

Department of Political Science

Chair in Comparative Politics

BRIDGING THE GAP
LOBBYING AND DEMOCRACY
IN THE EUROPEAN UNION

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List of Abbreviations

AEDH	Association Européenne pour la défense des Droits de l’Homme
CEECs	Central and Eastern European Countries
CEORs	Central and Eastern European Offices of Representation
CONECCS	Consultation, the European Commission, and Civil Society
CONNEX	Connecting Excellence on European Governance
CoR	Committee of the Regions
CSO(s)	Civil Society Organization(s)
DG	Directorate-General
EC	European Community
ECAS	European Citizen Action Service
ECB	European Central Bank
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECI	European Citizens’ Initiative
ECJ	European Court of Justice
ECOSOC	Economic and Social Committee
ECSC	European Coal and Steel Community
EDF	European Disability Forum
EEC	European Economic Community
EENA	European Emergency Number Association
EESC	European Economic and Social Committee
ECSC	European Coal and Steel Community
EPSU	European Federation of Public Service Unions
ETI	European Transparency Initiative
ETR	European Transparency Register

ETUC	European Trade Union Confederation
EU	European Union
GEF	Green European Foundation
IA	Interinstitutional Agreement
IRI	Initiative and Referendum Institute Europe
MEP(s)	Member(s) of the European Parliament
MS(s)	Member State(s)
LT	Lisbon Treaty
NGO(s)	Non-Governmental Organization(s)
OECD	Organization of European Co-operation and Development
PAM	Public Affairs Management
PR	Permanent Representative (Representation)
QMV	Qualified Majority Voting
RP	Rules of Procedure
SEM	Single European Market
SEA	Single European Act
SG	Secretariat-General
SGP	Stability and Growth Pact
TEC	Treaty Establishing the European Community
TEU	Consolidated version of the Treaty on European Union
TFEU	Consolidated version of the Treaty on the Functioning of European Union
UEF	Union of European Federalists
UN	United Nations
US	United States of America

Introduction

When I first started to be interested in lobbies at European level, I was diffident about their relationship with democracy. I had witnessed a plethora of diatribes against lobbyists: in the common debate, they are continuously defined as “obscure” actors who push their interests into the rooms of power without showing respect for the highly proclaimed principles of transparency, openness and legitimacy. Inevitably, I suffered from the influence of the mass media of my home country, which widely support the distorted view just mentioned. In addition, my judgment was biased by some literature which assesses lobbying as an obstacle to a full implementation of the basic rules governing a democratic polity.

Piecemeal I realized that a crucial deficit characterizes such sources: they tend to consider democracy as a static reality with a *single* possible configuration. In their view, only one kind of democracy seems to exist: consequently, they enumerate a list of undisputable components and parameters – ranging from free elections to representative mechanisms – and consider that lobbying is incompatible with a number of them. Enlarging the discourse, a widespread feeling is that lobbying is at odds with democracy at large.

However, during a course in Comparative Politics, I became aware that there is not a single and unchangeable model of democracy in the world. Conversely, *many* variants exist according to some defining features. In particular, the European Union can be defined as a democratic entity *sui generis*, as it is an agglomerate of twenty-seven (twenty-eight since July 2013) highly dissimilar constitutive units, with different traditions and governments. In this light, I wondered whether interest representation, in such a peculiar environment, could be interpreted in a new perspective and if it could help, instead of thwart, the ongoing process of European democratization.

As a consequence, I started a research which took into account the specificities of the Union and tried to conjugate the reality of lobbies inside it. The question which guided me was simple in its formulation, but it required a deep analysis to obtain a satisfactory answer: can lobbying help the process of European democratization? In other words: is it possible to bridge the *perceived* gap between interest representation and the fulfilment of the principles which pertain to a democratic polity?

I examined the problem from different points of view. I did not consider democracy as a given element, but I looked at its inner peculiarities in order to grasp all the specificities which make European democracy different, for instance, from the models at work in the single Member States. Within this framework, I observed how lobbyists behave and what their contribution to democracy, either positive or negative, is.

As well as many scholars which already addressed the theme of democracy in Europe, I referred to some crucial notions such as openness, representativeness, legitimacy and citizenship. The broadness of these concepts permits to consider them as *parameters* of democracy, whose fulfilment has to be tested in the polity under scrutiny. In this way, I could evaluate the “state of health” of the European Union in these fields and clearly define the impact that lobbying can exert on each of these dimensions. I did not resort to a wide-ranging definition of democracy: instead, by targeting the discourse to the European Union, I could refine the object of the analysis and avoid generalizations which would not have served the purpose of this research.

The thesis is ideally divided into three parts. The first is covered by Chapters 1-4 and is dedicated to the provision of all the theoretical notions, historical remarks and practical information needed to make a precise evaluation of the contribution of interest representation to European democracy. In Chapter 1 I analyse the concept of lobbying, which is too often confused with other terms used as synonyms: indeed the

word “lobbying” carries a precise meaning which has to be clearly identified in order to understand its role and effects. Chapter 2 gives an answer to the question on why the European Union is a central target for lobbyists coming from all Member States and beyond. I delineate the main features of our continental polity and, by relying on its peculiarities, I propose two main reasons why interest representatives are naturally attracted to Brussels. Both the multi-level character of European governance and the lack of popular participation affecting it can explain why lobbying can be considered not an occasional, but a *systemic* element of European decision making. In Chapter 3 I conjugate some widely known notions of democracy into the European Union context and I assess their fulfilment in such a political environment. In addition, I introduce the way lobbying can potentially display effects on them, whereas its actual impact is observed later. In Chapter 4 I propose a picture of interest representation in Europe: first, I describe the historical development from the beginnings of economic and political integration to the Treaty of Lisbon; second, I provide a landscape of the variety of interests represented and the numerous groups operating in Brussels.

Chapters 5 and 6 constitute the core part of this dissertation. In the former I examine the reasons why lobbying is frequently seen as an obstacle to democracy; in the latter, conversely, I investigate how interest representation can stimulate it. I analyse the effects that the activities of lobbyists display on the notions of democracy introduced in Chapter 3 and I evaluate their significance. In particular, I demonstrate that, although adverse impacts are a concrete and unquestionable reality, many system-linked correction mechanisms are likely to reduce their weight and counterbalance the negative perception of interest representation. In Chapter 6, more specifically, I investigate the favourable points of contact between lobbying and democracy. On the basis of such an examination, I propose my central argument: the gap between these two realities is more perceived than actual. It exists less in reality than in the minds of scholars who *a priori* refuse to admit the existence of a fruitful room for cooperation between interest representatives and European governing

bodies and officials. This gap can be bridged, if lobbying is properly considered and the model of democracy of the European Union is defined in all its specificities. If it is not just assimilated to all other democracies in the world, Europe can emerge as an entity with its own features, on which lobbyists can exert a positive impact even if they still try to push the interests of their clients. No insurmountable obstacle exists, in the light of a comprehensive investigation of the defining lines of the Union.

The third and final part is dedicated to a practical examination of the *liaison* between lobbying and democracy in Europe. In Chapter 7 I take into consideration the problem of transparency: it is one of the most discussed issues concerning interest representation in the light of which lobbyists are often criticized. I scrutinize the norms which regulate the conduct of both interest representatives and European officials and institutions, and I provide an evaluation of the degree of transparency of lobbying in the Union. Finally, in Chapter 8, I introduce the European Citizens' Initiative, a newly designed tool for enhancing popular participation and raising awareness about citizens' issues in a concrete and constructive manner. I examine the involvement of organizations and the support to such initiatives and I assess the impact that interest-representation groups can have on European democracy through the European Citizens' Initiative.

1. From Group to Lobby:

Definition of the Main Concepts

In the public debate on interest groups, interest promotion and lobbying, it is possible to observe, too often, a lack of clarity about the definition of the main concepts used in the discussion. Interest group and pressure group are often considered equivalent terms; in addition, lobbying is usually referred to as a synonym, or just a specification, of the previous notions. In more fortunate cases, it is supposed to correspond to a quasi-indefinite space between them. Some authors mean lobbyists as mere promoters of interests of any kind; others see them as real political actors aiming to exercise pressure on governments and/or institutions and organizations.

This terminological uncertainty tends to oppose a full and useful comprehension of the nature of lobbying or a scientific study of the role it plays in the public sphere. Without a precise collocation of this phenomenon within a clear-cut framework, it is not possible to define its impact on the democratic model of the European Union. In this light, a clarifying definition of some terms is necessary in order to delineate how lobbying works and what its possible benefits and disadvantages are. Therefore, in the following paragraphs, I will explore the ideas of group, interest group, pressure group and lobbying, and I will highlight the specificities of each of them. In this way, any kind of confusion can be eliminated and the functioning of lobbying in the EU can be more plainly examined.

1.1. Groups

The idea of group is central to the theory of political action. One of the very first contributions to the study of groups is James Madison's Paper No. 10 of *The*

Federalist series, published in *The New York Pocket* in 1787. In his essay, one of the most famous of the whole collection, the author deals with the concept of faction, defined as “a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community”.

As it is easy to observe, this basic characterization of groups already takes into account a decisive element which is functional to our discourse, that is, the *interest* promoted by the group as opposed to that of the rest of the community. This component can be assumed as the real *leitmotiv* of group theory of politics: as the Italian political expert Domenico Fisichella (1994) notes, there is no group without its own interest, and interests can cover any area of individual and societal life, from business to environment and beyond¹.

More specifically, interest and group cannot be detached, if we accept the definition proposed by Arthur F. Bentley. He labelled the group as a part of the members of a society, “taken, however, not as a physical mass cut off from other masses of men, but as a mass activity” (Bentley 1908: 211). In other words, the members of the group are still part of the wider society and they should not be treated as “different” individuals with regard to issues that represent a concern for all the units of a social group. However, their membership to a certain faction separates them from the others in relation to the particular interest they promote and aim to protect. In this view, group and group activity are equivalent terms and they both represent “a part of the members of a society which acts to pursue its own interest, without being separated from other masses of men and without precluding the possibility to participate in other group activities” (*ibid.*).

¹ The enormous range of issues dealt with by European lobbyists – as it will be shown in Chapter 4 – can be a good example of the huge variety of interests which are promoted by groups. From business to environment, from social issues to regional concerns, practically all matters acquire relevance at EU level and enjoy some form of representation before European decision makers.

In order to escape any collectivist conception of group, it is crucial to underline that this notion does not absorb the totality of the individual, who maintains his or her connotation as a social actor capable of being part of other agglomerates and enacting a plurality of roles within society. A person cannot be reduced to a simple unit of a group. For instance, an environmental activist may be, at the same time, member of both a political party and a syndicate, each of them being examples of groups with their own interest to promote. In principle, no mutual exclusion exists between memberships in different social clusters.

This simple example makes it clear that the idea of group, in its widest meaning, shows its limits in communicating information about the nature of the group itself, as it is able to describe a large number of different experiences, among which the bounds might be few and weak. This is why more specific notions have been developed in the sociological and political analysis of groups, first of all that of interest group.

1.2. Interest Groups

A specification of this concept is provided by David B. Truman (1913-2003). According to the American author, “interest group refers to any group that, on the basis of one or more *shared attitudes*, make certain claims upon other groups in the society for the establishment, maintenance or enhancement of forms of behaviour that are implied by the shared attitudes” (Truman 1951: 33, emphasis added). “Shared attitude” can be meant as a synonym of “interest” as we defined it. This definition deploys a sociological terminology able to refer to a wide set of occurrences, not just to political action: in this light, Truman properly presents interest groups as agglomerates of people who try to promote their issues through *claims*. However, as Petrillo (2011: 45) remarks, resorting to the simple notion of interest might be generic and vague: interest acquires relevance only if it is further

determined as a public interest (or private, national, individual, or else). This particularistic connotation allows individuating the sphere of action of the group which advocates such a kind of interest. In the next chapter, the European Union will be defined as a polycentric polity with multiple access points for interest representatives: in that light, public interests enjoy the same degree of legitimacy that characterizes private claims. As a matter of fact, in a complex context of twenty-seven asymmetrical states with different populations and traditions, political representation necessarily becomes a form of interest representation (Wright 1996: 22-23).

Truman also suggests that new groups emerge in waves: the birth of one group, which presents its claims, is usually associated with the emergence of another one in opposition. These factions – coming back to the Madisonian lexicon – will then bring their concerns to “other groups in the society” to obtain recognition and satisfaction, whether they are interested in maintaining the status quo or promoting policy change.

What does “other groups” mean? A vast variety of examples can be mentioned. For instance, a local sport association can ask the corresponding national organization for the recognition of its status in order to participate in official games; or, equivalently, a number of students, coagulated in an association, can appeal to the Academic Senate of their university to receive some funds and organize some extra-curricular activities. It would be possible to list myriads of similar cases. The central point is the following: any interest is promoted towards other groups, whose nature (social, private, or else) depends on the kind of interest at stake. Some of them require exerting pressure over *public* decision makers, whereas others can be satisfied without addressing them.

1.3. Pressure Groups

The decisive element which allows to further specify the notion of interest group into that of pressure group is the accession to the political arena. A pressure group differs from an interest group in that it looks for recognition, support and legitimacy of its claims through the channel of some governing institution (either local, regional, national or supranational, depending on the nature of the claim and the kind of gratification it looks for). In other words: a pressure group is always an interest group, but its defining feature is the aspiration to influence a decision-making process in order to change the distribution of resources (especially economic ones) or maintain them against the threat represented by a possible intervention by conflicting groups (Petrillo 2011: 46).

Some authors do not properly distinguish the two concepts. However, it is evident that certain groups try to achieve their target as actors of the social system (as in the simple instances proposed in the previous paragraph), whereas others try to enter the doors of politics in order to obtain what David Easton (1965) called *authoritative allocation of values*². In different terms: some groups try to influence governors so that decision making will take into account their claims and thus avoid to obstruct them. One of the clearest explanations of this process is given by Jean Meynaud (1964: 10, English translation in Rocher 1972: 448):

“[i]nterest groups are transformed into pressure organisms only when those responsible for them influence government apparatus in order to make their aspirations and demands triumph. A manufacturers’ trade union behaves as an interest group if it sets up and supervises the distribution of clients among its members by its own means; it becomes a pressure group if it tries to obtain a

² David Easton defines politics as a way to authoritatively allocate values: in fact, one of its main scopes is dealing with values and allocating them so that such allocations are binding on *all* members of society and are perceived as authoritative by the vast majority of the members of society itself. In the light of this dissertation, this expression perfectly fits the kind of process which interest groups aim at when they enter the political arena: they are in search of endorsement for their claims and ask decision makers to give them legitimacy through the political process.

statement from those in authority regulating the entry of new elements into its area”.

It is possible to observe that a clear distinction between the two categories, in some cases, is hard to outline. A group – for instance, the group of journalists or magistrates – may organize itself as both an interest group and a pressure group, depending on the kind of activities it engages in to reach its goals. In addition, as anticipated before, the members of a group can participate in the activities of other groups without prejudice to the nature of the group itself: in this way, overlaps are likely to occur in the membership of interest and pressure groups, and this makes it even more complicated to set a precise border between the two categories.

For this reason, it is possible to conclude that “interest” or “pressure” are labels assigned not on the basis of the members of a group, but on the grounds of their specific activities and the arena in which they operate. “The interest group is an actor of the social system whose function, in that area, is mainly the articulation of interests” (Fisichella 1994), that is, offering rationality and visibility to particular demands. However, the action in the social system may be not enough to obtain the desired results. The group might need to accede to the political arena to get its claims satisfied: in that case, it can be properly defined as a pressure group. Meynaud assumes that the category of interest group is partly included in that of pressure group because the essence of the latter is “analysing a specific aspect” of the former (the pressure on governments). Differently, Fisichella describes the pressure group as a sub-category of the interest group, so that the first and the second share a relation of *specie* and *genus*. In other words, as the Italian author explains, a pressure group is always an interest group, but an interest group does not always become a pressure group. This is the meaning assigned to these two labels in the rest of the thesis.

1.4. The Accession to the Political Arena

For our descriptive and explanatory purposes, it is sufficient to argue that interest groups act within a non-political dimension, whereas pressure groups enter the political arena. According to this generalization – which is analytically powerful but not always perfectly applicable – an interest group becomes a pressure group when it locates itself in the political sphere and consequently behaves as a political actor. The transformation happens when it pushes for the adoption of adequate policies able to impose a public hierachization of interests. If the group decides to move along a non-political path (in the social, economical and cultural field), it should be considered an interest group.

The central question is why a faction, which represents some claims and needs, decides to enter the field of politics to seek an authoritative allocation of values, instead of keeping on acting outside the rooms of power. A group is stimulated to pursue its goals by political means when it becomes implausible to reach a satisfactory outcome by remaining in the social arena. If this was possible, moving to politics would be considered time-consuming, expensive, or both. Differently, if politics occupies a large portion of the societal life, it might be counter-productive to remain confined to a non-political *modus operandi*, as useful results might never come without engaging in *ad hoc* political actions. In other words, the more the non-political arena is preserved from the influence of politics, the fewer groups will need to make pressure on governments and/or decision makers in order to achieve what they look for. Conversely, the more the decision-making environment is politicized – even in case of matters which, in principle, should be far away from politics – the more actors aiming to influence the policy-making process need to look for political recognition.

A practical example can make it clearer. If economy were completely independent from questions of power, firms and workers would not need to resort to politics to solve their problems. In such a case, entering the political arena would

imply a cost (in terms of time spent to collect ideas and rationalize demands) which would be contrary to economic rationality and would thus be rejected: addressing politicians would prove to be a waste of time, if they were incapable of doing anything about the economic environment. Similarly, if culture or society at large were really autonomous and free from political intervention, they would be able to find their own working rules without entering the field of public decision making. They would aim at self-regulation, in an invisible-hand style, and maybe they would try to kick politics out of their environment, in order to preserve their independence.

However, contemporary reality is distant from this utopian world. Politics is highly intrusive and its branches arrive, differently in the various countries, to the regulation of cultural activities, the definition of limits for economic entrepreneurship (for example by an increase or a decrease in the accession costs to the market) and support to associations active in the social field. Far from being a moral judgment – this is not the aim of this work – this observation just highlights that strong interconnections occur between the political sphere and other fields of our life, so that a certain degree of accession to politics is a *necessity* for many interest groups in order to get their demands paid attention and, hopefully, satisfied. As Fisichella (1994) underlines, the more the scene becomes “public” and “political”, the more a group is pushed to act in a political manner, because it perceives the expansion of the political arena as an ineluctable tendency. Therefore it looks for a way to protect its own interests and bring pressure to bear on those who are in charge of making decision which will become binding on all. Within this framework, it becomes clear-cut why many groups, which have a substantial interest in public determinations and regulations, often try to “push” towards a particular direction *before* the decision is definitively adopted. In this light, the passage from interest to pressure can be quite pacific, even if a practical distinction between the two kinds of groups cannot be always so straightforward.

1.5. Lobbying

The definition of lobbying, instead, is much more knotty if we try to separate it from the categories we just introduced. In economic and political literature, as mentioned at the beginning of the chapter, the three notions are often equalized, as if no specificities were to be underlined. However, during the time, due to the increase of studies on this topic, lobbying has been progressively put in connection with the idea of communication. Lester W. Milbrath (1968: 442) proposes the following broad definition:

“lobbying is the stimulation and transmission of a communication, by someone other than a citizen acting on his own behalf, directed to a governmental decision maker with the hope of influencing his decision”.

This description, despite its brevity, highlights some decisive elements which deserve attention.

- First, lobbying is a term which can be employed only when dealing with governmental decision making. In a less strict way, it is possible to argue that it refers to *public* decisions. As stated before, many other kinds of decisions are likely to be influenced by group activity (remember about the sport association or the university students), but this influence cannot be marked as “lobbying” because it does not aim to shape a determination having binding effects on a whole polity³.

³ One might reply that lobbyists try to pursue specific interests having repercussions on specific categories, e.g. a particular industry or even a single firm (in the case of individual lobbying). However, this does not invalidate our reasoning. The generality of decision making is defined in terms of general applicability of the rules: if certain determinations are directed, for instance, to the metallurgic industry, then *any* firm operating in that sector becomes bound to those rules, including any firm which will enter the same industry in the future (until the rules are in force). In this sense, the kind of decision making that lobbying tries to influence defined by its *erga omnes* applicability: this feature explains the importance of lobbying and the numerous attempts to shape policies by resorting to professional interest representatives at European level.

- Second, the presence of a specific interest is not what characterizes lobbying; instead, it is, as said, a typical element of any group.
- Third, the *raison d'être* of lobbies is the desire to exert influence and thus obtain a precise normative outcome in terms of policy making.
- Fourth, which is the main point, it is possible to talk about lobbying only if there is what Milbrath calls a “communication link between citizens and governmental decision makers”, in particular an intermediary or a representative.

The last point is particularly telling: it means that, for instance, the private initiative of single citizens, who try to influence the decisions of a government without passing through any representative channel, cannot be considered as lobbying. In other words, lobbies perform a kind of *communication*, meant as the only possible means to exert influence on decision makers. This idea is also supported by the definition proposed by the European Parliament in its 2003 Working Paper, according to which “lobbying essentially describes the direct *advocacy* of a point of view about a matter of public policy” (European Parliament 2003: 2, emphasis added). Not dissimilarly, the OECD (2009: 16) asserts that “the essence of lobbying involves solicited communication, oral or written, with a public official to influence legislation, policy or administrative decisions”. In other terms, lobbying means raising public decision makers’ awareness about relevant information on particular interests in order to influence their choices. This involves at least three dimensions:

- 1) *expertise*: the lobbyist is a specialist of a sector, so he/she is able to communicate targeted notions about a precise field which might not be at the disposal of the generic public or even the European institutions;
- 2) *message*: the lobbyist transmits a specific message on behalf of the interest bearer he/she represents;
- 3) *interaction*: the lobbyist should be convincing in order to push his/her interlocutor to agree on the need to promote the interest at stake. Precise

techniques are to be deployed, and lobbyists are more and more professionals with their own rules and education methods.

It is also possible to summarize the points raised until now by asserting that lobbies are interest groups which aspire to influence the public decision-making process in order to take advantage from it. Some clear points emerge from this comprehensive characterization. First, lobbies are always interest groups advocating a specific interest of some kind – whereas interest groups, as widely explained, may not be lobbies *stricto sensu*. Second, their goal is exerting a form of pressure on *public* decision makers: this element differentiates them from other groups trying to file their claims before decision makers that are external to the public sphere. The examples proposed in §1.2 (the local sport association or the Academic Senate of a university) are instances of non-public decision makers. Lobbying, instead, targets its job to those who are in charge of making decisions at a political level, and are thus potentially able to impact on all members of a society. Third, the advantage they aim to get can imply benefits even outside the group itself. Lobbies advocating business interests are concerned with the achievement of positive results for the industry, or the specific firm, they represent: in the light of business as a zero-sum game, it is reasonable to think that the advantage of one is matched by the loss of another. However, if we think about civil society organizations as Amnesty or the WWF, it is clear that their lobbying actions can produce effects which are supposed to benefit society at large, especially if we consider the protection of human rights and environment as activities which can enhance the global “state of health” of our planet. In this sense, the pressure they exert on public decision makers can produce outcomes far beyond their membership.

Lobbying – it should be now clear – is not about corruption or illegitimate influence. As we shall see in Chapter 5, the weight of national traditions can have important effects on the diffused aversion to lobbyists, who are generally perceived as a threat to democracy. Undoubtedly, there are degenerations which represent

damage to the reputation of this activity: they should not be forgotten but deeply analysed in order to understand their salience and the ways to counter-act them. Problems in terms of lack of transparency or unjust over-representation of “richer” interests are commonly alleged deficits, but they cannot shape the judgment on lobbying in an absolute manner. In theory, the aim of the lobbyist is to guarantee that his/her target decision maker (either a person, a collegial body or a whole institution) receives all the necessary information to enact an authoritative allocation of values in a more effective, coherent and conscious way.

In this light, lobbying takes the form of what van Schendelen (2002: 105-106) calls “the meta-game of Triple P”. The author describes the EU “political market” as a playing field in which multiple competitors promote different interests. Although a call for a level playing field is extremely diffused in the common debate on operational competition rules, such a claim proves to be fictitious: the real aim of the “players” is making the playing field more and more unlevel, and gaining a market share thanks to this change. A rush towards monopoly, rather than perfect competition, occurs, especially in the European arena. In the game of *Triple P*, “one tries to place, like pickets in the field, the friendliest *persons* in the best *positions* in the most beneficial *procedures*”. The three *P* which constitute this scheme are illustrated in Figure 1.1.

The underlying logic is a pro-active one: lobbyists try to arrange the playing field before the decision-making process starts, in order to get the best results when decisions are finally made. In this sense, their role can be defined as a *positive* one (Petrillo 2011: 48) because it is functional to making a decision which entails a low degree of infighting: by involving the targets of the decision itself in a preparatory procedure, the impact of the determination can be evaluated in a wider and more conscious way. It is possible to expect a lower degree of post-decision bickering if even the “losers” are included in the process that leads to their “defeat”. This dynamics facilitates the deliberative nature of EU decisions, as it will be shown in Chapter 6.

Figure 1.1 The meta-game of Triple P

<p><i>First P:</i></p> <p>PROCEDURES</p> <p>such as:</p> <p>EP: consultation, codecision</p> <p>Council: unanimity, (Q)MV</p> <p>Implementation: EU or national</p> <p>Court involvement</p>	<p><i>Second P:</i></p> <p>POSITIONS</p> <p>such as:</p> <p>Membership committees, working groups</p> <p>Special DG, EP Commission, Council</p> <p>Inside PR, SG Council, Council Chair</p> <p>Inspection Agency, policy consultancy</p>	<p><i>Third P:</i></p> <p>PEOPLE</p> <p>such as:</p> <p>Commission: “Chef de Dossier”, cabinets</p> <p>EP, EESC, CoR: friends as rapporteur</p> <p>Parachuted friends in Commission, SG Council</p> <p>Court members and staff</p>
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Adapted from van Schendelen (2002)

All of this does not mean that the lobbying function cannot be performed by an individual. Coen (2007b: 3) defines a lobbyist as an “organisation or *individual* that seeks to influence policy, but does not seek to be elected” (emphasis added). This more comprehensive characterization is not in contrast with the previous one: conversely, it specifies the sharp separation between the lobbyist and the electoral process, in the sense that he/she does not aim to be elected to power positions. Instead of being a decision maker by himself or herself, the lobbyist tries to bring influence to bear on those in charge of binding the polity to a certain order. By communicating with them, the lobbyist attempts to channel some issues that concern the process of authoritative allocation of values. The importance of the concept of communication has to be kept in mind: in Chapters 5 and 6 we will discuss about the possible advantages and disutility of lobbying and one of the focal points will be the role it plays in the provision of information and technical support to the institutions addressed. In that occasion, I will propose a broader and more comprehensive analysis of the peculiarity of lobbyists as conduits whose knowledge can travel from technical associations and organizations to decision makers – with the pros and cons inherent to this exchange.

Another argument backing the connection between lobbying and communication is proposed by De Mucci (2009: 265-266). When he deals with plebiscitary democracy⁴, the author includes in this notion the current expansion of lobbying agencies as direct channels of pressure on both politicians and public opinion, and their progressive conversion into “specialized public relation companies” (De Mucci 2009: 265). As a matter of fact, they organize and rationalize specific demands which have not only to be pushed into the decision making rooms, but also explained and made understandable and acceptable to common people who express their support to decision makers through the electoral process. The deliberations adopted as a consequence of forms of influence of any kind are likely to show repercussions over single men and single women who pay taxes or, more simply, buy certain products instead of others. Many goods are excluded from the European Single Market due to their failure in satisfying the standards set forth by EU legislators upon Commission’s initiative. Sometimes this produces a favourable outcome for consumers and is widely accepted as a kind of protection; in other instances, people perceive the regulatory process as an intrusion in their freedom to choose their patterns of consumption. Therefore, their opinion cannot be regarded just as marginal: instead, they should be properly considered an indirect part of the decision-making process, which does not mean that they are second-order actors. In this light, lobbying is also a way to convey the view of particular associations or categories to those who are not formally involved in decision making.

Finally, a brief overview of the possible output of the influence process may be useful in order to better introduce the ideas expressed in the following chapters. The

⁴ The plebiscitary model of democracy is borrowed from James Fishkin’s research on ‘Democracy and Deliberation’. In plebiscitary democracy the political actors tend to simplify the issues and reduce them to few decisional alternatives, in relation to which they activate constant electoral flows and try to eliminate the highest possible number of intermediate bodies who divide the citizens from political leaders. The role of lobbyists, in this perspective, may be that of connecting the public opinion with decision makers, providing information for them about the issue that is being discussed in the political arena.

possible outcomes of the interaction between groups and political actors can take various forms: from a more favourable legislation (for instance, the opening of some markets) to the specific destination of some resources to particular sectors (subsidies to companies operating in a certain field); from the creation of a convenient fiscal system (de-taxation of donations to NGO organizations) to plentiful other options (Spano 2009: 109).

B. Guy Peters proposes a classification which distinguishes four typologies of interaction between bureaucracies and pressure groups (substantially equalled to lobbies), giving rise to a continuum from situations in which pressure groups influence on policy is considered illegitimate to instances in which it is regarded as legitimate and even necessary, with in-between cases defined in terms of *clientela* and *parentela*. As it will be clearer in Chapter 2 (where the presence of lobbying in the EU will be defined as systemic) and in the rest of the thesis, the positive outcomes which can emerge from lobbying in terms of contribution to democracy are likely to be incentivized if European bureaucracy and interest representation groups interact on a legitimate basis. This means that the latter should be “legally and officially involved in the process of making and administering public policy” (Peters 2001: 187), thus escaping the accusations of a lack of transparency which, as we shall examine, are among the strongest arguments against the democratic role of lobbies not only at the EU level, but also in the single Member States (MSs).

Table 1.1 Types of interaction between lobbies and bureaucracies

Types	Scope	Influence	Style	Impact
Legitimate	Broad	Great	Bargaining	Redistribution / Self-regulation
<i>Clientela</i>	Narrow	Moderate	Symbiosis	Self-regulation / Distribution
<i>Parentela</i>	Narrow	Moderate	Kinship	Regulation / Distribution
Illegitimate	Variable	None / Great	Confrontation	None / Redistribution

Adapted from Peters (2001), p. 187.

1.6. Conclusions

In this chapter I have introduced the main concepts I will refer to during the analysis of European lobbying and its relationship with the process of democratization of the Union. Each of them, as shown, has a precise characterization which should be kept in mind in order to avoid bewilderment and prevent the following discourses about European decision making from becoming pointless.

Nevertheless, a final elucidation is required. Although the connotation of the term “lobbying” is widely shared among political scientists and commentators of political dynamics, a perfect matching between the definition we proposed and the actual behaviour of most people in the lobbying industry in the EU is much less straightforward (European Parliament 2003: 2). However, as the EP Working Paper on this matter suggests, “one advantage of using the term ‘lobbyist’ is that [...] it is widely understood and the functions of the lobbyist are more clearly recognised than other terms such as ‘governmental relations’, ‘public affairs’ or ‘special interest groups’” (*ibid.*). This should not inject confusion in our discourse.

This thesis aims to analyse the possible role of lobbying, as a precise and specific activity, distinct from any other form of group action, in the promotion of democracy at European level. Except some clearly specified cases, the term “lobbying” will be often substituted by “interest groups”, “pressure groups”, “lobbying”, “interest representation”, “interest promotion”, “pressure” and similar terms, on grounds of essential parity, as if they referred to the same phenomenon. Far from contradicting the analysis developed in this chapter, this apparent incongruence can be explained by two reasons. First, for seek of linguistic variety and stylistic pleasantness, I need to find alternatives to the word “lobbying”. Second, as already noticed, literature on these issues (to which I will refer both directly and indirectly in the whole work) tends to use such expressions almost as synonyms, despite the important differences among them. However, almost every time these concepts will be employed in the following chapters, they will be intended in the way I framed the

definition of lobbying: a form of direct advocacy of a position aiming at influencing public policy and decision making in order to achieve an advantage. This is not a contradiction: as developed in the previous paragraphs, lobbies can be seen as a progressive specification of the notion of group, interest group and pressure group. The theoretical part of the thesis rests on the proposed connotation of lobbying: in particular, the analysis of the benefits and the obstacles posed by lobbying with regard to democracy is conducted starting from this precise definition. In the empirical sections, which observe and evaluate the practice of lobbying in the EU in some specific fields, the observations above about the partial detachment of lobbyists from the “pure” definition of their activity should be kept in mind in order not to blur the concepts introduced in this chapter.

2. Why Lobby the EU?

The Introduction and Chapter 1 defined lobbying and its place in the general political theory. It is inscribed into the long-lasting tradition of group theory and may be broadly considered as a quasi-synonym of pressure group, nonetheless with a particular emphasis on the concept of communication.

This chapter provides a characterization of the environment in which lobbying is specifically observed in our work. The European Union thus represents the focal point of the discussion and, as such, needs to be classified according to some precise criteria in order to discover its essence, scope and dynamics. Only in this way it is possible to set the borders within which lobbying operates inside the European institutional and political system, whose democratic features are often debated by many scholars. This is also the sole manner to understand the reasons why pressure groups exist in such an environment, and where their legitimacy (if one exists) lies. Without clarifying these issues, any discussion about the variety and functioning of the lobbies in the EU would be meaningless, as the very bases of their existence would remain unclear – thus subject to easy and powerful criticism.

2.1. A Long and Hard Process of Integration

The history of the EU is not as long as that of its Member States, but still it has reached a sufficient age to be dealt with as a mature entity. Its origin can be dated back to 1992, after the forty-year long path of the European Communities. In that year, in the aftermath of the numerous changes that had recently modified the political geography of Europe, the Maastricht Treaty marked the decisive step towards a real union of citizens. In particular, it changed the name of the European

Economic Community (EEC) into “European Union”. This was a fundamental passage for the history of whole Europe. For the first time, the fifteen MSs were no more considered as mere commercial privileged partners, able to share resources and cancel barriers out. Instead, they became a “Union” of nations and citizens, with a new special focus on the need for harmonizing people more than markets. As a matter of fact, the completion of the Single Market had been considered achieved: at that point, Europe needed a real integration of citizens within a unified institutional framework. In other words, it aimed to move from a purely *economic* to a broadly *political* and *social* Union. The functionalist project of the “father of Europe”, Jean Monnet, rapidly reached its peak and proved its feasibility, despite the numerous critiques it had been called to face in the years of the economic communities. New spaces opened up for a plethora of interactions between EU citizens and institutions: the practice of lobbying, as we shall see in Chapter 4, claimed everyone’s attention as a decisive part of the decision-making process exactly in that period, and throughout the whole 1990s.

More than twenty years have now passed from the birth of the EU. In the meantime, this political entity has enlarged – it now includes twenty-seven Member States⁵ – and has been characterized by plentiful institutional modifications, *in primis* the entrance into force of the Lisbon Treaty (LT) in late 2009. Many adjustments became necessary due to some moments of *empasse* which provoked a stop in the Union’s evolution in crucial moments during its history. In fact, the development of the EU has not been unproblematic, especially because of the strong cleavages which divide the MSs along a variety of fracture lines, sometimes more than in nation-states. The clearest instance of the hardness of the European institutional integration

⁵ In 1992 twelve countries were part of the EU: the six founding members (Belgium, France, Germany, Italy, Luxembourg and Netherlands, since 1952), United Kingdom, Denmark and Ireland (since 1973), Greece (since 1981), Spain and Portugal (since 1986). The post-Maastricht period witnessed a flourishing of the applications for the EU membership. The result was the accession of Austria, Sweden and Finland (in 1995) and the fundamental Eastern enlargements of 2004 and 2007, in which twelve new countries joined the EU (Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and Hungary in 2004, Bulgaria and Romania in 2007). Croatia is expected to become the twenty-eighth member state in July 2013.

process remains the failure in approving the “Constitution of the EU” in 2005, due to the significant refusal of two of the six original member states (France and the Netherlands). It was a noteworthy slowdown in the route toward Europe building which risked threatening the future of our continent.

The economic arena has not proved to be less troublesome. Never-ending tensions surround the debate on EU economic policies, both monetary and fiscal. In particular, the institutions found themselves in an embarrassing position when, in 2003, the Excessive Deficit Procedure (set forth in the Stability and Growth Pact for sanctioning states with deviations from the 3% threshold for public deficit) was not applied to France and Germany, two of the countries which now most fiercely advocate the full respect of the rules laid down in the Treaties⁶.

Even the entrance into force of the LT has put Europe under serious stress, as the process of ratification of the Treaty by the single MSs lasted more than two years, especially due to the huge variety of rules governing this step in the twenty-seven Constitutions of the Union’s members. The number of opt-out clauses which had to be guaranteed to the UK and Czech Republic were another signal of the effortful, and often challenging, integration of very different polities within a single normative framework – in particular the European Union, defined in detailed by the incredibly long European Treaties.

In all these turning points the EU has been able to survive, passing through difficulties, diffidence and contestations, proving its resilience and attracting more and more states which are now awaiting their moment for joining the European architecture. It is clear that, in this long and hard path, interest representation has

⁶ In 2003 the Commission, in charge of evaluating Member States’ Stability and Convergence Programmes under the procedure set forth in the SGP, recommended to impose sanctions on France and Germany, which had overcome the 3% threshold. However, the Council (which examines the national Programmes together with the Commission) decided not to follow the Commission’s advice. The ECJ, invoked by the Commission, ruled against the Council. Nevertheless, the mortification of European institutions’ unity and common view was evident, and served as a landmark for revising fiscal rules in direction of higher automaticity of sanctions in case of violations. For a wider discussion about European fiscal policy and its implications, see Fitoussi and Saraceno (2010).

changed significantly, giving rise to a system of professional lobbying which has rapidly adapted to the specificities of the EU decision-making structure.

2.2. The Nature of the EU

Twenty years of cooperation, enlargement and shared initiatives have not been enough to create a diffused agreement among scholars – and politicians as well – about *what* the EU is. In other terms, a clear and totally comprehensive definition of its nature is still lacking, as any expressions which pretend to describe it inevitably provide just a partial view. A full picture often seems to be just unreachable.

The EU defines itself, on its official website, as “a unique economic and political partnership between 27 European countries that together cover much of the continent”⁷. In this case, the European infrastructure is depicted as a form of cooperation between countries which decided to enter a supranational economic and political arena, and that currently represent the territorial majority of Europe. This is a powerful definition, which succeeds in communicating the width of the EU borders and the high rate of enlargement they experienced in the last decades. However, this does not answer our basic question: what is the EU and how can interest promotion relate to it?

In order to properly respond, it is necessary to focus not only on the institutional aspects of the problem, but also on the cultural and political ones. If the first field is mostly covered in this chapter, the other two will be progressively discussed in the whole dissertation, as they imply the discussion of many variables that cannot be examined so briefly.

⁷ http://europa.eu/about-eu/index_en.htm, accessed on 04 May 2013.

2.2.1. *A Nation-State?*

One of the main problems in political theory, when dealing with the European Union, is allocating it inside some categories that political scientists elaborated during the centuries. The first of them is that of nation-state, which can be briefly defined as the outcome of a process of imposition of sovereignty over a certain territory in which a specific population lives. In fact, since the beginning of the history of the states (which is conventionally set in 1648, when the Peace of Westphalia was signed), such entities came to be individuated according to their ability to display three basic features:

- a) territory;
- b) population;
- c) sovereignty.

A European territory, although in constant evolution, can be considered as a matter of fact. It spans from the West Atlantic coasts of Spain and Portugal to the eastern borders of Romania and Bulgaria, from the northern mountains of Sweden to the southernmost points of Italy and Greece. It is going to become even wider, due to the ongoing process of enlargement. It can be considered even broader if we include also the states with which the EU is bound by a “special relationship”, as the ones addressed by the European Neighbourhood Policy. Anyway, it is easily recognizable as, at least, the territory of the nation-states which are members of the Union.

A comparable degree of confidence cannot be displayed with regard to the other two points. The question of population is a debated one, as the project of a “European Constitution” demonstrated. In 2005, it encountered a scathing failure due to the serious doubts of some European countries about the number of elements that the draft treaty introduced to sustain the idea of a European *people*. A European anthem, flag and motto were seen as indicators of the existence of a homogeneous population that, however, was not there yet. In fact it is quite accepted that, despite deep economic and political integration, Member States’ heterogeneity has not faded

away and it will disappear in a foreseeable future. No “European *demos*” inhabits Europe, despite the attempts made by the recent Treaties to introduce a sense of belonging to a “Union of citizens” rather than just to an Economic Community⁸. The last waves of enlargement, and the future ones, seem to represent a further deepening of the EU internal differentiation instead of a way of increasing cohesion, because asymmetrical and historically different states are now under the same blue, star-spangled flag. In this sense, wide agreement comes with Sieberson’s conviction that “creating a European *demos* is nothing but a theoretical construct” (Sieberson 2007/2008: 464) and, as such, it cannot be listed as one of the features of the Union.

Nor can sovereignty be assumed as a specificity of the EU. Born as a territory-related concept, sovereignty usually signifies the capacity of a ruler to display legitimate authority over a given territory, inhabited by a certain population. The notion assumed a variety of meanings during its evolution, and it was reshaped several times due to the numerous variations in the relationship between citizens and power. However, it conserved its *exclusive* connotation with regard to other concurrent powers. In this sense, the EU does not possess the kind of sovereignty that, traditionally, belongs to nation-states. It does not aim to substitute them as a centre of exclusive power, but to *integrate* them in a larger, supranational framework, able to allow their pacific cooperation⁹. In this sense, any doubt about

⁸ The introduction of European citizenship (presented in art. 9 of the consolidated version of the Treaty on European Union, TEU) is emblematic in this sense. It aimed to create a sense of shared belonging to the same political body, as citizens commonly refer to the common architecture of a nation state. However, the results in this sense have not been encouraging: for instance, the data about the participation of people in the EU’s life show a weak involvement of European citizens in the communitarian matters. See also §2.3.3 on this point.

⁹ It is necessary to recall here that the original purpose of the EU was to ensure the maintenance of peace within Europe. Our continent had just come out of two tragic conflicts which, due to their nature, could be largely described as “European civil wars”: the main battlefield was Europe, which experienced a disaster as never before; European countries, with their relations of power, were the causes and the drivers of the wars; the US of course intervened and had a decisive impact, but it did it only *after* the explosion of hostilities both in World War I and in World War II. The European project was thus meant to be a huge “never again” propaganda: Europe could not stand such massacres again, so it had to build up a form of integration capable of making war “not only unthinkable but materially impossible” (Schuman 1950). Not by chance, the first of the European Communities was the European Coal and Steel Community (ECSC), devoted to put the production of these resources under

Europe as a sovereign entity (at least in the traditional and all-embracing meaning) flaws away.

Given this analysis, it is now possible to enunciate our basic assumption: the EU cannot be observed from the perspective of a nation-state. At least, not yet. As a matter of fact, the Union cannot be regarded as the outcome of a process of imposition of territorial sovereignty, but as the result of an integration of separated nation-states within a larger framework able to allow their (initially only economic) cooperation. In other words, the EU is not a state, or a “superstate”, as Moravcsik (2002: 606-610) argues: “[t]he threat of a European superstate is a myth” because of a series of tight constraints imposed on the EU policy by the Treaties and the legislative provisions that form the “Constitution” of the Union, in a material rather than formal sense. Such restrictions – “substantive, fiscal, administrative, legal and procedural” (Moravcsik 2002: 607) – do not permit to consider the Union as a “state” in the common “European” (Westphalian) sense.

2.2.2. Supranationalism, Separation of Powers and “Quadrilateral” Decision-Making System

More than a state, the EU can be defined as a union of states. The twenty-seven national entities which coagulated around the project of integration originally proposed by Jean Monnet and Robert Schuman decided to give up part of their autonomy in order to gain the benefits of a shared European life. They maintained some areas of exclusive competence, but they also renounced to behave as totally sovereign states, submitting some of their decisions – and legislative authority – to the determinations of the EU institutions. The classic example is that of European regulations, which have immediate efficacy in all member countries, without the

the aegis of a (supranational) High Authority. As a matter of fact, coal and steel (whose major producers were France and Germany) had been among the causes of the previous major conflicts, and represented vital resources to wage war. Their collective management effectively represented a success in conflict prevention, and the recent attribution of the Nobel Prize for Peace to the EU can be observed as the final award for a process which started precisely with the launch of the ECSC.

need for explicit acceptance by any of them. This could be called the “Madisonian Revolution” of the European Union, from James Madison, one of the fathers of American integration (indeed one of the terms of reference, dealing with the EU): states are sovereign in *some* fields, but they are not so in many other areas. Sovereignty, in this light, is a very fragmented concept and it can no more be considered as a complete prerogative of a nation-state participating in the European experience.

These arguments justify the definition of the EU as a “union of asymmetrical states and their citizens¹⁰” (Fabbrini 2010: 267), whose birth is to be found in the necessity to avoid a new “European civil war”, as the two World Wars *de facto* were. It is characterized by both inter-state and supra-state features and can be thus described as a supranational polity (Fabbrini 2010: 203) rather than as an international organization or a federation *tout court*. The main examples of the EU inter-state and supra-state features are respectively the Council of Ministers (after the Lisbon Treaty simply “Council”) and the Commission. The first, composed of national ministers, is guided by a pure intergovernmental logic; the second is the expression of the supranational attitude of the Union, since it is composed of individuals, whose independence is guaranteed by art. 245 of the Treaty on the Functioning of the European Union (TFEU).

Arend Lijphart (1999: 34) stresses “the EU’s intermediate status”, between an international organization and a sovereign state. However, given the features just introduced, it seems more acceptable to define it as a supranational polity (Fabbrini 2010: 203), which moves along a path different from that of state sovereignty and

¹⁰ European states are defined “asymmetrical” because they strongly differ in terms of population, and this provokes strong inequalities in the number of representatives assigned to each country in the EP. This asymmetry is a common point with the US. However, in the American Federal Senate, each state, from the biggest to the smallest, can express just one Senator: this is a violation of the representative principle (as there is a strong incongruence between the number of inhabitants of the various states and the number of representatives assigned to them in the highest chamber); nonetheless, it is also a form of re-equilibration, as the smallest states have the possibility to make their voice heard when the typical Senatorial issues are at stake. Nothing like this happens in the EU, where the only directly elected body, the EP, marks enormous differences among member states in terms of representatives.

intergovernmental relations. The EU is not just the juxtaposition of twenty-seven sovereign states which interact as monads: most importantly, it keeps under the same flag people who speak hundreds of languages¹¹, profess dozens of religions and come from an indefinite number of different cultures. This focus on citizens is an extremely relevant feature of the EU, and it will be one of the main theoretical bases for the discussion of lobbying as a possible instrument of democracy (but also for other arguments about the configuration of democracy in the Union).

Being a union of states rather than a state or an international organization *tout court*, the EU presents a peculiarity that makes it more similar to its Atlantic counterpart – the US – than to its Member States: it does not have a *government* in the traditional European sense. In other words, there is no single institution able to make authoritative decisions binding on all. There is no body which can claim to be the *locus* of ultimate decision-making. Instead, there is a plurality of decision-making governing bodies which need to interact in order to adopt a final determination. The main instance of this is the “ordinary legislative procedure”, which has substituted the formerly-known codecision procedure after the entrance into force of the LT¹². It provides that the European Parliament (EP) and the Council are both in charge of decision making in the Union¹³. This is why the recent modifications of the Treaties have delineated a “quadrilateral” decision-making system, depicted in Figure 2.1, characterized by the interaction of:

- European Council, taking its source of legitimacy from national elections;
- Council, legitimated by national elections and composed of politicians, not bureaucrats;

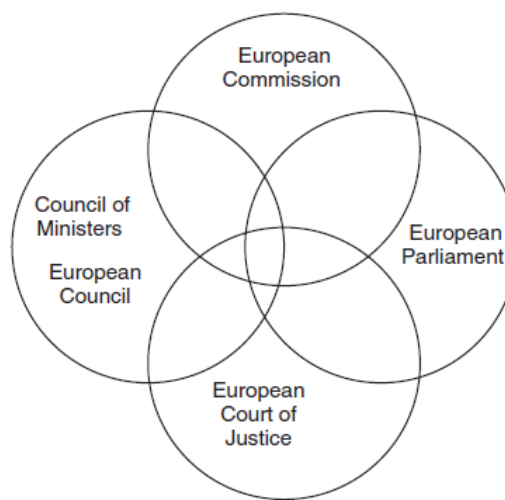
¹¹ The official languages of the EU are twenty-three. However, the European Commission (2007b: 7) recalls the VALEUR (Valuing All Languages in Europe) project, carried out under the auspices of the Council of Europe’s European Centre for Modern Languages in Graz, according to which “no fewer than 438 languages are spoken in the 22 European countries covered by the project”.

¹² The rules for the current ordinary procedure are set forth in Art. 294 TFEU.

¹³ For a graphical explanation of the ordinary legislative procedure, see Figure 2.2.

- European Parliament (EP), the only European body directly elected (every five years), based on a proportional representation of member states with a number of seats defined in accordance with their population;
- European Commission, whose members are selected by the EC and approved by the EP.

Figure 2.1 Power-sharing between EU institutions



Source: Fabbrini (2010)

For this reason, it is possible to define the EU as a system characterized by separation of powers: there is no institution in charge of the ultimate exercise of governmental functions and no single ruler able to make, alone, authoritative decisions binding on all. Power of government is diffused among a variety of bodies which co-act in order to produce European legislation. This separation of powers is not only vertical (between the Union and the states), but also, as said, horizontal (among the various subjects of the EU): in this sense, the EU institutions just mentioned can be described as “separated institutions sharing powers” (Fabbrini 2010: 267). The main consequence is that, as decision-making authority does not fall

under the full control of any individual or body, it is potentially more controllable by a system of mutual check and balances among states and institutions.

2.2.3. The EU as a “Compound Democracy”

The democratic model of such a Union cannot be assimilated to that of a nation-state. First, the European political framework is characterized by statist cleavages, that is, by lines of division which depend more upon the differences among, and the interests of, the twenty-seven Member States than upon more profound cultural issues. Majoritarian and consensual democracy (Lijphart 1999), instead, are more deeply marked by identity cleavages, which are likely to produce more intense fractures as they are rooted in historical and traditional divides.

Second, as anticipated in the previous sub-paragraph, the EU is a system of separated institutions sharing governmental power, which is divided both vertically and horizontally. The absence of a “government” in the traditional European sense – a specific institution whose legitimacy comes from a popularly elected Parliament – is one of the main features that makes the EU more similar to the United States (hereinafter “the US”) than to its Member States. A national democracy has its focal point in the management of the decision-making power, which is ultimately at the disposal of a specific ruler or governing body (for instance, the Head of Government, or a collegial Government in some countries). Differently, with regard to the EU (but also the US), the most convincing definition is that of “compound democracies” (Fabbrini 2005), which broadly corresponds to a “Madisonian” (Dahl 1956) or “non-majoritarian” (Majone 1996) model of democracy:

“[t]he overriding objective is, to use Madisonian language, to protect minorities against the ‘tyranny of the majority’, and to create safeguards against ‘factionalism’ – the usurpation of government by powerful and self-interested groups – and the threat which factionalism poses to the republican belief in deliberative democracy. In particular, delegation [...] attempts to restrain

majority rule by placing public authority in the hands of officials who have limited or no direct accountability to either political majorities or minorities” (Majone 1996: 286).

The notion of compound democracy takes into account the specific features aforementioned, in particular the multiple diffusion of power at territorial (vertical) and institutional (horizontal) level, and the fact that the Union is an institutional and political framework able to *compound* – that is, to combine, to keep together – asymmetrical states and different peoples, allowing them to peacefully coexist and not to be ruled by a single decision maker, who would prove inadequate in such a diversified context. In other words, compound democracies need to keep the power separated in order to permit the widest access to the decision-making process, because, in such systems, the social divisions are between states more than between interests or identity communities¹⁴.

2.3. The room for lobbying in the EU

2.3.1. Government and Governance

Our discussion about lobbying can be directly related to the previous discourse about the interpretation of the Union by further defining the EU as a multi-level system of governance. This expression is another way to express the idea of separation of powers both at horizontal and vertical level, but it communicates something more specific and deeper.

¹⁴ As a matter of fact, the main issues debated at European level regard the reality of the various states (or groups of states): the current economic crisis does no more than confirming this, as it showed the contraposition of *Mittleuropean* countries (Germany, France) and Mediterranean states (Italy, Greece, Spain) about the management of this difficult situation. Identity issues (left versus right, for instance) have little strength at European level, whereas they are able to start important debates in nation states and to fill the electoral programmes of national parties. This is another decisive difference between the EU and its single Member States.

First of all, the term *governance* particularly fits the features of the Union and thus has to be distinguished from *government*. The latter can be defined as a formalized hierarchical structure that controls the decision-making system: in other words, it is the subject of ultimate exercise of power, able to make authoritative decisions and, ideally, accountable and responsible for them. “Government” is the keyword of European national political systems, in which elections aim to select a person, or a collegial body, in charge of such a powerful task¹⁵. In our continent, government represents a synonym of governmental power, whereas such equation cannot be proposed at the European level or in the US, because of the diffusion of powers among a variety of governmental institutions mentioned in the previous paragraph.

Differently, governance is characterized by a *horizontal* pressure on decision-making institutions. This means that they cannot pretend to have the right to the final word without taking into consideration the opinions of many groups – not only formal actors but also by civil society groups, corporations, journalists, scholars, experts, epistemic communities and others. All these heads express their ideas for solving problems and/or raise the necessary funds to do it; in some cases, they provide the necessary technical expertise for settling upon matters whose specificities are not at the disposal of rulers in Brussels. As we shall see, this stands at the heart of the discussion about interest representation. As the European Parliament’s Working Paper on lobbying in the EU puts it, “civic and producer interests contribute to the perception, presentation and definition of issues in European Union policy-making” (European Parliament 2003: 1).

The second piece of the definition (“multi-level”) has a double meaning. In a *negative* perspective, there are various levels of power, and it is not always really

¹⁵ The obvious distinctions between the various European political systems do not invalidate this reasoning. In French semi-presidentialism electors directly choose the heads of their two-headed government (the President of the Republic and the Prime Minister); in Italian parliamentarianism they vote for the members of Parliament, but *de facto* the Head of Government results from the legislative elections, as he/she is usually the leader of the winning party or coalition.

clear the level of governance that should be applied. Some critics allege an “unclear separation of powers among the EU institutions” (Siebersson 2007/2008: 450) due to a decision-making system which involves too many institutions in its various steps, resulting in the creation of confusion about them. Sometimes this makes it almost impossible to clearly determine who is responsible for a decision and reduces the effectiveness of the process due to its excessive length. These problems, together with a perceived opaqueness of the decision-making system, contribute to diffuse the idea of an undemocratic Europe¹⁶. However, in a *positive* sense, the multi-level nature of Europe makes it possible to think about it as a system in which many voices have the possibility to be heard and defend their interests. It would be absurd to assume that European decision-makers naturally possess all the necessary knowledge to make the right choice in any occasion: as it will be better explained in Chapter 6, this unavoidable vacuum of knowledge is partly filled by lobbyists, who bring their expertise to Brussels in order to make all relevant aspects of a decision emerge.

Given what highlighted until now, the reason why lobbying finds a decisive role in the European context – regardless of the positive or negative connotation which accompany it – becomes clear. There are at least two explanations of the relevance of lobbying in the EU: one looks at the multi-level character of the Union, as it has been just described, while the other relies on the lack of popular participation in policy making.

2.3.2. *Lobbying in a Multi-Level System*

In a monocentric institutional system, in which a single ruler formally has the right to make decisions, it would be much more difficult to foresee a proper role for an activity that, in Chapter 1, has been defined essentially as a communicative affair.

¹⁶ The problem of the alleged European democratic deficit will be better discussed in chapter 3; the issue of transparency is the object of Chapter 7.

One could argue that the distinction between a nation-state and a union of states does not really impact on the relevance that lobbying acquires: it would be enough to observe the continuously increasing number of lobbying agencies that flourish at national level to understand that this phenomenon is rooted also within state borders and covers a fundamental part of decision making even in that context. This is certainly true. However, the multi-level nature of European governance suggests that a different form of organized pressure on governmental bodies can find a place in the very institutional arrangement of the continental organization, in particular between one level and another. Associations, organizations and individuals lobby directly their national representatives to the EU, their national governments (which send their members to the Council) or the institutions themselves (in particular the Commission). Many options are possible, because the Union is characterized by “porous structures with multiple access points” (Fabbrini 2010: 13).

The same concept is expressed by Mazey and Richardson (2006: 250), who define the EU as “a system of multiple access points created by institutionalized multi-level governance”. The idea of many different routes for acceding to European decision makers is crucial in our discussion, as it defines the peculiarity of the Union in terms of interest representation. In such an open and multi-faceted system, interest groups mobilize at different levels on a pluralist model of interest intermediation (Schmitter 2000). Whereas in nation-states, without the diffusion of powers which characterizes the Union, lobbying has to build up its own role by “infiltrating” in the decision making process in a way that sometimes appears obscure¹⁷, in a union of states the role of groups making pressure via communication seems much more evident and less debatable. This is not to argue that no problem emerges in relation to the establishment of lobbies in Brussels: a number of critiques continuously arise, in

¹⁷ Chapter 7 is devoted to the analysis of the numerous critiques according to which lobbying would be essentially an opaque method of influencing decision makers. This alleged lack of transparency has negatively marked the popular perception of lobbying, especially in certain areas of Europe. This is why the definition of this activity as *structural*, or systemic, with regard to the EU is an essential change of paradigm in order to free the minds of political analysts from the long-lasting negative attitude towards lobbying.

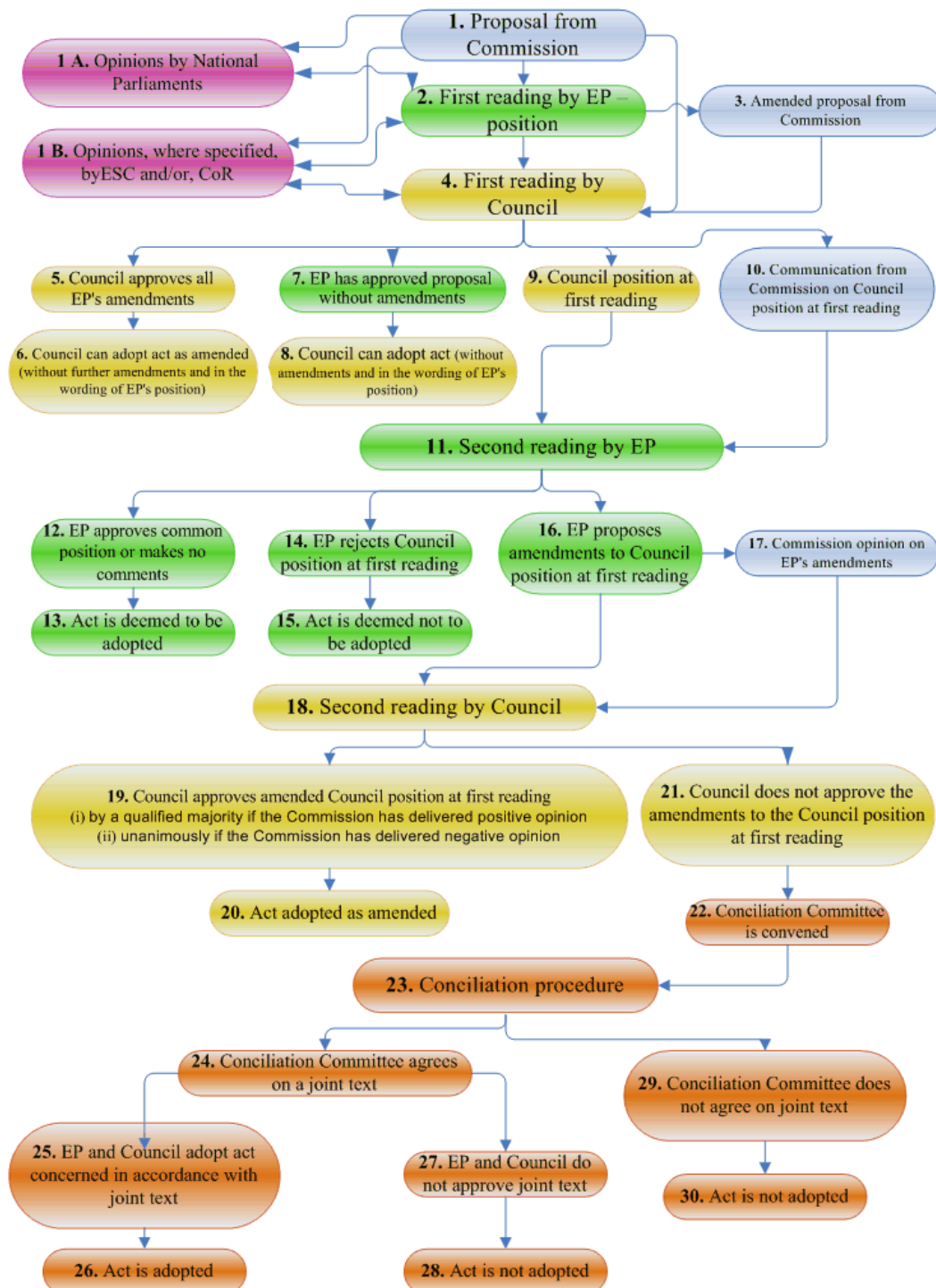
a way even fiercer than in some nation-states. However, at least from the point of view of a more impartial political analysis, more numerous and defensible reasons can be found in support of interest representation in a union of states. More, lobbying appears as a *necessary* element of the system, because of the need for delivering expertise to the European institutions. An instance may be the fact that “the European Commission has long favored a corporatist mode of negotiating with interest groups” (Lijphart 1999: 44) and that it “never abandoned its goal of promoting a dialogue between the social partners and of improving their participation in the Community’s decision-making process” (Gorges 1996: 139). It is relevant that one of the basic institutions of the EU has often actively engaged in the promotion of interest representation in the rooms of power: in this way, it has highlighted the importance that lobbying assumes in the legislative process of the Union.

In other words, if properly enacted and free of the numerous forms of corruption that limit their effectiveness and reputation, lobbies’ activities may be defined as *systemic* elements of the EU “multiple access points” arrangement. Whereas at nation-state level lobbying is widely perceived as a degeneration of a transparent and well-working political system, the analysis of the specificities of the Union seems to convey a completely different message: lobbying is not an element of deterioration of policy making, but it is one of its structural component as “the EC/EU as a polity presents an American-style plethora of opportunity structures to which interest groups can go” (Mazey and Richardson 2006: 250).

Figure 2.2 clearly explains how large the possibilities of intervention by lobbies are in the European multi-level decision-making context. It represents the ordinary legislative procedure (ex codecision), as renamed by the LT¹⁸.

¹⁸ For a discursive summary of the ordinary legislative procedure, see <http://www.europarl.europa.eu/aboutparliament/en/0081f4b3c7/Law-making-procedures-in-detail.html;jsessionid=15B910028387BCD13FF428077ED85A82.node1>, accessed on 1 June 2013.

Figure 2.2 The ordinary legislative procedure (ex codecision)



Source: European Commission's Website

This system assigns the same weight to the EP and the Council in a variety of areas, and it also involves:

- the Commission (which normally submits a proposal for a legislative act);
- the other bodies which can initiate a legislative procedure (the Court of Justice, the European Investment Bank, the European Central Bank, a quarter of the Member States);
- the national parliaments (which may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity);
- a Conciliation Committee (which intervenes if the Council and the EP are not able to find an agreement after two readings).

It is easy to see that governmental power is strongly diffused among a variety of different bodies which are variously involved in the decision-making process, each of them with its own proper role clearly defined by the Treaties. In this sense, a plethora of channels of intervention can be devised for lobbies: they can try to influence the procedure in any of its steps, for instance by bringing some piece of expertise about the needs of a specific sector or the practical consequences of a favourable (or unfavourable) legislation. The complexity of the legislative procedure (either ordinary or special) is the reason why many scholars allege an “unclear separation of powers among the EU institutions” (Siebersson 2007/2008: 450) due to an inclusive decision-making system (in the sense that it involves different institutions in its various steps), which has two main consequences:

- a) sometimes it is almost impossible to determine clearly who is responsible for a decision;
- b) the effectiveness of the process decreases, since it takes a long time¹⁹.

Without discussing here the problem of accountability and the consequences in terms of a possible democratic deficit, it is possible to observe that, indeed, the

¹⁹ For a discussion about the relationship between the number of decision makers and the effectiveness of the decision, see De Mucci (2009: 77-106).

inclusivity of the legislative procedure might prove to be a blessing in the extraordinarily complex pattern of the EU, made of different states and populations, each marked by its own history, specificities and needs. Lobbying, in this light, serves a high-level contribute in that it allows European decision makers to know more about peculiar situation: otherwise, they might difficultly be aware of them and they would not include such considerations in their reasoning before making a binding decision, with important consequences in terms of legitimacy.

2.4. Lobbying and Popular Engagement

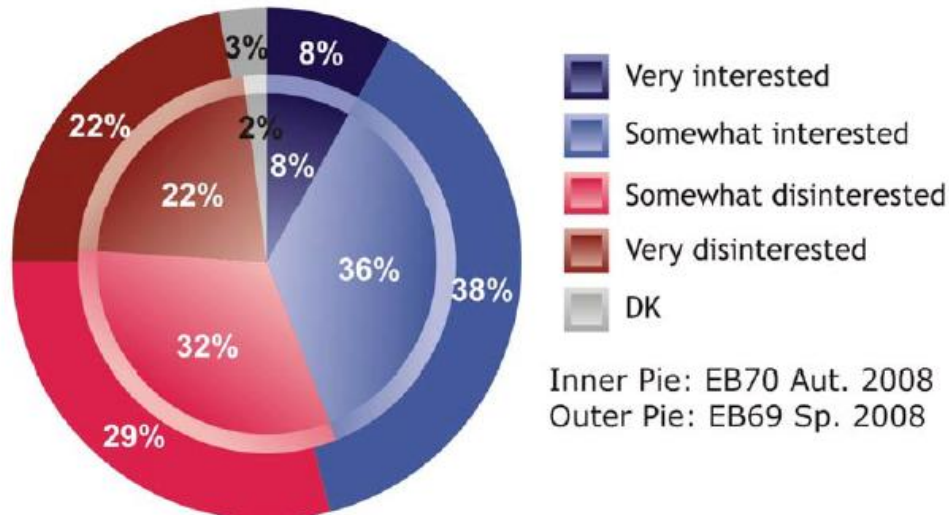
In democratic political systems it is possible to draw a substantial distinction between “participatory” channels of interest representation and “representative” ones:

- the first essentially involve the possibility for citizens to *directly* influence the decision-making process by expressing their will without the need for intermediation by some representative body or institution. The typical example is the tool of referenda (both confirmative or abrogative), in which electors can communicate their preferences about a specific issue by answering a targeted question;
- the second imply the presence of a “representative” (either a single person or a collegial body) ideally collecting the desires of the citizens, rationalizing them and expressing them in the decision-making *fora*. This relationship is often inscribed in the so-called agency model of political action, in which an *agent* carries out some actions on behalf of a *principal* who employs him by entering into contact with third parties²⁰.

²⁰ English and American common law contemplate two forms of agency: in the first, the principal has the right of control over the agent (named *servant*); in the second, the agent is independent of any kind of supervision by the principal (and is thus called *independent contractor*). For a detailed analysis of the concept of agency, see Coleman (1994), Chapter 4.

Figure 2.3 Interest in the 2009 European elections among EU citizens

Question: The next European elections will be held in June 2009. How interested or disinterested would you say you are in these elections?



Source: Special Eurobarometer 303

A second explanation of the relevance of lobbying in the EU emerges from the observation that the Union “is particularly dependent upon a secondary ‘participatory’ channel because of core weaknesses in the ‘representative’ channel” (Greenwood 2011a: 1). Follesdal and Hix (2006: 552), for instance, assert that referenda on EU issues are “ineffective mechanisms for promoting day-by-day competition, or contestation between policy platforms” because “they only allow voters to express their views about isolated constitutional issues and not on the specific policy content within a particular constitutional status quo”. The result is that a lack of participation emerges, as well as it happens in the case of European Parliament elections, already defined more than thirty years ago as “second-order national contests” (Reif and Schmitt 1980) and still considered scarcely attractive by European citizens.

This tendency is confirmed by the data collected by a survey requested by the European Parliament in 2008 (summarized in Figure 2.3), before the elections which

took place in June 2009. When asked about their interest (or disinterest) about the forthcoming European elections, an absolute majority of EU citizens declared that they were not interested. Despite the existence of explaining factors which might contribute to this trend (first of all, the global economic crisis), it was recognized that “a decline in interest in the European elections, with less than a year to voting, is a matter for concern” (European Parliament and Commission 2008: 18). As Greenwood (2011a: 1) notes, “the absence of popular engagement [...] means that interest organizations not only dominate input to the EU’s participatory channel but also perform surrogate democratic mechanisms, such as acting as agents of accountability”. In other words, the Union has become strongly dependent upon interest groups as proxies for a wider idea of “civil society”. In particular, the notion of “organized civil society” is fundamental for a proper understanding of the European decision-making system. It is easy to see that “much of what passes for ‘dialogue with civil society’ at EU level is dialogue with interest groups and related organizations” (*ibid.*: 2): this happens because of some specificities of the Union which constitute obstacles to the enactment of a proper form of popular participation – namely the absence of a real government, the lack of a common language, the non-existence of a “European *demos*” and a shared public space.

This incentive to interest representation is another reason why, as well as already done in §2.3.2, the presence of lobbyists in the decision-making chain at European level may be considered not incidental, but structural and systemic: it is a constitutive part of the governmental process of the Union and, as such, it must be evaluated with regard to its contribution to the adoption of deliberations in Brussels.

2.5. Conclusions

Looking at the evolution of the EU and its progressive definition as an almost unique political body, made of twenty-seven units radically different from the overarching

Union itself in terms of decision making structures, I have introduced the peculiarities which allow to label it as a compound polity rather than a nation-state democracy. In this light, relying on the notions of governance, multi-level system and representation, I have individuated the physiologic space for lobbying in the decision-making process that characterizes the EU.

The centrality of lobbies in Brussels has been acknowledged by the EU institutions in several cases, both directly and indirectly. In the following chapters many documents will be analysed, in which the Commission and the EP declared their openness to the promoters of “special interests” because of their crucial role in stimulating EU policies’ legitimacy and providing technical expertise²¹. Among them, we can just introduce here:

- the 1992 Commission’s Communication concerning “An Open and Structured Dialogue Between the Commission and Special Interest Groups”;
- the 2001 White Paper on Governance;
- the 2002 Commission’s minimum standards for consultation of interested parties;
- the 2006 Green Paper on the Transparency Initiative, its Follow-Up (2007) and the Policy Paper issued in 2008.

The influence that European lobbies exert, widely criticized despite the existence of *ad hoc* regulatory documents issued by the political institutions of the Union, will be better analysed in the following chapters, especially in the light of its impact on EU democracy, whose features can now be better understood. Once introduced the main concepts and delineated the space for interest representation, the relationship between lobbying and democracy cannot be investigated without a profound understanding of the second element of the relation itself, that is, European democracy. The next chapter is thus devoted to an in-depth observation of the

²¹ On these points, see Chapter 6, which presents the contributions of lobbying to European democracy and highlights how lobbies tend to perform a wide series of decisive tasks for the functioning of a democratic order.

characteristics of the democratic model of the post-Lisbon EU, with which we need to conjugate the practice of lobbying as introduced until now.

3. The Peculiarity of European Democracy

In Chapter 1 I defined lobbying and in Chapter 2 I put in strict connection with the institutional and political structure of the EU. In this way, its role within the European decision-making process has been identified not as distortive, but as *systemic* in relation to the multi-level reality of the Union. Of course, distortions do exist, and one of the prerogatives for the future of the EU is to cancel them out, or at least manage to progressively reduce them. As we shall see in Chapter 5, many of the critical questions linked to lobbying can find a positive answer through a deeper analysis which takes into account the specificities of the EU and its steps towards a higher level of openness and transparency. Some decisive problems still remain, but they are not enough to invalidate the idea that interest representation is rooted inside the European institutional structure and can be beneficial to it.

In this chapter, we need to make a step ahead in order to answer some fundamental questions in the analysis of the role lobbying in the democratic game: what kind of democracy characterizes Europe? Which are its main features? Is it inevitably corrupted, broadly speaking, or is it working well? If lobbying is considered systemic, democracy is the dependent variable of our discourse: the scope of this thesis is to highlight how it can be positively or negatively affected by interest representation. Lobbying, and more generically pressure, corresponds to a wide group of activities which may have an influence on democracy, shape it or even destroy it, according to different views and ideological orientations. However, without shedding light on the previous issues, it would be meaningless to engage in an analysis of the interaction between lobbying and democracy, as one of the two parts of the relationship (that is, democracy in the EU) would remain undetermined.

3.1. A Methodological *Caveat*

Lobbying in the EU is often, heavily and publicly criticized because it allegedly provokes distortions and other damaging effects on the democratic nature of the Union. Many arguments are used to support this view:

- lobbyists' activities are not under public scrutiny;
- lobbyists look for “underground” channels to promote the interests they represent;
- the power of the money they manage makes some issues more relevant than how they are supposed to be;
- they aim to organize “shadow” powers which interfere with the legitimate exercise of governmental functions by elected and non-elected members of EU institutions;
- the very notion of democracy seems to be at odds with a form of decision making which proceeds through channels other than the democratically legitimized institutions and *fora*.

Many other critiques could be mentioned, and they will be analysed in the following chapters. However, in order to deal with these crucial problems, we first need to understand what *democracy* means, not in absolute terms – it would be a titanic enterprise without an end – but in strict relation to the *context* in which we are observing it, that is, the EU. This will help examine the matter and properly weigh concepts which, too often, are misunderstood or confused.

Democracy is a business for reality, not just for theoretical debate. Very broadly speaking, it is the answer to the question on how to solve conflicts and keep citizens together. Nevertheless it can take a large variety of different forms. The quantity of definitions proposed during the history of political thought highlight the complexity of this concept and suggests that it needs to be examined in practice, “at work” in a *specific* period and context, as Alexis de Tocqueville did in his masterpiece, *De la Démocratie en Amérique* (1835-1840). The French author was

among the first to enunciate that no generalization can be considered absolute in social sciences. It is possible – and actually happens – that some elements recur in the common meaning of democracy. However, democracy in America will always show some peculiar features that cannot be found anywhere else in the world. According to the same logic, democracy in the EU – more specifically in the post-Lisbon EU – cannot be equal to all other democratic systems which, either formally or substantially, fill the political map of the world. Accountability, legitimacy, transparency are all constitutive elements of a typical debate on democracy, and they will help us in our analysis. However, if it is true that the EU is a system which strongly differs from that of its MSs (as stated in Chapter 2), the meaning of such generic concepts has to be built from the roots: it would be useless to employ them in the same way as they are referred to in nation-states. The same idea is strongly asserted in the CONNEX Final Activity Report on efficient and democratic governance in a multi-level Europe (Kohner-Koch 2008). Among the main findings of the Research Group on democratic governance and multi-level accountability, the following lines are striking in the light of our discourse and confirm what has been stated until now:

“[t]he issue of the nature of the European Union is a fundamental question with important implications for the study of these concepts. After all if one views the EU as simply another international organisation (albeit more institutionalised and more inclusive in terms of the scope of the issue areas dealt with) then the discussion on democracy and accountability can be quite different to viewing it in terms of an evolving and autonomous political system. In the international organisation perspective then ultimately democracy is assured through the national political process, supplemented by some weaker forms of politicisation at the European level.

[...]If the EU is viewed as a political system in its own right, albeit of a special kind, then the issues of democracy, representation, accountability etc. must be discussed and fleshed out at that level as well in relationship with the national

level. Yet when we look at the EU and compare it to other political systems in the post-industrial world the most striking point is the absence of politics in the sense of responsiveness in terms of elections, parties and the conventional procedures of popular democracy” (Kohler-Koch 2008: 12).

In this light, more than looking at a “universal” definition of democracy, the following paragraphs aim to reconstruct it as a set of different criteria, which can be applied to the peculiar nature of the European Union. The objective of this chapter is thus to evaluate how Europe performs with regard to them and how lobbying can enter the discourse with its impact.

3.2. Democracy as a Set of Criteria

3.2.1. Beyond a General Definition

In the previous chapter, the EU has been described as a multi-level governance system, characterized by both a vertical and a horizontal diffusion of powers among different governmental institutions. As anticipated, the model of democracy that best pertains to this unusual political creature is a compound one, marked by division of powers and defined by the opening of different decision-making *loci*. One fundamental question immediately arises from this portrayal: what does it imply in terms of democratic theory?

First of all, it is necessary to underline that “[a] scientifically sound criterion to determine the single best notion of democracy is simply beyond reach” (Lord 1998: 15). This is why not one, but *many* notions of democracy emerged in the history of political thought, often oriented to specific values or biased or history-biased. For instance, as van Schendelen (2002: 280-281) notices, in countries with a presidential-like system (as the UK and France) more importance is attributed to accountability and rule of law, whereas pluralistic competition and consensual decision-making

seem to be the basic parameters in parliamentary systems (Italy, Sweden) to evaluate democracy. Similarly, countries with strong political parties (Spain, Greece) tend to assign greater relevance to the notions of parliamentary governance and discursiveness, whereas corporatism and responsiveness are the keywords in states with well-developed interest groups (Austria, the Netherlands).

Generally speaking, it is possible to state that democracy cannot be defined only in institutional and legal terms. This would mean just looking at elements such as party pluralism, elections and majority rule (that is, the *formal*, or formalistic, aspects of democracy). This cannot be enough if we aim at a comprehensive understanding of the most debated political model, especially in a peculiar context like the EU. For instance, as K.R. Popper used to remark, a majority might rule in a tyrannical way, and formally democratic institution may easily collapse if they are not supported by some *substantial* requisites, namely societal and political pluralism (Popper 1945: 149-150), the guarantee of basic freedoms (Sartori 1992), the possibility of non-violent reformism and critique (Popper, in Marcuse and Popper 1985: 85-87). However, it would be pointless to make a one-shot choice among the various definitions of democracy, searching for the “best” possible definition. A whole book would not exhaust the problem nor would it lead us to reach a feasible conclusion.

Differently, it is possible to mix up the most popular notions of democracy as they are deployed in the common debate about the Union. In this way, a fairly inclusive characterization can be developed which is likely to take into account all the unfailing dimensions of a democratic system as the Union. In order to do this, I will follow the division proposed by Rinus van Schendelen (2002: 282-290), which is summarized in Table 3.1.

Table 3.1 Dimensions of democracy

	Input Dimension	Throughput Dimension
<i>Principles</i>	Openness Permeability Pluralistic Competition	Representativeness
<i>Methods</i>	Competitive Elections Direct Channels Indirect Channels	Majority-Vote Decisions Consensual Decisions Polyarchy
<i>Values</i>	Legitimate Authority Transparency	
	Output Dimension	Feedback Dimension
<i>Principles</i>	Legitimacy	Citizenship
<i>Methods</i>	Limited Government Rule of Law	Freedom and Rights Linkages to Input
<i>Values</i>	Accountability Responsiveness	Tolerance Identity

Adapted from van Schendelen (2002)

3.2.2. *Input Dimension*

A system is defined democratic if, first of all, it guarantees the possibility to accede to it without imposing barriers or enacting unjustified selection. In other words, it should be open and non-discriminatory: in principle, all individuals, peoples or groups interested in the outcome of the decision making process should be given the opportunity to participate in it, via direct (participatory) or indirect (representative) channels. Exceptions can obviously exist: restrictions can be determined with regard to specific situations in which openness could result in unfavourable impacts on the democratic process itself. However, given the general rule imposing openness, permeability and pluralistic competition, any deviation from these principles should

occur on the basis of general rules which do not create any imbalance of treatment among the actors of the system. Similar instances must be treated similarly, whereas different circumstances need to find dissimilar settlements: no discrimination among comparable realities is admitted. More, such exceptions should not be in contrast with the basic principle of pluralism, which represents the real core of the democratic game in modern societies. Without plurality of views no real democracy can exist: this widely shared consideration represents a good starting point for analysing lobbying as an instrument to enlarge the number of views and interest voiced in Brussels.

The means to implement this order are, first of all, regular elections. However, no less attention should be paid to both direct and indirect channels for making people's claims be heard (and properly considered) by decision makers. In contemporary democracies, the most common examples of these channels are, respectively, referenda and intermediary bodies, such as political parties and pressure groups, which filter the desires of citizens and bring them to central authorities. As we shall see, this has an impact on the legitimate authority of governing bodies, and is strictly linked to the transparency of policy making, which is benefited from an open system allowing a variety of interest to reach those in charge of decision making.

3.2.3. Throughput Dimension

One of the basic ideas regarding democracy is that "governance must be representative of what the people desire" (van Schendelen 2002: 284). This generic claim entails an incredible array of possibilities able to satisfy such a quest for representativeness. As a matter of fact, this principle can assume a wide range of meanings according to the criterion chosen to define it. From a generic representation of the geographical distribution of citizens (enacted in the European Commission's composition after Lisbon) to the mirroring of the various minority interests, passing

through a series of contrasting definitions of “people”, representativeness has progressively assumed a plethora of different, and even contradictory, meanings.

In order to circumscribe this notion, attention should be paid to the methods of governance, with the three main variants being the majority rule, the consensual decision making-system (deeply analysed by Arend Lijphart) and the ideas of polyarchy and opposition (to prevent the establishment of tyrannical majorities). All these concepts convey a similar message: competition among ideas is beneficial to democracy. In a majoritarian system the confrontation tends to be similar to a winner-takes-all game; in a consensual order more importance is attached to shared decisions able to reflect the widest number possible of views; opposition and polyarchy, then, recall the need for listening to a variety of voices before making choices which will become binding on all. In addition, it is possible to highlight the values underlying the notion of representativeness: among the numerous examples, legitimacy of authority and transparency, again, deserve a particular mention because they will be crucial in the analysis of lobbying in the EU.

3.2.4. Output Dimension

A democratic system, from the point of view of its output, should be legitimate. Many sources of legitimacy exist: this is why, as in the previous case, it is more useful to focus on the methods used to make a political system legitimate, rather than on specific conceptions of this notion. Traditionally, especially in the European environment, legitimacy is linked to the notion of limited government, which is a specific feature of the EU²². In other words, democracy is guaranteed by a combination of checks and balances, decentralization and government abstention from intervention in the private sphere. All these elements, combined with the maintenance of the rule of law, represent the minimum standards to define a democratic polity, in which governmental authorities are not assigned unlimited

²² See Chapter 2 on this point, in particular with regard to the notion of separation of powers between European institutions.

power, but they are subject to binding rules, so that the output of the political process can be considered legitimate.

The value-related counterpart of this discourse is built upon the notions of accountability and responsiveness. The outputs of the decision-making structure in a democratic polity should be responsive to the desires which give rise to the political process, and the officials who engage in it should be ultimately responsible in front of their electors, who are ideally entitled with the exercise of the sovereign power. If decision makers are not directly elected – as it happens in all European institutions except for the EP – accountability and legitimacy should surface from other sources: the typical example is the role played by competence (one of the main criteria on whose basis the Commissioners are selected and evaluated), as competent policy makers are usually considered more legitimate than those who are not proficient in the matters they address.

3.2.5. Feedback Dimension

People, in a democratic polity, are not passively subject to governmental power, but they *actively* participate in it by resorting to the means of citizenship. This concept summarizes a whole of dynamics which lead to the internalization of the values pertaining to governance: in other words, citizens – as well as governmental and non-governmental groups – aim to be part of an open, inclusive and transparent political system and form the so-called civil society, which is widely considered as one of the main requisites for democracy. Ideally, by participating in societal and political life, they can express their views and bring their concerns in the public sphere; they can ask for representation of their interests and institutions need to take into account citizens' responses to the policies enacted, in a continuous inter-exchange between governors and governed.

From the point of view of methods, this concept finds a proper expression in a system which provides a sufficient guarantee of basic freedoms and rights (freedom

from the political power and freedom to accede to it in an open way). More, civil society should enjoy a linkage with the inputs of the governance system, in particular with interest groups and mass media, in order to obtain real representation of its interests and benefit from a legitimate political process. Without this kind of connection, citizens risk remaining detached from the decision-making sphere, and the consequences in terms of lack of inclusion and participation can become threatening for stability. From the value perspective, a democratic polity is characterized by a satisfactory degree of tolerance, which allows a non-violent resolution of problems and divergences, coupled with a certain sense of group identity, able to build up a stable and self-sustainable image of community. This is particularly important in a complex and multi-component polity like the EU, which is made up of an incredible variety of constitutive units. They could hardly be reconciled within a single definition of “European people”²³: in this light, the enhancement of a sense of citizenship becomes absolutely central to the construction of a solid Union able to survive the numerous threats that such diversity poses every day.

3.3. A Balance Sheet of EU Democracy

Assessing whether the EU is a fully democratic polity is a hard task, and it is not the aim of this work. Thousands pages have been written to discuss the existence, or the absence, of the so-called “European democratic deficit”, without arriving to a definitive conclusion. This kind of discussion is simply beyond the reach of the present dissertation. However, a brief analysis of the level of fulfilment of the aforementioned notions of democracy is necessary in order to complete the evaluation of the context on which lobbying impacts. Therefore, now we need to

²³ See §2.2.1 on the structural lack of a “European people” and on the difficulties encountered by the project for a “European Constitution” which aimed to introduce in the EU elements typically characterizing a *demos*.

focus on the specific aspects which relate to the practice of interest representation. Put differently, we need to highlight the critical points which are likely to be influenced, either positively or negatively, by interest groups at European level, so that the analysis of the interaction between EU democracy and lobbying developed in Chapters 5-6, can rely on solid theoretical bases.

3.3.1. Openness

The input dimension of democracy has been defined essentially in terms of openness, permeability and pluralistic competition. As Bouwen (2001) observes, there is a high degree of equality for the political actors which enter the European arena. It is true, as it is often alleged, that “some established groups may take a lead” (van Schendelen 2002: 283) and thus they have the chance to acquire a dominant position which diminished the degree of pluralism in decision making. However, it is possible to observe that new issues keep on permeating the decision-making system and continuously change the public policy landscape.

Regarding the methods of input democracy, Chapter 2 already introduced the relative absence of popular engagement, which might be considered a limit in the view of a real democratization of the Union. Little contribution to politics in Brussels comes from European citizens, who tend to show a low degree of interest in Europe-related issues. Direct channels (primarily elections) are scarcely present. Only the EP is directly elected: nevertheless, the electoral contest at MS level occurs on a national basis and it usually follow dynamics which seem to reinforce a Westphalian logic more than a supranational process of integration. European elections are not a primary interest for EU citizens, and national politicians exploit them in order to propose, under the mask of Europe, issues of domestic politics vested in a different manner. In addition, Moravcsik (2008: 337) observes that “voters often use Euro-elections to cast protest votes on national issues: opinions about the ruling party, globalization or immigration involving non-EU countries, and other matters not

involving the EU” and thus “elections to the European Parliament generate relatively low turnout and are hardly influenced by European issues”.

If direct channels are extremely weak, indirect routes of accession to Brussels exist and are widely used by political and non-political actors from all member countries. Lobbying is one of these means, and it can be considered one of most important, albeit it is more often regarded as a conduit of undue influence than as a proper access routes to the European policy-making arena. By rationalizing specific interests and making them coherent, lobbyists give them voice and make them heard in Brussels: in this way, they contribute to maintaining the system open and competitive by enhancing interaction among different ideas and viewpoints. Without interest-representation groups, the European political game would be played only by officials of the main institutions and members of the other organs which formally dialogue with them (as the CoR). The Treaties set forth a number of formal consultations *fora* within the decision-making procedure leading to the adoption of binding rules; nevertheless, such spaces alone could be hardly considered sufficient to satisfy the input notions of democracy discussed above. Interest promotion, then, decisively contributes to the enhancement of openness by allowing more interests to reach the rooms of power in Brussels. In addition, pluralistic competition is stimulated by the accession of a variety of issues to the public arena: probably many of them, without a form of influence exerted by lobbyists, would never acquire relevance at EU level, due to their extremely localized nature – either due to their geographical marginality or their pertinence to a limited sector.

One problem, as we will discuss, strongly emerges and risks making this discourse collapse: more money seems to be able to produce a louder voice. Groups which are able to spend more often acquire more chances to produce a better and more refined form of influence, regardless of their relative importance. In other words, equality of entry is not guaranteed, as some groups are stronger than others (Bouwen 2001). As we shall see in Chapter 5, some answers can be offered to this argument. In any case, it is significant that interest representation contributes to

shape the input side of European democracy: this idea will be better developed in Chapter 6 to support the view that lobbying can be beneficial to the democratic model of the Union.

In addition, the highly fragmented decision-making system of the EU produces a structural impossibility, for any interest, to “capture” one of the main policy-making institutions (Greenwood 2011a: 4). As we will see in Chapter 4, the current environment of European lobbying is overcrowded, due to a rapid increase in the number (and type) of interest-representing entities which now populate the power arena in Brussels. Their abundance can be seen as a signal of the profound openness of the decision-making structure of Europe and as an indicator of its highly “porous” nature, decision-making structure of the Union, which allows an incredible number of both group and non-group actors to enter its doors. The positive result is that none of them can fully control any institution. No organized interest is so powerful to take over the Commission, the Council, the European Council or the EP, due to the extreme diversity which characterize our continent and the existence of intense inter-state cleavages. Multiple access points, therefore, make *compromise*, more than *domination*, the keyword of European power.

3.3.2. *Representativeness*

From the point of view of the throughput dimension of democracy, the idea of representativeness is decisively present in the EU institutional framework. In particular, nationalities have always been, and still remain, an important factor in European politics, as the composition of each institution is defined in relation to the countries where its members come from:

- the EP is composed of “representatives of the Union’s citizens” according to a “degressively proportional” representation, with a minimum number of six component per MS and a maximum threshold of ninety-six seats (art. 14.2 TEU);

- the European Council is composed by the Heads of State (or Government) of the Member States, plus its President and the President of the Commission (art. 15.2 TEU);
- the Council consists of a representative of each Member State at ministerial level (art. 16.2 TEU);
- the Commission is formed by nationals from the states parties to the Union “on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States” (art. 17.5 TEU)²⁴;
- the Court of Justice is made of one judge per Member State (art. 19.2 TEU).

Representativeness is granted not only to the diverse nationalities of the Union, but also to political parties (having their representatives in the EP), interest groups (in the Economic and Social Committee) and regions (in the Committee of Regions). In this context, lobbying is one of the instruments through which adequate representativeness can be guaranteed to the huge variety of interests which the assorted actors in the European political and social scene display. As van Schendelen (2002: 294) explains,

“[w]ith these groups nearby the officials act rationally by anticipating their demands even more and by establishing practices of recruitment and distribution that recognise lobby group’s wishes [...] By making available their experts, these groups make the work floors of the EU demographically more representative of the various sectors, regions and countries. By providing information, even if selective, they stimulate the representative and discursive character of the

²⁴ Art. 244 TFEU clarifies the principles according to which the system of equal rotation set forth in art. 17.5 TEU has to be designed: (a) “Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one”; (b) “subject to point (a), each successive Commission shall be so composed as to reflect satisfactorily the *demographic* and *geographical* range of all the Member States” (emphasis added).

opinions on policy held by the officials [...] By indicating their support, they promote a decision-making process more representative of the various interests”.

The author highlights the linkage existing between representativeness and, on the other side, experts, information and support, which are the three main contributions of lobbying from a “technical” point of view. As it will be clear, this dynamic is not unproblematic because, as it is often alleged, lobbying seems to provide an unbalanced representation to “richer” interests instead of fair visibility to all stakeholder in the various fields. There might be problems with the value of transparency, directly implied by the idea of throughput democracy. Many critics stress this point and accuse lobbyists of corrupting the open deliberative processes of the EU and making them subject to unclear dynamics of influence. Secrecy, in their view, might subvert the very ideas of representativeness and discursiveness. As we shall observe in Chapter 5, many of these charges have solid roots, but comparably strong replies can be proposed to limit their force and recover a positive role for European lobbyists in the light of enhanced democracy.

3.3.3. Consensual Decision Making

While evaluating the state of health of democracy in the EU, special attention should be paid to the idea of consensual decision making: it is a crucial element of the European landscape, partly linked to representativeness but also detached from it. For this reason it deserves a separated discussion, in order not to be confused with other similar, but not equal, dimensions.

Art. 15.4 TEU states that “[e]xcept where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus”. This is a powerful declaration: beyond the formal rules governing the decision-making procedures of the Union’, in particular the Qualified Majority Voting (QMV) system in the Council, “in all institutions the informal routine is consensually directed at reaching a broad compromise” (van Schendelen 2002: 285). The benefits of consensualism are

evident at both national and supranational level. In nation-states, consensual decision-making has been used as an influential tool to bridge the gap between strong internal differentiations among parties of the political system (Lijphart 1999). At EU level, decisions made by consensus (often even in secrecy, although some restrictions) have often helped avoid the otherwise almost inevitable nationalist characterization of some voting procedures (Heisenberg 2005: 83). The reason, as Anderson and Guillory (1997: 66) explain, is that “losers in systems that are more consensual display higher levels of satisfaction with the way democracy works than do losers in systems with majoritarian characteristics”: this dynamics occurs because minority parties in consensual systems perceive themselves as having a high impact on final legislation, although they are not able to dominate the decision-making process. Even if they cannot impose their will over others’ viewpoints, they feel included as they contribute to shape the final deliberation and enjoy the positive outcomes of being part of the system. . In a complex political system like the EU, the role of inclusion in decision making is absolutely central, and lobbyists may positively serve as promoters of consensus toward European policies.

As a matter of fact, lobbying is able to provide the Union with a decisive capacity for consensual decision making. By avoiding that sectorial interest remain outside the process of policy making, it can create a sense of inclusion able to avoid tensions or reduce their fierceness. Groups which are taken in the institutional mechanisms are able to express their concerns and necessities, and show their opposition to a certain kind of decision *before* it is ultimately made. Even if they are not able to obtain all they expected, this sense of enclosure can produce a significant normalization of their relationships with the European institutions. Conflicts can arise in a much softer way, or not emerge at all, if they occur in a preliminary phase, when parameters can be changed, numbers revised, allocations redefined. Nevertheless, as already mentioned, a problem might emerge in that lobbyists do not provide European interests with perfectly equal representation. The benefits surfacing from consensual decision making might be crowded out by the alleged

disparity between groups with large economic possibilities and groups which cannot afford a high-level form of representation of their interests before the institutions of the EU. An adequate balance would be the best solution, but it appears economically and politically difficult to propose and, most important, to enact. However, this is only a part of reality: money is able to pay a lot, but not everything. More money does not necessarily mean more power or influence. This argument, as well as many others concerning the apparent deficits of European lobbying with regard to democracy, will be recovered in Chapters 5 and 6.

3.3.4. Legitimacy and Accountability

As Mair (2007) notices, it is commonly perceived that a sense of democratic legitimacy exists in a political system only insofar as there is an effective system of democratic accountability able to make decision makers responsible for their deliberations before their electors. This statement, widely shared by many authors and the general public, generates one important consequence which is too often underestimated: it produces a direct connection between the notion of electoral accountability and that of legitimacy (Fabbrini 2010: 257). This tight link may work in a representative democracy at nation-state level, where governors are usually chosen by their population in a direct way, or at least through electoral dynamics which, in some way, tend to include citizens' will beyond formal rules. In the EU this limited notion of legitimacy does not find practical application. Only the EP is directly elected by the EU citizens, but:

- a) scarce interest surrounds European elections (as anticipated in Chapter 2);
- b) according to some scholars, these elections, held at national level, “are not in fact about Europe” but “about domestic political issues where the policies of different parties on issues on the EU agenda are rarely debated” (Follesdal and Hix 2006: 552).

Does it mean that the EU governance is not legitimate, excluding the case of the Parliament? Indeed, if we recall the discussion about the peculiarity of the Union as a political system on its own, we should admit that such a strong judgment would not pass the test of reality. As it is possible to demonstrate, “[t]he different notions and practices of output democracy belong to a process of europeanisation and vie with each other at the EU level. To some extent, they all exist in some form” (van Schendelen 2002: 288).

The direct relationship between the voters and their representatives is just *one* of the possible options to build up a notion of legitimacy. Certainly it is a sound criterion for evaluating accountability, legitimacy and responsiveness in nation states, but it shows its limitedness when dealing with a multi-level body such as the European Union. As well as the general idea of democracy, the particular notion of legitimacy too should be analysed without forgetting the specific political system in which it is observed. Majone (1996: 284-301), relying on the characterization of the EU as a “regulatory state” essentially made of “non-majoritarian institutions”, proposes a deep rethinking of the concept of legitimacy with regard to this kind of polity and demonstrates that EU legitimacy should not be assessed as it happens in a nation-state, but according to a different logic.

A variety of elements suggest that the Union seems to satisfy the requirements of output democracy.

- A system of checks on balances exists between the various institutions participating in decision making. The Commission usually exercises the right of proposal, whereas the EP and the Council are the legitimate holders of legislative power under the ordinary legislative procedure. Many subjects are entitled to enter the bargaining game throughout the whole process, as numerous access points are left open to external influence. Such an open and multi-composed legislative procedure contributes to the fulfilment of the notion of limited government and enhances European policies’ legitimacy.

- The rule of law is ensured by the complex mechanisms which lead to a formal decision by European institutions. An example is given by Figure 2.2, which represents the ordinary legislative procedure, but the same observation applies to all the other binding decisions too. Such complex (and too often slow and costly) procedures are grounded in the Treaties: this means that they have been approved by all the MSs in a formal meeting and that they underwent the processes of legitimization set forth in national Constitutions (which are differently opened to European legislation and thus devised various criteria for adhering to the Treaties and their modifications).
- Accountability is guaranteed although European institutions, with the exception of the EP, are not directly elected and thus do not respond to the “traditional” paradigm of a direct relationship between electors and governors. The EU institutions have their independence “guaranteed by the different source of their legitimacy, and thus by the different community of interests they represent” (Fabbrini 2010: 186). Even in the case of intergovernmental bodies (as the Council or the European Council), “the bonds of accountability are tight” (Moravcsik 2002: 611) as the representatives of the various states “can be re-instructed or recalled at will, often more easily than parliamentarians in national systems” (*ibid.*). Even without direct elections, they acquire legitimacy from their status of national officials and thus are accountable to the citizens of their state.

The impact of lobbying on the output notions of democracy may not appear uncomplicated. As said above, the legitimacy of European institutions emerges from their bonds of accountability with national electors. The EP relies on the nation-state based concept of a straight electoral link between governors and governed. The Council and the European Council are characterized by an indirect connection between nationally-elected (or selected) heads of states, heads of government or ministers, and citizens of the MSs. The members of the Commission are independent individuals and the President is proposed by the European Council and elected by the

(directly elected) EP. Strong ties exist between national Parliaments and European institution, which reinforce the idea of a direct legitimacy not requiring any form of external intervention. In addition, the notions of limited government and rule of law are strongly entrenched in the Treaties, on their turn grounded on the approval of twenty-seven countries, under the domestic provisions about the adaptation of domestic law with international (European) law.

However, beyond these mechanisms, “[t]he achievement of *legitimacy* is, indeed, frequently at least partially managed by lobby groups” (van Schendelen 2002: 297). For instance, they can promote sympathy for specific policies or, more generally, encourage the sharing of some values which are “captured” by European institution and used as vehicles for shaping deliberations and practical measures. The absolute faith in the goodness of a free and open market, which seems to be a matter of fact in contemporary Europe, is a powerful instance of this dynamics. At the present time, in the midst of a global economic crisis, it seems at least debatable that the “invisible hand” can *always* and *undoubtedly* promote the good for the whole society, as Adam Smith would say. It was comparably hard to believe for the polities which, after 1989, abandoned a long past shaped by the Communist propaganda, predicated on extreme egalitarianism and collectivism. However, the free market paradigm has never been put under serious pressure: it always remained (and still is) the real paramount of European integration, despite the difficulties it faces day by day. It is one of the so-called “fair practices”, a shared value of Europe, able to bring together almost thirty MSs with different national economic policies. Interest groups, in this sense, have contributed to diffuse the view of a free market compatible with the Treaties, and also acted as a checking-and-balancing power in order to involve different actors in the great game of the European Single Market. It is hard to recognize this merit as this achievement appears unquestionable today, but the establishment of the liberalist paradigm was actually a challenging task for European institutions, which benefited from the contribution of interest representatives.

3.3.5. *Citizenship*

The feedback notion of citizenship is not implemented in a homogeneous way at EU level. Many authors argue that there is no “European *demos*”, meant as a cohesive population sharing common values, traditions and aspirations. It should not be a surprise. It is quite accepted that, despite economic and political integration, the heterogeneity of the twenty-seven MSs has not disappeared and is not going to fade away within a foreseeable future. The last waves of enlargement, and the future ones, represent an amplification of this differentiation: in particular, the eastward movement of the EU has brought into Europe a number of peoples that have very few points of contact with their Western partners, especially due to their recent history. In other words, there is not a *demos* like the “people of the United States”, as presented in the Preamble of the U.S. Constitution. European national identities are still there, and they are not going to leave the floor to a real European *people*, despite the attempts, made by the recent amendments to the Treaties, to introduce a sense of belonging to a “Union of citizens” rather than just an Economic Community²⁵.

However, although individual citizenship has not reached a satisfactory level of maturity, “corporate citizenship, in the form of attentive and participatory civil organisations, to some degree representing the people as individuals as well, is highly developed” (van Schendelen 2002: 290). As we shall see in the following chapters, many associations aim to provide citizen interests with loud voice and thus wish to empower people who, otherwise, scarcely participate in European public life. If tolerance does not seem yet to be realized at the highest possible level – illegal immigration being one of the core reasons of scepticism by European Mediterranean populations towards people coming from areas close to our continent – a step ahead can be marked by the binding character assigned by the LT to the Nice Charter of

²⁵ The introduction of the European citizenship (presented in art. 9 TEU) is emblematic in this sense. However, the failure of the project of a “European Constitution” in 2004 was a strong signal of Europe’s unpreparedness to consider itself as a real state, with its own flag and anthem. The strength of nationalities and the statist cleavages which characterize the Union represent an enormous obstacle to the creation of a sense of a shared community of fate.

Fundamental Rights²⁶. In addition, art. 6 TEU opens the way to the EU's accession to the ECHR and recognizes the existence of "constitutional traditions common to the Member States": these elements can contribute to the establishment of a regime of tolerance and mutual recognition within the Union, and expresses an aspiration and deep commitment to a progressive continental cohesion. The ultimate target of this dynamics should be closer integration and real European citizenship: without these elements, Europe can hardly survive the challenges that further enlargement will set.

Citizens have the possibility to effectively feed the events happening in Brussels back in many ways, ranging from indirect to direct measures of response.

"What happens inside the EU system can flow to the outside at any moment. [...] If the citizens react, they do this at least through their civic spirit. They may develop new beliefs, values or judgments regarding the EU or confirm old ones. In some cases they even react by civic behaviour. This may be in their neighbourhood, society at large, the market or the domestic political system, thus potentially feeding back through indirect channels. Or they may react by more direct civic behaviour, for example by lobbying in Brussels, with the objective of bringing their civic spirit to the attention of EU officials" (van Schendelen 2002: 300).

Citizen interests are more and more represented in the European decision-making system. As we shall see in Chapter 8, the European Citizens' Initiative (ECI) has been regarded by many scholars as one of the possible instruments for strengthening democracy from the side of citizenship, thus contributing to fulfil both the feedback and the input notions of democracy, in a circular movement which reconnects the two sides of decision making. Values and practices are reinforced by the response that people give to EU actions: lobbies, as expressions of citizens'

²⁶ Art 6.1 TEU: "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties [...]"

needs, can communicate them to the Union's policy makers and thus contribute to make European institutions aware of the population's feelings and thoughts.

3.4. Conclusions

This chapter has focused on the notion of democracy conjugated at European level. I have introduced a wide concept of democracy which is dissimilar from the abstract characterization that too often accompanies it. Relying on van Schendelen's "notions of democracy", I have presented the critical points to be observed in order to evaluate the functioning of this political system in general and, then, in the specific context of the EU. From this analysis some conclusions follow:

- assessing the performance of such a complex system is extremely arduous, as many dimensions must be considered at the same time and put within a single dynamic framework;
- European democracy is not "ill" *per se*, as the advocates of a European democratic deficit would rapidly assert;
- there are both positive and negative records in this field, mostly depending on the theoretical approach to the problem of democracy and the nature of the Union;
- some notions still need to be consistently fulfilled (as those of citizenship, tolerance and identity);
- lobbying has a varying impact on each nation of democracy, and none of them can be considered independent from the influx of interest representation.

This chapter has introduced the basic concepts which will serve as guidelines toward a deeper analysis of the intercourse between lobbying and democracy in Europe. The basis for a critical observation of their interaction has been clearly set forth: §§3.3.1-3.3.5 have provided a "balance sheet" of the current status of European democracy, but they have also briefly highlighted the ways in which lobbying may impact it. The following chapters will deepen this kind of analysis and

will look at the complex relationship between the democratic model of the EU and the activities of lobbies: in doing this, they will rely on the notions introduced in the previous pages.

4. A Portrait of European Lobbying

The first three chapters focused on the theoretical framework necessary to properly analyse the contribution of lobbying to the ongoing process of European democratization. In particular, Chapters 2 and 3 highlighted the specificities of the European Union in terms of institutional setting and democratic model: they defined the EU as a compound democracy with multiple access points to decision making; then, they delineated a definition of European democracy by relying not on absolute and abstract concepts, but on specific criteria observed “at work” in the context we are interested in. The two necessary elements of our analysis are now available and properly defined: both the idea of interest representation and that of EU democracy were widely characterized, and the bases for an examination of their possible *liaison* were set down.

Before moving the core part of the thesis (Chapters 5-6), the following paragraphs have two main purposes: *a)* reconstructing the emergence of lobbying in the Union, from its origins to the current configuration; *b)* defining what the interests at stake and who the European lobbyists are. Without addressing these issues, it would be difficult to understand the deep impact of interest representation on the European democratic model in practice. All discourses would remain hanging in a well defined theoretical framework, but they could hardly be conjugated into the real world of EU politics. In this sense, the current pattern of lobbying needs to be analysed, and this is a landmark step in the light of the purpose of the present work.

4.1. The Evolution of European Lobbying

4.1.1. *The Years of the National Route (Beginnings-1987)*²⁷

Since its creation, the European Union (originally called European Community) proved to be a privileged target for pressure and interest groups. Many reasons contributed to this fact, many of which have already been analysed in the previous chapters:

- the multi-level structure of the European system of governance;
- the absence of a government *stricto sensu*;
- the multiplicity of access points to decision-making structures;
- the negotiation-style form of interaction characterizing European institutions;
- the collaborative form of government of the Union, aiming at cooperation and participation in decision making and avoidance of jurisdictional conflicts (Palermo 2005: 120).

The birth of the first European grouping of states, the European Coal and Steel Community (ECSC), paved the way for the accession of lobbies to Europe. The first representation offices were installed in Brussels; progressively, *ad hoc* institutional spaces – namely, the European Economic and Social Committee and the Committee of Regions – were inaugurated for the representation of interests in the European policy-making process. *Consultation*, more than government, became the real keyword for describing the reality of European politics. An increasing need for inclusion marked the working of the Community and its institutions, which more and more tried to attract the favour of the “civil society” and avoid any kind of conflict with it. As Greenwood (2011a: 204) stresses, “[t]he multi-level, multi-component,

²⁷ “National route” of communication means “the use of other national structures to engage EU decision-making” (Greenwood 2011a: 25). It is particularly relevant in the case of decisions to be taken by intergovernmental agreements and negotiations, in which national governments play a decisive role. In such instances, lobbyists prefer to exert influence over national decision makers as an indirect way to lobby Brussels. The use of this “route” is dependant upon a variety of factors which determine its effectiveness (the role and the strength of MSs, the nature of the decision to be made, the permeability of national organizations to organized interests, the degree of deliberation involved in the topic addressed).

decision-making architecture of the EU is oriented towards consensus seeking and leaves little room for adversarial contestation”. This was, and still is, a remarkable peculiarity, considering the process of European enlargement which still pushes the borders of the Union far away from the core six countries which gave rise to the ECSC in the 1950s. Much more countries are part of the contemporary European polity and an incredibly high number of interests are at stake anytime a decision is made, especially in some crucial fields such as the agricultural sector.

Despite this systemic search for consensus and interest group involvement, in the first three decades following the establishment of the European Community, European interests were primarily promoted by bringing pressure to bear on MSs governments, leveraging union, trade organizations and professional associations to access national representatives (Hauser 2011: 689). Lobbying in Brussels was not the wide and diffused activity it has recently become. It could be mostly defined as a *sui generis* form of diplomatic relations, conducted at the highest levels. The number of lobbyist was limited, if compared with current figures. Except some huge business organizations, rarely lobbyists had their own offices as they do nowadays. There was also little involvement of public opinion in European matters, which were not part of the common political debate. “Civil society”, in its largest meaning, was not yet a central actor of European politics.

Lobbying was characterized by a strong *national* focus. Three reasons can explain this considerable reliance on a “national route” of influence:

- a) the EC had a weak political mandate;
- b) the states parties to the Community could express a veto power in the Council of Ministers, which required a unanimous (consensual) vote in order to pass legislation;
- c) in general, there was a little degree of participation in communitarian matters.

The situation began to change after the EP became a directly elected body, in 1979. A progressive *Europeanization* of public policy occurred, with a significant

and continuing shift of functions from nation-states to EU institutions. As van Schendelen emphasizes, this phenomenon can be efficaciously defined as “the increase of crossborder public and private issue-formation in Europe” (van Schendelen 2002: 31)²⁸. Since then, firms, industries and organizations increasingly valued the possibility to enjoy the services of experts who, being located in Brussels, could make them aware of the Union’s dynamics (especially in the crucial sectors for their principals) and “educate” political representatives by *communicating* some specific needs. Physical proximity to target institutions became crucial in order to get constantly informed on what happened in the Community; lobbying offices, therefore, rapidly mushroomed. The EC was becoming a crucial arena for policy making across European states: the result was a fast institutionalization of the interaction between the Community and the various interest groups which already filled the political space in Brussels. Mazey and Richardson (2006: 248) explain this tendency by relying on three assumptions which will prove analytically useful in our discourse:

- 1) “bureaucracies have a tendency to construct stable and manageable relationships with interest groups in each policy domain as a means of securing some kind of ‘negotiated order’ or stable environment”;
- 2) “interest groups generally exhibit a preference for state bureaucracies as a venue for informing themselves about and influencing public policy”;
- 3) interest groups will seek to exploit new opportunity structures or venues as a means of maximizing their capacity to shape public policy to their own advantage”.

²⁸ For an analytical and complete discussion of the idea of Europeanization and its vectors, see van Schendelen (2002: 30-34). Here the author addresses the problem of the source, the direction and the outcome of Europeanization of Member Countries and maintains that a general, even if not absolute, dichotomy between the national and the European level, as well as between public and private sector. In this light, he distinguishes four vectors of Europeanization: *a)* from European public sector to national public sector; *b)* from European public sector to national private sector; *c)* from European private sector to national public sector; *d)* from European private sector to national private sector.

Precisely, European institutions were regarded as “new opportunity structures” in the light of a progressive shift of public policy from nation-states to Brussels. At the same time, the institutions – particularly the Commission – began to “recognize the benefits of being open to outside input” (European Parliament 2003: 1). Progressively, the necessity to provide them with information produced a development in the role of lobbyists: they started attempting to influence and direct the decision-making process in a reactive but also proactive way. In this way, their position was institutionalized and strengthened. The EC, contemporarily, showed its increasingly dependence upon elite interest groups as proxies for a wider notion of “civil society” (Greenwood 2011a: 2)²⁹.

Although European institutions and interest promotion were becoming more and more interrelated realities, until the end of the 1980s, lobbies continued to show a preference for a national route of influence. A lack of participation still characterized the European system of governance, with too little involvement of interest-bearer organizations in the communitarian decision-making process. In this light, the Cecchini Report (1988) invited European business interests to more actively participation in EU governance: “[b]usiness cannot afford to sit passively by... [t]here is a need for more active political involvement, in the sense of constructive input to policy” (European Commission 1988, quoted in Hauser 2011: 690n). In other words, it was the Commission itself which recognized, as time passed by, the necessary involvement of lobbies in European policy making as a positive and constructive instrument.

²⁹ This is a distinctive point in the discourse about the EU. In Chapter 2 I explained the need to lobby the Union as partly emerging from the remoteness of citizens from European affairs due to the low level of engagement in continental public life. This weakness of representative democracy opens both problems and opportunities in the complex relationship between lobbying and democracy, as we shall see in Chapters 5 and 6. Historically, it led to a progressive empowerment of civil society – or more precisely, “organized civil society” – as a structural component of the decision-making system, through an extensive set of regulations which defined lobbies’ accession to the European public sphere and norms for their behaviour. We will review some of these rules later in this chapter.

*4.1.2. The Years of the Brussels Route (1987-2009)*³⁰

A real turnaround occurred in 1987. The Single European Act (SEA) substantively changed the TEC and foresaw the creation of a Single Market by 1992. Progressively, European interest promotion activities emerged in all their significance as a result of two distinct dynamics: the progressive shift of regulatory functions from MSs to continental institutions and the introduction of QMV on Single Market issues (European Parliament 2003: 3).

With the negotiations for the Maastricht Treaty and its entrance into force, the European Economic Community (EEC) was transformed from an almost solely intergovernmental economic organization into a real political entity, aiming not only at pooling capitals and resources in a Single Market, but also (and most importantly) at the integration of peoples in Europe. It symbolized the triumph of Jean Monnet's functionalist project, initiated in the 1950s and still waiting for a full completion. In the light of a Union dealing with a huge number of different matters, the European institutions became more and more important as targets for lobbies.

Europeanization of lobbying was compelled by the increasing delegation of vast regulatory measures by MSs to European institutions, with an incredible extension of the competences of the Union, whose role grew exponentially. As Coen (2007a: 334) explains,

“The gradual transfer of regulatory functions from member states to the EU institutions in areas such as product quality, health and safety, employment and competition law, and environmental standards has contributed to the

³⁰ “Brussels route” of communication makes reference to a lobbying strategy which “involves representation to the European institutions themselves, whether alone or through collective channels organized at EU level” (Greenwood 2011a: 25). Lobbies following this “route” try to exert influence directly on EU institutions, without passing through national organizations. The increase in the relevance of this strategy is linked to the introduction of formal rules defining the relationship between interest representatives and EU institutions. In addition, the progressive shift from an “intergovernmental” Union to a real “supranational” Europe made direct advocacy of interest in Brussels more and more attractive, resulting in an escalating number of lobbyists' offices located in Belgium.

Europeanization of interest groups [...] Faced with the increased regulatory competencies of the EU and concurrent introduction of qualified majority voting on Single Market issues, interest groups and lobbyists increased dramatically in number and level of activity throughout the 1990s”.

At the same time, EU institutions became more and more reliant on interest-promoting lobbies in order to acquire technical information on the issues at stake. The flux of information required at decision-making level increased during the time, together with the expansion of the areas subjected to European competence and subtracted from the domain of MSs: in this way, interest groups found more and greater opportunities to exert their influence on legislation passed by the European Union.

As a consequence of these dynamics, an incredibly high number of interest groups, if compared with the past, began to populate the European decision-making arena. In 1992, the Commission published a Communication entitled *An Open and Structured Dialogue Between the Commission and Special Interest Groups*, aiming to install a regulated, transparent and organized interaction with lobbies. Some “guiding principles” were enunciated, among which it is remarkable to recall:

- the “preservation of the open relationship between the Commission and special interest groups, adhering to the principle of an open administration”;
- the “equal treatment of all special interest groups, to ensure that every interested party, irrespective of size or financial backing, should not be denied the opportunity of being heard”;
- the possibility, “for Commission officials, when dealing with representatives of special interest groups, to know exactly who is who and who does what”;
- the “adoption of simple procedures calling for a minimum amount of human and financial resources and administrative efforts”.

In addition, while recognizing the right of special interest groups to organize themselves in a free manner, without any kind of public interference, the

Commission encouraged them “to draw up voluntary codes of conduct”, which should contribute to enhance transparency in the relationships between lobbyists, members of the institutions and European officials.

In numerical terms, the 1992 Communication delineated a situation which, with the benefit of insight, could be interpreted as an anticipation of the currently overcrowded lobbying environment. The main data listed in the Communication are summarized in Table 4.1 below.

Table 4.1 The lobbying environment in 1992

CATEGORY	NUMBER
Special interest groups of various types in Brussels	~3,000
Employees in the lobbying sector	~10,000
European and international federations	>500
Offices representing local authorities (<i>Länder</i> , regions, etc.)	50
Individual firms with direct representation	>200
Consultants with offices in Brussels	~100
Law firms in Belgium specializing in Community law	100

The advent of the new millennium did not bring substantial modifications to this pattern. The small size of the European budget makes the Union a primarily regulatory authority (Hauser 2011: 691), relying on a small group of decision makers. The traditional low level of participation in EU-related matters has been partly filled by interest groups as “a natural outlet for private and civil society actors to pursue their respective goals” (*ibid.*).

4.1.3. After Lisbon

The Lisbon Treaty entered into force in December 2009. It introduced some innovations which have further changed the framework in which lobbyists operate in

order to channel their clients' demands to decision makers at European level. Some provisions contained in it can be observed as responses to specific critiques raised against the EU as an "undemocratic" organization. They address the problem of the alleged democratic deficit especially from the point of view of transparency: in this light, it seems worthwhile to introduce them here, as they will prove useful in the analysis, developed in Chapter 7, about the alleged violation of transparency by European lobbyists.

- a) The institutions are not subject to significant new accountability requirements, but the extension of the previously-called procedure of co-decision (that is now the "ordinary legislative procedure"³¹) testifies an increase in the role of the popularly-elected EP, often perceived as the sole potentially democratic institutions because it is legitimized by the direct vote of European citizens.
- b) The Treaty requires the Council to meet in public "when considering and voting on a draft legislative act"³². The same occurs with regard to the EP, but no requirement is set forth for the Commission or the European Council. It also improves the public right to access to EU documents, as a response to the diffused claim for more transparency: "[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies [...]"³³.
- c) The increased stability provided by the introduction of a semi-permanent Presidency of the European Council, together with the double role assigned to the High Representative for Foreign Affairs (Vice-President of the Commission and head of the Council of Foreign Affairs) is meant to give EU citizens a "greater sense of shared identity" (Sieberson 2007/2008: 454), which should help them feel more and more like a "European *demos*". As a matter of fact, the signatories of the Treaty, in the Preamble, declare themselves "resolved to continue the

³¹ Art. 289 TFEU.

³² Art. 15.2 TFEU.

³³ Art. 15.3 TFEU.

process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity”.

- d) The EP has a greater role under the Lisbon Treaty: it must be informed by the Commission if the latter does not act when the former requests it to initiate legislation³⁴; in addition, as mentioned above, co-decision has become the ordinary procedure.
- e) National parliaments play a more important role, even if largely consultative, with respect to proposed Union legislation, checking their compliance with the principle of subsidiarity³⁵. In case of violation of this principle, for example, they can enact the so-called “yellow-card procedure” (one third of the national parliaments can reject a legislative proposal).

From the more specific point of view of lobbying, the LT has introduced some core innovations (Hauser 2011: 687-689) which are supposed to change, although not substantially, the landscape of European interest promotion.

First, the Treaty has reinforced the role of lobbying as a source of legitimacy for a democratic governance of Europe. As Frosini and Petrillo (2012: 67) underline, for the first time pressure groups are openly mentioned in a text which aims to acquire constitutional nature. The LT, therefore, places citizens, parties and lobbies at the same level as expressions of civil society, and assigns them equal importance. Consequently, the EU institutions are strongly required to adopt opportune measures to set up forms of interaction with such entities: this provision indirectly brings to life a real *right* for interest groups to participate in the decision-making process of the Union, and creates a formalized space for their inclusion in Brussels politics.

Second, by extending the QMV in the Council to a huge variety of matters which previously required unanimity, the drafters in Lisbon followed a path of

³⁴ Art. 225 TFEU.

³⁵ Art. 69 TFEU.

continuity with the previous modifications of the fundamental Treaties of the Union³⁶. Analysts of the EU often point out that the introduction of QMV was one of the main drivers of the development of European lobbying in the 1990s: in the same way, “it is not unreasonable to hypothesize that expanding of QMV will drive a similar increase in demand for access to Europe’s institutions” in the post-Lisbon political environment (Hauser 2011: 687).

Third, a similar increase in rewards for lobbying emerges also by the introduction of a “double majority” requirement for passing legislation in the Council, which is likely to increase the number of legislative proposals having a successful outcome³⁷. Lobbyists may find it more valuable to accede to the policy-making arena, as the influence they can exercise is now able to cover a wider set of interests and, possibly, a larger number of EU legislative acts (both regulations and directives).

Fourth, the “double majority” system makes populous states vital for passing legislation. This might imply a significant increase in lobbying actions directed toward MSs with more citizens (currently Germany, France, United Kingdom and Italy³⁸). From a process of steady Europeanization of interest representation, a partial step back might be made: national institutions of MSs are likely to acquire more power in some (limited) areas in European policy making. For instance, as

³⁶ For a detailed analysis of the role of QMV in the European decision-making system, its implications in terms of national sovereignty, and the way in which it has been enhanced by the LT, see Sieberson (2010), in particular Parts 2, 4 and 5.

³⁷ Art. 16.4 TEU states that “[a]s from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union”. Passing legislation under the previous procedures, set forth in the Nice Treaty, used to require 74% of weighted votes, the positive vote of a number of states representing 62% of EU population and a simple majority of MSs. According to Sieberson (2010: 688), the requirement of 74% favourable weighted vote was one of the main obstacles to legislation to be passed, and its elimination will probably allow the Council to reach a positive legislative outcome in an easier way than ever before. In addition, this procedure assigns a higher relevance to population representativeness (from 62% to 65%). These effects, according to the author, should be enough to crowd out the inverse impact of the “double majority” criterion, that is, the increase in the number of MSs whose support is necessary in order to pass legislation (from fourteen to fifteen).

³⁸ Official EU data about MSs are available at http://europa.eu/about-eu/countries/member-countries/index_en.htm, accessed on 1 June 2013.

highlighted in point *e*) above, national parliaments acquire an influential role – even if many scholars express doubts about the effectiveness of such empowerment.

Fifth, the LT has introduced a High Representative of the Union for Foreign Affairs and Security Policy as the “head” of the EU’s activities regarding external relations and security. The role of this figure is, theoretically, crucial, as he/she is one of the Commission’s Vice-Presidents³⁹, presides over the Foreign Affairs Council⁴⁰ and ensures the consistency of the Union’s external action⁴¹. The Commission’s President too is assigned more power, as he/she can now ask for the compulsory retirement of Commissioners and even the Vice-President⁴². In this light, both the High Representative and the President are likely to become critical targets for EU lobbyists; more generally, demands for access to the Commission, as well as other institutions, will be probably enhanced by the changes operated by the LT.

Sixth, the increased number of competences in the hands of EU institutions evidently stresses the need for higher reliance on interest representation as a means of conveying technical knowledge on matters European decision makers cannot be expert of. The EU is now responsible for a wider group of topics, ranging from a common external action to fundamental rights (under the Nice Charter, which is now binding in the Union’s juridical space). As we shall see in Chapter 6, complex issues require technical expertise as decisions at European level cannot be made without taking into account the numerous repercussions they can have. Such considerations are linked to the problems of political legitimacy or democratic rule: it is hard to consider legitimate a policy decided without the necessary knowledge it requires. A lack of technical expertise inevitable affects the Commission in face of new and pressing problems: it is a matter of concern, but it can also be a possible access route to Brussels for lobbyists, whose role might become more and more essential in the

³⁹ Art. 17.4 TEU. Art. 17.7 TEU certifies this relevance by stating that the High Representative, as well as the President of the Union and the members of the Commission, shall be subject to a vote of consent by the members of the EP.

⁴⁰ Art. 18.3 TEU.

⁴¹ Art. 18.4 TEU.

⁴² Art. 17.6 TEU.

context of a multi-tasking Europe which aims at a further expansion of its areas of competence.

4.2. Interest-Promotion Actors

The first question, when dealing with a complex problem as that of lobbying and democracy, is “who?”. In other words: who are the subjects of our study? In Chapter 1, I derived the notion of lobbying by progressively specifying the idea of group: I conjugated the latter with the aim of promoting an interest and the necessity to accede to the political arena, and I shaped the definition in terms of communication and advocacy functions. Now we need to understand who matches this characterization, so that we can target our discourse and further define it. In order to make the answer exhaustive, it is necessary to delineate the landscape of interests at stake in Europe, which represents the substantial framework in which interest-promoting actors are engaged.

4.2.1. The Variety of Interests in the European Scene

An incredible variety of interests populate the European landscape. As Greenwood (2011a: 8) simply notices,

“almost every conceivable interest is organized in some way through formal collective entities [...] there are interest organizations organized at EU level for mustard seed producers, handwriting analysts, fish pathologists, chimney sweeps, beauticians, fairground hands, aquarium trustees, anti-capitalist/globalization-oriented networks, Muslim women, retired people, and the unemployed”.

Such a multi-component, and even confused, picture clearly shows the variety of interests promoted before European decision-making bodies. There is no way to

fully catalogue them, and many attempts to set a categorization of European interests have failed. Most important, the European Transparency Register (ETR), a key instrument in the light of the discussion on transparency developed in Chapter 7, fell victim of the same kind of obstacle, as it left to the organizations the possibility to choose the category in which they wanted to be included: however, many cross-sector organizations exist, and episodes of miscategorization often occurred (and still do).

A typical distinction is usually drawn between public and private interests. Nevertheless, many debatable assumptions underlie this division, which are fiercely contested by some authors, as Young and Wallace (2000). The EP Working Paper (European Parliament 2003: 5) efficaciously summarizes the following “false implicit assumptions”: “that there is such a thing as a single or predictable producer interest; that producers are in accord; and that producers, by pursuing their own ends, do not benefit the public good”.

Those who support a clear cleavage between public and private concerns tend to express a strong faith in the philosophic grounds of free market and liberalism. Admitting the existence of monopolies, or the fact that free interaction among economic actors does not bring the highest result for society, is contrary to the principles formally introduced by Adam Smith in his *Wealth of Nations* (1776) and replicated by a number of subsequent authors, whose intellectual works have rested on the notion of methodological individualism. On this basis, the distinction between public and private cannot configure a strong demarcation between the kinds of interests at stake in Europe. If we recall Smith’s predecessor, Bernard de Mandeville, and his masterpiece, *The Fable of the Bees: Or, Private Vices, Publick Benefits* (1705), this conclusion becomes immediately clear. Another wrong assumption, highlighted by the EP Working Paper, confirms this conclusion: “that public interest groups always represent what is objectively best for society, while private interest groups are selfish” (*ibid.*). No straightforward moral label can be attached to public and private interests without falling into a generalization mistake.

This is why an alternative and broader distinction can be proposed between producer and civic interest, able to escape the unacceptable moral connotation that, without any kind of validation, accompanies the public/private dichotomy. Civic interests are “interests other than those of producers that are relevant to both individual items of market regulation and their broad policy impact” (European Parliament 2003: 6). They are divided into environmental, regional, social and consumer issues. Producer interests regard the side of production and the strict relationship existing between producers’ activities and European regulatory measures. The components of this category are business, professions and labour.

More categories have been introduced during the time. The Commission, already in 1992, distinguished between non-profit (largely professional) organizations and profit-making (individual) organizations, although it recognized that “such a distinction [...] is somewhat arbitrary” (European Commission 1992: 1). In November 2002, the Commission’s Secretary-General (quoted in European Parliament 2003: 5) released a list of non-profit organizations, made up of about 700 groups which were divided into twenty-seven categories (see Table 4.2 below). They provide a good “photography” of the spectrum of interests which populate the decision-making arena in Brussels, but they are clearly not sufficient to exhaust the whole landscape.

Table 4.2 Non-profit organizations as listed by the European Commission (2002)

Agriculture and rural development	Competition	Consumer protection
Culture	Development	Economic and financial affairs
Education	Employment	Energy
Enlargement	Enterprise	Environment
External relations	External trade	Fisheries
Health	Human rights	Humanitarian aid
Information society	Internal market	Justice and home affairs
Overall EU policy matters	Regional policy	Research
Social affairs	Taxation	Transport

Source: European Parliament (2003)

Greenwood (2011a), in his analysis of the different interest which animate the diverse organizations in Europe, without expecting to be exhaustive, makes reference to:

- business and professional interests;
- labour interests;
- citizen interests.

It is easy to observe that a certain degree of overlapping exists between the various classifications introduced above. For instance, Greenwood's "citizen interests" might partly coincide with EP's notion of "civic interests". However, each categorization presents distinctive features and shades, all of them contributing to a piecemeal emergence of a comprehensive landscape of the issues which shape decision-making debates at European level. More than as an obstacle, this practical impossibility to unify the numerous catalogues of interests should be assessed as a *resource* to examine the complexity of the matters at stake. It is a testimony of the variety of Europe and its multi-faceted nature. In a continental organization made of twenty-seven Member States, hundreds of nationalities and thousands of languages, it is simply impossible to reduce the incredibly high degree of diversity to unity.

In this sense, a fully inclusive categorization takes the form of a theorem of impossibility. Its natural failure is just a structural consequence of the complex European architecture. In this light, it should not prevent us from going beyond such unfeasible task: more than assigning a label to any kind of interest promoted in Europe, we need to answer the question on who lobbyists are. We are about to define them in terms of group and non-group actors, and the broad categories introduced in this paragraph should serve as a paramount for understanding why some interests are promoted by groups and others are pushed by individual lobbies.

4.2.2. Who Are the European Lobbyists?

There is no complete list of European lobbyists. The ETR is a good source of information on the population of interest groups in the EU, but it cannot be completely relied upon. The reason is straightforward: every entity (both groups and individuals) which wants to register with it can just insert its data in the European database. In this way, as Greenwood (2011a: 9) fairly notes, the ETR has been often used as a “free advertising space” by groups aiming to promote themselves in the continental public scene. As a result, the Register is overcrowded, but also incomplete, as it has not been designed as a mandatory instrument for interest representatives who wish to interact with the European institutions. They can decide whether to make a registration or not, without any formal sanction in case they remain outside it. Conversely, the CONECCS database – the categorization system which preceded the ETR – risked providing an under-estimation of the European lobbies, as its rules of accession were particularly restrictive.

A broad distinction exists between groups and non-group actors in the field of interest advocacy. A clear portrait of the former category is depicted by van Schendelen (2002: 46):

“They come from the public and the private sides of both the member countries and many foreign ones. Brussels, the EU capital, is the main location of their activity. Most interest groups make only irregular visits to this meeting place, for example when something of relevance to them is at stake in a Commission expert committee [...] The rest of the time they try to monitor and to influence what happens at distance by remote control, for example via a trade organisation, through their domestic government or a consultant. Like their domestically based equivalents, most of these EU-based interest groups have a private sector background, either profit-making or nonprofit-making and their numbers continue to increase”.

No appraisal of their number can be considered as definitive or completely reliable. Scholars agree on the impossibility to have full faith in data coming from European databases or other directories, in which entries are regulated in different manners and provide dissimilar results. One of the most cited figures regarding EU lobbyists is the one mentioned by former EU Commissioner for Administrative Affairs, Audit and Anti-Fraud (now Commissioner for Transport), the Estonian politician Siim Kallas. In 2005: during his speech at the European Foundation for Management, at Nottingham Business School, he stated that “around 2,600 interest groups have a permanent office in the capital of Europe”. Greenwood (2011a: 12-13) raises doubts about such a high number, which were maybe inspired by Kallas’s need to drive support toward the transparency initiative he was promoting at the time of the speech. Greenwood compares various sources of data, and obtains a total estimate of EU-level groups between 1,300 and 1,450, although both underestimations and overestimations are possible. Two reasons explain this uncertainty:

- some restrictive rules for cataloguing groups might have produced the effect of not including some entities which actually behaved as interest-promotion groups in the sense we are referring to;
- some entries are “old”, and maybe they do not reflect the current situation anymore as they have not been properly updated, resulting in a number of groups which formally appear in the total figures listed above but are no more operating (at least at European level).

The most relevant aspect is the steady increase in the number of lobbying groups since the beginnings of the 1990s. One reason can be derived by the discussion developed in §4.1.2 about the years between 1987 and 2009. The progressive, but rapid, expansion of the role of the newly born European Union far beyond the competences assigned to the defunct European Economic Community made it valuable to groups to accede to the EU political arena in order to promote the interests of their clients. In addition, an exponential growth of citizen interest

organization occurred since the beginning of the new millennium: this dynamics further pushed upwards the number of groups operating at European level. In relative terms, they represent now about one third of all EU associations, while the share constituted by business groups, in comparison, has significantly decreased (Greenwood 2011a: 13).

Groups can represent either the interests of entire constituencies or specific issues of a particular sector. In both cases, “the federated (associations of national associations) format predominates throughout virtually all interest categories” (*ibid.*). In other words, EU organizations are usually a whole made of a series of national-based organizations which mix together in order to acquire visibility before European decision makers. This happens partly in response to the Commission’s open recognition that, although it is committed to the aforementioned guiding principle of equal treatment of all interest groups, it “tends to favour European (con)federations over representatives of individual or national organizations” (European Commission 1992).

Nevertheless, this “compound” feature of EU groups does not expresses itself into numerous organizations employing hundreds lobbyists. Instead, European groups are generally characterized by a *narrow* membership. In particular, the business sector, despite its numerical significance on the total of EU organizations, is peculiarly marked by a strong fragmentation, as many “sectoral” groups exist which represent tiny segments even within a specific industry. The result is that the number of EU business associations with more than twenty-five staff is extremely limited, contrary to what could be normally expected (Greenwood 2011a: 16).

The second category (non-group entities) can be decomposed into five kinds of actors (*ibid.*: 17):

- 1) representations from regions;
- 2) consultancies and law firms providing services on commercial terms;
- 3) company public affairs offices;

- 4) think tanks;
- 5) activists with a website.

This is a large-scope list, which does not aim to reflect the vast amount of interest-promotion entities which escape the definition of “groups”. It includes very different actors: public opinion difficultly see them as belonging to a same category, with the sole exception of consultancies, law firms and public affairs offices of the biggest companies.

When dealing with lobbies, common citizens often think about large firms or industries trying to push their interests into the decision-making rooms in Brussels in order to increase their profits by seeking a favourable form of regulation. There is some rationale behind this biased approach to the matter. Trying to exert pressure on EU legislation implies considerable costs: for instance, it may be necessary to establish a permanent office in Brussels, where the vast majority of decisions are made and where the possibility to influence policies, even through “underground” channels, is higher. In this sense, it is reasonable that large firms can display a better capacity to direct the European public affair management process, obtaining better results than other entities which are thus generally excluded from the count of European lobbies.

Actually, as we shall see in the following chapters, the landscape is much wider, and it includes a variety of actors which can strongly contribute to the democratization of the European Union. Non-group entities as activists, think tanks, research centres and similar are able to exert strong influence on European governors, through both institutional (formal) channels and informal routes. Their impact on citizens – more and more active parts of European public life, in line with the idea of European citizenship introduced in Maastricht – is crucial to promote, either directly or indirectly, issues which would be otherwise ignored. The introduction of the European Citizens’ Initiative shows how citizens in the EU can exploit the power they are assigned and thus partially counterbalance the lack of popular participation highlighted in Chapter 2.

Individual direct action is the most pressing issue in the study and regulation of EU lobbying. As Coen (2007b: 5) stresses, “the recent explosion of lobbying in the EU has not seen increases in traditional interest organisations like trade associations or NGOs but in individual lobbyists such as companies and law firms”, with a significant increase in the possibilities for interaction between group and non-group actors. The author collects data about the current population of individual entities and derives some core indications about the relative shares of interest representation at the Commission and the EP:

- 40% of lobbying is done by individual actors;
- 24% of them are firms;
- 4% are think tanks;
- 11% are governmental or regional authorities;
- the remaining share is divided among law firms, public relation companies and others.

The idea of “individual lobbying”, as mentioned, should not be confused with the number of individuals who partake in European interest representation mechanisms. Firms, consultancies and think tanks are still groups, so they fall within the categorization drawn in Chapter 1, having its roots in the very general notions of group and group action. Nevertheless, as pointed out in those pages, this does not prevent individuals from trying to apply some form of pressure to European decision makers. The problem is that even higher uncertainty surrounds the number of people *individually* involved in this activity at EU level. How can one person be counted as a lobbyist? This is a tough question which has received no unanimous answer, and the plethora of data released about the topic certifies its complexity and methodological ambiguity. Coming back to Siim Kallas’s 2005 speech, the Commissioner asserted that “there are about 15,000 lobbyists established in Brussels”, a relevant number if we consider that this figure does not take into account all the individuals who only occasionally travel to Europe’s capital city, when the interest they represent are at stake in some decision-making session. Greenwood

(2011a: 11) presents some examples of calculations relying on different criteria or sources. All they cannot be completely relied upon due to different reasons. One instance will clarify this problem. “Accredited lobbyists” registered at the EP which received a building pass in 2010 were 4,695: is it an exhaustive number? It does not seem to be so, because of two reasons: first, the total number of passes issued by an institution like the EP can be restricted by internal regulation, thus it might not be fully representative of all lobbyists who wish to enter the Parliament in order to promote some form of interest; second, some individuals might not want to be registered as “lobbyists” and thus sign as a different category. Important cultural aspects enter the game, as a traditional negative perception of lobbying in Mediterranean countries.

Concluding this section on the actors of European interest representation, one decisive issue becomes relevant: there is strong uncertainty about who lobbyists are and what kinds of interests are promoted at EU level. There is no definitive number which can be used as a convincing indication about the dimension of this phenomenon. Of course, the data introduced in the previous paragraphs can serve as a paramount for understanding the impact of the topic, but we should be aware of the impossibility to reach a conclusive figure to faithfully rely on. Instead, it might be useful to observe the *perception* of European citizens about which categories best fit the definition of lobbying. Table 4.3 presents the data collected by 2009 Burson-Marsteller’s Guide to lobbying in Europe (Burson Marsteller 2009: 10)⁴³. People

⁴³ The Burson-Marsteller’s Guide collects a series of data emerging from surveys conducted in fifteen European countries (including Norway, which is not part of the EU): Austria (AT), Czech Republic (CZ), Denmark (DK), Finland (FI), France (FR), Germany (DE), Greece (GR), Hungary (HU), Italy (IT), Netherlands (NL), Norway (NO), Poland (PL), Spain (ES), Sweden (SE), United Kingdom (UK). It is based on over 500 interviews carried out between February and July 2009 either online, by phone or face-to-face with politicians and senior officials from national governments and the European institutions. Therefore the Guide resumes the perceptions of policy makers across Europe, and does not really take into account the feelings of the respective public opinions. However, in this work, the data collected by Burson Marsteller are intended almost as proxies for the feelings about lobbying of the citizens coming from the different MSs. Although a significant gap of knowledge between policy elites and common people is likely to exist, the high degree of variance between the

were asked the following question: “In your opinion which of the following could be considered to match the description of a ‘lobbyist’?”. The results of the survey show that trade associations and public affairs agencies are in the highest positions and best respond to the generally diffused idea about lobbying, especially in Northern European countries (Finland, Norway, Sweden, and the UK, but also in the EU as an aggregate). NGOs too rank high, whereas individual forms of lobbying (e.g. think tanks and law firms) are less perceived as lobbyists.

Table 4.3 Perceptions of lobbying

	AI	AT	CZ	DE	DK	FI	FR	GR	HU	IT	NL	NO	PL	SE	ES	UK	EU
Trade associations	61	72	47	58	77	83	27	60	20	77	67	81	70	61	45	69	65
Public Affairs agencies	57	81	50	58	48	80	23	60	50	37	60	74	53	74	29	66	65
NGOs	50	63	50	45	61	67	37	40	23	27	53	77	57	48	29	44	63
Trade unions	46	63	27	55	35	67	30	40	7	60	27	65	53	52	35	59	50
Companies	43	44	20	48	52	50	27	10	20	43	50	48	43	68	29	63	58
Think tanks	27	25	17	39	26	30	17	47	10	30	10	10	10	55	32	44	25
Individuals & independent	24	34	37	35	13	20	10	20	23	17	10	26	7	35	10	56	29
Law firms	24	25	13	35	10	17	23	30	7	20	13	13	17	23	29	31	56
All of the above	16	9	17	26	13	17	23	10	17	7	20	6	17	13	29	16	19
Others (please specify)	6	0	7	3	6	0	0	0	8	7	10	13	0	13	13	16	6

Source: Burson Marsteller (2009)

In the course of this work we will propose other data about what people think and perceive. The problem of perception, even if it may seem less relevant than institutional matters and it is often regarded as a second-order question, has to be taken into consideration if Europe wants to move towards a real union of citizens – “European citizens”, as enounced in Maastricht – interested in continental politics. The position that individuals take with regard to European matters, such as lobbying, is crucial because it is often mirrored by the way and the extent to which they participate in EU public life. Data as those on interest in EU elections, presented in

answers given by those who were interviewed according to their nationality suggests that a strong differentiation is there in the perception of lobbying, depending upon the national membership of policy makers. In this sense, by assigning an appropriate weight to the fact that the surveys addressed political elites, the results may well mirror the relative differences between European peoples and nationalities in their attitude towards interest representation at continental level.

Figure 2.3, demonstrate that much is to be done in order to facilitate the path towards a full recognition of EU supranationalism and people's involvement in it.

4.3. Conclusions

In this chapter I have defined the current landscape of European lobbying. I have first introduced a brief history of this activity from the beginnings of European integration to the Lisbon Treaty: as a result, I observed a constant increase in the number of lobbyists and an extension of the spectrum of interests they represent. As the Europeanization of public life has gone on, more and more rewards for influence have emerged, thus provoking a real “explosion” of interest advocacy at European level and a significant widening of the interests promoted. The other important issue developed in this chapter has been the identification of lobbyists. I have defined them in terms of both group and non-group entities, obtaining a vast and multi-faceted picture which testifies the complexity of the phenomenon and its absolute centrality in European decision making.

The following two chapters enter into the details of the core question of this thesis: does a gap between lobbying and democracy actually exist? Might there be a fruitful interaction between them, or are they condemned to remain antagonist concepts, as a wide part of public opinion would assert? Such questions need to be answered in order to eliminate the numerous doubts that surround the activities of European lobbyists: if interest representation and democracy can be favourably conjugated, the traditional perception of lobbyists as evil instruments at the service of obscure principals should be erased, and substituted by a new framework in which these two realities are seen not as rivals, but as possible allies.

5. Lobbying Versus Democracy: Problems and Possible Answers

In the first part of the thesis I aimed to analyse the concept of lobbying with regard to group theory (Chapter 1) and individuate its possible role in the decision-making framework of the European Union (Chapter 2). Successively, I highlighted the peculiarities of the democratic model of the EU and the ways in which lobbying might impact it, either positively or negatively (Chapter 3). Then I completed the theoretical framework by looking at the history of European lobbying, from its origins to its current configuration, and describing who the lobbyists, and the interests they represent, are (Chapter 4).

The second part, which begins here, constitutes the core of the present work. Relying on the concepts introduced before, it conjugates the arguments about democracy and lobbying in order to understand whether the latter is detrimental to the former or, instead, a reconciliation between the two is possible. More specifically, the research question is: can European democracy benefit from lobbying? The most diffused discussions about lobbying seem to suggest that this activity leads democratic systems far away from their purposes and generally accepted methods. This chapter, and the two which follow, aim to demonstrate that this widespread criticism is only partly justified: lobbying at EU level has certainly some “black spots” which necessarily need to be corrected; however, once such a purification takes place, the activities of interest promotion groups might be seen as a part of the solution to the problems of European democracy. If depurated from the (existing) negative features which undermine its possible role as an incentive to a more open and legitimate decision-making system, lobbying can serve as a positive instrument in the hard race toward a fully democratic Europe.

5.1. The Alleged Conflict: Relevance and Difficulties

Democracy and lobbying often seem to be concept at odds with each other. While democracy is associated with transparency, openness and public scrutiny, lobbying carries a negative connotation built on the ideas of secrecy, power of money, disparity and opaqueness. In the European Union, where the notion of democracy is highly debated and the existence of a “democratic deficit” is a recurrent critique to the good functioning of the political system, the problem of a “conflict” between lobbying and democracy acquires special significance and depth, even higher than in the constitutive units of the EU.

As introduced in Chapter 2, lobbies are a constitutive part of the European decision-making architecture. Coen (2007b: 3) briefly recalls that lobbyists, especially since the 1990s, were able “to exert influence along the European policy process from initiation and ratification of policy at the Council of Ministers, agenda setting and formulation at European Commission led forums, reformulation of policy at the European Parliament committees, to the final interpretation, harmonisation and implementation of regulation in the nation state”. Their contribution has always been highly remarkable in all steps of the Union’s legislative process, both in formal and informal *fora*. From the MSs to the European institutions, all bodies in charge of participating in decision making have been targeted by European lobbies, for the most diverse purposes. In this light, assessing whether lobbying and democracy are compatible realities is vital in order to evaluate EU policies as democratic or undemocratic. Due to the high influx of interest promotion on European decision makers, it is possible to configure two main antagonist perspectives:

- a) lobbying is fundamentally detrimental to democracy, so the decisions adopted under the pressure of interest groups can be regarded as contrary to the elements proper of a democratic polity;

- b) lobbies' work does not conflict with European democracy, thus there is no reason to invoke their removal from the decision-making scene; instead, their role can contribute to the difficult democratization of the Union.

As it often happens, the right answer lies in the middle of two extreme options. As it will be possible to argue at the end of this work, the impact of lobbying is neither completely “black” nor fully “white”, with regard to the portrait of EU democracy. It has both positive and negative impact, and the opinions about it are consequently divided: “[w]hile some commentators see EU lobbyists as driving a mutually beneficial exchange of information that alleviates Europe’s democratic deficit, others criticize lobbying as detrimental to the democracy and legitimacy of EU governance” (Hauser 2011: 687). Public opinion is not the only one divided on this issue: even European policy elites tend to display dissimilar views about lobbying.

“Lobbying attracts mixed perceptions among policy-makers across Europe. Respondents acknowledge lobbying’s positive aspects (such as constructive input to decision-making and sharing of expertise), but negative aspects are also highlighted (a lack of transparency and biased information being cited most frequently)” (Burson Marsteller 2009: 8).

In this light, one of the main objectives of the future amendments to the Treaties should be the inclusion of normative measures aiming to reduce the negative consequences of lobbying and improve the favourable ones. This is a direct consequence of the fact that the overcrowding of the European lobbying environment produced double-face effects: “[it] provided legitimacy for the European integration program [but] it also has put a strain on the openness and transparency of EU policy-making, and pressure for the creation of rules and regulation of interest representation” (Coen 2007b: 4). From this point of view, studying the relationship between lobbying and democracy in the European Union, and defining whether a

conflict exists or not, is central to reaching a conclusion about the acceptability of EU-made decisions, which have an increasing relevance in nation-states' life.

There is another reason why this problem is so crucial. As Hauser (2011: 680) frames it, "the EU, as a primarily regulatory body with a relatively small budget and sparse staff, relies heavily on lobbyists for technical information". Actually, interest-promotion groups provide Europe with something more than "information". As we shall see, they contribute to the legitimacy of the Union and create a sense of sympathy for the values promoted at EU level. In any case, the fundamental question arises again: is there a clash between the tasks performed by lobbyists and the notion of democracy as we constructed it? If yes, serious problems emerge not only with regard to European legislation, but also to national decisions which openly obey the rules set in Brussels. The regulatory function of the Union reaches levels of intrusiveness in domestic affairs which were unimaginable when the economic integration process was launched in the 1950s. In 2003 approximately 80% of national legislation was inspired by the European *diktat* (Guéguen 2002: 47), and the percentage is likely to be even higher nowadays, due to the progressive expansion of the tasks assigned to the Union's institutions. More and more competences, both implicit and explicit, have been progressively assigned to the EU, to which lobbyist now contribute with the aim of shaping public choices in the fields they care about.

There are several difficulties which make the analysis of the relationship between European lobbies and democracy extremely thorny.

First, lobby groups are characterized by multi-finality (van Schendelen 2002: 302). They have impacts not only on democracy, but also on a variety of different aspects of European life. Associations representing whole industries create cohesion between firms operating in diverse countries in the same sector. Lobbies promoting the interests of workers can produce a significant increase in social cohesion at national and transnational level. Groups pushing the claims of citizens in the field of environment or sustainability have the chance to help raise awareness both in

Brussels and in the periphery of the EU, especially thanks to the possibilities offered by new media for spreading information beyond the traditional means of communication. It is undisputed that the primary – if not sole – objective of lobbyist is influencing decision making for achieving the desired outcomes in terms of public deliberations. Looking at their behaviour from a moral point of view, a high degree of selfishness seems to emerge from this search for their own interest's satisfaction. However, unintended consequences, even favourable ones, continuously emerge from the most self-reliant actions: as Adam Smith wrote with unforgettable words in his *Wealth of Nations* (1776), “it is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own self-interest”. The way in which lobby groups pursue their goals might cross the road of democracy in several and unexpected ways: this is certainly a huge obstacle to a clear-cut judgment about the interaction between the independent (lobbying) and the dependent variable (democracy) of our discourse.

The second difficulty is that European democracy can be defined in terms of multi-causality (van Schendelen 2002: 303). Not only lobbyists' actions, but also a number of other factors impact on the achievement of a more democratic Europe. The behaviour of EU officials, for instance, is greatly significant in this sense: they can dedicate all their efforts to the European cause, but they can also be inappropriate supporters of national issues. The result in terms of outcome democracy can substantially vary according to the perspective they choose to follow. Limits on this variability exist: the clearest example is art. 245 TFEU, which states that “[t]he Members of the Commission shall refrain from any action incompatible with their duties” and sets a correspondent obligation on MSs to avoid any kind of interference with Commissioners' independence. In addition, the media might perform relevant tasks in the light of European democratization: if truly engaged in EU affairs and committed to honestly inform the citizens about what happens in Brussels, they can act as real “watchdogs” of democracy and seriously help implement it by shaping a conscious and active public opinion. Because of this variety of sources, assessing the

actual reliance of EU democracy on lobbying, either positively or negatively, becomes a hard mission whose results will always be subject to external interference by the development of concurrent factors.

The third and last intricacy derives from a methodological observation surfacing from the previous ones. Assessing direct relationships between social phenomena is always a hazard which might lead to exaggerations and overestimations of causality links⁴⁴. Directly connecting the influence that lobbyists try to exert and the democratic performances of the Union could be a feasible experiment only provided that *all* the other elements playing a role in the definition of the outcome remain unchanged. In the light of the multi-finality of lobbying and the multi-causality of democracy, this means that it would be possible to test the impact of lobbying on democracy with a 100% degree of certainty *only if*:

- it was possible to perfectly isolate the side-effects of interest representation in fields other than democracy and
- the other factors influencing democracy could be considered as untouched.

The very nature of the facts we are observing suggests that such assumptions are simply impossible to verify. Social phenomena (including political ones) escape the rigid rules of a laboratory experiment. The “laboratory” of social sciences is reality: detaching multiple causes from their effects is no more than a matter of speculation.

Given these observations, the conclusions reached in this chapter and in the following ones must be evaluated in the light of the structural impossibility to assess a deterministic link between lobbying and democracy. The former is treated as an independent variable, as the focal point of our discussion. The quantity and the quality of lobbying may change, and such variations are supposed to display effects

⁴⁴ A classic analysis of the problem of causation is David Hume’s contributions in *A Treatise on Human Nature* (1739-1740) and *An Enquiry Concerning Human Understanding* (1748). In his main works, the Scottish philosopher addresses the challenging topic of causal links between phenomena and refuses both an *a priori* reasoning (requiring a necessary inference which makes an event B following its direct cause A) and an *a posteriori* argument (implying an empirical observation of the relationship between two distinct events).

on the dependent variable, that is, European democracy. However, the causal equation that can be derived from this reasoning is just an extreme simplification of reality, aiming to describe the possible interchange between the x and the y of our function.

This *caveat* derives also, more generically, from the disputed nature of the notions of democracy as presented in Chapter 3. As said, the four dimensions are all present at EU level, but their degree of satisfaction and their actual impact on the whole picture are debated aspects. Different scholars assign diverse weight to participatory and representative channels when they evaluate the democratic features of a political environment. The mix of direct and indirect channels of influence is another element subject to volatile opinions, as dissimilar political systems require unlike solutions in terms of organization of power and influence routes. In addition, some “prefer the direct channels to be open only to individuals, and the representative ones only to political parties. Their preferences thus conflict with those of others, who put their trust in, for example, interest groups as agents of democracy” (van Schendelen 2002: 291). In other terms: there is a structural difficulty in obtaining straightforward results which are applicable to *all* situations. Even targeting the discourse on the EU as a compound democracy, the validity of the results heavily depends upon the theoretical perspective adopted by the observer. Nevertheless, the wide definition of European democracy developed in Chapters 2 and 3 should serve as a paramount ample enough to encompass a great variety of possibilities and achieve results with a broad margin of applicability.

5.2. The Perceived Negative Aspects of European Lobbying

5.2.1. A Problem of National Traditions?

Before taking into consideration the single accusations against lobbying, a preliminary question arises: is criticism driven by national traditions? In other words:

is there a form of bias against lobbying (and its impact on democracy) hinging on the nationality of those who look at it?

As the 2003 EP Working Paper properly notes, “the term ‘lobbyist’ still carries a rather negative meaning in a number of other Community languages (e.g. in German or Italian)” (European Parliament 2003: 2). More specifically, it is possible to observe that “[i]n popular culture, particularly in the south and east of Europe, the word ‘lobbying’ carries pejorative overtones” (Greenwood 2011a: 200).

The European Commission recognizes the negative legacy that accompanies this term. In its website, in the section devoted to the relationship between the Commission and “interest representatives”, it clarifies that it “talks about ‘interest representatives’ and ‘representing interests’ because these are neutral terms, in keeping with its positive approach to the activity of representing interests. It uses them in preference to ‘lobbyist’ and ‘lobbying’ which for some people carry negative connotations”⁴⁵. One immediate consequence of this terminological discomfort is that it contributes to the confusion that surrounds the distinction between “lobbies”, “interest groups” and “pressure groups”, as highlighted in Chapter 1. The Commission – one of the main European institutions – is somehow forced to resort to different expressions to define an activity that, in political scientific terms, should be simply called “lobbying”, without any circumlocution. It is evident that national traditions play a relevant role, and they impact not only on the way lobbies are perceived, but also on the path that European groups follow in their process of Europeanization. A typical case is that of UK firms:

“[w]ith their long tradition of direct lobbying, the British firms attempted to build a complex dual lobbying strategy at the national and European levels. Unlike their Dutch and German counter-parts – who saw their national associations and governments as a complementary and safe option to influence the EU – the

⁴⁵ http://ec.europa.eu/civil_society/interest_groups/definition/definition_en.htm, accessed on 1 June 2013.

British firms' dual strategy was often geared towards Europeanising an increasingly anti-European Conservative government" (European Parliament 2003: 32).

Another telling instance is that of German firms. Looking at their history in European affairs, it emerges that they put their best efforts in influencing national representatives more than European institutions as their primary option – although nowadays many big German firms directly lobby the EU and have permanent offices in Brussels. The most important observation surfacing from these examples is that “the degree of Europeanisation of business interests still varies according to specific issues and Member States' lobbying traditions” (*ibid.*).

A typical case of national aversion to lobbying is that of Italy. At least three reasons contribute to this negative perception:

- a) from a historical point of view, the Italian juridical culture has always been permeated by a Jacobin culture which finds its roots in Rousseau's theorization of factions as opposed to the “general will” of society⁴⁶. A strong focus on the state as a whole and the law as expression of the “good” for society at large has always limited the capacity to look at intermediate bodies as beneficial instruments for the promotion of advancement and wellbeing;
- b) in the field of politics, the political party has traditionally been considered the sole body authorized to represent interests in Parliament, and all other entities suffered from this unjustified prioritization⁴⁷;

⁴⁶ Rousseau's idea was put into practice during the French Revolution with the so-called *Le Chapelier Loi*. That statute forbade any faction within society on the grounds of a theoretical rejection of intermediate bodies. This *a priori* opposition to interest representation has always pervaded the Italian juridical culture and, more generally, the perception of interest groups by Italian people. Probably the particular history of strong factionalism which characterized the country since the Resistance period during World War II impacted on the creation of this adverse feeling.

⁴⁷ The conceptual basis of the prevalence of parties over other intermediate bodies is art. 49 of the Italian Constitution, according to which all citizens have the right to freely associate in parties in order to contribute in a democratic way to determine national politics. No referral to other entities is included in this crucial article.

- c) more, although a relevant number of norms on lobbies exist (at least 120 in state and regions' statutes), the vast majority of them have always remained unapplied or simply disregarded.

Many other examples could be proposed. For instance, nationality seems to impact on a decision to speak to a lobbyist in a number of European states (e.g. Spain, Austria, Germany, Czech Republic), thus closing the doors to lobbyists who come from a different country than the person they want to speak to (Burson Marsteller 2009: 28). More, different approaches to the regulation of lobbying (European Parliament 2003: 43-51) might suggest that, at domestic level, MSs show significant divergences among each other due to their unlike traditions. All these instances reinforce the definition of the EU as a compound democracy made of incongruent nation-states, divided along inter-state cleavages which are partly mirrored by the different ways in which lobbying is perceived in the various MSs. This is a further element to add to the list of the difficulties in developing a fair and coherent evaluation of the relationship between lobbies' activity and European democracy.

5.2.2. An Overview of the Problem

European lobbies are often accused to produce a number of negative impacts on the democratic reality of our continental organization. According to the different theoretical perspectives adopted, more emphasis is posed on diverse elements of the European political system which are allegedly damaged by the actions of lobbyists trying to push some sector-related interests: from issues concerning a whole industry to those affecting a single big firm, from the problems of workers to environmental concerns which require a form of EU regulation, a variety of arguments are daily brought to the public debate to state that lobbyist negatively influence the democratic development of Europe.

Van Schendelen (2002: 305) efficaciously summarizes the main negative impacts of lobbying on EU democracy, as they emerge from a huge number of theoretical works of scholars studying European affairs:

“[t]he lobby groups, which enter and permeate the system successfully, may set up thresholds for others, form closed coalitions and overload the system on the input side. During the decision-making process the insiders may act as a closed shop, making a strong claim of representation and consensus, paying lip service to polyarchy and legitimate authority, and minimising external discursiveness and transparency. On the output side they may counter the democratic practices of legitimacy, limited government, rule of law, accountability and responsiveness, or they may manipulate them so that they can benefit from their protective flags. At home they may dispirit individual citizens and outside groups, disregard the values of civil tolerance and common identity, and discredit the freedoms and the linkages of competitors”.

This brief *résumé* does not exhaust all criticism toward lobbying in the EU, but it confirms the importance that this phenomenon has achieved in the European decision-making process. It is unquestionable that interest representation is not a marginal reality, so it must be treated as a formal part of the route that deliberations follow from their proposal to their adoption.

Given the observations developed above, and the considerations on the effortful definitions of lobbying and democracy, the question “What are the negative aspects of lobbying?” is likely to get different answers according to those who are asked to respond. Interesting data emerge from the results of a survey conducted on policy elites in European countries, which are summarized in Table 5.1.

Table 5.1 The negative aspects of lobbying

	ALL	AT	CZ	DE	DK	FI	FR	GR	HU	IT	NL	NO	PL	SE	ES	UK	EU
Interest not clearly outlined/ lack of transparency	57	50	53	65	39	80	43	37	60	60	67	58	90	65	52	50	48
Not providing neutral information	55	44	73	65	68	47	60	53	30	60	57	58	37	55	45	56	67
An undue influence of the democratic process	23	28	20	58	16	30	30	23	10	20	13	3	10	13	39	41	12
Too many contacts/ an annoyance	23	25	37	10	29	30	33	13	10	10	17	26	13	23	13	28	37
Reserved for the elite	20	28	7	23	16	17	20	17	37	27	7	23	10	29	32	22	12
Other (Please specify)	8	13	13	6	6	3	3	7	3	20	10	10	0	16	10	3	4

Source: Burson Marsteller (2009)

The main evidence emerging from data is that lack of transparency is perceived as the most important deficiency in European lobbying. Transparency is a transversal notion having to do with openness, representativeness and legitimacy. A process which is not transparent cannot be considered fully legitimate and its inclusiveness is seriously challenged by the fact that it is not able to satisfy the guarantees of openness which are among the main requirements in a modern democracy. Transparency is thus a “middle-way” problem which builds upon the other notions of democracy. In addition, with specific regard to the reality of the EU, it is the most fiercely debated aspect related to lobbying, and its assessment strongly varies according to how it is analysed. Because of these peculiarities, an entire chapter is devoted to the analysis of the degree of transparency of European lobbies’ activities.

The survey also highlights that the absence of objectivity in the information provided by lobbyists is another grave problem which makes lobbying appear as an obstacle, instead of a support, to democracy. Other factors guide the judgment about lobbying, including the apparently undue influence it exerts on the democratic process and the fact that it seems to be an activity reserved to privileged elites.

Many other lists of negative aspects have been compiled during the time. For instance, Greenwood (2011a: 201) identifies the problems of factionalism,

accountability, mediation and public cost. The Galle Report⁴⁸ (European Parliament 1992), filed by former MEP Marc Galle in 1992, identified three main alleged blames of EU lobbying: *a)* representation imbalances in favour of the dominant groups in society; *b)* secrecy; *c)* immorality.

The European Commission, in 2006, listed some examples of “improper lobbying methods” which, although they were not unlawful *stricto sensu*, “abuse the EU institutions’ policy of openness or are plainly misleading” (European Commission 2006: 5-6):

- “[d]istorted information is provided to the EU institutions about the possible economic, social or environmental impact of draft legislative proposals”;
- “[m]odern communication technologies (internet and e-mail) make it easy to organise mass campaigns for or against a given cause, without the EU institutions being able to verify to what extent these campaigns reflect the genuine concerns of EU citizens”;
- “[t]he legitimacy of interest representation by European NGOs is sometimes questioned because some NGOs seem to rely on financial support from the EU budget as well as on political and financial support from their members”;
- “[b]y contrast, according to many NGOs, there is no level playing field in lobbying because the corporate sector is able to invest more financial resources in lobbying”;

⁴⁸ Given the “explosion” of European lobbying at the beginning of the 1990s (especially following the introduction of the SEA in 1986), in May 1991, the Committee on the Rules of Procedures, the Verification of Credentials and Immunities invited Marc Galle to submit his proposals to address this issue. In January 1992 hearings were held on lobbying, raising a significant debate on both positive and negative aspects of European interest representation and how to regulate it. The final report was filed in October 1992, but it was never officially published or debated in plenary session. In the outcome document, Marc Galle proposed the introduction of a Code of Conduct for the MEPs and the obligation for lobbyists to register with a public list at a specific office in the EP. In addition, he foresaw the attribution of some areas of the Parliament, including some offices, to European lobbyists. For further information about the Galle report see Rideau (1993) and Chabanet (2011).

- “[i]n general terms, there is criticism about the lack of information about the lobbyists active at EU level, including the financial resources which they have at their disposal”.

Many other instances could be proposed. For seek of clarity and organizational exactitude, in the following pages I will analyse the problems of lobbying following the repartition into the four notions of democracy proposed in Chapter 3, broadly corresponding to the categories of openness, representativeness, legitimacy and citizenship.

5.3. An Obstacle to Openness?

One of the most frequent critiques to European lobbying is that it seems to interfere with the openness of the democratic process and thus represents a distortion on the input side of the decision-making process. In particular, four elements are recurrent in this viewpoint.

First, some groups enjoy a stronger position and exploit their preponderance to achieve better results. In particular, professional and long-established lobbies are likely to bring higher influence to bear on European decision makers due to their knowledge of the normative context and, maybe more important, the habits and the customs which informally regulate the way in which interest promoters enter in touch with their targets. They benefit from their experience and know how to get the best results without having to wait long time or wasting their limited resources. In their light, the problem of openness does not exist, as the European decision-making system appears open and permeable enough for them to enter it. Their competitors often resort to this argument to complain about the imbalances existing between different groups.

However, a possible answer to this criticism is that professional lobbies “are simply smarter than the amateurs and can arrive early in the right place” (van

Schendelen 2002: 293). Indeed, the input notion of democracy does not directly imply that all participants in the game should get *exactly* the same outcome. Instead, the idea of pluralistic competition requires the possibility to accede to the same opportunities, provided that all actors display the same degree and intensity of participation. In other words: more efforts should be repaid. It would be simply unjust to pretend that occasional lobbyists could perform like professionals. Unbalances exist in all democracies and they are not to blame, if they concern the point of arrival. Equal opportunities must be guaranteed in that all lobbyists must be given the chance to enter the system. Democracy asks for equality in the starting point: if the differences among competitors are produced by dissimilar efforts they put in their activities, they are not an obstacle to democracy at all. Professional groups, in particular, “carry out a lot of preparatory work before their lobbying” (*ibid.*): in this sense, it seems self-evident that they can enjoy a better position in the rooms of power. Problems in terms of justice would arise otherwise.

The second element is the attempt to “close” the open EU system by some groups which have already entered it. Recalling the idea of lobbying as a “meta-game of Triple P” (§1.5), it seems that lobbies continuously try to re-arrange the playing field in order to make it more unlevel, rather than level (contrary to public statements praising openness and transparency).

As van Schendelen (2002: 270) clearly explains, “[b]ecause they are already inside, they hope to protect their interests through acquiring Triple P privileges. With their own people in strong positions on favourable procedures they want to establish new *elitist* policy cartels in an otherwise pluralist environment, thus mobilising the groups in opposition to them” (emphasis added). The logical framework backing this point of view is the following: lobbying is not seen as a positive-sum game, but as a zero-sum game. If one wins, another loses: mutual advancements are out of reach, as competitors fight for taking “all or nothing”. In this light, professional lobbyists often treat other groups as enemies more than competitors, and try to close the system

instead of open it. The objective is thus monopoly, not perfect competition: resorting to the metaphor of the “market” for access to EU institution, as Hauser (2011: 691-693) does, lobbyists seem to promote a distortion of the free market paradigm instead of enhancing its free working.

All these observations contain seeds of truth. The behaviour of many lobby groups is not consistent with the values of input democracy. A deep contradiction often emerges, shaking the compatibility of the two realities. However, some structural remedies exist, which are grounded in the very decision-making system of the Union. If lobbyists try to “close the doors” of Brussels, “many doors are opened from the inside” (van Schendelen 2002: 293): beyond lobbyists’ race for acceding to the rooms of power, it is the structural need for interest representation which contributes to maintain the system open and permeable. As we shall see in Chapter 6, EU officials *need* information from the outside. They are strongly reliant upon experts’ advice, and they constantly invite interest representative to partake in the decision-making process which leads to authoritative acts. In 2002 the Commission re-affirmed its “long tradition of consulting interested parties from outside when formulating its policies” and its incorporation of “external consultation into the development of almost all its policy areas” (European Commission 2002: 3), thus showed it was aware of the benefits coming from the satisfaction of input democracy notions.

Even though the activities of lobbyists as “antagonists” of open doors might collide with such notion, it does not directly follow that European democracy and lobbying are incompatible or that the latter is detrimental to the former. Instead, it highlights the need for regulating the interest representation environment in order to ensure that they still enjoy the possibility to accede to the decision-making system. This is a task for European institutions, and the Commission, laying down ground rules for transparent and open relations with European lobbyists⁴⁹, shows that it is

⁴⁹ Among the various Communications and Policy Papers issued by the Commission on this theme, the most significant are the 2006 Green Paper on the European Transparency Initiative, the 2007

fully aware of this issue and is trying to satisfy the input side of our definition of democracy.

The third obstacle to the fulfilment of the openness requirement is the overloading which characterizes the landscape of interest representation. As already noticed in Chapter 4, the number of lobbies in Europe, albeit they are not perfectly identifiable, is enormous. The variety of estimates proposed by the authors who addressed the matter suggests, as said, that no clear criteria exist to precisely assess “who a lobbyist is”. Many difficulties arise, including the fact that many non-professional lobbyists are often reluctant to call themselves “lobbyists” because of the bad reputation that lobbying brings in some countries. In §5.2.1 above, for instance, I mentioned the unfavourable national traditions in Southern Europe with regard to this activity: it is reasonable thus that some interest-advocating individuals refuse to present themselves as lobbyists, being afraid of a negative perception which could prevent them from performing their tasks without prejudice.

Nevertheless, the numbers remain high. An overcrowded environment can struggle against the need for a functioning system and seriously threaten the possibility to fulfil the notions of input democracy. As well as in a market, too many competitors might preclude the good working of perfect competition. They might fill the political system with too many requests and claims, thus stopping decision makers from considering each of them and weighing all interests in an appropriate way.

A possible answer to this critique easily emerges if we keep on looking at access to the EU institution as a market with dynamics comparable to those of any other market described in a macroeconomics textbook. Many companies which try to enter the market for cars, for instance, might encounter problems if the market itself is overloaded: first of all, they need to devise particular strategies if they want to

Follow-Up of the same Green Paper, and the 2008 Policy Paper setting a framework for the relations with interest representatives. These crucial documents will be better analysed in Chapter 7, in the light of the discussion about lobbying and transparency.

acquire visibility and convince consumers to choose their own cars among the plentiful options at their disposal. They would benefit if the market was more regulated and accession was restricted under precise criteria, so that one firm would have to share the market with a limited number of competitors instead of a huge quantity of challengers. Actually, this is what they aim to do, coherently with a logic similar to that of the Triple P game: specifically, they aim to make the playing field unlevel and close the doors of the market once they are already inside it.

However, the classical answer of a liberalism-inspired economist is that competition, even if extreme, is a necessary warranty of the market openness and avoids its distortion. Excessive limits to entrance are the fuel of monopolies. In a comparable manner, it is possible to state that “the number of lobby groups scrambling for position outside makes the system more open and competitive than it already is” (van Schendelen 2002: 293). More lobbies contribute to maintain the playing field available to other players and avoids that it becomes an elitist club. In addition, strong competition for getting claims heard by European institutions can have the positive impact of stimulating lobbies’ professionalization: pressed by the need to push the right buttons of Brussels in a more effective way, they could find it valuable to enhance their preparation and advance more structured claims. The reward for occasional and bad-prepared lobbyists can significantly decrease, and European decision makers can enjoy higher-quality information instead of dispersed and ill-founded claims. This is in line with the position expressed by the EP in 2003:

“former MEP Ken Collins, probably speaking for many of his colleagues, has stated that the main problem with lobbyists was not quantity but quality. Indeed, badly prepared and unfocused efforts can be annoying, whereas useful and competent information is often welcome to policy-makers. Particularly useful are comparative research and evidence that will enable decision makers to assess the impact of their proposal on the law and practices in each of the Member States” (European Parliament 2003: 3).

Shifting the focus to *quality* can be a way to begin to look at lobbying as a real profession, with its own rules and methods. Too often it is perceived as something unclearly defined which could be hardly considered as a real job. This misconception of lobbying leads to the undefined connotation that accompanies it in many studies about the EU decision making (Chapter 1), and keeps it from being intended as a formal part of the process which leads to the adoption of authoritative deliberations.

Nevertheless, even such a shift would not be a sufficient answer to the fourth main critique in terms of input democracy, which directly follows the third. In an overloaded system in which an incredibly high number of interest representatives appear, priority seems to be attributed to *special* interests, that is, those which are pushed with “more intensity”. Less politically correctly, the threat is that only money seems able to “buy” a better position for interests to be considered. It is not only a problem of numbers: it is a matter of how such a high number of claims are managed, and how they are prioritized. A risk exists that lobbyists convey information only to those who have the possibility to pay for it. Problems can arise not only with regard to input notions of democracy, but also to throughput and output aspects, as money is able to create undue unbalances and misrepresentation of interests on the basis of the capacity to pay for professional advocacy.

Maybe this is the strongest critique to European lobbying: somehow it gives loud voice to one of the most feared negative consequences of interest representation, and it is often able to influence the common judgment about European lobbyists. In this view, the richest groups can “buy” better services: the advantage they achieve in terms of higher attention by policy makers is a threatening reality in the light of a Union which hardly fights for getting recognition of its democratic features. It is not easy to reconcile the basic elements of a democratic model as the one described in Chapter 3 with the perception – and sometimes the mere observation – that some industries and/or individual big firms enjoy a wider space in European decision

making and their claims find more frequent (and better) satisfaction. This is one of the aspects that certainly require consideration in the light of the future development of the EU and its enlargement.

Despite the strength of this critique, from a theoretical point of view, two counter-arguments can be proposed to diminish the negative impact deriving from the role that money plays in the lobbyists' ability to be heard. First, as Coen (2007b) notes, "money alone does not equal influence". Instead, according to the author, the degree of effectiveness of advocacy depends upon the alliances which stand behind it (often made of both public and private actors, who work together on one issue while opposing each other on different matters). Taking for granted a direct relationship between money and influence would be an exaggeration with no real counter-prove in reality: if it was absolutely valid, there would be no rationale for the existence of citizen interest representative or NGOs, which cannot compete with big industries in the field of financing.

Second, the complexity of the EU system of governance limits the ability of lobbyists to exert undue influence over policy makers and thus diminishes the possibility for corruption. Former Commission Vice President Siim Kallas displayed great faith in this point by stating that there has been "no smoking evidence, no burning scandals and no known cases of corruption of European decision-makers involved in lobbying"⁵⁰. Money can do a lot, but it cannot buy everything. The wide set of norms aiming at regulating the relationship between lobbyists and EU institutions, as we shall see in Chapter 7, constitute a powerful limit on the capacity of "rich" interest to dominate the decision-making system, as they provide for considerable standards of transparency and ethical behaviour which could not be complied with if the role of money was absolutely unlimited.

There is no doubt that "lobbying can be open to abuse" (European Parliament 2003: 31). Corruption, as well as information obtained dishonestly, indisputably

⁵⁰ Quoted in Hauser (2011: 685).

represents one of these deviations from the high road of democracy. The main aim of the European institutions which seek external advice and influence (first of all the Commission) should be to reduce the risk of unbalanced input to the European democratic decision-making process. Pluralism is certainly one of the defining features of the European Union, which appears to score high results in terms of openness and permeability (van Schendelen 2002: 294). In order to reduce the negative impacts and enhance the rewards coming from pluralism, the EU must enact a proper policy of prioritization of relevant interests, which seems to be lacking by now (Hauser 2011: 683-684, European Parliament 2003: 53). Such an intervention should take into consideration that, as anticipated above, some groups are better organized than others, either in terms of available money or because of their professionalization. In this sense, a policy of opening of the decision making process should not be egalitarian. Differences among lobbies should be eliminated as far as the simple financial availability guarantees more possibilities to get satisfaction: representativeness and influence must not be prerogatives of those who can afford them. On the other hand, however, disparities should not be cancelled out if they reflect a gap in the professional preparation of groups which try to enter the doors of Brussels. Unprepared lobbyists must not enjoy the same opportunities of professionals who make a lot of preparatory work in order to better rationalize the claims they push. This is not to say that professional lobbies always advocate the most just interests: it means, instead, that the most just interests should always aim at a better form of representation, able to properly communicate their relevance and provide European institutions with the necessary information and impact assessments. In other words: it is far from sure that the most prepared lobbyists push the most convenient interests for society at large; however, as a shield against degenerations, it would be essential that lobbyists promoting the “better” claims are the most prepared, in order to compete with their rivals on grounds of intellectual and professional parity. We would all benefit from such a situation.

5.4. A Source of Misrepresentation?

The second important set of critiques to European lobbying is linked to the idea of representativeness. From the viewpoint of throughput, democracy has to guarantee a certain degree of matching between the decision-making process and those who are subject to the process itself. In a polity like the EU, as said in Chapter 3, the role of consensus is higher than in many MSs due to the compound nature of the Union and the profound cleavages which shake it from the inside.

5.4.1. *Elite Pluralism*

Lobbies can have important impacts on this notion of democracy. By providing expertise to European institutions, they can enhance the discursiveness of the policy-making structure and guarantee that the various interests gain visibility in the rooms where power is exercised. However, a risk of unbalance between the represented interests exists: beyond the problems in terms of input analysed in the previous paragraph, many concerns arise due to the prospect that some groups get their issues over-represented (or, conversely, under-represented). Money, as said, can be a source of misrepresentation, as sometimes it assigns special weight to “richer” groups able to exert higher influence thanks to their financial availability.

In this light, it is possible to observe wide scepticism about the idea of *elite pluralism* which characterizes the access of European lobbies to the institutions of the Union. This expression is used to configure “a lobbying system in which access to the policy forums and committees is generally restricted to a limited number of policy players for whom membership is competitive, but strategically advisable. As such EU institutions can demand certain codes of conduct and restrictions in exchange for access” (Coen 2007b: 4). This situation is the result of the growth in the number of lobbyists occurred between the end of the 1990s and the beginning of the new millennium, which pushed the European institutions to introduce precise norms for lobbyists in order to regulate the input side of the decision-making architecture

and the behaviour of groups. The European Transparency Initiative, launched in 2006, can be seen as an instance of this process of mounting *elitism* with regard to European lobbies. Although a form of regulation was strongly needed in order to guarantee a feasible form of access to the EU to an unprecedented number of interest-promotion groups, it provided for a limitation which has been widely described as a threat to democracy: as Hauser (2011: 684) reports, “[e]lite interest groups enjoy unparalleled access to EU governing bodies, placing a strain on openness, transparency, and democracy”. Greenwood (2011a: 215) makes reference to Coen and Richardson’s idea of “chameleon pluralism”: a relatively open initial phase in the decision-making process would leave the floor to a second stage in which the degree of elitism would be higher, thus restricting the access to Brussels to a limited number of groups. The problem, as Greenwood underlines, is individuating “the extent to which participation in this ‘second tier’ produces routine dominance of certain kinds of interests”. In other terms: can elite pluralism produce a form of over-representation of some interests, which are customarily more present on the tables of European governing bodies?

With specific regard to the commonly mentioned “conflict” between highly-financed producer interests and NGO-promoted issues, the author concludes that there is no significant evidence of a heavy unbalance between them, and no relevant proof of NGOs’ under-representation in European decision making exists. The same discourse can be extended to other categories of groups in order to conclude, as Greer and his colleagues do, that the real differences in terms of representativeness are not to be traced back to the system of elite pluralism *per se*, but to the diverse degree of preparation of the groups aiming to influence European deliberations:

“[a]lthough formal interest representation has a pronounced insider / outsider dimension, it is not a simple story of exclusion by the Commission. What distinguishes the insiders [...] is not that they belong to particular insider forums but that they engage with many different forums [...] insiders are simply the

groups that expend the time and energy necessary to participate in many forums. Their interests in different forums appear to dictate whether they join, rather than the Commission deciding on a hierarchy” (Greer et al. 2008: 427-428).

A further response to the critique against elite pluralism can be derived from the observation, developed in §2.3.3, that the Union is strongly dependent upon interest groups and “organized civil society” as proxies for a wider idea of “civil society”. Due to the fragmentation of the EU and its peculiar decision-making system, together with a historical lack of direct engagement in European affairs, elitism has always been an inner feature of the Union with regard to interest representation. More generally, “democracy has always been dependent upon elites” (Greenwood 2011a: 22), and no direct relationship between elite pluralism and misrepresentation of interests can be considered as absolute. Cases in which the limits posed by institutions for acceding to them could be easily recalled: undoubtedly they imply a need for framing a system of lobbies’ regulation which does not create neither undue unbalances nor unjustified privileges for some groups. Nevertheless, it does not seem that a general conclusion *against* the fulfilment of the notion of throughput democracy can be built upon the notion of elite pluralism.

5.4.2. Brussels Talking to Brussels

In 2002, in its Communication concerning the minimum standards for consultation of third parties in the course of a decision-making process, the Commission strongly highlighted the importance it attached to “input from representative European organisations” (European Commission 2002: 11) in order to avoid the impression that “Brussels is talking to Brussels”. This occurred in response to frequent critiques according to which the groups pushing interests at EU level were not able to play a role as “socializing” agents, and they did not provide an acceptable representation of all interests at stake on the European scene. If this discourse might not appear strange with regard to business interest organizations and, in particular, individual firms

lobbying the European institutions, it can sound awkward if it is related to NGOs and other groups in charge of raising awareness on citizen interests. Usually, they are considered as valid instruments for the promotion of issues benefiting society at large and they are less subject to accusations of unbalanced representation.

However, even NGOs and similar entities are not exempt from criticism. For instance, Alex Warleigh (2001) defines a set of “key variables”, with related indicators, for the determination of the degree of Europeanization of civil society. On this basis, he analyses how much European NGOs comply with the requirements correspondent to the variables themselves. The results are resumed in Table 5.2.

Table 5.2 Civil society Europeanization

<i>Key Variable</i>	<i>Indicator in EU Context</i>	<i>Rating</i> (* = low; **** = high)
Collaboration with other NGOs and like-minded actors	Ability to construct policy coalitions	***
Independence	Reliance on non-official sources of funding	***
Democratic internal governance	Participation in decision-making by supporters	*
Cognitive impact on supporters	Increased awareness of, and engagement with, EU decision-making	*
Concentration on politicization rather than service delivery	Privileging advocacy role	***
Ability to be self-critical	Officer-supporter dialogue; internal review	**
Ability to draw on existing political socialization	Large base of supporters willing to participate in decision-making	*

Source: Warleigh (2002)

One of the most striking indications emerging from Warleigh’s study is that NGOs generally suffer from a lack of democratic internal governance. As the author points out, “[d]ecision-making about lobbying or campaigning was heavily

centralized, and shaped entirely by the relevant officers, although in the larger NGOs often via elaborate mechanisms to ensure that all the relevant staff members within the organization were able to make an input” (Warleigh 2001: 631). In addition, it came into sight that “[s]upporters played no formal role in the decision-making of any NGO in the sample, with three exceptions” (*ibid.*). Problems in terms of representativeness of citizens’ will seem to emerge: how is it possible to respond to the need for throughput notions of democracy if there are relevant obstacles in the internal decision-making structure of crucial interest groups such as NGOs?

Warleigh’s answer is that “NGOs will be unable to act as agents of civil society Europeanisation unless they are internally democratic” (*ibid.*: 635) in order to escape the problem of elitism and misrepresentation. The importance attributed to the element of representativeness is certainly significant: it shows that interest-promotion groups need to mirror, in some way, the will of those they declare to represent, otherwise coherence in European decision making could be difficultly achieved. It is a matter of matching between representatives and represented, and it becomes even more decisive when the group is a NGOs giving voice to citizens who otherwise could hardly enter the doors of Brussels. In this sense, another conclusion in Warleigh’s survey appears striking: no NGO official considered that his/her organization was primarily accountable to its supporters. This perceived lack of correspondence between non-governmental organizations and their “constituencies” it seems to configure a distortion of the relationship principal/agent mentioned in §2.3.3.

The European Commission, since 1992, has tried many times to affirm its deep commitment to the principle of interest groups’ representativeness. Laying down the standards for consultations with interest representatives, it affirmed that “[i]t must be apparent which interests they [the organizations] represent [and] how inclusive that representation is” (European Commission 2002: 17), in accordance with the general principle of transparency, which requires to clarify:

- “what issues are being developed”;

- “what mechanisms are being used to consult”;
- “who is being consulted and why”;
- “what has influenced decisions in the formulation of policy” (*ibid.*).

However, as clearly stated in Chapter 2, the crucial question should be whether the solution proposed by Warleigh (internal democratization of NGOs) is necessary with regard to the peculiar nature of the European Union. In the following Chapter the contribution of lobbying to EU democracy will be essentially defined in terms of support to a *deliberative* system of decision making. The deliberative and discursive effects of lobbying show their deepest impact on the Union’s model of democracy more than other considerations which might better fit the single MSs. In this light, the conclusion reached by Greenwood (2011a: 225) seems to be absolutely coherent with the features of the EU and, in particular, with its need for consensual normative outcomes and wide participation by the most different sectors of society:

“where the aim is to achieve contributions to public discourse, it makes little sense to ask who is represented by the voice which speaks, and how the organization consulted its members so as to arrive at their position. Rather, it is the quality of the point raised, the discourse, the contribution to public debate, and a sufficient population of voices, which matters”.

In terms of throughput notions of democracy, the EU has problems to solve. However, more than focusing on representation, it appears more useful to rely on the idea of deliberation, as it will be shown in the following chapter. Consensual decision making and inclusion better define the needs of a complex body such as the EU than other considerations about groups’ internal democratization and representativeness. Another issue linked to this one is that of transparency, which is among the most fiercely criticized elements of European governance, with particular relevance when interest groups are involved in authoritative deliberations adopted by the institutions. However, due to the special relevance of this problem, it will be

analysed in Chapter 7, devoted to the examination of the European Transparency Initiative (ETI) and the Transparency Register as a specific case-study.

5.5. A Negative Impact on Legitimacy?

From the point of view of the output of the decision-making process, the most diffused critique to European lobbying is that it tends to produce forms of inequality. Some lobbies enjoy a higher position and can reasonably expect to achieve their desired goals more than others. Many arguments can explain this alleged distortion:

- EU officials might be “more open” to some groups, and disregard the claims pushed by others, because of particular affiliations or, more concretely, because they can get some kind of advantage from it;
- client-style relations might produce an unbalanced representation of some interests;
- officials “may even undermine the practices of limited government by making deals and coalitions across institutional, territorial and sectoral boundaries” (van Schendelen 2002: 298);
- established groups might exploit their favourable position for requiring a preferential treatment by decision makers;
- groups enjoying a higher level of financing might take advantage from their stronger position to get their claims heard with a higher degree of effectiveness, compared with “poorer” groups.

Many other instances could be proposed. The common discourse about lobbying is full of considerations about risks in terms of output: one of the most dangerously perceived effects of interest representation at EU level is a distortion of the legitimacy and accountability bonds which, in theory, should connect decision makers and citizens, governors and governed. How is it possible to consider

legitimate a legislative outcome which produced strong imbalances among the actors of the system, especially if they favoured the “richest” interests and not the “best” or the “most useful” ones? An idea is quite diffused: that lobbying “confers an unfair advantage on those that can afford to carry it out and therefore runs counter to the notion of democracy” (Warleigh and Fairbrass 2002: 2). This is, of course, a crucial issue which cannot be given a single and forever valid answer.

A preliminary consideration is required. As already said in the previous paragraphs, a distinction should be drawn among imbalances on the basis of the disparity they entail and the causes which lead to them. If the higher power enjoyed by a certain group is due to the more profound efforts it puts in its preparation to lobby, it seems pointless to argue that a problem in terms of legitimacy exists. Rather, this should be a stimulus for ill-prepared groups to enhance their competences and try to do a better job. They should engage in more than sufficient preparatory work and collect better information, in order to convey more powerful messages and achieve more favourable results. European policy legitimacy can only benefit from a race to the *top* that pushes interest representatives to specialize and amateurish lobbyists to leave the floor to professional interest promoters.

The question is structurally different if the imbalances are provoked not by a gap of competences, but by money or other unjustified sources of disparity⁵¹. In order to address this problem, the TEU acknowledges the need to ensure some guarantees about interest representation in the decision-making process. First of all, art. 11.2 clearly states that “[t]he institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society”. In its 2008 Policy Paper on the European Transparency Initiative, the Commission specified

⁵¹ A distinction between the two instances is not always straightforward. Groups can enjoy pre-eminence in terms of both competence and financial availability. One of the possible examples is that of business associations, which often “possess organizational capacity, financial resources and technical expertise that citizens’ organizations cannot match” (Hauser 2011: 686). In such cases, an ideal form of regulation should take into account the impact that money and competence exert on the results lobbyists get and consequently isolate the ones coming from higher financial availability. The discourse is, of course, more theoretical than practical, as it seems out of reach to clearly divide the role that the two possible sources of imbalances actually play.

some important rules of behaviour which both interest representatives and EU officials must comply with in order to achieve a sufficient level of legitimacy:

“[i]nterest representatives are expected to apply the principles of openness, transparency, honesty and integrity, as legitimately expected of them by citizens and other stakeholders. Similarly, Members of the Commission and staff are bound by strict rules ensuring their impartiality. The relevant provisions are public and contained in the Treaty establishing the European Community, the Staff Regulations, the Code of Conduct for Commissioners and the Code of good administrative behaviour” (European Commission 2008: 6-7).

Impartiality is one of the keywords in the discussion about legitimacy. Except the EP, all other European institutions are not directly elected. In particular, the Commission is defined as a collegial organ made of individuals pursuing the interest of the Union, not accepting any kind of influence and pressure from their home states, governmental or non-governmental bodies. The ECB follows the same logic, as well as many other independent regulatory bodies which Majone (1996: 285) defines “non-majoritarian institutions”. Their role in modern democracies – and particularly in the EU due to its compound nature – has become crucial because of an increasing need for expertise, discretion, coherence and independence of judgment in decision-making bodies which necessarily escape the political and electoral logic (e.g. central banks, courts, advisory organs). As these institutions acquire more and more weight, growing doubts tend to surround their conduct: as a result, many critics of European democracy allege that independent, non-directly accountable bodies are contrary to the notion of output democracy. The EP, as a response, strongly stresses the need for impartial behaviour by those in charge of making binding decisions on the European polity: as a matter of fact, it remarks that, as far as they are concerned, “impartiality and objectivity [...] are essential qualifications for their independent

judgment, an essential condition for the exercise of a political mandate” (European Parliament 2003: 31).

As said, lobbies can impact negatively on the democratic model of the Union as they can create imbalances which put a serious strain on the legitimacy of European policies. If independent institutions prove to be unable to maintain a reasonable balance among interests, and tend to favour some of them over others, the outcome of the decision-making process can hardly be defined legitimate. This is a serious problem which shows its deepest effects on national legislation too: being the EU essentially a regulatory body whose deliberations enjoy primacy over national legislation, doubts may logically arise also with regard to domestic legislation following EU guidelines. If the European decision-making architecture presents problems, they can immediately flow into national legislation which derives from Brussels deliberations. In the case of regulations, which are directly applicable in MSs without the need for the State to “accept” them, the issue becomes even more significant. As Hauser (2011: 685) highlights, “Europe is rife with public suspicion that policy decisions reflect the influence of private interests over the common European interest”. This kind of perception has fuelled “allegations of dishonesty and corruption in Europe’s policymaking processes” (*ibid.*) which have worked against a shared sense of legitimate European governance.

Nevertheless, some correction mechanisms exist which can limit the adverse effects of lobbying on European policies legitimacy.

First, the Treaties include provisions about controls between institutions, aiming to reduce the possibility of behaviours able to threaten European legitimacy. One of the most relevant articles, in this sense, is art. 318 TFEU, which states that:

“[t]he Commission shall submit annually to the European Parliament and to the Council the accounts of the preceding financial year relating to the

implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Union [...]”.

The following article specifies the procedure under which the Commission’s behaviour with regard to budget is “evaluated” by the EP:

“[t]he European Parliament, acting on a recommendation from the Council, shall give a discharge to the Commission in respect of the implementation of the budget. [...] Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter’s request”.

In the course of this crucial mechanism, in 1999 the crisis of the Santer Commission exploded due to allegations of corruption and nepotism. In that occasion, all the twenty members of the Commission resigned, giving rise to a political emergency which is usually referred to as one of the most serious calamities in the institutional history of the EU⁵².

Second, lobbies can check each other’s behaviour and react against improper actions made by a specific group. The elevated number of lobbies operating at EU level produces a double effect: it does not allow any interest to permanently “dominate” the rooms of power in Brussels and permits a constant check on other associations trying to push their claims to European governing bodies. Lobbies have a strong influence also on the sectors they represent, from particular industries to citizen groups: if they detect a violation of the rules of conduct regulating interest representation, they can mobilize their “principals” and launch a critical campaign

⁵² For an analysis of the Santer Commission crisis in the light of the relations between the European Commission and the EP, see Ringe (2003).

“blaming the officials for a lack of legitimacy or accountability” (van Schendelen 2002: 299). The more a group is organized and represents a vast number of individuals, the heavier its balancing power will be. Joint actions between different lobbies represent a further option if it is possible to detect a shared interest in avoiding that another group benefits from an unjustified dominant position and/or the favours of EU officers who do not comply with their duty to remain impartial.

Third, external scrutiny can serve as a deterrent against unacceptable lobbyists’ behaviours (European Commission 2006: 6). As we shall see, European citizens can easily check the various entities which have registered in the European Transparency Register, a database of interest-representation groups which has followed the pre-existing CONECCS. However, this instrument cannot be regarded as a perfect proxy for the number and types of European lobbyists due to the lack of forced registration, which produces a degree of uncertainty about the entries in the Register. A way to enhance public scrutiny of lobbyists would be the provision of incentives to register. As the Commission, with regard to the defunct CONECCS highlighted, a more complete register “would provide a general overview, open for public scrutiny, of groups engaged in lobbying the Commission” (*ibid.*: 8). European citizens could thus browse the webpage of the ETR, search for the groups operating in the sector they care and get informed about their actions (for instance by looking for the websites of these associations).

There is no doubt that public scrutiny implies a form of responsibility by public opinion: people should seek information, read reports and official documents, learn about the European decision-making system and finally evaluate lobbyists on the basis of the results they achieved and the methods they employed. It is not an easy task and, as many would argue, it seems more a utopia than a feasible reality. However, difficulties should not prevent from aspiring to a better reality, and in this case the empowerment of citizens – who could give their contribution to the legitimate output of the process of interest representation – appears as a valid option although it is a thorny one.

Fourth, the Commission, since 1992, has encouraged the adoption of codes of conduct for lobbyists. More than imposing them, it has pushed for self-regulation, “backed by perceived or explicit disapproval for non-participants, which can extend to degrees of access to political institutions” (Greenwood 2011a: 56). The Commission proposed some criteria, which were summarized later into the following three points (European Commission 2008: 9):

- “[l]obbyists should act in an honest manner and always declare the interest they represent”;
- “[t]hey should not disseminate misleading information”;
- “[t]hey should not offer any form of inducement in order to obtain information or to receive preferential treatment”.

The last point, in particular, is crucial in the light of our discussion about legitimacy. The main message that the Commission aimed to convey is the need for a *mutual* commitment to a democratic output when entering the decision-making arena: both EU officials and lobbies must engage in the difficult enterprise of European democratization, and no party can consider itself out of such a complex mission. Traditionally, the EU has focused on rules of conduct for its staff, and thus produced a series of regulations aiming to set boundaries for the conduct of the personnel of the Union dealing with interest representatives. However, “integrity rules”, as the Commission called them, are essential also on the side of lobbyists, who can remarkably contribute to the active fulfilment of the output notions of democracy.

5.6. A Strain on European Citizenship?

The outcomes of EU decision making have always some impact on societies of the MSs. Due to the regulatory nature of the Union, the degree of intrusiveness of its deliberations into citizens’ life is becoming higher and higher. A clear instance is the

number of regulations involving food quality which can positively affect the health of EU citizens – who can enjoy higher standards of quality even in “junk food” restaurants – or the technical requirements necessary to sell some products on the European market, having deep impacts on the productive chain of firms and their capacity to resort to economies of scale. The issue of competition is another powerful example: on the basis of the four fundamental freedoms of circulation (of people, services, goods and capitals), differently from decades ago, people fight for obtaining a job no more within a national arena, but at least in a Europe-wide contest. There are many positive effects (such as the possibility, for employers, to hire qualified workers coming from twenty-seven states), but also potentially negative ones (e.g. people who would get a job in a restricted competitive system might remain unemployed because more qualified workers coming from another country submit an application for the same position).

Lobbies, as said, can have a deep impact on the feedback dimension of European democracy. They can (and actually did) stimulate a sense of integration in a supranational polity made of very dissimilar entities. They can rationalize the reactions of people to EU outcomes and channel their civic spirit and aspirations by promoting their interests before European institutions. However, their contribution seems to be insufficient for enhancing democracy in Europe. The degree of tolerance, for instance, depends more on other factors than on lobbying:

- peripheral countries, heavily affected by the phenomenon of illegal immigration, tend to be less open to discourses about integration and tolerance than states which are only marginally affected by migration fluxes;
- societies in need, hit by a strong crisis, might find it difficult to open themselves to foreigners because they firstly aim to reconstruct their domestic stability and prosperity, and thus see people from abroad more as a threat than as an opportunity;
- unemployed persons might be afraid of increasing competition and consequently look with antipathy at “other” people, even if they are EU citizens.

Lobbying can have significant negative impacts on the way people feed back European Union's policies and deliberations:

“[i]f the people come to believe that the EU is only a sort of republican court with lobbying groups and factions patronising them, they may lose some civic spirit and behaviour and become indifferent and passive. Individuals and outside groups, such as retired people and immigrant shopkeepers, may even get the feeling that they are not clients at all [...] For a job vacancy, a house purchase or even a parking place the people may dislike competition from equally entitled foreigners [...] The EU may challenge some domestic freedoms and rights, such as the Dutch coffee shop selling soft drugs, the Austrian Cabinet formation in 2000, the Spanish sport involving animals, the British working hours and the French appetite for ‘unhealthy’ cheese” (van Schendelen 2002: 301-302).

All these instances, which can be easily recognized in our everyday life, suggest that tolerance and identity, which are often promoted by many groups (representing either a specific sector or a geographical area), can even turn into social conflicts and cultural problems. In the light of a unified Europe which aims to connect the various populations in a valuable concept of European citizenship, this may represent a serious strain on, and a relevant obstacle to, one of the leading targets set forth in Maastricht at the beginning of the 1990s. People may lose their confidence in the EU if they perceive that it is backed by lobby groups which promote integration, if integration itself leads to a worsening of their living conditions. The result may be a mounting indifference toward European institutions and political life, with a consequent deepening of the distance between EU citizens and governors.

The data about the 2009 EP elections mentioned in Chapter 2 are a clear instance of the remoteness between Europe and its peoples, especially in a period of grave crisis as the one we are currently passing through. People may feel a sense of exclusion, rather than inclusion, ending up in a huge damage to the sense of

European belonging. Not by chance, the last years witnessed a steady increase in the popular support to xenophobic and far-right parties, especially in the Eastern part of our continent, which is among the areas most seriously affected by the economic crisis.

Some answers can be proposed to limit the impact of such a potentially grave picture. First of all, national representatives are part of the European institutions. They are lobbied domestically and they can try to push national interests in formal and informal meetings as a way to thwart the negative effects in terms of citizens' feedback. For instance, they can be aware of the weight that some EU regulations impose on national goods and ask for more favourable measures. More, they can fight for the recognition of their countries' specificities and ask for their protection. The plentiful measures adopted by the Commission in favour of the "made in Italy" sector, for instance, are an important means to reinforce the perception that Europe is not indifferent to the peculiarities and the quality of Italian goods, which are part of the tradition and the lifestyle of the country. In this light, the effects in terms of identity and citizenship are likely to prove more and more relevant as years pass by, at least with regard to the (high) number of people – both Italian and foreigners – who work in this sector and rely on its protection for the satisfaction of their daily needs.

Second, after the entrance into force of the Lisbon Treaty, citizens enjoy the possibility to directly "lobby" the European Union by taking the initiative for a legislative proposal⁵³. Art. 11.4 TEU states that "[n]ot less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties [...]". Citizens can

⁵³ For a detailed analysis of the European Citizens' Initiative and its implication on the European model of democracy, see Chapter 8.

initiate a legislative procedure by collecting one million signatures in support to a project they want the European institution to discuss. Art. 24 TFEU, which specifies the right to citizens' initiative, is included in Part Two of the Treaty, addressing "Non-Discrimination and Citizenship of the Union". This possibility has been devised for stimulating the sense of belonging to a same polity, and it aims to reinforce cooperation and chances for mutual benefit among European peoples: as a matter of fact, signatory citizens must come from at least one quarter of EU MSs.

Third, groups which used to remain outside the decision-making arena can organize themselves and progressively enter it. Until 1992, the Union's action was focused on the completion of the Single Market and the achievement of the fundamental freedoms auspicated since 1986. When it turned to be a "Union", made of citizens more than just goods and services, the European debate began to take into consideration arguments about democratic legitimacy in terms of input and feedback. In this way, it highlighted a structural need for citizens' inclusion within a decision-making process from which they had always been widely excluded, also in representative terms. Organized citizen groups exploited this shift in European concern and started to frame their claims in terms of input legitimacy for EU decisions, and they acquired more and more space and relevance in Brussels (Greenwood 2011a: 128-129). There is now a dense landscape of citizen groups and NGOs which are the main representatives of the needs of European peoples. One of the reasons why the Commission is open to cooperation with organized civil society is that NGOs and other similar organizations represent the views of specific groups of citizens to the EU governing bodies (Commission, EP, Council, Economic and Social Committee, Committee of the Regions). In particular, "many NGOs have an ability to reach the poorest and most disadvantaged and to provide a voice for those not sufficiently heard through other channels" so that "[t]heir involvement in policy shaping and policy implementation helps to win public acceptance for the EU. In some cases, they can act as a balance to the activities and opinions of other interests in society" (European Commission 2000: 5). More inclusion stimulates both the

input and the output side of democracy: in this light, lobbies seem to play a relevant role, as they are able to act as agents of European socialization and thus push for strengthening EU peoples' interconnection and European policies' acceptance.

5.7. Conclusions

The three answers just suggested may not be sufficient to dissipate all the doubts concerning the effects of lobbying on European feedback democracy. However, as well as the other responses proposed in the previous paragraphs to the several critiques to interest representation, they highlight that, at least, different points of view exist. Criticism against European lobbies is not ill-founded: many bad practices have been emphasized, and numerous practical examples might convey the idea that lobbying and democracy are irreconcilable realities.

However, these evaluations should be balanced with the methodological difficulties mentioned in §5.1 and the counter-arguments introduced in the rest of the chapter. In this light, it is possible to cast away any form of *a priori* opposition and open the doors to a deeper analysis. Within this framework, the next chapter proposes a variety of arguments which can reconcile the two elements of our discourse and pave the way to a view that has not enjoyed, in the most common literature, wide popularity: lobbying can serve as an instrument of democratization in Europe. This does not cancel its difficulties out: instead, many corrections should be made. The previous pages aimed to highlight the crucial points which need to be immediately addressed and showed that a *liaison* between interest representation and democracy is possible.

6. Lobbying Supporting Democracy: A Feasible Option

In Chapter 5 I analysed the reasons why lobbying might be perceived as an obstacle to the process of European democratization. Looking at the four main elements of our initial definition of democracy – openness, representativeness, legitimacy and citizenship – I highlighted the possible lines of friction between the activities performed by interest representatives and the fulfilment of the aforementioned notions at European level. At the same time, however, some answers were proposed which can make this contrast less hurtful than how it is commonly conceived. Self-correction mechanisms exist in the decision-making system of the EU itself and in the mutual relationships which link European officials and interest groups. Within this framework, I argued that problems cannot be simply cancelled out, but their weight should be reconsidered: the reasons why lobbying seems to be at odds with democracy appear less powerful, if the answers proposed in Chapter 5 are taken into account, beyond any form of *a priori* criticism of this relationship.

In this chapter I aim to demonstrate not only that the alleged conflict between interest representation and democracy can be solved, but also that lobbying can be a positive driver to European democracy. I will not restrict myself to show that lobbyists do not hurt democracy in the EU, but I will propose a number of arguments to support the view that they can actively enhance it because of their nature.

6.1. The Positive Aspects of Lobbying

The role of lobbying has been widely described by several authors in relation to different political systems. Not only scholars in European Union Law or similar

disciplines, but also the EP itself recognizes the positive spillovers coming from opening the doors of Brussels to interest representatives. On its website, it clearly states:

“[i]nterest representatives can be private, public or non-governmental bodies. They can provide Parliament with knowledge and specific expertise in numerous economic, social, environmental and scientific areas. They can play a key role in the open, pluralist dialogue on which a democratic system is based and act as an important source of information for Members in the context of the performance of their duties”⁵⁴.

With regard to the European Union, it has often been stressed that interest representatives play a decisive role in carrying out many tasks which are necessary to the functioning of the Union. For instance, the 2009 Burson Marsteller’s survey on European lobbying showed that European policy elites were aware of the existence of numerous favourable aspects of lobbying, among which they aggregately ranked higher: *a*) its ability to raise the local and national importance of an issue; *b*) its constructive input to the decision-making process; *c*) its capacity to make expertise shared.

Table 6.1 The positive aspects of lobbying

	ALL	AT	CZ	DE	DK	FI	FR	GR	HU	IT	NL	NO	PL	SE	ES	UK	EU
Raising the local & national importance of an issue	50	50	60	74	23	60	53	37	30	70	67	26	50	55	35	72	44
A constructive part of the decision making process	48	63	50	48	32	40	53	53	67	67	53	61	3	45	45	38	52
Sharing expertise	47	50	50	61	39	63	40	17	30	43	50	61	63	52	48	22	60
Translating technical & scientific information into relevant information	40	50	30	48	29	60	40	53	20	30	17	39	37	39	29	44	58
Providing the right information at the right time	39	75	43	65	26	50	7	33	23	40	47	35	43	26	32	41	38
Other (Please specify)	8	6	7	10	23	3	7	0	3	13	10	10	3	10	16	6	2

Source: Burson Marsteller (2009)

⁵⁴ <http://www.europarl.europa.eu/aboutparliament/en/0073710a27/Overview.html>, accessed on 1 June 2013.

Nevertheless, the research question which should be the *leitmotiv* of this analysis points toward another direction: is it possible to individuate some positive aspects, in European lobbying practice, having a favourable impact on EU democracy? The issue is deceitful: we do not have just to look at whether lobbying is systemically inscribed in the European decision-making architecture as a consolidated practice, but we need to highlight whether democracy can benefit from activities of lobbies in Brussels. In other words, we have to separate the discourse about how decisions are made (the *modus operandi* of the Union, which looks at the methods of lobbying and decision making) and the considerations about how democracy develops. There are possible overlapping areas, but the two problems are significantly different. In particular, the focus of the following paragraphs is the second point, as the first is a matter of “how to” lobby the EU, which is out of the reach of the present work.

Greenwood (2011a: 235) underlines that there is a relevant degree of “dependence upon organized interests to secure routine democratic outcomes, for policy-related tasks, and as political agents of EU institutions in the battles over European integration”. Despite the numerous difficulties which undermine interest representation, there are vast areas in which democracy, as a dependent variable, can be positively linked to lobbying as an independent variable. As a matter of fact, lobbyists can impact on the political system of the EU in four main respects:

- a) they provide competence and expertise to decision makers, shedding light on the technical aspects the latter cannot reasonably be informed of;
- b) they partly respond to the lack of popular engagement and participation which characterizes EU’s affairs;
- c) they stimulate the legitimacy of the Union by promoting support for certain policies and for European integration at large;
- d) they help Europe achieve deliberative outcomes able to contribute to decisions’ stability and popularity.

The following four paragraphs analyse these dimensions in detail and aim to demonstrate that lobbying can help the difficult process of European democratization. More than a part of the problem, as the supporters of a European democratic deficit would allege, it may be a part of the solution.

This does not mean that we can simply disregard the negative impacts mentioned in Chapter 5. They exist, and they cannot be simply eliminated from any discourse concerning the matter. The “correction mechanisms” described are not perfect tools able to *erase* any unfavourable impact of lobbying on democracy: instead, they are instruments for *limiting* the damaging effects and circumscribe their spillovers on the other dimensions of democracy. The only way to achieve a satisfactory degree of isolation of these adverse impacts is the promotion of important institutional reforms aiming to make lobbying an integral part of the European decision-making system, and correct from the inside all the spots of European democracy. However, the positive effects examined in this chapter, if supported by the aforementioned correction mechanisms and backed by the answers proposed in the previous chapter to the various critiques against lobbying, can represent the basis for a fruitful rethinking of the relationship between European lobbies and democracy. A new conception of lobbyists could be inaugurated: no more “evil” actors patronizing obscure interests detrimental to the general good, but legitimate actors of the deliberative process and contributors to its democratic outcomes.

6.2. A Guarantee of Competence

The European Parliament’s behaviour toward interest representation is a significant instance of how the European Union’s institutions regard this activity, particularly in relationship with democracy. In 2003 it openly admitted that “European Institutions recognise the benefits of being open to outside input and consultation mechanisms

form part of their activities throughout the whole legislative process” (European Parliament 2003: 1) and that “useful and competent information is often welcome to policy-makers” (*ibid.*: 3).

The role of “competent information” is crucial in the light of the contribution of lobbying to democracy. Competence can be meant in two senses:

- a) lobbyists are professionals, they are used to represent the interests of their clients, and they do it in the most informed way, differentiating themselves from amateurish groups which only occasionally accede the European institutions;
- b) lobbyists contribute to gather the necessary information which is required to make conscious decisions, taking into account the claims and the viewpoints of the highest possible number of stakeholders.

In both respects, lobbying provides a high service to the democratic development of the EU. As already stressed in the previous chapters, professionalization can be an important driver of democracy as it guarantees that professional lobbyists are included in the formal decision-making processes which lead to authoritative deliberations. The diffused negative perception of interest representatives is influenced by the unfortunate diffusion of low-quality lobbying by people who do not dedicate enough time to preparation and end up pushing the “wrong” buttons in Brussels. I have already expressed the idea that, if disparities in the treatment of different groups exist due to their dissimilar degrees of professionalization, it seems pointless to argue that a lack of democracy occurs. This conclusion can be reinforced here by stating that “high degrees of educational attainment and specialized knowledge can result in enlightened figures capable of perceiving the common interest [...] and using their autonomy to represent it” (Greenwood 2011a: 203). Professional lobbyists can contribute to the fulfilment of the input and output notions of democracy: due to the inevitable dependence of the European decision-making process on elites⁵⁵, a limitation of the access to those who

⁵⁵ As said in Chapter 5, *elite pluralism* is a defining feature of the European interest representation system. A perfect freedom of access cannot be guaranteed to all stakeholders: given the current

properly know how the EU works and how interests can be promoted can be a way to avoid to waste efforts and time, thus increasing the efficacy of the deliberative system of the Union.

Some might argue (and actually do) that professionalized representatives are detached from the interests they promote. In other words, they would be just hired agents at the service of a principal who pays them for being convincing without being really convinced about the cause they professionally support. This seems to be strikingly evident in the case of NGOs staff pushing the claims of citizens without ever being activists in the field. Environmental associations are full of people employed after a selection process starting with online-published job vacancies which only generally require interest in the themes in which these associations work. From Greenpeace to Oxfam, the ideal candidate's profile is defined in terms of university degrees achieved and professional experience (e.g. in fundraising or project management).

As Greenwood (2011a: 203) notes, these kinds of critiques “are more caricatures than rigorously tested propositions”, but their effect remains relevant as they are able to seriously undermine the reputation of lobbying and professional lobbyists. Nevertheless, looking for mass participation instead of elite pluralism, and hoping that all groups are formed only by passionate supporters of the cause they promote, is a nice utopia which can easily prove unfeasible in the real world. Conversely, “[w]ith the autonomy to define and develop their work in whatever way they see best, together with their expert knowledge of EU institutions and of the Brussels circuit of organizations, such professionals can develop networks and

overloading of the system, made slow and problematic by the myriad of interests at stake and the incredible number of European lobbyists (Chapter 4), it would be unreasonable to argue that *any* interest should be represented by *any* actor operating in Brussels. Instead, a certain degree of elitism is a feasible solution for limiting the number of voices to be heard and, at the same time, rationalizing claims which can acquire a higher status if conjugated with similar and compatible demands at European level. Coordination among promoters of parallel issues can bring better results than “atomistic” lobbying performed by numerous but disaggregate actors.

activities which have the effect of *deepening* the EU's democratic connections" (ibid., emphasis added).

This reasoning leads us to point *b*) mentioned above. Lobbying can be a crucial source of information for the development of conscious decisions at European level. Table 6.1 shows that 60% of EU policy elites consider expertise sharing as the most positive aspect of lobbying, and that 58% think that transforming technical information into user-friendly notions is the best result achieved by European interest representatives. In terms of democratic outcomes, these contributions are absolutely vital. EU governing bodies are characterized by a range of competences which rationally overcomes their possibility to be expert in each issue they have to decide on. Although they can rely on institutionalized advisory bodies (like the Economic and Social Committee and the Committee of Regions), they necessarily need to be *informed* on the technical aspects relating to their decisions, with special regard to the consequences of their deliberations. The huge variety of the countries interested by European decisions, and their internal and external differences, represent an enormous argument in support of allowing consultation between EU institutions and lobbyists. It would be just insensate to think that European decision makers, whose deliberations have huge impacts on twenty-seven diverse national legislations, can settle on specific issues without any *external* input. Such a situation would lead to never-ending *ex post* fights, and it would seriously undermine the legitimacy of any European diktat.

On these bases, the Commission, in 2002, released a Communication aiming at the establishment of a "reinforced culture of consultation and dialogue" in which it defined consultation a "win-win situation all around" (European Commission 2002: 4). In other terms, it was considered as a positive-sum game from which both the European institutions and the organized civil society can benefit.

“Consultation mechanisms form part of the activities of all European Institutions throughout the whole legislative process, from policy-shaping prior to a Commission proposal to final adoption of a measure by the legislature and implementation. Depending on the issues at stake, consultation is intended to provide opportunities for input from representatives of regional and local authorities, civil society organisations, undertakings and associations of undertakings, the individual citizens concerned, academics and technical experts, and interested parties in third countries” (*ibid.*).

Interest representation thus provides input democracy with a decisive stimulus. The same document produced by the Commission individuated a basic “need for specific experience, expertise or technical knowledge” (*ibid.*: 19) as a decisive element in the determination of relevant parties for consultation. As a consequence, they must be given the chance to express their opinions in the decision-making process. By including experts in the consultation procedure, when applicable, the Commission aims to enlarge the input side of the democratic structure of the Union, thus following two complementary paths:

- all “relevant parties” should enjoy the opportunity to get their voice heard;
- policy makers should listen to all the parties involved, not just “to one side of the argument” (as stated in the White Paper on Governance).

If both requisites are satisfied, the input side of democracy can benefit from lobbying providing European governors with expertise. In order to achieve this desirable result, some guiding principles should be respected, namely the independence of outside organizations and experts, a satisfactory degree of pluralism of points of view and transparency of consultations. In this light, the Commission individuated both general principles and minimum standards which, if fully respected, can make lobbying properly serve democracy as a necessary guarantee of

competence⁵⁶. In this way, it is possible to configure a scenario in which interest representation is not opposed to European democracy, but stimulates it and helps it achieve positive outcomes in terms of inclusiveness, legitimacy and stability.

6.3. Power of Inclusion

As I introduced in Chapter 2, one of the main reasons why lobbying can be seen as a systemic feature of the decision-making structure of the EU is the lack of participation and popular engagement in Union-related affairs. Such a peculiarity opens up the possibility to partly fill this void by the means of organized civil society. The latter can drive interests to Brussels and thus has the chance to bridge the gap existing between European citizens and the institutions. The EU is highly dependent upon interest representatives, much more than its MSs. Numerous constituencies can be individuated in twenty-seven countries: dissimilarities among them, couples with the variety of interests promoted in Brussels, make it clear that “there is a strong need for the EU to have a highly developed set of rules for engagement with organized civil society if it is to aspire to democratic legitimacy” (Greenwood 2011a: 204).

It appears doubtless that even the most structured dialogue between European governing bodies and interest representatives cannot fully compensate the lack of participation which affects the Union. The drafters of the Treaties were certainly aware of this, when they framed art. 11.1 TEU. As a matter of fact, such provision foresees the need for enhanced participatory democracy, but it does not emphasize in

⁵⁶ The “general principles” are participation, openness and accountability, effectiveness, and coherence. The “minimum standards” concern the clear content of the consultation process, the consultation target groups, the publication of the results of consultations, the time limits for consultation, and feedbacks of contributions. All the indications set forth in the 2002 Communication noticeably resemble the discussion about democracy developed in Chapter 3 and can be seen as the requisites for putting lobbying at the service of European democracy. In particular, these principles and standards guarantee that lobbyists, as experts, are included in the European decision-making process and that EU institutions can effectively gain from the expertise that lobbies bring to Brussels.

an excessive way the role of organized civil society as a proxy for a proper form of participation:

“[t]he institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”⁵⁷.

“Representative associations” can partly provide the lack European public space with an answer, but they cannot be a perfect substitute of it. Problems like the perceived distance between the institutions and the people, and the low degree of knowledge of European issues, are likely to remain worrying features in the EU public sphere.

However, *consultation* – especially in crucial phases of the decision-making chain as the one which leads to the elaboration of a structured legislative proposal by the Commission – can increase the degree of access to policy making by stakeholders at European level.

This view was expressed by the European Commission in two key documents. The first was the 2001 White Paper on Governance, in which the “executive of Brussels” widely stressed the need to involve civil society⁵⁸ into European governance: as a consequence, it formally empowered citizen organizations and made them more responsible as a formal part of the decision-making system of the

⁵⁷ Art. 11, as modified by the LT, is substantially built upon the “Protocol on the application of the principles of subsidiarity and proportionality” annexed to the Amsterdam Treaty (1997). At point (9), it states that the Commission should, “except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, whenever appropriate, publish consultation documents”. This was one of the first cases in which the Union openly recognized a structural need for engagement of organized civil society in the decision-making process of the Union (in particular, in the phase preceding the submission of a legislative proposal).

⁵⁸ “Civil society”, in the meaning of the White Paper, included trade unions and employers’ organizations, NGOs, professional associations, charities, grass-roots organizations, organizations that involve citizens in local and municipal life with a particular contribution from churches and religious communities. Broadly speaking, they correspond to the category of citizen interest representatives employed in this work.

EU. In clear and powerful words, the Commission proposed a refined picture of (organized) civil society and of its power of inclusion.

“Civil society plays an important role in giving voice to the concerns of citizens and delivering services that meet people’s needs. Churches and religious communities have a particular contribution to make. The organisations which make up civil society mobilise people and support, for instance, those suffering from exclusion or discrimination. [...] Non governmental organisations play an important role at global level in development policy. They often act as an early warning system for the direction of political debate.

Trade unions and employers’ organisations have a particular role and influence. The EC Treaty requires the Commission to consult management and labour in preparing proposals, in particular in the social policy field. Under certain conditions, they can reach binding agreements that are subsequently turned into Community law” (European Commission 2001: 14-15).

The same theoretical framework gave rise to the 2002 Communication concerning dialogue with interest representatives. In the Commission’s view, “society organizations play an important role as facilitators of a broad policy and dialogue”, which “in modern democracies is closely linked to the fundamental right of citizens to form associations in order to pursue a common purpose, as highlighted in Article 12 of the European Charter of Fundamental Rights”. In other words, “[b]elonging to an association is another way for citizens to *participate* actively, in addition to involvement in political parties or through elections” (European Commission 2002: 5, emphasis added).

Two instances can be proposed to show that lobbying is perceived by EU institutions as a potential driver of democratic participation, thus as a fuel of the compound model characterizing the Union.

The first is that the Commission publishes every year, on its website, a “Work Programme”⁵⁹, in which:

- it announces the policy imperatives with regard to the forthcoming year;
- for each need, it clearly defines the objectives to be pursued (although they are more frequently expressed in qualitative rather than in quantitative terms),
- it identifies what is missing today, thus highlights in which respects the EU should modify its behaviour in order to properly address the most pressing issues.

The Commission’s Communication is directed to the EP, the Council, the ECOSOC and the CoR; however, it can be easily consulted by all European citizens who browse the Commission’s website. It can be a useful instrument of inclusion due to two main reasons: first, it is written in a very direct language which immediately clarifies the macro-objectives in terms of policy making; second, it is made available before the year starts⁶⁰, so it provides all interests with a useful opportunity to be aware of what will happen in European governing rooms in the following months and consequently to get organized in order to influence the deliberative outcome. Citizen initiatives can be set up; interest representatives can be mobilized; groups can define a strategy to counter-act unfavourable proposals before they are formally issued. In addition, Green Papers and White Papers usually precede the submission of legislative drafts to the EP and the Council, at least in the most relevant areas within the Union’s competence. Consultations are widely used, as well as impact assessments which follow the legislative proposal and aim to depict the practical consequences of a particular piece of legislation and reduce, as possible, the unfavourable effects of European decisions⁶¹. After impact assessments come

⁵⁹ The 2013 Commission Work Programme – the last available at the date of completion of this thesis – can be consulted online at http://ec.europa.eu/atwork/pdf/cwp2013_en.pdf, accessed on 1 June 2013.

⁶⁰ The 2013 document was released on 23 October 2012; the 2012 Work Programme on 15 November 2011; the 2011 text on 27 October 2010.

⁶¹ The “Civil Society” section of the Commission’s website (available at http://ec.europa.eu/transparency/civil_society/index_en.htm, accessed on 1 June 2013) provides a more detailed presentation of dialogue and consultations of the Commission with European civil society and other interested parties.

roadmaps, which provide a first description of a planned Commission's initiative and makes the assessment operative by setting precise dates and details.

The second instance of how institutions consider lobbying as an instrument of democratic participation is that the Commission stimulates the emergence of Forums which not only aim to influence policy making, but also intervene in the phase of policy implementation (Greenwood 2011a: 212). Forums often involve initiatives open to public at large, which can thus feel a sense of commitment toward a specific matter and inclusion in the process through which influence is brought to European institutions. As a matter of fact, the European Commission dedicates *ad hoc* sections of its website to the Forums, in particular to those open to wide participation: in such areas, it formally acknowledges the main results emerging from these events.

An interesting example is the European Culture Forum which, in October 2011, attracted over 800 participants to Brussels. As the Commission reported, “[s]takeholders from diverse areas of the cultural sector gathered together to exchange their thoughts on the most pressing issues facing culture today, including digitisation, skills for culture in a globalised world, regional investment in culture, role of culture and the EU’s external relations in democratic processes. Policy-makers and experts from a range of cultural fields were invited to speak, and participants were able to make their views heard in the Q&A sessions”⁶². Papers were issued and published on the dedicated website, together with some brief resumes of the results achieved in the various Panels of the Forum. Culture might be perceived sometimes as something far away from the centre of debates in EU decision making, especially in a time of crisis: conversely, in this way it obtained high visibility, as well as and the numerous proposals which came up from the Forum, which achieved a degree of publicity which could be hardly imagined outside the channels provided by the Commission itself. Instances like this show that civil society, if properly organized, can receive support even by European institutions and

⁶² http://ec.europa.eu/culture/events/forum-2011_en.htm, accessed on 1 June 2013.

make its voice heard. Forums, as well as online consultations, are not instruments for directly influencing the Union. However, they guarantee a high level of pluralism of ideas and represent useful tools for enhancing public participation in European affairs.

If all these instruments are used effectively, lobbying can prove a useful resource to limit the distance between institutions and people. Citizens alone cannot aim to influence European institutions but, if they properly organize themselves (for instance by subscribing to the European Transparency Register), they can have a significant word in the EU decision-making architecture. They can get activated before a legislative procedure is initiated by bringing their (organized) claims before the Commission through their representatives. In case of failure, they can also set up protest movements, which can be much more effective in an early stage than in a following phase, when the EP and/or the Council have already received a structured text by the Commission. In other words, democracy can be enhanced in at least two main respects:

- a) on the *input* side, with a more open and pluralistic landscape of interest bearers expressing their views before a legislative initiative is formally launched, aiming to exert pressure on European institutions by communicating their opinions, concerns and expectations;
- b) on the *feedback* side, with the possibility to express support to, or protest against, EU deliberations which impact on specific interests by bringing concrete arguments which rely on expertise and commitment to a particular subject (such as culture, as mentioned above).

With regard to point *a*), van Schendelen (2002: 294) supports the view according to which “[t]he scores and successes of EU input democracy are [...] importantly, and to a degree even increasingly, caused by lobbying interest groups” because “[e]xcept for the few outsiders, all lobby groups have at least a good chance to enter the system sooner or later” and exert influence on behalf of the most diverse stakeholders – more and more including citizens, who have historically suffered from

a structural difficulty to accede to the room powers in Brussels. This happens because the representative channels are essentially *non-discriminating*: they are open to all groups which satisfy the general principles and the minimum standards developed by the European Commission. As already mentioned, this openness proves to be even excessive in the case of the ETR, which allows a vast variety of entries, resulting in an overcrowding of the Register itself.

On the feedback notion of democracy, the aforementioned White Paper on Governance was extremely clear:

“[c]ivil society increasingly sees Europe as offering a good platform to change policy orientations and society. This offers a real potential to broaden the debate on Europe’s role. It is a chance to get citizens more actively involved in achieving the Union’s objectives and to offer them a structured channel for *feedback, criticism and protest*” (European Commission 2001: 15, emphasis added).

Citizens can participate in European affairs by organizing themselves and exploiting the representative channels offered by the EU. This is a form of “indirect” participation which, of course, cannot be considered as a perfect surrogate of the scarce popular engagement in what happens in Brussels. However, input and feedback democracy can benefit a lot from interest representation. The high degree of openness of the decision-making structure of the Union guarantees at least the *possibility* to exert influence in a democratic setting: the result depends upon the efforts that lobbyists put in their work and the level of preparation which precedes the meetings with European governing bodies. In other words, citizen interests can enjoy a form of equality in the starting points: they can enter Brussels as well as any other kind of issue does, but the success of their activities is linked to how good their job is done. Obtaining favourable outcomes is a matter of professionalization: as said

before, expertise proves to be one of the possible drivers toward European democratization, although it is an effortful one.

6.4. A Potential Source of Legitimacy

6.4.1. Input, Output and Social Legitimacy

Lobbying does not only aim to influence the adoption of particular legislative and/or regulatory provisions by the institutions of the EU. Pressure is exerted both in the initial stage of decision making (when the Commission collects information and opinions in order to shape a coherent and feasible proposal) and in the phase of interpretation, harmonization and implementation at national level (Coen 2007b: 3). As a matter of fact, European legislation often needs to be “received” by national governments (directives being the typical example), which enjoy a variable margin of appreciation in the way they decide to put EU indications into practice. The modalities they choose to implement them have a strong impact on the favourable, or unfavourable, judgment that citizens develop about their governors and their ability to promote national interests within the European framework. This is one of the reasons why EU lobby groups can be observed as a potential source of legitimacy to decision makers, both European (in the development of EU legislation) and national (in its implementation).

Hauser (2011: 682) properly distinguishes between two sides of legitimacy:

- *output* legitimacy of EU policy is linked to the production of effective legislation through the supply of quality information and expertise by interested groups;
- *input* legitimacy is the ability of groups to contribute to the development of policies by influencing EU decision makers.

A third type of legitimacy can be added, which is peculiar to the structure of the Union: it is a *social* form of legitimacy implying that “legitimacy of a political order depends on the degree of social homogeneity, the strength of civil society

institutions, and the existence of a collective identity among citizens” (Schimmelfennig 1996: 5). In all these respects, the Union is highly dependent upon lobbies for achieving the desired level of legitimacy. The institutions are perfectly aware of their need for public support (European Parliament 2003: 53), especially in the light of the difficult integration process of a huge variety of countries and populations which strive for harmonization, but continuously encounter obstacles due to their internal and external differences. As the EP openly recognized, “EU officials and politicians [...] largely welcome the arrival of new issues and stakeholders, because this enhances the political weight of EU institutions and policies” (*ibid.*: 31). It is significant that the sole popularly elected body of the Union admits such a dependence: albeit, as also the European Commission (2000: 4) recognized, “[t]he decision making process in the EU is first and foremost legitimised by the elected representatives of the European people”, lobbies are important actors in the Union’s struggle for achieve legitimacy.

The beginning of the 2000s witnessed an increase in the perceived connection between lobbying and legitimacy. After the dismissal of the Santer Commission in 1999 and a more and more vivid Euroscepticism of many European politicians, the EU – and in particular the Commission – decided to inaugurate a new model of governance based on higher attention paid to the legitimacy of European politics. More generally, they wanted to reinforce the democratic features of the decision-making system. In this light, “citizens, civil society and non-governmental organizations (NGOs) are expected to play a prominent role, since their active engagement is considered to be necessary to remedy various (perceived or actual) defects and deficiencies” (Goehring 2002: 118).

In particular, lobbies can contribute to the legitimacy side of democracy by providing European interests with a form of representation before EU institutions and acting as balancers of influence itself. As Greenwood (2011a: 232-233) notes, the main task of EU institutions is “to ensure a sufficient population of interest groups in

which a wide variety of interests are represented, and which are sufficiently resourced so as to be able to act as checks and balances upon each other, and upon EU political institutions”. In this way, lobby groups contribute to the realization of a form of limited government in a number of instances (van Schendelen 2002: 298):

“[s]pecial citizens’ groups have pressed for the EP to be a checking and balancing power. [...] Regional and sectoral groups have been a strong factor of decentralised participation in EU affairs. Industrial groups have clearly stimulated the trend from so-called positive to negative integration, exemplified by the creation of a more open market and a more autonomous civil society. Together with their governments, the lobby groups from the majority of countries with a legalistic tradition (the South of Europe, plus Britain and Germany) have contributed much to the EU practice of bringing the compromises on decisions under the rule of law. [...] British citizens’ groups in particular have successfully pressed for more accountability”.

Within this general framework, the contribution of lobbying to European legitimacy can be more particularly shown by three elements: first, the Union’s institutions tend to “attract” lobbyists into the decision-making process; second, interest representation can enhance the throughput values mentioned in Chapter 3; third, lobbyists have often promoted sympathy for EU policies.

6.4.2. EU Institutions Attract Lobbyists

In §5.4.1 I introduced the concept of elite pluralism and I argued that there is no solid reason to link European lobbying practices to a violation of the notion of representation. That discourse can be expanded here to demonstrate that the elite pluralist arrangement which characterizes interest representation at EU level is a means for establishing good relationships between the institutions and lobbyists, with a significant advantage to European legitimacy.

According to Coen (2007b: 9), “the regulatory agency style of Brussels policy-making has produced the emergence of an elite trust-based relationship between insider interest groups and EU officials”. The Commission, in particular, has engaged in a “credibility game” with interests: as a mainly regulatory body, it has been assigned wide competences in a growing number of fields on the basis of the precise requirements of independence and expertise pending on its members. Due to its credibility and the positive results it has achieved in its history, it has acquired a high degree of policy-making legitimacy (or, in our lexicon, output legitimacy) in the opinion of most European interests. Within this framework, the Commission aims to build strong ties with lobby groups, based on:

- “*consistency* for information exchange”;
- “*wide consultations*”;
- “*conciliatory actions*” (*ibid.*).

At the same time, lobbyists are stimulated to enhance their reputation in order to obtain the possibility to enter the limited number of groups with a permanent (and effective) presence in decision-making rooms. This is confirmed by the more general idea that “regulatory policies produce underlying competitive interest group politics because their effects are intensely concentrated upon relatively narrow constituencies of interests” (Greenwood 2011a: 232)⁶³. On the one side, this produces a general orientation, among interest representatives, to form groups and alliances in order to acquire a higher status and make their voice louder. On the other side, this stimulates the professionalization of groups and their engagement in the previously mentioned “credibility game” with EU institutions. As a result, “contrary to the perception of aggressive lobbying of bureaucrats suggested in the popular media, EU lobbying and business representation is often characterized by institutions seeking out and in some cases funding interest groups and ad-hoc alliances” (Coen 2007b: 10). The validity of this conclusion is not limited to business: more generally, this argument can be

⁶³ This idea is built on Lowi (1964).

applied to all highly regulatory policy areas in which the European institutions operate.

Table 6.2 European Commission and lobbying resources dependency

DG	Number of <i>Fora</i>	Number of Groups
Agriculture	71	100
Competition	22	39
Development	3	51
Economic and Financial Affairs	12	44
Education and Culture	90	120
Employment and Social Affairs	56	106
Energy and Transport	104	110
Enlargement	0	52
Enterprise	94	221
Environment	124	132
Humanitarian Aid	18	13
External Relations	25	32
Fisheries	1	10
Information Society	39	53
Internal Market	70	105
Justice and Home Affairs	51	76
Regional Policy	59	24
Research	132	63
SANCO	55	149
Taxation and Custom Unions	99	28
Trade	10	64

Adapted from Coen (2007b)

Table 6.2 shows, for each Directorate-General in the Commission, the number of decision-making *fora* and the number of lobbying groups. It is striking to observe

that the highest degree of group activity is concentrated around DG Enterprise (221 groups) and DG Environment (132), in which the notion of legitimacy strongly depends upon expertise and technical knowledge. In such areas, where know-how is required and the appropriateness of the legislative outputs defines how much the Commission can be considered legitimate in its regulatory activity, it is the same institution which “attracts” lobbyists, creating forums (as the ones mentioned in §6.3 above) and other access routes in favour of interest representatives.

6.4.3. Enhancement of Throughput Values

The notions of democracy presented in Chapter 3 are not completely independent from each other. The tripartite definition of legitimacy – in input, output and social terms– proposed earlier means that not only European policies should be legitimate, but also that the institutions making them should express a legitimate authority and respect the values of discursiveness and transparency. These concepts, although they theoretically pertain more to the sphere of representativeness, play a decisive role also in the area of legitimacy and contribute to show how lobbying is interconnected with representative and legitimate decision making.

As said in the previous sub-paragraph, output legitimacy is closely linked to the provision of expertise for the production of “good” legislation, responding to the particular needs of the Union. However, by delivering technical knowledge and professional experience to Brussels, lobbies also allow a better representation of the various interests at stake: as a matter of fact, information, even if sector-related, can always enhance the discursiveness and openness of the policies made by EU institutions. More information implies a higher number of issues brought to the tables of European officials, who are thus able to take into account a wider spectrum of concerns which otherwise would not be available to them. By involving groups in decision making and assigning to them appropriate *fora* for discussion and influence, the institutions ultimately aim to legitimate their authority; by providing their support

and knowledge interest representative try to legitimize themselves, acquire a permanent access key to Brussels and provide their clients with higher visibility at EU level.

Therefore, a mutual exchange between lobbyists and European institutions occurs. The favourableness of the result of this interaction highly depends upon how lobbying is practiced and how EU officials receive influence. There is neither a single answer nor any permanent obstacle able to prevent lobbying from being beneficial to the European Union. Instead, the numerous steps toward a stricter regulation of interest representation – especially toward increased transparency and ethical behaviour on the two sides – show that there is large room of manoeuvre for putting lobbies at the service of EU legitimacy and representativeness. The best way to realize this project is to exploit the peculiarities of the lobbyists' activities and inscribe them within a helpful framework for the process of European democratization. As van Schendelen (2002: 295) explains,

“[t]he individual group does not, of course, primarily demand legitimate authority, discursiveness and transparency in the processing of the dossier at stake. In essence, it values most highly winning or at least not losing the desired outcome. But, knowing that such an outcome is frequently indeterminate for a long time, it has a next-best preference for these three values”.

Instead of risking losing because their rivals behave in a non-transparent way, secretly or corruptly, groups prefer to push themselves for a legitimate use of power by their target institutions, thus contributing to stimulate the values of throughput democracy and, indirectly, the legitimacy of European decision making.

One might argue that their support to the aforementioned values is not authentic, but *strategic*: in other words, lobbies do not advocate transparency, legitimate authority and transparency because of their intimate goodness, but because such notions entail the possibility for further intervention and keep the “market for

access” to EU institutions open. Maybe this is true: lobbies are usually more interested in preserving a market share than in keeping a level playing field in which their competitors can have a chance to get their claims heard. However, at the same time, it is also unquestionable that some criticism against the closed-door practice of, for instance, the Council is fuelled by lobbies themselves, in particular by those which are not able to gain what they expect in the decision-making process and consequently try to de-legitimize their winning competitors by claiming misbehaviours by other lobbyists and EU officials.

It seems pointless to discuss about the real motivations pushing the actors of our discourse to make specific choices. More than looking at whether lobbies express a “sincere” commitment to the values mentioned above, maybe it is more useful to understand *how* they can help European legitimacy increase and exploit their recurrent behaviours in the light of the need for enhanced democracy. In §1.5 I introduced the metaphor of the “meta-game of Triple P” to define the conduct of European lobbyists. By the same logic, it is possible to rationally analyse the actions of groups and understand that they choose to support the three values as their “next-best preference” in order not to risk to be excluded from the “game”. Relying on this *strategic* kind of performance, European institutions – and in particular the Commission – can take the chance to further regulate lobbyists’ demeanour, in line with initiatives already launched, such as the proposal of “codes of conduct” to be formally adopted by groups which aim to enter the buildings in Brussels.

6.4.4. Promotion of Sympathy for EU Policies

As anticipated in §3.3.4, lobbyists can promote sympathy for EU policies and thus favour a positive perception in the sectors they represent. Opening the decision-making system to a wider number of actors is a way, for EU institution, to make them feel included in both the positive and the negative outcomes of policy making. The examples mentioned above of the forums and the online consultations promoted

by the Commission not only serve as stimuli to the input side of democracy: they are also powerful means to strengthen the output of the democratic process and, in particular, to enhance the actual and/or perceived legitimacy of European policies.

A significant instance of this peculiar contribution of lobbying to EU democracy is represented by the influence it exerted, and continues to exert, on the process of enlargement and on the integration of formerly outsiders groups within the boundaries of European political life. An interesting analysis of the situation of the Central and Eastern European Countries (CEECs) was developed by Pérez and Borragán in 2002, two years before the 2004 wave of enlargement which brought ten new states to be part of the EU architecture. In their work, the two authors highlighted why CEECs were interested in getting their interests represented in Brussels even before their formal accession to the Union and how interest representation impacted on their process of inclusion in the European arena.

First of all, they had an “obvious incentive” in the “possibility of actively participate in the enlargement process by making sure that their concerns [were] being voiced at the core of the EU decision-making machinery” (Pérez and Borragán 2002: 168). They did not aim to directly influence the way decisions were made in Brussels: as candidate members, they did not possess a right to vote in EU institutions. However, interest groups performed a highly relevant role as they were able to communicate the position of their countries and populations on crucial issues concerning the polity of which they were going to become a constitutive part in the forthcoming years.

In this way, they made it possible to stimulate a European discourse in their home countries and partly act as agents of European socialization. This trajectory developed in two interconnected directions.

- a) Groups from CEECs engaged in forms of sectoral cooperation by affiliating with European associations operating in their same field: this collaboration provided the newcomers with a chance for “benefiting from the experience that these groups have acquired over the years, their communication networks and contacts,

and from their knowledge of the EU policy process” (*ibid.*). As a matter of fact, Central and Eastern European lobbies lacked the necessary abilities and experience to bring influence to bear on a liberal democratic environment, and through this cooperation they were rapidly “educated” to the values and the methods of European democracy.

- b) These groups also engaged in strict partnership with each other. Central and Eastern European Offices of Representation (CEORs) were established in Brussels, and they progressively started to work together and form networks of groups coming from candidate member countries for the exchange of information.

European integration benefited from these experiences. The formal presence of CEECs interests in Brussels, thanks to the CEORs, was a decisive stimulus to the diffusion of EU-related topics and European awareness in the forthcoming MSs. As the two authors argued, all of this shows that “Europeanization and socialization are two processes occurring in parallel to and beyond EU activities” and that, even before the formal accession of CEECs to the Union, “[a]s a result of Europeanization the EU has become the arena for the effective representation and promotion of Central and Eastern European interests” (Pérez and Borragán 2002: 178).

6.5. A Means of Deliberative Democracy

In Chapter 2 the EU was defined as a “compound democracy” and the specificities of this model of democracy was analysed to conclude that it sensibly differs from that of the single MSs. In this respect, the Union resembles much more the US than its constitutive units. Fabbrini (2010: 13) clearly expresses this similarity by looking at the peculiarities of the European and American political process:

“[t]he level of political responsibility is subsystemic and the scope of political issues is specific. Polities without a government – that is, polities without a centralized institution legitimized to monopolize ultimate decisions – have inevitably an open and incoherent political process. The outcome of this political process is not only decided on the basis of power relations among political actors; it is also and frequently the product of a *deliberative* process in which ideas, information, expertise, and knowledge play a crucial role. Hence, the structure of multiple separations of power and the open nature of the political process are necessary to support and protect the compound logic of the political system” (emphasis added).

Deliberation is one of the keywords which better describe the European polity and differentiates it from its MSs. The deliberative logic is essentially based on *arguments*: it is not dependent upon the degree of support by an electoral constituency (as it usually happens in national, non-compound democracies), because its objective is seeking a solution to a problem. Deliberation has not to do with finding sponsors for one’s own position by making an electoral bargain. What really matters is studying the issue at stake and being able to prove the goodness the argumentation one proposes. In this sense, expertise and information sharing play a relevant role in decision making. Consequently, lobbying – as a communication activity able to guarantee competence and raise awareness about sectoral topics which could hardly be known by European governors otherwise – can serve as a powerful means of democratization.

In the lexicon of Arend Lijphart (1999), the EU is more oriented toward consensual than majoritarian decision making: there is no “one-takes-all” logic, but a continuous re-negotiation of issues and positions due to the profound interaction among twenty-seven highly differentiated MSs. This is the inspiring logic of deliberative democracy: such a model is far apart from a zero-sum game in which one (the winner at elections) gains all while the others lose. Conversely, the guiding principle is the possibility of a continuous confrontation among different actors:

instead of a *winner-loser* dynamics, this interaction is likely to produce a positive-sum game, that is, a win-win situation in which all parties can benefit from participation in the game. In compound democracies, there is no room for the creation of winners and losers *by definition*, as the legitimate interests of all the actors tend to be taken into proper consideration.

In literature on lobbying there are mixed perceptions about whether groups can contribute to the fulfilment of the notion of deliberative democracy by adhering to the logic described above. Some highlight the fact that “multi-level governance political systems do require bargaining to produce outcomes” (Greenwood 2011a: 217), which seems to be an obstacle to both transparency and public use of reason. Others stress the high role that lobbying can perform in favour of deliberative outcomes by promoting a form of deliberative politics, especially through the action of committees (Joerges and Neyer 1997).

A reasonable assessment seems to rely on a middle way between these two positions. As a matter of fact, it is possible to argue that “[a]spects of the procedural regime which EU institutions have for engaging with organized civil society do present deliberative possibilities” (Greenwood 2011a: 224). The European polity, primarily founded on liberal democratic roots, is open to the contribution of interest representatives to the enhancement of the deliberative ingredients of EU democracy. These two inspirations, as Greenwood (*ibid.*: 226) argues, can be seen as complementary, and lobbies can help enact them. The following three observations can exemplify this position.

First, the Commission actively encourages the adoption of codes of conduct for lobbyists, with particular attention to the need to avoid misleading information⁶⁴. It tries to encourage “good practices” in the field of liberal democracy, but at the same time it aims to guarantee that valid arguments are brought to the public discourse in order to ensure proper consideration of worthy issues. The Commission strongly

⁶⁴ See §5.5 on this point.

relies upon the modalities of access to EU decision making and shows a deep commitment to the values of openness and fair behaviour; however, it also stresses the need for honesty and seriousness when conveying information to the European institutions, thus highlights the deliberative nature of their inspiration. In this light, also with regard to the EP and the other governing bodies, “credible policy will require that large quantities and *quality* of information continue to flow to functionaries” (Coen 2007b: 13, emphasis added).

Second, the Code of Conduct linked to the ETI lobby registration scheme contains a particular clause (Clause 4) which directly confirms what expressed in the previous point and strongly reinforces it. It states that “interest representatives shall always ensure that, to the best of their knowledge, information which they provide is unbiased, up-to-date, complete and not misleading”. Such requirements openly recognize the progressive institutionalization of organized civil society groups as real members of policy making. In addition, they mark the shift of interest representation from a simple advocacy means to a proper part of the decision-making structure of the EU. This is made possible by their ability to provide information useful to the public use of reason, which is the defining feature of deliberative democracy. Hence, if they are to play this crucial role, they must guarantee the quality of the information they transmit, as the previously mentioned Clause expresses.

Third, the European Commission, as already mentioned, makes wide use of public consultations (also online), impact assessments and consultation roadmaps. These instruments are important instruments for stimulating participation and opening the European arena to outsiders. At the same time, they also contribute to the fulfilment of the legitimacy requirements we are analysing. As a matter of fact, with regard to the EU, it is possible to state that

“its liberal democracy is founded upon checks and balances in which impact assessments are first placed in the public domain by political institutions for open debate. These then becomes the public battleground among protagonists, as they

ultimately inform the premises on which policy is based. From these public consultations, the European Commission is supposed to make policy choices on the basis of public reasoning” (Greenwood 2011b: 328).

The recurrence of the focus on public debate and mediation which emerges from EU documents, in particular from the regulation of lobbying connected with the launch of the ETI, can be seen as a way to reconcile the liberal and the deliberative parts of European democracy. In this light, lobby groups can exercise a positive impact as they are legitimized to participate in EU policy making only insofar as they are able to provide transparent, non-biased and non-misleading information. If these precise conditions are fulfilled, the Commission and the other political institutions are ready to recognize the profound contribution of lobbying to the democratization of the EU and to set up *ad hoc* spaces in which interest representatives can exert their influence. In other words, this interaction can produce wide mutual benefits. Lobbying can help the work of the deliberative side of the EU decision-making structure and, consequently, acquire a degree of legitimacy on the grounds of its positive involvement.

6.6. Strengthening the Positive Impacts

The previous paragraphs have highlighted a variety of fields in which lobbying can positively influence the process of European democratization. The activities of interest representatives bring expertise and competence to EU officials, thus they allow inclusion in the political and public debate of issues that might be too technical or specific to be discussed otherwise. They permit a higher level of civil society participation in European affairs, through organizations which represent their interests, so that the unfavourable effects of the traditional lack of popular engagement are reduced and partly counterbalanced. They also constitute an

important means for improving EU policies legitimacy, from the three sides of input, output and social legitimacy. Lobbying impacts on the way citizens perceive European decision making and how they can contribute to shape it. More, lobbies play a significant role also in the enhancement of acceptance of what happens in Brussels and, as in the case of enlargement, they can also reduce the perceived distance between European institutions and citizens, two poles often travelling along far apart routes.

In synthesis, lobbyists play the decisive task of bringing as much information as possible before public policy decision makers, and in this way they are able to contribute to the democratization of Europe as constitutive part of the architecture which leads to the adoption of EU legislation.

The Commission and the other political bodies are perfectly aware of the centrality of interest representation at EU level. As a matter of fact, they have engaged in numerous initiatives aiming to make lobbies an integral part of the European decision-making machinery by, at the same time, limiting the negative effects that their improper behaviour might cause. The European Transparency Initiative, which is described in the next chapter, is a clear instance of this attempt to bridge the gap between lobbying and European democracy and strengthen the EU governing bodies by formalizing the role of lobbyists in Brussels.

In addition, we have also to recall the role played by the self-correction mechanisms introduced in Chapter 5: they are all system-linked responses to the damaging outcomes of lobbyists' unfair practices which do not need any kind of intervention for being enacted. They are endogenous "antibiotics" which can help European democracy resist the system degenerations and preserve its capacity to be operative and legitimate. These mechanisms, conjugated with the initiatives taken by the institutions (both reactively and proactively), have made the democratic structure of the Union resilient and able to survive the plentiful challenges it had to face in its short but hard life, as stressed in Chapter 2.

This does not mean that the existing measures are enough. In *theory*, a lot of hopeful possibilities seem to stimulate cooperation between lobbying and democracy. In *practice*, many grey areas – if not black spots – still exist, and they call with loud voice for deep reforms and changes of mind. Transparency cannot be considered fully achieved; openness has probably not reached a satisfactory level; corruption is a sad reality not unknown in Brussels; money is actually able to “buy” the most prepared professional lobbyists and, thus, a more powerful form of interest representation. Many other instances could be proposed, which would depict a scarcely encouraging image of European interest representation system. However, this is not in sharp contrast with the arguments proposed until now nor does it invalidate the reasoning proposed in the previous paragraphs and chapters.

The existence of theoretical room for a fruitful inclusion of lobbyists in the process of EU democratization must serve as a constructive starting point to understand that no contradiction *per se* can be devised between these two elements. However, the persisting difficulties in the relationship between European lobbying and democracy suggest that further steps ahead must be made. Discussion about the positive impacts should be stimulated in order to properly highlight the lines along which a beneficial cooperation can develop. Too often the public discourse about lobbying takes into account only the deficiencies of this practice and the ways in which it frustrates the process of European democratization. In addition, *negative* responses, instead of positive and constructive ones, are usually given to this problem. Lobbying is likely to threaten democracy in many respects, as seen in Chapter 5. However, a variety of counter-arguments can equally be proposed and a plethora of correction instruments can be devised, as the European institutions have actually done in many occasions, especially after 1992.

In order to fight this disheartened approach to the matter, the positive impacts of lobbying should be proclaimed and referred to as starting points for further stimulation of encouraging *traits d’union* between interest representation and

democracy. The principal way to do this is recognizing which groups effectively contribute to democracy, how and why they succeed in this task, and thus benefit from their example to shape the *modus operandi* of all the other groups.

First of all we should look at the logic which inspires lobbies' action. One of their main contributions to the European decision-making process is the rationalization and simplification of information to be brought to EU governing bodies. It is possible to assert that lobbies themselves have an interest in providing non-misleading information (a decisive requirement, as highlighted in §5.5). If they try to influence the public process only in the light of the interests they promote, they inevitably convey partial and deceptive arguments, at the expenses of the rest of society. It might prove to be a success for them, but it would be a capricious and temporary one: as a matter of fact, the next time they would attempt to advocate the same kind of interest, they would find closed doors because of their previously unfair conduct. As a result, they would have to renounce to a fruitful and lasting access route to Brussels. Conversely, if they manage to conciliate the interests they push with the general good – thus aiming to take into consideration others' issues and problems – they can acquire a higher status and gain a privileged position before EU institutions. Professional lobbyists never consider only their point of view: they necessarily display a broader sight and try to present themselves as servants of the public good. They claim to speak on behalf of the interests of the widest constituencies: by doing so, they seek to conjugate a particularistic issue with the general concerns of society. In this light, they have attached strategic importance to the provision of true and unambiguous information: only in this way they can effectively get a shelter from the diffused accusations of undue and sectoral influence on decision makers. Lobbyists present themselves as the ones who bring information and solutions: the only way to do this is fulfilling the expectations about their role. As well as in the case of the enhancement of throughput values (§6.4.3), the logic and the strategy of interest groups operating at EU level should be an important

starting point for clearly understanding how they operate and, in some way, to “exploit” their behaviour for the purposes of European democracy.

A second consideration emerges from the fact that, as said many times in the course of the dissertation, the best results are achieved by professional lobbyists who engage in deep, effortful and time-consuming preparatory work in order to be perfectly aware of the European decision-making system and its specificities. In this way, they know *who* to lobby, *how* to do this and even *when* and according to which logic. They are conscious of the differences between exerting influence on national governors participating in EU meetings and bringing influence to bear on the independent members of the Commission. They know what kind of results they can expect, and which strategy best serves their specific scopes. Conversely, passive groups – those which only occasionally lobby the European Union and do it without the necessary preparation – can constitute a serious strain on democracy as they tend to adopt improper methods. They can attract discredit on the whole category of interest representatives and make EU officials unwilling to open their doors to lobbyists in the future, thus precluding possibilities for fruitful cooperation. This perspective is confirmed by the fact that 62% of European policy, when asked about the most disturbing practices enacted by industry lobbyists, cited ignorance of the decision-making process as the most frequent misbehaviour by interest representatives in Brussels (Burson Marsteller 2009: 20). This figure is less worrying when the object of the survey are European NGOs, as it is limited to 44% (*ibid.*: 21), but the percentage still remains high enough to confirm the idea that the real curse of European lobbying perception are lobbyists themselves, if they are not prepared enough.

In this light, van Schendelen (2002: 306) proposes a triple approach to the need for strengthening the positive impacts of lobbying on democracy, based on three keywords which every lobby group operating at EU level should rely on:

- activation: “the more the many domestic interest groups are *activated* to play a role as EU lobby groups, the smaller the stratum of passive groups providing room for the active few”;
- establishment: “the better *established* the lobby groups become, the more they will have to lose by creating negative impacts on democracy”;
- professionalization: “[t]he more the lobby groups become fully professional, with both technical skills and a sense of prudence, the less they cause serious damage to democracy”.

As the author stresses, “[t]he more and the better lobbying is practiced, the more it produces beneficial impacts on democracy” (*ibid.*: 304). Groups which are not passive, but establish themselves as real policy actors, are likely to contribute to the democratic model of the Union in accordance with the points raised in the previous paragraphs. They can help the system remain open and even enlarge its boundaries. They can reinforce the discursiveness of European policy making and encourage active citizenship. They can build solid relationships between themselves, both within and outside a specific sector, and start a mutually useful dialogue with the institutions. They can promote legitimacy and representativeness, and push less represented interests to organize themselves in order to achieve favourable results in terms of policy outcomes.

Of course, by proving successful, they could also make the “meta-game of Triple P” attractive to amateurish groups looking for comfortable gains. Looking at established groups obtaining positive outcomes, non-professional actors might periodically try to enter the system and achieve the same advantages despite their bad preparation. However, recalling the analogy of the “market” for access to EU institutions, strong competition between well-working lobbyists is likely to automatically cancel distortions out, as well as perfectly competitive market forces are able, up to a certain degree, to keep the market open and self-correcting. In other words, the significance of the negative impacts of “bad” lobbying on European democracy can progressively diminish if the EU decision-making system enters a

virtuous spiral stimulated by the threefold approach mentioned above. This is not an easy objective, but the Union, by regulating interest representation, pushing for a reinforced culture of consultation and promoting stricter rules of behaviour, seems to have chosen the right path.

6.7. Conclusions

In this chapter I aimed to demonstrate that lobbying can be at the service of European democracy, provided that its positive impacts are opportunely strengthened and its unfavourable effects are limited by self-correction mechanisms and *ad hoc* interventions by the EU institutions. The conditions for this beneficial interaction are stringent and, of course, their realization is an effortful task which, in many cases, is likely to fail. Structural errors are difficult to erase, especially when their cancellation requires an opening of the European governance system to traditionally weaker forces (such as citizen interests) and an erosion of the “market share” currently in the hands of the stronger and better organized business interests. There is no moral judgment here: the discussion developed in the previous pages pointed out that the real line of fracture between successful (and beneficial) lobbying and unsuccessful (and damaging) interest representation is defined by the degree of preparation and professionalization of lobbyists themselves, not by the kind of interest they support.

I proposed a number of arguments and instances to show that lobbying and democracy are not far apart realities. They can positively interact and provide EU decision making and interests with mutual gains, in a positive-sum game which finds its roots in the very institutional structure of the European multi-level system of governance described in Chapter 2. In this light, the traditional attitude towards lobbying – heavily marked by suspicion and fears for undue unbalances and closed doors – should be revised. This conclusion is even more evident if we take into

account the numerous attempts made by the Union to open up its policy-making architecture, include interest representatives in a transparent manner and promote an ethical behaviour by both lobbyists and EU officials. The commonly perceived gap between interest promotion and democracy can be bridged: the instruments are already on the floor and, if they are properly used by the actors of European decision making, a prosperous future can await Europe.

7. The Problem of Transparency: Significance and Relevant Norms

In Chapters 5 and 6 I explored the core argumentation of this thesis: a series of poor practices in lobbyists' activities still pose difficult challenges which continuously threaten European democracy, but such obstacles are not insurmountable. System-linked correction mechanisms limit the unfavourable impacts of lobbying; in addition, *ad hoc* initiatives by EU institutions, in particular the Commission, have deeply improved the degree of compatibility between interest representation and democracy in the Union, in all its dimensions. The path, of course, is not complete: the harmonization of these two realities is a demanding task which still requires a lot of efforts, but the use of lobbying as an instrument of European democratization can be a feasible option to pursue.

In the last two chapters I propose a couple of examples of the convergence between lobbies and democracy. They can be useful instances of different but interconnected aspects: first, there are inner features of lobbying which naturally tend to support openness, representativeness, legitimacy and citizenship; second, the EU institutions are taking appropriate initiatives in order to uphold this progressive junction. As a consequence, they should continue on their route toward a full integration of interest representatives in the European decision-making structure by setting precise rules and standards of behaviour for both lobbyists and officials.

This chapter presents a discussion on the problem of transparency – one of the most worryingly perceived negative aspects of lobbying at EU level – and introduces the relevant rules which have been progressively introduced in the European setting with regard to this topic. As a matter of fact, the Commission enacted a variety of measures in order to stimulate openness and accountability of policy making and fight its apparent opaqueness. In particular, I will focus on the European

Transparency Register, that is, the last attempt to provide an effective *regulation* of lobbyists' activities and maintain their actions within the commonly accepted boundaries of transparency and democracy.

7.1. The Importance of Being Transparent

Transparency is a central issue in any democratic polity, and assumes particular relevance when lobbying is concerned. In the EU political system this is even more evident because of its “high degree of reliance upon organized civil society to undertake core democratic mechanisms” (Greenwood 2011a: 53). If interest representation, as argued in Chapter 2, is a systemic feature of the EU decision-making system, one of the main questions which subsequently emerge is how to make lobbyists' activities transparent, and how to avoid that opaqueness infringes the four dimensions of democracy (in particular the input side).

There are at least two main reasons why transparency appears to be one of the most crucial elements in the evaluation of a democratic system. The first stems from a practical consideration of the job of a lobbyist: the more an interest representative is transparent, the more he is likely to be welcomed by the officials and the bodies he/she aims to influence. As Commission's Vice President Siim Kallas underlined while presenting the results of a survey on lobbying in the EU, “an average of two-thirds of those interviewed state that the degree of transparency does influence the decision whether to speak to a lobbyist” (Burson Marsteller 2009: 4). In the same line, Jeremy Galbraith⁶⁵ affirms that transparency “is an increasingly important consideration for politicians and officials both in Brussels and in national capitals [...] for more and more regulators a declaration of interest is becoming an essential pre-condition to contact with any lobby group” (*ibid.*: 5). Transparent lobbying is an advantage for both institutions and interests: EU officials can receive open and true

⁶⁵ CEO of Burson-Marsteller Europe, Middle East and Africa.

information, especially in fields they know a little about; lobbyists can enhance their reputation and, through an appropriate formulation of their claims, link the satisfaction of the needs they advance to the improvement of the social good. An official who perceives a high degree of cloudiness in his interlocutor probably will not agree to meet him/her again in the future. Subsequently, the opaque lobbyist risks getting a possible access route to Brussels precluded because of his/her own conduct. Transparency, therefore, is a value: if it is not so *per se*, it acquires importance as a *strategy* for conquering reputation and being paid attention by European decision makers, as institutions tend to be more open to transparent lobbyists.

The second reason is that transparency of the decision-making architecture can significantly help institutions present themselves as democratically legitimate and attract the confidence of the addressees of their deliberations. In this sense, it becomes a real pre-condition for a functioning democratic polity (Greenwood 2011a: 207), as it stimulates all the dimensions of democracy analysed in Chapter 3. Within this theoretical framework, the EU engaged in its enterprise of lobbying regulation, which led to the adoption of a series of documents that are mentioned in this chapter. In particular, lobby regulation schemes look at two distinct targets: lobbyists *and* officials. Both have to behave in a transparent way in order to guarantee the sufficient openness of the system: not only lobbyists have to avoid unfair practices, but also members of the European institutions must refrain from actions which can put EU policies' legitimacy and transparency under strain.

However, there is one counter-argument which could undermine the intrinsic value of transparency, at least in the light of EU decision making. As Greenwood (2011a: 217) highlights, "multi-level governance political systems do require bargaining to produce outcomes, which in turn is facilitated by some degree of opacity". In Chapter 6 I defined the logic of EU governing bodies as a deliberative one, in which arguments are central and consensualism acquires relevance as it allows making shared decisions in a positive-sum political game. Consensus can be

reached among many different actors only if they all renounce something and agree to let others be partially winning. No ideological division is insurmountable, if an appropriate degree of discussion and compromise is ensured. However, if we recall the definition of lobbyists as *agents* at the service of their principals, it might be possible to argue that *full* transparency can work against the necessities of Europe. If lobbyists know that everything they say and every position they take will be made available to all – by, for instance, publishing the records of their meetings with decision makers on the Commission’s website or other relevant channels – they will have a strong incentive to pursue the exact mandate they received from their principals: any departure from it might be perceived as a loss by those whose interests are to be promoted. In this light, lobbyists do not have free hands and they cannot decide to give up a portion of their claims, even if it would lead to a satisfactory outcome. In other terms, they are pushed to look for the optimal solution, which might prove to be simply unfeasible, whereas a sub-optimal result might bring an increase in wealth and position for *all* participants in the exchange. This second situation defines a positive-sum game, in which all lobbyists should engage in order to achieve a desirable deliberative outcome.

Of course, both positions present strong pros and crucial cons. More transparency helps legitimacy and openness, while more opacity can sometimes favour bargaining and compromise and thus lead to more effective and beneficial governance. What is best? Actually, there is no permanent solution to this trade-off. According to the policy at stake and the kind of interests involved in the discussion, it might be better to guarantee open doors, accountability and clearness or, instead, to privilege secret cooperation if it can help find the middle ground between antipodal positions. Even in this second case, however, transparency appears as a value which is renounced in favour of a more pressing need, that is, fruitful deliberation. It still remains a value, anyway.

Therefore, it seems reasonable to treat it as such and look at whether, and how, the Union has engaged in its protection, as transparency is one of the vectors of

European democracy. It risks being particularly under strain due to the peculiar activities of lobbies, so we need to look at this delicate relationship and assess the current state of health of EU democracy in the light of transparency-linked observations. Nevertheless, no ideology-driven exaggeration should be injected in the discourse: we should never forget that, sometimes, a certain degree of opacity can help the deliberative outcomes which are central to the functioning of the Union's decision making.

7.2. How the Institutions Seek Transparency

7.2.1. The Problem

The need for open and transparent dialogue is central to the whole architecture of European decision making. EU institutions, and in particular the Commission, are perfectly aware of the advantages coming from transparent consultation with interest representatives, as highlighted in Chapter 6. Nevertheless, they clearly know that “[p]olitics in Brussels is less than transparent” (Coen 2007b: 12). The main reason is that “it is sometimes hard to identify who is actually lobbying and how many times they have told their message to different Commission Forums, European Parliament Committees, and national permanent representations” (*ibid.*: 11).

In Table 5.1 we already observed how policy elites in Europe answered the question “From the following list, what would you say are the negative aspects of lobbying?”. The perceived lack of transparency appears to be the most worrying feature of interest representation at European level, followed by a strictly linked fault, the provision of non-neutral information. The same survey (Burson Marsteller 2009: 13) also highlights that trade unions, companies and trade associations are viewed as the most transparent lobbies in the EU. This finding is perfectly connected with the observation developed in §7.1: lobbies *need* to be transparent in order to enhance their reputation and gain better and wider access routes to Brussels in the

future. Trade unions, companies and trade associations are the categories which more frequently rely on the services of professional lobbyists for representation of their claims: it is thus understandable that the degree of transparency displayed by such professional operators – engaged in lobbying as their usual job – is higher than that of other bodies as think tanks and law firms, which are viewed among the least transparent actors in European decision making. Professional interest representatives more frequently declare who they are representing and make their concerns clear and intelligible. This is a central need in the light of both lobbies and governing bodies, as transparency is also the *modus operandi* which best communicates the needs of the categories represented.

Given these observations, one of the main objectives of EU institutions is the stimulation of transparency in order to avoid any form of criticism to European policy making in the light of opaqueness. A proof of that is the development, by the Commission, on its website, of a Transparency Portal collecting all relevant information and documentation about the initiatives and the rules which govern openness and transparency in the EU decision-making system. The rejection of opacity directly emerges from the introduction to the Portal, which strongly states that:

“[a]s a European citizen, you have a *right* to know how the European institutions are preparing these decisions, who participates in preparing them, who receives funding from the EU budget, and what documents are held or produced to prepare and adopt the legal acts. You also have a right to access those documents, and make your views known, either directly, or indirectly, through intermediaries that represent you”⁶⁶ (emphasis added).

⁶⁶ <http://ec.europa.eu/transparency>, accessed on 1 June 2013.

This is a fair declaration, which announces the right of citizens to be informed about what happens in Europe and to be able to evaluate the actions of their representatives, both institutional and non-institutional. It proclaims a clear idea in the minds of European governing bodies: transparency is a value *per se*, which can produce beneficial effects in terms of legitimacy of EU policy making and facilitation of interest representatives' inclusion.

Transparency is thus to be enhanced with all possible means: first of all, it is unavoidable to properly implement the existing norms which already define a considerable framework for lobbies' activities. As a matter of fact, a number of provisions and documents can be mentioned, which shed light on the attention that European institution pay to the need for the elimination of opaqueness in EU decision making. Two main blocs of rules have to be observed: the ones defining the rules of behaviour of Eurodeputies and lobbyists seeking to influence them, and those related to the Commission. Both the EP and the Commission have followed a precise path: not only lobbyists' activities should be regulated, but also the conduct of the officials on whom pressure is exerted. Only in this way a really transparent decision-making system can be enacted and lobbying can exert its positive impact on it.

7.2.2. *The EP Rules of Procedure*

The Rules of Procedure (RP) adopted by the EP contain numerous norms concerning the relationship between MEPs and interest representatives and, more generally, about the way interests are to be made manifest in order to enhance transparency.

Rule 9 is dedicated to “Members’ financial interests, standards of conduct, mandatory transparency register and access to Parliament”. Paragraph 1 foresees the creation of a register aiming at make MEPs’ financial interests transparent. Annex I responds to this need by setting a Code of Conduct which defines the principles and the practical arrangements guiding the Members of the EP in the management of their interests. Art. 4.1 of Annex I, in particular, states that:

“[f]or reasons of transparency, Members of the European Parliament shall be personally responsible for submitting a declaration of financial interests to the President by the end of the first part-session after elections to the European Parliament (or within 30 days of taking up office with the Parliament in the course of a parliamentary term), in accordance with a form to be adopted by the Bureau pursuant to Article 9. They shall notify the President of any changes that have an influence on their declaration within 30 days of each change occurring”.

The declaration of financial interests must contain all the necessary information needed to precisely identify what kinds of interests are pursued by the MEPs⁶⁷. They shall openly declare what their stakes are: they are not obliged to renounce to them, but they must be transparent in their declarations and act accordingly. For instance, art. 5 sets precise limits on the monetary value of gifts that they can accept in the

⁶⁷ Paragraph 2 of Art 4 lists all the information that the declaration is supposed to include: the Member’s occupation in the three years preceding his/her election as a Eurodeputy; any salary received for the exercise of his/her mandate in another parliament; any other remunerated activity; membership of boards or committees of any kind of body established in law; any other activity for which he/she receives a remuneration higher than 5,000 Euros per year; any holding in a company or partnership having consequences in terms of public policy or subject to a relevant influence by the MEP; any external support other than that provided by the EP; any other financial interest which can potentially influence the behaviour of the deputy.

performance of their duties: in particular, the maximum apparent value of a gift is limited to 150 Euros. This norm is relevant from both the point of view of the Union as a whole body and in the light of the needs of lobbyists:

- the EU, as a compound entity made of different institutions sharing powers, needs to know what interests its officials have, in order to properly evaluate their activities and avoid their degenerations;
- for a lobbyist, it is fundamental to be aware of what a MEP is interested in, so that a more effective form of influence is possible; however, it should not be confused with an illicit form of bargaining, as it happens in plain sight. As a matter of fact, everybody can know about a deputy's interest, not only the lobbyist who tries to bring pressure to bear on the MEP.

Transparency is thus the keyword of all this discourse. In case of a possible breach of the Code of Conduct, an Advisory Committee is established to examine the matter and, if necessary, make a recommendation to the President of the Parliament on a feasible decision. *Ad hoc* penalties are set forth in Rule 153, which lists some measures which can be laid down by the President:

- a) a reprimand;
- b) suspension of daily subsistence allowance for a period of between two and ten days;
- c) temporary suspension from participation in all or some of the activities of Parliament for a period of between two and ten consecutive days on which Parliament or any of its bodies, committees or delegations meet⁶⁸;
- d) submission to the Conference of Presidents of a proposal for the Member's suspension or removal from one or more of the offices held by the Member in Parliament.

Paragraph 2 of Rule 9 makes it clear that "Members' conduct shall be characterised by mutual respect, be based on the values and principles laid down in the basic texts on which the European Union is founded, respect the dignity of

⁶⁸ Nevertheless, this provision is not supposed to prejudge the right to vote in Plenary.

Parliament and not compromise the smooth conduct of parliamentary business or disturb the peace and quiet of any of Parliament's premises [...]”.

Rule 9, more generally, shall be interpreted in the light of a continuous attempt to enhance transparency and openness in the workings of MEPs. As a matter of fact, paragraph 3 underlines that the application of the Rule “shall be based on the principle of transparency and be so undertaken that the relevant provisions are made clear to Members, who shall be informed individually of their rights and obligations”. Only in this way Eurodeputies can be effectively bound to the respect of norms on transparency, which constitute a decisive part of the RP. This has a strong influence on their relationship with interest representatives: Rule 9 provides a strong incentive to behave in a fair way and avoid undue pressure coming from outside the EP. It should be coupled with Rule 2, which declares the principle of the “independent mandate”: MEPs must exercise their mandate independently, without following any binding directive and, implicitly, without being subject to external pressure by interest bearers. In this light, Members of the EP are supposed to pursue just the good of the Union, especially in a context in which the Parliament, after Lisbon, has significantly gained in terms of effective powers.

All of this means that MEPs shall behave in a transparent way, declaring their economic considerations and avoiding any interference with their activities. Nevertheless, this does not preclude cooperation with lobbies. Rule 32, in particular, is telling in the light of our study of the relationship between the members of the EU institutions and the representatives of organized interests. Art. 1 of this Rule declares that:

“[i]ndividual Members may form Intergroups or other unofficial groupings of Members, to hold informal exchanges of views on specific issues across different political groups, drawing on members of different parliamentary committees, and to promote contact between Members and civil society”.

MEPs coming from different political groups can meet on an unofficial basis in order to pursue a specific end if they are linked by a same objective. The Intergroups are usually constituted also by non-Members and they are generally financed by lobbies holding a precise stake in the theme addressed by the Intergroup itself. However, this should not be considered an access route for undue influence. Conversely, according to the general imperative of the EP – everything should be *public* and *transparent* – such groups are required “to declare any support, whether in cash or in kind (e.g. secretarial assistance), which if offered to Members as individuals would have to be declared under Annex I” (paragraph 2). No derogation from transparency requirements is allowed, not even in case of unofficial meetings as those regulated by Rule 32.

As it is clear, the EP deeply recognizes the need to involve interest groups in the decision-making process of the Union. Especially after the entrance into force of the Lisbon Treaty, and the consequent enhancement of its power, the popularly elected institution is perfectly aware of the impossibility to exclude lobbies from Brussels, as they represent interests at European level and are an important means for legitimizing the EU and its policies. Another instance of this fact can be extracted from Rule 193, second paragraph, fourth sub-paragraph, dealing with committee meetings. According to the piece of legislation just mentioned, “[t]he committee responsible may, subject to approval by the Bureau, organise a hearing of experts if it considers such a hearing essential to the effective conduct of its work on a particular subject”. Similar examinations have been introduced in many MSs, but at EU level they acquire special weight:

- reports of such hearings are made publicly available;
- they occur in public, so people can assist and have a direct experience of what experts suggest and then compare such inputs with legislative outputs;
- it is easy to know who partakes in them and what documents have been presented.

In other words, Rule 193 is another powerful evidence of how the EP open its doors to lobbyists and, more generally, to interest bearers. The general conditions never change: everything should be done in a transparent way. MEPs do not suffer from very stringent limits on their behaviour: they can hold stakes in companies and associations, receive funds from external organizations for other purposes and have financial interests which would be unimaginable in a different juridical environment (first of all in the US). However, all their activities should be subject to public scrutiny: with a simple click on the EP's website, it is possible to acquire a lot of information about Members and their interests, so that European citizens can check their representatives and compare their behaviour with the standards of a democratic polity.

Of course, such a form of popular inspection in many cases resembles more a utopia than reality, especially if we remember the considerations about the lack of people's engagement in EU affairs. However, it seems relevant that the RP of the European Parliament dedicate important provisions to the problem of transparency, and offer people and organized civil society the possibility to exert a form of "remote control" over the MEPs. This might be not completely sufficient, but it is a significant signal of the role which openness and transparency play in the European Union, especially when lobbies are concerned.

7.2.3. The Commission's Papers

The norms set forth in the EP RP, despite their relevance, show a certain degree of limitedness insofar as they do not clearly define who lobbyists are – a serious problem of identification, as argued in Chapter 4 – and do not fully guarantee that all interests at stake can be efficaciously heard in Brussels. Petrillo (2011: 277-278) defines the regulations adopted at EU level as "minimal" because they introduce some basic norms for lobbyists' participation in the Union's life but still leave widely undefined the concept of lobbying. In addition, they open up problems in terms of

compliance with rules themselves. Such deficiencies have remained unaltered even with the recent amendments to the RP, occurred in April 2013.

In this light, the Commission developed so far a series of instruments aiming to build up a framework for a fruitful interaction between institutions and interest representatives. Already in November 2005, thanks to Siim Kallas, the Commission launched the European Transparency Initiative (ETI). It was a strategy which pursued the general objective of increasing transparency by relying on the good records of the EU in this field:

- the introduction of Regulation (EC) No. 1049/2001 on the access to unpublished documents of EU institutions through a specific register;
- the establishment of *ad hoc* databases providing information about Commission's advisors;
- the enactment of consultation of interested parties, coupled with impact assessments;
- the development of the Commission's *Code of Good Administrative Behaviour* and the Staff Regulations.

Three main documents were issued to give an answer to the fundamental question of how to make Europe more transparent and how to include interest representatives in the EU decision-making structure without falling into the undemocratic trap of opacity: the Green Paper on the ETI (European Commission 2006), the Follow-Up to the Green Paper (European Commission 2007a) and the Communication setting a framework for relations with lobbyists (European Commission 2008).

The 2006 Green Paper recalled the main achievements of the Commission in the field of transparency and, for the first time, clearly defined lobbying in a comprehensive and clear way: in lucid words, it was identified with "all activities carried out with the objective of influencing the policy formulation and decision-making process of the European institutions" (European Commission 2006: 5). In

line with this characterization, lobbyists were presented as “persons carrying out such activities, working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units [...] or trade associations” (*ibid.*). It is easy to notice that such broad definitions reflect what we stated in Chapter 1 and 4 about the variety of lobbies in Europe and their wide areas of interests.

What is relevant, in this context, is the fact that, few lines later, the Green Paper added that lobbying is “a legitimate part of the democratic system, regardless of whether it is carried out by individual citizens or companies, civil society organisations and other interest groups or firms working on behalf of third parties”: this formal recognition of their support to European democracy is a strong argument in favour of the thesis presented in this work, as it was sponsored by one of the institutions which are most intensely lobbied by interest representatives. However, a precise condition was suddenly posed by the Commission itself: lobbyists can usefully contribute to policy making, but “it must be clear to the general public which input they provide to the European institutions” and “who they represent, what their mission is and how they are funded” (*ibid.*). In other words, they must be *transparent* about the agency bond which links them with their clients, the claims they try to get heard and the sources of financing.

Various proposals made by the Commission in the Green Paper attempted to get this goal achieved. In particular, it is noteworthy that it suggested the creation of a *voluntary* system of registration with incentives for lobbies that agreed to sign up to the register itself (for instance, the possibility for them to receive an alert in case of news in the field of the specific interests they indicate). In addition, a common code of conduct for all lobbyists, or at least common minimum requirements, were seen as a necessity in the light of improving transparency, together with a proper “system of monitoring and sanctions in case of incorrect registration and/or breach of the code of conduct” (*ibid.*: 10).

The 2007 Follow-Up to the Green Paper marked some steps ahead in the progressive definition of a coherent strategy for the inclusion of lobbyists in the EU governance system in a more transparent and fair way. It recalled that, “[f]or the Commission, full transparency means first and foremost covering the landscape of European interest representatives as comprehensively as possible” (European Commission 2007a: 3): in this light, the register proposed in the Green Paper could serve as a useful instrument, but the Follow-Up also recognized that the incentives to register were still weak. That was the reason why a number of consulted entities, in particular many NGOs, supported a *compulsory* system of registration as the sole way to meet the needs of enhanced transparency in the Union.

After reviewing the degree of compliance with the provisions of the Green Paper, the 2007 document drew some important conclusions which are highly meaningful to understand the direction that the Commission was following at the time. *Inter alia*, it stated that the Commission would “[c]reate and launch, in spring 2008, a new voluntary register for interest representatives with an ‘alert’ function (the existing CONECCS database will be wound down)” (*ibid.*: 8).

This deadline was respected: as a matter of fact, on 27 May 2008 the Commission released a new Communication presenting a “framework for relations with interest representatives”. By this instrument, the institution set a voluntary Register meant to offer “user-friendly access both to interest representatives for their online registration and subsequent updates and to the public at large, for the consultation of its content” (European Commission 2008: 2). In addition, in Paragraphs 1.1 and 1.2, it satisfied the plentiful calls for more clarity received in the consultation process and thus specified: (a) the activities for which representation was expected (“interest representation”) and (b) the entities which were expected to register (“interest representatives”)⁶⁹.

⁶⁹ Many exceptions are specified with regard to both activities and entities covered by the Register. They are almost perfectly mirrored by the exceptions defined with regard to the addressees of the European Transparency Register (see §7.3.1).

Particularly relevant was the Annex to the Communication, which contained the Code of Conduct developed by the Commission after engaging in consultations with more than 60 stakeholders in the period before the release of the document. It is remarkable that the principles enunciated in the Annex were supposed to apply to both lobbyists and Members of the Commission. As anticipated various times, the institution has always supported the view that not only interest representatives, but also lobbied official, must act in an open and transparent way in order to keep the decision-making system democratic. Transparency-linked duties, therefore, hang on both parties of the influence relationship:

“[i]nterest representatives are expected to apply the principles of openness, transparency, honesty and integrity, as legitimately expected of them by citizens and other stakeholders.

Similarly, Members of the Commission and staff are bound by strict rules ensuring their impartiality. The relevant provisions are public and contained in the Treaty establishing the European Community, the Staff Regulations, the Code of Conduct for Commissioners and the Code of good administrative behaviour” (European Commission 2008: 6-7).

The empirical advancement of the Register was monitored by the Commission during the subsequent year, and the results of this observation were collected and formulated in the 2009 Communication *European Transparency Initiative: the Register of Interest Representatives, one year after*. In that document, the institution expressed its pride for an initiative which appeared as being positively working, thus confirming the bounty of the main choices made by the drafters one year before (in particular the voluntary approach). In the words of the Communication,

“[s]ince the Register was launched, in June 2008, citizens have been able to appreciate the very wide range of interests represented at the European level. They have seen that European policy makers do not operate in isolation from the

civil society's concerns and interests, but interact with them in an open and inclusive fashion, creating a level playing field for all categories of interests. As a result, the European Commission today is one of the relatively few public authorities in the world that has put in place practical frameworks for transparency in this field" (European Commission 2009: 2).

The Commission was essentially content of the results achieved by the Register after one year of activity. Among the main findings, it highlighted that registration was already becoming a "normal process" for many organizations and a real "reference" for Commission services. Actually, it was also evident that some important categories of lobbyists, namely law firms and think-tanks, were not attracted by the possibility to get registered. Nevertheless, the Commission kept on considering the self-regulatory approach as a "key element of the system", inviting networks of associations to recommend to their members to join the Register and *de facto* rejecting the option of a compulsory inclusion.

The document ended with a brief but intense call for cooperation between the EP and the Commission toward the establishment of a common Register and, more generally, a shared regulation of the relationship between EU institutions and interest representatives. As a matter of fact, all the norms and the papers presented until now show a substantial deficiency of the European decision-making system: the two main legislative actors – which are now deeply interconnected through the ordinary procedure – were not able, until 2009, to speak with one voice on this crucial matter. The EP introduced many rules of procedure having to do with lobbyists; similarly, the Commission profoundly examined how to define their contribution to European decision making. However, no single framework was adopted: this complicated relationship, as Petrillo (2011: 283) underlines, produced relevant problems because:

- a) lobbyists had to follow different rules in their intercourses with the EP and the Commission;

b) the Commission, during its consultations within technical committees, relied upon “experts” (mainly lobbyists) who were not compelled to inscribe their name and qualifications in the Register.

Many problems never disappeared and are not supposed to fade away in a foreseeable future. However, a significant step ahead has been made in July 2011, when the EP and the Commission issued an Interinstitutional Agreement for the introduction of a single Register and the unification of the rules of behaviour imposed to lobbyists. In that case, which is analysed in the following paragraph, a further effort has been made to reach a common position on the crucial matter at stake.

7.3. The Last Attempt: The ETR

7.3.1. The Basic Rules

By their Interinstitutional Agreement of 23 June 2011 (henceforth referred to as IA), the EP and the Commission created the European Transparency Register (ETR) for “organizations and self-employed individuals engaged in EU policy-making and policy implementation”. The EP-Commission Agreement frames the way in which interest bearers can participate in the Union’s decision-making system, in particular with regard to their interaction with the two institutions. In this light, the IA can be perfectly inscribed within a long-lasting process through which the European governing bodies aim to fight the perceived lack of transparency often alleged by many critics of the EU.

The conceptual basis for the establishment of the ETR lies in art. 11 of the Treaty on the European Union. It is noteworthy that such piece of legislation is the same which has already been mentioned to explain the representative nature of the Union and that will be referred to when dealing with the European Citizens’ Initiative. In clear words, it states:

- “1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society [...]”.

From this point of view, the *raison d'être* of the ETR appears clear: it is an instrument for the registration and control of all organizations and persons engaged in EU policy making, in order to favour the “open, transparent and regular dialogue” mentioned in paragraph 2 of art. 11.

The Register can be regarded as the last step of a long process which started in 1996, when the EP launched its first registration system. Since then, the Commission launched a similar initiative in 2008. As seen, in 2009, one year after the opening of the European Transparency Initiative, the Commission itself issued a Communication entitled *European Transparency Initiative: the Register of Interest Representatives, one year after*. All these stages coherently led to the establishment of the ETR, whose structure and working shall not prejudice the general principles of Union law (art. 3 of the IA) or the competences and prerogatives of the parties and their organizational power (art. 5).

The sphere of application of the Register is defined by the IA in extensive terms. It covers all the activities aiming at influencing European decision making⁷⁰, both in the phase of its formulation and in its implementation, whatever the means of communication used (art. 8), with some exceptions listed in art. 10. In addition, some

⁷⁰ Art. 8 of the Interinstitutional Agreement provides a non-exhaustive list of activities covered by the ETR, which can serve as a further indication of what the Union means by interest representation: “contacting Members, officials or other staff of the EU institutions, preparing, circulating and communicating letters, information material or discussion papers and position papers, and organising events, meetings or promotional activities and social events or conferences, invitations to which have been sent to Members, officials or other staff of the EU institutions”.

specific entities are excluded from the reach of the ETR: churches and religious communities (art. 11), political parties (art. 12), local, regional and municipal authorities (art. 13). However, if they create offices, legal entities or networks supposed to represent them in their dealings with the Union's institutions, they are expected to sign up.

Art. 17 lists the rights and the duties that lobbyists undertake in the moment they submit their online registration to the ETR. *Inter alia*, it is valuable to mention the following provisions:

- they accept the publication of the information they provide;
- they agree to conform to the code of conduct annexed to the IA (Annex III), on the basis of which any complaint is handled;
- they acknowledge that the EP and the Commission might have to disclose correspondence and other documents regarding the activities of the entities included in the Register, in conformity with the related rules⁷¹.

The three points just mentioned are relevant in the light of our discussion on transparency: by filling the online form and registering, European lobbyists agree to reveal the basic information about their identity and their activities (including, for instance, the number of people employed in the activities they declare, their finality, their sector of interest, the main legislative proposal pertaining to them and data about their economic situation in the last closed financial year). In addition, they accept that these data are made *public*: this is a significant effort in terms of transparency, for groups which have to open up their doors to public scrutiny and guarantee that the information provided for inclusion in the Register is correct. More, they endorse a code of conduct which operatively indicates the norms of behaviour for members of the ETR. Among other rules, it asserts that lobbyists, in their relationships with the Union's institution, shall:

⁷¹ In particular, the provisions related to public access to documents of the EP, the Council and the Commission are set forth in Regulation (EC) No. 1049/2001 of the EP and of the Council (30 May 2001).

- “declare the interests, objectives or aims promoted and, where applicable, specify the clients or members whom they represent”;
- avoid to use “undue pressure or inappropriate behaviour”;
- provide information, within the framework of the activities for which they registered, which is “complete, up-to-date and not misleading”;
- “inform whomever they represent of their obligations towards the EU institutions”.

In case of violation of the rules set forth in the Code of Conduct, Annex IV defines some measures applicable to the non-compliant registrants, including the suspension or removal from the ETR and the withdrawal of the badges necessary to accede to the EP, in addition to a ban on future registration. Such measures, however, shall not prejudice the principle of proportionality and the right to defence.

7.3.2. An Evaluation

The ETR is the last attempt to provide an effective form of regulation of lobbyists’ activities in their interaction with the Union’s institutions. As well as the vast majority of its predecessors, it has not been able, until now, to escape numerous critiques due to its structural problems.

First of all, it did not prove to be a reliable source of data concerning the number and the nature of European lobbyists. Any entity which wants to include its name into the Register is allowed to do so, without any check on its characterization as an interest-bearer group: the result, according to Greenwood (2011a: 9), is that it is being used “as a free advertising space for small- and medium-sized enterprises” which aim to gain some visibility thanks to the Register being hosted on the Commission’s website.

Second, European lobbyists are not compelled to sign up for it: they are free to choose whether to enrol, on a voluntary basis, but they do not suffer from sanctions or disincentives in the case they decide not to partake in the ETR. In practice, there is

no advantage in communicating one's own data to the EU for registration. The incentives, either formal or informal, which subscribers are supposed to receive, are not enough to crowd out the limits coming from the non-mandatory character of the Register: as an immediate consequence, the number of entries in the ETR is significantly lower than those in the previous register established since 1996.

Connected to this problem, the frequent miscategorizations of records risk undermining the effectiveness of the ETR. Registrants are required to indicate to which category they belong, but it is easy to see that cases of overlapping may occur frequently, due to the large-scale and multi-finality nature of many transnational interest groups. The Commission has not enacted any proper counter-measure. Instead, it seems to rely on a system of checks and balances, according to which control over the registration of a lobby company is exercised directly by its competitors, which check its regularity and, if needed, start a strategic complaint (*ibid.*: 61). However, this cannot be considered a sufficient backlash by the EU. Especially in the light of the relatively high number of registrants and the deep commitment to transparency and clarity enunciated many times by the EU institutions, they should do something more to address the problems raised until now.

Many other critiques may follow, addressing problems such as that of the lack of accreditation of groups of lobbyists and the absence of a representativeness requirement for the lobbies wishing to enter the ETR. However, a more comprehensive judgment should be developed by inscribing the experience of the Register in the long process of regulation of lobbyists' activities in the Union. The European Transparency Initiative – of which the ETR can be seen as the last expression – was driven by a high concern for the enhancement of legitimacy in European public policy through transparency. The attempt to unify EU norms about interest representatives' behaviour is a remarkable step in this light.

At the end of the last century, Schaber (1998: 220) proposed a negative evaluation of the plentiful norms introduced at EU level to regulate the relationship

between MEPs and lobbies. In his view, they did “reduce the immense option of pluralism to an easily comprehensible number of options and actors”, with a *loss* of variety and an undesirable simplification of issues. Now, the EP and the Commission are trying to recover the advantages of pluralism by offering European lobbyists the possibility to sign up for a single register, comply with a unified set of rules and follow a Code of conduct without distinctions between the two institutions. The lack of coherence in entries’ categorization is a side-effect of the attempt to guarantee the inclusion of more entities which were not used to be comprised in the previous registers (such as academic institutes exerting pressure in the light of their technical knowledge of public policy issues).

The high reliance upon the theme of transparency, although it might appear rhetorical, is predicated upon practical rules which are supposed to effectively reduce opacity in the relationship between lobbyists and institutions.

“The key transparency components involve disclosure elements surrounding organizational contact and other details; interest categorization; who is represented; mission/interest areas; spending on interest representation; and, for NGOs and think tanks, budget and sources of funding” (Greenwood 2011a: 58).

An idea seems to guide the Union in its progressive achievement of a transparent *liaison* with interest representative: secrecy and opaqueness are threats to the stability of the EU and represent a serious strain on the legitimacy of its policies. In a twenty-seven-country organization with so different peoples and governments, transparency appears as an unavoidable necessity if the Union wishes to enhance its role as a powerful actor in the international arena. In this light, developing open and fair relationships with lobbies is a primary goal. Keeping in mind the observations about the centrality of interest representation in the EU (as they were developed in the first chapters of this thesis), it immediately follows that lobbyists are to be included within a transparent framework which offers opportune guarantees of

openness and reliability. European citizens must be able to check what their governmental representatives are interested in, and how they behave accordingly. They also must be given the chance to look at how public policy is designed and implemented, and what role lobbies play in its shaping and enactment. In addition, they must enjoy the possibility to know about the sources of financing of interest groups and the way the latter use their financial capacity to exert influence on the decision-making process of the Union.

These necessities are clear in the minds of the members of European institutions. The ETR is the last expression of this awareness, as it provides a response to all these needs in an apparently coherent way. One big deficiency, however, remains and threatens the whole structure: it is a non-mandatory inventory. It is not a surprising revelation: obliging interest groups to enrol in the Register would imply important costs to check:

- the composition of registrants;
- their compliance with the general rules of the IA and the Code of Conduct;
- their characterization as lobbyists;
- many other controls which are not necessary if registration is not compulsory.

The EP and the Commission decided not to take such a decisive step. This reluctance inevitably limited the capacity of the ETR to prove as a fully convincing instrument for the enhancement of transparency at EU level.

Nevertheless, the rules set forth in the IA of July 2011, together with the RP of the European Parliament and the previous efforts made by the Commission, are highly telling in the light of our analytical purposes. The EU cares about its transparent cooperation with interest representatives as a means for engaging them in legitimate policy making. The institutions share the view that lobbies constitute a decisive part of the governance architecture, and they aim to include them in the most visible way.

They are moving along a tricky road: they would like to eliminate all the obstacles to transparency, but they know that the fragile and expanding structure of

the EU is not ready for it yet. The result is an in-between situation: on one side, it sheds light on the valuable efforts made by the Commission and the EP to avoid opacity; on the other side, however, it still suffers from the absence of a fully transparent framework for representing interests in Brussels.

Nonetheless, the limits of the ETR do not seem so strong to cancel its benefices out. It provides useful indications about the way EU institutions aim to interact with lobbies and the behaviour they expect from both interest representatives and European officials. These signals confirm the arguments proposed in the previous chapters: lobbying is central to EU decision making; it is a way to enhance the legitimacy of policies and prevent tensions; it needs a framework modelled on the principles of transparency and openness.

7.4. Conclusions

In this chapter I have analysed the problem of transparency with regard to the interaction between European institutions and lobbyists. I have examined the most relevant among the plentiful rules which govern this issue at EU level, starting from the EP Rules of Procedure to conclude with the newly introduced ETR. This long investigation leads to a clear result: lobbies are a *central* element of European decision making and thus need to be included in the most transparent way possible. Their contribution in terms of legitimacy can be very relevant, so the institutions need to improve their efforts to increase the openness of the system and eliminate any form of opacity. Otherwise, the role of interest representatives is likely to remain ambiguous and raise suspicion in those who consider lobbies as obscure actors pushing their interest by the strength of money. This largely erroneous perception must be actively fought if the Union wishes to enjoy the beneficial contribution of lobbying described in the previous chapters. Given this necessity, only a further

expansion of a coherent transparency strategy can help the EU achieve this unavoidable goal.

8. The European Citizens' Initiative and the Role of Civil Society Organizations

This second “case-study” chapter is focused on the European Citizens' Initiative (ECI), a newly introduced instrument which is supposed to guarantee the possibility for a deeper contribution by citizens to European policy making. It has been designed as a means for the enhancement of *participation* in EU affairs: as a matter of fact, serious attention was paid to the numerous concerns, mentioned in the previous chapters, about the lack of a European public space and the almost fully representative nature of the Union. Regulation 211/2011, which gave the ECI a definitive shape, tried to ensure the existence of an *ad hoc* space for citizens in the field of legislative proposal, without however altering the role of the Commission as the primary source of the decision-making chain in Europe.

In the following paragraphs I do not analyse the ECI in depth. I aim to discuss neither its technical details nor its contribution to European democracy as a tool for inclusion in general: many commentators already engaged in this kind of analysis with quite homogeneous results, as we shall briefly observe later⁷². Instead, I am interested in looking at its peculiar interrelation with lobbying and, more specifically, the role that civil society organizations perform in European democracy. The scope of this chapter is not to assess how the ECI works or how much it can stimulate the degree of participation of people to policy making, but to analyse its impact on the relationship between lobbying and democracy. In the forthcoming pages I argue that

⁷² For a comprehensive analysis of the ECI and its general impact on EU democracy, see *Perspectives on European Politics and Society*, vol. 13, issue 3 (2012). This special issue, entitled ‘The European Citizens' Initiative: a First for Participatory Democracy?’ collects a number of articles written by ten of the most eminent scholars in the field of European Union, EU democracy and European interest representation. These contributions provide an important picture of the ECI and its impact on the future of the Union's democratic model. It is a useful instrument for clearly understanding the nature and the relevance of this new instrument in the hands of European citizens. In addition, for a brief comment on the ECI, its possible support to direct democracy and the role that Europarties are supposed to play in it, see Bressanelli (2012).

it has a sufficient potential to enhance the sphere of participation of a variety of *new* groups to EU politics and can even enhance dialogue with civil society at large.

8.1. The ECI: Basic Facts⁷³

8.1.1. The Birth of the ECI and the Essential Rules

By their Resolution No. 211/2011 of 16 February 2011, entered into force on 1 April 2011, the EP and the Council launched the European Citizens' Initiative. It is an instrument which enables European citizens to *invite* the Commission to submit an appropriate legislative proposal on matters in which the EU is attributed competence to legislate. It is a relatively new possibility in the hands of people who are nationals of a European MSs to be involved in the Union's decision making and contribute to shape its political agenda. The citizens can influence the proposals which are issued by the Commission and, then, discussed by the EP and the Council in accordance to the ordinary legislative procedure illustrated in Figure 2.2.

In actual fact, the birth date of the ECI can be traced back to a decade ago, when the idea of a direct involvement of citizens in the initial phase of policy making was included in the project for a Treaty establishing a constitution for Europe (the so-called "European Constitution"). Particularly, it was part of art. I-47, fourth paragraph, which stated:

“[n]ot less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where

⁷³ This paragraph introduces only the very basic information about the ECI, the procedure under which it works and the mechanisms which regulate the submission of a citizens' initiative. For a more exhaustive picture of the ECI, it is possible to refer to the Guide to the European Citizens' Initiative developed by the European Commission to explain what the ECI is about and how to organize or sign up to an initiative (European Commission 2011). In addition, the same Commission has set up a dedicated section within its website providing all the necessary information about the ECI (<http://ec.europa.eu/citizens-initiative/public/welcome>, accessed on 1 June 2013).

citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution [...]”.

This formulation is perfectly mirrored by art. 11 TEU, which uses exactly the same words and, in the final part, refers to art. 24 TFEU for the procedures and the conditions required for the ECI. On its turn, art. 24 TFEU empowers the EP and the Council to adopt, “by means of regulation in accordance with the ordinary legislative procedure”, the necessary provisions establishing the *modi operandi* and the conditions under which an ECI can be submitted. On this legal basis, the two legislative bodies of the Union were able, in 2011, to adopt the aforementioned Regulation 211, which defines a number of clauses regarding the admissibility of a citizens’ initiative and its development once it has been submitted and accepted. Among the main provisions, the following ones are the most noteworthy, especially in the light of our discussion.

- a) At least one million citizens must sign the ECI, and they must come from at least one quarter of all MSs (art. 2.1).
- b) In at least one quarter of MSs, signatories of the initiative must be at least equal to the number of the MEPs elected in the single MS multiplied by 750 (art. 7.3).
- c) Signatories are any EU citizens (that is, people possessing the nationality of at least one MSs) who have reached the voting age⁷⁴ (art. 3.4).
- d) All EU citizens who are potentially voters for the EP are entitled to become organizers of initiatives (art. 3.1), but they firstly have to form a citizens’ committee of at least seven persons who reside in at least seven different MSs (art. 3.2).
- e) Initiatives can be proposed by “organisations which under the Treaties contribute to forming European political awareness and to expressing the will of citizens of

⁷⁴ Citizen of EU Member States can all vote at the age of 18, with the exception of Austrian citizens, who are able to vote when they are 16 years old.

the Union”. Such a characterization is considered sufficient only if they provide the necessary guarantees of transparency (point (9) of the preamble).

- f) The organizers must register the initiative with the Commission and provide the required information (art. 4.1), that is: the title of the initiative, the subject matter, a description of the objectives, the provision(s) in the Treaties which are relevant to the initiative, the personal data of the members of the citizens’ committee and the sources of funding and support (Annex II).
- g) After the registration, the organizers have to collect statements of support by European citizens who wish to become signatories of the initiative (art. 5.1). Such a collection can occur either in paper form or electronically⁷⁵ (art. 5.2).
- h) After collecting the necessary statements of support and submitting them to competent authorities within the MSs (art. 15), the initiative must be verified within a period not longer than three months. If all conditions are satisfied, the organizers must receive a certification of the valid statements of support (art. 8.2).
- i) Once verified and certified, the ECI can be submitted to the Commission (art. 9.1), which shall publish it “without delay”, “receive the organizers at an appropriate level to allow them to explain in details the matters raised by the citizens’ initiative” and, within three months, communicate its conclusions, the actions it is planning to take (if any) and the reasons which push it to behave in that way (art. 10.1).

⁷⁵ In case of online collection of signatures, the Commission has offered the organizers of the first ECIs the exceptional and temporary possibility to host their online collection systems on the servers of the Commission itself, as a response to some problems faced by organizers (in particular, the need too guarantee data security and signatories’ privacy). The institution provided this form of exceptional assistance in the start-up phase in order to allow all organizers to start their job without excessive difficulties. For the press release see http://ec.europa.eu/commission_2010-2014/sefcovic/headlines/press-releases/2012/07/2012_07_18_eci_en.htm, accessed on 1 June 2013.

Table 8.1 Open European Citizens' Initiatives

A Initiative	B Subject	C Lang.	D Web	E Onl. Coll.	F Fund	G Draft
Unconditional Basic Income (UBI) - Exploring a pathway towards emancipatory welfare conditions in the EU	Improvement of social security systems	14	Yes	Yes	No	No
"30 km/h - making the streets liveable!"	Environmental and safety needs of road users	13	Yes	Yes	Yes	No
European Initiative for Media Pluralism	Protection of media pluralism	9	Yes	Yes	Yes	No
Central public online collection platform for the European Citizen Initiative	Provision of a working tool for ECI	1	Yes	Yes	No	No
Suspension of the EU Climate & Energy Package.	Suspension of climate regulations not including China, US and India	18	Yes	Yes	Yes	No
Pour une gestion responsable des déchets, contre les incinérateurs	Guidelines for responsible management of waste materials	1	Yes	Yes	No	No
High Quality European Education for All	Common education goals reflecting EU basic values	22	Yes	Yes	Yes	No
Stop vivisection	Legislative stop on animal experiments	23	Yes	Yes	Yes	No
One of us	Juridical protection of the human embryo	22	Yes	Yes	Yes	Yes
Water and sanitation are a human right! Water is a public good, not a commodity!	Human right to water and sanitation	23	Yes	Yes	Yes	No
Fraternité 2020 - Mobility. Progress. Europe.	United Europe based on solidarity among citizens	23	Yes	Yes	Yes	No

Source: European Commission's website

8.1.2. *The Currently Open Initiatives*

The Official Register of the Commission presents data about fourteen initiatives currently open for signatures, that is, initiatives for which the deadline for the collection of signatures has not expired yet. However, three of them (“End Ecocide in Europe: A Citizens’ Initiative to give the Earth Rights”, “Let Me Vote” and “Single Communication Tariff Act”) also appear in the list of obsolete initiatives, as they were withdrawn by the organizers in accordance with art. 4.5 of the ECI Regulation. Thus I focus on eleven initiatives: they are not a huge sample yet, due to the relatively young age of the ECI, but they can already provide useful information about its impact on EU democracy and its relationship with interest representation.

Table 8.1 summarizes the main data about these eleven initiatives. In particular, it indicates, for each ECI (listed in column A): the subject matter of the initiative itself (column B); the number of languages in which it has been translated (C); whether a linked website has been opened (D); whether an online collection of signatures has been activated (E); whether precise indications about support and funding are provided (F); whether a draft legislative proposal has been developed and attached to the initiative (G).

Some comments surface from the observation of the open ECIs. First, the number of languages in which the various initiatives are translated is highly volatile. From the initiative for a public online collection platform for ECIs (which has been published only in French) to the ones promoting the safeguard of the human embryo and the human right to water and sanitation (translated into 23 EU languages), it is possible to detect a high degree of variance. Of course, such a lack of cohesion is likely to display an impact on the visibility that initiatives are able to acquire. However, it is a disparity directly emerging from the formulation of Regulation 211. In art. 4.1, it clearly states that “[t]he translation of the proposed citizens’ initiative into other official languages of the Union shall be responsibility of the organizers”. This is likely to create unbalances between ECIs with large and well-funded support

and initiatives which are not backed by relevant capitals. A comparable problem has already been highlighted in §5.3 with regard to lobbies in Europe.

Second, all ECI organizers have set up a dedicated website on which they publish additional information besides that included in the standardized forms on the Commission's website. They are all aware of the significance of an *ad hoc* space where to interact in a closer way with the potential supporters of their cause. By resorting to pleasant layouts and organizing their news in a congenial manner, they enact a precise political communication strategy in order to attract people's attention and, possibly, their spontaneous donations. In addition, all these websites contain a link to the page where citizens can sign up the initiative, provided they are old enough to vote. The ECI on the right to water and sanitation (hereinafter referred to as "right2water") was the first to start the online collection of support statements, as the organizers found a private host provider for the electronic collection system⁷⁶. "Fraternité 2020", then, was the first initiative which benefited from the possibility to rely on the Commission's servers⁷⁷. Successively, all other ECIs followed this path, and now they can all be signed up for online. This represents a decisive facilitation and an important step ahead in the route towards really diffused participation by European citizens.

Third, eight initiatives out of eleven declare their sources of funding and support. The most consistent (declared) sponsors are the European Federation of Public Service Unions (EPSU), which contributed to right2water with €100,000, and Fondazione Vita Nova, which donated €50,000 to support the life of the human embryo. It appears clear that money plays a role in the degree of effectiveness of an ECI. Many costs have to be borne by organizers: it has been calculated that any initiatives imply an average expenditure of €1 million (Bouza García and Greenwood 2012: 252; Greenwood 2012: 331; Bouza García and del Río Villar 2012: 318). Such a sum can be partly covered by spontaneous donations by individual citizens, but it

⁷⁶ <http://europa.eu/rapid/midday-express-04-09-2012.htm?locale=en>, accessed on 1 June 2013.

⁷⁷ http://europa.eu/rapid/press-release_IP-12-1160_en.htm, accessed on 1 June 2013.

necessarily requires significant help by organized supporters, able to collect the required funds and sustain the burden of a Europe-wide series of conversations needed to gain one million signatures.

Fourth, only “One of us” attached a draft legal act, a three-page legislative proposal which suggests: *a)* some riders to the Financial Regulation applicable to the general budget of the European Communities; *b)* one amendment to the Proposal of a Regulation establishing a framework program for research and innovation (Horizon 2020); *c)* one addendum to the EP and Council Regulation establishing a financing instrument for development cooperation⁷⁸. Differently, three withdrawn initiatives out of five included a draft legal document (“End Ecocide in Europe: A Citizens’ Initiative to give the Earth Rights”, “EU Directive on Dairy Cow Welfare” and “Single Communication Tariff Act”).

The four points raised in this chapter are necessary for a first analysis of how the various ECIs work and how they differentiate among each other on the basis of some observable parameters. In addition, they have to be kept in mind as the forthcoming discussion about the impact of the citizens’ initiative on European democracy stems from these comments and the numbers presented above.

8.2. The Role of Organized Civil Society

Many scholars have already analysed the ECI and its general contributions to European democracy. Up to a certain degree, they all share the view according to which the citizens’ initiative is, or may be, an important tool for enabling people in Europe to shape EU legislation and enhancing their direct participation to policy making. Such commentators substantially follow the path inaugurated by European

⁷⁸ The full text of the legislative proposal is downloadable at <http://ec.europa.eu/citizens-initiative/public/documents/1379>, accessed on 1 June 2013.

Commission's Vice-President Maroš Šefčovič who, at the moment of its launch, defined the ECI in enthusiastic terms:

“[t]his brand new tool for participatory democracy is without precedent at transnational level. It will strengthen the democratic foundations of the Union and bring Europe closer to its citizens by providing a direct gateway through which they can make their voices heard in Brussels” (European Commission 2011: 1).

It is commonly agreed that citizens can be more included in the European decision-making process thanks to the opportunity to address directly the Commission. The ECI's objective is “complementing European representative democracy with direct involvement and participation by citizens in EU legislation” (Bouza García and del Río Villar 2012: 313), a target which responds straightforwardly to some structural deficits of European democracy, as illustrated in Chapter 3. Regulation 211/2011 marks a fundamental step and clearly expresses a long-running, growing concern about EU democratic legitimacy (Bouza García and Greenwood 2012: 251). It can provide a remedy to the traditional lack of public space and the little involvement of citizens in EU-related matters, two troubles which have already been discussed in a diffused way in the previous chapters. It can encourage wider participation and positively impact on three distinct levels (Monaghan 2012):

- developing a democratic governance and decision making;
- setting up a real European political community;
- empowering citizens as individuals.

Participation seems to be the *leitmotiv* which offers a common ground to all contributions aiming to describe the innovative elements brought by Regulation 211. There is vast agreement about this: future will tell us whether such high expectations are well-founded or not. Currently, only right2water was able to overcome, in early

February 2013, the threshold of one million signatures, even if the process of collection is still going on⁷⁹. However, the focus of this chapter is not the ECI *per se* and its relationship with European democracy, but the role that lobbies, involved in citizens' initiatives, can play in supporting the democratic model of the Union.

The experience of right2water, apparently the most vivid and successful ECI among all the ones proposed since April 2011, is a good example of the factors influencing the success of an initiative, and the difficulties and the challenges that organizers inevitably have to face. It can help understand the role of organized civil society and how interest representation impacts on these new tools in the hands of EU citizens⁸⁰.

First of all, right2water was supported by the EPSU, a large-scale federation which represents 270 unions across Europe. It helped the ECI come to life especially by funding it with €100,000, as said before: such an amount of money is indispensable to pay specialized staff taking care of communication, organization, legal assistance and all other tasks linked to carrying on the initiative.

Second, the right2water experienced a slow growth due to some technical difficulties with the online collection system of signatures and, most important, because the topic of the right to water is not known enough in Europe. Massive communication was a necessity, and this can also explain the reasons why the quorum of signatures has been reached in so few countries, although the total million has already been overcome.

Third, the organizers were able to rally such a wide consensus because it received broad coverage by national mass media (Kaufmann and Berg 2013: 20). Without this kind of support, it would have been extremely problematic to raise

⁷⁹ The signatures for right2water have not been collected in a sufficient number of different MSs: the minimum number of votes has been reached only in Germany, Austria and Belgium.

⁸⁰ The case of right2water is analysed by Kaufmann and Berg (2013) in the ECI Briefing Package published conjunctly by Democracy International, the European Citizen Action Service, the ECI Campaign and Initiative and Referendum Institute Europe.

awareness in European citizens about an issue which is not usually part of the public opinion's political debate. It would have been addressed by specialized press and sectoral websites, but it would have never reached the degree of popularity it enjoys now.

The three points just highlighted permit to conclude that “a measure of formalised organisation and resources will be necessary to gather the necessary signatures” (Bouza García and Greenwood 2012: 252). It is true that Regulation 211 does not allow legal entities to *directly* organize initiatives (but only to *support* and fund them) in order to avoid the risk of having ECIs “hijacked by lobbies” (*ibid.*). Nevertheless, somehow group action is strongly required in order to set up the necessary organizational structure and collect a sufficient number of signatures from at least seven countries. This is an indirect, but perfectly foreseeable, consequence of the procedural demands of the ECI, which “require the ‘Citizens Committees’ that host them to have access to professional organisation” (Greenwood 2012: 325).

The high costs connected, *inter alia*, to the collection of signatures, the organization of advocacy campaigns, the logistics and the salaries of staff are another crucial reason which highlights the need for organization. The already cited estimation of €1 million per initiative could be hardly borne by individual activists who aim to promote a citizens' interest in a fully autonomous way. Many specific needs emerge from the formulation of Regulation 211, which have already been mentioned; in addition, a number of “hidden” necessities spring out of the peculiar tasks that organizers of an ECI have to perform. Already in 2008, in the IRI Handbook dedicated to the forthcoming introduction of the citizens' initiative, Carsten Berg (2008: 45) underlined that a campaign aiming at success has four “launching criteria” concerning alliance building, the support of NGOs, signatures collection and fundraising⁸¹. In particular, he showed up that:

⁸¹ Carsten Berg is the Vice-Chairman of Democracy International and the founder of the Initiative and Referendum Institute Europe. As a director of the ECI Campaign, he worked in the European Constitutional Convention and campaigned for the inclusion of the citizens' initiative within the body of EU law. The four criteria he individuates emerge from the practical experience of “Initiative for the

- 1) “[a]t least 100 NGOs must have officially decided to join the alliance”;
- 2) “[t]here should be well-established national/local alliances for the ECI in at least 8 EU member states; two of these should be ‘big’ states (France, UK, Germany, Italy, Poland, Spain) and two should be new member states”;
- 3) “[a]t least 100,000 signatures should be ‘expected’ from NGOs”;
- 4) “[a]t least 100,000 Euro should have been secured in funds”.

The connection with organized forms of civil society thus appears evident. More, it is possible to observe that usually NGOs and other interest organizations do not possess by themselves the dimension, and the resources, necessary to help an ECI meet all the requirements set forth in Regulation 211. Greenwood (2012: 331-332) presents the case of the European Disability Forum (EDF), a federation of national associations which organized the pilot initiative “1million4disabilty”, submitted to the Commission in 2008. The EDF, thanks to its large membership and its Europe-wide dimension, was able to collect more than one million signatures by assigning to each 29 national member associations specific quotas of signatures to fulfil. This case, according to the author, suggests that single NGOs and organizations can hardly succeed in ECI campaigning due to the aforementioned transnational requirements. More precisely, they strongly need to create working networks in order to reach a satisfactory level of visibility across Europe. *Networking* becomes the real keyword for enjoying success: without forming systems of alliances among groups, the necessary resources (and also expertise) could not be collected and any initiatives would prove to be a failure.

Therefore, an important point of conjunction emerges between organized interests and European democracy in the case of citizen-promoted initiatives to bring to the Commission. At the beginning of the paragraph I referred to literature underlining the positive contribution, either actual or potential, of the ECI to the democratic features of the Union, especially in terms of participation and inclusion –

Initiative”, one of the 25 pilot ECIs which, between 2004 and 2010, anticipated the formal entrance into force of Regulation 211/2011.

that is, in our lexicon, from the input side of democracy. Beneficial impacts, however, can come to life only if an appropriate organizational structure is set up in order to collect signatures in a sufficient number of MSs: such a task implies high costs, need for resources and expertise, and many other practical necessities which only established groups can satisfy. In particular, federations seem to fit this role in a better way, due to their transnational dimension and their ability to resort to their network membership. In other words, European democracy can significantly benefit from the coordinated action of the entities which, in §4.2.2, have been defined as “associations of national associations”.

8.3. A Stimulus to Inclusion

The ECI possesses the potential to transform the decision-making model of the EU in three main respects (Bouza García and del Río Villar 2012: 313):

- a) it can enhance inclusion by opening the doors of EU institutions to new actors who are usually left outside the mechanism;
- b) it can improve the role of organized civil society, as stated in the previous paragraph;
- c) it can augment EU decisions’ visibility far beyond the specialized public currently involved in European affairs, making citizens aware of what is happening in Brussels.

These three impacts can progressively help EU democracy escape a wide series of critiques, like the common accusation that “Brussels talks to Brussels”⁸². By fostering citizens’ inclusion, the ECI can be a means for making a step ahead in the route toward a more open and legitimate Europe. As civil society organizations play a decisive role in shaping and supporting all the initiatives currently on the floor, it is

⁸² On this particular point, see §5.4.2.

interesting to observe what kinds of groups organize ECIs and what their peculiar contribution to democracy can be.

One question immediately arises: are lobbyists *directly* involved in citizens' initiatives? The very nature of the ECI would immediately suggest a negative answer. EP Vice-President Diana Wallis commented that "an ECI is not for MEPs, not for NGOs, but for all citizens" (quoted in Greenwood 2012: 325). In addition, as Bouza García and del Río Villar (2012: 314) highlight, "the success of the ECI relies less on the ability to mobilise *expertise* and trust with decision-makers than on the ability to obtain the *support* of a large number of citizens on a concrete proposal of European legislation" (emphasis added). This characterization marks a significant difference with lobbying as we observed it in the previous chapters. The provision of expertise has been defined as one of the highest contributions of lobbyists to the European democratic decision-making system; however, expertise does not seem to be a source of legitimacy for lobbyists to enter the field of the ECI. Nevertheless, if we recall the definition of lobbying developed in Chapter 1, it is easy to see that rallying support is one of the main results of a *communication*-style activity as the one performed by interest representatives. Instead of directly exerting pressure on European decision makers and governing bodies, they can help rationalize citizens' demands and formulate them within the framework of a coherent initiative to be signed by one million people across Europe. This conclusion resembles the results obtained in the previous paragraph.

However, a second question can open a discussion about ECIs' power of inclusion: with regard to the groups supporting the various citizens' initiatives, are they the same organized bodies which usually gravitate around Brussels? Or are they "outsiders" which, otherwise, would not accede to EU policy making?

One first indication is provided by the landscape of organizations which launched initiatives already before Regulation 211 (the so-called "pilot initiatives"), as emerging from Table 8.2.

Table 8.2 Pilot citizens' initiatives (2004-2010)

Subject Matter	Organizers	Subject Matter	Organizers
Oneseat Initiative	MEPs	Equality for all!	AEDH
Against Nuclear Energy	Friends of the Earth, Global 2000	European Health Initiative	Dr. Rath Health Foundation
Partnership instead of membership for Turkey	Conservative NGOs in Central Europe	For a political Europe of Freedom, Security and Justice	French politicians
Efficient 112 all over Europe	EENA	Help Africa	MEPs
Initiative pour un Service Civil Européen	European Movement in France	Save Our social Europe	Austrian NGO "Volkshilfe" Österreich
1million4disability	EDF	GMO – Initiative I	Greenpeace International
Initiatives of applied anthroposophy	Network of anthroposophical organizations	High Quality of Public Services	ETUC
For a European Referendum on the EU Constitution	UEF	Initiative for the initiative	Democracy NGOs and student groups
Emergency Initiative for Darfur	Human Rights Organizations	Referendum on the next EU Treaty	MEPs
Cancer United	Stakeholders in cancer care	European Citizenship Initiative	ECAS
European Referendum Initiative	Dr. Rath Health Foundation	GMO – Initiative II	Avaaz.org – the world in action platform
Free Sunday Initiative	German Catholic organizations	European Obesity Day Charter Initiative	Pharma industry including GlaxoSmith Kline
Eat Greener Initiative	Consumer organizations		

Adapted from GEF (2010)

According to Greenwood (2012: 326-327), it is possible to observe the emergence of an “ECI community” differentiated from the civil society organizations (CSOs) usually operating at EU level. The groups which organized and supported the pilot initiatives, as well as the ones which are active in the promotion of the currently open ECIs, do not seem to correspond to the established associations and lobbies normally populating Brussels. The citizens’ initiative can be thus considered both forward- and backward-looking:

- it is *traditional* as it continues a long-standing habit of CSOs involvement in the decision-making structure the EU;
- it is highly *progressive* as it represents a stimulus for the inclusion of *new* groups, which are usually closer to European citizens and are otherwise scarcely involved on the European scene at large.

Established EU-level groups are unlikely to resort to ECI as a means for bringing influence to bear on European decision makers. They tend to show a preference for other instruments of participation – namely civil dialogue and civil society consultation – rather than supporting a citizens’ initiative (Bouza García 2012). Conversely, “the ECI may attract organisations that so far have not been interested in the EU by choice or by a lack of valuable resources but that, unlike most EU level actors, are able to *mobilise* public opinion” (Bouza García and del Río Villar 2012: 317, emphasis added). More than expertise, mobilization represents their highest contribution to the ECI. Here lies the importance of networking, as said above: thanks to their ramifications and variety of membership, organizations as EDF or ETUC are able to achieve three fundamental results (*ibid.*):

- a) they can exert efficacious pressure on decision makers by forming diversified coalitions;
- b) they can increase the diversity of civil society interest representation at EU level, as a higher number of groups operate in Brussels;
- c) they can boost inclusiveness of EU policy making, as initiatives tend to be proposed by actors previously excluded from the formal decision-making chain.

The “ECI community” is thus able to extend the reach of European public policy far beyond the limits it has always encountered. New portions of society are involved in a legislative proposal, as “the ECI is mobilising constituencies separate from traditional EU NGOs, frequently embedded within wider social movements” (Greenwood 2012: 333). The population of groups aiming to exert influence on EU governing bodies is likely to increase if the citizens’ initiative becomes a widely used instrument. If many ECIs prove to be a success, new associations will be naturally attracted by the possibility to influence the Commission’s proposals through activities – the organization of an initiative and the collection of signatures – which require a comparably lower degree of institutionalization than a full-time participation in EU affairs as “pure” lobbies. It is quite accepted that the procedure set forth in Regulation 211 will help the EU empower organizations traditionally less open to participation in institutionalized decision-making (Bouza García and Greenwood 2012: 255).

These implications of the introduction of the ECI stand for powerful answers to some of the critiques to interest representation in terms of input democracy, presented in §5.3. Assuming that organizations promoting and funding citizens’ initiatives can be regarded as lobbyists (in their broadest meaning of interest promoters aiming at rationalizing and communicating issues to European decision makers), they perform a crucial role in opening up the system to a wider number of topics and actors. Thanks to their action, new interests are on the Commission’s table; in addition, the continuous competition between these newly mobilized organization and the established EU-level CSOs is likely to prove as a sufficient warranty against an anti-liberal closure of the decision-making system according to the logic of the “meta-game of Triple-P”. Instead of tightening the circle of participation, established organization, under the pressure of such a competition, will need to look *outside* their membership and try to develop a sufficient degree of networking: this will strengthen their links with “grass-roots civil society” (*ibid.*: 254) and enhance their effective representativeness of citizens’ interests. As a

consequence, they will be able to respond to the critiques of internal and external elitism proposed by many authors.

8.4. Enhanced Dialogue with Organized Civil Society

As emphasized in the previous paragraph, organizations which used to be “outsiders” in Brussels are now enjoying a broader power of influence: the initiatives they can promote are necessarily taken into account by the Commission due to the existence of a formalized procedure which defines precise and strict conditions of admissibility, but also a relevant opportunity for the enhancement of EU responsiveness to civil society’s claims.

Nevertheless, some could argue that this weapon resembles a toothless animal, as the ECI does not actually challenge the Commission’s monopoly in proposing EU legislation: as art. 2 of Regulation 211/2011 clearly states, by launching an ECI, citizens can only *invite* the Commission to take a certain initiative. The institution is obliged to follow all the steps set forth in the Regulation, if all the conditions are satisfied, including public hearings and timely notifications about the status of the initiative. However, no compulsory follow-up is established: once submitted, the ECI lies in the hands of the Commissioners, who can independently decide whether to transform it into a legislative proposal or not, on the basis of their expertise, technical knowledge and political judgment. Therefore, there is no guarantee that a formally impeccable citizens’ initiative will be substantially discussed by the EP and the Council, as this last step depends on the political judgment expressed by the members of the Commission.

It would be pointless to underestimate the potential benefits of the ECI on the grounds of such a critique. Democracy requires the possibility to enter the system with good argumentations: in other words, it is necessary that citizens’ issues are able to arrive to Brussels and get their voice heard without unjustified closures and

obstacles. It seems sufficient, therefore, that a perfectly structured initiative is considered and discussed by the Commission. The Treaties lay down numerous rules about the independent and Community-oriented behaviour of the Commissioners: art. 17.3 TEU, for instance, plainly declares that “[...] [t]he members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt. In carrying out its responsibilities, the Commission shall be completely independent [...]”.

If such criteria are fulfilled, the organizers of an ECI can faithfully expect that their initiative will receive due attention. More, if their proposal can be really beneficial to the EU, they can be faithful in the fact that it will be transmitted to the Council and the EP within the framework of the ordinary legislative procedure.

Conversely, it would be dangerous – and potentially anti-democratic – to disregard a fundamental filter such as the Commission. An ECI might be perfectly formulated and it might have collected all required signatures, but it might be, at the same time, contrary to the principles, or the needs, of Europe at large. In such a case, passing it to the two legislative institutions would be a waste of their time, or it might even prove to be a risk for democracy. The Commission, in this sense, serves as an intermediate body which further analyses and rationalizes the claims of citizens, and decides whether they are worthy of debate at European level. Some could see this role as a form of unduly pre-eminence of a non-elected institution over the will of citizens. This might be a reasonable point of view, but it would also put into discussion the very basic principles – agreed by the 27 MSs by signing unanimously the Treaties – which define the nature of the Commission itself:

“[t]he Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them”⁸³.

If this crucial point is accepted, it is possible to appreciate the positive impact that the ECI has on the dialogue between organized civil society and the EU institutions. It is quite acknowledged that citizens’ initiatives acquire a highly *political* meaning, as they highlight what European people desire at transnational level. Even if the final ECI does not have a legal meaning until it is discussed by the EP and the Council, still it is likely to produce beneficial effects in terms of input to public opinion’s debates and awareness. As a matter of fact, open ECIs are published on the Commission’s website; they acquire more and more visibility through the dedicated portals built by the organizers; they take advantage from *ad hoc* instruments of advocacy designed for this purpose (from periodic newsletters sent to those who log in to the websites of the ECIs to promotional campaigns and online conferences). People who are reached by the themes of a citizens’ initiative have the possibility to get information about it and actively participate by supporting it, either by donating money or by sharing data and news on social networks and blogs.

Besides this form of empowerment of citizens, there are important effects on the role of organizations in stimulating European democracy. Bouza García and del Río Villar (2012: 315) point out that “the strong concerns about the democratic legitimacy of the EU political system may make it costly to simply ignore the demands of one million citizens”. This means that groups supporting an ECI acquire a contractual power on the ground of the vast popular adherence to the initiative they promote, and they can “spend” such a power by exerting pressure on the European institutions in favour of citizens’ interests. This dynamics can potentially produce a double effect.

⁸³ Art. 17.1 TEU.

First, previously outsider groups have the chance to bridge the gap with established organizations operating at EU level. As said, new groups are attracted to Brussels, whereas large associations which already participate in the European decision-making process usually prefer other channels of influence. In this way, the dialogue between institutions and civil society can be significantly enlarged, as new interlocutors enter the scene and contribute to expand the area of interest of the EU. Of course, the best results could be achieved if *all* initiatives enjoyed a comparable visibility and similar probabilities of success. There is certainly a decisive difference between the ECI which proposes guidelines for a responsible management of garbage, published in one single language, and the one about the human right to water and sanitation, which is translated in all the official idioms of the Union. Money availability, also in this case, is a relevant watershed. However, as said in Chapter 5, it is not all and it cannot be simply equated to influence. Thanks to the online platforms for signature collection and the presence of *ad hoc* websites for each initiative, it is reasonable to think that all ECIs can reach a minimum standard of visibility. In this way, stronger competition between issues proposed at EU level is possible, and the space for a democratic debate can only increase thanks to this process.

Second, EU institutions (in particular the Commission) are stimulated to become more responsive to citizens' claims. Art. 10 of Regulation 211 unmistakably states that, once received an initiative, the Commission shall suddenly publish it in the dedicated register, receive the organizers to allow them to explain the matters addressed and, "within three months, set out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking the action". In other words, the Commission is obliged to provide a clear and rapid *feedback*, without unjustified delays and with the support of specific reasons. No unjustified denial is allowed at this stage. This means that Brussels, in the case of an ECI, cannot talk only to Brussels anymore, but it is forced to talk to citizens' organizations too. *Dialogue* becomes the keyword able

to describe the new relationship which links EU institutions and organized civil society: from the 2002 Communication on a reinforced culture of consultation and dialogue with interest representatives (European Commission 2002) to the 2011 Resolution, the trajectory seems to follow a precise direction toward openness, inclusion and cooperation. It is crucial, now, that ECI organizers exploit the renewed responsiveness of European institutions at least in the field of citizens' initiatives in order to inscribe their efforts in the long and effortful process of European democratization.

8.5. Conclusions

In this last paragraph I have analysed the newly introduced European Citizens' Initiative in the light of its possible contribution to bridging the gap between interest representation and European democracy. After introducing the norms concerning the ECI and presenting the currently open initiatives, I have demonstrated that they can produce two main positive effects: they can stimulate the inclusion of new groups in the decision-making system of the EU, and they encourage dialogue between European institutions and organized civil society. The main presupposition which lies behind these observations is that, although formally pertaining to citizens, the ECIs actually need to be backed by organizations because of the requirements set forth in Regulation 211. Such norms imply high costs and organizational needs which can only be borne by structured groups, whose nature resembles the definition of lobbies provided in Chapter 1. They sponsor ECIs by rallying support, organizing conferences, building up websites and exploiting their network-style internal structure. This is why some of them are *federative* groups, as well as a relevant number of lobbies operating in the EU decision-making chain.

In this light, it is possible to conclude that the case of the citizens' initiative confirms what expressed in Chapter 6: the activities of interest-promotion groups at

European Union level can be beneficial to the notion of democracy presented in Chapter 3. Undoubtedly, some errors can be corrected and many limits can obviously find a solution, but the route seems to be open toward a really productive interaction between lobbies and democracy in the EU. The noteworthy scepticism which too often surrounds this cooperation should be at least rethought in the light of all the arguments and the instances presented in this chapter and in the ones which came before.

Conclusion:

The Gap Can Be Bridged

At the end of the dissertation, it is possible to summarize the main findings and draw some conclusions about the research question that guided the development of the whole work.

I decided to investigate whether lobbying could play a positive role in the difficult process of European democratization. In order to address this issue in a coherent and constructive way, I needed to start from the roots of the problem. Therefore, in Chapter 1, I proposed a progressive definition of lobbying: from the general notion of group, I refined the object of the analysis and, passing through the concepts of interest group and pressure group, I concluded that lobbying is a peculiar activity which must not be confused with other similar, but not equal, ideas. Communication and advocacy were identified as the main keywords describing the role performed by lobbyists, who bring technical knowledge and sectoral viewpoints to the attention of those in charge of making binding decisions.

In this light, in Chapter 2, I took into consideration another crucial matter: why do lobbyists try to exert pressure on EU institutions? What is the reason why a peculiar entity such as the Union is so strongly and frequently addressed by interest representatives coming from all Member States? The answer relies on a thoughtful consideration of the peculiar nature of the European Union: it is not comparable to a nation-state, but it can be better defined as a supranational organization in which governmental power is shared among at least four heads. In this *fragmented* model of governance, many spaces are left open to lobbyists. Two reasons, in particular, can explain this situation: first, numerous “access points” exist for external actors in a multi-level governance system; second, the traditional lack of popular engagement in Union’s affairs directly paves the way for interest representatives pushing claims in

Brussels. Consequently, I clarified what lobbying is and where its rationale lies in the specific context in which I was observing it.

After this necessary introduction, I aimed to provide a picture of the two main elements of the discourse. In Chapter 3 I examined the peculiarity of the EU model of democracy: by considering four main dimensions – input, throughput, output and citizenship – I assessed their fulfilment in the European context. In particular, I took into consideration some very basic notions on which lobbying is likely to exert its deepest impact: openness, representativeness, consensual decision making, legitimacy and sense of citizenship. I found that EU democracy is not “ill” by definition, as some critics would argue, but its state of health highly depends upon the way the aforementioned notions are put into practice. Lobbying, in this view, can perform an important role, either positively or negatively.

Given these observations, the naturally subsequent step was the analysis of the current pattern of interest representation in the Union. In Chapter 4 I described the evolution of European lobbies from the beginnings of the supranational experiment to the entrance into force of the Treaty of Lisbon. During the time, the room for lobbying steadily increased, resulting in a huge variety of interests represented in Brussels and in an unclearly defined number of lobbyists and groups which try to influence EU decision makers on a daily basis.

In Chapters 5 and 6 I focused on the arguments which can fight against, or support, reconciliation between lobbying and democracy. Firstly, I looked at the reasons why interest representation seems to be at odds with the notions of democracy defined in Chapter 3. I found that problems certainly exist, but in many cases they are overestimated: for instance, national traditions play a relevant role in the diffused negative perception of lobbyists. In addition, there are system-linked correction mechanisms which naturally reduce such unfavourable impacts and contrast the view according to which the two elements of the discourse are irreconcilable. Conversely, many arguments can be proposed to demonstrate that lobbying renders a high-quality service to European democracy: it allows expertise to

reach decision makers; it guarantees the inclusion of organized interest in governmental choices; it helps EU policies achieve a sufficient degree of legitimacy; it enhances the deliberative outcomes of bargaining in Brussels.

The results achieved in these two chapters had to be tested in practice. Chapter 7 lay in a middle ground between a theoretical analysis *tout court* and a case-study investigation. Specifically, I examined the significance of the problem of transparency and I observed that it is absolutely central to our reasoning, as the vast majority of critiques to lobbyists are linked to a perceived opaqueness in the EU decision-making architecture. Assessing whether the relationship between institutions and lobbyists is transparent enough is a difficult operation which largely depends upon the perspective assumed in the development of the judgment. Therefore, I preferred to look at how the Commission and the Parliament tried to regulate this issue. I concluded that, although many deficiencies still characterize the discussed *liaison* between interest representatives and institutions, many important steps have already been made in direction of more transparency and openness: this suggests that the Commission and the EP are aware of the positive impacts of lobbying and are trying more and more to guarantee a constructive cooperation with European lobbyists.

Finally, in Chapter 8, I examined the European Citizens' Initiative as a means of empowering organized civil society. The result of the assessment of the currently open initiatives was that a relevant role can be played by groups, as they are able to provide the necessary financial support and help obtain the required signatures across different Member States. By backing ECIs, interest-promotion organizations can enhance participation; more, a higher number and variety of associations can be included in European decision making, as the groups supporting this kind of initiatives are generally not the same as those already operating at EU level. As a result, thanks to this new instrument, organized civil society can enjoy better and wider chances for dialogue with institutions in Brussels, with potentially high benefits for European democracy.

Many points have been addressed and a plethora of arguments have been raised. The complicated relationship between lobbying and the EU democratic model has been analysed from many different viewpoints, both from a theoretical perspective and in practice, with a variety of telling instances. One strong conclusion can be deduced from the eight chapters summarized above: the perceived gap between interest representation and democracy in the Union can be bridged. Lobbying can be at the service of the enhancement of democracy: this is a feasible option which should not be ignored, but further examined and put into practice with all possible strengths. The doubts rooted in national traditions should be dissipated, or at least contextualized and reframed, in the light of the arguments proposed in Chapters 5 and 6.

Of course, it would be pointless to state that lobbying and democracy are *perfectly* compatible realities. In the course of the dissertation, I underlined that grave problems exist: for instance, it would be difficult to disregard that money still play a high role in the definition of the degree of effectiveness of interest representation. However, it is necessary to properly weigh these limits and try to solve troubles linked to them, instead of just assuming that they will never be overcome. The institutions of the EU are seriously working on this: both the Commission and the EP have been proposing counter-measures to fight the adverse impacts of “bad” lobbying on the Union’s model of democracy, for instance by requiring the adoption of codes of conduct and proposing stricter requirements for a transparent and open behaviour of EU officials and governing bodies.

Some could argue that the steps taken until now are not enough to bridge the abovementioned gap. A good argument in favour of this position would be that decision making in Europe is still subject to distortions to which powerful lobbyists actively contribute. In many cases, such observations can prove right and appropriate. As said, there is wide recognition of the bugs affecting interest promotion and its effects on democracy in Brussels. Nevertheless, my reasoning followed another direction: I did not just look at what is wrong *now*, but I tried to

discover the positive aspects which allow having faith in a better *future*. My conclusion derives from such premises: the problems which have historically thwarted a fruitful interaction between EU institutions and lobbyists are not likely to disappear in a moment, but the Union already possesses the instruments for making the two parties actively cooperate. From a theoretical point of view, many reasons exist why lobbies should be involved in policy making. The institutions are perfectly aware of this: as a matter of fact, they tend more and more to “attract” interest representatives in Brussels, especially because they need their support in legitimacy building and expertise sharing. In practice, significant steps have been made to put lobbying at the full service of democracy, even if the process cannot be considered complete.

The gap can be bridged, and this is actually happening. Some more time is required, and EU institution must devote their best efforts to the full implementation of the transparency principle in order to build a perfectly working framework for cooperation with lobbies. If this occurs, it will be possible to consider lobbyists in a completely new perspective and finally abandon the diffused perception according to which their activities are detrimental to EU democracy. Consequently, the compound model of governance of the Union can gain important benefits from interest representation: it is just a matter of awareness and willingness to fully integrate lobbies’ activities into the complex European decision-making structure. It may appear hard to do, but Europe seems strong enough to overcome any unjust prejudice. It just needs to understand that it could take serious advantage from such a change of mind.

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