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## **Final Meeting**

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### **DECISION-MAKING IN THE EUROPEAN UNION BEFORE AND AFTER LISBON (DEUBAL)**

#### *Policy Brief*

#### **Special Interests and Integration: Changes in Patterns of Lobbying since Lisbon**

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Lobbying at the European level is nothing new. In fact, the EU has itself long acknowledged the important role that interest groups play in the EU decision-making process. The European Economic and Social Committee, for instance, established in 1957, formalized EU consultation with employers, workers, and other various interests. The 1986 Single European Act institutionalized a form of “social dialogue” or consultation between the Commission and designated European social partners representing business interests and workers’ unions. And the Commission, starting with the 1997 Treaty of Amsterdam, has been legally mandated to “consult widely (...) with representative associations and civil society” during the policy-making process.<sup>1</sup> Interest groups are an important and highly institutionalized aspect of the EU decision-making process. But how have changes brought about by the Lisbon Treaty affected the way interest groups lobby in the EU? My central argument is that the EU, post-Lisbon, is facing an unprecedented period of increased and intensified interest group lobbying activity. This is the result of (1) changes made to the EU decision-making process (including the extension of Qualified Majority Voting and the increase in the European Parliament’s executive powers), and (2) the emergence of a new point of access for interest group influence via the newly minted European Citizens’ Initiative. The challenge the EU faces, I argue, is not to curtail interest group involvement in the EU decision-making process, but rather to ensure that the lobbying process is fair, impartial and, most importantly, transparent. Current EU mechanisms, however, appear to fall short of these tasks.

#### **Part I: How Lisbon changes EU lobbying**

##### *Intensified Lobbying and New Actors*

Scholars have long stressed a correlation between the transfer of state competencies to the EU level with an increase in the EU lobbying population. The greater the EU’s decision-making power, the more incentive interest groups have to shift lobbying strategies from state governments to EU decision-makers. Interest groups are drawn in by the EU’s ability to pass legislation relative to state governments as well as the specific policy areas that the EU has control over. The extension of Qualified Majority Voting (QMV) in the Council ticks both boxes. After Lisbon, QMV is guided by

<sup>1</sup> European Commission (2007) Treaty of Lisbon, *Official Journal of the European Union*, available online: <http://eurlex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML 2007: Art. 8b>

the new ‘double majority voting’ rule not only streamlining EU decision-making but also making it easier for the Council to approve legislation.<sup>2</sup> Greater legislative output facilitated by these new rules enhances “the rewards of lobbying as interest groups vie to influence a larger portfolio of regulations and directives (Hauser, 2011: 681). It is thus little wonder that the last two decades have seen such a dramatic increase in the number of interest groups active at the EU level. From a meager 500-reported EU groups in 1985, the most recent estimates suggest a EU interest group population in the post-Lisbon era of about 20,000 employing about 500,000 to 1,000,000 lobbyists (Butt Philip, 1985; Earnshaw and Judge, 2006; Lehmann and Bosche, 2009).

Lisbon also extended the EU’s power to several new and important policy areas. More specifically, with the expansion of co-decision, now relabeled the Ordinary Legislative Procedure (OLP), the European Parliament is now on equal footing with the Council on a vast majority of EU policy areas. In addition to fisheries, transport, and justice and home affairs, the Lisbon Treaty has extended OLP to regional policy and agricultural policy. When it comes to lobbying, scholars are inclined to make a distinction between regulatory and redistributive policies. In general, regulatory policies present large-scope issues that engage many different agents in a conflictual, zero-sum way. Distributive and redistributive policies are less conflictual, have lower stakes and thus present less opportunity for countervailing forces to engage in lobbying the same issue (Lowi, 1969). In the EU, however, these expectations need to be adjusted. EU agricultural and regional policies account for more than 75% of the EU’s total yearly budget presenting interest groups with massive financial incentives for EU-level lobbying activities. Agricultural lobbying groups like COOP de France, the British Agriculture Bureau, and The European Federation of Food, Agriculture and Tourism Trade Union, are well-established EU-level players. However, sub-state level actors, like regional liaison offices, have only rarely been counted as interest groups alongside trade unions, NGOs and professional associations. By giving further power to the European Parliament with regard to regional policy, however, the EU has provided a new incentive for sub-state actors to take up more lobbying practices at the EU-level. Instead of using a circuitous route running through the largely ineffectual Committee of Regions (or lobbying exclusively through national governments), sub-state interest groups will be more inclined to target EU decision-makers directly.

### *Supply and Demand in the European Parliament*

The Parliament’s increased decision-making powers make it a more viable target for lobbyists. It is now the Council’s equal on nearly all policy areas. Additionally, Lisbon also gave the Parliament greater say over expenditures by eliminating the old compulsory and non-compulsory expenditures distinction. The Parliament’s new remit on expenditures coupled with the extension of OLP to more policy areas changes the way MEPs and interest groups interact. Lobbying tactics used in the Parliament are no longer distinct from those used in the Commission and Council (Chalmers, forthcoming). They are no longer based solely on outsider-lobbying strategies (like demonstrations or media campaigns) and exchanges are not highly politicized. Instead, interest group interaction with MEPs is, as with Commission, more and more based on the exchange of technical information and policy-relevant data. The 2011 cash-for-laws scandal, however, when several MEPs resigned after taking bribes from journalists posing as lobbyists, revealed that the Parliament is still growing into this new role.

Changes to the comitology procedure introduced with Lisbon (and coming into effect in 2014) will add to the increased intensity of lobbying in the Parliament.<sup>3</sup> However, the nature of interest group lobbying with regard to comitology stands in stark contrast to OLP. Comitology provides a mandate to

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<sup>2</sup> Double majority voting will still require country support of 55% of EU member states and the endorsement of states representing 65% of the population (marginally increasing the threshold for passing legislation when compared to the old Nice rules). However, double majority voting also does away with the requirement for legislation to get at least 74% of weighted votes which many scholars suggest was the Council’s greatest impediment to approving legislation.

<sup>3</sup> For a useful resource on how the post-Lisbon comitology procedure will impact lobbying, see, [http://www.hillandknowlton.be/sites/default/files/h%26k\\_comitology\\_LR.pdf](http://www.hillandknowlton.be/sites/default/files/h%26k_comitology_LR.pdf)

the European Commission for quickly making changes to or passing new EU legislation. However, the move from the old “Regulatory Procedure with Scrutiny” to the new procedure for “Delegated Acts” provides the Parliament with a new and enhanced role. Unlike the old procedures, Lisbon has given the Parliament as well as the Council the right to an “unrestricted” veto during the comitology process. Under the procedures for Delegated Acts, a veto can be issued without justification on legal grounds. Thus, while these procedures provide interest groups with a new route for influencing EU policy outcomes, their lobbying strategies will not necessarily parallel those used with OLP. Since a veto for Delegate Acts does not require justification, lobbying via the provision of technical information and data seems like a less effective strategy.

#### *A New Access Point: European Citizens’ Initiative*

Perhaps the most interesting post-Lisbon development for interest groups is the European Citizens’ initiative (ECI). As a mechanism for assuaging the EU’s democratic deficit, ECI is, at root, an attempt to bring a form of direct democracy to the EU. Specifically, ECI provides a right for EU citizens to propose EU legislation to the Commission. The most basic requirement is the collection of at least 1 million signatures of EU citizens representing a significant number of EU member states. However, recently passed regulation on the ECI suggests a special place for interest groups in the ECI process. Indeed, the ECI provides a new point of access for EU lobbyists to influence the EU legislative process.

Interest groups enjoy a type of de facto inclusion in the ECI process. Specifically, interest group are permitted to “promote citizens’ initiatives” but prohibited from organizing them.<sup>4</sup> The ECI regulation passed last year outlines an implicit, rather than explicit, role for interest groups. The Commission requires that a so-called Citizens’ Committee represent each initiative. These committees must be composed of organizers coming from at least seven different Member States, be able to provide translations of a proposed initiative into the official EU languages, and are ultimately liable in accordance with applicable national law for any damage that they cause. It is clear, however, that the provision for a Citizens’ Committee makes initiatives without prior organisation on a European level and considerable finances very difficult. It is little wonder, then, that the first initiatives to be organised even before ECI regulations were passed came from interest groups -- Green Peace and The European Disability Forum (Brand, 2010). Where individual citizens might be hard pressed to find individuals from seven member states who are willing to take up these tasks *and risks*, interest groups are well equipped.

In addition to the Citizens’ Committee, interest groups are implicated in the ECI process in terms of the Commission requirement that initiatives must indicate “the provisions of the Treaties considered relevant (...) for the proposed action.”<sup>5</sup> A certain technical and legal expertise is thus required. Indeed, ECI regulations recommend that initiative organizers “provide more detailed information on the subject, objectives and background to the proposed citizens’ initiative in an annex. They may also, if they wish, submit a draft legal act.”<sup>6</sup> Interest groups with considerable resources, a team of policy and legal experts and clear insight into the EU policy-making process will be able to provide initiatives that tick all the boxes. Submitting an initiative with a draft legal act puts the initiative into a language that EU decision-makers can both understand and appreciate.

While the ECI is still in its early stages, a glance at the currently registered initiatives gives a clear picture of the degree to which interest groups are already engaged in the ECI process. “The European Water Initiative” to declare access to water a human right is backed by the EU’s largest Trade Union (the ETUC). The “Fraternité 2020” initiative to improve student exchange programs boasts a long list

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<sup>4</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative, *Official Journal of the European Union*, 11.3.2011, preamble, section 9.

<sup>5</sup> Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative, *Official Journal of the European Union*, 11.3.2011, Annex II.4.

<sup>6</sup> *Ibid.*, Annex II.

of NGO supporters from both EU and non-EU countries. The “Happy Cow Initiative” aiming to improve the welfare of dairy cows is spearheaded by private interests (Ben and Jerry’s as well as Cono, a large Dutch cheese manufacturer) as well as NGOs (The World Society for the Protection of Animals). While the inclusion of interest groups in the ECI process is implied in the ECI regulations, access (and potential undue influence) is still largely unmediated.

## **Part II: The Need for Lobbying Transparency in the EU**

Changes brought about by Lisbon see an increase in EU lobbying activity (especially in the Parliament), the emergence of new types of interest groups at the EU-level, and the opening-up of new points of access to the EU legislative process. The central challenge facing the EU in the post-Lisbon era is thus how to effectively mediate interest group involvement. How, in other words, can the EU curb interest group influence, ensure that legislative inputs come from a broad (and ideally representative) range of interest group types, and provide transparency to interactions between decision-makers and lobbyists?

Central to the EU’s success in this regard is the European Transparency Initiative (ETI). Established by former Administration, Audit and Anti-Fraud Commissioner Siim Kallas in 2005, ETI seeks to add transparency to lobbying by having interest groups register on a public (online) registry and to agree to a “code of conduct”. Post-Lisbon adjustments to the ETI reveal some key weaknesses and omissions in the ETI that might threaten to undermine effective interest group intermediation.

The greatest hurdle facing the ETI is adequate coverage of interest groups listed on the public Register. There are minor incentives for registering (a door pass to the Parliament and alerts to Commission consultations), but interest group registration remains voluntary. A recent survey noted that about “60% of EU lobbying consultancies are still not registered”.<sup>7</sup> Others have noted the apparent “boycott” of the Register by think tanks, consultancies and law firms. While the numbers for think tanks and consultancies have since increased, law firms are still radically underrepresented on the register. Inadequate coverage not only skews the overall impression of the interest group footprint in Brussels, but also means that many interest groups are working beyond the purview of the lobbying code of conduct and are not required to disclose information about their lobbying activity.

But it is not just the issue of voluntary registration and coverage that seems to threaten the success of the Register and the ETI. Unlike the American Lobbying Disclosure Act and the Canadian Lobbyists Registration Act, to take two prominent examples, there is no clear EU stance on the so-called “revolving door issue” – high-ranking EU officials who move on to lucrative private sector lobbying jobs after their tenure. Suggestions put forward include greater transparency of officials’ activities after leaving office as well as a “three year cooling-off” period between posts (Alter-EU, 2010). Commissioners already subscribe to a public “declaration of interests,” disclosing information about previous posts and location of assets.<sup>8</sup> There is also a mechanism for the public disclosure of gifts received by Commission officials.<sup>9</sup> However, this appears hopelessly inadequate. The list is available only in French and contains a mere 83 items.

A somewhat less tangible but nonetheless significant challenge facing the ETI is the absence of Commissioner Siim Kallas. Kallas spearheaded the ETI as part of his job as Administration, Audit and Anti-Fraud Commissioner, a post he left in 2010. The ETI was very much Kallas’ pet project and the initiative threatens to run out of steam without him. The new Barroso Commission (Barroso II), since entering office in 2010, has reassigned this portfolio to three separate Commissioners: Algirdas Šemeta, Maros Šefčovič, and Janusz Lewandowski. The problem, to speak with one MEP, is that

<sup>7</sup> <http://www.alter-eu.org/documents/2010/03/blacklist-of-unregistered-lobbying-consultancies>

<sup>8</sup> For Commissioner disclosures of information, see: [http://ec.europa.eu/commission\\_2010-2014/interests/index\\_en.htm](http://ec.europa.eu/commission_2010-2014/interests/index_en.htm)

<sup>9</sup> For the list of gifts the Commission receives see: [http://ec.europa.eu/commission\\_2010-2014/pdf/cadeaux\\_recus\\_par\\_le\\_college3\\_fr.pdf](http://ec.europa.eu/commission_2010-2014/pdf/cadeaux_recus_par_le_college3_fr.pdf)

none of them “seems to have been assigned clear responsibility for increasing transparency concerning lobbying and for following up the ETI in other areas” (European Commission, 2009). The success and effectiveness of lobbying transparency in the EU is on shaky ground.

## Conclusion

Changes brought about with the Lisbon Treaty have led to a period of increased and intensified lobbying in the EU. Not only are more interest groups lobbying at the EU level across a greater number of issue areas, but we also see new types of interest groups emerging to lobby key EU decision-making institutions. What is more, Lisbon has provided additional points of access for which interest groups can seek to wield influence over EU policy outputs. The ECI in particular creates a new lobbying channel to the EU. Despite a lobbying scandal in 2011, the Parliament and Commission’s commitment to bringing greater transparency to EU-lobbying has been short-lived. The fact that the interest group Register remains voluntary and that key interest group types are still relatively absent for it does not bode well for EU lobbying transparency in the post-Lisbon era.

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