

European Union Lobbying Post-Lisbon: An Economic Analysis

By
Henry Hauser*

INTRODUCTION

Over the last decade, academics, politicians, civil servants, business elites, and the European public have become concerned that lobbying in the European Union (EU) exacerbates issues of unequal access to political institutions and asymmetrical information provision. Applying general theories of lobbying to the EU magnifies these worries for three reasons.

First, the EU, as a primarily regulatory body with a relatively small budget and sparse staff, relies heavily on lobbyists for technical information.¹ Second, great geographic distances separate Brussels from most national capitals, which are the traditional centers of citizen and interest group organization. Third, the EU is a structurally complex political system, and actors seeking access to its institutions must possess political sophistication and expansive resources.²

Perhaps contemporary fascination with EU lobbying also stems from the diversity and complexity of EU interest representation, which renders definitive, positive conclusions highly elusive.³ Although many scholars have made valuable contributions in mapping the labyrinthine landscape of EU interest representation,⁴ such literature presently lacks an investigation of the ways in

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1. RINUS VAN SCHENDELEN, *MACHIAVELLI IN BRUSSELS: THE ART OF LOBBYING THE EU* 91 (2d ed. 2006).

2. David Coen, *The European Business Interest and the Nation State: Large-firm Lobbying in the European Union and Member States*, 18 J. PUB. POL'Y 75, 76 (1998).

3. JUSTIN GREENWOOD ET AL. EDS., *ORGANIZED INTERESTS AND THE EUROPEAN COMMUNITY* 3 (1992).

4. Peiter Bouwen, *Corporate Lobbying in the European Union: the Logic of Access*, 9 J. EUR. PUB. POL'Y 365, 368 (2002) (relationship between lobbyists and EU institutions represents

which the recently approved Treaty of Lisbon (“Lisbon”) will impact lobbying and the market for access to EU institutions.⁵ In this paper, I begin such an investigation through employing a positivist approach grounded upon economic principles.

I argue that Lisbon has several implications for EU lobbying, the most important of which is that expansion of Qualified Majority Voting will increase legislative output and thus enhance the rewards of lobbying as interests groups vie to influence a larger portfolio of regulations and directives. I predict that Lisbon will drive an increase in demand for access to the EU policy process by precipitating an increase in EU legislative output across a more expansive range of policy areas. Moreover, the assumption of new competencies by EU governmental bodies will exacerbate the strain on its institutional resources and compel policymakers to rely more heavily on lobbyists for technical information and representative input. In the aggregate, these shifts will result in a higher quantity of EU lobbying. Whether EU institutions will be able to secure a greater “price” for access to the policymaking process will depend on whether the shift in demand for access to EU institutions or shift in supply of access to Europe’s institutions dominates.

In Section I, I will explore the critical importance of lobbying to Europe’s democratic deficit debate. I also highlight the key arguments for and against the proposition that lobbying is necessary to representative democracy. Section II contains a discussion of the Lisbon provisions that could affect Europe’s lobbying landscape. In Section III, I focus on the history of interest representation in the EU by exploring the early history of Brussels lobbying, identifying causal factors that may explain the explosion in EU lobbying, and surveying the current landscape of Brussels’ interest representation. In Section IV, I lay out a proposed theoretical model to describe the market for EU interest representation. Then, in Section V, I discuss the EU Commission, Parliament, and Council as the three most important EU organs and highlight the institutional, regulatory, and legislative powers of each body. I explore why each organ is an attractive target for interest representatives and evaluate the ways in which interacting with lobbyists ameliorates each institution’s democratic and resource-based deficiencies. Section VI discusses EU lobbyists. Here, I analyze the various strategic mechanisms and structural forms utilized by lobbyists to gain access to EU institutions and steer policy, highlighting key differences between public and private interest groups. Finally, Section VII employs the

“exchange relation between two groups of interdependent organizations”); *see also* David Coen, *Empirical and Theoretical Studies in EU lobbying*, 14 J. EUR. PUB. POL’Y 333, 333 (2007) (noting the growing political sophistication of lobbyists within the EU’s “complex multi-level venue environment”); Directorate General Internal Policies of the Union, *Lobbying in the European Union*, PE 393.226 (Nov. 2007), available at <http://www.europarl.europa.eu/activities/committees/studies/download.do?file=18208>.

5. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306).

theoretical model set forth out in Section IV to predict the impact of Lisbon on EU lobbying.

Before further exploring EU lobbying, I will establish clear definitions of the key terms upon which this article relies. Lobbying is generally defined as the attempted or successful influencing of legislative-administrative decisions made by public authorities through the use of interested representatives.⁶ The terms “lobbying,” and “interest representation” will be used interchangeably. A lobbyist, or interest representative, is an individual or organization that seeks to influence policy, but does not seek to be elected.⁷ Whereas positive lobbying describes efforts to steer policymakers toward enacting favorable regulations or directives, negative lobbying refers to efforts to derail or block unfavorable legislation.

I divide “legitimacy” into two components: output legitimacy and input legitimacy. Output legitimacy of EU policy concerns the “supply of information, ideas and expert resources for the technical quality” of EU policies,⁸ and is closely associated with leveraging expert knowledge to produce effective legislation.⁹ However, legitimacy stems from more than the achievement of effective results; it is also rooted in the opportunities for citizens to help shape these results.¹⁰ For the purposes of this paper, I define input legitimacy as the capacity of a diverse range of citizens and organizations to influence EU policy, which is measured as the proportion of EU citizens whose interests a lobbyist can credibly allege to represent.

I.

LOBBYING AND THE DEMOCRATIC DEFICIT

Interest representation is a central theme in contemporary debates concerning Europe’s “democratic deficit.” Lobbying exists at all governance levels, substantially impacting local, regional, national, European, and global policy outcomes.¹¹ Its impact can be observed across all stages of the European policy process, as interest groups influence agenda setting in the European Commission, policy reformation in the Parliament, ratification of regulations and directives in the Council, and the application of law in nation-states.¹² Many

6. Peter Koepl, *The Acceptance, Relevance and Dominance of Lobbying in the EU Commission*, 1 J. PUB. AFF. 69, 71 (2001).

7. SONIA MAZEY & JEREMY RICHARDSON, ENVIRONMENTAL POLICY IN THE EUROPEAN UNION: ACTORS, INSTITUTIONS AND PROCESSES 141 (Andrew Jordan ed., 2d ed. 2002).

8. JEREMY GREENWOOD, INTEREST REPRESENTATION IN THE EUROPEAN UNION 1 (2d ed. 2007).

9. GREENWOOD, *supra* note 3, at 366

10. *See generally* GREENWOOD, *supra* note 8.

11. *See generally* Bouwen, *supra* note 4.

12. *See* Directorate General Internal Policies, *supra* note 4.

scholars contend that the EU relies more heavily on civil society actors than any other government in the world.¹³

Some commentators argue that Europe suffers from a “democratic deficit,” brought on by EU political institutions’ lack of responsiveness to the demands of European citizens and weak turnout in elections to European Parliament.¹⁴ Thus, according to this view, Europe’s democratic deficit stems from a lack of institutional legitimacy of EU organs and low degree of citizens’ influence upon these institutions.¹⁵

Pluralist¹⁶ democratic systems of governance require balanced interest participation.¹⁷ As such, the EU must “combine and reinforce” diverse forms of representation and participation.¹⁸ In accord, the “group theory” of politics holds that democratic societies must employ a group process to make decisions, encouraging citizens groups, individual businesses, law firms, and trade federations to influence policymakers.¹⁹ Input from elite interest representatives is insufficient to establish legitimacy of governmental institutions.²⁰ In practice, however, some citizens and interests tend to enjoy “superior representation and disproportionate power.”²¹ Indeed, the “pluralist choir,” Schattschneider colorfully argues, “sings with a heavily upper-class accent.”²²

Reconciling the “demands of self-interested private interests with the interests of wider civil society” represents the “central problem of democratic life.”²³ The criticisms of pluralist theory are magnified when a system proves incapable of prioritizing relevant interests and when better organized and more

13. GREENWOOD, *supra* note 8, at 1.

14. *Glossary—Democratic Deficit*, EUROPA—OFFICIAL WEBSITE OF THE EUROPEAN UNION, http://europa.eu/scadplus/glossary/democratic_deficit_en.htm (last visited Jan. 8, 2010).

15. *The First Use of the Term “Democratic Deficit,”* FEDERAL UNION—DEMOCRACY AND ACCOUNTABILITY AT ALL LEVELS OF GOVERNANCE, <http://www.federalunion.org.uk/the-first-use-of-the-term-democratic-deficit/> (last visited Jan. 8, 2010).

16. Pluralism is the political theory that various segments of society organize successfully to bargain with each other and influence politics, which, in turn results in higher quality information flow between policymakers and citizens.

17. Christine Mahoney, *The Power of Institutions: State and Interest Group Activity in the European Union*, 5 EUR. UNION POL. 441, 442 (2004).

18. REBEKKA GOEHRING, *Interest Representation and Legitimacy in the European Union: The New Quest for Civil Society Formation*, in INFLUENCE AND INTERESTS IN THE EUROPEAN UNION: THE NEW POLITICS OF PERSUASION AND ADVOCACY 118, 134 (Alex Warleigh & Jenny Fairbrass eds., 2002).

19. G. DAVID GARSON, *GROUP THEORIES OF POLITICS* 206 (1978).

20. IRINA MICHALOWITZ, *EU LOBBYING PRINCIPALS, AGENTS AND TARGETS: STRATEGIC INTEREST INTERMEDIATION IN EU POLICY-MAKING* 62 (4th ed. 2004).

21. ROBERT COOTER, *THE STRATEGIC CONSTITUTION* 63 (2d ed. 2002).

22. MICHALOWITZ, *supra* note 20, at 26.

23. Jeremy Greenwood & Clive Thomas, *Regulating Lobbying in the Western World*, 51 PARLIAMENTARY AFF. 487, 487 (1998).

highly funded groups have superior access to political resources.²⁴ Elite interest groups enjoy unparalleled access to EU governing bodies, placing a strain on openness, transparency, and democracy.²⁵ Over five decades ago, Oxford Professor Sammy Finer asserted that the “world of pressure politics [is] obscured from public view,” and in order to remedy this ill, Finer demanded “more light!”²⁶

Political scientists differ greatly in their perspectives on lobbying. Many recognize the legitimate and important role that public and private interests can play in the public policy process.²⁷ These commentators see EU lobbyists as driving a “mutual[ly] beneficial exchange of information,” as opposed to being brokers of “undue influence.”²⁸ Viewed through this lens, interest groups are representatives of organized civil society with the capacity to contribute to EU democratic legitimacy. As the European Commission itself has declared, “lobbying is a legitimate part of the democratic system, regardless of whether it is carried out by citizens, companies, or firms working on behalf of third parties, think tanks, lawyers, [or] public affairs professionals.”²⁹

Interest representatives can bridge the democratic gap between Europe’s institutions and its citizens by enhancing the legitimacy of EU legislation. Interest groups contribute crucial resources such as factual data to support the policy formulation, implementation, and monitoring functions of EU institutions.³⁰ Lobbyists also use their resources to provide EU institutions with the expertise necessary to efficiently address European issues.³¹

Lobbying opens the complex EU policy process to a diverse range of citizens and organizations. In interacting with lobbyists, EU institutions seek to integrate comprehensive and diverse input into legislation. Such interactions enhance popular identification with EU policies, which bolsters EU legitimacy.³² Further, “investment in political influence provides voters with a way of

24. Directorate General for Research, *Lobbying in the European Union: Current Rules and Practices* (April 2004), available at http://ec.europa.eu/civil_society/interest_groups/docs/workingdocparl.pdf.

25. *Id.*

26. SAMMY FINER, ANONYMOUS EMPIRE: A STUDY OF THE LOBBY IN GREAT BRITAIN 12 (1958).

27. Jeremy Richardson, *Government, Interest and Policy Change*, 48 POL. STUD. 1006, cited in David Coen, *Empirical and theoretical studies in EU lobbying*, 14 J. EUR. PUB. POL’Y. 333, 340 (2007).

28. Margaret McCown, *Interest Groups and the European Court of Justice*, in LOBBYING THE EUROPEAN UNION 91 (David Coen, & Jeremy Richardson 2d ed., 2009).

29. Directorate General for Research, *supra* note 24.

30. Justin Greenwood, *The Search for Input Legitimacy Through Organised Civil Society in the European Union*, 2 TRANSNAT’L ASS’NS, 145, 145 (2002); Koepl, *supra* note 6, at 70 (lobbying is more than mere persuasion; in addition, lobbyists must provide factual and relevant information).

31. BOUWEN, *supra* note 4, at 377.

32. GREENWOOD, *supra* note 8, at 116-17.

expressing the intensity of their preferences, which, in turn, increases the efficiency of politicians.”³³ Lobbyists perform the critical function of informing citizens about laws and regulations and can increase the average quantity of citizens’ political knowledge.³⁴ However, lobbyists only provide information to those who are able to pay for it. Because different groups have varying abilities to bear this cost, lobbying also increases the variance in political information known to citizens.³⁵

Although concern exists as to whether lobbyists do in fact exert undue influence, the potential for lobbyists to “capture” policymakers is mitigated by the diversity and complexity of EU governance.³⁶ Former Commission Vice President Siim Kallas points out that there has been “no smoking evidence, no burning scandals and no known cases of corruption of European decision-makers involved in lobbying.”³⁷ Many even tout lobbyists as serving the important function of scrutinizing Brussels’ civil servants and politicians that evade media and public attention.³⁸

Despite the many arguments in favor of granting organized interests access to Europe’s public policymaking process, several convincing arguments stand in opposition to this proposition. First, lobbying is not an entirely productive activity. Although investments in manufacturing facilities, labor, and research are entirely productive, lobbying may result in laws that “redistribute government money or restrict competition.” Such wasteful political activities are known as “rent-seeking,” which refers to the pursuit of gains via “passive ownership, as opposed to profits from productive activity.”³⁹ Thus, investment in political influence can be costly and unproductive because it merely seeks to transfer wealth between groups.⁴⁰

Second, lobbying can detract from legitimacy. Europe is rife with public suspicion that policy decisions reflect the influence of private interests over the common European interest.⁴¹ Perceptions of “sinister influence pedaling”⁴² by interest groups with reckless disregard for the general welfare have fed allegations of dishonesty and corruption in Europe’s policymaking processes.

33. COOTER, *supra* note 21, at 72.

34. Coen, *supra* note 2, at 79.

35. *Id.*

36. Coen, *supra* note 2, at 79 (“Changing institutional balance, expansion of policy areas, and technical nature of functionaries reduce chance of bureaucratic capture”).

37. GREENWOOD, *supra* note 8.

38. *See id.*

39. *Id.* at 80.

40. *Id.* at 81.

41. *Euractiv Report on Launch of Bursting the Brussels Bubble*, CORPORATE EUROPEAN OBSERVATORY (Apr. 27, 2010), <http://www.euractiv.com/en/pa/eu-transparency-talks-resume-next-month-news-485734>.

42. *See* LESTER MILBRATH, *THE WASHINGTON LOBBYISTS* 14 (1963).

Third, lobbying “confers an unfair advantage on those that can afford to carry it out and therefore runs counter to the notion of democracy.”⁴³ Business groups possess organizational capacity, financial resources, and technical expertise that citizens’ organization cannot match.⁴⁴ The dominance of business interests is a great concern to pluralist theorists.⁴⁵ Business and professional organizations comprise over 75% of EU lobbyists but citizens’ organizations are represented by merely 20% of interest groups.⁴⁶ The European Parliament, in accord, states that 3,500 of an estimated 5,000 EU interest groups are business oriented, while just 20% are citizens’/public organizations.⁴⁷ However, it is not entirely clear that business interests have as much sway as the numbers suggest. The numerical majority of business interests alone should not necessarily be automatically equated with disproportionate influence over EU policy.⁴⁸

Generally, though, business interests are quite successful in capturing EU regulators via corporate dominance of the advisory groups that the Commission consults when drawing up legislation.⁴⁹ Members of European Parliament (“MEP”) recently criticized the Commission for the close proximity between financial and the Commission’s political elites.⁵⁰ Because of the power imbalance between financial interests and those representing civil society, as well as intensive lobbying efforts of banking interests, policymakers tend to afford disproportionate attention to the positions of financial interests. MEPs contend that the Commission actively bolsters the influence of financial interests by selecting banking lobbyists to participate in its advisory groups.⁵¹ MEPs, however, cannot themselves escape blame for contributing to this asymmetry of influence.⁵²

Thus, while interest representation is of great significance to contemporary debates concerning Europe’s democratic deficit, commentators’ perspectives

43. ALEX WARLEIGH & JENNY FAIRBRASS, INFLUENCE AND INTERESTS IN THE EUROPEAN UNION: THE NEW POLITICS OF PERSUASION AND ADVOCACY 2 (2002).

44. Coen, *supra* note 4, at 335 (European chemical industry federation lobbyists in Brussels outnumber those of all environmental groups combined).

45. Garson, *supra* note 19, at 444 (Resource rich groups such as businesses and industrial federations “compose a larger proportion of the interest group community and therefore have stronger influence on policy-making”).

46. Coen, *supra* note 4, at 335.

47. *Id.*

48. *See, e.g.*, GREENWOOD, *supra* note 8, at 16 (Noting that the EU landscape is highly specialized, which creates a high degree of competition between various business lobbies).

49. *Id.* at 15.

50. *MEPs Ring Alarm Bells Over Financial Industry’s Excessive Lobbying Power*, BRUSSELS SUNSHINE BLOG (June 29, 2010), <http://blog.brusselssunshine.eu/>.

51. *Id.*

52. Directorate General for Research, *supra* note 24 (Although MEPs publicly champion Parliament’s amending power as a mechanism by which it channels interests of citizens’ and NGOs, evidence indicates that the majority of these amendments are actually written by industry lobbyists and merely passed on members of Parliament).

vary widely regarding the nature of this impact. While some commentators see EU lobbyists as driving a mutually beneficial exchange of information that alleviates Europe's democratic deficit, others criticize lobbying as detrimental to the democracy and legitimacy of EU governance.

II.

THE TREATY OF LISBON

The Treaty of Lisbon represents yet another step in Europe's march toward the creation of "an ever closer union among the peoples of Europe."⁵³ Among the most controversial elements of the Lisbon Treaty is its extension of Qualified Majority Voting ("QMV") within the Council to new policy domains. Pursuant to QMV, member states' votes are weighted roughly according to population size. While QMV "provides necessary efficiencies in EU lawmaking," critics fear it "threatens Member State sovereignty that unanimous voting would protect."⁵⁴ In subsection A, I will discuss the new strategic opportunities for lobbyists under Lisbon. In subsection B, I highlight the ways in which Lisbon provides new incentives for EU political institutions to grant access to interest representatives.

A. *Enhanced Rewards for Lobbying*

Lisbon extends QMV to a plethora of new policy areas, including structural and cohesion funds, freedom of movement for workers, social security, common defense policy, intellectual property, sport, professional licensing, energy, tourism, and budgeting.⁵⁵ Scholars point to the introduction of QMV in the Council as a causal factor to explain the explosion of EU lobbying in the final decade of the 20th century. Thus, it is not unreasonable to hypothesize that expanding of QMV will drive a similar increase in demand for access to Europe's institutions.⁵⁶

Significantly, Lisbon also introduces a new voting system in the Council, "double majority voting," which scholars label the most sensitive political issue of Lisbon.⁵⁷ Double majority voting requires the support of 55% of EU member

53. Stephen Siberson, *Inching Toward EU Supranationalism? Qualified Majority Voting and Unanimity Under the Treaty of Lisbon*, 50 VA. J. INT'L L. 920, 922 (2010).

54. *Id.*

55. *Id.*

56. Certain fields remain subject to unanimous voting including: harmonization of certain tax matters, harmonization in the field of social security and social protection, common foreign and security policy, citizenship, restrictions on capital flow to or from third countries, and membership in the Union. I predict that lobbying in these policy areas will either remain constant or decrease as the returns to investment in lobbying decline relative to other policy domains.

57. STEFAN GRILLER & JACQUES ZILLER, *THE LISBON TREATY: EU CONSTITUTIONALISM WITHOUT A CONSTITUTIONAL TREATY?* 57 (2008).

countries and endorsement of states representing 65% of the EU population to enact legislation.

Under the now superseded Treaty of Nice voting procedure, proposed legislation required 74% of weighted votes, the support of states representing 62% of the EU population, and a simple majority of member states. In virtually every scenario, satisfaction of the condition on voting weights implied that the population requirement would be satisfied.⁵⁸ Thus, the 74% voting weight requirement was arguably the greatest impediment to the Council's enactment of legislation.⁵⁹

I therefore hypothesize that the elimination of the 74% weighted vote requirement under Lisbon, by enabling the Council to approve legislation more easily, will drive an increase in EU legislative output.⁶⁰ Greater legislative output, in turn, may enhance rewards of lobbying and drive an increase in demand for access to the policymaking process as interests groups vie to influence a larger portfolio of regulations and directives.⁶¹ In addition, by affording greater weight to population, double majority voting may shift the focus of lobbying toward Member States with more citizens.⁶²

Several other provisions of the Lisbon Treaty, though less controversial, also have the potential to drive critical shifts in EU lobbying. First, Lisbon extends "co-decision" to several new fields, allocating greater powers to Parliament in policy areas such as immigration, penal judicial cooperation, police cooperation, trade policy, and agriculture. Under Lisbon, a majority of Parliament must assent to all international agreements in fields governed by co-decision.

Second, Lisbon further bolsters the power of Parliament by abolishing the distinction between "compulsory" expenditures and "non-compulsory" expenditures. This change makes Parliament an equal partner with the Council

58. The only exception occurs when a proposal is rejected by Germany and supported by exactly three of France, United Kingdom, Italy, Spain and Poland, along with nearly all of the remaining 21 member states.

59. Axel Moberg, *The Voting System in the European Union: The Balance Between Large and Small Countries*, 21 SCANDINAVIAN POL. STUD. 347, 352 (1998). For example, under Nice, a proposed regulation could be derailed at the Council stage despite the support of the dozen most populous member states representing ~86.5% of the EU population because the combined weighted votes of these dozen states fails to exceed 74% weighted vote threshold.

60. On the other hand, it must be noted that Lisbon increases in the number of member states required to support legislation from fourteen to fifteen, thus making it somewhat more difficult to pass legislation and possibly counteracting the increase in demand for access.

61. However, the true effects of double majority voting reform may not be felt for several years, as any member state may request that the Nice Treaty rules be used for a particular vote until 2017. See Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1.

62. For instance, Germany's share of Council votes nearly doubles from 8.4% under the Nice Treaty to 16.4% pursuant to Lisbon.

of Ministers in deciding EU expenditures.⁶³ I hypothesize that allocating greater powers to Parliament will result in more lobbying of that body.

Third, Lisbon creates the position of High Representative for the Union in Foreign Affairs and Security Policy (“Vice-President of the Commission”). I hypothesize that the Commission Vice-President will emerge as a new target for interest representatives. Finally, Lisbon strengthens the powers of the Commission President by granting him authority to dismiss fellow Commissioners. A stronger Commission President may drive an increase in demand for access to the Commission, as lobbyists vie to persuade the President to oust Commissioners unfavorable to their respective causes.

B. New Incentives to Grant Access

The assumption of new competencies by EU organs under Lisbon will exacerbate the present strain on its institutional resources and compel policymakers to rely more heavily on lobbyists for technical information. Under Lisbon, the EU has enhanced responsibility over security, home affairs, fundamental rights, and justice. Scholars have long recognized that the Commission is overstressed and under staffed, and that the complexity of issues on the agenda of Parliament exceeds the technical expertise of its members. Because EU institutions interact with lobbyists partly to mitigate internal resource and staffing deficiencies, I suggest that the expansion of EU functions and competencies under Lisbon may compel policymakers to supply more access to interest groups.

III.

HISTORICAL DEVELOPMENT OF EU LOBBYING

A. National Route (1957-1987)

In the first three decades following the 1957 Treaty establishing the European Community (“TEC”), European interests lobbied Brussels primarily by targeting Member State governments, leveraging unions, trade organizations and professional associations to access national representatives.⁶⁴ This national focus flowed naturally from the European Community’s weak political mandate and the ability of Member States to veto legislation in the Council of Ministers pursuant to the requirement of unanimous assent.⁶⁵ Recognizing this participatory deficiency, the Commission’s 1988 Cecchini Report demanded

63. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1.

64. VAN SCHENDELEN, *supra* note 1, at 91.

65. See generally SONIA MAZEY & JEREMY RICHARDSON, *LOBBYING IN THE EUROPEAN COMMUNITY* (1993).

more active participation from business interests in EU governance.⁶⁶

B. Brussels Lobbying Explosion (1987-1999)

The 1987 Single European Act (“SEA”) represented the first major revision of the TEC, and established Europe’s goal of establishing a single market by the conclusion of 1992. Thereafter, the locus of lobbying activity shifted from national to European channels.⁶⁷ The Commission estimates that by 1992 there were more than three thousand public and economic lobbies active in Brussels.⁶⁸

“Where power rests,” contends eminent political scientist Key, “influence is brought to bear.”⁶⁹ Europeanization of lobbying was partly driven by economic integration and the growing role of the EU.⁷⁰ Under the SEA and 1993 Maastricht Treaty (“Maastricht”), national governments delegated vast regulatory functions to European institutions, expanding EU competencies over the single market, product quality, health, safety, employment, competition law, environmental standards, industrial policy, and consumer protection.⁷¹ Demand for access to Europe’s policymaking process increased as EU institutions assumed more significant competencies. Maastricht also extended the policy domains over which the Council could make decisions via QMV. As a result of the shift from unanimous voting in the Council to QMV on issues involving the single market, lobbyist activity increased dramatically.⁷²

Concurrently, EU institutions grew increasingly reliant on interest representatives for technical information, signaling that the Commission and the Parliament lacked the resources to deal with their expanded legislative competencies absent the active participation of technical experts.⁷³ Spikes in the sheer volume of information to be absorbed, along with increasing specialization within a particular body of knowledge, placed great strain on the EU’s internal resources.⁷⁴ As a result, the increasing need for information on complex issues

66. Commission of the European Communities, *The Overall Challenge*, SEC 88(524) final, Brussels (1998) (“[b]usiness cannot afford to sit passively by...[t]here is a need of more active political involvement, in the sense of constructive input to policy”).

67. Directorate General Internal Policies, *supra* note 4 (Watson charts moderate growth from 400 EU interests groups in 1970 to 800 in 1991, but doubling to over 1600 in 1994. Similarly, Porter reports a steady growth from 300 groups in 1960 to 750 in 1990, dramatically increasing to 1200 in 1997.).

68. *Id.*

69. VLADIMIR ORLANDO KEY, *AMERICAN STATE POLITICS* 168 (1956).

70. Coen, *supra* note 4, at 334.

71. Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C 191) 1. Maastricht also contained Articles on cooperation regarding education, health and culture, the development of EU citizenship rights, expand economic aid to the least developed members, and authorization of the court of justice to sanction delinquent member state governments by fines and penalties.

72. Coen, *supra* note 4, at 334.

73. *See generally* VAN SCHENDELEN, *supra* note 1.

74. CHRISTIAN DE FOULOY, *THE PROFESSIONAL LOBBYIST’S DESK REFERENCE* 135 (2001).

offered interest groups greater opportunities to influence EU legislation.

C. EU Lobbying in the 21st Century

Given the relatively small size of the budget, the EU has developed into a primarily regulatory authority. Consequently, the impact of legislation is often highly concentrated upon a narrow class of actors, rendering interest groups a natural outlet for private and civil society actors to pursue their respective goals.⁷⁵ Business is seen as dominant numerically and politically in the EU policymaking process,⁷⁶ and business groups comprise approximately 72% of those holding a position in Commission consultative committees.⁷⁷ Therefore, EU lobbying has become a key mechanism by which business interests guarantee a favorable regulatory environment for their activities.⁷⁸

IV.

MARKET FOR ACCESS TO EU INSTITUTIONS

“Political institutions are not mere arenas accepting citizen pleas,” but “government officials are themselves participants in the process.”⁷⁹ Indeed, EU lobbying is not characterized by “unidirectional activity” of lobbyists hassling EU institutions.⁸⁰ For example, the Commission attempts to forge long term relationships with interest groups that consistently supply valuable information by developing networks of relevant actors and subsequently “massaging” the way these networks operate.⁸¹ This results in the formation of long-term, trust-based relationships between elite interest groups and Commission officials.⁸²

Interest groups demand access to EU institutions because governments, empowered with the legal right to make binding decisions, enjoy a virtual monopoly on political influence. However, influence is very difficult to measure. Although access does not necessarily translate into influence, the two

75. Erik Wesselius, *High Time to Regulate EU Lobbying*, 15 CONSUMER POL. REV. 1, 13 (2005) (Arguing that Brussels provides “fertile ground” for cultivating political influence, thus attracting “public relations and political affairs consultants, think tanks, and a diverse range of political entrepreneurs”).

76. Grant Jordan, *What Drives Associability at the European Level? The Limits of the Utilitarian Explanation*, in COLLECTIVE ACTION IN THE EUROPEAN UNION 31, 31-32 (Mark Aspinwall & Justin Greenwood eds., 1998).

77. Mahoney, *supra* note 17, at 450.

78. Peiter Bouwen, *The Logic of Access to the European Parliament: Business Lobbying in the Committee on Economic and Monetary Affairs*, 42 J. COMM. MKR. STUD. 473, 475 (2004).

79. Mahoney, *supra* note 17, at 446; *see also* Bouwen, *supra* note 4, at 336 (explaining that allegations of aggressive, pushy interests representatives nagging policymakers are unfounded).

80. Bouwen, *supra* note 4, at 368.

81. JEREMY RICHARDSON, POLICY-MAKING IN THE EU: INTERESTS, IDEAS AND GARBAGE CANS OF PRIMEVAL SOUP 14 (1996).

82. Coen, *supra* note 4, at 335.

are closely intertwined.⁸³ Lobbyists cannot obtain influence absent access to the critical points of political decision-making.⁸⁴ As such, access to political institutions becomes the “facilitating intermediate objective” of interest groups.⁸⁵ In the EU, businesses demand access to the Commission, the Parliament, and the Council with the ultimate objective of securing favorable legislation and blocking adversative regulations. Citizens’ organizations, on the other hand, demand access with ultimate collective goals such as the protection of public health and the environment.

As noted above, EU institutions are themselves key players in creating a distinct EU lobbying system.⁸⁶ While trust and credibility remain strong lobbying currencies in Brussels,⁸⁷ successfully lobbyists must provide technical information to bolster the output legitimacy of EU legislation and develop pan-European credentials to support input legitimacy of EU policies. Technical information and representation – input and output legitimacy – in the aggregate represent the “price” that EU institutions obtain in exchange for granting lobbyists access to the EU policymaking process. As such, EU institutions come to depend on lobbyists for expertise, information, and reputation in the European public policy process.⁸⁸

Figure 1 illustrates graphically the market for access to EU institutions. Legitimacy price is the aggregate of input and output legitimacy, and represents the “price” that the European Union obtains from interest representatives in exchange for granting access to its institutions. Quantity of access measures the extent of access to EU institutions granted to lobbyists. Demand is the aggregate quantity of access demanded by lobbyists at a given legitimacy price, while supply is the aggregate amount of access supplied by EU institutions at a given legitimacy price.

83. Bouwen, *supra* note 78, at 474.

84. DAVID TRUMAN, THE GOVERNMENTAL PROCESS, POLITICAL INTERESTS AND PUBLIC OPINION 334 (1951).

85. *Id.*

86. DAVID COEN & JEREMY RICHARDSON, LOBBYING THE EUROPEAN UNION 91 (2009).

87. *Id.*

88. Coen, *supra* note 4, at 334.

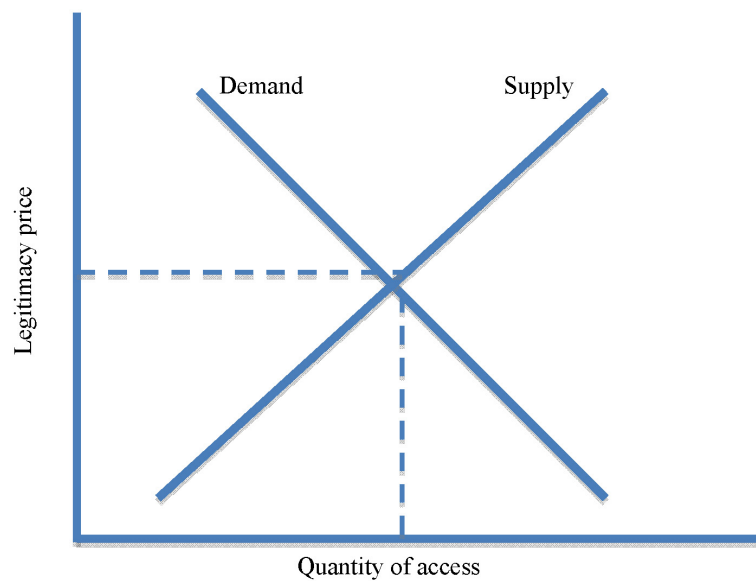


Figure 1: Market for access to EU institutions

Regarding input legitimacy, actors must develop a broad political profile across a number of issues and participate in the creation of collective political strategies to develop widely representative credentials.⁸⁹ Concerning output legitimacy, resource dependency theory holds that organizations require “resources from the environment and therefore . . . [must] interact with those organizations or groups in the environment who control the resources they need.”⁹⁰ EU institutions, dependent on lobbyists for resources that are critical for their own functioning, are subject to pressures from interest groups that possess expertise and technical information.⁹¹ Institutions grant the highest degree of access to the actors that can best satisfy their most problematic resource deficits.⁹² For EU institutions this deficit consists of insufficient expert resources along with limited government and democratic legitimacy.

89. GREENWOOD, *supra* note 8, at 133.

90. JEFFREY PFEFFER & GERALD SALANCIK, THE EXTERNAL CONTROL OF ORGANIZATIONS: A RESOURCE DEPENDENCE PERSPECTIVE 258 (1978).

91. Coen, *supra* note 4, at 334.

92. JEFFREY PFEFFER, ORGANIZATIONS AND ORGANIZATION THEORY 183 (1982).

V.

INSTITUTIONAL ACTORS: POWERS AND DEPENDENCIES

EU interest representatives must be cautious of treating the EU as a “monolith, behaving and acting as one.”⁹³ This statement applies not only to the EU as a whole, but also to each of its institutions, where the perspectives of different departments vary widely.⁹⁴ Indeed, the very structure of a political institution influences the nature of interest representation.⁹⁵

In this Section, I will discuss the Commission, the Parliament, and the Council as the EU’s three most vital organs and highlight the institutional, regulatory, and legislative powers of each body. I then explore why each organ is an attractive target for interest representatives, and proceed to evaluate the ways in which interacting with lobbyists ameliorates each institution’s democratic and resource deficiencies.

A. European Commission: Foremost Venue for Interest Representation

The European Commission is perhaps the most widely traveled EU lobbying channel. As the initiator of legislation, the Commission is the central actor in the early stages of the EU policymaking process. Commission officials recognize the importance of lobbyists as fundamental, legitimate, and effective players in its policy development process.⁹⁶ Because of its central function in the EU policymaking process, the Commission is an attractive target for lobbying. The incipient stages of policy formulation involve the defining and framing of issues,⁹⁷ and therefore afford lobbyists ample opportunity to shape and steer proposals.

Further, the Commission is empowered to bring matters against member states for failing to fulfill an obligation under the Treaty before the European Court of Justice (“ECJ”).⁹⁸ Member States’ noncompliance with obligations may come to the attention of the Commission via interactions with private interests or citizens’ organizations. Individuals and organizations harmed by a member

93. GREENWOOD, *supra* note 8, at 22.

94. *Id.*

95. Thomas Riss-Kappan, *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures and Internatioanl Institutions*, in BRINGING TRANSNATIONAL RELATIONS BACK IN: NON-STATE ACTORS, DOMESTIC STRUCTURES AND INTERNATIONAL INSTITUTIONS 3, 5 (Thomas Risse-Kappan ed., 1995) (explaining that fragmented structures “afford ease of access but dilute the impact of any given constituency of civil society actors,” while centralized structures create difficulty of access but can result in high policy impact); van Schendelen, *supra* note 1, at 89.

96. COEN & RICHARDSON, *supra* note 86 at 8 (explaining that 67% of survey respondents believe lobbyists were “necessary and initiated contact with them”).

97. GREENWOOD, *supra* note 8, at 24.

98. Treaty Establishing the European Economic Community, Mar. 25, 1957, 1957 O.J. (C 340) 226.

state's failure to comply with Treaty obligations will rationally demand access to the Commission with the goal of alerting it to the violation.

As a magnet for interest group activity, the Commission satisfies its own needs by exchanging access for technical information and input legitimacy. For example, to secure information regarding highly technical regulatory areas where Commission staffing numbers are low, the Commission creates consultative committees to manage lobbying activity.⁹⁹ These forums provide interest groups with early opportunities to access and influence the EU policymaking process.¹⁰⁰

Despite the substantial amount of technical and political information required to draft policy proposals, the Commission's staff of 17,000 is much smaller than most national bureaucracies.¹⁰¹ Indeed, the Commission is "understaffed and overstressed"¹⁰² and relies heavily on private interests, citizens' organization, and technical experts to effectively initiate legislation.¹⁰³ Because of its human capital deficiency, the Commission supplies access to interest representatives that consistently provide valuable technical information to enhance the output legitimacy of its proposals. Actors with privileged access are routinely consulted, invited to workshops, and selected to sit on consultative bodies, and can thus influence policy more effectively.¹⁰⁴

Whereas EU citizens elect the Parliament, the Commission must actively seek input of organized civil society and European organizations to support the input legitimacy of its policies. Its desire to see its proposals become law further drives the Commission to supply access to interests representatives.¹⁰⁵ Interest groups provide the Commission, with a means of "test[ing] the waters" among stakeholders, thus enhancing input legitimacy.¹⁰⁶

Lobbyists also give the Commission greater autonomy from national governments. By involving a range of public and private interests in discussions

99. GREENWOOD, *supra* note 8, at 10.

100. Consultative committees allow interest representatives to articulate their positions and provide valuable technical information on policy initiatives. By reducing the transaction costs of bargaining, consultative committees increase the probability that interest representatives and EU institutions will cooperate with exchange legitimacy for access.

101. Anthony Broscheid & David Coen, *Lobbying Activity and Fora Creation in the EU: Empirically Exploring the Nature of the Policy Good*, 14 J. EUROPEAN PUB. POL'Y 346, 350 (2007) (politicians and academics agree that the Commission's staffing levels are low compared to the extent of its functions and responsibilities).

102. GREENWOOD, *supra* note 8, at 7.

103. *See generally* VAN SCHENDELEN, *supra* note 1.

104. Broscheid, *supra* note 101, at 250.

105. MICHALOWITZ, *supra* note 20, at 64 (to ensure that the Council or Parliament do not reject Commission proposals, the Commission integrates into its proposals information concerning the "practical implications for individual actors in the member states").

106. GREENWOOD, *supra* note 8, at 34 (consulting with private and public interests provides an indication of how regulations and directives will be perceived at the national level).

concerning policy initiatives, the Commission circumvents “obstruction of national governments.”¹⁰⁷ Indeed, organized civil society enables the Commission to bypass national governments and thereby build a consensus among stakeholders.¹⁰⁸

B. From Phantom Parliament to Critical Lobbying Venue

For the first three decades of EU history, the conventional wisdom was that the Parliament was an inherently weak institution.¹⁰⁹ It is unsurprising that interest representatives focused their activities more heavily on the Commission, the Council, and national governments relative to Europe’s “phantom Parliament.”¹¹⁰ However, the Parliament has become a key EU lobbying venue as its powers and functions have expanded under Maastricht and successive treaties.¹¹¹ Successive EU Treaties have shifted internal decision making from consultation to co-decision procedure. Figure 2 illustrates graphically the importance of Parliament as a venue for interest representation under various legislative procedures.

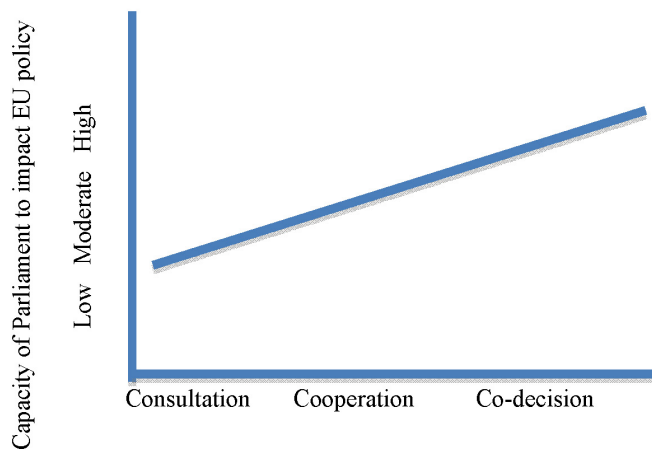


Figure 2: Importance of Parliament as an interest representation venue under various legislative procedures

107. Thomas Christiansen, *The European Commission: the European executive Between Continuity and Change*, in EUROPEAN UNION: POWER AND POLICY-MAKING 103 (Jeremy Richardson ed., 2001).

108. MICHALOWITZ, *supra* note 20, at 64.

109. Bouwen, *supra* note 4, at 475.

110. MICHAEL SHANKS & JOHN LAMBERT, BRITAIN AND THE NEW EUROPE – THE FUTURE OF THE COMMON MARKET (1962)

111. COEN & RICHARDSON, *supra* note 86, at 9.

The absence of a built-in majority in Parliament results in an orientation toward coalition building and consensus, which further heightens its importance as a lobbying venue as “each majority is built afresh.”¹¹² An estimated 70,000 individuals make contact with the European Parliament each year.¹¹³ Though quantitative data on lobbying Parliament is scarce because many contacts between MEPS and lobbyists are informal and confidential, Parliament issued 4,435 annual passes to accredited lobbyists in 2006.¹¹⁴

Parliament’s most significant power is its ability to veto legislation vis-à-vis the Council under “co-decision,” originally introduced by Maastricht in 1993.¹¹⁵ Under co-decision, approval of both the Council and the Parliament is required for Commission proposals to obtain the force of law. Between 1994 and 2005, direct lobbying of the Parliament doubled, with the greatest interest representation activity occurring in policy domains where co-decision applies.¹¹⁶ Further expansion of co-decision under Lisbon affords Parliament greater powers in fields such as agriculture and energy policy,¹¹⁷ which could drive an increase in demand for access to Parliament.

Parliament supplies access to interest representatives to enhance its output legitimacy because lobbyists constitute a critical source of information that bolsters the autonomy of Parliament relative to the Commission, the Council, and national governments. As a result, compensating for the perceived bias of the Commission toward private interests in policy proposals becomes a critical access point for lobbyists.¹¹⁸

The complexity of issues on the agenda of the European Parliament compels MEPs to seek specific industry expertise. An Italian MEP noted that lobbyists supply information in “clear fashion so that the [MEP] doesn’t have to be an expert in the field.”¹¹⁹ In particular, intergroups – subject specific committees within Parliament, represent an important lobbying venue that facilitates early contacts between MEPs and outside interest groups.¹²⁰

C. *The European Council and Council of Ministers*

Structurally, the Council is divided into the Council of Ministers and the

112. GREENWOOD, *supra* note 8, at 36.

113. COEN & RICHARDSON, *supra* note 86, at 9 (business spends approximately one-fifth of its lobbying resources in targeting legislative committees and individual Members of European Parliament).

114. GREENWOOD, *supra* note 8, at 11.

115. Treaty Establishing the European Economic Community, *supra* note 98, art. 251.

116. Directorate General Internal Policies, *supra* note 4, at 10.

117. COEN & RICHARDSON, *supra* note 86, at 40.

118. *Id.* at 48.

119. David Earnshaw & David Judge, *No Simple Dichotomies: Lobbyists and the European Parliament*, 8 J. LEGIS. STUD. 61, 63 (2006).

120. *Id.* at 66.

European Council. The Council of Ministers is an intergovernmental body that brings together national ministers of Member States and provides a forum for them to articulate and defend their respective interests.¹²¹

The European Council, on the other hand, is comprised of the heads of state of EU Member States. It acts as the final arbiter of disputes and makes strategic decisions that shape Europe's future.¹²² Along with Parliament, the Council holds veto power over all legislation through co-decision and holds authority to determine the EU budget.¹²³

These vast intergovernmental powers make the Council an appealing target for interest representatives. In turn, the Council requires information from lobbyists concerning the "domestic encompassing interest,"¹²⁴ which pertains to whether a given proposal is acceptable to the relevant member state stakeholders.¹²⁵ Since each country is typically divided over every piece of legislation, lobbyists can mobilize domestic pressure groups to influence the position of a national minister in the Council.¹²⁶ However, access to the Council itself is severely limited.¹²⁷ Indeed, scholars describe the Council as opaque, closed, elusive, and inscrutable because it holds meetings behind closed doors and refuses to release papers relating to its deliberations.¹²⁸

The Council's minimal dependence on interest representatives for technical information limits the supply of access for private actors. Compared with the Commission and Parliament, the Council requires less information from private actors because it has greater opportunities to obtain information from national and local governments. In addition, the difficulty of changing entrenched positions and integrating fresh input at the end of the policy cycle reduces the importance of the Council as a lobbying venue.¹²⁹ By the time most proposals reach the most visible stages of the Council, only a small fraction of highly politicized issues are up for debate.¹³⁰

Further, because the Council is in a constant state of flux due to national elections and cabinet reshuffles, Council members are temporary. Effective lobbying requires interest representatives to earn the trust of policymakers over

121. Fiona Hayes-Renshaw, *Least Accessible but Not Inaccessible: Lobbying the Council and the European Council*, in Coen *supra* note 4 (Council of Ministers is the EU's "chief decision-making body on day-to-day issues").

122. *Id.* at 70.

123. *See supra* Section IV.

124. Bouwen, *supra* note 4, at 369.

125. COEN & RICHARDSON, *supra* note 86, at 77.

126. VAN SCHENDELEN, *supra* note 1, at 97-98.

127. KATRINA CHARRAD, *LOBBYING THE EUROPEAN UNION* 48 (2005).

128. COEN & RICHARDSON, *supra* note 86, at 73 (The Council has a well-established reputation as the least accessible and most secretive EU institution).

129. GREENWOOD, *supra* note 8, at 24.

130. McCown, *supra* note 28, at 85.

an extended period of time. The relatively rapid turnover of Council members makes it difficult to cultivate sustained relationships. This is exacerbated by the fact that Council members are based in their respective national capitals, and may only visit Brussels for brief periods of time.¹³¹

VI.

INTEREST REPRESENTATIVES

European interest groups employ various strategic mechanisms and structural forms to gain access to EU institutions and steer policy. For instance, lobbyists must select which institution, officials, and policy domains to target.¹³² While the optimal strategy varies widely across dossier, procedure, setting, and time,¹³³ legislation involving concentrated costs and benefits is most attractive to interest group politics. Subsection A explores the various strategic options and structural forms available to lobbyists. Subsequently, subsection B will discuss the inherent differences in capacity to access EU institutions between business lobbyists and citizens' organizations.

A. Strategic Options

Private and public interests build their lobbying strategies from a wide range of options.¹³⁴ First, they must choose between targeting distributive policies that have concrete and specific impacts on individual firms, and regulatory policies, which may affect an entire sector.¹³⁵ Numerically, distributive policy domains contain fewer lobby groups than regulatory policy domains.¹³⁶ Subsidies can attract new firms and therefore dissipate profits, while regulatory quotas restrict competition and may enable monopoly profits. Because the EU is primarily a regulatory authority, I predict interest representation will focus on regulatory restrictions on competition and price.¹³⁷

Second, interest representatives must decide whether to devote resources toward pushing its own agenda or blocking opportunities for competing interests.¹³⁸ The blocking strategy is typically easier, involves less cost, and

131. *Id.* at 75.

132. VAN SCHENDELEN, *supra* note 1, at 94 (“pushing the wrong button can result in lost momentum, new competitors in the policymaking field, or irritation of officials”).

133. *Id.*

134. Alex Warleigh, *The Hustle: Citizenship Practice, NGOs and “Policy Coalitions” in the European Union — the Cases of Auto Oil, Drinking Water and Unit Pricing*, 7 J. EUR. PUB. POL. 229, 230 (2000) (EU lobbying involves a “scramble for influence”).

135. MICHALOWITZ, *supra* note 20, at 74.

136. GREENWOOD, *supra* note 8, at 7.

137. COOTER, *supra* note 21, at 66.

138. VAN SCHENDELEN, *supra* note 1, at 152.

carries less risk.¹³⁹ Although EU lobbyists exhibit a bias toward ease and low risk strategies, no pressure group can only play the negative game.¹⁴⁰

Third, lobbyists must decide which EU officials to target. Lobbying is primarily directed at the lowest possible level.¹⁴¹ This is because less senior officials undertake most of the preparatory work in drafting legislation, and final commission proposals usually reproduce around 80% of the first draft.¹⁴² Furthermore, low-level officials constitute the majority of the EU's civil service and are relatively easy to access. The most senior officials, in contrast, are difficult to access, numerically scarce, and mainly involved during the later stages of the policy formation process.¹⁴³ When a proposal reaches top officials, higher degrees of formality hamper lobbyists' attempt to push their respective interests.

Fourth, lobbyists must make strategic choices regarding policy domain. Most EU lobbying activity clusters around committees that have the greatest regulatory output and competencies.¹⁴⁴ Not surprisingly, the Directorate Generals facing the greatest number of lobby groups are those with the greatest regulatory competencies: Enterprise, Environments, and Agriculture. Lobbying is limited in domains where member states retain higher levels of sovereignty.¹⁴⁵

Fifth, interest representatives must decide when to lobby because timing is considered essential for successful interest representation.¹⁴⁶ As discussed above, it becomes increasingly difficult to influence legislation as the policy process unfolds. Early access to EU institutions drives greater opportunities to influence the final laws by enabling groups to identify opportunities for networking, coalition formation, and bargaining.¹⁴⁷

Perhaps the most important strategic choice, however, is between direct and collective action. Each interest must find the "optimal form of a European collectivity or flock."¹⁴⁸ Small groups and individual actors tout lower consensus building costs because they are selective in their membership and target specific goals. These benefits are clearly attractive, as 40% of all interest representatives

139. VAN SCHENDELEN, *supra* note 1, at 93 (explaining that it is "easier to block than to push . . . and it is more prudent to play defensively than offensively" since lobbyists inherently have greater "nuisance value than pushing power").

140. VAN SCHENDELEN, *supra* note 1, at 93.

141. Koeppl, *supra* note 6, at 69-80.

142. VAN SCHENDELEN, *supra* note 1, at 94 (explaining that those who draft legislation are more important than those who sign it).

143. COEN & RICHARDSON, *supra* note 86, at 25-26.

144. GREENWOOD, *supra* note 8, at 152 (positing that interest representatives "shoot where the ducks are").

145. *See generally* VAN SCHENDELEN, *supra* note 1 (explaining that less EU lobbying occurs where interlocutors are primarily national governments).

146. Earnshaw & Judge, *supra* note 119, at 63.

147. VAN SCHENDELEN, *supra* note 1, at 164.

148. *Id.*

lobbying at the Commission and Parliament are individual actors.¹⁴⁹ Figure 3 illustrates graphically the tradeoff between group size and cost of building a consensus. Despite the growth of direct action by individual lobbyists over the past decade, formal collective entities remain the dominant actors in EU lobbying.¹⁵⁰

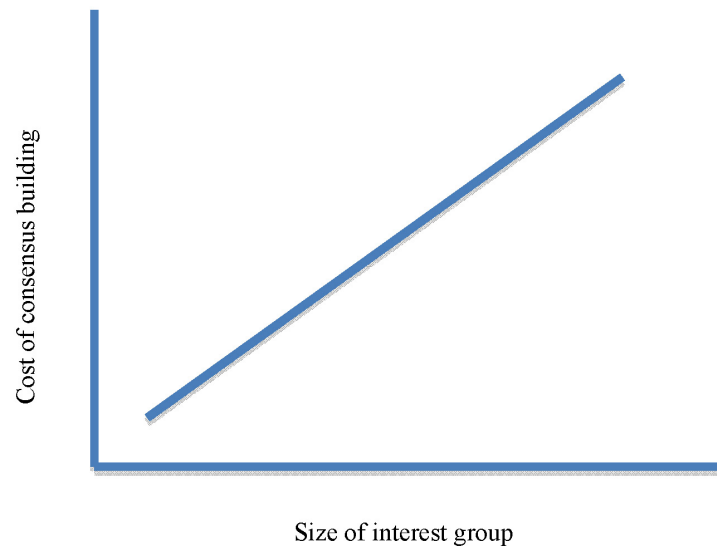


Figure 3: Relationship between EU interest group size and cost of consensus building

Since participation in European associations enhances an actor's opportunities to influence EU policy, the prevalence of collective action in EU lobbying is not surprising for several reasons. First, collective action enables firms to increase their capacity to supply input legitimacy because EU institutions perceive collective associations as more representative of Europe's citizens.¹⁵¹ Leveraging natural alliances that enhance and refine reputation, as well as developing a broad political profile across diverse issues, are highly effective mechanisms to supply input legitimacy. Second, given the great number of actors lobbying the EU, interests must possess mass and weight to attract the attention of policymakers.¹⁵² Finally, collective associations save on the cost of lobbying because these expenses are distributed across several

149. MAZEY & RICHARDSON, *supra* note 7, at 147.

150. GREENWOOD, *supra* note 8, at 36

151. *See generally* Coen, *supra* note 2.

152. *Id.*

actors.¹⁵³

B. Resource Allocation Tradeoffs

Of great concern to pluralist theorists is the disparity between public and private interest groups' abilities to supply EU institutions with technical information (output legitimacy), access the policymaking process, and ultimately the groups' impact EU policy.¹⁵⁴ However, before diving into this resource asymmetry issue, it will first be helpful to examine how businesses allocate scarce resources between lobbying and productive activities. Businesses depend on market stability and certainty, and it is thus rational that businesses invest in lobbying to influence EU regulatory policy.¹⁵⁵ Since businesses have finite resources, they must choose between investing in productive activities and lobbying.¹⁵⁶ Figure 4 illustrates graphically the budget constraint curve for a typical EU business. As the business invests greater resources in lobbying, fewer resources are available for investment in productive activities such as labor, capital, and research. For example, an increase in lobbying investment from I(L) to I(L)' will force the firm to decrease investment in productive activities from I(P) to I(P)'. Though normative judgments are beyond the focus of this paper, chilling investment in productive activities appears undesirable from an economic standpoint.

153. VAN SCHENDELEN, *supra* note 1, at 45 ("Concerning heterogeneous groups, it is difficult to build a common position because preliminary efforts to build a common agenda result in endless warfare.").

154. *But cf.* CHARRAD, *supra* note 127, at 16 (explaining that public interest groups may be able to secure access to Parliament by virtue of their democratic credentials).

155. MICHALOWITZ, *supra* note 20, at 73.

156. Broscheid, *supra* note 101, at 164 (Political affairs teams compete with strategic divisions for resources).

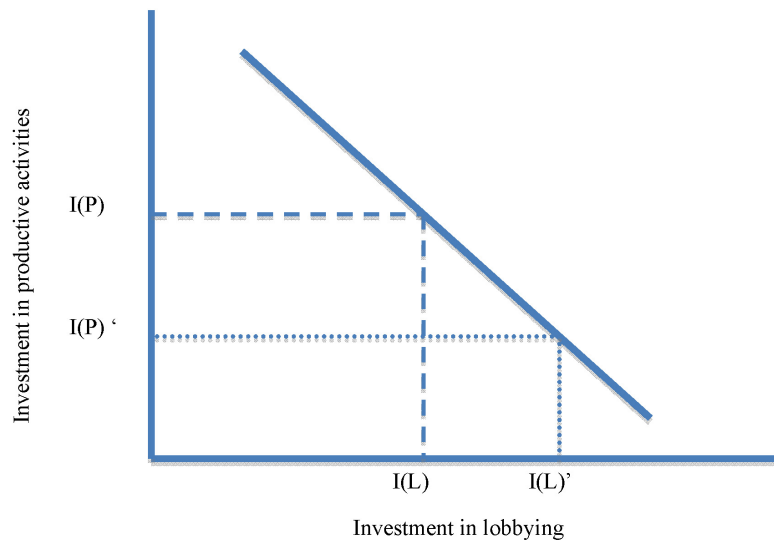


Figure 4: Business budget constraint

Assuming rational business behavior, it may be possible to predict how a firm will allocate resources between lobbying and productive activities. In the following equation, let $u-i(\text{lobby})$ signify the utility that a business expects to gain by spending an additional “i” dollars on lobbying,¹⁵⁷ and allow utility $u-i(\text{production})$ to stand for the utility a given actor expects to enjoy by spending an additional “i” dollars on labor, capital, and other productive activities.

Where $u-i(\text{lobby}) > u-i(\text{production})$, the business shifts its scarce resources from productive activities to lobbying EU institutions.

Where $u-i(\text{production}) > u-i(\text{lobby})$, the business shifts its scarce resources from lobbying to productive activities.

I predict that expansion of QMV under Lisbon may increase the utility a business expects to gain by spending an additional dollar on lobbying by enabling firms to obtain favorable regulations despite securing less access to EU policymakers. Under Lisbon, firms need only secure support of a qualified majority of Council ministers. In contrast, under the superseded unanimity rules, lobbyists hoping to secure friendly legislation faced the daunting challenge of

157. I assume that lobbying investment will be allocated to generate an efficient combination of technical information and representative credentials.

winning support of all Council ministers. Thus, the cost of obtaining favorable regulations decreases under Lisbon. Accordingly, I hypothesize that businesses will transfer resources from productive activities to positive lobbying, resulting in an outward shift in demand for access to the EU policymaking process.

A probability-based economic model supports my hypothesis. In the equation below, let $p(a)$ denote the subjective probability that investing in interest representation will yield enactment of favorable legislation, allow B to stand for the expected benefit of this legislation, and allow $C(P)$ to indicate the costs of interest representation.¹⁵⁸

Where $p(a)B > C(P)$ a firm can be expected to increase investment in lobbying.

Lisbon may increase the subjective probability that investing in interest representation will yield enactment of favorable legislation by enabling lobbyists to secure favorable legislation by winning the support of fewer Council members. Further, by expanding EU competencies to new policy domains, B , the expected benefit from lobbying EU institutions may also increase. Thus, assuming the costs of lobbying remain constant, Lisbon may drive an increase in demand for access to EU institutions.

Private interest groups hold a comparative resource advantage over public groups, which is important because vast resources increase the probability of influencing policy by funding research and broadening an interest group's "tactical repertoire."¹⁵⁹ Public interests are at an inherent resource disadvantage because internal questions about the ethicality of using public donations to fund lobbying chills their ability to invest in interest representation. Further, while private firms can recoup lobbying expenses by derailing costly legislation and pushing favorable regulations, successful lobbying by public interest groups eludes financial measure.¹⁶⁰

In addition, public interests are less able than businesses to solve problems of collective action. Rational behavior dictates that potential members of a group will prefer to "free ride" absent selective incentives to join.¹⁶¹ Small, specific groups like individual businesses are better able than large, public oriented groups, to provide such incentives,¹⁶² and thus enjoy an advantage in

158. Broscheid, *supra* note 103, at 220 (Costs include establishing an office in Brussels, mobilizing members, generating information, and developing pan-European credentials).

159. Mahoney, *supra* note 17, at 451.

160. For example, environmental protection regulations do not necessarily allow citizens' organizations to recoup the costs of lobbying, whereas restrictions on competition enable businesses to generate cognizable financial returns.

161. MANCUR OLSEN, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 48 (1965).

162. MICHALOWITZ, *supra* note 20, at 26.

overcoming free riding problems relative to public interest groups that represent large classes of citizens.¹⁶³

Lobbying expenditure, in turn, is a function of ability to overcome free rider dilemmas. Nongovernmental and civil society interest groups, with no means to tax their members, must rely on idealism to finance lobbying activities.¹⁶⁴ In short, the free-rider theory predicts that lobbying will be strong in highly concentrated industries and weak by consumers across all markets.¹⁶⁵

To compensate for these inherent resource asymmetries, the Commission actively funds societal and environmental interest groups.¹⁶⁶ Of the sixty-four groups funded by the Commission in 2004, twenty-eight were citizens' organizations and eleven were youth and educational organizations. In contrast, the Commission funded just nine business, industry, professional, and trade organizations combined.¹⁶⁷ The disproportionate funding of public interests groups suggests a conscious attempt by the Commission to manipulate the composition of Europe's interest group environment.

VII.

IMPACT OF LISBON ON THE MARKET FOR ACCESS

I argue that the Treaty of Lisbon will drive transformations in the market for access to EU institutions. First, Lisbon will increase demand for access to EU institutions. Second, assumption of new competencies by EU organs will exacerbate the strain on its institutional resources, compelling policymakers to rely more heavily on lobbyists for technical information and representative input.¹⁶⁸

A. Demand Side Shifts

As discussed in Section II, the number of EU interest groups skyrocketed after the introduction of QMV in the Council. QMV allows the Council to enact legislation more efficiently relative to unanimous voting procedure. Further, QMV enables lobbyists to win favorable regulations despite securing access to fewer Council ministers, lowering the costs of interest representation. Thus, it is not unreasonable to hypothesize that the expansion of QMV under Lisbon will drive a spike in either the number of interests seeking access to EU institutions

163. COOTER, *supra* note 21, at 66.

164. *Id.*

165. *Id.*

166. Broscheid, *supra* note 103, at 8.

167. Mahoney, *supra* note 17, 446.

168. I assume zero transaction costs of bargaining between EU institutions and interest representatives, which means that the supply of access to EU institutions is efficient relative to the preference of policymakers and interest groups.

or the amount of resources existing interest groups allocate to lobbying activities. Rational economic behavior supports this claim. As shown in Section VI, firms will shift resources from productive activities to lobbying where

$u-i(\text{lobby}) > u-i(\text{production})$. Expansion of QMV under Lisbon may increase the expected utility of lobbying relative to productive activities by enabling firms to more easily secure favorable regulations by purchasing access to fewer Council ministers. Also shown in Section VI, expansion of QMV may drive an increase in demand for access to the policy process by increasing $p(a)$, the subjective probability that an investment in lobbying will yield favorable legislation.

Demand for access to the Commission will be bolstered by the creation of a new target for lobbyists, High Representative for the Union in Foreign Affairs and Security Policy, as well as the Vice-President of the Commission. In addition, Lisbon strengthens the powers of the Commission President by granting him authority to dismiss fellow Commissioners. A stronger Commission President will drive an increase in demand for access, as interests vie to persuade the President to dismiss undesirable Commissioners.

Concerning Parliament, expansion of co-decision voting and abolition of the distinction between compulsory and non-compulsory expenditures will enhance its powers. Greater powers for Parliament will drive an increase in demand for access, as lobbyists target the institutions where power is concentrated.¹⁶⁹

B. Supply Side Shift

The assumption of new competencies by EU organs pursuant to Lisbon, absent increased resources and staff, will exacerbate the present strain on its institutional resources and compel policymakers to rely more heavily on lobbyists for technical information. Under Lisbon, the EU is tasked with controlling issues surrounding security, home affairs, fundamental rights, and justice. Scholars recognize that the Commission is overstressed and under staffed, and the complexity of issues on the agenda of Parliament far exceeds the technical expertise of MEPs. Since EU institutions supply access to interest groups to acquire output legitimacy (expert and technical information), I hypothesize that the expansion of EU competencies will drive policymakers to supply more access to interest groups in an effort to mitigate institutional information, resource, and expertise deficits.

C. Aggregate Effect on Market for Access

In aggregate, I believe that Lisbon will result in a higher quantity of EU lobbying. However, whether EU institutions will secure a greater “price” for

169. VAN SCHENDELEN, *supra* note 1, at 168.

access post-Lisbon depends on whether the demand or supply-shift dominates. Figure 5 illustrates graphically the effect of Lisbon on the market for access to EU institutions if the demand side shift dominates the supply side shift.

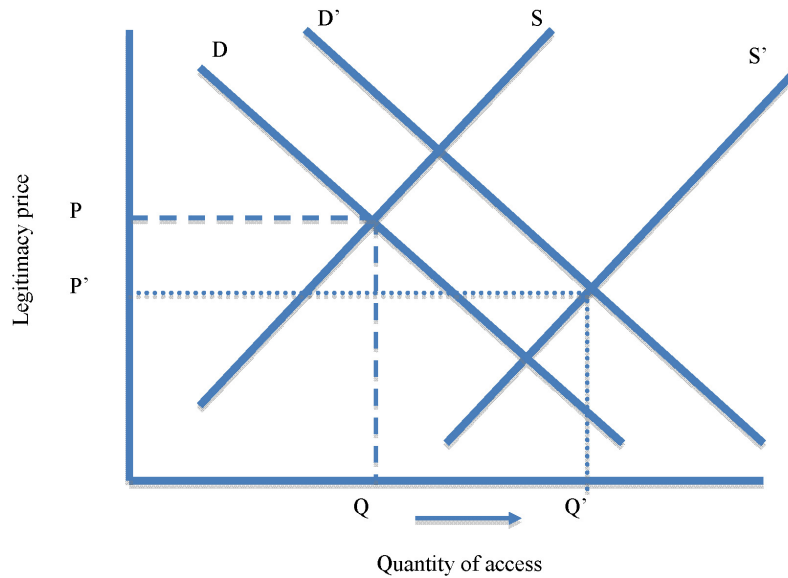


Figure 5: Shift in supply of access dominates demand shift

In the above figure, D represents demand for access to EU institutions prior to Lisbon, while the aggregate supply of access to the policymaking process provided by all EU institutions is S . In equilibrium, the quantity of access to EU institutions enjoyed by interests groups is Q . In exchange, the EU obtains an equilibrium price of P for this access in the form of output and input legitimacy. As I have argued, Lisbon will drive outward shifts in S and D . Assuming that the supply shift dominates, demand shifts D to D' , while supply shifts from S to S' . As can be seen, the equilibrium quantity of “access,” will increase from Q to Q' . The “price” EU institutions secure in exchange for this access, in turn, decreases from P to P' in equilibrium. This indicates that in exchange for granting more access to lobbyists, EU organs will receive less technical information (output legitimacy) from groups that are less representative of EU citizens (input legitimacy). Though normative judgments are beyond the scope of this paper, at first glance this appears undesirable as it fails to cure democratic deficit ills.

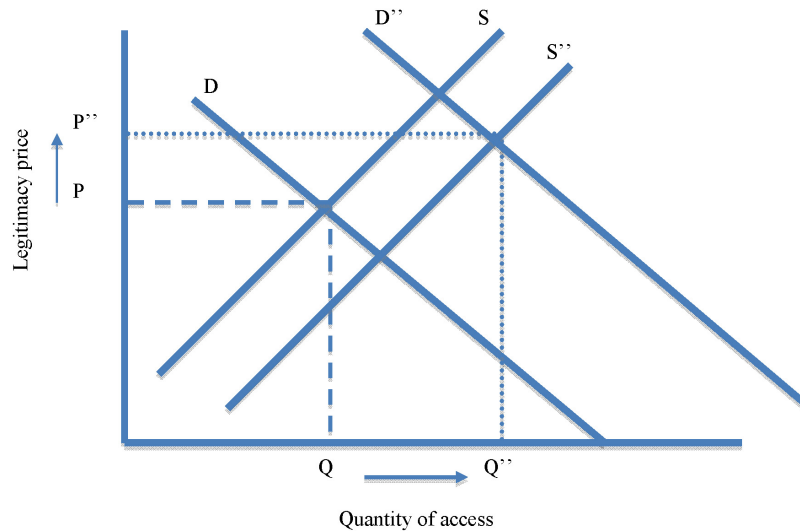


Figure 6: Shift in demand for access dominates supply shift

However, I believe the more likely scenario is that the shift in demand for access will dominate the shift in supply of access. This is because Lisbon increases the probability that investments in lobbying will yield favorable results for businesses by enhancing Council’s ability to pass legislation. Greater powers for Parliament and new lobbying avenues within the Commission may further drive demand for access that could outpace EU institutional dependencies on interest representatives. Figure 6 illustrates graphically the effect of Lisbon on the market for access to EU institutions if the demand side shift dominates the supply shift.

Assuming that the demand shift dominates, equilibrium demand moves from D to D'', while supply shifts from S to S''. As can be seen, the quantity of access increases from Q to Q''. The “price” EU institutions can secure in exchange for access, in turn, increases from P to P''. This means that in exchange for granting access to interest groups, EU organs will receive more technical information (output legitimacy) from groups that are more representative of EU citizens’ (input legitimacy).

CONCLUSION

While theoretical issues regarding lobbying, legitimacy, and democracy are likely to arise in any political system, concerns of unequal access to political institutions and asymmetrical provision of information are magnified when applying general theories of lobbying of the EU. This is because of the EU’s complex structure, strong reliance on lobbyists for technical information, and

geographic distance between Brussels and traditional centers of citizen and interest group activity. Despite valuable contributions of European scholars, literature on EU interest representation lacks an investigation of the ways in which the Treaty of Lisbon will impact lobbying and the market for access to EU institutions.

In this paper, I have argued that Lisbon has several important implications for EU lobbying. The economic models employed above indicate that Lisbon will increase the quantity of EU lobbying. The price EU institutions secure for granting access to such interest representatives, however, is dependent on which of the following effects dominates: (1) shift in demand for access (driven by the expansion of QMV, increased legislative output, and enhanced the rewards of lobbying) or (2) shift in supply of access (driven by the assumption of new competencies and functions by already over burdened, understaffed and under funded institutions).

Those seeking to ensure that the EU can continue to extract a high legitimacy price from lobbyists should consider increasing the EU budget in light of newly assumed competencies and functions under Lisbon. Such budgetary reform could rein in the shift in supply of access to EU institutions by mitigating EU institutional resource dependencies. Negotiations between the Council and Parliament over EU's 2011 budget, unsurprisingly, reveal the intergovernmental Council, which seldom interacts with lobbyists, as the primary actor opposing such a reform, while the interest representative dependant European Parliament has positioned itself as a key advocate for augmenting the EU's budget.¹⁷⁰ Though the result of future EU budget negotiations remains uncertain, it is reasonable to assume that Parliament's enhanced powers under Lisbon will afford it greater leverage vis-à-vis the Council, increasing the probability of EU budgetary expansion.

The Treaty of Lisbon shakes loose the ingrained institutional forums, power dynamics, and transactional variables of European Union interest representation. This shift not only creates critical challenges and strategic opportunities for both lobbyists and policymakers, but may also usher a new wave of academic and political discourse concerning the legitimacy of EU governance, its perceived democratic deficit and pluralism in general.

170. Press Release, Council of the European Union, Conciliation Committee (Nov. 10, 2010), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/117695.pdf (Council seeks to limit 2011 EU budget increases to 0.2% for commitments and 2.9% for payments as compared to 2010, whereas the European Parliament is pushing for increases of 1.1% and 6.2% in commitments and payments, respectively).