Interest groups and patterns of lobbying in Brussels

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Introduction

Most developed political systems feature substantial interactions with stakeholders; however, the EU is remarkable in its high degree of dependence upon organized interests to achieve systemic goals, as exemplified by the significant extent of EU funding for NGOs. Before examining the specificities of the EU system of interest representation, the first section of this chapter contextualizes a set of more generally applicable issues regarding the role of interest groups in political participation. This will clarify the factors affecting the systemic dependencies upon organized interests in the EU political system, as well as the principles that inform the instruments used by EU political institutions to structure their relationships with interest organizations.

Typologies of interest group roles in political participation

Participation in political decision-making in democratic systems can be described as a range between two extremes. At one extreme, participation is viewed as undermining the role of political institutions as representatives of public interest, due to the possibility that decision-making will be skewed in favour of special interests (Schumpeter 1943; Majone 1996). This outlook is commonly found in civil society in Southern Europe and in Central and Eastern European countries, where ‘lobbying’ has pejorative connotations and even the contribution of NGOs is viewed with scepticism (Eurobarometer Flash 2013: 9). At the opposite end of the spectrum is Pateman’s ‘no democracy without participation’ (Pateman 1970: passim), a tradition that relies on supplementing representative channels; here, ‘stakeholder participation’ is seen as an element of ‘good governance’ essential for enhancing output (effectiveness) and input (participation) legitimacy. Stakeholder participation is commonplace in a variety of regions across the globe in which instruments of consultation inform regimes of ‘better regulation’. These systems also embrace the concept that participation itself facilitates acceptance by increasing public awareness of the reasons that inform the choices made by political institutions. Instruments for consultation that gather a wide range of diverging viewpoints that are subsequently presented in follow-up reports can also provide an opportunity for political institutions to engage in ‘divide
and rule’ strategies. Stakeholder participation varies from corporatist traditions in Germanic and Nordic countries to Anglo-US pluralist traditions (from whence the word ‘lobbying’ originates) in which a multitude of interest groups are encouraged to act as checks on one another as well as on the state. In this latter tradition, any form of engagement – including critical perspectives – may be interpreted as support for the wider political system. Checks on excessive powers, whether wielded by states or by other forces, thus become a democratic function, and participation in a ‘marketplace of ideas’ (in which arguments and advocacy are subjected to scrutiny, tests of robustness and counter-arguments) is interpreted as vital to the perceived legitimacy of the system. Political institutions might undertake measures (such as funding for NGOs) that are intended to expand the breadth of participating interests; such measures are rationalized on the basis that they promote a counterweight to business interests, create a ready constituency of support for policy proposals that are likely to encounter opposition from entrenched interests and provide a flow of information into the political system. This information may be of a political (e.g. testing whether legislative proposals are viable) or a technical nature (e.g. making proposals practically feasible or providing street-level feedback that reveals policy failure).

In international organizations, interest groups are often used as surrogates for ‘civil society’ and as agents to assist in policy delivery (Mercer 2002; Ottaway 2011). Because international organizations are far removed from civil society, interest groups act as proxies and surrogates for democratic mechanisms, playing a de-facto role of ‘unofficial opposition’ within a political framework that lacks a system of government and opposition, popular parties or an engaged public. International organizations need to regulate these interactions because of the extent of their reliance upon the participation of lobbyist groups and the degree to which these exchanges are vulnerable to negative interpretation; regulation also establishes the ‘rules of the game’ for political participation. This can range from accreditation arrangements resembling corporatist structures to a series of rules seeking to ensure a ‘level playing field’ for competition between groups and access to political institutions, similar to how ‘free’ markets require rules that structure market exchanges.

The EU system of interest representation

As reviewed above, the EU system is contextualized by the needs of international organizations. Its pluralist framework with underlying regulations to ensure structured competition between multitudes of groups is somewhat unusual; for example, the system differs from that of the United Nations, the World Health Organization and the Council of Europe, organizations in which accreditation arrangements restrict access to the political system to an elite set of interest groups. In the EU system, the regulations feature language that explicitly excludes accreditation arrangements on grounds of anti-elitism (JTRS 2012). This is similar to perspectives that place primary emphasis upon the density of interest group populations as a countervailing force and source of debate in the public sphere; in this view, it makes little sense to erect obstacles to group formation through regulatory requirements such as ‘representativeness’ or accreditation (Kohler-Koch 2010: 107). The underlying regulation is instead articulated on the basis of ‘transparency for public legitimacy’ (Kallas 2005: 3) by means of a ‘Transparency Register’ (dating from 2011, but with earlier predecessor schemes), as the Register Secretariat describes:

European institutions’ interaction with citizen’s associations, NGOs, businesses, trade and professional organizations, trade unions, think tanks, etc. is constant, legitimate and necessary for the quality of democracy, for their capacity to deliver adequate policies, matching needs
and reality. Citizens have a right to expect this process to be transparent and to take place in compliance with the law as well as in due respect of ethical principles, avoiding undue pressure, illegitimate or privileged access to information or to decision makers.

(JTRS 2013: n.p.)

With 28 member states, decision-making in the EU can only be founded upon consensus. Consensually oriented decision-making systems are especially in need of an opposition; in a system in which there are three decision-making institutions but no framework of 'government and opposition', interest groups provide a ready constituency to fulfil this role. At an early stage in preparing policy initiatives, policy-makers require signals indicating how policy proposals are likely to be received by governments in the member states. In the EU system, the regulatory character of much of the policy-making enhances the role of interest groups, due to their capacity to act as support mechanisms for political institutions with supranational outlooks. The European Commission has long encouraged the formation of groups capable of supporting its regulatory policy proposals in the face of entrenched opposition from producer interests (Young 2010: 377). These relationships are therefore critical for the European Commission as a means of achieving further European integration. Most of the Commission’s services administer budget lines with funding streams that are intended to support NGOs, either by providing core operating grants or through project instruments broadly aimed at fostering European integration. NGOs that receive grants from EU political institutions obtain, on average, 43 per cent of their income from such sources (Greenwood and Dreger 2013: 140).

The most extensive relationship with interest groups is found in the European Commission, largely due to its roles and interests in policy formulation and implementation, coupled with its lack of resources relative to the functions it undertakes. The European Parliament’s role as co-legislator similarly increases its need for expertise as well as for allies. Because of their interests and difficulties in connecting with civil society, these institutions are somewhat reliant upon interest groups as surrogates for civil society. Various interpretations identify the role of organized interests in the EU system as somewhere between participatory governance and an attempt to promote a European public sphere (Heidbreder 2012: 12). In this quest for a variety of different types of legitimacies, an infrastructure has emerged to formalize exchanges with ‘interested parties’ using devices commonly found elsewhere. This reliance upon ‘outside interests’ is evident in a number of Commission communications of varying status dating back to 1992 (European Commission 1992, 1997, 2000, 2001), in which the Commission progressively seeks ‘an open and structured dialogue between the Commission and special interest groups’ (as the title of the first of these documents indicates). The last such communication, the 2001 White Paper on Governance, represents a landmark change – namely, a push to increase participation intended to enhance both the legitimacy and the effectiveness of European governance (Heidbreder 2012: 10). This led to the development of a system of procedures for the involvement of ‘interested parties’ (a term often used by the European Commission to denote a wider scope than ‘interest groups’), in which civil society is both an active policy collaborator in governance and an agent of a European public sphere (Heidbreder 2012: 12):

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

(European Commission 2013: n.p.)
This outlook reflects a concern with democratic legitimacy, rather than an instrumental focus on symbolic consultation or on simply satisfying its informational needs. Thus, procedures for access to documents, for instance, empower requesters to acquire documentation from EU institutions, enhancing the ability of civil society to act as a systemic accountability agent; however, in practice only interest organizations with sufficient resources for full-time staff with EU policy knowledge are capable of trawling through the reams of documents on the ‘Europa’ website. Although a variety of different Commission services have their own structures for communicating with interest organizations, they operate within a system of minimal standards applicable across the Commission. The subsequent sections of this chapter review the details of these schemes and assess their orientation. The European Parliament has enacted relatively few rules structuring its interactions with interest organizations, other than an access-pass scheme within the framework of the Transparency Register, an instrument discussed in further detail later in this chapter.

The Transparency Register has been the focus of globalized lobby regulation activists working towards the development of ever higher regulatory standards, generally using instruments in the USA as a benchmark. These actions are led by a professionalized social movement that emerged from the counter-globalization tradition and arrived on the Brussels scene after the ‘Battle of Seattle’. This has since grown into a family of 80 organizations of both ‘insider’ and ‘outsider’ orientation, sourcing substantial funds to employ a large staff working out of the 4,000m² purpose-renovated ‘Mundo-B’ eco-building in Brussels, which features shared facilities (conference centre, café, etc.) and is within easy walking distance of the European Parliament. Their presence is both a cause and a consequence of the shift away from regulatory EU competencies (in which a premium is placed on technical information) towards those that have more salience in electoral politics. Virtually all types of legislative policy-making, technical or political, require expert resources. The Parliament’s now almost complete set of powers as a co-legislator enables it to make a mark on EU policy; however, the expert resources available in the European Parliament to support its legislative work do not match those of the European Commission, with the inevitable result that a number of amendments sponsored by Members of the European Parliament (MEPs) bear the hallmarks of lobbying organizations. The organizations that are extensively involved in preparing the Parliament’s political responses to legislative proposals – the rapporteurs and their shadows from other parties, all drawn from the lead committee(s) – use the pluralistic forces of interest groups more systematically, checking technical information with opposing sets of stakeholders or using groups as political messengers and supporters.

The actual number of organizations that lobby EU institutions is subject to political contestation by lobby regulation activists. The Transparency Register appears to list about three-quarters of the business-related organizations lobbying the EU and 60 per cent of NGOs (Greenwood and Dreger 2013: 139). The Register also includes a sizeable number of groups that have nothing to do with lobbying EU institutions but use the Register as free publicity. At the start of 2013, there were 3,577 organizations in the Register that identified ‘European’ as one of the territorial levels of interest they represented (Greenwood and Dreger 2013: 150). Around two-thirds of these (2,316, or 64.76 per cent) were business-related organizations; one-quarter (824, or 23.04 per cent) were NGOs. Of this constituency of 3,577, 2,095 groups had an address (primary or secondary) in Brussels; when those with an address in countries neighbouring Belgium were included, the total reached 2,240. This seems to be the core of organizations that lobby EU institutions (Greenwood and Dreger 2013). At the start of 2013, there were 1,179 organizations with at least one individual accredited to the European Parliament, accounting for 2,733 individuals in total.¹

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The most recent measure developed by the EU aimed at connecting with civil society is the 2012 European Citizens’ Initiative. This agenda-setting measure seeks to develop a European public sphere; in something of a break from the past, this attempt is independent from interest groups. The Initiative calls for the creation of ‘Citizens’ Committees’ to act as organizing agents in the place of interest groups; if a legislative proposal obtains the support of one million citizens from at least seven member states, such a committee can request that the Commission consider the proposal. The measure has mobilized a number of campaigns from the member states that are clearly far outside the Brussels circuit. However, the systemic dependence upon interest organizations is evident from the small number of initiatives which have succeeded in reaching the required threshold of signatures.

Impact assessments with consultation

Impact assessments (IA) are used by the European Commission to justify legislative proposals to civil society in concept and detail. These evaluations are informed by consultations with a wide range of outside interests, in an attempt to collect detailed input to identify feasible policy options and hone legislative proposals, as well as to acquire broader legitimacy. A structure of procedures has emerged to ensure that everyone has a chance to make their voice heard. The origins of these procedures can be traced back to a High Level Working Group in 1992, which had complained of inadequate and intermittent information flows as well as ad-hoc consultation, resulting in an unpredictable and confusing process and an ill-informed public (Sutherland Report 1992). This had created a situation in which stakeholders were forced to locate the relevant policy-makers and develop their own bilateral relations with them, meaning that resources for intensive networking were required. The Secretariat General’s response, ‘An Open and Structured Dialogue between the Commission and Special Interest Groups’, sought to ‘place these relations on a more formalised footing which will make them more transparent for the benefit of all concerned’ as well as ‘broadening participation in the preparation of Commission proposals’ (European Commission 1992: 1). The 2001 White Paper on Governance (WPG) developed this latter participatory theme on ‘connect[ing] Europe with its citizens’ (European Commission 2001: 3) through ‘better involvement and more openness’ (European Commission 2001: 4). This WPG also includes a discussion on how to manage participation, noting that ‘consultation helps the Commission and other Institutions to arbitrate between competing claims’ (European Commission 2001: 15).

Whereas the orientation of the WPG emphasizes input legitimacy, another important strand of contributory thinking has emerged that has shaped the information exchange regime between the Commission and outside interests. The Mandelkern Group was established in 2000 in response to member-state criticisms of the quality of the Commission’s policy initiatives (Radaelli 2004: 741); its recommendations resulted in a regime for impact assessments embedded within a framework of ‘better regulation’. Impact assessments are presented on the Commission website as a means to ‘guide the policy-making process through an open analysis of the options and provide a discipline to ensure that economic, social and environmental factors are fully taken into account’ (European Commission 2012a).

Thus, the WPG concerns over input legitimacy have been combined with the Mandelkern emphasis on output legitimacy. Both of these aspirations are clearly evident in the details of the regime that structures information flows between the Commission and outside interests, in which a ‘system’ is clearly visible for the entire process of interactions. In 2002, a series of standards were introduced for the use of expertise and for consultations; these were later embedded within
the regime of impact assessments introduced in 2003, which sought to ensure that policy options were informed by a sound evidence basis. These procedures have evolved through a series of incremental reforms, each reflecting the predominant concerns at the time (i.e. output or/and input legitimacy). Although the procedures are required practice and have become standard policy norms, they are not backed by legal provisions; the extent to which they might be viewed as enforceable in the event of a case before the Court of Justice remains an open question (Tanasescu 2009).

Legislative notification and impact assessments

The first step in the legislative process is for all new initiatives to be announced in advance through the annual publication (available on the Internet) of a ‘Commission Legislative Work Programme’ (CLWP), ensuring that notice of future regulatory initiatives is provided in sufficient time for actors not among the ‘usual suspects’ in Brussels to engage in the process. The CLWP notification includes an ‘Impact Assessment Roadmap’, within which the proposed means of consultation is laid out; the audience can range from a general public forum to technical discussions held with target groups of stakeholders. The results of such consultations are published in an impact assessment report, along with the final legislative proposal; this should include an explanation of how consultation influenced the policy choices selected. As with similar instruments in many other contexts, there has been a predictable scepticism among seasoned practitioners regarding the extent to which impact assessments are actually responsive to such input; IAs may simply justify a policy decision taken long before formal consultation procedures commenced, with consultation responses being used as ammunition in a ‘divide and rule’ strategy. These criticisms can only be evaluated by examining the operational detail of such schemes.

All legislative proposals, as well as white papers, action plans, expenditure programmes, guidelines that define future policies, and implementing measures (other than those that are highly technical or limited in impact) require an impact assessment (European Commission 2009a: 6).

The guidance manual governing the creation of IAs reveals a highly involved process requiring the production of a report in seven sections that provides details on the following aspects: the consultation undertaken with interested parties; a justification of why the problem needs to be resolved at the EU level (the ‘subsidiarity test’); the policy options; an analysis of the economic, environmental and social impacts; a comparison of the options; and arrangements for monitoring and evaluation (European Commission 2009a: 1–50). Consultation with stakeholders on impact assessments should begin at an early stage in the process in order to enable the data generated to inform the analysis. The impact analysis section of the guidance manual mandates the identification of ‘winners’ and ‘losers’, as well as sub-sections for analysis of the effects upon, inter alia, social inclusion, gender equality, participation and governance. On such matters, the guidelines state that the consultation of NGOs is essential; the publicly available status of the manual ensures that these standards will be enforced by advocacy organizations.

The production of an impact assessment report is accompanied by mechanisms of support and oversight. The minutes of the (support) Impact Assessment Steering Group (IASG) concerning a final report are forwarded to an Impact Assessment Board (IAB) for evaluation of the process undertaken and the quality of the report; these boards are comprised of Commission officials from economic, social and environmental departments. After meeting with the authors of the impact assessment report, the board holds a formal hearing. Boards are empowered to require legislative developers to restart the impact assessment process or to redesign elements
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of it (European Commission 2009a; European Commission 2010), and the final report must include details on how the proposers made changes to the report following the board’s comments. A positive evaluation is required from the IAB before the report can be sent to the responsible Commissioner to consider whether a legislative proposal is necessary and what form the instrument might take, before any proposal enters into inter-service consultation within the Commission. The evaluation of the quality of each impact assessment is published online, and includes an assurance guarantee of conformity with the consultation standards developed in 2002. The work of IABs is in turn subject to scrutiny by the Court of Auditors, as well as oversight exercised by the increasingly active European Parliament Committees. Together, these procedures ensure thorough consideration of policy options based on informed analysis and public exploration of alternatives.

A Strategic Review in 2008 involving public consultation on the IA process resulted in the following changes: reinforcement of feedback mechanisms and an emphasis on the importance of seeking alternative approaches from NGOs; improvements to the assessment of social impacts; inclusion of an examination of impacts on SMEs in comparison to large firms; greater quantification of impacts; and greater use of external expertise to validate methodologies, pluralize expertise and provide independent assessments (European Commission 2008, 2009b). Annual reports on the impact assessment process include examples of the ways in which legislative proposals have been halted or downgraded as a result of IAs or scrutiny from IABs. In 2011, over one-third of reports had to be resubmitted and 41 per cent of reports required substantial changes (European Commission 2012b).

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

Consultation

The consultation regime is defined by a Commission Communication from 2002 with reference to Amsterdam Treaty Protocol 7, which obligates the Commission to ‘consult widely before proposing legislation’ (European Commission 2002b). The 2002 reference document states that the guiding principle for the Commission is that of ‘a voice but not a vote’ for interested parties. Among the general minimum standards is a stipulation that, in addition to having an opportunity to express their opinions, adequate feedback will be provided to all such parties (European Commission 2002b).

There has been a recent trend towards public consultation prior to more specialized forms of consultation (European Commission 2009b: 2). Open public consultation is used in three-quarters of all impact assessments (European Commission 2012c: 5); 90 per cent of all impact assessments also involved targeted stakeholder consultation, often during the later stages of the assessment process. The centrepiece of public consultation is a website, ‘Your Voice in Europe’, where policy documents are posted and responses are encouraged. The 2014 open public consultation on the Transatlantic Trade and Investment Partnership (TTIP) attracted a record 150,000 responses. With such a volume, the impact of an individual response is likely to be minimal, such that the diversity of responses provides room for manoeuvre for political institutions. Quittkat and Kotzian argue that participation in online public consultations by the
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‘usual suspects’ in Brussels should primarily be seen as ‘playing the game’; these organizations do not expect that their contribution will make very much impact due to the relatively large number of other voices, but they hope to gain access to, or a role in, the second tier of focused (non-public) consultations (Quittkat and Kotzian 2011: 404–5).

Consultations focused on target audiences are the instrument of choice when the issues are of such a technical nature that they are inaccessible to the wider public. A browse through the list of open consultations on ‘Your Voice in Europe’ confirms the largely technical nature of ‘everyday policy-making’ in the EU. Specialist consultative fora can include meetings of or with experts (Gornitzka and Sverdrup 2011) and/or stakeholders, in formal or informal, regular or ad-hoc settings. The choice of the stakeholders invited to attend informal gatherings is also vested in the Commission. In terms of composition, the participants in expert fora from civil society are approximately evenly divided between producer and non-producer interests (Gornitzka and Sverdrup 2011). From the Commission’s perspective, this setting is where stakeholder participants from radically different perspectives can engage in interactive discourse and come to understand the variety of constraints to which the Commission is subjected in reaching its policy decisions. These fora are therefore of significant value in helping to build consensus.

Once a consultation is closed, online links are provided to a follow-up page that should contain, inter alia, information about consultation responses, the consultation report within the impact assessment and the final legislative proposal. However, there are a number of issues with implementation. Practices in publishing the responses received during consultation exercises vary; in 2011, publication occurred in not quite two-thirds of all consultations (European Commission 2012c). Furthermore, practices in publishing the reports on the consultation exercises themselves are also variable. A survey conducted in 2008 by Hüller and Quittkat found that fewer than 40 per cent of online consultation reports were publicly available (Hüller and Quittkat 2009: 20; Quittkat 2011: 659) despite the inter-institutional agreement of 2003 mandating that the results of consultations be made public (Official Journal of the European Union 2003: para. 26). The Commission’s more recent analysis claims a higher level of compliance, with 58 per cent of summary consultation reports published in 2011 (European Commission 2012c: 16).

In a review of all impact assessments during the first three years of the regime, the Centre for European Policy Studies (CEPS) was able to determine from consultation reports that stakeholder input had made a difference in half of all IAs, in the sense that it had resulted in a change in the choice of the regulatory option or a major change in the final proposal (Andrea Renda, in Tanasescu 2009: 217). Notably, the CEPS study observed that stakeholders who had participated in a targeted consultation were more likely to regard the outcome as legitimate in comparison to participants in open public consultations. The conclusions of the CEPS study are supported by an external evaluation finding that stakeholder involvement improved the quality of impact assessments (Jacob et al. 2008: 2–6). Tanasescu therefore concludes that ‘when consultations are conducted in a timely and correct manner, stakeholder input does make a difference and is reflected in the final version of the IA Report’ (Tanasescu 2009: 223).

Over time, there has been a growing focus in Commission procedures on input legitimacy in addition to its traditional need for output legitimacy. Considering impact assessment-related policies as a whole, it is important to note that the Commission has championed the development of these procedures at some inconvenience to itself, in a manner that increases its workload, pluralizes its power (through policies geared towards both output and input legitimacy that require it to engage in transparent public explanation for its actions) and enhances the ability of others to monitor it and call it to account. There has been an indisputable upward trend in the standards of impact assessment-related policies as a whole towards those consistent with input legitimacy purposes.
Acquiring and providing information: access to documents and the Transparency Register

Directive 1049/2001 on Access to Documents addresses information asymmetries by making the work of EU institutions (as well as those who provide documentation to them) more easily accessible to scrutiny. This is a freedom-of-information measure facilitated by a web-searchable register of documents and a very brief e-submission form that allows requesters to obtain documents held by institutions within 15 working days of a request. Of the 6,447 access requests received by the European Commission in 2011, 80.2 per cent were granted in full; in a further 7.63 per cent of cases, partial access was granted. There was a revision of the institution’s decision in more than half of the cases appealed by applicants (European Commission 2012d: n.p.). Academics accounted for around one-quarter of applications, followed by interest organizations (one-fifth). A small number of interest organizations have been disproportionately responsible for such access requests. A niche NGO, Access Info Europe, has been created (as a branch organization of a wider network) in order to increase the usage of the regime by other NGOs.

The European Ombudsman plays an oversight role, sometimes working in parallel with ‘watchdog’ NGOs to expand the office’s jurisdiction. The 2010 Annual Report states that the service ‘regularly receives complaints from the Corporate Europe Observatory (CEO), which help us to identify shortcomings in the EU administration and to advise the EU institutions on how to rectify them’ (European Ombudsman Service 2010). CEO is a Mundo-B tenant that has made considerable use of access requests, successfully appealing to the Court of Justice of the European Union (General Court) in cases accusing the Commission of procedural failures related to access to documents. The measure and its enforcement mechanisms have substantially increased the workload of the Commission, but they have become one of the key tools empowering civil society organizations to play the role of accountability agents. This runs paradoxically counter to the concept of bureaucratic self-interest – empowering watchdogs at the expense of political institutions, entailing a considerable increase in both workload and accountability. But the overriding concern with democratic legitimacy is evident in the development and the implementation of the measure, extending to documentation originating with third parties.

The Transparency Register

The Transparency Register primarily involves a flow of information in the other direction (i.e. from interest organizations to civil society and EU institutions) via self-disclosure of various categories of information in a public web database. The European Commission and European Parliament have a set of rules that regulates the behaviour of lobbyists and the lobbied (appointed and elected officials, and those who assist and advise them). The rules concerning the latter are unremarkable, including transparency declarations and measures to avoid conflicts of interest (or anything likely to be perceived as such), and the rules are under constant development. The main instrument with regulatory impact on lobbyists is the Transparency Register and its associated code of conduct.

The 2011 Transparency Register merges two preceding systems: the European Parliament’s ‘Accredited Lobbyist’ scheme dating from 1998, based on the registration of individuals, and the European Commission’s 2008 ‘Register of Interest Representatives’ (ROIR), which was based upon organizational registration. The Council has yet to join the scheme, despite signalling its intention to do so in June 2011. Registration is voluntary but highly incentivized. The two strongest incentives are the availability of a special access pass to the European Parliament
of the building that allows some freedom of movement (as opposed to access only to a certain location for a specific meeting) and the possibility that non-registered organizations will not be invited to participate in consultations with target groups of stakeholders. Another incentive involves one-to-one pressure, in that ‘invitations’ to join are also granted to non-registered organizations at the start of meetings with Commission officials. A lesser incentive is related to information flows: registered organizations are able to subscribe to receive consultation alerts for elective topics, but this knowledge can easily be acquired elsewhere. There are currently over 5,500 registrations, covering an estimated 75 per cent of business-related organizations and 60 per cent of NGOs that have an address in Belgium (Greenwood and Dreger 2013: 139). However, a number of organizations from across the globe without any link to EU policy-making or implementation use the database as free advertising space; one-third of registrations do not check the ‘European’ box when asked to state the different territorial levels of interest represented. A major point of criticism with the Register is that there is no systemic check preventing uploads to the public interface when information is not provided; furthermore, the random checks in specified data fields conducted by the Commission are quite limited in scope. This is partly due to the lack of monitoring resources in the institutions, partly the expression of a preference for a mutual system of checks and balances among those registered, and partly because the Secretariat General of the Commission views checks on every entry as an accreditation scheme that is too reminiscent of arrangements for elite access. The result is that the quality of data in the register is somewhat variable, although it is gradually improving. In practice, the scheme relies upon interest organizations to monitor the information entered by others and file complaints strategically, in the hope that this will result in a good standard of information for the core set of organizations lobbying EU institutions. The reputational consequences for transgressing organizations can potentially be significant when the punishment involves suspension from the register, particularly in the case of commercial public affairs consultancies, where a loss of client base will follow.

Of particular note is the wide scope of the Transparency Register, which encompasses formal organizations as well as structures with no legal status, and employs both indirect and direct means of communicating messages to EU institutions. An organization cannot claim to be covered by ‘indirect registration’, i.e. through its affiliation with another registered entity. Registered groups are asked to provide public information on who the organization represents, contact and website information, and the organization’s mission, funding, lobbying of personnel and expenditures. There is some variation in information requirements across different categories of actors; for example, questions about lobbying expenditures are voluntary for NGOs and compulsory for business-related organizations. As a result, around 15 per cent of the entries in the NGO category would more accurately be categorized elsewhere, the majority of which are business associations (such as the European Tube Manufacturers Association) or even companies (such as Qantas Airways) (Greenwood and Dreger 2013: 145). Although there is guidance on the information to be included, some organizations enter obviously implausible data. When the Joint Transparency Register Secretariat receives a complaint that it subsequently upholds, a variety of options are available; however, most complaints are settled by the offending organizations rectifying the data deficit.

The main gap in the register involves law firms that provide political consultancy services. Although this is not a sizeable number of firms, their absence from the register has a significant consequence, as these firms attract clients who do not want their business to be disclosed; they use the ‘client confidentiality’ demanded by the legal professional code as an excuse not to register. Many think-tanks and churches were previously reluctant to appear in the old (2008) Register of Interest Representatives because they rejected the labels of ‘lobbyist’ or ‘interest representative’.
This has been resolved by the name change to Transparency Register for the 2011 successor scheme; in addition, in the presentation of the register there is a clearly visible bold black line that separates producer-related interests from NGOs, think-tanks and research-related organizations, churches and public-sector entities (de Castro Asarta 2011). It is notable that the discourse on the ‘legitimacy of lobbying’ (de Castro Asarta 2011) from the Green Paper introducing the ROIR (European Commission 2006) has disappeared completely from the Transparency Register legislation.

Conclusion

A common driver in any democratically oriented political system is the quest by political institutions to enhance the legitimacies of their policies; interest groups provide a readily available source of legitimization. The disconnect between transnational organizations and civil society and the consensual nature of their decision-making procedures require interest groups to perform as surrogate democratic agents. The twin demands of critic and ally seem paradoxical, but ultimately provide political support from within systemic parameters. Transnational organizations have a particular need for political supporters and messengers to achieve their policies; these proxy actors engage with resistance from entrenched interests and lobby government institutions. Consequently, such organizations develop key frameworks within which these groups can operate, including funding and regulatory infrastructures. The EU has chosen a pluralist design centred upon a multitude of interest groups, requiring a high degree of funding for NGOs. The predominance of regulatory policy-making among EU competencies results in underlying interest group politics based on interactions that are often highly technical in content. Nonetheless, an increasingly significant feature in recent years has been the growth of political contestation by interest groups, as well as the presence of professionalized social movements bridging ‘outsider’ and ‘insider’ tactics. The European Parliament, keen to make its mark on European politics and policy, has increased the political content of technical regulation as a result of its now virtually complete powers as a co-legislator.

The European Commission has developed an elaborate framework enabling groups to act as checks and balances, both on one another and on political institutions. Extensive procedures have been developed to structure exchanges between political institutions (mainly involving the Commission) and interest organizations in an attempt to obtain legitimacy for this dialogue. These procedures are of particular importance because of the high degree of systemic reliance upon interest organizations found in EU political institutions. The centrepiece is the system of impact assessment procedures, in which consultation and transparency measures are embedded elements. These elements confirm the emphasis on the development of mechanisms of political consultation in the public sphere, which seek to moderate the potential for ‘negative externalities’ in dialogues with ‘interest representatives’ – a term that the European Commission prefers over ‘lobbyists’ in order to communicate what the EU seeks from the dialogue. Procedures intended to structure interactions with interest organizations have largely been developed since 2001, and compare favourably with instruments – where they exist – in the member states.

Note

1 The European Parliament accreditation pass scheme is the one section of the register that is still growing significantly as of mid-2014; updated figures list 4,170 individuals (http://ec.europa.eu/transparency_register/public/consultation/listaccreditations.do?locale=de&reset= [accessed 20 July 2014]).
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