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Lobbying in the European Union

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**Directorate-General Internal Policies
Policy Department C
Citizens Rights and Constitutional Affairs**

Lobbying in the European Union

Briefing paper

Summary:

This paper surveys the history of European Lobbying and recent empirical studies on current practice. It presents some key results on the structure, methods and strategies of professional interest representation in Brussels.

The briefing also comments on the Commission's European Transparency Initiative, underlining the need to create a single mandatory registry at the Commission and the European Parliament. An inter-institutional approach would reduce the opportunities for lobbyists to venue-shop and increase the exclusion costs of misinformation.

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Lobbying in the European Union

Introduction:

In light of an unprecedented expansion of lobbying in Brussels and the complex nature of European public policy process we are faced with the pressing issues of regulating lobbyists and improving transparency. However, we must not lose sight of the fact that lobbying is a familiar if not always welcome reality in western politics, and that most political scientist and policy-makers recognise that public and private interests have a legitimate and important role to play in the policy process (Richardson 2006, Coen 2007). Nowhere is this truer than in the European public policy process where some 15,000 Commission and European Parliamentary officials face some 20,000 lobbyists on a daily basis (Greenwood 2003, European Commission 2001).¹ It is therefore not surprising that a significant resource dependency between officials and lobbyists based on regulatory needs, expertises, information and reputation has emerged. For this reason it is important that as we formalised and improved the EU lobbying codes of conduct we do not damage the information exchanges and credibility of the policy process.

EU interest group activity exploded in the 1990s, as a result of the gradual transfer of regulatory functions from member states to the EU institutions, and the concurrent introduction of qualified majority voting on the Single Market issues. In parallel with this increasing functional supply, institutional demand for EU interest group activity was facilitated by the openness of the European Commission and European Parliament (Com 93/C1666/04) and the funding of EU groups by the European Commission. The bare facts speak volumes for the ease of access to the EU institutions during this period, with an estimated, 1450 formal interest groups operating at the European level (Greenwood 2003), 350 firms with European affairs offices (Coen 1999) and 267 law and public affairs firms active in EU public policy (Lahusen 2002).

With such numbers and growing resources, EU interest groups where able to exert influence along the European policy process from initiation and ratification of policy at the Council of Ministers, agenda setting and formulation at European Commission led forums, reformulation of policy at the European Parliament committees, to the final interpretation, harmonisation and implementation of regulation in the nation state. In following and accessing all points of the policy process, EU interest groups are important supply of information on the development and delivery of EU public policy and a potential source of legitimacy to policy-makers.

¹ A lobbyist is defined here as organisation or individual that seeks to influence policy, but does not seek to be elected (Richardson 2002).

However, the increasing numbers of lobbyists in Brussels at the turn of the century has become a concern to EU institutions and interest groups alike. As a consequence, EU institutions have attempted to informally manage access to committees and forums, and are currently debating transparency and codes of conduct (Commission European Transparency Initiative 2006). The result is a more competitive *elite pluralist* environment, where access to decision-makers is restrictive and more competitive.²

In response to this increasingly crowded and competitive lobbying environment; public and private interests have evolved new direct lobbying strategies, collective action arrangements, and complex political advocacy alliances. Accordingly, EU interests have matured into sophisticated interlocutors that often have more awareness of inter institutional differences than the functionaries they lobby. The result is EU interests now have unparalleled access and understanding of the multilevel governance structure and lobby with a multitude of political voices. Albeit, this unprecedented lobbying explosion provided legitimacy for the European integration program, it also has put a strain on the openness and transparency of EU policy-making, and pressure for the creation of rules and regulation of interest representation. However, as a result of the multilevel and institutional lobbying it is important that policy-makers and academics can first and foremost map interest group inputs across the whole policy process.

Today we are faced with how EU institutions can manage and regulate the expanding numbers of interests and conversely how interests groups can continue to influence and contribute to the EU public policy process in a positive and constructive form. Few would question the importance of interest groups to facilitate policy, advocate positions, provide expertise and at times scrutinise authority. What is more difficult to agree is how we monitor and regulate their access to the policy process without constraining information exchange and political trust.

2. The evolution of European Lobbying: The Business Lobbying Case Study.

In the last decade many have studied why interest groups came to Brussels and how they attempted to influence the EU policy process (Kohler Koch & Eising 1993, Coen 1997, 1998 & 2007, Greenwood 2003, Eising 2007). These studies recognised that regulatory rent seeking motivated EU interest politics, just as their cousins in Washington, but they also noted that distinct collective action styles and reputation maximizing strategies also emerged. While the first body of studies identified the gradual transfer of regulatory functions to the EU institutions contributed to the Europeanization of interest politics, the second wave of interest studies attempted to understand the uniqueness of the EU institutional and interest relationship and the emergence of elite pluralism (Broschied and Coen 2007, Bouwen 2002 & 2004, Beyer and Kerremans 2004 and Eising 2007).

² Elite Pluralism is a lobbying system in which access to the policy forums and committees is generally restricted to a limited number of policy players for whom membership is competitive, but strategically advisable. As such EU institutions can demand certain codes of conduct and restrictions in exchange for access (Coen 1997).

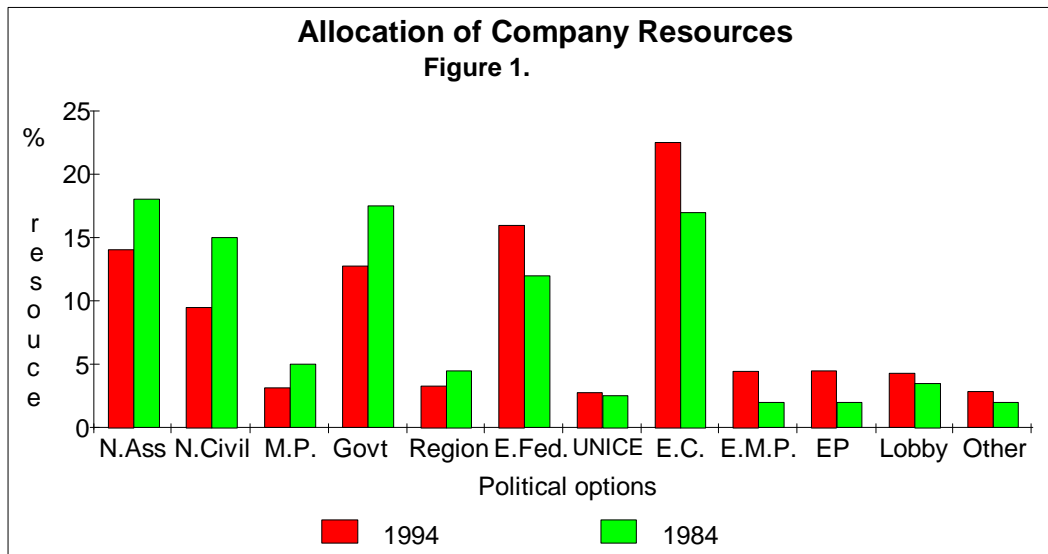
Today, we are faced with a need to one understand how the emergence of individual direct action has impacted on traditional forms of collective action (Coen 2007), and two how we can regulate this complex interest representation. Significantly, the recent explosion of lobbying in the EU has not seen increases in traditional interest organisations like trade associations or NGOs but in individual lobbyists such as companies and law firms. It has been estimated that some 40% of all interest representation at the Commission and the European Parliament would now appear to be individual actors (Firms (24%), Think Tanks (4%), Government/Regional authorities (11%), law firms, public relations companies etc) rather than interest group organisations (CONECCS and EP 2007, Berkhout & Lowery 2008). In view of this new studies need to observe strategic games between individual interests and collective groups, firms and firms, and between firms and traditionally countervailing public interest groups (Broschied and Coen 2007, Mahoney 2007, Eising 2007). But new transparency regulation must also monitor how individual lobbyist may also fund and participate in alternative collective action arrangement to access to EU institutions.

To illustrate how the new EU individual lobby mobilises, this report tries to describe and analyse how individual firms lobby in the EU and how their behaviour has developed: So that we can assess how to regulate and monitor lobbying more generally in the future. The analysis is rooted in two surveys completed in 1994/5 (n94) and 2004/5 (n50) of 200 firms with European Government affairs functions in Brussels. Using this empirical evidence, the report pursues the idea that large firms have developed sophisticated EU political affairs functions that are capable of complex political alliances and EU identity building in response to EU institutional informational demands and access requirements.

Learning to Lobby: 1984-1994.

The original study showed that, between 1984 and 1994, over 200 companies chose to develop direct lobbying capabilities in Brussels. More specifically, figure 1 demonstrates that over the ten-year period the locus of political activity shifted away from national and towards European institutional channels. A parallel trend was the general tendency of firms to favour direct individual representation at the national government (Govt), Ministry (N.Civil), European Commission (EC), European Parliament (EP) as opposed to using intermediaries such as professional lobbyists (lobby) and national associations (N.Ass). However, there was a realisation by business that all the channels were mutually reinforcing and that a holistic approach to lobbying involving national and regional government and all EU institutions along the policy process was most effective.

Figure 1: Changing Nature of Business Political Activity in the EU.³



Source: Coen 1997.

The most favoured political channel was to lobby the Commission directly, with about a quarter of the significance of all political activity attributed to this. While much of this increased activity can be explained by the single market legislative boom acting as a pull factor, it should be noted that qualified majority voting also acted as a push factor for many firms. Thus, business recognised that some 80 percent of single market regulations and standards were initiated and formulated at the Commission. As a consequence, business change from reactive and destructive EU lobbying strategies focused on member states and the veto at the Council of Ministers, towards more pro-active EU strategies. Thus, a new and distinct EU public policy process evolved that was unlike Bonn, London, Paris or Washington.

Running concurrent with the increased EU interest supply was a willingness by the European Commission and European Parliament to open their doors to more lobbyists. In reality, this new openness was recognition by the EU institutions that they no longer had the resources to deal with the expansion of legislation without the active participation of technical experts. Significantly, it was not only transnational firms that were attracted to Brussels by the creeping competencies of the Commission, and by 1992 it was estimated that more than 3,000 public and economic lobbies were active in Brussels (OJ93/C63/02). Faced with this increasingly crowded political market, the increasing use of multiple access points, and a growing number of European issue areas, business developed a high degree of political sophistication. In this complex environment, 84% of the firms surveyed reported that the most successful lobbyists were those able to establish “goodwill” with the relevant “heads of unit” and “Director Generals” of Commission Directorates.” In a political market where numerous countervailing interests were trying to influence an open political

³ Figure 1 shows the lobbying pattern for large firms seeking to influence the European policy process and represents the mean average who responded to the question: How would you allocate 100 units of political resources (time, money, expertise) between the channels listed to influence the European Union today and Ten years ago? The percentage data therefore represents firms’ revealed preference for various political channels, as opposed to their actual expenditure.

system, greatest weight was given to those actors who were prepared to establish a “European identity” through European alliances with rival firms (hence the growth in numbers and size of European Federations and ad-hoc groups) and/or solidarity links with societal interests.

Gradually it became apparent that large firms that wished to exert a direct influence on the European public policy process would have to marshal a greater number of skills than merely monitoring the progress of European directives and presenting occasional positions to the European Commission. Successful lobbying of the European Commission meant establishing an organisational capability to co-ordinate potential ad-hoc political alliances and to develop and reinforce existing political channels at the national level and European level. To achieve good access for *direct lobbying* of the European Commission – the primary focus – large firms were encouraged to develop a broad political profile across a number of issues and to participate in the creation of *collective political* strategies. Accordingly, the cost of *identity building* would be discounted against better access to “company specific” issues at a later forum or Committee. Significantly, during this period of norm creating, some firms were establishing themselves as political “*insiders*” through a process of regular and broad-based political activity. It was these new insiders which stood to benefit most from the gradual “closing down” of access to the European Commission in face of the “interest overload” in the 2000s.

Recognising that the political take up of political channels was influenced by cost considerations and that companies were faced with an internal budget constraint. In is fair to assume that the importance of cost grows with increases in the uncertainty of the political returns associated with a political channel. As a direct consequence of this uncertainty, the usage of channels in the Europe has built up only slowly and has required large institutional and market changes to become decisive. Political change is particularly slow in periods of recession – when corporate affairs budgets are the first to be cut back. Whist the establishment of the government affairs units has reduced some of the information transaction costs and facilitated an understanding of EU institutions; the constant evolution of many of the political institutions inhibited the full adoption of all the available political channels.

This was illustrated by the slow lobbying take up of the European Parliament after the Maastricht Treaty. While many interviewees in the 1984-1994 periods recognised the increasing policy-making powers of the European Parliament and the emergence of new lobbying opportunities, the reality was that until a time when they had additional resources or they had suffered a clear cost of non-participation, the focus of lobbying would continue to be the European Commission. In this period, the low lobbying take-up was clearly a legacy of past reputation. In fact, until Maastricht the European Parliament had only had a limited consultation role and the impact of co-decision and conciliation were still to impact many lobbyists. Rather, the reluctance to commit resources to lobbying the European Parliament was attributed to the ambiguous political outcomes of EP committees and the risk of log-rolling at the Strasbourg vote.

To firms used to lobbying in the European Commission on technical expertise and information exchanges, the more socially and politically aware European Parliament was also seen as too uncertain and marginal to the agenda-setting and formulation process. Significantly, this perception was too changed over the late 1990s with some

high profile lobbying campaigns in on bio-technology patenting and tobacco alerting business to the cost of non-action at the Parliament (Earnshaw and Judge 2006). Thus, over time interests have learned to target the European Parliament over propositions for amendments to Commission directives. Conversely, like the European Commission officials, the European Parliament officials have sort to establish an informational lobbying arrangement based on direct, technical rich and well time contact. However, in addition to the *facilitator* and *expert* roles of interests groups that provided *policy legitimacy* the European Parliament required a wider range of interests groups that provide an *advocate* and *representative* roles to provide it with *political legitimacy*.

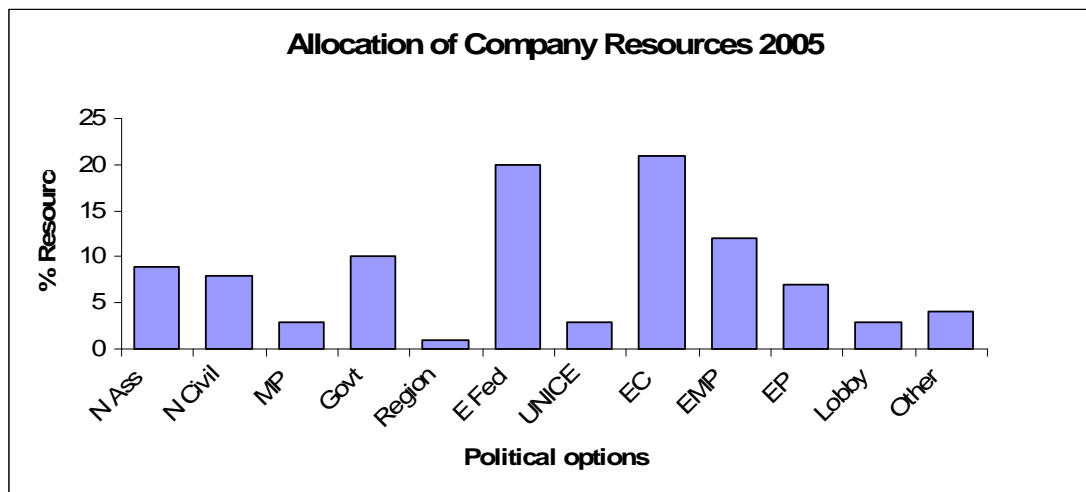
The low take-up of hired lobbyist was explained by the realisation by business and newly created European interest groups that they were capable of direct lobbying of EU institutions. The private lobbyist's position worsened with the green papers on open access and transparency in the European Union (OJ 93/C166/04). Especially, as the report made a clear distinction between representatives from business and society and those making representations for profit. However professional lobbyist and increasingly law firms maintained a specialist niche as most firms used them to identify new political issues and legislative trends, while government affairs offices were used to respond to the immediate market threats. For this reason, hired lobbyists provided a complementary benefit to the firms' government affair functions, providing specialist information and continuous political monitoring. They did not, however, establish "*goodwill*" or *political reputations* that facilitate private business access at a later date. However, while take up by big business and established European NGOs may be lower than expected, the profession continues to grow in Brussels as smaller national interest groups and SMEs used then to access the EU policy process. Moreover, as lobbyist themselves recognised the importance of reputation building as a Brussels lobbying strategy, we saw the arrival and expansion of a number of large public relations companies – such as Hill and Knowlton and Burston and Marsteller and a growth of think tanks.

The Emergence of a Distinct European Lobbying Style: 1994-2005

The unobtrusive nature of much lobbying activity has restricted our understanding of European behaviour and influence. Unlike the visible lobbying of rent seeking industries in the US Senate and Congress and Political Action Committee contributions, most EU interest studies have focused on the trade associations and the visible logic of collective action (Greenwood 2005, Eising 2007). However, if we are to define codes of conduct and create data bases of institutional lobbying activity it is important that we have a clear understanding of how and when interests make representation across the policy process and for different policies.

Figure 2, as the previous figure 1, clearly illustrates that a number of mutually reinforcing political channels are utilised to influence the EU public policy process. However, the timing, take up, and the style of activity have altered as EU procedural rules have changed and EU interests and functionaries learnt to trust one another.

Figure 2: Allocation of Business Political Resources 2005.



Source: Coen 2008

Regardless of treaty changes and the slowing legislative outputs of the EU, the European Commission continues to be the primary focus of lobbying activity in Brussels both directly and/or via trade associations. However, while the Commission is still recognized as the policy-entrepreneur and exerts a huge influence on the formulation of the directive – via initiative, consultation and increasingly at tri-logs, it has, via its discretion to invite or exclude interest, been able to demand behavioural criteria for the participation in its more exclusive policy forums and committees. Thus, the most significant development in lobbying in Brussels over the last 20 years has been the emergence of an *elite pluralist* arrangement.

The recognition of the existence of elite pluralism raises the important tension between “political” and “policy” legitimacy that the new EU lobbying transparency debates often fail to explore. Significantly, the regulatory agency style of Brussels policy-making has produced the emergence of an elite trust-based relationship between insider interests groups and EU officials. Accepting the rationale to delegate regulatory competencies to the European Commission in terms of credible commitment, blame avoidance and market expertise, the policy-making legitimacy of the European Commission is seen to be high by most EU interests. Within this credibility game the Commission makes much of its attempts to build long-running relationships with interests, based on *consistency* for information exchanges, wide *consultations* and *conciliatory actions*. Conversely, interest must develop strategies that create reputations that will help them to gain access to the closed decision-making arenas. The result of this discretion politics is that policy-making in Brussels is reliant upon both social capital and deliberative trust. Faced with these specific depoliticized institutional arrangements, it is important that we build accountability and transparency arrangement that takes account and foster trust building, credibility and institutional discretion.

In fact, contrary to the perception of aggressive lobbying of bureaucrats suggested in the popular media, EU lobbying and business representation is often characterized by institutions seeking out and in some cases funding interest groups and ad-hoc alliances. A study by Broschied and Coen (2007) illustrate this by showing how interest group and Commission preferences for forums and/or direct action are a function of the informational demands of the Directorate, number of interests and capacity to process interest group inputs, balanced against the “*input*” and “*output*” legitimacy requirements of the policy domain. Moreover, see table 1, in highly regulatory policy areas, where technical policy input defines the policy legitimacy and staffing numbers are low, they observe that the Commission creates forums and committees to manage lobbying activity. Equally significant, as table 1 shows, greatest lobbying activity is clustered round Enterprise and Environmental Directorate General as these have the greatest regulatory output and competencies. It is therefore important that we do not attempt to see lobbying the Commission as a single strategy and only collect access and frequency of contact data for individual institutions, but rather assess interest access to the whole EU policy cycle.

Table 1. European Commission and Lobbying Resources Dependency.

DG	Number of For a	Number of Groups	Distributive Policy Domain	Personnel in DG	Number of Policy Units
Agriculture	71	100	1	984	29
Competition	22	39	0	626	30
Development	33	51	1	277	17
Economic and Financial Affairs	12	44	0	465	25
Education and Culture	90	120	1	645	13
Employment and Social Affairs	56	106	1	676	25
Energy and Transport	104	110	0	953	38
Enlargement	0	52	0	333	15
Enterprise	94	221	0	858	38
Environment	124	132	0	541	21
Humanitarian Aid (ECHO)	18	13	1	179	4
External Relations	25	32	0	676	28
Fisheries	1	10	1	290	12
Information Society	39	53	0	1054	35
Internal Market	70	105	0	437	24
Justice and Home Affairs	51	76	0	368	14
Regional Policy	59	24	1	595	23
Research	132	63	1	1552	65
SANCO	55	149	0	711	26
Taxation and Customs Union	99	28	1	396	23
Trade	10	64	1	456	16

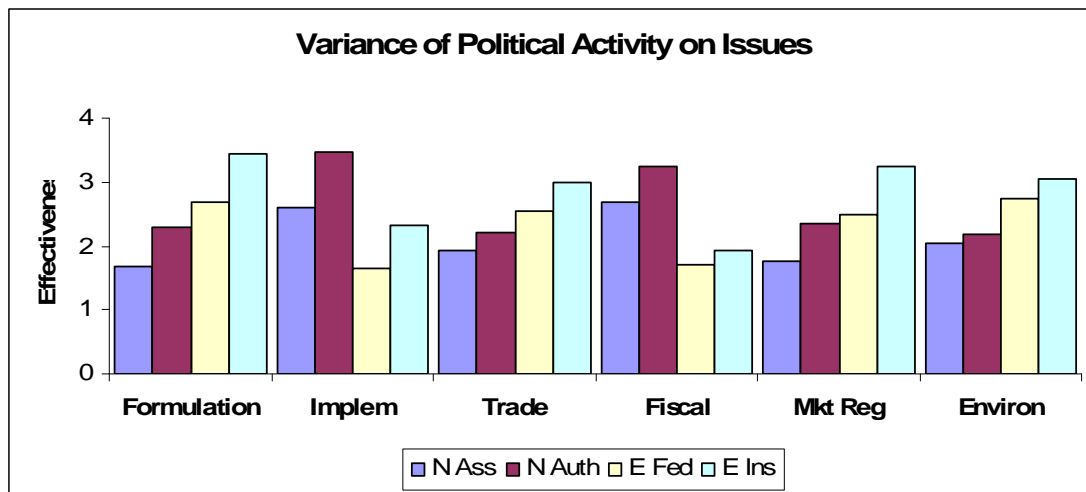
Source: CONECCS 2006, Broscheid and Coen 2007

Building on this integrated lobbying strategy and recognising the creeping competencies of the European Parliament, direct lobbying of MEPs and EP civil servants increase 100 percent from 1994 to 2005. Moreover, new EU lobbying styles emerged and greater professionalism in the exchange of information between EP officials and business representation evolved. As expected the greatest lobbying activity has emerged in committees secretariats where co-decision applies – such as single market and environmental legislation (Lehmann 2008). Accordingly, the

greatest activity has tended to mirror the European Commission’s legislative activity and a strong argument for monitoring interest groups access to both institutions should now be made. However, while much of the political capital of business interests is their understanding of technical issues and the input legitimacy that this provides at the European Parliaments wider political considerations apply.

In such a complex environment, we have seen business interests reformulate or re-emphasis economic competitiveness arguments to focus on wider public goods such as regional employment consequences or create wider issue linkages – was perhaps most visible during the pharmaceutical patent debates in the early 2000s. However, the more substantial difference, between the European Commissions bureaucratic discretionary model and the European Parliament political environment, is the growing use of the economic media and public opinion in lobbying the EU (Earnshaw and Judge 2006).

Figure 3: Policy Variance.



Coen 2008

In sum, while some institutional characteristics have been drawn out from the empirical study, it is perhaps more notable that the nature of the policy being debate and the type of institutional legitimacy required have the biggest bearing on the style and impact of lobbyists. It is therefore important that we understand the policies that are being lobbied, if we are to make sense of the level and concentration of lobbying in the EU. As figure 3, illustrates there is huge variance in political activity across issues and policy cycle. Moreover, as access to different institutions requires different access strategies we have seen the creation of new political alliances and the emergence of ad-hoc lobbying groups as a result. As a result, it is sometimes hard to identify who is actually lobbying and how many times they have told their message to different Commission Forums, European Parliament Committees, and national permanent representations. Hence, rather than collecting data for individual EU institutions it may make greater sense to follow the *lobbying footprint* of a directive across the policy life-cycle and audit the institutions and individuals who are also lobbied.

European Transparency debates:

Politics in Brussels is less than transparent, which is one reason why interest groups develop government affairs offices to manage the EU policy cycle. EU officials recognising the uniqueness of the European Lobbying process have over the last 20 years attempted to define an informal code of conduct and improve openness and transparency (Galle 1991, Ford 1994, Com 1992). The most recent manifestation of this debate has been the Commission Green paper “European Transparency Initiative” (COM 2006 194 final) which sought to build on “better law-making” policy and wider stakeholder consultations proposed in the European Governance White Paper. The object was for a more structured framework for interest representatives, feedback from the Commission’s minimum standards for consultation, and mandatory disclosure of information about the beneficiaries of EU funds. In terms of lobbying it suggested a voluntary registration system, a common code of conduct, and a system of monitoring, and sanctions to be applied in the event of incorrect registration and/or breach of conduct.

While seeking to widen the registration to all interest groups and lobbyist involved in the Commission consultation process, the green paper ruled out a mandatory registration of lobbyists in favour of self regulation. Initially, it was proposed that incentives such automatic alerts on consultations would encourage participation, however, it was clear from interest group responses that this was seen to be of limited value to Brussels based interest groups who already monitor the policy debates. Rather it has been suggested that registration should be mandatory if interest groups wish to submit formal documents to the consultation process.

Linking the voluntary register with the standard internet consultations is one way of creating an access incentive and would facilitate the development of a *policy foot print* across EU regulatory debates and institutions. In line with the above, mandatory registration at European Parliament and Committees should be encouraged. Neither of the above suggestions would stop proactive and informal discussions at the earlier agenda-setting process, but would rather regulate who has access to later policy committees, formal consultations and tri-log debates.

By the same token insisting on financial disclosure to join the register would help the EU institutions map who is actually taking part in consultations. However, money alone does not equal influence. Rather, as the early lobbying discussion illustrated, we see more consensus politics based around complex advocacy alliances and short life collective groupings in Brussels. As such, we often see private and public interests working together on one issue and acting as rivals on a second issue. Therefore, it is important that for each policy we know who has funded each advocacy coalition or special interest group. In fact, there is a strong case for asking interests not just to declare who they are funded by, but also which groups they fund, which groups they utilise to lobby the EU and which DG and Committees they approached. This it is less about monitoring the funds for lobbying, as monitoring the opportunity structures available to the lobbyists. Such an audit, while capturing the frequency and level of

contacts along the EU policy process, potentially reduces the risk of interests hiding under different hats and/or the playing off institutions and policy committees.⁴

With regards to codes of conduct, it has been agreed that self regulation of voluntary codes of conduct would be difficult to enforce. While, both the Commission and European Parliament would be reluctant allow self regulation if the accepted the aim of the transparency initiative is to improve public perceptions their independency accountability, and policy legitimacy. Monitoring of the voluntary codes and information provided may therefore require additional auditing resources: however this is a cost that may have to be incurred for the credibility of the policy process. Moreover in addition to interest groups disclosing financial resources and lobbying activity it could also be argued that MEPs and Commission functionaries also disclose representation made to them. Such double accounting of lobbying activity will reduce the opportunity for under counting and misinformation on the part of interest groups.

Regardless of who regulates, credible policy will require that large quantities and quality of information continue to flow to functionaries and Parliamentary officials. In such a policy-making environment, it is important that a balance between transparent and open consultation and occasional informal discussions and dialogue are maintained. In the past EU policy-making has worked well on discretion and trust based politics; where “naming and shaming” have constrained those who sought to abuse their insider status. However, as numbers of interests groups have increased this informal regulatory mechanism is no longer able to monitor and sanction effectively. Accordingly, if the registry is to operate, the provision of poor and non-factual information must be punished with credible treats of exclusion from the register and future consultation.

Finally, if policy-making in the EU is to be legitimate we must understand how the nature of the issue changes the style of lobbying (what interest supply and what institutions demand) and how lobbying activity changes along the policy cycle. It is therefore paramount that any new transparency initiative attempts to create a single mandatory registry at the Commission and European Parliament. Regardless of the one-stop-shop registration argument, the inter-institutional proposal would reduce the opportunities for lobbyist to venue-shopping and increase the exclusion costs of misinformation.

⁴ As for the concerns of exempting law firms from lobbying disclosure of clients on issue such as state aid and competition. It would be possible to make a behavioural definition of what is deemed a lobbying activity and what is a legal representation. Especially, if all contact points into the policy process are monitored.

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