

# The Constitution for Europe: An Evaluation

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ISBN: 99909-67-24-5 Paperback  
ISBN: 99909-67-15-6 Hard Cover

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*Typeset by the European Documentation and Research Centre.  
Printed by Media Centre Print*

## **INTEREST GROUPS AND THE EU DECISION-MAKING SYSTEM: HOW THE CONSTITUTION WILL AFFECT MALTESE INTEREST GROUPS TARGETING BRUSSELS**

MARK HARWOOD

In the study of the political dynamics involved in the EU's decision-making system, the scope and role played by national and European-level interest groups has continued to receive much attention. Interest groups are key players in domestic politics, representing an important link between the public and the officials they elect to run the government. For those who govern, interest groups are an important source of information, advice and interest-articulation. Increasingly, most interest groups have found their focus split between the national and European level as national competence in more and more policy areas is shared with the European Union. This can pose a challenge to many interest groups as they have to navigate a new and uncharted political system, try to devise new strategies to influence decision-makers as well as to establish new networks of cooperation at the European level with other, similar groups. Most of the time, they must also maintain their established, national activities as no policy area has been totally and completely taken over by the European Union. But with the challenges of navigating the EU waters come opportunities; The European level increases the number of actors involved and allows groups to devise new strategies to maximise their influence; it offers the chance for groups to find strength in numbers, especially when small groups can benefit from the assistance and experience of larger and more influential groups in other member states; as well as offering the opportunity for groups to strengthen their domestic influence by building on their strengths at a European level and vice-a-versa.

In studying the political environment within which interest groups operate at the European level, one of the principal factors to note is that the EU does not represent one single political system. Because of the EU's piecemeal development, the political system involved in decision-making changes from policy area to policy area and with it we see a shift in the role and influence of interest groups.

While the majority of the key actors remain the same, additional players may be involved and the dynamics are always different. This can be seen clearly in the area of the Common Agricultural and Common Fisheries Policy; where we see very similar decision-making systems but completely different political dynamics, especially for the interest groups concerned<sup>1</sup>. This means that, when analysing the strategies adopted by interest groups in targeting Brussels, one must always keep in mind that each policy area has its own nuances which warrant a more detailed application of the concepts discussed.

Much of the focus of the studies undertaken on interest groups concentrate on the EU-level and the developments of an EU-level system of interest representation. Hix (2005) undertakes an analysis of what interest representation types can be found in the EU while Mazey (1995) studies the development of European-level interest groups. For Schmitter (2000) the role of interest groups is an important opportunity for the EU to bridge the democratic deficit gap within the EU system; an opportunity to bring an increasingly apathetic European citizen closer to the decision-making system of Brussels. On a more practical level, Greenwood (1997) gives a detailed analysis of the opportunity structures and principal actors involved in EU decision-making.

Naturally, most of these studies have focused on the most dominant players in Europe, whether large and medium-sized member states or influential and well resourced interest groups, players who have been integrated into the Brussels' system for many years and which have significant resources. Interest groups can be of many different types, from the promotional to the protective, from the temporary to the permanent<sup>2</sup>. European-level interest groups can be even more

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<sup>1</sup> While the main interest groups representing farmers and farming co-operatives (COPA-COGECA) have long been involved in the working of the CAP, groups like EUROPECHE, which represent fishing associations, have largely been ignored in favour of other interest groups such as the environmentalists as well as the Commission's priorities.

<sup>2</sup> Protective groups aim to protect the interests of their members, such as unions, federations of industry. Promotional groups tend to promote an idea or ideology, such as environmental groups. Temporary groups are normally single-issue

various, ranging from those that cover all the member states and beyond to those that represent a distinctly regional area, from the internally weak to the highly organised and well-resourced business groups. Each have a different EU-level strategy and target different players. However, the application of the knowledge gained in relation to these types of groups can be considered debatable when considering the Maltese system of interest groups and the opportunities open to them at the EU level.

Maltese interest groups find themselves at a disadvantage in this new political playground. First, they do not have the history of participation which so many other players enjoy. This means that they are still at the beginning of the learning curve begun with membership, building up networks of official and unofficial contacts with the key players at the European level. Malta's size also means that gathering support for the priorities of Maltese groups entails maximising very limited political influence, with limited voting power within the various institutions as well as in the European-level interest group umbrella organisations. While size is definitely not an automatic corollary with power, each member state must deal with an expanding Union in which their relative power and influence will be consistently challenged and compromised.

In addition to this, Maltese interest groups must contend with several key limitations including, in most cases, limited resources, a widespread lack of knowledge across Europe of local issues and Malta's peripheral status. Malta is situated far from the centre of power. While other EU citizens can nip over to Brussels, lobby for an hour or two and be home for supper, local groups do not have that luxury. For many Maltese, Brussels remains a distant place, both physically and strategically. The standard advice that interest groups should lobby as many influential players as is possible at all

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groups that come together to achieve a particular aim, such as halting a development project, and normally disband once the issue has been resolved. Most interest groups are permanent groups with multiple aims.

times has little local application<sup>3</sup>. It is a question of being selective and of highlighting priorities.

In this paper, I will attempt to analyse the implications of the Constitution's provisions on decision-making procedures and the relative powers given to the EU institutions, in particular the European Parliament. The aim will be to see how changes in the 'balance of power' between the three main institutions may affect the lobbying priorities of Maltese interest groups in the near future. We will begin by looking at the channels of influence open to interest groups in the EU, focusing primarily on which players represent the best target for local interest groups. Once this has been established, we will then analyse the Constitution's provisions in terms of the role of the various EU institutions and proposed changes in the decision-making system of the Union. From this, we will try to highlight the possible shift in the significance of the three institutions for Maltese interest groups and how this may necessitate a change in the lobbying priorities of Maltese interest groups in the future.

### **Targeting EU Institutions**

Interest groups normally act within the domestic political arena to try and achieve one of several things: to initiate a policy, to try and influence an established policy or to enter into discussion in the formulation of solutions to particular problems. Suggested changes can be radical or minor. Whichever outcome is desired, the interest group must mobilise its resources to maximise its influence over the government and administration if it wishes to have its priorities recognised and incorporated into government policy. Much the same can be said regarding decision-making at the European level, the principal difference being that the national government is now only one actor in a complex system, a system which involves other actors outside the control of the national government.

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<sup>3</sup> Sonia Mazey and Jeremy Richardson 'Interest Groups and EU Policy-Making' in Jeremy Richardson (ed.) *European Union: Power and Policy Making*. Page 229.

There are two methods by which one can analyse interest group lobbying of the EU political system. One can either view the process in terms of the chronology of the decision-making procedure, from inception to enforcement, or one can look at it from the perspective of the principal actors. For the purpose of this paper, we will take the latter approach. It allows one to incorporate aspects of the first approach while also accommodating the fact that there is no single, standard decision-making process. The role of the three main institutions, the Commission, European Parliament and Council of Ministers, fluctuates across different policy areas. In many key areas like agriculture, the EP plays only a minor role in decision-making, the principal decisions being made by the Council in conjunction with the Commission. This fluctuation has consequences for a time-based analysis of lobbying but creates fewer problems for an institution-based analysis.

### *The European Commission*

The European Commission is the logical starting point for any analysis of interest group lobbying of Brussels, primarily because it is the Commission which acts as the initiator of most EU policies as well as being conspicuously open to consultation, both as a data gathering exercise and in the formulation of draft legislation.

As the first point in the decision-making process, the Commission is an attractive target for interest groups. Its relatively small number of staff has often made it dependent on national interest groups to supply information. The Commission has also used widespread consultation as an important mechanism in ensuring a smoother passage for proposals through the Council and EP, as well as facilitating the implementation of legislation on the ground<sup>4</sup>. However, while the Commission likes to depict itself as listening to the voice of the European masses, the sheer volume of groups targeting the institution has increased exponentially over the years, to the point where it cannot possibly listen to everyone. With

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<sup>4</sup> Dionysis Dimitrakopoulos and Jeremy Richardson. 'Implementing EU Public Policy' in Jeremy Richardson (ed.) *European Union: Power and Policy Making*. Page 346.

each enlargement and as greater competences have been shifted to the EU, the Commission has had to become increasingly selective about who it chooses to listen to, increasingly favouring European-level umbrella groups.

The European umbrella groups can be considered a necessary but unsatisfactory solution to the problem of listening to an ever-expanding citizenship. Often created specifically by the Commission, these groups do much of the work which was previously done by officials; they bring together a large number of similar groups from across Europe, often with more than one group from each member state, and basically channel and sift through the various national demands in devising a final, filtered opinion on EU policies and proposed legislation. When individual priorities converge, this can be of benefit to all concerned, with members of the umbrella group gaining strength in numbers. But when one interest group's priorities may necessitate a different stand or fail to find backing from the other members of the umbrella group, then the national interest group may find its particular priorities sidelined, by both the umbrella group, and by default, the Commission.

The principal benefit of targeting the Commission, beyond its tendency to listen, is that interest groups can lobby for their priorities to be incorporated into the ideas that go towards the drafting of the legislation even before pen is put to paper. Strategists advocate that interest groups should establish an extensive network of contacts within the Commission with the aim of hearing about initiatives at their very inception, when officials are undertaking consultation with interested parties, including officials from the member states. However, this involves an investment in human resources, situated in Brussels, which many interest groups find financially impossible. At this stage, umbrella groups can play a role, notifying their members of initiatives, but even certain umbrella groups lack the resources to cover more than a fraction of the officials working in the relevant Directorates-General. In addition to this, the increasing tendency for the Commission to issue Green Papers, as well as the involvement of national officials in the Commission's consultation process, means

that trying to target the Commission at the very beginning of the formulation stage may be a luxury open to only a few and a luxury which many may not need, assuming one can gain the ear of the national government.

An additional caution in lobbying the Commission is the fact that a draft proposal must travel a fair distance before actually coming out of the Commission and passing to the next stage of the decision-making process (deliberation between the Council and the European Parliament, assuming it is an area of co-decision). From the Unit within the DG where the actual drafting of the proposal takes place, the proposal must then pass up through the Directorate General before passing into the cabinet of the Commissioner responsible for that proposal. On the journey up, the draft can be amended after the legal recommendations of the legal service or by the recommendation of other DGs, especially as many policy areas increasingly involve several sectors covered by different DGs<sup>5</sup>. Once within the cabinet, this bargaining can become more pointed, as the members of the cabinet try and balance possible conflicting demands as well as satisfying their own political priorities, before a proposal goes to the vote in the College.

An important point in reference to lobbying the Commission is the fact that the College must vote on, and approve by a majority, a proposal before it is passed out of the Commission. The College is often depicted as a group of officials working in the general European interest but it remains a political group of individuals, the majority drawn from the ruling political parties across Europe and Commissioners are not above the tendency to be swayed by the interests of their home country<sup>6</sup>. This has often meant that those devising strategies for lobbying the EU decision-making process often highlight the use of targeting the 'home' Commissioner and his or her cabinet, in trying a last ditch attempt to influence draft

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<sup>5</sup> A good example of this is policy under CAP. Increasingly CAP has become associated with trade policy, environmental policy and health with various DGs having a keen interest in the policy areas of DG AGRI.

<sup>6</sup> This is especially marked during the annual 'clearing of accounts' when commissioners often lobby to have the fines imposed on their home countries reduced.

proposals. While this is a valid and useful option, especially for interest groups from small states which cannot invest heavily in the networks that stretch down into each and every DG, it takes a very special type of interest group that can envisage its priorities being successfully accommodated by having a 'home' Commissioner interfere in the work of another Commissioner, as would often be the case. Therefore, for interest groups from small countries, the Commissioner and his or her cabinet represent an accessible avenue for influencing drafting but at a stage of the process when the opportunities of success of such an attempt is highly debateable. At the same time, the more successful approach of targeting more humble officials involves a degree of financial commitment that many groups simply do not have. It is not just the case of having people on the ground. They must be able to gather information regarding potential Commission initiatives, to find and target the individuals within the Commission devising the legislation and to establish the networks upon which trust can develop into consultation, demands which necessitate more than one individual.

### *The Council. The 'national route'*

Once an EU 'draft' policy or legislation has passed out of the Commission, it moves to the next stage where the member states, within the Council, will discuss their collective position on the Commission's proposal with the varying input (from one of co-decision to mere consultation) of the European Parliament.

Lobbying the Council of Ministers is often referred to as the 'national route' for interest representation. It is a highly useful avenue for influencing EU decision-making because it is so intimately linked to domestic politics, with national governments operating within the national political system. Governments are intimately tied into the general well-being of the country, both politically and economically. If governments wish to be re-elected they must be sensitive to the concerns of the people who elected them into government, concerns often expressed through interest groups. While EU officials and other EU governments may remain blissfully ignorant of local problems, the national government

cannot afford to ignore its domestic support for too long. This makes it more likely that an interest group can convince national governments to incorporate their concerns and priorities into national objectives at the EU level.

The primary utility of the national route is based on the fact that the member states are involved in all decision-making within the EU, through membership of the Council. For a long time, this power was almost exclusive, with the Council having the final say in all decisions taken. With time, the centrality of the Council in decision-making has been tempered. In many policy areas, which now fall under co-decision, the Council shares its decision-making powers with the Parliament. The power of the member states has also been affected by the increasing tendency to use Qualified Majority Voting (QMV) within the Council. Governments, thus, face a double challenge in trying to push their European agenda. This challenge comes from the EP and from other member states, especially if a member state finds itself in a minority within the Council, especially a minority too small to constitute a blocking minority.

While the above could imply that the national route has lost some of its attractiveness, the reality is that the national route remains a very beguiling option for many interest groups, especially those from small countries. While the Council's powers have been made conditional in certain policy areas, the Council remains the key player in all EU affairs. There is also a tendency, as far as possible, for states to accommodate the national concerns of other member states when voting by QMV on decisions within the Council. Should member states also view an issue as a keen priority, they also have the option to mobilise resources in trying to bargain for support from other member states to either create a blocking minority or a qualified majority.

Another key factor that determines the effectiveness of the national route is the effectiveness of the national coordination system which determines EU-level policy positions and coordinates national strategies at the European level. Countries do not all have the same system and some member states lack effective methods for

devising EU level positions, priorities and strategies. However, in the case of countries with very strong, centralised coordination systems, like Denmark, the UK and France<sup>7</sup>, the government is able to devise effective and timely positions on EU proposals, to communicate those positions to their representatives in Brussels and then to ensure the effective implementation of those positions through the adoption of a centralised and coordinated European strategy. Interest groups operating in a country which does have a highly organised and effective coordinating system can benefit from a national strategy, assuming the government is open to incorporating the interest group's priorities into its overall aims at the EU level.

When assessing the attractiveness of the national route, the benefits of this option often rest upon the fact that national governments have immense powers within the Council. But an additional factor that makes the national route so attractive is the fact that national officials, whether from the representation office in Brussels or from home ministries, participate in many important forums outside the Council. In particular, member states are involved in much of the workings of the Commission. In this respect, member states play an important role in the Commission's numerous expert committees, which are consulted in the drawing up of draft legislation. This means that the national route can also extend into the drafting stage of the decision-making process. Of course, it is up to the Commission to decide to what degree it will listen to the individual concerns of a member state, but the Commission will always try to be sensitive to national concerns to minimise problems at a later stage of decision making. This involvement in the working of the Commission is even more significant when it comes to comitology. This delegated role allows for the Commission to devise secondary legislation and it must do so through a series of committees which give varying power to the member states to control what the Commission is proposing. Here, in particular, the member states

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<sup>7</sup> B. Guy Peters and Vincent Wright. 'The National Coordination of European Policy-Making: Negotiating the Quagmire' in Jeremy Richardson (ed.) *European Union: Power and Policy-Making*.

show their wide involvement in the entire legislative and executive functions of the EU.

This leads to another, associated, factor which can make the national route very attractive. To participate throughout the Council of Ministers, to be actively involved in much of the consultation process within the Commission as well as the myriad other networks which link the national administration with the European Parliament and other Brussels' based institutions, involves a large and well resourced machinery. Each member state has the resources to station a large and highly trained group of individuals in Brussels as well as maintain the national bureaucracy at home which communicates with EU institutions daily. When the government has a highly centralised and coordinated policy on Europe, this resource can represent the best mechanism for targeting EU decision-making. It has the resources to collect information and to channel this through to national players; it has the network on the ground which can help interest groups to highlight targets and to lobby on their behalf; as well as acquiring, over time, the understanding of how best to negotiate the treacherous waters of central Brussels. More importantly, the government can, at times, be the only substantial player that has anything to offer, in trying to establish backing for an interest group's demands. Governments can trade, offer future support, threaten to block an initiative and a myriad other strategies which smaller players further down the chain simply do not have. And what makes this national route even more attractive is the fact that they are to be found on the interest group's door step. Groups can kick back and let ministers and their acolytes do the travelling for them. In this way, the national route can also represent the most cost-effective means of lobbying the European Union.

A final point which can be mentioned in support of the national route is the importance of national governments in the final stage of the EU policy process. The EU policy-making process can be divided into three distinct stages; the drafting stage, the decision-making stage and, finally, the implementation stage. This final stage can often be quite straight forward, especially when dealing with EU Regulations. In ensuring their adoption and follow-up, the

Commission plays a significant role. But much of the EU's output is through the use of directives. These must be transposed into national law by the member state and it is the home government which implements and enforces these laws. This allows governments a large degree of discretion in incorporating new EU legislation into national law as well as some lee-way in implementation, the history of the EU being littered with instances of governments failing to implement unpopular EU rules. While this can not continue indefinitely, it can be used as an important political tool; it allows the government to distance itself from unpopular EU decisions by showing a will to resist but can also serve as an important transitional period, giving national players greater time to adapt and adjust to new EU rules. Thus, the national route serves as a last ditch attempt at influencing EU policy, either through the transposition process or during enforcement and can represent a last ditch attempt at trying to influence outcomes, especially if an interest group was unsuccessful during the first and second stage of decision-making.

### *The European Parliament*

Of the three main EU institutions, the EP has seen its significance increase over time, especially with the co-decision procedure which gave it equal status with the Council in the EU legislative process. This has made the Parliament an effective player in decision making and one keen to flex its muscle. However, targeting the Parliament and getting results is not as simple as many may assume and various factors are involved which seriously compromise its utility.

First and foremost, once a proposal comes before the Parliament, it is no mean feat to gain support for a proposal when decisions are taken by over 700 individuals. In this respect, it is generally agreed that the most effective way to lobby the Parliament is to aim at three distinct players, individual MEPs, the relevant committees and the rapporteur. At the initial stage, MEPs from the interest group's home state can represent an important link into the Parliament. Much as with national officials, MEPs, eager to be re-elected and to cater to their voter's concerns, may be willing to

throw their weight behind an interest group's priorities and to help the group navigate the Strasbourg waters. They can provide important links to key players in the relevant committees as well as lobbying their EP party group to back a particular issue. No single country has enough MEPs to ensure a proposal is adopted in the plenary session of Parliament and greater success is possible by ensuring political support from one of the major political groups within the EP. MEPs can also help in raising issues in the plenary session, in using their staff, situated in Strasbourg and Brussels, to do the actual foot work as well as representing a key alternative to the national route should a government show a lack of interest in an interest group's demands, a factor which we will come back to a little later. As with the national route, one of the most notable benefits of targeting the EP is the fact that MEPs represent a cost-effective option; the MEP can do the travelling, has the resources and can use his or her networks to get things done without the interest group having to do any travelling themselves.

When a proposal enters Parliament, it is allocated to a committee which will then draw up a preliminary recommendation on how the Parliament should vote on the Commission's proposal or subsequent changes made by the Council. The committee and its rapporteur, who draws up the report, represent the second and third key players in the Parliament. It is the rapporteur who will consult with and draw up a recommendation on how the EP should vote and what changes may be required to the draft text. As with the Commission, targeting this individual allows for an interest group to have their views accommodated at the very beginning of the drafting of possible suggested amendments. However, it is rarely so fortuitous that the particular committee drawing up the report will have a rapporteur from the same country as the interest group. This being the case, one cannot automatically assume that the rapporteur will be sensitive to an interest group's concerns, especially if the MEP has conflicting demands being made upon them by other interest groups from their home state. However, an interest group's 'local' MEP can provide an important link to these individuals.

This is where the utility of the committee comes in. The draft report of the rapporteur is then debated within the committee. It is

more likely, at this stage, that there will be an MEP from the home state. Trying to influence the recommendations at the committee stage are more likely to be successful than when the issue comes before the plenary session for a final vote. Once an issue reaches the plenary session, any changes suggested would have to be minor; the main political parties will have already convened to decide how they would plan to vote on the proposals before the plenary session and no proposal can successfully get through the Parliament without the agreement of one or more of the big political groups.

This very long-winded process depends too heavily on having to drum up a level of support which many interest groups, especially if isolated and preoccupied with domestic issues, may find difficult to muster. The large number of MEPs involved means a limitless number of possibilities of other, conflicting interests being directed at MEPs, of more effective groups getting the upper hand, or larger groups from bigger countries gaining the advantage of a greater number of MEPs to lobby. There are too many stages at which a proposal can be modified or over-ridden. Even if a proposal is successful and incorporated into a final position and sent back to the Council, opposition from the latter could force the issue into a conciliation committee, at which stage the bargaining process could 'easily see the interest group's concerns dropped. When an issue goes to conciliation it has already become highly politicised and this can make compromise difficult. Therefore, the EP road is a long, convoluted and rocky road where many runners are competing with each other to be heard by 732 MEPs who are themselves competing to be heard.

### **Optimising Limited Resources in Deciding Whom to Target**

The number of interest groups targeting the European Union has increased rapidly in recent years with more and more regions, companies and social groups, amongst others, establishing offices in Brussels<sup>8</sup>. But interest groups must have substantial resources to

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<sup>8</sup> Simon Hix, 'Interest Representation' in *The Political System of the European Union*. Macmillan, London, 1999.

meet the oft-quoted advice that those wishing to influence EU decision-making should try and target as many institutions as is possible, as often as is possible. Obviously, most interest groups do not have such limitless resources and it then becomes an issue of deciding where to allocate time and money to achieve the best results.

From what we have said above, it would seem logical, assuming a sympathetic government open to the particular concerns of a group, that the national route is the most cost effective. The government has direct power in Brussels over decision-making. Even in those areas where that power may not be exclusive, the government has the network and resources to strike bargains across policy areas with other member states. As governments have the power to vote across the entire EU policy spectrum, smaller countries often find themselves voting on issues of no national interest. This can make the opportunities for striking deals even easier, giving small states large currency to haggle in the few areas where they actually do have a national interest. In addition to this, the government also has a large and highly trained staff that can play the Brussels' game, constituting a relatively 'cheap' pool of expertise.

For Maltese interest groups, the national route is even more attractive than for similar groups in other countries. The Maltese coordination system for devising EU-level policy is highly centralised and efficient. The representation office in Brussels is intimately connected to this coordinating system which means that policy decisions at home can be quickly implemented in a Brussels' strategy. Because of this strong and centralised coordination system, Maltese interest groups can be more confident that once they have successfully won over government their interests will be effectively defended within the EU.

An additional factor that makes the national route so appealing is the fact that interest groups can target national capitals without the need to incur expenses in lobbying directly in Brussels. Considering the limited resources of local groups, the national route allows for Maltese interest groups to save extensively on many of the financially draining expenses of targeting the EU, such

as travel expenses, hiring of professional lobbyists, paying for information gathering services and so on.

For Maltese interest groups, the national route is highly attractive. For want of resources and time, it may be the only option. But this does not mean that this easiest of options should be the only one adopted by an interest group. Even from the vantage point of our small Island, Brussels cannot be simply targeted by relying exclusively on the government's resources.

There are several important reasons why interest groups must invest in lobbying the European Parliament and, possibly, the Commission. In some cases, interest groups do have the resources to allocate time and money to a direct lobbying of people and institutions in Brussels. If a group does have the resources to be situated in Brussels, this can help them in establishing networks, gathering information about potential developments and lobbying institutions other than the Council. Government may not always be able to communicate all information to those interested and having their own information gathering source can allow groups to be more prepared. Thus, for those with the means, the traditional adage of lobbying everyone at all times makes targeting the other institutions valid.

Another factor that can encourage looking beyond the national route is when an interest group may be articulating an interest which is not exclusively domestic. European Union membership can create countless opportunities and challenges for different groups across different countries but there is the possibility that similar interest groups may have the same priorities at the same time. This type of association is facilitated by the umbrella groups which can make interest groups aware of similar groups in other countries and enable them to highlight areas of common concern. In this situation it would be easier to target the EP as the issue assumes extra-regional importance and would be able to attract greater prominence in the EP. It also becomes easier to highlight the importance of accommodating that concern when it comes to influencing the Commission.

But targeting the EP and the Commission may not be a luxury some groups have but which they may find to be a necessity. Till now we have spoken about a hypothetical situation in which the government realises the importance of a group's concerns and adopts them into its EU priorities. But there will be countless occasions when the government is not sympathetic to a group and may actually try and work against that group through the Council. In this case, the group must target other institutions. It can even be the case that the government may make a commitment to a group's cause but either chose not to fully translate its pledge into action or strategically use that group's goals as a bargaining chip in a wider game. Whichever is the outcome, the best option is to try and target the other institutions as a type of safety net.

Therefore, there are several key reasons why interest groups must look beyond the national route for results. In this respect, the EP offers itself as the next best option when targeting Brussels. While the factors mentioned above have not changed (very difficult to muster enough support across the whole EP, problem that EP recommendations may be not be accepted) the EP offers some notable benefits. These include the fact that MEPs are based at home with resources in Strasbourg and Brussels, making the lobbying of these individuals easier. They are keen for re-election which makes them more open to be influenced. The EP is a relatively open institution but a highly political one. It is easy to lobby across the Parliament and individual committees but it is not so easy to play the political game and an MEP, well chosen, can be an effective player.

The EP is also a good target because it is a major player in terms of decision-making. While it does not share decision-making power with the Council in all areas, its scrutiny of the Council and the Commission, its important role in controlling non-compulsory spending, its increasing tendency to flex its muscle with the Commission make it an important and influential actor. Finally, the EP is a media circus. Most MEPs base their work on trying to achieve exposure back home. The backing of an MEP can be a major source of media exposure for a group's priorities.

The EP is an affective alternative to the national route for those areas where the EP shares legislative power with the Council. However, there are several key areas, such as agriculture, fisheries, trade policy (to name a few) where the EP does not enjoy co-decision power in legislating. In these areas decisions are made as a compromise between the member states with a heavy input from the Commission. Therefore, in areas where the Commission enjoys extensive competences, its attractiveness as a lobbying target is acute. While it still involves a heavy financial commitment, it remains the only viable alternative to the national route, the EP route having only minimal influence.

In those areas where the EP does enjoy co-decision power, the Commission's status as the most open of EU institutions has little consequence and, for Maltese interest groups its importance cannot be considered that significant. It involves a large commitment of financial resources to have any access to the workings of the Commission. While groups may wish to 'hit' the Commission before a proposal is formulated, it has still to be kept in mind that the final legislation may bear no resemblance to that issued by the Commission. And one of the key factors for success with the Commission, getting in early while initiatives are being formulated, demands a number of personnel that many local groups simply do not have. In this way, taking into consideration the cost of devising a European strategy, and assuming the national route is impossible, it would appear that the EP is the next best option with the Commission trailing far behind (except in those areas where the Commission enjoys extensive competence), to say nothing of the minor institutions which have not been dealt with here and which have an even weaker claim to importance, especially the Economic and Social Committee and the Committee of the Regions.

### **The Constitution and its Provisions on the Role of the Institutions and Decision-Making**

In trying to analyse the potential impact of the Constitution for interest groups when devising their EU strategy, several key changes are stipulated in the Constitution which could have a significant impact. These provisions relate to developments within

the Council regarding the use of Qualified Majority Voting and the power of the European Parliament over decision-making.

We have spoken so far about the positive factors which make the national route so attractive. Many of these factors will not be changed by the Constitution. However, one of the principal benefits of the national route is the power enjoyed by the member states within the Council. While that power is relative, Malta having the smallest number of votes within the Council in matters of QMV, a country's limited number of priorities can make it an effective player in buying and selling support within the Council. How will the Constitution affect this situation?

The Constitution makes two important provisions in relation to the use of QMV. The first relates to its extension to cover around twenty additional areas of EU competence. As of 2009, the extension of QMV will mean that states no longer have the right of veto in these areas with a resultant shift in the EU strategy of member states (states which lose the right to veto are more likely to enter negotiations open to compromise)<sup>9</sup>. This development will

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<sup>9</sup> Articles switching to QMV are;

Configuration of the Council of Ministers (Art. I-24)

Implementing Acts (Art. I - 37)

Taking up and pursuing activities as self-employed persons (Art. III - 141)

Coordination of economic policies (Art. III - 179)

Excessive deficits (Art. III - 184)

European System of Central Banks (Art. III - 187)

Tasks, objectives and organisation of the Structural Funds and Cohesion Funds (Art. III - 223)

Common Transport Policy (Art. III - 236)

Justice and Home Affairs: Administrative cooperation (Art. III - 263)

Border checks (Art. III - 265)

Asylum (Art. III - 266)

Immigration (Art. III - 267)

Crime prevention (Art. III - 272)

Eurojust (Art. III - 273)

Non-operational police cooperation (Art. III - 275)

Europol (Art. III - 276)

Culture (Art. III - 280)

Initiatives of the Minister for Foreign Affairs (Art. III - 300)

European Defence Agency (Art. III - 311)

not affect several key sectors where unanimity will remain, including in the area of taxation, the common foreign and security policy, the common security and defence policy, harmonisation in the field of social security and social protection, citizenship and membership of the Union. Also, with the introduction of the new bridging clause, additional areas can be moved into the area of QMV by a unanimous decision of the European Council without the need to convene an IGC.

The extension of QMV will mean that national governments will lose some of their power within the Council, making it slightly more difficult for a government to ensure achieving its priorities. However, more significant to the power of the member states in the Council is the second innovation of the Constitution, the double-calculation of what is a qualified majority or a blocking minority.

The Constitution, in an attempt to balance the idea that the Union is a coming together of the countries and peoples of Europe, devised a new system of calculating QMV. Article I - 25 of the Constitution abandons the established system of a single QMV in favour of a double majority system. A qualified majority is reached when a decision within the Council is backed by 55% of the member states, at least fifteen of them, and these states must represent 65% of the Union's population. This provision also applies to QMV voting within the European Council. When voting on a proposal which did not originate from the Commission or on an initiative of the Union Minister for Foreign Affairs, the number of member states voting in favour must be 72%. The new rules also extend to a new provision on blocking minorities which states that blocking minorities must be comprised of four member states or more, to ensure the big 'four' do not block decision-making by coming together in groups of three.

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Appointment of the Executive Board of the European Central Bank (Art. III - 382)

Therefore, the overall power of the member states will be affected by the new Constitution. They will have to vote on more and more issues by using QMV and that QMV will necessitate a large degree of support. For small countries like Malta, whose voting powers far out weigh its population size, this means that the country retains its 'weight' in terms of the first criterion of the double majority system but appears as less significant when looking at the second criterion. When looking to bargain within the Council, a smaller member state will thus appear as a less important addition to the sums than a medium sized country should a majority be lacking in terms of the second criterion. While this may be expected to be the exception rather than the rule, enlargement to include more and more populous countries will mean that the second criterion could become a key factor with very small countries having little to offer in making up the sums.

The relative power of the Council, and the member states within it, is also affected by changes in the Constitution in relation to the powers of the EP. Several provisions within the Constitution make significant additions to its powers in decision making as well as in the overall running of the Union, as well as the particular development of an extra seat for Malta within the EP. The provision, that even in the smallest member states the major political groups can all be represented within the EP, means that Malta will gain an extra MEP as of 2009. This will only have minimal implications for Malta. While the EP continues to grow, with enlargement, it will at least ensure no lessening of Malta's presence in the Parliament. Also, as another avenue for trying to lobby the EP, as an additional actor for networking within the Parliament, any additional MEPs can be considered a good thing.

Innovations in the area of the EP can be broken down into three key areas. The first and the most significant are the changes to the decision-making system of the Union. First and foremost, the Constitution stipulates that the Union will dispense with its complex methods of decision-making, broken down into co-decision, consultation and assent (the power of the Parliament relative to the Council decreasing down the line). From 2009 decision-making will be via the ordinary legislative procedure (Art.

I - 34 and III - 396) or the special legislative procedure (Art. I - 34). The latter will incorporate the old methods of consultation and assent and will continue to vest the greater share of decision making in the Council. It will apply for the most part in the area of justice and home affairs, aspects of the budget and in the area of taxation. But the ordinary legislative procedure will become the rule and will replace the co-decision procedure. It will place the Parliament on equal footing with the Council in almost all areas of decision-making and involve a much simpler procedure; rather than the multiple readings involved in co-decision, the ordinary legislative procedure will involve a single reading in the EP and Council before going to a conciliation committee, should this be required. The increased relevance of the EP with the creation of this simplified decision-making method is complemented by its extension into more and more areas of Union competence, effectively expanding co-decision's application, which will, in turn, effectively expand the role and importance of the Parliament.

Parliament will also see a significant change in the area of the budget. Until now, the EP has played the dominant role in the setting of non-compulsory spending. This has effectively kept the EP out of decisions in relation to spending on agriculture, fisheries and other compulsory spending. The new constitution has done away with this distinction between compulsory and non-compulsory spending and created a procedure similar to the ordinary legislative procedure. The EP and the Council will have a first reading on the Commission's recommendations and then go to conciliation, should it be needed. This means that the EP will have an important input in areas of Union spending over which it previously had none. But the other side of the coin is the fact that the EP will lose its exclusive control over non-compulsory spending. The possible implications of this are limitless. It increases the EP's presence in the workings of the Union, allows it to highlight where it feels money should be spent as well as facilitating its general standing within the institutions.

The final innovation of note relates to the election of the President of the Commission. This is a power the EP has enjoyed for some years now but what is interesting is the inclusion of a clause on the

role of European elections. Until now it has been up to the discretion of the Council members to find a compromise and nominate an individual to the position of President of the Commission. It is then the responsibility of the EP to endorse or reject this individual. But the new Constitution stipulates that the EP, in voting for the president, must do so by taking into consideration the European elections. It is held that this change indirectly increases the influence of the EP and lends importance to the European elections which have traditionally been regarded as second order elections.

So what is the implication of the developments listed? One can safely say that the importance of the European Parliament will continue to grow, especially with the new Constitution. The EP will see its significance within the legislative procedure increase with greater power over decision-making in more and more areas. This will be to the detriment of the powers of the Council. Its increased relevance in budgetary matters will also have a direct effect on its significance in terms of the EU's overall aims, as it must decide what is spent and where. What is even more important is the indirect relevance of these changes. The Commission must be more open to listen and take into consideration concerns expressed by the EP or those aiming to lobby the EP, as Commission drafts ultimately have to gain EP approval in those areas falling under the ordinary legislative procedure. The same can be said of the Council, which will increasingly have to rely on developing a relationship of equality with the EP if the simplified, ordinary legislative procedure is to work.

In fact, of the innovations mentioned, the EP can be seen to have gained significantly at the cost of the Council while the Member States within the Council will also see their power wane within the overall structure of the Council. This does not mean that their power is significantly less but does mean that certain countries, especially small countries like Malta, may find their bargaining options within the Council challenged by its weakened status in QMV areas when second-criterion issues are involved.

Based on what was stated at the beginning of this paper, Maltese interest groups have three principal actors to target in Brussels. The Constitution will not change the fact that the national route retains important attractions; the government's power in a main institution, its resources on the ground and its vested interest to keep local interest groups happy. While the bargaining game in the Council will become more complex with the relative weight of smaller countries compromised to a certain degree, the national route remains the most cost effective for a small country with interest groups that only have minimal resources. The national route is also the best source of information on EU developments, whether via MEUSAC, directly from government departments or through the national parliaments. The heavy demands of keeping up to date with developments in Brussels is almost completely impossible unless one has a very coordinated and well staffed centre for collecting and disseminating information. Malta's small size, very organised public service and highly centralised coordinating system means that the government is the best source for providing this information service and, as if oft quoted, half the battle in Brussels is knowing that a battle is about to start.

However, there remain important arguments in favour of interest groups cultivating other contacts in Brussels. Until now, these arguments have centred on the possibility that the government would decline to endorse an interest group's priorities or prove ineffective in realising those priorities. With the relative decline in national power for small countries, envisaged in the new Constitution, and the increasing relevance of the EP, devising an EP strategy becomes more and more relevant. The EP will enjoy greater significance in decision making as well as its general standing with the other institutions. The EP will also represent an important opportunity to augment the national route at the EP level. And the whole attractiveness of the initiative is that it represents a relatively cheap method of lobbying the institutions. Maltese MEPs will increase in number and represent an important alternative to ruling parties should the national route be closed off to a group due to political reasons. MEPs offer similar benefits to those listed in relation to the national route; while a MEPs staff is small, their base in the actual institution, their network of contacts, their ability

to draw on the resources of the party group they belong to, can make them very effective at the EP level, always taking into consideration the EP limitations mentioned above. This being the case, interest groups will have to increasingly cultivate an EP strategy from 2009 onwards, as both an alternative and a complement to the national route.

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