UNIVERSIDADE CATÓLICA PORTUGUESA

CORPORATE LOBBYING IN EUROPEAN ENVIRONMENTAL LAW:

THE IMPORTANCE OF TRANSPARENCY IN THE EUROPEAN INTEREST GROUP SYSTEM

A thesis submitted to the graduate faculty of the Universidade Católica Portuguesa (Católica Global School of Law) in partial fulfilment of the requirements for the Degree Master of Transnational Law

By/Por: Mariana de Matos Vieira

Supervised by/Sob a orientação de: Armando Rocha, PhD

Faculdade de Direito, Escola de Lisboa
Católica Global School of Law
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List of Abbreviations

AFCO	European Parliament Committee on Constitutional Affairs
CEO	Corporate Europe Observatory
CL	Carbon Lobby
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EDG	Environment Directorate-General
EP	European Parliament
EPRS	European Parliamentary Research Service
ETS	Emissions Trading System
EU	European Union
HATVP	Haute Authorité de la Transparence pour la Vie Publique
IATA	International Air Transport Association
IETA	International Emission Trading Association
ISLR	International Standards for Lobbying Regulation
MEP	Member of the European Parliament
MTR	Mandatory Transparency Register
NGO	Non-Governmental Organisation
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
VTR	Voluntary Transparency Register

List of Keywords

lobbying, European lobbying, environmental lobbying, lobbying regulation, transparency standards, interinstitutional agreement, voluntary transparency register, mandatory transparency register, environmental transparency, business interests, corporate disclosure

Introduction

European environmental policies were first included in the political agenda in the early 1960s and 1970s with a clear predominance on the benefits for the internal market. At this early stage, environmental measures were a circumstantial background to a vast array of political and economic action plans used to harmonise the establishment and functioning of the common market. This focus on environmental law, however, was described by scholars as incidental or responsive (Brinkhorst 1993), since the development of environmental policies did not pretend to focus on environmental aspirations but rather on the impact upon the economic goals set out in the treaties. Only during the late 1970s and 1980s, due to public pressure and the global rise of environmental concerns, the EU agreed to develop and sign the first action programmes with a more explicit focus on environmental protection. As environmental goals have only been part of the EU's main tenets for the past twenty years, there are still many institutional obstacles that further delay the creation and maintenance of truly effective environmental policies. One of these obstacles is corporate lobbying, or representation of business interests.

In fact, one of the problems of EU environmental policies is the focus on the wrong reference object, complicated policies, overly optimistic goal-setting and regulatory reforms that focus more on reducing the adverse effects that are consequence of non-environmentally friendly behaviours, than on actively removing those behaviours. Establishment of non-ambitious goal setting for reduction of emissions paired with an untimely action in reducing those numbers have left European environmental policies lacking in effectiveness. It should be a surprise, then, that despite all the environmental debate in EU institutions as well as the creation of an ambitious 7th Environment Action Programme to 2020, so many challenges persist to this day, with legislation being drafted slowly and strategy reports postponed.

But who or what is to blame for the EU's lack of success in the environmental area? While many structural issues could be indicated to support the ongoing environmental failure, this dissertation considers the impact of non-transparent corporate lobbying or representation of business interests in EU institutions as a detrimental factor. The hypothesis presented here is that unregulated lobbying activities have a negative impact on environmental policies and that improving transparency measures could help improve access to information and promote well-informed decisions which would lead to effective policies and environmental strategies.

Lobbying can be defined as 'all activities carried out with the objective of influencing the policy-making and decision-making processes of the European Union institutions (Commission 2006).

Lobbying, as this dissertation will suggest, enhances the democratic system. However, not all lobbying is equal, and corporate lobbying is especially prone to negatively impact environmental policies at the EU level. This happens due to (1) the amount of resources that corporations can redirect for lobbying expenditure, (2) the impact of environmental policies in business interests and, finally, (3) the supply of information and technical expertise in exchange for concessions.

It is also true that the EU has a legislative gap in lobbying regulation, relying on a sole Voluntary Transparency Register (VTR) to control the scope of influence played by third parties amongst decision-makers. Solid transparency policies can improve accountability, allow an open dialogue between all players involved and establish sanctions that help control abusive lobbying attempts. However, the VTR is non-compulsory, which allows lobbyists to pursue their activity without having to report in a public register. Consequently, the abusive influence of MEPs, the practices of bribery and collusion, as well as the arrangement of forged technical expertise to better suit the interests of privates, are all common dangers in a system where lobbying activities are not fully scrutinised. It can therefore be argued that, by not safeguarding the transparency of lobbying practices, the EU is undermining any future environmental policies, as well as current ones. Additionally, the issue of undisclosed lobbying can further aggravate policies meant to specially target corporations. Possession of resources and capable information networks make business interests the major lobbyists in EU environmental law, allowing them to actively influence EU institutions and create policies that indirectly suit their better needs (such as happened with the EU Emissions Trading System), as well as simply buying their way into vetoing policies that negatively impact business.

As such, the main concern of future lobbying legislation is improving the current transparency standards and drafting effective supervision and sanction-based mechanisms to improve the existing framework.

I. Transparency in the EU and the Interest Group System

1.1. Characterising the EU's interest group system

Understanding the legal framework of lobbying in the EU and the role played by business interests in Environmental Law requires a first analysis of the EU's interest group system and the type of influence non-institutional actors can exert during the decision-making process.

The dynamic of interest groups helps shape governance by channelling participation of civil society during the decision-making process. These groups, representing business and citizen preferences, allow policies to be implemented in line with their respective interests, creating accountability and reinforcing a democratic framework. However, as Dur underlines (2007, 1) 'the role of interest groups in democracies [thus] crucially depends upon how much power interest groups have, and how power is distributed among different groups.'

According to recent literature, the EU's interest group system has been classified as élite pluralist. A pluralist system focuses on politics and decision-making as core activities of the EU's framework. Furthermore, it grants legal instruments that allow non-governmental groups and businesses to exert their influence during the legislative process, bargaining for power and representing their interests to directly or indirectly impact future policies and outcomes. These diverse and competing interests promote the democratic equilibrium (Held 2006) and help support complex relationships between the public and the institutions.

An élite system allows trust-based relationships to develop between EU officials and the interest groups represented at a political level (Rasmussen 2012). The blooming number of lobbyists and interest groups in Brussels forces the Commission to select the interest groups that carry out the best mobilisation of information and resources, which grants corporations a positive political reputation in the Commission and, consequently, an insider status (Eising 2008). In the process, this selection fosters competition among the different groups, resulting in differentiated distribution of power and influence and an unbalanced lobbying scenario. By allowing resourceful parties to get involved in the decision-making process, élite pluralism creates a 'political marketplace' that shifts with the framework and forces different interests to clash when brought to the negotiation table.

Also, while it is shown that the EU has a disproportionate lobbying mobilisation of business organisations, contributions (Eising 2008) still acknowledge participation of other

types of interest in the EU scenario, validating its pluralist character (Bunea and Ibenkas, 2015).

Naturally, the rise of élite pluralism matches the views regarding corporate dominance over politics as assumed by classical authors. However, it is necessary to underline that business dominance does not happen equally within the EU paradigm and needs to be analysed under a three-pronged test (Rasmussen 2012).

First, it should be clarified that not all business groups are granted the insider status and, as such, not all corporations are allowed to play an influential role in EU politics. In fact, it appears that the Commission is able to regulate representation in the EU via the 'advent of forums and quasi-industrial clubs' (Coen 1997, 105). Secondly, most literature regarding the policy-making trends within the European Parliament (hereinafter 'EP') portrays a highly populist elected list of initiatives that does not match the corporate dominion sought by the élite pluralist theory. Finally, taking into account the highly complex net of EU law (including legislation on categorically different structural agendas), business interests cannot be equal in each of these areas. In the present case-study, it is found that Environmental Law is a field highly sought by lobbying actors, mainly corporate businesses, but when establishing a trend that classifies the full scenario of European policy-making, it is necessary to consider all these different variables.

Élite pluralism suggests a bias towards EU umbrella organisations and the representatives of large businesses when participating in lobbying activities (Beyers 2004). This assumption is strengthened when finding that business groups have a facilitated access to the Commission's committees in comparison to national associations or groups representing diffuse interests.

However, the rise of élite pluralism does not only portray how policy-making is impacted by corporate actors (and thus being overburdened with business interests), but also how a system of élite pluralism can create further discrepancies between overarching policies and overall fragmentation of the legislative process. Business interests tend to form coalitions in order to support or oppose a specific proposal. As these coalitions shift, impact of lobbying attempts also changes across multi-level approaches, clashing into countervailing forces that prevent harmonising efforts from taking place. These business conflicts disaggregate collective interests, paralysing the policy-making process and further disengaging less-influential lobbying actors from taking part in the debate (Rasmussen, 2012).

1.2. The benefits of transparency in a democratic system

In general, transparency is a positive characteristic of any political system, and lobbying, as a political mechanism, also benefits from it. The participation of non-institutional actors (be it in the form of non-profitable interest representation or in the form of business interests) generates accountability during the political process, producing adjusted decisions that help promote public trust. The most basic premise that sustains transparency as a valuable characteristic in lobbying practices is that citizens have the 'right to know how public institutions and public officials make their decisions' (OECD 2012) – if these decisions are impacted by external sources, including the activity practiced by agents paid to influence institutional bodies, then the responsible governmental institutions should facilitate public scrutiny of these activities. Furthermore, this right is enhanced in policy areas that directly impact the lives of citizens, such as Environmental Law.

This principle comes hand in hand with the already established practices in the EU, including public access to the debate of ministers and their respective vote on EU legislative acts, the Council's press conferences, the EP's public meetings and debate, etc. In fact, the EP states that transparency is one of its commitments (EP 2008), citing Article 15 of the TFEU as a basis to ensure participation of civil society in its legislative work and the promotion of good governance.

The most obvious consequence of lack of transparency is corruption. On average, corruption costs €120 billion a year to the European economy (Sgueo 2015), both in direct costs for the European budget (including auditing), and indirect costs, which include hampering of growth and productivity as well as increased administrative expenditures. However, corruption is not only manifested in direct costs to the European economy but also in political shortcomings – incremented distrust, lack of institutional accountability and an increasing negative image of European political institutions (Sgueo 2015).

There is consensus regarding the possible achievement of good transparency standards through the implementation of administrative measures that provide clear and thorough information on current lobbying activities. The International Standards for Lobbying Regulation (ISLR) issued a collaborative work that aimed to provide guidance to policymakers, governments and international organisations and stated that transparency in lobbying can be achieved by providing a mandatory register with timely registration and

reporting that discloses information on the identity of the lobbyist, the expenditure, type and frequency of the lobbying activity, as well as the targets, political contributions and sources of funding (Access Info Europe 2015). This information should then be subject to the public scrutiny, free of charge.

However, while many regard transparency as a positive characteristic for any political system, other authors point out the counter-intuitive effect of transparency policies for lobbying purposes. As Naurin has argued (2004), lobbying activities with higher levels of transparency or public scrutiny lower accountability. With low transparency there is more compromise, as lobbyists do not fear the positive or negative consequences of their lobbying attempts. As there is no public register of the purpose or end-goal behind the lobbying practice, lobbyists can be more flexible with their activity (Stasavage 2004). With high transparency, representatives are basically forced to carry out their initial policy stance, which may not be advantageous in unpredictable political contexts. Overall, the higher the transparency, the less flexible and constructive is the lobbyist and cooperation becomes more difficult to achieve.

However, it is hard to imagine a situation where a shift of political stances would be prohibited even under the strictest transparency standards. The abovementioned ISLR suggests that all lobbying registers should contain a 'decision-making footprint' - an outline of the history, public engagement and overall process for the initiative at hands that showcases all information and viewpoints related to the individual items for consideration. Under this procedure, a lobbyist would be allowed to be flexible in its activity without compromising transparency rules.

Regarding the costs for the institutional parties involved, non-transparent lobbying allows zero costs arising from any regulation concerning control of transparency or an increase in administration personnel. It also allows the private sector to pursue their activity with no intervention from the public sector. Additionally, personal data disclosure is also assured to be protected (Bednarova 2018).

Although part of the same system, the three main European institutions have different approaches on how to deal with lobbying transparency standards. The Commission has been seeking self-regulation by allowing interest groups to act as providers of specialised information and knowledge and abiding under codes of conduct (Malone, n.d., 11). As an accessible institution, considering lobbying to constitute an important resource to improve governance and policy-making, the Commission is usually the institution where the lobbying process begins, therefore influencing the EP and the Council further down the process (Malone,

n.d., 14). To improve the transparency framework, the EP also established a code of conduct for MEPs in 2012 which clarifies the provisions regarding the acceptance of gifts and invitations by third parties, namely under Chapters 4 and 5. Both provisions clarify that MEPs are obliged to declare any financial interests and refrain from accepting any gifts or monetary values other than courtesy usage.

Additionally, the Joint European Transparency Register was created in 2011, a voluntary register for interest representatives that included lobbying activities in both the Commission and the EP. This register, however, does not present enough solutions, having a non-compulsory nature, as will be discussed in Chapter II.

1.3. Environmental policy-making in the EU and the role of business interests

Environmental policies have a certain degree of specificity that (1) justifies its autonomy from a general policy drafting and (2) makes it especially prone to lobbying. Environmental law relies heavily on technical information, scientific data and predictions. The need to handle the technological progress required to develop and implement environmental rules has a significant impact in the decision-making process, as the management of scientific uncertainty, creation of incentive mechanisms and establishment of compliance norms are particularly difficult in a law field that is mainly regulated through treaties, soft law and *droit dérivé* (Dupuy and Viñuales 2015).

Initiative of environmental policies can be particularly challenging, as it usually relies on a precautionary approach to create the framework and institutional structures paving the way for future regulation. Although this principle allows decision-makers to gather momentum to tackle environmental issues as they develop, it also gives lobbyists enough space to inflect against scientific uncertainty that may create costs for businesses. By acting against the lack of concise data on environmental issues or offering to provide their own findings, business interests are therefore well-equipped to directly impact the outcome and development of environmental policies.

Environmental rules require a specific set of documents and reports that need to be drafted by third-parties (either through external sources or experts inserted into specialised committees) with enough expertise for the undertaking. Before the commission proposes new initiatives, it relies on Environmental Impact Assessments (EIAs), which distinguish the

advantages and disadvantages of policy implementation. Furthermore, the Commission consults interested parties during the drafting process, including representatives of industry and civil society, where corporate interests can be represented, as well as groups of environmental experts. While consultation of these groups ensures the transparency of the democratic process throughout the early stages of the drafting process, it also permits the wrong interests to taint the integrity of the information provided, as any bribery or asymmetrical representation behind closed doors can be transferred to the decision-making. In fact, as emerging case evidence suggests, EIAs in several countries are being distorted by practices of bribery, collusion and conflicts of interest.

While developments in the fields of Criminal Law, Civil Law, and even Financial Law can be created through an empirical analysis and the observance of societal changes, Environmental Law comprises, to the most extent, of a concealed framework that can only be materialised through scientific data and impact assessments. If this data lacks in veracity, environmental policies are mostly ineffective since they do not fully reflect the goals that ought to be undertaken. And, as will be discussed in Chapter III, as business interests are the main providers of technical expertise for policy-making purposes, evaluating the transparency and accuracy of this information is detrimental to assure the effectiveness of the environmental policies at hand.

Although the Commission provides general procedures for drafting, reviewing and adoption of EU policies, it lacks specialisation in technical areas such as Environmental Law, where reliance on few sources can prove to be detrimental to the overall efficiency of the policy. In fact, while mandatory cross-checking and funding of more groups to provide technical information could be considered a way to formalise a tighter scrutiny of early stages of legislation drafting, monitoring the influences of business interests in these reports through implementation of tighter transparency measures could help regulate the issue without adding to the length of future decision-making processes.

1.4. The Outline of the Drafting Process

To understand the degree of influence played by lobbyists in the European environmental policy-making process, it is necessary to understand both the formal and informal reality of the legislative procedures and the relevant moments when lobbying attempts take place.

1.4.1. The formal overview of policy-making

In broad terms, environmental policies are crated in a linear, multi-institutional approach. On a first moment, the European Council (hereinafter 'EC') establishes wide-ranging goals for the EU, outlining extensive objectives on various policy areas, including environmental policies. Afterwards, the Commission drafts proposals of laws and policies corresponding to the goals established by the EC. These proposals are then materialised through a detailed drafting methodology held by the EP and the Council, who decide in a joint effort which laws to create and how to best implement them. In the following paragraphs, this outline and the importance of each of its stages in environmental policy implementation shall be explained.

The EC dictates overarching goals for European law and policy. Although these statements do not have a great level of detail, they act as guides for other institutions to thoroughly draft the policies then instructed by the Commission. As an agenda-setter, the EC is responsible for inspiring the legislative procedure and deciding when Environmental Law requires new developments.

Conferring the lead in defining the environmental framework to an agenda-setter, however, creates an instrumentalization of technical-oriented areas of EU policy. In 1985, the trend to improve environmental protection was grounded on the EC's desire to improve economic growth and job creation (McCormick 2001). Here, environmental policies were seen as secondary tools to help boost the industrial and agricultural sectors and only in 1992 did the EC declare its interest in respecting the 'environmental imperative', which was now a more individualised approach for protection of the environment (Commission 1990).

The Commission, on the other hand, has a 'monopoly' on the legislative initiative, proposing new laws through a policy network of commissioners (McCormick 2001). These commissioners are divided according to specialised branches of policies and are supported by their cabinets, a group of seven to eight advisers. These portfolios are often hierarchised according to priority. The Environmental portfolio was attributed a directorate-general in 1973 and in 1999 it was subdivided into five different directorates, which treat specialised matters

related to Environmental Law, such as industry, natural resources and nuclear safety (McCormick 2001).

As will be seen in further detail, this rather simple process does not reveal the informal procedures happening in the background. Although a multi-institutional approach allows the EU to adopt multiple perspectives and promote a democratic approach, it fails to introduce the appropriate transparency mechanisms to monitor the complexity of political relations and their vulnerability to business interests.

1.4.2. The informal realities of policy formulation and the role of business interests

As mentioned above, during the draft of environmental policies, the Commission is influenced by internal and external forces. In the environmental sector, the decision-making process is *overly democratised,* with the Commission acting as a 'forum for the exchange of policy ideas' (McCormick 2001). For instance, the Commission only has a formal, visible monopoly on the validity of its proposals. While these proposals are internally enacted, they are also often sent to other institutions and interested parties for discussion (these include interest groups, national governmental ministries and experts), and then return to the Commission so their implementation and oversight can be concluded through the cabinets, the key target of lobbying attempts (McCormick 2001).

It is also imperative to underline the role of comitology in policy formulation. 'Comitology' or 'committee procedures' refers to the process by which the Commission adopts measures based on the delegated authority of the Council and the EP, under the legal basis of Article 290 and 291 of the TFEU. Delegating the implementation of detailed measures to the executive in conjunction with committees of representatives has the main goal of speeding up the policy-making process. In total, there are around 250 comitology committees composed of national experts from member states, chaired by the Commission (Nørgaard, Nedergaard, and Blom-Hansen 2014). Thirty of them are focused on the environment (Commission 2018). These committees are actively targeted by business interests, as their sectoral knowledge often dictates the outcomes of policies, namely in the environmental field where expert knowledge is required (Nørgaard, Nedergaard, and Blom-Hansen 2014). As such, these committees present the bulk of 'insider lobbyists' in the EU (Broscheid and Coen 2003, 168).

The length of proceedings in policy formulation shows the impact of external interests. McCormick (2001, 99) describes this as a 'slow-moving process' that is not only justified by

the shortage of staff in the Environment Directorate-General (EDG) but mostly due to the need to ensure that all interested lobbyists have their input in a specific European policy. Furthermore, the contact established by the EDG with corporate interests and industrial federations during the policy-making process only further strengthens the dependency on these groups. The funding and organisation of these bodies allow them to bring strong motives to the bargaining table, as they understand quantification of costs and benefits of policy options and are therefore able to judge the direct and indirect costs of policy implementation. Employment of technical experts and production of detailed reports allow the EU to acquire invaluable resources to develop legislation on technical issues. This relationship can even be considered symbiotic, as technical input is returned in the form of concessions during the policy formulation process (Broscheid and Coen 2003).

However, the Commission is not the only institution impacted by lobbying initiatives. The EP, responsible for adopting or refusing the Commission's proposals together with the Council, is affected as well. Rasmussen (2012) researched lobbying as an information exchange in Brussels and interviewed sixty-two interest groups about the type of information conveyed to the MEPs and the Commission. The results pointed to an over-simplification of information conveyed to the MEPs, as well as the use of visual aids and short talking-points. Most of the interest groups interviewed agreed that during information exchanges, technical arguments were put aside, and principles and end-goals were promoted instead. Rasmussen utilises the Road Transport Working Time Directive as an example of how emotional issues can be used in order to turn the table during the policy-making process. Despite the typical economical issue at hands, focusing mostly on the impact of concentrated costs/concentrated benefits for businesses, the argument put forward by the lobbyists was that of 'public good' and the necessity to increase road safety by regulating the working time for truckers. On a completely different approach, the same lobbyist used the issue of social dumping for the Commission, as it figured that a less emotionally charged argument would not work with the MEPs (Rasmussen 2012, 286).

Additionally, Beyers (2004), observes that MEPs are more open to a wider set of interests due to their elective nature. As representatives, they are required to provide a forum for public debate and are 'expected to be sensitive to political arguments' (Beyers 2004, 219). This is different for the Commission, who is protected by weak public control over individual commissioners and is more prone to listen to technical expertise portrayed through specific interests. There is, therefore, a higher risk for the commissioners to be provided misleading

technical information and, in parallel, an equal risk of technical arguments being manipulated into purely political claims in the EP, as there is strong evidence that lobbyists use a vast array of tactics that depend both on the characteristics of the situation or policy affected as well as the group being influenced (Baumgartner and Leech 1998).

In conclusion, the policy-making process in the EU is configured to allow business interests to actively participate, conveying technical expertise and impacting the legislation's outcome. This special configuration justifies the creation of transparency rules that at least aspire to equal the ones applicable to the European institutions themselves.

II. Current legislation in the EU regarding transparency in lobbying activities

This chapter outlines the current legislation on transparency standards for lobbying in the EU and aims to present the overview of the faults and positive aspects of the current framework.

As a product of democracy, lobbying allows private interests to reach public officials and influence the outcome of the policy-making process. However, unregulated lobbying creates a scenario where ethical and unethical lobbying efforts cannot be distinguished and are therefore granted the same level of legal undifferentiation. A framework where abusive lobbying cannot be filtered from legitimate communication of public and private interests is an ineffective system, as specific interests with enough funds, influence and political power are able to control the entire policy-making process.

In environmental issues, abusive lobbying represents a particularly dangerous prospect, as the inefficiency of environmental policies has a global impact. Additionally, corporate lobbying focuses on small targets, protects the business interests of minorities and allows overarching public policies to be undermined by profit-based concerns.

The history of lobbying regulation in the EU is short. Corporate lobbying recognition in the EU dates back to 1988, when the Commission recommended incremental active and direct participation of business interests in the EU (Sgueo 2015). Considering treaty rules, Article 11 TEU regulates the details of participative democracy within the EU, establishing the need to provide a horizontal civil dialogue (Article 11(1) TEU), vertical civil dialogue (Article 11(2) TEU), consultation practices related to the Commission's activity (Article 11(3) TEU) and the new European Citizens' Initiative (Article 11(4) TEU). This framework, namely under the specific provisions of Article 11(3), establishes the legal foundation for the inclusion of public participation in the political debate, including lobbying initiatives, by stating that 'the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.' The constitutional foundation of these principles shows a clear obligation on behalf of EU institutions to legislate on these issues to ensure compliance with Article 7 TFEU, which forces consistency between policies and activities practiced at the EU level, by 'taking all of its objectives into account and in accordance with the principle of conferral of powers' (Kingston 2014, 7).

The voluntary register for interest representatives was established for the EP in 1995 and only in 2008 a similar instrument was created for the Commission. A merge in 2011 would later denominate both of these mechanisms as the Joint European Transparency Register (also

known as the VTR). This register would allow policy-makers to 'not operate in isolation from civil society, but maintain an open, transparent and regular dialogue with representative associations and civil society' (Commission and EP 2011).

The VTR is a database listing lobbying organisations and individuals, including law firms, think-tanks and NGOs, as well as self-employed consultants and trade unions. It is an online tool available to the public that displays data related to the legislative proposals lobbyists attempt to influence. The VTR entails a high level of detail during registration, as the guidelines ('Transparency Register Implementing Guidelines' 2018) require an accurate and comprehensive description of the activities registered. Furthermore, registering in the VTR requires signing the Register's Code of Conduct, which envisages information to be 'complete, up-to-date and not misleading' ('Code of Conduct, Annex III' 2014).

Registering in the VTR is awarded with a badge that allows access to the EP premises. The badge is personal and non-transferable, and its conferral requires the holder to comply with a number of rules set forth in the EP's Rules of Procedure ('Interinstitutional Agreement on a Transparency Register, Annex III' 2014). Holding this badge, naturally, facilitates the lobbying activity, as it is necessary to register in order to access the EP. Additionally, accessing the EP does not only equal accessing the hearings but also taking part in those hearings by request of MEPs.

In the case of failure to comply, interested parties are able to either trigger an alert regarding a factual error in the registrants' information or file a formal complaint in case the registrant has failed to abide by the Code of Conduct. However, the consequences of this formal complaint are the detrimental weakness of the system envisioned by the VTR. As stated in Annex IV of the Interinstitutional Agreement for a Transparency Register, only four measures are currently foreseen by the EU:

Table 1 – Measures against non-compliance with the Code of Conduct

Source: Agreement between the EP and the European Commission on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation

	Type of non-compliance	Measure	Mention of measure in the register	EP access badge withdrawn
1	Unintentional non-compliance, immediately corrected	Written notification acknowledging the facts and their correction	No	No
2	Deliberate non-compliance with the code, necessitating a change of behaviour or rectification of information in the register within the deadline laid down	Temporary suspension for up to 6 months or until such time as the corrective action requested is completed within the deadline set	Yes, during the suspension period	No
3	Persistent non-compliance with the code — no change of behaviour —failure to correct information within the deadline laid down	Removal from the register for 1 year	Yes	Yes
4	Serious, deliberate non-compliance with the code	Removal from the register for 2 years	Yes	Yes

Observation of the abovementioned measures shows that the true negative consequence of non-compliance with the Code of Conduct is being barred from accessing the EP, which negatively impacts the lobbyists involved. The other measures only include temporary suspension from the register or a written notification to the non-complying party.

Two non-impacting measures out of four total measures are not, in principle, enough to actively enforce compliance of transparency in the EU. In fact, the lack of enforcement of these rules and the inefficiency of the underlying Code of Conduct are two reasons why transparency principles are not fully pursued under the EU lobbying framework. Transparency and complete

data end up not being provided by the lobbying parties since the consequences of their absence do not impact the underlying corporate activity enough to inspire compliance.

Furthermore, there is high volatility in the EU interest community. This points to a high amount of 'influence tourists', i.e., lobbyists who act on 'specific and/or time-bound issues' (Berkhout 2011, 11). The lack of a core of interests allows these groups to lobby without requiring a continuous transparency register, rendering the abovementioned sanctions obsolete, as volatile lobbyists do not fear repercussions for non-compliance with the Code of Conduct due to the temporary nature of their activity.

The practical effects of these sanctions have already been proven. In 2017, the Corporate Europe Observatory (hereinafter 'CEO') submitted several complaints to the VTR regarding violation of the Code of Conduct and the guidelines by corporations. Most of these cases were closed after the corporations updated their register. Some businesses were only declaring a minimum of lobbying expenses (e.g., Audible Magic), others were registered while not even declaring expenses (e.g., Epicenter) and some were not listing a full list of clients (e.g., GPlus). Although the findings showed that some of these corporations were not disclosing close ties with other lobbying companies, such as think-tanks, as well as companies who lobbied on their behalf, the Secretariat took no action, on the basis that the register did not formally specify that type of information (CEO 2017).

Before the creation of the current VTR, talks of a mandatory transparency register (hereinafter 'MTR') had already started in 2008. The inclusion of this register in the EU policy scenario had democratic urgency, to ensure the inclusion, on one hand, of all lobbying activities at the EU level and, on the other hand, of the influence of business and non-business interests occurring in the Council, which is still unprotected from abusive lobbying activity as of today. This urgency was reinforced in 2014 by the inclusion of lobbying regulations on the political agenda of the Commission.

In 2016, the Juncker Commission used the framework of an interinstitutional agreement to start a proposal for lobbying legislation. The efforts began with additional rules regarding representation of interest groups in the transparency register and public consultations for the introduction of a MTR. This register would be developed in order to provide solutions for the lack of transparency at the EU level, by featuring wider application of the register (including the Council and other minor EU institutions), requiring detailed descriptions of the type of lobbying interaction, granting the power to investigate and sanction breaches of the Code of

Conduct and creating an interinstitutional management board which would oversee the implementation of the MTR.

In the view of this dissertation, implementing the MTR is a crucial step to safeguard transparency at the EU level and create the necessary and appropriate measures to ensure compliance. Although this solution is not without its challenges (as will be further discussed in Chapter IV), it still provides for a solid framework to better control lobbying of business interests by disclosing information and therefore improve the efficiency of environmental policies by opening the dialogue to an enhanced public debate.

III. Corporations as Lobbying Actors

This chapter aims to highlight corporations as major mobilisers of lobbying of business interests. By focusing on the particularities of this lobbying group, this analysis intends to describe the complex relationship between business interests and the environmental context and therefore reinforce the importance of increasing transparency measures in the EU framework.

Corporate lobbying was not a pressing issue in the early days of European integration. However, as the EU slowly transformed itself into a regulator and witnessed the creation of a shift in business strategies and approaches, autonomous business interests of corporations emerged. These interests, which were predominantly represented at the national level, were now elevated to the EU institutions in order to match the supranational nature of its regulators (Coen 1998).

European interest representation is transnational, allowing national interests to be transposed to European institutions and therefore affect European policies. In that sense, it operates directly, impacting the work of the institutions by openly influencing decision-making occurring in the EU.

As Sgueo finds on his briefing (2015), the interconnection of interest groups in lobbying activities creates a stronger relationship between private parties, MEPs and EU officials. This activity encourages greater transparency and accountability in policy-making by allowing inclusivity of interests and dialogue between the institutions and other parties. Additionally, plurality or inclusivity in European decision-making is achieved by allowing big corporations, NGOs, trade unions and smaller non-profit organisations to participate in the decision-making process.

As a fundamental pillar in a democratic society, lobbying became a relevant concern during the process of European integration (Kohler-Koch and Finke 2007). Without lobbying, the business sector would not be able to exert political pressure over public actors and the regulatory outcomes could compromise any potential payoffs. Lobbying activities lead to value enhancement through increased revenues and reduced costs and the budget spent in these activities is higher in firms with greater potential payoffs from favourable regulations and policies (Hill 2013). As such, firms will always seek to influence policy-making through governmental bodies (Grossman and Helpman 1994).

In the end, what proves the core importance of these aspects in the European lobbying scenario are actual numbers. As of February 2019, the European Parliamentary Research Service found that almost 12 000 organisations were registered in the VTR. 26.3% of these latter are non-governmental organisations, platforms and networks, while 59.8% account for organisations with business interests, including trade and business associations, companies and groups.

Among the different issues these bodies are lobbying in, environmental policies top the list. While 36% of the represented issues are considered 'European', it is also known that 53% of lobbying activities occurring at the EU level occur on a predominantly national level, with 26% accounting for lobbying at a regional level (Joint Transparency Register Secretariat 2019).

Unofficial reports, however, estimate different figures. For instance, the CEO estimated in 2011 that there were between 15 000 and 30 000 lobbyists targeting EU decision-makers (Sgueo 2015). In that same year, the EU had less than 2 000 organisations registered in the VTR. This discrepancy in numbers reveals the incapacity of the current VTR in showing the true scope of lobbying activities in the EU.

In the view of this dissertation, as long as the current transparency register remains non-compulsory, leaving to the discretion of lobbyists the choice of disclosing their activities or not, mobilisation of business interests at a political level will never be fully transparent.

3.1. Corporations as information mobilisers – a general approach.

There is vast EU literature discussing the degree of lobbying activities in the EU. However, it is more important for this discussion to frame the importance of corporate lobbyists according to the type of activity they perform and the role they play when influencing European institutions and, consequently, impacting environmental policies. As such, it is important to discuss why business interests are prone to heavily impact environmental legislation drafting and approval and why the lucrative nature of their activity justifies the reinforcement of transparency rules.

A widely accepted notion is that business groups and corporations carry a heavier impact in the decision-making process than diffuse interest groups. This happens due to three main reasons: first, policy-makers are more likely to rely on organised interest groups to share technical information on matters pertinent to the policy (Rasmussen 2012). This idea of information mobilisation through private groups is asserted in Article 11(3) of the TEU, which

states that the Commission requires a communication of expertise from third parties in order to formulate its legislative proposals.

Due to the profit-based nature of business interests and investment of large sums, mobilisation of information occurs easily, helping policy-makers to shape their course of action according to the findings of the corporations investigating the issues at hand (Broscheid, 2007). Since business groups are best placed to help define what is technologically possible and cost-effective, their expertise is relied upon by decision-makers (Kerwin 2010) in order to maintain their output legitimacy (Coen and Katsaitis 2013). The more complex the policy or issue is, the higher the level of information provided by these interest groups and, therefore, the higher the dependency of the institutions on their knowledge (Kluver 2011). In exchange, policy-makers provide direct and indirect benefits, through policy concessions and insider information (Coen and Katsaitis 2013).

Additionally, companies are more numerous in Brussels in comparison to diffuse interests (Rasmussen 2012). Existing interest group literature considers lobbying to be an information exchange (Austen-Smith and Wright 1994) and the relationship between decision-makers and these interest groups is often considered a pure supply and demand relationship. The way this information is provided, and the type of information that is being provided can then help distinguish the different procedures occurring during the lobbying process. Chalmers (2013) broadly divides the type of information into expert knowledge (comprising of technical information) and political knowledge (which includes data about public support and value-laden chains).

Expert knowledge, furthermore, is intricate in its complexity and can be studied in a system of resource exchange between private and public actors at the EU level. Bouwen calls 'access goods' to the information exchanged in order to gain insights (Bouwen 2002). In all three main access goods identified by Bouwen[1], the common denominator is information, something that can only be provided by players who are in a close relationship with the market and are able to access privileged data.

This division of information into expert or political validates the preference of decision-makers towards business groups, as these often provide the first, and diffuse interest groups

[1] Bouwen identifies three different types of access goods: Expert knowledge, concerning expertise and technical know-how, information about the European Encompassing Interest, concerning the needs and interests of a sector in the European Internal Market and information about the domestic encompassing interest, regarding the needs and interests of a sector in the domestic market.

provide the former. The main reason to this preference is that while political knowledge can be sought from multiple suppliers and the relevant information cross-checked, business interests are the main actors who possess the power to acquire technical information independently, due to their resources, on one hand, and the natural preponderance of being experts in the areas in which they operate, on the other hand (Rasmussen 2012).

Secondly, a small group with a focused stake can also mobilise better and more firmly than diffuse interests, as individual participation is better rewarded and creates incentives. This is also known as the *Olsonian collective action dilemma*, where an interest of the broader public, while unorganised and lacking the rewards, cannot be effectively incentivised by interest groups. Business groups play a key role in a capitalist economy, promoting employment and economic growth, which carries determinant weight in decision-making (Lindblom 1977). Thirdly, business groups have structural power in the political domain because their investments and decisions are crucial for the development of the economy (Lindblom 1977).

While authors disagree whether corporations actually dominate politics (Vogel 1987), in the view of this dissertation, business interests do play a significant role in decision-making.

3.2. The prevalence of corporations as the primary lobbying actors

Environmental law is an asymmetrical field where supporters of business damaging policies hardly coincide with the people managing those businesses. In fact, since lobbying both includes business interests as well as NGOs and other specific interests, one might wonder why is there a predominance of business interests in the EU in comparison to non-profit environmental groups. In fact, this predominance does not necessarily mean there has been an increase in corporate lobbying over organisations of other natures – in fact, studies point to the opposite, revealing an increase of representation of interests in the EU via NGOs, think tanks and associations (Berkhout and Lowery 2010). Curiously, this stagnation in numbers does not mean that corporations are losing their strength as influencers (or deciding to withdraw their lobbying activity) but are rather stabilising their numbers while corporate lobbying transforms into a regular corporate activity.

Predominance of corporate lobbying occurs mainly to three reasons: the prevalence for information exchange (as discussed in 3.1.), institutional funding for environmental groups, and exposure to differentiated coalitions of groups.

Regarding funding, Coen (2004, 208) states that '[E]nvironmental groups have suffered a number of problems of organising at the EU level. While the Commission provided small amounts of funds to facilitate the mobilisation of groups such as the European Environmental Bureau, Friends of the Earth, and World Wildlife, environmental groups are still underrepresented at the EU level, relative to member State capitals or Washington, D.C.' In fact, environmental groups are not even placed third in the index of lobbying groups influencing European policies. Structural disadvantages and transparent multilateral relations turn environmental groups into poor allies in the moment of policy-making, making a corporation's complex web of influence more attractive for institutions.

Furthermore, it must also be noted that business interests rely more often on outside lobbying than other interest groups. Access to large amounts of resources grants business interests the possibility to rely on the media and lobbying events to further strengthen their claims. Corporations, as such, are experts in combining outside and inside lobbying, allowing the public pressure to foster more prominent influence among policy-makers.

On the other hand, it is possible to assert that while NGOs and environmental groups representing diffuse interests have less power to influence EU institutions in comparison to business interests, the agglomeration of these bodies into large European networks strengthens their pleas by creating an ideological cohesiveness. One example of this is the Green10, a network of ten European environmental organisations armed with mechanisms that facilitate cross-national coalitions and organised action. The Green10 tries to answer the problem of representation of different environmental interests and engages the difficulty in aligning interests of small, non-funded groups. These often have their own agendas, ranging from true international, ecological issues, to the protection of a sole regional species, which can be deemed irrelevant by the majority of actors. As the focus of a small group is undermined due to a vast complexity of interests, business representatives are granted more flexibility when picking their alliances and focus, being able to manipulate small environmental groups as well as large political bodies.

However, Smith alerts to the different levels of exposure from different interest groups for a particular policy. This is called lobbying symmetry and consists on 'the extent to which MEPs are lobbied evenly by different interest groups' (Smith 1984, 49). Information

asymmetries will invariably harm the transparency process for certain arguments. Business groups avoid lobbying extreme groups or groups that, despite not being extreme, do not share their views and therefore may use the provided information to transmit, modify and rebate the arguments used by the lobbyists.

3.3. The impact of Environmental Policies on Corporations

Environmental law is mostly a restrictive field of law to interest groups, especially businesses and corporations which operate on a profit-based strategy. By mostly affecting the structure of whole industries, promoting alteration of old technologies, new policies mostly always involve new costs to business. To prevent the implementation of non-profitable investments, corporations are inclined to use information asymmetries, as well as their influence among decision-makers to alter these policies.

Implementation of environmental policies suggests different categories of costs for businesses. By usually focusing on replacement or elimination of technologies and processes, and an overhaul of existing mechanisms used by corporate owners, Environmental Law is particularly prone to affect businesses and, as such, the inefficiency of its policies is usually on the best interest of these actors. When the costs arising from legislation are too focused on a small group, such as a corporation, the probability of triggering lobbying processes is higher, leading to what the author calls 'client politics' (Wilson 1974). Additionally, these business costs are complex and multi-levelled. First, business interests are faced with compliance costs, i.e. 'the costs to business of complying with specific pieces of environmental legislation' (Oosterhuis 2006, 16), which almost inevitably create additional marginal costs to the production process, as they are added to the pre-existent model without affecting the wider operation. Although multiple available technological solutions may allow these marginal costs to be reduced, environmental solutions tend to present a narrow array of options for compliance, which creates added costs to the production process, as well as an obligation to restructure management or overhaul the production process. Furthermore, investment costs relate to the capital costs of altering production methods through the purchase of new equipment and include energy, materials and labour. Finally, businesses may have additional administrative costs due to implementation of environmental regulations such as mandatory reporting mechanisms.

3.4. The Impact of Corporate Lobbying in Environmental Law

Due to the abovementioned reasons, environmental policy-making is directly impacted by corporate lobbying. The configuration of the decision-making process in the EU, paired with information mobilisation in exchange for policy concessions, steadily weakens the impact of environmental policies. Due to these factors, environmental standards and goals are modified to encompass moderate cost effectiveness for companies and overextended transition periods for new rules. Emission goals and time-limits are often drafted into these policies in order to create less sociological, economic and technological impact and as such, are already stretched to the limits of reasonableness when compared to the limits established by the experts involved. Subsequently, the influence of business interests extends these goals and time-limits even further (or eliminates them altogether), creating a snowball effect of inefficiency of compliance with environmental standards. Any policies that create costs for businesses will induce underinvestment in technology if the involved interest groups are respected by the institutions (Damania 2001). One study, for instance, concluded that large firms in the EU had substantial influence (in comparison to other areas) on the outcome of policies related to the biotechnology and electrical energy sectors (Bandelow 2000).

The current public policy approaches in Environmental Law show a multilevel move towards coalitions between consumers, businesses and European interests that was envisioned to foster information legitimacy and representation of a wider span of interests (Coen 2004). This forms issue-specific political alliances that create feedback loops and poor implementation – while the Commission has been advocating the policy lead in environmental issues, member state action hinders European policies by refusing to allow EU institutions to manage redistributive powers concerned with environmental policies. This results in 'flexible and poor implementation, and recognition of minimum standards' (Jordan 2004).

Researchers call Carbon Lobby (CL) to the industry lobbying targeted at undermining the effectiveness of EU's climate policies. According to the CEO's report on corporate lobbying in Brussels, the CL is responsible for weak climate policies that implement measures with insufficient reduction of CO_2 emissions, carbon trading and the use of agrofuels to avoid more efficient measures with more aggravating costs to business. CEO pointed major oil and energy companies such as BP, Shell and Vattenfall as leading the CL activities in Brussels, closely followed by Daimler, the International Emission Trading Association (IETA) and the

International Air Transport Association (IATA). CEO found that BP, for instance, already has a history of lobbying decision-makers, funding the US Chamber of Commerce and its political campaigns. Symmetrically, BP also owns its own lobbying offices in Brussels, relying on 'in-house' lobbyists to thoroughly represent its interests during the decision-making process. Among its lobbying attempts, BP successfully influenced the EU to transform the Emissions Trading System (ETS) into its main tool to prevent climate change repercussions. The ETS is a very imperfect system that undermines other emission control policies, sets a strict ceiling on climate policies, subsidises polluters at the expense of the tax payers' and ultimately remains susceptible to fraud (CEO 2015).

Besides more internal measures, such as lobbying to secure permits for BP's refineries, the oil company also appointed its chairmen in 2007 to advise on energy and climate change in the Commission (CEO 2011). The CL uses both insider and outsider lobbying techniques to impact environmental measures in the EU, seeking engagement both in EU institutions, relying on the Commission as the major mobiliser of information exchanges, but also allocating some of the efforts on national representatives in the comitology committee.[2]

In conclusion, environmental policies, due to their negative legal nature, represent an unmistakable impact, creating investment and aggregated costs for businesses. Access to large sums, political leverage and classification as insiders allow corporations to use both outside and inside lobbying strategies to overcome the voices of environmental NGOs and therefore influence MEPs (through emotionally-driven arguments) and the Commission (through reliance on technical expertise). These combined efforts allow business interests to steadily manipulate environmental policies in the EU by creating transitional mechanisms such as the ETS, and therefore reduce or eliminate the costs hinted by the proposal. This manipulation is actually promoted by the configuration of the European policy-making process, which relies on external information input to formulate European policies and therefore create a slow-moving process, hindering the legislative process and granting corporations further room to form powerful coalitions, render new arguments and strengthen their positions both in the Commission and the EP.

Having said that, the intricacies of the relationship between EU political actors and the corporations that lobby them are complex enough to encourage the creation of a system that better reflects those relationships through transparency-enabling mechanisms. While rhetoric,

[2] See, for instance, Norgaard et al., regarding the impact of comitology on legislation of CO_2 quotas.

argumentative persuasion and influence of policies are allowed and fostered under the EU interest system, the public, as direct and indirect targets of parallel influences, should have access to the ways in which EU environmental policies are impacted by those strategies.

IV. Towards improved transparency standards in environmental lobbying regulation

As discussed in Chapter II, European lobbying legislation has debatable efficiency. Despite the obvious benefits of information input and participation of varied interest groups, the obvious lack of strong regulations at the EU level creates a deficit of transparency regarding the identity of the lobbyists and the impact of their activity. In comparison to other jurisdictions, the EU lobbying regulation is considered minimal (Woll 2012).

Due to its nature as a supranational entity, the EU created a two-levelled issue regarding the impact of lobbying. On one hand, it authorised lobbying activities to occur within the EU institutions, allowing influence exuded from third-parties to impact institutional decision-makers. On the other hand, the lobbying occurring within member States is inevitably transported to the negotiation table within the EU through national representation. For instance, Rasmussen (2012) found in an interview with a lobbyist representative from the food industries that 'for the Council [lobbyists] engage national associations to lobby their national governments. We prepare our position and arguments. In the EP, we try to adapt our letters to the specific national context and interest of MEPs.'

This multi-level approach to lobbying sparks a need to improve regulation at the EU level. Unregulated and non-transparent approaches to lobbying at the national level will eventually sacrifice any coordination developed at Brussels, leading lobbying actors to target national parliaments and governments to deliver their interests to the EU institutions. The most democratic way to control cross-border lobbying is through increased and harmonised transparency standards.

Insufficient transparency standards, however, are justified by some authors due to the different practices in different systems, namely in regards to public funding – while campaign contributions are an established practice in the US, in most European countries it is the European commission itself that mobilises non-profit organisations (Sanchez-Salgado 2007). This difference of attitude emanating from the political institutions is rooted in the difference of practice of lobbyists themselves. While Washington firms are considered to be practitioners of 'aggressive lobbying' (Thomas and Hrebenar 2009), European lobbyists use 'sophisticated' techniques and a subtle style (Coen 1999). Naturally, policy-makers are more drawn towards regulating aggressive behaviours, which may explain the underlying gap in transparency policies. That tendency is often found in EU countries which have created hard legislation on

lobbying activities after polemic occurrences sparked a reaction from the legislative body. Nevertheless, the need to regulate should not be reactionary but precautionary.

4.1. The issue of the misuse of mechanisms of private interest to influence public policies affecting the international framework

Any radical theories against lobbying can be easily withdrawn – although the dangers arising from this activity may lead to a lack of policy efficiency, lengthy legislative procedures and aggravation of environmental issues, ensuring the dialogue between political bodies and third parties, whether individual or collective, public or private, is essential to guarantee the democratisation of the political and legislative process, as well as the capability of pledging well-founded and well-drafted policies capable of best protecting the interests of all parties involved.

This freedom, however, as important as it is to a self-proclaimed democratic entity such as the EU, can be largely overused to pursue interests of a private nature, inhibiting the well-functioning of policies mainly focused on the public interest and safety. Some authors, such as Scotford (2017) consider that environmental policies can be identified under the ´Dworkinian sense of collective goal[s] of the community as a whole' and despite consisting on standards that allow goals to be reached, represent goals of environmental protection and sustainable development as dynamic realities.

One of the problems of unregulated lobbying is realising how the protection of democracy can be used to justify an abusive control of these 'collective goals' by exclusively business actors. Although, as seen in 3.3., environmental policies inevitably impact the production processes of corporations and create costs to private actors, the pursue of Environmental Law is mostly public, and the rules enacted aim to protect public goods, safety and welfare. Although some authors believe that public welfare should not prevail over private interests, it is nonetheless consensual that a sovereign body places more importance on the well-being of all individuals concerned within its jurisdiction than the performance of a few businesses. In that regard, unregulated lobbying allows the overriding of legislation aimed at protecting the public, who relies on the institutional process to ensure compliance with environmental standards.

4.2. Current concerns about the transparency standards in the European lobbying system

Quoting the briefing in the EP regarding transparency of lobbying at EU level (Sgueo 2015), four major areas are underdeveloped in lobbying regulation:

(1) Estimates of the number of interest groups that lobby the EU institutions,
(2) Information on the typology of EU interest groups,
(3) Information on lobbying expenditure and
(4) Conflicts of interest.

Firstly, as noted by the European Parliamentary Research Service (EPRS), one of the main problems with the current VTR is how data is gathered from the recipients, and how data is categorised and organised. The data provided by the VTR does not always coincide with studies made by external sources. In fact, there are several Commission directories that provide for their own numbers and that information does not match with the data provided by the official register. As such, as concluded by the EPRS, 'no reliable and certified information exists on the number of lobbyists operating at EU level' (Sgueo 2015).

In fact, there is evidence that many lobbying firms in Brussels have been absent from the VTR while stating clearly in websites with public access that they run lobbying services. This is especially true with law firms, which actively avoid the existing sparse legislation to avoid disclosing their lobbying activities (Sgueo 2015).

Secondly, the typology of EU interest groups is also contested. The EPRS found that over 50% of registrants consisted on lobbyists working for businesses and similar associations and 75%, despite their nature, represented businesses and professional organisations; furthermore, in practical terms, more than 75% of the meetings with EU institutions were held with corporate lobbyists. NGOs, however, only account for 18% of meetings with institutions. The problem with this data, on the one hand, is that it does not provide justification for the massive discrepancy between meetings with business interests in comparison with diffuse interests. On the other hand, the numbers and categorisations provided do not account for one of the most dynamic lobbyists in Brussels: law firms. Only 100 law firms were registered in the VTR in 2015, despite accounting for 53% of the consultancy market in the EU, according to the EPRS. However, these law firms do not provide complete information about their

activities in the moment of register and the depth of their influence is still unknown in practical terms.

Besides clear issues regarding scarcity of information affecting lobbying expenditure, the European lobbying scenario also features conflicts of interest in the form of 'revolving doors, the practice of professionals moving from political or administrative posts to roles in the private sector, or vice-versa' (Sgueo 2015). The issue of revolving doors mainly concerns information asymmetries – as former officials move to private positions, their valuable knowledge grants privileged access to EU institutions.

It is clear to understand why revolving doors can compromise the whole system as a whole. Focusing on the US scenario, Lapira (2014) considers revolving doors to undermine interest representation as a whole and suggests that transparency can be achieved by requiring lobbyists to disclose accurate information about contact with previous public officials. While building an enforcement system that uses a vast amount of resources to confirm whether lobbyists have been contacted former employees with privileged information is almost impossible, creating mandatory reporting norms would at least improve the efforts towards transparency.

In fact, this issue is addressed by the Commission's Code of Conduct by forcing previous employees to abstain from lobbying on the same issues of their past portfolio for eighteen months. Furthermore, in the EP, former members cannot use their life-long pass to access the EP for lobbying purposes. Although prohibiting access to the EP can account for a more drastic cut in lobbying efforts from past employees, a cooling period of eighteen months does not seem reasonable to prevent privileged information to reach private parties and therefore disrupt the mobilisation of interests in EU institutions.

One of the questions that should be asked is why it is considered that the VTR is an ineffective system in comparison to a compulsory system. In a very streamlined approach and considering that the benefits of transparency in lobbying regulation prevail over their potential counter-intuitive options, it can be defended that regulation for a mandatory register creates mechanisms that force lobbyists to comply, as they provide information about their activity, granting more transparency. This is the approach of the EP, who has stated multiple times that only with the MTR, full compliance with EU lobbying codes of conduct can be granted.

However, this simple rationale is not devoid of criticism, especially in the political field. Major criticism of the MTR as the 'ultimate solution' is usually defended by those who perceive that abusive lobbyists can always avoid registers, even if mandatory. Sgueo (2015)

demonstrates that in the US, despite strict lobbying regulations, many lobbyists cancel their registration in the federal register while continuing to actively lobby for the same employers. By avoiding the reporting limits required by the federal government, lobbyists still partake in substantial lobbying efforts that nonetheless render the mandatory register less effective than it ought to.

The common denominator in the above-mentioned criticism, however, is that a mandatory register is not enough to support effective transparency in lobbying activities – therefore, logically, a non-compulsory register also falls short of achieving that goal. Legally-binding systems with imposition of serious repercussions, including financial sanctions, are more likely to draw inspiration for compliance purposes. As such, this assessment implies that fully-fledged, legally-binding lobbying legislation should be the next step from the current VTR.

However, as will be discussed in 4.4., the issue with that higher stage in legislative action is that there are currently many impediments (legal and political) that prevent the EU from adopting a fairly simple mandatory register. Drafting regulation with the purpose of granting full lobbying transparency would add even more complications to the current scenario and would probably hinder the process even further.

4.3. The MTR in the EU – legal framework and justification

As emphasised in previous chapters, improving transparency standards in lobbying is crucial to counteract the current decision-making paradigm in European institutions and increase the dialogue between different actors through better access to information of lobbying practices. It was also examined that the currently applicable VTR provides for insufficient measures and a deficient non-compulsory scheme that needs to be redesigned. Negotiations on a future MTR through an Interinstitutional Agreement[3] can offer a solution in improving transparency standards in lobbying activities. This section is aimed at analysing the legal framework and justification concerning the implementation of the MTR.

[3] As of now (March 2019), the last update on the negotiation for the MTR is dated 13 February 2019, when negotiators from the three EU institutions agreed to continue their discussions on moving towards a joint mandatory Transparency Register.

4.3.1. The legal basis for the MTR

The proposal for developments on the MTR suffered a stage of stagnation due to a lack of legal provision in the treaties to defend implementation of a compulsory system.

The first issue with the legal basis for lobbying transparency relies on an omission in the Treaties. Article 11(1) TEU refers the importance of consultation and specifies in point (2) that institutions 'shall maintain an open, transparent and regular dialogue with representative associations and civil society.' However, what falls under this scope is left for the interpreter. While Article 15 TFEU further specifies that EU institutions should 'conduct their work as openly as possible', some authors argue that there is a clear collision between the principle of transparency and the principle of openness, and the difficulty in legislating lobbying relies on how to weigh both of these factors into concise regulation (Nettesheim 2013).

The EP considered in 2014 that the implementation of a mandatory register could be defended under Article 352 of the TFEU. This provision enables the EU to take the necessary measures to implement a policy as defined in the Treaties by requiring the Council's unanimity and EP consent. Although a literal interpretation of the article would not allow covering regulation on lobbying (since interest representation includes cross-institutional issues), the report for the European Parliament Committee on Constitutional Affairs (hereinafter 'AFCO Report') found that the term 'policies' required a broader interpretation – despite not assisting achievement of in-treaty policies, regulating on a compulsory transparency register was required to 'attain the objectives of the Treaty at a fundamental level' (Nettesheim 2013). Additionally, the committee considered that the implementation of this transparency register would require the enactment of a regulation which, according to the principle of direct effect, would be imposed over the laws of Member States and the rights of private and public parties therein.

Despite the ability to trigger Article 352, the previous Commission claimed that the provision was not suitable for a proposal. In face of the hinderance, the Juncker Commission planned to submit a non-legislative proposal in the form of an interinstitutional agreement[4] to allow lobbying legislation to be developed.

[4] Interinstitutional agreements are used by EU institutions to develop their working relationship and may only cover administrative and institutional affairs. It is a mechanism that allows institutions to develop instruments to better regulate their own functioning without enacting hard regulations that directly impact other States and meddle with the boundaries of the treaties.

4.3.2. Transparency under the Aarhus Convention, the treaties and the Exception of Commercial Interests

Independently of the agenda of the EU, International Law has also stated the importance of transparency as a crucial principle for the protection of the environment. This evolution is a result of the implementation of several standards promoted by the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the 'Aarhus Convention') and the European Convention of Human Rights, which allow the public to complain about poor compliance of environmental norms, granting the right of members of the public to examine the parties' performance (Bianchi and Peters 2013).

The Aarhus Convention is a legally binding international, multilateral agreement applicable to the EU and all Member States 'within the framework of their existing and future rules on access to documents' which makes the EU 'responsible for the performance of [the] obligations resulting from the Convention which are covered by [EU] law in force' (EU 2005). As party of the Convention, the EU is required to allow public consultation of environmental measures adopted in member states as well as institutions, bodies, offices or agencies established by, or on the basis of EU treaties, through EU law, namely regulation 1367/2006, known as the Aarhus Regulation. The objective of the convention is to guarantee the right of public access to environmental information and ensure that environmental information is 'progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination' (Article 1, 1(b) Regulation no. 1367/2006).

But is it possible to consider that lobbying on environmental matters and not fostering a regime that allows that information to be filed under a public register is precluded under the Aarhus Convention?

Article 2(d) of the Convention states that 'environmental information' relates to any information on 'measures, such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii).' This environmental information should then be published in accordance with Regulation no. 1049/2001 regarding public access to the EP, Council and Commission documents.

As lobbying shapes the process and outcome of policies, it can be defended that the lobbying process fits under information on policies and legislation or, even, as an activity that affects the state of the elements of the environment (i) or 'releases into the environment' in the form of 'substances, energy, noise, radiation or waste' (ii).

Article 4(2) of regulation no. 1049/2001 requires EU institutions to refuse public access to a document when that disclosure undermines 'the protection of commercial interests of a natural or legal person.' This, paired with the other exceptions listed in Article 4, constitutes absolute grounds for refusal, as the legal provision provides that 'the institutions *shall* refuse access…' while the same exception, provisioned under the Aarhus Convention, states that 'a request for environmental information *may* be refused if the disclosure would adversely affect the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest.' This transposition issue creates a subjective cross-reading between both legal instruments, drastically reducing the amount of information that could be released to the public (Berthier and Kramer 2014).

The Commission, however, has a practice of considering that disclosing letters sent under lobbying purposes undermines commercial interests. In 2006/2007, Porsche lobbied for industrial affairs on the emission of CO_2 for cars and the Commission refused to disclose the letters to an environmental organisation, caving in only five years after the first request and after the European Ombudsman complained that the Commission was lacking sincere cooperation, which constituted maladministration (Kramer 2013).

However, under the Convention, information on emissions is particularly important and no exceptions in disclosure should take place. There is an 'overriding public interest' in disclosure when the information requested 'relates to emissions into the environment.'

In the initial judgement of Stitching Greenpeace Nederland and Pesticide Action Network Europe v European Commission (Case T-545/11), the Commission was forced to disclose pesticide testing information to NGOs. However, under the appeal brought to the Court in 2017, the ECJ stated that the Commission was correct in protecting the commercial interests of producers of pesticides and that 'the public interest in disclosure had been sufficiently taken into consideration, since the other parts of the draft report, disclosed in their entirety, made it possible to know the potential effects of releasing glyphosate into the environment.' As such, the apparent overriding of exceptions under Article 4(2) of the Convention is more prone to the subjective scrutiny of the Court than the text would indicate.

In fact, the Commission decided to take up the position of ignoring the combination of Article 37 of the Charter and Article 11 TFEU (which requires an explanation on the decision to side with public authorities and the corporate sector). Similar information omissions occurred in 2011, after the Commission published a White Paper on Transport, and from 2005 onwards, after failing to provide annual reports for the Scientific, Technical and Economic Committee for Fisheries (STECF). In all of these examples, the Commission failed to comply with Article 37 of the Charter and 11 TFEU by disrespecting the fundamental right of access of information, under which it should inform the public of the aims and extent of its proposals and its impact for the improvement of the environment (Kingston 2014). As Kingston (2014) states,

> 'When an EU institution or body adopts or proposes a measure which is likely to affect the environment to a significant extent, it is under an obligation to explain – in the explanatory memorandum, in recitals or in another appropriate way – how this measure contributes – or omits to contribute – to a higher level of environmental protection and to the improvement of the quality of the environment.'

Despite the obstacles and the reticence of the Commission to afford public scrutiny of business documents, both the Convention and the treaties are solid legal instruments that can inspire more openness in environmental policy-making, creating a solid foundation for a mandatory register to be implemented in order to comply with its envisioned principles of access to information and transparency.

4.3.3. Appropriateness of different lobbying regulation systems

Lobbying regulations are different according to their jurisdiction and the level of strictness of their measures is usually explained by the political scenario in which they are inserted. For instance, certain countries with severe cases of corruption stemmed from lobbying tend to react by creating harsh regulations.

Lobbying regulations can be divided into three different categories: low-regulation, medium-regulation and high-regulation (Chari 2019). In low-regulation lobbying systems, the law does not require detailed information or spending disclosure on lobbying activities. These systems are usually equipped with a voluntary register and lack a regulatory authority to

oversee the process. Chari (2019) considers that a low-regulation system is 'window dressing', finding that its actual effectiveness is 'wanting' in comparison to medium and high-regulation systems. Considering the current register, European institutions fall under this category.

Medium-regulation increases the level of thoroughness of information, requiring names and staff members involved in the lobbying process, as well as all issues being lobbied about, the bills being object of the lobbying and potential ministers that are targeted by the lobbying efforts. Although enforcement is still lacking and penalties are practically non-existent, the increase of information safeguards the minimum for a transparent system.

In high-regulation systems, being the US federal government the best example, there is full disclosure of information (which is then provided to the public) and severe penalties enforced by the state.

Despite the difficulty in picking a specific level of strictness for legislative purposes, it is clear from the provided data regarding lack of transparency and misuse of lobbying activities for corruption and bribery that a low-regulation approach does not work at the EU level.

Under the current system, lobbying actors are able to use their discretion to completely avoid any input regarding their activity. Even if the establishment of penalties and harsh enforcement systems is considered inadequate for the European agenda, the increase of requirements regarding the type and amount of information provided may certainly improve the level of transparency standards.

In that sense, medium-regulation would be more adequate for the current lobbying framework. By imposing an increased level of disclosure, this system would comply with the transparency requirements ascertained in the EU treaties and applicable environmental conventions without compromising the integrity of lobbying actors through the establishment of hard sanctions. While a high-regulation system could be drafted in the future, it seems far-fetched to propose a highly punitive regulation for lobbying activities without first strengthening the foundations for information disclosure.

4.4. Current Challenges

4.4.1. Impact upon fundamental rights

4.4.1.1. Impact on fundamental rights under the CFR

As mentioned in the AFCO Report, introducing a mandatory register may affect 'the right to freedom of expression, the freedom to conduct a business and [also] the right to the protection of privacy.' As such, legislation on lobbying needs to be adapted to avoid impacting these rights, especially when it comes to establishing sanctions and delimitating the field of application of the law.

Regarding freedom to conduct a business, established in Article 15(1) of the Charter of Fundamental Rights (CFR), the register can specifically impact the right to represent commercial interests. The AFCO Report considers that creating a mandatory obligation to become member of a register can violate the right to decide whether or not to be considered a 'lobbyist' as an occupation, by automatically inserting a certain type of activity considered as lobbying into an occupation. In that sense, the AFCO Report states that there is a negative fundamental right associated with the Freedom to Choose an Occupation, since it is a right that grants protection against any undertakings requiring mandatory disclosure leading to self-incrimination.

However, this interpretation of the AFCO Report seems stretched. EU policies have inevitably set the stage for various automatic categorisations of activities and actions, utilising behavioural patterns to ensure protection of rights. Just like the EU characterises lobbying as 'all activities carried out with the objective of influencing the policy-making and decision-making processes of the European Union institutions' (Commission 2006), any actor, whether representing corporate or non-governmental interests, falling into this definition, will inevitably be considered a lobbyist for the purpose of ensuring transparency at the EU level. In fact, without this automatic categorisation of the lobbying activity, the personal and material scope of any future legislation on this issue could not be established.

The information used for the purpose of building a compulsory register could eventually violate the ways in which the lobbyist may want to share and present private information for the purpose of ensuring private interests. However, there is no clarification on behalf of the ECJ on the true scope of this provision and whether it prevails over the interests carried out by a mandatory register or not. A proportionality test would have to be ensured in order to allow

the MTR to protect the right to privacy without losing its effectiveness. Publishing information online regarding declarations of interest and assets of members of EU institutions, for instance (just as happens in France, overviewed by the Haute Autorité de la Transparence pour la Vie Publique) will most probably be hindered by this right.

We leave the right of freedom of expression or freedom of political communication for last, as its scope and application are harder to frame in the present case. Although there is no decision by the ECJ regarding the political scope of Article 11 of the CFR, most theories agree that political expression, including interest representation, is included on the general understanding of freedom of expression. This freedom of political communication would then encompass the ability of individuals and organisations to express their concerns and pressure European institutions.

In the opinion of the AFCO Report, the MTR may restrict the right to a political opinion as it reveals the identity of lobbyists and the funding involved in their engagement with EU institutions. As such, a legal obligation to disclose participation of individuals and organisations in interest representation activities intervenes with Article 11 as it affects the private exchanges occurring between MEPs, officials and the lobbyists. Likewise, the AFCO Report also states that controlling these private exchanges or restricting their occurrence would transfer a 'central area of liberal and democratic expression of freedom' into the 'sphere of influence of sovereign power.'

However, this reasoning does not really coincide with the nature of the transparency register. In fact, revealing the identity and amounts involved in lobbying activities does not restrict interest representation, as it does not establish boundaries to the activity in regard to the parties involved or the amount of resources employed. Furthermore, private statements and communications, as well as the extent of the influence exerted by business interests or other individual political concerns, are not revealed through membership of a transparency register, but framed according to the nature of the parties involved in order to ensure higher levels of transparency in the European political context and a better understanding of the powers and influences being wielded during decision-making. In this sense, a corporation which registered expenditure of resources in lobbying pursuits does not reveal the direction of the influence played in its lobbying efforts or the policies affected. Naturally, registering employment of high levels of resources by a major oil company will certainly create scepticism as to the environmentally-friendly goals of that lobbying attempt. However, scepticism falls into the area of speculation and does not directly reveal the intentions and goals pursued by the lobbying

activity. Additionally, the EU legislative body is able to restrict the scope of fundamental rights when considering the goals established in the treaties and protection of other fundamental rights also celebrated by the CFR. As such, balancing transparency of represented interests and freedom of political communication, barely restricted as it is, will grant a more concise look into the legitimacy of lobbying legislation.

4.4.1.2. Impact on fundamental rights under the ECHR

The register of consultant lobbyists may also impact fundamental rights provisions under the ECHR, with special regards to Article 8. Article 8(1) ECHR provides the right to respect for private and family life and includes personal data as a part of its scope, rendering any obligation to provide data for the collection and storage on a public archive as triggering. However, the information that the EU seeks to use for the register's purpose is not sensitive enough to imply engagement with Article 8(1), and can be furthermore justified by Article 8(2), especially in regards of being substantiated by the protection of a 'democratic society'.

Article 8 can also pose some problems regarding the 'right to respect for correspondence' in case there is an inclusion of monitoring or supervision bodies as competent to require documents for ensuring compliance with a mandatory register. However, these documents and correspondence would not be continuously monitored, but rather demanded in case of non-compliance with the register's mandatory provisions, a situation that would then fall under the scope of the justifications raised by Article 8(2).

4.4.2. Passing the necessity, suitability and appropriateness tests

The AFCO Report considers that there is no need for the establishment of a MTR, but its test of necessity lacks strong arguments. One the one hand, the AFCO Report prompts that the current VTR may be as effective as a compulsory register. It then defends this position by ascertaining that it is difficult to establish the threshold of interest representation, that is, the level of influence exerted to be considered lobbying. Furthermore, the AFCO Report uses the suitability test to defend its position regarding restriction on fundamental freedoms, considering that by employing a consideration of the end versus the means, a restriction on the freedom of engaging in interest representation will create a heavy burden of justification, as a broad conception of 'lobbying' and consequently a broad obligation to register personal

information and restrict access to interest representation is more difficult to defend under the present formulation of EU treaties than limiting the scope to more restricted information to be registered, as well as narrowing the object of the regulation to the representation of commercial or business interests (Nettesheim 2013).

Regarding appropriateness, the AFCO Report prompts the issue of establishing sanctions for a compulsory register that restricts fundamental rights by considering that any restraint instituted by this regulation will have to feature concise boundaries so as not to affect more than the necessary, adequate and appropriate, fundamental freedoms of individuals.

Finally, the AFCO Report adds that there is no 'obvious necessity' for a MTR. It considers that the current VTR offers 'considerable information concerning the line-up of individuals and organisations engaged' and that a comparison of necessity (and according to its reasoning, here 'necessity' equals the volume of information revealed by the registry) with a less interventive measure has to be made in order to prove whether the current system is necessary. Furthermore, the AFCO Report affirms that it considers more necessary to promote transparency through a 'process and decision-oriented' method, without the automatic labelling of lobbyists as an abstract status, than promoting a compulsory register that has a big impact on individuals by acknowledging their status as a 'lobbyist'. As such, the AFCO Report suggests another approach for regulation on lobbying transparency by orienting influence on a case-by-case analysis, for specific decision-making processes, instead of creating an overall category of 'lobbyist' under the EU framework.

4.4.3. Establishment of Sanctions

As discussed in II., in the current EU lobbying system only four sanctions are established by the Interinstitutional Agreement on Transparency: a written notification, suspension, removal from the register and withdrawal of the EP badge. The major problem with implementing sanctions in the context of a mandatory system is, on the one hand, the conflict with fundamental rights that are already being challenged by the nature of the regulation itself and, on the other hand, the sanctions being applied and their efficiency in the European context. The AFCO Report also mentions the creation of sanctions in a possible MTR, stating:

> 'The more severe the sanction laid down by the legislative bodies at EU level, the more difficult it will be to justify a regulation requiring the introduction of a

> compulsory transparency register. The withdrawal of privileges (internal ID passes etc.) is considerably less severe than the threat of sanctions of an administrative nature or sanctions similar to those handed down under criminal law.'

Current negotiations on the MTR already predict an establishment of sanctions concerning breaches of the Code of Conduct applicable to the registrants to the register (Commission 2016, Article 7). These breaches would be investigated by the Secretariat but the nature and listing of these sanctions still has not been revealed by the EU.

4.4.4. Inhibiting national lobbying from influencing European institutions

As mentioned in the introduction of Chapter IV, one of the objectives of creating and implementing lobbying legislation at the EU level is controlling the impact of multi-level lobbying activities within the EU.

Since at a political level lobbying can start in thoroughly circumscriptive areas (e.g., municipalities) and move its way up to the Commission (namely through the committee procedure, lobbying national specialists on domestic sectoral interests), assuring a thorough system of cross-checking between different institutions, from local to supranational, is crucial to grant the coherence of a controlled system. This multi-level system is detrimental, however, to pursue the goals of interest representation set in the treaties – only by fostering a system of organised interest representation can the institutions grow in terms of their executive and legislative powers. In this regard, Streeck and Schmtter (1991) observe that only through the creation and development of a transnational system can the Commission 'lift itself out of the parochial entanglements of national politics and intergovernmental non-decision-making into a safely anchored new world of supranational political management.'

However, although unregistered or unrestrained lobbying attempts can be diluted in the chain of power, as influences move from small, local governments until they reach the Commission, the possibility of allowing multi-level interests to render the lobbying system ineffective is too big to be left unattended. Eising (2007) observes that the EU multi-level setting allows both European and national associations to develop a division in their lobbying efforts, allowing national groups to follow the policy-formulation process from an EU perspective until they are implemented in their own domestic jurisdictions. By being well-

embedded in domestic policy networks, these domestic actors are fundamental to ensure representation of business interests at the EU level through a multi-stage process.

In fact, on 6 December 2017, the Council stressed that under a future MTR, lobbying interactions between interest representatives and national officials shall be responsibility of the concerned member state, therefore claiming that the Interinstitutional Agreement should not cover interactions concerning national communications (Sgueo 2015).

4.4.5. Financing the creation of platforms and resources to guarantee the effectiveness of the system

In a way, financing a system that allows thorough regulation of lobbying activities can also be challenged when considering the reluctance of member states to invest in a system that will control the ways in which they exert their influence in EU institutions. In fact, guaranteeing the effectiveness of a MTR or further 'hard legislation' on lobbying will undoubtedly require the establishment of a major authority able to oversee any possible breaches of the regulation. In France, for instance, the Haute Authorité de la Transparence pour la Vie Publique (HATVP) hired fifty remunerated agents to collect financial assets and interest declarations of thousands of public officials in order to make sure there were no omissions in information disclosure.

In fact, there is a straightforward relationship between public costs and the level of austerity in lobbying regulations. The stricter lobbying legislation is, the higher the cost to upkeep a system where penalties need to be enforced and high authorities need to be funded to control compliance with the register. The highly-regulated US lobbying legislation, for instance, has been criticised by relying on the federal state to control the entire system. Some authors suggest that building a coalition through licensing processes can allow a statutory register to run without allotting all costs to the state.

Conclusion

The dynamic of corporate lobbying is clearly a substantial factor for the development of environmental policies in the EU. Data points to business groups outnumbering NGOs and labour unions. Through the mobilisation of significant resources, they are able to alter or abolish entire environmental policies proposed by the Commission and this impact is further increased when considering the lack of lobbying transparency legislation in the EU. The fact that transparency standards are underdeveloped and non-compulsory paves the way for abusive lobbying behaviour and an opaque interest group system that provides no information to the public on matters that are predominantly focused on the public good.

Regulating lobbying transparency at the EU level is fundamental to ensure the efficiency of environmental policies, as well as guaranteeing the democratic and transparency ambitions declared by EU institutions. In an area as especially prone to lobbying as is Environmental Law, due to the numerous direct and indirect costs to businesses, it is detrimental to design a system that respects the principles conveyed in international conventions by creating effective instruments that publicly disclose information related to lobbying in the EU in a thorough and compulsory manner. While the currently enforced VTR can be seen as the foundation for a future, comprehensive lobbying framework, it still lacks coherent enforcing mechanisms and sanctions, with little incentive for businesses to register. Despite the effort in drafting a solid Interinstitutional Agreement to regulate these matters, current information on the future MTR still lacks several key aspects on enforcement and compliance.

Future research is detrimental to design an effective system of sanctions and incentives for a compulsory register. Due to the challenges provided by an interinstitutional agreement that partially overrides certain fundamental rights, such as the protection of privacy or the protection of commercial interests, particular care should be taken when considering the impact of those sanctions among corporate and political actors.

Either way, the MTR can be the intermediate solution between the current agenda and a future system with a hard-regulation framework, but cross-border cooperation and harmonising transparency standards and access to the transparency register are fundamental to ensure the effectiveness of future rules.

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