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# Comparative Lobbying

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**Practice and Regulation in the European Union, Spain and other EU Countries. Lobbying in the United States. Campaign Finance, Fund-Raising and Lobbying.**

PID\_00246648

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Recommended minimum time required: 4 hours





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## Introduction

Since time immemorial, lobbying is linked to power. The more power, the more lobbyists. As the European Union expands its competences, it makes the European system of intermediation of interests grow.

Today, it is estimated that three quarters of economic rules which oblige EU citizens are generated at the European Union level. At the same time, however, national interests play out and clash daily within the institutions, because the EU is not a federal system but still largely based on Member States.

The lobbying community has developed over the last few decades, tailored to the unique and changing nature of the institutional framework of the EU. Consequently, it is sui generis and coexists with the different lobbying traditions prevailing in each country.

Not only are there a whole constellation of European-wide interest groups, but even many national groups have had to adjust to the displacement of the centers of decision to the EU level. This requires having a presence and allies in Europe.

The complexity of the European decision-making system, consisting of networks between public and private groups at the EU-level and national level, where decisions are reached after consultations and intricate multilateral negotiations, has led to the development of a professional niche of experts in this unique system and has spurred academic interest in studying them.

Growing importance, complexity and accessibility-- such are the main features of the system of decision-making for EU lobbyists.

Thus, the unstoppable trend for lobbyists active in Member States is to consider an EU-wide stage.

This module will also look at lobbying and the transparency of the regulatory systems in Spain and neighboring countries, and compare them with lobbying in the United States. Finally, we conclude this chapter and the course with a theme closely linked to lobbying: the financing of election campaigns.



# 1. The European Union

## 1.1. Brief History

The European Union was set up with the aim of ending the frequent and bloody wars between neighbours, which culminated in the Second World War. As of 1950, the European Coal and Steel Community begins to unite European countries economically and politically in order to secure lasting peace.

*A brief history of the European Union. European Parliament in the United Kingdom*



The European Union is the world's largest internal market and the biggest player on the global trading scene. The EU-28 covers over 4 million km<sup>2</sup> and has 508 million inhabitants – the world's third largest population after China and India.

## 1.2. Lobbying the European Union's Main Institutions and Bodies

The administrative structure of the European Union is French-inspired. Not a coincidence since France has played a leading role from the start (along with Germany). France's central role has only come into question after large enlargements since the 90's which have grown the Union from 12 to 28 members –soon 27 again, after Brexit. Furthermore, the EU's main institutions are headquartered in French-speaking cities (Brussels, Strasbourg and Luxembourg). The advantage for Spain is that its administrative (and legal) system is rooted in the French system.

Despite the French base, the European administrative flowchart is complex and multi-level, involving numerous actors at the continental and national level, both in the public and private sectors.

The main institutions of the European Union are:

- European Parliament: elected by the citizens of the Member States
- Council of the European Union: represents the governments of the Member States
- European Commission: engine and executive body, guardian of the Treaties
- European Court of Justice: ensures compliance with European law
- European Court of Auditors: performs the control of the legality and appropriateness of the management of the EU budget
- Economic and Social Committee: expresses the views of organized civil society regarding economic and social issues
- Committee of the Regions: expresses the views of regional and local authorities
- European Central Bank: in charge of monetary policy and managing the common currency, the euro
- Ombudsman: responsible of citizens' complaints about mismanagement of any EU institution or organisation

The European Council is a variant of the Council of Ministers, composed by the Heads of State or Government of the Member States. It is responsible for exerting political leadership and establishing general policy guidelines.

The essence of the institutional game, and therefore lobbying, develops itself among the three main actors: Commission, Parliament and Council, with the Court of Justice as referee. We will get a taste of how lobbying is practiced vis-à-vis the European Union with a brief introduction to the three major institutions and through case studies.

## **European Commission**

Of all the EU institutions, the European Commission is considered to be the most open to interest groups. The Commission decisionmaking power touches all levels. It has plenty of competences, resources and policy instruments, which explains why interest groups prefer to lobby the Commission via its multiple entry points rather than other institutions. The European Commission describes itself as responsible for planning, preparing and proposing new European legislation. This is called the 'right of initiative'. Citizens, businesses, civil society, public authorities, or any other stakeholder who thinks that they may be affected, can have their say in the legislative process.



The mandate of the European Commission's is five years, coinciding with a legislature of the European Parliament. About 30,000 civil servants work at the European Commission. To get an idea of how thin the Commission's workforce is, it suffices to compare it with Catalonia's, where over 300,000 people work for the public administration.



European directives have a long gestation. Quite in advance, the Commission publishes requests for proposals (RFP) for studies or research on its platform for public tenders e-Tendering. These can indicate the areas where the Commission is planning for legislation. For example, the Commission published in March 2017 a request for proposals for the drafting of a report on major developments in the postal sector between 2013 and 2016. At the same time, the Directorate General for the Single Market announced that, depending on the studies' results, it will consider changes in the regulatory framework for postal services.

After one or two years of studies and information gathering, the Commission may launch a Green Paper, or an equivalent, to open a public discussion, even over the Internet. The public consultation period does not last too long, just a few months. This time is obviously a great opportunity for lobbying. Interest groups will try to ensure that their lobbyists get invited to submit a study or paper of their own at a stakeholders' conference about the Green Paper. But not all Green Papers have their own conference. In fact, the Commission is celebrating fewer and fewer of such stakeholders' conferences arguing that the multitude of inputs collected are very complex to process. It is possible that the European Parliament, the European Economic and Social Committee and the Committee of Regions conduct public hearings on the issue, although this practice is also becoming less frequent. If hearings are held, interest groups should definitely participate, especially in hearings at the European Parliament which has real legislative power. The other two institutions have only a consultative role.

### **Green Papers and White Papers**

A Green Paper is a document published by the European Commission to stimulate discussion on a topic or issue that requires legislative action at the European level. All relevant parties (individuals or organizations) are invited to participate in a consultation process and debate on the basis of their proposals. Green Papers may lead to legislative initiatives presented in the form of White Papers.

After the intervention of various actors and stakeholders, the Green Paper usually leads to proposals to resolve the matter, presented as a White Paper or action plan. A White Paper therefore offers solutions to issues raised by the Green Paper.

An example is the Green Paper the Commission published in 2015: "Building a Union of Capital Markets". The European Union wants to achieve a Single Market for Capitals in 2019 and plans to publish a White Paper regarding specific capital markets.

It is very simple to participate in the public consultations that the European Commission launches before submitting proposals for legislation. It is as easy as visiting the website [europa.eu](http://europa.eu) and searching for "public consultations". For instance, in April 2017, the European Commission proposed the European Pillar of Social Rights. It was the result of a long period of preparation, including a public consultation process that concluded with a High Level Conference in January 2017.

Each year, the Commission publishes its work programme with its likely political initiatives, such as Green Papers, discussion papers and draft directives. The work programme shows how the Commission plans to give practical effect to the political priorities set out by the President. It provides a multiannual overview to help stakeholders and the other EU institutions plan their work with the Commission. When initiatives are listed in the work programme, we can say that it is already too late for lobbyists!

Interest groups or lobbyists registered with the European Transparency can subscribe to an alert service on roadmaps and inception impact assessments on the subjects that interest them<sup>1</sup>.

<sup>(1)</sup>Roadmaps and Inception Impact Assessments: [http://ec.europa.eu/smart-regulation/roadmaps/index\\_en.htm](http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm)

### **What are Commission Roadmaps and Inception Impact Assessments?**

The European Commission uses a roadmap to define the scope of:

- A major new law or policy
- An evaluation of an existing law or policy
- A fitness check of a bundle of related existing laws and/or policies

Roadmaps describe the problem to be tackled and objectives to be met, explain why EU action is needed, outline policy options and describe the main features of the consultation strategy.

Sometimes the potential impact of a law or policy on the economy, environment or society is so great that an impact assessment is required. In that case, the roadmap is replaced by an inception impact assessment, which goes into greater detail.

A lobby should act, at the latest, during the phase of the Green Paper. It should give feedback to the Commission:

- In 15% of cases, the rapporteur at the Parliament or chair of the Council working group are the key instruments to change the proposal.

- In the remaining 85% of cases, the Commission and the comitology system are the key players.

It depends on the complexity and dynamics of the situation.

The key Commission officials for lobbying are medium-level A civil servants, sometimes those at the high end of B. These are the ones who prepare the first draft of a final decision and get input from outside sources -experts sitting on a committee or others. Their assistants (grade B officials and Cs –administrative assistants) act as gatekeepers, and therefore are also important.

## **Comitology**

According to the European Commission:

“Comitology refers to a set of procedures through which EU countries control how the European Commission implements EU law.

Broadly speaking, before it can implement an EU legal instrument, the Commission must consult, for the detailed implementing measures it proposes, a committee where every EU country is represented.

The committee provides an opinion on the Commission's proposed measures. These opinions can be more or less binding on the Commission, depending on the particular procedure specified in the legal act being implemented.”

The Commission needs the support of advisory committees and working groups to prepare its drafts. It opens an avenue for interest groups to participate as "stakeholders" and/or experts and practice lobbying.

Strictly speaking, what is known as "Comitology" are not those advisory committees, but the management and legislative committees on issues and legislation that fall under the Union's scope, such as the common agricultural policy (CAP). Within the comitology procedures, Member States exert influence through their Permanent Representations in Brussels and their participation in the appointment of experts. Most experts designated to sit on committees are national experts appointed by the Permanent Representations and they also represent their nation states. There are about 450 committees that are likely to receive formal powers by the Council or the European Parliament (through the co-decision) to prepare draft legislation.

### **Categories of committees:**

Advisory Committees: They just give advice on how to implement the European Commission proposals. The Commission is told to pay priority attention to the advice, but it is not binding.

And within Comitology in the strict sense:

Management Committees: they manage a topic, particularly the Common Agricultural Policy (CAP).

Regulatory committees: they draft regulations.

In addition to the approximately 450 committees within "comitology" strictly speaking, there are more than 2000 expert committees with more than 80,000 members. Experts are hired through the website of the European personnel selection office (European Personnel Selection Office, EPSO). About half come from central or decentralized governments, and the other half come from interest groups, corporations and NGOs.

Keep in mind that many proposals for directives arising from the Commission, respond to requests by the Council. This implies a high degree of involvement by Member States. The lobbyist will do well to stay in close contact with the Permanent Representation of the State or States concerned to find clues about who is pushing the issue within the Council and what public bodies are involved in drafting legislation.

When Jean-Claude Juncker became President of the European Commission in November 2014, he reorganized the internal distribution of powers to provide more content to different portfolios. Instead of dividing the "cake" of competences into 28 separate pieces, Juncker created vice presidencies with coordination powers among different portfolios. Thus, the Spanish Commissioner for Energy, Miguel Arias Cañete, reports to a Slovakian, Maros Sefcovic, Vice President of the Commission. Sefcovic has "taken over" an important competence from Cañete: the Energy Union, which aims to create a European Single Market for energy.

In 2014, the private media company viEUws published a short video explaining the Juncker Commission in 3 minutes. You can watch it at the following link:

*Juncker Commission explained in 3 minutes*

<http://www.vieuws.eu/eu-institutions/animation-juncker-commission-explained-in-3-minutes/>

#### **viEUws.eu - "The EU Policy Broadcaster"**

viEUws is an online media organisation launched in 2010 providing an analysis of EU policy developments through the production and broadcasting of video interviews and programmes.

Parallel to its editorial content, viEUws acts as a dissemination platform offering advocacy and communication services to stakeholders interested in the EU debate.

viEUws is privately owned by viEUws SA, a Belgian registered company. It is independent from government, EU institutions and other media groups.

## The European Parliament

Most of the work is done in parliamentary committees. In committees, Commission proposals are subject to scrutiny and amendments are proposed. Parliamentary committees are obviously of great interest to lobbyists, especially given the growing powers of the European Parliament. Most committees meet in Brussels once or twice a month.

The European Parliament committees receive basic documentation from comitology committees. Please note that parliamentary committees can have more than 100 members, and thus, it is essential to establish contact with the rapporteur in charge of a topic or report. Members of the European Parliament also meet in Intergroups, which are multiparty informal meetings around a topic of common interest. But they can eventually generate legislation, such as the Intergroup for Animal Welfare which succeeded in increasing animals' rights.

The plenary sessions of Parliament are held in Strasbourg. They include a session of questions to the president of the European Commission. They can be oral or written. Written questions submitted to the Commission must be answered within six weeks.

### **Example question to the European Commission and its response:**

E-004697-16

8 June 2016

Lack of investment in the Mediterranean Corridor

Question for written answer

submitted to the Commission

Rule 130

Francesc Gambús (PPE), Javi López (S&D), Ernest Maragall (Verts/ALE), Jordi Sebastià (Verts/ALE), Josep-Maria Terricabras (Verts/ALE), Ramon Tremosa i Balcells (ALDE), Ernest Urtasun (Verts/ALE)

A report by the European Court of Auditors has criticised the delays in constructing rail links serving ports, as well as Spain and France's failure to invest in projects in the Mediterranean Corridor. This failure to invest is exacerbating a lack of standardisation across the European rail network, as the Commission has already acknowledged in a report. Priority public investment would be needed to overcome the existing differences: as it stands there are two different gauges in place and three different voltages.

In Commissioner Bulc's answer to Written Question E-011826/2015, she said that the European Coordinator for the Mediterranean Corridor had identified this particular

problem in his work plan, and he would address this question with the authorities of the two Member States.

– What is the Commission's view on the European Court of Auditors' report?

– What has been the outcome of the European Coordinator for the Mediterranean Corridor's discussions with the French and Spanish authorities?

– Will the Commission ask France and Spain to set aside an adequate part of their budget to finance projects designed to remedy these shortcomings?

#### **Answer given by Ms Bulc on behalf of the Commission – 2 August 2016**

The Commission shares the overall position of the European Court of Auditors (ECA) according to which the performance of rail freight transport in Europe remains unsatisfactory. Rail freight has a key role to play in the transport system of the future and is part of the Commission's strategy to decarbonize transport. The Commission has taken various initiatives to reverse this situation but strong political will is also needed from the Member States. The Commission detailed replies to the ECA findings and recommendations are available on pages 71-85 of the report(1).

The Honourable Members refers to the specific situation of the new high-speed railway link between Spain and France on the cross-border section Figueres – Perpignan. The problem arises only in respect to freight transport and not as regards passenger transport. The European Coordinator for the Mediterranean Corridor set up a dedicated working group earlier this year which is currently addressing the issue.

In the Connecting Europe Facility Call 2014, EU co-financing has been granted to Spain and France to overcome shortcomings of rail freight connections. First and foremost, Spain is implementing the standard European railway gauge between Valencia and Barcelona to allow interoperable railway services to France. EU co-funding has been granted to France to build the Lyon-Turin base tunnel, the key section to fully implement the Mediterranean Corridor. But grants have also been made available to solve railway capacity issues in the Lyon agglomeration to finalise the bypass of Nimes-Montpellier and to complete the studies for the missing Montpellier-Perpignan section of the Mediterranean Corridor.

(1) 'Rail freight transport in the EU: still not on the right track'; Special report No08/2016; European Court of Auditors; [http://www.eca.europa.eu/Lists/ECADocuments/SR16\\_08/SR\\_RAIL\\_FREIGHT\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_08/SR_RAIL_FREIGHT_EN.pdf)

Questions and answers are published at the Official Journal of the European Union (OJEU). Questions and answers are very valuable to lobbyists. They can easily have access to them through the European Parliament website

The European Parliament and the European Commission co-decide together the annual budget proposed by the Commission. All parliamentary committees get involved in the budget approval process. The rapporteur for the budget belongs to the Budget Committee. Other committees have no rapporteur but they do have draftsmen. All of them are important contacts. In general, the Council has the last word on compulsory expenditure (approximately 50% of all expenses). These expenses are those that are foreseen in the Treaties and other basic legislation, such as the common agricultural policy, structural funds, etc.

Lobbyists must not overlook the staff assisting the parliamentary committees.

Speech by Ms. Ada Colau, then spokeswoman for the NGO “Plataforma de Afectados por la Hipoteca” (Platform for People Affected by Mortgages), at the Petitions committee of the European Parliament, in April 2013. In May 2015, Ms. Ada Colau was elected Mayor of Barcelona.



#### Recommended website

Petition Portal of the Petitions committee of the European Parliament:

<https://petiport.secure.europarl.europa.eu/petitions/en/home>

## The Council

The Council of the EU, also known as the Council of Ministers or simply the Council, is the main source of legislation, although they share that power with the Parliament and the Commission. The executive power is shared between the Council and the Commission was also shared with the Commission - though access to the Council by interest groups is restricted.

Each EU country holds the Presidency of the Council by rotation for a period of six months. Council decisions are prepared by the Committee of Permanent Representatives of the Member States (COREPER), assisted by working groups made up of Member States' government officials.

The Council's particularly fragmented structure makes it very difficult to establish any effective contact, or to attempt an interest representation to the Council as an institution. To influence the decisions of the Council of the EU the lobbyists must choose the national route, ie, relate to different national representations in Brussels. The Council operates as a merely intergovernmental institution, which greatly complicates interest representation vis-à-vis all Member States.

For this reason, the main object of lobbying when trying to influence the decisions of the Council is the Permanent Representatives Committee, COREPER. As its name suggests, it consists of the permanent representatives of each Member State. Each permanent representation is headed by an ambassador, who takes part in the work of COREPER as it relates to political affairs (COREPER II) or delegates in one of his or her assistants (Deputy Permanent Representatives) for technical issues (COREPER I).

The importance of this committee for the exercise of lobbying has been made clear by Alonso Pelegrín (1995) for the following reasons:

- COREPER is a forum for dialogue which prepares the decisions of the Council. This dialogue is based on negotiations and being in contact with each national administration. So, it is a crucial strategic move for interest groups to make an alliance with national ministries of at least one Member State.
- Consequently, the draft decision involves national representatives in Brussels. This means that companies and interest groups should seek to influence through various REPERs (Permanent Representation of Member States).
- Given the clearly political nature of COREPER, the message from the interest group may land on the negotiating table among states. Sometimes coincidence and chance play a big role, more than the message's or request's own merits.
- There are specialised working groups within COREPER (known as Council of Ministers groups), supervised by the COREPER itself. An effective strategy to influence decision-making at this level should be not to ignore these groups because, although they act when the procedure is quite advanced, these groups deal with technical questions and, sometimes, lobbies may manage to influence their conclusions, which are taken very much into consideration.
- A proper lobbying strategy aimed at a workgroup and the REPER may lead to attaining a draft agreement on certain issues which, if adopted by COREPER, can be included as a point A (not subject to discussion –just a yes or no vote) in the agenda of the Council of Ministers. In contrast, political or diplomatic issues lacking a preliminary agreement, are thus labeled as point B. Point B questions are discussed and, eventually, voted upon.

In our European lobbying case studies, COREPER emerges more as a source of information for lobbyists and stakeholders rather than as a body subject to influence. COREPER diplomats come from their respective capitals already equipped with concrete instructions!

**Case study J: Public Lobbying. Catalonia. Mr. Amadeu Altafaj,  
Representative of the Catalan Government to the European Union**

January 2017

Amadeu Altafaj is a journalist by training. He worked nearly a decade at the European Commission, where he became the face of the financial crisis as the European



Union spokesman for Economic Affairs. Between 2012 and 2014 he was deputy chief of staff of the Finnish Olli Rehn, the European Commissioner for economic and monetary affairs. Since January 2015, Amadeu Altafaj is Representative of the Catalan Government to the European Union, with the rank of general director. He heads the Delegation of the Catalan Government in Brussels.

The case of the Delegation of the Government of Catalonia to the European Union gives us an example of a public-public lobbying. Concretely, the study of a regional government's efforts to influence EU authorities.

Amadeu Altafaj begins explaining that Catalonia is a substate actor in Europe without diplomatic status. This limits their margin for maneuver, which they try to compensate by opening other channels to pass messages, such as third-party partners.

The regions have a certain position in the ecosystem of European lobbying. It is not a prominent one. More than anyone, regions should especially strive to maintain frequent and constructive relations with European institutions to counter their tendency to relegate them to a symbolic role like, for instance, participation in the Committee of Regions.

The promotion of institutional relations in Brussels by Catalonia began in 1982 with the creation of a public-private partnership to prepare the accession of Spain in 1986: the Catalan Pro Europe Board (Patronat Català Pro Europa). Catalonia was the first region in Spain to have representation in Brussels. The Basque Country had tried to open a delegation a few months before, but it was appealed to Spain's Constitutional Court.

In 1994, the Constitutional Court also confirmed the powers of Spanish regions to engage in foreign relations and open offices abroad. Multiple regions did it, not only historical regions such as Catalonia, the Basque Country and Galicia.

In 2006, the Catalan Pro Europe Board was replaced by the Delegation of Catalonia to the European Union, which, as the name suggests, is a government organ, thus fully public.

Since his appointment in 2014, Altafaj decided to organise the Delegation's functions based on three vectors:

1. To exist politically. Make Catalonia visible.
2. To participate in the EU's decision-making process. Not only monitor decisions.
3. To influence. Make advocacy for Catalan positions and interests

### **To Exist and Participate**

To exist means to become an actor. Be present in all possible arenas, not just institutional ones. The institutional exchanges are just the visible part of the iceberg of European decision-making.

To exist politically, Catalonia tries to maximize participation in advisory committees and, where applicable, in the comitology system where Member States participate in the management of European programs, such as agriculture or continuing education. Catalonia is the Spanish region that is present in most committees: sixty-seven. Comitology provides precious occasions to influence and interact with entities with similar interests. Since the delegation has fewer than twenty employees, experts and senior officials fly from Barcelona to take part in comitology committees.

Spanish regions –formally called autonomous communities– have agreements with each other to send one to represent them all at the advisory committees and to share the resulting information. Therefore, when Catalonia sits on a committee, it does so on behalf of all other regions, and on a rotating base. Of course, some regions are more interested in or have more skills than others to participate in advisory committees.

At the start of the European project in the '50's, the Treaties did not foresee any institutional participation by regions: the only actors considered were states. Following growing informal relationships with the regions, the EU authorities began to appreciate and value more the representativity and proximity to citizens of subnational authorities.

Regions provide the EU authorities the opportunity to contrast the information given by the states, and to approach local realities more closely.

The participation of Spanish regions in the advisory committees takes place in addition to the presence of experts from Spanish government ministries, which represent Spain as a Member State. At comitology management committees, the ones which are truly significant, regions attend embedded within the Spanish delegation, without visibility.

Catalonia has been present at meetings of several management committees, such as those of the Research Framework Program. These have sub configurations according to different themes, such as Energy, Information Technologies and Communication, Security, Social Sciences, etc.

The Spanish regional representation in the European Union has two dimensions, as Immaculada Fuente Cabero (2005) explains:

- The direct or external dimension means that, when deemed appropriate, regional representatives or experts may be included in the Spanish delegation and participate in debates with Community Institutions on issues with regional impact.
- The internal dimension of participation refers to the procedures of cooperation to facilitate regional participation at two different points in time:
- In the definition of the Spanish position on draft European legislation.
- During the implementation phase of legislation already adopted.

By applying the principle of cooperation, Spain has found the formula for regional participation through Bilateral and Sectoral Conferences. The most relevant among them is sectoral. It was created in 1988 and was then called Conference for Matters relating to the European Communities (CARCE, for its Spanish acronym), and then changed its name to Conference for Matters relating to the European Union (CARUE). The participation of the regions in the formation of the State's position is indirect because it is the State who acts before the Commission or within the Council of Ministers. In addition, Madrid decides which European committee meetings are open to participation by regions and only takes into account the position of the regions when they decide it unanimously. On issues such as cohesion policy, there are obvious differences of opinion among the less advanced regions which receive European cohesion funds and are net recipients of European money, and those who are net contributors such as Catalonia and the Basque Country.

The Spanish government by no means is obliged to defend any regional position, even if adopted unanimously. Unanimity is a precondition to call it a common position by the regions, but not enough to engage State institutions.

The Basque Country has refused to participate in the CARCE and Catalonia also requested to interact with the state via bilateral talks, but they have not come to fruition due to the rejection by other regions.

Amadeu Altafaj critiqued the functioning of regional cooperation on European affairs with national authorities, not among the regions. He notes that CARUE meets irregularly, but the Coordination of Spanish Regional Offices (CORE<sup>2</sup>) works, and does so well. CORE gathers the offices of all Spanish regions in Brussels. They work in groups, share information of common interest, there is a good working environment. For example, they have met to discuss how Brexit will affect them.

Catalonia is a member in its own name and stand in more than 50 European networks. Where you cannot get to by formal powers, creativity will take you there. To mention a few:

#### **Four Motors for Europe (4motors.eu)**

Founded in 1988, the association Four Motors for Europe brings together four of the most dynamic and competitive regions in Europe which do not have a capital city. All of them are an economic engine: Baden-Württemberg (Germany), Lombardy (Italy), Auvergne Rhône-Alpes (France) and Catalonia.

Four Motors for Europe is the first example of interregional cooperation between four regions which do not share borders. This alliance aims to promote the participation and influence of these regions in the European Union.

#### **Working Community of Pyrenees (CTP.org)**

The Working Community of Pyrenees is a cross-border interregional cooperation entity. It was created in 1983 with the encouragement of local entities which share borders across the Pyrenees: there are now two French regions (New Aquitaine and Occitanie-Pyrenees-Mediterranean), four Spanish autonomous communities (Aragon, Catalonia, the Basque Country and Navarra) and the Principality of Andorra.

The main objectives of the CTP are to make of the Pyrenees a nexus of union among peoples that want to know each other better and who want to cooperate and reduce imbalances in their territories.

The working areas of the CTP focus on economic development, research, improved communications and environmental protection.

#### **Foundation of European Regions for Research in Education and Training (FREREF.eu)**

The Foundation of European Regions for Research in Education and Training (FREREF) is a network of interregional cooperation in education and training. The FREREF is a tool to serve regions. It aims to promote cooperation between different players in the field of education: regional authorities, social partners and researchers, and other education professionals.

The FREREF consists of 17 regions and other member institutions. Each year it organises, among other things, the European Summer University for Lifelong Learning.

Catalonia has relations with political, cultural and economic NGOs, such as the Bertelsmann, Friedrich-Naumann, and Jacques Delors foundations, and research entities like Bruegel.

We conclude this general review of the Catalan activities in Europe with a summary view of its involvement in think tanks. Catalonia is a member of at least three:

- European Policy Centre (EPC.eu)
- Centre for European Policy Studies (CEPS.eu)
- Friends of Europe (friendsofeurope.org)

### To Influence

Catalonia maintains regular contact with Members of the European Parliament (MEPs) and senior officials from the European Commission and Council. It creates networks with other European regions and non-state actors.

However, it is difficult to exert influence in Brussels. The European Union is a club created for and by the Member States.

Catalonia attends meetings of the Committee of Regions, where it presents proposals. It is a consultative committee: its reports, such as those of the Economic and Social Council, are not binding. Amadeu Altafaj is an alternate member of the Committee of Regions when he replaces Maria Badia, Secretary for External Relations and European Union of the Catalan government. Besides regions, three Spanish cities are represented in the Committee of Regions.

Influence is sought indirectly. One way is participating in public consultations of the European Commission. The Catalan Delegation in Brussels encourages its own government to contribute to the consultations that affect them. This process obliges the Catalan government to develop and adopt concrete positions on different European policies and somehow forces it to act as if it were the government of a country. Altafaj mentions the example of the upcoming European Social Pillar. The Catalan government has involved several departments with competences related to the Pillar, including the regional ministries of Presidency, Employment and Economic Affairs. To take a position requires monitoring the European legislative process, identifying sensitive points for Catalonia and, once objectives and targets are identified, defending Catalan interests.

There are now nine Catalan MEPs. The Delegation is in regular contact with them, and sometimes they coordinate activities. However, for reasons of political affinity with the current government, the Delegation is more in tune with some MEPs than with others. When it comes to promoting the Catalan language in the European institutions, partnerships extend to some members of the European Parliament from Valencia and the Balearic Islands. Here again, not all Catalan MEPs collaborate.

Amadeu Altafaj recommends to regions which wish to exert influence in Europe, to above all, get organised. A delegation is the interface to the European institutions, the privileged interlocutor. A region must present itself with one voice, especially to avoid a cacophony. Prevent each department of the regional government to pursue a European policy of their own. A delegation shall coordinate and channel interactions with Europe, and make it consistent with the program and priorities of the government in question.

Catalonia has cooperated with the Basque Country in matters of common interest, such as the Vanguard Initiative<sup>3</sup>. Launched by the Directorate General Single Market, Industry, SMEs and Entrepreneurship at the European Commission, it seeks the political commitment of the regions to use smart specialisation strategies to promote economic growth through new business innovation and renewal in certain priority industrial regions.

Typically, the Spanish Permanent Representation (REPER) informs regions with offices in Brussels about meetings and topics of their interest. But Catalonia does not want to wait to be informed by the REPER, and strives for first-hand information.

Amadeu Altafaj noted that there are many examples of effective lobbying activities by the Catalan delegation in Brussels. One of them, the Mediterranean Corridor, promoted by Fermed, which received the support of the Strategic Catalan Board for the Mediterranean Corridor, a public-private cluster that brings together the Government of Catalonia, municipalities, provincial authorities and the private sector.

Among the outstanding issues, Altafaj speaks of Barcelona's bid to host the European Medicines Agency (EMA) when it leaves London after Brexit. Another one is to improve the status of the Catalan language in Europe. It is the non-official language in the EU with the most speakers: ten million.

Interview: Mr. Antoni Torras, Policy Analyst. Delegation of the Catalan Government to the European Union. Brussels.

Mr. Antoni Torras is a Policy Analyst with over 10 years of experience at the Delegation of the Catalan Government to the European Union. He graduated in Translation and Interpretation from Pompeu Fabra University (UPF) in Barcelona, and holds a Master's degree in European Studies by the Catholic University of Leuven (Belgium). Torras completed an Accelerated Management Programme at the Solvay Business School (Belgium).

Watch a video of the interview with Antoni Torras.

<sup>(2)</sup>Mirna Nouvilas Rodrigo (2012)

<sup>(3)</sup>The Vanguard's Initiative motto is 'New Growth through Smart Specialisation'. <https://ec.europa.eu/growth/tools-databases/regional-innovation-monitor/link/vanguard-initiative>.

**Case Study K: Industry Association Lobbying. European Association for National Trade Organisations representing the European Manufacturers of Weighing Instruments, CECIP, Brussels. Interview: Ms. Bárbara Morales Pascual, Secretary General**

Founded in 1958 and now based in Brussels, CECIP ([cecip.eu](http://cecip.eu)) has 14 member associations as of 2017: Austria, Czech Republic, France, Germany, Hungary, Italy, Netherlands, Poland, Portugal, Russia, Slovak Republic, Spain, Switzerland and the United Kingdom.

The aims of CECIP, as stated on its website, are to play its role within Europe, striving for common and harmonised standards to be adopted at European and International levels to provide safety and quality to both consumers and users of weighing instruments. In order to provide valuable arguments to influence the relevant regulatory environment and market conditions, CECIP has two working groups composed of industry representatives from its member associations.

The Legal Metrology Working Group (LMG) deals with the analysis of the relevant regulatory framework and represents the industrial position within this legislative process. Furthermore, the LMG participates in the work of international organisations, such as OIML (International Organization for Legal Metrology) and WELMEC (European Cooperation in Legal Metrology). But LMG does not only deal with Legal Metrology issues but also with private metrology as, for example, the calibration guidelines of EURAMET. Any other important Metrology issues in private metrology are covered by the LMG.

The Business and Trade Working Group (BTG) focuses on securing fair competition within the EU internal market, ensuring a proper and uniform control of instruments by the relevant authorities.

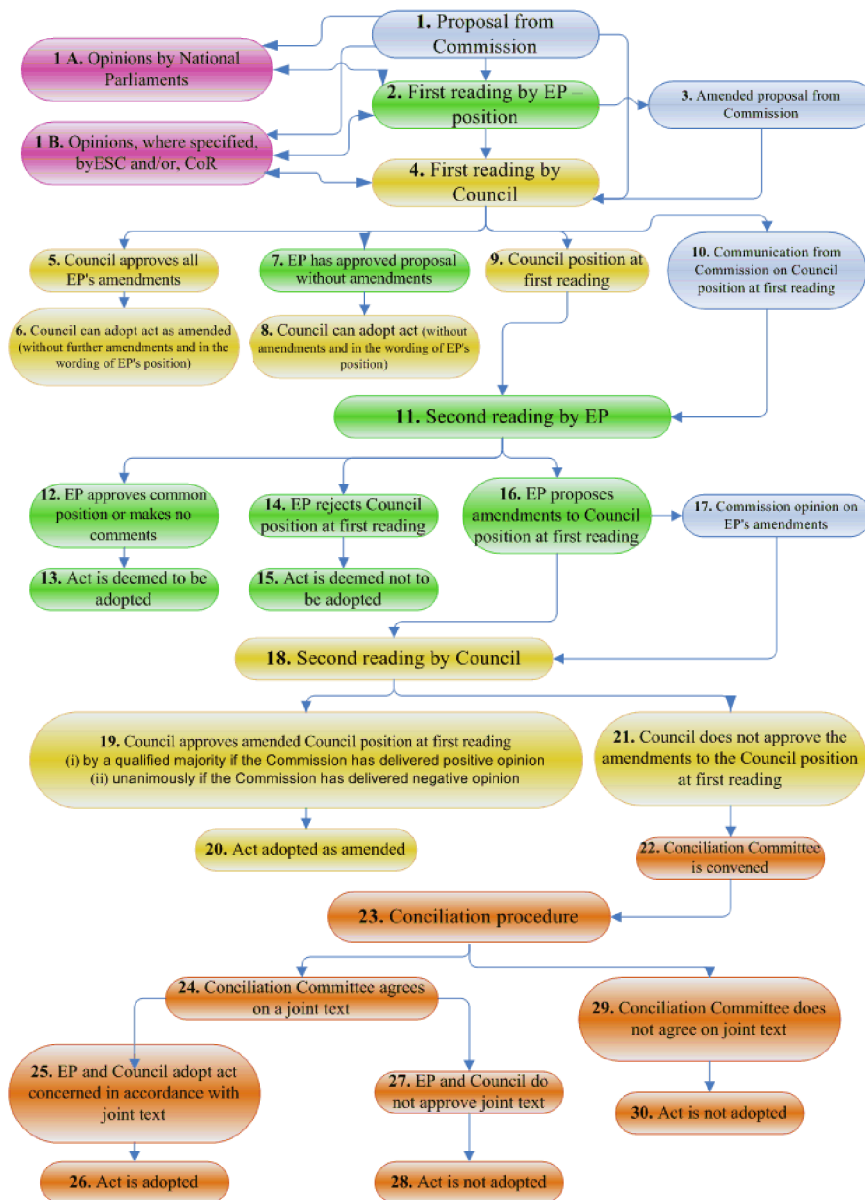
Ms. Bárbara Morales Pascual is CECIP's Secretary General. She obtained a Law degree at the University of Valencia and later graduated from the University of Ghent with a Master of Laws.

Watch a video of the interview with Bárbara Morales.

### **1.3. The EU's Ordinary Legislative Procedure: Co-Decision**

#### **The Co-decision Procedure or Ordinary Procedure**

The co-decision procedure was introduced by the Maastricht Treaty on European Union (1992), and extended and made more effective by the Amsterdam Treaty (1999). With the Lisbon Treaty that took effect on 1 December 2009, the renamed ordinary legislative procedure became the main legislative procedure of the EU's decision-making system.



Co-decision flow chart. Source: European Commission

### Key milestones: from co-decision to the ordinary legislative procedure

**Maastricht Treaty, November 1993:** Introduction of the co-decision procedure which covered a limited number of legislative areas (mainly internal market).

**Amsterdam Treaty, May 1999:** Simplification of the co-decision procedure making it possible to conclude agreements at first reading. Extension of its scope to more than 40 legal bases (including transport, environment, justice and home affairs, employment and social affairs).

**Nice Treaty, February 2003:** Extension of the scope of the co-decision procedure to further areas.

**Lisbon Treaty, December 2009:** Co-decision officially becomes the 'ordinary legislative procedure' covering 85 areas of Union action (including agriculture, fisheries and common commercial policy).

**Joint Declaration, 1999/2007:** adopted in 1999, laying down practical arrangements on the operation of the co-decision procedure. Revised in 2007, explicitly recognising the importance of the "trilogue system" throughout the co-decision procedure.

Source: **European Parliament** (2014). *Co-decision and Conciliation. A guide to how the European Parliament co-legislates under the ordinary legislative procedure* (p. 6)

The ordinary legislative procedure gives the same weight to the European Parliament and the Council of the European Union on a wide range of areas (for example, economic governance, immigration, energy, transport, the environment and consumer protection).

The vast majority of European laws are adopted jointly by the European Parliament and the Council.

The 2009 Lisbon Treaty reinforced the powers of the European Parliament at the expense of the Council of Ministers: More than 40 new areas were added to those to be legislated via co-decision, where Parliament and Council have equal weight. Co-decision has been extended to agriculture, energy, immigration and European funds, among other areas. Since 2009, the Parliament got the final say on the EU budget. The President of the Chamber at the time, the Pole Jerzy Buzek, believes that the Lisbon Treaty almost doubled the power of the institution he headed.

In the words of former Catalan MEP Raül Romeva (who stepped down after two terms (2004-2009 and 2009-2014): "The European Parliament has less power than it should have but more than people think."

For example, the Common Agricultural Policy (CAP) accounts for almost 40% of the expenses of the European Union. Before the Lisbon Treaty, CAP was decided almost exclusively by the Council, in this case, gathering the agriculture ministers of all Member States.

In co-decision, the Commission sends its proposal to the Parliament and the Council:

- Both of them examine and debate the Commission's proposal twice in a row.
- After these two readings, if Parliament and Council fail to agree, the proposal is submitted to the Conciliation Committee, composed equally of representatives of the Council and the Parliament.
- The Commission representatives also attend this committee's meetings and participate in discussions.



- If and when the Committee reaches an agreement, the text is sent for a third reading to the Parliament and the Council, so that they can finally adopt it as a final text. They both must agree.
- But even when the Conciliation Committee adopts a joint text, Parliament can reject the proposed law by an absolute majority of its members.

See here a video of the Europarlament TV on how Co-decision works:

<https://www.europarl.europa.eu/en/programme/others/codecision-press-start-to-see-how-it-works>

Since the Amsterdam Treaty (1999), “trialogues” were introduced as a quick and informal interinstitutional negotiation tool to achieve an agreement on the first reading.

### **Triologue meetings according to the EU Internet dictionary EUABC.com**

“Under the ordinary legislative procedure, the European Parliament has the right to propose amendments to the proposals for new laws that come from the Commission. Commission proposals, Parliament's amendments and the Council's common position are then considered in a so-called "trialogue" meeting with representatives from the three institutions who seek to negotiate an agreement or a compromise. 80% of all such law proposals are dealt with in a single reading. There were around 1000 confidential trialogue meetings in 2013 according to an investigative article in the online newspaper euobserver.com. Official statistics later stated that there were almost 700 such meetings that year.

The first trialogue meeting took place under the German presidency in 1994. The most important meeting place for deciding new EU laws is thus not explicitly mentioned in the treaties at all!

Instead, these Trialogue meetings were regulated by a joint declaration of the three institutions in June 2007. The European Parliament has also developed its own rules by amending its internal Regulation regarding the relationship between the negotiating MEPs and their responsible committees and the European Parliament as a whole.

The trialogue meetings normally conclude with an agreement. The acting president of COREPER then sends a formal letter to the president of the responsible committee in the European Parliament stating that the Council will adopt the law in accordance with the agreement mentioned.

Then the European Parliament adopts the law in a plenary session by a simple majority. Following this adoption the media often writes that the “European Parliament today adopted”. This decision has no place in the formal treaty rules and it conceals where legislative power is really based.

The European Parliament can only propose amendments to the draft laws that come from the Commission and it can reject a proposal by an absolute majority of its members. Proposals from the Council and the Parliament have force only if they are approved by the non-elected Commission. The Council can only adopt a text by unanimity if the Commission withholds its support.

The real decision on new EU laws occurs after the trialogue meetings and the symbolic approval of the trialogue agreements by the European Parliament. The Council then formally decides the law by qualified majority or (on rare occasions) by unanimity.

Formal adoption of a new EU law then takes place as an A-point [not to be discussed, just to be approved or rejected] at the next Council meeting without debate. The real influence of the MEPs involved in these trialogue meetings is far greater than their limited formal power because the Commission often supports the amendments from the European Parliament.

As a result of the development of this trialogue meeting system the formal "ordinary legislative procedure" that is set out in Article 294 TFEU has been changed into pragmatic agreements between the three institutions. From 14 July 2009 to 12 August 2013 there were 247 first reading agreements, 25 second reading agreements and 25 in between. There were only eight conciliation committee meetings".

Source: EU ABC, Internet dictionary on the European Union created by the former Member of the European Parliament, Jens-Peter Bonde (1979-2008). <http://en.euabc.com/word/2507>

Diagram of the different forms of EU rules

Rule	Characteristics	Reach	Implementation
Regulation	It is mandatory in all its elements, the goals to be achieved and the methods to achieve them. It cannot be applied selectively or incompletely.	General, i.e. impersonal. It affects neither specific groups nor identifiable individuals or companies.	It becomes immediately enforceable as law in all Member States simultaneously. Transposition into national law is automatic.
Directive	It is a flexible instrument mainly used as a means to harmonise national laws. It requires EU countries to achieve a certain result but leaves them free to choose how to do so.	General in practice, but not legally.	Implementation varies depending on Member States. It is binding on the countries to whom it is addressed (one, several or all of them) as to the result to be achieved. It enters into force when it is transposed into national law by Member States. Transposition must take place by the deadline set when the directive is adopted (generally within 2 years). When a country does not transpose a directive, the Commission may initiate infringement proceedings and bring proceedings against the country before the Court of Justice of the EU (the non-enforcement of the judgment on this occasion can lead to a new conviction which may result in fines).
Decision	The decision (by the Council or the Commission) is binding in its entirety for all its recipients.	It may either be of general application or may have a specific addressee.	Since the Lisbon Treaty (2009), a decision no longer necessarily specifies to whom it is addressed. Decisions addressed to one or several specific individuals and companies have direct effect (i.e. they can directly create rights and obligations for the addressees, who can invoke them and rely on them before the courts). Decisions without specified addressees may be adopted by legislative procedures.
Recommendation and Opinion	Recommendations and opinions do not impose any legal obligation on those to whom they are addressed.	They are not binding. Therefore, there are not legal acts, but useful tools for the institutions to express their positions and to guide behaviours.	A "recommendation" allows the institutions to make their views known and to suggest a line of action. An "opinion" allows the institutions to make a statement on a given subject. It can be issued by the main EU institutions (Commission, Council, Parliament), the Committee of the Regions and the European Economic and Social Committee.

Source: Eur-Lex.europa.eu

**Case Study L: Non-Profits Lobbying. The European Citizens' Initiative. Ms. Marta Pont. Membership and Outreach Manager. European Citizen Action Service (ECAS), Brussels.**

Brussels, February 2017

Marta Pont is Membership and Outreach Manager at a non-governmental organisation, the European Citizen Action Service (ECAS.org).

ECAS was founded in 1991, is headquartered in Brussels and aspires to be a centre for helping Europeans to fully exercise their rights as EU citizens and achieve an inclusive, transparent and democratic Union. It provides free legal advice to EU citizens and their families who exercise or want to exercise their rights in the EU. They also do research, organise activities and conferences and other awareness activities, such as information and advocacy actions at the European level.

In other words, ECAS wants to bring closer to European citizens the effective exercise of their rights as European citizens, by facilitating their participation, mobility and enjoyment of the benefits and opportunities provided by the EU.

ECAS people do not consider themselves lobbyists, but "advocates" who try to influence decision-makers for public interest purposes and the common good, and not to favor private interests. ECAS tries to distinguish itself from business lobbyists by creating a category of its own for non-profits. In reality, they are the same: interest groups that lobby, with all the diversity with which lobbying can be done.

ECAS considers itself a *rara avis*, because it is not a non-governmental organisation as others that are active at street level. In some ways, it resembles a think tank and, in others, a service company.

It has nine full-time employees and two interns. Two people are engaged in following up EU policies and law, but not full time.

For twenty years, ECAS has handled almost €1.5 million annually awarded by the European Commission as a result of a competitive tender to provide legal advice to citizens and businesses about their rights in the European Union. They do it in 24 official languages. In English: Your Europe Advice.

ECAS has a network of more than 60 legal experts throughout Europe that resolve citizens' doubts and answer their concerns regarding their rights in the EU.

Thanks to winning the four-year tender to provide this service on behalf of the European Union, ECAS has an open channel with the Commission to hold regular follow-up meetings.

In the late 90s, exceptionally, ECAS lost the competition to provide legal advice in Europe. However, the new supplier did not fulfill the expectations and the bidding was reopened after a short time. ECAS won it again.

ECAS Funding also comes from grants to implement projects in the field of European rights and democratic participation, granted in other competitive contests. In addition, ECAS obtains a small portion of its funding for specific projects from private sources, and from membership fees.

Another example of a non-profit organisation that manages EU programs is the University of Ghent, which, after winning a public tender, manages a network of legal experts in the field of freedom of movement of workers and coordination of national systems of Social Security under the name FreSsco.

The Directorates General (DG) at the Commission with which ECAS interacts the most are:

- DG Growth: Internal Market, Industry, Entrepreneurship and Small and Medium Enterprises (SMEs)
- DG Employment

- DG Health and Consumers (Sanco)
- DG Justice
- DG Connect

The European Parliament committees which are more relevant for ECAS:

- Employment and Social Affairs (EMPL)
- Civil Liberties, Justice and Home Affairs (LIBE)
- Petitions (PETI)
- Constitutional Affairs (AFCO)
- It also works occasionally with the Culture and Education Committee (CULT)

ECAS does not work together with the Subcommittee on Human Rights (DROI) within AFET (Foreign Affairs). Freedom of movement, one of the ECAS' major themes, is not a human right, but one of the four fundamental freedoms recognised in the Rome Treaty in 1957.

### **Influence by NGOs at European institutions**

ECAS is registered at the Transparency Register As a non-profit organization, it believes that it has nothing to hide and would like the Register to be compulsory and comprehensive. It wishes it showed more effectiveness in creating equal opportunities for access between business stakeholders and civil society, for example, requesting more specific information about the issues lobbies seek to influence and check the information they provide. There is no control of the accuracy of the information declared in the Register by its over 11,000 entries: the Commission has no resources to do so, the Register does not even have a Secretariat, and much less a regime to punish malfeasance.

ECAS believes that the Council is the institution setting up obstacles for the Register to become compulsory.

ECAS disapproves of the growing importance of the "trialogues" (or "trilogues) in the European legislative process. According to the ordinary procedure, also known as co-decision, the Commission submits a legislative proposal to the European Parliament and interacts with the Council of Ministers by conducting various readings and, if necessary, by calling a conciliation committee to try to find a common position that could be approved by all. The reality, however, is that more and more often agreements are negotiated and reached on a first reading by unregulated informal meetings between Parliament, Council and the Commission: the trialogues.

ECAS and other nonprofit stakeholders consider the trialogue an intransparent mechanism, in contrast to the meetings of parliamentary committees, for example, which are recorded and broadcast live. With trialogues, decisions are made faster and you do not know who decided what. After a trialogue agreement, the adoption of legislation becomes a simple formality. In 2015, the European Ombudsman started a strategic research about trialogues. Her conclusions asked for greater transparency on documents and agendas of trialogue meetings.

Nevertheless, ECAS recognizes that transparency in the European Union is much better than in many Member States. For example, the commissioners hold regular dialogues with citizens in several countries where they answer direct questions from the public. In addition, the Commission publishes its meeting agendas and provides citizens the opportunity to contribute to legislative initiatives in their initial stage or ongoing stages through public consultations.

### **Example of ECAS' Success Story: Portability of Unemployment Benefits**

In December 2016, the European Commission presented the proposed revision of those regulations that coordinate national social security systems. ECAS participated

in the public consultation and in meetings with the European Commission on the Labour Mobility Package in 2015.

Among other issues, a priority for ECAS was to extend the deadline for the portability of unemployment benefits for workers who travel to another Member State. ECAS considered three months to be insufficient and wanted an extension to six months. ECAS succeeded in including this six-month deadline already on the proposal by Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour Mobility. Thus, ECAS influenced the package during the pre-legislative phase, when advocacy is most effective. It remains to be seen whether the proposal will not be watered down in negotiations with Parliament and Council<sup>4</sup>.

ECAS is an established stakeholder, recognised by European authorities in the field of European citizenship rights, and therefore, it is regularly invited to meetings and consultations. ECAS is well versed in the complexity of the European legislative process and knows how to operate in this environment.

For example, ECAS is a member of the accredited stakeholder Platform REFIT. It is an initiative of Vice President Frans Timmermans to bring together in regular meetings the Commission, national authorities and representatives of the business world and civil society in different areas to improve European legislation. REFIT works both to evaluate existing legislation and to consider new proposals.

This REFIT platform has given ECAS the opportunity to interact directly with governments, corporations and senior officials at the Commission and explain its positions to them.

On this platform, there are two subgroups of 25 members each, one consisting of national governments and the other of stakeholders. They meet about once a quarter, and each member undertakes the writing of an opinion a year on a given issue. This commitment alone already represents a considerable investment in human resources for a small organisation such as ECAS, given that participation in advisory groups is not remunerated. REFIT pays per diems and travel expenses to those who travel from outside Brussels.

### **An Outstanding Issue: The European Citizens' Initiative**

The European Citizens' Initiative (ECI) is a project that also falls within the powers of the Commission's First Vice President Frans Timmermans, responsible for Better Regulation, Interinstitutional Relations, Rule of Law and the Charter of Fundamental Rights.

Through the ECI, the Commission invites European citizens to propose legislation on the fields of its competence. You need at least one million signatures that must come from seven or more different Member States. An ECI may not be proposed by organisations, although, obviously, they are the ones that often launch campaigns to collect signatures, which may not last more than a year. The ICE was regulated in 2011 by a regulation (211/2011).

Since then, there have been sixty initiatives, of which only three fulfilled the necessary requirements, all in 2012. One initiative aimed at ending animal vivisection, another aimed at prohibiting the destruction of human embryos and a third expected the Commission to implement the right to water and sanitation. And none of them got any effective follow-up, only nondescript and irrelevant Commission communications.

The conclusion for ECAS is that ICE, as an instrument for agenda-setting, has been a failure as long as it has only generated a lot of frustration, especially among those who made great efforts to push an ICE along and did not succeed. In 2015, ECAS published a study criticising ICE's legal basis, its follow-up procedure and requirements, which were considered too demanding. Vice President Timmermans declared that it was still too early to ascertain what is not working with ICE and preferred to postpone

a review of its Regulation. But in April 2017, Timmermans changed his mind and decided to review ICE's procedure for ICE to make it more effective.

ECAS considers that ICE could be an excellent tool for advocacy and thinks that, perhaps, the Commission looked at it with suspicion because, depending on how it is used, could foster Euroscepticism<sup>5</sup>.

#### **Recommendations by Marta Pont to Do Lobbying and Advocacy**

Marta Pont highlights four recommendations to interest groups, especially in the European context:

- 1) Specialisation. Groups should be very familiar with the subject matter. Advocacy goes far beyond putting leaflets in the mailboxes of members of the European Parliament. Provide specialised, quality information that the public decision-maker will appreciate.
- 2) Timing. We should act with enough time and in advance. When an issue arrives to the plenary of the European Parliament, it is too late, "the fish is already sold."
- 3) Network. It is essential to establish partnerships. There are many ways to make alliances and it is crucial to make them.
- 4) Visibility. Groups should never go unnoticed. They must maintain an active presence through events, conferences and public events.

<sup>(4)</sup>You can find a summary on this case here:<http://ecas.org/eu-update-social-security/>

<sup>(5)</sup>Make it more effective because it worries that the ICE might be used by eurosceptics<http://www.euractiv.com/section/eu-priorities-2020/opinion/commission-ignoring-the-eci-s-positive-potential-for-democracy/>

### **1.4. Regulation of Lobbying. The European Transparency Register**

The European Union has created a portal that aims at facilitating the access of European citizens to information on EU decisions that affect them: how are they drafted, who makes those decisions and what preparatory documents are used.

The Transparency Portal enables anyone to access online EU documents and legislation; participate in open consultations; and connect to the Transparency Register and the Comitology Register, which contains a list of all comitology committees, as well as background information and documents relating to the work of each committee.

Also, citizens will find there information on beneficiaries of EU funds, advisory committees, and on the Commission's replies to citizens' petitions.

The European Transparency Register is a central element of the European system of transparency.

The European Commission and the European Parliament share a common transparency register since 2011. Its requirements have been toughening in the last years, but it is still voluntary.

In 2001, the Regulation 1049/2001 already established the right of everyone to have access to a wide range of EU documents, including those provided by lobbyists to European officials.

Some EU officials believe the current level of transparency is exaggerated, causing excessive bureaucracy and limiting their margin to maneuver.

In December 2014, a month after he took office, the President of the Commission, Jean-Claude Juncker of Luxembourg, tightened access conditions to European officials by interest group representatives. He prohibited Commissioners, cabinet members, Directors General and Directors to meet with unregistered lobbyists. Moreover, they must inform of their meetings with registered lobbyists.

All Commissioners are required to complete a declaration of interests, which are public and available on their individual pages. They must declare gifts of a value of more than €150 and in the 18 months after leaving office, former Commissioners are required to request Commission approval of their new occupations. They must comply with certain rules and limitations regarding their career moves.

### **José Manuel Durao Barroso and Goldman Sachs**

Former European Commission president, Portugal's José Manuel Durao Barroso, announced in July 2016 that he had taken a job with the US investment bank Goldman Sachs. Despite having respected the mandatory waiting period of 18 months after leaving the Commission in November 2014, the current Commission president, Jean-Claude Juncker publicly and openly criticised his predecessor's move and ordered the Commission's Ethics committee to review Barroso's behaviour. This happened in a difficult political context, as the United Kingdom had voted for Brexit a few weeks before and the continent faced the risk of rising anti-European, populist parties in several Member States.

José Manuel Barroso complained of discrimination against him and denied that he worked as a lobbyist at Goldman Sachs.

A self-defined "spontaneous" group of European officials launched a petition at change.org, protesting against Barroso's joining a bank whose reputation they consider stained by the 2008 financial crisis and which was involved in the concealment of Greece's true financial situation before it joined the euro, Europe's common currency. In particular, this trade union complained that Barroso's behaviour damaged the

#### **Recommended Website at the European Commission**

[https://ec.europa.eu/info/about-european-union/principles-and-values/transparency\\_en](https://ec.europa.eu/info/about-european-union/principles-and-values/transparency_en)

#### **Recommended Website**

You can find information about the meetings of high-ranking European Commission officials with lobbyists at [www.integritywatch.eu](http://www.integritywatch.eu)

European Union's reputation and requested the European Commission to withdraw the Portuguese's retirement pension.

This petition gathered more than 150,000 signatures.

In October 2016, the Ethics Committee cleared Mr. Barroso of any wrongdoing.



## 2. Lobbying in Spain: Regulation and Practice

Despite multiple attempts by minority parliamentary groups over the years, lobbying is not regulated in Spain. But maybe times are changing, finally: in April 2016, the plenary of Congress approved taking into account a concrete text to create a lobbying register and adopt a code of conduct for interest representation. A few weeks later, Parliament was dissolved and this proposal fell. Nevertheless, it created a clear precedent expressing and guiding the political will by a majority of political forces to regulate lobbying. We present here a couple of case studies illustrating how lobbying is currently practiced in Spain.

### **Case Study M: Lobbying Consultancy in Spain. Mr. Carlos Lareau. Founder & Managing Partner, Conduit Market Engineers, Barcelona, Spain**

Barcelona, February 2017

Carlos Lareau is founder and manager-director of Conduit Market Engineers. It is a company specialised in strategic communications, reputation management, public affairs and stakeholders relations in Spain. It is based in Barcelona and its partner in Madrid is Torres y Carrera.

Lareau has a long and brilliant career of more than 35 years as a journalist, foreign correspondent and senior executive at Burson-Marsteller and Fleishman Hillard, two of the world's leading public relations companies. He has led projects in different continents, advising companies, governments and international organisations.

According to Lareau, Spanish lobbying professionals are lagging behind their colleagues in European countries and the United States. In advanced European countries and the US, the lobbying framework has clear rules. Lobbying campaigns are structured, and are carried out with a strategy - including a legislative one -. Target audiences are specific, as well as the messages that are addressed at each of them.

In Spain, real interlocutors are not the official public decision-makers. Real, effective power is found in the political parties and in the government. Lobbying efforts in Spain are characterised by their informality. However, the relevance of the VIP-zone at Real Madrid's Santiago Bernabeu football stadium, considered the mecca of Spanish lobbyism, is overrated: when it comes to really important issues, the interlocutors will not allow themselves to be seen in public together.

There are many informal power circles in Madrid, the Bernabeu's VIP-box being just one more of them. The Bernabeu may act as the ice-breaker. Other informal power circles may be, for instance, thematic breakfasts organised by media groups or large companies.

The lobbying sector in Spain will welcome its regulation, when it finally arrives. It will improve its reputation and give lobbyists security to operate without raising suspicions. Lareau is in favor of regulating and letting fresh air come in, by applying European standards. Someone should go to jail from time to time, which is something that does not happen now in Spain.

He believes that it is fundamental in this business to generate credibility from the outset, and to maintain it. Interest groups should avoid doing anything that carries reputational risk. As an example, it is a good idea to invite public decision-makers as speakers to a corporate conference, but it should not take place at a resort with a beach or a golf course.

Lareau stressed the centrality of political parties in decision-making, and hence in the business of influence. On the other hand, we must take into account the deep dependence of the main media groups in Spain on the financial sector. Most media groups owe millions in debts to banks and this makes them vulnerable to pressure by the financial sector.

Big Spanish companies, especially the old public monopolies, carry a lot of political weight. They usually support whatever power is established and the government in charge. For many years, the Catalan figure with the most power in Spain was not the president of the Generalitat or regional government, but the CEO of financial behemoth La Caixa, Mr. Isidre Fainé.

Of course, these large companies often have representative offices in Brussels.

In the old good days, associating your logo with the royal family was good publicity. Thus, Mallorcan businessmen paid for King Juan Carlos' yacht, which showed the La Caixa logo.

King Juan Carlos' second daughter, Princess Cristina worked for La Caixa during many years. And her husband Iñaki Urdangarin signed for the former telephone monopoly, Telefónica. It can be argued without fear of being mistaken that the royals' links with these companies lasted for longer than what would have made sense in terms of business, after Urdangarin's and Cristina's alleged wrongdoing became public.

King Juan Carlos was more or less pushed to abdicate in favor of his son Felipe VI in 2014, following his son-in-law's, daughter's (and own) financial scandals.

Nowadays in Spain, corporations already apply stricter rules on party financing, especially multinationals. Not only because the legislation has been tightened but because of reputational risk. For example, the reputation of construction company Ferrovial has been deeply damaged by their indictment for corruption. Ferrovial stood trial in 2017 for its alleged illegal financing of the political party Democratic Convergence of Catalonia through the concert hall Palau de la Música Catalana in Barcelona.

### **Recommendations by Carlos Lareau**

Young lobbyists must be aware of Spain's authoritarian history. Private companies still tend to ask for acquiescence by the political power before making certain decisions. And they should not have to! The state plays a decisive role even in the private world. Statism is still part of the political culture in Catalonia and Spain.

It is of public knowledge that the large Spanish banks were mobilised to prevent the coming to power of a leftist government in 2014 and 2015. The CEO of a Catalan bank expressed publicly his wish to have a "right-wing Podemos", referring to the new leftist party founded by Pablo Iglesias.

Lareau recommends lobbyists to specialise. In fact, the complexity of most issues being lobbied about almost forces lobbying professionals to specialise. His company Conduit has done it in the sectors of aviation and energy-- more specifically, the chemical sector.

Lobbyists should have a good level of culture in general, and especially in politics.

And they should be willing to work hard, and never stop learning.

### **Case Study N: Parliamentary Lobbying. Mr. Joan Capdevila, Member of the Spanish Congress, Republican Left of Catalonia**

April 2017

Joan Capdevila is a veterinarian by profession and has a master's degree in veterinary clinics and administration from the Autonomous University of Barcelona. Since 2015, he has been a Member of the Spanish Parliament representing the constituency of Barcelona for the party "Republican Left of Catalonia" (Esquerra Republicana de Catalunya, ERC) as an independent. Joan Capdevila is spokesman for his parliamentary group at the following committees: the Committee on Budget, the Committee on Energy, the Committee on Tourism and the Digital Agenda and the joint committee between Congress and Senate called Joint Committee on Parliamentary Control of Spanish Public Radio Television (RTVE) and its societies.

Capdevila talks about his experience as a target of lobbying in Congress. He emphasises that his group only consists of nine members out of 350, whose status in the Spanish Parliament is that of outsiders. However, he is contacted by quite a few lobbyists.

The deputy notes that two types of lobbyists operate in Congress:

1) "Go-get-interviews". These lobbyists often work for law firms that complement their services with lobbying or, as they like to say, "advocacy". These lobbyists tend to come with their clients, even though they have sufficient knowledge of the issues to come on their own and defend their points themselves. Typically, they can accompany the secretary general of a trade union, a guild, or an industry or service association.

This kind of lobbyist usually exposes his or her arguments and asks for an amendment or a vote one way or another. They tend to leave a folder in your office and do not follow-up on the topic. As a Member of Parliament, you get the feeling that they are doing their rounds, as it were. Even if they shoot in all directions, so to say, they pay more attention to members of relevant committees, especially to their spokespeople in different groups.

2) Lobbyists, strictly speaking. They are professionals in specialised public affairs consultancies and they come well-prepared, extremely well-prepared. You can add to this premium category those organisations that do their lobbying themselves. For example, major trade unions, and even the Spanish business association CEOE (Spanish Confederation of Business Organisations; ceoe.es). CEOE has hired Josep Sánchez Llibre, a former deputy with 20 years of experience (1996-2015), to manage its parliamentary relations. These lobbyists know perfectly well how legislative mechanisms work and are versed in the political culture of the Spanish parliament.

Capdevila sees every day how Members of Parliament with extensive experience, who are extroverted, empathetic and able to establish strong personal relationships with their peers can excel as lobbyists once they leave office.

Capdevila likes the lobbyist to bring his or her request as a brief text. Better on one page than two. If the request is to present an amendment, the proposal should already be given to him written, and ready to go. The lobbyists should make it as easy as possible for Members. Parliamentary life is complicated and hectic enough. The ones

who have an interest in the matter at hand are the lobbyists and the organisations they represent, so they should do the work.

Capdevila appreciates being given comprehensive reports of about 30 pages. They can be useful to deepen his knowledge on one specific issue. In every case, though, the report should include an executive summary of one page expressing what the lobbyist is asking for and why he or she deserves support.

His relationship with lobbyists is usually very proper. Some may be insistent, but the deputy believes that listening to stakeholders and interests groups through lobbyists is one of his duties as a representative of the people.

### **The Transparency Regime at the Spanish Congress**

Joan Capdevila thinks a Lobbyists Register would be adequate but it is not a priority for him. In his opinion, there should be a balance so transparency does not end up causing excessive bureaucracy or a violation of privacy.

For example, Capdevila finds it to be an exaggeration to have to give so many details about his personal financial situation in the declaration of income and assets they need to fill in at the beginning of each term. The form they have to fill in has five pages. This is akin to a financial striptease which may even end up being a security risk for wealthy parliamentarians and their families. Capdevila believes that it would be enough to sign an affidavit before a notary public which a judge could claim as part of a judicial investigation.

Joan Capdevila made the joke that now all his friends know he has a lot less money than they thought, and that he still owes a lot of his mortgage and to which bank.

### **Good Practices in Lobbying: the Multisectorial Platform against Late Payments**

As an example of good practices in lobbying, the deputy mentions the Multisectorial Platform Against Late Payments (Plataforma Multisectorial contra la Morosidad, headquartered in Madrid).

The Multisectorial Platform Against Late Payments (PMcM) is a confederation of employers' associations created in 2008 to combat the extended practice of late payments in Spain and promote a culture of ethics that includes complying with payment deadlines. One of its objectives is to get Spain to implement the European Directive 2011/7/EU on combating late payments in commercial transactions.

The PMcM gathers companies in many sectors in Spain, accounting for nearly one million businesses with a turnover of close to €150,000 million, which create jobs for more than 4.5 million employees and self-employed workers. PMcM has submitted to the Government and the various political groups a battery of 16 proposals for new legislative and regulatory measures to minimise the risk for businesses to suffer from late payments, to combat the lengthening of payment deferrals and fight against business defaults.

Capdevila praised the quality and clarity of the information provided by the PMcM and the precision of what they requested him to do regarding the bill on Public Sector Contracts. This bill is being discussed in 2017 and it is supposed to transpose several European directives in the field where Spain is already beyond the deadline. The European Commission has opened a disciplinary procedure against Spain because of its delay in transposing those directives.

The Republican Left party responded to the concerns of self-employed workers and companies which suffer under the very late payments by public administrations and

private clients in Spain and began to negotiate with other parliamentary groups on the various amendments that the PMcM platform proposed.

The Multisectorial Platform Against Late Payments does not only try to persuade Members of Parliament and political parties: Its amendments are posted on their website and it is asking private citizens to support them through an online form.

The Spanish People's Party, the strongest in Parliament, and the Republican Left Party agreed in the corridors of Congress to support certain PMcM amendments. Then, the Platform went to the Spanish Socialist Party telling them that, if two so disparate parties at the right and the left, one monarchist and the other republican, one supporting the unity of Spain and the other Catalonia's independence, had been able to reach an agreement in favor of Small and Medium Enterprises (SMEs) and against late payments, then the Socialists could not be left on the sidelines. This strategy appears to be working.

Obviously, a parliament without a majority such as is the case in Spain since December 2015, there is more room for lobbying than if a single party dominates with an absolute majority. But even then, there will be lobbying. Always.

## **2.1. The Transparency Law. Regional and Sectoral Transparency Regulation.**

Catalonia was the first region to create a registry of interest groups: the Decree 171/2015 of 28 July on the register of interest groups of the Administration of the Catalan government and its public sector. It went into effect in October 2015 and it is voluntary, public and free of cost.

At the national level, the first authority to create a registry has been the National Commission on Markets and Competition (CNMC, for Comisión Nacional de los Mercados y la Competencia), in March 2016.

### **Transparency Register of the Commission on National Markets and Competition, CNMC (<https://rgi.cnmc.es>)**

This Register aims to contribute to transparency in decisions that affect millions of people. The CNMC maintains regular contacts with groups representing specific interests. It considers their activities to be legitimate and necessary to channel the involvement of civil society in public affairs and ensure that economic regulation responds to the needs of citizens. The Register includes a code of conduct inspired by the European Union's code. Since 2013, the CNMC has published a calendar listing meetings held between its counselors and business representatives, thus fulfilling the requirements set by the law establishing the institution. Source: CNMC, [forotransparencia.com](http://forotransparencia.com)

Spain does not yet have a transparency register but it does have, however, a transparency law and its corresponding portal ([transparencia.gob.es](http://transparencia.gob.es)). The Law 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance aims to facilitate the exercise of the right to public information, but has been criticized for not providing information easily enough and some critics even say it may have been a step backwards. Before the creation of the Spanish transparency portal in December 2014, the Administration answered email information requests, but later refused to do so, directing citizens to the transparency portal. However, the transparency portal requires personal identification by digital certificate, a

personal electronic ID card or a personal code obtained over the phone. The Ombudsman has criticised the system for requesting information from the Government, considering it overly complex and discouraging.

A year after the Spanish Transparency Law, Catalonia approved one of its own. The Law 19/2014, of 29 December on transparency, access to public information and good governance. It entails the corresponding transparency portal: Transparència Catalunya. Official evaluations are pending.

**Case Study O: Transparency. How Catalonia enacted a public transparency system. Mr. Eduard Triay. Head, Department of Institutional Relations, Parliament of Catalonia.**

Brussels, March 2017

Eduard Triay is the Director of the Department of Institutional Relations of the Catalan Parliament. He has Bachelor Degrees in Business Sciences, Advertising and Public Relations, and a Postgraduate Degree in State and International Protocol from the Spanish Ministry of Foreign Affairs.

In February 2017, the Parliament of Catalonia created a Register of interest groups and MPs' Public Agenda.

Eduard Triay emphasises that it is the first Parliament with in the Spanish State to do so. Registrations are coming in at a steady pace, with more than two hundred entries in the first two months.

According to the President of the Catalan Parliament, Carme Forcadell, the Catalan Transparency, Access to Public Information and Good Governance Act 19/2014, of 29th December is underpinned by four main pillars:

- 1) Promotion of active notification
- 2) The right to information
- 3) The MPs Code of Conduct
- 4) The Public Agenda and Register of interest groups

The Catalan Parliament believes that the Register and Public Agenda of MPs will be beneficial for all of the actors involved, as well as for society. The aim is to destroy the negative image people have of interest groups. The activity of lobbying is recognised as legal and legitimate and the Act regulates a relationship that has always existed.

The Register gives the classification of "interest groups" or "lobbies" to private individuals and organizations that carry out activities to influence the drafting of laws and other parliamentary functions, with the intention of permanence and continuity. The Register and the Public Agenda regulate and standardise the relations between interest groups, on the one side, and MPs and parliamentary groups, on the other, establishing the rules of the game based on full transparency and public notification, with the aim of ensuring the public interest.

Interest groups have a set of rights and obligations. As such, they are entitled to defend the interests that they represent in front of MPs and parliamentary groups, with meetings, hearings and the submission of documents, as well as having to publicise information about their activity and comply with a code of good conduct. In this way, it is hoped that they will contribute by setting a good example of the democratic quality of the institutions.

### **Code of Conduct for the representatives of interest groups in the Catalan Parliament**

The interest groups registered on the Catalan Parliament's Interest Group Register have to comply with the following guidelines with respect to their relations with the Parliament, MPs, the members of parliamentary groups and civil servants:

- 1) Whenever requested by the body in charge of the Register, they have to indicate the name and registration number of the organization or organizations that they represent or work for, the interests or objectives they pursue and, if applicable, the clients that they represent.
- 2) They must refrain from obtaining or trying to obtain information or force decisions in a dishonest way or using abusive pressure or inappropriate conduct with respect to MPs, members of parliamentary groups and the staff working for the Parliament.
- 3) They must not state or imply in their relations with third parties that they have a formal relation with the Parliament.
- 4) They must not submit inaccurate data to the Register that may mislead MPs, third parties or parliamentary civil servants.
- 5) They must refrain from using the logos or any other institutional sign or image of the Parliament without authorization.
- 6) Throughout the registration process and whenever applicable, they have to provide full, up-to-date and not misleading information about the activities and other data that has to be recorded on the Register.
- 7) They must accept that all of the information submitted to the Register is subject to revision and they must respond to any administrative requests for supplementary and updated information.
- 8) They must refrain from selling copies of documents obtained from the Parliament to third parties or obtaining any financial benefit from such documents.
- 9) They have to respect the regulations, codes and good governance practices established by the Parliament and must not obstruct their execution or application.
- 10) They must avoid inciting MPs, parliamentary groups and their advisors, and parliamentary civil servants to breach the regulations and guidelines that they have to comply with as a result of the position that they hold.
- 11) If they contract people that have previously had relations with Parliament or parliamentary groups, they have to respect these people's obligation to comply with the regulations and requirements with respect to confidentiality, if applicable.
- 12) They have to obtain the prior authorization of the MP in question if they want to establish contractual relations with somebody who works within the MP's specific area.
- 13) They have to respect the established regulations on the rights and responsibilities of former MPs.

14) They always have to notify the people who they represent of their obligations with respect to the Parliament and the consequences that may arise if they fail to fulfil these obligations.

15) They have to wear their access card in a visible position at all times within the Parliament building.

16) They must comply strictly with the stipulations of the Bureau of Parliament in relation to the conditions that interest groups must abide by to conduct their activity within the agencies of the Parliament, as well as any instructions given by the parliamentary staff in this respect.

Source: The Parliament of Catalonia

If the interest groups do not fulfil these obligations, a disciplinary procedure may be initiated against them and the penalties stipulated in the Register may be imposed (public reprimand, fine, temporary suspension or permanent removal from the Register depending on the severity of the breach).

It is too soon to evaluate the effectiveness of the penalty system. The Register is managed by the Administration of the Parliament and, specifically, by a civil servant. This civil servant is a lawyer, working under the supervision of the Secretary or General Secretary of the Parliament, who is also a civil servant by profession. They are the senior director of all of the staff and services of the Parliament and they provide the technical support and advisory functions of the Parliament's governing bodies, assisted by the Parliament's attorneys.

An academic analyst may wonder how some professional civil servants could approach decisions on penalties and fines sanctions that are probable politically charged to some extent.

The Public Agenda of MPs will record their meetings with interest groups, and they are under obligation to report such meetings. Lobbyists that are not registered cannot appear before Parliament nor meet MPs. The Public Agenda is not yet up and running at the time of writing (April 2017).

Forcing MPs to announce their public agenda goes beyond the usual levels of requirement in this respect in Europe. In the European Union, senior officials of the European Commission (from Director upwards, and the members of the Commissioners' cabinets) are obliged to report on a fortnightly basis with respect to their contacts with lobbyists and interest groups, which must be recorded. However, this is not the case for MEPs. Any MEPs who do report such contacts, many of whom are members of the Greens-European Free Alliance group, do so voluntarily.

Eduard Triay agrees that these regulations set the bar high in terms of the requirements they impose, adding that, after the initial probation period of this pioneering initiative, the regulations can be amended by agreement of the Catalan Parliamentary Bureau. It is relatively easy to make such changes and it is always simpler to make amendments that relax conditions rather than tightening them.

Triay emphasizes the shift in political culture represented by the Catalan Register and Public Agenda. The Parliament wants complete transparency and to open up to the citizens represented through for-profit and non-profit organizations, and also individually.

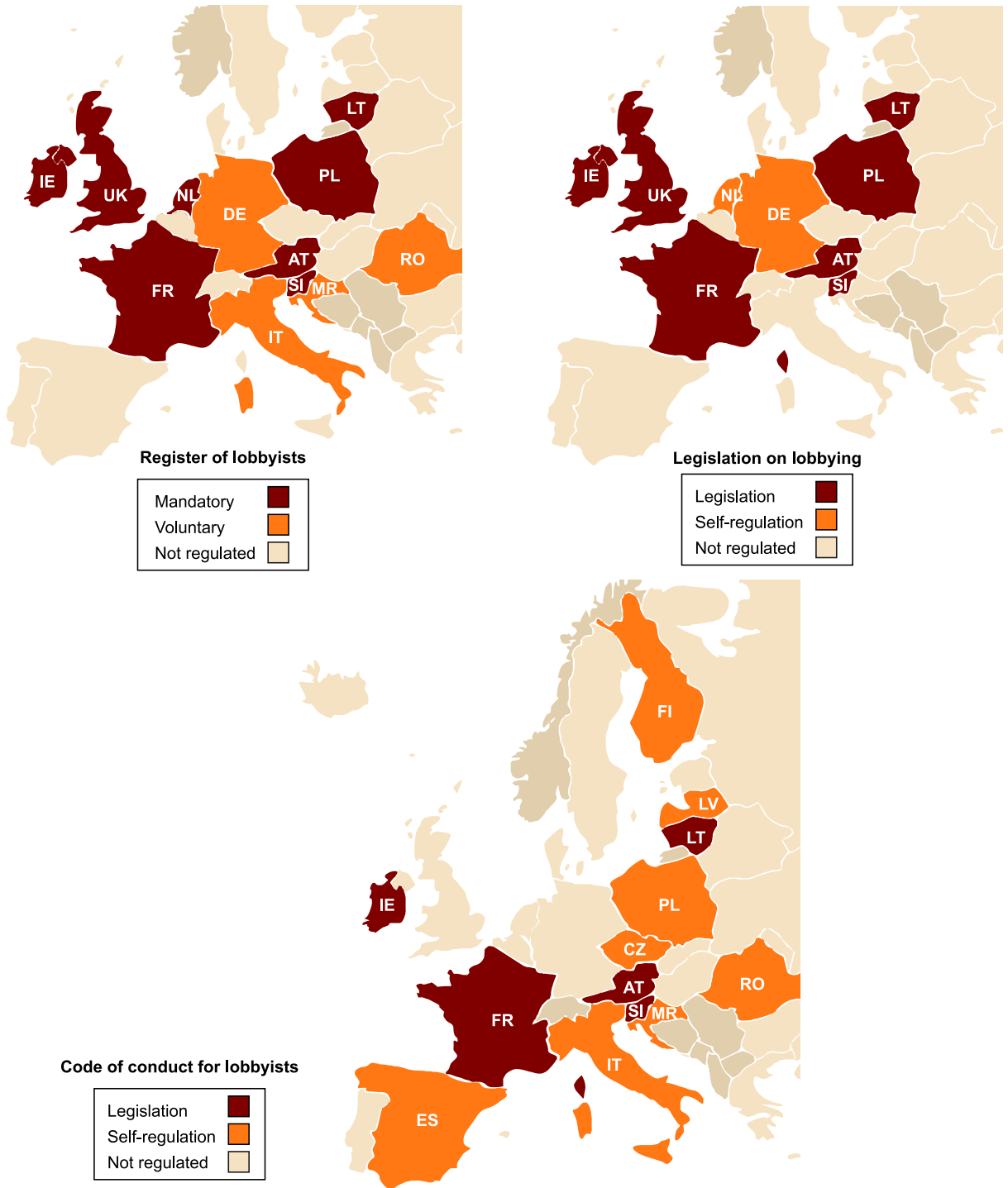


### **3. Transparency in European Countries. An Overview.**

In recent years, there has been a growing tendency in Western countries to create registers of lobbyists and/or interest groups, responding to repeated scandals and public opinion pressure.

In December 2016, the European Parliament Research Service published infographics giving an overview of the regulatory landscape of lobbying across Member States:

Regulation of lobbying across the EU



Source: European Parliamentary Research Service

The infographic illustrates in broad terms the differences between Member States' approaches to regulating lobbying (legislation or soft-regulation), as well as the existence of codes of conduct for lobbyists (either provided for by legislation, or through self-regulation by lobbyists' organisations), and registers of lobbyists (mandatory or voluntary).

Table of European Union Member States and their Legislation, Code of Conduct and Register of lobbyists

Country	Legislation	Code of conduct	Register
Czech Republic	No	Self-regulation	No
Germany	Bundestag Rules of Procedure, 1972	No	Voluntary, register for Bundestag lobbyists
Ireland	Registration of Lobbying Act, 2015	Yes, provided for by the law	Mandatory
Spain <sup>1</sup>	No	Self-regulation	No
France <sup>2</sup>	Loi Sapin II, 2016	Yes, provided for by the law	Mandatory
Croatia	No	Self-regulation	Voluntary
Italy <sup>3</sup>	No legislation at the national level	Self-regulation at different levels	Voluntary in some ministries
Latvia	No	Self-regulation	No
Lithuania	Lobbying Act, 2001	Yes, provided for by the law	Mandatory
Netherlands <sup>4</sup>	House of Representatives Rules of Procedure, 2012	No	Mandatory register for accessing Parliament
Austria	Lobbying and Special Interest Group Transparency Law, 2013	Yes, provided for by the law	Mandatory
Poland	Act on Legislative and Regulatory Lobbying, 2006	Self-regulation	Mandatory
Romania <sup>5</sup>	No	Self-regulation	Voluntary
Slovenia	Integrity and Prevention of Corruption Act, 2010	Yes, provided for by the law	Mandatory
Finland	No	Self-regulation	No
United Kingdom	Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act, 2014	No	Mandatory only for public affairs consultancies

Legislation	■
Soft-regulation	■
Self-regulation	■

**Notes**

1. In Spain, Catalonia has a Lobby Register overseen by the Catalan Government.
2. In France, until a new law comes into force (in July 2017 at the latest), the National Assembly Rules of Procedure regulate the issue and the registration of lobbyists is voluntary.
3. In Italy, there is no specific legislation at a national level, but there are some internal regulations (for the Chamber of Deputies, not in force as yet, and for two ministries), and regional laws in five regions.
4. The Netherlands also has a mandatory register, but only for lobbyists accessing the Parliament.
5. In Romania, the Government introduced a public register of meetings with interest group representatives in September 2016

Source: European Parliamentary Research Service

**Germany**

Since 1972, the President of the Bundestag maintains a public list of associations representing interests before the Lower House of the Federal Parliament (Bundestag) or the Federal Government. The list is voluntary and it does not entail any advantage. At the same time, non-registration does not entail any disadvantage. Registration is no prerequisite for group representatives to be heard by parliamentary committees or meet with public and/ or elected officials. The Bundestag and its committees, obviously, may invite experts of non-registered associations.

There are more than 2,300 entries in the associations (*Verbände*) representing interests. The list includes name, contact information, name of representatives, interest represented and number of members. It does not give any information on budget, clients or names of lobbyists. Moreover, the list is limited to associations. It does not concern lobbying firms, corporations, law firms or other types of organisations which may do lobbying. For all these reasons, it is not a lobbying register.

There is no regulation regarding the Upper House of Parliament or Bundesrat.

The state of Saxony-Anhalt started a lobbying register in 2015. Registration is required to be heard in the state parliament. The register has about 200 entries (2017).

### **Austria**

Starting on 1 January 2013, the Austrian Justice Ministry maintains a mandatory register of lobbyists. The government decided to create a compulsory register in 2011, following several lobbying scandals. This register divides lobbyists into four categories: lobbying consultancies, corporations, associations of interests and chambers of commerce. Depending on the category, different disclosure requirements apply.

The lobbying consultancies, among other things, must provide information on their individual contracts, how much money they involve and the lobbying objectives they pursue. On the other hand, corporations, in addition to the names of their lobbyists, must only indicate whether the amount spent on lobbying exceeds 100,000 euros per year or not.

Lobbying and public affairs consultancies consider that conditions imposed on them are stricter than for other entities which also do lobbying and have complained of unfair treatment.

Penalties between €10,000 and €60,000 (in case of recidivism) can be imposed in case of infringements against the register and, in serious cases, organisations may be taken out of the register altogether. The non-profit portal on party donations [parteispenden.at](http://parteispenden.at) aims to illuminate the business of influence by providing information on party finances.

### **Denmark**

There has been a voluntary lobbying register at the Danish Parliament since 2012.

The lobbyists must appear by name in the archives of the committees of the Folketing (Danish lower house of parliament). That information is public. Certain rules apply to speaking before the committees:

- People appearing before a parliamentary committee must have a natural link with the organisation having requested to do so (e.g. be their lawyers or employees).
- At the end of an intervention by a lobbyist or interest group representative in front of a parliamentary committee, its members are entitled to ask questions.
- There is no possibility of negotiation, at least formally.

### **Finland**

No regulation. However, informal contacts between lobbyists and Members of Parliament and political parties are common. Parliamentary committees may hear experts, provided they have been invited to participate in the debates.

### **France**

The National Assembly (Parliament) of France created an information register (registre de renseignement) about lobbyists in 2009 and developed it further in 2013, giving it the name of "Register of Interest Representatives". Registered lobbyists are issued an identification card.

### **The Netherlands**

Since 2012, the Netherlands has a mandatory register of lobbyists for accessing Parliament. Previously, in the absence of specific regulations, the Division of Public Relations of the Lower House issued a card allowing access for twenty-four hours to lobbyists and interest group representatives. Exceptionally, the validity of the card could be biannual. These cards allowed direct contact with Members of Parliament, as well as attendance to parliamentary meetings and public debates.

### **Italy**

Since March 2017, lobbyists and interest groups willing to access the Chamber of Deputies must register. Registration gives them a maximum of two electronic passes to access the Chamber of Deputies, where they have a dedicated room to follow parliamentary business. Lobbyists and interest groups must submit an annual report of their meetings with Members of Parliament within the Chamber and of their activities. However, meetings outside the Chamber are not subject to any condition or requirement.

Lobbying the Senate is not regulated at all.

### **United Kingdom**

The pioneer country of parliamentary lobbying passed the Law on the Transparency on Lobbying in 2014. It created a lobbying register, which is mandatory for public affairs consultancies. Prior to 2014, the United Kingdom had no rules on lobbying. Gentlemen's agreements, fair play and respect for customary rules are cultural characteristics that replaced regulation.

### **Ireland**

There has been a mandatory lobbying register since 2015.

### **Sweden**

Sweden does not regulate lobbying. However, the debate on the regulation of lobbying has been intensifying recently. So far, calls for regulation have been rejected on the grounds that informal lobbying as is currently practiced, is considered a natural and legitimate ingredient of the legislative process.

In Sweden, organisations play an important social role. It is believed that a society with such a strong tradition of transparency and openness can offset the risks inherent to lobbying.

### **Belgium, Bulgaria, Cyprus, Estonia, Greece, Hungary, Luxembourg, Malta, Slovakia and Portugal**

No regulation of lobbying.

## 4. Lobbying in the United States

The key difference between lobbying in the United States and Europe lies in the financing of election campaigns: *grosso modo*, election campaigns in the United States are financed primarily with private funds, whereas in Europe, they are mostly financed with public funds.

In exchange, the American system is much more transparent than those in European countries. Candidates have the legal obligation to declare each quarter the contributions they receive, and must meet limits on donations by individuals and companies.

The Lobbying Disclosure Act of 1995 requires lobbyists to register at the House of Representatives and the Senate, to adhere to a code of conduct and to regularly declare how much money has been spent on lobbying.

According to the nonprofit organisation Center for Responsive Politics, the lobbying industry grew between 8 and 10% annually in the years leading up to 2010. That year, \$ 3,550 million were spent on lobbying in the USA. However, the market decreased to \$ 3,200 million in 2015 and \$ 3,100 in 2016.

The American Public Affairs industry is the most developed in the world. It is the biggest in size and sophistication of strategies and tactics. United States lobbying specificities are, according to Clive S. Thomas (Harris & Fleisher, 2005):

- Unique separation of powers
- Strong federal system
- Individualistic political culture
- Entrepreneurial spirit in American life

US political parties are not as centralizing and controlling as in other liberal democracies. An illustration of this individualism: Trade union membership rates are much lower than in Europe, much much lower than in Scandinavia.

The first contract lobbyists appeared at the beginning of the 20th century in the US. In the '60s, grassroots campaigns appeared, the PACs, tactics such as coalition building, the use of the courts, and group involvement in the nomination of the executive branch, officials and judges. A combination of entrepreneurial spirit and capitalist ethic. In the late 19th century, entrepreneurial techniques applied to lobbying led to lobbying (I: unfettered capitalism also brought unfettered influence by large US corporations. Search for lobbying abuses in New York's Democratic campaigns, for instance). Abuses such as railroad construction. But the US society is also moralistic, and

out of this clash the first regulations of lobbying were born. The American public is ambivalent about lobbying, therefore they have the most extensive regulation in the world.

Thomas highlights 6 lessons of US lobbying:

- 1) Power is fragmented. There are many “entry points”: legislative, executive, even judicial.
- 2) Fragmentation favors the status quo. In Europe, if you get support by major party and Government Cabinet, it’s done. Not in the US. (I: Frequent complaints that Congress is “blocked”).
- 3) The lobbying campaign usually requires multiple fronts, particularly if you want something enacted, not a defensive position.
- 4) It is difficult to enact “entire programs”. Therefore, policy-making is usually incremental.
- 5) A lot of money is needed. And it needs to be spent well.
- 6) From the clash of entrepreneurial spirit against the moralistic ethic: a lot of regulation.

**Case Study P: Lobbying in the United States. Mr. Maurice J. Kurland. Partner. Alcalde & Fay, Arlington, Virginia. USA.**

April 2017

Maurice Kurland has been Partner at the lobbying consultancy Alcalde & Fay since 2001. The firm is headquartered in Arlington, Virginia, across the Potomac river from Washington, DC, United States. He is an attorney and a lobbyist, and a graduate with a major in Business from the University of Texas at Austin and from the Washington University in Saint-Louis School of Law.

Many of the top lobbyists at Alcalde & Fay, like in most specialised firms, have educational backgrounds in law, and professional experience in politics. Alcalde & Fay, and Mr. Kurland in particular, lobby primarily on behalf of environmental, agriculture, maritime, air and sea port entities, transportation and infrastructure, international affairs, as well as a multitude of various public bodies, including state, county, and municipal governments as well as educational institutions. Moreover, the firm is set up in practice groups, to capitalize on the expertise and collaboration of its personnel for the benefit of the clients, and to support the firm as a whole.

The teams of personnel assigned to each issue is between 1-5 staff members, including partners and associates. It depends upon the size of the client and the complexity of the issues for which they are seeking assistance.

Materials for lobbying campaigns include position and background materials, studies, testimony: a multitude of correspondence. Alliances are usually sought with similar or complementary entities. The firm offers advertisements, social media, white papers, op-eds, letter writing campaigns, press conferences and events, viral campaigns, surveys, coalition building, and management of grassroots activism.

Maurice Kurland considers that the transparency of disclosure rules in the United States provide general transparency, at least identifying who is the client, the issues being advocated, and the registering advocate. However, he thinks that there are



some gaps, as those who merely serve to strategise, advise, or consult which is often part of overall lobbying activities, do not have to register.

The system in the United States is much more transparent and thorough than in the European Union and even more so than in its Member States. To start with, the Lobbying Disclosure Act of 1995 requires lobbying firms and organizations to register and file quarterly reports of the lobbying activities and certain contributions and expenses with the Secretary of the Senate and the Clerk of the House of Representatives. Lobbying firms are required to file a separate registration for each client if its total income for that client exceeds or is expected to exceed an inflation-adjusted statutory threshold during a quarterly period. The 2017 thresholds for House and Senate are \$3,000 per client per quarterly period, and \$13,000 for in-house lobbying activities for a given organisation. States' rules may vary.

Lobbyists and firms can easily comply with their obligations filling in forms online. The information they disclose is public. Private websites such as Center for Responsive Politics ([opensecrets.org](http://opensecrets.org)) present those data in a simplified and practical way.

As an example of successful lobbying, Kurland explains that his firm achieved the reversal of a denial of a timeline extension, after two previous appeals, for an approximate \$10 million flood mitigation project. There had been two unsuccessful appeals previously. The extension allowed additional time to properly design, engineer and complete the project, despite unanticipated delays over almost 10 years.

Flood mitigation projects are usually complex undertakings with federal, state and local authorities involved in funding and implementation. Their budget may run in the hundreds of millions. Timeline extensions are approved by a Flood Mitigation Board at the state level.

In contrast, as an issue that remains unresolved, Maurice Kurland mentions an effort to secure a purchase of property from a federal agency. That purchase could not be negotiated due to bureaucratic obstacles and a lack of market principles to facilitate a transaction, despite various official inquiries and advocacy.

For those considering a career in lobbying, Kurland recommends taking some legal courses, as well those pertaining to government, and spend time participating in an internship or working for a governmental entity, as well as volunteering to work on an election campaign. Additionally, an aspiring lobbyist should hone their speaking and writing skills, and overall communication abilities.

Kurland could see himself lobbying in another country. Already, many US domestic issues often have international components. He would like to find out more about lobbying rules in Europe in more detail.

## 5. Campaign Finance, Fund-Raising and Lobbying

The relationship between lobbying and party financing is a subject which repeatedly comes up when you debate the need for more regulation to increase clarity and transparency, and, therefore, improve the legitimacy of lobbying activities. We cannot ignore that the association between lobbying and corruption are stronger in places where rules on party financing are opaque, and where the justice system which applies them is ineffective. Spanish democracy, unfortunately, has a far-from-exemplary track record in this respect. Any study of lobbying and its legitimacy requires a comparative study of campaign financing systems and a reflection on how to improve them.

As a candidate, Barack Obama revolutionised the financing of American presidential campaigns: He was the first to circumvent major corporate and interest group donors and shift his fundraising focus to small individual donors via the Internet. Obama raised a record \$639 million on his first presidential campaign (2008), mostly through small donors and mostly through the Internet. In 2012, he raised \$ 684 million. The smaller a candidate's fundraising dependence on any given donor, including interest groups, the less political influence they will have.

The medical and insurance industries spent hundreds of millions of dollars on lobbying to stop his plan for health care reform, also known as Obamacare. These industries sent an average of six lobbyists for every member of Congress (435 members). Despite enormous lobbying efforts to stop it, Obama's health care reform was approved in 2010.

In the 2016 presidential campaign in the United States, public data showed that:

	<b>Donald Trump</b>	<b>Hillary Clinton</b>
Raised	\$ 333 M	\$ 564 M
From individual donors	40%	71%
Small	26%	19%
Big	14%	53%
From external groups (aka lobbies)	\$ 75 M	\$ 206 M
<b>Total</b>	<b>\$ 408 M</b>	<b>\$ 770 M</b>

Source: Opensecrets.org

This campaign finance table misses a crucial factor in the election: It does not reflect the fact that the media reported about Donald Trump much more often and longer than about Hillary Clinton. It is not the purpose of this course to analyse the root causes of the difference in media interest generated by each of the presidential candidates. However, it is certainly related to the existence of one candidate with a personality well off the charts in many respects. Donald Trump was constantly generating controversy, stirring emotions and thus, helping raise audiences and sales. The value of the free media coverage Trump received may be equivalent to an investment of about \$ 5,000 million in advertising. With figures like that, it is not surprising that Hillary Clinton lost the election even though she carried the popular vote by more than 2 million votes.



## Activities

Milk is a basic food product consumed, directly or through derivatives, by 6 billion people around the world.

Since 1984, the European Union has been implementing quotas for milk production to Member States. In the 1980's, the Common Market was suffering a huge milk surplus.

After more than 30 years of enforcing milk quotas as a measure to control supply, on 1 April 2015 a new era began. A new era without the compulsory quotas that helped milk producers maintain prices. Now the price of milk varies depending on supply and demand. European farmers complain that it is too low.

Imagine that you are lobbyists of a European federation of agricultural unions. Your organisation wants to ask the Commission to take measures to help the dairy industry recover the income level they had before the elimination of quotas.

1. Identify the competent European authorities which you will need to address, and explain why.
2. Propose some messages to convince EU public authorities of the need to support European dairy farmers. You can propose different messages depending on various target audiences.

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### Recommended films

*También la lluvia* (2010) [film in Spanish]. Icíar Bollaín. Example of the power social movements can reach, in this case, in Bolivia.

*Thank you for smoking* (2005) [film]. Jason Reitman. Parody, unfortunately quite realistic, of the world of lobbying in the United States.

*Miss Sloane* (2016) [film]. John Madden. Drama/thriller about the most sought after and formidable lobbyist in D.C.