CONNEX Research Group 4

Work Package A1

Report

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The Regulation of Interest Groups in the EU[1]

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Introduction[2]

Given the place interest groups occupy in European governance, the issue of their regulation is crucial for an understanding of power games within the EU and for a more accurate description of how the EU political system functions and its underlying principles. Regulation of the activity of actors seeking to exert pressure on European institutions - i. e. formalising their role and setting its limits - inevitably raises the matter

[1] Our warm thanks to Richard Balme for his comments on previous versions of this paper. We also want to thank the documentalists at the Information Office of the European Parliament in Brussels, who helped us considerably in our investigations.

[2] Work in Progress. Please do not quote without the permission of the author.

of the part played by the representatives of those institutions, foremost among them the EU's parliamentarians and functionaries.

One of the main issues arising here is thus that of how private or specific interests, whether economic, social or civic, mesh with a general interest produced and embodied in one way or another by those acting in the EU's name. Clarification is made more difficult by the fact that proximity between organised interest groups and European spheres has been historically encouraged as seeming necessary both to dialogue with the different civil society actors and to the quality of the public policies implemented. With a host of sensitive issues at stake here, it is hardly surprising that the question of regulation meets with considerable resistance, especially in the Parliament and the Commission. The Commission in particular has always been hostile to all compulsory forms of supervision of interest groups, thus basically neutralising parliamentary efforts already burdened by pronounced inertia. However the recent obstacles to European integration have relaunched a debate that makes ethics and transparency core parts of the European agenda; this hints at the possibility of a more demanding regulation of lobbyists and, in broader terms, of all parties involved in the European system of consultation and decision-making. The political dynamics currently at work testify to growing EU receptiveness to the claims of the Alter-EU movement; to the power struggles between representation models; and, more widely, to the existence of more or less open, virtuous and/or citizen-controlled conceptions of public action that reflect differentiated national traditions and practices.

1. The failure of the Marc Galle Report: the abortive European Parliament attempt at regulation

On 18 March 1985 the Danish European Jens-Peter Bonde[1] issued a crafty challenge to the Commission of European Communities, calling on it to "give an idea of the growth in the number of lobbies between 1972 and 1974, indicating their relationships with consumer associations, trade unions, companies and profession bodies."[2]. Some years later, on 1 December 1989, his Dutch colleague Alman Metten was more explicit when

[1] Bonde is still a member of the European parliament, where he has become an iconic Eurosceptic.

[2] Written question n°2325/84 (85/C 228/25).

he raised the issue of transparency and monitoring of EU pressure group activity.[1] Drawing on the system already in operation in the United States, he suggested the creation of a common register for the Commission and the Parliament that would allow for better identification of these groups and the provision of rules of conduct. Twenty years down the track regulation of lobbying is still a long way from this kind of scenario, even as it generates more and more controversy.

At that time anybody could enter the Parliamentary complex. At the door all the visitor had to do was declare that he had an appointment; he was then given a badge providing unrestricted access to the buildings. Very quickly the increase in EU areas of authority, especially after the Single European Act in 1986, began attracting lobbyists in substantially larger numbers, sometimes to the point of interfering with parliamentarians' work and generating malfunctions.[2] In May 1991 the Committee on the Rules of Procedures, the Verification of Credentials and Immunities invited Belgian Member of the European Parliament (MEP) Marc Galle "to submit proposals with a view to drawing up a code of conduct and a public register of lobbyists accredited by Parliament" (PE 200.405/fin, 8 October 1992, p. 2). For the first time an official EU institution document raised the possibility of regulation and supervision of lobbying activities.

For many months the working party concerned organised consultations, hearings and meetings with numerous interest groups (PE 154.303, December 1991, 52 pp.) and carried out a number of investigations into the current situation in the Member States (PE 153.305, October 1991). This extensive stocktaking operation provided an idea of the diversity of opinions and positions, the various national regulatory systems and, lastly, the main points of disagreement.

Discussion then centred on a number of problem areas. What constitutes a lobby? Should a compulsory register be established or should registration remain optional? Should all pressure groups be subject to the same rules, or should a distinction be made between economic interests on the one hand and civic and social interests on the other? Was regulation of conduct necessary? If so, should the system be one of self-regulation

[1] Written question n°893/89 (90/C 117/20).

[2] Examples include interest group representatives masquerading as Parliamentarians and the theft and/or sale of official documents.

or of rules imposed by the European institutions? This was when interest group strategy, especially in the economic field, took fairly clear shape, most often stressing the opacity and ambiguity characterising the activities of certain MEPs; thus it put the ball in the Parliament's court and rejecting the notion of lobbyists as the only ones whose status should be subject to regulation.

Since no consensus could be reached on either issue, Marc Galle's quest for an overview led him to broaden considerably the spectrum of proposals covered by his brief. The report he filed in October 1992 with the Committee on the Rules of Procedures defines lobbyists[1] in considerable detail and recommends that the Parliament draw up a code of conduct for them, restrict them to areas separate from MEPs' offices and, above all, compel them to enrol in a register available to the public. The register should in particular specify "the activities developed to influence Members of the European Parliament directly or via staff or assistants, and the budgets involved in it" (PE 200.405/fin, p. 4). Persons complying with these requirements would then be provided with a renewable annual pass and access to the working facilities the Parliament grants its visitors.

Two other vital stipulations target not the lobbyists but the parliamentary institution itself and its personnel: "To ensure that Members of parliament meet the same standards of transparency that Parliament requires of lobbyists, Members should be required to update their declaration of financial interests at least annually. A register of financial interest of members' staff should also be introduced forthwith" (PE 200.405/fin, p .6).

Lastly the report adds that the committee should examine the extent to which intergroups and the like can be used for covert lobbying purposes, but without indicating exactly how this might take place. In attempting to regulate the situation both of lobbyists and of parliamentary personnel - thereby implying that there were conflicts of interest between the two categories that called for specific provisions - the Marc Galle Report

[1] Lobbyists are considered as "Anybody who acts on the instruction of a third party and set out to defend the interests of that third party to the European parliament and other Community institutions or who regularly distributes information or arranges or maintains regular contacts for that purpose with MEPs and staff working within the institution" (PE 200.405/fin, 8 October 1992, p. 3).

provoked opposition on a broad front and finally became a dead letter, not even being examined in plenary session.

While the resistance, not to say hostility to this project on the part of some MEPs partly explains this initial defeat, the role of the European Commission was equally decisive. A key document published in December 1992[1] outlines the main emphases in the representation of interests, going counter to the Parliament regarding a number of crucial provisions at the very time when the latter was examining the proposals contained in the Marc Galle Report.[2] What the Commission was doing was urging the lobbyists to draw up their own rules of (good) conduct and create their own representative professional associations. This pressing invitation combined the carrot and the stick[3] with a good dose of suggestion,[4] and results were not slow in coming: in the following months the first European lobbyists' federations appeared and in September 1994 a self-regulatory code drawn up by the Commission was signed by a number of interest groups.[5] These new organisations involved only a tiny number of lobbies,[6] but they presented themselves as the emerging spokespersons for European public affairs and so became major actors. Nobody was deceived however: the Commission and the interest

[1] Commission of the European Communities, *An Open and Structured Dialogue between the Commission and Special Interest Groups*, December 1992, SEC (92) 2272 final.

[2] Cf. A. McLaughlin, J. Greenwood, "The Management of Interest Representation in the European Union", *Journal of Common Market Studies*, vol. 33, no. 1, March 1995, pp. 143–53.

[3] The Commission reserved the right to impose its own set of rules if attempts at self-regulation failed.

[4] Draft versions of several readymade codes of conduct were drawn up by the Commission's departments and presented to lobbyists at the various meetings organised by the Commission.

[5] Public-affairs shall: (a) Identify themselves by name and company; (b) Declare the interest represented; (c) Neither intentionally misrepresent their status nor the nature of enquiries to officials of the EU institutions, nor create any false impression in relation thereto; (d) Neither directly nor indirectly misrepresent links with EU institutions; (e) Honour confidential information given to them; (f) Not disseminate false or misleading information knowingly or recklessly and shall exercise proper care to avoid doing so inadvertently; (g) Not obtain for profit to third parties copies of documents obtained from EU institutions; (h) Not obtain information from EU institutions by dishonest means; (i) Avoid any professional conflicts of interest; (j) Neither directly nor indirectly offer to give any financial inducement to any EU official.

[6] A few dozen.

groups tacitly agreed on an ultraminimal self-regulation process and thus defused the parliamentary initiative.

Within the European Parliament the College of Quaestors took advantage of the opportunity to offer lobbyists a minimally modified version of this code - which was not binding in any way - and with it automatic access to the complex for signatories.[1] For three years this optional registration - left to the free choice of interest groups and totally non-regulatory - guaranteed them free access.[2] For the lobbyists the code would also act as an obstacle to the implementation of bolder projects, for example the one some of them discussed late in 1995, which involved extending Condition (j) to financial inducement to MEPs and their staff as well as EU officials. This was ultimately rejected on the grounds that it would have been incompatible with the functioning of certain intergroups.[3]

2. Implementing the Ford and Nordmann Reports: no easy matter

After the June 1994 European elections, the question of regulating lobbyists' activities came to the fore again, mainly at the instigation of the Group of the Party of European Socialists. Given the chastening failure of the Marc Galle Report, subsequent projects approached matters more prudently. In November 1994 MEP Glyn Ford was commissioned by the Committee on the Rules of Procedure, the Verification of Credentials and Immunities to report on "lobbying in the European Parliament". In an initial Working Document Ford spoke of developing the rules gradually and suggested the creation of voluntary registration for all those "who wished to have long-term access to Parliament and its members" (PE 212.085, 15 March 1995, p. 3). This extremely vague turn of phrase had the advantage of applying without distinction to different categories of actors and avoiding the ever-contentious definition of lobbyists that had played such a

[1] According to Justin Greenwood, an influential member of the College of Quaestors at the time had close contact with the business world and realised the advantages that could accrue from a formality having little application to the lobbies (Cf. "The Regulation of Interest Representation", *Representing Interest in the European Union*, Basingstoke, Macmillan, 1997, p. 86).

[2] During this time only one lobbyist was refused a pass!

[3] Cf. J. Greenwood, "The Regulation of Interest Representation", op. cit., p. 87.

part in the rejection of the Galle Report. Those who agreed to registration should comply with a code of conduct and draw up an annual statement of their activities; to be made public, this statement would "include a list of payments monetary and in kind to members of the European Parliament, their assistants and parliament staff for the previous year", in return for which they would be give a fulltime one-year right of entry.

The aim here was to systematise the unofficial College of Quaestors practice, which would now be integrated into parliamentary rules. Those who refused to comply would still have the possibility of requesting a pass, but for certain parts of the complex only, which constituted a major restriction. It was clear that Glyn Ford's strategy was an update of the measures Marc Galle had wanted to put through some years earlier, but with incentives added in the hope that enough interest groups would step into line to ensure eventual compliance by the majority.[1]

The preliminary draft report drawn up some weeks later formalised this set of proposals, honing appreciably the content of the declaration of activities section to ensure "detailing, in particular, [of] any benefits, subsidies, gifts or services of any nature rendered to Members, officials or assistants (PE 212.411, 12 April 1995, p. 3)." At this stage reaction to the rough drafts circulating in the corridors of Parliament were fairly favourable; at least they were not provoking any tension and an agreement looked to be on the cards.

Between April–September 1995 the text was examined by a number of different parliamentary commissions, which substantially amended it and tightened it up before it went to plenary session. A series of measures restricted passholders' access to the Parliament: in particular, areas in which members' offices and officials' offices were situated were to be excluded, except for the holders of a written invitation; and a badge clearly specifying the type of interest represented was to be worn visibly at all times. These two measures were far from innocuous, the first hampering considerably physical interaction between MEPs and pressure groups and the second undercutting the discretion the latter are often so attached to. In addition, the College of Quaestors would be given a

[1] It differed in one major respect, however, proposing that the body in charge of implementing the procedure be not the parliamentary committee - an administrative body - but the College of Quaestors, a political entity made up of MEPs.

certain latitude both in the issuing of passes and the use that could be made of them, a provision that caused widespread concern about the potential for arbitrariness. The transparency obligations were also scaled up: lobbyists would have to declare all benefits provided to Members, officials or assistants in excess of 1000 Ecus per person and per calendar year, with the Parliament reserving the right to check the veracity of the information supplied. Most importantly, there was a decisive break with the spirit of the earlier versions, as a clause relating specifically to parliamentary assistants was introduced, obliging them to sign a written declaration to the effect that they neither represented nor supported any interests other than those linked to their post: "All other persons, including those working directly with Members shall only have access to Parliament under the conditions laid down for interest groups (PE 212.411/rev., 25 September 1995). Thus their accreditation depended on compliance with this provision which, had it been put into effect, would have cleared up one of the main grey areas in parliamentary work by making a clear distinction between its strictly political side, limited to accredited assistants, and the striving for influence by different groups among the entourage of MEPs and their teams.

The Ford Report was all the more exacting, and in many respects more restrictive, in that another project - the so-called Nordmann Report - was drawing up at the same time proposals for declarations of interest by Members. The measures put forward were draconian, including detailed public declaration of Members' financial situations in the form of "disclosure of all assets of movable and immovable property, including bank accounts." As for pressure groups, all gifts in cash or kind provided to MEPs over 1000 Ecus were to be declared, opening the way for a cross-referencing process that would constitute a redoubtable means of information checking. Examined in plenary session on 17 January 1996, both reports were rejected and sent back to the Committee on the Rules of Procedure after stormy debate. This exceptional state of affairs compromised the Parliament, which began looking for a quick way out of its quandary. Working groups and commissions were formed and new versions of the Ford and Nordmann Reports were put together, with their most controversial proposals excised. Despite continuing

resistance both were finally adopted by the Parliament on 17 July 1996.[1] Henceforth every Member had to declare in a public register "his professional activities and any other remunerated functions or activities; any support, whether financial or in terms of staff or material, additional to that provided by Parliament and granted to the Member in connection with his political activities by third parties, whose identity shall be disclosed; and any 'significant' gifts." The exact meaning of this term was not made explicit. Furthermore "They must refuse any gift, payment or benefit which might influence their vote; and before speaking in Parliament or in one of its bodies or if proposed as rapporteur, any Member who has a direct financial interest in the subject under debate shall disclose this interest to the meeting orally." Regarding the declaration of personal property, no special obligations were imposed and MEPs were subject to the laws of the Member State in which they had been elected. All in all this was no mean set of rules, establishing a framework of required acts and basic transparency that had not existed before. At the same time it fell well short of the provisions of the first report, using only the proposals allowing for the verification of information given and suggesting no serious sanctions for breaches.

Furthermore, for a long time the vast majority of Members - even in the College of Quaestors[2] - paid no heed whatsoever to the obligation to declare their financial interests. The situation improved slightly in March 1999, when this document became directly consultable on Parliament's website. Even today, however, most Members provide no more than a few handwritten and often illegible words such as "RAS",[3] "Nothing to declare" or "As before";[4] some - certain Greek MEPs, for example - reply in a mother tongue unintelligible to almost everyone else. The situation regarding

[1] These provisions now constitute the basis of the Rules of Procedure of the European Parliament in the relevant domains. Cf. Appendix I: Provisions governing the application of Rule 9 (1) – Transparency and members' financial interests; and Appendix IX: Provisions governing the application of Rule 9 (2) - Lobbying in Parliament.

[2] This in spite of the fact that the Quaestors are supposed to be the guardians of internal Parliamentary regulation, responsible for ensuring application of the rules and, when necessary, sanctioning breaches.

[3] French: "Rien à signaler" ("Nothing to declare").

[4] Thus somebody interested in consulting previous years' archives has no choice but to go to Brussels and obtain permission to enter the Parliament.

parliamentary assistants is even more opaque, despite recent progress. The list of accredited assistants has recently become available on the Internet, but the declarations of interest in which they state their professional activities and all other paid functions or work can only be consulted at the Parliament, where the request must first be justified. Whether or not these declarations should be made public in the same way as those of the deputies has been a matter of long and bitter debate, and it has finally been decided that since the assistants hold no elected mandate the information is of a private nature and as such protected. Despite its obvious limitations, this system at least enables ready identification of each Member's closest collaborators and, where applicable, their links with pressure groups. Nonetheless substantial grey areas remain, since financial declarations are compulsory only for accredited assistants and are as perfunctorily filled out as those of Members.

Lastly, since 2003, a record of accredited public and private interest groups can also be accessed on the Net. Its usefulness stems not from its paucity of information,[1] but from the fact that registration carries entitlement to a non-transferable pass,[2] valid for a maximum of a year, renewable on demand and providing access to and freedom of movement within the parliamentary precincts. Until recently this was a mere formality, with requests being granted almost as a matter of course and with no checks on the back-up information.[3] Given the ongoing increase in the number of lobbyists seeking this authorisation, the rules are nonetheless tending to toughen up and become more restrictive.[4]

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[1] Only the names of the organisation and its representative(s) are mentioned. A slightly more comprehensive print version containing the group's address and corporate name is obtainable directly at the Parliament.

[2] Each group can be represented by a maximum of six people.

[3] This was confirmed during an interview in May 2004 with Wilhelm Lehman, European functionary and co-author for the European Parliament of the report *Lobbying in the European Union: Current Rules and Practices*, 2003.

[4] In 2005 the required submission was more detailed and demanding, calling for proof of the applicant's identity. Above all the Parliament would accredit only groups with an address in Brussels; this constituted a major filter and contributed to the formation of a "political centre".

Pressure groups must sign into a public register and will have to observe a code of conduct coming into force at a later date; in exchange, they are given a pass. Parliamentary assistants wanting accreditation must simply make a written declaration of their professional activities or other functions, which means that the principle of incompatibility between their status and the defending of private interests, as embodied in the first report, has been abandoned. The issue of gifts and/or benefits in kind is ignored and the practice thus not expressly forbidden.[1] Even more so than Nordmann, then, Ford has been voided of the essentials of its initial content.

As planned, in May 1997 a code of conduct for representatives of special interests was adopted, in substance requiring them to behave in a frank and fair way and to practise no dissimulation in respect of the Parliamentary institution. The code drew word for word on the unofficial version already used for several years by the College of Quaestors, itself based on the one signed by public affairs consultants at the instigation of the Commission. Thus it had taken seven years of prevarication for the code of conduct "forced" on interest groups to be brought into line with the minimal criteria laid down by those groups(!) and the Commission. At the same sitting, however, two amendments were rejected:[2] one would have obliged lobbyists, as a prerequisite for the renewal of their passes, to draw up an annual report on the influence of their activity on the parliamentary decision-making progress; the other stipulated that only accredited assistants exercising no other functions should have access to Parliament on the same basis as the political groups. The upshot is that a parliamentary assistant, accredited or not, can now enjoy free and unlimited access to Parliament, perhaps being paid for his work there, while at the same time working for private interests.[3] Similarly nothing prevents an MEP from being a businessman at the same time, as the press regularly points out. The *Wall Street Journal* ironically noted that "In his job with a leading

[1] Even if the practice is partly regulated by the obligations applying to MEPs, the cross-checking that would have enabled comparison between the two declaration registers is no longer possible.

[2] At the request of the PPE group.

[3] Each year the Federation of Austrian Industry grants scholarships to students attending its training courses for a year's professional experience in Brussels, often as assistants to Austrian MEPs. During this period they receive remuneration both from the Member and from the Federation of Austrian Industry.

German patent-law firm, Klaus-Heiner Lehne advises corporate clients on European Union policy. In his second job, as a member of the European Parliament, Mr. Lehne also shapes policy: in June, he helped rewrite a patent proposal more to the liking of big software makers…In May, legislators with outside jobs in the financial industry helped push through late amendments to European banking regulations that were favored - and in some cases written - by the industry."[1]

3. Intergroups: a blind spot in parliamentary life

At the same period the Parliament was also trying for closer supervision of lobbyists' activities through the intergroups, a relatively informal but nonetheless crucial element of the life of the European Parliament.[2] At key stages in European integration certain intergroups played a decisive part: the Kangaroo Club in the implementation of the Single Market in 1992; and the Crocodile Club, created by Altiero Spinelli to back the construction of a federal Europe. As focal points for encounters and debates between agents of influence and MEPs, they contributed to the process of drafting legislation. Initially few in number, they increased markedly after the Single Act of 1986 and then grew in line with the extension of parliamentary competences. In January 1991 this proliferation led the Parliament to take a number of not especially restrictive measures aimed more at providing the intergroups with reception and working facilities comparable to those of the political groups – excluding those of the Secretariat General – and stipulating that they not use the parliamentary logo. In October 1995 these rules were reinforced, placing the functioning of the intergroups under the direct responsibility of the political groups.

On more than one occasion the president of the Parliament and/or the presidents of the political groups, meeting as the Conference of Presidents,[3] pronounced in favour of

[1] M. Jacoby, G. Simpson, "Politics, business mix freely in Europe Parliament", *Wall Street Journal*, July 5, 2005, p.x.

[2] Cf. O. Costa, *Le parlement européen, assemblée délibérante*. Institut d'Etudes Européennes, Brussels, 2001, notably the section "Les intergroupes, acteurs occultes de la délibération", pp.xx.

[3] Under the terms of Article 24, the Conference of Presidents is notably in charge of parliamentary commissions and relations with third parties.

greater intergroup transparency and expressed the wish that their status be integrated into the Ford Report, then being drawn up.[1] But having already escaped the regulation provided for in the (aborted) version of the Galle Report, the intergroups then vanished from the final version of the Ford Report. A few years later the Parliament made another try at disciplining and limiting the extent of the intergroup phenomenon, and in 1996 the parliamentarian Mark Spiers found himself given the task of examining intergroup status, notably with a view to endowing them with a transparent financing mode. The initial draft legislation, dated 20 March 1997, proposed a rigorous monitoring system aimed at real transparency. An intergroup was defined as a grouping of European parliamentarians from at least three Member States and three political groups, who discuss issues relating to the work of the Parliament and having to do with the EU's fields of activity (PE 221.685). This wide-ranging definition embraced not only the groups active within the Parliament – as had been the case until then – but all those matching the stated criteria, wherever the meetings took place. The intergroups were to be subject to strict obligations including a request that formation be authorised, reporting of any changes of composition and a public decoration of any external aid received.

In marked contrast with the toothless existing measures, these stringent measures were judged too ambitious and rejected by the Committee on Legal Affairs. A second draft was put forward on 9 July 1998; stripped of all the clauses relating to the definition of an intergroup, it settled for specifying that intergroups must be registered with the College of Quaestors. But it too was rejected. A third version omitted all reference to the intergroups as such, merely mentioning "groupings of Members" subject to the rules applying to Members as individuals. Placed under the control of the political groups, they were simply required to register with the Committee of Quaestors, without their existence being made public. Finally adopted on 18 February 1999, the Spiers Report is strikingly hollow. More than three years' work had not been enough to enable effective regulation of the way intergroups were run and a minimum of transparency.

[1] L. Dutoit, *Les intergroupes au Parlement européen*. Geneva, Institut européen de l'Université de Genève, 2001, pp. 32–33.

The debacle having been duly noted, on 16 December 1999 the Conference of Presidents decided to subject formation of intergroups to stricter, more selective criteria.[1] In particular, intergroup projects were to be signed by at least three political groups, each group having a number of signatures limited in accordance with its size. Arbitrarily a maximum of 25 intergroups was authorised, entailing de facto the disappearance of many of them.[2] Moreover, in a move against certain rapprochements with foreign states or peoples, intergroups "likely to have an adverse effect on relations with the other Institutions of the Union or relations with non-members states" (article 3) - were banned.[3] The rules of transparency were likewise tightened up, the list of members and the raison d'être of each intergroup having to appear in a register accessible to the public. At the practical level, strict rules were applied to the availability of rooms and time slots for meetings.

These measures had tangible results, leading certain intergroups to merge in order to obtain the necessary authorisation from the political groups. The new regulations made their existence official, rationalising their modus operandi and thus favouring the most efficiently structured of them. This process of institutionalisation acted as a filter, resulting in enhanced influence for a small number of intergroups. By contrast other interest groups decided to pull out of their intergroups, judging the regulations too restrictive. One example was the extremely powerful International Automobile Federation/International Touring Alliance, which at the end of the fourth legislature

[1] Decision of the Conference of Presidents, "Rules concerning the establishment of Intergroups", PE 339.492/BUR/def.

[2] Before this measure was taken, the level of opacity was such that there was no way of knowing their exact number, estimates from different sources varying from 50 to over 80.

[3] Among them were the groups Friendship with Taiwan, Friendship with the Hebrew State and Pro-Arab Intergroup. On this point, cf. Laurent Dutoit, *Les intergroupes au Parlement européen*, op. cit., p. 45. This measure was important in that it showed how supervision of interest groups took the form of limitation of their fields of competence to the benefit of the EU, which gradually appropriated the influence they formerly exercised. It is clear here that the conduct of a European foreign policy and its influence on the interplay of international relations - both of which had gained considerably in strength in the preceding few years - had difficulty in coming to terms with the activities in the same field by hard-to-control groups of MEPs.

withdrew from the Automobile Users intergroup - causing its disappearance - and opted for organising meetings outside the parliamentary precincts and so immune to all monitoring.[1] In this sense the effect of the standards imposed was the opposite of that intended: supervision and transparency of lobbying activities. Thus the existence of formal rules does not always mean they will be put into effect or produce the effects sought for. As it happens, regulation of the intergroups has only been partially implemented, since the publicly accessible register intended to list intergroups and their members has still to make its appearance. Only a few specialists in European affairs working from parliamentary documents can put together a list of existing intergroups and their presidents, the political groups that sponsor them and the date of their creation;[2] but even then, none of the information reveals the identity of the MEPs and lobbyists then present.

In the final analysis the incredible difficulty involved in having the regulations passed and the practical aspects of getting access to available information[3] point to major resistance. It is significant, too, that the sanctions for non-compliance seem largely virtual and ineffective. Despite these shortcomings, the creation of a system of regulation and supervision of lobbying bespeaks a political will - extremely slow-moving, often thwarted and faced with multiple inertias - specific to the Parliament. At present, the Parliament is the only European institution to possess a procedure for the obligatory registration and accreditation of pressure groups. As such it appears extremely isolated and largely out of phase with the Commission's concerns. Unlike the Parliament, whose

[1] L. Dutoit, "L'influence au sein du Parlement européen: les intergroupes", *Politique européenne*, no. 9, 2002, pp. 123-142.

[2] In September 2005 24 intergroups were officially registered (PE 360.492).

[3] The obstacle course begins with the Kafkaesque business of getting permission to enter the Parliament. To receive a pass, the ordinary citizen must first be invited by a European functionary, who vouches for his or her behaviour. Inside the building the citizen is supposed to be accompanied at every moment, as a rule by the person with whom he has an appointment. Finally he must consult the documents that interest him wherever he can find room to do so, as there is no space set aside for this. Photocopying being strictly forbidden, there is no choice but to copy out by hand the information sought. All this demonstrates that while a policy of transparency is certainly to be evaluated in terms of the general principles mentioned, but also, and above all, in terms of its practical application.

functioning is based on the sacred "elected member" - and which is thus responsible to its electors for the way in which it exercises its mandate[1] - the Commission is above all an administrative institution that has always made receptiveness to interest groups one of its hallmarks. Not being a product of universal suffrage, and as the target of repeated attacks for its famous democratic deficit, the Commission has opted for multiple consultation and participation procedures and so found its decisions and the implementation of European public policy on unrivalled expertise - it fights for a "Europe of results" - in the hope of establishing a legitimacy alternative to that of national political systems.[2] It has thus always opposed a strict, compulsory and binding system of lobbying regulation, while espousing transparency in its relations with representatives of European civil society. In this way it avoids the trap of excessively detailed and rigid rules which, for example, could render it dependent on certain Member States;[3] and above all it constantly broadens its range of expertise and arms itself with a highly competitive economic policy. This doctrine goes back a long way, being clearly stated in the preparatory work on the setting up of the Single Market.[4] Thus the creation of an interest group register covering both the Parliament and the Commission, with those listed subject to the same obligations - this was officially suggested by the Commission at the time - now looks totally unrealistic, and the profound divergence of approach between the two bodies in this respect is unmistakable.

4. The European Commission and "organised European civil society"

[1] T. Schaber, "The Regulation of Lobbying at the European Parliament: The Quest for Transparency", in P.-H. Claeys, C. Gobin, I. Smets & P. Winand (eds.), *Lobbyisme, Pluralisme et integration europeenne. Lobbying, Pluralism and European Integration*. Brussels, Presses Interuniversitaires Europeennes / European Interuniversity Press, 1998, pp. 208–232.

[2] Cf. Fritz Scharpf's distinction between "output legitimacy" based on the results of public action and "output legitimacy" arising out of democratic mechanisms and elector approval. See *Governing in Europe*. Oxford, Oxford University Press, 1999.

[3] All the studies show that, indirectly or not, the Member States remain the most influential actors in European governance.

[4] P. Sutherland, *The Internal Market after 1992: Meeting the Challenge*, Report to the EEC by the High Level Group on the Operation of the Internal Market, October 1992, SEC (92) 2004 final.

While the Parliament was striving to regulate - and even curb - lobbying within its precincts, the Commission continued to encourage the practice, pointing to its vocation of dialogue with all the driving forces of European civil society[1] and even calling for new interlocutors in underdeveloped sectors.[2] In line with this doctrine, it logically declined to impose compulsory registration or accreditation on pressure groups, arguing that influence should not be the prerogative of any organisation in particular; this would, it said, guarantee openness and pluralism of representation and provide a balanced response to the demands of the different interest categories, whether economic, social or civic. This argument had a performative side to it, since access to European institutions - and notably the Commission itself - reflected selective bias;[3] but it also led to the creation of more or less permanent and formalised consultation procedures, characteristic of a specific mode of governance, in which a very broad range of groups played a vital part. One of the outstanding features of this process of dialogue is the preparation of "Green Papers", during which opinions are collected; this precedes the drawing-up of the proposals the Commission then presents in "White Papers".

The expansion of EU competences and the concomitant lobbying is nonetheless forcing the Commission to rationalise its consultation procedures - to select a number of privileged interlocutors - even if this functionalist approach is not always made explicit, and certainly not highlighted, for fear that it should reinforce the image of an EU committed to the cause of the most powerful. This approach has three main objectives: not only to facilitate the decision-making process, but also to improve the quality of lobbying, described as unsatisfactory by those in positions of responsibility in all EU institutions, and to establish the efficacy of the NGO subsidy system gradually developed via partnerships. "At present is it estimated that over EUR 1.000 million a year is allocated to NGO projects directly by the Commission, the major part in the field of external relations for development co-operation, human rights, democracy programmes,

[1] European Commission, *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, December 2002, 28 p. COM (2002) 704 final.

[2] Especially in the new Member States.

[3] R. Balme, D. Chabanet, "Action collective et gouvernance européenne", op. cit., pp. 21–120.

and, in particular, humanitarian aid (on average EUR 400 million). Other important allocations are in the social (approximately EUR 70 million), educational (approximately EUR 50 million), and environment sectors within the EU."[1]

The tension between these two agendas - receptivity towards interest groups on the one hand, rationalisation of consultation procedures on the other[2] - was resolved via some acrobatics with the notion of "organised European civil society", which enabled the Commission to regulate its functioning as an interface with interest groups while continuing to promote the idea of broad, equitable and transparent participation. The designation covered management and labour,[3] organisations representing socioeconomic circles, NGOs and community-based groups regarded as European. Very strict criteria were drawn up by the Economic and Social Committee and used by the Commission: "In order to be eligible, a European organization 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 recognized at Member State level as representatives of particular interests; have member organizations 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 be bound by instructions from outside bodies; be transparent, especially financially and in its decision-making structures."[4]

It should be noted that the Commission adopted this definition word for word, something which highlights the part the Economic and Social Committee is indirectly playing in regulating the forms of consultation and, consequently, in the emergence of a

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[1] European Commission (Discussion Paper), *The Commission and Non-governmental organizations: building a stronger partnership*, January 2000, p. 2.

[2] Here we find both the Commission and civil society actors faced with the classic dilemma: representational capability or operational efficacy? The more organised a group – or an institution – the more expertise and credibility it enjoys and the more its members tend to feel cut off from their representatives. Cf. J. G. March, J. P. Olsen, 1998, "The Institutional Dynamics of International Political Orders", *International Organization*, 52, 4, pp. 943-69.

[3] Other than the European Social Dialogue groups, whose status was set in the treaties.

[4] Opinion of the Economic and Social Committee on *European Governance and White Paper*, 20 March 2002, pp. 5-6.

European civil society. With this aim in view, the Commission studiously avoids identification with the Committee of the Regions, both groups asserting their ability to make a useful contribution to the democratic life of the EU and so claiming the status of European institution. Implicit here is the possibility of creating a Civil Dialogue overseen by official consultative bodies, even if such a procedure meets with the opposition of the coalition of actors making up European Social Dialogue, keen to hold onto their standing as privileged partners.[1] The role of the Economic and Social Committee is thus not neutral; it is also problematical in that it systematically favours the representation of certain interests to the detriment of others. As Justin Greenwood stresses, "The composition of the ESC has remained unchanged since its formation, based around producer interests. To be taken seriously as the representative organization of civil society in a modern democracy, the ESC needs to embrace the full spectrum of public interests."[2]

An in-depth survey of dozens of civic NGOs in Europe has brought out the nature of the bias implicit in the selection process and, above all, the apparent arbitrariness governing European institutions' choice of interlocutors, at least in this field of activity: "What happens in reality is that these rules favor strong and well-established organizations, to the detriment of small, new, local or specialized ones."[3]. The Commission in fact partly subscribes to this analysis and "has played a role in encouraging NGOs to regroup into umbrella organizations and to develop common networks across borders within the European Union, given that these forms of collaboration streamline the consultation process."[4] It also recommends that they adopt a transparent modus operandi and contribute to the democratisation of the public arena. These requirements add up to a system of evaluation which certainly enhances the

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[1] European Economic and Social Committee, *European Social Dialogue and Civil Dialogue: Differences and Complementarities*, December 2003, 49 p.

[2] J. Greenwood, "The White Paper on Governance: Implications for EU Public Affairs", p. 8 (http://www.lib.gla.ac.uk/sjmc/WhitePaperonGovernancearticle.doc).

[3] Active Citizenship Network, *Participation in Policy Making: Criteria for the selection of Civic NGOs*, September 2004, p. 94.

[4] European Commission (Discussion Paper), *The Commission and Non-governmental organizations: building a stronger partnership*, op. cit., p. 9.

dialogue the Commission is so keen on, but which also makes the consultation procedures more rigid and reinforces their selectivity. In particular, most of the civic and social interest groups do not have the critical mass to meet these requirements. In the same spirit the Commission has been working for several years on drawing up a formal European status for these associations, the initial version of which requires of non-profit organisations working for a public cause a minimum starting capital of 50,000 euros and a working presence in at least two Member States.[1] Should this measure be adopted, it would also help structure the European civil society space, but around only a handful of ultrapowerful actors. A vital question here is that of the impact of these measures and the incentives they provide on the development of community association life in the Member States. Given the mounting importance of EU subsidies for many NGOs, we can expect that Commission support will go to the national civil societies that show themselves the most dynamic and the most in phase with the accountability and transparency criteria it espouses. In the longer term there is the possibility of a change - currently slow and not very visible - in community association commitment, especially in the countries where civil participation is most underdeveloped: these countries will have no choice but to comply with European standards in order to obtain the hoped-for resources. In this case European civil society, at least in its institutional form, should focus on partner-based and participatory forms of action, at the expense of reactive and protest-driven ones. The first scenario might increase the differences between registers of association participation, even suggesting a dichotomy between a Europeanised space and national spaces; while the second would, with EU support, encourage overall alignment with current practice in the Northern European countries.

CONECCS, the database for Consultation, the European Commission and Civil Society and an umbrella for non-profit organisations, is a concrete expression of the Commission's concern with providing the public with better information about its consultation processes. Set up in 2003, it replaced the old interest groups list and marked a step toward transparency. It is radically separate from the register kept by Parliament, which is compulsory, allies entitlement to official recognition and applies to all groups without distinction. The information provided to CONECCS is detailed and checked, and

[1] http://www.efc.be

offers a relatively comprehensive picture of the activity of the groups concerned.[1] Even if the databank is voluntary and in no wise constitutes an official seal of approval, the distinction it makes between "consultative bodies" and other "civil society organisations" strongly suggests that dialogue is becoming steadily more selective, is relatively stabilised and bears the marks of a corporatist system. In April 2006 the first list comprised 141 groups and the second 706, offering a fairly nuanced picture of the most influential European civil society actors structured by and around the Commission. While providing no form of accreditation, the database filters rigorously, allowing through those organisations considered by the Commission as "open and responsible". The indications it accumulates allow it to assess groups' capacity to meet the criteria of transparency, competence and representativity, and thus form a seedbed from which actors can be selected the to participate in specifically orientated consultation procedures. In other words registration with CONECCS is de facto a decisive prerequisite for involvement in the European public policy decision-making process.

5. Interest groups, Ethics and the construction of the general interest

The Commission's self-imposed emphases regarding regulation of lobbying, representation of interests, transparency and sound administration for European citizens are nothing new. By contrast, the growth of lobbying of EU institutions on the one hand and the increasing impediments to European integration since the early 1990 on the other are giving rise to a new configuration that is rendering the lobbying regulation issue much more sensitive. While the rules in this area have been fairly stable for some ten years now, the number of lobbyists has risen considerably over the same period. The recent enlargement of the EU generated a flood of close to 3000 lobbyists,[2] bringing the total to some 15,000.[3] Lobbying methods have been professionalised, too, with the

[1] It should be emphasised, however, that they reveal nothing about financial interest groups or business consultancies.

[2] According to the latest edition of the European Public Affairs Directory.

[3] European Commission estimate. If this figure is compared with the number of European functionaries, estimated at around 26,000 in 2004, the ratio is considerably higher than for the American Congress in Washington, so often cited as the political system the most open to lobbyists.

appearance of schools, training courses and internships. Think tanks - permanent bodies specialising in producing public policy solutions[1] - have proliferated, offering the wealthiest pressure groups a means of increasing their capacity for influence and, above all, of using it discreetly and even sub rosa.[2] In the interests of greater efficacy and coordination, some have even grouped together: the Pan-European Stockholm Network, for example, now comprises over 120 think tanks in Europe seeking to promote deregulation of the Single Market.[3] The fact that very wealthy organisations with a relatively opaque modus operandi pool part of their resources in this way is something of a challenge to the functioning of the EU political system, even if the role of the interest groups, and especially the economic ones, is questionable and should not be overestimated.[4] Among numerous other activities, a think tank like TechCentralStation[5], jointly financed by Microsoft, Exxon and McDonald, organises regular meetings with European parliamentarians and officials and now enjoys privileged access to the seats of European power in a context of very little publicity and monitoring. American multinationals, too, are increasingly represented in Brussels, which takes think tank transparency into the domain of another issue: that of economic competition between major world powers and the capacity of the EU to clarify the forms of influence practised by non-European interests, so as to ultimately limit their effects.[6]

At the same time the rise of Euroscepticism, whose shattering climax was the French and Dutch "No" to the proposed European Constitution in April 2005, inaugurated a period of uncertainty and political crisis. Weakened by this situation, which left the EU's political future in abeyance - but also by the entry of ten new Member States which, in the short term at least, enfeebled the European edifice and fuelled widespread

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[1] Notre Europe, *Europe and its think tanks: a promise to be fulfilled*, Etudes et Recherches, no. 35, 2004, 160 p.

[2] According to the pioneering study by Notre Europe, 44% of the think tanks relevant to Europe receive funds from the private sector, and from Banks in particular.

[3] http://www.stockholm-network.org

[4] E. Grossman, "Bringing politics back in: rethinking the role of economic interest groups in European integration", *Journal of European Public Policy*, vol. 11, n°4, 2004, pp. 637–54.

[5] http://www.techcentrastation.be

[6] Our thanks to George Ross for having drawn our attention to this point.

public fears - the Commission tried to get the integration process going again. In a highly unfavourable economic context and very much aware of its shaky democratic status, it embarked on an enormous programme of self-legitimation, emphasising more than ever the cachet of its Services and its consultation/communication procedures in the hope of getting public opinion back on its side.[1] Thus the capacity of European institutions to meet the standards of excellence universally expected of efficient modern organisations became a recurring theme; and promoted to the rank of political priority, it is of decisive importance in the present context. More precisely, the issue of the legibility and comprehension of the European mode of governance has become a civic issue, with all eyes now on the relationships between interest groups and political elites. In a way, then, the Commission has made transparency, efficacy and the ethics of public action core parts of the European agenda and used them as the basis for specific discourses and measures.[2]

The cumulative aspect of this process is a sign that it cannot be dismissed as a mere passing fashion or side effect. Rather it reflects a major trend, as indicated, for example, by the Commission's creation in November 2005 of a register of expert groups[3] that provides an overview of all consultative bodies, formal and informal, which assist it in its preparation of legislative proposals and political initiatives. While providing no information as to names, this new list throws extra light on the distribution of groups according to areas of activity and the specialist environment of the DGs.[4] Furthermore, there is provision for consultation with the general public via an electronic portal

[1] European Commission, *White Paper on a European Communication Policy*, February 2006, 14 p.

[2] In this respect we should mention the collective resignation of the Commission under Jacques Santer on 15 March, 1999, in response to the accusations of fraud, administrative incompetence and nepotism levelled at four commissioners. While open to interpretation as a sign of ignominy and bankruptcy, this act also – and perhaps above all – testifies to the Commission's sense of responsibility, and more broadly to the determination of EU institutions to be judged according to principles and political morality. So far no national government faced with a political/financial scandal has reacted in the same way.

[3] http://ec.europa.eu/comm/secretariat_general/regexp/index.cfm?lang=EN. Three broad categories are used: governmental experts and/or academics; specialists and interest groups; and NGOs.

[4] It intersects partially with CONECCS, but is different in that, unlike the latter, it also lists groups with "non-civil society" participation, such as public authority representatives and personal experts.

allowing any and every European to give an opinion on a range of subjects relating to European policies.[1] Whether one sees these measures as bogus or trifling, or as useful and substantial - even if only symbolically - they testify to the ongoing extension of accountability procedures equally applicable to European civil society actors and EU institutions. The Commission has also endowed itself with a code of Good Administrative Behaviour[2] and a Code of Conduct for Commissioners[3] whose successive versions indicate a growing exactingness. These measures point clearly to a determination to promote, directly or otherwise, a body of standards and politico-administrative practices fuelled by a principle of excellence in contrast with the slowness of certain Member States in this field. In more than one respect this line of conduct tends to generate ongoing criticism as it is put into effect, giving it the appearance of a high political risk spiral. By an odd paradox, many of the reproaches directed at the EU are provoked by the transparency measures it is promoting, a situation which in turn feeds the strictures of the media and public opinion.[4]

Nonetheless, clearly established cases of corruption within the Commission are rare, firstly because job security and high salaries discourage it and secondly because the risk is reduced by exposure to criticism. In 1996 the weekly *European Voice* listed 37 disciplinary proceedings in 1994–95,[5] the offences including use of official paper for private purposes, cheating on travel expenses, accepting gifts and sexual harassment. The creation of the European Anti-Fraud Office (OLAF) in 2000 has helped reinforce prevention tools and, when necessary, the sanctioning of ethical and legal infractions, even if its limited resources and, above all, the fact of being a Commission service clearly

[1] [1] http://europa.eu.int/yourvoice/consultations/index_fr.htm#open

[2] http://ec.europa.eu/comm/secretariat_general/code/index_en.htm

[3] http://ec.europa.eu/commission_barroso/code_of_conduct/code_conduct_en.pdf

[4] Political scandals are more likely to break out in open, transparent societies than within closed systems. Similarly the disapproval corruption attracts is all the stronger when corruption is defined as such and detected, for this presupposes a cognitive framework and appropriate means. In other words, the low level of these issues in many Member States does not mean that those states are immune to such practices. The opposite in fact…

[5] *European Voice*, Brussels, March 21, 1996.

undermine its independence.[1] Without there necessarily being illicit practices involved, what stokes the controversies is supposed conniving between business circles and the Commission, as in the case of the Bilderberg Group conferences, which since 1954 have been bringing together personalities from finance, industry, politics and international institutions. Bilderberg discussions take place in camera and in the utmost confidentiality, most often in Europe. While no formal decisions emerge from these encounters, they do enable preparation of certain key stages in EU development and are even said to have played a vital part in the gestation of the Rome treaties, which in 1957 set up the CEE and Euratom.[2] This clandestine intertwining of political and economic decision-makers is often taken as symbolising the "Capitalist International" for whose benefit the building of Europe is taking place.

Furthermore, proximity of interests between commissioners and lobbies is relatively common and fits pretty much with the EU mode of governance. One of the best-known examples is that of Sir Leon Brittan, the former commissioner for external trade who, the year he left his post, became a business councillor for the international law firm Herbert Smith, vice-president of the UBS Warburg international investment bank, and a member of the boards of directors of Unilever and International Financial Services London (IFSL). Similarly Etienne Davignon, after being commissioner for industry, customs and internal markets in 1977–85, soon took over as head of the Société Générale bank in Belgium. Former Commissioner Yves-Thibault de Silguy was made "European counsellor" at the Lyonnaise des Eaux, while two onetime members of his team were recruited by lobbying consultancies.

As Robert Dahl has demonstrated in his study of America's ruling classes,[3] certain members of the political, economic and administrative elites move between one sphere of activity and another, occupying over a short period and sometimes simultaneously different posts of responsibility. This is probably less the case within EU institutions, but

[1] http://ec.europa.eu/comm/dgs/olaf/

[2] B. Balany'a, A. Doherty, O. Hoedeman, A. Ma'anit, E. Wesselius (in association with Corporate Europe Observatory), *Europe Inc.: Regional & Global Restructuring and the Rise of Corporate Power*. London, Pluto Press, 2000.

[3] R. Dahl, *Who governs? Democracy and Power in an American City*. Yale University Press, 1961.

the situation is also less regulated - and thus less readily identifiable - than in the United States, where the Regulation of Lobbying Act (1946) and the Lobbying Disclosure Act (1995) have paved the way for a regulatory system providing notably for compulsory registration of interest groups lobbying Congress and a quarterly statement of their activities including the names of all clients - politicians where applicable. Gifts to the value of over 250 dollars are banned, with infringements bringing substantial civil fines. Each state has its own relatively similar measures. These rules do not exclude all abuse and fraud; their major weakness is that they do not apply to non-profit organisations, which means that certain lobbyists find ways around them. The offering of gifts and services to political decision makers is frequent, as is, to an even greater extent, help with the raising of campaign funds by interest groups inevitably looking for a return on their investment. According to the Center for Public Integrity, under the Clinton and Bush administrations 620 White House members of staff accepted 2.3 million dollars' worth of free travel, while a number of politicians are currently being investigated on charges of fraud, corruption and insider trading. On 29 March 2006 the conviction handed down in the trial of famously rich lobbyist Jack Abramoff called attention to the ramifications and reciprocal favours between businessmen, magistrates and members of Congress (and their spouses and colleagues) that are such a blot on Congress's reputation and credibility, and by extension on America's ruling classes as a whole. This kind of collusion is all the more problematic given the quasi-organic osmosis between economic and political circles: about half all former Congressmen become lobbyists.[1]

Although not necessarily strictly forbidden, the proximity between economic circles and EU executives also raises doubts as to the latter's honesty and the impartiality of certain political decisions. It is said that in 2002 a lobbyist obtained a juicy contract thanks to information passed on by two former members of the Commission whom he had just taken onto his team. Acknowledging the conflict of interests, the Commission had the contract cancelled.[2] Similar cases can arise when the interests of someone close to a commissioner are directly affected by the latter's activity. The press regularly

[1] P. Gelie, "Le procès des lobbies secoue Washington", *Le Figaro*, January 4, 2006, p.x.

[2] D. Bilefsky, "Lobbying Brussels: It's getting crowded", *International Herald Tribune*, October 29, 2005, p.x.

highlights in more or less suspicious tones the special relationships between some European executives and extremely rich businessmen. In 2005 the *Times* revealed that Peter Mandelson - then European Commissioner for Trade - had spent New Year's Eve on a yacht belonging to Paul Allen, joint founder of Microsoft, at the very time when the multinational was being investigated by the Commission for alleged breaches of the rules of competition and for having supplied the Commission with misleading or incomplete information. Commission president José Manuel Barroso also found himself under investigation by the European Parliament after spending a brief holiday with a Greek businessman on the latter's yacht.

What are considered the aggressive or unethical methods of some lobbyists are also condemned, even though they are not always illegal. In one of its lobbying training courses the firm Kimmons & Kimmons teaches its "gunship" strategy, which involves threatening political decision-makers with, for example, relocation when other tactics have failed to win them over.[1] The Commission itself does not hide the fact of various abuses and anomalies, referring to them as "misbehaviour".[2] The parliament is also a particular target. Reputable press sources have reported offers of luxury holidays to MEPs by Turkey and Taiwan, describing these practices as corruption.[3] Derisive references are made to some lobbyists' lack of scruples, sometimes leaving a woeful impression of the way the Parliament works: "The industry hired a British lobbyist, Paul Adamson, who met with patients' groups and helped persuade 30 terminally ill patients in wheelchairs - people likely to benefit from biotechnology research - to greet members of the Parliaments on the days of crucial votes on the legislation."[4] These anxieties have been heightened since the integration of ten new Member States whose political and administrative customs are in some cases at a far remove from the EU's chosen standards of transparency and equity. No European institution is immune to this near-universal suspicion, public opinion not having a very clear idea of the differences between them. In

[1] Corporate Europe Observatory, *Lobby Planet. Brussels, the EU quarter*, 2005, p. 8.

[2] Notably sale of its official and working documents, fraudulent use of its symbols and the use of false press cards.

[3] K. Bartak, "Les institutions européennes sous influence", *Le Monde diplomatique*, October 1998, p. 13.

[4] D. Bilefsky, "Lobbying Brussels: It's getting crowded", op. cit., October 29, 2005, p.x.

this context the Commission has no choice but to defend the overall image of the EU, since even a scandal involving only one of its institutions is going to tarnish the reputation of the system as a whole. This need to behave in an exemplary manner is intensified by the activity of corruption watchdog units and independent international organisations who are demanding that a public register of all beneficiaries of European public funding be created and made the responsibility of the Commission.

The critical question here is obviously that of the distinction between the private and the public and thus, more generally, of the definition of the general interest. These highly sensitive matters bring into play different notions of a more or less balanced participation by civil society representatives in the EU system, and have real social, political and ethical implications for, to cite one example, health policy. In several recent instances European projects for protection of the environment and by extension people - projects relating to greenhouse gas emissions, dangerous chemicals and the rules for approval of new drugs - have had to lower their sights considerably under pressure from, notably, automobile manufacturers, the oil companies and the big pharmaceutical groups. This raises major doubts about the legitimacy of the European decision-making process and its capacity to defend the "public good" and thus limit the influence of the most powerful pressure groups.

6. Transparency at the heart of European "culture shock"

These controversies meet with a variable response from public opinion in the Member States according to different national notions of what is or is not tolerable. In this respect they are a further sign of the emergence of a European public arena: more or less stabilised, without doubt limited and fragmented, but interacting at least from time to time with one or other of the national equivalents. The Northern European countries have the habit of considerable transparency in the political and administrative fields, but also of a fairly clear separation between business circles and the political sphere, and are seeking to have the same distinction validated at European level. In most of the other Member States - especially the continental and Mediterranean ones - these issues attract far less attention and are endowed with less symbolic importance both for the ruling classes and the mass of citizens.

To this gap must be added another one, between the traditionally pro-EU countries and those where Euroscepticism has more of a grip - and, above all, powerful media backing: in Denmark, the UK and to a lesser extent Germany the lack of transparency of European institutions and the supposed collusion between political and economic spheres are subject to vigorous and increasingly frequent press campaigns. While generating real and widespread public passion in some countries, these bones of contention go virtually unnoticed in others, some of them next-door neighbours. For example, debate over MEPs' salaries[1] and allowances and alleged irregularities[2] has received considerable attention in Germany, notably through coverage by *Bild Zeitung*, whereas in France the matter has passed virtually unnoticed. Even fragmentary and compartmentalised, these controversies shape a European public arena and considerably undermine EU institutions in that they go to the heart of the legitimacy the institutions are seeking for themselves. In this respect the Commission and the Parliament are mutually affected, even if, where lobbying regulation and transparency are concerned, they have opted for approaches that are in many ways divergent and competing.

This diversity of political mores and cultures - which reflects the multifarious norms applying to interest group activity at national level[3] - makes it difficult for the EU to find a middle path acceptable to all. The incredible slowness the Parliament - and the

[1] At present these are based on the different national scales, which explains the marked disparities in the remuneration of parliamentarians from different countries. In 2004 the range of gross monthly salaries extended from 7538 euros (over 14 months) for an Austrian MEP to 888 euros (over 12 months) for his Slovakian counterpart. To these figures must be added such reimbursements as 3700 euros per month for general and travel expenses. This situation will continue as long as no common status has been laid down in compliance with the terms of the Treaty of Nice (art. 190.5). In December 2003 the parliament adopted a common draft resolution defining a uniform status for MEPs which would both have wiped out the salary disparities and brought more extensive use of the (probably less costly) system of actual expenses. Failing to achieve the necessary qualified majority, the Council did not pass the text. In a number of documents the parliamentary services stress that Austria and Germany - the two countries whose MEPs enjoy the highest salaries - are firmly opposed to this project.

[2] It is alleged that false signatures appeared on the parliamentary attendance registers, allowing for payment of the concomitant allowances.

[3] Cf. European Parliament (Directorate-General for Research), *Rules on Lobbying and Intergroups in the National Parliaments of the Member States*, National Parliaments Series - Working Document, 1996, 17 p.

Parliament alone - brought to equipping itself with lobbying regulation tools is largely explained by this situation, which is delaying the introduction of a common regulation system and, by extension, the definition of a shared model for a political society.[1] In most Member States the current rules in this field are weak and not binding, the exceptions being the UK and, most of all, Germany. In the UK monitoring is mainly aimed at parliamentarians, who since 1996 are subject to a code of conduct forbidding, among other things, the representation of special interests.[2] This is an interesting case in that it is conducive to the formation of interest groups, known to be numerous and influential; to minimal forms of regulation for these groups; and to real transparency in political life. Overall this is the prevailing view of things in the EU, and British MEP Glyn Ford drew on this regulatory framework, then under discussion in his home country, for the reports that now bear his name.[3] In Germany provisions are much stricter and apply directly to interest groups as such: the Bundestag is currently the only European chamber in which these groups must be listed in a public register if they wish to exert pressure in Parliament or on the Federal Government.

Overall, then, the question is one of two opposed agendas: one that derives from the English-speaking and/or Scandinavian tradition and seeks to establish a set of rules guaranteeing the legibility of the European decision-making process for citizens; and the other which sets much less store by an issue it sees as secondary and even incompatible with the exercise of power, and adapts far more readily to a degree of opacity, along the lines of centralised administrative systems and/or countries where clientelism is common. The first system is no less well-disposed to lobbies than the second; in fact the contrary is the case, for it organises their role and recognises their usefulness in consultation in

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[1] A good example of these misunderstandings is the situation of Frenchman Jacques Barrot, European commissioner for transport. Indicted in France in a case relating to the financing of the Social Democratic Centre, whose treasurer he was, he was appointed a member of Jose Manuel Barroso's team. This gave rise to lively displays of disapproval in the Parliament, whose Scandinavian Members in particular found the situation incompatible with (sound) political mores.

[2] Cf. The Guide to the Rules Relating to the Conduct of Members. http://www.publications.parliament.uk/pa/cm200102/cmselect/cmstnprv/763/76306.htm

[3] See J. Greenwood, "The Regulation of Interest Representation", *Representing Interest in the European Union*, op. cit., p. 91.

public life.[1] Nor does this distinction necessarily cover a gap between high-regulation and low-regulation countries: Finland is one of the least corrupt countries in the world, with one of the most advanced systems of political and administrative transparency, yet supervision of lobbying is all but nonexistent and involves no compulsion whatsoever.[2] Comparison of Finland with the rest of the EU thus demonstrates that regulation of private and public interest can obey different rationales, these tending to the consensual and self-imposed in the countries whose civic norms are most strongly structural. In other words, common practice is shaped at least as much by a widely shared civic vision as by restrictive regulation. Products of their national habitus, EU actors embody, represent and strive to impose[3] their own conceptions of political and public life.

At present, and given the absence of consensus, self-regulation by lobbyists and non-binding codes of conduct have emerged as the only possible regulatory principles for the Commission, while in the Parliament a largely emasculated set of rules was adopted only with great difficulty. At the CIGs two very different administrative cultures clash regularly. Denmark, Holland, Sweden and Finland plead fulltime for enhancement of citizens' right to access European institution documents, while France, Belgium, Luxembourg and Germany try to block this shift. Seen in this light, the European transparency model is drawing more and more on the first group than on the second,[4]

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[1] In fact British, Dutch and German interest groups were long more numerous and better represented in the European context than those from the continental countries, which benefited from their national situation.

[2] Cf. the two European Parliament studies, *Lobbying in the European Union: Current Rules and Practices*, op. cit., p. 46 and *Rules on Lobbying and Intergroups in the National Parliaments of the Member States*, op. cit., p. 11.

[3] This was particularly well illustrated in 1999 by the stances of parliamentarians in the Santer Commission controversy. The motion of censure moved by the Socialist group received extensive support from German, Swedish, Austrian and Dutch MEPs, who were notably opposed by their Spanish, Portuguese and Italian counterparts; the motion ultimately failed to gain the necessary two-thirds majority.

[4] The EU might now be playing the high priest of transparency, but its ancestor - the European Coal and Steel Community - had developed a very elaborate strategy of control and even manipulation of information. It handsomely remunerated the few journalists specialising in European matters, bought thousands of indulgent articles and equipped itself with a news department that had, according to an in-house memorandum, "the responsibility for opportune information and the monopoly of orthodoxy" (quoted by Gérard de Sélys, "La machine de propagande de la Commission", *Le Monde diplomatique*, June

with the entry of two Scandinavian countries into the EU in 1995 bringing a marked change to the balance of power. Thus it was at the instigation of the Finnish presidency in the second half of 1996 that the transparency of European Council activities was put on the EU agenda; as a major objective it should soon lead to Internet broadcasting of the public debates the Council organises and the availability of some of its working documents.[1]

7. Emergence of the Alter-EU movement

In Europe the alterglobalist movement was born and developed outside, or on the periphery of EU institutions. Its capacity for challenge via the media and popular mobilisation is in marked contrast with the scepticism and even outright rejection of these institutions by a growing section of the population, and highlights the trend to significant dualisation of the European public arena.[2] The maturation of this protest movement, now capable of exercising real influence, and the increasing readiness of European spheres to listen to their critics are giving rise to a frankly new configuration and the possibility of an integrated political debate. What is interesting here is that the transparency of European institutions and the regulation of lobbying are simultaneously the cause of the emergence of a new alter-European actor and the framework for the construction of the Commission's agenda.

1996, p. 8). These practices largely reflected the policies of information control applying at the time in most of the six founder countries, and notably France and Germany.

[1] The prospect of these new rights is also the result of pressure from civil society actors in these countries, who for several years now have been making their case to European institutions. Thus it is significant that it is the newspapers the *Guardian* and *Journalisten* - English and Swedish respectively, and from the countries with the most highly developed tradition of investigative journalism - who lodged two complaints against the European Council at the Luxembourg Court of Justice. This happened after the Council had refused to supply them with working documents. Although twice rejected, these cases contributed to the recent decision.

[2] R. Balme, D. Chabanet, "Construire l'intérêt public européen: les mobilisations dans les processus conventionnels", in *L'Europe en voie de constitution. Pour un bilan critique des travaux de la Convention*. Brussels, Bruylant, 2004, pp. 229-253.

The Alter-EU movement - the Alliance for Lobbying Transparency and Ethics Regulation - has gradually been taking shape since late 2004, its main weapon being denunciation of collusion between business and European decision-making circles. Now presenting as a credible interlocutor, it brings together the traditional alterglobalist actors - ATTAC for example - with Eurogroups generally representing civic or social interests that see themselves as maltreated by the current EU style of governance, and journalists' associations, notably the European Federation of Journalists, concerned about the influence of pressure groups on the media. In contrast with the usual alterglobalist mobilisations and the European Social Forums, the interaction here between Europe's governing elites and their challengers is direct and internalised, in the sense that it is taking place in a shared institutional space. Determination to counter the atmosphere of Euroscepticism represents a window of opportunity for the Alter-EU movement, whose leaders regularly meet with high-ranking Commission staff and the Commissioners themselves. Thus its influence depends less on its financial and logistical resources, or even the size of its membership, than on overall alter-European protest power - of which it is one manifestation - and, consequently, the more or less conciliatory attitude taken towards it by the European institutions. Despite this favourable context, however, its political existence lacks stability and remains relatively fragile.

Largely designed as an information network, Alter-EU makes enormous use of the Internet to put an extremely precise and well-documented case grounded in research and often couched in humorous or satirical terms. Its way of working is systematised enough to suggest a strategic positioning especially well adapted to its chosen vector and likely to catch the eye of netsurfers and a broad audience.[1] Its aim is to solicit the attention of a public with no specialist knowledge of European issues, while setting itself apart from the great mass of information circulating on the Net and steering clear of the jargon and hermetic style usually employed by EU institutions. Just as social movements with little political or institutional backing specialise in spectacular activities intended to

[1] For instance *Lobby Planet: Brussels - the EU Quarter* follows the Lonely Planet guidebook model, providing a very comprehensive set of indications on the geography of the main interest groups in Brussels and using their cartography to stress their nearness to European institutions. There is also an annual "Worst EU Lobby Award" for a group using tactics regarded as especially unacceptable.

grab the attention of the media and the public, Alter-EU has opted for a distinctly original style of action and argument, with humour and ridicule as its favourite weapons. Basically it advocates a binding system of regulation applicable to all special interest categories; exceptions would be made, however, for unstructured groups with limited resources - no office in Brussels, for example - for which the demand for a declaration of activity and/or transparency obligations would involve administrative costs too heavy to bear.

And so, since late 2004 Alter-EU has set up a dense, precise programme which is closely drawn on by the Commission for its thinking and work on lobbying regulation and the transparency of European institutions. The most striking proposals bear on establishment of an independent public body with the powers needed to act as a public guardian of lobbying transparency and ethics; for lobbyists, a mandatory system of electronic registration and reporting to ensure transparency in EU decision-making (including the names of their clients); Rules of Conduct for Lobbyists and EU Officials, notably including a revolving door system imposing a period of transition before any move from the private sector to posts of responsibility within the Commission and vice versa; and an obligatory Declaration of Personal Financial Interest. Furthermore, immediate family members of a covered official should be prohibited from lobbying for compensation the agency on which the covered official serves; lobbyists and their clients should be prohibited from offering gifts with a value of more than 150 euros - they must declare all reimbursement to an official; for each policy proposal the European Commission should publish a list of organizations it has consulted on this proposal.[1]

This impressive list of measures also deserves attention in that it represents the background to the European Transparency Initiative, officially launched in March 2005 by the Vice-President of the European Commission and Commissioner for Administrative Affairs, Audit and Anti-Fraud. The programme speech by Siim Kallas to The European Foundation for Management, Nottingham Business School,[2] basically used the Alter-EU's demands, concerns and alarmist, not to say vehement tone. Stressing the

[1] Alter-EU, *Recommendations on Lobbying Transparency and Ethics in the European Union*, January 13, 2006, 5 p.

[2] S. Kallas (Speech/05/130), *The Need for a European Transparency Initiative*, 3 March 2005, 6 p.

majority of citizens' loss of confidence in the EU, especially over the recent period, he announced a set of measures aimed at reversing this state of affairs and intimating for autumn 2006 "possibly legislative action on Community level and recommendations to Member States and other stakeholders." Core parts of the system currently being drawn up are far more stringent regulation of lobbying - covering every sector - and clarification of the activity of MEPs, their assistants and Commission personnel. This has even led the Commission to officially consider a complete change of doctrine in which "one option would be to transform the existing 'CONECCS database' into a compulsory registration system for all interest groups and lobbyists, including public affairs practitioners, trade unions etc"[1].

Lobbyists' associations - the Society of European Affairs Professionals (SEAP), European Public Affairs Consultancies' Association (EPACA), Association of Accredited Lobbyists to the European Parliament (AALEP) - reacted sharply to this initiative, arguing that existing codes of conduct provided adequate safeguards and that their contribution to European democratic life should not be interfered with. They also asserted that a more restrictive system would work against civic and social interest groups, for whom access to European spheres would be rendered even more difficult. The existence of several such organisations - mostly very recent, displaying no distinctive ideological differences, and embracing only a hundred or so mainly Commission-oriented groups - might seem surprising in that it would seem to weaken the groups' position and capacity for influence. In fact the situation presents a number of advantages: each professional association can claim to speak on behalf of a category - interest groups - and so enjoy a significant place in the public micro-space made up by the European institutions; at the same time they do not have to submit to the obligations of a representative body, the latter being considered a vital interlocutor and so obliged to work on binding rules and ultimately impose them on its members. Here private sector interest groups can put together all the Codes of (good) Conduct, Codes of Ethics and Codes of Practice they like, without getting too involved in formal consultations procedures that

[1] Communication to the Commission from the President, Ms Wallstrom, Mr Kallas, Ms Hubner and Ms Fischer Boel, *Proposing the Launch of a European Transparency Initiative*, 2006, p. 6.

might turn out to be restrictive, while still enjoying freedom of expression and a real right to a hearing.[1]

As previously, European lobbyists riposted by creating, on 28 January 2005, a new organisation - The European Public Affairs Consultancies Association - whose task it was to draw up a new code of conduct while defending the principle of self-regulation for the profession. However, this "touch of déjà vu" is not likely to prevent regulation that is tighter, capable of throwing new light on the part played by private-sector actors in European governance and, in doing so, meeting some of the demands voiced by citizens.

Initially scheduled for late 2005, the Green Paper *European Transparency Initiative* did not appear until 3 May 2006, the delay resulting from the extreme difficulty of defining a framework for the resultant public consultation, to be terminated on 31 August.[2] Even so, this new stage marks a significant advance: firstly because the issue under consideration has never been set so directly at the core of the European political agenda; and secondly because the Commission itself acknowledges having "launched a review of its overall approach to transparency", with an explicit emphasis on "the need for a more structured framework for the activities of interest representatives."[3]

Partisans of strict regulation will doubtless be disappointed to find that in the final document compulsory registration for interest groups has once again been postponed - even though it had been seriously suggested by top Commission officials - and they may see this as a retrograde step: "A tighter system of self-regulation would appear more appropriate. However, after a certain period, a review should be conducted to examine whether self-regulation has worked. If not, consideration could be given to a system of compulsory measures - a compulsory code of conduct plus compulsory registration."[4] Those of a pessimistic - or realistic - bent might point out that this was exactly the

[1] UNICE long proceeded in a similar fashion, preferring a weak presence on the European scene so as not to encourage implementation of the Social Dialogue procedure while continuing to decentralise and multiply its negotiation venues.

[2] Green Paper, *European Transparency Initiative*, 17 p.

[3] Ibid., p. 3.

[4] Ibid., p. 10.

Commission's line in 1992. And they will not be well pleased to see the issue of the recycling of senior European functionaries in the business world totally ignored.

Even so, the Commission's proposals are not entirely without weight. With its plan for a web-based voluntary system with incentives to register for all lobbyists who wish to be consulted on EU initiatives,[1] the Commission is aiming at making public the activities of all interest groups - think tanks, companies specialising in European affairs, legal consultancies, employer organisations, etc. - that do not appear in the CONNECS databank and currently operate for the most part in secret. The effectiveness of the rules of transparency is also slated for improvement, with plans for an independent authority in charge of monitoring the system and imposing sanctions in cases of misleading registration and/or violation of a code of professional ethics ultimately applicable to all lobbyists. Such a system would provide the general public with a fairly comprehensive information tool, one enabling a better understanding of the rationale of representation of European interests and at least partial clarification of the EU decision-making process.

Conclusion

Where the regulation of interest groups is concerned, the Parliament and the Commission have historically adopted largely contradictory, competing lines of conduct, the former laboriously putting together a compulsory system of registration and the latter - in favour of self-regulation - settling for incentive measures. The issue is now a crucial one, given the intensification of lobbying since the early 1990s and, even more importantly, the EU's political fragility and democratic deficit. Gravely weakened by the "No" to the European Constitution and keen to revive public confidence, the Commission cannot afford the risk of a case of corruption, or even a scandal, which would destroy the ethical credibility of the European project.

More than just the status of pressure groups, what is ultimately at stake here is the model of political representation and the conception of European society currently under construction. The challenge is amplified by the fact that European governance has always made the interweaving of private and public interests one of its salient characteristics, even though the transparency principles it promotes can be used to its disadvantage. In

[1] Ibid., p. 8.

this domain very different notions of public life clash in more or less concealed ways, and this largely explains the extreme difficulty of establishing a system of regulation worthy of the name. The influence of the English-speaking - and even more so the Scandinavian - countries appears to be a growing factor in the orienting of the EU's political agenda and standards, and this suggests the possibility of a more rigorous and effective system for the not too distant future, one that would enhance the legibility of the European decision-making system and the role of its various stakeholders.

At the same time the rapprochement between some of the demands of the alter-European movement - notably in the fields of ethics and transparency - and the political policies laid down by EU institutions is opening up a critical period for the future: a period that will provide vital indications of Europe's capacity to meet the aspirations of those calling for a more virtuous democracy.

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