

# Captured states:

when EU governments  
are a channel for  
corporate interests





**COUNCIL  
OF THE EU**

**EUROPEAN  
COUNCIL**

**COMMITTEES**

COMMISSION ADVISORY GROUPS  
COMITOLGY PROCESS  
EU AGENCIES' COMMITTEES

ROTATING  
PRESIDENCY

PERMANENT  
REPRESENTATIONS



**MEMBER STATE GOVERNMENTS**



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# Glossary

<b>ACEA</b>	European Automobile Manufacturers' Association, a corporate lobby group
<b>AFEP</b>	Association Française des Entreprises Privées, the French association of private businesses, a corporate lobby group
<b>AFME</b>	Association for Financial Markets in Europe, a corporate lobby group
<b>AGRIFISH</b>	Agriculture and Fisheries Council of Ministers, part of the Council of the EU
<b>AIFMD</b>	Alternative Investment Fund Managers Directive, an EU regulation
<b>ALTER-EU</b>	Alliance for Lobbying Transparency and Ethics Regulation, an NGO
<b>ASD</b>	AeroSpace and Defence Industries Association of Europe, a corporate lobby group
<b>BDI</b>	Der Bundesverband der Deutschen Industrie, the Federation of German Industries, a corporate lobby group
<b>BIT</b>	Bilateral Investment Treaty which locks in investor-state dispute mechanisms
<b>BfR</b>	Bundesinstitut für Risikobewertung, Germany's Federal Institute for Risk Assessment
<b>CARACAL</b>	European Commission expert group which advises on chemicals regulation
<b>CBI</b>	Confederation of British Industry, a corporate lobby group
<b>CCE</b>	Conseil de Coopération Economique, the Council for Economic Cooperation, a corporate lobby group
<b>CCS</b>	Carbon capture and storage
<b>CEFIC</b>	European Chemicals Industry Council, a corporate lobby group
<b>CEO</b>	Corporate Europe Observatory, an NGO
<b>CETA</b>	Comprehensive and Economic Trade Agreement, also known as EU-Canada trade deal
<b>Comitology</b>	Series of committees, run by the European Commission, in which member states input into the implementation of EU law
<b>Competitiveness Council</b>	Ministers responsible for trade, economy, industry, research and innovation, and space, part of the Council of the EU
<b>Coreper</b>	Committee of the Permanent Representatives of the Governments of the Member States to the European Union, part of the Council of the EU
<b>Council of Ministers</b>	Part of the Council of the EU, this is a set of 10 configurations covering different policy areas, to which each member state sends their minister responsible. Examples include AGRIFISH, Competitiveness Council, Ecofin
<b>Council of the EU</b>	EU institution where member state governments negotiate and then adopt EU laws, and coordinate EU policies
<b>ECB</b>	European Central Bank
<b>ECHA</b>	European Chemicals Agency, an EU executive agency
<b>Ecofin</b>	Economic and Financial Affairs Council of Ministers, part of the Council of the EU
<b>EFSA</b>	European Food Safety Authority, an EU executive agency
<b>ERF</b>	European Risk Forum, a lobby group
<b>ERT</b>	European Round Table of Industrialists, a corporate lobby group
<b>ESF</b>	European Services Forum, a corporate lobby group
<b>ETS</b>	Emissions Trading System, the EU's key climate policy
<b>European Council</b>	EU institution which sets its overall political direction and priorities. Its members are the heads of state or governments of the member states

<b>EVCA</b>	European Venture Capital Association, now known as Invest Europe, a corporate lobby group
<b>FTT</b>	Financial Transactions Tax, a small levy on all transactions on financial markets, to create public funds and discourage short-term speculation
<b>Green hydrogen</b>	Produced from supposedly excess renewable electricity via electrolysis
<b>IARC</b>	International Agency for Research on Cancer, part of the World Health Organisation
<b>Ibec</b>	Irish member of BusinessEurope, a corporate lobby group
<b>ICSID</b>	International Centre for Settlement of Investment Disputes, part of the World Bank
<b>IIF</b>	Institute of International Finance, a corporate lobby group
<b>ILSI</b>	International Life Sciences Institute, a lobby group
<b>IOGP</b>	International Association of Oil and Gas Producers, a corporate lobby group
<b>IPR</b>	Intellectual property rights
<b>ISDS</b>	Investor state dispute settlement, a highly controversial system found in some trade deals through which companies can sue host countries for laws that allegedly discriminate against them or affect future expected profits
<b>Magritte group</b>	A corporate lobby group of major energy companies
<b>MEDEF</b>	Mouvement des Entreprises de France, French employers federation, a corporate lobby group
<b>MEP</b>	Member of the European Parliament
<b>PADR</b>	Preparatory Action on Defence Research, an EU budget on defence
<b>Nox</b>	Nitrous oxide
<b>NVB</b>	Nederlandse Vereniging van Banken, the Dutch Banking Association, a corporate lobby group
<b>QMV</b>	Qualified majority voting, the most common way of voting in the Council of the EU, requiring agreement from 55 per cent of EU countries with at least 65 per cent of the EU's population
<b>RDE</b>	Real-world Driving Emissions tests to measure vehicle emissions
<b>REACH</b>	Registration, Evaluation, Authorisation and Restriction of Chemicals, an EU regulation
<b>Renewable gas</b>	Gas from renewable sources such as biomass or renewable electricity
<b>Rotating presidencies</b>	Every six months, a member state takes on the Presidency of the Council of the EU, a key role in preparing for, and setting the agenda of, Council meetings
<b>SCOPAFF</b>	Standing Committee on Plants, Animals, Food and Feed, a comitology committee
<b>TDMA</b>	Titanium Dioxide Manufacturers Association, a corporate lobby group
<b>TMCV</b>	Technical Committee on Motor Vehicles, a comitology group committee
<b>TPC</b>	Trade Policy Committee, part of the Council of the EU
<b>Trilogue</b>	Negotiations to finalise a piece of EU legislation involving the European Commission, Council of the EU, and European Parliament
<b>TTIP</b>	Transatlantic Trade and Investment Partnership, also known as the EU-US trade deal
<b>VDA</b>	Verband der Automobilindustrie, the German Association of the Automotive Industry, a corporate lobby group
<b>VNO-NCW</b>	Verbond van Nederlandse Ondernemingen en het Nederlands Christelijk Werkgeversverbond, the Confederation of Dutch Industry and Employers, a corporate lobby group


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# Executive Summary

The member states of the European Union are intimately involved in, and responsible for, the EU's laws and policies. This report focuses on the democratic deficit that sees too many member states, on too many issues, become captured states, allowing corporate interests to malignly influence the decisions they take on EU matters. Instead of acting in the public interest of their citizens and those in the wider EU, they often operate as channels of corporate influence.

Many of the ways in which member states feed into EU decision-making are not well-known, and are neither transparent nor commonly studied. This report breaks new ground by providing an overview of how member states act as middlemen for corporate interests with a focus on the following European institutions:

- **The Council of the European Union** (also known as the Council of the EU, or simply the Council).<sup>1</sup> This is where member states' ministers and officials input into EU law-making and policy-making, primarily via working groups and regular ministerial meetings. The six-month rotating presidencies of the Council of the EU also feature here.
- **The European Council** where heads of government of EU nations gather regularly for summits and to make pronouncements on the EU's broad future direction of travel, especially when it comes to economic coordination and foreign affairs.
- **The EU's committee structure** which, whether via the Commission's expert groups, the EU agencies' advisory committees, or the Commission's comitology process (for member states to decide, via committees how the Commission implements laws), provide member states with key seats at the table to discuss the technical and scientific detail of proposals and their ultimate implementation.



This report breaks new ground by providing an overview of how member states act as middlemen for corporate interests...

1. The Council of the European Union is not to be confused with the Council of Europe which is a wholly separate organisation not connected to the European Union. See: <https://www.coe.int/en/web/portal/home/>

## Our key findings are:

- i. **Corporate interests**, including EU and national-level trade associations as well as multinational corporations, **are really dominant** in lobbying member states on EU decision-making and they have numerous successes to show for it.
  - o **Elite corporate lobbies** target the European Council of member state leaders, with access that NGOs and trade unions cannot match. For example the regular meetings of the European Round Table of Industrialists bring together 50 bosses of major European multinational companies with the leaders of France, Germany, and the Commission President.
  - o **Rotating presidencies** of the Council of the EU provide a key target for corporate lobbies. This report shows, for example, how the 2016 Dutch Presidency promoted both the interests of the arms industry, and the corporate-designed concept of the 'innovation principle' in EU decision-making which undermines precautionary approaches. Additionally, corporate sponsorship of rotating presidencies now appears to be standard.
  - o The EU's complex and opaque **committee structure** benefits corporate lobbies with the resources and capacity to influence the final outcomes. The decision-making on the licence renewal of the pesticide glyphosate and the safety of the whitening agent titanium dioxide both demonstrate the reach and staying power of the chemicals' industry lobby.
  - o Brussels-based **lobby consultancy firms** provide specific services to corporate lobbies aimed at influencing member states, such as Fleishman-Hillard's annual gas forum for member state officials, organised for trade association GasNaturally, a lobby forum for major gas companies such as Shell, Total, and RWE.
  - o Where data is available, corporate interests held the clear majority of lobby meetings with officials working at the **permanent representations of member states**. The Dutch Permanent Representation's officials held over 500 lobby meetings between June 2017 and 2018 and 73 per cent of these were with business interests, and only 15 per cent with NGOs or trade unions.
- ii. As a consequence, there is a **massive asymmetry of influence** on member states' EU decision-making as civil society groups cannot match the privileged access and far greater lobbying capacity and resources of the corporate sector.
- iii. **Member states and national corporate lobbies have developed a symbiotic relationship** whereby the national corporate interest has – wholly wrongly – become synonymous with the national public interest as presented by the relevant government in EU fora. Extreme examples include the influence of the car industry on the German political establishment (and the negative impact of this on EU climate and emissions' regulations); Spanish telecoms giant Telefónica, whose closeness to the Spanish Government ensured its demands were absorbed and promoted; the state-owned coal industry which leads the Polish Government to be such a climate pariah; and the City of London, which can count on the UK Government to back its demands for the lowest possible financial regulation.
- iv. At the EU level, **member states have collectively absorbed some corporate agendas** and adopted them as part of the EU-wide agenda, such as on economic governance (strict fiscal rules and austerity) and investors' protection in trade treaties (allowing corporations to sue states for billions in compensation when governments act to protect their people and the planet).

- v. Some member states **proactively reach out to corporate lobbies**. Rotating presidencies represent a particular opportunity for a member state to actively champion a pet project, issue, or national industry. The recent Austrian Presidency organised a high profile event for EU ministers at the premises of its key national steel producer Voestalpine, even launching an initiative to promote 'green hydrogen' (which will most likely give a boost to fossil fuel gases) signed by member state ministers.
- vi. A number of **commissioners** from the Juncker Commission appear to have a **bias towards corporate interests from their own member states** when it comes to lobby meetings, providing business with another potential 'national' channel, on EU decision-making. Commissioners Oettinger, Hill (who left the Commission in July 2016), Cañete, Hogan, and Vestager have all held a disproportionately large number of meetings with corporate lobbies from their own country.
- vii. **Complex EU decision-making procedures**, a **lack of transparency**, exclusion of citizens in decision-making at national level on EU matters, and generally **weak national parliamentary mechanisms**, have combined to create an accountability and **democratic deficit**, which corporate lobbies are happy to take advantage of. As just one example of the transparency problem surrounding the way in which member states participate in EU affairs, only 4 out of 19 permanent representations (Finland, Ireland, the Netherlands, Romania) provided some transparency regarding their meetings with lobbyists. The others remain totally non-transparent.

Contemporary nationalist rhetoric argues that a strong EU is imposing rules and regulations on nation states and sometimes it suits member states to play up to this narrative and blame the EU for decisions which are unpopular at home. However, blaming the EU 'apparatus' alone is far too simplistic: after all, governments set the EU's strategic direction, are closely involved in both the drafting and implementation of EU rules, and have final sign-off on all EU legislation.

Too often, member state governments, acting individually or collectively, are a bastion of corporate influence on EU decision-making. The risk of corporate capture of some member states, on some EU dossiers, is very high, undermining democracy and the public interest. And it is getting worse.

With this report, we hope to alert civil society and decision-makers to the threat that corporate lobbies, influencing member states, have on EU decision-making, and our final recommendations set out some initial steps to start to counter this corporate influence. They include:

- a. Member state governments must **adopt national rules and cultures** which **reduce the risk of corporate influence** on EU decision-making, including an end to privileged access for corporate lobbies and full lobby transparency.
- b. Member state **parliamentary scrutiny** and accountability on government decision-making at EU level must be strengthened. This should include both pre-decision scrutiny and post-decision accountability.
- c. Urgent action is needed by the EU institutions to tackle the **democratic deficit** in how they operate. These will require **reforms** of the ways of working of the **Council of the EU**, the **European Council**, and the European Commission's **comitology process and advisory groups**.
- d. We urgently need **new models for citizens** to both **find out more** about, and **have a say** on, the EU matters with which member states are tasked with deciding. This could include participatory hearings, at the national level, on upcoming pieces of EU legislation; on-line consultations; and more.



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# 1. Introduction

The role of individual member states in EU decision-making is hugely important but not widely understood. Of the numerous EU fora where member states have a voice, the most well-known are the high-profile and often drama-laden European Council summits where the leaders of all the member states gather, sometimes into the night, to agree joint positions on issues of public interest: the economic crisis, migration, and most recently, Brexit.

But beyond these big moments, out of the spotlight the member states make thousands of decisions a year on EU issues. They play a critical role in developing, negotiating, and agreeing legislation on everything from how to regulate food, chemicals, internet privacy, pollution, tax, and so on, to working out how best to implement it. Additionally they coordinate policy-making on non-legislative matters such as foreign policy, security, and economics.

Much of this decision-making is out of the public eye, allowing national governments and a growing number of populist far-right parties to blame anonymous EU institutions for policies they have actually supported themselves or bear a responsibility for, such as the approval of glyphosate.

There is a democratic deficit in how member states relate to the EU, but it consists of the fact that while citizens are mostly excluded from decision-making on European matters, corporate interests are well-equipped and often successful in ensuring that EU rules serve them. A major reason for this is that

corporate interests overtake public interests in governments' agendas, or are wrongly seen by officials and ministers as one and the same thing.

The exact interplay of corporate lobbies with member state representatives varies significantly from issue to issue, and takes places in both member state capitals and Brussels. Sometimes member states work alone, and sometimes they forge alliances with other member states to promote a shared corporate agenda. This report identifies two broad types of corporate influence on member states in the context of EU decision-making, both of which are much in evidence.

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## i. Direct corporate lobbying

Direct corporate lobbying is the core of the influencing game. Trade associations, operating at both EU and national levels, are key players in the lobbying of member states. Their greater financial resources and capacity mean the more targets they can cover, the deeper their lobbying can go, and the higher the chance of success. Typical lobbying tactics include:

- Holding face to face meetings. Some permanent representations hold hundreds of meetings with lobbyists, the vast majority of whom represent business interests, on a wide range of issues every year.
- Sending letters and press releases to demonstrate broader industry support for a position.
- Commissioning research which backs industry lobby positions.
- Holding high-profile events, including those connected to a rotating presidency of the Council of the EU; attracting key ministers to speak affords extra status and impact.
- Employing public relations and lobby consultancy firms to provide insights into EU decision-making, expertise on promoting demands, and designing fully-fledged campaigns to reach corporate goals.
- Sitting with member states on the Commission's advisory groups to provide inputs into various stages of the EU law and policy-making process.
- Attempting to reframe lobby battles with corporate buzzwords such as 'innovation', 'competitiveness', 'better regulation', while undermining opposing demands for safety, privacy, fairness, or environmental protection.

## ii. Absorbing corporate interests over time

This kind of corporate influence on member states is far more indirect and subtle than overt lobbying, and it can be harder to map and to understand. But as a number of cases in this report show, there is a clear pattern of symbiosis between national corporate interests and governments. This often includes a shared ideology, personnel, contacts, and sometimes political interests. Thus corporate positions are given extra legitimacy, absorbed by governments, and eventually even seen as being synonymous with the national public interest, when they may be diametrically opposed. This can involve:

- Corporations that were previously state-owned such as Telefónica in Spain, or which retain some government ownership today, like the coal industry in Poland.
- A common culture created and reinforced by high-level staff and officials moving between a prominent corporation and the government via the 'revolving door'.
- Sectors which wield so much economic power that politicians prefer to cooperate with, rather than challenge, them (the car industry in Germany, the financial industry in the UK), or which are culturally symbolic for other reasons (the fishing industry in the Netherlands).
- Debts of loyalties from ministers to corporate funders of their political parties, or where corporate and business elites have personal friendships.
- Co-dependency built up over the years when corporate interests and governments work together on a series of legislative files and dossiers. This particularly applies to scientific and technical policy areas where governments and regulators become partially dependent on industry's data, studies, and knowledge, conveniently forgetting their role is to make independent decisions in the public interest.
- A shared ideology where governments and corporations share a common vision to promote the EU single market, deregulation, free trade, and competitiveness. These are often forged and perpetuated through institutions such as corporate-funded think tanks.

In contrast it is impossible for civil society to match both the privileged access of corporate interests and their army of lobbyists. As a consequence, corporate interests are far more active in lobbying member states on EU matters than other voices such as civil society, allowing an asymmetry of influence to thrive.

Combine this asymmetry with the pro-business tendencies of the Commission, which drafts proposals for new laws and policies, and it is not hard to see how the EU's pro-business reputation emerges. This is notwithstanding the role of the European Parliament, the EU's only directly-elected institution, which on some issues at least, places a higher value on public interest concerns.

Corporate influence can have a variety of outcomes on EU decision-making:

- Delivering support for broad corporate agendas that undermine the public interest (see case studies on economic governance (5.5), investment protection (2.9), and the 'innovation principle' (3.7));
- Creating delays in the regulatory process which benefit corporate interests and profits (see case studies on the regulation of chemicals such as glyphosate (6.3) and titanium dioxide (6.2));
- Blocking progressive proposals from being passed (such as the financial transactions tax (2.2), or threats of veto in exchange for advantages to national industries, such as the 2030 climate and energy targets (5.3));
- Introducing loopholes which fundamentally weaken new laws (such as over hedge fund regulation (2.3));
- Agreeing to provide direct material gain to particular industries (for example gas (3.5), fish quotas (2.11), defence funds (3.2));
- Protecting national brands at the expense of people and or planet (such as wholesale roaming charges (2.5) or Dieselgate (6.4));
- Helping industry to open-up new sectors and markets (hydrogen case study (3.4)).

This report represents a selection of case studies which illustrate our fundamental concerns that corporations wield a greatly disproportionate amount of influence on numerous member states, and over a wide range of EU decisions, and that this is detrimental to both democracy and the wider public interest.

# COUNCIL OF THE EU

Promoting corporate interests behind closed doors



## 2. The Council of the EU: promoting corporate interests behind closed doors

The Council of the European Union is the key institution which brings together all member state governments within the EU, playing both a legislative and a policy-making role.

Corporate lobbies increasingly recognise that a focus on the Council of the EU can deliver high returns. Our case studies largely focus on the detailed work conducted by officials via the Council's 150+ topic-based working parties, and the Council of Ministers' meetings which provide the seal of approval to Council positions.

The Council of the EU is a notoriously opaque institution and the European Ombudsman has recently accused it of "maladministration" in the way its working groups handle legislative files.<sup>1</sup> While Council of Ministers' meetings are sometimes livestreamed and votes are made public, citizens may find it nearly impossible to track and influence the role of member state officials in working parties, where the detailed work on new policies and laws is done.

By contrast, our case studies reveal how corporate interests with the time and money can run effective direct lobbying campaigns focused on member state officials and ministers, with the aim to block new legislation entirely (such as the financial transactions tax (2.2), revised gas directive (2.12)); or to delay and substantially weaken proposed new rules (ePrivacy, 2.7), wholesale roaming charges (2.5), Alternative Investment Fund Managers Directive (2.3)). On the other hand, corporate lobbies sometimes advocate *for* something when it is in their interests to do so, and in the examples of investment dispute settlement (2.9) and fishing quotas (2.11), we see how business interests have successfully persuaded member states to deliver new rules, quotas, or funding to benefit industry.

Particularly prominent in this section are cases where governments have absorbed the positions of leading national corporate players or whole sectors, seeing domestic corporate interest as synonymous with the national public interest. This is usually at the expense of issues in the genuine public interest such as climate change or consumer protection. Sometimes the industry takes on an almost iconic status at the national level. With Telefónica in Spain (2.6), and the City of London finance sector in the UK (2.4), this relationship has been greased over the years by the 'revolving door', personal friendships, business donations to political parties, or similar.



## 2.1 Fact file on the Council of the EU

- **The Council of the EU** is primarily known as a **legislative body**, coming to an agreement (in most cases under what is known as the ordinary or co-decision procedure) with the European Parliament on legislative proposals produced by the European Commission. On fewer issues, such as taxation policy, the Council has exclusive competence and the most the Parliament can do is to submit an opinion. Often the Council takes a **less progressive** position than the Parliament – watering down good proposals or opposing Parliament’s efforts to improve bad proposals.
- **Decision-making** in the Council of the EU is generally based on a **‘qualified majority’** which, under the Lisbon Treaty, requires agreement from 55 per cent of countries comprising at least 65 per cent of the EU’s population. Qualified majority voting covers about 80 per cent of the Council’s votes. However, in some areas, unanimity of all EU member states is required, including on taxation, the EU budget, foreign and security policy.
- **Detailed work** on EU legislation is delegated to the **Council’s 150+ working parties** which are organised thematically and include an official from every member state. These officials may come from a member state’s permanent representation in Brussels, or from the relevant government ministry in the national capital. The working groups meet regularly in Brussels and play a key role in thrashing out the Council’s initial negotiating position on a piece of legislation, as well as the revisions required during trilogue negotiations with the Parliament and the Commission, and as such are a key target for corporate lobbies.
- Once a decision is prepared by a working party or another preparatory body, it must pass through one of the **COREPER committees** (Committee of the Permanent Representatives of the Governments of the Member States to the European Union) which look at both the technical and political issues, although no formal decisions are made there.
- Final decisions on the Council’s position on legislation and on policy matters are ultimately agreed by the **Council of Ministers**, a series of 10 different committees or configurations depending on the subject being discussed which include Ecofin (member states’ economic ministers) and AGRIFISH (agriculture and fisheries ministers), plus the informal Eurogroup (Eurozone finance ministers).
- Additional to its legislative role, the Council of the EU plays an important role in **policy-making and coordination** on economic affairs, foreign, and security policy, based on the guidelines and strategic direction set out by the member state leaders via the European Council (see section five). The **European Council** has been described as having a “top-down” relationship<sup>2</sup> with the Council of the EU.
- As an additional role, the Council of the EU provides the **initial negotiating mandate** to the European Commission for new **international treaties**, and gives its final approval to the EU’s international agreements ie. on trade.



## 2.2 France: Backing away from the Robin Hood tax

**Decision topic:** Introduction of a Financial Transactions Tax

**Date:** 2011-ongoing

**Channel of influence:** European Council and Council of Ministers, specifically Ecofin which brings together the Economic ministers of the EU

**Corporate lobby:** Financial trade associations, domestic banks, and business lobby groups including MEDEF and AFEP

**Member state:** France

**Summary:** Despite the popularity of the idea for a Financial Transactions Tax across Europe,<sup>3</sup> a major corporate lobbying mobilisation at both EU and member state level has succeeded in diminishing the enthusiasm of key member states, notably France, essentially consigning the proposal to the deep-freeze.

The Financial Transactions Tax (or FTT, also known as the Robin Hood tax) is a proposed small levy on all transactions on financial markets, to create public funds and discourage short-term speculation. At first sight it might be the EU's most constructive regulatory attempt to rein in the excesses of the financial markets after the 2008 crash.

While not all member states supported the European Commission's original proposal for an FTT,<sup>4</sup> 11 agreed and entered into negotiations.<sup>5</sup> These included the major financial markets of Germany, France, Spain, and Italy, and together represented about 90 per cent of economic activity in the Eurozone.<sup>6</sup> France was an early advocate of the FTT and former President Sarkozy championed both the EU-level tax as one of his "key post crisis objectives";<sup>7</sup> while introducing a limited, domestic version of the tax in 2012.<sup>8</sup> Italy followed suit a year later.

The stakes were rising for both the financial industry and their multinational corporation clients as the FTT looked ever more likely. European central banks also saw the FTT as contrary to their interests and began to join the chorus of lobbyists against it. Arguments against the tax focused on the consequential reduction in the number of financial transactions, and the supposed loss of competitiveness to EU business which would face reduced investment opportunities.<sup>9</sup>

Lobbying at the EU level was primarily led by the usual suspects: trade associations representing the big financial banks and investment houses, including the Global Financial Markets Association, Association for Financial Markets in Europe, and others.<sup>10</sup>



Credit: Oxfam France

In France the financial lobby focused on fuelling the fear of a loss of national competitiveness.

But domestic lobbying was arguably even more effective. In France the financial lobby focused on fuelling the fear of a loss of national competitiveness. La Fédération Bancaire Française (which in 2014 scored a significant coup when it appointed the official responsible for financial and monetary affairs within the French Permanent Representation as its Deputy Director)<sup>11</sup> warned the French levy would restrict the development of Paris' financial market and claimed it would be detrimental for big companies and small investors.<sup>12</sup> Paris Europlace<sup>13</sup> which represents companies and aims to promote the Paris financial market, and the bank Société Générale,<sup>14</sup> were also loudly opposed.

Beyond the financial sector, other corporate lobbies, for example French and German employers' groups, joined the chorus of disapproval.<sup>15</sup> They and other business organisations wrote to finance ministers just prior to the November 2015 Ecofin meeting urging a rejection of "this damaging proposal", in an initiative coordinated by BusinessEurope.<sup>16</sup>

Meanwhile French central bank Governor Christian Noyer argued that an FTT would "destroy financial sectors",<sup>17</sup> and was arguably influential in steering the Hollande administration away from supporting a full FTT.<sup>18</sup> Soon after, Pierre Moscovici (now an EU Commissioner, previously France's Minister of Finance) stated: "The European Commission's proposal seems to me to be excessive and risks being counter-productive.... I want to work on improving [it] so that we have a tax that does not undermine the financing of the economy."<sup>19</sup> These 'improvements' took the form of exemptions from the tax for certain derivatives, in line with the lobby demands of the big French banks.<sup>20</sup> Austria and Belgium insisted pension funds should be exempted from the tax,<sup>21</sup> whereas the German Government continued to insist on a broad based tax.

Nonetheless, by the end of 2016, the 10 remaining, interested member states (Estonia had dropped out) could point to substantial progress made on the FTT, with a core agreement in place which covered many practical aspects of how the tax would operate.<sup>22</sup>

But since that point, there has been next to no progress. Instead, the member states have grappled with internal disagreements on the design of the tax – in no small measure a result of lobbying at the national level. Campaigners now refer to the FTT as a "frozen file" at the EU level. However, the Spanish Government has recently announced it will introduce a version of the FTT at the national level, showing that the finance lobby has not been able to block the idea entirely<sup>23</sup>

#### FOR MORE INFORMATION READ

Corporate Europe Observatory's *Lobbying to kill off Robin Hood*, March 2012.

<https://corporateeurope.org/financial-lobby/2012/03/lobbying-kill-robin-hood>

Manolis Kalaitzake's *Death by a Thousand Cuts? Financial Political Power and the Case of the European Financial Transaction Tax* (2017), *New Political Economy*.

<http://dx.doi.org/10.1080/13563467.2017.1311850>



## 2.3 The UK: a reliable ally of the financial sector

**Decision topic:** the Alternative Investment Fund Managers Directive

**Date:** 2009-10

**Channel of influence:** Council of Ministers, specifically Ecofin which brings together the Economic ministers of the EU

**Corporate lobby:** The City of London, including the European Venture Capital Association (EVCA, now known as Invest Europe)

**Member state:** UK

**Summary:** In the immediate aftermath of the 2008 financial crisis there were many fine words spoken by EU leaders about preventing another from ever happening again. However, when it came to actually creating tough regulations for dangerous speculative and asset-stripping activities of hedge funds and venture capital, the financial lobby, working with its allies in the UK Government, were able to prevent any serious restriction on their activities.

In April 2009 the European Commission proposed the first-ever EU attempt to regulate hedge funds, venture capital, and private equity, the Alternative Investment Fund Managers Directive (AIFMD).<sup>24</sup> It tried to reduce the unacceptable risk of the financial bubble economy. But finance lobbyists immediately got to work on the UK Government, as well as on EU decision-makers.<sup>25</sup>

By June 2009 the UK's City Minister Lord Myners was promising to "fight tooth and nail" to revise the directive,<sup>26</sup> and hedge fund lobbyists maintained close contact with him. For example Nickolas Reinhard, "one of the best European financial services sector lobbyists"<sup>27</sup> from the lobbying consultancy Fleishman-Hillard, hired by the European Venture Capital Association (EVCA),<sup>28</sup> briefed Myners. The Minister promised hedge fund managers that the UK was sending officials to lobby "in more than a dozen key EU capitals".<sup>29</sup>

The hedge funds also mobilised then-Mayor of London Boris Johnson on their behalf. The financial sector had provided half of his election campaign funds and he duly took a lobbying trip to Brussels to warn against AIFMD.<sup>30</sup>

Industry lobbyists, keen to head off the worst aspects of the directive, scaremongered about the risk of over-regulation, and the threat that the hedge fund industry from countries such as the US and Japan would be driven out of Europe. Officials from the UK Treasury and the City of London (see case 2.4) raised the issue with the US Government,<sup>31</sup> and in March 2010, US Treasury Secretary Timothy Geithner issued a remarkably sharp protest over the planned directive.<sup>32</sup>

The UK Government's position was now strengthened in the negotiations at the Council of Ministers; slowly positions shifted in their favour, and the Belgian Rotating Presidency of the Council offered a major concession.

By June 2009 the UK's City Minister Lord Myners was promising to "fight tooth and nail" to revise the directive, and hedge fund lobbyists maintained close contact with him.



In a pincer movement, City lobbyists also mobilised UK Conservative MEP allies in the European Parliament. In the first half of 2010, 46 separate meetings on the AIFMD took place between members of this group of MEPs and lobbyists.<sup>33</sup>

The final deal among ministers in October 2010 was seen as a victory for the UK and for the finance lobby too.<sup>34</sup> While the European Parliament had suggested rules to counter asset stripping, the final law came nowhere near such ideas. Broadly speaking, the hedge fund industry conceded some transparency measures in order to get easier access to the full EU single market, but regarded this as a decent trade-off given their overall lobbying success.<sup>35</sup>

AIFMD is a clear example of the EU's failure to adequately regulate the industry in the wake of the financial crash, and how member states can be symbiotic with industry interests.

#### FOR MORE INFORMATION READ

Corporate Europe Observatory's *Regulating investment funds: the power of filthy lucre*, November 2010.  
[https://corporateeurope.org/sites/default/files/sites/default/files/files/article/regulating\\_investment\\_funds.pdf](https://corporateeurope.org/sites/default/files/sites/default/files/files/article/regulating_investment_funds.pdf)



Image: Ed Robertson / unsplash

Generations of leaders from Margaret Thatcher to Tony Blair to Theresa May have believed that the City is the goose that lays Britain's golden eggs, to be prioritised, pampered and protected.

- Nicholas Shaxson, journalist

## 2.4 The City of London: a thin line between public and private

The UK's financial services sector is notoriously powerful with considerable influence over decision-makers in both London and Brussels. These lobby players (banks such as Barclays and Goldman Sachs, hedge funds, private equity, insurance companies, accountancy firms, and their trade associations and lobby groups) are often collectively referred to as the 'City' and include both home-grown companies and those from countries beyond the EU such as the US and Japan, that use London's 'light touch' regulatory environment as a key European base.

The City of London's influence is not only based on its size and weight within the UK economy, but also on the way in which it is deeply intertwined with the UK's political establishment.

The revolving door between the UK Government and Big Finance interests is active and goes both ways. High-profile examples include former Treasury Minister George Osborne's lucrative advisory work with BlackRock whilst still an MP;<sup>36</sup> former Prime Minister Tony Blair's move to JP Morgan not long after leaving office;<sup>37</sup> and ex-UK European Commissioner for Financial Services Jonathan Hill's move to UBS.<sup>38</sup> NGO the High Pay Centre, has highlighted a host of revolving door moves between just one City company, HSBC, and the UK public sector, including HSBC's former chairman Lord Green's move to become a trade minister.<sup>39</sup>

UK political parties regularly accept hefty donations from the City of London. For example by 2011 over 50 per cent of the Conservative Party's total income was from the City,<sup>40</sup> and in 2015, Deloitte, KPMG, and PricewaterhouseCoopers accountancy firms were reported to be significant donors to all three major UK political parties.<sup>41</sup>

City interests, both specific firms and via numerous trade associations such as TheCityUK, are active lobbyists in both London and Brussels<sup>42</sup>, including on finance, trade, and Brexit.<sup>43</sup> Additionally, TheCityUK works closely with the City of London Corporation,<sup>44</sup> a kind of anachronistic public municipality purely for the 'square mile' of central London where much of the UK financial sector resides, and which often takes up its causes. Together TheCityUK and the Corporation run the International Regulatory Strategy Group which develops joint positions on policy matters and conducts major lobbying efforts, for instance on the shape of a future EU-UK trade deal.<sup>45</sup> Despite this lobbying role, the City of London Corporation enjoys a unique Parliamentary privilege with the post of the 'Remembrancer', which dates back to 1571. This is a City of London Corporation official who is allowed to enter the debating chambers of the Houses of Parliament while other special interests remain – literally – in the lobby.<sup>46</sup> What better symbol could there be of the long-held, deeply intertwined relationship between the UK establishment and City interests?

Journalist Nicholas Shaxson argues that "Generations of leaders from Margaret Thatcher to Tony Blair to Theresa May have believed that the City is the goose that lays Britain's golden eggs, to be prioritised, pampered and protected." But he goes on, "the finance curse analysis shows an oversized City to be a different bird: a cuckoo in the nest, crowding out other sectors". The UK's irresponsibly lax approach to taxation and financial regulation looks set to continue.<sup>47</sup> (See also section 5.9 on Brexit.)



Theresa May, UK Prime Minister, addresses City of London banquet, November 2018. Credit: www.gov.uk



## 2.5 Spain: a “vassal” of telecom lobbies

**Decision topic:** Wholesale mobile roaming charges

**Date:** 2017

**Channel of influence:** Working Party on Telecommunications and Information Society, Council of the EU

**Corporate lobby:** Telefónica and others in the telecoms industry

**Member state:** Spain

**Summary:** The EU’s ‘Roam like at home’ rules tackle rip-off mobile roaming charges. While popular with EU citizens, this dossier was a magnet for serious lobbying by telecoms interests who argued it would hit their profits. Telefónica, with the help of the Spanish Government and telecoms industry allies in other member states, did not win outright, but succeeded in weakening the final outcome in their favour.

The Spanish Government specifically proposed an amendment nicknamed the ‘Telefónica clause’, to try to protect Spain’s biggest telecoms operator from having to substantially lower its high wholesale prices

The European Commission’s proposal on wholesale mobile roaming charges was an important component of the ‘Roam like at home’ package which allows people travelling from one EU member state to another to use their phone without incurring a large bill. Because it reduced inflated roaming charges it faced massive opposition by the major national telecoms operators, including Deutsche Telekom (Germany), Orange (France), and Telefónica. Spain’s biggest telecoms owner and operator, Telefónica was backed by the Spanish telecoms regulator for its position on wholesale roaming.<sup>48</sup>

When the roaming charges proposal reached the Council, the Working Party on Telecommunications and Information Society proposed a far more industry-friendly approach to charges than either the Commission or the Parliament, in line with lobby demands from the traditional telecoms industry in which Telefónica is a major player. The Spanish Government specifically proposed an amendment nicknamed the ‘Telefónica clause’,<sup>49</sup> to try to protect Spain’s biggest telecoms operator from having to substantially

lower its high wholesale prices when ‘Roam like at home’ was introduced. A majority of member states agreed to adopt it as part of the Council’s position as it entered trilogue with the other institutions.

After three rounds of trilogue, the final deal saw lower charges than both the Council and Commission wished, but higher than the Parliament wanted, representing a partial victory for the telecoms lobby. The Council was ultimately defeated on the ‘Telefónica clause’, although it had remained in its negotiating position until the last moment.

In April 2017 when the Council came to approve the final deal, the Croatian, Cypriot, Greek, and Spanish ministers voted against it and issued a joint statement, expressing regret that the so-called ‘Telefónica clause’ had not been accepted.<sup>50</sup> Spain advocated Telefónica’s interests to the last.

### FOR MORE INFORMATION READ

Corporate Europe Observatory’s *Telefónica: the well-connected EU and Spanish lobbyist*, June 2017.

<https://corporateeurope.org/power-lobbies/2017/06/telefonica-well-connected-eu-and-spanish-lobbyist>

## 2.6 Spain and Telefónica – a symbiotic relationship

Telefónica is Spain's biggest telecoms company, and one of its largest multinationals. State-owned until the 1990s, close ties persist between Telefónica and the establishment; activist platform Xnet called the Spanish government a "vassal of the telecom lobbies".<sup>51</sup>

The revolving door between Spain's political establishment and Telefónica is so advanced that the corporation was labelled "an insurance against unemployment" for the Partido Popular, Spain's conservative party<sup>52</sup>. Examples include former Minister Eduardo Zaplana<sup>53</sup>, in Telefónica until his arrest in 2018 for money laundering,<sup>54</sup> Rodrigo Rato (former Deputy Prime Minister and former IMF chief, currently in prison for 'black cards' case),<sup>55</sup> and Andrea Fabra, on a protracted leave of absence from Telefónica whilst an MP and who returned to the company in 2016.<sup>56</sup> The husband of Spain's previous Deputy Prime Minister moved to Telefónica in 2012, having previously worked for the European Commission and the Spanish Permanent Representation.<sup>57</sup>

In the wake of the 2016 elections Telefónica's attempts to influence the Spanish political process were attested to by Socialist Party leader (now Prime Minister) Pedro Sánchez, who said that Telefónica's then-Chief Executive César Alierta, alongside other corporate interests, had been pushing "for a conservative government" during the post-election political deadlock.<sup>58</sup>

According to one commentator, a feature of the Alierta era at Telefónica (2000-2017) was "a clearly harmful dependence on politics".<sup>59</sup> Alierta understood the value of lobbying and high-level connections, both at national and EU level. Telefónica was one of the earliest members of the European Round Table of Industrialists (see 5.2), alongside many other key Spanish lobby groups such as the Consejo Empresarial de la Competitividad (Business Council for Competitiveness).

The revolving door between Spain's political establishment and Telefónica is so advanced that the corporation was labelled "an insurance against unemployment" for the Partido Popular...







## 2.7 Member states fall for corporate hyperbole on ePrivacy

**Decision topic:** EPrivacy regulation

**Date:** 2016-ongoing

**Channel of influence:** Working Party on Telecommunications and Information Society, Council of the EU

**Corporate lobby:** Big data including advertisers, publishers, telecoms, and social media, including Axel Springer and Deutsche Telekom

**Member state:** Germany

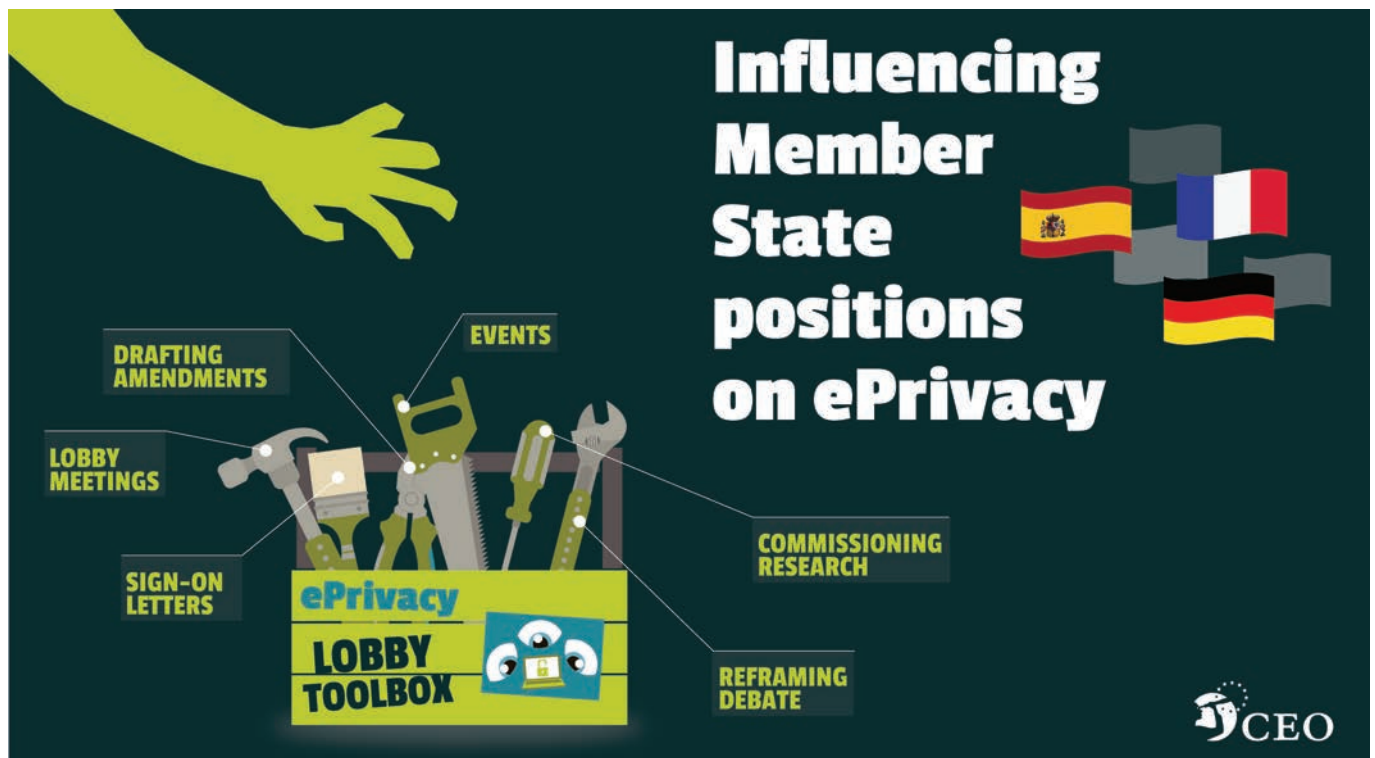
**Summary:** The proposed ePrivacy regulation has been the target of huge lobbying by a variety of interests including advertisers, publishers, telecom companies, and social media platforms. Corporate interests initially opposed the ePrivacy regulation in its entirety and have succeeded in ensuring that it is massively delayed; now they are working with member state allies to gut provisions to protect our online privacy.

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EPrivacy is about ensuring the confidentiality of your online communications, including the content of your emails, the websites you browse, and the purchases you have made, together with metadata (data which includes to whom, when, and where your communications are sent). Much of this data is monitored and collected, including via tracking cookies and other mechanisms, sold on and used to target commercial advertising or political messaging at you, by advertisers, publishers, and social media platforms like Facebook and others. The EU's ePrivacy proposal aims to tighten regulations on how this data can be used.

Perhaps not surprisingly, considering the hefty corporate lobbies with an interest in Big Data, officials from among the permanent representations based in Brussels have reported a veritable lobby onslaught around the ePrivacy dossier. One official following the ePrivacy file said that "99 per cent of the lobbying" had been from industry, and the lobbyists that they had met were almost entirely opposed as they consider it too far-reaching. Another said they could not recall a proposal that had attracted so much lobbying.<sup>60</sup>

// ...officials from among the permanent representations based in Brussels have reported a veritable lobby onslaught around the ePrivacy dossier.



Netzpolitik has reported that of a total of 32 meetings at which German ministers or state secretaries have met lobbyists to discuss the ePrivacy proposal, only 7 took place with civil society organisations. Industry lobbyists met include the publishing corporation Axel Springer, as well as Deutsche Telekom, Facebook, and Google.<sup>61</sup> The government has appeared particularly keen to meet the demands of the publishing, data, and telecoms sectors.

The government's August 2017 position paper on ePrivacy defended Big Data-driven online advertising models.<sup>62</sup> The Ministry of Economics and Technology then published an economic impact study into ePrivacy's expected effects on the country's advertising industry, predicting a drop in digital advertising spending of one third.<sup>63</sup> The report was severely criticised by NGOs and the German Data Protection Commissioner for being largely based on the views of the industry.<sup>64</sup>

German industry has run a fear-mongering campaign against ePrivacy, with industry journals calling it "the biggest possible evil"<sup>65</sup> and "the end of digital economy?".<sup>66</sup> The Chief Executive of Axel Springer urged German officials to take action saying: "If the Directive were to be adopted in this form, it would be an anti-European law originating in Brussels".<sup>67</sup>

The German Government has apparently also been open to the telecoms industry's demands that they should be allowed to use communications metadata (especially location data) on a pseudonymous basis and without consent, reflecting the interests of its key operator Deutsche Telekom.

At the time of writing, the Council is still trying to formulate a joint position on ePrivacy, although it appears that proposals by industry and supported by the German Government are winning. Where corporate interests win, data privacy will lose out.

#### FOR MORE INFORMATION READ

Corporate Europe Observatory's *Shutting down ePrivacy: lobby bandwagon targets Council*, June 2018. <https://corporateeurope.org/power-lobbies/2018/06/shutting-down-eprivacy-lobby-bandwagon-targets-council>



## 2.8 BusinessEurope attends Council working party meeting

In October 2018, BusinessEurope, one of the key promoters of so-called ‘Better Regulation’ (of which the ‘innovation principle’ is part, see 3.7) was invited to address the Council’s Working Party on Better Regulation.<sup>68</sup> The two representatives presented “industry’s priorities for the Better Regulation agenda” including various strategy papers.<sup>69</sup> Arguments promoted by BusinessEurope included “regulatory simplification”, with the presentation apparently “well-received by many members of the Working Party”, stimulating “a constructive exchange of views”.<sup>70</sup>

It is not clear how often lobbyists secure privileged access to the Council’s working parties. The Council’s Secretariat has told us that “no attendance lists are formally kept for any meeting” except for Council ministerials, although surely there are attendance lists for the purposes of security and expenses’ reimbursement at least?<sup>71</sup> The Council’s Secretariat further told us “Attendance to working party meetings is limited to representatives of Member States”. Exceptions are made “in specific and limited cases [for] representatives of specialised EU agencies and bodies, or of UN bodies”, none of which applies to BusinessEurope. In this case, the ‘no lobbyists’ rule appears to have been disregarded.





## 2.9 Hand in glove to protect foreign investors' rights

**Decision topic:** Investment protection and investor-state dispute settlement (ISDS)

**Date:** 2010-ongoing

**Channel of influence:** Trade Policy Committee (TPC), which involves officials from trade and economics ministries who monitor and guide the European Commission in its trade negotiations with third countries

**Corporate lobby:** BusinessEurope and its national members (for example, German BDI, Dutch VNO-NCW, French MEDF, and British CBI), law firms and arbitrators who make money with ISDS

**Member states:** Spain and others

**Summary:** Since 2010 Spain and other countries have fought attempts to reform the bilateral investment treaties (BIT) regime, which grant investors super rights and a parallel justice system for corporations. National links to the arbitration industry might explain why at least until recently, Spain, the most sued country under these corporate courts, was one of its main defenders.

Corporate lobbyists won the battle long ago in EU member states. Now, they only had to lobby the Council to let existing treaties continue to be valid for as long as possible, with as few changes as possible and with total investor protection. EU governments have just put forward the industry position."

- Carl Schlyter former MEP

EU member states have signed hundreds of bilateral investment agreements (BITs) which include the extreme corporate rights known as ISDS (investor state dispute settlement). This gives foreign investors sweeping rights to sue states in international tribunals and claim dizzying sums in compensation for government actions that have allegedly damaged their investments. For example, Swedish energy giant Vattenfall is seeking €3.4 billion from Germany following a democratic decision to accelerate the phase-out of nuclear energy after the Fukushima disaster.<sup>72</sup>

ISDS has come under great public criticism as a result of these kinds of cases. But while the Lisbon Treaty created a formal opportunity to terminate member states' corporate-friendly BITs, member states like Spain, Germany, and the UK have pushed back. Urged on by the arbitration industry and other corporate interests, these member states have fought hard against public-interest driven reforms of bilateral investment treaties.

When the Commission's trade department proposed putting an expiry date on existing BITs in 2010, Germany and the UK successfully intervened via their Commissioners to prevent this.<sup>73</sup> Spain and other member states pushed MEPs to table amendments against a proposed expiry date for their BITs with the rest of the world in the European Parliament. Spanish conservative MEPs Pablo Zalba Bidegain and socialist Emilio Menéndez del Valle tabled 15 identical amendments to the Parliament report on the issue,<sup>74</sup> "the result of the contacts I have had with the Spanish Permanent Representation", as Zalba Bidegain told Corporate Europe Observatory.<sup>75</sup>



An anti-ISDS sign at a TTIP/CETA protest in London in September 2014

Former Swedish MEP Carl Schlyter (Greens), then the Parliament's lead person for the BITs report, explained: "The existing system of international investment treaties is the result of companies asking governments to protect whatever they do. Corporate lobbyists won the battle long ago in EU member states. Now, they only had to lobby the Council to let existing treaties continue to be valid for as long as possible, with as few changes as possible and with total investor protection. EU governments have just put forward the industry position." Schlyter added: "In all the dossiers I followed in the Parliament, I have never seen such an extreme and exclusive focus on corporate interests."<sup>76</sup> In the end, big business and member states got their way. The EU introduced legislation which allowed existing BITs to continue, and member states to negotiate new ones.<sup>77</sup>

Spain and other EU member states have also pushed for even more corporate-friendly provisions than the Commission and its trading partners whenever the EU negotiated ISDS as part of larger trade deals in recent years. Throughout the negotiations for the EU-Canada deal CETA, for example, Germany and Spain criticised the level of protection for investors as "too low". They were particularly unhappy that Canada had tried to partially protect banking regulations by limiting ISDS in the financial sector.<sup>78</sup>

Member states' agenda was strikingly in line with that of big business lobby groups such as the European employers' group BusinessEurope or the European Services Forum (ESF, see 3.3). "On behalf of some of its members" European employers' group BusinessEurope, for example, had repeatedly "expressed worries that the EU will give away too much in the investment protection negotiations with Canada" by "lowering the current level of protection offered by BITs concluded at the member states' level".<sup>79</sup>

This industry-government campaign to protect this parallel justice system for corporations across the EU goes beyond the classic corporate lobbying success story. It shows how a decade-long internalisation by trade and economic ministries of the corporate wish-list, aided by frequent and numerous revolving doors moves and other ties, has resulted in a symbiosis in which it is difficult to tell where one starts and the other ends.



Greenpeace

Recently, the corporate ISDS agenda has suffered a massive blow from Europe's highest court. In March 2018, the European Court of Justice ruled that ISDS between EU member states is illegal,<sup>80</sup> forcing all EU members to cancel respective agreements (so-called intra EU BITs). While they have committed to do so by the end of 2019,<sup>81</sup> member states in the Council signed yet another corporate-friendly investment agreement with Singapore in October 2018.<sup>82</sup>



## 2.10 Spain and the arbitration industry

Spain has taken particularly strong investor-friendly and anti-democratic ISDS positions in the Trade Policy Council.<sup>83</sup> This is despite the fact that it is the EU country most often sued under ISDS; with over 40 investor lawsuits against it so far, and it has already been ordered to pay out millions in taxpayer money to private equity and other investment funds.

So why isn't Spain trying to limit ISDS? One explanation might be the close ties between the Spanish Government and law firms in the arbitration business. These lawyers can make up to US\$1,000 per hour when companies sue states under ISDS. Several powerful Spanish state lawyers (Abogados del Estado) have walked through the revolving door into the arbitration industry. According to a 2015 investigation by El País, state lawyers on voluntary leave acted as counsel for investors in 12 of the 20 then ongoing ISDS claims against Spain.<sup>84</sup> Examples include Antonio Vazquez-Guillen (a state lawyer on voluntary leave since 2005, now heading the arbitration department of Allen & Overy, the busiest law firm in ISDS cases against Spain)<sup>85</sup> and Antonio Morales (a "State Attorney on leave of absence" who now manages arbitrations for Latham & Watkins).<sup>86</sup> Spain's former Prime Minister, José María Aznar, is now also a political advisor with Latham & Watkins.<sup>87</sup>

Spain has also designated for-profit arbitrators (rather than, for example, former judges) to the World Bank's International Centre for Settlement of Investment Disputes (ICSID) where they can be picked to decide particular ISDS cases.<sup>88</sup> Some of these arbitrators are well-known 'ISDS hawks', in other words, arbitrators who have driven the boom in ISDS cases and paved the way for particularly devastating rulings against states through investor-friendly interpretations of the law.<sup>89</sup> This practice, revealing close ties to the arbitration industry, is also common with other member states.<sup>90</sup>

### FOR MORE INFORMATION READ

Corporate Europe Observatory's *The Battle to Protect Corporate Investment Rights*, July 2010.

[https://corporateeurope.org/sites/default/files/sites/default/files/files/article/battle\\_to\\_protect\\_corporate\\_investment\\_rights.pdf](https://corporateeurope.org/sites/default/files/sites/default/files/files/article/battle_to_protect_corporate_investment_rights.pdf)

Corporate Europe Observatory, *Investment rights stifle democracy*, March 2011.

[https://corporateeurope.org/sites/default/files/publications/investment\\_rights\\_stifle\\_democracy.pdf](https://corporateeurope.org/sites/default/files/publications/investment_rights_stifle_democracy.pdf)



## 2.11 Fishing for influence at EU ministerial meetings

**Decision topic:** Allocation of fishing quotas

**Date:** December 2016

**Channel of influence:** Council of Ministers, specifically AGRIFISH which brings together the agriculture and fisheries ministers

**Corporate lobby:** National fishing industries

**Member state:** The Netherlands

**Summary:** While fishing is not a large industry in Europe in economic terms, it punches above its weight in terms of the lobby influence it has on some member states.<sup>91</sup> Dutch industry lobbyists were caught red-handed using press passes to access the Council building during the annual AGRIFISH meeting to allocate fishing quotas, giving them privileged access to influence their minister on the margins of the talks.

The allocation of fishing quotas to EU member states is often a fraught affair, with member states competing against each other for quotas, and the pressing need to reduce catches to preserve and replenish fish stocks often ignored. An investigation by Corporate Europe Observatory and Seas at Risk exposed how Dutch fishing and Spanish industry lobbyists used press passes to access the Council building during recent AGRIFISH ministerial negotiations. Only government representatives and genuine members of the press are allowed to access the Council building during a ministerial meeting.

// ... the Dutch fishing lobby's press passes gave them the opportunity to meet directly with their Minister in the Council building.

In December 2016 the Dutch fishing lobby's press passes gave them the opportunity to meet directly with their Minister in the Council building. As an industry lobbyist put it: "We attend for the moments when the Ministry... needs consultation".<sup>92</sup> Having already benefited from receiving a leaked European Commission proposal for the negotiations, the lobbyists were able to give the Minister "extra ammunition" to argue for higher quotas during negotiations.<sup>93</sup>



VisNed tweet showing meeting between fish industry lobbyists and Dutch minister inside the Council building.

We only know this meeting happened because the proud lobbyists posted photos on Twitter.<sup>94</sup> Another lobbyist later tweeted: "After our talk with secretary of state we count on a much stronger position".<sup>95</sup> The industry lobbyists were pleased with the final results of the negotiation – increases for specific species<sup>96</sup> – while the Minister also said he was "satisfied" with the result.<sup>97</sup>

Analysis by the New Economics Foundation shows that for the period 2001-17 the Netherlands is third among the EU nations most responsible for allowing the continuation of overfishing.<sup>98</sup> The industry is shooting itself in the foot by demanding its government secures such big quotas. After all, depleted fish stocks are in no one's interest, least of all industry's.

#### FOR MORE INFORMATION READ

Corporate Europe Observatory and Seas at Risk, *Fishing for influence: Press passes give lobbyists EU Council building access during fishing quota talks*, May 2017.

<https://corporateeurope.org/power-lobbies/2017/05/fishing-influence>

Transparency International EU *Overfishing in the Darkness*, September 2016.

<https://transparency.eu/overfishing-in-the-darkness/>





## 2.12 Power battles around energy: the case of Nord Stream 2

**Decision topic:** Amendment of the Gas Directive<sup>99</sup>

**Date:** 2017-ongoing

**Channel of influence:** Working Group on Energy, Council of the EU

**Member state:** Germany (supported by Austria, the Netherlands, and France)

**Corporate lobby:** Nord Stream 2 AG, consortium owned by Russian oil and gas company Gazprom, and financially supported by Uniper, Wintershall, Shell, OMV and Engie

**Summary:** Germany is blocking a proposed amendment to the gas directive in the Council Working Group on Energy, with the help of several other member states. This amendment was proposed by the Commission in 2017 to try to prevent the construction of Nord Stream 2, a gas pipeline from Russia to Germany, bypassing the current gas transit route via Ukraine. Germany's defence of the pipeline is partly explained by the revolving doors between the German political elite and the company behind the pipeline, owned by Russian giant Gazprom.

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Nord Stream 2, a projected twin pipeline from Russia via the Baltic Sea to Germany, is key in the geopolitical and economic conflict dividing EU member states, the Commission, the US, and Russia. Meant to be completed in 2019, it would double the capacity of the existing Nord Stream pipeline and is being built by Nord Stream 2 AG, a consortium owned by Russian giant Gazprom and financed by five European companies: Uniper, Wintershall (German), Shell (Anglo-Dutch), OMV (Austrian), and Engie (French).

The European Commission and several EU member states oppose Nord Stream 2. The pipeline could threaten the large revenues countries such as Poland and Slovakia receive from the existing transit of Russian gas to Western Europe. In 2017 the Commission proposed an amendment to the gas directive in an attempt to block Nord Stream 2, which would extend the application of EU energy rules to import pipelines such as this one and most likely kill the project.<sup>100</sup>

Germany, with the support of France, Austria, and the Netherlands (which all have energy companies signed up to the deal), is opposing this amendment in the Council Working Group on Energy, in order to protect the construction of the pipeline. Meanwhile Bulgaria and Austria, both of which held the EU presidency in 2018, have backed Germany, refusing to push the dossier through despite Polish and Commission attempts to accelerate it.

Although many German MEPs opposed the amendment, the European Parliament supported it in a vote in plenary in May 2018. However, trilogue can't start without agreement in the Council of Energy ministers.

Klaus-Dieter Borchardt, Director for internal energy market at DG Energy, said the Romanian Presidency – which started in January 2019 – is willing to move to<sup>101</sup>. However, with the Parliament due to stop work in April for the European elections, it will be very difficult for the dossier to progress.

Germany's staunch defence of Nord Stream 2 is not just because two of its companies are financially involved, but also due to the strong links Gazprom, and its construction consortiums, have with the German political elite.

Germany's staunch defence of Nord Stream 2 is not just because two of its companies are financially involved, but also due to the strong links Gazprom, and its construction consortiums, have with the German political elite. High-profile revolving door cases include Gerhard Schroeder, former German Chancellor, who chairs both the board of Nord Stream AG – the company that built the first Nord Stream pipeline – and the board of Russia's Rosneft oil company. Schroeder has often criticised both the European Commission and the US for their opposition to Nord Stream 2.

It remains to be seen who wins this tug-of-war in the Council, but the fact is that new pipelines like Nord Stream 2 are not needed and will further our addiction to fossil fuels well beyond the time we have to head off catastrophic climate change.



Pipe sections for Nord Stream 2 stored at the coating plant in Kotka, Finland. © Nord Stream 2 / Axel Schmidt.

# THE ROTATING COUNCIL PRESIDENCY

A target and partner for corporate lobbies



# 3. The Rotating Council Presidency: a target and partner for corporate lobbies

Every six months an EU member state takes over the role of Presidency of the Council of the EU. Each rotating presidency sets out its own agenda and priorities for its six-month term.

As the following examples show, the rotating Council presidencies are a target for lobbies both before and during the presidency, as a way to influence its agenda and to curry favour. Some corporate lobbies use a change of presidency as a hook to organise high-profile lobby events, either in Brussels or in the presidency's country, such as the annual gas industry jamboree (3.5), or the European Services Forum's biannual cocktail parties with member state officials (3.3). Many lobbies develop a set of demands for particular presidencies. EU-level trade associations, for example GasNaturally (3.5), Hydrogen Europe (3.4), DigitalEurope (3.8), and the AeroSpace and Defence Industries Association of Europe (3.2) seem particularly aware of the lobbying opportunities opened up by rotating presidencies and are sometimes advised by Brussels-based consultancy firms.

Indeed lobby consultancy firms, Brussels' lobby-guns-for-hire, have long-recognised the money-making opportunities that come with a rotating presidency, both in terms of influencing a presidency's agenda and officials, or even doing paid work for the presidency (3.8).

But a presidency can also be an opportunity for a member state government to spearhead a favoured corporate agenda, by promoting a particular sector or domestic industry interest, such as Austria's Hydrogen Initiative (3.4); or pressing for decisive action on an issue of mutual interest, such as the Dutch Presidency's promotion of the so-called 'innovation principle' (3.7), and industry's interests within a new EU defence fund (3.2); or working with allied member states on a shared agenda as we saw in the previous Nord Stream case study (2.12). And as we report, corporate sponsorship deals are now standard operating practice for the rotating presidencies (3.6).

## 3.1 Fact file on Rotating Council Presidency

- Holding an **EU rotating presidency** is an important role which involves **chairing all Council of the EU working parties, Council of Ministers' committees and others** – including the preparation of meeting agendas and discussion papers – as well as representing the Council in **trilogue negotiations** with the European Parliament and the Commission. The presidency is also responsible for trying to **progress current legislative files** by producing proposals upon which it can try to seek agreement from the other member states.<sup>102</sup>



## 3.2 Unlocking support for EU defence industry

**Decision topic:** Preparatory Action on Defence Research (PADR)

**Date:** January-June 2016

**Channel of influence:** Rotating Presidency of the EU

**Corporate lobby:** The AeroSpace and Defence Industries Association of Europe (ASD)

**Member state:** The Netherlands

**Summary:** Since the advent of the Lisbon Treaty in 2009, the EU has stepped up its role and spending on military and security programmes. With billions of euros on the table, the arms industry is pulling strings to ensure it benefits as much as possible from these programmes.

“the [ASD] board had a wide-ranging exchange of views on strategic Defence issues” with the Minister

In 2016 the EU set up a military research programme worth €90 million, the so-called Preparatory Action on Defence Research (PADR). This unprecedented move is a first step towards a much larger European Defence Research Programme to which the European Commission plans to allocate €13 billion, alongside further contributions from member states, for the research and development of weapons over the next decade.<sup>103</sup>

The Commission and member states negotiated the details of the initial fund, PADR, through 2015-2016. The large industry lobby around this has been mapped and analysed by Flemish NGO Vredesactie.<sup>104</sup> Leading this lobby is the AeroSpace and Defence Industries Association of Europe (ASD) whose members include some of the world’s biggest arms manufacturers including Airbus, BAE Systems, Leonardo, and Thales. ASD’s demands included that the fund would include “100 per cent funding to industry... along with full ownership of IPR [intellectual property rights]”<sup>105</sup>, meaning it was demanding that, while the PADR be fully publicly-funded, industry would still own any intellectual property such funds would generate. These were brazen lobbying objectives, characterised by the Commission and some member states as demands that the EU “pay[s] twice for the research”.<sup>106</sup>



Then Defence Minister Jeanine Hennis-Plasschaert of the Netherlands.

The Commission initially put up some resistance to industry’s demands so ASD pushed back.<sup>107</sup> For example, they met with the Dutch Minister of Defence, Jeanine Hennis-Plasschaert, who spoke at the 2016 ASD board meeting. The Dutch Government was holding the Council of the EU rotating presidency at the time. The May 2016 ASD newsletter noted that “the [ASD] board had a wide-ranging exchange of views on strategic Defence issues” with the Minister, which concluded with her promising to offer “her support to address industry concerns about IPR provisions in the Preparatory Action to her Council colleagues from other Member States”.<sup>108</sup>



Only a couple of months later, ASD stated that “such thorny issues as IPR... are moving ahead in a positive way”.<sup>109</sup> Ultimately, the ASD achieved almost all its demands: all research results under the PADR are to be owned by the arms companies involved, although member states are to have access rights if they want to further develop a technology. Meanwhile the research is subject to 100 per cent public funding.<sup>110</sup>

The Netherlands’ Rotating Presidency of 2016 helped deliver a lobby win to the EU’s arms industry. At a time of ongoing economic austerity for welfare and public services, the EU’s growing expenditure on military matters is deeply worrying.

#### FOR MORE INFORMATION READ

Vredesactie’s *Securing Profits: How the arms lobby is hijacking Europe’s defence policy*, October 2017.  
[https://vredesactie.be/sites/default/files/pdf/Securing\\_profits\\_web.pdf](https://vredesactie.be/sites/default/files/pdf/Securing_profits_web.pdf)

### 3.3 The European Services Forum’s cosy cocktails with member states’ officials



*“The (ESF) Chairman thanked the... Presidency for its hard work in the past months and expressed the wish to pursue informal discussions with the forthcoming... Presidency and invited all participants to a cocktail.” - From ESF’s internal minutes of a meeting with Trade Policy Committee members<sup>111</sup>*

The European Services Forum (ESF) represents Vodafone, HSBC, Deutsche Telekom, and other big corporate interests in the services sector. It enjoys privileged access to EU member states on the topic of trade and foreign investment policy. The European Commission helped initiate the setting up of ESF in 1999, creating a services-industry feedback loop that helps to justify the EU’s own agenda for the liberalisation and privatisation of services. The ESF thus has a major interest in all trade negotiations such as TTIP (proposed EU-US trade deal) and CETA (finalised EU-Canada trade deal).

Under each rotating EU presidency the ESF has a meeting with member states’ trade officials, followed by a cocktail reception. Sometimes more than a dozen governments attend, “welcom[ing] the possibility to interact with the services industry”, “thank[ing] the ESF for initialising the discussion” on certain issues,<sup>112</sup> “becoming versed on the details following... earlier meeting[s] with the ESF secretariat”, and often asking the ESF “if it could supply more of the priorities that industry are concerned with”.<sup>113</sup> Issues discussed in those meetings range from “Reinvigorating Open Trade in Financial Services” (pushed by then-ESF member and financial market lobby TheCityUK, see 2.4)<sup>114</sup> to negotiations in the World Trade Organisation (WTO).



### 3.4 Austrian Presidency: showcase for the 'renewable' gas lobby

**Decision topic:** signing of the Hydrogen Initiative Declaration

**Date:** September 2018

**Channel of influence:** Rotating Presidency of the Council

**Corporate lobby:** Hydrogen Europe

**Member state:** Austria

**Summary:** The Austrian Presidency of the EU in the second half of 2018, organised an event to promote the hydrogen industry, represented by lobby group Hydrogen Europe. The Austrian Presidency also prepared, and encouraged all EU ministers to sign, a 'Hydrogen Initiative Declaration',<sup>115</sup> encouraging the promotion of hydrogen in all areas of the economy. As green hydrogen made without fossil fuels represents a tiny five per cent of all hydrogen production, promoting it risks boosting dirty hydrogen made with fossil fuels.

Piggybacking on the bi-yearly 'informal' meeting<sup>116</sup> of European energy ministers on 17-18 September 2018, the Austrian Government organised a high-level energy conference and declaration promoting the use of 'green hydrogen' from renewable electricity in energy intensive industries.<sup>117</sup>



The event brought together 200 industry captains and political leaders with a keynote speech from the EU Climate and Energy Commissioner Cañete. In the invitation to the event, Austrian Minister for Sustainability and Tourism and former MEP Elisabeth Köstinger encouraged EU ministers to sign on to the 'Hydrogen Initiative Declaration' which promotes hydrogen across all sectors.<sup>118</sup> Alongside numerous members of industry lobby group Hydrogen Europe, and climate and energy Commissioner Miguel Arias Cañete, 25 EU member states signed the declaration.

The Hydrogen Initiative Declaration focused on green hydrogen gas, made using excess renewable electricity to split water into hydrogen and oxygen. But green hydrogen makes up only five per cent of today's hydrogen.<sup>119</sup> Pushing it also gives momentum to hydrogen made with fossil fuel, and is more likely to keep us hooked on dirty gas way past 2050, something we cannot afford given the urgency of the climate crisis.<sup>120</sup>

No coincidence then, that the International Association of Oil and Gas Producers (IOGP) used their speaking slot at the conference to push for support for hydrogen made from fossil gas!<sup>121</sup>

But green hydrogen makes up only five per cent of today's hydrogen. Pushing it also gives momentum to hydrogen made with fossil fuel, and is more likely to keep us hooked on dirty gas way past 2050

In Austria, industry group Hydrogen Europe, representing more than 100 industry companies such as Air Liquide, Verbund, and Toyota, pushed also for hydrogen made from fossil fuels.<sup>122</sup>

Hydrogen Europe also used the opportunity to lobby Cañete and the next rotating residency, Romania, to keep pushing the initiative forward.<sup>123</sup> It is worrying that a presidency of the EU, with ample powers to set the agenda, acted as a showcase for industry, organising a high-level event attended by ministers, Commissioners, and industry, to help put a risky business that will help industry keep burning fossil fuels on the agenda.

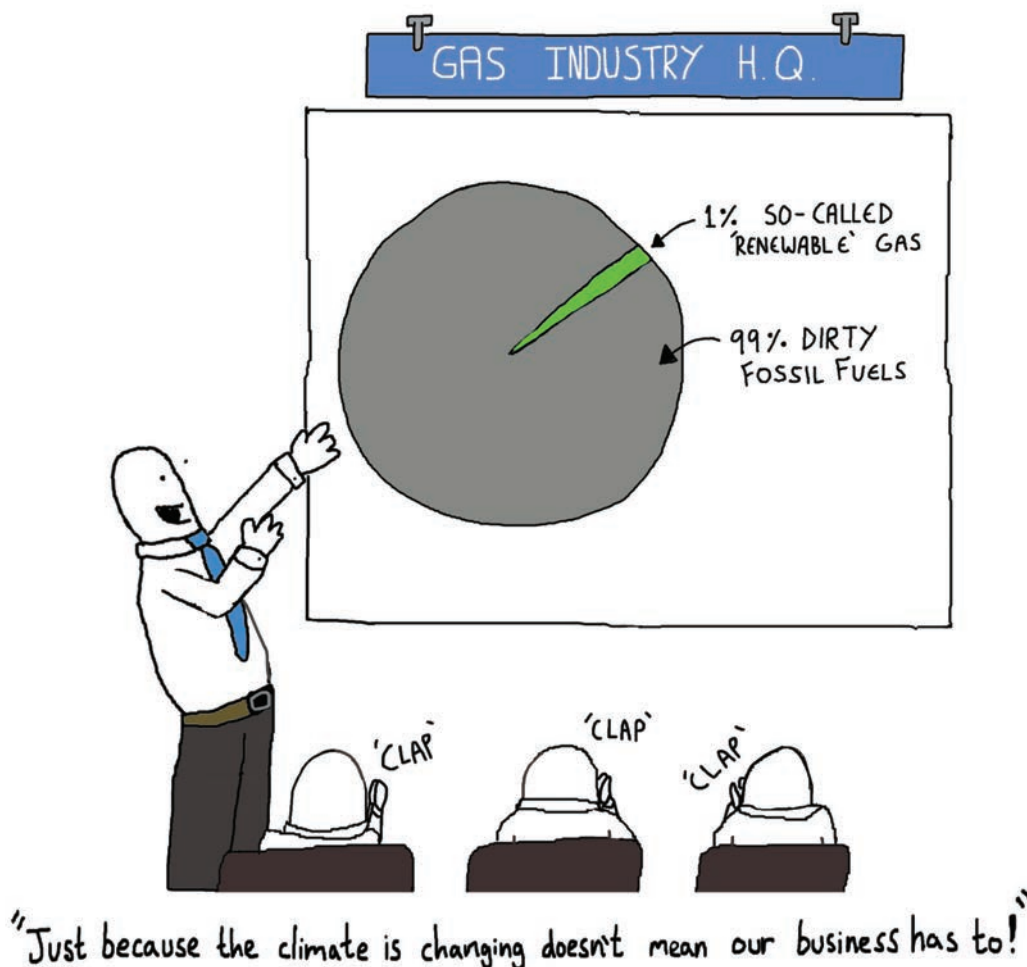
**FOR MORE INFORMATION READ**

Corporate Europe Observatory's *A dangerous distraction*, part 1: *Seven myths industry uses to sell "renewable gas"* and part 2: *The industry lobby behind so-called renewable gas*, September 2018.

<https://corporateeurope.org/climate-and-energy/2018/11/part-1-dangerous-distraction-seven-myths-industry-uses-sell-renewable-gas>

Corporate Europe Observatory, *The Great Gas Lock-in: Industry lobbying behind the EU push for new gas infrastructure*, October 2017.

<https://corporateeurope.org/climate-and-energy/2017/10/great-gas-lock>



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### 3.5 PR firm curries favour with rotating presidencies for the gas industry

Giant lobby consultancy Fleishman-Hillard has provided GasNaturally, a trade group for the gas industry, with fruitful access to several rotating presidencies, including those of Greece, the Netherlands, and Luxembourg. Among the services provided by the PR firm to promote dirty fossil fuel gas to policy-makers as a 'transition energy', they crafted "a recurring tailored forum for Member State representatives [which] has resulted in good cooperation with the respective Council presidencies".<sup>124</sup> This "tailored forum" is GasNaturally's annual member states' gas event which provides a major lobby opportunity for the industry to interact with officials from across the EU institutions and member states, often using the hook of a rotating presidency, to engage in the [then ongoing] 2030 energy & climate debate (see 5.3).

The 2014 forum was "organised under the patronage of the Greek Presidency of the EU" and took place in the context of deliberations on the EU's 2030 Climate and Energy Framework.<sup>125</sup> It featured a speech by the Greek Minister and a particular focus on promoting gas from the Eastern Mediterranean region. Meanwhile the 2015 event was organised as an "EU Energy Day" and featured a keynote speech from a representative of the upcoming Luxembourgish Presidency and contributions from the Permanent Representations of Slovakia and Netherlands (both countries which held the rotating presidency in 2016), and Germany.<sup>126</sup>

The 2016 forum focused on the importance of liquefied natural gas (LNG) and its storage.<sup>127</sup> The Netherlands was holding the rotating presidency at the time and it opened the event "sharing the Presidency's views on the cooperation among Member States and the role of gas in Europe" while representatives of the Dutch fuel companies Shell and Gasunie made speeches.

This privileged access (part of a much larger lobby strategy) combined with the firepower of the gas industry, which in 2016 alone spent over €100 million on lobbying activities,<sup>128</sup> has born fruit: the Commission and national governments are now underwriting controversial new gas infrastructure projects.

### 3.6 Driving for influence? Corporate sponsorship for rotating presidencies

Corporate sponsorship is now an established part of rotating presidencies. The current Romanian Presidency is sponsored by Mercedes-Benz, Renault, Coca Cola, Enel, and others.<sup>129</sup> Many of these companies have also lobbied the Romanian Permanent Representation (see 4.2). The previous Austrian Presidency received sponsorship from Porsche, Audi, Microsoft and others.<sup>130</sup>



The Maltese Presidency of 2017 proactively invited sponsorship proposals from Maltese companies, promising “priceless exposure, prestige and enhanced brand recognition” in return; BMW, AirMalta, and Microsoft are among those who took up the offer.<sup>131</sup> The rotating presidency websites of Slovakia (2016)<sup>132</sup> and Estonia (2017)<sup>133</sup> continue the pattern, while Bulgaria (2018) lists no less than 50 “partners”.<sup>134</sup>

Car companies are particularly active in this regard, with the provision of free cars to rotating presidencies dating back to at least 2012.<sup>135</sup> The idea of corporations sponsoring governments in this way raises serious questions, considering that many of them have a clear interest in EU decision-making ie. the car industry and the regulation of vehicle emissions (see 6.4).

We challenge the Finnish Rotating Presidency, due later in 2019, to buck the trend and refuse all corporate donations.



### 3.7 'Innovation principle': member states change the rules of the game

**Decision topic:** Adoption of the 'innovation principle'

**Date:** 2016

**Channel of influence:** Council of the EU's Competitiveness

Council + Rotating Presidency of the EU. The Competitiveness Council meets at least four times a year and brings together ministers responsible for trade, economy, industry, research and innovation, and space, depending on the topics on the agenda

**Corporate lobby:** European Risk Forum, BusinessEurope, European Round Table of Industrialists, tobacco/chemicals/fossil fuels industries

**Member state:** The Netherlands

**Summary:** In 2016 the Dutch Rotating Presidency of the Council of the EU spearheaded the adoption of the so-called 'innovation principle' – a business-derived antidote to the precautionary principle – in EU decision-making. This was a big win for corporate interests, and the potentially disastrous consequences of this decision for example for food and chemical safety regulations, are only now becoming apparent.

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The 'innovation principle', part of the EU's deregulatory 'Better Regulation' agenda, is promoted by business interests and seeks to put corporate profits at the forefront of EU decision-making.<sup>136</sup> It is designed to undermine social and environmental protection rules, as well as the precautionary principle which aims to prevent serious harm when there are indications that a chemical, product, or process creates a plausible risk to human health and the environment.

The 'innovation principle' is the idea of self-styled think tank the European Risk Forum (ERF), whose members include Bayer, Syngenta, Dow, CEFIC, and PlasticsEurope, all industries whose profits take a hit from a robust precautionary approach to the regulation of chemicals.<sup>137</sup> The ERF, now hosted by lobby consultancy firm FIPRA, has had involvement from the tobacco industry since its early days.<sup>138</sup>

In 2013 the ERF coordinated an industry letter to EU institutional presidents including then-European Council President Herman Van Rompuy, to promote the 'innovation principle', prior to a related European Council meeting.<sup>139</sup> In June 2015 corporate lobby groups BusinessEurope, the ERF, and the European Round Table of Industrialists (ERT) produced a joint briefing on the 'innovation principle' which cranked up the pressure, urging the incorporation of the 'innovation principle' as "an integral component of the policy-making process".<sup>140</sup>



The Dutch Presidency of the EU gave this attack on the precautionary principle a significant boost. In January 2016 it co-organised with BusinessEurope, ERT, ERF, and VNO-NCW (the Dutch big business lobby group) a conference on "A better framework for innovation" which had the specific aim "to build a political momentum" and "shape the EU policy landscape surrounding innovation".<sup>141</sup> The following day the 'innovation principle' was discussed at an informal meeting of EU research ministers, again convened by the Dutch Presidency, which specifically looked at how "all new European legislation must be evaluated in terms of its impact on research and innovation."<sup>142</sup>

// ...documents obtained under freedom of information show that throughout the Dutch Presidency an intense level of cooperation was maintained with business lobby groups.

In fact, documents obtained under freedom of information show that throughout the Dutch Presidency an intense level of cooperation was maintained with business lobby groups.<sup>143</sup> After a Council working group in April, when it became clear that member states were not very familiar with the concept of the 'innovation principle', lobby groups organised a breakfast event for attachés. The Dutch Permanent Representation was invited to highlight the goals for the draft Council Conclusions at this breakfast event. Meanwhile, BusinessEurope reinforced its position with a letter to the Dutch Presidency which lobbied for the adoption of the 'innovation principle' just two days before the decisive meeting in May.<sup>144</sup>

In May 2016 the Council of the EU's Competitiveness Council agreed that the 'innovation principle' should be applied "when considering, developing or updating EU policy or regulatory measures", precisely in line with the demands of the risky industries.<sup>145</sup> This focus was subsequently repeated by the Maltese<sup>146</sup> and Austrian<sup>147</sup> Presidencies, while the Bulgarian Presidency co-organised an event with the European Risk Forum.<sup>148</sup>

Today the 'innovation principle' is playing an increasingly influential role in the EU institutions. Since 2017, the Commission has developed a tool to implement the innovation principle by "systematically assessing the impact of new EU policy and legislative initiatives on innovation",<sup>149</sup> and regrettably, it is mentioned in the draft regulation on Commission's new multi-billion euro Horizon Europe research programme.<sup>150</sup>

From the tobacco and chemical industries to the heart of the European institutions, the 'innovation principle' has crept into the EU system with the helping hand of the Dutch EU Presidency, but without any debate on what type of innovation it is supposed to promote.

#### FOR MORE INFORMATION READ

Corporate Europe Observatory's *The 'innovation principle' trap*, December 2018.  
<https://corporateeurope.org/environment/2018/12/innovation-principle-trap>

### 3.8 Lobby consultancies get in on the act

While the Commission and MEPs are obvious targets for corporate lobbyists, lobby consultancy firms – lobby guns for hire, at least for those with the cash to pay for their services – are increasingly promoting their services during rotating Council presidencies, and towards member states' roles in EU decision-making more generally.

#### Hiring lobby firms

Several member states have hired lobby consultancy firms during their rotating presidencies. In 2011 the Polish Presidency hired Burson-Marsteller (now Burson Cohn & Wolfe) at a cost of one million euros, paid for out of EU funds. According to EUObserver "The Brussels and Warsaw branches of the US-based PR company will train Polish press spokespeople, set up the presidency website, carry out worldwide media monitoring, organise study trips to Poland for foreign journalists, put on social and cultural events and encourage MEPs to get behind presidency priorities."<sup>151</sup>

Some of this sounds suspiciously like lobbying, although the idea that the lobby firm would be doing any "pro-Polish media spin" was denied. However LobbyFacts shows that Burson-Marsteller declared €500,000-€600,000 revenue from the Polish Ministry of Foreign Affairs for work covered by the scope of the EU lobby register.<sup>152</sup>

More recently, lobby firm APCO Worldwide has represented the 2018 Presidency of Bulgaria. APCO provided "strategic communication counsel" with a contract worth €250,000<sup>153</sup> to "promot[e] the image of the Republic of Bulgaria as fully integrated into the EU".<sup>154</sup>

These contracts between lobby firms and EU member states – especially during their all-important presidencies of the Council – raise many questions, including about conflicts of interest, considering lobby firms' other clients. In 2011-12 Burson-Marsteller represented Exxon-Mobil, Bayer, GE Energy, and Johnson & Johnson<sup>155</sup> in addition to the Polish Presidency. While APCO was working for the Bulgarian Presidency its other 2018 clients included Microsoft, DuPont, GlaxoSmithKline and many others.<sup>156</sup> APCO denied that there was an issue telling Politico, "Our Bulgarian interlocutors are the communications team, not the policy team, and... the APCO team working on Bulgaria aren't involved with other presidency issues,"<sup>157</sup> but this idea of an internal firewall is not entirely convincing. These kinds of contracts create a channel of connections between hired lobbyists and member state governments that could be helpful for their other clients, beyond the life of the specific contract.

These kinds of contracts create a channel of connections between hired lobbyists and member state governments that could be helpful for their other clients, beyond the life of the specific contract.

### Revolving doors

Rotating Council presidencies provide the ministers and officials who run them with huge experience and a big profile, at least in the Brussels bubble, making them attractive targets for lobby firm recruitment.

Lucinda Creighton led the 2013 Irish Presidency as Minister for European Affairs and now heads the Brexit taskforce for FIPRA, a lobby consultancy firm, and one of many to set up a specific Brexit team.<sup>158</sup> FIPRA boasts of a “network of offices and professional political advisers present in every EU Member State”.<sup>159</sup>

Meanwhile Jean de Ruyt, the Belgian Permanent Representative – including during the 2010 Belgian rotating Presidency of the Council – can now be found at the law firm Covington & Burling.<sup>160</sup> This US-based firm has a significant presence in Brussels and a major lobbying operation on behalf of clients.<sup>161</sup> After his move in 2013, the *New York Times* reported de Ruyt saying he had learned the art of influencing decisions, instead of just making them: “There is a certain excitement of getting what you want through the system. I now know exactly how to do it.”<sup>162</sup>

### Lobbying opportunities

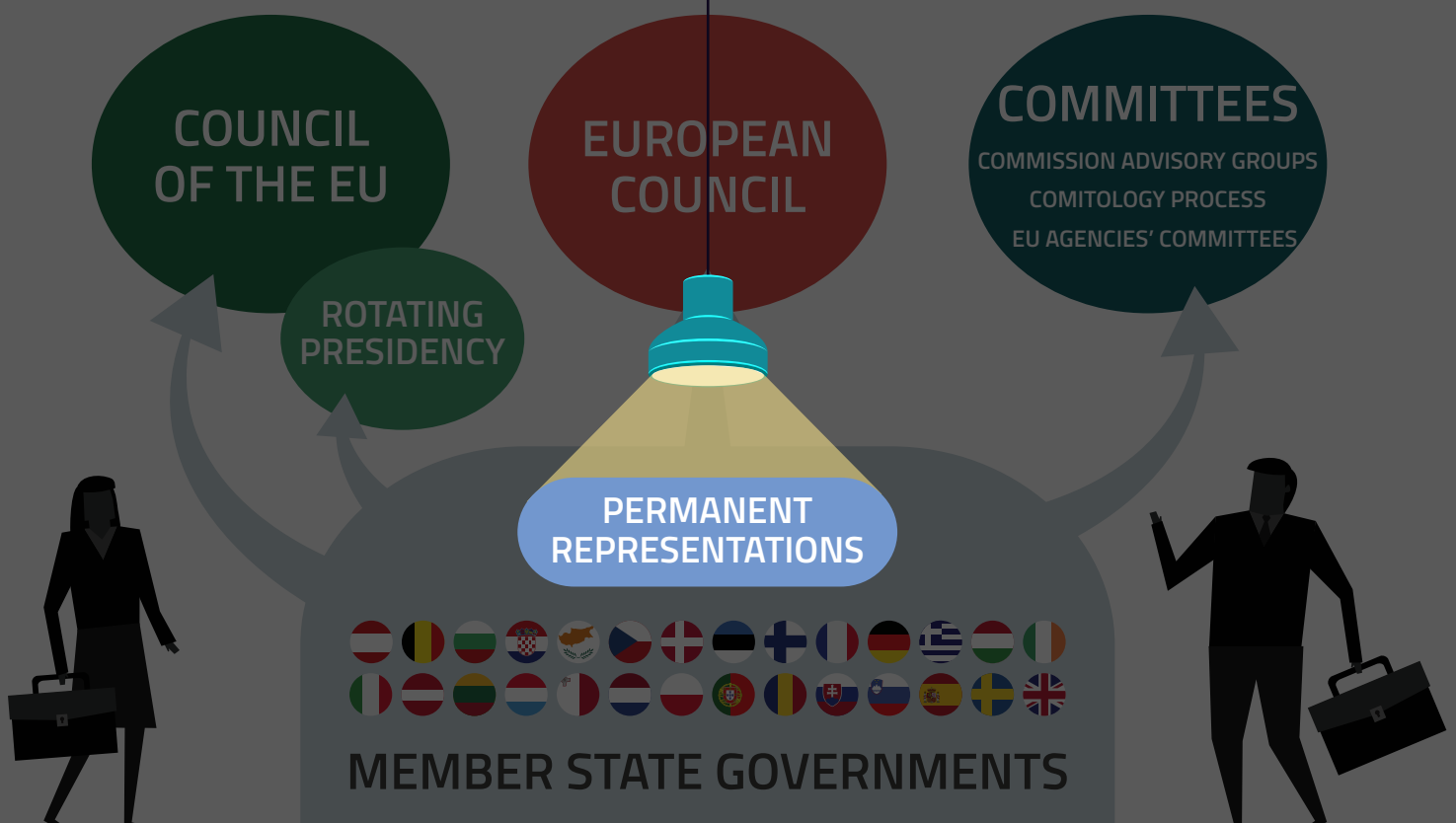
Beyond the rotating presidencies of the Council, many lobby firms tout their services as a way for corporate clients to break through the opacity and complexity of Council decision-making. APCO claims that, on behalf of DigitalEurope, it “designed and executed a media and social media campaign to raise visibility of... key messages with opinion elites” in the run-up to a key Council ministerial meeting. It claims, “a favourable position was adopted in the Council of Ministers’ conclusions which acknowledged the status quo was no longer tenable and that policy change was needed on copyright levies”.<sup>163</sup> The ultimate result was the Commission’s hugely controversial and problematic copyright proposal which, at the time of writing, continues to be negotiated and which threatens freedom of expression and privacy, access to knowledge, and collaboration online.<sup>164</sup>

Other lobby firms also drum up Council lobbying-related business. EUTOP emphasises that since the Lisbon Treaty, it is “no longer sufficient to convince just one member state of one’s own position”,<sup>165</sup> while PACT European Affairs presents itself “as THE experts in EU decision-making processes”, monitoring “even the most opaque processes of the Institutions, whether trilogues, Council Working groups or delegated acts”.<sup>166</sup>

It seems that wherever corporate interests wish to influence member states’ decision-making on EU affairs, there is a lobby consultancy firm waiting to help out.

# PERMANENT REPRESENTATIONS

Where lobbyists and officials mingle



## 4. Permanent representations – where lobbyists and officials mingle

Each EU member state has a permanent representation in Brussels, an office of national government officials. The permanent representations are the primary link between member states and the EU institutions. They have their finger on the pulse of EU decision-making, are privy to a huge amount of sensitive information about different countries' positions on key policies, and are especially important when holding the six-month rotating presidency of the Council of the EU.

The permanent representations, while totally unknown by most EU citizens, are a logical target for Brussels' lobbyists, because of the important role they play in negotiating the Council of the EU's positions on legislation and policy, and because they are so well plugged into the Brussels bubble. Research for this report shows that the Netherlands and Romania are unique among permanent representations for releasing data about all lobby meetings held when asked. The data reveals hundreds of meetings with corporate interests, and a significant imbalance when compared to the meetings held with NGOs or trade unions. The list of lobby meetings for the Netherlands is especially notable for the large numbers of encounters with Dutch corporate lobbies (4.2).

It is clear that on some issues permanent representations are deluged with requests for lobby meetings (see ePrivacy case study, 2.7). The case study on the protection of corporate investments (2.9) demonstrates that permanent representations are not averse to engaging in lobbying fellow national MEPs to push corporate demands.

Permanent representations are not just in demand for lobby meetings. There is a lively revolving door in operation which sees officials moving to the private sector or vice versa, taking their know-how and contact books with them. Because the permanent representations remain part of their national governments, rather than being an EU institution in their own right, they are not subject to EU rules regarding lobby transparency, access to documents, or revolving doors and conflicts of interest. The permanent representations are only subject to national rules, where they exist.



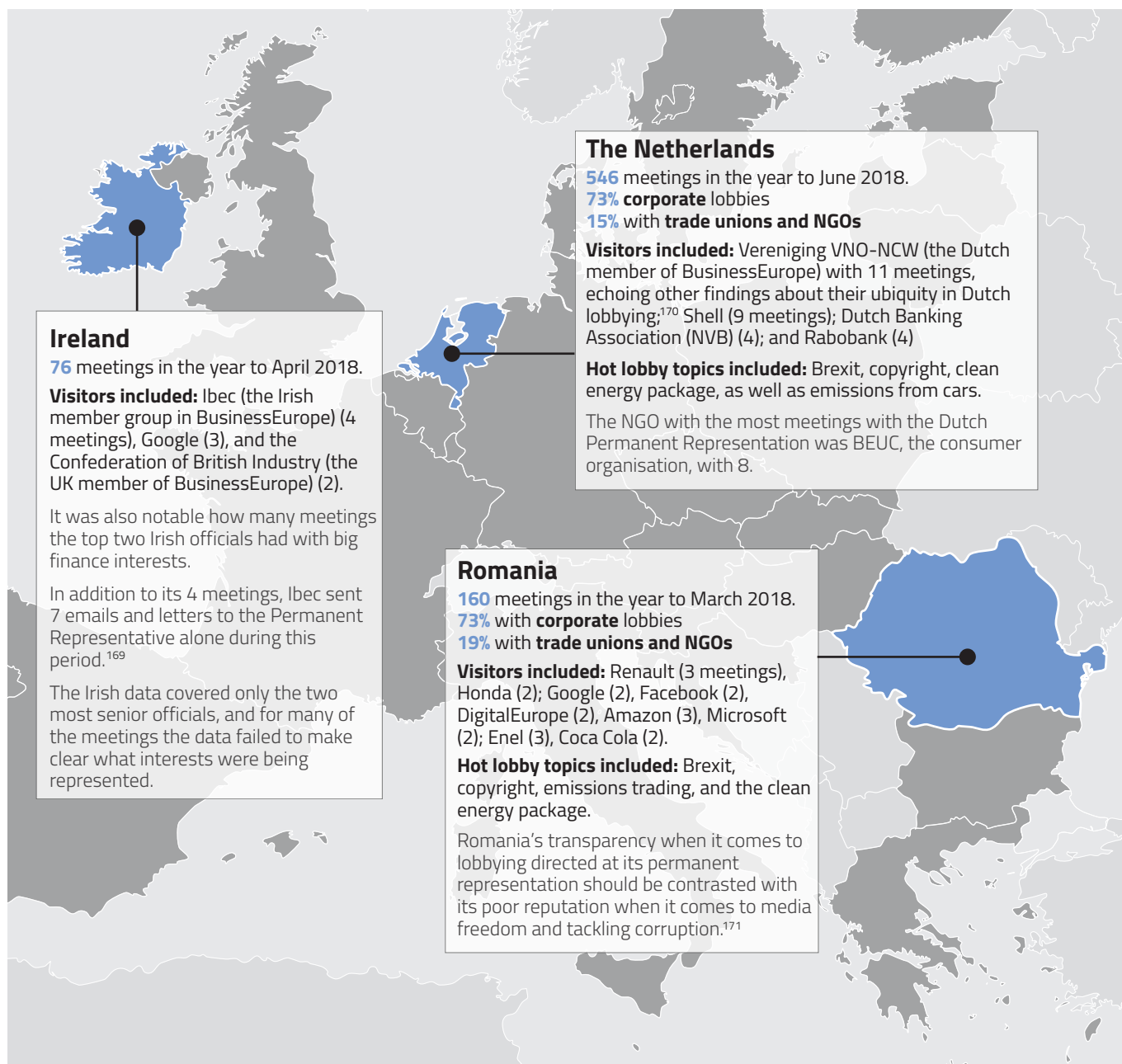
## 4.1 Fact file on Permanent Representations

- **Permanent representations officials represent their member states** in a **variety of EU institutions**. These include attending meetings of the Council of the EU's working groups looking at specific pieces of legislation and attending Commission comitology committees or expert groups; while the Permanent Representative and Deputy of each member state takes part in Coreper committee meetings.
- Coreper (the Committee of the Permanent Representatives of the Governments of the Member States to the European Union, to give it its formal title, and which is actually two committees, Coreper Part One and Coreper Part Two) is a hugely important body which meets weekly to **prepare agendas and decisions for the meetings of the Council of Ministers**. While it is not a formal decision-making body, it irons out agreements and political compromises to allow the Council of Ministers to take final decisions.
- Officials in the permanent representations in Brussels **work closely** with their colleagues in their **respective national governments** to share information and updates and to agree positions to adopt in negotiations.

## 4.2 National representations in Brussels: Open for corporate lobbyists?

During 2018 Corporate Europe Observatory and NGO allies submitted freedom of information requests to 19 permanent representations in Brussels to obtain information about the extent of their contacts with lobbyists. This investigation updates data collected by the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) in 2015-16.<sup>167</sup>

Only two member states both stored and released full data on lobbying: Romania and the Netherlands. Ireland only released the data relating to meetings with their Permanent Representative and Deputy, not lower officials. Analysis of the data provided by Romania, the Netherlands, and Ireland indicates that these permanent representations are a major target for corporate lobbyists, although the lack of transparency by others means it is hard to know how representative this picture is for other permanent representations. The full data is available online.<sup>168</sup>



**The rest**

Of the other countries, Portugal and the UK stored data on lobby meetings held by the staff of their Permanent Representations but they refused to release it. Belgium, Bulgaria, Denmark, Germany, and Spain said they did not store the data. Meanwhile, Austria, Cyprus, France, Greece, Italy, Malta, and Poland did not even bother to reply. It is particularly serious that the most recent holders of the rotating presidencies, Bulgaria, and Austria, have been so uninterested in transparency. These two member states have taken a hard-line on issues of migration. Bulgaria is a border state which favours tough migration control, led the process to finalise the new eu-LISA regulation (on large-scale technology systems to implement the border management and migration policies of the EU), and has even taken the extreme measure of building a border wall. Meanwhile Austria steered negotiations on the new regulation on Frontex (the EU's border agency). There is a clear public interest in these permanent representations being open about the meetings they have held, in order to assess the extent of security industry lobbying.



While Germany refuses to be transparent about the meetings it holds with lobbyists, nonetheless it promotes propaganda videos about its work in the Council of the EU.<sup>172</sup>

Of the other two countries in our survey, Sweden released a log of “selected visits” to its office in Brussels. Of course, this does not equate to a full list of lobby meetings held, and did not reveal many meetings with corporate lobbyists. It is hard to know if this is because they were not “selected” to go into the data provided, or whether the Swedish Permanent Representation does not meet with significant numbers of corporate lobbyists.

Finally, Finland told us that “Our resources are very limited so we don’t have much time for this kind of activities [meeting lobbyists]. Normally lobbyists contact the authorities and Ministries in Helsinki, where Finland’s position in different EU affairs is decided, not the staff of our Permanent Representation”.<sup>173</sup> Nonetheless Finland told us that while it did not have a list of lobby meetings held in the past, from October 2018 it would publish such a list of meetings for the Finnish Permanent Representative and

Deputy.<sup>174</sup> Annex 1 contains further information about individual country responses.

With the important exceptions of Romania and the Netherlands which did release their lobby records, Ireland who released some data and which also has a domestic lobby register, and Finland which is now proactively publishing some information, this is a shockingly poor record of transparency on the part of the permanent representations in Brussels. This absence of transparency prevents citizens from having any understanding of who its officials in Brussels are meeting, and how these lobbyists might be trying to influence EU decision-making. Furthermore, since ALTER-EU’s 2015-16 survey, it appears that very little has improved.

The attitude of the permanent representations towards corporate lobbying is deeply worrying. Too few bother to measure and record the lobbying received, let alone make that data publicly available. For those that do collect the data, far too little concern appears to be given to the greater access of corporate lobbies and the impact that their influence might have on the positions adopted in negotiations with other member states. While it is clear that not all permanent representations encounter major industry lobby efforts, it seems clear that for some, regular meetings with corporate lobbyists is business as usual.

### 4.3 MEDEF and the French Permanent Representation



MEDEF, the French employers’ organisation and member of BusinessEurope, regularly organises a €400 per person day of training, including a meeting with the French Permanent Representation, on current issues of interest to companies and French influence in Brussels. This ‘MEDEF Academy’ helps to “make our members aware of the process and the actors of European decision-making, enabling them to be better relaying or supporting their members and their national or European federations in their lobbying actions,” according to MEDEF’s website.<sup>175</sup>

## 4.4 Permanent Representations come and go via the revolving door

Permanent Representatives, the highest ranking official in each of the representations, are much in demand by the private sector as they approach the end of their careers and a swing through the revolving door to a lucrative corporate role must seem attractive.

Pierre Sellal was recruited by French law firm August Debouzy in January 2018 after over ten years as France's Permanent Representative in Brussels, during which time he had been "directly involved in all the major European negotiations"

Pierre Sellal was recruited by French law firm August Debouzy in January 2018 after over ten years as France's Permanent Representative in Brussels, during which time he had been "directly involved in all the major European negotiations". As the law firm itself pointed out when it recruited him: "His experience is an additional asset in the firm's international expansion."<sup>176</sup>

The revolving door swings both ways. In 2013 Ivan Rogers was appointed as the UK's Permanent Representative to the EU. He had rejoined the UK Government in October 2011 as Prime Minister David Cameron's Adviser on Europe and Global Issues, but had previously been at Barclays Capital. Rogers also worked for Citigroup from 2006 to 2010.<sup>177</sup> He left the UK Permanent Representation in 2017.

Officials with a detailed understanding of specific policy areas are also much in demand by corporate lobbies. This can be seen across sectors:

- A UK finance attaché moved to lobby consultancy firm Gplus.<sup>178</sup> He has since worked with other EU lobby firms.<sup>179</sup>
- A Dutch attaché on health, pharmaceuticals, and medical devices moved to the European Federation of Pharmaceutical Industries and Associations as Director of European affairs.<sup>180</sup>
- Another Dutch government official, who had been a senior adviser on investment policy and the chief Dutch representative in the Council of the EU's Trade Policy Committee, left to co-found a lobby group for law firms and others with commercial interests in the EU's approach to investment arbitration.<sup>181</sup>
- A UK official of 15 years who had spent time as the environment attaché for the UK Permanent Representation, is now Head of Sustainability at lobby firm Burson-Marsteller (now BCW Brussels).<sup>182</sup>
- A Danish counsellor on financial services during the Danish rotating presidency moved to the lobby firm Fleishman-Hillard as a Senior Policy Adviser to the financial services practice.<sup>183</sup> He has since moved to another EU lobby.<sup>184</sup>

Corporate Europe Observatory's recent report<sup>185</sup> about the corporate influence on EU tax-avoidance policy-making noted that many of the so-called Big Four accountancy firms had previously employed officials who later ended up at the Brussels-based permanent representations, including Ireland,<sup>186</sup> Finland,<sup>187</sup> Malta,<sup>188</sup> and Germany.

The revolving door is a widely-recognised problem in the Brussels bubble – with its risk of conflicts of interest and implication that officials and business interests have a shared culture – and it is clear that the permanent representations are not exempt from this. This revolving door is especially problematic if we are concerned about member states showing a bias towards, or a preference for, corporate interests over the public interest.

# EUROPEAN COUNCIL

EU leaders far from immune to corporate influence



## 5. European Council: EU leaders far from immune to corporate influence

“The European Council has emerged as the new centre of political gravity in European Union (EU) policy-making.”

- Uwe Puetter in *The European Council and the Council*.<sup>189</sup>

The European Council, a different institution from the Council of the EU, consists of the leaders of the EU member states ie Angela Merkel, Emmanuel Macron et al, alongside the President of the European Council (Donald Tusk) and the President of the Commission (Jean-Claude Juncker) who play non-voting roles.

Whether it is over the economic crisis, migration, or Brexit, the European Council often makes the big-picture policy announcements which set the overall direction of the EU, usually presented as outcomes of the high-profile European Council meetings and Euro Summits held a few times a year. Based on the decisions taken in recent years, the European Council follows a broadly neo-liberal economic agenda and a tough line on migration issues.<sup>190</sup>

The big beasts of the corporate lobby world are not afraid of targeting this high-level forum and its members, and this interest is reciprocated by EU leaders. This chapter shows how some EU leaders have strong links with the biggest lobby groups such as the European Round Table of Industrialists (regular meetings and dinners with the leaders of France, Germany, and the Commission) to influence EU policy-making (5.2); while some EU member states have even created their own business-influenced lobby group to feed into deliberations at the European Council (5.6). At one of many Euro Summits dedicated to tackling the Greek debt crisis, members of the banking lobby were consulting with EU leaders within the Council building itself (5.7). The privileged access enjoyed by captains of industry to members of the European Council is significant, especially when compared with public interest lobbyists who have little chance to match it.

As our case studies show, even in this high-level forum member state leaders are not afraid to make the case for domestic corporate interests and will even risk the much-prized European Council consensus model by threatening a veto if a national industry will lose out from a decision (for example Poland over its coal industry (5.3, 5.4)), despite the negative impacts that this might have.

Some of our case studies reflect the dominance of financial and economic issues on the agenda of the European Council in the past ten years, and shows how the very biggest of corporate interests have helped to set the tone and direction for one of the EU's most far-reaching and controversial policy initiatives: economic governance. By influencing these big-picture issues at the European Council, business lobbies can get 'good bang for their buck' as they successfully influence the broad direction of the EU and the shape of more specific policies and legislation in the future (5.5).

## 5.1 Fact file on the European Council

- The **European Council** has very little involvement in EU legislation, leaving that to the Council of the EU. Instead, it **sets the broad direction of the EU** and plays a key role in policy-making and coordination, setting out its agenda via the conclusions of its **regular European Summits**.
- Its policy-making role grew dramatically with the 1992 Maastricht Treaty, and in particular, the European Council now has a **key function in coordinating policy among member states** on economic governance issues, including the euro (via Euro Summits of the leaders of Eurozone countries); foreign, security, and defence issues; and justice and migration issues. The European Council was particularly prominent in the financial crisis, and more recently in the migration crisis. Its role in **enlargement issues** means that it is the lead EU institution on the UK's exit from the EU, Brexit (5.9).
- Its policy coordination role is especially important in the context of policy areas where there is not a lot of EU legislation. Without legislation to bind the EU member states together, it is instead **policy coordination among these governments** which helps to ensure that **domestic policies are broadly aligned across the EU**, and that there is a **coordinated position on international matters**.
- In the European Council, alongside the **leaders of the EU member states** there is also a **President of the European Council**, a role introduced under the Lisbon Treaty, who is appointed by the leaders of the member states. **Herman Van Rompuy** was the European Council's first president; **Donald Tusk** has been in post since 2014. This role is to prepare meetings and work behind the scenes to **ensure that there is consensual agreement** on upcoming topics, unanimity being the goal on all such pronouncements.





## 5.2 The European Round Table of Industrialists – regular meetings with EU elite

*“Following our dinner with Chancellor Merkel and Presidents Hollande and Juncker in June this year, ERT has met with Vice-President Ansip and Commissioners Oettinger, Moedas, Bieńkowska and Vestager. I would like to thank each of them for the excellent discussions.”*

- Benoît Potier, Chairman ERT<sup>191</sup>

The European Round Table of Industrialists (ERT), a group of 55 captains of some of the biggest European companies (including Telefónica, Voestalpine, Siemens, Total, and BMW Group), holds annual meetings with the German Chancellor and French President (together with the Commission President), which gives the elite of Europe’s biggest businesses the chance to lobby arguably the most important EU leaders. The ERT has a long track record of being among the most influential lobby groups in terms of setting the big picture agenda of the EU, and its fingerprints can be seen on the single market, the euro, and even the European treaties.<sup>192</sup>

In June 2018 ERT discussions with the leaders focused on trade with China and the US.<sup>193</sup> But the development of the EU’s digital single market seems to have been a major preoccupation of the ERT in recent years (not surprisingly given the number of telecoms companies within its membership, as well as wider corporate interests in the ‘Internet of Things’). In 2015 the ERT held two summits with Chancellor Merkel and President Hollande on digital issues. A June 2015 event held in Berlin was followed by a further summit in Paris in October 2015, with the invitation coming directly from Hollande.<sup>194</sup> Various meetings were held in-between to develop discussions further with European Commissioners, French and German senior officials, and ERT members including Vodafone, Orange, Ericsson, Nokia, and Siemens in attendance to discuss the digital single market.<sup>195</sup> A further gathering with Merkel and Hollande, on the same subject, was held in 2016.<sup>196</sup> All of these events came at a key time in the development of the digital single market and ERT demands can be seen as feeding into specific proposals such as ePrivacy (see 2.7) and others.<sup>197</sup>



*Monsieur François Hollande  
Président de la République*

*vous prie de bien vouloir assister à la Conférence numérique  
franco-allemande,  
au Palais de l’Élysée, le mardi 27 octobre 2015 à 14 heures 15.*

*Cenue de ville*

The ERT has a long track record of being among the most influential lobby groups in terms of setting the big picture agenda of the EU, and its fingerprints can be seen on the single market, the euro, and even the European treaties.



## 5.3 Climate Saboteurs: the weakening of the EU targets for 2030

**Decision topic:** Climate and energy targets for 2030

**Date:** 2014

**Channel of influence:** European Council

**Corporate lobby:** Magritte group, Eurelectric, Business Europe.

**Member state:** Poland, UK

**Summary:** In 2014 the Commission proposed new climate and energy targets for 2030. In response the Magritte Group, BusinessEurope, and other heavyweight corporate lobby groups, launched a campaign to fight the renewable energy and energy efficiency targets, with the backing of Poland and the UK. They argued that the EU should instead adopt a single climate target. Although they did not fully achieve their goal, their campaign helped to ensure that national-level renewable energy targets were dropped, and the target for energy efficiency was weakened. As this was decided by the European Council which requires consensus, Poland used a veto threat to get its way.

In January 2014 the Commission proposed a set of climate and energy targets for 2030. The number and scale of these targets became a key lobby battleground. The Commission's original plan for the 2030 objectives was a system of separate targets for reducing greenhouse emissions, and for a minimum level of renewable energy and energy efficiency, each of which were related to national targets and a set of policies aimed at achieving them.<sup>198</sup>

The existence of three separate targets helps to move our energy system to renewables, rather than allowing polluting industries to decide how to cut emissions via the carbon market, where polluters can trade in the right to emit carbon dioxide. This merely encourages incremental changes in a fossil fuel-based energy system, and can lock-in redundant technologies for decades to come.

Energy companies, energy-intensive industry, and their trade associations – Eurelectric, BusinessEurope, and many others – fought tooth and nail against this three target model from the outset, arguing that the EU should instead adopt a single climate target. The big energy companies argued that this was the best way to match 'competitiveness' concerns with environmental ambition. In fact, their main objective was to undermine renewable energy targets and subsidies because they threatened investments in gas in particular, and energy efficiency measures, which would reduce demand for their product and so undermine their profits.

They launched a concerted effort in which formal lobby efforts ran alongside informal contacts, as executives courted the Commission and national governments at dinners, cocktail receptions, and even birthday parties.<sup>199</sup>

It is up to the heads of state to decide, together with the European Commission. So we have decided to visit them all: we've seen President Hollande; we've had meetings with the Dutch Prime Minister; Mr Cameron has agreed to the principle, as has Angela Merkel and Messrs. Rajoy, Di Rupo, and Letta. Dialogue is ongoing.

- *G rard Mestrallet, Magritte Group*

The pressure for a single target mounted in 2013, as the chief executives of eight power companies (including GDF Suez, RWE, and Iberdrola) created the Magritte Group.<sup>200</sup> They threatened blackouts unless the EU departed from the three targets course. BusinessEurope weighed in with a range of letters, position papers, and events with decision-makers.

The Commission's 2030 Climate and Energy Framework presented in January 2014 showed clear results from this lobbying. Although the proposal maintained renewable and energy efficiency targets alongside an overall climate target, these were stripped of much of their force, with the renewables target significantly weakened.

Efforts moved then to target national governments. As G rard Mestrallet, Chief Executive of GDF Suez (now Engie), a leading member of the Magritte Group, explained: "It is up to the heads of state to decide, together with the European Commission. So we have decided to visit them all: we've seen President Hollande; we've had meetings with the Dutch Prime Minister; Mr Cameron has agreed to the principle, as has Angela Merkel and Messrs. Rajoy, Di Rupo, and Letta. Dialogue is ongoing."<sup>201</sup>

Some EU member states fought hard to defend the interests of their country's corporations. In defence of its coal industry Poland threatened to block the deal unless the costs to its economy and industry were discounted by €15–20 billion between 2020 and 2030, under a complicated system of concessions from the EU's carbon trading system.<sup>202</sup> Concessions granted to Poland since then will allow it to continue reaping hundreds of millions of euros in free allowances to modernise coal-fired power plants. Donald Tusk, current President of the European Council, was Polish Prime Minister at the time these were agreed.

Other member states such as the UK strongly supported the industry campaign for a single target. The UK advocated a "technology neutral" greenhouse gas target, envisaging a key role for nuclear power, shale gas, and carbon capture and storage in meeting climate commitments, as advocated by Shell and others.

At the European Council in October 2014 EU heads of state and government agreed the 2030 Climate and Energy Package. The conclusions went beyond the remit of the European Council to provide "general orientations and strategic directions" and were very specific about the governance of renewable energy and energy efficiency. They decided that the renewable target would not be transposed into binding national targets, and set a target for energy efficiency of just 27 per cent, which is virtually meaningless as it is likely to be achieved without any additional effort or policy.

Why was the decision on the 2030 package adopted with such detail in the European Council and not in the Council of Ministers? As we have seen before, the European Council takes decisions on a consensus basis and the Council of Ministers is supposed to take specific decisions on specific policies, by qualified majority voting (which requires the support of 55 per cent of the member states representing at least 65 per cent of the population of the EU).

According to Claude Turmes, now Luxembourg Secretary of State for Sustainable Development and Infrastructure, but until recently a leading MEP on energy issues, the European Council of October 2014 "upset the fundamental EU institutional balance."<sup>203</sup> The conclusions of the European Council were so specific that according to Turmes "they prejudice the outcome of the legislative procedure and prevent lawmakers from exercising their prerogatives....[they] were an affront to us as MEPs."<sup>204</sup>

Moving issues 'up' to the European Council level facilitates a kind of renationalisation of policies, allowing one member state to use the threat of a veto to push the interests of its own industry, and avoid the need to compromise as would generally be the case under qualified majority voting.

**FOR MORE INFORMATION READ**

Corporate Europe Observatory's *Carbon Welfare: How big polluters plan to profit from EU emissions trading reform*, December 2016.

<https://corporateeurope.org/climate-and-energy/2016/12/carbon-welfare> ;

Corporate Europe Observatory, *Life beyond Emissions Trading*, January 2014.

[https://corporateeurope.org/sites/default/files/attachments/life\\_beyond\\_ets\\_web.pdf](https://corporateeurope.org/sites/default/files/attachments/life_beyond_ets_web.pdf) ;

Corporate Europe Observatory, *Ending the affair between polluters and politicians: how the industry lobby gutted Europe's climate ambitions*, Corporate Europe Observatory and Friends of the Earth Europe, March 2014.

[https://corporateeurope.org/sites/default/files/attachments/endingaffair\\_briefing\\_final.pdf](https://corporateeurope.org/sites/default/files/attachments/endingaffair_briefing_final.pdf)



## 5.4 Poland and the coal industry

Poland is “a country still pushing hard to keep its coal plants open, made possible by skilfully re-negotiating legislative files proposed by the European Commission,”<sup>205</sup> according to climate group Sandbag. Poland has earned the dubious fame of being the most obstructionist EU country when it comes to climate policy. Coal is the most polluting fossil fuel, and the coal industry in Poland is largely state-owned, blurring the lines between state and corporate interests even more than other cases in this report.

More than 80 per cent of Poland’s electricity is from coal, with its four major power producers, PGE, Enea, Tauron, and Energa all under state control.<sup>206</sup> In spite of the Paris Agreement and the EU’s 2030 climate targets, Poland’s state-owned companies are pushing on with plans to develop a string of new, heavily polluting mines.<sup>207</sup>

With this double role of member state and coal major, the Polish Government has affected or gained exemptions to many EU climate policies. For example its power plants continue to receive free permits to pollute in the EU carbon market, the Emissions Trading System (ETS), despite the fact that this provision was supposed to end in 2013. This is equivalent to an estimated €2.16 billion subsidy for 46 Polish coal plants between 2013 and 2017.<sup>208</sup> Poland also managed to win exceptions from EU air pollution limits, despite the fact that its coal plants are among the dirtiest in Europe.<sup>209</sup>

Poland’s coal addiction has even hit the UN climate talks. Poland hosted the 2013 and 2018 meetings, both times inviting coal companies to sponsor the UN talks with a platform to greenwash and lobby for false solutions which keep the coal industry alive.<sup>210</sup> In 2013 Poland co-organised the International Coal and Climate Summit with trade association and lobby group the World Coal Association, alongside the official UN meeting. In 2018 three coal state-owned corporations (JSW, Tauron, and PGE) sponsored the talks.

These are not the only examples of Poland interfering with UN and EU climate policy processes in order to advance the interest of its coal industry. Poland routinely blocks efforts, threatening vetoes and in the end, managing to redefine EU rules to keep subsidies and extend the life of its coal industry.

Poland is “a country still pushing hard to keep its coal plants open, made possible by skilfully re-negotiating legislative files proposed by the European Commission”

- Sandbag





## 5.5 How big business used the crisis to promote EU austerity

**Decision topic:** Economic governance

**Date:** 2010

**Channel of influence:** European Council

**Corporate lobby:** BusinessEurope

**Summary:** One of the worst outcomes of the 2008 financial crisis in Europe has been the widespread application of neo-liberal austerity measures across member states, leading to public service budgets cuts and unemployment. At the EU level the so-called economic governance reforms introduced following the crisis gave austerity a massive boost, and closely resembled the proposals put forward by BusinessEurope, one of Brussels' biggest and most influential corporate lobby groups.

In March 2010 in the wake of the financial crisis and the collapse of various banks, the European Council established the Task Force on Economic Governance to develop a new framework for 'economic governance' in the EU and the eurozone in particular. It was chaired by then-European Council President Herman Van Rompuy and was composed of the national finance ministers, the Commissioner for Economic and Monetary Affairs Olli Rehn, and the Head of the European Central Bank Jean-Claude Trichet.

From late 2009 to the end of 2012, BusinessEurope (as well as other big business groups such as the Conseil de Coopération Economique, see 5.6) intervened in the ongoing debate on post-crisis economic reforms with more than 20 publicly-available policy papers and letters to European institutions and individual decision-makers. The European Council was a key target for BusinessEurope's messaging.<sup>211</sup> For example, in letters to Van Rompuy in early 2010, BusinessEurope made its case for "structural reforms".<sup>212</sup> In July 2010 the lobby group's Director-General Philippe De Buck asked Van Rompuy for a "structured dialogue" with the Task Force and its participants, while noting that BusinessEurope's ideas were "gaining ground" with the Task Force.<sup>213</sup> A further communication in December 2010 reinforced the pressure.<sup>214</sup>

BusinessEurope promoted its proposals for "fiscal discipline, structural reforms, sound and sustainable competitiveness",<sup>215</sup> and its action plan 'Combining fiscal sustainability and growth'<sup>216</sup> called for binding fiscal rules at a European and national level by giving more power to the Commission to provide the framework to lock in national economic and budgetary policies.

BusinessEurope's plan was to use the financial crisis to argue for policies which would essentially make it easier for their members to do business. But these 'economic governance' policies also increase the pressure on the welfare state and public services, and boost privatisation. At the same time, social expenditure cuts weaken the protection of workers against worsening labour conditions. EU-level economic governance also limits the scope of democracy and institutions at the national level by imposing an austerity agenda and structural reforms, while strengthening the Commission, an institution which tends to be very favourable to business interests.





By late 2010 the Task Force had finished its work and, together with the Commission, presented the 'Six Pack' (so called because it consists of six pieces of legislation) as the outcome of the process. BusinessEurope reported that it was "glad to see a large number of [their own] recommendations reflected in the legislative package".<sup>217</sup> These included stringent debt and deficit rules, and far greater EU surveillance of national economies.

But BusinessEurope didn't stop there. In October 2011 its Director-General used a speech to ask for even "more radical reform"<sup>218</sup> of European economic governance. In June 2012 Van Rompuy, together with the Presidents of the Commission, the Eurogroup, and the ECB, presented a further report 'Towards a genuine Economic and Monetary Union'<sup>219</sup> which backed BusinessEurope's demand that the EU lock individual member states to particular economic policies, evidenced today by the European Semester process which does exactly that.<sup>220</sup>

Overall BusinessEurope was extremely successful in influencing the EU's economic governance reform. It used the crisis as an opportunity to insert its long-term goals into Europe's political agenda as set by the European Council. Since then BusinessEurope has done its utmost to reap the harvest by pushing specific reforms within the new framework. And it remains ambitious, seeing the further development of the EU's Economic and Monetary Union as an opportunity to strengthen the EU institutions' ability to impose business friendly reforms on member states.<sup>221</sup>

#### FOR MORE INFORMATION READ

Corporate Europe Observatory's *BusinessEurope and Economic Governance*. March 2013.

<https://corporateeurope.org/eu-crisis/2013/03/businesseurope-and-economic-governance>

## 5.6 Conseil de Coopération Economique – a lobby group just for the European Council



Remarkably, four EU member states have set up a lobby group with the explicit aim of influencing the agenda of the European Council. The Conseil de Coopération Economique (CCE) was created in 2002 under the "permanent patronage" of the Spanish, French, Italian, and Portuguese governments to assist them in the "preparation of the European Councils and bilateral Summits on sectoral economic matters".<sup>222</sup>

According to *Le Figaro* CCE is an "organisation of 50 bosses from the south of Europe" which apparently include Total, Santander, and Finmeccanica, the largest French, Italian, Spanish, and Portuguese corporate groups.<sup>223</sup> CCE's funders are described as major "European economic groups". The CCE draws up opinions and recommendations for the Commission and the Presidency of the European Council, often at the request of national governments or European institutions.<sup>224</sup>

CCE has its fingers in numerous EU policy pies including the Investment Plan for Europe, Circular Economy Package, Energy Union, Internal Market Strategy for Goods and Services, and others.<sup>225</sup>

Recently it has been active lobbying on the EU gas market.<sup>226</sup> CCE considered the EU post-crash stimulus packages too "national", and demanded greater EU level coordination and economic governance, echoing arguments made by BusinessEurope (see 5.5).<sup>227</sup> The CCE is a clear example of how these four member states facilitate privileged access for corporate interests to EU decision-making.



## 5.7 Corporate lobbyists inside Euro Summits

**Decision topic:** Greek bailout

**Date:** 2011

**Channel of influence:** Euro Summit

**Corporate lobby:** Institute of International Finance (IIF) and members including Deutsche Bank

**Summary:** At the height of the financial crisis Euro Summits were far from immune to the reach of Big Finance. The Institute of International Finance (IIF), established by the biggest banks and financial institutions in the world to lobby on the issue of sovereign debt,<sup>228</sup> became highly influential on the Greek debt issue.

The Euro Summit brings together the heads of government of the eurozone and is a sub-set of the European Council. In July 2011 IIF's President at the time Josef Ackermann (also then Chief Executive of Deutsche Bank), attended the Euro Summit to defend the financial sector's interests, alongside the IIF's General Director Charles Dallara. The IIF met with the Greek Government during the Summit and also had "extensive meetings with very senior European government officials" over several weeks.<sup>229</sup> It was reported that Ackermann had previously been invited to address EU finance ministers in November 2010, and had visited the European Council during the July 2011 Summit.<sup>230</sup>

In the follow-up Euro Summit in October 2011, according to media reports the IIF had two brief encounters in the office of Council President Herman Van Rompuy. French President Nicolas Sarkozy and German Chancellor Angela Merkel were present alongside representatives of the big banks. These encounters were described as crucial and decisive for the outcome of the summit.<sup>231</sup> Bloomberg even reported that "Europe's leaders took the unusual step of summoning the banks' representative, managing director Charles Dallara of the Institute of International Finance, into the summit to break the deadlock over how to cut Greece's debt. Dallara 'squared off' with a group led by Merkel and Sarkozy around midnight".<sup>232</sup>

The IIF itself claims it played a "catalytic role" in securing the deal on Greece's re-financing in 2011. Corporate Europe Observatory's verdict on the deal was: "Banks get a good deal, but Greece remains in debt. Member states pay the price instead of banks".<sup>233</sup> The Greek people also paid the price with the resulting austerity programme leading to devastating consequences including increased homelessness, unemployment, and even hunger. German NGO LobbyControl awarded its 2011 Lobbykratie Medaille<sup>234</sup> to Deutsche Bank and Ackermann for their role in securing favourable conditions for the financial sector in the Greek debt crisis, while misleadingly pretending to be badly impacted by the result.<sup>235</sup>

### FOR MORE INFORMATION READ

Corporate Europe Observatory's *What are bankers doing inside EU Summits*, January 2012. <http://corporateeurope.org/sites/default/files/iif.pdf>



## 5.8 Babiš – the ultimate corporate capture of government



This report mostly deals with the interaction between member states and corporate lobbies on EU decision-making. Sometimes this is based on lobbying and influencing, and in some cases, there is evidence of a symbiotic relationship where the member state is so intertwined with corporate interests that industry positions are absorbed as if they were public interests. And then we have the case of Czech Prime Minister Andrej Babiš.

Babiš, the second richest man in the Czech Republic, was elected Prime Minister in October 2017 after a spell as Finance Minister. His corporate empire extends beyond the Czech Republic to Germany and Slovakia, centred on the agrochemical giant Agrofert, and media outlets including two major newspapers. Critics have called Babiš one of several “capitalist predators who have made themselves absurdly rich using the loopholes in the young democracies”.<sup>236</sup> Babiš’ business model is based on channelling public money to his private corporation in the form of subsidies, tax breaks, and investment incentives. EU subsidies, such as for biofuels, were a key factor in the expansion of Babiš’ business empire.

Babiš is part of the new wave of right-wing populism in Europe (which includes Hungary’s Fidesz and Poland’s Law and Order parties). In 2011 he set up the Action of Dissatisfied Citizens party (ANO, ‘yes’ in Czech). As with Trump in the US, Babiš wooed voters by posing as an alternative to corruption. Yet since he came to power, pressure on the media has increased dramatically and many signs point to the transformation of state institutions by Babiš and his allies, undermining the enforcement of environmental and other regulations.<sup>237</sup>

Recently thousands of protesters took to the streets over allegations of EU subsidy fraud involving Agrofert.<sup>238</sup> Transparency International in the Czech Republic has submitted a complaint alleging Babiš has a conflict of interest as he is both the founder and beneficiary of the two trusts which now oversee Agrofert.<sup>239</sup> Babiš denies the conflict but according to *The Guardian*, a confidential European Commission legal opinion says that Babiš’ situation “qualifies as a conflict of interest”, because politicians should not benefit from EU funds they ultimately control.<sup>240</sup>

But there are even bigger issues at stake here at the EU level. What impact does it have on European Council decision-making when corporate tycoon Babiš with his potential power of veto, is in the room? What wider impact does a Babiš Government have on the Council’s working groups and the comitology process? A failure of transparency prevents us from understanding more, but surely Babiš, and others like him – former Italian Prime Minister and media mogul Silvio Berlusconi comes to mind – represent a democratic threat at both national and EU levels. Laws, regulations, and subsidy schemes need substantial reform both at national and European levels, to prevent such gross risks to the public interest. The EU must stop funding oligarchs and prioritise defending media freedom and civic space.

What impact does it have on European Council decision-making when corporate tycoon Babiš with his potential power of veto, is in the room?

## 5.9 Looking through the Brexit lens: the UK & the EU

Brexit has illuminated several important elements of the UK's relationship with the EU.

The first is the UK Government's self-appointed role as advocate for the City of London (see 2.4). From the day a ballot on UK membership of the EU was first mooted by Prime Minister David Cameron in 2013, the UK's hefty financial sector sought and won significant lobbying victories. These victories included the appointment of former lobbyist Jonathan Hill as the UK's commissioner with the portfolio of finance (see section 7), and significant financial services deregulation via the Capital Markets Union proposal.<sup>241</sup>

Additionally, the so-called Cameron deal,<sup>242</sup> struck in February 2016 with fellow EU leaders in the European Council, which aimed to secure sufficient changes to secure the 'remain' vote in the upcoming referendum, also reflected demands from the City of London. In 2013, the government had consulted with the financial sector to gather its opinion on the UK's relationship to the EU.<sup>243</sup> Many of these views were then taken on board by the government and several feature prominently in the final deal,<sup>244</sup> leading it to be welcomed by financial lobbyists at the time.<sup>245</sup>

Of course, the UK's vote to leave the EU has now consigned the Cameron deal to the dustbin. But it remains one example of many showing how the UK Government has repeatedly and consistently acted to protect the interests of the City of London, and the wider corporate sector, when it comes to negotiations on EU policies and regulations (see 2.3). Today, the City of London is using its ties to the UK government to try to secure as much access to the Single Market as it can in a new post-Brexit EU-UK trade deal, in an attempt to make up some of its losses from its referendum bet that went wrong.

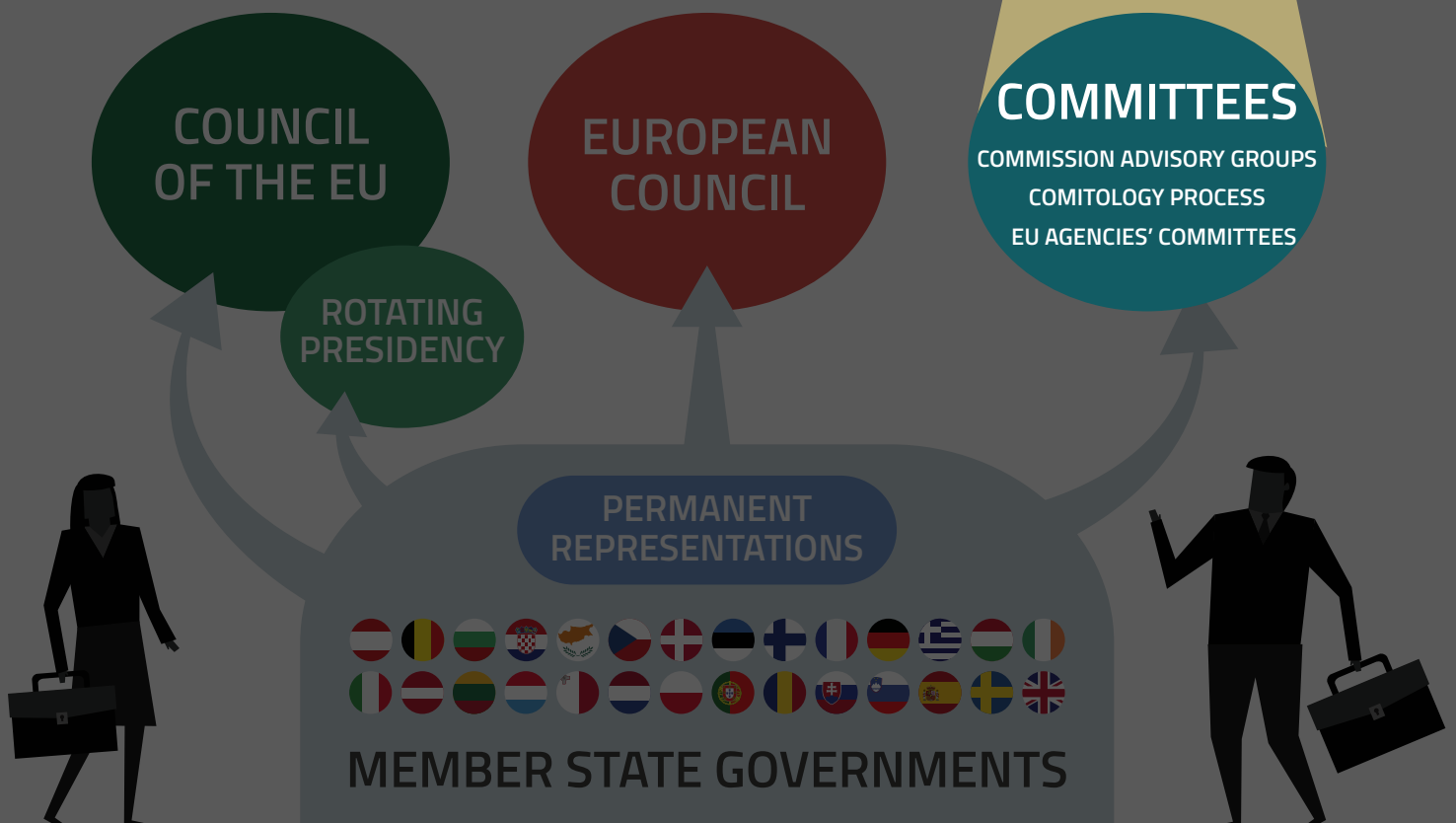
The second element of the UK's relationship with the EU which Brexit has highlighted is the mismatch between how the UK's role in Europe is sold at home, and the reality in Brussels. The slogan of the 'leave EU' camp during the 2016 referendum, "take back control", implied that the EU was something that 'controlled' UK political and public life. But this ignores the strong voice that the UK Government has on EU decision-making, even though that voice has too often promoted the interests of the corporate sector, at the expense of the public interest.

A key example of this mismatch was the pre-referendum debate on TTIP, the proposed EU-US trade deal. TTIP was often cited as a reason to leave the EU, capitalising on very legitimate public concern that TTIP would lead to the further privatisation of the National Health Service (NHS). But what was lost in the debate was the way in which the UK Government had been proactively pushing *for* TTIP in Brussels, including supporting the inclusion of health services in the scope of the deal and opposing reforms to the toxic ISDS 'corporate court' mechanism (see 2.9).<sup>246</sup> And of course now the UK Government is touting for a post-Brexit trade deal with the US which would rival TTIP, and which would be negotiated without democratic scrutiny!<sup>247</sup>

The UK, as a member of the EU, has a strong voice to be able to articulate the public interest. But as the "most neoliberal country in an avowedly neoliberal bloc", the UK has rarely chosen to do that.<sup>248</sup>

# EU COMMITTEES

Channelling  
corporate demands  
into the fine print  
of EU rules





## 6. EU committees: channelling corporate demands into the fine print of EU rules

The member states don't just input into EU law-making via the Council of the EU and the trilogue process with the other institutions. There are also numerous committees where significant power is wielded, where member states can express views and take decisions on EU policies, rules, and regulations, at different stages of the process. These committees are especially active on scientific and technical matters and where detailed discussions with experts are required.

This section examines three different elements of the EU's committee structure: the European Commission's advisory groups, also called expert groups; the EU agencies' member state committees; and comitology. In some of the examples shown it is possible to see how decision-making on a particular file or issue is influenced at different stages, sometimes over a period of years. Only corporate interests have the resources and capacity to run detailed and multi-pronged influencing strategies throughout, sometimes setting up purpose-built lobby groups to do just that, such as the Glyphosate Task Force steered by Monsanto.

Our examples focus especially on decisions over safety regulations for the chemicals glyphosate (6.3) and titanium dioxide (6.2). Germany and the UK, with large and active chemical lobbies, inevitably dominate the case studies. The cases show the importance of independent scientific expertise and how governments and regulators risk becoming partially dependent on industry's data, studies, and knowledge, ignoring their role to make independent decisions in the public interest.

Germany is also the focus of our Dieselgate case study which explores how, via expert groups and comitology, the powerful German car industry was able to deliver significant loopholes in vehicle emission reduction targets and delay new emissions tests (6.4, 6.5).

While corporate interests often publicly complain about so-called 'red tape' and lengthy decision-making processes, they actually quite like bureaucratic decision-making processes such as committees that they can be a part of. Yet the opacity and complexity of these processes mitigate against real citizen engagement. As Karl Isaksson, managing partner of lobby consultancy firm Kreab has said of the comitology process: "The devil is in the detail, as it always has been; but now more stakeholders realize this is a process where you can have a say, often on a very technical level, and actually influence the outcome."<sup>249</sup>

## 6.1 Fact file on EU committees

- The **EU's committee structure** is not well-known but it is crucially important – particularly on **technical** and **scientific** matters – as it is where key opinions are formed and **real decisions are made** which affect EU citizens' daily lives, such as whether a particular chemical or foodstuff is safe to be used.
- On the one hand, these committees allow **technical expertise** within member state governments, agencies, and authorities to **feed into EU decision-making**. But there is little or no public awareness of these committees, the officials taking part are anonymous, and for those who are happy to act as a channel for corporate interests, these committees provide a further opportunity to **promote a pro-business agenda**.
- This report focuses on three different elements of the EU's committee structure as detailed below.

### 1. The European Commission's advisory groups, also called expert groups

The Commission has approximately 750 expert groups, which often include a representative from every member state. These groups play a hugely important role in EU decision-making by offering non-binding advice, and are closely involved in the preparation of proposals for new laws and policy initiatives, as well as being consulted on their implementation.<sup>250</sup> Expert groups have attracted widespread criticism from the European Parliament, and NGOs such as Corporate Europe Observatory and the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) for the way in which corporate interests often dominate, outnumbering participants representing the public interest.<sup>251</sup> However member state officials who participate in these groups can also act as a channel for corporate influence, offering business additional means to try and affect both the drafting stages of new laws, and their implementation.


### 2. The EU agencies' member state committees

The EU has numerous executive agencies in the fields of chemicals, medicines, food safety, and other technical or scientific areas, which are tasked with providing advice and opinions to help the European Commission take decisions and implement policies, including the European Chemicals Agency and the European Food Safety Authority. The agencies are based in different countries across the EU. Within the agencies, member states may be represented on specific working groups, or on committees which include participants representing all member states. Corporate interests lobbying of member state officials on agency committees can be an effective way of influencing an agency opinion on whether, or how, a particular chemical or foodstuff should be regulated. Moreover, some member state officials represented on agency committees have conflicts of interest relating to side jobs or previous work; if a domestic agency is close to industry interests, it is likely to be reflected in the positions taken.

### 3. Comitology

Comitology is a little-known EU process in which member states input into how the Commission implements EU law. Once a piece of EU legislation has been agreed by the Council of the EU, the Parliament, and the Commission, the latter must consult the relevant comitology committee of all member states on the detailed implementing measures it proposes. The committee provides an opinion on the Commission's proposed measures, and these can be more or less binding on the Commission, depending on whether the 'advisory' or 'examination' procedure is being used.<sup>252</sup> While 'delegated' acts enable the European Parliament (and the Council of the EU) to veto a proposal, 'implementing' acts do not allow such interventions.<sup>253</sup> Nonetheless implementing acts are popular with member states because they allow their national officials, via the specific comitology committee, plus the Commission, a huge amount of power to influence the details of agreed rules and regulations. In 2015 over 1700 proposals or decisions were made via comitology.<sup>254</sup> While some comitology committees are transparent in terms of how member states votes, the Standing Committee on Plants, Animals, Food and Feed (SCOPAFF comitology committee) which features below, is not.

In 2017 the Commission proposed reforms to the comitology process, prompted by several debacles including on glyphosate (see 6.3). NGOs have criticised many aspects of the reform proposals as too weak; meanwhile industry is also worried about the proposal, fearing that more transparency in the comitology process may lead to greater public scrutiny and tighter regulation of their products.<sup>255</sup>



In 2015 over 1700 proposals or decisions were made via comitology.



## 6.2 Beyond the pale: the classification battle over titanium dioxide

**Decision topic:** Classification of titanium dioxide as a “suspected carcinogen”

**Date:** 2016-ongoing

**Channel of influence:** CARACAL expert group, European Chemical Agency’s risk assessment committee, REACH comitology committee

**Corporate lobby:** Chemical manufacturers and industrial users

**Member state:** UK, Slovenia

**Summary:** Titanium dioxide is a ‘whitening’ chemical found in everyday products such as sunscreen and paint, and the EU has been assessing whether it should classify and regulate the chemical as a “suspected carcinogen”. But the chemicals’ producers and industrial users have put on pressure at every step of the process with the UK, alongside other governments close to the chemicals’ lobby, echoing industry’s position.

In 2006 the World Health Organisation’s International Agency for Research on Cancer declared titanium dioxide a “possible carcinogen for humans” after tests on animals.<sup>256</sup> France has been at the forefront of demands to regulate titanium dioxide at the EU and national levels over a number of years,<sup>257</sup> and in 2018 banned the use of titanium dioxide in food.<sup>258</sup>

France had submitted a proposal to the European Chemicals Agency (ECHA) in 2016 to classify the chemical as a “carcinogen by inhalation”, based on its own substance evaluation.<sup>259</sup> ECHA’s subsequent consultation on the matter received over 500 responses, almost all of these from industry, opposed to the classification of the chemical.<sup>260</sup> Eventually ECHA’s risk assessment committee opted to broadly support France but proposed classifying all forms of titanium dioxide as “suspected carcinogens” (rather than as outright carcinogens) when inhaled.<sup>261</sup> This downgrade to France’s original proposal nonetheless would represent a step forward, requiring titanium dioxide to be labelled, and restricting its use in cosmetics.



ECHA’s opinion was sent to the Commission which at the time of writing is charged with developing a proposal for classification which can secure the support of a qualified majority of member states via the REACH (chemicals’ regulation) comitology committee. Further inputs are provided by its advisory group CARACAL, made up of officials from all 28 member states, as well as stakeholders from industry and civil society.<sup>262</sup>

The UK Government has had numerous interactions with industry on the subject in the year to July 2018, including meetings or phone calls – five with TDMA itself – and a ministerial visit to Cristal, TDMA member and one of the world’s biggest titanium dioxide manufacturers.

There is a large and highly active industry lobby opposing this classification. The Titanium Dioxide Manufacturers’ Association (TDMA), the key lobby group, has embarked on a major influencing operation<sup>263</sup> helped by public affairs firm Fleishman-Hillard<sup>264</sup> and CEFIC, the European Chemicals Industry Council.<sup>265</sup>

TDMA’s members are titanium dioxide producers including Cinkarna Celje from Slovenia; Cristal, the world’s second biggest producer of titanium dioxide, with a presence in UK, France, and Belgium; and Evonik, a German chemicals company. The group has attended REACH sub-group meetings hosted by Commission officials to hear ‘exchanges’ on the proposed titanium dioxide classification, which have included many member state and industry representatives, but no NGOs.<sup>266</sup> TDMA is just one among many corporate lobby groups submitting position papers and participating in CARACAL discussions. German chemical and business lobbies have also been active.<sup>267</sup>

TDMA appears to have a big ally in the UK, Europe’s second biggest producer of titanium dioxide.<sup>268</sup> The UK Government has had numerous interactions with industry on the subject in the year to July 2018, including meetings or phone calls – five with TDMA itself – and a ministerial visit to Cristal, TDMA member and one of the world’s biggest titanium dioxide manufacturers.<sup>269</sup>

Whether as a result of the short-term lobbying, or a longer-term symbiotic relationship, the UK is strongly opposed to the classification of titanium dioxide. Indeed, in a recent Commission consultation with member states on this issue, the UK and Slovenia made clear their opposition to the classification of titanium dioxide in all its forms, and instead proposed an alternative and weaker “hazard communication” label as a way to avoid what they call “the complications and unintended consequences” arising from classification.<sup>270</sup>

But the industry’s lobby campaign goes far beyond a handful of member states. Officials have reported intense industry lobbying as the classification process on titanium dioxide has proceeded. *Politico* reports an EU official describing “well-organized pressure” from industry, with lobbyists apparently asking for meetings with authorities in every country.<sup>271</sup> Meanwhile *Le Monde* reports that when a member state environment ministry official agreed to meet with the industry to discuss titanium dioxide, no less than 24 people arrived at their office!<sup>272</sup>

A final decision on whether and how to classify titanium dioxide has been postponed. But the corporate lobbying, and alternative proposal of the UK and Slovenia, seem to be having an effect. Other member states have now also raised concerns about the proposed classification,<sup>273</sup> while Germany, the EU’s largest producer of titanium dioxide, says it is opposed to classification.<sup>274</sup>

#### FOR MORE INFORMATION READ

Corporate Europe Observatory’s *Beyond the Pale on Titanium Dioxide*, July 2018.

<https://corporateeurope.org/power-lobbies/2018/07/beyond-pale-titanium-dioxide> and [Corporate](#)

Europe Observatory, *Lobby “deluge” on titanium dioxide, while decision is postponed*, September 2018.

<https://corporateeurope.org/power-lobbies/2018/09/lobby-deluge-titanium-dioxide-while-labelling-postponed>



## 6.3 Germany: backing glyphosate renewal

**Decision topic:** Renewal of Glyphosate's EU licence

**Date:** 2012-17

**Channel of influence:** Committees in the European Food Safety Authority (EFSA) and the Standing Committee on Plants, Animals, Food and Feed (SCOPAFF comitology committee)

**Corporate lobby:** Monsanto and the Glyphosate Task Force

**Member state:** Germany

**Summary:** The renewal of glyphosate's market authorisation as a herbicide in the EU was a big victory for Monsanto (now owned by German chemicals giant Bayer) and its lobby association the Glyphosate Task Force, and Germany backed glyphosate's licence renewal from the start. While the decision was originally due in 2012 it was only taken in November 2017 after heavy lobbying, giving industry a further five-years' worth of sales; but the delay also enabled campaigners to bring the issue out of the shadows.

...research by Corporate Europe Observatory revealed that shortly before EFSA finalised its study, a German chemical industry consultancy (Knoell) working for the Glyphosate Task Force was invited to file requests for redaction of documents, and was even given the ability to edit the documents at the very last minute.

Glyphosate – a flagship product for US company Monsanto – has been in widespread use since the 1970s. Germany was key to the glyphosate licence renewal process (which started in 2012) via its Federal Institute for Risk Assessment (Bundesinstitut für Risikobewertung or BfR) as it held the rapporteur role to assess glyphosate's safety on behalf of the EU, despite the fact that it had already concluded that it was safe. The BfR duly produced a vast report in 2014, recommending not only the re-approval of glyphosate for use in Europe, but even an increase in the "acceptable daily intake" level.<sup>275</sup>

German research NGO Testbiotech, among others, strongly criticised the report saying that it had failed to evaluate several important studies.<sup>276</sup> Moreover, industry's Glyphosate Task Force (a lobby group specifically set up by the pesticides industry to fight for glyphosate renewal) had worked hard to influence the study by submitting huge amounts of documentation.<sup>277</sup>

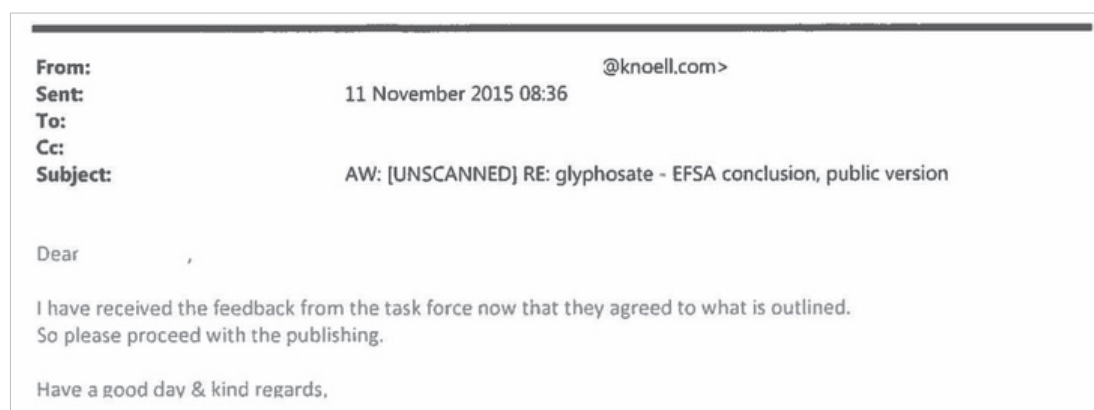
Elsewhere evidence was mounting about glyphosate's impacts on human health. In 2015 the World Health Organisation's International Agency for Research against Cancer (IARC) declared that glyphosate was "probably carcinogenic to humans" after having found "limited evidence" of cancer in people and "sufficient evidence" in experimental animals.<sup>278</sup> However, following a request by the European Commission to look at it, the BfR's review of the IARC's study came to a different overall conclusion (although the BfR went to extraordinary lengths<sup>279</sup> to keep its study out of the public domain).<sup>280</sup> This conclusion was then reviewed together with BfR's first report by experts from all member states in a review led by public officials from the European Food Safety Authority (EFSA), and approved by all of them, with the notable exception of Sweden.<sup>281</sup> EFSA, charged with advising the European Commission



on this process, therefore concluded that glyphosate was “unlikely to pose a carcinogenic hazard to humans and [that] the evidence does not support classification with regard to its carcinogenic potential”.<sup>282</sup>

It is worth noting the position of BfR’s Head of Chemicals’ Safety Roland Solecki.<sup>283</sup> While BfR was leading the glyphosate review, Solecki was additionally a member of EFSA’s scientific committee.<sup>284</sup> He had also previously co-authored a report produced by the International Life Sciences Institute (ILSI) while a member of one of its technical committees, alongside representatives from Bayer and Monsanto.<sup>285</sup> ILSI is funded by corporations such as Monsanto, BASF, Coca-Cola, and McDonald’s.<sup>286</sup>

Subsequently research by Corporate Europe Observatory revealed that shortly before EFSA finalised its study, a German chemical industry consultancy (Knoell) working for the Glyphosate Task Force was invited to file requests for redaction of documents, and was even given the ability to edit the documents at the very last minute.<sup>287</sup>



In 2017 with the release of the ‘Monsanto Papers’, the extent of corporate efforts to intimidate and rubbish the experts at the IARC who had produced the critical glyphosate opinion became clear.<sup>288</sup> Further document releases revealed how serious the loopholes in current risk assessment rules for pesticides are, the company’s strategy to spy and influence EU decision-making on glyphosate renewal<sup>289</sup>, and how the company had gamed public regulators by secretly funding helpful reviews of the scientific literature.<sup>290</sup> The BfR, then EFSA, overwhelmed by the volume of Monsanto’s application, imported word-for-word entire sections of these funded studies into their own glyphosate assessment.<sup>291</sup>

In November 2017, it was finally decision time. The Standing Committee on Plants, Animals, Food and Feed (SCOPAFF comitology committee of member states) could not reach the qualified majority to approve the Commission’s revised proposal for a five year authorisation<sup>292</sup> (reduced from the Commission’s initial ten year request because all the delays in decision-making had by default awarded industry an additional five year licence).

The decision was instead made by an appeal committee of member state ministers. At the last minute, Germany moved from abstention to approving the licence extension, which delivered the required qualified majority to pass the proposal. The German Agriculture Minister’s decision was very much in line with industry’s demands, including that of Bayer which was in the middle of its take-over of Monsanto, but ran counter to what had been agreed with the German Environment Ministry.<sup>293</sup>



For a time, Glyphosate's licence renewal became a political hot-potato, thanks to an exceptional situation where two public health agencies, IARC and EFSA, publicly disagreed about the safety of the highest-selling herbicide on the planet, as well as the under-hand tactics of Monsanto and friends, and the mobilisation of citizens across Europe who opposed the chemical's use. The German Government played a key role in shepherding glyphosate through the EU approval process.

**FOR MORE INFORMATION READ**

Corporate Europe Observatory's *The Glyphosate Saga, & "independent scientific advice" according to Germany, the UK & France*, April 2015.

<https://corporateeurope.org/food-and-agriculture/2015/04/glyphosate-saga-independent-scientific-advice-according-germany-uk>

Corporate Europe Observatory, *Industry edited EFSA's Glyphosate evaluation ahead of publication*, July 2017.

<https://corporateeurope.org/efsa/2017/07/industry-edited-efsa-glyphosate-evaluation-ahead-publication>

Corporate Europe Observatory, *Glyphosate: one pesticide, many problems*, June 2016.

<https://corporateeurope.org/food-and-agriculture/2016/06/glyphosate-one-pesticide-many-problems>





## 6.4 Dieselgate: EU emissions policy in the grip of the car industry

**Topic:** Dealing with Dieselgate – regulating nitrous oxide (NOx) emissions through the Real Driving Emission (RDE) tests

**Date:** 2015-2016

**Channel of influence:** Commission’s expert group the ‘Real Driving Emissions- Light Duty Vehicles’, and comitology group the Technical Committee on Motor Vehicles (TMCV)

**Corporate lobby group:** Volkswagen, BMW, ACEA (the European Automobile Manufacturers’ Association) and VDA (the German Association of the Automotive Industry)

**Member state:** Germany

**Summary:** The Dieselgate scandal involved Volkswagen and other car makers using cheat software to mask polluting diesel emissions in the laboratory. But they had also been lobbying against new real-world emissions tests. Despite public outrage, the car industry, aided by member states such as Germany, still succeeded in weakening and delaying the new tests via two key channels: the expert group on Real Driving Emissions- Light Duty Vehicles (subgroup of the Working Group on Motor Vehicles)<sup>294</sup> and the comitology group Technical Committee on Motor Vehicles (TMCV).<sup>295</sup>

The Dieselgate scandal erupted in September 2015 when German car maker Volkswagen was caught using cheat software for its diesel cars to pass pollution emissions tests in the laboratory, when actually they exceeded EU pollution limits tenfold when on the road. This has a direct health impact: there are 75,000 premature deaths per year in the EU alone caused by nitrous oxide (NOx) emissions,

according to the European Environmental Agency.<sup>296</sup>

### The German government's meetings with lobbyists



In the wake of the scandal, Corporate Europe Observatory obtained documents that show how the car industry, including Volkswagen,<sup>297</sup> continued to undermine Europe’s proposed new real-world emissions test standards, despite the public outrage and pressure on politicians to act.<sup>298</sup>

The Commission's 'Real driving emissions – light duty vehicles' advisory group, along with the Commission itself, helped to delay the introduction of the new test by years.<sup>299</sup> The car industry used its role in the group to make the conditions for tests as unrealistic as possible.<sup>300</sup> The membership was (and remains) dominated by corporate representatives: 78 per cent of participants represent corporate interests at time of writing.<sup>301</sup> The expert group also lists four member states as members: UK, Sweden, the Netherlands, and Germany.<sup>302</sup>

The work of the advisory group fed into the work of the comitology committee the Technical Committee on Motor Vehicles (TCMV, responsible for the regulation on emissions), which was to adopt the main nitrous oxide emissions cap underpinning the RDE tests (Real Driving Emissions).<sup>303</sup> The national experts in the comitology committees are appointed by member states and they report to them.<sup>304</sup>

The car lobby, united in the European Automobile Manufacturers' Association (ACEA), orchestrated an EU-wide campaign to get member states on board with its own proposals, and UK and France, as well as Germany, lobbied for a weaker NOx cap.

In the TCMV, experts from the member states watered down the existing NOx cap, adopted by the co-decision process between the EU institutions only a few years earlier, claiming it was "too stringent" for industry.<sup>305</sup>

The car lobby's ties with the German Government were extremely helpful. The day before the vote, the German Chancellor's office received an email from the Bavarian Minister President's office with demands that matched those of Bavarian manufacturer BMW.<sup>306</sup> According to German news outlet *Der Spiegel*, the President of the German Association of the Automotive Industry (VDA) Matthias Wissmann, contacted his former cabinet colleague Chancellor Merkel, who called Commission President Juncker to increase the pressure to support the corporate demands. *Der Spiegel* reports that at the end of the conversation they reached a compromise.<sup>307</sup>

None of the individual positions of member states within the TCMV that led to this decision have been made public, allowing countries to hide behind the opaque system, despite criticism by the European Ombudsman and others.<sup>308</sup>

This scandal shows how the car industry uses its grip over a national government (Germany) and the position given as expert by the Commission in certain bodies, to bend legislation in its favour, lobbying against more stringent testing, as well as generally weakening and delaying the procedure.

#### FOR MORE INFORMATION READ

Corporate Europe Observatory, *Two years after Dieselgate: car industry still drives Berlin and Brussels*, September 2017.

<https://corporateeurope.org/power-lobbies/2017/09/two-years-after-dieselgate-car-industry-still-drives-berlin-and-brussels>

Corporate Europe Observatory, *Scandal-hit car industry in the driving seat for new emissions regulations*, January 2016.

<https://corporateeurope.org/climate-and-energy/2016/01/scandal-hit-car-industry-driving-seat-new-emissions-regulations#sdendnote10sym>

Alter-EU, *Corporate capture in Europe - When big business dominates policy-making and threatens our rights*, September 2018.

<https://www.alter-eu.org/documents/2018/09/corporate-capture-in-europe>

## 6.5 German Government bows to the car industry

The love affair between the German Government and the car lobby goes beyond a corporate sector lobbying a national government. As Nina Katzemich from NGO LobbyControl puts it, “More than just a close lobbying relationship, policy-making on cars is viewed as a national interest by many politicians. Government after government has seen it as an obligation to protect this industry from regulation, costs or limitations.”<sup>309</sup>

This intimacy between policy-makers and car lobbyists is partly explained by the many revolving doors between the German political elite and the car industry. For example, the long-standing Director (2007-18) of German car association VDA, Matthias Wissmann, was a former cabinet colleague of Chancellor Merkel. The lobbyists-in-chief of all big German car manufacturers have previously been politicians or political managers, very often at high levels.<sup>310</sup>

Direct contact is important to keep love relationships alive. Research by LobbyControl showed that ministers and state secretaries from the German Government met 325 times with the car industry, compared to 58 times with automotive clubs and consumer protection organisations, and 21 times with environmental organisations, between September 2015 and May 2017.<sup>311</sup>

Money crosses both ways, with the car lobby making substantial donations to the political parties and getting its money back with favourable legislation. The German car industry is an enormously generous donor to, and sponsor of, German political parties. Since 2009 the German car lobby has donated over €17 million to the centre-right CDU/CSU, centre-left SPD, liberal FDP and Greens.<sup>312</sup> Lately, party sponsorship has become more popular in Germany, being tax deductible for corporations and very non-transparent. For example BMW declared in 2014 that it would completely change from party donations to sponsorship. There are few clues about the size of its sponsorships, but BMW listed 11 CDU, SDP, and Green Party events that it gave money to in 2015. In Brussels the car lobby is also a big spender: the ten biggest car industry players in Brussels spend around €20 million on lobbying, and half of this is by German automobile industry.<sup>313</sup>

“More than just a close lobbying relationship, policy-making on cars is viewed as a national interest by many politicians. Government after government has seen it as an obligation to protect this industry from regulation, costs or limitations.

*Nina Katzemich, LobbyControl*







## 7. Commissioners: national lobbies' friends?

It seems clear that for some national corporate lobby groups, their respective national commissioner is an extra, potential channel of influence for EU decision-making. It is striking that for some, although not all commissioners, national corporate lobbies make up a disproportionately large number of meetings.



Commissioner Oettinger is seen as a friendly face for German industry inside the Commission

Image: Jacques Griebmayer

**Commissioner Oettinger** is seen as a friendly face for German industry inside the Commission, initially as Energy Commissioner, subsequently Digital, and now responsible for the EU Budget.<sup>314</sup> Five out of Oettinger's top ten most frequently met lobbyists (from December 2014 to June 2018) have been from German industry.<sup>315</sup> The big German industries profiled elsewhere in this report (see case studies on ePrivacy (2.7) and Dieselgate (6.4)) are much in evidence in Oettinger's diary. For example **Deutsche Telekom** has held ten encounters with Oettinger; the car industry association **Verband der Automobilindustrie** eight encounters; publisher **Axel Springer** also has eight; and car producer **Daimler Aktiengesellschaft** has seven.

But even when Oettinger moved to a new role to manage the EU budget he has remained happy to entertain numerous corporate lobbies, especially from Germany. Of 65 lobby encounters with corporate lobbies, listed by Oettinger since he became Budget Commissioner in January 2018, more than half (35) were with German corporate interests including **Volkswagen**, **Deutsche Bank**, **BASF**, **Lufthansa**, and **Daimler**.<sup>316</sup>



Image: European Commission. Audiovisual services.

In a similar vein, former **Commissioner Hill's** friendliness towards UK finance lobbies shows that his very appointment was a victory for the City of London (see 2.4). Of Hill's 151 lobby encounters with corporate interests (between December 2014 and July 2016<sup>317</sup>), approximately one third (47) were UK-based. Four of Hill's ten most frequently met lobby groups were from the UK's finance sector, with the **London Stock Exchange Group** holding four encounters, and **The Investment Association**, **Barclays**, and **HSBC** all enjoying three encounters each.<sup>318</sup>



Image: Aron Urb (EU2017EE)

Meanwhile Climate **Commissioner Cañete's** background with the fossil fuel industry in Spain (he was President of two Spanish oil companies whilst holding national office) makes him an obvious target for Spanish energy firms.<sup>319</sup> Among the lobbyists he has most frequently met with are **Iberdrola** (nine times) and **Naturgy** (eleven times). Of a total of 264 encounters with industry lobbyists (between December 2014 and October 2018), Spanish lobbies made up 100 (37 per cent) of these, including **Telefónica** and **Santander**.<sup>320</sup>



Image: Arno Mikkor (EU2017EE)

Of Agriculture **Commissioner Hogan's** 102 corporate lobby encounters since December 2014, at least 29 were with Irish interests, including Ryanair and Bank of Ireland. Irish corporate interests were half of his top ten most-met lobbyists. Several of these would have a keen interest in Hogan's portfolio: **Irish Farmers' Association** (seven meetings); **Ibec**, the BusinessEurope member (four meetings); **Irish Creamery Milk Suppliers Association** (four meetings); and the **Irish Co-operative Organisation Society Ltd** (three meetings).<sup>321</sup>



Image: EU2016 NL from The Netherlands

Competition **Commissioner Vestager** from Denmark seems a clear target for Danish business interests lobbies. Out of 41 encounters she has held with corporate lobbies during her time in office since December 2014, 24 or 59 per cent have been with Danish lobbies, often in Copenhagen. These include the **Confederation of Danish Industry** (nine encounters), the **Danish Chamber of Commerce** (three), and the **Confederation of Danish Employers** (three).<sup>322</sup>

For all of these commissioners, there seems to be a serious risk that they appear to have prioritised lobby meetings with corporate interests from their home country. It is also clear that sometimes commissioners are being sought out by industry to discuss topics which are not remotely connected to their own portfolio. In 2018 *EUObserver* reported on a dinner hosted by ExxonMobil and attended by Cypriot Commissioner Stylianides (responsible for the Commission's humanitarian aid programmes), to hear about the company's drilling plans near Cyprus.<sup>323</sup> Also in attendance were several Cypriot MEPs and the Cypriot Permanent Representative.

It seems as if the corporate sector has identified a further potential 'national' channel of influence on EU policy-making.



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## 8. The democratic deficit in the spotlight – and reasons to be optimistic

“Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.”

- Article 10, Lisbon Treaty.

Here we present the worst elements of corporate advantage, secrecy, and lack of accountability that have emerged from this report, while also highlighting some developments that should provide hope and good practice for the future.



### Absence of citizens' inputs into national decision-making on EU matters

Citizens are quite absent from member states' decision-making in EU matters. By contrast, corporate interests with the funds and capacity to focus on complex EU processes, or to buy in expertise (in the shape of lobby firms or law firms), have a massive advantage when it comes to developing sophisticated influencing strategies. Opacity of decision-making tends to benefit those whose lobbying tactics rely on high-level or privileged access, quiet 'words in the ear', and revolving door contacts.

Direct citizen participation is, at best, very limited, and even NGOs and trade unions can struggle to systematically influence member state decision-making on EU affairs. Civil society, which relies on public mobilisation, has a much harder time engaging members and supporters about important, albeit little-known and little-understood, legislative proposals on the table in Brussels. And the sometimes systemic privileged access that industry groups like the European Round Table of Industrialists (5.2), European Services Forum (3.3), Conseil de Coopération Economique (5.6), the

Magritte group (5.3), the Institute of International Finance (5.5), and others enjoy with EU leaders and decision-makers is not available for public interest groups.

This absence of a genuine public voice on member states' decision-making on EU matters exacerbates the following three major concerns.

Opacity of decision-making tends to benefit those whose lobbying tactics rely on high-level or privileged access, quiet 'words in the ear', and revolving door contacts.



### Lack of awareness of risk of lobbying and corporate capture

The fact that so few permanent representations in Brussels collect lobby data and monitor the kinds of lobbies they meet, let alone make that data public, is just one indication of how reckless member states' attitudes are to the risks of corporate lobbying. Instead some member states actively cultivate close relations with corporate lobbies (the German car industry (6.5), the UK's finance sectors (2.4), Telefónica in Spain (2.6), the Polish coal industry (5.4)), or at particular key moments like a rotating Council presidency. Similarly, President Tusk of the European Council and his Cabinet fail to publish lists of their lobby meetings (currently the subject of an inquiry by the European Ombudsman, following a complaint by Corporate Europe Observatory)<sup>324</sup> and the two ethics rulebooks which apply to staff of the Council Secretariat and Tusk's Cabinet do not even cover the particular concerns regarding interactions with lobbyists.<sup>325</sup> Too many member states and their EU institutions seem entirely relaxed about the risk that corporate lobbying poses to EU decision-making.



### Failure to publish member states' positions as decisions are negotiated

Whether it is in the Council of the EU's working parties, which develop the members states' shared position on a piece of upcoming legislation, or in the Commission's comitology committees, it is standard practice to neither record nor publish member states' positions. Furthermore, the Council Secretariat has told us that "there is neither an obligation nor a practice" to take minutes at working party meetings, although it is hard to imagine how progress on files is ever made without some form of report of the detail of discussions.<sup>326</sup> This opacity is fundamentally undemocratic: it prevents citizens, researchers, and journalists from tracking decision-making; stops them from holding their member state to account; and crucially gives a massive in-built advantage to corporate lobbies with the resources and capacity to put together such an overview. MEPs are increasingly critical of this opacity. A recent European Parliament report criticises the lack of transparency in comitology, especially in the context of the glyphosate decision (see 6.3),<sup>327</sup> while another draft report by MEPs says "despite requests to the Council, no relevant documents have been made available to the ... Committee".<sup>328</sup>



### Absence of Council and European Council in EU lobby register

The absence of the Council and the European Council from the EU's lobby transparency register has various implications. Officials at these institutions are not bound by any restrictions about meeting unregistered lobbyists (notwithstanding President Tusk's voluntary commitment to not meet with unregistered lobbyists). Meanwhile the lobbies themselves are not obliged to declare how much they spend lobbying these EU institutions and on which issues. The current EU register (which only covers the Commission and the Parliament) is far from perfect, but it does provide a degree of lobbying

transparency. National transparency regimes are patchy at best, and do not cover all their member states' EU activity. However, the ongoing negotiations to extend the EU register to the Council are deadlocked, and radical changes look far off.



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On the other hand, there are reasons to be optimistic. Despite the evidence of state capture, corporate advantage, secrecy, and lack of accountability that has emerged from this report, there have been some encouraging developments in recent years:



### The European Ombudsman

The office of the European Ombudsman has undertaken several hard-hitting actions which pinpoint key problems raised in this report and which have helped to push these issues up the political agenda. The Ombudsman's report on the Council of the EU ruled that its lack of transparency was "maladministration" and considered the situation to be so serious that it has, in a rare move, referred its report to the European Parliament.<sup>329</sup> MEPs, led by Jo Leinen and Yana Toom, have agreed a follow-up critical opinion on the transparency practices of the Council, which was passed with a huge majority.<sup>330</sup> The Ombudsman has also criticised the failure of the comitology committee on motor vehicles to disclose all positions of the representatives of the member states on environmental issues (6.4).<sup>331</sup>



### Member states' Parliaments

Across the EU while there are great variations in how governments are held to account for the decisions they have taken in EU fora, some proactive parliaments and national parliamentarians are striving to improve the situation.

Some parliaments like the Danish Folketinget have sophisticated scrutiny and accountability processes in place which enable MPs to debate with ministers about particular Council of the EU decisions prior to the meeting taking place.<sup>332</sup> The Swedish, Finnish, and German parliaments have the "right to mandate the government's negotiation position" on EU matters, albeit in a way which is legally non-binding.<sup>333</sup> In Austria that right is legally-binding, and in Sweden the government can check-in with Parliament "by email, text message or phone calls" on last minute additions to the Council's agenda or in cases where the Swedish position needs to be adapted.<sup>334</sup> In the Netherlands, the Parliament is very active in the scrutiny of EU proposals with the principle that EU legislation should be treated like national bills.

These countries appear to be at the vanguard of national parliamentary efforts to scrutinise and hold to account member state governments before, during, and after EU-level decision-making, and while it appears that governments enjoying parliamentary majorities may be scrutinised less by MPs, these Parliaments provide a model worth considering by others.

Additionally, parliaments from 20 EU countries have united to demand more transparency in the work of the Council of the EU which they refer to as a "black box". The report, coordinated by Dutch MPs, observes: "Transparency is essential to making democracy meaningful. Without transparency, there can be no public space in which citizens, stakeholders and media can deliberate and thus participate in decision-making.... Members of national parliaments have insufficient access to documents and voting records, including informal voting records, to be able to oversee and scrutinize their governments' actions."<sup>335</sup>

Municipalities and regions also have an important role to play. The Walloon Parliament in Belgium held dozens of hearings on the EU's trade deal with Canada, CETA, which ultimately led to the active involvement of the Walloon Government in the CETA ratification debate.<sup>336</sup> Across the EU, 2000 TTIP and CETA 'free zones' have been declared by regional and municipal authorities concerned about the impacts of these treaties on their local communities.<sup>337</sup>

// ...parliaments from 20 EU countries have united to demand more transparency in the work of the Council of the EU which they refer to as a "black box".



## Member state governments

In 2015 six member states – Denmark, Estonia, Finland, the Netherlands, Slovenia, and Sweden – demanded far greater transparency in how the Council of the EU and member states conduct themselves, including advocating that the Council join the EU lobby register, that more Council documents automatically be made public, as well as more transparent comitology and trilogue processes.<sup>338</sup> While these ideas have met with mixed success, it is clear that among member states there are voices demanding reform. Some are going further. Finland now proactively publishes the lobby meetings held by its top two officials and the Netherlands and Romania released a full list of lobby meetings held by staff (4.2). All countries now need to recognise the risks of lobbying and put in place measures to prevent corporate capture.

While this report has inevitably focused on examples of member states prioritising the corporate interest over the public interest, it is clear that this is not the default position for all member states all of the time. For example in relation to the regulation of chemicals, France has led calls to classify titanium dioxide in the face of tough corporate lobbying (6.2), while Sweden refused to support the opinion that dismissed concerns over the safety of glyphosate (6.3), to name just two.

But it is not enough to rely on member states to voluntarily 'do the right thing'. We need new models for citizens themselves to have more of a say on the EU matters upon which member states are tasked with deciding. Combining greater citizen participation with better local and national parliamentary accountability and more transparency, could be the beginning of a counterweight to the hefty influence corporations wield in EU decision-making, and to tackle in-built corporate advantage.

Transparency is essential to making democracy meaningful. Without transparency, there can be no public space in which citizens, stakeholders and media can deliberate and thus participate in decision-making... Members of national parliaments have insufficient access to documents and voting records, including informal voting records, to be able to oversee and scrutinize their governments' actions.

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## 9. What can you do?

Now you have read this report and learned more about the role that EU member state governments – maybe even your member state – together with corporate influences, play on some issues at the EU level, **what can you do about it?**

- Help us to **get this report into the hands of activists and decision-makers** at the national and EU levels. These issues are not well-known or understood yet, and we hope this report will help to change that. Send it to your MEPs and ask for support for our recommendations. Send it to your national MPs and ask for their help in holding your national government to account for its EU decision-making.
- If you work for an NGO, trade union, research group, or are a journalist, and are interested in following up on any of the stories featured here, or have new stories about how corporate interests are influencing member states on EU decision-making to add to the picture we are building, then **get in touch** with us. Please contact: [ceo@corporateeurope.org](mailto:ceo@corporateeurope.org) and put COUNCIL in the subject header.
- If this is a new area for you, but you are concerned about **the stance of your member state on a particular EU legislative proposal**, these tips might help. Traditionally, campaign and activist groups focus on contacting MEPs to express concerns about EU decision-making, because MEPs are directly elected, but it is also possible to take action via your national government or national MPs.
  - i. To find out **which Council of the EU body is responsible for handling a proposal**, and to see what papers are already available on it, you can look at the (confusing) Council of the EU website: <https://www.consilium.europa.eu/en/> If the information is not clear (and often it is not), you can table a request for all documents which relate to a particular proposal under EU access to documents rules. This could include: agendas, minutes of meetings, position papers, working documents, and Presidency proposals. You can table a request to the Council of the EU via Ask the EU [https://www.asktheeu.org/en/body/council\\_of\\_the\\_eu](https://www.asktheeu.org/en/body/council_of_the_eu) or via the Council's own website: <https://www.consilium.europa.eu/en/contact/general-enquiries/>
  - ii. Using **national freedom of information or access to document laws** (find out more here: <https://www.rti-rating.org/>), you can ask your national government which minister and department is handling this particular EU file. You could also ask your country's **permanent representation** (most have contact details online). Once you know this, you can ask them to share their position on the dossier with you, and you can also ask them what lobbying they have received on this file.
  - iii. You can also approach your **national Parliament** for help or for more information. Is there an EU affairs or EU scrutiny committee you can approach? Will they look at the specific EU dossier before decisions are made about it at the EU level, or only after? Your **local member(s) of parliament** should also be able to point you in the right direction. Your MP(s) could raise your concerns directly with ministers, via a letter or a Parliamentary question perhaps. Parliamentary questions by MPs can often elicit more information than freedom of information requests.

Will the upcoming Rotating Presidency publish a list of all lobby meetings held in the run-up to and during the Presidency? Will they run a public consultation on the Presidency's priorities and ensure that the public interest is centre-stage at all times? Will they actively rule out employing any PR or lobby firms, and accepting any form of corporate sponsorship...

iv. To find out more about a decision which is in the comitology procedure, you can have a look at the **European Commission's comitology register** <http://ec.europa.eu/transparency/regcomitology/index.cfm> or you can contact the relevant Commission department, via Ask the EU, to try to clarify the process, timetable, and decision-making: <https://www.asktheeu.org/>

v. Every member state has a **permanent representation** in Brussels. They should be accountable to citizens so why not **contact them and ask about their work**, including which lobbyists they meet and why? Ask them to **proactively publish** this information on their website. Permanent representations can be contacted directly via their websites, or you could make a request for information via Ask the EU: <https://www.asktheeu.org/>

vi. If your member state is due to hold the **Rotating Presidency of the Council of the EU**, this is an opportunity to expose and even stop malign corporate influence. These countries are: Romania followed by Finland (2019); Croatia followed by Germany (2020); Portugal followed

by Slovenia (2021). Will the upcoming Rotating Presidency **publish a list of all lobby meetings** held in the run-up to and during the Presidency? Will they run a **public consultation on the Presidency's priorities** and ensure that the public interest is centre-stage at all times? Will they actively **rule out employing any PR or lobby firms, and accepting any form of corporate sponsorship** before and during the Presidency? These are just some of the questions that you or your MP(s) could put to the national government.

vii. Is there a particular corporate lobby based in your country that you are concerned about, especially how it influences national and EU decision-makers? Can you build a profile of its public policy demands? Can you make **requests** for lists of the **company's lobby meetings and lobby correspondence** with key EU and national politicians? At the EU level, LobbyFacts might be able to help you to build up a picture: <https://lobbyfacts.eu/> Have there been any **high-profile revolving doors** moves between this lobby and government? If national political parties are transparent about their funding can you see any **links between the corporate lobby and political parties**? Which **civil society organisations** might also be concerned about this, who might also have information or be able to help?

As this report makes clear, getting information about how member states act at the EU level, and the corporate influences upon them, is not easy, and some of the above suggestions may not elicit the information that you are after. But things will only change if we highlight the lack of transparency, expose the accountability gaps, and demand more democracy, so do use social media and other channels to highlight disappointing responses and refusals, as well as important information that you discover.

Good luck with this and keep in touch!

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# 10. Conclusion and recommendations

As this report has shown, there are many reasons why we should all be concerned about the extent of corporate influence over EU member states.

**Reason #1: Member states play a key role in EU decision-making, whether it is through the Council of the EU, the European Council, or through the EU's committee structure – and they must take responsibility for the positions that they adopt.** While it may sometimes benefit member states to distance themselves from the laws and policies of the EU, playing into the populist narrative that the EU imposes rules on them, in fact member states are around the table when all key rules, regulations, and policies are discussed and voted upon, and governments take conscious and proactive decisions to support corporate interests over the wider public interest.

**Reason #2: Member states are heavily lobbied by business interests and the far greater firepower of the corporate sector gives them a huge advantage.** This lobbying takes place in both national capitals, and often in Brussels too. Whether it is EU and national-level trade associations, multinational corporations, or their hired lobby consultants, industry lobbyists are very active and often effective. Their resources and capacity are unrivalled and enable industry to penetrate complex and opaque EU decision-making processes, to run major lobby campaigns across multiple member states, to pay for lobby consultancy services, and to track particular dossiers for as long as is needed.

**Reason #3: Some industries have an almost iconic status at the national level, and this can lead to a kind of symbiosis between policy-makers and corporate interests, where governments actively champion that industry in decision-making.** This symbiosis is based on a shared neo-liberal ideology, fuelled over the years by the revolving door, personal friendships, business donations to political parties, and the like. On some other issues, high-level member state politicians and officials have effectively 'internalised' the agenda of corporate interests, such as on economic governance, trade, or the 'innovation principle'. This means that industry, through member states, is helping to set the EU's agenda on some important issues, undermining public services, environmental protection, and the existing precautionary principle.

**Reason #4: Corporate influence has a large, visible, and negative impact on the process and outcome of EU law-making.** Whether it is by delaying or even blocking progressive proposals, introducing loopholes to benefit industry, or by securing pro-corporate funding decisions and rules, it is the public interest which suffers.



**Reason #5: Citizens are excluded from member states' decision-making on EU matters.** They are rarely consulted about upcoming decisions and not adequately informed afterwards. Member state governments receive some protection from public scrutiny of their actions at the EU level. The complexity of EU decision-making and its sheer volume, combined with processes which actively disallow key information from being placed in the public domain make scrutiny very challenging and provides further advantages to those with the resources to overcome them. National politicians, the media, and citizens cannot adequately hold governments to account for their positions adopted on EU decision-making.

But it doesn't have to be this way. For starters, several of the cases that we feature in this report – on 'renewable gas', the financial transactions tax, titanium dioxide classification, ePrivacy – are ongoing and it is not too late for member states to change their approach to secure outcomes in the public interest.

In the long term, substantial reforms are needed by member state governments, national parliaments, and the EU institutions, while citizens need to be enabled to play a far greater role. This report is a wake-up call to the threat that corporate lobbies' influence on member states poses to EU decision-making. We hope to create new interest in exposing and tackling this phenomenon and to provide further pressure for change at the EU and national levels, reinforcing and extending the work already underway by the European Ombudsman, the European Parliament, national parliaments, and some member state governments themselves.

### **Our recommendations for change include:**

- i. Adoption by all **member state governments of national level rules and cultures which reduce the risk of corporate influence on EU decision-making.** These should include:
  - Active recognition that the public interest is of an entirely different nature to, and should override, corporate interests, alongside an acknowledgment of the need to reduce the risks that come from corporate lobbying.
  - Creation of lobbying firewalls to prevent, first of all, the most toxic industries (for example tobacco, fossil fuels, tax avoidance) from influencing member states' decision-making.
  - An end to privileged access to ministers and officials by corporate lobbies.
  - An end to conflicts of interest and revolving doors, including for ministers and national officials who engage in EU decision-making.
  - An end to corporate money in politics, particularly when it comes to party funding.
  - Improved freedom of information rules and proactive transparency to cover lobbying and decision-making by ministers, officials, and permanent representation staff on EU matters.
  - Legally-binding national transparency registers which additionally cover member states' decision-making on EU matters and permanent representation officials.
  - Clear ethics rules for officials and ministers involved in a rotating presidency.

- ii. Far greater **member state parliamentary scrutiny and accountability on government decision-making at EU level**. This should include both pre-decision scrutiny and post-decision accountability with the examples of Denmark, Sweden, and others worth studying. Regional and municipal governments also have an important role to play and may well be more in tune with citizens' interests.
- iii. Action by the **EU institutions to tackle the role of excessive corporate influence within the democratic deficit** in which they operate. These should include:
  - o An improved EU lobby transparency register which covers the Council and the European Council, alongside the Commission and Parliament.
  - o Full and published minute-taking of Council working group meetings, to include the positions advocated by member states.
  - o Far greater public access to Council and European Council documents.
  - o Full and published minute-taking of comitology meetings, to include the positions advocated by member states.
  - o Live-streaming of key working group and comitology meetings.
  - o Proactive publication of lobby meetings held by the European Council President and his cabinet, with expanded ethics rules for the Council Secretariat which address the risks of corporate lobbying.
- iv. New **models for citizens themselves to both find out more about, and have a say on, the EU matters** with which member states are tasked with deciding. This could include participatory hearings, at the national, regional, or municipal level, on specific upcoming pieces of EU legislation; regular in-person discussion forums; digital consultations; citizens' initiatives involving petitions, and much, much more. Tools to enable citizen engagement should be actively encouraged by both member state authorities and EU institutions, and decision-making processes will need to be adapted to ensure that citizens can have a real impact on how new laws and policies develop.

2019 will be a really significant year for the EU with European Parliamentary elections due in May and a new European Commission to be appointed in the autumn. The EU's reputation has been increasingly damaged, not least because of the realisation that it very often works in the interests of elites, including corporate elites, rather than in the public interest. Far-right, nationalist forces and some member state governments seek to exploit this, while conveniently ignoring the fact that member states play a hugely important role in all key EU decisions, decisions which are also framed by the EU's systemic neoliberal bias. A key democratic problem lies in the way the EU allows corporate power to hold governments captive, and member states must take urgent steps to address it.

# Annex 1

Information requests on meetings with lobbyists, sent to permanent representations of member states to the European Union

## Template request sent to the permanent representations:

*"With reference to the [national freedom of information law], I would like to request the following information:*

*How many meetings have employees of the XXX Permanent Representation to the EU had with representatives of companies, organisations and other stakeholders, during the last 12 months?*

*I would like to request a list of these meetings: who was present at the meeting, including the names of organisations/ lobbyists presents, as well as the date of the meeting, and the subject matter discussed."*



### Austria

On 6 April 2018, a request was tabled via Ask the EU. A follow-up was sent on 14 September. Neither has been acknowledged or replied to at the time of writing.<sup>339</sup> Austria held the Council rotating presidency between July and December 2018.



### Belgium

On 17 April 2018, a request was tabled via Ask the EU.<sup>340</sup> Further communications took place by email and on 4 July the Belgian Permanent Representation confirmed that they do not hold the requested information.



### Bulgaria

On 6 April 2018, a request was tabled via Ask the EU. Further communications took place and on 14 September we were told that Bulgarian legislation "does not oblige officials at the Perm rep to keep records of any possible meetings with representatives of companies, organizations, etc. This is why, we are not in a position to provide the information requested."<sup>341</sup> Bulgaria held the Council rotating presidency between January and June 2018.



### Cyprus

On 6 April 2018, a request was tabled via Ask the EU. A follow-up was sent on 14 September. Neither has been acknowledged or replied to at the time of writing.<sup>342</sup>



### Denmark

On 6 April 2018, a request was tabled via Ask the EU. On 19 April, we were told that: "The ministry can inform you that the Danish Permanent Representation to the EU does not keep a list of meetings of any of its staff, so it is not possible to make a count of these meetings. The Representation has an open door policy and is generally accepting meeting requests from relevant stakeholders such as organisations, companies and civil society as long as the subject relates to the work of or in the European Union."<sup>343</sup>



### Finland

On 2 October 2018, a request was tabled via Ask the EU. On 12 October the following response was received:

“Our Permanent Representation keeps a list of all visitors visiting the Finnish Permanent Representation in Brussels. From this register we are able to pick up the date of the visit or meeting and the name of the visitor or visitors. The vast majority of these names are members of different groups which visit our Permanent Representation in order to learn about EU and our work in Brussels. Unfortunately we do not register the names of organizations or the subject matter discussed or the host of the visit.

Please do not hesitate to tell us if you find this kind list of visitors and dates of their visits in our Perm Rep during 1.10.2017-30.9.2018 useful for you. As collecting this information requests quite a lot of time, we will start this work only once you have confirmed us that this information is useful for you.

We do apologize that we are unable to provide you more exact information for the moment. But please note that from October 2018 we will publish on our website the information of all the lobbyists and companies who have visited Permanent Representative/Ambassador or Deputy Permanent Representative of the Finnish Permanent Representation.”<sup>344</sup> Lobby meetings with these two individuals are now being published on the Finnish Permanent Representation’s website.<sup>345</sup>



### France

On 6 April 2018, a request was tabled via Ask the EU. A follow-up was sent on 14 September. Neither has been acknowledged or replied to at the time of writing.<sup>346</sup>



### Germany

On 5 December 2018, a request was tabled via the FragDenStaat website. On 7 January 2019, a reply was sent which said that the requested list is not available; nor is there information available on how many meetings permanent representation staff have had.<sup>347</sup>



### Greece

On 6 April 2018, a request was tabled via Ask the EU. A follow-up was sent on 14 September. Neither has been acknowledged or replied to at the time of writing.<sup>348</sup>



### Ireland

On 28 March 2018, a request was tabled via Ask the EU.<sup>349</sup> We were asked via email to refine the request and we agreed to limit it to “Designated Public Officials” only, namely the Permanent Representative and Deputy Permanent Representative, rather than all 90 staff at the Permanent Representation. This data, which was taken from the two officials’ diaries, was supplied on 17 May 2018. See link to data at: <https://corporateeurope.org/power-lobbies/2019/01/data-permanent-representations-lobbying>



### Italy

On 6 April 2018, a request was tabled via Ask the EU. A follow-up was sent on 14 September. Neither has been acknowledged or replied to at the time of writing.<sup>350</sup>



### Malta

On 6 April 2018, a request was tabled via Ask the EU. A follow-up was sent on 14 September. Neither has been acknowledged or replied to at the time of writing.<sup>351</sup>



### Netherlands

On 10 April 2018, a request was tabled via Ask the EU.<sup>352</sup> A phone call was subsequently arranged between Dutch officials and Corporate Europe Observatory. On 2 July a list was sent which comprised meetings between employees of the Permanent Representation and representatives of companies, and other

stakeholders, between June 2017 and June 2018. The list included the name of the organisations met, the Ministry involved, the date of the meeting, and the subject matter discussed. See link to data at: <https://corporateeurope.org/power-lobbies/2019/01/data-permanent-representations-lobbying>



### Poland

On 6 April 2018, a request was tabled via Ask the EU. A follow-up was sent on 14 September. Neither has been acknowledged or replied to at the time of writing.<sup>353</sup>



### Portugal

On 19 April 2018, a request was tabled via Ask the EU. On 28 June we were told that the requested documents could not be released because they were diplomatic and not administrative documents as defined by Portuguese freedom of information rules.<sup>354</sup>



### Romania

On 6 April 2018, a request was tabled via Ask the EU. On 25 April, a list of meetings was provided which included the date of the meeting, the name of the lobby group met, and the general theme of discussion. See link to data at: <https://corporateeurope.org/power-lobbies/2019/01/data-permanent-representations-lobbying><sup>355</sup>



### Spain

On 11 April 2018, a request was tabled via Ask the EU. On 10 June we were informed that the Spanish Permanent Representation does not collect the data requested.<sup>356</sup>



### Sweden

On 6 April 2018, a request was tabled via Ask the EU. On 10 April we received the following reply: "The Representation must inform you that that we do not keep a horizontal track record of these type of meetings nor such a list as requested. As such an official document does not exist we cannot accommodate your request, in accordance with the Swedish Freedom of the Press Act.

However, the Representation keeps an unofficial record of selected official visits to our premises. We are currently in the process of making a summary of the records we have kept during the last 12 months, in case you would like to have access to these records. We would then be happy to provide you with them as an act of service. In that case please let us know. (These records do however only exist in Swedish)."

On 18 April, a list was sent which comprised "internal records kept of selected visits to our premises during the period in question."<sup>357</sup>



### UK

On 28 March 2018, a request was tabled via Ask the EU. On 12 April it was rejected as breaching the £600 threshold for the costs required to answer the request.

On 8 May, a revised request was submitted which reduced the scope of the original. On 20 August this request was also rejected on the grounds of "prejudice to the effective conduct of public affairs" and "international relations". We were told that the information was held and that "the Permanent Representative and Deputy Permanent Representative meet regularly with a range of stakeholders, including but not limited to, industry associations, business people, trade unions, journalists, think tankers, academics and so on in the normal pursuance of their duties as is the usual practice for the head of any FCO mission and other senior diplomats overseas."

Corporate Europe Observatory submitted a complaint about the handling of these requests on 12 September, and is still waiting for a reply.<sup>358</sup>

# Endnotes

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  346. French Permanent Representation: [https://www.asktheeu.org/en/request/list\\_of\\_meetings\\_4](https://www.asktheeu.org/en/request/list_of_meetings_4)
  347. German Permanent Representation: <https://fragdenstaat.de/anfrage/treffen-mit-lobbyisten-der-mitarbeiterinnen-der-standigen-vertretung-deutschlands-bei-der-eu/111651/anhang/190107BescheidVg.426-2018.pdf>
  348. Greek Permanent Representation: [https://www.asktheeu.org/en/request/list\\_of\\_meetings\\_5](https://www.asktheeu.org/en/request/list_of_meetings_5)
  349. Irish Permanent Representation: [https://www.asktheeu.org/en/request/permanent\\_representation\\_of\\_irel#incoming-16678](https://www.asktheeu.org/en/request/permanent_representation_of_irel#incoming-16678)
  350. Italian Permanent Representation: [https://www.asktheeu.org/en/request/list\\_of\\_meetings\\_6](https://www.asktheeu.org/en/request/list_of_meetings_6)
  351. Maltese Permanent Representation: [https://www.asktheeu.org/en/request/list\\_of\\_meetings\\_8](https://www.asktheeu.org/en/request/list_of_meetings_8)
  352. Dutch Permanent Representation:  
[https://www.asktheeu.org/en/request/request\\_list\\_of\\_meetings\\_permrep?nocache=incoming-16846#incoming-16846](https://www.asktheeu.org/en/request/request_list_of_meetings_permrep?nocache=incoming-16846#incoming-16846)
  353. Polish Permanent Representation: [https://www.asktheeu.org/en/request/list\\_of\\_meetings\\_9](https://www.asktheeu.org/en/request/list_of_meetings_9)
  354. Portuguese Permanent Representation:  
[https://www.asktheeu.org/en/request/reunioes\\_com\\_representantes\\_de\\_i?nocache=incoming-17885#incoming-17885](https://www.asktheeu.org/en/request/reunioes_com_representantes_de_i?nocache=incoming-17885#incoming-17885)
  355. Romanian Permanent Representation: [https://www.asktheeu.org/en/request/list\\_of\\_meetings\\_10](https://www.asktheeu.org/en/request/list_of_meetings_10)
  356. Spanish Permanent Representation: [https://www.asktheeu.org/en/request/list\\_of\\_meetings\\_11](https://www.asktheeu.org/en/request/list_of_meetings_11)
  357. Swedish Permanent Representation: [https://www.asktheeu.org/en/request/list\\_of\\_meetings\\_12](https://www.asktheeu.org/en/request/list_of_meetings_12)
  358. UK Permanent Representation: [https://www.asktheeu.org/en/request/uk\\_permanent\\_representation\\_lobb#incoming-16790](https://www.asktheeu.org/en/request/uk_permanent_representation_lobb#incoming-16790)
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Published by Corporate Europe Observatory (CEO) Brussels, February 2019

**Written** by Vicky Cann and Belén Balanyá | **Edited** by Katharine Ainger | **Designed** by Emily Sadler

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### **Acknowledgements:**

Thank you to Staffan Dahllöf, Katharine Ainger, Pia Eberhardt, and Olivier Hoedeman for discussions and insightful comments on the drafts of the text. We are also very grateful to Kenneth Haar, David Hillman, Nina Holland, Luisa Izuzquiza, Frida Kieninger, Hans Muilerman, Martin Pigeon, Ninja Reineke, Oscar Reyes, Pascoe Sabido, Antoine Simon, and Bram Vranken for their inputs and suggestions.

We thank EPSU, the European Federation of Public Service Unions, for assistance with the translation and presentation of sections of this report. [www.epsu.org](http://www.epsu.org)

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