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Lobbying and Foreign Policy.

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Abstracts

Lobbying: The French Way, by Olivier Debouzy

In contrast with the U.S. lobbying world described by Steve Clemons, Olivier Debouzy argues that the French lobbying activity is “by definition discrete, obscure and underground”. Through a historical and sociological description of the French “elite” system, Olivier Debouzy provides explanation to the existence of this other *exception française*. Relations between the political class and the rest of society have deeply inherited from the “Court system” which prevailed in France during many centuries. After the Second World War, two major transformations of French society and political system reinforced this “court system” culture: the first one is the State’s taking control of the economy and its increasing in the nation’s life after 1495. The second is the standardisation of the criteria for selecting the country’s administrative, managerial and economic elite. Being an efficient lobbyist in France therefore most likely requires belonging to this elite.

The Regulation of Lobbyists in the United States and the Impact on Washington’s Public Policy Think Tanks, by Steven C. Clemons

After a brief description of U.S. lobbying activity legislation, Steve Clemons argues that studies of the lobbying industry in Washington, particularly in regards to foreign policy affairs, should no longer focus on just the firms themselves and the kinds of interactions that they dutifully file under the Lobbying Disclosure Act. He describes a second economy, in which lobbying interests “take advantage of, co-opt, seduce, manipulate, and even instigate and found less-well regulated non-profit enterprises that are engaged in public policy work”. The author articulates some of the structural aspects of the lobbying industry’s relatively new innovations in the arena of think tanks. He argues that to allow lobbyist influences infiltrate the non-profit public policy sector, without restraint, threatens to fully undermine the legitimacy of the important role of think tanks in public policy, and in foreign policy in particular. He also believes

that the problems of corruption of think tanks are systemic ones and not easily remedied. The troubling pattern of “deep lobbying” and influence peddling via research institutions needs to be broad and serious.

Lobbying the European Union: Do Corporate Interests and Foreign Policy Meet?

by Alan Butt Philip

The main thrust of lobbying effort at the level of the European Union has traditionally been and remains concerned with internal policies, especially those which touch on the single market and the development of trade. Trade however has both an external and an internal dimension, and in so far as the EU institutions seek to regulate or authorise trade relations between third countries and the EU's internal market there is a foreign policy dimension to such relations. In this paper, Alan Butt-Philip provides a very complete description of the EU institutional system and of the various strategies adopted by the “EU-lobbying community”. He also points out the positive and negative aspects of lobbying, arguing—just like Olivier Debouzy does—that at the most immediate level, lobbying can be viewed as an inevitable part of the democratic process.

Lobbying: The French Way

Olivier Debouzy

“Laws have been established in nearly all States by the lawmakers’ interest, by the need of the moment, by ignorance and superstition: they are made randomly, as time goes by.”

Voltaire, *Dictionnaire philosophique*

“There an infinite number of laws which only survive because we have not had time to reform them.”

Domat, *Pensées*

Let's call things by their name: *lobbying* is a contribution to the drafting of the law. In France, the word is almost obscene. The law, “expression of the general will”, influenced, inspired and formatted by individual interests? *Horresco referens!* In the French political tradition, there is a tradition of condemnation of the influence of “obscure forces” (Jesuits, Freemasons, Jews, the “two-hundred families”, etc. according to the political colour of where they come from) over the formulation of the law. The reason is that the law is thought to remain, by a miracle somewhat difficult to explain, free of any influence or compromise with any specific interests whatsoever. It is indeed men who vote laws, draft decrees, ministerial regulations or interpretative circulars: how could these men possibly escape the influence of interests with which they have political, religious or other affinities?

In France, lobbying is by definition discrete, obscure and underground. Yet this is not the case everywhere. As we know, in the United States and Great Britain, lobbyists are well-established and state their job title on their business cards. They are listed in a parliamentary register and anyone can know what interests they represent. In Brussels, lobbyists (10,000, *i.e.*, practically the same number as Commission officials) are the natural interlocutors of a system whose distance from the electorate

and the economic community reduces the quantity and quality of the relevant and available information on the ever-increasing number of issues that the European institutions handle. In Brussels, the lobbyist in fact fulfils a public service role: he is a source of information on issues where the Commission or Parliament do not always rely on Member State administrations' points of view, particularly in the economic field or on technical issues. Even when they do, lobbyists represent interests which, as such, are not always politically represented and which cannot find a way through the national administrations of having the States endorse positions that are difficult to defend or simply contrary to common opinion.

Lobbyists therefore fulfil a real role: reduced to their economic function, they are agents of information and decision-making aid. Their legal function consists in contributing to the drafting of laws which, by definition, have an impact on the interests they represent; their technical knowledge of a subject, their familiarity with the issues they raise and their ability to propose solutions make them legitimate interlocutors for public authorities (in any case, as legitimate as political or trade-union representatives). The question is why does lobbying receive such bad press in France, and why are the French public authorities so reticent toward it, at least when it is termed as such. There is in fact a type of lobbying that the French public authorities and French opinion deem acceptable, even legitimate, for example lobbying by "representative trade unions" or by employer organisations. This type of lobbying refuses to be called as such, and takes on rather the more elegant title of "consultation" or "social dialogue". The distinction between "good" and "bad" lobbying originates in French political and social culture, which should now be examined from a historical, political and sociological viewpoint.

First, from a historical viewpoint. For fifteen centuries, France lived under a monarchy whose pre-eminence only began to assert itself during the reign of Louis XIV (1664-1715). Before this period, power was shared ("decentralised", as we would say today) between the king, who had an increasing, but still reversible, share of power; the nobility, who had significant local powers, control of territories and (essentially rural) riches, and military power; and, the Church, whose material power and spiritual and political influence were perhaps more considerable still than those of the aristocracy. The nobility was only brought to heel during the reign of Louis XIV, first by the

institution of the “Court system”¹, the reorganisation of the armies (instigated by Louvois) and a policy of ennoblement which Saint-Simon implacably criticised, even though such criticism was to have little effect²; then the Church, with Louis XIV’s very political Gallicanism which resulted in the State’s relatively tight control over the ecclesiastical hierarchy (the controversy over the *Unigenitus* bull was the illustration that marked the definitive bringing to heel of the Catholic hierarchy); the Parliaments lastly, whose remonstrating power was limited as much as possible, without however it being completely limited, the nobility finding in these assemblies a forum where it could express what could not be expressed elsewhere³.

This progressive centralisation of power resulted in the “Court phenomenon”, the shadow of which is still cast over the French system of power today. The Louis XIV system in many respects foreshadows the current system of the exercise of power, its rituals and its networks.

What was the Court? It was a selective system governed by rules whose complexity and detail compare with those the Republican and *grandes écoles* competitive exam system of today. Only men capable of proving several degrees of noble lineage (the exact number does not really matter, but it tended to increase during the XVIIIth century) and of sustaining a lifestyle compatible with the requirements of life at Versailles, could appear at Court. Once admitted to the Court, the applicants had to be presented to the king and queen, and to the king’s brothers and sisters, according to a specifically defined ritual. They also had to be, depending on the favours at the time and according to a less strictly regulated but subtle protocol, presented to the persons that the royal favour had defined as being the *confidants* of or close to the king. Only after this, the presented nobles could lead the “Court life”. What did it consist in? Essentially, in hoping that the king’s or the royal family members’ favour distinguished them or in conjuring up tricks, ruses and manoeuvres in order to obtain such favour. In other words, the Court was a system of power entirely based on the notion of *intuitus personæ* (birth), and where lobbying constituted the main tool to

¹ Emmanuel Le Roy-Ladurie, *Saint-Simon et le système de la Cour*, Paris, Fayard, 1997.

² The *Mémoires* of the duke of Saint-Simon are a long lamentation of the social rise of the new nobility, the prosperous bourgeoisie and what today we would call the “technocrats” to the detriment of the old aristocracy (that Saint-Simon defends although he did not belong to the old aristocracy himself, his dukedom dating back to Louis XIII, who supposedly had granted it to his father for his hunting services – but Proust described with perfidious acuteness in *A la recherche du temps perdu* that the new nobility expresses its prejudices in the most extreme manner, maybe due to an insecurity as to the value of their titles.

confirm this. Without lobbying, no invitations to go for a promenade, to go hunting or to join in the royal games, no gifts, no responsibilities or opportunities to advance one's interests or to intercede on behalf of third parties who would return the favour in the future. In a nutshell, the Court system functioned by and for lobbying, entirely directed toward the king and any persons who had, at any given time and for any substantial period, the chance to approach him and enter into a relationship of trust and intimacy with him. Saint-Simon for example describes at length in his *Mémoires* how the king's valets were approached, and particularly how Blouin, the king's first valet, became at the end of Louis XIV's reign someone who wielded considerable influence, the king being forced to remain in his bedroom and almost never venturing out in public.

The Court phenomenon is what philosophers and critics of a universe they describe as replete with favouritism, nepotism and moral corruption (when it is not pure and simple corruption) rose up against as from the xviiith century, with much greater vehemence than the old nobility, compromised by their participation in the system. The French revolution of 1789 and most of all the Empire, the creation of an impecunious young man born into a family of dubious nobility, whose initial successes had been academic and then due to his personal bravery and his genius for organisation, marked the dawning of a new era where merit, confirmed by competitive examinations, was going to reign supreme in a society where nobility used to be awarded for military achievement and civic virtues. The school and university mould conceived by Bonaparte was going to mark French society up until the present day—to a much lesser extent, however, than an analysis of the history of France with hindsight would lead us to believe. Extraction remained very important, and Balzac's novels are all full of this persistent fight of the pre-1789 nobility against the nobility of the Empire and the achievers of the rising bourgeoisie⁴. One had to wait until the 1960s-70s for the standardisation of the selection of the elite (together with the grip of the State on the French economy and society) to produce the effects that are now deplored in the government of France and which reproduce, by one of these ironies of history, the Court phenomenon of the past. French society in the xixth and xxth centuries remained remarkably diverse: networks of influence were divided

³ Incidentally, it only benefited from this once the king died, as shown in Saint-Simon's *Mémoires* on the difficulties encountered by the Regent at the time of his introduction in the Parliament of Paris.

⁴ See for example *Illusions perdues* or *Le cabinet des antiques* by Balzac.

between a number of groups that were very different and whose competing strategies were mixed up in a subtle game of powers where the aristocrats, freemasons, businessmen, the military, former pupils of the Jesuits and of the *Ecole polytechnique*, academics and intellectuals held, each in a social sector or occasionally in competition inside several sectors, a part of the keys to political and social influence. At that time, France was strictly speaking a collection of tribes (some in decline, others on the rise) whose interaction constituted the carousel of a power that was a lot more fairly distributed than it is today. In such a society, the State's power appeared more supervisory than active in most sectors, and lobbying remained confined to narrow areas, and, most of all, highly ritualised. Republican rites succeeded royal ones and the imprecations of monarchists (like Maurras, Daudet or Bonnard) or extremists (like Rochefort or Jouvenel) against the "*République des camarades*" did not succeed in breaking down a range of social relations that were still largely based on patronage, protection and personal allegiance, corresponding to a less than democratic deference but which everyone subscribed to. If there was any lobbying, it only took the form of the defence of traditional interests through very institutionalised representation, the only form of representation permitted by the system.

Everything exploded after the Second World War, which marked, in two aspects, the dawning of a new era as far as lobbying is concerned.

The first aspect is the State's taking control of the economy and its increasing involvement in the nation's social life. Prior to 1940, the French State remained a minimal one, with few means and staff: the large majority of State officials were in the military, the civil service only employing a few hundred thousand civil servants. One may recall for example that the Banque de France was, up until 1936, a private institution whose share capital was essentially held by "two hundred families" and whose management was assured by a "council of regents" representing the *private* shareholders of the Bank⁵. After 1945, the nationalisation of the Banque de France (in fact controlled by the State since 1936), gas and electricity, coal mines, railways, the three largest banking institutions and a multitude of companies in a wide range of sectors marked the beginning of an era where, for nearly half a century, the French State added to its traditional, sovereign functions, skills linked to the control of the

⁵ Maurice Druon, in *Les grandes familles* (Paris, Julliard, 1948), painted both a vitriolic and fascinated portrait of this through the character of baron Noël Schoudler.

economy. This has resulted in it taking a greater and more detailed involvement in economic activity and in the definition of its conditions, particularly through credit and subsidy policies to certain sectors and its weighty and increasing involvement in labour and consumer relations—where contractual freedom is today more or less non-existent—to only take these examples. In addition, the French State has extended its competence to functions which, although appearing normal today, constitute no less than a massive and very resounding interference in civil society: cultural policies (cinema policies, linguistic policies, policies controlling the prices of books, etc.), territorial planning (with the political consequences of decentralisation), policies on “launching France into the Information Society”, social policies (immigration policies, creation of “social minima” or “home-assistance benefits”), *politique de la ville* (one wonders what it actually consists in), evidencing in all of these areas a meticulous and omnipresent interventionism. Today, there is no domain where the French State does not have its say or a policy to implement via an administration whose number of employees amounts to an unrivalled 5.8 million (including local government), *i.e.*, nearly a quarter of the French workforce.

The second aspect is the standardisation of the criteria for selecting the country's administrative, managerial and economic elite. This standardisation, symbolised by the creation of the *Ecole nationale d'administration* (ENA) in 1945, but which in fact predates it—in the form of the *Ecole polytechnique* and the *Ecole Normale Supérieure* which preceded it—reflects the *State's progressive colonisation of the economy and civil society*. It also constituted the emergence of a real *meritocracy*, in that, however contestable competitive exam selection criteria may be (ENA has often been criticised in this regard), this mode of selection represents by itself a clear progress compared with all other modes, at least for access to the Civil Service. *The problem is that this mode of selection has become the method for selecting the entire French elite*, through selection criteria originally applicable only to the Civil Service. The State's colonisation of the economy has encouraged the standardisation of criteria for selecting the country's managerial and economic elite; two consequences result from it.

The first consequence is that the administrative system, and particularly the passage through the State's *Grands Corps*, has become an unsurpassable horizon for the elite: success in economic performance, in the management of large companies or in the conquest of new markets was not, until recently, a criterion allowing social

recognition, or even one granting access to the top ranks of finance and industry. The quick route for accessing top corporate positions was via the administrative system: one only has to cite the names of the (current or former) directors of the biggest French companies to be convinced. From Jean-Marie Messier (*Inspection des Finances*) to Charles de Croisset (*idem*), Henri de Castries (*idem*), Jacques Friedmann (*idem*), Guy de Panafieu (*idem*) or Jean-Yves Haberer (*idem*); from Jean-Louis Beffa (*Corps des mines*) to Jean Syrota (*idem*) or Anne Lauvergeon (*idem*), to name but a few, the list of CEOs of large French companies strongly resembles a compilation of the State's *Grands Corps* directories.

The second consequence is that the Court phenomenon has reappeared in a form that is as implacable as it was under the *Ancien Régime*. Being a member of certain corps and passing through certain positions (particularly positions in ministerial staffs) now constitutes the functional equivalent of having noble lineage. However, for the main part, the French "ruling class"—which is not actually a class but rather a *nomenklatura*, which includes both representatives of the administration and of the private sector—functions, if one may say so, in a closed circuit and in a totally referential fashion. Made up of men who have been to the same schools, belong to the same institutions, have often successively or simultaneously held similar positions in a ministerial staff or in central administration, this social caste functions in a way that eliminates any element that is foreign, undesirable or that simply does not fit in. This is what differentiates it from, for example, the British ruling class, which is both more open and more diverse: it includes representatives of the aristocracy, principal businessmen and City bankers, alumni of the prestigious Oxford and Cambridge university colleges, senior civil servants and military officials, certain artists, alumni of Eton, Harrow, Winchester and Rugby, all having different and distinct backgrounds, education and roles. Nothing like this exists in France, where the governing elite is both socially and culturally homogenous.

Let us move on to politics. Lobbying forms part of a vision of politics that is very different to what generally prevails in France. In France, politics is vested with a principal and eminent role: it is the expression of national sovereignty, of popular will, *i.e.*, of the general interest. The general interest is conceived by our secular political system as immanent and not, as one occasionally believes, as transcendent: the "principles of constitutional value" and the "general principles of law" do not find their source in a transcendent reality which would impose itself on leaders. The

transcendental nature of this reality has been denied since 1789, and political republican principles, which were in fact only the transposition of the principles of the authority as formulated by Christian doctrine into the immanent order, only remained valid for so long as society was deeply shaped and restricted by Christian values. As Christian values have now become irrelevant, roughly as from the 1960s, republican principles have experienced an almost immediate decline and no-one, except by a few politicians who think they can win over an ageing and conservative electorate, asserts such principles anymore. These principles, in truth, no longer have any substance or legitimacy. One may be sorry or pleased about this, but it is not the subject of our discussion here. It is interesting, in this regard, that political discourse continues to assert these principles and to confer on them a supra-legislative authority. This would appear to be a somewhat desperate attempt to confer onto politics an eminence or transcendence (ironically based on principles which originate from an immanent, and not a transcendent, source, as they are supposed to result from the "social contract" and a conception of law and society based on natural law, which by definition only refers to man himself) that is supposed to guarantee the legitimacy of politics.

It remains that the invocation of the general interest, supposedly incarnated in the law and those who draft it (administrative services who prepare texts, politicians who debate and vote them), is hardly compatible in the French context with acknowledging the legitimacy of lobbying. Indeed, if the law is the expression of the general will, and if this general will is incarnated in the executive power elected by direct universal suffrage and in the parliamentary representation, any attempt to influence this will is illegitimate as it emanates from representatives of individual interests. This contradiction has only been partially resolved by the setting up of "consultation" mechanisms which have established a type of official lobbying. As said above, French law confers on certain organisations (particularly trade unions) the title of a "representative bodies", according to criteria that have not changed since 1945 and that make these bodies the obliged interlocutors of public authorities⁶. In other words, there are legitimate and illegitimate forms of lobbying in France. If we dig deeper and more politically, the legitimacy of trade union lobbying lies on a conception of the general interest that is biased in favour of "progressive" forces. The

⁶ Which, incidentally, shows to what extent ideology and efficient lobbying can contribute toward shaping and maintaining the law.

trade unions are quick to denounce the “lack of consultation” (*i.e.*, the fact that their requests are not taken into account) as soon as a bill or a regulation appears to threaten their interests, which are *by definition* supposed to coincide with the general interest, as they are vested with the legitimacy to represent the “social forces” in consultation with the public authorities for the drafting of the law. This procedure, although it is not innocent, is at least logical; it merely reflects the consequences of the system set up in 1945. This system is based on the idea that, when drafting the law, certain interlocutors (the trade unions) express legitimate interests, and others (employer associations, or *ad hoc* coalitions of companies for example) express *less* legitimate, or in any case, secondary interests.

This twist in the principle of the supremacy of the general interest over individual interests in the name of ideology today knows its limits, because the political and economic context is changing. First, the French political system, which has for a long time functioned behind closed doors, is now forced to take into account outside political legitimacies, based on principles and arguments which widely go beyond the idea of sovereignty as it is traditionally understood in the French political system. Thus, for example, the European Community is a universe where interaction and relations between various interest groups are a lot more balanced than in France. The Commission, in particular, because it is not subject to electoral imperatives, sometimes addresses issues more openly than an administration directly subject to the orders of the political power would do. In other words, the Community rationality differs from the French rationality. Secondly, the French political mythology does not have any equivalent in the other countries of the Union whose history and relationship with the State are very different. Moreover, the Commission is a multinational body: the interlocutors to be found there can thus address issues without the political baggage that every French civil servant and politician carries around with them and which strongly controls the perceptions of what is feasible or possible. Thirdly, the economic system in which France lived up until the end of the last century was largely controlled by the State: companies and representatives of economic interests therefore necessarily had to negotiate with the State which was one of the major players and the *de facto* ultimate decision-maker of economic life. This is not entirely the case nowadays, mainly because legislation and Community rules have changed rules governing State intervention to shift the emphasis from an active role to a regulating role, and also because financial and economic factors have

lead the State to progressively withdraw from the economic sphere where its presence, to be truthful, does not make any sense any more.

Political representations, however, survive for a long length of time in the circumstances that prevailed over their emergence and that, in France, politics is the field where change takes the longest to come about. Thus lobbying activities continue to be considered as a suspect contribution to the drafting of the law, except—and I am now coming to the third characteristic of the French system—when they follow the very specific paths of the networks of the State's corps.

The specific nature of lobbying *à la française* is also sociological. France is, theoretically, since the Revolution a State free of any bodies or distinctions based on family lineage or condition. In reality, the second half of the xxth century saw, at the same time as the State's colonisation of society and the economy was moving forward, the power of the members of certain State bodies (the *grands corps*) consolidate. These are the bodies that are accessible to those gaining the top grades at the most prestigious of France's *grandes écoles* (*Ecole polytechnique* and *Ecole nationale d'administration*): *Inspection générale des finances, Conseil d'Etat, Corps des Mines, Corps des Ponts et Chaussées*. The *Ecole polytechnique*, the ENA and the *grands corps* constitute the two strata of this caste system. The number of students at the *Ecole polytechnique* and the ENA is relatively high: each year around 300 students graduate from the *Ecole polytechnique* and 100 from the ENA (for the latter, this figure has reduced since 1995: before then, it was approximately 150). There results that graduates of these two *grandes écoles* can be found in number at all levels of authority of State services: even if all graduates do not go on to follow an illustrious career, they all, particularly graduates of the *Ecole polytechnique*, develop a solidarity, strong and persistent, throughout their careers. The bureaucratic elite is then extraordinarily homogenous and, even if it is occasionally prone to internal quarrels, its grip over administrative and economic life is very strong.

The second level, which completes this grip, is that of the *grands corps*, whose internal solidarity is much stronger than that of the graduates of *grandes écoles*: as discussed earlier, the proportion of directors in central administration, of ministerial advisors and of public and private company CEOs and directors that have come through the *grands corps* is extremely high. Once again, this creates a standardisation of modes of thought and action which is noticed by all outside observers. In fact, no network (whether an old-boys network, British public school

network or *alumni* system in U.S. universities) is as homogenous, powerful and strongly structured as that of the *grands corps*. This network is also strengthened by the social homogeneity (inherited or acquired) of the members of the *grands corps*, which reinforces a professional solidarity arising out of their will to keep the *corps* status alive and its place in the distribution of administrative positions.

This “State nobility”, besides the inevitable idiosyncrasies of restricted social circles, is finally characterised by a uniform mode of thought, as if it were “formatted” by a sort of “mental mould”. This mode of thought is based not only on reflexes acquired through the identical studies followed by its members, but also on a phenomenon which is not inherent in the French system, but considerably intensified by the administration’s grip on the political and economic decision-making process, *i.e.*, the self-validation of this administration. In other words, the French administration is remarkably resistant to outside influences when they do not take the form of ritual interventions by players themselves legitimised by the rules of law (“representative” trade unions, for example). Senior French officials are so convinced that they possess a righteousness based on the technical abilities validated once and for all at a very young age that practically nobody outside of the administration participates in the analysis and decision-making process. In France there are almost no think-tanks or independent research centres that may contribute to studying problems, to formulating solutions and to fair exchanges with public authorities. This situation strengthens the administrative and governmental illusion that they incarnate a “general interest” that cannot, by definition, be mixed up with individual interests, as these are even more suspect since they are generally expressed in the form of strictly categorised demands based on studies or analyses deemed to be supported by few documents or objectives. The administration’s isolation therefore largely stems from its own doing; its isolation turns into an additional argument to claim that it incarnates a general interest which, by definition, may not be compromised with individual interests and which, at the most, can only give marginal importance to any input from their representatives.

There is only one situation in which this situation can be nuanced: when the representative of individual interests is himself a member of the *grands corps* or, with a more modest influence, is a graduate of one of the *grandes écoles*, who went through the mirror. In fact, lobbying *à la française* works best between *Ecole polytechnique* or ENA graduates, and even better between former members of the

grands corps. They speak the same language and have the same references. Lobbyists are capable of putting forward proposals in a language that is immediately comprehensible to their counterparts who have remained in the administration. Senior officials still in office are able to perceive behind the expression of an individual interest the possible general interest that this individual interest could bring to bear if these proposals were to be taken into account. Also, lobbying *à la française* is a lot more discrete and informal than American-style lobbying or the lobbying that takes place in the European Union: it is first based on an institutional relationship (an identical education, ranking and career path) and only then, and in a relatively secondary manner, on the power of the interests represented or the reality of the general interest residing in the proposals put forward. Lobbying *à la française* under the IVth and Vth Republics is therefore, at the end of the day, a lot closer to the lobbying practised at the Court of Louis XIV or Louis XV than that which was practised during the forty-four years of the IIIrd Republic, because the rules are more or less the same as those that governed life at Court. To be a successful lobbyist, one has to:

- Have a status that was acceptable to those who one addressed (a degree from or status as a graduate of a *grande école* having replaced the 24 degrees of noble lineage which allowed access to the Court);
- Have cultural and social familiarities with the persons with whom one interacted: under the *Ancien Régime*, the country squire who makes a fool of himself at Court is a classical comic figure. Under the Vth Republic, his role is performed by the lobbyist whose extraction, studies or social networks do not give him enough familiarity with decision-makers; as a result, he cannot perform adequately his lobbying function, because he appears as a perpetual supplicant. To be an efficient lobbyist, one should never give this appearance, but should rather be able to speak to one's interlocutors about any other matter than what one is actually appointed for, up until the moment when, "out of friendship", one's contact will pay the lobbyist a favour or will endorse the arguments put to him, but only "incidentally and on a personal basis".

These features of the French system outline the characteristics of an efficient lobbyist. I am only talking about the lobbyist, and not the public relations or advertising man, who may find it useful to have a political and administrative network to increase the value of his operations but who, by definition, is not and *cannot* be a

lobbyist because his activity is based on making himself known, whereas the lobbyist is, if I may say so, the power behind the power, present but always invisible. It is not possible to be a credible lobbyist if one does not possess certain characteristics. These characteristics can only be acquired by following a career path which makes lobbying more of a consequence than a vocation. In other words, to be an efficient lobbyist, it is first necessary to have been something else; more brutally, one has to have belonged to a certain category of the population.

Is this to say that only *Ecole polytechnique* and ENA graduates can be effective lobbyists? The answer is clearly no. There are several examples of lobbyists who do not fall into this category and who are yet very competent and very efficient. However, the characteristics of the French system give a significant comparative advantage (in the Ricardian sense of the term) to graduates of the *grandes écoles* and to the former members of the *grands corps*. French society, although so very democratic in both its culture and the concrete ways in which it functions, nevertheless retains, in the field of public decision-making, a specific elitism that is not based on substance (it is well known that the French elite is basically short-sighted and that over the past century it has provided several examples of it) but rather on form and method. In other words, as we have already said, French society is a society of imperfect lobbying. The advantage of former senior officials is that they accumulate both, in relation to their political and administrative interlocutors, a recognised competence, a cultural similarity and a common language. This is not always enough, but it is an essential prerequisite.

Unlike the U.S. system, where decisions are made a lot more openly than in France and with a much more marked and decisive participation of politicians (representatives, State or federal senators, governors), the debate on public decision-making in France is essentially an administrative one. Everyone knows that when bills arrive in Parliament they will be voted as filed, save for a few minor adjustments. The real task of drafting, supervising and selecting is carried out inside the administration. Really efficient lobbyists recognise that for them, parliamentary work is only a side activity: the real influence is wielded inside the administration. A particularly illustrative example of this was the *loi Evin* (1991): when the bill was examined by Parliament, this triggered an outburst of opinions, debates and interventions rarely seen before in French post-war parliamentary history. Members of Parliament, representatives from a wide range of interest groups, the press,

farmers, advertisers and sporting event organisers put forward the most varied arguments, often supported by serious studies and quite convincing foreign examples. Outcome: the bill was voted as it had been filed. Why? Because an interest group that had perfectly defined its target, objectives and which had focused its efforts on the inter-ministerial arbitration phase had very efficiently lobbied the Ministry of Health, whose duty was to prepare the bill. Once the debates between the representatives of various points of view inside the administration had been arbitrated, an equilibrium was reached and the bill could no longer be challenged without calling it into question, however great the efforts of the (multiple) participants in public and parliamentary debates might be. It was simply too late.

However, up until recently, graduates of the *Ecole polytechnique* and ENA were not available to engage in lobbying as representatives of private interests because the public sphere was omnipresent and their career choices were to be found inside this sphere. The slow but progressive liberalisation of the French economy has nonetheless put a more limited, although not negligible, number of *grandes écoles* graduates from the administrative elite onto the market, who now find themselves in a position to have a career outside of the public sphere while maintaining the particularly generic and narrow links with it. The French lobbyist is therefore an emerging species whose role is set to increase in the years to come.

Moreover, the French lobbyist, former senior official, also has a very precious asset, that is his familiarity with the EU administrative universe. Indeed, the EU universe, unlike the French decision-making system, which remains, despite everything, under the tight control of politicians participating in important arbitrage institutions, is an essentially bureaucratic world. The EU Commission is an organisation whose logic combines both technical expertise (limited by its few resources but strengthened by an experience which now amounts to decades) and an essentially pragmatic vision of administrative work, simply because the set of ideologies cluttering up the national administrative systems are not translated into this stateless and cosmopolitan body. This ideological neutrality is what facilitates the work of the lobbyists. The Commission knows that they are the spokespersons of interests that they do not conceal; but they are most of all precious agents of information, even if this information is oriented (and what information, isn't?). The major difference between the Commission and the French administration is that the Commission's action is a lot less polluted by ideological or political considerations than that of the French

administration, and that the “sacred cows” (trade unions or other groups) are not revered—because their electoral nuisance capacity at the national level has no equivalent at the Community level.

In other words, the Commission is, which is only apparently paradoxical, an organism where debate between various private interests is much fairer than at a national level, because there is no “EU ideology of the general interest” as vivid as that to which French individual interests are subject, as we mentioned earlier. EU lobbying is simply a participation in a debate and the institution responsible for overseeing the debate between the various interests perceives each of the various participants on an equal footing. This is of course due to the fact that the Commission’s mission consists in proposing and drafting legislative and regulatory texts, and whose legitimacy is primarily technical; ministers and Heads of State and governments represented in EU Councils of Ministers or Summits balance these proposals by injecting political considerations into them. In this process, the French lobbyist, especially if from an administrative background, has an advantage insofar as the EU administration is both very similar to the French administration (high technical competence, procedures for drafting long and detailed texts) and fairly small, which makes it relatively dependant on outside contributions, all the more so as these contributions are formalised and can be rapidly assimilated by the EU administrative institutions. The bureaucratic legitimacy obtained by the lobbyist’s *previous* belonging to the French administrative world is thus combined with the French lobbyist’s legitimacy gained because he *currently* does not belong to it (always suspected by Brussels of being arrogant and tainted by Franco-centrism, thus making it difficult to seek technical compromises that are not polluted by considerations such as those ritually expressed by French representatives on the basis of domestic political considerations, often incomprehensible to their European interlocutors).

The French Court system, attacked from all sides and becoming less and less legitimate, but still very vivid, thus co-exists alongside a European system that is both different, more open and more flexible and whose expansion remains quite largely hidden, even if, in reality, more than two thirds of French laws and regulations originate from EU regulations. The French lobbyist and his practices are therefore in the process of being adapted, in a manner that is actually one step ahead of the French administrative system. Thus, the lobbyist finds himself in an institutional *avant-garde* position, juggling the gap between the French system where he came

from and the European system which validates, strengthens and legitimises his institutional role (and no longer just his social or personal role). The transformation of relations between the powers that be and private interest groups and the new definition of a less univocal and abstract general interest, the development of more transparent “game rules”, are thus moving forward down an indirect path: the path of lobbying.

The Regulation of Lobbyists in the United States and the Impact on Washington's Public Policy Think Tanks

Steven C. Clemons

Introduction: Washington's "Red Dots"

Lobbying may not rank as the world's oldest profession, but it comes close. As long as there have been rulers who depended on gatekeepers and retainers to manage their affairs and policies, others have tried to curry favor with the regime through those close to power. Interestingly in both Europe and Asia, emperors and kings maintained vast arrangements to support members of their court and inner circle. The retinue of people around the Chinese emperor or the Japanese shogun was tremendous, and bribes were common by those who sought favors by influencing those who controlled and made decisions of state.

Wherever and whenever political authority contemplates policies that produce winners and losers, those in favor or those opposed generally organize to pursue what's in their best interests. This jousting among interest groups and political opponents occurs in most political systems, democracies or not, at all levels of government, as much on the local level as at the national.

However, in contemporary times, the greatest arena in the world and perhaps in history of those attempting to determine the course of great policy decisions is Washington, D.C.—itself a city created from a political deal between contending forces in which some won, some lost, and some won even more. The story of the creation of a new capital city in the newly born America helped lay the course for the way in which lobbyists would become part of the equation of all the state's great decisions. Alexander Hamilton, as Secretary of the Treasury was trying to get the new nation's credit established by assuming past debts wrought by the revolution. His political opponents, Thomas Jefferson and James Madison, among others, opposed Hamilton's credit scheme and were themselves being "lobbied" by states

and interests who would be worse off if the nation assumed these debts. In the end, Hamilton knew that of greater importance to Madison was the debate about the site of the future capitol, for which five locations were being considered. Real estate speculators stood to profit handsomely wherever the capitol ended up—and thus Hamilton co-opted his opponents on the credit deal by supporting the establishment of the nation's new capital in a swampy area on the Potomac River, adjacent to Madison's and Jefferson's home state of Virginia. Madison's cronies profited and Virginian pride was stroked as well. Political compromise is nothing new—but oftentimes, behind the scenes, the rough and tumble competition not just between legitimate government officials but between the powerful and unofficial, and one might argue illegitimate, actors in a political system often determines what emerges as official policy.

The framers of the U.S. Constitution did not provide for lobbyists in their treatise on government, but lobbyists have been part of the lifeblood of U.S.'s government from the beginning. Lobbying broadly defined can refer to anyone or any group attempting to influence policy—but generally, over time, the term lobbyist has come to mean simply a paid agent of influence, an advocacy agent, often a lawyer, or public relations representative, or former government official, whose knowledge of the people and back corridors of government can give some private interest an edge in influencing a political decision.

In the U.S. Senate and House of Representatives, correspondence received by a member's office is typically coded and recorded, according to whether the letter, or email, was part of a mass-mailing blitz operation, or whether it was a unique letter. If the letter came from the member's home district or state, the letter is given more weight as opposed to someone writing a member from another part of the country. But the weightiest classification is often called the "red dot" category, which means that the member sees and often responds to the letter personally. To acquire red dot status, one does not typically just send in fascinating and useful public policy proposals; rather, a person makes major campaign donations, giving at the highest legal levels allowed by law. Alternatively, the person may help organize or contribute to a political action committee that can give, legally, great sums to the member's political party. Clearly, money speaks and always has. Contributions get one's views heard, and lobbyists exert their influence by leveraging long-held relationships, strengthened by their fundraising power and ability to generate a great number of red

dot contributors, and by demonstrating their ability to achieve policy outcomes that their clients desire.

Washington's lobbying firms, the "red dot" crowd, cluster themselves along what is known as the "K Street Corridor" in the District of Columbia. Indeed, as Jeffrey Birnbaum has written, "Corporate lobbyists have so suffused the culture of the city that at times they seem to be part of the government itself⁷". The lobbying industry has become so important that some of the nation's leading publications, including the *Washington Post*, the *National Journal*, and *Roll Call* have sections in their paper entirely dedicated to this industry.

The archetype lobbyist—captured in some of the country's most incisive political cartoons over the last century—has been the rather fat, cigar-smoking character lurking in the shadows behind a politician whose pockets the lobbyist is stuffing with dollars. Today, lobbyists have become more sophisticated players of the political game, but there are ongoing efforts to curb the power of these behind the scenes power brokers and to generate greater transparency about the contacts between lobbyists and public officials. Lobbyists used to be able to walk into Congressional "cloak rooms", the private reserves of each party's delegation in each chamber of Congress, something that no average citizen could do. This privilege, however, has been stripped away, but the "red dot" crowd still has many informal privileges, particularly in the U.S. Congress, that average American citizens do not enjoy. Recently, Senator Chris Dodd (D-Conn), Chairman of the Senate Rules and Administration Committee, wanted yet again to raise the perks of lobbyists beyond normal citizens in their access to the Capitol complex by proposing strategies that would allow them to move more quickly and easily into the Capitol to reach Congressional members and their staffs; something akin to a frequent user card to get by the lines, like premier executive card holders get on United Airlines⁸. Nonetheless, financial relationships between public officials and lobbyists are tightly regulated—meals purchased, trips sponsored, or gifts provided by special interests through lobbyists to government officials have either been made illegal or are now regulated by a number of ethics-monitoring centers in the Congress and executive branch of the U.S. government.

⁷ Jeffrey H. Birnbaum, *The Lobbyists: How Influence Peddlers Work their Way in Washington*, New York, Random House, 1992, p. 3.

⁸ See Michael S. Gerber, "Lobbyists Gain Access on the Hill", *The Hill*, 31 July 2002.

A Second Economy of Influence-Peddling: The Think Tank Sector

In an article I wrote after the passage of the 1996 Senate gift ban titled “How to *Still* Make a Senator Smile⁹”, I explored the pathways that influence seekers could still tempt legislators and their staffs despite the raft of new rules and regulations that had been respectively adopted in the House and Senate about their relationships with lobbyists. For instance, the Senate cafeteria, with lots of cheap but fairly decent food, replaced high end restaurants in town as the preferred meeting place for lobbyists to host staffers because the lobbyist could buy an unlimited number of unrecorded meals for the staff member, or Congressional member, without adding to the annual limits applied by the new Congressional rules. The Senate Ethics Manual is a 562-page document that specifies what is permitted and not between Senate members and their staff on one hand and special interests on the other. Part of the statute relating to gifts reads:

Senate Rule 35.1(a)

(1) No Member, officer, or employee of the Senate shall knowingly accept a gift except as provided in this rule.

(2) A Member, officer, or employee may accept a gift (other than cash or cash equivalent) which the Member, officer, or employee reasonably and in good faith believes to have a value of less than \$50, and a cumulative value from one source during a calendar year of less than \$100. No gift with a value below \$10 shall count toward the \$100 annual limit. No formal record keeping is required by this paragraph, but a Member, officer, or employee shall make a good faith effort to comply with this paragraph.

Senate Rule 35.2(b)(1)

The term “gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

⁹ Steven C. Clemons, “How to *Still* Make a Senator Smile: Lobbying for Favors after the 1996 Congressional Ethics Reforms”, *Bungei Shunju* (Tokyo, Japan), February 1998.

However, despite the fact that certain staffers may relish an unending supply of cafeteria food paid for by lobbyists for such diverse interests as grazing rights, electromagnetic spectrum allocation, unilateral sanction exemptions for Cuba or the Sudan, or Alaskan wildlife refuge oil exploration, influence seekers did see a roll back in their ability to wine and dine the Congress in the finest clubs and restaurants in Washington.

Without going into minute detail regarding the rules that now govern lobbyist vs. Congressional and administration contacts, what has occurred is the development of a "second economy" of political influence. Instead of relying on exclusive and direct contacts with government, lobbyists are increasingly using "public education" forums and think tanks to woo and court staffers and members of Congress. The ethics rules allow staffers to attend and enjoy the food and other benefits of "widely attended" meetings, defined in practice as assemblies of more than just ten people. The rules allow staffers and members to travel domestically and abroad, at the expense of others, if the purpose is in line with the public official's duties and if sponsored by an ethics office-screened non-profit entity.

Remarkably, despite the requirement of an ethics clearance, the sponsoring organization has no problems and is breaking no laws by serving as a money-laundering operation for corporate or foreign government sponsorship of programs and trips for public officials. The Chinese government can invite Congressional legislative staff by funnelling money into a non-profit entity organizing and inviting the staffers, and in some cases, actual members of Congress. The Taiwanese government sends all of its sponsored Congressional staff first class on China Airlines and offers VIP treatment in Taipei's best hotels where staff frequently have the unusual experience of their own floor butler. One staff member of this author's acquaintance switched policy issues on a House Member's staff and called to let this author know that he was "available" for foreign trips anywhere if they had anything to do with his new telecommunications policy responsibilities. Many of the programs sponsored by firms and even foreign governments are packed with excellent policy-related educational opportunities, but there are many that are the crudest form of junkets, designed to corrupt rather than enlighten the minds and votes of important public policy practitioners.

RAND Corporation senior analyst Jeremy Azrael has written extensively of the second and third economies of the former Soviet Union and the newly independent

states of Eastern Europe, arguing that the corruption that emerged in these political systems was a natural and predictable necessity given the inadequacies of a command economy. If the state could not get bread and shoes distributed effectively in the country, then alternative markets would emerge to accommodate the demand. Certainly, rules of behavior matter—and are implemented with a system of carrots and sticks to influence behavior—but if the rules of a political economy run too counter to the demand for some good or service, then the supplier will seek other ways to flourish and survive. The drug economy in the United States and in other tightly regulated systems controlling illicit drug production and use is a good example. The second economy of the drug industry in the United States seems to be thriving despite a huge investment by the U.S. government against the production, supply and distribution of illegal drugs. One might consider intellectual property theft in China as another case where the system of rules and law is not yet mature enough to beat back the illicit economy in copying, producing, and distributing pirated copies of popular CDs and even generating new generations of *Harry Potter* novels that J.K. Rowling has never even written, not to mention the pirated copies of those that she has.

What has happened in the lobbying sector is that as it has become increasingly controlled and regulated, lobbyists have sought other less regulated vehicles to pursue their interests, and one of the most attractive strategies that corporate and other interests have employed is to use think tanks as advocates for their policy proposals. Most think tanks are organized under U.S. corporate law on the same terms as social charities and educational organizations—what are called 501(c)3 organizations. If DaimlerChrysler or the Biotechnology Industry Association wanted to educate a group of staffers, or members, about the ways in which Korea was failing to live up to the terms of the bilateral Korea-United States auto agreement, or respectively, wanted to lay out the reasons why Europe's "precautionary principle" regarding genetically modified foods and products was a violation against science, free trade, and modernity itself, than these interests might try and secure an organization like my own—the New America Foundation, or others like the Heritage Foundation, Brookings, the Center for Strategic and International Studies (CSIS), the Cato Institute, the Carnegie Endowment, or the American Enterprise Institute (AEI) to host a luncheon or conference to provide "education" for public officials about these issues. These special interests could ask a non-profit entity such as the

Congressional Economic Leadership Institute, or yet again the New America Foundation, to organize a trip to study biotech issues in Sydney, Australia or to go to Seoul or Brussels to compare European and Korean auto trade parameters. Since members of Congress often have their own office or committee budgets to travel, one of the interesting devices employed by the non-profit organization/special interest nexus is a strategy to educate the spouses of members about public policy issues, coincidentally sending them on trips that track the member's committee or personal office objectives.

The Corruption of Think Tanks

In a tradition fashioned in old Europe, wealthy individuals and institutions often established charities to support the needs and affairs of those less well off. London today seems littered with old line "trusts" established to educate young people, to help the homeless, to deal with all sorts of social ills. In slightly different ways, such foundations, derived from ancient wealth abound in Italy, France, Germany, and other parts of Europe. In the United States, the richest individuals from Andrew Carnegie to Bill Gates have fulfilled their *noblesse oblige* responsibilities by establishing personal foundations. Henry Ford's Ford Foundation has been one of the major foundations engaged in global affairs. Social liberals such as Norman Lear and political conservatives such as John Olin established foundations and trusts to help endow projects and people who would pursue their respective political agendas. But firms have done the same. DaimlerChrysler, AT&T, Federal Express, Phillip Morris, Toyota, AIG Citigroup, firms all around the world give money both from their corporate coffers and from corporate foundations that focus on issues of concern to the firm, which can mean supporting everything from a philharmonic orchestra, to sponsoring an inaugural ball after a presidential election, to sponsoring policy-related trips and programs for public officials.

U.S. style civil society depends on a robust array of politically diverse players and perspective wrestling with each other to achieve ends, some views winning one day and then being forced to retreat the next. Political parties, the media, academics, public policy institutions, labor unions, corporations, community and cultural leaders,

a vast number of special interest organizations represent one of the richest fabrics of civil society the world has seen. To preserve the health of U.S. democracy means in part to prevent monopolies of power, either financial or political, from throwing out of balance the give and take among competitors. Where do lobbyists fit into this picture? Lobbyists and lobbying firms are amoral—usually willing to pursue most agendas for the right compensation. There are lobbyists of the left, of the right, lobbyists that represent communities, states, special interests, labor organizations, business and trade federations, universities, all interests who can win or lose via government policy. Thus, lobbyists permeate the system but as a group are virtually invisible as they take on the guise of their client. As the author of *Demosclerosis*¹⁰, Jonathan Rauch, once stated in an interview about the impossibility of differentiating between the choke-hold of control lobbyists had on government and the best interests of citizens, “the lobbyists are the people; the people are the lobbyists”¹¹.

However, as lobbyists’ tools of the trade, particularly their ability to court favor with money, has become more and more transparent and regulated, the sector has discovered that think tanks—also regulated in theory but “less so” in practice represent a great vehicle to pursue their agendas.

501(c)3 organizations are incorporated and given special tax status under the rules of the Internal Revenue Service as organizations that serve the public good. An AIDS hospice, a private school, the Boy Scouts of America are all institutions organized as non-profit organizations whose objectives are not ostensibly to make financial profits, but rather to serve the public. Think tanks are usually organized under the same tax code provision.

As 501(c)3 public policy organizations, think tanks are not permitted to devote any more than a trivial 5% of their total resources to lobbying and political advocacy. These organizations must have boards of directors and publicly available board meeting minutes and financial disclosure forms, what are called 990 forms. At the time of applying for non-profit status, the Internal Revenue Service (IRS) asks questions about rules of membership with the implication that membership should not be discriminatory; about programs and whether the public can attend or not; about the choice of publications and what sort of governance structure exists to determine

¹⁰ Jonathan Rauch, *Demosclerosis. The Silent Killer of American Government*, New York, Times Books, 1994.

¹¹ Michael Rust, “When Money Talks: Special Interests in Government”, *Insight*, 27 July 1998.

what should and should not be published by the non-profit. However, after approval, there are very few investigative actions about non-profit behavior as long as the organization's tax statements are filed appropriately. One of the few exceptions to this rule has been the long running tussle between the IRS and Church of Scientology, also organized as a non-profit, for public good entity. One of the key reasons that non-profit, rather than normal corporate organization rules are so attractive to public policy institutions and other social good outfits is that contributions to them, from individuals, firms, unions, and foundations are tax-deductible. In other words, a group of wealthy individuals worried about the negative impact on their businesses of disrupting trade with China, could either give money to members of Congress, or donate to political parties—which is not tax deductible; or instead, could make major, unlimited contributions to think tanks to host Congressional staff for dinners, conferences, and trips and otherwise support the public policy work of a think tank designed to make an “advocacy impact”.

This practice is increasingly referred to as “deep lobbying”, and one of the greatest practitioners of it over the years has been Roger Milliken, a textile magnate from the south who has quietly fought the North American Free Trade Association (NAFTA), the Caribbean Basin Initiative, Fast Track legislation, and other legislation designed to carve away at textile protections in the United States. While Milliken's efforts have often lost, his money has in fact bought him time, and he is a formidable player behind the scenes. His support behind the scenes of Ross Perot in 1992 and then again in 1996 probably cost former President Bush and Senator Robert Dole the presidency. Despite Perot's wealth, it was Milliken's bankrolling of Pat Choate's Manufacturing Policy Project, the cultivation of Pat Buchanan that threw some real hurdles in the way of the Republican Party's ability to mount an offense against Bill Clinton. The younger President Bush's cynical but successful attempts to purchase the support of those wanting protection of the steel industry and higher agricultural subsidies, running quite counter to the U.S.'s broader message of liberal and free trade, is also designed to keep other commodity tycoons like Roger Milliken from rising up and funding challengers to face down Bush in 2004.

Think tanks have always taken contributions from people, foundations, and firms that had policy agendas. The Ford Foundation, attempting in many ways to rehabilitate the memory of its founder who was anti-Semitic and prejudiced on many fronts, has become the champion of affirmative action in the United States. Organizations that

do not achieve numerically significant ethnic and gender diversification will not get support from Ford, and touching the sensitive topic of whether affirmative action is anachronistic at this point in history will also keep Ford from giving support, no matter how enthusiastic the Ford Foundation may be about some other given project. The same is true for corporations and unions. No union-related foundation will subscribe to a think tank that has produced too much work in support of a global free trade agenda. And corporations that have been in the trenches fighting against unilateral sanctions policy are not going to be supportive of intellectuals or institutions that argue that much of the world is getting a free ride when the United States makes the decision to sacrifice economic benefits for higher ordered national security concerns.

While it is not new that think tanks have taken money from others with given political interests, the culture of U.S. style civil society has been that academic institutions and think tanks—on the whole—would represent the best possible generators of objective public policy analysis. There would, of course, be a diverse set of views but that these contending perspectives would be informed by history, by analysis, by the empirical, by modelling, and by deep reflection and strategy. Other players in the game had other roles. The media existed to expose and to inform—but not to think deeply. Contending special interests of all sorts had narrower, specific agendas to pursue and are not designed to be the intellectual conscience of the public policy process. Think tanks, and universities to some degree, are mostly policy analysis and research centers, and it is this function, and the legitimacy that think tanks enjoy with public officialdom and the media—that lobbyists have worked very hard to co-opt and subordinate to their agendas.

Some Cases

This paper is not going to provide the sort of “change over time” data that would inform and help generate a much broader and serious discussion of the corruption of think tanks by the lobbying sector. The intention here is to highlight new tendencies and the quite dramatic innovation of increasingly innovative lobbyist sector in finding new tools in the think tank arena to achieve their ends. There is significant anecdotal

information to make this case—but it is really the rather simple reality that lobbying in the United States is coming under greater and great scrutiny. Senator McCain's Herculean efforts along with former Federal Election Commission Chairman Trevor Potter on campaign finance reform are making it tougher—though not impossible—for special interests to give practically unregulated amounts of soft money to political campaigns¹². And of course, senate staffers are forced either to live with annual limits on hosted nice meals that are not widely attended—or to make the effort at getting lobbyists to buy them lots of “less than \$10” meals in the Congressional cafeteria.

The think tank sector, a very crowded field in Washington, is mostly thriving with billions of dollars pumping into it. Despite the appearance of drama in many policy battles, think tanks are less and less committed to policy inquiry designed to stimulate enlightened policy decisions and more oriented to cutting deeper the well worn groves of a paralyzed debate—frozen in place by the contending power of potential winners and losers, each with an army of lobbyists at its heel. Part of the explanation for the increasing vulnerability of think tanks, large and small, to the whims and policy targets of lobbying interests, is that think tanks as an industry are proliferating at a rapid pace and the total dollars going into the policy sector are divided among an increasing number of players. To grow as an institution means struggling to some degree with a Faustian bargain—of taking money from donors and while maintaining the guise of policy objectivity and seriousness still doing the bidding of the lobbyist. The lack of IRS resources to investigate the non-profit sector in any serious manner combined with the fuzziness that exists in actually defining the differences between “public education” for public officials and their staffs and lobbying also enriches the environment for the corruption of think tanks.

While I worked in the U.S. Senate, I was invited by a foundation dedicated to after school tennis programs to watch from one of the luxury boxes leased by IBM the championships of the Legg Mason Tennis Championship. When I was invited, there was no mention of IBM or that I had been specifically selected by IBM to be invited to the charitable event. In the box, enjoying caviar, champagne, and a delightful array of lunch time treats and gourmet meal I ran into about fifteen of the Senate's most luminary staff members—Chiefs of staff for committees and personal offices—from both parties, but nearly all of who had helped IBM and a coalition of other business

¹² See Peter H. Stone, “A Legal Champion for Campaign Reform”, *National Journal*, 5 October 2002, pp. 2904-2905.

members pass in the Senate a provision called the "Team Act" which tried to reform a part of the national labor relations act that prohibited unregulated back and forth exchange between a small number of workers and management on matters that related to all workers. We were being rewarded for our efforts.

In the Senate Ethics Manual, the following examples are described:

"Example 22. The Washington Press Club (a non-profit organization) invites Members to attend its annual Press Awards dinner, which will be attended by representatives of numerous press organizations, and their spouses. The Press Club will provide two tickets to each Member interested in attending, one for the Member, and one for the spouse. The Members may accept the tickets, and may bring their spouses.

"Example 30. The sponsor of a charitable golf tournament invites several Senators, along with numerous other celebrities, to participate in the tournament. The sponsor (the charity non-profit organization) offers to pay the Senators' entrance fee of \$150 in order to induce other people to contribute to the charity in return for the opportunity to play with the celebrities. The Senators may accept because the invitation comes from the sponsor of the charity event."

In other words, if as a corporate lobbyist, you want to invite a staffer to a gala dinner organized by a think tank like the New America Foundation, you cannot buy tickets to the event and give them to the staffer or Congressional member, but you can give a list of names to the non-profit and have that institution invite the staffer. When the night of the gala dinner arrives, the staffer is not surprisingly sitting right there at the table next to the staffer. This practice has become exceedingly common in Washington and is nothing more than a money laundering operation designed to skirt the spirit of the ethics rules established. The annual dinners of the Cato Institute, the Heritage Foundation, and the American Enterprise Institute—which rank as some of the hottest annual events of Washington's public policy social calendar—are filled with officials from the administration and Congress whose attendance is paid by corporate sponsors who have laundered their support and invitation through the non-profit think tank.

The wining and dining that lobbyists used to engage in quite explicitly for Members and senior staff of the Congress and administration now increasingly occurs through non-profit proxies. When I worked in the Senate, some of those who were among the

most eager consumers of these lobbyist-provided opportunities would say, “We respect the rules, as written¹³”.

The most important kind of advocacy of public policy that lobbyists have secured think tanks to pursue, however, is on a far grander, more sophisticated scale than invitations to a set of black tie dinners or trips to Bali and Singapore. Think tanks are in the business of policy analysis, but they also market that analysis and attempt to sell their views to the public and to the government. For example, senior fellows at Brookings carry the reputation of being more academic than most policy wonks in Washington and pursue their policy work through books more frequently than researchers for comparison at the Heritage Foundation who may operate more frequently through faxed policy briefs or op-eds in the *Washington Times* and other newspapers and magazines. However, in the last decade, the same phenomenon that has occurred in scientific research and development funding has happened in the public policy analysis business. Rather than funding basic research in science, funders are increasingly demanding applied research in which the targets of research are more defined and less certain. Similarly, in think tanks—whereas many funders, particularly corporations, unions and foundations, may have been comfortable with a broad swath of public policy research—funders are increasingly expectant of policy achievements that contribute to their bottom line. The examples abound.

The Economic Strategy Institute (ESI), of which I once for several years Executive Vice President, moved from being one of the most significant micro-economic policy impact institutions in Washington to becoming a consulting operation organized as a non-profit. In other words, firms or industry associations would come to the senior staff at ESI and make deals that looked more like retainers for work done than contributions to an organization committed to the public good. This is not back-biting criticism of the institution as the head of the organization and chief economist regularly mentioned in public ESI’s consulting and lobbying competencies. A league of firms interested in generating intellectually impressive reports against global warming remediation efforts was one such commissioned report from a set of lobbyists. Once while discussing the tense debate between long distance carriers and local exchange telecommunications firms, both continuing to struggle with the

¹³ For more discussion of the exploitation of Senate Ethics rules by lobbyists, see Michael Lind’s “Washington Meal Ticket: Official Measures Ruling Lobbyist Gift-Giving to Senators in Washington, D.C.”, *Harper’s Magazine*, August 1998. I am the then undisclosed source in this story outlining the many counter-regulation strategies employed by lobbyists to circumvent the 1996 Ethics Rules.

law and spirit of the 1996 Telecommunications Act, several ESI staff suggested weighing in on the side that gave the most support to the organization. This story is not unique and is not even unusual.

The Progress and Freedom Foundation receives a bulk of its support from local exchange telecom firms and by firms that were opposed to Microsoft's dominance in the computer field, even though the objectives of the Foundation when established had to do with a much wider mandate than telecom and information technologies (IT related debates about regulation. Policy briefs and op-eds produced by this institute sound like advocacy statements that could easily have been written by the firm or trade association advocating some policy. But in this case, the report came from a non-profit institution, given special tax status and not required to pay any kind of corporate income tax. In one case of a battle between U.S. domestic express mail carriers and a successful foreign entrant into the U.S. market, the Economic Strategy Institute organized a public policy/media briefing and released a report about practices of the new entrant to market that appeared without an author's name. It appeared that way because the firm's lobbyists had drafted the report and issued it through the non-profit research organization.

These are clear cases where interests have pursued their agenda through the machinery of non-profits, but to some degree, this is conventional wisdom in Washington. Most believe that all of the major institutions engage to some degree in this behavior, if not as crudely. However, in the foreign policy realm, two cases adequately demonstrate the vulnerability of the think tank sector to the force of will of lobbying interests.

First is the interesting case of USA*Engage, an impressive lobbying entity established to fight the proliferation of unilateral sanctions by the United States against nations that were felt to have threatened vital national security interests of the United States. Sanctions against Sudan, Cuba, Myanmar, and other nations that were unmatched by our key allies in Europe and Asia meant that U.S. firms were losing in many global business opportunities in these countries that Germany, France, Japan, even Israel were hungry to tie up as U.S. multinational firms were themselves tethered at home. The lobbying effort had more than 600 members and included such luminary multinationals as Eastman Kodak, IBM, Unocal, Boeing, General Electric, and Caterpillar. As Jacob Heilbrunn wrote in a powerful expose on the group in 1998:

“USA*Engage, as the name suggests, seeks to equate trade with internationalism, unilateral sanctions with isolationism. It doesn't oppose multilateral sanctions; it simply doesn't want the U.S. to go it alone, to find itself isolated, losing business, antagonizing its allies. Its officials go on to argue that, far from being avaricious supporters of dictatorships, corporations are the last internationalists—nothing less than a new advance guard for democracy¹⁴.”

I happen to completely support the goals of USA*Engage and did so at its founding, but the operation depended in part on its ability to recruit think tanks as both hosts for important public policy practitioners, as described earlier, and to get the U.S. nation's top public policy intellectuals serving as advocacy elements in their public policy objectives, rather than as uncorrupted dispassionate commentators on the ultimate folly and clear limits of widespread application of unilateral sanctions. As Heilbrunn reports, USA*Engage funded a report produced by the Institute of International Economics (IIE), perhaps the premier macroeconomic-focused policy institution in Washington, and had it released to the media at an April 1997 press conference called by USA*Engage. The fact is that nothing in the report prepared by the Institute for International Economics runs counter to the general perspective of most IIE reports. However, IIE did not draft the report before USA*Engage's creation and via indirect funding, drafted a report—albeit thematically consistent with IIE's other work—but crossed the line by issuing a piece of public policy analysis at a lobbying/advocacy effort to influence the media and government.

Most in Washington circles are simply not bothered by the distinctions raised here about the funding and point of entry into the public policy debate of important public policy work and the lobbyists that engendered it. Some might argue that IIE was taking advantage of USA*Engage's operation, rather than the other way around. The point is that though on many fronts USA*Engage's goals are laudable, by people of my belief about the benefits of neo-liberal trade and the limits of economic and security tradeoffs to achieve punitive foreign policy objectives, the lobbyist organization is not organized on behalf of indisputable public interests whereas IIE is—and receives tax-subsidized treatment for this. Heilbrunn also reports that USA*Engage and one of its key members, the National Association of Manufacturers, funded a Georgetown University study that described the “steep price tag for U.S. commercial interests”. The lobbying group's influence was also demonstrated in a

¹⁴ Jacob Heilbrunn, “The Sanctions Sellout”, *New Republic*, 25 May 1998.

flurry of programs and policy briefs issued by the Cato Institute and the Heritage Foundation.

Another example, though an insidious one with the most cynical of objectives in contrast to USA*Engage's work, was pursued by the lobbying firm Jefferson Waterman International (JWI), which according to journalist Ken Silverstein "has promoted despots across three continents"¹⁵. Jefferson Waterman, comprised of staff that previously worked in important national security policy positions in government, including the Central Intelligence Agency (CIA), frequently worked for major U.S. energy and defense firms, but it also vigorously pursues foreign government work. Regrettably, in my view, it was also a significant force in the league of firms tied together in USA*Engage. As written by Silverstein:

"One of JWI's first big clients was President Franjo Tudjman of Croatia, who hired the firm in the mid-1990s during the Balkan wars [...]. In a memo to the Croatian leader, Waterman wrote that U.S.'s foreign and defense policy was "primarily formulated" by the president, based on consultations with the State Department, the Pentagon, the National Security Council and the CIA. "It is important [...] to have official and personal contacts at appropriate levels in all of these organizations", he wrote. "As you are aware, we are well positioned to assist in this process"¹⁶."

Jefferson Waterman also informed Tudjman that it would handle spin control "no matter how difficult the circumstances", and would help cultivate important public policy think tank voices in *support of* Tudjman if he found it necessary to seize control over territory that was being patrolled by United Nations monitors¹⁷. All of Jefferson Waterman's objectives and intentions are transparent and filed on record with the Foreign Agent Registration Act Section of the Criminal Justice Division of the U.S. Department of Justice. Anyone can peruse the filings of lobbying firms and their strategies for achieving influence on behalf of foreign clients. Any quick perusal of the thousands of filings shows the frequent mention of the think tank community, various public policy intellectuals available for hire, and of the media as domains for influence-peddling at the behest of the lobbyist. There is no respect at all for the stated public interest function of non-profit think tanks; rather, permeating this material is the confidence that the legitimacy and special role of think tanks in public

¹⁵ Ken Silverstein, "DESPOTS 'R U.S.: U.S. Lobbyists Champion the Hard Cases", *Australian Financial Review*, 3 August 2002.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

policy are there to be exploited and are low-hanging fruit for the lobbyist and client government to co-opt.

There are many other such cases where lines between the public good and parochial interest are violated every day in the collaboration and interaction between non-profit institutions and lobbyists. One of the most interesting recent cases concerns the current Ambassador-equivalent official of the United States in Taiwan, who formally is titled Director of the American Institute in Taiwan (AIT), nominally a non-profit organization (ironically) that performs most of the functions of an embassy except for the fact that America no longer recognizes the sovereign status of Taiwan. AIT Director Douglas Paal was President George H.W. Bush's National Security Advisor for East Asia. When he left office, Paal founded his own think tank, the Asia Pacific Policy Center (APPC). According to a major expose on Paal and his activities by Joshua Micah Marshall in the *New Republic*, the majority of Doug Paal's staff thought that the APPC was a consulting/lobbying enterprise—this view held by employees of the Center¹⁸! The APPC prepared a newsletter, the annual subscription for which ran in the thousands of dollars and went primarily to important Asian government organizations who while they may have been interested in the newsletter were interested in propping up the career of someone very close to former President Bush.

The APPC did not organize public policy programs for the public, nor did it provide through the internet or otherwise public policy materials available to the public. Several of its reported board members, including Brent Scowcroft, former Congressman Dave McCurdy, and former Pentagon chief Frank Carlucci expressed astonishment when they learned that they were listed as members of the APPC board in the IRS 990 forms filed by Doug Paal's organization. In the last year for which papers were filed, the three largest funders of this non-profit, for public good organization were the Government of Singapore, JETRO (Japan External Trade Organisation, an arm of Japan's Ministry of Economy Trade and Industry), Itochu (a Japanese trading company) and Mitsui Marine & Fire Insurance (a Japanese insurance firm). The Asia Pacific Policy Center also organized and hosted numerous high level trips of members of Congress, particularly the Senate, to Malaysia with funding coming from Malaysian public and private sources into the bank accounts of

¹⁸ Joshua Micah Marshall, "Pacific Whim: The Bush Administration's Dubious Envoy to Taiwan," *New Republic*, 4 March 2002

the APPC, which the Senate Ethics Committee then approved, as an allowable organizer of Congressional trips abroad. Some allege that Douglas Paal was compensated handsomely by then Malaysia Deputy Prime Minister Anwar Ibrahim, who was at that time heir apparent to succeed Prime Minister Mahathir. Joshua Marshall's discoveries then ran in a 4,500 word article in a leading publication did not keep Doug Paal from receiving his appointment in Taipei, though the article probably delayed his departure by several months. The key issue here is that this non-profit organization, the Asia Pacific Policy Center, did not act like the Boy Scouts, or like Brookings, or like an AIDS hospice—or some other sort of institution committed to the social welfare. In some senses, one could argue that there is a degree of corporate fraud involved because consulting firms do pay corporate taxes. Non-profits do not.

In 1997, I drafted legislation passed in the Senate that failed to pass conference committee that would have forced non-profit public affairs organizations to disclose publicly if they accepted more than \$10,000 directly or indirectly from foreign government sources. When this provision was being debated, the American Civil Liberties Union objected on the grounds that the Boy Scouts and other such organizations would have to register under our plan if they accepted foreign government money, and this was thought to be terrible because it would make those entities appear to be foreign agents. So, nothing was done to reply to the real problem that Congress had observed—which was an increasing number of non-profit, 501c3 organizations with dubious funding “lobbying” Congress on such issues as permanent normal trading relations for China while pretending that it was “public education”. Transparency is the solution, but few have found a satisfactory method to achieve reasonable transparency on the funding and intentions of non-profit institutions, many of which have been created by or are controlled by lobbying interests.

One of the members of the senior management of the American Enterprise Institute talked to me about this provision. I prefer not to mention the name of the individual, but the conversation went roughly as follows:

“*AEI*: Steve, the Senator's provision is clearly well intentioned. Transparency regarding foreign funding is a very important issue—but you miss something when you focus on the quantitative dollar level as opposed to the percent of budget that the support represents.

“*Clemons*: I understand that—but that would then let big organizations off the hook that took rather sizeable grants and simply force small organizations to register these contributions, wouldn't it?

“*AEI*: Perhaps, but in the case of AEI for example. Various research institutes in Taiwan have been major funders of AEI's Asia Studies Center and they themselves as you probably know are funded by the Taiwan government. Over time, as things have gone on each year, AEI has begun to appear as a line item in the Taiwanese government budget. But, the overall amount of funding we receive from Taiwan, while big to a small organization, is small given our overall size. Perhaps you should focus on a percentage of overall budget, like perhaps 20 or 30% instead of a dollar amount.”

This was a remarkable conversation. And for all of Doug Paal's issues of running a non-profit organization as a consulting outfit, the revelation that a major institution like AEI was rather immune because of its size from lobbying influences and objectives of foreign governments was remarkable. Doug Paal, by the way, is an important public policy intellectual who probably wanted to run a first rate public policy organization and had a difficult time lining up the sort of financial support that would give him leeway to pursue serious analytical work. The more myopic and bottom line objectives of those who supported APPC became his concern—but his organization was, on the whole, smaller than AEI's Asia Studies Center which is known in Washington to be a strident friend of Taiwan's interests.

Conclusion

Studies of the lobbying industry in Washington, particularly in regards to foreign policy work, should no longer focus on just the firms themselves and the kinds of interactions that they dutifully file under the Lobbying Disclosure Act. A second economy has evolved in which lobbying interests take advantage of, co-opt, seduce, manipulate, and even instigate and found less-well regulated non-profit enterprises that are engaged in public policy work. Frequently, these think tanks are havens for public officials who were pushed out of office by a change in administration, biding their time until they return to government.

In this paper, I have tried to articulate some of the structural aspects of the lobbying industry's relatively new innovations in the arena of think tanks. I have tried to highlight concerns because of my own belief that the public policy community in Washington has played an important role in the robust but delicate collision of forces and interests that we term civil society. To allow lobbyist influences to infiltrate the non-profit public policy sector, without restraint, threatens to fully undermine the legitimacy of the important role of think tanks in public policy. Like so many other sectors in the U.S. society that have fallen recently to accusations and reality of corruption, the think tank sector is in no way immune.

Lastly, I believe that the problems of corruption of think tanks are systemic ones and not easily remedied. The troubling pattern of "deep lobbying" and influence peddling via research institutions needs to be broad and serious. The Internal Revenue Service needs to engage in more enforcement actions against non-profit firms that fail to deliver credible services to the public and which tend to act more as tax-sheltered income machines for key principals in the organization. Furthermore, there should be greater transparency regarding major gifts to non-profits so that deeds done by institutions can be measured by money received from donors, or "clients" as the case may be. My own institution, the New America Foundation, does an admirable job of balancing the funders that would otherwise like to direct New America's activities in one direction or another. However, even the New America Foundation is not entirely immune to both firms and foundations that attempt to use New America's machinery in policy advocacy efforts. We can parrot the same line as other institutions that we would not do anything that did not coincide with our general world view and "radical centrist" perspective—but even then, there are cases where content and funding, and timing, ride too closely together. This paper is not attempting to make a "holier than thou" argument. It is in part confession, in part simple observation, about emerging behaviors in the think tank sector driven by the hunger and creativity of Washington's lobbying machines. I believe that this relatively new trend should be scrutinized so that the important dynamic of U.S. style civil society is not undermined.

Lobbying the European Union: Do Corporate Interests and Foreign Policy Meet?

Alan Butt Philip¹⁹

The EU Lobbying Environment

The EU's system of government is unique and this fact requires lobbyists and lobbying to use different strategies and to be aware of multiple constraints because of the structure of the European Union itself and the great diversity of culture/politics and interests that the EU encompasses. For a long time the accusation was made that the EU decision-making system was some kind of "secret garden" to which only insiders had the key—despite official EU attempts to prove that their decision-making was transparent. The impenetrability of the EU system is indeed caused by lack of transparency at certain key decision points, but it is also the product of the complexity and specificity of the EU decision-making system as well as sheer distance from most of the national capitals²⁰.

The first salient feature of the EU system of governance is that it is governed by a legal order established by a succession of six (soon to be seven?) treaties which are enforceable by resort to the courts, and in particular the European Court of Justice (ECJ). The treaties define and in theory also limit, the scope of the ability of the EU institutions to intervene in new areas of policy, although it must be acknowledged that any initiative that can sustain a logic based on a more thorough application of the principles of the single market is likely to be justified under either Arts 95 or 308 (formerly Arts 100a and 235 of the original EEC Treaty). In practice, there are few constraints on the EU from moving into new policy domains, provided—crucially—all the member states are willing or compliant, the Commission and the European Parliament are supportive. The situation in regard to foreign and security policy, and

¹⁹ Paper prepared for the IFRI Conference, Paris, 14-15 November 2002.

²⁰ For a general introduction to EU decision-making see J. Peterson and E. Bomberg, *Decision-Making in the European Union*, Houndmills (U.K.), Macmillan, 1999; N. Nugent, *The Government and Politics*

justice and home affairs, differs only in that the Commission and the Parliament have no direct influence.

Secondly, the legal instruments used by the EU have distinctive characteristics which must be integrated into all lobbying efforts. The *directive*, which the EU addresses to each member state, defines the end of policy but leaves many of the means by which policy is achieved up to each national government to determine. For the lobbyist this opens up the possibility of organising interest representation at a minimum of two levels. A *regulation* is binding throughout the EU and cannot be modified by member state governments. Regulations are usually rather detailed and specific, and may well come within the umbrella of the broader policy-scoping directives. A *decision* of the EU, which could come from the Commission, the ECJ, the Council of Ministers with or without the European Parliament, is binding on those to whom it is addressed—for example an individual company as much as an individual member state. *Recommendations* of the EU are non-binding 'soft law' devices sometimes used to indicate a policy preference on the part of most member states, and may be taken into account in cases taken to the ECJ.

A third element to bear in mind is location. Most core EU institutions are located in Brussels, but several parts are not. Luxembourg still holds the ECJ, the European Investment Bank and the secretariat of the European Parliament. Strasbourg is home to the plenary sessions of the European Parliament, which physically requires several Commissioners and their staff as well as almost all members of the European Parliament (MEPs) and therefore many active lobbyists to make an inconvenient monthly pilgrimage to the gastronomic capital of Europe! The EU's para-statal agencies are scattered like confetti across all the member states, and outposts of the EU's in-house research arm are to be found in Belgium, Italy, Germany and the UK.

Some of the less pleasant characteristics of international organisations are also in evidence in the case of the EU. There is a constant tendency to seek an equitable division of spoils between the member states, not least in the selection of personnel to occupy key political/administrative posts in the EU institutions. The ECJ has roundly condemned any move which does not appoint personnel on merit, but this does not seem to have influenced very much what has become common practice.

of the European Union, Houndmills (U.K), Macmillan, 2000; and H. Wallace and W. Wallace, *Policy-Making in the European Union*, Oxford, Oxford University Press, 2000.

Decision-making in the EU is still governed by the hybrid arrangements introduced in the Treaty of Maastricht of 1992. The core common economic policies and many others are organised within the first pillar created by this Treaty, the European Community, and are subject to the full rigours of EU institutional involvement. The Commission initiates policy proposals, the Parliament may amend these, as may the Council of Ministers. The ECJ will decide any challenge to the legality of any ensuing legislation and will decide any areas of doubt raised by individual cases, or concerning the Treaty base itself. The second of the three pillars defines the Common Foreign and Security Policy (CFSP) which aims to ensure increased co-ordination and agreement across the EU member states on a range of foreign, security and defence issues. The Commission and the European Parliament have very few rights to intervene in second pillar issues, and decision-making is essentially the preserve of the member states acting behind closed doors. Although there is now a public face, Javier Solana, attached to the Council of Ministers, to represent the CFSP the possibilities of lobbying at EU level are very circumscribed. Because most decisions in this policy field are only taken once a consensus has been found in the Council, the best strategy for those seeking to influence such policies is to be found in approaching individual national governments in their national capitals. This however assumes that the lobbyist knows what is being discussed by the Council, and information of this nature (given that this is usually deemed confidential) is generally more accessible in Brussels than elsewhere. Broadly, the same considerations apply in regard to the third pillar, covering judicial and home affairs (see Appendix).

The role of the main EU institutions is described in the accompanying chart, but a few further observations may provide a deeper level of understanding. The *Commission* will continue until 2005 to be headed up by at least twenty Commissioners appointed by member states, but the role of the President (currently Romano Prodi) is being enhanced by giving him enhanced powers to re-shuffle and to reorganised his team, and by making him more clearly accountable to the European Parliament. The Commission is widely perceived as having lost influence, and its self-confidence, since the forced resignation of the Santer Commission²¹ in the Spring of 1999²².

²¹ Ajouter la même note qu'en français ? Du nom de son président, le Luxembourgeois Jacques Santer. Cette démission faisait suite au rapport d'un comité d'experts critiquant sévèrement la gestion laxiste de l'institution bruxelloise.

Certainly it is trying hard to legislate less and to find new ways of involving more stakeholders in collective EU decisions (see below), but its role as the motor in the EU system for delivering economic and political integration is unchanged. The Commission in any event is still directly responsible for administering key policy sectors such as external relations (including international trade) the management of agricultural markets and the EU competition policy, which embraces approval or disapproval of mergers, and state aids as well as more traditional anti-trust cases.

In addition, the Commission which still retains “the sole right of initiative” in the EC policy-making system, is necessarily the first port of call for those with interests to represent since it remains par excellence the EU’s agenda-setter. Moreover, it is also the Commission that such interests must complain to if they believe that EU legislation is unduly onerous or being incorrectly implemented in the member states, or if they have a claim of dumping, illegal state subsidy or anti-competitive behaviour to be investigated. The Commission has the delicate task of persuading reluctant member states to implement Community obligations agreed in Brussels, and, if necessary, of taking national governments to the ECJ for persistent non-compliance. The Commission is also the body that organises, acting on agreements made with the Council and the EP, the distribution of grants from the structural funds, from the research programmes and from other Community sources.

The *European Parliament* may be losing voter interest (electoral turnout at the 1999 election was mere 52%) but it gained power as a result of all the treaty changes since the Single European Act of 1986 made most single market measures subject to weighted majority voting in the Council and gave the right to the Parliament to take a second look, and possibly veto, at such measures once the Council had stated its views. The Parliament still suffers from trying to grapple with a huge remit and from being unable to focus consistently on key issues. Yet it has sufficient powers, under the new co-decision procedure where it shares the last word with the Council of Ministers, for it to wield major clout at the decision-making end-game on most issues. The final stages, involving a conciliation process, also offer major opportunities for the astute and well-informed lobbyist. Although most attention is paid to the EP’s plenary sessions, to which Commissioners and representatives of the Council

²² Further reading on the European Commission can be found in M. Cini, *The European Commission*, Manchester, Manchester University Press, 1997, and G. Edwards and D. Spence, *The European Commission*, Londres, Cartermill, 1994.

frequently report, the detailed work of the Parliament is done by its twenty standing committees when the committee chair and the *rapporteur* on each individual piece of business are important players on the scene.

Role of Political Parties

The political parties in the EP are more like loose coalitions of like-minded individuals or parties that happen to bear similar names. On issues of national importance their group discipline often breaks down, although there are signs of growing party coherence²³. It is however the nine party groups in the EP, particularly the two largest formations, the Christian Democrats and the Socialists, who control most of the business of the Parliament and the division of spoils across the political spectrum (e.g. committee chairmanships, speaking time in plenary sessions). Since no one group is ever likely to form a majority in the EP, and given the need under the Treaties for major challenges to other EU institutions to be by absolute majority, the Parliament is at its most effective when it can build a broad consensus across the various groups.

The *Council of Ministers*, as well as the summit meetings of EU heads of state and government known as the *European Council*, is also assuming more importance as the Union's agenda expands²⁴. In particular it is the Council not the Commission which is the driving seat on CFSP and justice and home affairs issues (mainly police co-operation, anti-terrorism and measures to combat organised crime). The Council secretariat does not however welcome lobbying, as it does not have the same discretion as the Commission. So those with interests to press must try to gain a hearing in the national capitals or in the permanent representations of each member state in Brussels. The Council is now divided into work into three sections covering agriculture, CFSP, and other business. But almost all national delegations will come to these meetings with instructions approved in the national capitals. Hence the emphasis on lobbying on Council business at the national level. This may be especially fruitful if a member state is about to assume the Presidency of the Council since all Presidency's like to construct a series of objectives for their period in office,

²³ See S. Hix, "How MEPs Vote", ESRC "One Europe or Several?" Programme, Briefing Note 1/00, Sussex European Institute, University of Sussex, April 2000.

²⁴ See F. Hayes-Renshaw and H. Wallace, *The Council of Ministers*, Houndmills (U.K.), Macmillan, 1996).

and the Presidency does have some influence on the order of priorities on each agenda of every Council meeting which that government chairs.

The Council of Ministers also spawns working groups of national officials to consider legislation and other issues; up to two hundred such groups may be in existence at any one time. Although these groups cannot be lobbied directly dedicated lobbyists will nevertheless be present "in the margins" to give their advice to national representatives emerging from these meetings in case they can help officials to better understand the implications of ideas that have surfaced in the group's debate.

The *European Court of Justice* in Luxembourg is clearly not susceptible to the usual forms of lobbying, but its influence is extending as more and more cases are brought to the attention of the Court (and its sister court, the Court of First Instance). This is a natural product of the enlarged scope of the Union and the continuing additions to the stack of EU legislation. The Court may nevertheless be an important avenue for pressure groups to pursue their campaigns, and the Court has made landmark decisions in regard to social policy and competition policy, where relatively little legislation exists and so Treaty principles may have to be interpreted. Trade unions and corporate interests have frequently brought cases to the Court to test what the rights and principles in the Treaties and case law really mean in practice. The *Nouvelles Frontières* case decision in 1986 probably put air passenger service deregulation on a fast track in the EC, for example. The Barber case in 1990 has had the effect of radically changing state and occupational pension arrangements in most EU member states.

The EU Institutional Balance

The commentary above tries to highlight the ways in which each of the four institutions discussed can play an important role in EU decision-making. Yet the lobbyist also needs to know where power lies in the political system as a whole. The EU has clearly become more significant as a political actor both globally and in the domestic politics of each member state. The Council continues to be the leading political actor on the EU scene, but finds that its room for manoeuvre is constrained by other actors on the scene. Traditionally the axis on which the progress of the EC/EU had come to depend is the Council-Commission "dialogue". The Delors Commissions (1985-94) were perceived as strong and may have pushed the integration too fast for comfort, but their actions were based on a strong partnership

with the Council. Since 1995 the Commission has been less self-confident, has been weakened by scandal, and is now absorbed in its own reform. This has greatly strengthened the hand of the Council, but it is still the case that unless the Commission is on side little can progress within the EU. At the same time the powers of the European Parliament have been progressively strengthened, notably with the invention and extension of the co-decision procedure, but also in relation to the Commission, especially in its newly enfeebled state. This has led to even more inter-institutional bargaining behind closed doors. So while all the key EU institutions may lay claim to enhanced powers, the pre-eminence of the Council is still the central feature of the EU decision-making system and seems likely to remain so.

EU Agencies

A continuing debate surrounds the future role of the Commission and the means by which excessive centralisation within the EU can be avoided. One response has been to hive off a number of independent EU agencies from the main institutional core, of which there are now about a dozen. The first of these, in effect, was the European Investment Bank (EIB) set up in 1959 and based in Luxembourg. It has been deliberately detached from the other EU institutions, although governed by parts of the Treaty base, with member states directly involved in the governance of the bank by making appointments to the board of the Bank. The formation of Europol just outside The Hague which occurred in the 1990s bears some similarities to the EIB because of the close involvement of the member states in its operations. However these are exceptions to the normal model of EU agency where the main national government input comes very early on, in seeking to secure the location of an EU institution on its national territory! Thereafter each agency is working within a framework laid down by EU legislation but may of course be subject to considerable corporate pressures—none more so than the European Medicines Agency in London which authorises which commercially produced medical products may be sold within the Union. Another agency, the European Environment Agency in Copenhagen, must also be noted. Its role is to monitor the state of the European environment and the implementation and efficacy of EU environmental legislation. Much of its work relies upon co-operation with the national authorities in each member state, so that a symbiotic relationship develops between the two levels. Ultimately any dissatisfaction within the EEA about any national states' environmental standards is likely to feed

through the Brussels system and to have adverse consequences for individual member states. So it is in the latter's interests to have a good relationship with the Agency and to seek to dissolve at an early stage any doubts about a state's environmental record and practice.

Future Issues Concerning EU Governance

The EU faces rather an uncertain future with the prospect of enlargement changing both the institutional priorities of the Union and the financial balance between net contributors and net recipients from the EU budget—all at a time when the democratic legitimacy of the EU is increasingly being called into question.

From a lobbying perspective, it is no longer clear that member states like Spain and Ireland which have done very well from transfers of funds from richer member states to themselves will remain so enthusiastic about the EU's activities when there are no longer such clear advantages to their state in being an EU member. And if the Treaty of Nice (February 23, 2001) completes the ratification process the representation of the large member states at the top of the Commission will fall from 2005 to one Commissioner only, with the small states—now including many new central and eastern European states as members—holding still more sway in this body. Enlargement will of course swell the numbers of MEPs, judges in the ECJ, members of the Economic and Social Committee (ECOSOC) and of the Committee of the Regions (CDR), ostensibly diluting the power of the large west European states. Yet a complex reconfiguration of the system of qualified majority voting (QMV) system in the Council of Ministers will attempt to claw back some power for the largest EU member states. The four largest states (Germany, France, Italy and the UK) plus one of either Spain or Poland will be able to block decisions in the Council of Ministers now comprising twenty-five states. The Franco-German axis may be further weakened, but the scope for leadership by the big EU players will remain, but in a different form. In any case, through enlargement we can expect to see the policy priorities in the EU alter to reflect the new balance of interests within a larger group of member states. In a nutshell we should expect a reduced interest in extending the scope of environment policy and more interest in security and agricultural issues.

The expansion of the EU can be expected to bring into sharp focus the application of the principle of subsidiarity adopted in the Treaty of Maastricht. So far this declaration of intent does not seem to have made a tangible difference to the output of the EU

institutions, except that the number of new laws has been reduced. But with the added diversity of situation of so many new member states being incorporated into the decision-making process, we can expect renewed determination to enable more and more states to make more decisions at national level to suit local conditions. The Commission itself could well find itself overwhelmed by the enormity of trying to secure compliance to the 80,000 pages of the *acquis communautaire* across such a scattered and diverse territory. These two parallel developments may in turn prompt calls for the re-nationalisation of policies currently managed from Brussels, the most mentioned candidate being agriculture. The Convention of public representatives from the member states and the applicant countries is also looking for ways to further entrench the subsidiarity doctrine, ahead of the intergovernmental conference which will be convened in 2004. This event on its own has the power to reconfigure the decision-making structure as well as the scope of the Union, and it is far from clear what will ensue from such a notoriously unmanageable occasion. A simplified constitution for the EU might perhaps enable individual citizens as well as national governments to challenge some proposed EU policy developments in the courts as *ultra vires*, or as violating the subsidiarity principle.

Meanwhile two other possibilities need to be borne in mind. One is that the role of the Commission itself may alter under the weight of the size of the challenge facing EU bureaucracy following enlargement. One model would have the Commission positioned as more of an enabler or facilitator of policy development basing its influence and its authority on its central position at the hub of numerous policy networks and epistemic communities²⁵. Another parallel scenario could see the Commission, together with the governments of the member states and a wide cross-section of interests, build up a policy programme for Europe in specific sectors based on consensus and co-ordinated measures taken at several levels (local, nation and EU) simultaneously. This “open method of co-ordination” was set in train by decisions taken at the summit meeting of EU leaders in Lisbon in April 2000 and is in the process of being applied in policy fields as diverse as education, pensions, social exclusion, immigration and industrial competitiveness. How far this represents a diminution of influence for the Commission, or the European Parliament, is hard to

²⁵ L. Metcalfe, “Building Capacities for Integration: The Future Role of the Commission”, in *EIPA Scope*, No.96/2, 1996, and “Reforming the Commission”, *EIPA Scope*, No.99/3, 1999, *Journal of the European Institute of Public Administration*, Maastricht (NL).

fathom at this early stage. But clearly there are opportunities in this process for national governments and interest groups to change the EU's agenda, policy by policy²⁶.

The Structure of the Lobby in Brussels

The “lobby” is an amorphous term used to describe an amorphous array of interests seeking representation and influence in centres of power and decision-making. In the case of Brussels the opacity of the lobby is particularly marked, the rules of engagement between lobbyist and the lobbied are very loose, and the demarcation between lobbying organisation and governmental structures is frequently blurred. In this paper the lobby refers to all decision-making players other than the EU institutions themselves, including sectoral interests, promotional pressure groups and, sometimes, third country governments.

It would be too easy to confine a definition of an EU lobby to the 800 plus pan-European federations of national associations and/or companies which are the classic politically specialist, closed membership interlocutors with the EU institutions. In fact there are hundreds more entities—law firms, accountancy firms, management consultancies, political and/or public affairs consultancies, national peak and trade associations and local government representatives—which regularly have such input. The size of the lobby in Brussels today is somewhere near 1,800 lobbying organisations and about ten thousand people employed in lobbying capacities: twenty years ago the figures were more like 400 organisations and 3,000 people. Not all such organisations cover all the EU states, some have members that are not EU-based, a large minority are not even headquartered in Brussels. Some industry associations will not accept Japanese producers based in the EU as members (the car manufacturers) while others are heavily influenced by foreign investors (electrical appliances). In addition the lobbying landscape is increasingly populated by temporary coalitions and *ad hoc* structures formed to react to specific events or proposals. Then there are the activities of governments—particularly non-EU governments that through diplomacy as well as typical lobbying activities seek to

²⁶ See the Commission's White Paper on “European Governance”, COM(01)428, 25 July 2001.

persuade the EU decision-makers that their national interests should be reflected in EU policies²⁷.

In truth, anyone can lobby the EU, but not many people know how best to do so. The lobby is not closely regulated, although the Commission does keep a register of its own which contains the details of some 700 organisations. What the Commission's list does not capture are the paid intermediaries for a whole raft of interests or the passing organisations from a member state which does not regularly have business in Brussels.

The European Parliament also tries to limit the number of passes issued to lobbyists (which confers advantage on the regular Brussels-based lobbyist) in order to spare MEPs the constant pressure to give some of their attention inside the Parliament building to this or that cause or interest. Both the Commission and the European Parliament now have strict rules which prevent their members or staff from receiving significant gifts, but the Parliament seems to be having some difficulty following the Ford report of 1996 in ensuring all MEPs complete fully the new register of their interests. Two groups of lobbying consultancies have drafted codes of conduct for their members, but only a few dozen firms have signed up to these codes which are purely voluntary. All the rest of lobbying activity is unregulated in Brussels, save perhaps as an indirect result of the legal status in Belgium that each organisation chooses for itself.

Academics have made increasing efforts since the mid-1980s to capture the essence and the degree of influence of lobbying organisations in Brussels. Interest groups have long been recognised by integration theorists as vital indicators of how far the European institutions can be characterised as intergovernmental (in which case interest group influence will be low) or how far by contrast the European institutions follow a more federalist or functionalist model (in which case interest group influence can be expected to be higher). This debate within the academic community is by no means settled, but there does seem to be a convergence of views around two poles of opinion—the one “liberal intergovernmentalist” (now more open to accepting that some non-governmental organisations [NGOs] may have some power in the EU system), and the other “new institutionalist” (who argue that member states, interest

²⁷ See J. Greenwood, *The Representation of Interests in the European Union*, Houndmills (U.K.), Macmillan, 1997; S. Mazey and J. Richardson, *Lobbying in the European Union*, Oxford University Press, Oxford, 1993; and R. Pedler (ed.), *European Union Lobbying*, Houndmills (U.K.), Palgrave, 2002.

groups and the EU institutions all interact and influence each other)²⁸. The new institutionalist school emerged in the 1990s mainly as a result of policy and individual decision making case studies which demonstrated that at a sectoral or sub-sectoral level interest groups—both corporate and promotional—can and do play a significant role in the EC/EU decision-making process. It is only where “very high political” issues are concerned that interest groups are more or less shut out of decision-making influence. In other words, where small, technical and un-politicised issues are concerned NGOs may exercise great influence, but the more that governmental interests and political salience play a part in an issue the harder it is for interest groups to contain the debate, let alone influence outcomes. What has also become evident, as the EC has developed into the EU and new treaties have added new competences to the powers of the EU institutions, is that the structure of the lobby has changed. Agriculture and food dominated the lobbying scene in the 1960s; social and environmental interests began to get organised at community level in the 1970s and 1980s; the single market programme triggered a wave of new commercial interests seeking representation; the Treaties of Maastricht and Amsterdam gave a new reason for more social, health, educational, justice and immigrant interests to try to take part in Brussels decision-making²⁹. Overall, the stronger and more coherent the EU has become as an international player—for example on trade and environment issues—the more institutional dialogue has stepped outside the confines of the “margins” of the corridor of power in Brussels and of the Union. Thus one of the most significant fora for the representation of “foreign opinion” in Brussels decision-making in recent years has been the Trans-Atlantic Business Dialogue (TABD) process which only came into being a decade ago³⁰. Nor could one pretend that the views of American business had previously been relatively un-represented in the EU institutions, since the EU Committee of the American Chamber of Commerce (AMCHAM) is generally agreed to be one of the most effective lobbying organisations on the Brussels scene. Rather it can be argued that given the common economic interests of the United States and the EU in regard to international trade, combined

ville?, Cornell University Press, 1998, while new institutionalism is discussed fully in J. Peterson and E. Bomberg, *op.cit.* [1].

²⁹ See A. Butt Philip and O. Gray (eds.), *Directory of Pressure Groups in the European Union*, London, Cartermill, 1996.

³⁰ The TransAtlantic Business Dialogue is reviewed in Maria Green Cowles, “The Transatlantic Business Dialogue: Transforming the New Transatlantic Dialogue”, in M. Pollack and G. Schaeffen

with a longstanding propensity of these two governmental administrations to fall out with each other on individual issues, a new forum was needed for improving mutual understanding which emphasised the shared strategic interests of the two partners.

The flexibility and opportunism of the lobbying scene in Brussels also requires some analysis. The structures for lobbying there are not particularly fixed, and those structures where some interest group representation is pre-determined (e.g. the Economic and Social Committee or the hundreds of official advisory committees) are often not the most effective. If blockages in the current institutional layout prevent keenly felt interests from expressing their point of view, ways can easily be found to create new structures or to find new avenues to make sure those views are in fact heard. The key factor is knowledge of how to play the political game in Brussels. Clearly established organisations with a Brussels presence should know what they have to do. Given the excellence of modern communications it is not always necessary for successful organisation and lobbying professionals to be Brussels-based. Any skills or knowledge that is lacking for a particular lobbying campaign can always be bought from among the highly competitive array of lobbying consultancies. A more detailed consideration of lobbying styles will be undertaken below.

At the heart of the Brussels decision-making process (which of course also involves national, and sometimes sub-national levels as well) is the Commission's need to have information in order to make useful proposals in any sector and to monitor what is happening in each policy area with which it is concerned. That information frequently is not made available, and sometimes cannot be made available by the governments of the member states. So inevitably the Commission turns to representative bodies to give it information and opinion which can inform its own policy approach. Here is the basis of the symbiotic relationship between the Commission and interest groups, which in turn need information about the Commission's thinking and any future plans, in order to be able to react promptly to them or even to pre-empt them. The mutual dependence of these two sets of actors has tended to be reinforced by the fact of the hegemony of the Council of Ministers in most big EU decisions. However it sometimes occurs that a strong partnership between the Commission and well-organised EU-wide interest groups can in effect by-pass the Council, or at least marginalise a member government with strong

(eds.), *Transatlantic Governance in a Global Economy*, ville?, MD: Maryland? (U.S.A), Rowman and Littlefield, 2001.

objections. Thus the Commission-EUROFER (European Confederation of Iron and Steel Industries) alliance in the late 1970s triumphed over German reservations about manipulating the (severely depressed) market in steel products³¹. And the French bankers enthusiasm for liberalising their domestic business environment in the late 1970s carried the day with the Commission and the EC institutions despite the objections of the French government³².

There have been several important changes in the EC/EU decision-making system since 1986 which have also influenced the nature of lobbying on many issues. The progressive extension of the use of qualified majority voting in the Council of Ministers in all four treaties/treaty amendments agreed by member states since the Luxembourg intergovernmental conference of 1985 has in effect handed power back to the Commission and the European Parliament (EP). The EP's role has been enhanced since the institution of direct elections in 1979, but the most important change has been the arrival of the co-decision procedure (set up in the Treaty of Maastricht) which gives the EP joint decision-making rights with the Council of Ministers in an increasing number of policy areas (e.g. much of single market and environmental policy) with the Commission sometimes acting as facilitator where there is a strong disagreement between the Council and the Parliament. Every decision taken by the EU is governed by a very complex rule-book which reflects the state of treaty base and existing EU law concerning the sector in question and the type of decision to be taken. There are said to be at least twenty-three different decision-making structures in play within the EU, so lobbying strategies have to reflect the state of the rulebook, as well as the balance of political forces in play. In some fields the Commission is dominant, in some the Council, while in others the EP has the power to block progress, or an appeal to the ECJ through the legal process could be very effective. Those who want a decent hearing for their interests in Brussels have to work out a strategy for each policy issue and each stage of the decision-making game if they are to have a chance of success.

³¹ See A. Butt Philip, "Pressure Groups and Policy Formation in the European Communities", *Policy and Politics*, Vol.10, No.4, 1982; and Y. Mény and V. Wright, *La Crise de la Sidérurgie Européenne*, Paris, Presses Universitaires de France, 1985.

³² A. Butt Philip, *ibid.*

Lobbying Styles

The EU decision-making system is a unique mixture of lobbying styles, blending a variety of political cultures taken from continental and Anglo-U.S. sources with the needs of a particular and peculiar institutional configuration. What most lobbying organisations have to decide early on in the life of an issue is how far they wish to be pro-active or reactive in its pursuit. Very often organisations are unwilling or unable to commit much resource to this activity in which case they will confer an advantage onto those who do.

A few rules of thumb are normally important to be followed. (1) Find a Euro-group (business association or professional body or similar) that reflects your interest. If none exists, form one that brings together companies or organisations from several member states (preferably) which will greatly add weight with the Commission to your cause. The EU decision-makers want to know how far your views represent a definable strand of opinion rather than one company's particular commercial interest. (2) Get your views in early. The Commission as agenda setter is obviously the place to start—preferably to be lobbied before the relevant directorate has shaped its own ideas. To do this organisations need to have active intelligence about the developing policy scene in Brussels and contacts in the right places. This requires some form of representation in Brussels—direct or by proxy—and periodic networking. (3) Target the key players and lobby them. The Commission, for example, is not one monolith but a famously fragmented bureaucracy. So while the responsible desk officer in one Directorate-General (DG) is obviously a crucial target, other avenues may pay good lobbying dividends. The Commissioner and his cabinet for the same DG should be approached, as well as any other DGs (sometimes several are) with an interest in the issue. That way the whole political environment in which the responsible desk officer is working stands to be influenced. Other avenues should also be pursued such as members of the relevant committee of the European Parliament, members of the ECOSOC and the Committee of the Regions. The precise decision-making chain must be identified for this issue and each link in the chain pursued and lobbied as appropriate. (4) Seek allies where you can find them. The Brussels lobbying scene is highly active and highly populated. One organisation's views can seem rather weak, so the lobbyist needs to find other allies among the lobby. Clearly a major player like

the European Round Table of Industrialists (ERTI) or the EU Committee of AMCHAM would be very influential to have on your side, so they too should be approached and lobbied, as well as any relevant peak association, such as the employers organisation UNICE (Union of Industrial and Employers' Confederations of Europe). Otherwise it may be necessary to form a single issue group or to put together a wider advocacy coalition which will greatly add weight to the position your organisation supports but may also require you to drop some of your demands as part of the political "log-rolling" process. Lobbying overload is a real issue in Brussels, so serious lobbyists often have to combine to make sure their views really are paid attention to. (5) Keep lobbying at different levels. The EU is a prime example of multilevel governance where the political institutions at one level interact with and impact upon other levels above or below. Given the primacy of the Council of Ministers, influencing national government positions is often crucial and this is best done in the national capitals, usually by local companies or organisations. This has increasingly to be done at the same time as actors in Brussels or Strasbourg are being primed or whose support needs to be enlisted. All this takes time and money and networking. Given the EP's increased decision-making powers, especially the co-decision procedure, it is not wise to leave lobbying the MEPs to a late stage, although this can succeed especially as a delaying tactic to force consideration of an aspect of a proposal not previously identified or considered. Timing is also often a key factor, especially navigation of the complex electoral calendar of each member state which can easily mean that the window of opportunity for the Council to take some awkward decisions is rather short. (6) Credibility is a key ingredient of lobbying success in the EU. This can be achieved in a number of ways. It comes from establishing the "representativeness" of your case. It comes from providing a professional service as a lobbyist—offering good information and analysis, by understanding the rules of the political game, the constraints and possibilities of the Treaty base, and by coming up with well-founded ideas which may assist the EU decision-makers in arriving at a successful compromise. A further boost to credibility may arise if unlikely allies are found among "opposing" interest groups—e.g. Shell's dialogue with Greenpeace.

Lobbying and Foreign Policy

The main thrust of lobbying effort at the level of the EU has traditionally been and remains concerned with internal policies, especially those which touch on the single market and the development of trade. Trade however has both an external and an internal dimension, and in so far as the EU institutions seek to regulate or authorise trade relations between third countries and the EU's internal market there is a foreign policy dimension to such relations. The EU is sometimes guilty of not fully recognising the external impacts of its internal policy-making, the clearest example in recent memory being the famous 1985 White Paper on completion of the Internal Market which failed to discuss them at all³³. This somewhat introverted aspect of much EU policy-making makes it all the more important for external actors, such as governments as well as companies, who have a stake in the European market to make representations in Brussels, and to lobby EU decision-makers at national in addition to the European level. It is no exaggeration to say that third country governments have become part of the lobbying infrastructure in the EU.

The nature of such lobbying is now extending beyond trade-related issues as the second and third pillars of EU competence, specified in the Treaty of Maastricht and further developed in the Treaty of Amsterdam, are now being brought into play. The inter-governmental decision-making system may be somewhat different but the interest of third countries in the policy areas covered by co-operation on foreign policy, security and defence (CFSP) and by cooperation on judicial and home affairs (JHA) is clear. This interest on the part of third countries may be purely bilateral, where the subject impacts directly on the government or its territory in question; or the interest may be more collective, where for example an international agreement is being negotiated, concerning subjects such as terrorism, money-laundering, or the illicit narcotics trade or the setting up of an international criminal court.

It is perhaps useful to observe at this point that foreign policy is a rather broad and not very well demarcated concept. It is used here to denote any national government's policy in relation to other countries or international organisations. The forces of globalisation have extended the remit of foreign policy to cover trade in services as well as goods, the financial markets, international crime and terrorism

and so on. With the fast growth of world trade since 1945 foreign policy concerns have become more economic and trade-related. Hence the interest of many third country governments in the European Community's decision-making long before the 1990s ushered in the Treaties of Maastricht and Amsterdam. The EU is the world's largest trading block and its decisions are critical to most nation states in the world that are engaged in international trade.

Nor has the EC been afraid to make links between trade policy and foreign policy. It did so quite clearly in 1982 when it placed an embargo on all goods coming from Argentina into the EC when Argentina invaded the Falkland Islands. It did so again in 1986 when the EC threatened to suspend its trade agreement with Syria in response to evidence in the Hindawi case that Syria had knowingly harboured a terrorist organisation and the actual perpetrators of the attempted blowing-up of an Israeli airliner at London Heathrow airport.

Another more wide-ranging example comes from the long line of trade disputes between the United States and the EC/EU. In 1982 the Reagan administration became very concerned at the strategic implications for Western Europe of constructing an oil/gas pipeline to bring Russian energy supplies to the European market. The U.S. authorities feared that such significant energy dependence on the U.S.S.R (during the "cold war" period) could undermine Western Europe's capacity to respond vigorously to any threats to its security emanating from the U.S.S.R and its East European allies. Accordingly the U.S. decided to threaten to blacklist any U.S. or foreign company supplying parts (or services?) for the construction of this pipeline for the purpose of selecting suppliers for U.S. government contracts or securing any private contract with American companies. The EC threatened retaliatory trade measures if the U.S. threat was implemented and one company at least, British Aerospace, found itself in the dock for ignoring the U.S. embargo. The U.S. position attracted very strong criticism around the world and indeed was soon set aside³⁴.

Regulating the EU Banana Trade

Few issues in the EU policy-making have provoked more anguished debates and intense lobbying than the question of the regulation of Europe's trade in bananas.

³³ The Commission's White Paper on Completing the Internal Market was published in June 1985 as COM(85)238 final.

³⁴ The U.S. embargo on pipeline parts in the early 1980s is discussed in J. Lodge (ed.), *Institutions and Policies of the European Community*, London, Frances Pinter, 1983.

Governments from many parts of the world as well as business interests and other NGOs have spent well over a decade lobbying the EU and pursuing their related claims in the European Court of Justice, the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). The issues and the consequences of any EU decision have been portrayed in lurid and dramatic terms—free trade *versus* fair trade; the economic survival of some micro-states in the Caribbean; the moral duty of EU ex-colonial powers to support their former dependencies; the encouragement of the growing of illicit drugs as the only viable alternative to growing bananas; the power of U.S. multinationals to arrange for trade rules which suit themselves but not others, especially with the aid of the U.S. government in Washington.

The problem of the EU banana trade was known from the outset of the EEC—the signing of the Treaty of Rome was delayed several days while a final protocol was ironed out which enabled the Germans to import bananas free of duty (and hence cheaply) while the French and others could guarantee their own market to ex-colonies and their DOM-TOM dependencies, with higher prices prevailing. The deal was a denial of the single market principle, and when other states like Britain joined the EC/EU the deal was extended, and ultimately enshrined in the Lomé convention under which the EU offers special access to the single market for many products of the now 74 ACP (African, Caribbean and Pacific) states, as well as financial and food aid, shared expertise and export earnings stabilisation funds. The basis of all these complex arrangements was inevitably called into question by the EC's 1985 White Paper on the Completion of the Internal Market and specifically by the promise to stand down all internal border controls within the Community³⁵. The import quotas and differential import duties which had enabled neighbouring national markets to set the terms of the trade in bananas completely differently from each other were set to become useless and inoperable. Either a free market in bananas within the EU would have to be implemented (with consequent driving out of business of local European producers and many West Indian producers) or a whole new EU-wide banana regime would have to be devised in which the plethora of conflicting interests would have to be reconciled. With several large EU states publicly backing the second option in order to defend their local and/or ex-colonial interests, it was obvious from 1986 that the free market option would not be chosen and that a new regime would have to be

hammered out. This was not achieved until 1993, six months after the date the new single market came into being, such was the difficulty of finding agreement between the parties in contention. Nor was this new EU regime to last for long—it was by no means the end of the affair.

The interests involved in lobbying on this issue were both powerful and varied. Local European producers from the Azores, the Canaries, Crete and Lakonia obviously had the ear of their respective governments (Portugal, Spain and Greece) all of which were represented in the Council of Ministers agreeing the new banana regulations. Producers from Martinique and Guadeloupe, as well as many ex-colonies, found the French government attentive and concerned to help. Producers from British ex-colonies and dependencies in the Caribbean and the Pacific found the UK government similarly willing to assist. The Italians did not wish to neglect the interests of Somali producers, another ex-colony. The Caribbean governments indeed formed themselves into an association (the Caribbean Banana Exporters Association, CBEA) with the main banana growing companies in their territories. Meanwhile the Latin American producers kept a low profile but relied on their governments (most of the Central American states, Colombia and Ecuador) to fight their corner. They were arguing for full free trade principles to be upheld—something the EU is normally willing to accept – so that they could reap in full the benefit of their cost advantages in efficient production which they held over and above their ACP, and especially Caribbean, neighbours. The U.S. government was also brought into play by U.S. multinationals (especially Chiquita/United Brands) once the EU had clearly decided to back a banana regime which could be at variance with GATT (and later WTO) rules. Chiquita, and its then chief executive, Carl Lindner, openly admitted to making large donations to both the Democratic and Republican parties to ensure that its voice was heard throughout the course of the debate on the EU banana trade in the 1990s.

So much for government actors. The industry actors took several different approaches as the issues were unfurled. Among the key producer firms, some chose to do battle openly in close association with their home governments (Chiquita/United States; Noboa/Ecuador); others decided to hedge their bets and develop business strategies which would enable them to withstand most foreseeable outcomes (Dole, Del Monte, and the Anglo-Irish Fyffes); while others were tempted some, or even all of the time to let the governments in the territories in which they grow bananas to

³⁵ COM(85)238 final.

take the political strain (Dole and Fyffes again). At the other end of the spectrum the distributors of bananas in the EU were represented by their trade association (the European Community Banana Trade Association, ECBTA) but do not seem to have influenced key decisions on the issues involved. Indeed the nature of their association was being changed throughout this period by the buying-up of key fruit distribution channels by the leading banana producers and shippers—a clear consequence of market integration and vertical integration in the sector driven by increased competition.

But other NGOs have also taken a keen interest in this debate, most notably aid charities, such as Oxfam (Oxford Committee for Famine Relief), groups interested in third world development, and many church organisations. Their combined efforts succeeded in mobilising hundreds of thousands of concerned individuals to protest to their national governments about the plight of the ACP banana producers and to focus the attention of the mass media on the banana trade debate: numerous television documentaries and letter-writing campaigns followed!

The EU Banana Trade Issue: A Brief History

At this point it is necessary to summarise the history and development of the EU banana trade dispute. The story is long and complex.

The origins of the banana trade dispute go back to the formation of the EEC. The signature of the Treaty of Rome in March 1957 was delayed by four days while agreement was sought to the much disputed protocol on bananas which gave to the Federal Republic of Germany a dispensation from the common external tariff (CET) on bananas which all other member states would have to apply. The German consumer has played a powerful role throughout this dispute by persuading the German government to use every means possible to maintain the flow of cheap bananas into the country. Unsurprisingly the Germans have the largest per capita consumption of bananas in the EU. The European Union as a whole accounts for 30% of the world's banana trade by volume (45% by value).

When the programme to complete the single market was launched in 1985 it was abundantly clear that the deliberate fragmentation of the EEC market in the organisation of the banana trade could not possibly continue under conditions of the elimination of internal frontier controls. A new EC-wide banana regime would have to be introduced, just as in the case of new automobiles.

Article 115 of the EEC Treaty had provided the opportunity for member states to bring forward nation-state specific import regimes for bananas and to have these validated and enforced by the Community. The series of Yaoundé and then Lomé Conventions had pledged as recently as 1991 that no ACP state would “be placed, as regards its traditional markets and advantages in those markets, in a less favourable situation than in the past or in the present”.

Thus the scene was set for a long drawn out EC bargaining classic which resulted in a decision by the EC in 1993 to introduce an EC-wide banana regime, with a quota system governing the import of dollar bananas (initially set at 2 million tonnes) and a common external tariff set at 20%. Twelve ACP states would continue to be guaranteed tariff free access for up to 620,000 tonnes of bananas per annum. The Commission was to retain a discretionary quota to allocate as the banana market continued to grow. Dollar banana imports would however be controlled by a licence system which would be distributed only to those importers who undertook to sell some ACP/Euro-bananas. The expectation was that the new system would give 30% of the import licences (by volume of sales) to dealers on the basis of past trade in ACP bananas, 60% on the basis of trade in dollar bananas and 10% to newcomers and traders in EU-grown bananas. The system is managed by the EU banana management committee and the Commission.

The new agreement was achieved with great difficulty using the qualified majority vote, with a change of heart by Denmark proving decisive. The agreement was vigorously attacked by Germany and challenged by them, unsuccessfully, in the European Court of Justice as being contrary to the economic principles enshrined in the Treaty of Rome. A separate challenge was mounted in the GATT by the U.S. and several Latin American dollar banana producers. The GATT ruling on the new regime leading to an increase in the dollar banana quota to 2.1 million tonnes meant that with the demise of GATT in 1994 the procedure for resolving this dispute under the successor WTO had to be started from scratch, this time at the instigation of Ecuador and the U.S. In 1997 the WTO ruled against the EU banana regime as being discriminatory against the Latin American producers. The EU amended its banana regime with effect from January 1999, but a WTO panel ruled in April 1999 that this modified regime perpetuated the discrimination of which the WTO had earlier complained. Before the EU had come up with a response to this later WTO ruling, the U.S. government introduced a system of rolling sanctions to the value of \$200 million

in trade (a “carousel” approach) against EU states, particularly those favouring the EU's banana regime. The EU claimed that the U.S. was breaking WTO rules in so doing, but clearly the U.S. government was by now exasperated with EU delays. Chiquita, one of the leading dollar banana producers and traders, and a U.S.-based company, filed a suit for damages amounting to \$525 million (€564 million) at the end of January 2001, citing losses suffered since the January 1999 regime was implemented. In April 2001, however, the EU appeared to have reached a compromise with the U.S. interests, based around a revised licensing system favouring traditional suppliers of dollar bananas to the European market, much to the disgust of another U.S. banana producer and trader, Dole, and of the government of Ecuador.

The banana trade issue is a good example of the institutional strengths and weaknesses of the EU itself. The divisions within the Council of Ministers were sharp and settling the argument with the application of QMV merely forced the dissident minority to seek (unsuccessfully) relief in the European Court of Justice. The Commission had the misfortune to be led on this issue by DGVI (Agriculture) which by tradition always understands the producer aspects rather than the consumer angle to an issue. But pulling at the line taken by DGVI was a veritable alphabet soup of directorates-general each with its discrete penumbra of lobbying organisations—DGI (External Relations), DGIII (Industrial Affairs), DGVIII (Development and Co-operation), DGXV (Internal Market), DGXVI (Regional Affairs) —as well as the EU banana management committee.

A whole set of layers to this issue needed to be brought into alignment. The developing country interest found itself sharply divided into two opposing camps—ACP states *versus* non ACP states. Single market principles were at stake, favouring a consolidation of the banana regime at EU level, but liberalisation of access to the newly integrated market was having to be balanced against protectionist policies designed to preserve the living standards of some of the poorest people in the world. The traditional lines of division between free trade practising and the more protectionist-inclined states break down on this issue, with the UK espousing a more protectionist view (supported by France, Italy and ultimately the Netherlands) because of the developing country interests at stake. Finally, and possibly most significantly, the whole of the EU's relations with the Americas are placed in jeopardy by this trade dispute. Not just relations with the U.S. (of which more later), but

Caribbean states *versus* central American states, central American states *versus* south American states (notably Ecuador), hard-line central American states such as Honduras pitched against more moderate states such as Costa Rica.

The Auto-Oil Programme

EU acceptance of the 1997 Kyoto Protocol proposals for reducing greenhouse gases had knock-on effects for the car manufacturers and the oil companies selling in Europe. The Union as a whole has agreed to cut emissions from their 1990 levels by eight per cent by 2010, but the scale of reductions needed will be higher in some states (the UK's emissions must fall by 12.5%) while other states (e.g. Ireland) will be allowed an increase in emission levels (up 13%). Kyoto hit the corporate interests in Europe as they were having to respond anyway to intense regulatory pressures from Brussels to achieve more efficient use of resources, cleaner car emissions and greater recycling. Those pressures were a reflection of environmentalist pressures driving from a large number of member states (six of which are generally considered to be in the vanguard of environmentalist policy-making) and the European Parliament³⁶. Rather than be picked off separately by the EU institutions and be forced to dance to a politically determined, rather than industrially convenient or sensible agenda, the two major interests involved and at risk (automobile manufacturers and the oil companies, represented by pan-European federations such as ACEA [European Automobile Manufacturers Association] and EUROPIA [European Petroleum Industry Association]) proposed in 1996 that they would jointly come forward with proposals designed to help achieve the EU's environmental objectives and, later, the Kyoto targets by 2008-12 as far as vehicle emissions are concerned, in consultation with the European Commission, and subject to final approvals by the Council of Ministers and the European Parliament. Separate deals with the Japanese and Korean auto manufacturers have also been concluded. This approach has been accepted, despite misgivings on the part of many MEPs, and the first Auto-Oil programme has been voted through—despite some rather too public disagreements between the two big industries about which of them should be bearing

³⁶ This notion of member states being leaders or laggards on EU environmental policy is discussed in A. Butt Philip, "The European Union: Environmental Policy and the prospects for sustainable development", in K. Hanf and A-I. Janssen, *Governance and Environment in Western Europe*, New York, Longman, 1998) and by A. Sbragia, "Environmental Policy", in H. Wallace and W. Wallace (eds.), *op. cit.* [1].

the greatest burdens for bringing down vehicle emissions. It is also alleged by green NGOs that the two industries have diluted policy demands from the European Union. The second Auto-Oil programme is now being negotiated with greater harmony between the two sectors, and more NGO involvement.

The process does raise important issues about democratic legitimacy and authority in the formation, application and scrutiny of public policy. It also enables corporate interests to have greater control of the policy agenda, and for the same interests to be hostile to Kyoto on one side of the Atlantic while being apparently keen to help the attainment of Kyoto's targets on the other side of the Atlantic!

Positive Aspects of Lobbying

At the most immediate level, lobbying can be viewed as an inevitable part of the democratic process. Those individuals or companies or groups with interests to protect or to advance, or grievances to register are entitled to make their views known directly to European decision-makers as well as to members of the European Parliament. Unusually, the European Parliament is not the only legislature in the EU policy-making system (it shares this role with the Council of Ministers) nor does it initiate legislation (which is the responsibility of the Commission). So simplistically one can argue that lobbying is a manifestation of democracy at work, and capable of ensuring some accountability of the EU institutions at least to those most directly affected by EU decisions.

Lobbying also serves a very useful purpose for the Commission, who can and do sound out corporate and other NGO opinions before making radical new policy initiatives and who often rely on trade and professional associations for sector-wide data and analysis before making up their minds. Given the relatively small size of the Commission and the impossibility of a few officials in Brussels knowing all they need to know about the sectoral peculiarities of each EU member state, the information exchange between the Commission and the lobbyists is often significant for both sides. A well-informed Commission, it is argued, is more likely to propose ideas for policy and its application which are well-founded and capable of being implemented. So there is an argument that lobbying can lead to a more efficient policy process, where the decision-makers can ultimately be pressured into adopting measures that are most likely to achieve the desired policy outcomes, taking fully into account the realities and practicalities on the ground as perceived by the interests immediately

affected. The same interest groups can give feedback on the implementation of EU policy using similar channels into the Commission.

The lobbying process is also increasingly interactive as corporate and other interests compete for attention and, in order to gain a serious hearing, lobbyists must try to take on an inclusive European view that addresses the key issues in their policy area across the Union. Two outcomes may well result. One is the building up of a Europe-wide consensus as one set of interests, in a quest for allies, is constrained to address the concerns of other, not necessarily compatible interests. The other outcome, which may arise in parallel to the consensus-building effect, is that the direct contact with the EU institutions can encourage the integration process over the long-term by a trickle-down impact upon (the mindset of) key opinion-formers, a process that academics have termed "engrenage"³⁷.

The Negative Aspects of Lobbying

There are a number of complaints upon democratic grounds about lobbying at the EU level. First there is the relative secrecy of the decision-making process and the lobbying process which, in combination, feeds the suspicion that deals have been struck behind closed doors between corporate interests and EU decision-makers which do not give due weight to the general or public interest. Democratic structures are thus to an extent by-passed and public accountability marginalized in favour of accountability to a few private interests. A foreign-owned multinational may gain a better hearing for its views in Brussels than an inexperienced group of concerned EU citizens.

Secondly these suspicions are re-enforced by the very obvious fact that it costs serious money to lobby successfully the EU institutions, as this requires much time and specialist expertise. In general the Brussels lobbying scene is dominated by commercial interests with economic interests to defend, for which they are often able and willing to pay a heavy price. Such options are not open to interests of a more general or altruistic purpose like the representation of the interests of refugees, migrant workers, disabled people or the unemployed. The argument thus is that the balance struck in the EU between different interests is heavily weighted in favour of those interests with big money to devote to their cause (generally corporate interests

³⁷ See D. Coombes, *Politics and Bureaucracy in the European Community*, London, Allen & Unwin, 1970.

but also governments). The European Commission acknowledges the force of this argument by contributing to the costs of some sixty EU-wide NGOs, but this response also carries with it the risk of compromising the independence of the organisations set up to represent such interests.

Another concern is the “representativeness” of the organisations established to represent European opinion on this or that subject. The Commission does pay attention to the structure and membership of organisations claiming to represent particular social, economic or professional groups. But equally as great an issue is how far positions adopted by an organisation at EU level really have included the concerns and needs of national associations and how far they have been validated democratically within the organisation. The arrival of the internet and e-mail has certainly transformed the possibilities of Brussels-based NGOs keeping closely in touch with members at national level³⁸. As yet, it is unclear just how far this has forced previously centralised decision-making by insiders running interest groups in Brussels to be decentralised and more widely shared.

Finally, those who work for the Commission, as well as MEPs, frequently refer to lobbying overload, while the fragmented structure of EU decision-making encourages just this. So it can be argued that intensive lobbying efforts, sometimes involving hundreds of organisations, prevents speedy or coherent decision-making in the Union.

Future Issues

The future structure and development of the EU seems curiously unclear despite the decision to enlarge its membership to 25 in 2004. For the lobbying organisations enlargement will mean that whole new sets of interests (sometimes conflicting) will have to be accommodated within individual organisations as well as by the EU institutions. Enlargement is also expected to tip the balance in the Council of Ministers away from, for example, green issues and towards security issues.

Enlargement will certainly add further pressure to the tension that already exists between those who seek EU standardisation and those who prioritise subsidiarity.

³⁸ See J. Greenwood, *Inside EU Business Associations*, Houndmills (U.K.), Palgrave, 2002.

Many corporate interests are keen to see decision-making power centralised at Brussels level. Their life is made simpler, and their costs are kept down, if one rule from Brussels applies everywhere throughout the EU. That is why the big corporate interests made common cause with the environmentalists in 1992 against Jacques Delors' proposal that environmental standards should be set and administered at national level. Those who champion subsidiarity inevitably risk moving away from the notion of "the level playing field" of competing companies serving the single market by opening the door to further national and regional variations in rule-making and rule-application in the EU. And yet, may that not be the inevitable outcome of the next enlargement, even without any specific re-enforcement of the subsidiarity principle? Another emerging issue is the alternative policy-making process heralded by the Lisbon summit (2000) of the "open method of co-ordination" (OMC) mentioned above³⁹. While this envisages an interactive partnership between EU institutions, national governments and key interests to develop policy responses in subject areas where many levels of government, including the EU have some competence, concerns already abound about the risk of excluding elected representatives from this process and including only those interest groups which are well-known to the authorities or which are unlikely to "rock the boat". As the subjects already identified for the OMC approach are rather weighty this will be a very serious issue the more important this process turns out to be.

Finally the integration of the policy-making process in Brussels is made more difficult by multi-faceted *ad hoc* lobbying of the fragmented Commission and other EU institutions. There may well be a case for more formalised consultative fora to which all interested parties are invited to contribute and through which representations to the EU must in future be channelled, and for publishing all the documents, position papers and discussions that such for a elicit. Not only would this assist transparency to the public at large, but it would also contribute to transparency within the Commission and the other EU institutions, and between the various lobbying groups.

³⁹ See the White Paper on "European Governance", *op. cit.* [7].

APPENDIX

Institutions of the European Union

European Commission

The executive arm of the EU, it initiates and drafts legislative proposals, implements the decisions taken by the Council of Ministers and Parliament (see below), administers EU funds (e.g. European Social Fund, Cohesion Fund); and monitors the implementation of EU law by the Member States. It has 20 members: a President and 19 other Commissioners nominated by the Member States (two from the five larger Member States and one from the smaller Member States) and approved by the European Parliament. Commissioners must act independently of their national government and take decisions on the basis of collective responsibility.

European Parliament (EP)

Directly elected since 1979, the EP has 626 members, elected for a term of five years, and is limited to an absolute maximum of 700 in the case of enlargement. Its role is to approve the Member States' choice of President of the European Commission and give prior-approval to the appointment of Commissioners, adopt the Community budget, amend and approve legislative proposals in conjunction with the Council, and to investigate complaints of "mal-administration" in the other institutions. The Amsterdam Treaty extends and simplifies the co-decision procedure, giving the EP almost equal legislative powers with the Council; the co-operation procedure is effectively limited to matters relating to EMU. The EP can also request the Commission to draft legislation in any areas that it feels requires EU action.

Council of Ministers of the European Union

The Council of Ministers consists of Ministers from each of Member State, who vary according to the subject under discussion. The Council has a rotating "presidency" which is held by each Member State in turn for six months. The European Council (or "Summit") is the meeting of the Heads of State and Government of the Member States and the President of the Commission which takes place at least twice a year. The Council has a decisive role in legislation, acting in co-decision with the

Parliament having obtained the views of the COR and ECOSOC where necessary. With the Amsterdam Treaty in force most legislative decisions are taken in the Council by qualified majority (62 votes out of 87); unanimity is required in relatively few areas.

Committee of the Regions (COR)

COR is an advisory body, issuing opinions on draft legislation referred to it by the Commission or Council in areas such as structural policy, cross-border co-operation, environment, employment, equal opportunities, transport, education and training. It can also be consulted by the EP, and may issue “own-initiative” opinions, where it considers special regional interests to be involved. It has 222 representatives from local and regional government in the Member States and an equal number of alternate members, appointed for a term of four years. Members may not be an MEP at the same time.

Economic and Social Committee (ECOSOC)

This is an advisory body which consists of 222 representatives from the various economic and social sectors in the EU, appointed for four years. It has three groups—employers, workers and various interests (such as agriculture, small and medium enterprises [SMEs], and representatives of the general public). It draws up opinions on all draft legislation referred to it by the Commission and may be consulted by the EP.

Conciliation Committee

Comprises representatives of the Council of Ministers and the European Parliament in equal numbers. This Committee is convened when the Council of Ministers and the European Parliament disagree on a proposal for legislation and endeavours to draw up and approve a joint text.

Committee of Permanent Representatives of the Member States (COREPER)

This is made up of national civil servants and is where the initial discussion of legislative proposals takes place between the Member States prior to decision in the Council of Ministers.

European Court of Justice (ECJ)

The Court of Justice, which is based in Luxembourg, ensures that EU law is correctly interpreted and applied in a consistent manner across all Member States (not be confused with the European Court of Human Rights). The Court of First Instance rules on disputes concerning the EU institutions and their staff, competition rules and the European Coal and Steel Community (ECSC).

Court of Auditors

The Court is the Community's financial watchdog, investigating any irregularity in EU revenue and expenditure. It can audit the accounts of any body managing EU funds.

European Investment Bank (EIB)

Provides loans on a non profit-making basis for capital investment which contributes towards balanced economic development in the Community.

European Central Bank (ECB)

Established in May 1998 with the start of stage III of Economic & Monetary Union (EMU). It is responsible for implementation of a single European monetary policy.

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