WHEN BIG BUSINESS DOMINATES
POLICY-MAKING AND THREATENS OUR RIGHTS

CORPORATE CAPTURE IN EUROPE

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ALTER-EU is a coalition of over 200 civil society groups and trade unions concerned with the increasing influence exerted by corporate lobbyists on the political agenda in Europe. ALTER-EU ran the Politics for People campaign at the 2014 EU elections which gained the support of 180 MEPs, all of whom have pledged to "stand-up against the excessive lobbying influence of banks and big business".

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summary

introduction

This report examines the extreme and undue influence of big business on European Union (EU) and member state decision-making processes. It has been produced by the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) as a response to the distortions we witness in policy and law making at EU-level and across a wide number of member states.

Citizens expect decision-makers to regulate in their interests, to be ambitious and to achieve the best possible outcomes, but the reality often fails to live up to expectations, with weak or disappointing laws benefiting mainly big business interests. ALTER-EU's experience, and that of our members across Europe, points to excessive corporate influence over policy-making as being a key reason for this. At times, this influence is of such an extreme degree that we talk about corporate capture.

In this report, for example, we argue that corporate capture has been behind the lack of action in the aftermath of the financial crisis, with banking regulation that continues to allow mega-mergers of banks, and fails to tackle the "too big to fail" problem (see case study one). Similarly, we present the role of the arms industry in setting the agenda and objectives of the EU's defence programs (see case study seven). The phenomenon of corporate capture is not, however, limited to the EU level. Even the Organisation for Economic Co-operation and Development (OECD) has recognised that "while capture has been commonly perceived as characterising countries with endemic corruption, it is increasingly prevalent in developing, emerging and developed countries".[1] ALTER-EU's broad membership has witnessed and challenged corporate capture of various national governments. Dieselgate, for instance, exposed the intimate connections between the German government and its national car industry, and how the German government acted as vehicle for the industry's influence at EU level (see case study eight). Too often we find member states acting on behalf of their biggest national industries in Brussels, taking shelter under Council secrecy and avoiding public accountability.

The evidence and analysis we have pieced together in this report is a critical but sober assessment of how an extraordinary set of practices and assumptions have become normalised, even legitimised, particularly by those inside the Brussels' bubble, the main focus of this report. The term 'corporate capture' is used deliberately to illustrate how deeply entrenched and embedded the relations between EU policy-makers and business interests are. There appears to be very little debate or reflection about what this closeness between big business and EU political elites means for European citizens, workers, or consumers. In fact, within policy circles it seems to be accepted as common sense that whatever is good for industry is, self-evidently, good for Europe. This kind of complacency is particularly worrying at a time of growing inequality and associated social tensions across EU member states.

The European institutions are failing in reforming themselves in any substantial way, and their remoteness from those they notionally serve has arguably fuelled populist criticism of the wider European project. To be clear, ALTER-EU is committed to the ideals of European cooperation, based on the principles of solidarity and sustainability. However, ALTER-EU is also convinced that democratic reforms are long overdue in Brussels. Without reform, it is very unlikely that the EU will deliver tangible benefits for the wider EU citizenry, address the huge challenges of sustainability and environmental justice, or tackle inequality and growing racism. Reform is needed because a sustainable social and economic model, capable of meeting the challenges facing Europe in the 21st century, cannot simply be predicated on the preferences of big business. It is this assumption – that what is best for big business is for the good of all – that has produced record levels of social and economic inequality, led us towards climate catastrophe, and created the conditions that have bred growing nationalist and populist sentiments across the EU.

ALTER-EU has been campaigning for over a decade on a number of key and inter-related issues that go to the heart of how democratic institutions respond to external pressure, including:

— lobbying transparency: without transparency around who is lobbying who, it is difficult to know what is happening between governments and industry, let alone hold public institutions and office-holders to account;

— conflicts of interest and ethics rules: these are a vital means of trying to ensure that public officials and elected representatives are not unduly influenced by private interests in the performance of their public duties; and,

— balancing the inputs into EU decision-making processes: an essential step towards addressing the privileged access enjoyed by industry, ensuring that business interests do not dominate policy expertise, and that civil society input and public interest arguments are integrated into policy development.

In the last decade, there have been some notable improvements around disclosure of lobbying activity, regulating conflicts of interest and opening-up expert groups to more diverse interests, but these measures have still fallen short of what is needed.

What's more, beyond these particular campaigns, there remains a wider structural issue of the closeness of industry to EU policy-making. Some of the reforms that ALTER-EU has campaigned for since its inception have served to highlight how little has changed regarding the systemic close ties between Europe's corporate boardrooms and the European Commission, and other EU institutions. To be clear, this embedded corporate capture does not affect all the institutions, or all policy areas, equally. Policy areas marked by powerful, rent-seeking industries that stand to be heavily regulated seem to be the most vulnerable. Issues that avoid full scrutiny of the European Parliament or the press also face a higher risk. But while the risk of corporate capture is not equal among all areas, it is far from an exceptional case.

Taking a step back and considering longer time-scales, it is hard to avoid the conclusion that the core of EU policy-making has been, or is vulnerable to being, captured by big business. There are too many policy decisions and political priorities where the preferences of industry have been accommodated at the expense of the quality and efficiency of policy-making. For corporate wish-lists to be rejected, it seems to require extraordinary levels of public mobilisation across Europe, as with the case of TTIP a few years ago.[2] However, even this victory may be temporary, as core elements of TTIP are being revived in ongoing EU-US trade negotiations, including the recent 'deal' between Commission President Juncker and US President Trump, which re-opens negotiations on so-called 'regulatory cooperation', a core big business demand that poses a threat to democratic processes (see case study two).

GROWING RECOGNITION OF CORPORATE CAPTURE: DEFINING THE PROBLEM

— Box 1

The concept of corporate capture has been used by academics for a long time, and civil society groups are showing renewed interest in the idea. Definitions and ways of identifying the problem vary, but share many common traits.

Some of the broader definitions used by civil society groups emphasise its consequences rather than its causes. The International Network for Economic, Social and Cultural Rights, for example, describes corporate capture as referring "to the means by which an economic elite undermines the realization of human rights and the environment by exerting undue influence over domestic and international decision-makers and public institutions."[3] This is achieved via corporate interference in judicial, legislative or policy processes, and its symptoms include increasing privatisation of social provisions, and a revolving door between the public and private sectors.

Other definitions point to the secrecy of elite policy-making: Friends of the Earth Europe, for example, describe corporate capture as "the process whereby special interest groups, often business and industry groups, gain privileged access to policy-making processes, which gives them disproportionate influence, behind closed doors."[4] Moreover, they point out, closed door discussions "where the agenda, content, attendees and outcomes, are not made public" are antithetical to democratic decision-making. The OECD, meanwhile, notes that the "capture of public decision making" can be achieved not only through illegal means, like bribery, but "through legal channels, such as lobbying and financial support to political parties and election campaigns".[5] And, it adds, undue influence can be exercised "by manipulating the information provided" to policy-makers, "or establishing close social and emotional ties with them".

Oxfam, in a recent report, offers a substantial analyses of corporate capture, identifying key power resources that 'extractive elites' use to further their interests and influence public policies. These include spending power, privileged access to decision-making, their ownership of economically important resources, and the ability to shape narratives, perceptions, beliefs and discourses about policy and public issues. Such policy capture, warns Oxfam, "erodes the system's legitimacy, reinforces the asymmetries among different groups within a society and ends up undermining public confidence in public institutions and political decision-makers. All of this can be translated into greater inequality, whether political, socioeconomic or even with regard to opportunities."

As well as the varied approaches of civil society groups and public bodies, academic literature about corporate capture also reveals differing emphases. Academic literature around public health suggests an understanding similar to that of civil society groups working in the area, focusing on questions of institutional and symbolic power: "corporations actively engage in attempting to dominate the information environment, so they can significantly affect decision making" by "capturing a wide range of arenas of debate".7 More broadly, in the field of political science, there is literature dating back to the 1940s that points to the phenomenon of government regulation serving the interests of the organisations it is regulating, rather than the public interest. Mitnick, for example, argues that corporate capture, at its most fundamental level, is exhibited when "a regulated industry is able to control the decisions made about that industry by regulators".8 Furthermore, suggests Mitnick, to be 'captured', the relationship "must go beyond political influence to form a stable relationship with industry that consistently shapes agency decisions" - in other words, it is systemic and long-lasting. Academic literature also points to the advantage that an industry has when the policy issues surrounding it are complex and highly technical, as the industry possesses both the resources and interests to intervene strategically. Additionally, when there is little critical public attention, or where the issues are not salient at the time of the decision-making to the wider public, the possibilities for corporate capture are increased.

HOW ALTER-EU IDENTIFIES CORPORATE CAPTURE

There are many ways of defining corporate capture (as explored in Box 1), and corporate capture has been receiving growing recognition as a problem at various levels. ALTER-EU considers corporate capture to be evident when a particular policy area exhibits certain key tendencies, which suggest that decision-making in that area has often been captured by corporate interests. In the eight case studies in this report, our focus is on the relationships between business and policy-makers in the EU, the communication and information exchanged between them, both in the Brussels' bubble and at national level, and on the outcomes of these contacts in terms of policy and regulation. Specifically, ALTER-EU's analysis suggests that the conditions for corporate capture include, inter alia, situations where:

1. 

The outcome is policies and regulations that are in industries' interests and often against the public interest

2. 

Industry/corporations have privileged access to decision-making and regulation over a long period (they are often long-term trusted partners)

3. 

There are formal and informal channels of communication between industry and policy-makers (social events, club memberships, receptions)

4. 

Revolving door cases and/or other conflicts of interest occur

5. 

Policy issues are removed from the public (high technical complexity, low public awareness)

6. Contacts are usually not happening in a transparent way

7. The policy debate is framed in industry's interests, through use of concepts like 'sound science', innovation, better regulation, competitiveness, etc

8. There is heavy industry lobby strength, with practical evidence of big expenditures, many staff, etc

9. It is usually not illegal but illegitimate, and undermines public trust in democratic decision-makers

10. The industry/corporation often has a certain power over decision-makers (financial or jobs arguments, the need for data, expertise, etc)

Most of these criteria (though not necessarily all) are evident in each of our eight case studies, whilst arguably the fifth criterion – policy issues being removed from the public – applies to almost all EU policy-making. This is perhaps because of the absence of a demos in Brussels, as well as the scarcity of critical media that robustly reports on what is happening in the EU and seeks to hold the institutions to account. This therefore appears to be a structural feature of politics in Brussels, which provides fertile ground for corporate capture to flourish.

With this contextual factor in mind, the following case studies set out some of the other evidence that may indicate corporate capture, or tendencies toward corporate capture. We do not allege that in all these policy fields there is complete corporate control over policy or the performance of public agencies. Rather, we trust the reader will make their own informed judgement of the evidence presented. ALTER-EU would suggest that the evidence set out in these eight case studies together points to a phenomenon much more significant than individual businesses enjoying privileged access to policy-processes. This report suggests that corporate capture is a structural feature of lobbying and influence peddling in Brussels, as well as occurring at national level, sometimes reinforcing one another. Following our eight case studies, we will return to consider what the consequences of this state of affairs might be for the EU institutions, for civil society working on EU policy issues, and for EU citizens concerned about the fate of the wider European Union.

1

the banking sector

— Kenneth Haar, Corporate Europe Observatory

The biggest banks in Europe are 'systemically important' in more than one way. Not only are we economically dependent on them, they have invaded the political system as well. As a result of the financial sector's capture of EU financial policy, rules that should have protected the public interest from the risk-taking and greed of the too-big-to-fail banks are dangerously weak, even counter-productive. And the cost? The continuing risk of another crisis, with all the suffering and injustices it comes with.

Cashing in on 'systemic importance'

There are many examples which demonstrate, in different ways, that the interests of the biggest banks have won the hearts and minds of rule-makers in the EU. In September 2017, the European

Central Bank (ECB) argued that there are too many banks in Europe, suggesting big is good and small is not.

This statement followed the approval of one big bank's purchase of another, in Spain: ownership of Banco Popular passed to Banco Santander for the humble sum of one euro. In October 2017, the European Commission decided to scrap planned rules intended to prevent the biggest banks from making risky investments in a manner that would put their customers at risk. In December 2017, new international rules were agreed, intended to make up for years of neglect in limiting big banks' systematic attempts to limit precautionary measures to avoid financial meltdown. Yet the EU had fought these new rules tooth and claw, emerging once again as a staunch defender of big banks.

The crisis showed that it is dangerous to have a small number of very big banks at the heart of the economy, and that measures to reduce their size and importance are essential to protecting the public interest. Given this, one can only be deeply disappointed with the now finished era of 'financial reform'. It shows in the statistics. Since the climax of the financial crisis in late 2008, the European banking sector has become more concentrated: 25% of credit institutions have vanished, while the biggest have got bigger.[9] Though there are multiple reasons for this, there is no denying that lobbying by big banks has been a factor. If you imagined that the financial crisis would lead to a clamp down on big banks, or cause regulators, civil servants and politicians to hesitate before they took the advice of lobbyists from big banks, think again. Few sectors can boast the same degree of corporate capture as the financial sector, not least the world of big banks.

Flexing their financial muscles

Having the necessary resources certainly helps to exercise influence in Brussels, and there is no doubt that the banking sector has the troops on the ground. Financial lobbyists can be dispatched in groups of hundreds when their interests are at stake: a 2014 investigation into the size of the financial lobby in Brussels found that banks, investment funds and other financial companies had at least 1700 lobbyists at their disposal.10 Most of whom represent big banks, directly or indirectly. This means financial lobbyists outnumber Members of the European Parliament (MEPs) by around 2.5 times! And there are indications that this number has grown. A sample of seven financial industry associations and companies, estimated in 2014 to have a combined 88 lobbyists, in 2018 have 115 people involved, according to Transparency Register data on LobbyFacts.11 Nor is there a shortage of money: the 2014 investigation found the industry spent an annual €120 million lobbying the EU. A fully updated estimate has not been made since then, but the numbers are bound to be higher: comparing the 2014 budgets with those declared today, for a random selection of financial lobby groups, shows similar or much higher spending.12

‘Experts’ in high demand

All of these banking sector lobbyists do not sit idly twiddling their thumbs: their ‘expertise’ is in high demand. They cover all steps in the decision-making process, from the production of long term strategies for banking regulation, to individual pieces of legislation. A little bit of history helps illustrate this. In 1999, for the first time, the EU took up financial services in a strategic way, with a blueprint for a single market in finance: the Financial Services Action Plan. Representatives from big finance played a significant role in elaborating the outlines of this plan, and once it was adopted, they were on hand to help with the legislative details.[13] Financial corporations dominated a growing number of so-called ‘expert groups’ set up by the Commission to help make this plan a reality. Roughly 80% of the advisers in these groups were representatives of financial corporations, banks particularly. This approach became highly contested in the aftermath of the financial crisis, not least because in several cases a link could be traced between the advice of financial industry lobbyists and weak legislation that left the EU open to financial meltdown.[14]

Yet this approach proved hard to change, even in the midst of financial crisis. As economic and financial shock-waves resounded around the world from the collapse of Wall Street’s Lehman Brothers and insurance giant AIG, the Commission established a high-level expert group to give guidance on what steps should be taken. Of the eight men that comprised the group, four had intimate links with big banks: Goldman Sachs, BNP Paribas, Citigroup and Lehman Brothers itself.[15] Since then, the domination of banks in EU advisory structures on banking regulation has been a recurrent theme. The Commission has been under a lot of pressure to ensure stronger representation from other interest groups, but has repeatedly failed or refused to make significant changes.[16] In its own defence, the Commission directorate in charge of financial services (DG FISMA) has told ALTER-EU that it finds it difficult to find civil society organisations with the means and availability to engage with them. But the reluctance to ditch its old approach can also, in part, be explained by the information big banks have access to, which is difficult to come by for the Commission. Currently, few expert groups relate directly to banking, but those that do follow the familiar pattern. For example, of the 14 members of the 'Regulatory obstacles to financial innovation' group, five are linked to banks, and a further six to the broader financial sector.[17] Of the 13 members in a group on 'electronic identification', ten represent banks.[18] The ECB is also guilty of having advisory groups dominated by financial lobbyists: its 'Banking Industry Dialogue', for instance, is comprised solely representatives of big banks.[19] ALTER-EU research, meanwhile, has shown that around 92% of meetings held by DG FISMA, in the first half of 2016, were with corporate interests.[20]

Doors revolving at a dizzying pace

With this proximity between decision-makers and the banking lobby, it is little surprise that high-level officials and politicians often jump more or less straight from office into the pool of banking lobbyists. This revolving door is seen most vividly with Commissioners. With the change of Commission in 2009, three Commissioners took lobbying positions in finance: French bank BNP Paribas welcomed Meglena Kuneva, the Royal Bank of Scotland took Günter Verheugen on board, and investment company NBNK brought in Charles McCreevy.[21] This pattern was repeated at the next change of guard: former competition Commissioner Neelie Kroes to Bank of America Merrill Lynch, and former Trade

Commissioner Karel de Gucht to two investment funds.[22] A year later, the two times Commission President, José Manuel Barroso, joined US investment bank Goldman Sachs. Goldman has had quite a few prominent EU decision-makers on its payroll, including former Commissioners Peter Sutherland and Mario Monti, former Commission President Romano Prodi, and current ECB President Mario Draghi! Last but not least, the first Commissioner for financial regulation, the UK's Jonathan Hill, who left his post after the Brexit vote in 2016, within a year took a job with Freshfields, a firm that essentially lobbies for the financial industry, and later Swiss bank UBS, insurance giant Aviva and Deloitte.[23]

The revolving door also spins franticly at the directorate responsible for financial services regulation, DG FISMA, as recent research shows. Four of five DG FISMA directors who left their posts between 2008 and 2017, went to work for companies they once oversaw, or their lobbyists. In the same period, seven of 22 deputy heads of unit previously worked for the financial industry, whilst one of three heads of unit that left their departments went to work for the financial sector.[24] It is also not unusual for MEPs to seek employment in the financial sector at end of their terms. In 2014, several MEPs did so, including UK MEP Sharon Bowles with the London Stock Exchange, and Danish MEP Emilie Turunen at Danish bank Nykredit.[25]

Club life: relaxed ambience and helpful amendments

MEPs have plenty of opportunities to get to know representatives of big banks personally. In the European Parliament, there are several club-like structures that bring together MEPs and financial sector lobbyists in informal discussions about EU rules. Most notable is the European Parliamentary Financial Services Forum (EPFSF), whose financial industry members include representatives from practically all the biggest banks and financial lobby groups.[26] EPFSF's 'Steering Committee' meanwhile has no less than 42 MEPs, from all political groups.[27] Clubs like EPFSF offer lobbyists a chance to establish trust, which can then be cashed-in on when needed. For example, when the Parliament is to vote on a new piece of legislation, exercising influence means getting your amendments adopted. And to many MEPs, it has become normal practice to ask banks for advice on banking regulation, often leading to amendments being proposed based on wording fed to MEPs by banking lobbyists. Even when big banks were in public disgrace over the financial crisis, some MEPs confessed openly to Corporate Europe Observatory that they were in regular contact with financial lobby groups, who had helped draft amendments.[28]

It is not simply the case that MEPs see it as natural to have big banks help out on banking regulation: there is something else at play as well. MEPs are hard-pressed on time, and banking regulation is highly technical, requiring insight that is not quick and easy to come by. For that reason, MEPs have stated on occasion that lobbyists actually do them a favour, because getting their heads around the issues would be costly in terms of time. The downside, of course, is that the advice corporate lobbyists deliver is tainted by their vested interests. So whilst there is nothing illegal about it, the fact that this type of influence is rarely something MEPs brag about in public, indicates it is not a legitimate part of democratic decision-making. It is also an opaque part, not least because the Parliament is hesitant to accept rules that would let citizens see who MEPs talk to on what issues.

Similar kinds of informal clubs have been erected at other levels, including internationally. A recent, high profile case concerns the ECB's President, Mario Draghi, who is a member of international bankers' forum the Group of Thirty (G30).[29] The G30 has, at times, had significant influence over international banking rules. Set up by big banks on Wall Street, the G30 is run by representatives of brand names in banking, like JPMorgan Chase, and boasts representatives of big banks supervised by the ECB. This conflict of interest has led the European Ombudsman to ask President Draghi to step down from the G30.[30]

Repeated exploitation of public fears

There is more in the banking lobby's armoury than providing 'expertise' and nurturing cosy relationships: they also adeptly exploit public fears. The interconnectedness and size of the biggest banks enables them to argue that regulatory steps they dislike would have an immediate effect on growth and employment. When the Eurocrisis broke in 2010, the slump in economic activity across Europe made it easy to argue against strong regulatory measures. This argument about damaging 'growth' has been repeated again and again, and proved an effective lobbying strategy. At the international level, the biggest banks teamed up in mid-2010 to produce a report designed to invoke fear: the plans being made for banking regulation would, it said, lead to 0.6% lower annual growth, and unemployment to match.[31] Months later, a report from the Bank of International Settlement debunked their argument, but by then the race was run, and ambitions had been lowered. Similar attacks later unfolded at EU-level, with some success. The fact is that most politicians now seem to believe that big banks not only have to be accepted, but that they are the hallmarks of economic success.[32] In terms of power over decision-makers, wielded through arguments about protecting jobs and growth, big banks have mastered the tactic to perfection.

Cutting off the public, privileging the banks

Given that MEPs often struggle with understanding the details of financial regulation, the general public seems to have little hope. When you look at the crucial EU debates on banking, you rarely find genuine citizens' participation. Only a small number of people are versed in concepts like capital requirements, internal risk assessment models, gearing ratio, single resolution mechanisms, systemically important financial institutions, or liquidity coverage ratio. Yet all this technical jargon is actually about the fundamentally public-interest issues of whether big banks are safe, and what politicians think should be done and how. The risk is that public awareness is limited to times of deep crisis, when nobody can ignore the dangers represented by banks so big that their collapse brings whole economies to the brink. The obtuse and exotic lingo that has developed around banking regulation is a clear barrier to public involvement. But the highly technical nature of banking regulation is also often used as an excuse for limiting public involvement. When a Commission official was confronted with the evidence that its expert groups were dominated by financial corporations, the response was a dry remark: “If you want financial advice, you don’t ask a baker”.[33] Yet it is vital that the EU institutions do not rely on the advice of big banks when developing the rules to protect us from their collapse, secure our rights as consumers, and protect the public interest.

Controlling the political agenda, at the cost of the public good

One of the expert groups at the ECB, the Macroprudential Policies and Financial Stability Contact Group, whose membership is dominated by the biggest banks and investment funds in the world, illustrates the depth of the close ties with, and privileges given to, big banks. Minutes from a February 2017 meeting to discuss the state of the European banking sector show that it actually focused on the low profitability of banks in Europe.[34] In their assessment, Europe is ‘overbanked’, and so ‘mergers and acquisitions’ should be promoted: in other words, let big banks swallow other banks and get even bigger. This view was echoed later in the year by the head of the ECB’s Supervisory Board.[35] The arrogance on display in the meeting minutes is a perfect symbol of how big banks call the shots in the EU. Participants highlighted the Banking Union as the key reform that will consolidate the European banking sector – which is indeed what it is supposed to do. The Banking Union is about handling ailing banks in a structured way, from the minute trouble is on the horizon in a big, systemic bank. Non-action is not an option in the case of the biggest banks, as their collapse could create waves in other financial institutions, and even lead to another meltdown.

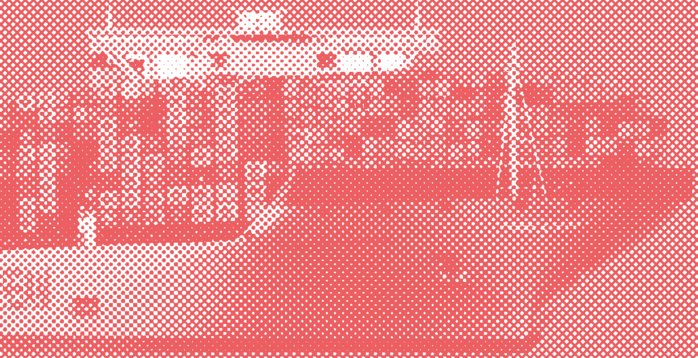
Many, however, argue that the best way to make banks safer, is for them to become smaller. If they were smaller, the collapse of a bank would not be a problem for the whole of society. Yet neither EU banking regulation, nor the Banking Union, does anything to address the issue of size. Rather the opposite: the crisis management aspect of the Banking Union contains elements that could make the biggest banks bigger, exacerbating the problem. Namely, it includes a tool that allows big banks to buy other big banks at a low price. It seems that the tale of one Spanish bank buying another for a euro, is, for big banks, one of its key purposes.[36] Although the sale was a success from one perspective, by saving the public purse from bailing out a bank, it also helped perpetuate the concentration in the banking sector. Which is one reason why the biggest banks in Europe were staunch supporters of the Banking Union in the first place. As the head of the biggest bank in France, BNP Paribas, stated in 2013, the Banking Union will lead to efficiency, which in turn will allow 'the strongest part of the banking system' to take out and buy the weaker players.[37] Put plainly, the Banking Union will help big banks get bigger.

Plenty of rules have been adopted in the EU since the crisis that give big banks the upper hand, often to the detriment of small banks.[38] Nowhere is this clearer than on 'capital requirements', the money or 'capital' that banks are supposed to have at hand in order to avert problems. It was widely acknowledged at the peak of the financial crisis that the rules in force had let the biggest banks be too creative about how to measure the amount of required capital. And yet, in the EU, the approach of the biggest banks was defended vigorously, and allowed to continue. Big banks can use advanced models to bring the so-called 'capital requirements' down, sometimes with astonishing results. For example, Deutsche Bank changed its model and suddenly appeared €28 billion healthier![39] But this kind of magic wand is not available to small banks, who have to stick to a standardised way of identifying the necessary requirements. It is beginning to be commonly accepted that the new rules have favoured the biggest at the cost of the smallest, even by some central bankers, like the head of the Bundesbank.[40] Yet during 2017, when international rules were being reformed to limit big banks' use of such creative models, the EU was up in arms to defend the interests of its biggest banks. As a result, to ensure EU support for new global rules, the level of capital requirements – the buffer to protect banks and the financial system from collapse – was lowered.[41]

Sadly, the EU prefers to be one step behind when it comes to measures to rein in big banks. In the US, for instance, the so-called Volcker rule bars banks from making certain investments that could hurt their customers. In the EU, something far less ambitious was discussed for years following the launch of the Liikanen report, which proposed new measures on 'banking structure', including how to avoid excessive risk-taking. But after a tug of war that lasted almost four years, the proposals were finally ditched in October 2017.[42] The financial industry's interests won out, again.

Corporate capture could cost us another crisis

Big banks have every reason to feel at home in the EU institutions. They are treated like royalty by the institutions tasked with their regulation and supervision, repeatedly offered political influence on a silver platter. Even on the tails of a financial meltdown, caused in part by big banks, they have turned the EU's policy responses to their advantage. The EU has gone so easy on big banks that they are continuing to collapse, with the risk of a broader systemic meltdown still lurking. It is for these reasons that the road to genuine public interest banking reform in the EU must first go through a systematic unpicking of big banks' deeply embedded influence.



2

trade policy

and the case of TTIP

— Paul de Clerck, Friends of the Earth Europe

EU trade and investment policies – including the mega- trade deals recently concluded with Canada and Japan – benefit big business, often to the detriment of workers, consumers and our environment. This reflects the fact that trade policy in the EU is, to a great extent, made for and by corporate interests. New generation "trade" deals actually have less to do with trade than with who makes the rules, and who holds power over rule-makers.

Trading away democracy

New generation "trade" deals actually have less to do with trade than with who makes the rules, and who holds power over rule-makers. For example, the inclusion of euphemistically named 'investor protection' mechanisms (known as ISDS, and later ICS) in trade deals, gives investors (ie mainly multinational corporations) VIP rights that no-one else in society has. This system allows investors to sue governments for doing their job, which is developing policies in the public interest. But if that public interest – say in protecting the environment or ensuring affordable healthcare – conflicts with investors' 'legitimate expectations' of profits, investors can make claims for large sums of public money. The EU-Canada trade deal CETA includes this kind of 'investor protection'.

Another major aspect of EU trade deals that serves corporate profits rather than the public interest is so-called 'regulatory cooperation'. This is a means to ensure that business has a say on new regulations before Parliaments do, in the guise of preventing 'barriers to trade'. This will often create pressure to lower standards that protect citizens, workers, consumers and the environment. Both CETA and the EU-Japan deal JEFTA include regulatory cooperation, as the outcome of corporate-captured processes. Yet it was the negotiations towards the EU-US trade deal TTIP ('Transatlantic Trade and Investment Partnership') that were perhaps the starkest example of business interests being prioritised over those of wider society. TTIP (at least in name) is now stalled, thanks in part to the enormous public backlash against the corporate-captured trade deal, as well as the shift in US politics under Trump. But the agenda-setting leading up to the TTIP talks, and the negotiations themselves, continue to be illustrative of the wider trade policy-making culture in the EU.

Privileged access and cocktails with industry lobbyists

From its earliest stages, it was clear that TTIP followed a corporate agenda: when preparing the TTIP negotiations in 2012-13, 92% of the lobby encounters (meetings, stakeholder debates, consultation responses) had by Commission trade officials' were with business lobbyists.[43] Industry is also likely to have had major influence on the work of the EU-US High-Level Working Group on Jobs and Growth, which resulted in the initiation of the TTIP

negotiations.[44] During the TTIP negotiations, various Commission departments (including its trade directorate, DG Trade) were meeting 75% or more with business groups, on TTIP.[45] And in addition to the sheer number of industry lobby meetings with representatives of DG Trade, there were many informal cocktail meetings and drinks events between TTIP negotiators and industry lobbyists.[46]

There is also evidence that DG Trade actively encouraged the involvement of corporate lobbyists, while keeping unions and other public interest groups at bay. One example is how DG Trade chased business groups like the pesticide industry lobby ECPA to participate in its first consultation on TTIP in 2012. Trade unions, environmentalists, and consumer groups, on the other hand, did not receive any special invitation.[47] The Commission also actively solicited input from particular sectors (such as the chemicals lobby) before developing its proposals for the negotiations. In a similar display of privileged access, DG Trade negotiators would regularly speak to business audiences, while they rarely attended the events of civil society organisations. Commissioner Malmström, for example, refused on at least three occasions to take part in public debates co-organised by Friends of the Earth Europe. Yet industry think tank CEPS organised recurring closed-doors meetings between Malmström and its corporate members.[48] And high ranking DG Trade officials regularly attend the meetings of industry lobby group BusinessEurope's international relations committee. This same kind of privileged access to corporate interest groups has also been evident in other EU trade deals. For example, business breakfast events held with chief negotiators during the EU-Japan trade talks, whilst the public had access to extremely limited information.[49]

Trade Commissioner: "I am in your hands"

Close ties between trade policy-makers and big business go back a long way, years before the negotiation of trade deals like TTIP, CETA and JEFTA. For example, DG Trade has a long and intimate relationship with the European Service Forum (ESF), an influential lobby group of global services players, from finance to IT to shipping. ESF was set up in the late 1990s at DG Trade's request, with the then Trade Commissioner telling ESF "I am in your hands".[50] The former head of DG Trade's services unit admitted that for "the Commission, the contribution of the ESF is absolutely decisive. We need them in permanence… or we simply cannot negotiate".[51] DG Trade is always present at ESF's quarterly policy committee meetings, often with several lead negotiators and other high-ranking officials. Twice a year they are joined by trade officials from EU member states, followed by a cocktail reception. Years of advocacy by ESF has resulted in the EU taking a negative list approach in trade agreements (ie everything is covered by a trade deal unless it is explicitly listed as being exempt), which poses a threat to future public interest policy-making.

In light of all this, the apparent 'balance' between industry and civil society in the Commission's TTIP advisory group, had little to no effect on the direction of negotiations. DG Trade has also stated that it has an 'open-door' policy, and meets with everyone who requests meetings, including civil society organisations. Whilst this may be true, it doesn't change the overall picture of privileged access for business – or the active invitation policy that the Commission pursued towards corporate lobby groups. Nor does an open doors policy take into account the industry's greater lobby strength, which helped enable corporate interests to dominate the agenda and negotiation positions of the EU on TTIP. Where civil society groups had a few tens of people involved in EU advocacy on TTIP, industry had hundreds of lobbyists. Similarly, while civil society only had the capacity to focus on few key issues, industry was more than capable of influencing all chapters in the negotiations. And it went further. Industry had the means to pay communications agencies to promote TTIP or seek to discredit the anti-TTIP movement. For example, the Confederation of Swedish Enterprise – with the help of lobby firm Kreab – set up the 'Alliance for Responsible Commerce' (ARC), a pro-TTIP propaganda initiative. Meanwhile, the 'Business Alliance for TTIP' (comprised of BusinessEurope, ESF, the Trans-atlantic Business Council, AmChamEU and other business groups) paid Hill & Knowlton to "communicate the benefits of TTIP". And can you guess another client of Hill & Knowlton? The European Commission, which according to the Transparency Register paid the lobby firm €90,000 in procurement in 2016)![52]

When TTIP entered the public spotlight, business had long shaped the agenda

It was only as wider public awareness grew about TTIP – fuelling outcry at its very evident corporate capture – that the balance started to change. Indeed, it was the extreme level of corporate capture of the trade agenda that provoked such massive resistance. Nevertheless, TTIP entered the public spotlight long after corporate interests had shaped the trade deal's agenda. And even then, public awareness about TTIP focused on very few elements of the negotiations (partly reflecting the limited capacity of the civil society groups working on TTIP). At the start of the TTIP negotiations, however, there were hardly any documents publicly available. It was only following public pressure, several leaks and a report by the European Ombudsman, that the Commission started to release position papers. But the most important documents – the consolidated negotiation texts of trade deals – are not published, which differs from other international negotiation processes such as the UN climate talks. And even those position papers that were released did little to address the lack of public accessibility: the broad range of topics, and technical, detailed documents, meant the issues continued to be far removed from most people.

Public consultations on contentious issues like investor protection (ISDS and the Multilateral Investment Court or 'MIC') were highly technical (and in English), thus presenting another barrier to participation of the wider public. And when an overwhelming majority of responses to the investor protection consultation rejected ISDS and did not support the MIC, the Commission misrepresented these outcomes and used them to legitimize its own proposals.[53] Another problem has been that responses to Commission consultations that don't give technical answers to very technical questions are often ignored by the Commission. Even though the issues being consulted on are not merely technical, but deeply political, and so should be subject to meaningful consultation with the public. Finally, it is only after consultations are done and negotiations completed, that a trade deal's text is made public, as, for example, with CETA. However, such texts are several thousands of pages of complex legal language, or 'legalese', which is hardly accessible or meaningful for the general public.

In contrast to this lack of transparency and high technical complexity, public concerns about TTIP largely stemmed from the threat to democracy posed by TTIP, and in particular, from ISDS and regulatory cooperation. The undermining of democratic-decision making that both of these represent was combined with the impression that the trade deal would mainly be for big corporations and against the public interest. As a result, more than three million citizens signed the 'Stop TTIP' European Citizens Initiative (ECI). The ECI however was ignored by the European Commission, further feeding the impression that democratic decision-making was being threatened by corporate capture of trade policy.

Swapping staff

The corporate capture of TTIP, and EU trade policy more generally, has been facilitated by the revolving door between public office and the private sector. To take one high-level example, after leaving office, former Trade Commissioner de Gucht took positions with steel giant Arcelor Mittal, a private equity fund and a large Belgium telecom provider.[54] At a more institutional level, DG Trade has its share of revolving doors cases, with staff coming from or going into business lobby groups. For example, Maria Trallero went from DG Trade (2005 to 2012) to being Director of Trade Policy (since 2013) at pharmaceutical industry lobby group EFPIA.[55] This is indicative of a shared culture and the blurring of interests. Other kinds of conflict of interest are also evident: the current Trade Commissioner Cecilia Malmström appointed Jan Eric Frydman as Special Adviser on EU-US Trade Policy, despite Frydman working for Swedish law firm Ekenberg & Andersson, whose practice includes international trade and regulatory affairs, and dispute resolution (ie ISDS).[56] The revolving door also turns at EU member state level; for example, a former senior Dutch civil servant co-responsible for TTIP and other trade negotiations founded a pro-ISDS think tank, and runs an investment consultancy.[57] And in the context of TTIP, on the US side, the former US Ambassador to the EU (a prominent figure in the TTIP debate) now works for a law firm involved in ISDS cases, and previously worked for law firms involved in investment arbitration. Michael Froman, the US Trade Representative who lead the TTIP negotiations, worked for Citigroup just before he got his position,[58] and the US financial sector was strongly involved in the TTIP debate.

Copy-paste from business positions

The corporate capture of TTIP was also aided by the power industry exercised over decision-makers through use of particular kinds of arguments, as well as the Commission's need for data and expertise from external sources. Not long after the financial crisis, when the idea of an EU-US trade deal was gaining traction, claims by business groups that the trade deal would bring much-needed jobs and employment were particularly potent (regardless of the accuracy of the arguments). The limited internal capacity of the Commission also lent itself to business 'expertise' being sought, creating an environment where business lobbyists 'helped' the Commission by providing a concrete and detailed agenda for what to demand from the US in the negotiations. In fact, part of the regulatory cooperation chapters of CETA and TTIP are practically copy-pasted from business positions.[59]

Corporate rhetoric captures minds of policy-makers

The success of big business in capturing EU trade policy also owes much to its framing of the policy debate in the industry's interests. The overall objective of the TTIP negotiations was to increase trade volumes – how? by lowering costs for business. The economic benefits of TTIP were strongly exaggerated, while the benefits of regulations for society were ignored and described as 'barriers to trade' rather than measures that protect the public interest. The objectives of key elements of the negotiations, like regulatory cooperation between the trading partners, were framed in a way that ensured they would serve industry interests. For example, emphasizing that regulations should aim to lower costs for companies, rather than, say, comply with Sustainable Development objectives. Similarly, that ISDS must serve to protect investors' interests, even though there are no comparable mechanisms to advance the public interest or protect citizens that are harmed by investors. Thus, investor rights are precise, binding and enforceable, whilst chapters on Sustainable Development are vague, voluntary and cannot be enforced.

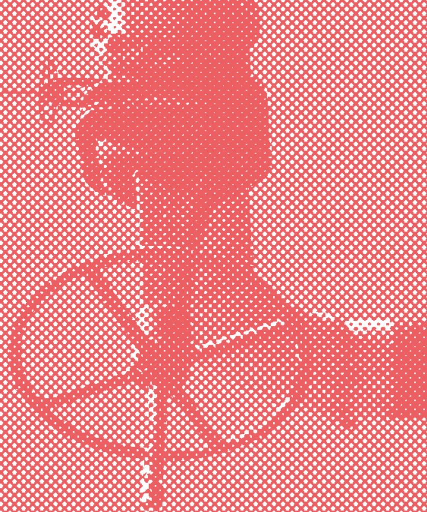
Another concept that was heavily relied on by business lobbies was the idea that decision-making must be 'evidence based'. This neutral sounding term actually embodies a concerted industry attack on the precautionary principle, which is enshrined in the EU treaties. The precautionary principle ensures that when the stakes are high – like harm to human health or the environment – it is possible to take action based on reasonable evidence (though with some scientific uncertainty), regardless of big business' interests. The term 'evidence based' is used to mean the opposite: an impossibly high bar of evidence that prevents precautionary action being taken to protect against harm. This pushes the risks of hazardous products onto society, so that industry can reap greater profits. Nor should we forget the spin about how TTIP would be advantageous to small businesses (SMEs), glossing over the fact that multinationals would be the main beneficiaries of the trade deal. This ignored two things: first, that many SME associations opposed TTIP, and second, that behind-closed-doors, big business trade associations acknowledged that SMEs would suffer from the trade deal.[60]

Public interest traded for corporate profit

The recipe for TTIP, and other corporate captured EU trade processes, has been cooked up by big business, out of public view, and with EU trade policy-makers happily stirring the pot. Despite massive public resistance, EU trade policy continues to put public interest policy-making in jeopardy, through mechanisms like regulatory cooperation and investor protection. Trade deals are being written at the behest of industry lobbies that trade policy-makers see as partners – regardless of the costs to people and the planet, or the threat to democracy.

3

the gas industry



— *Myriam Douo, Friends of the Earth Europe*

To comply with the Paris agreement and stay within 2°C warming, Europe needs to phase out all fossil fuels, including gas, by 2035-2040 – and even earlier to stay within 1.5°C.[61] Yet the EU continues to promote and invest in more and more gas mega-projects, like the infamous MidCat and Trans Adriatic pipelines. The EU's oh-so-cosy relationship with the gas industry is locking us in to a fossil-fuelled future of catastrophic climate change.

Climate sidelined as industry gets its wishes

Mirroring the industry's messaging, gas is presented by the Commission as a 'clean' energy, and an alternative to 'dirty' fossil fuels.[62] This is reflected in the EU's list of Projects of Common Interest

(PCI), which sets the direction for the biggest energy investments in Europe. The PCI list offers fast-tracked regulatory processes to priority energy projects, and provides access to public funding through the Connecting Europe Facility (CEF). Since 2014, as part of its CEF programme, the Commission has granted €1.3 billion to the gas industry to build more gas infrastructure.[63] This is despite the Commission's own forecasts that demand will significantly decrease between now and 2050, and despite current gas demand being lower than recent peaks.[64] What's more, existing liquefied natural gas (LNG) facilities (which can import over 40% of the gas Europe consumes annually) are used at just 25% of capacity.[65] In total, Europe already has twice the gas import capacity of what it actually imports. Yet the EU still plans to increase it. This goes against the wishes of local communities across Europe, who are mobilizing and fighting the construction of new LNG terminals and gas pipelines.[66]

Made possible by a privileged role for industry...

Such industry-friendly gas infrastructure plans have not appeared out of thin air: they are the product of a corporate captured decision-making process. This capture of gas policy is aided first by the hefty spending power of the gas industry: an estimated lobby budget of €104 million in 2016, with more than 1000 lobbyists employed.[67] Add to this, 490 meetings between the gas industry and the Commissioner for Climate Action and Energy, Miguel Arias Cañete, and Vice-President for the Energy Union, Maroš Šef□ovi□, between November 2014 and June 2018.[68] By contrast, civil society has had only 49 meetings since November 2014, ten times fewer.[69] And the gas industry does not have to rely on traditional lobbying alone: it has been invited in to help make the decisions.

One body is particularly instrumental in deciding which projects join the PCI list: the European Network of Transmission System Operators for Gas (ENTSOG).[70] Established in 2009, this gas industry group has the official goal of promoting the internal market in natural gas, and ensuring good management of the gas transmission network.[71] Its influential role in the PCI list process is set out in the Trans-European Networks for Energy (TEN-E) Regulation, which gives direction to public investment in the energy sector.[72] In practice, ENTSOG puts together the Ten-Year Network Development Plans (TYNDPs), which paint a picture of the future of gas infrastructure, and are instrumental in setting the PCI list. ENTSOG also provides analyses for the Commission on the future of EU gas demand, and runs cost-benefit analyses for each gas candidate for the PCI list, on behalf of the Commission. Thus, the Commission has, to an extent, externalised some of its supervisory role to ENTSOG. And although ENTSOG was created by the Commission, it represents the gas industry: most of its 45 member companies are international players in the energy sector, some of which belong to oil and gas companies (e.g. French member GRT Gaz is 75% owned by Engie, Hungarian FGSV owned by MOL, and Gas Connect Austria owned by OMV).[73] 16 of its 45 members are signed up to the lobby register, which although voluntary (and therefore containing unreliable data),[74] gives us some idea of their lobbying and spending power. Combined with ENTSOG, these companies had a lobby budget of more than €2.5 million in 2017, and have held 43 meetings with the highest levels of the Commission since 2014.[75] ENTSOG provides the gas industry, which owns the gas grid, a privileged position in EU decision-making, effectively being considered a satellite of the institutions, working directly and constantly with the Commission.

As well as the regular meetings and discussions that ENTSOG is involved in, there are other channels of communication between the gas industry and EU decision-makers. Energy-related events happen almost weekly in Brussels, providing myriad opportunities for gas lobbyists and policy-makers to interact. For example, the European Energy Forum – an organisation comprised of MEPs 'interested in energy' and energy companies (such as BP, ENI, Exxon Mobil and Chevron) or energy lobby groups (such as ENTSOG and Eurogas) – organises a whole host of events.[76] A high-level event in Brussels organized by news outlet Politico, and sponsored by gas industry lobby group GasNaturally, featured the Executive Secretary of the United Nations (UN) Framework Convention on Climate Change, and the president of GasNaturally (the chief executive of Italian gas infrastructure firm SNAM Spa) as its only two speakers.[77] And there are many other less high-profile events that ensure industry's interests are prevalent in the decision-making process. For example, lobby firm FTI Consulting ran an event on behalf of Exxon Mobil, to which MEP assistants were invited to hear the fossil fuel giant's predictions for future energy use![78]

Another channel of influence for the gas industry is the Gas Coordination Group, a Commission advisory group mandated "to facilitate the coordination of security of supply measures in the event of a Union or regional emergency".[79] Yet the fact that it meets on a regular basis suggests an 'emergency' is not required for the group to convene.[80] It is not, however, possible to monitor what the group does, since its meetings are held behind-closed-doors, away from civil society and citizens' scrutiny. The group is comprised of member state and 'stakeholder' representatives, but the overwhelming majority of stakeholders are industry representatives: eight of nine represent industry interests, including gas lobby groups Gas Infrastructure Europe (GIE), Eurogas and the International Association of Oil and Gas Producers (IOGP). The only non-industry group represented is consumer organization BEUC.[81]

...whilst NGOs are kept at arms length

As the Gas Coordination Group illustrates, the other side of the picture of privileged access for industry, is the lack of transparency and openness to civil society organisations. It is a repeating pattern that the meetings where real decisions are taken are not open to civil society groups. For example, only the Commission, member states and Transmission System Operators (i.e. the companies operating the infrastructure) are invited to regional stakeholders meetings. Likewise, civil society groups are not present at the meetings presenting the results of cost-benefit analyses done for gas project candidates to the PCI list, nor the final meetings where decisions are taken on which projects to include. Some TYNDP and PCI processes are, to a certain extent, open to civil society, and a number of documents are made available on public websites (e.g. the CIRCAB platform), but this transparency hits some serious limits. The processes are adapted to human resources and financial capacities that only industry has, particularly in terms of technical expertise, frequency of meetings, and so on. Thus, even when open to civil society, they are almost entirely attended and influenced by industry. Some crucial information is also kept confidential, with different reasons used by the Commission to avoid releasing documents (e.g. that a decision is ongoing, or to protect commercial interest, an exception which is often abused). Cost-benefit analyses carried out by ENTSOG are kept confidential, as are minutes of regional stakeholder meetings and final decision-making meetings. Only some very basic information on CEF grants is disclosed, and only once the decisions are taken (i.e. no information about who applied, the grounds for accepting or rejecting grants, etc).

Civil society is also heavily underrepresented in Commission advisory groups, which provide expert advice to the Commission, which often has an instrumental role in policy-making. When it comes to gas policies, several groups stand out, such as the Gas Coordination Group mentioned above, as well as the Unconventional Hydrocarbons Network[82] and the Sustainable Transport Forum. In all three of these groups, industry is overwhelmingly represented, with very few civil society organisations at the table.[83] The Sustainable Transport Forum, for example, has only two civil society representatives out of 30 members.[84] Other bodies that play a role in decision-making include high-level groups, like the Central and South Eastern Europe Gas Connectivity (CESEC),[85] the High Level Group for South-West Europe,[86] and the High Level Group on the Baltic Energy Market Interconnection Plan (BEMIP).[87] Industry is invited to participate in these groups on a regular basis.[88] Also notable for its exclusion of civil society is the Madrid Forum, which gathers together national governments, the Commission and gas suppliers, traders, industrial consumers and gas exchanges, but no civil society actors.[89]

With a little help from the revolving door

The gas lobby's influence over policy is also facilitated by a revolving door between the industry and energy policy-makers.[90] Climate and Energy Commissioner Cañete was himself formerly president of two oil companies, Petrologis Canarias and Petroleos Ducar, from 2005 to 2011. Markus Lippold, an official at the Commission's energy directorate, DG Energy, previously worked for Exxon Mobil. Since starting at the Commission, Lippold has enjoyed multiple 'sabbaticals' with the energy industry: in 2013 he worked at the MOL Group, and took an authorised sabbatical at Saudi Aramco, Saudi Arabia's state-owned oil and gas company. Another example is Matthew Hinde, former Head of EU Strategy in the UK's Department of Energy and Climate Change. A month after leaving, in September 2015, he started working for lobby consultancy Fleishman-Hillard (whose clients include Gas Naturally, Shell and Exxon Mobil[91]) as Senior Vice-President for Energy. Similarly, until October 2014, Constantine Levoyannis was political advisor to MEP Niki Tzavela (who sat in the Parliament's energy committee) during a period when shale gas was the subject of heated debate, and Tzavela was rapporteur on a shale gas resolution.[92] After leaving, Levoyannis joined lobby firm FTI Consulting (whose clients include IOGP and Exxon Mobil[93]) as a senior consultant, and then Director. Levoyannis is, at the same time, head of the Greek Energy Forum, a think tank led by companies like Shell, BP and ENI, which seeks to promote fossil fuels. ENTSOG is also a hotbed of conflicts of interest: its board is presided over by Stephan Kamphues, chairman of OPEN Grid Europe (formerly E.ON Gastransport). Other board members represent Enagás, Fluxys Belgium, the UK's National Grid Gas, French GRTgaz, Romanian Transgaz and Hungarian FGSZ.[94]

Industry holds sway, as technicalities keep public at bay

Energy in general, and gas in particular, are technical and scientific policy areas, which means policy debate tends to take place without a high level of public discussion. The PCI list, for example, is considered as a technical topic, and has therefore been treated as fairly confidential. The latest PCI list, voted in March 2018, is the third of its kind but the first to be debated in the European Parliament. This was the result of strong mobilization by civil society groups to expose the number of new climate-wrecking gas projects in the PCI list, and highlight the many local communities fighting massive infrastructure projects on the ground. Not an easy task, since the PCI list – despite being a cornerstone of investments in energy infrastructure in Europe – is known only to people working in the field, and is obscure to those outside policy spheres.

Compared to oil, gas is believed by many to be a clean source of energy. The complex and scientific arguments about why this rhetoric – promoted by the gas industry – is far from true, are hard to convey to the public, although some organisations are trying.[95] This is made harder by the efforts of gas companies to greenwash the image of gas. Shell, for instance, rolled out a marketing campaign aiming to appeal to younger generations, presenting gas as the future of energy.[96] As well as greenwash aimed at capturing the public debate, oil and gas companies have attempted to coopt the renewable energy policy debate, by heavily investing in renewables' industry lobby groups, such as Solar Power Europe and WindEurope. These groups have subsequently become much less critical of gas, lowering their demands for more renewable energy in our energy mix, and so becoming a weaker opponent of the climate-wrecking fossil fuel industry.[97]

These tactics have been complemented by the gas industry's clever framing of the debate around innovation, competitiveness and energy security. Rhetoric around energy security is particularly well-developed, with the building of new gas infrastructure justified by the need for Europe to be independent from Russian gas. This is one of the main objectives of the PCI lists, and is very present in communications from the industry.[98] The public's distance from the policy arena, and the industry's spin on the debate, are compounded by the dependence of EU decision-makers on the industry for particular information. The gas industry owns various types of data that is critical to deciding where gas infrastructure can go. They regularly use the security of supply argument to scaremonger decision-makers, arguing that based on their data, if no new infrastructure is built, Europe would be exposed to major threats (however unlikely this actually is). In the same way, the Commission's reliance on industry expertise, in advisory groups, or through presentations from ENTSOG,[99] gives industry a particular power over the direction of policy.

Not a legitimate path to democratic energy policies

With such a blatant privileged role given to an industry with a vested interest in the policies its being asked to shape, the glaring lack of transparency, and the many conflicts of interest, there is a serious threat to democratic energy decision-making – and to our climate. Take again the example of ENTSOG, which presents itself as a neutral advisory body, but in reality represents the gas industry. In 2017, Friends of the Earth Europe caught ENTSOG listing itself in the Transparency Register as a non-governmental organisation (NGO), illegitimately: it was only after a complaint that ENTSOG changed its entry to a trade association.[100] And for an example of illegitimate influence over policy, one need look no further than the Nord Stream 2 pipeline, seemingly pushed forward by heavy, behind-closed-doors lobbying. Indeed, former German chancellor Gerhard Schröder signed the agreement for the pipeline with Russia just days before leaving office, and has been pushing for the project ever since.[101] Not surprising, since Shröder was appointed chairman of Russian state-controlled oil producer Rosneft, and chairs Nord Stream 2![102]

The gas industry's push to create more and more gas infrastructure, and to increase demand for gas, serves only their interest. The strong push back from civil society, and local communities resisting pipelines across Europe, shows the industry pressure for what it is: an illegitimate attempt to circumvent democracy. The fact that industry is given a seat at the table, whilst citizens are not, is highly damaging to people's trust in the EU. What's more, given the climate urgency,[103] developing more gas infrastructure and thereby locking Europe into a fossil fuel future, is not a legitimate policy goal, as it goes against the public interest – and international obligations – to try to limit global warming to 1.5°C.[104]

4

tax policy

in the Netherlands

— Jasper van Teeffelen, Lobbywatch

The Netherlands has an extensive system of policy and legislation that enables multinationals to avoid paying taxes.[105] The tax system in the Netherlands has been shaped by and for multinational corporations, with the result that they pay less than their fair share of tax. This increases the tax burden on regular citizens, and erodes the resources available to invest in public services like education and healthcare.

Shell and Unilever pulling the strings on tax...

A particularly clear example of the corporate capture of Dutch tax policy can be found in the abolition of the withholding tax on dividends (ie a tax on payments from a corporation to its shareholders). In October 2017, the new coalition Dutch government announced it would abolish the withholding tax on dividends, despite the fact that it would cost the country and its taxpayers €1.4 billion a year.[106] This policy was included in the government's coalition agreement directly at the request of Shell and Unilever, which both spoke with the country's biggest political party VVD during the government formation process. The fact that this corporate-friendly tax measure came at the behest of an oil giant and consumer goods company was well-publicised in Dutch media and heavily debated in Parliament, where Prime Minister Mark Rutte was criticized for following big business' orders without any sound economic foundation. Nor was it a step that was included in any of the political parties' electoral programmes. Yet the legislative proposal including the measure is due to be presented to Parliament in September 2018.[107]

Close ties: access, influence and power

This corporate coup over tax policy – despite huge public outcry – was facilitated by extensive behind-closed-doors contacts between the political negotiators involved in the government formation process and Unilever and Shell, discussing the dividend tax. This was revealed through Freedom of Information requests by a researcher at the University of Amsterdam.[108] For example, the then-Deputy Minister of Finance, Eric Wiebes (who is now the Minister of Economic Affairs) met at least once with the chief executive of Unilever during this process. But why were political decision-makers so receptive to their demands? Internal documents also revealed that the threat of Unilever, Shell and chemicals giant AkzoNobel to leave the Netherlands was crucial in the government's decision to abolish the tax. Unilever and Shell both currently have a dual Dutch and British structure, but had recently made it known they planned to choose a single nationality. They used the fear that they would choose the UK over the Netherlands (and move their head offices or stock listings to Britain) as leverage. This implicit threat gave the companies' considerable power over politicians to get what they wanted, pushing the government into abolishing the tax regardless of the huge cost (€1.4 billion annually) to the public.

The demand to abolish the dividend tax was not, however, a last minute request. Research by the Centre for Research on Multinational Corporations (SOMO) has shown that lobbying to abolish the dividend tax has a long history: it has been pushed for by corporate lobbyists for over a decade.[109] In the past, the government was always sceptical, because of the billions in revenue it would lose, much of which would go to foreign governments at the cost of Dutch taxpayers. But with the threat of Shell, Unilever and AkzoNobel leaving the Netherlands, the government finally caved to the pressure from corporate lobbies. At the same time, the government considered it important to keep the Netherlands an attractive (i.e. low-tax) "investment destination", in light of incoming EU anti-tax avoidance measures that could make the Netherlands less attractive to tax-dodging multinationals.

The close relationship between corporate lobbies and Dutch tax policy-makers has also been revealed by internal government documents obtained through a Freedom of Information request by SOMO and Oxfam Novib. Dutch big business lobby group VNO-NCW, and the American Chamber of Commerce (AmCham), which promotes the interests of US multinationals, have established very intensive and long-term contacts with the Ministry of Finance. For example, Finance Ministry officials have described AmCham as a "familiar" contact of the ministry on tax, noting that they "regularly have meetings" and have "good contacts".[110] Research by Lobbywatch has shown that corporate lobbyists have incredible levels of access to the Dutch government: VNO-NCW has met with 17 of the total 24 ministers, since the new government formed in October 2017 (with a total of 21 meetings).[111] The Minister of Finance has met nearly exclusively with banks and financial sector companies, providing an even starker demonstration of the privileged access enjoyed by corporate interest groups.[112]

With all these lobby meetings taking place, it is clear that industry not only has better access to decision-makers than other interest groups, but has considerable means at its disposal. However, as there is no law in the Netherlands requiring companies or lobby groups to declare their lobby expenditures, there is no way to know just how much they spend on influencing tax policy. What is also unclear, being beyond the lobby transparency data that is available, is how much informal schmoozing there is between policy-makers and corporate interests. One case worth highlighting however, is the former State Secretary for Finance, Joop Wijn, being awarded an "Investment Award" by AmCham for his "exceptional contribution" to the Dutch investment climate. Put plainly, this means reducing the tax burden for multinationals, as Wijn introduced a wide array of measures that reduced corporate taxes and enabled tax dodging.[113]

Conflicts of interest written into tax law

A major contribution to the capture of Dutch tax policy is the conflicts of interest bred by the revolving door between those making the laws and those seeking to benefit from them. In the case of the dividend tax, an important dimension was that key individuals involved in the decision to abolish it had a history with either Unilever or Shell, the two corporations behind the move. The first major revolving door case is right at the top: Prime Minister Rutte worked for Unilever between 1992 and 2002![114] The second case is also high-level: during the negotiations between the political parties to form a coalition agreement for government, the former Minister of Finance, Gerrit Zalm, who held the position for 12 years between 1994 and 2007, was appointed 'informateur'. As 'informateur', Zalm played a key role in the formation of the government. This is significant because Zalm also currently sits on the board of directors of Shell.[115] Which raises the issue of conflicts of interest, since the government's coalition agreement contained the dividend tax measure that was included as a result of lobbying from Shell, et al.

HHigh profile revolving door cases are worryingly widespread in the Netherlands, with numerous cases of ministers moving to the financial sector after their political careers. Sticking with the case of former Finance Minister Gerrit Zalm, who not only sits on the board of Shell, but became a banker after leaving office, working for the now bankrupt DSB Bank. He then became chairman of the board at ABN AMRO, from 2009 until 2016, and in 2018 joined the board of credit rating agency Moody's. Another notable example is Wouter Bos (whose career started at Shell), who served as State Secretary of Finance between 2000 and 2002, and Minister of Finance from 2007 to 2010.[116] After he left office, Bos became partner at accountancy firm (and corporate tax avoidance intermediary) KPMG.[117] Similarly, Joop Wijn, State Secretary of Finance between 2003 and 2006, and Minister of Economic Affairs from 2006 to 2007,[118] started his career at ABN AMRO and moved back to the banking world after his political career, working for Rabobank and ABN AMRO.[119] He is currently Chief Strategy and Risk Officer at fintech company Adyen.

Out of the public eye: easier for corporate lobbies to shape the details

By their nature, tax policy and the methodologies of tax dodging are technical, complex, and often boring issues to the general public, the mainstream media, and even many Parliamentarians. Public and political awareness around tax dodging and the role of the Netherlands has certainly increased over recent years, with the release of the Panama Papers and work from civil society and parts of the media, but it remains a technical issue, the intricacies of which are difficult to grasp. So although the topic is on the political agenda, its complex nature makes it difficult for politicians, media, civil society and citizens to assess whether any so-called 'anti-tax dodging measures' are actually effective.

What's more, important aspects of tax policy are removed from the public eye. A key example of this lack of public information is found in so-called 'tax rulings'. Tax rulings are agreements between companies and the government that are intended to provide a company with 'assurances before the fact' about how they will be taxed. In practice, these rulings are often better described as sweetheart deals, with multinationals corporations and the government negotiating the most favourable (i.e. low tax) deal for the company. For example, a tax ruling between the Dutch government and Shell, signed in 2005, enabled the company and its

British shareholders to circumvent the dividend tax for nearly half of its shares. This is estimated to have cost the Netherlands a total of around €7.5 billion between 2005 and 2017.[120] The contents of the ruling are kept strictly confidential, with the government citing a legal provision that prevents it from speaking about individual rulings. However, the same law includes a provision that enables the government to speak out if deemed necessary for the public interest. Given the huge loss of resources for public services that this sweetheart deal has resulted in, transparency about the deal clearly is in the public interest. Yet the Parliament has only been given a strictly confidential, technical hearing with Finance Ministry officials to get further information on the ruling, and were prohibited from publicly sharing any information acquired in the hearing!

What's good for big business is good for everyone... right?

Complementing the relatively low general literacy about tax policy is a debate that has been framed in a way that (falsely) equates the interests of big business with the public interest. A debate h uses rhetoric that mirrors the language of corporate lobbies. Thus, the Dutch tax system, which is so conducive to corporate tax dodging, is defended by decision-makers as being in the interests of industry: it is necessary because the Netherlands must safeguard its "investment climate", because it is important for "jobs", or "attracting corporate headquarters" or simply for the "economy". These are precisely the arguments used by the government to defend its decision (at Shell and Unilever's request) to abolish the dividend tax: "we need to ensure an attractive investment climate".[121] Prime Minister Rutte stated that "as a coalition government we made the choice to make an extra step for companies that really add value and jobs".[122] These are the very same arguments used by the corporate lobbyists of AmCham, VNO-NCW, and many multinational companies. Importantly, there is usually little or no independent statistical or quantified basis for these arguments. The only research that was cited to defend the abolition of the dividend tax was funded by Shell but carried out by the University of Rotterdam.[123]

Corporate capture by tax dodgers erodes public trust

Public trust in democratic decision-making has been eroded by the government's dealings with multinational companies that led to its plan to abolish the dividend tax. The fact that this was not in any of the political parties' electoral programmes – so nobody voted for it – and that it was implemented directly in response to behind-close-doors lobbying by big corporations, without any sound evidence of why it is a good decision, is both illegitimate and deeply damaging. This comes on the back of public outcry over the role of the Netherlands as a global tax haven for multinationals. Such a clear case of corporate capture only looks worse in light of the revolving door between tax policy-makers and the corporate world of tax avoidance, the privileged access given to business, and the shared industry-friendly rhetoric used by decision-makers. When billions of euros that should fund education, healthcare and other public goods are bargained away by government at the behest of global corporations, democratic public-interest law making is in serious trouble.

5

pharmaceutical industry

— Rachel Tansey, Writer and researcher

The corporate capture of pharmaceutical-related policy and regulations is damaging to the public interest, by pushing greater risks onto patients, keeping doctors and patients in the dark about the results of clinical trials of medicines, pushing up prices and reducing access to medicines. All so the industry can keep its profits as high as possible – no matter the impact on human health or the loss of life.

Industry cashing in…

One example of how the industry cashes in from corporate capture is the Innovative Medicines Initiative (IMI). Since the early 2000s, the Commission has allowed pharma trade association and lobby group, the European Federation of Pharmaceutical Industries and Associations (EFPIA), to lead a multi-billion euro, publicly funded, research project called IMI.[124] This much-critiqued project has, from its outset, been a glaring example of research policy being written by and for big pharma, rather than in the public interest. It pours public money into the pockets of some of the richest companies in the world, subsidising multinationals' research costs and enabling them to capture the profits through an intellectual property rights (IPR) regime they authored.[125] On its website (now deleted), EFPIA admitted that IMI offers pharma companies «tremendous cost savings, as IMI projects replicate work that individual companies would have had to do anyway»![126]

A recent evaluation of the first phase of IMI (2008 to 2016) by a Commission expert group concluded that "no socio-economic benefits" could be identified, nor any examples of it "bringing new, safer and more effective" medicines to patients, or shortening their development time. These were the objectives that justified the €1 billion of public money.[127] It also noted that IMI's research agenda was non-transparently set by EFPIA; that companies could pull out of their commitments without any way of being penalised; and, that SMEs were disadvantaged by the IPR regime. And the cherry on the top, it concluded that research topics "closer to the public interest than those identified by the industry" may be better identified under the EU's regular research framework "at a lower cost for the public budget." In other words, by letting EFPIA lead the project and write its rules, much needed medicines' research ended up being more expensive and less effective, whilst big pharma companies reaped cost-savings and lucrative IPR. Yet despite all of this, the corporate capture of pharma research policy meant that IMI was renewed for a second phase (2014 to 2024), with another €1.6 billion public money![128]

...while patients' interests are traded away

Another area where big pharma's corporate capture is particularly damaging is trade. The trade policy demands of the pharmaceutical industry seriously threaten access to affordable medicines and to clinical trials' data on medicines' safety and efficacy, preventing patients and doctors from knowing the real risks of medicines they take and prescribe. Yet the Commission promised to take the industry's wish-list for EU-US trade deal TTIP "to the negotiation table".[129] Big pharma also appears to have been successful in getting one of its key offensive objectives in almost all EU trade negotiations: longer and stronger protection of IPR for medicines. This serves the interests of the companies, but makes medicines more expensive for people, and reduces access to essential medicines. And whilst TTIP (in name at least) may be off the table for now, pharma's TTIP wishlist has been mimicked in its lobbying around other trade deals. For example, EFPIA successfully pushed the Commission for the same dangerous things in the EU-Japan deal, which includes a strong IPR chapter, and regulatory cooperation. The latter creates new avenues for pharma industry influence over our laws, and pressure to erode regulations designed to protect (but portrayed as 'trade barriers') down to the lowest common denominator.[130]

An inside role for big pharma

Pharma lobby group EFPIA – whose members include the likes of GlaxoSmithKline (GSK), Pfizer, Novartis and Roche – is a member of seven Commission expert groups on pharmaceutical related issues.[131] Big pharma's formal high-level influence is exemplified by this sort of advisory group, allowing the industry to shape the policy agenda. Big pharma has both explicit and covert roles in these groups – the latter, by allowing pharma company representatives to advise in a "personal capacity", even on issues of direct commercial interest to their companies. For example, Gautier Pereira was one of nine "personal capacity" experts sitting an Expert Group on biotechnology patent law, listed as a "Senior Manager Legal in the pharmaceutical industry". This, it turned out, meant pharma giant and self-declared IP lobbyist, GSK.[132]

EFPIA also enjoys a high level of access to the Commission, holding regular meetings with Commissioners, their cabinets, and officials. For example, in the first few months after the Juncker Commission entered office in November 2014, this single lobby group had over 50 meetings with high-level officials in the health, trade, research and growth directorates.[133] Over the first two years of TTIP negotiations, EFPIA had 11 behind-closed-door meetings meetings with DG Trade, at which the Commission routinely updated them on the status of negotiations. In contrast, public health group, the European Public Health Alliance, had just one meeting in the same period.[134]

What's more, the Commission's regular meetings with pharma representatives are sometimes far from transparent. Despite a commitment not to meet with lobbyists that haven't signed up to the transparency register, high-level officials in the Juncker Commission have met with several (at the time) unregistered pharma firms and associations.[135] And contacts between the Commission and the pharma industry are opaque in other ways. Commissioners, their cabinets and Director Generals should disclose all meetings with stakeholders online, but when meetings with lobby consultancies are declared, information about which client they were acting for is often missing. For example, Health Commissioner Andriukaitis' cabinet met with Brussels lobby firm H+K to discuss 'Immuno-oncology treatments', in February 2015. But it did not say which of its clients – which then included pharma giants Shire, Pfizer, Novartis, Amgen and GSK – H+K was lobbying for.[136]

Sitting in all these expert groups and orchestrating so many meetings is made possible by the big lobby budgets and large numbers of lobbyists that big pharma can deploy. In 2015, it was estimated that the pharmaceutical industry – including companies, associations and the top ten lobby firms they employ – had a declared annual lobby spend of nearly €40 million. That is around 15 times more than the lobby expenditure of civil society and consumer groups which work on public health or access to medicines.[137] At the same time, the pharma industry had well over three times as many full time lobbyists as the civil society groups. EFPIA alone declared spending over €5.5 million lobbying the EU in 2016, with an arsenal of 29 lobbyists,[138] and hired six different consultancies and law firms to assist in its Brussels lobbying![139] Likewise, many global pharmaceutical giants – some of the wealthiest companies in the world – declare spending millions on lobbying the EU. For example, Novartis nearly €2 million[140] and GlaxoSmithKline over €1.5 million.[141] Many of these companies also hire multiple lobby consultancies to help influence EU policy.[142] In fact, the pharma industry spent more than three times the total expenditure of the civil society organisations just on hiring lobby consultancies.[143]

The power of framing and the framework of power

The pharmaceutical industry expertly frames “its profit-making goals as a proxy for public health objectives” by using language in ways designed to manipulate public understanding.[144] One favourite term bandied about by the industry is “innovation” and “innovative medicines”. Often, however, this does not refer to medicines that actually do something new, but to any new drug brand put on the market, even if it doesn’t represent a therapeutic advance.[145] And the industry itself develops little that is meaningfully “new”, more often buying up rights from publicly-funded institutions. Yet the assumption that big pharma funds the research that saves lives and improves health is used by the industry to convince policy-makers of the need for high medicine prices and strict protection of IPRs – supposedly to maintain the incentive for research, but in reality, allowing them to extract monopoly profits.

Most pharmaceutical-related policy processes are very technical, and usually garner little media coverage. Clinical trials regulations, intellectual property and trade secrets rules, pricing and reimbursement policies and ‘regulatory harmonisation’ in trade deals, are all complex policy issues far-removed from the awareness or scrutiny of the general public. Yet whilst these policy issues and jargon may appear quite complicated, they affect fundamental aspects of people’s lives: the right to know the risks, dangers and efficacy of medicines they take, and the ability to access and afford live-saving or life-improving drugs. But the lack of wider public awareness or media interest means that these policy issues are too often dealt with behind the scenes, in a way that does not represent the interests of people, but the interests – and profits – of the industry.

However, it is not just being out of the public eye, and big pharma’s framing of the policy discourse, that has enabled corporate capture of pharma-related policy. The industry is in a powerful position vis-a-vis its EU regulators, which lack sufficient internal technical expertise on many pharma-related issues. This is one reason why so many pharma industry 'experts' are entrenched in policy-making processes. For example, nearly one thousand of the European experts at the European Medicines Agency (EMA) – the EU agency responsible for the scientific evaluation of medicines developed by pharma companies in the EU – have direct or indirect interests in the pharmaceutical industry.[146] That is a quarter of EMA's total number of experts. Direct interests include financial interests or employment with, consultancy to, or a strategic advisory role for a company. But even indirect interests – which include being an Investigator or Principal investigator (in an industry instigated/sponsored clinical trial), or organisational grants or funding from the pharma industry – are pretty direct![147]

EMA also depends on data provided by the industry, particularly around clinical trials of new drugs, which it doesn't have the means to verify. This creates a power imbalance. When EMA made moves towards greater clinical trials data transparency, the then president of EFPIA (and chief executive of pharma company Sanofi), responded with claims that this would discourage critical investment in crisis-hit Europe, threatening that Sanofi's "next euro of investment would go to the United States or to emerging markets."[148] Following this, and other industry pressure, EMA backtracked. EMA shifted to a much more restrictive transparency approach, with a major loophole to block disclosure of information that might undermine the 'economic interests' of pharma companies.[149] This kind of economic blackmail is run-of-the-mill: do what we want or you'll lose jobs and investment. The same strategy was used by pharma firm Lilly when lobbying on IPR in an EU trade deal: Eli Lilly threatened to relocate its investment away from the EU if it didn't get its way, warning that if IPR protection is not favourable, "(n)othing impeaches that future investments go elsewhere."[150]

Blurred interests from revolving door

As well as its reliance on industry data and experts, EMA, the agency responsible for licensing medicines to be sold in Europe, has a revolving door with the pharma industry, which turns both ways.[151] For example, Stefano Marino became EMA's head of legal affairs in June 2013, after a 23-year career in the pharma industry, including being chairman of EFPIA's trademark committee. Whilst in 2012, Vincenzo Salvatore, EMA's former legal head, joined the 'European life sciences regulatory practice' of law firm Sidley Austin LLP. Xavier Luria became a consultant for the pharmaceutical sector after leaving his job overseeing medicines' safety and efficacy at EMA. EMA's ex-director, meanwhile, Thomas Lönngren set up Pharma Executive Consulting Ltd in January 2011.[152] All of these cases faced insufficient restrictions by EMA under its conflicts of interest rules. Cumulatively, they risk blurring the interests of the regulated and the regulator. And these interests need to remain separate, for they are fundamentally different: the industry being regulated seeks to maximise its profits, but the job of the regulator is to safeguard public health, by ensuring strict conditions are met before a drug can be sold in the EU. Sadly, EMA is not the only place with a well-oiled revolving door. Maria Trallero moved from the Commission's DG Trade (2005 to 2012) to become EFPIA's Director of Trade Policy (since 2013), a job move which was authorised without any restrictions.[153] And the health and pharmaceuticals attaché at the Netherlands' permanent representation to the EU become EFPIA's Director of European affairs in 2014.[154]

Commission and pharma team up to dismiss public worries

The impression given by the close ties, lack of transparency, institutionalised access and industry-favourable policies is that decision-making is sewn up between the pharma industry and EU officials. This undermines public trust in democratic processes. A particularly stark illustration of just how damaging to public trust corporate capture by big pharma can be comes from the area of trade policy. Internal Commission notes on a February 2015 meeting between EFPIA, Novartis and Trade Commissioner Malmström about two EU trade deals (the now concluded EU-Canada deal CETA, and stalled EU-US deal TTIP), reveal a frightening lack of democratic legitimacy: “Both Commission and industry underlined the importance of a vocal business community to explain the benefits of a possible TTIP agreement and to get rid of false myths around the negotiations and its impact. The Commissioner also shared her experience stating that local examples work best to show the benefits of a possible TTIP agreement to the public.”[155] In other words, the pharma lobby and EU trade boss used the private meeting to share propaganda strategies and to dismiss the legitimate concerns of the public as “false myths”!

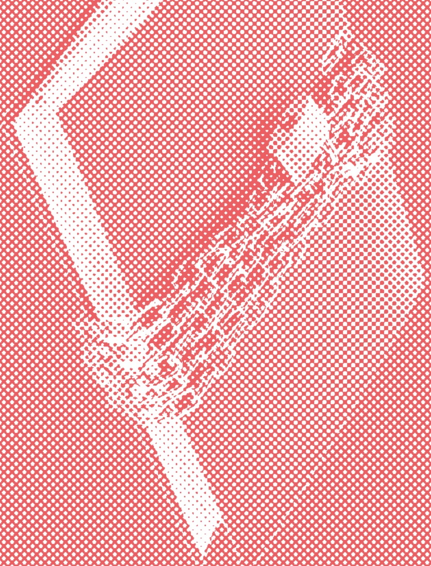
Real life cost of corporate capture

The pharmaceutical industry has successfully shaped trade deals in the interests of its profits, but at the expense of public health, and captured EU research policy, funnelling public cash and copyright-privileges into the arms of some of the world’s richest companies. Big pharma has not just entwined itself in pharmaceutical-related policy areas, it has framed the debate, it provides the ‘expertise’, and pulls no punches in its attempts to influence policy-making. But its capture of regulatory processes has a real life cost: access to safe and affordable medicines in Europe and beyond.

6

data protection

and privacy policies



*— Léa Caillère Falgueyrac, Researcher**

The data economy is flourishing. Businesses and political leaders claim it will restore economic growth and make Europe influential on the international stage. Yet the most profitable data is personal data: information relating to an identified or identifiable natural person.[156] Technological tools working on a mass scale to collect, process, and deduce new information from personal data are surveillance tools, used by corporations to generate profits, and by governments for monitoring purposes.

These practices violate individuals' fundamental rights to privacy and the protection of personal data – which include not being monitored or tracked – rights that are legally enshrined at various levels. To increasingly base our economy on the wild exploitation

**This case study was commissioned by the Austrian Federal Chamber of Labour (AK EUROPA)* of data about individuals is dangerous: it reinforces social conformism, feeds surveillance systems and confines citizens to the role of consumers. Yet the digital industry has fought tooth and claw against new EU rules on personal data and on privacy: lobbying to block, delay and weaken legislation, and framing the debate so that fundamental issues remain unchallenged.

A brief history of tech: money over morals

As far back as the 1970s, some countries started to make laws responding to the challenges posed by new technologies to the protection of personal data and to privacy. At EU level, the 1995 Data Protection Directive created a general framework, complemented by various sectoral rules. In 2012, the EU institutions started negotiations for new rules to replace the now technologically outdated 1995 directive. Four years later, the General Data Protection Regulation (GDPR) was adopted. Similarly, since 2016, new rules on the confidentiality of electronic communication (the so called ePrivacy Regulation) are being discussed, to replace the 2002 ePrivacy Directive. All these rules seek to set limits on companies and states when collecting and processing personal data. They do not, however, take issue with business models being based on the exploitation of pieces of people's lives. Rather, they try to 'balance' the protection of the rights of individuals – who are increasingly considered solely as consumers – with the interests of business.

Although these new laws may not be fundamentally changing the rules of the game, enabling an unhealthy model of the data economy to continue, they are nonetheless pioneering at the international level. Business interests fear that the EU could be a trendsetter in this area; as a result, there has been an unprecedented degree of industry opposition. The pressure from, and aggression of, lobbyists has been matched by their unparalleled numbers and the diversity of actors involved. Shortly after the Commission published its 2012 GDPR proposal, the responsible Commissioner, Viviane Reding, said the draft law had been subject to the most aggressive lobbying she has ever witnessed.[157]

Disproportionate access to EU officials

The tech industry is one of the most active lobbies towards the Commission. According to Transparency International's Integrity Watch database, the digital economy and the digital single market directorates have had the most contacts with lobbyists since 2014.[158] What's more, 90% of lobby contacts with former digital economy Commissioner Günther Oettinger were with industry. Looking at the top ten organizations that Commissioner Oettinger and Commissioner for the Digital Single Market, Andrus Ansip, have met with shows DIGITALEUROPE and Deutsche Telekom in the lead, with 16 meetings each (as of April 2018). They are followed by Vodaphone, BUSINESSEUROPE, Microsoft, Google, IBM and Telefonica, which each had more than ten direct contacts with one or other of the Commissioners. More specifically, on the revision of the ePrivacy Directive, 41 lobby meetings were held in 2016 with Commissioners Ansip or Oettinger, their cabinets, or the Director-General of the lead department for ePrivacy, Roberto Viola: 36 of these (88%) were with corporate representatives, whilst only 5 were with civil society organisations.[159]

Parliamentary forums and swanky ski chalets

As well as the abundance of official meetings between the digital industry and the policy-makers charged with regulating it, there are a multitude of informal channels of communications between them. The closeness and complicity that results from these informal discussion spaces is indicative of corporate capture. For example, the European Internet Forum (EIF) regularly organizes receptions, breakfast and lunch meetings in the European Parliament. EIF's membership is comprised of 77 MEPs, 49 business members (including Amazon, Apple, Deutsche Telekom, Facebook, Google and Vodafone) and 71 associate members (business federations, of which many of these companies are members, such as DIGITALEUROPE[160]). These secretive events, open to members or by invitation only, take place under Chatham House Rule.[161] At a February 2017 EIF breakfast debate on e-Privacy, chaired by centre right MEPs Axel Voss and Michal Boni[162], the industry audience applauded after interventions along the lines of "we have too much of fundamental rights" and "digital rights defenders are left activists".

Another example of cosy and informal contacts was a November 2016 conference on the free-flow of data, organized by trade policy think tank ECIPE.[163] The event took place in the Silken Berlaymont, a swish hotel in Brussels, and was attended by Commissioner Ansip, alongside 120 other participants, a huge majority of which were industry representatives. At the end of his speech, Commissioner Ansip openly told participants to lobby their member states on the issue of free flow of data.[164] Commissioner Oettinger has also proven himself a friend to the industry: telecommunications and tech lobby groups are a staple at his annual ski chalet getaway in the Austrian alpine town of Lech. This exclusive event, organised by the cabinet of Commissioner Oettinger (who infamously called net neutrality activists "taliban-like"[165]), brings together industry representatives and EU officials. At 2018's event, 42% of the industry participants were telecoms and IT companies.[166] As one regular attendee told Politico Europe, "For me, being based in Brussels, if I want to see him, I can see him… But in Lech, he is around for most of the days. He is on most of the panels. There are opportunities to sit with him. He is not rushing."[167] By contrast, no activists, consumer groups or civil society organisations were invited. But even if they had been, it is unlikely they could afford the luxury chalet.

Staff swap between tech industry and its regulators

Positions in the tech industry and in EU institutions on digital issues are alarmingly interchangeable. Former Commissioner for

Digital Agenda, Neelie Kroes, joined Uber's Public Policy Advisory Board in 2016. Robert Madelin, former Director General of the Commission's communications technology directorate, DG CONNECT, is now director of FIPRA International, an influential public affairs consultancy whose clients include eBay, Uber and Microsoft.[168] Former MEP Erika Mann spun straight into a lobbying role for the Computer and Communications Industry Association, and later for Facebook.[169] Whilst Facebook's current cheief Brussels lobbyist was previously at the Danish Ministry of Science, Technology and Innovation.[170] The same pattern exists at national level: the Google Transparency Project has identified around 80 revolving door moves between Google and EU governments over the past decade.[171] Many involved the UK government, notable given the UK's stiff opposition to a strong GDPR in the Council.[172]

Big data, big budgets, and floods of amendments

The tech industry's colossal resources – the money it has to throw at influencing data protection policies – grease the wheels of its success. According the lobby register, Google spent close to €5.5 million lobbying the EU in 2016, with 14 lobbyists wandering the halls of Brussels.[173] Microsoft threw €4.5 million at its EU lobbying efforts from mid-2016 to mid-2017, with 15 lobbyists.[174] The numbers are similar for other tech giants, like Amazon, Facebook, Apple and Uber, and for big telecom operators such as Deutsche Telekom, Orange, Vodafone and Telefonica. But that's not the end of the story. As well as lobbying in their own name, most are members of associations and federations, which enable their interests to be represented multiple times, and their messages to be repeated again and again, artificially creating the impression of diverse support. For example, Microsoft is a member of 30 federations, associations and think tanks. Google's voice is amplified through the 24 organizations it is a member of, and Amazon's through 12.[175] To illustrate how effective this is, a December 2016 tech industry joint statement on ePrivacy had 12 signatory federations: six count Microsoft and Google as members.[176]

The tech industry's vast resources have repeatedly enabled them to flood the debate, including at Parliamentary level. The European Parliament approved its report on the GDPR in April 2014, after a lengthy process that was slowed down by the record 3,999 amendments tabled by MEPs. Green MEP, and Parliamentary rapporteur on the dossier, Jan Philipp Albrecht, noted that "the number of amendments was a direct result of lobbyists of different stripes pushing changes on the bill".[177] A particular scandal was caused by the 229 amendments Belgian liberal MEP Louis Michel tabled, 158 of which were strongly anti-privacy. Louis Michel claimed that he was not aware of this, and that his assistant had held meetings with lobbyists and tabled the industry amendments himself.[178]

Pulling the strings behind not-so-impartial experts

The industry has also made good use of well-tested strategy: the funding of seemingly impartial or academic experts. For example, in March 2018, the EU-Observer published an article arguing that the ePrivacy Regulation risks "breaking the Internet of Things" (ie linking online devices like smartphones to everyday items such as thermostats), written by a "Brussels-based senior policy analyst at the Centre for Data Innovation".[179] At first glance this appears to be an article from an independent expert. In reality, the Centre for Data Innovation isa prominent digital industry lobby group, headed by Daniel Castro, and affiliated with the Information Technology and Innovation Foundation (ITIF), a US foundation financed by the US tech and telecoms industry.[180] In the same month, a report revealed that Google has paid tens of millions of euros to finance European academics and think tanks, to develop "an influential network of friendly European academics who write research papers supporting the tech giant's business interests".[181] This is the case with Berlin's Humboldt Institut für Internet und Gesellschaft (HIIG), which has organized over 160 events and produced more than 240 academic articles, many related to interests of Google. Funding impartial-seeming groups is a way to influence policy in a more discrete way, at a time when the reputation of big tech companies such as Google, Amazon or Facebook has been damaged by scandals around tax, anti-trust and privacy.

A well-trained choir that frames the debate

The GDPR and the future ePrivacy Regulation are supposed to protect individuals' fundamental rights in a new age of digital surveillance. But these fundamental rights, which are enshrined in international law, are, apparently, too constricting for corporations' greed and governments' desire for control. Thus, the focus of policy debates has been about balancing "consumer rights" with industry's interests. All components of the industry sector (tech, banks, insurance, digital advertising, media, employers, etc) push the same message, arguing that these laws would destroy European competitiveness and innovation.[182] As a well-trained choir, they repeat that self-regulation should be favoured over binding laws. And so, just as with the other aspects of the Digital Single Market (e.g. telecoms regulation, free flow of data, data economy, the digitalisation of European industry, etc), the main focus of GDPR and ePrivacy remains competitiveness and growth.

In 2016 and 2017, publishers and the advertising industry led an impressive lobby campaign against the future ePrivacy Regulation, disingenuously accusing it of harming media plurality and high quality journalism, while favouring fake news.[183] The argument that data-driven ad revenue helps make high quality journalism possible is fallacious, given that the advertisers' economic model does not focus on quality journalism but on articles that people will click-on. Rather, data-driven ads are a new way for the industry to influence the press: quality journalism means journalism free from economic and industry pressure. Despite their misleading arguments about fake news, such discussions took up a big part of the general debate. And as a last attempt to remove fundamental rights from the discussion, some industry lobbyists accused privacy defenders of being "anti-technology" and caught in a "cycle of hysteria".[184] One such example was ITIF's 2015 report 'The Privacy Panic Cycle: A Guide to Public Fears About New

Technologies'[185] (written by the Centre for Data Innovation's Daniel Castro), which aims at discrediting arguments based on the defence of our fundamental rights.

Dark zones and closed-doors

When EU legislation goes through the co-decision procedure, there is a phase of trilogue negotiations between the Commission, Parliament and Council (which represents the member states). They meet behind-closed-doors to hash out a compromise based on their three versions of a draft text. This is the most opaque phase of the legislative process, with no documents or details published, yet big changes often occur. The GDPR is an example of this, with respect to how a provision on the protection of worker's personal data evolved. The Commission's draft had a minimalist approach allowing member states to adopt specific rules on the processing of employees' personal data.[186] In March 2014, the European Parliament heavily amended this by setting minimum standards that member states would have to follow (no processing without knowledge of the employee, no surveillance in places used for private activities, no genetic testing, no processing of sensitive data for discriminating purposes, etc).[187] But two years later, all the Parliament's amendments were gone, the final version a copy-paste of the Council's position.[188] This version contains a nice-sounding statement of principles, but in reality aims at keeping the status quo of not regulating anything that touches labour law at EU level. Ultimately, employees have lost out. Yet the lack of transparency around trilogues means we cannot easily answer the questions of which member states pushed for this, which lobby groups exerted influence on them, or why the Parliament gave up its version.

Derailing democratic decision-making?

A leaked version of the Commission's ePrivacy proposal was published by Politico in early December 2016: digital rights and consumers' organizations mostly welcomed it, but industry was furious, and immediately went on the offensive. There followed numerous articles, joint-letters to Commissioners, and public statements from the telecoms industry,[189] trade associations,[190] digital advertising and publishers.[191] Some allegations lost sense of all proportion, such as those of the Interactive Advertising Bureau (IAB) UK, which told the Financial Times that the draft proposal was "putting at risk the entire internet as we know it".[192] In addition, an informal coalition of tech industry representatives met with Commissioner Ansip and Justice Commissioner Vera Jourova to discuss "transparency and harmonization of EU data protection".[193] This heavy offensive was successful. In January 2017, the Commission presented its official proposal, which significantly differed from the earlier leak: a weaker definition of metadata, the removal of privacy by default settings, and the removal of class action possibilities.[194] Internal sources in the Commission said that the changes to the draft happened directly at the top level of the Commission (ie in the cabinets of the Commissioners, rather than in the responsible directorate, DG CONNECT), and noted that the IAB would have been very influential.

Another avenue through which corporate interests may have been fed into the process was through the active lobbying of the US government against the GDPR: hardly a legitimate part of democratic EU law-making. The digital rights organizations EDRi and Access Now reported how the US Department of Commerce engaged in a concerted lobbying effort in December 2011, shortly before the publication of the Commission's proposal.[195] This included phone calls from senior figures in the US Department of Commerce to top level Commission staff. In 2013, the US government published a non-headed lobby document – with no authorship information – which was clearly supporting large US corporations' positions and advocating for a US-style self-regulation system.[196] This document sunk to new lows, as EDRi explains, with desperate and groundless claims that the GDPR would put a brake on the fight against terrorism and child pornography.[197]

Torpedoing policy: the case of surveillance at work

Industry lobbying routinely targets each stage of the legislative process, but at its most successful, it can remove an issue from the agenda before it gets under way. This was the case with surveillance at work – privacy and data protection in the employment context. After the 1995 data protection law was adopted, the Commission promised to supplement it with rules to protect employees' rights to data protection. A directive was drafted by the directorate for Employment and Social Affairs in 2004, but the draft was never presented to the Commission, and was soon forgotten.[198] So what happened? The answer lies in what is known as the Social Dialogue, negotiations between European employers' organisations and trade unions that take place before a legislative process affecting European social standards begins. Between 2002 and 2005, the main employers' organisation, UNICE (now BusinessEurope) simply "refused to negotiate on… the protection of employees' personal data".[199] If the social partners fail to reach agreement – or if the business representatives simply refuse to negotiate – the Commission remains able to present a proposal.[200] Thus, in 2004, after two years of preparatory work,[201] the Commission was forced to abandon the project, leaving workers' inadequately protected from surveillance.

Corporate capture at a deeper level

Industry lobbying in the field of privacy and data protection legislation occurs on a massive scale, using a broad range of strategies to water down proposals: big spending, flashy events, funding 'impartial' experts, working through federations, and so on. Yet despite all of this, the industry does not always reach its goals: the GDPR was adopted, the ePrivacy Regulation won't be repealed, and the rights of European data subjects are growing. But this does not mean we cannot talk about corporate capture: not only does industry sometimes get its way completely (as with workplace surveillance) but, as the loudest voice on internet issues and new technologies, it has had free rein to frame and capture the political debate. As a result, it is uncritically accepted in policy circles that an entire economic model can be based on surveillance and on the exploitation of people's information. Even though this economic model deeply infringes our fundamental rights.

7 the arms industry

— Bram Vranken, Vredesactie

EU policy-makers see themselves as champions of the 'defence industry', and arms manufacturers and weapons-dealers have long held formal and informal seats at the decision-making table. The details and dealings of this cosy relationship are kept secret from the public, even as growing amounts of public money is given to the arms industry. Money which could better serve social and environmental goals in Europe, and beyond.

Weapons spending soars, at cost of poverty and hunger

As more and more resources are channelled into the arms industry, tackling fundamental issues like poverty and hunger are sidelined. According to the research institute SIPRI, worldwide military expenditure in 2016 was estimated at $1,686 billion (2.2% per cent of global GDP), which is a higher level than at the end of the Cold War.[202] Both the US and many EU member states have started to substantially increase their defence budgets, after several years of contraction. Yet this military expenditure comes at a huge opportunity cost, at the expense of social and environmental issues.[203] According to SIPRI, just 10% of global military spending would be enough to provide free and quality education, as per the fourth Sustainable Development Goal (SDG). Eradicating poverty and hunger (SDGs one and two) could be accomplished with another 10% of global military budgets. All SDGs could be met using less than half the world's military budget.

Similarly, the planned European Defence Fund – the objective of which is "to foster the competitiveness and innovation capacity of the Union defence industry" - is expected to divert money from civilian policy areas to fund military R&D.[204] And that is not, of course, the only way in which the arms' industry's stranglehold over EU (and its member states') decision-makers is damaging. Between 2012 and 2016, EU member states were the second largest arms supplier in the world (26%). What's more, EU member states have a long history of arms sales to authoritarian regimes and conflict zones. Out of the 51 authoritarian regimes on the Economist Intelligence Unit Democracy Index, 43 were able to buy weapons in the EU.[205] These sales not only have a disastrous impact on the people living in these countries, but also have negative long term consequences for EU citizens. The European Defence Fund, which is expected to increase arms exports, risks exacerbating this trend.

A long history of privileged access to EU decision-making

With such severe negative effects, how did the arms industry become so entrenched in arms – or 'defence' – related policy spheres? The answer is manifold, but it is clear that the industry's access to, and influence over, EU defence policy has a long history. For example, the arms industry was well represented in the Convention on the Future of Europe, whose work was a precursor to the Lisbon Treaty. The working group on defence consisted of 13 members, two of which were from arms companies (BAE Systems and EADS – the European Aeronautic Defence and Space Company – now called Airbus) and one from an arms industry lobby association, the European Defence Industries Group.[206] This working group proposed the establishment of a European Defence Agency (EDA), which was created in 2004. One of the core objectives of the EDA is to promote the European defence sector's "technological and industrial base".[207] Michel Troubetzkoy, the then-head of EADS Brussels office, and director of the arms lobby group Club Europe et Défense, bragged at the European Agenda Summit in 2008 that the EDA was EADS' baby, and that the agency was 95% similar to EADS' proposals. Troubetzkoy also said that EADS had very easy access to Michel Barnier, who was then president of the Convention on the Future of Europe.[208]

Another example of the privileged access given to the arms industry is the so-called 'Group of Personalities' (GoP). Created in 2003 by the Commission to advise on a security research programme, the arms industry was well represented, with eight reps in the GoP on Security Research, out of 29 members.[209] The security research programme, which resulted from the work of this group, was very beneficial to the arms industry. Subsequent advisory bodies on the implementation of the programme also saw the industry well represented.[210] For example, in 2016, seven out of 30 members of the Commission's Protection and Security Advisory Group (PASAG) were arms industry lobbyists.

This kind of privileged access breeds undue influence. For example, in 2015, a GoP on Defence Research was established by the Commission's directorate for internal market and industry (DG GROW). More than half of its members – nine out of 16 – represented the arms industry or military research institutes.[211] The group was chaired by Commissioner Elżbieta Bieńkowska,[212] whilst the only MEP member, Michael Gahler, holds pro-military views and is a board member of the Kangaroo Group, a lobby vehicle which brings together MEPs and the defence industry.[213] This arms industry-dominated GoP proposed a European Defence

Research Programme of €3.5 billion from 2021, a proposal which was included in the Commission's 2016 European Defence Action Plan.[214]

This corporate capture shows no sign of going away. In 2017, the Commission set up a Consultation Forum for the arms industry, providing "a forum for their views on Commission proposals" concerning the European Defence Fund. The arms industry is also heavily involved in the Advisory Group for the Preparatory Action on Defence Research, the first military research programme funded by the EU.[215] This is clearly reflected in statements by EU officials: shortly after the announcement of a European Defence Fund, Commissioner Bienkowska tweeted "Good news for the defence industry: new European Defence Fund before the end of the year!"[216]

Recipe for influence: meetings, high-level events, arms fairs and MEP-groups

Arms industry representatives and defence policy-makers enjoy various channels of communication. Numerous meetings between the arms lobby and the Commission take place: since the Juncker Commission took office, Lobbyfacts reveals that the AeroSpace and Defence Industries Association of Europe (ASD), the industry's most important lobby group, has had a total of 29 meetings with Commissioners and their cabinets.[217] Airbus meanwhile, the second biggest EU arms company, has had a staggering 132 meetings![218] This makes it the fourth most prolific lobbyist towards the Commission.[219] There are also frequent high-level events bringing together arms industry reps and senior policy-makers. The EDA's annual conference is one example: in 2016, almost 300 arms industry representatives were invited. Another example is the European Defence Industry Summit, which took place in December 2017, "debating defence from the industry perspective".[220] Organised by the European Business Summit, it was supported by NATO and the EU External Action Service. Arms industry speakers included UTC, Raytheon and Defendec.

Arms fairs are another arena for influence: enormous industry gatherings of thousands of visitors, including dozens of official delegations. Notable examples include Defence and Security Equipment International, which is organised by the company Clarion Events and receives major financial, logistical and political support from the UK government, particularly via the government's arms sales unit, the Defence & Security Organisation.[221] Similarly, Eurosatory is organised by the French government and the French arms industry. These fairs function not only as markets for buying and selling military equipment, they are also ideal places for industry and policy-makers to meet and discuss policies. The EDA and the Commission are both regularly present at arms fairs. For example, in June 2017, arms lobby ASD tweeted "Another great visit today with Philippe Brunet & Thierry Buttin from DG Grow at the #PAS17 [Paris Air Show]".

The European Parliament is also host to arms industry schmoozing. The Kangaroo Group, mentioned above, is an MEP-industry forum of 'informal gatherings' for MEPs and the (defence) industry.[222] MEPs like Michael Gahler (EPP), who has played an important role in furthering a military agenda in the Parliament, are board members of the Kangaroo Group. Another example is the Sky and Space Intergroup, whose secretariat is run by ASD: ASD boss Jan Pie has described the intergroup as "an extremely effective forum to engage with MEPs".[223]

An impressive arsenal, with industry personnel enmeshed in policy-making

All this lobbying activity is of course made possible by the vast resources the arms industry has to throw at Brussels. The industry's EU lobby spending was estimated by news site Politico to be around €54.7 million for 2016, based on Transparency Register data.[224] And these numbers are likely to be an underestimate, due to under-reporting of lobby budgets: one study suggests that arms lobby organisation ASD may have spent up to ten times more than its declared €298,000.[225] Also notable, is that the self-declared, combined lobbying budget of the top ten European arms companies has doubled in five years, from €2.8 million to €5.6 million a year. These ten companies had a total of 216 meetings with Commissioners and their cabinets, between 2015 and April 2018, and together employ 33 accredited lobbyists (with access passes to wander freely in the Parliament).[226]

But the arms industry's lobbying arsenal is not limited to money, meetings and feet on the ground: a non-stop revolving door between the industry and European policy-makers helps grease the wheels of their influence. Out of the 33 accredited lobbyists from the top ten European arms companies, at least one third (11) have previously worked for an EU institution or a national government![227] And there are numerous high-level revolving door cases too. One noteworthy case is former defence expert for the Commission, Burkard Schmitt.[228] Schmitt, who started working with the arms industry's most influential lobby group ASD in 2015, had previously worked for more than eight years at the Commission, where, according to an internal Commission memo, he was "the pen on all matters related to defence and security".[229] Schmitt was, for example, the rapporteur for the GoP on security research. Another prominent case is Massimo Baldinato, who since 2015 has been Vice-President of International Institutional Affairs at Italian arms manufacturer Leonardo.[230] Prior to this, Baldinato was for over seven years a member of the cabinet of then-Commissioner Antonio Tajani. Commissioner Tajani played an important role in laying the foundation for an EU military research programme, and has been quoted as saying that "he wanted to support the arms industry".[231]

The arms industry is also notorious for its close relations with decision-makers at member state level: the Campaign Against the Arms Trade (CAAT) has documented 174 cases of revolving doors between 1996 and 2017.[232] There are also several MEPs who have links with the security and defence sector. Most controversially, Christian Ehler, who has championed increased security funding at the same time as being chief executive of co:bios Technologiezentrum GmbH, a German biotech company. Bizarrely, Ehler claimed that his position in industry makes him more independent from party politics than most other MEPs.[233]

Revolving doors are not the only kinds of conflict of interest at play either. Several of the Commission's advisory bodies, such as the GoP on Security Research, the Advisory Board on Security Research and the GoP on Defence Research raise grave concerns of conflicts of interest. Often, the same companies represented in these advisory bodies are also those profiting most from European funding. In total, private companies were granted almost €552 million from the European Security Research Programme (2007-2013), 40% of the total amount.[234] Thales (€28.5 million), Finmeccanica (€23.3 million), BAE Systems (€14.2 million) and Indra (€12.3 million) were all heavily involved in the decision-making process.[235] Similarly, Ocean 2020, the biggest project under the Preparatory Action on Defence Research, saw €35 million granted by the EDA to a consortium, six members of which have also been members of the GoP on Defence Research,[236] which proposed the Preparatory Action on Defence Research in the first place![237]

A veil of secrecy: keeping the public in the dark

Defence issues are notorious for their lack of transparency. Often even the most basic information is withheld behind the veil of national security, which has given rise to numerous scandals and corruption cases. According to researcher on the arms trade, Andrew Feinstein, the arms industry is the most corrupt industry in the world, enabled by the secrecy involved in the trade.[238] In the EU, this lack of transparency is exemplified by militarily sensitive documents being exempt from access to documents laws.[239] Because the extent of this exemption is unclear, it is often misused to refuse any requests related to defence issues. The European Ombudsman, following a complaint by Vredesactie, has concluded that there were "systemic issues" and "shortcomings of the relevant systems" within the EDA in answering access to documents requests.[240] It was only after the Ombudsman investigation that the EDA updated its procedure for answering requests.[241]

This lack of transparency is a deep-seated and recurring problem. The European Defence Research Programme will be subject to a high level of secrecy about the results of its projects. While the EU's general research programmes, like Horizon 2020, are subject to open access guidelines, this is not the case for military research projects. This makes parliamentary scrutiny over the results of these projects much more difficult. There is also a serious lack of transparency around arms industry lobbying towards the European institutions. Setting up 'Groups of Personalities' like the GoP on Defence Research, created by Commissioner Bie□kowska, is rare, and seems to have been deliberately used by the Commission to evade even basic levels of transparency. The GoP was not registered as an expert group, which are subject to some transparency rules (e.g. dates of meetings, agendas and minutes are publicly available). But with the GoP, not even these basic rules apply.[242]

As for defence-related expert groups themselves, they are still far from functioning in transparent way. The 'As-If Programme Committee for Defence Research', which is comprised of member state representatives, broke the Commission's own rules on transparency by not making its minutes, meetings or agendas public. Only after intense media scrutiny, from several news outlets across Europe, did the Commission make these documents available.[243] The dealings of the Advisory Group for the Preparatory Action on Defence Research are even more unclear. The Group's mandate is to provide "advice to the Commission services during the preparation of the annual work programmes", and it is listed as active in the Commission's register of expert groups. Yet it does not list any members, nor are there any known meetings. When the EDA was questioned about this by the Belgian magazine Knack, an EDA spokesperson stated that the names of the experts would only be revealed when the Preparatory Action is finished, as this would "ensure their independence".[244] The Commission, on the other hand, stated they had not found enough military experts and that the expert group was not yet operational.[245]

This lack of transparency has far-reaching implications for the democratic legitimacy of EU defence policies. The decision to establish a European Defence Fund, for example, has remained largely under the radar. Despite the huge amount of money involved – a projected €13 billion – there has almost been no public debate about it. Civil society and various media outlets have raised the issues of democratic accountability and lack of transparency: there has been very little involvement of the European Parliament, and no involvement of civil society or independent academics in the setting up of EU military programmes, such as the GoP.[246] And the Commission has more or less ignored the views of citizens and civil society groups expressed through official channels. Over 4000 citizens and organisations gave their views on the proposal for a Defence Industrial Development Programme via the Commission's 'have your say'-feedback mechanism.[247] The great majority expressed dissatisfaction with the proposal, but the Commission has never taken these views into account.

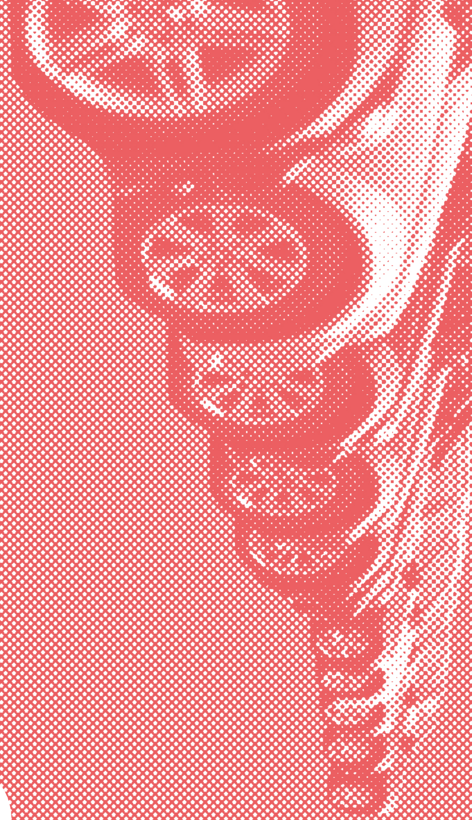
Spinning the debate: selling weapons is good for Europe!

The policy debate around defence is skewed in the arms industry's interests. Economic arguments are often wielded, despite the fact that there is no conclusive evidence of the economic benefits of military expenditure. According to a meta-study by the Flemish Peace Institute, military research has no positive impact, and may even have a negative impact, on economic growth.[248] Yet regardless of these uncertainties, the Commission continues to use the same economic arguments as the industry. Another argument regularly wheeled out concerns the EU's ability to arm itself and to act militarily without the help of other governments (ie 'strategic autonomy'). A competitive European arms industry is therefore presented as essential. During the first meeting of the GoP, Antoine Bouvier, chief executive of missile producer MBDA, stated that "strategic autonomy is of key importance, as [is] the notion of a competitive EU industry that can deliver this autonomy". This line of reasoning has been largely taken over by the Commission and Parliament.[249] The Commission also claims that a more integrated defence market could lead to annual savings of €26 to €130 billion, with the European Defence Fund presented as a way to make the industry more efficient. Yet multiple academics have questioned the efficiency of cooperative weapon programmes,[250] and the Commission has also emphasized that EU funding for military R&D should not lead to national spending reductions.

A large part of the power that the arms industry has over decision-makers comes not from its economic importance but its strategic importance. The defence industry's economic importance vis-a-vis the overall economy is limited: arms industry turnover constitutes only 1.3% of total European manufacturing turnover.[251] Yet the industry occupies an important strategic position, with respect to the interest of certain governments to carry out military operations. This strategic position has been known as the military-industrial complex, and has led to an extreme level of support, both politically and financially.[252] Although this is not as well established at the European level as at the national level, several researchers have pointed towards the emergence and growth of a European military industrial complex which closely resembles that of the position of national arms companies.[253]

Defence policy well-armed against the public interest

The corporate capture of EU defence policy is demonstrated by the deeply entrenched privileged access and undue influence bestowed upon the arms industry, and the widespread conflicts of interest in advisory structures and via the revolving door. Not to mention the fundamental lack of transparency that keeps the public in the dark, even as greater amounts of public money and policy support goes towards an industry that wreaks destruction, rather than into areas that protect people and our planet, such as healthcare, education and environmental protection.



8

dieselgate

and the german car industry

— Nina Katzemich, Lobbycontrol

There has always been a special relationship between the German car industry and German politics. 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. Over the last three decades, the European Commission has undoubtedly tried to regulate the car industry's CO2- and NOx-emissions.

But although willing to set some rules, it is at the same time heavily influenced by the car industry. The scandal of Dieselgate reveals the high degree of corporate capture by the German car industry at the EU level, and to an even greater degree in Germany. Whenever German car producers have faced tougher measures from the EU, the German government has done everything it could to protect them, by delaying or watering down the new rules.

Setting the scene: Dieselgate

In September 2015, the US Environmental Protection Agency uncovered a scandal: Volkswagen had been using so-called defeat devices in its diesel cars, which differentiated between the test bench and real driving conditions, keeping nitrogen (NOx) emissions under the legal limit only during regulatory testing. The vehicles were emitting between four and 40 times more NOx in real-world driving. And it soon became clear that these devices had not only been used in the US: Volkswagen had deployed this programming software in about 11 million cars worldwide, with 8.5 million in Europe since 2007.[254] And the scandal continued to spread; it was not only Volkswagen (and its upmarket brands Audi and Porsche) that cheated, but also Daimler, Opel and others.

If you're wondering how this could remain unnoticed for so long, the answer is, it wasn't. Already by 2010 there was sufficient indication, from independent research institutions, that the differences between emissions on the road and during tests could only be explained by some kind of deception in the approval process. But political players and government agencies turned a blind eye to this evidence, including Antonio Tajani, Commissioner for Industry at the time, who was repeatedly alerted to this concern.[255] The same goes for the German governments in power during this period, and even for the German authority responsible for authorising new car types, the Kraftfahrt-Bundesamt (KBA). During a hearing in the European Parliament's Dieselgate committee, KBA director Ekhard Zinke claimed he had never suspected illegal software was being used, despite the fact he had been warned by civil society groups, other agencies, and the Commission.[256]

The question is, did this scandal, which showed how German car producers have betrayed politicians and consumers for years, change the attitude of political figures and agencies? Did they clean up the mess, impose severe fines, and require the car industry to present long overdue non-polluting alternatives? The answer is a resounding no. Instead, the car industry has managed to capture the process of its investigation, and, as of yet, has seen very few political consequences in Germany and Europe.

Getting away with fraud

In the US, Volkswagen had to fulfil around €25 billion worth of compensation payments to car owners[257], yet in Germany, nothing has been paid to the unwitting owners of these polluting-vehicles, due to the absence of an instrument for collective redress. Shortly after the Dieselgate scandal broke, the German Justice Minister tabled a draft law to address this, but the Transport Minister blocked it, reportedly removing the proposal with the written comment: “Dismissed! Delete completely!”[258]

German car manufacturers have also successfully refused to pay for any hardware updates to their dodgy vehicles, and the government has let them off the hook.[25]9 While Volkswagen was obliged to recall the cars for software updates, which reduces their emissions by up to one third, hardware conversion is said to reduce emissions by up to 90%.[260] Yet the car companies argued that this is too expensive, and would have unclear consequences. This means that if local authorities ban certain diesel car types in polluted cities, a measure which the German supreme administrative court has declared permissible if needed to comply with the EU Air Quality Directive, then many German drivers could be left in the lurch. People who bought their cars in good faith that they complied with legal standards will have no compensation from the car producers that betrayed them. All they are being offered are bonuses for buying a new car and scrapping the old one, which is effectively a means of drumming up additional business for the car industry! And on top of all that, VW and Daimler report record earnings.[261]

Another way in which the car industry is getting off lightly, is the relatively small fines it has faced. The public prosecutor of Low Saxony is now fining Volkswagen with a one billion euro civil penalty – but if that sounds like a lot, it isn’t. Administrative fines of up to €5000 per car would have been possible,[262] which if you consider the 8.5 million VW cars affected in Europe, would be in the realm of €42.5 billion! Yet sanctions for breaching the EU prohibition to use turn-off devices have not been imposed, because the then Minister for Transport, Alexander Dobrindt, has helped Volkswagen to get around them.

Just as scandalous, is the fact that through the diesel inquiry committee, which was set up by Minister Dobrindt shortly after the scandal broke, the Minister helped other car manufacturers to define their turn-off devices as legal measures for engine protection (see below). It was only in 2018 that Germany's Federal Motor Transport Authority, the KBA, finally declared some of Daimler's turn-off devices illegal and forced them to recall certain cars. VW subsidiary Audi had even continued building defeat-devices in their cars, though in 2017, Minister Dobrindt had no choice but to require some recalls.

The cherry on the cake was the European Commission caving into pressure from Germany to give cheating car firms years more leeway before fixing their polluting vehicles. The Commission had been promoting tests for diesel cars under more realistic conditions long before Dieselgate, tests which would take place on the streets instead of on the test bench. But Germany had always refused and postponed this measure.[263] After Dieselgate, Germany finally gave in, but the car lobby scored a major coup by introducing a conformity factor, which allows car producers to surpass the new real emissions limit by 110% until 2021, and then by 50%.[264] This conformity factor is so generous that the Clean Air Directive will still not be met in many cities.

How the car lobby co-writes rules in Brussels and Germany

The reasons the car industry has managed to escape from its worst scandal with few political consequences[265] start with the privileged access that it enjoys. In the process of cleaning up Dieselgate, Minister Dobrindt has proven himself a true the patron of the car industry. After the scandal broke, he quickly assumed responsibility for the investigation, setting up a committee to inquire how it could happen, and whether other manufacturers had also used cheat-software. It took months before the public found out who had a seat in this committee.[266] There were four representatives from the Ministry of Transport, and three from the KBA, the authority that gives permission for new car types in Germany, and which is itself responsible to the Transport Ministry. Yet the KBA has proved to be one of the many problematic factors that lead to Dieselgate: the approval of new car types was done in close partnership with the car industry, and the KBA relied only on specifications provided by the producers. The final seat on the inquiry committee was given to Professor Georg Wachtmeister, who holds the chair for combustion engines at the technical University of Munich, and has worked for the car industry both before and during his academic career.[267] He did however give a very critical opinion on a practice used by many car manufacturers: in his view, switching off emissions controls when certain temperatures were reached was not (or rarely) necessary, and bore resemblance to a turn-off device. Yet the Transport Ministry did not make this opinion public in the final report.

And that's just the tip of the iceberg. Car manufacturers were allowed to co-write the VW Investigation Report, or "Untersuchungsbericht Volkswagen". The KBA allowed the car industry to delete and correct parts of the text they didn't like. Opel, for example, complained that the draft text's use of the phrase "manipulated cars" suggested a contravention by the company, something it sharply rejected. The director of the KBA personally told his employees to change the passage, and ended his email "with industry friendly greetings". Irony or not, we don't know. In the end, Minister Dobrindt responded to Commission inquiries that no manufacturer other than Volkswagen had cheated. Rather, he said, they used turn-off devices to protect the engine, which reduced the exhaust gas purification depending on the temperature – something he said was permissible since the EU had failed to define exceptions for the protection of the engine. This is an interpretation that many experts and lawyers have cast doubt on, and consider illegal.[268] It was only in summer 2018 that the KBA finally declared several Daimler turn-off devices illegal, forcing the firm to recall the concerned models.

Diesel Summit: A tête-à-tête with the car industry

In summer 2017, Chancellor Merkel convened a ‘Diesel summit’. The main issue for discussion was how to deal with high levels of air pollution in many German cities, which fail to meet the obligations of the Clean Air Directive. It seemed clear to many that the car industry was responsible for the contribution of NOx pollution, and must be made to act. So who did Merkel invite to the Diesel Summit? The car industry, and no one but the car industry: no environmental or consumer organisations whatsoever. Thus, the result of the Diesel Summit was not a big surprise: the car industry was not obliged to do anything more demanding than software updates, which would cost the industry only €50 per car, and reduce NOx emissions by no more than 30%. Many experts have stated that this will not be enough to reduce air pollution to safe levels, which will require hardware updates, especially for diesel 3 and 4 models.[269] Yet hardware updates were rejected by the industry as too expensive and technically too complicated. Instead, the car industry offered special deals for owners of these older 3 and 4 models, effectively a business stimulating program that will increase their profits and the carbon footprint of the manufacturers.[270]

More generally, Dieselgate did not trigger any change in attitude in the German government over its habit of meeting exclusively with the car industry on mobility issues. Unfortunately, unlike European Commissioners, German government members do not have to publish information on their lobby meetings. However, the German Party ‘Die Linke’ tabled a parliamentary question for information about meetings on mobility issues, between top government representatives and lobbyists, since the Dieselgate scandal came to light. The answer, in July 2017, revealed the extent of the one-sidedness: Chancellor Merkel met exclusively with the car industry, five times with BMW, three times with VW, twice with Daimler and the German car lobby association Verband der Automobilindustrie (VDA), and once with Ford.[271] By contrast, she had no meetings with environmental or consumer organisations. Top level officials from the Transport Ministry met with the car industry 61 times (with Minister Dobrindt present at 14), compared to just five meetings with automotive clubs (which promote the rights of car drivers). Government-wide, ministers and state secretaries 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. Clearly, despite Dieselgate, there is no sign of balance being sought in meetings with lobbyists.

The German car industry also enjoys privileged access to the European Commission. Since the Juncker Commission entered office at the end of 2014, meetings with lobbyists between Commissioners and their cabinets, as well as directors-general, are published online. This data reveals the most frequent guests at the top level of the Commission, and the car industry is one of them. The most influential EU-level car lobby, the European Automobile Manufacturers Association (ACEA), whose members include BMW, Daimler and Volkswagen, plus national associations of car manufacturers, had 91 meetings. This puts them 11th in a ranking of all lobbyists.[272] Volkswagen itself has had 60 meetings, which puts them 12th out of all companies.[273] And the level of access, and influence, that the German car industry has in Brussels is particularly evident: looking at the 15 most active car lobbies in Brussels, the five German lobbies (Daimler, Volkswagen, VDA, BMW and Opel) have around the same number of lobby meetings as the other ten, including ACEA.[274] And these meeting numbers only cover the very highest-level Commission officials, not mid-level Commission staff, with whom more meetings likely take place. Nor is privileged access only about meetings. The Commission's reliance on external expertise, all-too-often obtained from corporations and business groups, gives the industry even more sway (see below).

When one phonecall is enough

When the German car industry sees a threat, it seems it must only click its fingers to gain access to the German government: one call or letter, and the highest-levels of German politics stands at the service of VW, Daimler and BMW. When the Commission conceded to the car industry's demands for a conformity factor, giving them time to adapt to the new rules for real-driving emissions testing, it initially suggested a factor of 60% over the limit. But the car lobby wanted more – a factor of 110% – and German car companies were able to rely on their close relationship with German politics to get it. The day before the vote, the German Chancellor's office received an email from the Bavarian Minister President's office with demands for a conformity factor that matched those of Bavarian manufacturer BMW.[275] According to German news outlet Spiegel, at the same time, the president of German car lobby group VDA, Matthias Wissmann, contacted his former colleague "Angela" (see below). Chancellor Merkel then called Commission President Juncker, which was finally was enough to fulfil the wishes of the German car industry: a conformity factor of 110% until 2021, after which 50%.

Nor is this kind of last minute intervention a one off. In 2013, Merkel called Enda Kenny, then- Prime Minister of Ireland, which held the Council presidency at the time, to burst a compromise that had been reached on vehicles' CO2 emissions. Although the German car lobby had already put a stop to the plan for bigger cars to reduce more CO2, German manufacturers still thought the compromise reached was too burdensome. In the months following its collapse, the compromise was watered down further in the industry's interests, with, for example, the loophole that only 95% of car models were covered, so that more big, high-end, cars could be built.

The EU-level also has its share of intimate rendezvous with the car industry: documents acquired by Corporate Europe Observatory from the Commission's internal market directorate (DG GROW) reveal how a secretive weekend meeting between the Commission and ACEA guided the latter's lobbying strategy on the real driving emissions (RDE) tests.[276] The meeting took place on a Sunday in January 2015, between ACEA's Emissions and Fuels director Paul Greening (who came through the revolving door from the Commission[277]), and a policy officer in the Automotive Industry Unit of DG GROW. The official told ACEA that there was, in his view, "no need for compromise". In other words, ACEA didn't need to weaken its lobbying position to get what it wanted from the new RDE tests. The official also let Greening know where the Commission was likely to adjust its position towards that of the car lobby. Thanks to the sharing of this highly sensitive information – worth a fortune to ACEA – the car lobby could rest at ease knowing just where it didn't need to compromise its positions.

"Dear Angela": revolving doors grease the wheels

The very close and personal ties between the car industry and German politics is one reason that the car industry is protected so devotedly from public interest measures. And the revolving door is a major facilitator of this, at both German and EU level, as the case of the ACEA lobbyist noted above shows. In Germany, the long-standing director (2007-18) of German car association VDA, Matthias Wissmann, is a former cabinet colleague of Angela Merkel (they were both CDU Ministers in Chancellor Kohl's cabinet). The way he writes to her to ask favours – starting letters with "Dear Angela" – is just one example of how personal ties help grease the car lobby's wheels. Wissmann has served as Minister of Research and Technology (1993) and Transport Minister (1993-98) and is said to have much influence on Merkel.[278] And that's just the beginning: the lobbyists-in-chief of all big German car manufacturers have previously been politicians or political managers, very often at high levels.[279]

Daimler's head of politics and external relations since 2013, Eckart von Klaeden, was a CDU politician and Minister of State under Merkel from 2009 to 2013. Similarly, Joachim Koschnicke went through the revolving door twice, from being the CDU's head of strategic planning and communication (2011-12), to Vice-President of Public Policy at Opel (2013-17), then back to the CDU as Election Campaign Manager in 2017, followed by a position at PR firm Hering Schuppener! Next up is Michael Jansen, Merkel's office manager from 2006 to 2009, who since 2015 heads Volkswagen's Berlin office. And let's not forget Thomas Steg, who between 2002 and 2009 was deputy spokesman of the federal government, under Chancellor Gerhard Schröder, and from 2006 under Merkel. Since 2012, Steg has been VW's head of politics and external relations. In 2018, Steg briefly stepped back from his duties at VW following the #MonkeyGate scandal, after the New York Times uncovered how Volkswagen, Daimler and BMW had tested the effects of exhaust fume inhalation on monkeys; as of June 2018 however, he is back at the wheel of VW's lobbying.[280]

There are plenty of EU-level revolving door cases too. Paul Greening, mentioned above, was a Senior Administrator at the Commission's DG Enterprise and Industry (1996-2004), then a Senior Engineer at the UK's Department for Transport (2004-06), before taking up his role at Brussels' car lobby ACEA, in 2006. Holger Krahmer, meanwhile, was a German liberal MEP from 2004 to 2014, during which time he dealt with the regulation of the car industry,[281] and in 2015 became European Director of Government and Industry Relations at Opel.

Outspending them all

As well as the revolving door between the auto industry and decision-makers, the brute lobby strength of the German car industry is also a big factor. As there is no lobby register in Germany, little is known about how much German car manufacturers spend on lobbying at home – but with former government ministers and spokesmen as their heads of lobbying, their influence is guaranteed! Another aspect is party donations. Although they should not have a direct impact on political outcomes, financial contributions help nurture good relationships with political parties. It can, moreover, lead to dependencies, or foster the feeling of needing to return a favour. The German car industry is an enormously generous donor to, and sponsor of, German political parties. Since 2009, car producers, component suppliers and car associations have together donated over €17 million to the centre-right CDU/CSU, centre-left SPD, liberal FDP and greens (Grüne), with the CDU/CSU and FDP being the main beneficiaries.[282] Party sponsoring has also become more popular in Germany, being tax deductible for corporations and very non-transparent. BMW, for example, declared in 2014 that it would completely change from party donations to sponsoring. 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. Research by the magazine Stern suggests BMW gave €15,000 to the CDU solely for a press reception at its party convention in 2016.[283]

In Brussels, the Transparency Register indicates that the German car lobby is by far the strongest compared to other national car lobbies. Lobbyfacts helps reveal that the ten biggest car industry players in Brussels spend around €20 million on lobbying, and half of this is spent by the German car industry. Looking at the numbers of individual lobbyists, the ten biggest spenders employ around 70 full-time equivalent lobbyists, 50 of whom work for the German car lobby.[284]

Jobs, jobs and expertise

Some of the power that the car industry has over decision-makers comes from the fact that it is one of the most important employers in Germany, and in Europe.[285] 800,000 jobs are said to be dependent on the car industry in Germany alone. The industry frequently uses the jobs it provides as an argument against any kind of regulation. For example, when VDA chief Matthias Wissmann wrote to Angela Merkel in 2013, as the new CO2 emissions reduction targets were being negotiated, he argued that Germany's "premium segment" constitutes almost 60% of jobs in the German automotive sector, and that the Chancellor shouldn't destroy them by "over-regulating".[286] And Merkel took this argument on board: at a conference on electro-mobility in Berlin she said that big cars were the driver of innovation in the automotive industry, which Germany was especially dependent on. "One quarter of the business volume of German industry is generated in and with the car industry", she said, adding that prosperity and the future of the country would greatly depend on it.[287] The car industry couldn't have phrased it better. This was around the same time Merkel burst the compromise on CO2 emissions. The jobs argument also has impact at EU-level. Volkswagen, for example, has four factories in Spain, producing VW and SEAT cars, which employ more than 17,000 people.[288] It also has factories in Poland, Slovakia and Portugal. The German car lobby can usually rely on the votes of these countries' representatives in the Council.

The European Commission's relatively small number of officials – 30,000, which is less than the administrations of cities like Hamburg and Cologne – means it relies heavily on external expertise, and the car industry has successfully got its "experts" well-entrenched in the Commission's advisory groups. Commission expert groups play an important role in shaping its thinking around new policies and legislation, but are consistently dominated by big business interests. Groups relating to car industry interests are no exception: according to the lobby register, ACEA sits in 18 expert groups.[289] The car industry is firmly strapped in to the driving seat of high-level group 'CARS 21'. Founded in 2005 by industry Commissioner Günter Verheugen and the chief executive of Volkswagen, Bernd Pischetsrieder (in his role as then-director of ACEA), the stakeholder members of this group were almost exclusively car industry reps. Some of the policies proposed by CARS 21 included replacing EU-specific emission testing methods with weaker global standards, and introducing self-testing instead of fully independent assessments.[290] It's successor group, 'CARS 2020', managed to set the period between a regulation coming into force and industry compliance with it, at five years, in order to ensure sufficient 'lead in time'.

The 'Real driving emissions – light duty vehicles' advisory group played a central role in discussions around diesel: its stakeholder membership was 78% car industry. This group has been able to delay the transition to emissions tests on the street for years. Moreover, the car industry used its expert role to make the conditions for tests as unrealistic as possible. Cold starting (ie starting a car at cold temperatures and increasing the speed very quickly) was taken out of tests, and high speed driving was removed after an email from Volkswagen to DG GROW.[291]

The logic of Better Regulation

An important strategy for industry lobbyists is to find ways of framing their interest in being unregulated (or self-regulated) as actually being in the public interest. In Brussels, a broad industry alliance has pushed for so-called 'Better Regulation' for many years. This agenda, introduced by the EU in 2005, is about cutting "red tape", and keeping the "regulatory burden" for business to a minimum, for example by using alternatives to legislation. The car industry has been extremely successful in applying this agenda and influencing policy-making towards 'self-regulation'. It has successfully pushed market-driven solutions, plugged industry-friendly impact assessments (that pit policies' overall benefits against their costs to business), and promoted voluntary agreements instead of regulations. It also succeeded in replacing EU-specific emissions testing methods with weaker global standards, and introducing self-testing instead of fully independent assessments.[292] It can legitimately be asked whether Dieselgate could ever have happened without the Better Regulation agenda.

In Germany, the car industry frames the debate around German car manufacturers' long-established lead in combustion engine technology, arguing against E-mobility (ie electric vehicles) by saying that fewer workers are needed to make e-cars than 'regular' combustion engines. Thus, they argue, continuing to focus on diesel cars would save jobs. Similarly, when it was clear that the legal limits for CO2 could not be achieved with petrol cars, industry presented diesel as the solution, and the government jumped on board. However, while diesel cars emit less CO2, they produce more NOx. Despite this, in order to reach emissions targets, consumers were given incentive to buy diesel cars, through much lower prices for diesel (which is highly subsidised) than for petrol. This political embrace of diesel technology was probably one reason why political players did not want to hear that the fuel had not lived up to promises.[293]

It takes major scandal to get public attention

In recent decades, decision-making around vehicles' emissions has taken place largely unnoticed by the German public. This issue has shifted to the EU institutions, meaning there was little public awareness of what was taking place. Industry lobbyists enjoy this general advantage in EU politics, as aside from a few major lobby battles, Brussels' lobbying takes place largely out of the public eye, making it easier for corporate interests to capture the process. Even the pressure that Merkel put on the Council remained mostly invisible, as the Council is far less transparent than either the European Parliament or Commission. National governments are not interested in giving the public insight into how EU decisions are reached: minutes of meetings, positions of member states, and details of lobbying at the Council are carefully kept out of public reach. Dieselgate, however, suddenly raised public attention, with a lot of critical media reporting. Despite the relatively high complexity of the issue, it was greatly discussed in Germany, and there is no doubt that the car industry lost a lot of credit.

Car industry still in the driving seat?

Whilst the German car industry may have lost its lustre in the public eye, Dieselgate has shown the industry to be unrepentant, confident in its expectation that the German government would not only do nothing to harms its interests, but would protect them. Unfortunately, as this case study shows, they were right. Germany's political players have completely failed to bring the car industry to account for the biggest fraud in its history. And the reason? Corporate capture. Germany's car industry could rely on its economic importance, and its extremely close contacts with politicians and officials, both in Germany and in Brussels.

However, the golden-age of the industry's influence might just be waning. Three years on from Dieselgate, criminal procedures are finally culminating in fines, top figures like Audi's chief executive are suddenly becoming the focus of investigations, and the KBA is finally recalling Daimler and Audi models that use illegal software. Now that German politicians can no longer comfortably bask in the glory of the car industry, might they finally end this close relationship? It is time democratic decision-makers put themselves back in the driving seat, for the benefit of both people and the planet. At the very least, this means talking to varied stakeholders on mobility, not just the car industry, closing the revolving door, and no longer believing everything the car industry says. Not to mention withdrawing from Volkswagen, which partly belongs to the Federal State of Low Saxony! The car industry must be expected to comply with laws and regulations, not to break them with impunity, or have free reign to shape them in their interest.

conclusion

Corporate capture: business as usual in Brussels?

This report has sought to shed light on the ways that big business has become structurally embedded in contemporary EU policy-making. No serious observer would argue that business does not enjoy direct and regular access to policy-making in Brussels, yet the notion that business enjoys privileged access to EU decision-makers still meets resistance, including from many in the EU institutions themselves. This may be because accepting the notion of privileged access for one group or sector in society violates the sense of democratic norms and the legitimacy of how the EU institutions operate.

The European project is at a difficult time and, for some, it may be difficult to admit to such a state of affairs, for fear it would give succour to populist critics of the EU. The critique presented in this volume will therefore be anathema to those who prefer not to notice some of the glaring contradictions, democratic deficits and the empirical evidence of how decision-making in Brussels is vulnerable to – and we would argue, in several instances, has succumbed to – corporate capture.

Talk of corporate capture is not the kind of analysis that passes for polite political conversation within the professional and personal milieu of Brussels' corporate lobbyists, think tank-ers, or the EU officials they regularly socialise with. Yet ignoring legitimate criticisms, rather than encouraging informed discussion and democratic solutions, is one of the reasons that discontent and disenfranchisement with the EU has spread so widely. ALTER-EU therefore believes it is time to stop avoiding discussing the problem, and to start talking about solutions.

The studies in this report show how big business has been able to capture key policy processes and outcomes. Transnational corporations maintain well-staffed lobby offices in Brussels, and pay lobby consultancies handsomely for their political contacts and know-how. They enjoy privileged access, and in return provide policy-makers and regulators with their detailed expertise. They employ former politicians and senior officials, benefiting from their inside knowledge and contacts. And they scaremonger with threats like relocating from Europe to regimes with lower costs or fewer regulations: the threat of jeopardising thousands of jobs is a powerful bargaining ploy. When many of these elements are, together, in play, we can begin to talk of regulatory or corporate capture.

Such capture leads to outcomes that are damaging to the public interest, as the case studies in this report demonstrate: corporations hiding taxes which could be used for healthcare or education; car manufacturers violating emissions laws without political retribution, and so on. Corporate capture results in policies that undermine public goods such as clean air, water and energy; local, sustainable agriculture; and, social protection and workers' rights. It is also fundamentally undemocratic, privileging the voice of big business, while marginalising those with different views, such as small businesses, trade unions, civil society organisations or local communities.

Corporate capture does not apply to every issue, regulation or piece of legislation that passes through the EU process. It is an extreme outcome, though, as the evidence presented in our case studies suggests, it is not an exceptional one. There are also elements of the EU decision-making system that are particularly vulnerable to corporate capture. Yet corporate capture is not exclusively an EU-level problem, as illustrated by the Dieselgate and Dutch tax case studies, which are just two examples of how national politicians appear to conflate the interests of big business with the public interest. Nonetheless, as alluded to in the introduction, there are unique characteristics of the EU system that arguably heighten the likelihood of capture. Almost all policy and regulation in Brussels is insulated from public scrutiny: the deliberations and decisions taken have very little public salience as the issues are being decided. They are usually highly complex, with only specialist media providing news and information about the detail of what is being discussed, usually for special interests like trade groups or industry sectors that are seeking intelligence on these processes. The wider public, meanwhile, is oblivious to these routine aspects of EU policy-making. What's more, the politics of EU decision-making is often not obvious, and the mainstream media that does cover the Brussels beat usually does a very poor job of finding out and communicating what may be at stake. Without wider media discussion of EU legislative proposals, and much greater availability of critique and counter-arguments, it is almost impossible for any meaningful public opinion to emerge – never-mind the challenge of translating that opinion into political action!

It is clear that the distance between EU institutions and EU citizens, and the complexity of the EU decision-making process, are major factors in enabling corporate capture to take place. So what can be done to fight back against corporate capture in Europe?

recommen-
dations

First of all, whether at the EU or the national level, corporate capture requires the at times willing, and always uncritical, participation of decision-makers and holders of public office. Politicians, regulators and officials have to remember that they shall serve the public interest. And this cannot be limited to rhetoric: it must be evident in deeds as well as words. There needs to be a culture change in how public institutions interact with various stakeholders, and by extension, in the policies and legislation produced.

End the privileged access of corporate interests. Many of our case studies show stark imbalances when it comes to meetings between public officials and lobbyists. Business lobbyists account for 75% of the high-level lobby meetings in Brussels that are pro-actively disclosed. And when ALTER-EU did an assessment of Commissioners' meetings (half way through the Juncker Commission's mandate), many Commissioners had an even greater corporate bias![294] When Commission President Juncker first came to office there was much talk about enhanced transparency, and the expectation that Commissioners would have balanced meetings with stakeholders. Evidently, this was yet another case of the reality falling far short of the rhetoric. And the story doesn't end with top-level officials: data from the Commission's trade and finance directorates suggests that the corporate bias in meetings might be even greater with lower-level Commission officials.[295]

Re-democratise the input process. To break the structural imbalance in stakeholder inputs to policy-making, the institutions need to go beyond a simple 'open doors' policy (i.e. just accepting invitations received), which benefits the professional and well-resourced lobbying operations, that have offices in, or the ability to travel to, Brussels. If 'open doors' results in big business having a vastly disproportionate number of meetings, then these meetings should be reduced. Similarly, if only business groups can provide enough people to participate in large advisory groups, then less of these groups should be initiated, and they should be smaller in size. Instead, the institutions should seek novel ways to gain input from citizens, SMEs and other, currently under-represented, interest groups, at different levels.

Address conflicts of interest. ALTER-EU has long exposed how ethics concerns, such as the revolving door, or MEPs with second jobs or outside financial interests, affect the independence of policy-making. We continue to ask for robust ethics and conflicts of interest rules for politicians and officials, to prevent them from having professional or financial interests in the industries they are tasked with regulating. These rules should govern financial interests, second jobs, revolving doors, and receiving gifts and hospitality, among other areas. But rules that are not enforced are an empty gesture: it is equally vital that these ethics rules be accompanied by independent monitoring, oversight, and enforcement. Putting an end to self-regulation is crucial, as too often politicians and officials make their own rules and then act as judge and jury as to whether they have been implemented.

Enhance democratic control through greater transparency and access to information. To enable citizens and civil society to see how and by whom laws are made, and to hold their law-makers to account, transparency tools are very important, including:

- Full EU lobby transparency, which requires a legally-binding lobby register and pro-active transparency of lobby meetings and/or of who has influence on draft laws;

- A legislative footprint for all EU legislative proposals;

- Lobby transparency is also needed at the national level, as well as greater transparency around member states' actions at the EU-level. The permanent representations of member states (i.e. their Brussels' diplomats), and the rotating national presidencies of the Council, must be included in a mandatory transparency register, which provides for full lobby transparency;

- Comprehensive freedom of information rules, which enable outsiders to follow the policy-making process in a detailed and timely way, and to assess how a proposal is being influenced; and,

- Protection of whistleblowers and investigative reporters.

In extraordinary cases, when there is an irreconcilable conflict between the industry's interests and the public interest, creating a firewall between regulator and regulated should be considered. This was the conclusion of the UN World Health Organisation when it put forward the Framework Convention on Tobacco Control. The convention's guidelines require decision-makers to restrict contacts with the tobacco industry lobby to "only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products". This principle may need to be applied in other policy areas where the public interest is fundamentally contrary to the interest of the regulated industry. There have, for example, been calls for a conflict of interest policy in the UN climate talks, to reduce the risk of big polluters blocking measures needed to prevent catastrophic climate change. This was supported by the European Parliament in a 2017 resolution, and is an official agenda item at the intersessional meetings of the UN Framework Convention on Climate Change, with growing support from numerous governments. ALTER-EU would like to see meaningful debate about whether and how other lobby sectors could be held at arm's length in this way.

Get money out of politics, particularly at the national level. While the US is often seen as the pinnacle of political party funding problems, there are also concerns across EU countries about undue influence. Recently, fallout from the Brexit referendum has highlighted the flaws in the UK's party and political funding,[296] whilst in Germany big business can donate to parties directly.[297] Funding limits should be imposed, with transparency requirements on big donors, in a timely manner, as well as limits on anonymous donations, and mandatory and timely transparency about political advertising, including on social media.

Strengthen the capacity of the EU institutions. Last but not least, the Commission, which as the EU's executive body has sole responsibility for producing legislative proposals, has a staff of only 30,000. This is smaller than some local government departments in some member states, such as the city of Hamburg. Essentially, this means there is a mismatch between the Commission's reach and its capacity to deliver. How does it fill this capacity gap? Turning to corporate interests for 'expertise' and 'advice' is a favourite tactic, which kick-starts corporate lobbying at the earliest stages, and privileges business' interests. More expertise inside the institutions is one possible way to reduce dependence on external expertise. At the same time, an overhaul of how advice and expertise is provided during the policy-making process is urgently needed. It is abundantly clear that the Commission needs to start a process to minimise the risk that those with a financial stake in an issue dominate policy deliberation and decision-making.

Ultimately, ALTER-EU concludes that there is an urgent need to curb the political power of big business. And the EU is capable of stepping up to be the space for this change. We have seen, for example, instances where enforcement of competition law has led the EU take on some of the biggest multinationals in the world. And the EU can lead in other ways, including by reforming itself to be closer to citizens, and to being more wary of big business lobbying. The EU can play a role that a stand-alone member state would struggle with, and by doing so, can seek to become a better embodiment of its own democratic values.

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