

**EUROPEAN PARLIAMENT**



*Directorate-General for Research*

**Working Paper**

**LOBBYING IN THE EUROPEAN UNION:  
CURRENT RULES AND PRACTICES**

*Constitutional Affairs Series*

*AFCO 104 EN*



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## Executive Summary

The main objective of European affairs consultants, European associations and other lobbying professionals is to maintain a favourable regulatory environment for their organisations, members or clients. In 2000, about 2,600 interest groups had a permanent office downtown Brussels, of which European trade federations comprise about a third, commercial consultants a fifth, companies, European NGOs (e.g., in environment, health care or human rights) and national business or labour associations each about 10%, regional representations and international organisations each about 5%, and, finally, think tanks about 1%.

According to the literature, the activities of lobbyists and pressure groups can usefully be grouped in four categories:

- *service functions*, i.e. the provision of specific (and often exclusive) services for their members (e.g. the gathering of information);
- *lobbying functions*, i.e. attempts to influence decision-making processes from outside (e.g. by meeting Commission officials or participating in public hearings);
- *decision-making functions*, i.e. the attempts to influence decisions from within (e.g. by direct participation in the decision-making process of expert committees selecting research project proposals);
- *implementation functions*, i.e. the participation in policy implementation (e.g. by taking over management functions in programme implementation).

The first two tasks mainly serve the organisations' membership or clients, whereas the latter two contribute – in some way or other – to public policy-making and the governance of a specific policy sector.

Most EU interest associations are composed of national associations, large companies or both. Sectors dominated by small firms tend to be represented by federations of national associations, whereas highly concentrated sectors tend to be represented by direct company membership organisations. The key players are formal EU business associations and firms that have established government relations offices in Belgium. A high degree of specialisation is apparent according to sectors or even sub-sectors of business activity and issues. However, some of EU business associations also represent a very broad spectrum of issues. At the national level consumer organisations in Europe have pursued a number of different strategies to attract members. Although each of these traditions is represented at the European level, European consumer organisations use similar approaches.

Many lobbying groups exhibit striking differences in their approaches. They may have particular preferences, resources, forms of management, or lobbying styles. These differences often stem from factors such as geographical origin, type or size of organisation and situational (time) aspects.

One of the most significant issues facing interests groups is the shifting balance of power among European Institutions. Extension of qualified majority voting in the Council took the veto power from Member States in some economic areas, the co-decision procedure gave the

EP a greater role in decision-making and the ability to reject legislation that the Council favours. These institutional changes helped to underpin the importance of non-state actors (now often called civil society) in the policy making process. In addition, in the past ten years the EU has been given new competencies in areas such as consumer, social and environment policy and it has introduced a single currency. This growth of authority has created the need for information on complex regional economic issues and the opportunities to influence EU legislation in new policy areas. The Court of Justice has played a crucial role in promoting civic interests, particularly in overruling national regulations that protected certain individual and corporate interests at the expense of consumers.

In describing lobby activities, the metaphor of the *political market* is often used: just as the equilibrium price in goods markets is found by the interplay of supply and demand, the equilibrium level of influence is determined by the supply and demand of information and other goods provided by officials and politicians, on the one hand, and lobbyists, on the other. The immediate parallel of price formation in the commercial market would hence be the formation of consensus in the EU political market.

Not all legislative proposals concern a whole industry branch; they may instead relate to an individual enterprise. In both cases, however, the more the point of view presented to the addressees of a lobbying effort is European, the greater the chances of having that viewpoint seriously considered. Hence, interest groups form alliances in order to give the issue a genuine European dimension and context.

The extent of *knowledge* and *understanding* of the EU machinery frequently makes the big difference between successful and inefficient participants in the lobbying theatre. The desired outcome being set as the dependent variable, stakeholders' expertise of the decision-making process can be taken as one of the most important independent ones.

A certain symbiosis can be detected between interest groups and bureaucracies. The latter have a tendency to construct stable relationships with the former as a means of securing some sort of "negotiated order". Interest groups, for their part, also exhibit a preference for public bureaucracies as a venue for obtaining reliable information and influencing public policy, particularly planned or impending legislative measures.

The growth of lobbying and the greater sensitivity of EU institutions to their public image have led to lobbying now being more closely regulated. Lobbyists (or "public affairs professionals") have drawn up their own codes of conduct, which require them, for instance, to "identify themselves by name and company" and to specify the client they represent. The codes outlaw anything which might be constructed as bribing officials or politicians.

The EP has its own 10-point code of conduct on lobbying, set out in Annex IX of the Parliament Rules of Procedure. This, too, requires lobbyists to refrain from any action designed to obtain information dishonestly and moreover not to claim any formal relationship with Parliament in dealing with third parties. Lobbyists, defined as persons who wish to enter Parliaments premises frequently with a view to supplying information to Members in their own interests or those of third parties, are required to register and are issued with special passes, which distinguish them from others visitors.

In more general terms, efforts at regulating outside interest influence in the European Parliament should be seen for what they can achieve in maintaining public confidence in the work of the Parliament and in putting its relations with interests on a more solid basis. They are linked to broader concerns about the legitimacy of European institutions and a level playing field between business and non-business interests. The regulation of lobbying abuses may be seen as only the nucleus of wider issues such as public standards of behaviour, openness and transparency, remedying the democratic deficit and creation of a Citizens' Europe.

The basic purpose of all regulation and codes of conduct is to bring lobbying into the open. Although there is still pressure in some quarters in favour of making the codes legally binding, others argue that this is not necessary as long as they are consistently enforced. Lobbyists recognise that it is not in their interest to be suspected of underhand practices and that good relations with EU institutions are essential for them.





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## **Introduction**

Modern government implies close co-operation with stakeholders from all sectors of society. Therefore, civic and producer interests contribute to the perception, presentation and definition of issues in European Union policy-making. European Institutions recognise the benefits of being open to outside input and consultation mechanisms form part of their activities throughout the whole legislative process. There are already institutionalised advisory bodies established to assist the European Commission, the European Parliament and the Council of the EU, namely the Economic and Social Committee (ESC) and the Committee of the Regions (CoR). As the Commission stresses in one of its recent communications, “the role of these advisory bodies does not exclude direct contact between the Commission and interest groups. In fact, wide consultation is one of the Commission’s duties according to the Treaties and helps to ensure that proposals put to the legislature are sound”<sup>1</sup>. According to Protocol n° 7 annexed to the Amsterdam Treaty, on the application of the principles of subsidiarity and proportionality, “the Commission should [...] consult widely before proposing legislation and, wherever appropriate, publish consultation documents”.

This paper has two objectives:

- to provide a photography of the current state of affairs in EU lobbying, addressing questions such as the number of organisations involved, their main strategies and working methods; this part of the paper is based on an analysis of recent academic work on lobbying and special interest representation;
- to give an overview of current rules and practices concerning lobbying in the parliamentary institutions of the Member States; this part of the paper is based on a previous working document drawn up by the Directorate General for Research (DG IV), which was updated with the help of the Parliamentary Documentation Centre of the European Parliament.

No attempt is made to answer the frequently asked question whether and how lobbying has influenced particular policy decisions. In this respect, lobbying may be compared to advertising or marketing, of which Henry Ford has famously said that 50% of it worked, but that you never knew which half it was. Lobbyists will tend to overstate their influence, most of their addressees, particularly Members of Parliament, will rather play it down. For this and other reasons, no empirical studies could be found which tried to measure directly the efficacy of any real world lobbying project. There are, however, a number of investigations based on questionnaires and interviews (including MEPs) which have been evaluated for this study.

The document focuses on the lobbying efforts concentrated on Members of the European Parliament and the Commission. The other institutions are only glanced at cursorily. It was requested by the chair of the Committee on Industry, External Trade, Research and Energy<sup>2</sup>. In keeping with this request, the paper presents an evaluation of recent literature on lobbying

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<sup>1</sup> European Commission, "Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission", COM (2002) 704 fin., p. 4.

<sup>2</sup> Note of 7 November 2002.

and special interest groups in the context of the European Union, with particular focus on Parliament's legislative activities<sup>3</sup>.

As van Schendelen has observed some time ago, "the major books on chess are descriptions of chess-cases and important situations. As descriptive studies they are not general but specific. The same applies to the field of lobbying, particularly EC lobbying". Indeed, much work on lobbying falls into one of two categories – "how-to" books written by practitioners, which seek to describe those activities which are commonly employed in a given country or institutional environment, and then a smaller number of texts which adopt a theoretical and academic approach. The present evaluation attempts to find a balance between these two approaches.

Interest groups can be national, European and international federations covering all sectors of economic and social activity, private enterprises, law firms, public-affairs consultants, and representatives of local or regional authorities. No consensus has yet emerged from the academic literature as to how this work can best be labelled. Numerous terms are used in everyday language to describe these organisations: interest groups, pressure groups, lobbies, promotion groups and so on. Each of these terms refers to a particular aspect of interest representation. If lobbying essentially describes the direct advocacy of a point of view about a matter of public policy, it is less clear as a description of the actual work undertaken by most people in the lobbying industry. Still, one advantage of using the term "lobbyist" is that, even though it is often shunned in some countries and associated with the United States "pork barrel" system, it is widely understood and the functions of the lobbyist are more clearly recognised than other terms such as "government relations", "public affairs" or "special interest groups".

Such issues of definition are of more than academic interest. Indeed, as will be seen below, they were one of the major difficulties experienced during the laborious process of developing a European Parliament strategy towards lobbyists. It should also be mentioned that the term "lobbyist" still carries a rather negative meaning in a number of other Community languages (e.g., in German or Italian).

As Brussels has turned into an important centre of decision-making power (80 % of national legislation today is of European inspiration<sup>4</sup>), lobbies started to proliferate. Today the EU controls important policies such as the Common Agricultural Policy, the negotiations in the World Trade Organisation, telecommunication, food safety, public health and transport. Over 1000 Committees and Expert Groups assist the European Commission in the preparation, adoption and enforcement of regulations and directives. With about 1000 accredited journalists, Brussels has also become one of the world's biggest press-centres<sup>5</sup>. In spite of media suspicion and criticism of lobbying, the media themselves are becoming increasingly

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<sup>3</sup> *Editorial note:* For ease of reading, only longer illustrations or quotes taken from other publications are directly referenced. However, the document draws substantially from the sources given in the References list at the end of the text.

<sup>4</sup> Guéguen, D., "Governance and the Role of Associations in Economic Management: A Response from an EU Public Affairs Practitioner", in: Greenwood, J. (ed.). *The Effectiveness of EU Business Associations*, Palgrave, Basingstoke, 2002, p. 47.

<sup>5</sup> *Ibid.*, p. 48.

active in Brussels. The BBC, for instance, in addition to its newsgathering team, has its own office to lobby the European institutions. The print media have several representative bodies.

In parallel with the extension of the European Parliament's legislative powers, the volume and intensity of efforts to lobby it have significantly increased in the 1980s and 1990s. The most often quoted – although meanwhile somewhat outdated – source on the number of interest groups at the European level is a Commission report published in 1992<sup>6</sup>. In this report, the Commission estimated that there were about 3000 interest groups (both national and European) active in Brussels and Strasbourg, employing around 10.000 people, among which there were about 500 European and/or international federations. In addition, it is generally agreed that there are more than 300 individual companies having direct representations or public affairs offices in Brussels. About 100 management consultancies and numerous law firms specialise in EU decision making procedures and European law.

Although the Commission has recognised that its 1992 figures were somewhat exaggerated and based on rough and ready assumptions, the general idea the communication has left is that there is a problem of "overcrowding" of the lobbying environment and of information overload of MEPs. On the other hand, former MEP Ken Collins, probably speaking for many of his colleagues, has stated that the main problem with lobbyists was not quantity but quality. Indeed, badly prepared and unfocused efforts can be annoying, whereas useful and competent information is often welcome to policy-makers. Particularly useful are comparative research and evidence that will enable decision makers to assess the impact of their proposal on the law and practices in each of the Member States.

This study first surveys different types of interest groups and the characteristics of their collective action, focusing on business interests, especially the trade associations of the Information and Communications Technology (ICT) sector, which has, for the past few years, been the main object of EU industrial policy. The paper then examines which lobbying strategies are likely to influence EU policy-making. Furthermore, we look at the ways in which the special "network" or multi-level characteristics of EU institutions and European decision-making structure the contribution which civic and producer interests make to EU policy making. Finally, attempts at regulating the activities of lobbyists in the Parliament and the Commission are examined, complemented by a brief look at the situation in Member States.

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<sup>6</sup> Commission of the European Communities, *An Open and Structured Dialogue Between the Commission and Special Interest Groups*; SEC(92)2272 fin.



## **1 The landscape of special interests**

The European lobbying landscape is extremely fragmented. According to Guéguen, there are over 1000 EU trade associations; around 750 NGOs (which represent consumers, ecologists, religions, families, Third World aid and so on), European representative bodies from around 500 major companies, about 150 regional offices, 130 specialist law firms working on European law (the large majority of which are of British or American origin) and an unspecified number of consultants, many of whom specialise in regulation and community finance programme monitoring.

Interest groups can be categorised in a variety of ways. They can be seen in terms of their organisational degree (peak associations vs. membership associations), their structure (traditional associations vs. spontaneous, unconventional initiatives and movements), their legal forms, or their motivational character. Much of the literature builds the categories according to the kind of interests that groups pursue. Generally, public and private interests are distinguished. According to this classification, public interest groups seek benefits serving the society as a whole, for example better consumer protection, improved environmental protection or lower taxes, while private interest groups seek to achieve goals for their immediate members only.

Some authors challenge the common dichotomy between public and private interests<sup>7</sup>. In their view this assumption makes several false implicit assertions: that there is such a thing as a single or predictable producer interest; that producers are in accord; and that producers, by pursuing their own ends, do not benefit the public good. An additional problem is that the asserted dichotomy between public and private interests also carries the implication that public interest groups always represent what is objectively best for society, while private interest groups are selfish. In order to get away from this dichotomy, the terms producer interest and civic interest are being used here.

The Commission makes a distinction between two categories: non-profit organisations (national, European and international associations and federations) and profit-making organisations (legal advisers, public-relations firms and consultants). Non-profit organisations are largely professional organisations. Profit-making organisations are made up of individuals who often act on the instructions of a third party to defend the interests of that party. The Commission acknowledges that such a distinction is somewhat arbitrary. In November 2002, the secretary-general's list of non-profit organisations included around 700 groups, divided into categories according to policy areas as follows:

- Agriculture and rural development;
- Competition;
- Consumer protection;
- Culture;
- Development;
- Economic and financial affairs;

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<sup>7</sup> See, for instance, Young, A. and Wallace, H., *Regulatory Politics in the Enlarging European Union: Weighing Civic and Producer Interests*, Manchester University Press, Manchester, 2000.

- Education;
- Employment;
- Energy;
- Enlargement;
- Enterprise;
- Environment;
- External relations;
- External trade;
- Fisheries;
- Health;
- Human Rights;
- Humanitarian Aid;
- Information Society
- Internal market;
- Justice and home affairs;
- Overall EU policy matters;
- Regional policy;
- Research;
- Social Affairs;
- Taxation;
- Transport.

### **1.1 Civic interests**

Civic interests have been defined as interests other than those of producers that are relevant to both individual items of market regulation and their broad policy impact. Although there are many reasons to expect producer predominance in EU regulation (they are discussed further on), civic interests often have a significant impact on EU policy-making. Somewhat intriguingly, it is even held by some observers that environmental groups and human and animal rights lobbies are among the most influential lobby groups. Agricultural associations and industry rank only third and fourth in influence, according to one author<sup>8</sup>. Young and Wallace explain this by the interaction between EU institutions, actors and ideas, which facilitate consideration of civic interests. As mentioned in the introduction, the Treaties even oblige the Commission to consult widely when elaborating its proposals. A multiplicity of actors can hence articulate the preferences of different civic interests.

In some cases it is the Commission in its role as agenda setter that inserts civic interest, in others the EP or the European Court of Justice (ECJ) make an influential input; in other cases again one or the other Member State government is a sponsor of particular civic interests. In addition, firms and industries often have conflicting interests. As some industries always stand to gain from the regulation of another sector, civic interest organisations often find themselves with objectives compatible with those of some businesses. What is more, at the European level there are often splits within industries, because firms' perceptions of proposed EU measures are coloured by the regulatory regimes under which they operate domestically.

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<sup>8</sup> Vandenberghe, K., *Lobbying in the European Union, Government relations*, May 1995, p. 3-5.



Finally, the negative views expressed on the process of European integration at the time of the negotiation and ratification of the Maastricht Treaty on European Union highlighted a certain legitimacy deficit in the EU. One consequence seems to have been that the Commission and Member State governments, but above all the European Parliament, began to pay more attention to societal interests.

### ***1.1.1 Environmental***

The nature of environmental issues encourages a transnational perspective, therefore it was no surprise to see environmentalists addressing the European level much faster than many other organised collective interest groups. Furthermore, the general heightening of environmental awareness and the assumption of tasks by the Commission also favoured the environmentalists' case from the 1970s onwards. The first specifically European organisation, the European Environmental Bureau (EEB) was established in 1974, with 25 member environmental movement organisations representing all Member States. In subsequent years, the relationship between the EEB and the Commission was often close and the EEB even derived much of its core funding from the Directorate-general (DG) Environment. For more than twelve years, the EEB remained the only environmental organisation dedicated to the EU arena, but with the arrival of new environmental organisations in Brussels in recent years relations between the EEB and the Commission have become less cosy.

Most European environmental organisations take the form of transnational alliances or loose networks of national organisations. The EEB's web site in November 2002 claimed 141 environmental citizens organisations based in all EU Member States and most accession countries, as well as a few neighbouring countries. Most of the other environmentalist networks are the European branches of more extensive international organisations whose presence in Brussels can be interpreted as a recognition that in matters of environmental policy the EU is now considerably more important than the Member States. Examples of such European branches include, among others, the Climate Network Europe, the European Federation for Transport and Environment, Birdlife International and the two leading international organisations – Greenpeace and World Wide Fund for Nature.

Environmental organisations at the European level are not generally in competition with one another; they have a common interest in better environmental regulations. There is some competition for funding but there is an unwritten agreement to specialise in different areas of activity. Environmentalists were, at least up to the early 1990s, relatively successful at setting the Commission's environmental agenda, but they were much weaker in their ability to stay with an issue all the way through to the detailed drafting of policy. The reason for this is their lack of resources. Co-operation among European environmental organisations is often impeded by the very diversity of the groups and their national backgrounds. They differ in their organisational forms and styles, in policy styles, perceptions of the relative importance of various environmental issues, and in the magnitude of their expectations.

Environmental organisations depend for their legitimacy and their resources upon their ability to command public support, and in the absence of a genuinely European public opinion, it is primarily public opinion at national level to which they must be responsive. Therefore they tend to invest in strengthening their national organisations rather than providing for substantial resources required for collective action at European level. Moreover, action at the

EU level is often made disproportionately expensive by the costs of travel, communication and translation, while its effectiveness may be hard to evaluate, since the implementation of policies is still national. In brief, environmental movement networks within the EU are neither very dense nor very active. Most are highly specialised and most remain primarily orientated toward the national rather than the European stage. Involvement with the Commission is not attractive to groups whose objectives are more confrontational, and whose principles are those of mass participation. These groups are frequently critical of the institutions and the purpose of the EU. The environmental radicals reject the dominant conceptions of good practice within the developed world, and most notably the concepts of “ecological modernisation” and “sustainable development”.

### **1.1.2 Regions**

Subnational governments have established approximately 150 independent offices in Brussels by the end of the 1990s. While some of them are poorly funded, i.e. staffed by one or two part-time officers, others are large quasi embassies of 15-20 staff members. This depends much on the role of regions in a given Member State. The strongest motivation to open an office in Brussels is usually informational exchange. This is most obvious for regions in federal or semi-federal states. In addition, a subnational authority may decide to set up an office when its political demands conflict with those of its national government.

Citizens in the region may have a strong sense of identity, reinforced perhaps by a distinct language and/or culture, or they may have a durable party-political orientation not represented in the national government. Subnational authorities employ their Brussels offices to compete and collaborate with a variety of actors. Offices rarely collaborate with their national permanent representations, though initial strained relationships have eased somewhat. National governments are not in principle against transnational co-operation among subnational authorities, but they draw the line when these transnational efforts are perceived to pose a threat to national unity.

The two most important transnational organisations representing regional governments are the Assembly of European Regions (AER) and the Council of European Municipalities and Regions (CEMR). The AER was founded in 1985 by nine interregional associations. In 1993, it was made up of delegates of 235 regional parliaments claiming to represent 80 percent of European population. The organisation had developed a close working relationship with the Commission, particularly on cohesion policy, but also on institutional issues. The AER was instrumental in the Creation of the Committee of the Regions, although its relations with the new body have become strained. The AER has lost much influence. Its competitor, the CEMR, which was founded in 1951, is the European section of the International Union of Local Authorities (IULA). It represents primarily local interests and its role in the European arena is similar to that of the AER.

Alongside the AER and the CEMR Hooghe names functional transnational networks of three types. The first group, the product of Commission efforts, promotes collaboration between areas with similar problems but variable resources. They are often outgrowths of a specific Community programme or initiative. Examples include associations for objective two regions and for objective one regions, and narrower networks built around Community initiatives like Urban (urban regeneration) or Interreg (cross-border co-operation). A second set of networks

has its origins among regions with common territorial features or policy problems. Networks in this category include the Association of European Frontier Regions (AEFR), the Conference of Peripheral Maritime Regions (CPMR), the three Alps association, the Working Community of the Pyrenees, the Working Community of the Jura, and the Association of European Regions of Industrial Technology. They have usually close connections with the Commission, and have from time to time been effective lobbyists for EU funding.

The last category of regional networks has emerged from a position of strength in the EU. The most famous example is the Four Motors arrangement between Baden-Württemberg, Rhône-Alpes, Catalonia and Lombardy, which combines dynamic regions in their respective countries. In these arrangements, regional politicians act as brokers, who set a broad regulatory framework and bring interested parties together, while decisions about possible collaborations are left to private actors.

As argued by Hooghes, regional and local authorities have asserted themselves as relatively autonomous and flexible players in Europe, while their transnational activities are to a large extent responses to increased competitive pressures in a global economy.

### **1.1.3 Social and community**

Organisations of women, human rights activists and other societal interests tend to be weaker than their counterparts in the sectors of industry, trade and agriculture and for the most part lag behind in the pace of Europeanisation set by the latter groups. This is even more true of other groups of the population, for instance welfare recipients and pensioners, who lack transnational ties and are widely dispersed – not to mention immigrant workers, minority ethnic groups, and the unemployed<sup>9</sup>.

Only more recently have relatively small networks such as the Platform of European Social NGOs, the European Anti-Poverty Network (EAPN), the Human Rights Contact Group, the European Migration Forum (EMF), United (a European-wide network of about 400 groups fighting racism), the European Network of the Unemployed (ENU), the European Network of Women (ENOW) and the European Women's Lobby (EWL) gained a higher profile. As an example of a very successful campaign Helfferich and Kolb mention the EWL's attempt to gain inclusion for the goal of gender equality in the Amsterdam Treaty<sup>10</sup>. Article 3 of the Amsterdam Treaty adds the principle of "gender mainstreaming" to all policies of the EU; women were also added to the new article on anti-discrimination. At the same time, article 141 was extended to include equal pay for equal work. In addition, the right and principle of equal treatment was enshrined in the Treaty. The amendments passed in Amsterdam were at least partly the result of a co-ordinated lobbying campaign of the European women's movement, headed by the EWL.

In general, it seems that the large gap between this type of groups and the big corporatist actors in terms of their degree of integration and amount of resources is somewhat

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<sup>9</sup> Imig, D. and Tarrow, S, (eds), *Contentious Europeans*, Rowman & Littlefield, Oxford, 2001, p. 235.

<sup>10</sup> Helfferich, B. and Kolb, F., "Multilevel Action Coordination in European Contentious Politics: The Case of the European Women's Lobby", in: Imig, D. and Tarrow, S., op.cit., p. 143-159.

diminishing, albeit still significant. According to the literature, some 60 per cent of groups representing broader societal interests are in receipt of European funding.

A relatively new phenomenon is quasi-religious lobbying. A number of MEPs feel quite annoyed by high intensity lobbying orchestrated with seemingly massive resources by self-styled "minority religious movements" protesting against purported discrimination of "spiritual movements" and other alleged infringements of fundamental rights.

#### **1.1.4 Consumers**

Consumer groups are among the better resourced organisations in Brussels. Similarly to the environmentalist groups, consumer groups are not competitors. A regulation that benefits one consumer group will not necessarily harm another. Moreover, the EU's style of consumer policy, which tends to raise the level of protection in the countries with the lowest standards without threatening the level of protection afforded by the highest standard countries, means that even divergent interests can be readily reconciled in a common position.

The European Consumers' Organisation (BEUC - *Bureau Européen des Unions de Consommateurs*) is one of the best resourced of the consumers organisations and tends to advocate more liberal policies. The position of BEUC is the most purely consumerist of all European consumer organisations. Its support for increasing consumer choice through liberalising trade and increasing competition meshes well with the objectives of the Single Market programme. The Confederation of Family Organisations in the European Community (COFACE) tends to be less affluent and has a wider range of social concerns. Consequently, consumer affairs are not its sole focus and it has fewer resources to allocate to promoting consumer interests. COFACE is less concerned with the economic aspects of consumer policy, focusing rather on health and safety protection, informing and educating consumers, and ensuring their access to justice.

The European Trade Union Confederation's consumer unit (EURO-C) is not an independent organisation and it sees the niche in the pluralistic European consumer movement to be in social and solidarity-based consumers protection. This means that it is rather sceptical about the benefits of increased competition through liberalisation, although it favours reform of the CAP. In other policy areas, however – such as ensuring the quality and safety of foodstuffs, asserting the liability of service providers, improving the consumer orientation of financial services and enforcing high standards in after-sales service – it takes positions more closely aligned to those of the other European consumers.

The European Community of Consumer Co-operatives (EURO COOP) is the founding father of the European consumer movement, but it has lost its primacy to BEUC. EURO COOP specialises in EU food issues and is an active proponent of the CAP reform. It has also been active on product labelling and packaging and packaging waste. The European Interregional Institute for Consumer Affairs (IEIC) differs from the other European consumer organisations in two ways: it includes public authorities and is organised only at the regional level. The IEIC is the youngest of the European consumer organisations, having been founded by seven regional organisations in 1989. It is also the only one of the European consumer organisations not to be based in Brussels; its secretariat is located in Lille. The association is particularly active in the areas of consumer information, training, and education.

The European institutions have played an important role in creating incentives for and promoting consumer co-operation at the European level, although until quite recently European consumer protection tended to be pursued indirectly and the European institution concerned with consumer policy were rather weak. The three institutional focal points for consumers are the Commission's Directorate-General Health and Consumer Protection, the European Parliament's Committee on the Environment, Public Health and Consumer Protection and the Parliamentary Intergroup on Consumer Affairs. In the Commission, consumer affairs obtained a full Directorate-general only in March 1995. The EP's role in promoting European consumer policy has developed as its general powers have been enhanced. Particularly since 1989, it has been an active player on consumer affairs, amending several important directives to consumers' advantage. Parliamentary Committee and Intergroup meetings also provide opportunities for consumer and other groups to exchange information and identify potential allies.

## **1.2 Producer Interests**

Producers necessarily play an important role in the regulatory policy process, as it is their activities and products that are the object of regulatory measures. Young and Wallace argue that producers can provide policy makers with the detailed information they need regarding the state of the market and the probable efficacy of a proposal and its likely direct costs. Furthermore, implementing a policy is much easier if it is developed with the co-operation or at least acquiescence of the regulated producers. Policy makers also need to consult producers in order to ensure that regulations do not interfere with their ability to provide employment and generate economic benefits. The advantage to producer groups may be enhanced by their superior capacity to organise. Finally, the founding treaties of the EU gave producers (or *agents économiques*) a particularly important place in European integration. The political objectives of the EU – preservation and strengthening of peace and liberty – were to be achieved via economic integration.

### **1.2.1 Business**

After the creation and liberalisation of the Single Market the EU institutions increased their regulatory authority. Large firms have, therefore, intensified their multi-level lobbying in an attempt to influence EU policy. Business groups account for around two-thirds of all Eurogroups<sup>11</sup>.

In the early 1990s, EU institutions were faced with an unprecedented boom in economic lobbying. Consequently, the Commission was faced with the problem of how to balance its informational needs and consultation requirements against a manageable number of interests. One of the Commission's informal solutions was to create restricted entry industrial forums, such as the Bangemann telecommunications and pharmaceutical forums. Coen explains that

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<sup>11</sup> Coen, D., "Business Interests and European Integration", in Balme, R., Chabanet, D. and Wright, V. (eds): *L'action collective en Europe*, Sciences Po Press, Paris, 2002, p. 255-292.

the success of these forums and a desire to have access to them, resulted in firms attempting to build their European credentials via the creation of ad hoc business alliances.

Between 1985 and 1997, over 35.000 firms chose to develop direct European lobbying capabilities, according to Coen. However, they soon had to recognise that the number of seats at the policy table was limited. Coen observes that direct membership of issue or sector specific industrial forums, like the Transport Network Round Table or the Automobile Group, required firms to build credible “policy profiles” in Brussels. Hence, large firms actively joined their European trade federations and industrial groupings like the European Round Table. Gradually more established players were invited to participate in think-tank style policy forums such as the Competitiveness Advisory Group (CAG) and the Bangemann forum on competition and competitiveness. The creation of these new forums suggested the development of an inner core of policy-makers and the institutionalisation of big-business in the EU policy process.

European federations began to increase their effectiveness by restructuring their membership and decision-making process to allow for the direct participation of large firms. The outcome of this restructuring was, as Coen puts it, “direct representation by multinationals of federation positions at the Commission”. Thus, while industry forums and committees continued to pursue collective EU goals, they benefited from a membership of like-minded and quick acting firms.

There has been a trend in recent years to tender out policy-making to specific business issue groups. For example, the Trans-Atlantic Business Dialogue (TABD), set up in 1995 as a joint initiative of the Commission and US State Department has gradually evolved into a quasi policy-making organisation. It aimed to bring together top American and European Chief executive officers (CEO) to co-ordinate responses on international trade and regulation issues. Coen describes the criteria for membership as theoretically straight forward: it requires that the CEO is pro-liberalisation and trade, represents a transatlantic company and is deemed constructive to the policy process.

There is a big overlap between the European Round Table of Industrialists membership and TABD with companies like ABB, Bayer, Bertelsmann, Ericsson, ICI, Olivetti, Pirelli, Philips, Siemens, Solvay, SKB and Unilever and American companies like Boeing, Enron, Ford, IBM, Procter and Gamble, Time Warner and Xerox. Coen notes that where agreement can be reached European and American governments are likely to incorporate many of the recommendations in policy documents and so avoid complex intergovernmental negotiations at WTO trade summits. According to this author, this raises serious questions as to who has access and who is excluded from these working groups. Thus, although large firms have established their credibility as policy actors in the EU, it is open to debate whether all firms who participate can attain favoured access.

### ***EU trade associations***

The overwhelming majority of EU business associations are trade associations. Guéguen summarises two main reasons why belonging to an EU trade association is essential for a

company<sup>12</sup>. Firstly, the EU trade association remains the official representative body with regard to the EU institutions, with the consequent advantage in terms of obtaining information and invitations to meetings. Secondly, the EU trade association is a crucial meeting place for national members.

Guéguen also draws the attention to the fact that, in the 1990s, decision-making power in EU trade associations was held by the national member associations. According to the author, however, “currently it is the large companies who are running the show”. This take-over of the EU trade associations by the big companies has come about gradually. Increasingly, the chairman of the EU trade association is from a big company. Very often EU trade associations have accepted to create a major companies’ Club within them, often having a seat on the EU trade association committee. The choice of general secretary is clearly influenced by the big companies. They also contribute to the EU trade association’s budget (special subscription, project sponsoring, provision of a member of staff).

This situation offers numerous possibilities in terms of lobbying. Depending on the issue, the big company will, as the author puts it, “wear the EU trade association’s hat when it has an interest in doing so. Conversely, it will undertake its own lobbying action when this is to its advantage. This is what is known as a dual lobbying strategy.”

The exact number of formal business associations that are politically active at the EU level is difficult to estimate for several reasons. First of all, there are various ways of accessing EU institutions and politics, and there is a variety of businesses. Some of these key players seek visibility while others prefer relative anonymity. The internal organisation of firms and their public affairs capacities are also very diversified. They engage in EU “public affairs” from different territorial locations. For instance, Mazey and Richardson mention that there are far more than 20 flights per day from London to Brussels, many of which carry representatives from various interest groups and companies to do regular business with the EU institutions. Similar observations could certainly be made about the Thalys high speed train now running every 30 minutes between Paris and Brussels.

According to different directory listings and the European Commission database there are approximately 950 business interest associations, more than 1300 EU level groups of all types and around 300 transnational firms with government relations offices in Belgium. Research suggests that the most effective European groups in terms of attracting members tend to be those in business sectors characterised by a relatively high degree of concentration with only a limited number of potential members<sup>13</sup>. Very effective are also the firms that are multinational and have experience of operating in different regulatory environments. If sectoral specialisation is strong, the danger of competition from members in other sectors whose interests diverge is rather limited. Thus, one of the most effective actors at the European level is the European Federation of Pharmaceutical Industry Associations, while some of the least effective are tourism related interests. Pharmaceutical firms deal with very similar issues regardless from where they operate. Governments try to attract them because of their earning capacity, but worry about medicine prices, selling standards and safety. As argued by Greenwood, “the shared challenges faced by pharmaceutical companies have created a habit

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<sup>12</sup> Guéguen, D., 2002, p. 50-51.

<sup>13</sup> Greenwood, J. and Aspinwall, M. (eds), 1998, p. 21.

of co-operation in international forums beyond the EU, and it has not been hard to reproduce this at the European level”.

Some new trends are of interest: the European Modern Restaurants Association (EMRA), for instance, is a ‘virtual’ organisation representing the interests of fast-food chains such as McDonalds, Burger King and Pizza Hut which uses modern technologies and resource sharing to avoid the need for traditional infrastructure like buildings and a permanent secretariat<sup>14</sup>. The emergence of new technologies has also entailed a change in the definition certain economic sectors: the merger between two former telecommunications and information technology (IT) associations into the European Information and Communication Technologies Association (EICTA) is an example.

Activities of EU associations are of a rather narrow range if compared to national associations who provide a variety of membership services in response to the perceived needs of their members. Members of European associations seek primarily political representation and information at the European level which explains why they tend to have much smaller secretariat sizes than is common at the national level. However, business representation is increasingly showing a determination to influence rather than to monitor and respond to events in Brussels. By encouraging EU legislation, public and private lobby groups can overcome irritating domestic situations and thus benefit the whole EU. By blocking it, they can save domestic situations pampering their interests. Their incentives have somewhat changed from social interaction and information gathering to economic gain and political lobbying.

The nature and structure of business interests to a large extent depend on the political system in which they are engaging. Corporatist systems common to Germanic countries provide the associations with status as official interlocutors. The Austrian model with its compulsory membership of economic chambers has been the model of economic management in which associations have featured most strongly. In Anglo-American societies, on the other hand, associations are just one part of a dialogue between business and government. Greenwood argues that the EU, with its fragmented institutional set-up and dispersion of power, lacks the capacity to support and licence an association system. Consequently, EU associations do not form part of an overall system of governance. As to the specificity of lobbying efforts coming from European associations, officials sometimes deplore bland consensus statements, e.g. from UNICE, which fail to address the specifics of proposed legislation. Rich firm clubs, i.e. small and sometimes temporary coalitions of large companies, enjoy a better reputation with European legislators.

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<sup>14</sup> Greenwood, J., *Inside the EU Business Associations*, Palgrave, Basingstoke, 2002a, p. 8.



### 1.2.2 Professions

Groups representing the professions formed later and came to Brussels later than business groups. According to Greenwood, they are less likely to have a Brussels base than any other category of interest<sup>15</sup>.

At the peak level, three associations organise professional interests:

- SEPLIS, representing the liberal professions, formed in 1974;
- EUROCADRES, the Council of European Professional and Managerial Staff, which operates under the auspices of ETUC, and represents salaried, unionised professional and managerial staff; EUROCADRES was formed in 1993;
- CEC, the *Confédération Européenne des Cadres*, representing independent organisations of managerial staff, primarily in industry and commerce; CEC is not affiliated to ETUC and was created in 1989.

Despite each of these having specific membership constituencies, their interest domains overlap considerably. Greenwood also points out a high degree of fragmentation through the presence of national-level organisations in Brussels alongside European associations. Such weaknesses had for consequence that the Commission almost abandoned attempts to engage European level professional interests in consultation. Because consultation measures tend to be addressed to national level associations, there is a lack of institutionalised incentives for interests to invest significant resources in organising at the European level.

The weakness of the European level organisation for interests representing the professions has a number of explanations: the limited demand for use of the single market by the service based professions, including professional mobility across Member States; the difficulties of finding common issues which impact across the variety of professional interests; the lower level of EU competencies concerning professional life in comparison with other fields; the relative lack of institutional incentives upon professional interests to organise and develop at the European level and extreme differences in the relationship between the state and the profession between Member States.

The main problem appears to reside in national differences in the composition of professional interests, and their relationship with the state. In some cases, the European level has represented a threat to domestic professions by challenging control over regulation and service provision, whereas in other countries the European level has provided an opportunity for enhanced autonomy of professional interests.

### 1.2.3 Labour

Various social partners are being consulted by the Commission when it submits proposals. This social dialogue occurs via three main organisations representing the social partners at the European level:

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<sup>15</sup> Greenwood, J., "The professions", in: Greenwood, J. and Aspinwall, M. (eds), *Collective Action in the European Union: Interests and the new politics of associability*, Routledge, London, 1998, p. 127-148.

- The Union of Industrial and Employers Confederation of Europe (UNICE);
- The European Trade Union Confederation (ETUC);
- The European Centre for Public Enterprise (CEEP).

The social dialogue involves discussion, joint action, and sometimes negotiations between European social partners as well as discussions between the partners and EU institutions. The dialogue was started by the Commission in 1985, and ever since the Single European Act, the Treaty has formally required the Commission to develop it (Article 139 TEC). Social dialogue may also lead to contractual relationships including agreements, the implementation of which are subject to a decision by the Council on proposal from the Commission. There have been two agreements of this type between the employers and labour: parental leave and part-time work.

Another major development in the EU's social dimension was the adoption of the European Works Council Directive (EWC) in September 1994. This Directive establishes, for the first time, a legal right for employees or their representatives in companies operating in more than one Member State of the European Economic Area (EEA) to be informed and consulted about company policies and activities with transnational implications. It requires undertakings and groups of undertakings with at least 1000 employees across the EEA and with at least 150 employees in each of two different Member States to set up a European Works Council or a procedure for informing and consulting their employees on cross-border issues which affect them.

It has been hoped for that the social dialogue and the EWC Directive would in time help to create a cohesive European trade union movement as some kind of counterbalance to international capital in order to help prevent national industrial relations systems being undermined. However, as pointed out by Branch, the internal political tensions between different levels of the trade union movement which came to surface after Maastricht showed that an important concern of national trade unions was the preservation of their national power base rather than the establishment of an effective counterpart to international capital.

Nevertheless, owing to the social dialogue and the EWC Directive trade unions are in a stronger position than before. For a start, the employers have been forced to negotiate at the cross-industry European level and a wide range of European-wide minimum standards are now in force, which creates some kind of floor against downward spiralling of standards. Also, multinationals are now being forced to consider the implications of their actions, and to account for them, in a way which was not previously necessary.

### **1.3 The practice of lobbying**

The EU's institutional setting as described above gives interest groups both advantages and disadvantages. Its machinery of decision-making full of links between the different bodies, and its variety of external linkages with the Member States, provide an almost infinite number of access points through which to lobby EU authorities. In such a differentiated institutional setting, the problem of interest groups is not a shortage but an over-supply of potential routes to influence. However, the mere plurality of actors and the complexity of the decision-making process can be serious obstacles for private interest groups as well. It is virtually impossible

for any single interest or national association to secure exclusive access to the relevant officials or politicians, let alone to exert exclusive influence.

### 1.3.1 Objectives, strategies and techniques

In both the academic and the practically oriented lobbying literature, the wish for a *level playing field* for all actors in EU decision making is expressed. This may be compared with the eternal call for free and open competition on the commercial market, in which every merchant still strives to become the single monopolist. Van Schendelen has developed a model he calls the "game of triple P" to describe some facets of these attempts to obtain political influence in a quasi-monopolistic manner. The game's objective is to make the playing field more unlevelled; its participants try to place the friendliest *persons* in the best *positions* in the most beneficial *procedures*<sup>16</sup>. When others start to argue over the contents of the issue, triple P players have already prearranged the playing field and limited the other players' movements by their early settling of the procedures, positions and people favourable to their cause. The game usually has a bad reputation among the players who find themselves at the far end of the playing field. Many pressure groups, however, quickly learn it in practice.

On a more instrumental level, Berry suggested already 25 years ago, in a study of lobbying by public interest groups in America, that the tactics or activities they pursued fell into three broad categories:

- techniques that are characterised by direct communication between lobbyists and governmental officials; these include private, personal representations before people in government; testifying before congressional committees; and formal legal action, such as litigation and interference with administrative proceedings;
- methods by which groups lobby through their constituents; for this, the professional staff act as intermediaries, stimulating lobbying by citizens toward their government; they may ask all their members to write letters or to participate in protest demonstrations; or they may ask individual, but highly influential, members or constituents to contact a key policy maker;
- groups may try to change governmental policy by influencing elections or altering public opinion; techniques of this sort are contributing money to political campaigns, publishing voting records, releasing research results, and public relations campaigns<sup>17</sup>.

More recently, Guéguen divided lobbying *strategies* in three categories<sup>18</sup>:

- negative strategies consisting of a face-on opposition to Commission proposals or by proposing untenable counter-proposals; the farming lobbies provide the best illustration of these opposition strategies;
- reactive strategies in which prudence prevails over action and initiatives: monitoring, meetings and a small amount of public relations;

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<sup>16</sup> Cf. van Schendelen, M., 2002, pp. 105 ff.

<sup>17</sup> Cited in McGrath, C., "Comparative Lobbying Practices: Washington, London, Brussels", Draft paper, University of Ulster, 2002.

<sup>18</sup> Guéguen, D., 2002, p. 51.

- pro-active strategies consisting of working constructively with the Commission in a spirit of partnership and credibility.

Pro-active strategies are relatively rare, which is regrettable because the pro-active lobbyist also offers the legislator an authorised and competent technical opinion and credible proposals. Credibility moreover involves companies' and industries' capacities to build European alliances with consumers and ecologists.

According to Coen, successful lobbying requires firms to have established at least four strategic capacities:

- the ability to identify clear and focused policy goals;
- develop relationships and credibility in the policy process;
- understand the nature of the policy process and institutional access;
- look for natural allies and alliances to develop profile and access<sup>19</sup>.

### ***1.3.2 The lobbyist's working tools***

The lobbying process can be divided into several practical stages: fact finding, analysis, influencing and follow-up.

According to De Fouloy, the first step in building lobbying momentum at the European level is to assemble an information network within EU institutions and other associations that can provide an indispensable alarm system and a means of accessing vital information. The earlier the lobbyist intervenes in the legislative process, the more effective he is. Adapting the message to the interests of the institution addressed will help gain attention and influence decision-making. Most legislation is written by experts and officials at lower level. In many cases, these experts are the starting point for the lobbyist. Higher level officials are only called on when there is a deadlock, an unwillingness to deal with the issue, or when there is a high political stake. Highlighting principles such as free movement of goods and persons, social cohesion, employment and competitiveness, on which European legislation and initiatives are based, enhances the profile of the lobbyist.

Direct advocacy of a case to policy makers is merely one element of a lobbying campaign. Many consultants do no or very little lobbying themselves. The complete catalogue of activities may be summarised as follows<sup>20</sup>:

#### *Atmosphere setting*

Clients will sometimes want initially to simply raise or enhance their corporate profile with decision makers, such as gaining access to policy makers, creating an attitude among policy makers conducive to the group's goals, and influencing policy makers in the group's favour. Much interaction by groups with policy makers, therefore, is not related to immediate

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<sup>19</sup> Coen, D., "Business Interests and European Integration", in: Balme, R., Chabanet, D. and Wright, V. (eds): *L'action collective en Europe*, Sciences Po Press, Paris, 2002, p. 261-267.

<sup>20</sup> Cf. McGrath, C., op.cit.

concerns but intended to gain access or create an atmosphere – involving trust, credibility and maybe even dependence or “capture” – that will be conducive to the group in making future government policy.

### *Monitoring*

Monitoring is frequently mentioned by practitioners as a key element of their work, although this function tends to be neglected in the academic literature. Monitoring means going through agendas and finding what needs to be copied to what clients. Monitoring is often recommended to be done at a more sophisticated level than simply trawling through transcripts of legislative proceedings and press releases. It can involve many forms of useful political intelligence.

### *Communication with policy makers*

The purpose of detailed monitoring and research is essentially to enable the lobbyist’s employer or client to develop messages related to public policy issues and to identify the most appropriate or effective ways of communicating those messages to relevant politicians and officials. There seem to be three primary options or routes available:

- Approach policy makers on the basis of issues: a lobbyist here would seek to demonstrate that they are aware that the target has a known interest in the relevant policy area. Politicians and officials generally accept that lobbyists often have a better understanding of the issues than they do. Lobbying hence acts as a bridge across which information can flow in order to ensure that policy decisions are better informed.
- Promise access to decision makers rather than knowledge of the issues: this tactic can best be summarised in the words of one consultant: "It’s not that you have a huge academic background or skills, what will impress clients is knowing someone."
- Knowledge of the legislative process: Lobbyists often take the stance that processes are intended to make life difficult for anyone who tries to move things through, and that to be able to deal with them efficiently is a more important asset than detailed knowledge of issues.

### *Advocacy and influencing*

As was mentioned above, according to McGrath most commercial lobbyists say that they are relatively uninvolved in advocacy. The lobbyist crafts a strategy and organises the campaign, but it is the client who primarily delivers the message directly to politicians and officials. More commonly, commercial consultants report that they see their role as being to advise clients on how to conduct their own lobbying of policy makers.

### **1.3.3 Some principles of successful lobbying**

As we have seen in previous chapters, a large part of the lobbying literature is devoted to giving advice to persons and organisations wishing to establish a successful temporary or long-term lobbying operation. With a view to the multitude of variables to take into account, they often take the form of rather general advice such as "the more thorough the reflection, the better the chance of success, although there are never any guarantees." In most cases these

"how-to" texts could be summarised by saying that you should demonstrate "intelligent and prudent behaviour".<sup>21</sup> Indeed, for every specific political arena, lobbyists have to observe and consider the issues at stake, the stakeholders involved, the time dimension and the arena boundaries, and also to reflect on their best management. Van Schendelen, again, summarises this by calling for a lot of "preparatory homework" and "fine-tuned fieldwork". So-called *best practices* are never permanently fixed, but are dependent on new insights and are thus constantly in development.

It is, however, illustrative for lobbyists' addressees, too, to take a brief look at what some experienced lobbyists see as the main requisite for having a lasting impact on decision makers' preferences. Hence, two recent specimen of compact "how-to" lists are given for the purpose of illustration. Neither their authors nor the authors of this document claim that they are in any way exhaustive, but they appear to be fairly representative of a lot of lobbying guides. In addition, they convey a feeling of how lobbyists view their addressees and their possibilities to influence them. Finally, considerable practical experience and common sense transpire from the two lists.

The first one was drawn up by an American public affairs consultant based in Brussels:

<b>Assemble an information network</b>	Information transparency is a problem in the EU, and obtaining timely information will be a major challenge. Specialised media, including electronic, cover EU political and legislative developments. Nevertheless, your own network within EU institutions, other associations, and among your oversee members will provide you with an indispensable alert system and a means of accessing vital information.
<b>Be proactive</b>	The earlier you intervene in the legislative process, the more effective you will be. Build your relationships before you actually need something. Schedule introductory meetings with officials and other contact persons to get to know each other and exchange views. This will also help you to adopt the right approach with every official
<b>Know your audience</b>	Before approaching a government department, understand that particular department's agenda and interests. In the European Commission, for example, Directorate General I (external commercial relations), will have a different interest from Directorate General III (fostering European industry). Adapting your message to their interests will help you gain their attention and influence their decision-making.

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<sup>21</sup> Van Schendelen, M., op.cit., p. 12.

<b>Subscribe to the principles of European integration</b>	Your case should always be presented as being able to make a contribution to the aims of European integration, which is based on a number of principles, such as free movement of goods and persons, social cohesion, the fight against unemployment, and competitiveness. Highlighting these principles, on which all European legislation and initiatives are based, will enhance your profile
<b>Form alliances; know your opponents</b>	It is very rare that a single interest group can make a strong enough case. Building alliances with related groups (e.g. European counterpart associations) is indispensable to your lobbying campaign. In some cases, you would set up an ad hoc organisation to present a certain alliance lobbying a particular issue.  Find out who your opponents are. Your argument will be more effective if it takes your opponents into account.
<b>Respect the level principle of decision-making</b>	Most legislation, at some stage, is written by experts and officials at a lower level. In many cases, these experts are your main starting point. Include them in your approach, and you will gain their respect. Calling in the higher political echelon will be productive when there is a deadlock, an unwillingness to deal with your issue, or high political stakes.
<b>Play the reciprocity game</b>	Never take without giving. There is a chronic and apparent need on the part of EU decision-makers for market data, industry information, and expertise. The best way to capture the EU official's interest and also indirectly influence decision-makers is to provide these data. You may even find your information being used by the European legislator.  Always offer an acceptable alternative when you are trying to prevent or change a regulation. Providing information or supporting the Commission in areas that are not of your direct interest could also build your credibility and advance your primary interest.
<b>Always follow up</b>	One secret to successful lobbying is to follow up every lead, every letter you write, every contact you make, and every initiative you take. Write a thank-you letter to an official you have met. It will give you the opportunity to restate your arguments and repeat what you expect from him or her.
<b>Be aware of cultural differences</b>	An official of Portuguese origin will express himself differently from a German. A UK Member of Parliament will have different expectations from his or her Greek colleague. Become familiar with these differences.

Source: Vandenberghe, K., *Lobbying in the European Union*, Government relations, May 1995, p. 3-5.

The second was drafted by a former MEP:

<b>Get in early</b>	Try to anticipate the Commission's future thinking by keeping an eye on tender invitations and by cultivating officials in national government departments and permanent representations
<b>Try to understand what is wanted</b>	The Commission cannot push through directives without the agreement of the Council and; in the case of co-decision, the Parliament as well.
<b>Work with others - look for allies</b>	With co-decision, draft directives create a need for coherent lobbying. An example of incoherent lobbying in recent years is the draft directive on internet copyright when numerous trade and industry bodies and other pressure groups lobbied separately. Many of them would have been better off and carried more weight if they had been able to work together. Officials, parliamentarians and Members of the Economic and Social Committee and Committee of the Regions, get very frustrated when more than one pressure group says more or less the same thing but in different words. It only leads to horrible confusion.
<b>Don't be negative</b>	Pressure groups simply cannot turn their back on the process and hope that draft directives will go away. They do occasionally go away but only after a very long time. Others, such as the 5th European company law draft directive have been under discussion since 1972!
<b>Attention to detail</b>	The saying 'the devil is in the detail' is one to bear in mind. Often it is in mind. Often it is the detail of draft directives (such as annexes laying down technical specifications) which leads to 'the law of unintended consequences'. Officials and parliamentarians will be grateful to anyone who can help them to avoid making fools of themselves. Attention to detail also means making sure that you are following all developments throughout the full co-decision procedure.
<b>Use permanent representations</b>	Permanent representations are a valuable resource. They regard it as part of their job to get the best possible deal for their country. Within the limits of their professional obligation to be impartial, as between one national interest and another, they can be very helpful in keeping you informed about what is going on and even on occasion be prepared to make suggestions as to tactics. It is a part of their job always to be absolutely up-to-date with the progress of a piece of draft legislation as it makes its way through the Brussels process.



<b>Use national representatives</b>	MEPs, members of Ecosoc and of the Committee of the Regions are there to serve national interests, irrespective of the political party to which they belong. Members of lead committees, especially rapporteurs and draftsmen, are therefore important contacts.
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Source: Cassidy, B., *European Lobbying Guide - A guide on whom and how to lobby*, Hawksmere, 2000.

### 1.3.4 Business associations in the Information and Communications Technology Sector<sup>22</sup>

One of the areas where the convergence of business interests of different industry sectors into a joint European association is very strong is the Information and Communication Technology (ICT) Sector. Major information technology firms have long enjoyed the ear of EU policy makers via their direct participation in the European ICT Round Table, which brought together the twelve leading ICT companies in the EU and played a critical role in the establishment of the ESPRIT programme. Moreover, ICT forms the bulk of what is dealt with by the Committee on Industry, External Trade, Research and Energy of the European Parliament in its industrial policy remit.

The leading industry group, the European Information and Communications Technology Industry Association (EICTA), results from a merger of the former two European federations ECTEL (European Telecommunications and Professional Electronics Industry) and EUROBIT (representing information technology and computer manufacturers). EICTA has two kinds of members, national associations and ICT companies. The 22 national associations represent 16 European countries and 10 000 company members. In addition, there are 31 global players active in the EICTA: Agilent, Alcatel, Apple, Bull, Cisco, Compaq, Ericsson, HP, IBM, ICL, Indra, Infineon, Intel, Italtel, Lucent, Marconi, Matsushita, Microsoft, Motorola, NCR, NEC, Nokia, Nortel, Olivetti, Philips, Siemens, Sony, Sun, Thales, Thomson-Multimedia, and Xerox.

EICTA's main committees are structured around seven broader policy areas:

- information society and electronic commerce;
- industry policy;
- trade policy;
- environmental policy;
- research and Development and education policy;
- legal affairs and consumer policy;
- radio and spectrum matters.

Around 500 experts from various industries are active in those committees and issue groups dealing with a large number of specific topics such as the Commission's e-Europe initiative,

<sup>22</sup> This section is based on Blank, O., "The Impact of Changing Sectoral Definition upon Associability: the Convergence of Business Interests in the Information and Communications Technology Sector in Europe", in: Greenwood, J. (ed.), *The Effectiveness of EU Business Associations*, Palgrave, Basingstoke, 2002b, p. 115-121.

data protection and privacy, copyrights and digital rights management replacing the levies system, taxation of electronic commerce, computer-related crime, regulatory framework for communications, environmental legislation and collection of waste, framework programmes for R&D, skills shortage in ICT, trade disputes between the EU and the USA, convergence of technologies, and mobile communications. In 2000/2001, EICTA has contributed to the ongoing policy debate with more than 60 statements and position papers.

According to Blank, the convergence of business interests of different industry sectors happened due to the following factors:

- Market and product factors: information technology, telecommunications, consumer electronics, content and services have clearly merged on the product side. They all compete on a global market. Any producer selling on the global marketplace faces the challenge of different laws and regulations. Manufacturers of different products encounter similar problems and have an alike interest to find an international level playing field.
- Management factors: the shortage of ICT-skilled people and technology experts has implications for policy making as well. As fewer experts are available to spend time on lobbying and communications, the need to co-ordinate their time becomes more urgent.
- Policy factors: there has been a shift of co-ordination and regulation of network technologies beyond country boundaries. In accordance with this shift of policy-making from the national to the European level, European ICT industries have increased their direct representation in Brussels gradually, addressing policy issues more frequently and directly with the European policy-makers. On the other hand, political decision-makers became increasingly dependent on expertise from the private sector because of the complexity of policies related to information and communications technologies.

### ***1.3.5 Results in the ICT field: three case studies***

The IT field, although in many ways 'boringly' technical in nature, is currently characterised by huge societal (financial, functional) as well as commercial interests. This makes it an important political issue. In the interaction between the players (governmental, NGO and private sector ones), lobbying plays an all-important role. Furthermore, lobbying is not confined to one side of the game; everybody 'does it'.

The results of these manifold lobbying activities (within IT), are substantial and often quite easy to see when studying the final outcome of a particular legislative process. The lobbying activities themselves, on the other hand, are by their very nature not easy to identify in detail. When did what change? and as a result of which effort (information, pressure)? Insiders will know but the knowledge is usually neither public nor documented and, when one asks them, one learns, again, that "success has many parents, failure is an orphan".

#### *An 'ancient' sector*

Information technology is nowadays often taken to pertain exclusively to the last 10 or, at most, 20 years. In fact, it is only the digitised information technology which has had this recent blossoming thanks to the dramatic, ongoing, rise in data transport, processing and storage capacities of the last 20 years. Data (telegram) and voice (telephony) transport were current already during the 19th and 20th centuries, respectively.

This means that whereas legislative regulation of information technology matters has only been a political issue of popular interest since around 1990, the technologies, their legislative frameworks, and their substantial societal importance, have been in existence, albeit mostly unnoticed in a popular political sense, since at least the 1930s.

It is not surprising, therefore, that the present-day legislative framework of the IT sector is conceptually based upon a mixture of thinking-quite-new and thinking-quite-old.

The following three examples of legislative regulation within the IT sector aim to illustrate how the influence of interests shaped the final outcome in different ways.

#### ***1.3.5.1 The preparation for and introduction of GSM***

An example of how initial national lobbying for adoption on EU level of existing legacy systems of mobile telephony failed and the resulting launch of a new, common and advanced technology, the GSM standard, not only became a huge success for producers and users alike in Europe but also stole a march, just for once, on American Technology.

Cellular systems make efficient use of a scarce resource - the radio frequency spectrum. By progressively reducing the cell size, cells can be served by low-powered transmitters and cells only a few miles apart can use the same channels for different calls. Each generation of technology reaches a level of maturity when it is surpassed by a new standard. Three generations of cellular systems include:

- 1st generation (1G) analogue systems introduced since 1983 (e.g. AMPS, NMT, TACS) use digital switching technologies for MSC and BSC components, but use analogue transmission over the air interface between the subscriber handset and RBS.
- 2nd generation (2G) digital systems for narrow-band voice and low-speed data services. Introduced since 1993 (e.g. GSM, PDC, CDMA), they use an all-digital connection over the air interface between the subscriber handset and RBS, resulting in large increases in capacity.
- 3rd generation (3G) systems are currently being developed to supply a future potential mass market with wide-band voice, data and videoconferencing services (see The IPTS Report, February 1996). The preferred air interface technologies are versions of CDMA.

The success of European companies in global cellular system markets has been made easier by the co-ordinated efforts of the EU Member States, standard-making bodies and leading European manufacturers in the 1980s to promote the Global System of Mobile communications (GSM) standard and the failure of the US to select a preferred standard for digital systems. In 1987, a Memorandum of Understanding (MoU) was signed by 13 EU signatory countries which established the agreement needed to define and implement GSM on a pan-European basis. Europe's latest microcellular 2G systems, called Personal Communications Networks (PCN), use Digital Cellular Systems operating at 1800 MHz frequency (DCS-1800), and are based on the GSM standard to allow manufacturers and operators to exploit the advantages of backwards compatibility when upgrading GSM systems. With nearly 100 companies now offering licences to operate GSM networks, GSM is the dominant world-wide standard for 2G digital systems.

While U.S. operators are often free to deploy any mobile system they want, European governments stipulate that all spectrum licensees deploy GSM. Even when first invented back in 1982 by the PTTs, this wasn't necessarily the most economically viable technology. GSM is a complex protocol, with many features that seemed redundant at its inception. Left to their own devices, many carriers might have chosen something simpler that boosted short-term profits. Instead, Europe now has a system that has currently achieved only a fraction of its true potential, with an upgrade path lasting for at least another 10 years.

The EU's insistence on GSM is sometimes said to stifle innovation: in particular, opponents of the system say that Code Division Multiple Access (CDMA) is technologically more advanced. While this is true, GSM had already been widely deployed by the time CDMA was developed. Far from trying to hold back the new technology, European governments have used it as the basis for Universal Mobile Telecommunications System (UMTS), GSM's eventual successor.

### *1.3.5.2 Exemption from the free market - 'must carry' TV channels*

An example of how lobbying by national state-owned or state controlled broadcasting corporations through very powerful representation managed to disengage the principle of a liberal economy and thus perpetuate a system of old monopolies.

#### *Universal Service and Services of General Interest*

Two proposals are currently going through the Parliament which impact on broadcasting. The first concerns the Universal Service Directive which affects the "must carry" proposals for digital television. Malcolm Harbour, the rapporteur, has criticised the proposals for not being "technologically neutral". The Commission did not agree with his amendments as they thought Art 26 should not be extended to all electronic media. Secondly, the Services of General Interest proposal has a section concerning public broadcasting. A hearing was held on this matter on 6th March 2001 in which broadcasting was barely mentioned; instead, the debate focused on public water, electricity etc.

#### *Telecoms Council Conclusions*

The Telecoms Ministers reached a decision on the Universal Service Directive on 27th June 2001. The Common Position did not make any substantial changes to the Commission proposal. The debate focused on the "must carry" obligation, and the Council's common position authorises Member States to make such obligations on companies supplying electronic communications networks used for broadcasting radio or TV as long as these networks are used as the main vector of TV and radio programs and therefore cannot be imposed on the internet. The payment in exchange for "must carry" also is not binding (as in the Commission's proposal) but must be "proportionate and transparent".

#### *Technological Developments as a Rationale for a New International Instrument*

In its proposal for a WIPO Treaty on the protection of broadcasting organisations the European Union underlines the rationale of an international instrument for the protection of

broadcasting organisation: the evolution of broadcasting as a result of the development of transmission technology and receiving equipment makes it necessary to introduce new international rules in order to develop and maintain the protection of the rights of broadcasting organisations. The WIPO Secretariat in its technical background paper stresses that technological developments, which are shaping the digital era of broadcasting, gave birth to new delivery techniques, new services, which might require new protection mechanisms. As far as delivery is concerned, the increase in channel capacity led to a multiple number of channels.

The development of cable networks and broadcasting satellites created more signal transmission options. Satellite broadcasting is not excluded from the definition of broadcasting in the Rome Convention (transmission by wireless means). However, the concept of broadcasting was updated by the WIPO Performances and Phonograms Treaty (1996). It clarifies that transmission by satellite and certain encrypted broadcasting is also included in the notion. Cable distribution falls out of the Rome Convention and thus does not grant rights for cable or wire distribution. Cable operators are acting either as carriers (cable retransmission) or as content providers transmitting content which the cable operator has selected or produced (cable originated programmes). Some national copyright laws grant providers of cable originated programmes rights, similar to those of traditional broadcasting organisations. Concerning cable retransmission, cable operators are obliged to retransmit some public service programmes (must carry rule) in some countries, including all member states of the European Union

### ***1.3.5.3 Patentability of software***

An example of how an early perception - i.e. that the US American way of patenting software (and most anything else) was commercially superior to the European way - eventually, through phases of consultation, lobbying and publicity led (is leading) to a solution which is more complicated (more 'European'?) in nature.

#### *European Patent Systems (legal status quo)*

In the European Union, patent protection is currently provided by two systems, neither of which is based on a Community legal instrument: the national patent systems and the European patent system.

The national patent has undergone a de facto harmonisation with the signing of several international conventions, including the Convention on the Grant of European Patents (Munich Convention) in 1973 to which all the Member States have acceded.

The Munich Convention lays down primarily a single procedure for the granting of European patents. The European Patent Office (EPO) grants the patent, which then becomes a national patent and is subject to the national rules.

Although the Munich Convention creates a single system for granting patents, there is still no Community patent forming part of the Community legal order. A single and affordable patent for the whole Community, offering adequate legal protection, will enable Europe, among others, to reap the full benefits of research and technological advances and to raise the level of

private R&D investment in the Community to that of the United States and Japan. It is also considered an essential tool for transforming research results and new technological and scientific know-how into industrial and commercial success stories.

Software development has shown steady growth in recent years. It has had a major impact on the whole of European industry and provides a substantial contribution to the GDP and to employment. In 1998, the value of the packaged software market in Europe was €39bn<sup>23</sup>. A recent study by Datamonitor concluded that the number of packaged software workers in Western European countries will grow by between 24% and 71% from 1999 to 2003, with an average of 47%. A further conclusion is that each packaged software job creates 2-4 jobs in the downstream economy and 1 job in the upstream economy<sup>24</sup>.

In 1997 the Commission launched discussions with its Green Paper on the Community Patent and the Patent System in Europe [COM (1997) 314 final].

The patentability of computer-implemented inventions was one of the priority issues identified in the Communication from the Commission of 5 February 1999: "Promoting innovation through patents - The follow-up to the Green Paper on the Community patent and the patent system in Europe" [COM (1999) 42 final].

After 1999, public debate on the patentability of computer-implemented inventions developed and became more intense. Some sections of European industry repeatedly asked for swift action to remove the current ambiguity and legal uncertainty surrounding the patentability of computer-implemented inventions, while on the other hand, developers and users of open source software and a substantial number of small and medium-sized enterprises backing them have increasingly raised concerns about software patents.

On 19 October 2000 the European Commission launched a final round of consultations in which the public at large and Member States were invited to comment on the basis of a paper entitled "The Patentability of computer-implemented inventions", which was made available on the Internet.

The consultation adopted a two-pronged approach. In the first place, the basic question was whether there was any need at all for harmonisation action at Community level and, if yes, what the appropriate level would be in general terms. Following this, there was set out in some detail the current state of the case law as established within the EPO, with the suggestion of a number of very specific elements which might figure in any harmonisation exercise based more or less on this status quo.

On the first question, the responses clearly showed a demand for action. On the second, as to precisely what to do, opinions were sharply divided between those who wish to see strict limits on software-related patents (or even an outright ban) and those who support harmonisation at the level of more or less the status quo - as defined by the current practice and jurisprudence of the EPO.

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<sup>23</sup> Cf. study by Booz Allen & Hamilton for the Dutch Ministry of Economic Affairs, "The Competitiveness of Europe's ICT Markets", March 2000.

<sup>24</sup> "Packaged software in Western Europe: The economic impact of the packaged software industry on the combined economies of sixteen European countries", Datamonitor, London, September 2000.

The individual responses were dominated by supporters of open source software, whose views range from wanting no patents for software at all to the “official” position of the Eurolinux Alliance, which is to oppose patents for software running on general-purpose computers. On the other hand, submissions broadly in support of patents on computer-implemented inventions tended to come from regional or sectoral organisations representing large numbers of companies of all sizes, such as UNICE, the Union of Industrial and Employer's Confederations of Europe, EICTA, the European Information and Communications Technology Industry Association, and the European IT Services Association. There were also individual large organisations, other industry associations and IP professionals. Thus although the responses in this category were numerically much fewer than those supporting the open source approach, there seems little doubt that the balance of economic weight taking into account total jobs and investment involved is in favour of harmonisation along the lines suggested in the Commission paper.

The outcome of the discussions launched with the Green Paper of 24 June 1997 were the proposals for a Regulation on the Community patent (COM (2000) 412 final) and a proposal for a Directive on the patentability of computer-implemented inventions (COM (2002) 92 final).

#### *The proposed Regulation*

The purpose of the proposed system is not to replace but to stand alongside the existing national and European systems. Inventors will remain free to choose the type of patent protection best suited to their needs.

The main thrust of the proposal is the creation of a "symbiosis" between two systems: the Regulation on the Community patent and the Munich Convention.

The Regulation will supplement the Munich Convention. The Community patent will be issued by the Office as a European patent, specifying the territory of the Community instead of individual Member States. As soon as the Community patent is granted, the Community Regulation will apply. This requires the Community to accede to the Munich Convention and a revision of that Convention to enable the Office to grant a Community patent.

Once the Regulation has been adopted, the external jurisdiction for the Community patent will come under the exclusive jurisdiction of the Community.

#### *The proposed Directive*

The European Patent Office and the Member States issue thousands of patents for computer-implemented inventions, but discrepancies in the way legislation is interpreted and practices in the Member States lead to legal uncertainty and hamper the proper functioning of the single market. Harmonising and clarifying legislation on this subject at European level could solve these problems and stimulate investment, employment and progress in this important area.

The proposal covers inventions, which involve the use of a computer and the use of a computer network or any other programmable device, i.e. inventions created by running a

computer program or a similar device. The invention may be a product (for example, a programmed computer) or a procedure.

Under the Directive, the fundamental criterion for all patentable inventions is the principle of "technical contribution". To be considered patentable, a computer-implemented invention must be new and must make such a technical contribution, which is defined as a contribution to the state of the art in a technical field which is not obvious to a person skilled in the art.

It is important to point out that computer programs as such cannot be patented and will be excluded from the scope of patentability in the proposal for a Directive. They are only protected by copyright as laid down in Directive 91/250/CEE on the legal protection of computer programmes.



## 2 Regulation of special interest activities at EU and national level

The European institutional set-up affects the potential for collective action, since it is the supranational institutions that provide formal rules which structure the relationships with interest groups. There are several ways in which EU institutions may condition the incentives for interest groups' organisation at the EU level. First is the constitutionality of the sector, or the authority of the supranational institutions. Clearly, the stakes are raised in policy areas which fall within the remit of the EU institutions. One of the most obvious areas is the single market, which has fostered large firm collaboration through a wave of mergers, acquisitions, take-overs and strategic alliances.

All sorts of interest groups coming from the pluralistic Member States' societies try to intervene in the workings of the EU machinery, which provides much openness and permeability. Interests seek influence over regulation, measures for integration, promotion, and funding. Information which helps shape this agenda is traded for influence. European Institutions need information from interest groups; in turn these actors are in a position to shape the outcome of debate. Without voice there is no influence. EU officials and politicians, for their part, largely welcome the arrival of new issues and stakeholders, because this enhances the political weight of EU institutions and policies. One of the most famous examples is probably the case of the European Round Table of Industrialists (ERT), which was assembled by the Commission in 1982 among representatives of some of the biggest European Community firms, with strong administrative support from the Volvo Company, and which played an instrumental role in the preparation of the European Single Act and the creation of the 1992 single market programme.

It goes without saying that lobbying can be open to abuse. Most problems fall into one of two categories. The first is obtaining information dishonestly, which is an abuse of the privileged access that accredited lobbyists enjoy with respect to EU institutions and may well entail a breach of trust on the part of an official. The second is bribing or otherwise suborning officials. As far as politicians are concerned, this intimidates the impartiality and objectivity which are essential qualifications for their independent judgement, an essential condition for the exercise of a political mandate.

### 2.1.1 National traditions and the Europeanisation of business lobbying

Brussels is now full of informal and formal lobbying networks. Informally, public affairs professionals of a common nationality or language congregate in selected bars of the *quartier européen*. Other informal networks are based on education, e.g. the ENA (*École nationale d'administration*) alumni network comprising French officials, politicians and lobbyists, or on professional ties, as is the case with the Ravenstein group of major public affairs companies' directors.

More formal associations have also sprung up: the *Society of European Affairs Practitioners* (SEAP), the *Public Affairs Practitioners* (PAP), the *European Federation of Lobbying and Public Affairs* (FELPA) or the *European Centre for Public Affairs Brussels* (ECPAB). The latter offers courses and intensive programmes which are costly but widely recognised by lobbyists for their quality. Faculty includes not only lobbying professionals and academics but

also European officials and former or present MEPs. One of their major objectives is to improve transnational communication and reduce national idiosyncrasies, which do still exist. There are also full degree programmes, e.g. for acquiring a Masters of Business Administration, offering a specialisation such as "Lobbying & Business Representation".

British, Dutch and American firms were the first to recognise the potential of strengthening direct representation in Brussels. American activities can be seen as an increasing recognition of the EU's importance. Coen explains much of the early lobbying focus in the context of firms' limited influence in their home states and the Council of ministers<sup>25</sup>. With the extension of policies subject to qualified majority voting (QMV) in the Council, and co-decision, internationalised British and Dutch conglomerates like Shell, BP, ICI and Philips were quick to follow the American lead. The arrival of these mainly Anglo-Saxon conglomerates encouraged other large European firms like Fiat, Olivetti or Daimler-Benz actively to participate in the European debate. These insider firms have exerted strong influence on French and German firms which were still focusing on national associations. Coen notes, however, that the initial objective of firms like Philips, Olivetti or Fiat was to create a protected European market.

With their long tradition of direct lobbying, the British firms attempted to build a complex dual lobbying strategy at the national and European levels. Unlike their Dutch and German counter-parts – who saw their national associations and governments as a complementary and safe option to influence the EU – the British firms' dual strategy was often geared towards Europeanising an increasingly anti-European Conservative government.

Nowadays French business is as active as British firms, representing about 9 % of all European affairs offices in Brussels. It has become well integrated into the EU policy network as active members of the ERT and Commission committees and working parties. In general, British and American firms welcomed the arrival of large French firms in Brussels as it has given a further degree of legitimacy to their alliances.

In Germany, there has traditionally been a high degree of business confidence in the government and in the national channels used to influence the EU policy process. German business is characterised by a rather broad consensus on the general direction of European integration. While direct lobbying of the EU by German firms has also increased, national associations continue to redirect resources into EU lobbying and many, such as the *Verband der Chemischen Industrie* have Brussels representations. At the same time, German firms have been reluctant to exit the national corporatist arrangement as it offers trusted means of influencing the federal government and European federations. Nevertheless, German firms have learned to lobby within Brussels industrial forums – with firms like BMW, Hoechst, Bertelsmann, BASF, Bayer, Bosch, Daimler Benz and Siemens actively chairing groups like the TABD.

In conclusion, the degree of Europeanisation of business interests still varies according to specific issues and Member States' lobbying traditions. Still, there has been a trend towards direct lobbying strategies which resulted in a marked specialisation according to sectors and in ad-hoc alliances based on issues. As many firms began to find their 'national champion'

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<sup>25</sup> Coen, D., "The impact of the EU on the trade union movement" in: Balme, R. et al., 2002, p. 269-272.

status under threat, the need felt to become a member of a Eurogroup increased, both because of the uncertainties presented by the European market and because of the need to seek 'Euro champion' status for particular industries<sup>26</sup>. On the other hand, where Member States retain principal authority and responsibility, interests have less reasons to organise at the European level. The achievement of the Single Market project, the important role Member State governments play in implementing and enforcing European rules, and the principle of subsidiarity all point to the continuing relevance of Member State authority.

### **2.1.2 The European Parliament**

Following the rule that interests turn to where the power is, the Commission and the Council were the principal targets of lobbyists until the Single European Act (SEA) entered into force on 1 July 1987. After the institutional position of the EP had been further upgraded with the introduction of new legislative procedures - the co-operation and the co-decision procedures - pressure groups much intensified their action with the EP as a new channel of influence. Especially the less organised interest groups tried to form alliances with the EP on issues that most concerned the general public. Schaber notes that the main strategy of these groups consisted in lobbying the Commission and the Council as the final targets *via* the Parliament. This had considerable impact on the institutional balance and its internal dynamics: the Commission and the EP are no longer permanent allies representing the European interest but are increasingly often becoming rivals competing for legitimacy. Relations between the EP and "weaker" civic interest groups have the characteristics of what many EU scholars call 'advocacy coalitions'.

It has been estimated that there are about 70000 individual contacts per year between the Members of the European Parliament and interest groups<sup>27</sup>. The EP comes into the focus of special interests as soon as the rapporteur of the competent Committee starts to prepare his or her report, and the discussion commences within the Committee and the political groups. The rapporteur and the Committee Chair are the main gatekeepers in forming the opinion of the EP. For a Member, the position within a Committee is even more important than the position within a political group or his/her general reputation within the parliament. According to De Fouloy, personal acquaintance, nationality, or political affiliation that might influence the accessibility and openness of parliamentarians rank comparatively low in importance to lobbyists. Assistants, the secretariats of the political groups or the EP's research services are also considered less significant by lobbyists. They give preference to staff close to the rapporteur and the secretary of the Committee. Lobbyists and MEPs agree that it is most efficient to meet a Member in person. The average MEP still receives most of the requests for help and support by letter.

Rule 2 of the EP's Rules of Procedure specifies that Members shall not be bound by any instructions and shall not receive a binding mandate. To agree to vote in a particular way in exchange for whatever advantages a lobbyist may be prepared to offer would be tantamount to accepting a "binding mandate". Contrast this to some lobbying techniques, also described by MEP Stihler: MEPs are phoned by lobbyists demanding urgent meetings or find them

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<sup>26</sup> Ibid, p. 23-24.

<sup>27</sup> Study by Wessels, W., cited in Mazey, S./Richardson, J., 2001, p. 230.

knocking on the office door without an appointment; sometimes Members wonder how a lobbyist got there in the first place. However, some tactics are more disturbing than others. For instance, during the debates on Parliament's reports on the biotechnology directive, some MEPs complained about the bombardment of letters and phone calls from companies such as SmithKline Beecham, Boehringer, Hoechst, or Ciba-Geigy. They expressed their hope that such pressures brought to bear by outside organisations would not happen again.

The specialised press regularly reports doubtful efforts by pressure groups to influence Parliament's internal procedures, e.g. to avoid certain MEPs as rapporteurs for subjects for which they are known to be critical<sup>28</sup>. Two examples recorded some time ago by a British MEP illustrate the fully legitimate, but nevertheless sometimes disagreeable tactics and approaches used by special interest groups:

<b>Case 1: The Shaken Baby Syndrome</b>	<p>Recently I hosted a delegation from the UK, which wanted to lobby the Parliament about the first European Conference on Shaken Baby Syndrome to be held in Edinburgh in May next year. This phenomenon involves a parent, carer or guardian, shaking a baby when they are crying. The shaking can lead to death, brain damage for life, bleeding behind the eyes and fractures to the bones. In the UK over 200 cases were taken to court last year and many more went unreported. Sentencing differs from place to place and treatment of the crime differs from place to place. Over a third of babies are murdered when subjected to this violence. 70% of people who commit this crime are men. Among the women who violently shake babies, the mother is rarely the perpetrator.</p> <p>Of the victims, two thirds are boys and one third are girls. Why are more boys affected and more perpetrators men? The answers were as fascinating as the questions. The delegation comprised of five people: a detective from Scotland Yard, a lawyer from Cardiff University, a social work researcher from Dundee University, a paediatrician from the Sick Kids Hospital in Edinburgh and a Scottish Child protection officer. All very different, but all united in their campaign to raise awareness of the issue.</p> <p>The group worked as a team. They met with the Commission and parliamentarians. At the end of the day, more people knew about the conference, understood about what was meant by Shaken Baby Syndrome, and they had a list of action points to take away with them. Everything was open, honest and above board.</p>
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<sup>28</sup> Recently, for instance, according to *European Voice* (9-15 January 2003, p. 7) a business association representing British makers of food flavourings wrote to MEP Phillip Whitehead, Member of the Committee on the Environment, Public Health and Consumer Policy, asking him to oppose a Danish colleague's appointment as rapporteur.

<p><b>Case 2:</b> <b>Herbal medicines</b></p>	<p>The lobbying on the traditional herbal medicines directive has been ferocious for British and Irish MEPs. For example, there has been the 'Holland and Barrett' campaign. With shops in nearly every high street in the UK, customers going into a H&amp;B store have been faced with a petition concerning three EU directives and asked to sign a petition calling for all three to be rejected. The accompanying leaflet is entitled 'SOS-save our supplements'. If you took its contents at face value you too may be concerned with what is written and might sign the petition. You might also write the standard letter to your MP or MEP concerning these pieces of legislation, which they claim, will deny you choice on what supplements and products you will be able to buy in the future.</p> <p>But all is not as it appears. Claims to represent consumers can be misleading. This week the key organisation representing consumer interests in the UK, the Consumer Association, condemned the tactics of the Holland and Barrett campaign, stating that: "A retail lobbying group, Consumers for Health Choice led by the Managing Director of Holland&amp;Barrett has been established to influence political decision makers to further commercial interests under the guise of advocating wider consumer choice. However, Consumers for Health Choice represents a small number of retailers and many manufacturers and retailers do not support this organisation, including the British Herbal Medicines Association, as well as health care professionals, herbal practitioners and medical experts".</p> <p>Much more than this, European herbalists and SMEs involved in herbal production want to see the regulation on tradition herbal medicines succeed. They see far too many sub-standard products being put on the market. Instead of enhancing health such products are damaging consumers' interest and confidence in herbal products. One example is Echinacea Root. As a user of this herbal medicine I was shocked to discover that a recent UK herbalist analysis of four different types of Echinacea products found that only one completely satisfied the analysis. One "failed to comply" because of excessive amounts of ash and acid-insoluble ash in the product. The other was apparently free of Echinacea root altogether and the last had not been solely manufactured from Echinacea root powder as claimed in the label. This means that I would have a 25% chance of actually purchasing what I wanted. Echinacea is one of the better known products. So what about the others?</p>
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Source: Stihler, C., "Editorial", *The Parliament Magazine*, November 25<sup>th</sup> 2002.

When compared to other institutions, the EP is about as open as the Commission, according to lobbyists. Access to the Council, for instance, is far more difficult. But the majority of lobbyists are aware that they have to face differing degrees of acceptance in the parliament. They attribute this to reservations based on national culture and political allegiance. There is, e.g., a clear North-South division between countries familiar with professional lobbying and those where this industry is still in its infancy. Professional lobbying by public-affairs consultants is well known in the UK, for instance, but less in Latin countries and Germany.

Unsurprisingly, Conservative and Liberal parties more open to producer interest group lobbying than Social Democratic and Green Parties, whereas the opposite situation may be observed with some civic interests. With certain Members, consultants have a reputation of being too pushy. As many of them do not represent interests of their own, but of clients, they are not considered by some MEPs to be players that one should rely on or include in the personal network. When evaluating interest positions on a given policy issue, MEPs mostly give preference to those outside interests that either represent a broad constituency such as trade unions, social movements or political parties, or those that can provide them with an aggregate view on the most efficient ways to deal with the problems and economic consequences.

One lobbyist recommends that "lobbyists should be alert to opportunities to make individual rapporteurs 'shine' in the eyes of their colleagues. Well-crafted legislative reports, based on careful investigation and meticulous analysis, can enhance the reputation of a newly elected MEP. And a reputation for diligence and intellectual acumen can lead to leadership positions in the future"<sup>29</sup>. Indeed, to a large extent, MEPs act as individual members. Nevertheless, to secure re-election they will try to make use of interest groups and improve reputation in their constituency and national party. MEPs also rely on information from interest groups, chiefly if they are expected to make well thought-out judgements about technical details and scientific expertise.

### ***Regulatory Issues***

Regulation of lobbying is directly linked to the regulation of financial interests. Charges that some MEPs' assistants could have been paid by interest groups and that some MEPs even could have acted as interest representatives themselves, illustrate this link. A second problem concerns intergroups, formed by MEPs of different political groups possessing a common interest in an issue. There were cases of intergroups representing themselves to the public using official EP symbols, even though they acted on behalf of particular interests. Conversely, parliamentarians took offence when they found multinational interests submitting mass amendments to proposals through other MEPs, sometimes with the company logo still on the amendment sheet submitted.

The first step to find solutions to these problems was a Written Question tabled by Alman Metten, in 1989. In 1991, Marc Galle, Chairman of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, was appointed to submit proposals for a code of conduct and a register of lobbyists. Galle's proposals included: a code of conduct with minimalist standards aimed at preventing abuse (such as prohibiting selling on documents and use of institutional premises); the establishment of 'no go' areas in the Parliament's buildings including members' offices and library facilities; examination of the role of lobbying with intergroups; and, taking an idea from the United States, the registration of lobbyists on an annual basis, spelling out the rights and obligations of those on the register, and specifying penalties for failure to comply. A final, and contentious, proposal required MEPs annually to state their financial interests and those of their staff, on a separate register. Since no consensus could be reached as regarded the proposed definition of interest groups and the financial interests of MEPs and their staff, the report was finally not discussed in the plenary session.

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<sup>29</sup> Cited in Buholzer, R.P., p. 247.

One reason behind this failure was the time pressure of the upcoming EP elections in 1994. The most substantive problem, however, were the controversies on the definition of what constituted a "lobbyist".

After the 1994 elections, a second attempt at regulating lobbying was undertaken by the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, which, by letter of 10 August 1994, requested authorisation to draw up a report on lobbying in the European Parliament (Glyn Ford was later appointed rapporteur) and on the declaration of Members' financial interests (rapporteur: Jean-Thomas Nordmann). Mr Ford first asked for a study by Parliament's research services of the rules governing lobbying in the national parliaments of the Member States, thereby making the connection to issues of standards in public life which had arisen on the political agendas of many countries in the years before. The study showed that Member States with provisions governing the activities of interest groups or their representatives were the exception (notably Germany and the UK).

Avoiding the above-mentioned definitional conflicts, Mr Ford proposed a scheme of great simplicity. In its original form, it proposed that the College of Quaestors should issue permanent passes to persons who wished to enter Parliament frequently with a view to supplying information to members within the framework of their parliamentary mandate. Later on, the Ford report became concerned not only with regulating the activities of lobbyists, but also with those of parliamentarians, and the incremental extension of its scope led to spirited political debates among the principal groups.

In 1996, the Ford (and the Nordmann) reports were successfully submitted to the plenary after a first version had been referred back to the Committee in both cases<sup>30</sup>. The Ford report proposed amendments to the Parliament's Rules of Procedure, according to which the Quaestors should grant interest representatives a pass in exchange for acceptance of a code of conduct and registration. With regard to financial interests, each MEP is now required to make a detailed declaration of his professional activities. MEPs have to refrain from accepting any gift or benefit in the performance of their duties. Registered assistants also have to make a declaration of any other paid activities. The rules currently in force are annexed to the Rules of Procedure of the Parliament (see annex). In a further resolution based on a second report drawn up by Mr Ford, Parliament decided to supplement the Rules with a Code of Conduct for lobbyists (to become Article 3 of annex 9 to the Rules)<sup>31</sup>.

In a recent exchange of letters, Richard Corbett, Member of the Committee of Constitutional Affairs, asked President Cox to make the register of lobbyists provided for in the Rule 9 (2) of Parliament's Rules of Procedure available on the Internet<sup>32</sup>. President Cox promised to table this matter in one of the next meetings of the Bureau. To date no decision has been taken, partly because of a political mix with the problem of creating a public list of Members' assistants<sup>33</sup>.

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<sup>30</sup> OJ C261 of 9 September 1996, p. 51/52 and 73/75.

<sup>31</sup> OJ C167 of 2 June 1997, p. 14 and 22.

<sup>32</sup> Question to the President pursuant to Rule 28(2) of 28 May 2002.

<sup>33</sup> Cf. Opinion of the Committee on Legal Affairs and the Internal Market, on the public register of assistants and data protection, of 28 November 2002 (draftsman: Giuseppe Gargani).

As to the EP's institutional attitude towards lobbying, Schaber provides several explanations for its lengthy quest, in the 1990s, of a consensus on the regulation of lobbying and that of financial interests: persisting national differences in political culture, lack of a European regulation replacing national rules, different cultural and judicial attitudes towards lobbying in general. The author also notes that the EP's approach to reach transparency should differ from that of the Commission, because each of the EU institutions should adapt its approach to the role it plays in decision-making. While the Commission as the agenda-setter wishes to keep an open dialogue and provides only minimum standards of self-regulation, the EP, as a pluralistic institution, requires institutional structures to secure transparency and the building of stable majorities. Schaber suggests that "the EP should try to reduce the immense options of pluralism to an easily comprehensible number of options and actors. The regulation of lobbying should contribute to an aggregation of interests and not a fragmentation and a pluralisation of interests"<sup>34</sup>. Another observer arrives at the conclusion that "the difference between the schemes put forward by the Commission and the Parliament is that the former has sought means of ensuring wider-ranging consultation, whereas the latter may further privilege the already privileged"<sup>35</sup>.

### **2.1.3 *The European Commission***

Parliament's long efforts to establish some regulatory framework for outside parties were always followed by the Commission with great interest. Generally speaking, outside interests provide the Commission with key governance resources such as expert knowledge of highly technical dossiers. Consequently, while the Parliament has turned to some regulation of its contacts with outside parties, the Commission has mainly sought to encourage self-regulation amongst the interests themselves and continues to be open for all kinds of third party input. However, over the past ten years, the Commission has clearly changed tack in their attitude towards such organisations<sup>36</sup>. In its more recent communications and internet publications the Commission has turned away from the lobby or special interest tag to terms such as "consultation of interested parties", "dialogue with civil society" or "NGOs". The Commission has established an Internet "Directory of non-profit making civil society organisations" called CONECCS (Consultation, the European Commission and Civil Society) which is fed by organisations on a voluntary basis and is intended only for information<sup>37</sup>. Inclusion in the directory does not constitute any recognition on the part of the Commission.

As a consequence of the ever-increasing number of lobbyists active in Brussels, the Commission also sought to use its resources more effectively and attempted to focus on a stronger "inner core" of interest groups. Its effect has been to privilege a small number of better established groups at the expense of a larger number of smaller, newer and/or less institutionalised groups. There is therefore a rise of "secondary lobbying" – whereby the latter groups lobby others that they believe to have the ear of the Commission.

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<sup>34</sup> Schaber, T., "The Regulation of Lobbying at the European Parliament: The Quest for Transparency", p. 220.

<sup>35</sup> Greenwood, J., 1998b, p. 597.

<sup>36</sup> On the Commission General Secretariat's website, for instance, a link which, under the heading "Civil Society", leads to "special interest groups (lobbies)" only guides the reader to documents which date almost all back to the early 1990s, whereas other links such as "NGOs" or "consultations" provide much more up-to-date information.

<sup>37</sup> See [http://europa.eu.int/comm/civil\\_society/coneccs/index\\_en.htm](http://europa.eu.int/comm/civil_society/coneccs/index_en.htm).



This new strategy was considerably reinforced by the White Paper on European Governance<sup>38</sup>, in which consultation and dialogue with civil society played an important role. The White Paper announced a whole series of implementing activities, particularly in the consultation field. Recently, the Commission published a communication on consultation standards<sup>39</sup> which sums up the Commission's approach to "interested parties", acknowledging, for instance, that "less formalised direct contacts with interested parties" are the third pillar of interaction between the European institutions and society (supplementing the European Parliament and the advisory bodies, the Economic and Social Committee and the Committee of the Regions).

The Commission recognises in this communication that, whilst the benefits of being open to outside input are evident, "there has not been a Commission-wide approach on how to undertake such consultation. Each of the departments has had its own mechanisms and methods for consulting its respective sectoral interest groups. While this has undoubtedly created many examples of good relationships between the Commission and interest groups, there is a general view, shared by many within the Commission and those whom it consults, that the process should be more consistent." Another important goal of the Commission's new approach to special interests is to ensure that consulted organisations themselves keep to certain rules and standards: "Openness and accountability are important principles for the conduct of organisations when they are seeking to contribute to EU policy development. It must be apparent which interests they represent and how inclusive that representation is".

As to the representativeness of organised interests, the Commission warns that "the issue of representativeness at European level should not be used as the only criterion when assessing the relevance or quality of comments", thus detaching itself a bit from the demanding definition of eligibility drafted by the Economic and Social Committee<sup>40</sup>.

Partly in response to some criticism phrased in the EP in its debate on the Commission's White Paper on Governance<sup>41</sup>, the Commission finally stresses in the communication on consultation that "the guiding principle for the Commission is [...] to give interested parties a voice, but not a vote." As regards the scope of the consultation process, the Commission emphasises "that consultation can never be an open-ended or permanent process. In other words, there is a time to consult and there is a time to proceed with the internal decision-making and the final decision adopted by the Commission." As to the form of regulation, the Commission believes that a legally-binding approach to consultation, as suggested by some

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<sup>38</sup> COM(2001)428 fin. (OJ C 287 of 12 October 2001, p. 1-29).

<sup>39</sup> "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission", COM(2002)704 fin. of 11 December 2002.

<sup>40</sup> "In order to be eligible, a European organisation must: exist permanently at Community level; provide direct access to its members' expertise and hence rapid and constructive consultation; represent general concerns that tally with the interest of European society; comprise bodies that are recognised at Member State level as representatives of particular interests; have member organisations in most of the EU Member States; provide for accountability to its members; have authority to represent and act at European level; be independent and mandatory, not bound by instructions from outside bodies; be transparent, especially financially and in its decision-making structures" (Opinion on 'European Governance – a White Paper' of 20 March 2002; CES 357/2002).

<sup>41</sup> European Parliament resolution on the Commission White Paper on European governance, OJ C153E of 27 June 2002, p. 40 and 314.

interest groups, should not be supported. It argues that “a clear dividing line must be drawn between consultations launched on the Commission’s own initiative prior to the adoption of a proposal, and the subsequent formalised and compulsory decision-making process according to the Treaties.”

From the lobbyist's point of view, the Commission is by far the most important and the primary institution where the lobbying process begins. As was mentioned above, some authors even go so far as to say that "you don't lobby the European Parliament or the Council, but you lobby the Commission through the Parliament or the Council." For a lobbyist who follows the itinerary of a legislative proposal, it is crucial to identify the relevant Commission officials. For the most part, several civil servants in various Directorates-general work on a given topic. One of them is responsible for the draft, the others have an advisory function. Practitioners like De Fouloy remark that it takes much time and effort to identify them, especially with regard to the officials who are in an advisory position. According to the majority of lobbyists in Brussels, Commission officials are easily available and quite open to interest groups.

Contact with an appropriate official are often recommended to be established at the latest when the Commission conducts consultations with trade unions and experts of the national administrations of the Member States. Direct contacts between lobbyists and Commissioners are still exceptional. One should not, however, play down the significance of senior officials in the Commissioners’ Cabinets, who are fairly easy to contact.

**An empirical comparison of lobbying the three institutions**

In a recent study, Bouwen provides a comparative analysis of business lobbying in the EU’s institutional triangle by applying the so-called theory of access, an explanatory model of lobbying which is currently quite popular in political science<sup>42</sup>. Although access does not necessarily mean influence, gaining access to the institutions involved in the EU legislative process is a necessary condition for exercising influence. On the basis of interviews with representatives of the EP, the Commission and the Council, the author analyses the access of four different forms of business interest representation: European associations, national associations, individual firms and consultants. The focus of the study is on the European financial sector.

As regards the EP, the author identifies the plenary session, standing committees, committees secretariats, hearings, the college of Quaestors and intergroups as relevant addresses of lobbying activities. However, given the fact that most of Parliament’s legislative work takes place in its specialised committees, Bouwen’s analysis concentrates on access to the Committee on Economic and Monetary Affairs. As a result of interviews conducted with 27 MEPs, the author concludes that European associations generally enjoy preferential access, followed by national associations and individual firms. Consultants are the least successful category in securing access to the Committee. The difference between the values calculated for European and national associations are very small; therefore, the author points out that MEPs clearly prefer to talk to lobbyists from representative organisations, irrespective of the level of interest aggregation (national/European).

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<sup>42</sup> Bouwen, P., "Corporate lobbying in the European Union: the logic of access", *Journal of European Public Policy* 9: 3, June 2002, pp. 365–390.

In the Commission, the most relevant target for lobbyists covering the financial sector is the Internal Market Directorate-General. An important access point for lobbyists are also the so-called non-comitology consultative committees, where individual firms and interest groups are allowed to participate. The study shows that it is the European associations that have the highest degree of access to the Commission. In the author's view, this comes somehow as a surprise given the frequent critique regarding the effectiveness of European associations. As was mentioned above, they are often considered to be internally divided, poorly resourced and unable to respond quickly to Commission requests for information because of their cumbersome internal decision-making. Second best in terms of access come individual companies, while national associations and consultants have the lowest degree of access.

With respect to the Council of Ministers, access to the Internal Market and Ecofin Councils is chosen as an example. Starting from the assumption that the national negotiating position of Member States in the Council is determined in the national capital by ministers and their cabinet, the interviews included a group of 22 financial attachés from all permanent representations of the Member States. The outcome, as expected, shows a clear preference for national associations and individual firms. This was even more so if the individual firms were what is called "national champions" in economics. European associations have a lower degree of access than national associations, while consultants are again at the bottom of the list.

Bouwen concludes that, from a comparative inter-institutional perspective, individual firms have a higher degree of access to the Commission (34%) and the Council (37%) than to the EP (20%). He stresses that different kinds of firms are the main partners of the Commission and the Council, respectively: the Commission has preferences for non-national companies, while the Council prefers to listen to national champions.

National associations have better access to the Council (43%) than to the EP (37%) and the Commission (21%). European associations, in turn, have a higher degree of access to the EP (38%) and the Commission (43%) than the Council (11%). The limited capacity of consultants to provide relevant information, explains their very low degree of access to the three EU institutions (Parliament 5%, Commission 2% and Council 9%).

#### **2.1.4 Other EU institutions**

##### ***Council***

If lobbyists do not participate in Commission "comitology" working parties or advisory committees, they aim at exerting influence on members of these groups. Here the cooperation with national governments becomes significant. National experts appointed by their governments sit in numerous committees and groups. Lobbyists therefore seek to maintain good contacts with them. Formally, the ESC and the CoR must consider and give an opinion on draft legislation before the EP and the Council of the EU can adopt it. However, de Fouloy draws attention to the informal consultations among the officials of the Council, its advisers, and the Commission, which take place before the proposal is made public. The working groups start examining the draft without waiting for reactions the committees, or the Parliament, for that matter. Such departure from the formal procedure means lobbyists make contact with Council officials before the Council officially deals with the position of other EU institutions.

Still, the Council of Ministers is often called the least accessible institution for lobbyists. The Council secretariat keeps no listing of lobbyists and takes the position that "all contact with lobbyists and NGOs is handled by the European Commission"<sup>43</sup>. Lobbyists presumably influence the Council of the EU and its decision-making indirectly by working through national channels, particularly by maintaining contacts with government representatives. Their rule is to talk to low-ranking civil servants rather than ministers. Having access to reliable sources of information (e.g. a member of the working group) about changes being made to the draft legislation is of major importance given that the groups work behind closed doors. This allows for rapid reaction, if the changes are going in the wrong direction for the particular interest group.

The principal task is to get in touch with the government representatives who are members of the working groups. To identify them correctly, lobbyists have to get the information from the permanent representation. These officials are also valuable to lobbyists because of their influence on Council decisions, its agenda, and priorities; they also submit conclusions of the working groups' work to the Council. Working with the Council calls for maintaining contacts with the representatives of the lobbyist's own country as well as cultivating good relations with other representatives and having the expert knowledge of both national and other political, cultural, and technical realities. The influence of the country holding the presidency is particularly significant to lobbyists.

Lobbying the Council can be expensive, e.g. when national experts do not live in Brussels but in their own country. Another problem can be the issue of co-ordinating activities at the international level. Consequently, only big firms and corporations possessing appropriate financial resources will carry out comprehensive lobbying with the Council, which is linked to a well-developed network of contacts in each of the 15 capitals of the member countries and in Brussels. Intensive monitoring of the working group's sessions is necessary.

### ***The Court of Justice of the European Communities***

The European Court of Justice (ECJ) has acquired a seminal role in the EU policy making process by not only protecting but also promoting the European *acquis*. It was hence inevitable that interest groups would pay a lot of attention to its rulings and try and influence them, albeit keeping account of the jurisdictional nature of this institution. If interested parties (e.g., individual firms) fail to gain satisfaction at the national level, with the Commission, the EP or the Council, they may have the option – albeit a costly one – of bringing cases (usually in the form of test cases) before the Court, or of persuading the Commission to do so. Women's and environmental groups (and also trade unions) have been adept at securing favourable ECJ decisions which have been very important, indeed, in prompting policy change.

For these pressure groups, the ECJ has been an essential body to improve the situation of working women and enforce national change. In the environmental field, the ECJ played a seminal role in the creation of supranational norms which fuel the integration process, often in opposition to preferences of Member States. Private litigants (individuals and interest groups) have played an integral role in this process. These interest groups were not exclusively

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<sup>43</sup> Informal reply from the Council secretariat of January 2003.

environmental, but also included business associations who, for instance, sought to prevent tough national environmental laws from being used to undermine the principles of free and unrestricted trade enshrined in the treaties. In summary, the expansion of EU responsibilities, particularly in the area of environmental and social policies, has prompted much greater use of the ECJ by individual firms and groups who perceive the ECJ as an ally.

### **2.1.5 Member States<sup>44</sup>**

#### **2.1.5.1 Overview**

In most parliaments of the Member States there are no specific rules or provisions governing the activity of interest groups or their representatives. The main exceptions are Germany and the UK.

In the United Kingdom, the Select Committee on Members Interests of the *House of Commons* reported in 1990/91 that a Register of lobbyists should be set up together with an associated Code of Conduct. However, this recommendation was not adopted by the House. In 1994, a Committee on Standards in Public Life (the Nolan Committee) was set up. This committee considered the use of parliamentary lobbyists along with a wide range of public ethics issues. The committee's report in May 1995 did not propose a mandatory register of lobbyists but did recommend that the House should immediately prohibit Members "from entering into any agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms which provide such parliamentary services".

However, the House Select Committee on Standards in Public Life, which was appointed to consider the recommendations of the Nolan Committee, found it impossible to arrive at a satisfactory definition of "lobbyists" as distinct from other forms of outside employment. It preferred, instead, to recommend a greater degree of disclosure by Members of all outside sources of remuneration which involved "the provision of services in their capacity as Members of Parliament". This was the solution agreed to by the House in November 1995, which is now embodied in the Code of Conduct for Members of Parliament approved in July 1996 and updated recently (see below).

The German *Bundestag* is the only Chamber which has specific rules set out in an annex to its Rules of procedure, which stipulate that groups (*Verbände*) wishing to express or defend their interests before the Bundestag or before the Federal Government must be entered in a register; this list of registered organisations, including some information such as name and address, is published annually.

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<sup>44</sup> This part of the document is an update of a previous DG IV working document (*National Parliaments Series*, document W5/rev., "Rules on Lobbying and Intergroups in the National Parliaments of the Member States", October 1996). The author is grateful to the Parliamentary Documentation Centre of the European Parliament for their help in the update.

In *Italy*, there has been much debate on the regulation of pressure groups and indeed on the need for such regulation at all. As in other countries, it was never easy to arrive at a definition which would, in any case, only cover public affairs 'professionals' and would not tackle the issue of lobbies as such or the representation of interests in general. Some observers have suggested that the proliferation of legislation provides fertile ground for pressure groups and that a return to basic legislation fixing general principles, keeping the adoption of laws to a minimum and publicising or 'proceduralising' access of pressure groups to the pre-legislative stage would be the best means of resolving the issue of lobbying.

In the Danish *Folketing* there is a *de facto* recognition of interest groups, which may be received and heard by parliamentary committees according to an accepted practice.

Several national parliaments apply systems which inspired the regulations adopted by the European Parliament: issuing access cards or passes of variable duration, as and when requested by Members of parliament or political groups, which allow the holders to establish contacts and/or gain access to certain parts of parliament buildings and/or to attend public meetings.

In most of the national parliaments, practice and the Rules of Procedure allow Committees to listen to the opinions of persons or organisations from outside parliament, in particular through public hearings, where this is considered necessary.

In several Member States, the Constitution and/or national law provide for the setting up of national bodies representing economic and social interests (e.g., Economic and Social Councils) which have the right to participate in the formation of legislative policy in certain areas and which must in certain cases be consulted by the executive and even by parliament. This notion of "representation of interests" is part of a particular political culture, which is not explored in greater detail below.

#### **2.1.5.2 Brief summaries of individual Member States**

##### ***Austria***

The Rules of Procedure of neither the Austrian National Council nor the Federal Council contain any provisions affecting the activities of lobbies or interest groups in connection with the framing of the federal legislation, and there is no official register of interest groups in Austria.

Nonetheless, the influence of interest groups on Austrian legislation, especially of the large economic interest groups co-operating within the framework of the so-called 'social partnership', is relatively strong. The social partners participate in the preparation of legislation: when preparing a bill, government has to consult the chambers (*Kammern*), which are the statutory representatives of interest groups, under the so-called "appraisal procedure". Usually, not only the chambers but also other interest groups are consulted. At the parliamentary stage, the social partners influence legislation through political and personal contacts. For a long time more than 50 % of MPs have had close ties with or were members of interest groups such as employers' associations or trade unions. This proportion has only recently diminished.

Furthermore, under the provisions of section 40 para. 1 of the Rules of Procedure of the National Council and section 33 para. 1 of the Rules of Procedure of the Federal Council, which entitle the committees of the National Council and the Federal Council to summon experts or other witnesses, experts representing interest groups may also be invited to present their point of view to a committee deliberating on a bill.

### ***Belgium***

Both in the Chamber of Representatives and in the Senate, there are no rules on this matter. There were lively debates within the *Commission pour le renouveau politique*, which so far had no legislative result.

### ***Denmark***

Lobbyists who seek to have their interests made known or defended in the Folketing by sending delegations or petitions to the Standing Committees, have their names entered in the archives of these Committees, but this and the registration of working documents is done purely for recording purposes. Their names are also mentioned in committee reports submitted to the Folketing and published in the Danish parliamentary journal, *Folketings-tidende*.

All written material from the committees of the Folketing, including petitions to standing committees and Members of the Folketing, is collected in the Archives of the Folketing to which the public has access in accordance with the "Rules on access to the written material of parliamentary committees and access to information held in the parliamentary database of committee documents (FTU)" adopted by the Standing Orders Committee of the Folketing on 3 April 1991.

Rules exist governing the admittance of delegations to the presence of a Committee such as :

- those making up a delegation must have a natural affiliation to the person, organisation, association etc. applying for admittance to the Committee (e.g. a lawyer, member, or employee). Persons without any real affiliation to the delegation are not allowed to participate.
- the spokesman of a delegation - possibly assisted by other participants - is entitled to make a short statement of the delegation's position to the Committee.
- after this statement, the Members of the Committee may ask questions and receive replies from the delegation.
- no negotiations may take place, but the points of view stated by the delegation are included in the deliberations of the Committee.
- the delegation is not allowed to put questions to the Committee.
- the hearing is not expected to exceed 10 to 15 minutes.

All participants of the delegation should be acquainted with the above mentioned rules.

Written material for the Committee should be sent to the Committees Department of the Folketing in 60 copies in sufficient time to enable the Committee to study its contents.

Details of the names, affiliation etc. of the members of a delegation must be given to the Committees Department in good time. Changes in the composition of the delegation must be notified to this department no later than one day before the hearing.

#### *Finland*

Interest groups are not registered in the Finnish Parliament. Lobbyists may contact representatives informally as they wish - there are no regulations whatsoever, except that demonstrations and other strong measures are strictly forbidden on Parliament's premises.

Parliamentary committees do, in the normal routine of the preliminary preparation of legislative work, hear invited specialists in their committee meetings. The representatives of interest groups are also treated as specialists and are regularly invited whenever government legislative proposals might be of some importance to a particular group.

#### *France*

##### *Senate*

The Senate has no register or list of pressure groups. Professional groups or organisations wishing to gain access to the Senate apply to the Presidency of the Senate. The request is dealt with by the General Secretariat of the Presidency which, in addition to authorising access to the *Palais* (the seat of the Senate), may also authorise access to the corridors of the *Salle des Séances* (the Chamber itself) if the professional group is considered important and representative (e.g., *Barreau de Paris*, *Chambre des notaires*, *Assemblée permanente des Chambres d'agriculture*, *Electricité de France*, *Gaz de France*, etc.).

The request may also be addressed to the College of Quaestors which then issues a pass for the *Salle des Conférences* and the *Galerie des Bustes*, where it is possible to meet senators. In this case no access is given to the *Salle des Séances*.

About 20 passes are issued each year by the College of Quaestors and a dozen or so authorisations for access to the corridors of the *Salle des Séances* are granted by the Presidency General Secretariat.

There is no code of conduct for representatives of interest groups. Any who behave improperly may be the subject of oral recommendations or be declared *persona non grata* at the request of senators.

##### *National Assembly*

Lobbying activities are not regulated and are not covered by any code of ethics. There is no list or register (public or otherwise) of pressure groups, which are neither 'known' nor



'recognised' as such. There is only one relevant provision: under the general directives of the bureau of the National Assembly on circulation within the Assembly, those with special cards issued personally by the President or by the Quaestors have access to the *Salon de la Paix*.

In practice, there are about twenty public affairs representatives of a few large public firms (e.g., *Electricité de France*) and a few institutional bodies (e.g., *Caisse des dépôts et consignations*) or agencies representing a professional organisation (e.g., *Chambres consulaires*).

However, these are not the only representatives likely to lobby within the National Assembly. Many others have access to certain areas, either on a permanent basis or otherwise, for example at the request of one or more deputies, and may thus in effect put forward the point of view of many large private companies or professional and trade union organisations.

Article 79 of the rules of procedure forbids deputies from pleading and from using their position or status or allowing it to be used for any purpose other than the performance of their duties as deputy, with disciplinary sanctions for non-compliance. They are also prohibited from belonging to any association or group which defends private, local or professional interests or from making any commitments to such groups regarding their parliamentary activities, if such membership or commitments involve accepting mandatory instructions.

## *Germany*

### *Bundestag*

According to Annex 2 of the rules of procedure of the German Bundestag, each year a public list is drawn up of all groups wishing to express or defend their interests before the Bundestag or the Federal Government.

Representatives of pressure groups must be entered on the register before they can be heard by parliamentary committees or be issued with a pass admitting them to parliament buildings. The following information must be provided: name and seat of the group; composition of board of directors and board of management; sphere of interest; number of members; names of appointed representatives; address of group's or association's office at the seat of the Bundestag and of the Federal Government.

However, the public list does not have any legal force. Its purpose is to make pressure groups in the parliamentary field clearly visible and collect information for the work of the Bundestag and its committees, and make it available on request. Registration does not entitle a group to special treatment, nor to be consulted at parliamentary hearings. The Bundestag may unilaterally declare an entry pass invalid, and the Bundestag and its committees may invite associations or experts who do not appear on the register to their meetings where they consider it necessary. The list published in the federal gazette (*Bundesgesetzblatt*) in 1996 contained 1 614 pressure groups.

Similarly to what was said above about the Austrian system, a substantial part of *Bundestag* MPs are members of trade unions or employers' associations.

### *Bundesrat*

There are no rules governing interest groups.

### *Greece*

The concept of lobbying or interest group activities is unknown in Greek law and is therefore not regulated.

### *Ireland*

There are no rules governing pressure groups.

In 1999 and 2000, a Registration of Lobbyists Bill was presented by opposition Members several times. However, it will not proceed without significant changes from the government side. There is no time scale at the moment. In the meantime, there are no guidelines on the activities of lobbyists.

### *Italy*

There are no specific rules on the activities of interest groups or their representatives within the Italian parliament.

However, in the Ninth Legislature (1983-1987), four bills were tabled on regulating professional public affairs activities (A.C. 148, 157, 2983 and A.S. 125) and discussed by the committee on employment and social security of the *Camera*, which in the course of its deliberations prepared a unified text. The passage of this proposed legislation was interrupted by the early dissolution of parliament. Further bills have since been tabled (A.C. 479 in 1987, A.C. 4144 in 1989 and A.C. 144 in 1992), but there the procedure has ended.

In the Senate, national associations and organisations can usually ask to receive a card admitting them to the Senate buildings, but not to the rooms where the parliamentary committees meet. The card does give the holder access to parliamentary facilities (library, photocopiers, etc.).

It is generally felt, though with differences of emphasis, that there is a need for regulation, accompanied by institutional reform which would change the relationship between interest groups and political groups (for example, the introduction of one-member constituencies or incompatibility between parliamentary posts and government office). It was also proposed to establish registers of pressure groups and to make it compulsory for registered groups to submit reports stating their expenses incurred and actions taken in order to provide greater transparency of interest group activities. Recently, a Bill taking up some of these ideas (*progetto di legge N. 1567*) was presented to Parliament, in September 2001, but not adopted.

### ***Luxembourg***

There is no register or public list of pressure groups wishing to express or defend their interests before the Chamber of Deputies. No facilities are provided for such groups by the Chamber of Deputies and there is no code of conduct applicable to them. However, the Chamber of Deputies, a parliamentary committee or one or more deputies do have the right to hear such pressure groups if they wish, either on their own initiative or at the request of the pressure groups themselves.

### ***Netherlands***

There are no specific rules on the activities of pressure groups within the Dutch parliament.

The Public Relations Division of the Second Chamber provides representatives of pressure groups and lobbyists and representatives of other organisations with a special card or pass which is valid only on the date of issue. In exceptional cases, this card may be valid for a maximum of two years. The pass admits the holder to the buildings of the Second Chamber in order to contact Members of parliament, attend public meetings and consult documents.

### ***Portugal***

There are no specific rules or registers concerning pressure groups or their activities. Representatives of such groups are covered by the general rules governing access to, circulation and presence in Assembly buildings (despacho n 1/93, D.A.R. du 22.3.1993, II Série-C, n 22).

### ***Spain***

There are no rules governing the activity or registration of pressure groups.

### ***Sweden***

There are no rules or practices in Sweden (other than general legal rules) concerning lobbying in the *Riksdag*. Lobbying has been discussed for many years and lately to a somewhat greater extent. Private Members' bills on the registration of lobbyists in Parliament have recently been rejected by Parliament, as lobbying in its present form and degree is considered to be a natural and legitimate part of the political process.

Traditionally, organisations have played an important role in Swedish society and the dangers of lobbying have been considered to be outweighed by a traditionally transparent and open society. Even so, there is some discussion about the dangers of a 'dual mandate' for MPs involved in interest groups or state authorities, and also about the involvement of interest groups in the work of state authorities. There is an ongoing debate on these issues but no formal proposals for rules or legislation.

### *United Kingdom*

The UK disposes of many regulatory texts (e.g., codes of conduct) concerning Members' interactions with outside interests. However, many of these concern Members' own financial interests and behaviour rather than control of third party interests. Most recommendations are in keeping with the British tradition, also practised in the media, of declaring an interest when participating in a debate related to that interest.

The basis of current regulatory practice was laid down in October 1994, when Prime Minister John Major set up the so-called Nolan Committee (Committee on Standards in Public Life, presently chaired by Sir Nigel Wicks) to "examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of probity in public life."

### *House of Lords*

There is no official register or public list of lobbyists seeking to have their interests made known or defended in the House of Lords, and no rules or code of conduct specifically applicable to such persons. In general, the facilities of the House are made available only to Members, and not to lobbyists or interest groups as such, although it is open to Members supporting particular interest groups to sponsor in person meetings or functions of such groups at the House.

In November 1995, the House of Lords agreed to set up a Register of Members' Interests as recommended by the Procedure Committee which had conducted an enquiry into the matter earlier in 1995. The Register is divided into three categories: category 1 is mandatory and lists Lords with paid parliamentary consultancies; category 2 is also mandatory and lists Lords with financial interests in lobbying companies; finally, category 3 is optional and shows other interests (financial or non-financial) which Lords have chosen to register. The Register is published annually.

As a general rule, Lords are supposed always to speak for themselves and not on behalf of outside interests. Lords with paid consultancies, or financial interests in lobbying firms, are barred from speaking, voting or lobbying on behalf of their clients. The operation of the Register of interests is overseen by a subcommittee of the House of Lords Committee for Privileges. This committee would investigate any allegation that a Lord was in breach of the new rules.

In recent years, several Committee reports and revised versions of guidelines for Members have been published. Details of the rules governing relations between Members and third parties are thus constantly updated<sup>45</sup>.

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<sup>45</sup> For an overview of developments in both Houses see "Seventh Report of the Committee on Standards in Public Life", November 2000, Standards of Conduct in the House of Lords; "Eighth Report of the Committee on Standards in Public Life", November 2002, Standards of Conduct in the House of Commons.

### *House of Commons*

The Nolan Committee's report, adopted in May 1995 (see above), did not propose a mandatory register of lobbyists but did recommend that the House should immediately prohibit Members "from entering into any agreements in connection with their role as parliamentarians to undertake services for or on behalf of organisations which provide paid parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms which provide such parliamentary services."

However, the Select Committee on Standards in Public Life, which was appointed to consider the Nolan recommendations, found it impossible to arrive at a satisfactory definition of "lobbyist" as distinct from other forms of outside employment. They preferred instead to recommend a greater degree of disclosure by Members of all outside sources of remuneration which involved "the provision of services in their capacity as Members of Parliament." This was the solution agreed to by the House in November 1995, which is now embodied in the "The Guide to the Rules Relating to the Conduct of Members" approved in July 1996 and updated in May 2002, which now includes a chapter on "Lobbying for reward or consideration"<sup>46</sup>. The guide reiterates that "the main responsibility for observation of the ban on lobbying for reward or consideration lies with the individual Member".

There are Registers of Journalists and Members' staff, introduced by the Commons in December 1985 following concerns about the introduction of professional lobbyists into the House under the guise of Members' staff. Professional lobbyists are not treated as a separate category when passes are issued to the Palace of Westminster and lobbyists have no right to a security pass (which would gain them access to the Palace). Hence, there still is no public list or register of parliamentary lobbyists. NGOs such as Charter 88 have criticised this as a failure of parliamentary self-regulation. Charter 88 also recommended that a set of written rules should be established which should include the regular publication of who is acting with whom, on behalf of whom, over what, at any time, with penalties for failure to comply.

Still, in 1994, two separate Associations of Parliamentary Lobbyists launched Codes of conduct to self-regulate their affairs. *The Association of Professional Political Consultants* and the *Institute of Public Relations* have set up registers of professional Lobbyists. It is important to note that these are voluntary codes and registers.

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<sup>46</sup> The text is annexed to the "9<sup>th</sup> Report of the House of Commons Committee on Standards and Privileges" of 23 April 2002 and is available on the internet under <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmstnprv/763/76306.htm> - n27.



## **Conclusion**

The European system of multi-level governance has produced a system of equally multi-layered interest groups organized at the European level. There is a majority view that these “Eurogroups” are numerous, but often rather weak<sup>47</sup>. A certain fragmentation of interest representation in the European policy process has taken place during the last decade. Alternative methods of interest representation have gained importance which are supposed to be faster, more flexible, less costly and more effective, because they by-pass the existing European interest groups:

- national interest groups and associations have started to act directly at the European level; a large number of national business associations now have offices of their own in Brussels and are in direct contact with supranational institutions;
- small informal clubs, round tables, or ad-hoc coalitions, such as the European Information Technology Industry Round Table (EITIRT) or the Transatlantic Business Dialog (TABD), are selective in their membership and targeted on specific goals, thus reducing the costs of consensus-building among their members;
- individual companies – large multinational firms in particular – have addressed their lobbying efforts directly to the European institutions; they have established offices in Brussels and gained some access to the European policy process, thus having a chance to become major political actors;
- the number and importance of professional lobbyists (“public affairs representatives”), law firms and consultants in Brussels has been increasing considerably in the 1990s; although their access to the principal institutions is also weak, they still allow firms to invest in highly specialized advice for very specific purposes without the costs of permanent offices or of cumbersome consensus-building.

According to a recent study, successful lobbying is characterised by the following combination of traits: the group is well organised and able to solve conflicts; disposes of sufficient financial, human, informational and political-economic resources; its main interest is in high-tech markets; decisions do not have to be taken unanimously within the association; the group deals with a strongly communitarised policy and has a limited number of addressees; it has been around for some time; it has few member organisations and its administrative seat is in Brussels<sup>48</sup>. Lobbying that does not contribute to the aggregation of interests can result in the development of personally close, but intransparent networks and channels of contact.

In a democratic political system, it is legitimate for a plurality of actors to try to pursue their own interests. Problems arise if the system is not capable of considering and prioritising all relevant interests, given that some groups are much better organised than others. Therefore, some regulation or control of certain aspects of lobbying and other special interest activities is necessary.

The EU institutions are probably more open to a variety of interests than most national administrations, since they are aware of the need to recover public support for the integration

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<sup>47</sup> Grande, E., 2001, p. 13.

<sup>48</sup> Cited in Buholzer, R.P., p. 294/5.

process. The Commission has always had a strong incentive to widen support for its proposals, for which social, environmental, regional or consumer interests may be particularly important. These civic interests present the Commission with opportunities to expand its influence and legitimacy.

The EP has been able to amend legislation since the entry into force of the Single European Act in July 1987, thereby incorporating certain interests and policy aims in the decision-making process. In addition to the institutional discrepancies between a directly elected and a markedly intergovernmental body there are often different political majorities in the EP and the Council. Moreover, the EP has become more involved in the details of regulation than most national parliaments. This has proved significant for the articulation of special interests, because many MEPs tend to be receptive to some of them (e.g., for environmental protection policies).

The wide distribution of power in the EU provides not only for multiple arenas in which lobbyists engage but also for some insulation of the European institutions from producer interests, which tend to be better organised than others. Bargains between business interests and EU institutions can lack durability as the focus of decision-making moves to other, notably national arenas. Furthermore, the Commission can sometimes play different interests off against one another in acting as a “multi-level broker”. As pointed out by Greenwood, the Commission is sometimes able to insulate itself from pressures by outside interests, thus eroding the importance of business associations at the European level compared to other lobbying strategies<sup>49</sup>.

Looking at the future, it can be argued that lobbying is likely to increase rather than decrease in the coming years, albeit more slowly than in the past 10-15 years. De Fouloy names some key factors that will continue to favour lobbying and outside interest activities:

- further consolidation of the EU and more uniformity of legislation;
- an austere economic and political climate in which more groups are demanding to be heard and to redistribute or retain their piece of the economic pie;
- technology change due to the speed and growth in communication technology;
- the information explosion (sheer volume of information to be absorbed);
- increasing specialisation within a body of knowledge<sup>50</sup>.

With enlargement, lobbyists will have to work in an EU that is becoming even more complex. Many of the new Member States have a political culture which is quite different from that of current members. Pressure groups will therefore face new challenges as the EU institutions and their decision-making mechanisms are modified by the European Convention and the subsequent Intergovernmental Conference. Organised interests and their capacity to plan and execute campaigns will probably become more manifest, as has already been recognised by EU bodies, particularly the Commission, by increasing the consideration given to improving consultation and the dialogue with civil society. It is all the more important that competition among lobbying groups remains open for newcomers, thus assuring that European interest representation does not develop into a closed shop system.

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<sup>49</sup> Greenwood, J., 2002a, p. 26.

<sup>50</sup> De Fouloy, C.D., 2001, p.135.



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## **Annex: Annex 9 to the Rules of Procedure of the European Parliament**

### **Provisions governing the application of Rule 9(2) - Lobbying in Parliament**

#### **Article 1**

##### **Passes**

1. The pass shall consist of a plastic card, bearing a photograph of the holder, indicating the holder's surname and forenames and the name of the firm, organisation or person for whom the holder works.

Pass-holders shall at all times wear their pass visibly on all Parliament premises. Failure to do so may lead to its withdrawal.

Passes shall be distinguished by their shape and colour from the passes issued to occasional visitors.

2. Passes shall only be renewed if the holders have fulfilled the obligations referred to in Rule 9(2).

Any dispute by a Member as to the activity of a representative or lobby shall be referred to the Quaestors, who shall look into the matter and may decide whether to maintain or withdraw the pass concerned.

3. Passes shall not, under any circumstances, entitle holders to attend meetings of Parliament or its bodies other than those declared open to the public and shall not, in this case, entitle the holder to derogations from access rules applicable to all other Union citizens.

#### **Article 2**

##### **Assistants**

1. At the beginning of each parliamentary term the Quaestors shall determine the maximum number of assistants who may be registered by each Member.

Upon taking up their duties, registered assistants shall make a written declaration of their professional activities and any other remunerated functions or activities.

2. They shall have access to Parliament under the same conditions as staff of the Secretariat or the political groups.
3. All other persons, including those working directly with Members, shall only have access to Parliament under the conditions laid down in Rule 9(2).

#### **Article 3**

##### **Code of conduct**

1. In the context of their relations with Parliament, the persons whose names appear in the register provided for in Rule 9(2) shall:

- (a) comply with the provisions of Rule 9 and this Annex;
  - (b) state the interest or interests they represent in contacts with Members of Parliament, their staff or officials of Parliament;
  - (c) refrain from any action designed to obtain information dishonestly;
  - (d) not claim any formal relationship with Parliament in any dealings with third parties;
  - (e) not circulate for a profit to third parties copies of documents obtained from Parliament;
  - (f) comply strictly with the provisions of Annex I, Article 2, second paragraph;
  - (g) satisfy themselves that any assistance provided in accordance with the provisions of Annex I, Article 2 is declared in the appropriate register;
  - (h) comply, when recruiting former officials of the institutions, with the provisions of the Staff Regulations;
  - (i) observe any rules laid down by Parliament on the rights and responsibilities of former Members;
  - (j) in order to avoid possible conflicts of interest, obtain the prior consent of the Member or Members concerned as regards any contractual relationship with or employment of a Member's assistant, and subsequently satisfy themselves that this is declared in the register provided for in Rule 9(2).
2. Any breach of this Code of Conduct may lead to the withdrawal of the pass issued to the persons concerned and, if appropriate, their firms.