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RSCAS 2008/36

**Law and Lawyers in Brussels' World of
Commercial Consultants**

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ISSN 1028-3625

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Printed in Italy in December 2008
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
<http://cadmus.eui.eu>

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Abstract

This paper argues that European public affairs is a growing labour market exposed to a gradual institutionalization, albeit important internal cleavages and fragmentations. The primary focus of the analysis is on the position and orientation of legal firms and consultants. The author agrees to scholarly writing by underlining that commercial consultants and lobbyists do not belong to the powerful actors and stakeholders of the European arena. However, he argues that these companies do have an important impact on European politics on another dimension of analysis, because they play an active role (along with the European institutions, amongst others) in the construction and organization of public affairs as a labour-market of paid work on the basis of specific skills, shared claims to superior knowledge and ethical commitments. While the legal profession tries to preserve its own professional status and privilege, and attempts to dissociate itself from the dusky work of interest representation and lobbying, it cannot detach itself from the steady institutionalization and professionalization of European public affairs, which is having indirect effects on European politics.

Keywords

European Union; interest representation; lobbying; commercial consultants; public affairs; legal profession; legal firms

1. Introduction*

Commercial consultants are a fairly new actor in the arena of the EU. Particularly since the Single European Act of 1986 the number of companies have tripled to almost 300 organizations. More than half of them are law firms.¹ This datum is indicative of a more general development. On the one hand, it points to a gradual institutionalization and professionalization of a new labour market of specialized services in the vast area of public affairs.² In fact, there are indications that public affairs professionals are increasingly following common educational and occupational career patterns, and are becoming more active in setting up common professional associations and standards. These developments tend to structure and institutionalize more clearly this emerging labour market, in certain aspects disregarding the different occupational groups and activities within it.

On the other hand, the growth of public affairs at the EU has nourished controversial debates about transparency and good governance, and has pushed the European institutions to take regulatory measures in order to control this growing field of activity. Most recently, on the 23rd June of 2008, the European Commission has launched a code of conduct and a voluntary register of interest representatives, matching the European Parliament that introduced a similar (but obligatory) measure twelve years earlier. This initiative demonstrates that the EU institutions are more ready to monitor and regulate the field of public affairs. However, it is significant that the Commission calls only upon those consultancies (and other public interest organizations) to register voluntarily, which intentionally try to influence policy making on behalf of their clients – thus exempting ‘politically des-interested’ professional services, explicitly in the realm of legal advice, implicitly also in the area of public relations and economic or management services.³ This exception helps commercial consultants (amongst them mainly lawyers) to dissociate themselves and their clients from the problematic notion of lobbying. Lawyers are thus officially recognized – in principle – as members of a ‘neutral’ occupational group committed primarily to the rule of law (Cohen and Vauchez 2007). However, it is unclear so far, which direction future developments will take, given the fact that the EU institutions have accorded to monitor the wider field of public affairs more closely, reserving themselves the right to introduce more severe measures at a later stage.

These preliminary observations suggest that the field of public affairs is still in the making. However, are the external pressures and internal developments mentioned above establishing a proper EU-related labour market with fuzzy, yet, traceable borders and internal structures? And are lawyers and law firms participating in this ‘professionalization project’ (Larson 1977)? My tentative answer to

* This paper was originally presented at the Conference “The European Legal Field-Le champ juridique européen” organized by Bruno de Witte and Antoine Vauchez with the Robert Schuman Centre and the Academy of European Law (European University Institute, 25-26 September 2008).

1 These numbers and insights go back to a survey amongst commercial consultants conducted in 1998 by the author. Systematic and more investigations have not been conducted so far, to my knowledge. The empirical evidence have been published in length: See Christian Lahusen (2002, 2003 and 2005)

2 In the following, I will not argue that Public Affairs is or is becoming a ‘profession’ in terms of the sociology of the professions (Burrage and Torstendahl 1990). We are rather speaking of a wider field of work cultivated by a number of occupational groups (McGrath 2005), amongst them lawyers, the latter being the only ones in this arena, which are regarded as a profession. We will follow this terminology. However, this clarification does not prevent us from asking, whether processes of professionalization are under way, because these developments help us to analyze evolving patterns and structures of the field more clearly. For a definition of professionalization for our purposes, see page 10.

3 The Commission’s register thus centres on types of activities, not on types of organizations. It makes clear that all organizations are expected to register, with the one exception: “Certain specific activities do not fall within the scope of the register: activities of legal and other professional advice, when they relate to the exercise of the fundamental right to a fair trial of a client, including the right of defence in administrative proceedings; activities of the social partners when they are part of the social dialogue; activities in response to the Commission’s direct request.” (EU-Commission, MEMO/08/428 of June 23rd 2008).

these questions is 'yes' and 'no'. On the one hand, we can witness the emergence of a broad arena and labour market of 'public affairs', both as a consequence of regulatory measures by EU institutions and the professionalization attempts by the occupational groups involved. Lawyers and law firms are part of this field, both in the sense that they are (willingly and unwillingly) engaged in it, yet, also subjected to the underlying developments and their intended and non-intended consequences. On the other hand, EU institutions and public affairs practitioners have a general interest in establishing a structured and well accepted field of activity, although both sides favour a liberal, minimalist self-regulatory approach. Moreover, public affairs remains a contested terrain, where different occupational groups defend their specific jurisdictional claims, establishing a general cleavage line between legal firms against the rest. In particular, we see that law firms and lawyers generally tend to resist attempts to be enmeshed too clearly into the debates about public affairs, interest representation, and lobbying. European integration has been by and large a process of legalization and judicialization, providing the legal profession with a privileged status within the European Communities, with an increasingly intense demand for legal services and an expanding labour market of legal advice and support. The establishment of European public affairs as an increasingly integrated and regulated labour market threatens this jurisdiction, because it opens the labour market to competing occupational groups and because it politicizes this area of work in regard to governance issues, such as transparency, accountability and the EU's democratic deficit.

In the following, I will raise these research questions and propositions in several steps. First, I will give an empirical picture of the field of commercial consultancy, including the role of law firms and lawyers. For this purpose, I will present available evidence on the level of the organizations (companies and their clients), and on the level of the professionals. This will allow us then to deal with the question of whether European public affairs is institutionalizing and professionalizing as a discrete and proper field of action. The role and position of lawyers and law firms will be discussed accordingly. Finally, I will discuss the consequences of these developments for the EU in general, and the legal field in particular.

2. Commercial consultancies: services and structures

While scholarly writing has extensively dealt with public interest representation and lobbying in its various facets, it has shed only little light on commercial consultancies so far. If studies mention these actors at all, they are merely treated as part of the overall development of the European sector of interest groups: its general growth, differentiation, and fragmentation (Eising and Kohler-Koch 1994). However, as soon as scholars ponder on the relevance and weight of consultants, they tend to converge on that we are not dealing with an important type of organizations, when compared with other established forms of interest representation, to which they merely provide technical assistance. This political irrelevance is explained by the fact that consultants have little to offer and thus little access to political decision-making. In the conceptual terms of political economy it is argued that consultants have less chances to find access to EU institutions because it is rather individual firms that can deliver expert knowledge, and national or European federations, which can generate consensus and compliance amongst their members. In sum, consultants have no political or social influence or exchange power of their own, or at most this influence is accorded to them by their clients (Hix 1999: 195; Bouwen 2002).

Little can be objected to such convincing arguments. However, is this the full answer? How can we explain the significant increase and share of consultancies amongst European interest groups? To grasp the specific position and contribution of commercial consultancies, we first have to understand their services and the logic of this market. Consultants are not advocates but rather intermediaries or interfaces, in the sense that consultants act on behalf of their clients. This means that clients might confer their consultants the mandate to get active on their behalf, thus pushing them onto the 'frontstage' of lobbying. Most often, however, consultants service their clients in order to enable them to get active themselves. Thus they rather remain at the 'backstage'. Here, they either provide

specialized services in accounting and management, public communication campaigning or legal advice; or they assist their clients in public or government relations by monitoring policy debates and legislative procedures, advising clients in the interpretation of this information, helping them to define their interests, allies and opponents, supporting them in designing and implementing lobbying campaigns, drafting statements and documents, and assisting them in building coalitions.

The considerable growth of this market suggests that these actors seem to satisfy market demands quite successfully. We can even argue that the development of European integration is increasing the demand for consultancy services. In fact, current research has argued that the institutional structure and policy process of the EU is a complex, disjoint and multilevel system that increases contingencies and uncertainties and pushes interest groups to use a strategy of venue shopping and over-supply (Wallace and Wallace 2002; Kohler-Koch and Eising 1999; Knill 2001; Mazey and Richardson 2001). That is, individual interests need to keep track of the entire policy debate and to keep their hands on the entire policy process across various and interlocked policy fields and in a growing number of member states in order to strike where it is necessary. Hence, the EU pursues a policy process that is particularly demanding in terms of lobbying, but even more so in regard to information gathering and interpretation, observation and analysis. This situation encourages redundancies among different forms of interest representation, but calls particularly for information brokers helping their clients to find out what is going on in the various European institutions and capitals, to understand better what this means for the particular interests involved, and to decide better on how their concerns can be brought back into the specific bargains and discourses within and between the European institutions.

Consultants are thus in a position to offer valued services. They provide clients with an extra pair of hands, they might supply expertise in particular issues in case of specialization, they have cross-sectoral expertise (e.g., legal, management, communication competences) generally applicable in a wide range of issue areas, and they may be contracted user-defined as they are not tied to particular interests. However, this assumption needs to be specified. In fact, the demand for information brokerage generated by the institutional and regulatory structure of the EU has enhanced the entire business, but differentiates between different types of information: those consultancies have benefited most from European integration, whose services are most in tune with the EU-related demand, i.e., legal firms. In fact, European integration has been largely a legal venture, spearheaded by the Commission's regulatory approach and the European Court of Justice's judicialization of political debates and decision-making.

In the following, I wish to present some evidence for these assumptions.⁴ Generally speaking, we can draw a picture composed of three major aspects. First, commercial consultancies are a fairly young phenomenon linked to the establishment of the Single European Market, and to the related increase in numbers of interests active on the European level, amongst them particularly European and non-European firms. In fact, more than half of the commercial consultancies started their work between 1986 and 1995. While the pace of growth has diminished, it has not come to an halt altogether. The biggest share of this growth goes back to the establishment of law firms, and in the second instance, to the creation of political consultants. Today, 53% of all consultancies are law firms, 30% political consultants, 13% economic and management consultants, and 5% public relations agencies.

Second, the field of commercial consultancy is still highly fragmented in terms of occupational groups, the companies' size and the geographical area of operation. Most organizations are rather small, when measured in terms of staff: 50% of all companies have seven or less employees, and only 7% of them employ more than 50 people. On average, political consultancies are amongst the smallest (10 staff members), economic and management companies amongst the biggest organizations (57 staff members) – law firms and PR agencies being in a middle position (18 and 20 respectively). Moreover, companies work only in a handful of countries: on average, consultancies have branches in 3,4

4 As mentioned, I will draw on a survey to this end, which I conducted in 1998 amongst all consultancies registered in the Public Affairs Directory of 1997. For details on the survey, see Lahusen (2002 and 2003).

countries and local partners in 4,8 countries (excluding in both case Belgium). Law firms are generally speaking those with the smallest number of national branches (i.e., 2,2), but with the second highest number of local partners (i.e., 5,2 countries). If we synthesize these findings in order to develop different company profiles according to the type of services they provide, we arrive at the following rough characterization. Economic and management consultancies are among those with a pronounced transnational range of operation, arguable in tune with the international or global outlook of the companies they aim to service. While there are a considerable number of smaller and Belgian-based companies (16.1% of all cases), the proportion of big and pan-European corporations clearly dominates this sector (32.3%). Political consultancies, on the contrary, are typically small companies (i.e., 1 to 10 staff members) and Belgian based only (40.3% of all cases). Law firms range in between, as they tend to specialize on a couple of countries, yet, employing a rather reduced number of staff - and this segment makes up 39.8% of all law firms. A minority of organizations consists of bigger companies that are either established Belgian chancelleries and global law firms.

Third, the consultancy market has a bias towards the Anglo-Saxon countries and the biggest member states within the EU (i.e., Britain, Germany, and France). This observation is particularly true for law firms, because here we see a clear predominance of British, US-American and German legal offices (19%, 16% and 15% respectively) – not to forget the high number of Belgian law firms (22%), which illustrates the convenience of contracting locally based consultancies for legal advice and support. A similar picture is generated when looking at those countries, in which commercial consultancies have local branches or partners. Generally speaking, the territorial presence of European consultants' national branches and partners follows a pattern of concentric circles: most organizations have national branches in three core Western European states (France, Great Britain and Germany), followed by a smaller group of organizations being present in a surrounding circle (e.g., Spain, Italy, Benelux, Poland, Sweden), and a small minority working through national branches in an outer circle of the former accession countries (e.g., the Baltic states, Bulgaria, Romania). Apparently, the bulk of mainstream consultancies tend to centre their range of operation on the older and weighty member states, leaving the smaller member states and the former accession countries to bigger, transnational corporations. Finally, these observations are corroborated when looking at clients: most consultants say that their most important costumers are individual companies and that most clients come from Anglo-Saxon countries. Clients from other countries refrain much more from using these companies. These national differences cannot be explained in economic terms alone, because they do not mirror the size and strength of the related countries or national economies adequately.⁵ Rather, institutional and political factors impinge on this situation as well. Apparently, clients from Anglo-Saxon nations are more inclined towards using commercial services, and in particular they are the most loyal clients of political consultants and lobbyists. French and German political culture and institutional structures, instead, tend to emphasize less commercial consultancy in general, and political consultancies in particular. If clients from these countries favour a particular type of consultancy at all, then this service will be primarily legal advice.

Altogether, we see that the consultancy market is strongly fragmented, yet, has successfully established itself on the European level. Their success is determined by an increasing demand for specialized services. This demand is seemingly tied to economic corporate interests, who can afford to contract these services and have less reservations in regard to a business-like approach to interest representation. Moreover, most customers come from Anglo-Saxon countries. We might expect a

5 In fact, the provenance of clients stands in stark contrast to what would be expected when the size of the country (e.g. population) and economy (e.g. gross domestic product), the number of potential interests (e.g. the number of enterprises with more than nine employees) or the economic interdependence with the EU (e.g. export and import rates) are concerned: in all cases we would expect, at least twice as many German, French or Italian clients, when compared with the British numbers. For instance, when Britain is taken as the point of reference (=100), then Italian clients rank at 12 points, although Italian GDP would rank at 75, the no. of enterprises at 69, export rates at 96 and the like (see data in Eurostatistics 2002, or Enterprises in Europe 2002).

great number of these clients being US-American firms. However, the data illustrates also that the consultancy market is opening itself to other interests. On the one hand, consultancies work for clients from a wider range of European countries, primarily by means of specialization (i.e., companies servicing primarily a certain type of national markets, e.g., Scandinavian, Romanic or German speaking groups of countries). On the other hand, the material reveals that consultancies do not only work for individual firms, because every second company services trade associations (European and national ones) and government institutions, and almost every third one is contracted by NGOs. Overall, we see that consultancies have established themselves successfully as a new and legitimate means of interest representation, which can be used – and is in fact being used – by a wider range of customers.

3. The professional consultant: careers and orientations

Let us now move from the organizational to the individual level, and take a look at the professionals. Does this fragmented market with its different occupational groups and national traditions disaggregate into distinct, even individual careers and professional orientations? Or do we observe a stream-lining of educational and occupational requirements and functions? And which position do lawyers and law firms have in this wider market? To be honest, these questions cannot be answered empirically, because there is almost no evidence available on the level of the personnel. The bits and pieces of information we have, allows merely for a preliminary and rough characterization. On these grounds, I want to argue in the following that the commercial consultant is a fairly new type of actor on the European level, which clearly distinguishes itself from the 'advocate', who typically works for Euro-groups and associations and has dominated the scenery until the 1980s. At the same time, 'European' consultants are dissociating themselves more strongly from their national counterparts, helping to establish thus a proper career and skill pattern, and thus, start to control a distinct (European) labour market. Beneath this level, different occupational groups co-exist and compete on the jurisdiction of this labour market.

In order to pinpoint the professional background and orientation of the commercial consultant more clearly, it seems necessary to relate him or her to the wider field of public affairs and lobbying. Available information suggests that there are three typical career developments.⁶ First, we have a group of 'self-made' lobbyists and consultants, most of them career changers coming from other occupations, e.g., former journalists or attorneys, most prominently former staff members of European institutions (Parliament, Commission, Council of Ministers etc.). These cases are willingly commented in public, particularly when regarding high officials (e.g., ex-commissioners).⁷ However, these people are not necessarily good consultants and lobbyists. Moreover, their 'market value' tends to decrease the longer they are out of office. These might be the reasons why most lobbyists normally have a different career background. Second, many lobbyists working on the European level formerly worked in national or local associations and/or in some of their member companies or organizations. Hence, we are speaking of a career advancement within the broader field of interest representation. Available information seems to indicate that those persons were actively involved in building up European interest groups and associations since the very beginnings of the European Communities. In fact, many

6 Scholarly writing has recurrently analysed interest groups as organizations, but has seldom dealt with the people doing the job. See Lahusen and Jauß (2001).

7 The case of Martin Bangemann is a good example, because he resigned from his position shortly after the Jacques Santer-Commission abdicated in 1999. His ambition to change to Spanish Telefonica aroused much public protest, because of the close links with his previous job and because of him having relevant and sensible information of the telecommunication market, which would be available to the company. However, as far as ex-staff members conform to the code-of-conduct, this sort of career-change is a normal and widely accepted option. In fact, the change of most of Bangemann's colleagues went generally uncommented. Let us name, for instance, Karel van Miert, who changed to Philips, or Yves-Thibault de Silguy, who went to work for Suez-Lyonnaise des Eaux; the vice-president of the EU-Commission, Sir Leon Brittan, was hired by the UBS-owned Warburg Dillon Read, and Marcelino Oreja became president of Formento de Construcciones y Contratas as well as member of the advisory board of Repsol.

senior staff members of existing Euro-groups have a long record in national and European interest representation. Third, since the 1990s, we have seen a new generation of lobbyists and consultants emerging on the European scene. We are dealing here most commonly with career starters coming directly from universities and/or specialized training institutes and finding a job as lobbyists or public affairs consultant in interest groups, yet, most commonly in commercial consultancies. In fact, we might assume that a generational change has been going on within the field of European interest groups since the late 1990s, which attributes particular importance to the consultancy market, because it is here, where many of these young people are trained and gather their first experiences, before moving on to other employers, such as traditional interest groups.

These changes come as no surprise seeing that the generation of lobbyists actively contributing to the establishment of the European interest group sector since the 1960s are now being replaced by personnel, which is much more interested in consolidating and professionalizing this occupational sector. This is particularly true for commercial consultants, who can be defined as those actors particularly interested in this professionalization project.⁸ In fact, if we look at educational backgrounds, professional self-understanding and occupational work ethics, we can distinguish two ideal-typical variations of a common occupational function: the advocate or activists on the one hand, and the commercial consultant on the other hand. While the former is tied economically, normatively and cognitively to a particular interest group, the latter is bound to the occupational group as an emerging profession. In fact, the consultants are geared to devote their activities to the well-being of the professional group, or to be more specific: they develop a particular interest and pleasure in representing (whatever) societal groups or interests, and it is here where they aim to achieve occupational self-fulfilment and professional excellence (Michel, 2005).

This orientation makes them stand out against advocates or activists, a second occupational ideal-type, which is far more common amongst interest group staff members, because these people remain loyal to the interests they represent and to which they remain economically, professionally and emotionally tied. In ideal-analytical terms, these advocates will remain detached from – and even critical of – the professionalization of lobbyism, because they are strongly committed to particular societal interests and rather distrustful of the business-like attitude of professional consultants. Most clearly, this conviction is shared by volunteer activists and honorary advocates, e.g., amongst non-profit or social movement organizations, which highlight moral commitments and democratic accountability and are worried about the oligarchization of their ventures in formalized organizations with their paid, professional staff. The commercial consultants, in contrast, are committed substantially to the ideal of a professional service delivery that is independent of and neutral towards the interests they might represent (and which will change along with the clients they service), because they are oriented towards establishing and safeguarding professional standards, which are to be applicable to all interests and thus to be developed universally for the entire market of clients.

The consultant is thus a person, who is particularly interested in professionalizing the job of interest representation and public affairs as a proper and self-contained area of work, i.e., also in sharp contrast to the pragmatism and/or dilettantism of self-made activists, well-meaning do-gooders, arriviste career changers or even practically experienced lobbyists. Their professional advancement depends on developing and defending ‚neutral’ occupational standards, and their occupational ethics is firmly grounded in this mission. Consequently, the ideal-typical consultant is much more interested in furthering the academic and scientific substantiation and legitimation of his/her work, because according to him/her professional labour is not a matter of intuition and practical learning, but of abstract cognitive models and methodically refined skills, which are to be based on theoretical and empirical wisdom and require methodical training. In this sense, consultants are the most vigorous

8 The sociology of profession has argued that professionalization is an intentional process spearheaded by specific actors interested in forming occupational groups, partially in competition or antagonism with others. This conflict theoretical perspective on professionalization was developed most forcefully by Larson (1977).

proponents of a professionalization project, which – as in the case of many other occupations – entails the establishment of professional associations and university-based institutes or study programmes as a means of regulating, controlling and legitimating a proper occupational labour market.

As mentioned above, we have little comprehensive empirical data to confirm these presuppositions on the individual level systematically. Available information, however, seems to suggest that the labour market of public affairs is establishing new entrance gates and career patterns for younger professionals. For instance, (internationally accredited) university degrees are becoming ever more important in the recruitment of personnel, as attested by a survey amongst public affairs agencies in Germany (Klewes and Busch-Janser 2008). Moreover, an increasing number of people are attending specialized postgraduate courses, training programmes or internships in order to learn about the European Union, European law and politics (Michel 2005). Overall, the conviction is spread that the EU requires specific qualifications and skills, which can be learned (and need to be learned) systematically by a specialized education and training. Finally, individual cases seem to document that there is a stronger occupational mobility within the circles of European public affairs, e.g., between Euro-groups or NGOs and commercial consultancies on the one hand, between the 'Brussels scenery' and European-related national labour markets on the other.

These observations draw a general picture, which leaves many questions unanswered. In particular, it is unclear whether common educational and career patterns emerge from this series of individual choices. It is rather to be assumed that the situation will diverge, depending on the occupational groups involved. In regard to government affairs, lobbying and political consulting in a more strict sense, there are indications for a closure of a EU-related labour market, given the fact that EU specific qualifications and skills, experiences and contacts are required. The picture is less clear amongst EU related legal consulting. While a specialization on European law and European institutions might be a good choice for many young professional aspiring jobs in law firms specialized in European law and affairs, career patterns are still dominated by either national or global firms, as we have indicated earlier. Hence, for many professionals, European law and European institutions become rather part of a larger professional portfolio, where European law is more strongly coupled with either national or international law. Hence, while non-legal occupational groups are pushing European public affairs towards a distinct EU related labour market, the legal profession aims rather to tie European consultancy back to its stronghold, i.e., the nation-state.

4. Professionalization of European public affairs?

The description of companies and professionals has provided some insights into the demand and supply side of European public affairs. Related observations seem to confirm a gradual professionalization, however, the extent of this development is badly understood when institutional factors are neglected. In fact, we need to clarify whether European public affairs is institutionalized as a professional labour market. For this purpose we have to take a look at those collective actors, which commonly guide the fate of occupational groups: the educational system, professional associations and state institutions. 'Professionalization' is defined here as a collective (and collectively contested) attempt to construct, organize and regulate a labour-market of paid work on the basis of shared claims to superior knowledge and ethical commitments.

On first sight, this professionalization seems to be quite improbable (McGrath 2005). In fact, the EU has not introduced a legal status for interest groups and consultants, and the occupational title of lobbyists or consultants is not legally protected. As we see, there is even minimal interest in regulating the sector on the part of the EU-institutions. Moreover, lobbying is accepted differently within Europe, and this also goes for the EU-institutions, whose staff is more or less used to working with lobbyists (e.g., Kohler-Koch 1998; Bouwen 2002). Moreover, there are several occupational groups working in the realm of European public affairs, with differing professional interests and orientations. Finally, we need to recall that Brussels is an 'insider's town'. The various policy-actors (staff

members of the Commissions and the Parliament, interest groups, experts) know each other quite well, meaning that consultations are based on routine interactions and interpersonal trust, and require less 'professional' habitus.

However, there are also conditions favouring a professionalization project. Commentators and policy actors agree that European politics behave according to a proper logic, meaning that forms and strategies of interest representation established and used on the national level do not necessarily apply to the EU-level. Moreover, the growing institutional complexity of the EU and the growing uncertainty of political influence taking is increasing the need for insights and skills to raise the efficiency and effectiveness of EU related interest representation. Finally, the fierceness of political negotiations between member states and interest groups, and the above mentioned debates about the democratic legitimacy of the EU is favouring those actors, who are interested in regulating and legitimating interest representation as a normal and necessary aspect of European politics. In this context, a professionalization of lobbyism seems to offer a way out of all these dilemmas.

It comes as no surprise, therefore, that 'Public Affairs' and 'Public Affairs Management' is becoming a well-received concept that provides an umbrella for the wide range of activities associated with interest representation (lobbying, public relations, legal advice, management services). This concept bears a more positive occupational identity than lobbyism; moreover, it has the benefit of channelling alignments to academic disciplines and university programmes in the realm of business administration, management, political, social and communication sciences. In fact, more and more guidebooks and manuals are published, more and more conferences or workshops are being organized on Public Affairs, Issue Management, Association Management and the like. Here, we see the attempt to construct a common and abstract knowledge base of theories and concepts, qualifications and skills that allow to rationalize and systematize 'professional' work and legitimate the occupation's jurisdiction of the specific labour market. It is no surprise that university education has reacted to this development as well. This is true not only for the US and Great Britain, which are in the lead of this development, but also for many European countries, such as Belgium and the Netherlands, but also Germany, Austria, France, Hungary and many others. Universities have established specialized BA- and MA studies particularly in the Benelux countries, such as the *Université Libre de Bruxelles* and its *Institut d'Etudes Europeennes*, the *United Business Institute* or the *University of Maastricht*. To these degrees we can add a myriad of BA and MA courses in the social sciences, which have included public affairs into their specific curricula, e.g., into study programmes on public policy, political communication, public administration and management (Klewes and Busch-Janser 2008). Finally, specialized institutes for advanced training were established during the 1990s, for instance, in 1994 the *European Institute for Public Affairs and Lobbying* (EIPAL), and in 1996, the *European Centre for Public Affairs* (ECPA) in Brussels (Michel 2005; van Schendelen 2002: 40ff.). All in all, we are witnessing an academization of public affairs, and we can argue that this development was introduced from the USA and Britain via the EU into most of the European member states

As to the gradual organization and structuration of European public affairs, we can refer also to professional associations, which aim to order this field of activity. Today, there are the *European Public Affairs Consultancies' Association* (EPACA), the *Society of European Affairs Practitioners* (SEAP), the *Alliance of European Public Affairs Consultants* (AEPAC), and the *Association of Accredited Lobbyists to the European Parliament* (AALEP), but also national associations provide an important arena for the organization of European consultants, for instance, the *Association Francaise des Conseils en Lobbying* (AFCL). We are speaking of rather small associations that are active only marginally in the realm of advanced training and qualification, in representing occupational interests, and in regulating public affairs' relevant labour markets. Their main mandate resides in formulating and promoting 'codes of conduct' as a reaction to the severe criticism following the accelerated growth of the sector and regularly emerging debates about irregular and illicit lobbying practices. By 2000, only a small proportion of lobbyists had signed the codes of conduct of the then still existing *Public Affairs Practitioners* and the SEAP (approximately 50 and 100 respectively). In sum, there are

modest attempts to organize the 'profession' of public affairs practitioners, however, these associations only speak for a minority, which remains internally divided, as we well see.. Interestingly enough, the majority of organized practitioners is recruited amongst staff members of commercial consultancies and representatives of specific trade associations (e.g., chemical and pharmaceutical industries), who are more interested in self-regulation and professional marketing, and are thus more committed to promoting the professionalization of lobbying (Michel 2005). Commercial consultants are amongst those promoting this professionalization project more actively, not least because their personal career advancement depends on convincing future clients and/or employers about the legitimacy and excellence of their occupational group.

Finally, the EU institutions have become more active in the regulation of European public affairs,⁹ most recently as a reaction to the European Transparency Initiative under the Vice-President of the Commission, Siim Kallas. By now, the EU-Parliament and the EU-Commission have a register and code of conduct for interest representants, and debates about an inter-institutional mandatory register is still in the air. It is also significant for the changed political environment that debates and regulatory attempts are, today, assisted by a number of NGOs, who are committed to monitor and control this part of European politics quite explicitly (e.g., *Alliance for Lobbying Transparency and Ethics Regulation*, *Transparency International*, *Corporate Europe Observatory* or the *Civil Society Contact Group*). Undoubtedly, these registers are committed to a liberal and self-regulatory approach, generally trusting in the ability of 'the profession' to monitor and control itself. However, in adopting consecutive measures, the EU is promoting a holistic perspective, arguing that all interest groups and consultants belong to the same occupational group of public affairs professionals and need similar treatment.¹⁰

In sum, there is evidence to assume that a gradual professionalization of European public affairs is under way. However, there is an important qualification to add: there is some resistance by the legal profession to become enmeshed into the institutionalization of public affairs. Rather, there are indications that this profession aims to safeguard their occupational status and privileges, and aims to dissociate itself from regulatory debates related to governance and interest representation. To simplify the cleavage, we can say that there is a competition between the legal professions on the one side, and the social sciences (in a broad meaning: political and communication, public administration and management science) on the other side, about the jurisdiction of this area of operation. While the latter

9 The EU institutions have shown moderate interest in regulating this occupational field (Schaber 1998; Preston 1998). The European Parliament was the first to pick up this issue in 1989, yet it took more than six years to introduce a code-of-conduct (European Parliament 2003; Schaber 1998). It was not until the demission of the Commission under Jacques Santer that a more pro-active debate emerged. Even then, the Commission introduced only very moderate measures. In various papers published during the 1990s, the Commission committed itself to more transparency and openness, to equal treatment of all interests and wider consultations, however, explicitly negated any attempt to formalize or proceduralize the relations between interest groups and EU-institutions. Rule-making was restricted to developing a 'code of conduct' that was designed to regulate the dealings between staff and lobbyists, and which was tightened in 2001 in response to the demission of the Santer-Commission. A White Paper on 'European Governance' was published in that same year listing a number of standards for routine consultations with interest groups (EU Commission 2002). Since then, the Commission has stepped up their activities, particularly in reaction to financial irregularities in European agencies and continuing complaints about illicit behaviour by functionaries and lobbyists, however, without altering the general political orientation. In fact, the vice-president of the EU-Commissar, Siim Kallas, launched a transparency initiative in 2005, which gained momentum through the publication of a Green-Paper on May 3rd 2006 (EU Commission 2006), and which might lead into regulatory measures. Amongst other measures geared to increase transparency, it advocates for a soft regulation of the lobbying market, particularly by a voluntary registration system, a common professional code-of-conduct, and a monitoring and sanctioning system.

10 In its communication of June 23rd 2008, the Commission explains that "it is not the nature of the organisation which is the determining factor for registration, but the nature of the activities in which the organisation is engaged. However, law firms, public affairs consultants, certified accountants, etc., giving assistance to a client for an individual case submitted to the Court of Justice or directly related to a competition case or an access-to-document request handled by the Commission do not fall within the scope of the register." (EU-Commission, MEMO /08/428).

have a strong interest in expanding their labour markets into the realm of public affairs (e.g., by adapting their university education accordingly, and by setting up common professional associations), the former profession has a defensive attitude that aims to preserve its jurisdiction. This implies, on the one hand, that they participate in promoting a minimalist self-regulatory approach, because in this respect there is a consensus about goals amongst the various occupational groups involved in European public affairs. On the other hand, however, they refrain from any further attempt to construct a common arena of public affairs.

In fact, the legal profession has a lot to lose in view of the institutionalization of European public affairs. Here, we can distinguish a material and a symbolic dimension. On the material dimension, the privileged position of lawyers and law firms on the labour market of EU related consultancy work is threatened by other occupational groups, which claim to have as many valuable competencies and skills to offer as lawyers have. On the symbolic level, European public affairs and the debates about European governance is dissociating the work of the legal profession from the disinterested pursuit of the rule of pan-European law (Cohen and Vauchez 2007), and is associating law firms with interested parties, and thus with interest representation and lobbying. This is politicizing European governance at large, and the function of law and lawyers within the construction of the European Union in particular. Lawyers are thus entrapped into the institutionalization and regulation of European public affairs, yet, they aim at minimizing their effects. This is nicely evidenced when looking at professional associations. In fact, lawyers and law firms tend to organize and represent their interests on the European level in separate associations, such as the *European Lawyers Union*, the *European Association of Lawyers* or the *Council of the Bars and Law Societies of Europe*. When the Commission publicized its plans to introduce a general register for lobbyists, these organizations were at the lead of attempts to dissuade Commissioner Kallas and his team from these plans, and subsequently to convince them that the legal profession's venture is not necessarily politically inspired, and thus distinct from public affairs in general, from lobbying in particular. The decision of the EU-Commission to grant consultants the right to abstain from registering, when refraining their service to fundamental rights to a fair trial of their clients, demonstrates that this argument was quite convincing.

5. Conclusions

This paper argued that European public affairs is a growing labour market exposed to a gradual professionalization, albeit important internal cleavages and fragmentations. Particularly interesting is the position and orientation of the legal profession, in that it has become part of the steady institutionalization of European public affairs, yet, tries to preserve its own professional status and privilege, and attempts to dissociate itself from the dusky work of interest representation and lobbying. But which are the consequences of this development? I want to close this paper by pointing to three important implications.

First, commercial consultants are at the lead of a professionalization of public affairs, which means first of all the construction and control of a market for *paid work*. This minor details is of importance, given the fact that interest representation and consulting involves also volunteers and honorary personnel, particularly in the realm of non-profit-organizations, which, as we have seen, tend to defend a completely different approach towards interest representation, namely the idea of advocacy and militantism. In this sense, professionalization implies the marginalization of non-paid-work, as soon as the 'high standards' of good, effective and transparent work are established in opposition to the dilettantism of self-made-practitioners and do-gooders as guiding rules within the field of interested representation – and as an expected entrance ticket to consultational procedures of the EU institutions.

Second, we can argue that the commercial consultancy market does augment *power differentials* within the European field of interest representation, because it adds working power and lobbying expertise to those actors, who have the resources to contract such costly services. So far, no case studies or other systematic evidence is available to validate this assumption, however, we might expect

that the assumption of heightened political inequalities is analytically plausible.¹¹ Third, we argue that the professionalization helps consultants and advocates to become important players in their own right, as soon as they are treated as a proper profession with certain *self-regulatory competences*. The history of regulatory initiatives by the EU-institutions demonstrates that the latter have always refrained from an overt control of the field, hoping that the occupational groups and professions involved will manage to regulate their matters independently in order to maintain the efficiency and legitimacy of European governance. However, keeping in mind the fragmented and competitive structure of the European interest group sector and the weak regulation of this field by EU-institutions and professional bodies, we might have to expect – for the time being – interferences and scandals with regard to irregular and illicit practices. This implies ambivalent consequences for the legal profession and the legal construction of Europe. On the one side, public affairs and lobbying will continue to unravel debates about European governance (e.g., the effectiveness of policy deliberations, the democratic deficit and others). These debates do not necessarily challenge the idea of a rule of law, but could even reassert the need for more regulations and procedures and clearer legal and constitutional underpinnings. On the other side, however, these debates are politicizing the role and function of law and the legal profession within the construction of the European Union, and thus eroding the seemingly ‘disinterested’ status and ‘apolitical’ influence of lawyers. So far, the minimalist self-regulatory approach aims to solve the related governance problems without leaving room for more severe institutional reforms. However, it is to be seen with which success.

11 Political inequalities, however, do not necessarily say something about factual power in terms of successful influence on political decision-making. Also weak interests can be quite effective in bringing their concerns and interests into European decisions. We can therefore only speak about power potentials.

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