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## A New Concern in Europe: Lobbyists, the Merchants of Influence

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# A New Concern in Europe: Lobbyists, the Merchants of Influence

Odile Prevot\*

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## I. INTRODUCTION

Concerned about the realization of the European Market, lobbyists are seeking to modify the decisions made in Brussels. The lobbying phenomenon has involved many controversial issues that will be resolved during the spring of 1992.

The United States has been familiar with the concept of lobbying for many decades, but such familiarity is not the case in Europe. As the following anecdote demonstrates, the practice of lobbying has not always been exclusive to the Americans. A French lobbyist, the *Comte de Vergennes*, Minister of Foreign Affairs under Louis XVI, visited Washington D.C. in 1793 and influenced Congress to grant a refund for the armaments that France had delivered to the United States during the Revolutionary War. Lobbying had been practiced for many years on both the American and European continents; but Europe has never regulated methods, proceedings, or codes of conduct for lobbyists.

The fact that none of the European countries have regulated lobbyist activity does not mean that these countries are not concerned about these purveyors of influence. The lobbies of the European Parliament in Strasbourg, Capitol Hill in Washington D.C., and even the California State Capitol specialize in influencing legislative and administrative action.

The term "lobbying" is generally understood to mean bringing positive influence to bear on lawmakers to advance a given interest.<sup>1</sup> In recent years, lobbying has become an accepted part of the European Economic Community's (EEC) legislative process, although the methods and approaches required differ considerably from those employed in national areas. With the advent of 1992, the European Community (EC) is moving rapidly towards the realization of the Single Market. Implementation of EC '92 goals started slowly, but by late 1991 the process had become the principal topic of discussion in capitols and boardrooms across Europe.

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1. FAIR POLITICAL PRACTICES COMM'N, STATE OF CALIFORNIA, INFORMATION MANUAL ON LOBBYING DISCLOSURE PROVISIONS OF THE POLITICAL REFORM ACT (1990).

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EC '92 finally had gathered the critical mass needed to attract and hold public attention. Even if the EC government misses the December 31, 1992 deadline for enactment of all proposals for unifying western Europe, the process of unification will be irreversible because the goals of EC '92 are not new.<sup>2</sup>

Many companies, both within and outside the EC, now understand the need to protect and advance their interests in the formative stages of the law-making process, that is, while legislation is being drafted and debated. Accordingly, companies need to communicate their interests to EC decision-makers effectively, and to take the initiative in proposing alterations or additions to putative legislation. Therefore, although lobbying of politicians and lawmakers may not be a new idea, recently it appears to have assumed more importance within the EC. Even after the rules for the Single Market have been promulgated, many details will need to be addressed by the EC decision-making bodies. For this reason, many people in Brussels expect that lobbying will continue as a valuable, and often necessary, activity.<sup>3</sup>

Are consultants and representatives of organizations continuing to practice lobbying activities without any safety net, with no regulation, code of conduct, or code of business ethics? This issue has been raised for several years,<sup>4</sup> but remained unanswered until 1991. This article discusses whether it is finally necessary to regulate the so-called European "merchants of influence."

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2. Article 2 of the Treaty of Rome, signed in 1957, states as the EC's primary goals, "[A] harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it." TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY] art. 2.

3. Interview with Florence Maisel-Mouterde, Associate Director of INTEREL, Public Affairs and Communication Institutionnelle, in Paris, France (Oct. 9, 1991).

4. *Written Question No. 2325/84 to the Commission: Community Lobbyists*, Jens Peter, Rainbow Group (Mar. 18, 1985); *Written Question No. 620/85 to the Commission: Lobbyists*, Dieter Rogalla, Socialist Group (Dec. 31, 1985).

## II. A PRACTICE NOT ACCEPTED

Some contend that the term "lobbyist" necessarily connotes United States. Perhaps this association is because it was in America that pressure groups gained respectability after starting from less than respected origins; and a general view that the vast majority of lobbying that occurs in the world takes place in Washington D.C. Today, lobbyists have invaded all parts of the world.<sup>5</sup>

### A. *Lobbying Throughout the World*

From North to South, East to West, the internationalization of exchanges, the quest for capital to invest, and the development of economies is evident. Despite their uniformity of purpose, the methods used by lobbyists are different.

In the vast majority of EC-member state parliaments, there are no rules or provisions governing the activities of lobbyists. This is true of the parliaments of Belgium, Greece, Spain, Ireland, Italy, the Netherlands, Portugal, the United Kingdom (U.K.), and the German Bundestag.<sup>6</sup> In the Italian Chamber of Deputies, five bills aimed at recognizing and regulating professional public relations activities have been tabled.<sup>7</sup>

There are no specific rules governing the organization and activities of lobbyists in the Danish Parliament (*Folketing*), or the French National Assembly.<sup>8</sup> Nevertheless, both chambers give de facto recognition, and certain parliamentary privileges, to such groups.<sup>9</sup> In the *Folketing*, delegations or representatives of concerned organizations may be admitted to parliamentary committees under the following conditions: (1) members of the delegation must belong to the organization which has submitted a

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5. JEAN-DOMINIQUE GIULIANI, *MARCHANDS D'INFLUENCE, LES LOBBIES EN FRANCE* 163 (1991).

6. Rules of Procedure of the Bundestag, Annex II, Doc. No. DG JUR% PR001 (June 1991) (available at Library of the European Parliament, Luxembourg (noncirculating material)).

7. *Id.*

8. *Id.*

9. *Id.*

request to appear; and (2) the lobbyists are permitted to appear for a maximum of fifteen minutes.<sup>10</sup>

There are no specific rules affecting lobbyists in the National Assembly of the French Republic. Lobbyist access to the French Parliament's office and meeting rooms is governed by general rules of access.<sup>11</sup> In general, arrangements are similar to those applied in the European Parliament and political groups which freely decide who to receive and with whom to consult. However, access to, and movement within, the premises of the National Assembly is regulated by a general directive of the Assembly which specifies who may enter.<sup>12</sup>

Although no explicit reference is made to lobbyist activities, Switzerland and Luxembourg are beginning to formulate rules which would govern lobbyists' activities. In Switzerland, lobbyists actually exercise their power more on the international level than on the national level. European influence groups are in Brussels to learn what will occur during 1992, but they are also in Washington D.C., where they do not hesitate to use the services of professional lobbyists from either Switzerland or the United States to obtain the ends they seek. Large companies headquartered in Switzerland have lobbyists in all parts of the world, which gives them the opportunity to be present wherever decisions which may affect them are being made. Functioning nationally, Swiss companies do not hesitate to hire prestigious foreign personalities to lobby on their behalf. The Swiss multinational corporations are highly efficient at influencing decisions, anywhere in the world, which may affect their business.

The Luxembourg Chamber of Deputies has enacted rules governing lobbyist activities. Rule 25(1) of the new Rules of Procedure refers to extra-parliamentary cooperation, and makes provisions for a committee to receive and hear the opinion of extra-parliamentary persons and organizations, to request information or documentation, and to accept or request extra-parliamentary

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10. *Id.*

11. General Directive of the French National Assembly, art. 26.

12. *Id.*

cooperation when considering a bill. Such consultations must relate to the subject under consideration by the committee and, following an assessment of the need for consultation, must be approved by an absolute majority of its members.<sup>13</sup>

Precise and systematic rules regulating lobbying exist only in Australia, Canada, and the German Bundestag.<sup>14</sup> Observation of what Canada and Australia are doing to regulate lobbying efforts will help to understand the future evolution of English lobbying regulation. In these two past colonies of the British Empire, lobbyists are accepted, but their activities are restricted.<sup>15</sup> Lobbyists in both Canada and Australia must be registered.<sup>16</sup> Currently, more strict regulations are in the process of being drafted.<sup>17</sup>

In the German Bundestag, each year a public list is compiled, including all associations, organizations, or undertakings which wish to express their interests to the Bundestag or the federal government.<sup>18</sup> Entry onto this list is a precondition for representatives of interest groups to be received by parliamentary committees, or to be issued a pass admitting them to Parliament's premises.<sup>19</sup> The list must contain the following information: (1) Name and location of the association or interest group; (2) the composition of the group's board of directors and board of management; (3) the group's sphere of interest; (4) the number of members in the organization; (5) the names of the association's appointed representatives; and (6) the address of the group or association's office at the seat of the Bundestag and the federal government.<sup>20</sup>

Once an interest group has provided all the necessary information to the corresponding services of the Bundestag, the

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13. Luxembourg Chamber of Deputies Rules of Procedure 25(1) (1991).

14. *Le Lobbying, Sport National Allemand*, LE MONDE, Feb. 18, 1992 [hereinafter *Le Lobbying*].

15. See GIULIANI, *supra* note 5, at 163.

16. *Id.*

17. *Id.*

18. *Le Lobbying, supra* note 14.

19. *Id.*

20. Rules of Procedure of the Bundestag, Annex II, Doc. No. DG JUR% PR001 (June 1991).

service may issue a pass on request.<sup>21</sup> The list does not entitle lobbyists to be heard in hearings or before committees, or to be issued a pass. Indeed, once a pass has been issued, it can be declared invalid by the Bundestag. The invalidation of passes remains entirely at the discretion of the corresponding office of the House.<sup>22</sup> The Bundestag and its committees can also invite associations or experts who do not appear on the list to their meetings when considered necessary.<sup>23</sup>

Rules governing the activities of lobbyists have a considerable tradition in the United States. Therefore, it is imperative to understand the lobbying arrangements used in that country before examining the problems that the U.S. is facing due to lobbying activities.<sup>24</sup>

The three main laws which regulate lobbying at the federal level are: the Federal Regulation of Lobbying Act, the Byrd Amendment, and the Foreign Agents Registration Act. In addition to this legislation, another consideration is the Senate and House Rules on Gifts, Travel, Reimbursements, and Honoraria to members of Congress, which might be described as an internal regulation on ethics.<sup>25</sup>

The first of the federal laws, the Federal Regulation of Lobbying Act, restricts the activities of pressure groups as they pertain to the U.S. Congress. This statute lists those persons who must register as lobbyists, and the information which they must periodically supply, in a manner typical of the caustic approach to such rules under Anglo-Saxon legal practice.<sup>26</sup>

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21. *Id.*

22. *Id.*

23. *Le Lobbying, supra* note 14. The 1990 public list of the Bundestag was comprised of 1501 associations. *Id.*

24. *See* Serge Marti, *Le Lobbying Social Nippon Aurait Ateint 400 Millions de Dollars en 1991*, LE MONDE, Dec. 10, 1991.

25. *See* DONALD H. HAIDER, *WHEN GOVERNMENTS COME TO WASHINGTON* (1974). These rules vary slightly for each of the chambers of Congress. Rather than laying down major obligations for lobbyists, they are chiefly addressed to members of Congress, and apply equally to congressional officials and employees. *Id.*

26. *Id.*



In the U.S., lobbying is defined as any activity which involves influencing or seeking to influence the legislative process through direct contacts with members of Congress or their staff. According to the Federal Regulation of Lobbying Act, lobbying comprises four key elements: (1) legislative activity, (2) intention to influence the legislative process, (3) intention to influence Congressional members or their staff, and (4) direct communication with members of Congress or their staff. An activity is not considered lobbying where one of these features is lacking.<sup>27</sup>

The Byrd Amendment sets forth restrictions and prohibitions on the use of federal funds in lobbying activities. Further, it provides new and more precise rules concerning expenditures incurred in lobbying activities by persons receiving any type of federal grant or funding.

The Foreign Agents Registration Act consists of a series of registration obligations for any person wishing to act as a lobbyist on behalf of a foreign national, and requires the submission of periodic reports on their lobbying activities.<sup>28</sup>

The problems that the U.S. is experiencing from lobbyists' efforts are voiced in congressional concern about the effects of foreign influence on the U.S. government and the American public. U.S. Senators have, therefore, proposed amendments to the Foreign Agents Registration Act of 1938.<sup>29</sup> The Act neither prohibits representation of foreign interests in the U.S., nor prevents dissemination of foreign propaganda.<sup>30</sup> Since 1974, 47% of former senior officials in the Office of the U.S. Trade Representative (USTR) have registered with the Justice Department<sup>31</sup> as foreign agents, or worked for firms that had so registered.<sup>32</sup> "The Office of the USTR has become almost a training ground for foreign

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27. *Id.*

28. See Phillip J. Perry, *Recently Proposed Reforms to the Foreign Agents Registration Act*, 23 CORNELL INT'L L.J. 133 (1990).

29. *Id.*

30. *Id.*

31. See NIKKEI WKLY., Sept. 7, 1991.

32. WASH. POST, Dec. 14, 1991, § 1, at A25 (statement of the Center For Public Integrity, a new labor, business, and foundation-financed public-interest group in Washington D.C.).

lobbyists.”<sup>33</sup> Recently, however, attention has been focused on the powerful Japanese lobby in Washington. “[T]here is no question that lobbyists—and the Japanese lobbyists in particular—are having an effect on politics and policy [in the United States].”<sup>34</sup>

An examination of lobbying throughout the world would not be complete without giving attention to those countries who are trying to discover democracy: a prime example is Hungary. Because of its trader traditions and its opening to western Europe, Hungary has undergone precocious liberalization.<sup>35</sup> After the Revolution of 1956, the Janos Kadar regime tried to accomplish a soft normalization. Kadar was open to lobbyists because he knew that Hungarians needed to find their way to a new job, or to give communism the opportunity to survive, even if the population did not want it.<sup>36</sup> Lobbyist groups were recognized and they existed even if no proper rules governed their activities.<sup>37</sup> However, when the economy worsened the lobbyists lost their power. In the early 1980s, a new type of lobbyist appeared with a new dream; to be the preferred interlocutor of the huge investors from the capitalist countries.<sup>38</sup> For the Hungarian lobbyist, lobbying means democracy.

### B. Europe, Native Country of Lobbyists

The European Community tries to maintain a balance between the Anglo-Saxon common and Latin civil legal traditions. Regarding the practice of lobbying, however, there is no doubt about the English influence. The Anglo-Saxon common law model has more influence on this issue than the Latin civil law model.

A whole spectrum of people and organizations now lobby for their clients in the EC. There are 500 European associations and

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33. *Id.*

34. See JEFFREY H. BIRHAUM, *LOBBYISTS AND YOU* (1990).

35. Guy Sorman, *14 Triomphes du Liberalisme*, LE FIGARO DU SAMEDI, Jan. 18, 1992 (No. 14746).

36. *Id.*

37. See GIULIANI, *supra* note 5, at 193.

38. *Id.* at 195.

3000 lobbyists involved in the EC decision-making process.<sup>39</sup> Certainly these influence groups need to make themselves more visible to members of the decision making bodies. The large number of professional EC public affairs consultants now working in this area is a testament to the extent to which organizations now value active lobbying.<sup>40</sup> Based mostly in Brussels, some lobbyists have affiliated offices in other major cities. For example, there are thirteen lobbyist firms registered with the *Association Française des Conseils en Lobbying* in Paris.<sup>41</sup> These consultants represent a broad range of clients from national and international corporations,<sup>42</sup> to trade associations, charities, environmental groups,<sup>43</sup> and local government authorities. They provide a wide range of information and advisory services. Lobbyists also assist in identifying issues, developing strategic programs, managing media relations, and making presentations to the EC.<sup>44</sup> Not all professional consultants provide the same range of services. Some lobbyists may provide monitoring services, while others do not.<sup>45</sup> In selecting a lobbyist or consultant, it is therefore necessary to assess what type of services are called for, and then determine whether a particular organization can provide those services.

Because the legislative procedure of the EC is complex, those who wish to exercise influence within it should first understand the system before they may effectively communicate their interests to EC decision-makers.

### *1. Understanding the System*

A knowledge of the various channels through which proposed laws pass, the bodies involved, and the time at which deliberations occur, assist the lobbyist in determining when and where

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39. Interview with Florence Maisel-Mouterde, *supra* note 3.

40. *Id.*

41. THIERRY LEFÈBURE, LOBBY OR NOT TO BE 161 (1991).

42. Interview with Florence Maisel-Mouterde, *supra* note 3.

43. Interview with Olivier Bobille, *Chargé de Mission Affaires Européennes et du Bureau CNIH de Bruxelles*, in Brussels, Belgium (Oct. 8, 1991).

44. *Id.*

45. *Id.*

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representations to EC officials should be made. Lobbyists also need to be aware of the voting majorities required to pass legislation, and time limits on their activities; both of which vary according to the legislation involved and the procedure being used by the system. The essential structure of the EC law-making system is one in which the Commission proposes, the European Parliament advises, and the Council decides. Supervising the activities of these institutions and ensuring that they act within the scope of their powers is the job of the European Parliament.<sup>46</sup>

### *a. The Commission*

The Commission consists of seventeen officials, known as the Commissioners, designated by the individual governments. The Commission is the policy-initiating body; virtually all policy decisions originate with the Commission. It initiates policy and passes the recommended measures on to the Council of Ministers. Proposals for new laws emanate from the Commission and are drafted by members of the Directorate General responsible for the policy area concerned.<sup>47</sup>

A positive exchange of opinions and information, before a proposal is drafted and submitted to the Council, is viewed by many lobbyists as highly beneficial.<sup>48</sup> Dialogue at this point on the possible effects of the proposal and alternative methods of achieving objectives may reduce or obviate the need for future activity.<sup>49</sup>

### *b. The Council*

The Council consists of the foreign ministers of the member states. The ministers deliberate and decide on the measures

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46. See CHRISTIAN GAVALDA & GILBERT PARLÉANI, *DROIT COMMUNAUTAIRE DES AFFAIRES* 97 (1988).

47. *Id.* The Commission is internally divided into departments responsible for specific areas such as agriculture, internal markets, social affairs, and transportation. *Id.*

48. See *id.* at 90-91.

49. *Id.*

recommended by the Commission, accepting or rejecting the proposal. The Council is the principal law-making body of the EC, altering or amending Commission proposals.<sup>50</sup> Since the Council determines what is to become law, and is comprised of member-state representatives, it is also worthwhile to consider lobbying the Council through national channels.<sup>51</sup>

*c. The European Parliament*

The European Parliament is composed of 518 members which are directly elected to that position by the country they represent.<sup>52</sup> The formal opinion of the Parliament is required on most proposals, before they can be adopted by the Council. Its powers have been greatly strengthened by the cooperation procedure for certain measures under the Single European Act.<sup>53</sup>

The role of the European Parliament remains largely consultative except for its ability to control, within limits, certain types of EC budgetary expenditures. The preparatory work for plenary sessions is completed in eighteen specialized committees.<sup>54</sup> A proposal from the Commission is first referred to one of the committees for a report and to others for an opinion. The reporting committee then formally nominates a *Rapporteur*,<sup>55</sup> chosen by the political parties.<sup>56</sup>

In the committee, there is generally a first reading of a preliminary paper from the *Rapporteur*, and a presentation of the Commission's proposal. Once adopted, the committee's report is placed on the agenda for a forthcoming session.<sup>57</sup> The Parliament generally meets in full session once a month in Strasbourg, France. The majority of legislative proposals under the Single European

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50. *Id.*

51. GAVALDA & PARLÉANI, *supra* note 46, at 90-91.

52. *Id.* at 98.

53. EEC TREATY.

54. *See* GAVALDA & PARLÉANI, *supra* note 46, at 98.

55. Mr. Marc Galle of Belgium, member of the Socialist Party, is the *Rapporteur* in charge of the regulation on lobbyists.

56. *See* LEFÉBURE, *supra* note 41, at 162.

57. *Id.*

Act fall under the cooperation procedure: after giving its opinion on the Commission proposal, the Parliament may modify its stance before the Council of Ministers reaches a common position on the proposal. This common position is returned to the Parliament for a second reading.<sup>58</sup> Because of its mainly consultative role, the Parliament may have less significance for lobbyists than does the Council.

The system of review and debate through the Council, the European Parliament, and the committees which assist them, is comprehensive. It is therefore essential that lobbying activities occur at the optimal time in the process. Once a proposal has been formally drafted by the Commission, it would be extremely difficult to substantially alter it. Once a proposal has been accepted by the Council, there may be little chance of changing what is to become law.

## 2. Brussels: the Lobbies Under Pressure

The actions of lobbyists in Brussels and Strasbourg are different than lobbyist actions in the individual member states. It is an extremely different political world. "Brussels, [Belgium] is the native country of lobbyists, they are everywhere."<sup>59</sup> But lobbyists in Brussels are different from the lobbyists in the member states. "They are European; that means fast, rich, organized, effective, imaginative, and tenacious."<sup>60</sup>

Lobbying of the European Parliament has increased considerably in the past decade.<sup>61</sup> This increase has come not only from commercial lobbyists, but also from single issue pressure groups and other organizations.<sup>62</sup> The concerns expressed by the Parliament over representational activities in Brussels and Strasbourg, arise from the practices of a small minority of

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58. *Id.*

59. JACQUELINE NONON & MICHEL CLAMEN, *L'EUROPE ET SES COULOIRS, LOBBYING ET LOBBYISTES* 31 (1990).

60. *See* GIULIANI, *supra* note 5, at 207.

61. *Id.*

62. *Id.*

professional and personal interest advisers who have abused the facilities of the Parliament.<sup>63</sup> Most lobbyists in Brussels and Strasbourg stress their concern over such abuses, and express hope that such abuse will not occur at the Commission or Council levels.<sup>64</sup>

Presently, the bulk of policy and legislative representation concentrates on the Commission. However, the European Parliament is constantly growing in significance to political lobbyists and lobbying organizations.<sup>65</sup>

### *3. Resources, Strategies, and Tactics*

Strategies and tactics are central to the achievement of group purposes in EC lobbying. It must first be described how the interest groups pursue their objectives; what strategies they use. Secondly, what actions they take in fulfilling those strategies, specifically, their tactics.

Lobbying involves communications, whether direct or indirect. The intermediate objective of all interest groups is maximizing their influence; to develop and improve their access to the decision-making bodies of the EC.<sup>66</sup> The general public, segments of the media, and others, accord interest groups considerable legitimacy.<sup>67</sup> The lobbying tasks of interest groups, once having gained access, are defined in terms of trying to convince and persuade legislators. This means persuading the Commission, Council, and Parliament that broader constituencies will be affected by their particular decisions or actions.<sup>68</sup> To accomplish this task

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63. See LEFÉBURE, *supra* note 41, at 168.

64. Letters from Peter Verhille, a representative of ACCESS (a London, England-based lobbying group), and H.H. Lever, *Conseil Europeen de l'Industrie Chimique* (Brussels, Belgium), to the European Parliament Committee in charge of the lobbyists regulation, Committee on the Rules of Procedure, the Verification of Credentials and Immunities.

65. *Id.*

66. Interview with Dennis O. Flatt, Vice President and Legislative Representative of Kaiser Foundation Health Plan, Inc., in Sacramento, California (Jan. 10, 1992).

67. *Id.*

68. *Id.*

the direct approach, the personal presentation of a case, is widely considered to be the most effective tactic for communication.<sup>69</sup>

The quality of the lobbyist, as well as the substance of the information they carry, is important to successful lobbying.<sup>70</sup> Many lobbying organizations in Europe do not possess the necessary resources to be effective. Nevertheless, they try to properly assess each specific case before a decision-making body of the EC, and appraise their available options.<sup>71</sup> European lobbyists maintain continuing relationships with EC officials and understand that the approaches to the EC governing organizations should not be made until the desired objectives have been precisely determined.<sup>72</sup>

Time is an important factor in determining not only when to make approaches to the Commission, Council, and Parliament, but also in deciding what approaches to pursue. First, a lobbyist should be selective in whom to approach. The person confronted should be someone closely involved in the formulation and evolution of the matter under consideration.<sup>73</sup> Second, representations should be kept clear and framed within concise, constructive presentations.<sup>74</sup> It is also advisable that the lobbyist be aware of the individual sensitivities of those with whom they speak. An aggressive stance may gain attention, but not obtain results. National cultural mores and rules of conduct also play an important role in affecting EC policy determinations.<sup>75</sup>

“To lobby the EC successfully, you have to get in early, and stay in; be on the spot and base your positions on evidence.”<sup>76</sup>

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69. Interviews with Judith E. Wolen, Legislative Advocate, Associate of Frank Murphy, Jr., Attorney at Law; David C. Knight, Government Relations Director, Beneficial Management Corporation of America; and Denny Samuel, Senior Representative California State Relations, the Chevron Companies, in Sacramento, California (Jan. 13, 1992).

70. Interview with George H. Cope, Jr., President of Aggregate Producers Association, in Sacramento, California (Jan. 6, 1992).

71. *Id.*

72. *Id.*

73. See generally NONON & CLAMEN, *supra* note 59, at 169. Both authors are involved in the EC decision-making process. They give advice to beginner lobbyists.

74. *Id.*

75. *Id.*

76. Interview with Florence Maisel-Mouterde, *supra* note 3.



There is, therefore, an investment of time and effort to be made. "But the EC officials and the members of the European Parliament are much more open to act on well-founded arguments than their national counterparts. Euro-lobbying definitely pays-off."<sup>77</sup>

### III. A CODE OF PROFESSIONAL ETHICS

#### A. "Act Now or Suffer Later"<sup>78</sup>

In lobbying the European Parliament,<sup>79</sup> it is not enough to put forth general positions and hope that members of the European Parliament (MEPs) and their assistants will translate them into amendments, resolutions, or questions. Everything must be drafted by the lobbyist. Therefore, it is important to know the practical tips, and the channels for lobbying the Parliament.

##### 1. Channels of Lobbying

Many organizations have found the European Parliament to be the catalyst for introducing new policies, legislation, and, of course, budget lines.<sup>80</sup>

The first stage of lobbying the EC is to contact the *Rapporteur*, because if he accepts your position the battle is half won. Once the draft report of the *Rapporteur* is circulated to the Committee,<sup>81</sup> the lobbyist must write to, and speak with, members of the Secretariat, and Ordinators in the political parties. In practice, in order for proposed amendments to stand a chance of being

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77. *Id.*

78. Interview with Olivier Bobille, *supra* note 43 (translating Mrs. Edith Cresson's opinion about lobbyists in Europe, *Agir Pour ne Pas Subir, Bruxelles, Mode d'emploi*). Mrs. Cresson was the Prime Minister of France until April 1, 1992, and was the Minister of European Affairs until 1991.

79. *Id.* It is important to remember that EC decisions are amended, rejected, or approved by national and political representations in the European Parliament. *Id.*

80. Interview with Olivier Bobille, *supra* note 43 (explaining this assertion). Every effort is being made to increase the budgetary powers of the Parliament and give it the power of the purse that all legislative assemblies possess. *Id.*

81. *Id.* The preparatory work for a Plenary session is done in 18 specialized committees. The proposal from the Commission is first referred to one or another of the committees for a report, and to others for an opinion. *Id.*

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accepted, they need the support of both the Socialist and the European People Groups, which are the two largest political affiliations.<sup>82</sup>

The second stage is a reading of the proposal in the European Parliament.<sup>83</sup> The same process of examination is followed in committee, and then in the plenary session, with a number of options and strict time limits on the process. It is significantly more difficult for the lobbyist to have any influence at this stage because an absolute majority of members is required for an amendment to be adopted.<sup>84</sup>

Choosing the right channel can only be done on an ad hoc, case-by-case basis.<sup>85</sup> Good lobbying depends on the proper assessment of each specific case and appraising the available options. Approaches to the EC should not be made until defined objectives have been precisely determined together with a plan for pushing the relevant request through the process.<sup>86</sup>

### *2. Practical Tips for Lobbying*

The gray booklet,<sup>87</sup> which lists the names and addresses of the MEPs by committee and political group, is particularly useful to the lobbyist. Another useful indicator of upcoming issues is an internal publication, *Work in Progress in Parliamentary Committees*, which announces not only the state of current work, but what legislation is forecasted to be introduced in the other institutions of the EC decision-making bodies.<sup>88</sup>

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82. *Id.* The distribution by political group in January 1991 is as follows: The Socialist Group has 180 members, the Group of the European People Party (Christian-Democratic Group) has 121 members. *Id.*

83. *Id.*

84. *Id.*

85. LEFÉBURE, *supra* note 41, at 108 (explaining Nike's file: in 1988, a problem developed with a Korean company over a restriction on the importation of sports shoes to the EC; the Parliament asked American lobbyists to defend the Korean company).

86. *Id.*

87. Available from the European Parliament, Luxembourg.

88. See LEFÉBURE, *supra* note 41, at 114-15.

The itinerant nature of the Parliament, along with the Secretariat in Luxembourg, and most committee meetings in Brussels, and the plenary sessions in Strasbourg, poses a significant problem for the lobbyist.<sup>89</sup> It is best to deal with *rapporteurs* before or after committee meetings in Brussels because they have more time at their disposal. It is also very useful for a lobbyist to attend public committee sessions in order to hear what is said by whom, and thereby determine which committee member to contact on any given issue.<sup>90</sup>

When following up proposals at the European Parliament in Strasbourg be aware that the building is a veritable fortress. Visits must be arranged in advance, with an invitation from an MEP, in order to obtain a pass to get into the building.<sup>91</sup> Once allowed to enter the Parliament, one can roam quite freely. It is, however, very difficult to talk to people in Strasbourg for any length of time. It is, rather, the place to contact several people, for short periods of time, on several issues. This can be done from the phone at the desk near the entrance.<sup>92</sup>

### *B. The European Parliament: Should Lobbying Be Regulated?*

On May 24, 1991, Mr. Enrique Baron Crespo, President of the European Parliament, asked the Committee on the Rules of Procedure to consider a request from the Enlarged Bureau to submit proposals for drawing up a code of conduct, and a public register for the lobbyists accredited by Parliament.<sup>93</sup>

On June 21, 1991, the Committee appointed its Chairman, Marc Galle, *Rapporteur* on the subject of lobbyist regulation. On September 18 and 19, 1991, the Committee decided to hold a public hearing in connection with the preparation of the report. The

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89. Interview with Olivier Bobille, *supra* note 43.

90. *Id.*

91. *Id.*

92. *Id.*

93. Telephone Interviews with staff members of the European Parliament (Oct. 1991).

## *1992 / EC Lobbyists, the Merchants of Influence*

hearing was held in Brussels in the course of the committee meetings of January 22 and 23, 1992.<sup>94</sup>

At the end of 1991, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, received letters from representatives of organizations wishing to take part in the public hearing.<sup>95</sup> Invitations to participate in the hearing were extended to six persons who had made themselves known to the Committee Secretariat.<sup>96</sup> They were chosen because they had the widest representational mandate possible, covering several member States. A member of the U.S. Congress was also invited but did not attend.<sup>97</sup>

The framework of the hearing in January 1992 was a questionnaire submitted by the *Rapporteur*, Mr. Marc Galle, to the Committee on the Rules of Procedure, the Verification of Credentials and Immunities.<sup>98</sup> This questionnaire contained six questions which each of the guests answered.<sup>99</sup> They also submitted the positions of lobbyists in the hope that this would assist in the Committee's deliberations.<sup>100</sup>

### *Questions Asked at the Public Hearing*

Question 1. *Should Parliament confine itself to drawing up a body of rules concerning itself alone, or should it work towards introducing Community legislation on the representation of interest groups to all of the EC institutions?*

Most of those who answered this question were in favor of a "body of rules concerning [lobbying in the] the European

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94. *Id.*

95. Telephone Interview with Philippe Ventujol, *Director General des Commissions et Delegations, DG2 Direction A, Commission Politique* (Feb. 27, 1992).

96. *Id.*

97. *Id.*

98. *Id.*

99. Doc. EN\CM\115663, PE 153.280 (1991) (available at the Library of the European Parliament, Luxembourg).

100. The letters from the representatives of organizations wishing to take part in the hearing have been published on December 2, 1991 by the European Parliament. PE 154-304/add; Doc. EN\CM\120151 (available in the Library of the European Parliament, Luxembourg).

Parliament itself.”<sup>101</sup> However, there is a flaw in seeking to control those who attempt to influence the Parliament, but not those who seek to influence the EC’s other institutions, especially the Commission. President Jacques Delors<sup>102</sup> stated in January 1991 that “the Commission will not adopt any kind of rules on the subject matter [of lobbying].”<sup>103</sup> In this respect, the European Parliament should provide a lead for the other European institutions. The rules it adopts could well serve as a model for the other EC policy making institutions.

*Question 2. As to the definition of the concept of representation of special interests: What activities and persons would be concerned in the rules on representation of interests? What, accordingly, should the criteria be for lobbyist accreditation to the Parliament?*

Throughout the world those parliaments which have addressed the question of determining what constitutes lobbying have found it difficult to define the activity. In 1988, a Report on the Registration of Lobbyists by the Association of Secretaries General of Parliaments noted that none of the national parliaments of the EC member states had a precise definition of “lobbyist” in official use. Only the Bundestag had a registration system, adopted in 1972 which is now part of their Rules of Procedure.<sup>104</sup>

Based on the comments made during the January hearings,<sup>105</sup> the twenty-five members of the Parliament’s Rules Committee had a key problem to resolve before taking any action requiring

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101. Those answering in favor were the lobbyist groups: ICL, FEP, *Dutaret La Giraudiere Larroze*, CEFIC, and CNPF.

102. Jacques Delors has been the President of the EC Commission since January 6, 1985. He was previously the French Minister of Economy and Finance from 1981 to 1983. He also served the French government as the Minister for Economic and Financial Affairs and the Budget in 1983 to 1984. In 1979, he was elected to the European Parliament where he chaired the Parliament’s Economic and Monetary Committee. Mr. Delors can claim considerable credit for reviving the European Community in the 1980s after the stagnation of the 1970s.

103. Answer from Jacques Delors and Cardozo E. Cunha to the Written Question from M. Metten, Nos. 833/89 and 834/89, O.J. (C 117) (Jan. 24, 1991).

104. Rules of Procedure of the Bundestag, Annex II, Doc. No. DG JUR% PR001 (June 1991).

105. Telephone Interview with Marc Galle of Belgium, member of the Socialist Party, the *Rapporteur* in charge of the regulation on lobbyists (Feb. 27, 1992).

registration, or compliance with a code of conduct, namely, how to define a lobbyist. Rules restricting the access of registered lobbyists to the Parliament will be extremely difficult to enforce because of this definitional problem.<sup>106</sup> However, some MEPs felt that it would benefit the Parliament “to know exactly which lobbyists are representing which interests.”<sup>107</sup> The definition of the term “representation of interests” had been suggested in one response to the questionnaire. “It could include personal appearances in the parliamentary buildings, meeting in other places, invitations to dinner or other events. Also included could be a range of ways of communicating, including phone, fax, letters, video and special presentations.”<sup>108</sup>

The following answers to questions three, four, five, and six, were given almost unanimously by all the groups in attendance at the hearing. There was no vigorous opposition to these four questions.

Question 3. *What should be the accreditation procedure? Should it be confined to listing the approved representatives in a register, or should a specific accreditation unit be set up within the framework of the Committee on the Rules and Procedure with the task of verifying fulfillment of the conditions required for registration?*

It was recommended that the accreditation be regulated by a specific accreditation unit set up within the framework of the Committee on the Rules and Procedure. This unit would define the conditions for the registration of representatives and determine whether or not representatives fulfill these conditions.<sup>109</sup>

The proposed accreditation unit would be responsible for the publication of approved representatives in a register which would be updated and reissued every six months. This register would list the names and addresses of approved representatives, the names of

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106. *Id.*

107. Interview with Paul Benhaoum, *Chargé de Mission de Mr. J.L. Borloo*, Mayor of Valenciennes City, in Valenciennes, France (Oct. 7, 1991).

108. Answer by Fred Tuckman, Doc. EN/CM/118767, PE 154.303 (Dec. 5, 1991).

109. Telephone Interview with Philippe Ventujol, *supra* note 95.

their clients and their places of business, and the issues or matters upon which their lobbying activity is taking place. The accreditation unit must ensure that the register clearly states who is lobbying the European Parliament, and on what issue.<sup>110</sup>

An accreditation system based on the following criteria has also been proposed:<sup>111</sup> (1) A requirement for MEPs to declare all assistants and administrative staff employed by them or using their facilities. The staff will be registered, and the register made available for public inspection; (2) considerable tightening of security at entrances to, and within, the European Parliament buildings to ensure that only those with an appropriate pass use European Parliament facilities is the most important requirement; (3) the panel should be drawn exclusively from EC institutions with two representatives each from the Parliament, the Commission, and the Council Bureau.<sup>112</sup>

Others present on January 22 and 23, 1992, however, spoke in favor of a minimum of formality, a mere register of lobbyists rather than the creation of an investigatory committee.<sup>113</sup>

*Question 4. As to the effects of registration: Should the benefits be limited to obtaining a laissez-passer for the Institutions' premises? Should the representatives be expected in return to fulfill certain requirements, e.g., to submit a regular statement of the activities?*

If the registration of representatives to the European Parliament is indispensable those persons should have access to the premises of the European Parliament on the basis of a permanent *carte d'accès*.<sup>114</sup> The Public Policy Europe Group added in relation to a declaration of activities, a serious concern of any possible requirement to declare clients.<sup>115</sup> A number of firms have clients who insist on their advisers signing confidential nondisclosure

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110. *Id.*

111. Public Policy Europe Group (a lobbyist group).

112. *Id.*

113. *Id.*

114. Interview with Paul Benhaoum, *supra* note 107.

115. Answer by Public Policy Europe Group, Doc. EN/CN/118767, PE 154.303 (Dec. 5, 1991).

agreements, which prohibit them from disclosing to outsiders any details of their relationships with those organizations.<sup>116</sup> There is concern that a requirement to list clients could cause some organizations to end the relationships with their advisers. Public Policy Europe Group mentioned that “some organizations that are already considering the drafting of bogus contracts under which political consulting services would be provided by them through a third party, such as their advertising agents, in order to avoid explicit disclosure.”<sup>117</sup>

Question 5. *Should the different types of activities carried out by the representatives be defined on a limitative basis?*

Most of the answers focused on the general social and ethical principles of due respect, pertinence, courtesy, and competence.<sup>118</sup> There is no need, indeed it would be democratically incorrect, to restrict lobbying activities. MEPs and others can always choose not to receive representatives, or to reject the advice of those they do receive.<sup>119</sup>

Question 6. *Should consideration be given to drawing up a code of conduct for the members and officials having contacts with the special interest representatives?*

It was recommended by most of the questionnaire respondents that the Committee on Rules and Procedure give consideration to drawing up a code of conduct for MEPs, their staff, and officials of the Parliament that have contacts with the accredited representatives of present interests. It was recommended that the Committee pay particular attention to the following issues:<sup>120</sup> (1) Ensure that MEPs orally declare their financial, professional, and other relevant interests, before speaking in Parliament or in one of its bodies; (2) MEPs’ staff and any family members who may have

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116. *Id.*

117. *Id.*

118. Answer by *Federation Bancaire de la Communauté Européenne*.

119. *Id.*

120. External Affairs and Communications (ICL) and *Conseil Européen Des Fabricants du Sucre* (lobbyist groups).



access to the European Parliament and other EC institutions be permitted use of offices, phones, and facilities, and have access to papers, only in a privileged manner.<sup>121</sup>

It was mentioned by the National Council for Voluntary Organization in London,<sup>122</sup> in August 1991, that a distinction must be made between a code of conduct for profit making, and nonprofit making bodies. A code should be drawn up in conjunction with representatives of lobbyists.

### III. CONCLUSION

Many Europeans who have not directly observed the EC's policy-making institutions in operation will steadfastly deny that lobbying occurs in Brussels or in the national capitals of the EC member states. In contrast to the U.S. Congress, few of the national parliaments of the EC member states regulate lobby groups' activities. Only the Bundestag has a complete set of rules. The United Kingdom, France, and Denmark have only sketchy regulations.

The European Parliament under great pressure from lobbyists recognizes the need to exchange information with these outside sources but with some regulation on lobby groups' access to the European Parliament's facilities, data bases, and working groups.<sup>123</sup> Lobbying is no longer a uniquely American phenomenon. There is a European style of lobbying. Its style is derived partly from the EC's complex institutional structure, and partly from the distinctive culture of legislative advocacy in Europe.<sup>124</sup> "Many non-EEC companies, trade associations and even governments refuse to believe that Community Institutions can be lobbied successfully."<sup>125</sup>

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121. *Id.*

122. The Voluntary Sector Parliamentary Workers Group represents the interests of lobbyists and others from the social economy working with politicians domestically and internationally.

123. See James N. Gardner, *Lobbying, European Style*, EUROPE MAGAZINE, Nov. 1991, at 30.

124. *Id.*

125. *Id.*

In actuality, members of the European Parliament and lobbyists depend on each other for their survival. This interdependence can give rise to practical problems. For this reason, the Parliament has commissioned a study from Belgium Socialist MEP, Marc Galle, on the question of regulating lobbyists. At the public hearing on regulating lobbyist activities of January 1992 held by the Parliamentary Committee on Rules and Procedure, there was no significant opposition to a potential lobbyist registration requirement so long as no complicated procedures were involved.<sup>126</sup>

Some of those present at the hearing spoke in favor of the creation of an independent organization for professional lobbyists with an accreditation committee. Marc Galle favored locating this organization outside the Parliament. He also suggested a new press center in Strasbourg, as a place where MEPs and lobbyists could obtain information without having to find their way through the maze of corridors in the Parliament building. Another socialist MEP, Alman Metten of the Netherlands, protested against the lack of organization and of the exponential growth of lobbyist groups in Brussels.

A more serious concern is that many Parliament employees also work for lobbyist groups, and it is becoming difficult to tell "who is working for whom."<sup>127</sup> "If they are European, that's alright. If they are foreigners . . . that's a good question, we did not envisage this issue."<sup>128</sup> At the end of March 1992, Mr. Galle and Philippe Ventujol would like to see, at the very least, a definitive draft of a lobbying regulation. "If everything works out with the Commission, we may see the end of the tunnel in May, 1992."<sup>129</sup>

Every mendicant must be aware of this new concern. Those who are most knowledgeable about the act of political persuasion

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126. Telephone Interview with Marc Galle, *supra* note 105.

127. Interview with Olivier Bobille, *supra* note 43.

128. Telephone Interview with Philippe Ventujol, *supra* note 95. Mr. Ventujol is working on the lobbyist regulation at the European Parliament. Mr. Ventujol added that the first priority will be given to a European group of interest before any foreign agents of influence, but if a lobbyist from a foreign country wants to prowl at the European Parliament he can do it if he fulfills the requirements.

129. *Id.*

must know that prowling the European Parliament has become a new profession *En Vogue*. “In comparing lobbyists to predators, lobbyists are not painted as badly. But if I compare the lobbyists to geishas, I am apparently referring to their skill at entertaining rich and powerful men, creating an atmosphere that puts those men at ease! . . . After this research, I would probably lean to the latter.”<sup>130</sup>

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130. Interviews with Judith E. Wolen, David C. Knight, and Denny Samuel, *supra* note 69.