The record of a Captive Commission

The 'black book' on the corporate agenda of the Barroso II Commission

Corporate Europe Observatory

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Cover picture: *Group photo of the ERT, from left to right, in the 1st row: Wim Philippa, Secretary General of the ERT, Leif Johansson, President of AB Volvo and CEO of Volvo Group and Chairman of the ERT, José Manuel Barroso, Gerard Kleisterlee, CEO and Chairman of the Board of Management of Royal Philips Electronics and Vice-Chairman of the ERT, and Paolo Scaroni, CEO of Eni, in the 2nd row: Aloïs Michielsen, Chairman of the Board of Directors of Solvay, César Alierta Izuel, Executive Chairman and CEO of Telefónica, Zsolt Hernádi, Chairman and CEO of MOL and Chairman of the Board of Directors of MOL, Paulo Azevedo, CEO of Sonae, and Bruno Lafont, CEO of Lafarge*

(Photo: EC Audiovisual Services/European Commission)

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Introduction

With the upcoming European elections, the term of the European Commission is coming to an end, and it has been a term like few others. Since it took office in early 2010, the European Union has experienced a severe financial and economic crisis that has transformed the bloc significantly. More competence over economic and fiscal policies has been given to the EU institutions in general, and the power of the Commission in particular has been boosted. Through the course of the crisis, attempts by corporations and corporate lobby groups to influence EU policies have probably been more successful than ever, in part due to a close relationship with the Commission.

Corporate Europe Observatory has gathered a lot of evidence over time and covering many different areas that shows how the Commission is easily captured by corporate interests. This report is an attempt to produce a condensed version of how the Commission has come to act on behalf of corporations over the past five years, focusing on climate policies, agriculture and food, finance, economic, and fiscal policies.

In short, European corporations have been very successful in exploiting the crisis to forward their own agendas, and the help of the European Commission has been instrumental in that effort. That is partly due to the composition of the Commission, but there is more to it than that.

The European Commission is a very powerful body. It has the monopoly on legislative proposals – all suggestions tabled in the European Union come from the Commission. And yet it is unelected, and not directly accountable to anyone. Also, the Commission generally lives its life at a comfortable distance to public debate. There is little chance that the concerns of citizens will reach the chambers of the Commission unfiltered.

On the other hand, it is a body that is easy to penetrate for corporate lobby groups with ample financial resources, for various reasons. For instance, the fact that the Commission has relatively few economic resources itself, with little in-house expertise, makes it all the more easy for corporate lobby groups to step in and influence the agenda.

Thus an increase in the competence of the Commission tends to be directly proportional with corporate capture of EU decision making, which is why the current trend in that direction should raise concern. From the very beginning the Barroso II Commission has followed a corporate agenda, and its close links to the biggest corporations and banks in the European Union is a key trait of the current European project.

This report is released at a time when these issues should be debated broadly. As if the Commission itself has realised it has an urgent need for a stronger legitimacy, it has played its part in helping the European Parliament stage a kind of indirect election for the Commission President for the first time. Whichever political group in Parliament wins the most support will elect the Commission President. What remains to be seen is whether the other actor in the selection of the President, the Council, will play along with their choice.

In any case, we believe such an indirect election will do little if anything to fix the democratic deficit of the Commission. More fundamental problems are at play, and those problems are the topic of this report.

The report attempts to capture the key experiences of Corporate Europe Observatory with the outgoing Commission in the core areas covered by our research, including trade, agriculture/agribusiness, finance, climate change, water privatization, and economic policies, particularly policies adopted in response to the eurocrisis. In all these areas the presence and influence of corporate lobby groups on the Commission has been a key feature of its actions all along.

But despite this, there has been very little progress on lobbying transparency and ethics, as this report shows. CEO and many other public interest groups have worked throughout the term of this Commission to strengthen the rules on transparency and ethics in order to erect some obstacles to excessive lobbying influence and open the Brussels scene to greater public scrutiny. We have campaigned for transparency via a mandatory register for lobbyists, on ethical conduct, against imbalanced advisory structures, on "revolving doors", and many other issues. This report looks at the most important issues with the Commission in this regard, and it reveals a rather bleak picture.

The chapters can be read separately, but they all form part of the same story: that of corporate capture of the Barroso II Commission. We are not reviewing this for sentimental reasons, nor to close the book on past events, but rather to examine the long term and fundamental problems, and look ahead to explain the potential challenges of the incoming European Parliament and Commission to reverse this trend. The topic of the conclusion covers some of the steps that need to be taken to address this corporate capture.

1. Trade

The corporate trade and investment agenda

Soon after the European Commissioner for International Trade, the Belgian liberal Karel de Gucht, took office in 2010, he made it clear that he considered himself a servant of big business. During a Commission Civil Society Dialogue in June 2010, when de Gucht was asked if he would break with his predecessors' open-door policy towards the business sector, he responded: "My job description is 'open new markets for the European industry and the European services sector'."[1] And this is exactly what de Gucht and his team at the Commission's Directorate General for Trade (DG Trade) have done over the past four years – all too often to the detriment of people and the environment around the world.

During the past four years, DG Trade has negotiated far-reaching free trade agreements for their friends in the business sector with nearly the whole of the rest of the world. Some negotiations have been concluded: the controversial EU-Colombia-Peru trade deal, for example, which implies gross violations of human rights, and the rights of trade unionists in particular (Colombia has the highest number of trade union murders in the world);[2] or the infamous Anti-Counterfeiting Trade Agreement (ACTA) which was eventually axed by the European Parliament when millions took to the streets fearing that ACTA would allow corporations to censor the internet.[3] Other trade negotiations are ongoing, amidst fierce resistance to the EU's aggressive market opening agenda – from India to the African, Caribbean, and Pacific group of states; from Canada to the Arab spring countries; from the US to the ASEAN region (Association of South East Asian Nations).

In the past four years DG Trade has also embraced sweeping powers for foreign investors.[4] They have granted big business the right to claim multi-million dollar compensations for democratic laws to protect the environment or public health – just because these laws allegedly reduced business profits. The EU's Lisbon Treaty opened a window of opportunity to learn from the negative experience with these excessive corporate rights that other parts of the world experienced. The Commission could have adopted a fresh approach to the issue, without so called investor-state dispute settlement which allow corporations to sue governments, and with obligations for corporations going abroad. Trade unions and NGOs had called for such a u-turn. But instead, DG Trade opted to side with the business lobbies and EU member states, and is now negotiating dangerous corporate rights with many countries – including the US, Canada and China.

EU trade negotiations: putting big business in the driving seat

The ongoing trade negotiations between the EU and India are one of many examples of how DG Trade puts big business in the driving seat. If the deal is secured, it will threaten the livelihoods of millions of small farmers, fisherfolk, street vendors, and indigenous people in India. For example, the Indian retail sector will be opened to competition from EU supermarket giants such as Tesco and Carrefour. There are 33 million small scale traders in India. How can they compete with cost-cutting, supermarket style?

The Commission has assured European retail and other industries that, "we must decide together what we want, then work out how to get it" from India. In countless exclusive meetings and email exchanges with the EU's negotiating team, business has been given sensitive information about the on-going talks – information that was later withheld from public interest groups[5] – and has been invited to provide details about problems they face in penetrating the Indian market. The European employers' federation

1 Civil Society Dialogue meeting, Brussels, 23 June 2010.
2 See, for example: TNI (2012): Dossier Colombia, http://www.tni.org/sites/www.tni.org/files/download/dossiercolombiaen.pdf.
3 See, for example: https://www.laquadrature.net/en/ACTA.
4 Corporate Europe Observatory (2010): The Battle to Protect Corporate Investment Rights. Commission tempers its new powers in response to business lobby, http://www.corporateeurope.org/system/files/files/article/Battle+to+Protect+Corporate+Investment+Rights.pdf; Corporate Europe Observatory (2011): Investment rights stifle democracy, http://corporateeurope.org/sites/default/files/publications/investment_rights_stifle_democracy.pdf.

5 See the story about CEO's court case against the European Commission, challenging the privileged access that it grants corporate lobby groups to sensitive information relating to its trade talks: http://corporateeurope.org/news/commission-sued-privileged-access.

BusinessEurope, in particular, meets behind closed doors with high-level officials from DG Trade at least once a month to discuss the talks.[6]

Big business also has a lucrative place in the EU's so called market access working groups. Here, Commission officials, EU member state representatives and corporate lobbyists sit together to discuss regulations in key markets (such as India) that stand in their way – and develop joint strategies to get rid of them. What business expects from these groups is clear: the Commission should "gather necessary information from companies", "adapt to company perspective" and "speak company language". A lobbyist of the European retail and traders' lobby group Eurocommerce has called the market access working groups: "a big ear-trumpet, with which the Commission and the member states listen to businesses and gather their market access interests." The Commission has repeatedly assured the corporate lobbyists on these groups that it is committed "to work on all issues that member states and industry will bring to the table."[7] The Commission's actions range from attacking other countries' laws in trade negotiations to diplomatic pressure.

TTIP: handing the negotiation agenda over to business

EU-US negotiations for the Transatlantic Trade and Investment Partnership (TTIP) are another example of the privileged access and undue influence that the Commission grants industry over its trade policy. An internal Commission document obtained through the EU's access to information rules shows that, to prepare the trade talks, DG Trade has had at least 119 meetings behind closed doors with large corporations and their lobby groups – but it has had only a handful with trade unions and consumer groups. When negotiations were announced in February 2013, not a single such meeting with public interest groups had taken place – compared to dozens with business lobbyists.[8] The result is an unsavoury big-business-first agenda for the TTIP. The leaked Commission proposal for the so called "regulatory cooperation" in the agreement, for example, mirrors joint plans by industry associations BusinessEurope and the US Chamber of Commerce which would essentially allow business lobbyists to "co-write legislation" in the future. This would allow corporations to rewrite rules in the financial sector, food labelling requirements or environmental standards to be more compatible with their interests – to the detriment of consumers, workers and the stability of our economies.[9]

The Commission's mock consultation on corporate super rights

The controversial investor privileges which the European Commission wants to enshrine in TTIP also have corporate fingerprints all over them. Trade unions, environmentalists, consumer groups, and online activists are unanimously opposed to these corporate super rights which they fear will undermine democracy and make governments pay when they regulate to protect their people and the environment. Big business, on the other hand, has been lobbying for strong investor rights – from individual companies such as US-based energy giant Chevron to powerful industry lobby groups such as the aforementioned BusinessEurope and the American Chamber of Commerce.[10]

In response to growing public outcry over the investor rights in TTIP, the European Commission has just halted negotiations and published a public consultation on the issue, which will run until early July. Is DG Trade finally

6 Corporate Europe Observatory (2010): Trade Invaders. How big business is driving the EU-India free trade negotiations, chapter 3.2, http://corporateeurope.org/sites/default/files/publications/trade_invaders_0.pdf.

7 Ibid.

8 Corporate Europe Observatory (2013): European Commission preparing for EU-US trade talks: 119 meetings with industry lobbyists, http://corporateeurope.org/trade/2013/09/europe-an-commission-preparing-eu-us-trade-talks-119-meetings-in-dustry-lobbyists.

9 Corporate Europe Observatory (2013): Regulation – none of our business?, http://corporateeurope.org/trade/2013/12/regulation-none-our-business.

10 Corporate Europe Observatory/ TNI (2013): A transatlantic corporate bill of rights. Investor privileges in EU-US trade deal threaten public interest and democracy, http://corporateeurope.org/trade/2013/12/regulation-none-our-business.

listening to the people? Quite the contrary. The consultation does not ask *if* and *why* these corporate rights should be enshrined in the transatlantic trade deal at all – but rather, asks what the “modalities” should be. So, it is a mock consultation with a pretty much pre-determined outcome: the Commission’s own ‘reform’ agenda is intended to salvage a legal regime reserved for the global elite that is increasingly contested around the world.

Also, the ‘reforms’ are remarkably in line with the big business lobby agenda to re-legitimise investor-state dispute resolution – by reforming it around the edges (transparency, faster proceedings, more consistent rulings…) without touching its core (greater property protection rights for companies and a private judicial system of for-profit arbitrators to claim them).[11]

All in all, the trade and investment policy of the Barroso II Commission reveals a bunch of unelected technocrats who care little about what the people want and negotiate on behalf of big business.

11 Corporate Europe Observatory (2014): Still not loving ISDS – 10 reasons to oppose the corporate super-rights in EU trade deals, http://corporateeurope.org/international-trade/2014/04/still-not-loving-isds-10-reasons-oppose-investors-super-rights-eu-trade.

2. Economic policy

Crisis response: austerity and attacks on social rights

The financial crisis in 2008 led straight to the eurozone crisis which hit the European Union in spring 2010. Member states felt obliged to bail out banks resulting in soaring public debt. While progress on reforming financial regulation was to be slow and piecemeal, the Commission eagerly jumped onto an agenda promoted vigorously by the business community: austerity, stronger control of member state budgets, and reforms of labour laws.

Soon after the outbreak of the euro-crisis in spring 2010, Commission President José Manuel Barroso announced what he called "a silent revolution" in terms of "stronger economic governance by small steps"[12]. That silent revolution was to begin with the tabling of the so-called "six-pack" in September, a set of laws which was to tighten the rules on debts and deficits, boosting the power of the Commission by introducing a rule of "reverse majority". This means that in the future, when the Commission proposes sanctions on member states with deficits that are too large, there has to be a qualified majority *against* it for the sanctions to be rejected. In the same package, mechanisms on "macroeconomic imbalances" were introduced, to be used for pushing wages downwards among other many other socially regressive measures.

The six-pack was only the beginning. After the six-pack came many other measures, including the European Semester, the two-pack and the Fiscal Compact[13], all of which had basically the same purposes: to impose austerity, to push for reforms of labour laws, and to increase the influence of the EU institutions in general and the Commission in particular on member state budgets. This increased control was to become a single-minded attack on social expenditure in an attempt to make European economies more "competitive".

12 José Manuel Barroso, speech at the European University Institute, June 2010.

13 For an overview of these reforms, see Kenneth Haar & Steffen Stierle, 2012, Troika for everyone, http://corporateeurope.org/eu-crisis/2012/11/troika-everyone-forever
On the two-pack: Corporate Europe Observatory, 2013, The dangers of the two-pack, http://corporateeurope.org/news/double-jeopardy

The Commission was cheered on by the business community in this process, not least by two of the major players on the corporate lobbying scene, BusinessEurope and the European Roundtable of Industrialists (ERT).

Siding with business on austerity and wages

Right from the inception of the eurocrisis in 2010, the type of response favoured by the Commission was clear: austerity and attacks on labour rights and on pensions. The Commission and the Council responded swiftly along these lines, and the first proposals were tabled in June and September 2010. The latter proposal was the so-called "six pack" which strengthened the EU rules meant to make member states stick to strict fiscal policies – which in times of crisis would mean harsh austerity. The six-pack was about wages as well, in that a mechanism was introduced that allows the Commission to keep a close eye on wage developments in member states, and suggest sanctions if wages were going up too much according to a predefined threshold.

BusinessEurope responded very positively to these six proposals, and felt its own effort to influence developments had once again borne fruit: "We are glad to see a large number of these recommendations reflected in the legislative package proposed by the European Commission on 29 September", BusinessEurope said in a statement.[14]

The six-pack was to pave the way for the EU crisis regime. A regime that would prove very costly for most Europeans, and do nothing to solve the real-world economic crisis.

Attacking labour in unison

One of the mechanisms adopted in the course of the crisis is "the European Semester". The European Semester is a procedure which makes a long standing wish of the European Roundtable of Industrialists come true. Back in

14 BusinessEurope, 2010, Declaration on economic governance, http://www.businesseurope.eu/content/default.asp?PageID=568&DocID=27393

2002 the ERT wrote in a position paper, that "at the drafting stage, the implications of national budgets and of major national fiscal policy measures [should be] reviewed at the level of the Union"[15]. At that point, the time for this to be adopted was not ripe. The proposal was suggested by the Commission in 2005, but rejected by the Council. But with the crisis, things changed, and in 2011 the first European Semester was carried out.

Under the European Semester the Council votes on recommendations for each member states' economic policies, including for that of their labour markets. The proposals are prepared by the Commission, and so far it has been a pretty straightforward affair on some issues. There is a remarkable resemblance – if not complete identity – between the proposals by the Commission on labour and the wish lists of the European employers' lobby group, BusinessEurope, and the results have been reduced labour protection laws in most member states[16]. And generally the Commission's proposal have been adopted by the Council.

The recommendations are actually more than mere suggestions. In the case of Spain, recommendations have been elevated to conditions for loans to the nation's banks, and the Commission is exploring other ways too to make the recommendations binding for all member states.

Preparing next steps with the European Roundtable

After the fiscal compact, the Commission considers new measures to boost "competitiveness" the most vital component of its scheme for a common economic policy. From the very outset, this was a scheme that would, among other things, be an attempt to push member states to weaken labour protection, however the details have not been spelled out by the Commission. One of the reasons for this is clearly because the Commission wants to include big business in the debate.

In March 2013 a meeting hosted by the German Government took place in Berlin. Guests were the French President Hollande, the Commission President Barroso, and a large number of CEOs of European corporations, members of the renowned EU big business lobby group the European Roundtable of Industrialists. The agenda of the meeting was nothing short of the European Union's next big steps on the road to a common economic policy. In connection with the meetings, the ERT stressed its desire to see "modernised job protection measures including reducing redundancy notice periods and severance payments in exchange for training for new jobs".[17]

One of the outcomes of the meeting was a Franco-German working group on competitiveness, headed by two ERT veterans, Gerhard Cromme (Siemens) and Jean-Louis Beffa (Suèz)[18].

In March 2014 a similar meeting took place, this time in Paris, and this time announced by the Commission as a recurring annual event[19].

Whether the ERT will succeed in framing the agenda of EU economic policies in this way remains to be seen. At the end of 2014, the European Council is set to decide on whether mandatory rules to centrally direct the economic policies of member states should be adopted, either via EU legislation or a separate "competitiveness pact". But proposals from the French and German governments, backed by the Commission and co-authored by some of the biggest in big business, would stand a pretty good chance.

15 ERT, 2002, "EU Governance", ERT Discussion Paper. See also Corporate Europe Observatory, 2011, Corporate EUtopia, http://corporateeurope.org/sites/default/files/sites/default/files/files/article/corporate_eutopia_final.pdf

16 Corporate Europe Observatory, 2013, BusinessEurope and the European Commission: in league against labour rights?, http://corporateeurope.org/eu-crisis/2013/03/businesseurope-and-european-commission-league-against-labor-rights

17 Corporate Europe Observatory, 2013, Merkel and the dreams of corporate leaders, http://corporateeurope.org/eu-crisis/2013/05/merkel-and-dreams-corporate-leaders

18 Corporate Europe Observatory, 2013, Mad men of the Roundtable, http://corporateeurope.org/eu-crisis/2013/06/mad-men-roundtable

19 Corporate Europe Observatory, 2014, The permanent liaison, http://corporateeurope.org/lobbycracy/2014/03/permanent-liaison-how-ert-and-businesseurope-set-agenda-eu-summit

3.Finance

Single market trumps stability

The term of this Commission started in the midst of a financial crisis, with banks collapsing like a house of cards, companies closing, unemployment soaring, and indebted families thrown into the streets. The costly bailouts of banks would ultimately cost the public purses in Europe the staggering sum of 1,6 trillion euro – all because of a financial sector running wild. It was a time of sobering self criticism at the political level in Europe as the rules governing financial markets had been totally insufficient. The previous Commission had clearly borne part of the responsibility, and the outgoing single market Commissioner discreetly acknowledged that he had "learned that all consultation bodies should be able to stand back also, and say 'it's wonderful what the industry has said' but we need to be a bit more objective ourselves"[20].

This clearly applied to his own office as well. In November 2009, the ALTER-EU coalition released a report that showed a marked dominance of people with links to financial corporations in all the advisory bodies that had helped guide the Commission on financial regulation in the years preceding the crisis[21].

Such a conclusion is rather damning, particularly when we consider the hight costs. Millions were driven into poverty and unemployment, and states spent a total of 1.6 trillion euro in bailouts. Former Commissioner McCreecy put it like this: "What we do not need is to become captive of those with the biggest lobby budgets or the most persuasive lobbyists: we need to remember that it was many of those same lobbyists who in the past managed to convince legislators to insert clauses and provisions that contributed so much to the lax standards and mass excesses that have created the systemic risks. The taxpayer is now forced to pick up the bill."[22]

The question over the past four years, then, has been whether this corporate capture of the Commission would be allowed to continue. In the beginning there were some encouraging signs that it would not, as when the new single market Commissioner, Michel Barnier acknowledged in a letter of November 2010 to the ALTER-EU coalition that he would work to "achieve a fair balance of non-industry stakeholders in our consultation process"[23].

However, that promise was never fulfilled. On all key issues, the advisory bodies of the Commission and the Directorate General of the Single Market (DG MARKT) have maintained the same makeup. In a final count by Corporate Europe Observatory, the advisory groups in place during the time when the European Union was going through the banking reform process, were more or less as dominated by the financial lobby as before[24]. Three fourths of the non-governmental advisors expert groups had links to financial corporations.

When new legislation proposals pass the desks of financial corporations, it is always very likely that this will impact the final proposal. And this close interaction between the Commission (and DG MARKT) and the financial lobby has affected the final result of the reform agenda deeply. Considerations for the profitability of banks, and the drive for a deeper single market on financial services seem to have been at the forefront of the agenda, far more than reforming finance to avoid a repetition of the collapse of the financial bubble.

1. Below standard banking regulation

In 2012, the Council and Parliament finally adopted a series of new rules on banking – the EU implementation of the international banking standards, the Basel III rules. On several accounts, the EU rules are below the standard set at the

20 Charlie McCreevy, 2009, The Credit Crisis – Looking Ahead, speech at the Institute of International and European Affairs, Dublin.

21 ALTER-EU, 2009, A captive Commission – the role of the financial industry in shaping EU regulation, http://www.alter-eu.org/sites/default/files/documents/a-captive-commission-5-11-09.pdf

22 Charlie McCreevy, 2009, The Credit Crisis – Looking Ahead, speech at the Institute of International and European Affairs, Dublin.

23 Commissioner Michel Barnier, 2010, letter to the ALTER-EU coalition, http://www.alter-eu.org/sites/default/files/documents/barnier_to_alter_eu_oct_2010_0.pdf

24 Corporate Europe Observatory & AK Europa & ÖGB, 2014, The fire power of the financial lobby,http://corporateeurope.org/sites/default/files/attachments/financial_lobby_report.pdf

Basel negotiations – which were concluded in the summer of 2010 – and the Commission shares responsibility for that. From the very beginning, the Commission conducted an in-depth dialogue with the biggest banks in Europe on the precise shape of its proposal on banking regulation[25].

At the time, the Commission was under some fire to re-balance the composition of its advisory groups, aka expert groups, and in response the Commission set up a Group of Experts on Banking Issues (GEBI). However, this group too was severely imbalanced to the advantage of financial corporations. Of the 42 members of the advisory group, 34 came from banks and investment firms[26]. After enduring some public criticism, ironically the Commission decided to close the group instead of reforming it, leaving more space for financial corporations to conduct their lobbying effort via bilateral meetings with the civil servants in charge of the dossier.

In the end, the Commission tabled a proposal which by most accounts was in line with the demands of the biggest banks[27].

2. Untrustworthy limits on food speculation

Among the topics debated between in-coming Commissioner Michel Barnier and the European Parliament during the hearing of the new Commission in early 2010, was food speculation. Responding to a question from French conservative MEP Jean-Paul Gauzés, Michel Barnier became emotional and vowed to look into it and make sure regulation would fix any detected problem[28].

In the years that followed, the Commissioner and his civil servants discussed the matter on an endless number of occasions with the financial industry, including via two expert groups – the derivatives expert group and the Expert Group on Market Infrastructures – both dominated by financial corporations, most members of the key lobby group on derivatives, the International Swaps and Derivatives Association[29].

Both expert groups would be closed well before the Commission tabled its proposal – as if to waive criticism for a one-sided preparatory process. However, instead of formally setting up a balanced expert group – with all that would require in terms of transparency, such as listing it in the official register of expert groups with names of the participants – the Commissioner instead decided to organise a series of so-called “workshops”. These workshops had all the characteristics of expert groups, but were never listed in the register. Their existence became publicly known only when the Commission tabled its proposal[30].

The Commission’s proposal was clearly meant to appease that part of the financial sector that is involved in food speculation. It did not ask member states straight out to impose specific position limits, but allowed for use of the regulatory approach used in the UK, position management. Position management is a much weaker tool, which has never proved effective in the UK. Position limits sets a ceiling on the amount of money that is allowed to by invested in “commodity derivatives”, whereas with “position management” there are no fixed limits, but limits can be imposed by the stock exchange depending under particular circumstances.

Though the proposal of the Commission was to be slightly improved in the ensuing debate between the Council and Parliament, it does not live up to hopes and expectations of public interest groups that have campaigned on the matter since 2010[31].

25 Corporate Europe Observatory, 2012, Addicted to risk, http://corporateeurope.org/financial-lobby/2012/05/addicted-risk
26 Ibid.
27 Corporate Europe Observatory, 2014, A union for big banks, http://corporateeurope.org/sites/default/files/publications/addicted_to_risk.pdf
28 Hearing of Michel Barnier, 2010, European Parliament.

29 Corporate Europe Observatory, 2011, Hunger brokers, http://corporateeurope.org/sites/default/files/publications/hunger_brokers.pdf
30 Corporate Europe Observatory, 2013, Barnier’s ban on meetings with lobbyists, http://corporateeurope.org/blog/barnier-ban-meetings-lobbyists
31 Friends of the Earth-Europe, press release, January 2010, https://www.foeeurope.org/initial-steps-restricting-food-speculation-150114

3. Designing the banking union with the banks

The banking union is probably the most important package of legislation passed in the EU since the financial crisis. One of its most contentious parts is the common procedures on resolution of banks, including the questions of when a bank is to be resolved – that is, wound down and sold off, in its entirety or in smaller pieces – and how.

When preparing its proposal for a directive on "recovery and resolution" of banks, the Commission ignored flat out all standards and guidelines on use of external expertise and simply collaborated with a special working group of the European Banking Federation, the most important lobby group for banks, to design the proposal, according to its own "impact assessment"[32].

Unsurprisingly the final proposal of the Commission seems to have many footprints of the banks' agenda from this exchange, that were maintained all throughout the decision process. They include bank friendly measures such as exemptions for certain types of investments that will be spared when regulators are to decide which creditors are to pay a small part of the bill. Also, other banks will be allowed to purchase assets of a failing bank, potentially well below their value[33].

32 European Commission, 2012, impact assessment accompanying the proposal for a directive on recovery and resolution of credit institutions and investment firms, page 86, http://ec.europa.eu/internal_market/bank/docs/crisis-management/2012_eu_framework/impact_ass_en.pdf

33 Corporate Europe Observatory, 2014, A union for big banks, http://corporateeurope.org/financial-lobby/2014/01/union-big-banks

4. Climate change

The climate climbdown

During President Barroso's second term, what was already a weak climate policy has taken a considerable turn for the worse. The Commission's structurally flawed flagship climate policy, the emissions trading scheme (EU ETS), has not cut emissions – in fact the opposite – while industry lobbying has hindered both attempts to improve it as well as the pursuit of alternatives. But despite this the Commission wants to take the same failed market logic and apply it to stopping biodiversity loss. The climate targets proposed by the Commission for 2030 are woefully inadequate to help limit global warming. They dramatically fail to kickstart a low-carbon transformation at a time when Europe – along with the rest of the world – is starting to feel the harsh impacts of a changing climate.

The Commission's emissions trading scheme: a zombie that is killing the climate

Launched in 2005 after serious industry lobbying, the European Union's Emissions Trading Scheme (EU ETS) was touted as the cheapest way for Europe to reduce its emissions: the idea being that creating a market for carbon pollution while setting an emission cap, would mean industry would invest in clean technology. However, intense industry lobbying meant too many permits were given out so companies keep polluting rather than investing in low-carbon technology. Under the EU ETS emissions have actually increased, along with the use of fossil fuels, but meanwhile Europe's dirtiest industries have made billions of euros profits from the many flaws in the ETS system, as well as outright fraud.

In spite of its failure, the Barroso II Commission – and Commissioner Hedegaard of DG CLIMA – has refused to consider life beyond the ETS. Industry lobby groups such as the 'Friends of ETS' – established by Shell and other big energy companies – have kept the Commission wasting its political capital on the ETS rather than genuine solutions. Business Europe teamed up with carbon traders' lobby IETA – with members like BP, Shell and JP Morgan – to scare the Commission into believing that if it introduced structural reforms to the ETS, they would affect the levels of trading and undermine the whole scheme (regardless of whether trading had any relation to emissions cuts).[34] As a result, carbon trading remains largely an activity based on speculation rather than real emissions cuts.

Aggressive lobbying from the biggest climate laggards such as steel manufacturer ArcelorMittal and its numerous trade associations have blocked any attempt to make the ETS more effective. They have effectively wielded the threat of relocating outside of Europe if the Commission makes it pay for emissions cuts, despite the fact that in 2012 ArcelorMittal still held more than €1.6 billion worth of free carbon permits. The message was echoed by trade associations for steel (Eurofer – which ArcelorMittal chairs), metals (Eurometaux) and chemicals (CEFIS), as well as cross-sector associations like BusinessEurope. Heavy industry even went as far as demanding – and receiving – compensation through subsidised electricity prices.[35]

The Commission has instead resorted to stop-gaps such as temporarily withholding carbon credits, but even these limited measures have the fingerprints of industry all over them.

For instance, IETA, alongside BusinessEurope, was instrumental in stopping tougher market regulation following the ETS fraud scandals. In 2009 €5 billion was lost through VAT fraud (one of many different fraudulent activities), and Deutsche Bank, an IETA member, has seen staff members imprisoned. Yet the IETA put forward its own weak measures which did enough to reassure the Commission that action was being taken to prevent further fraud.

34 Corporate Europe Observatory and Carbon Trade Watch, 2011, Letting the Market Play: corporate lobbying and the financial regulation of EU carbon trading, available at http://corporateeurope.org/sites/default/files/lettingthemarketplay.pdf

35 Corporate Europe Observatory and Carbon Trade Watch, 2012, Paying the Polluters: EU emissions trading and the new corporate electricity subsidies, available at http://corporateeurope.org/sites/default/files/publications/payingthepolluters_0.pdf

Next: marketizing nature

Despite the failure of the ETS, the European Commission is focused on the same strategy of financialisation – assigning a market value to ecosystems and their 'services' – as a solution to biodiversity loss and other environmental problems. At the Rio+20 Sustainable Development Conference in 2012, the Commission was one of the key cheerleaders of this approach, embracing the message from the world's biggest corporations like Rio Tinto and Shell that creating markets would protect the environment and stimulate growth – despite current evidence that environmental markets, by putting a price on forests, rivers, and ecosystems, lead to the privatisation of the commons, high levels of speculation, and very little additional environmental action. At home, a European Commission working group was set up dominated by consultants working with Rio Tinto and Shell – as well as the mining industry via their trade association Euromines – to develop a European biodiversity off-setting system. Such system would give the green light to destroy biodiversity as long as it was 'created' somewhere else. Expect to see a draft proposal by early 2015, matching industry needs.

Commission helps industry gut climate targets

This year the Commission has put forward a dramatically bad draft proposal for climate action for the decade between 2020 and 2030. It contains a single binding target of 40% emission reduction by 2030, a target too weak to stick to the EU's own commitment to limit global warming to 2°c",[36] which will already have devastating consequences on the most vulnerable.

The plans also mean the Commission is intending to give the green light to more dirty energy like fracking. Support for renewable energy and energy efficiency has been cut; one of the more absurd and sinister reasons given was that if they were successful in cutting emissions, they would reduce the demand – and therefore the price – for carbon credits, further weakening the ETS.[37]

The Commission's draft proposal also sacrifices the EU's fuel quality directive, which would have penalised petrol that came from tar sands, as it was seen as a barrier to trade to our carbon-intensive North American neighbours.[38]

And again, industry's fingerprints were all over the document. To start with, the original discussion document was written by Commission official Martin Westrup,[39] who had until 2011 been a lobbyist for BusinessEurope on climate change issues – a flagrant case of the 'revolving door' between business and regulators.

Industry ensured that all voices within the Brussels echo chamber were singing from the same hymn sheet: the industry associations for chemicals (CEFIC), steel (Eurofer), cement (Cembureau), and electricity (EurElectric) but also cross-industry associations like the European Roundtable of Industrialists (ERT), BusinessEurope, and the American Chamber of Commerce. These were not spontaneous outbursts, but a coordinated effort by the associations' highly-overlapping membership including German chemical giant BASF, petroleum behemoth Dutch Royal Shell, and global steel and mining company ArcelorMittal. Lobbying consultancies like Weber Shandwick and GPlus were also employed to amplifying the message via high-level lobbying events such as in the European Parliament.

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36 Kevin Anderson, 2013, Open letter to the EU Commission President about the Unscientific Framing of its Decarbonisation Target, available at http://kevinanderson.info/blog/open-letter-to-the-eu-commission-president-about-the-unscientific-framing-of-its-2030-decarbonisation-target/

37 European Commission, 2014, Impact Assessment Accompanying the Communication of a Policy Framework for Climate and Energy in the Period from 2020 up to 2030, available at http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52014SC0015
Corporate Europe Observatory, 2014, Life Beyond Emissions Trading, (footnote 11), available at http://corporateeurope.org/climate-and-energy/2014/01/life-beyond-emissions-trading,

38 Ros Donald, 2014, Carbon Briefing: who killed the EU's transport fuel standards?, available at http://www.carbonbrief.org/blog/2014/01/who-killed-the-fuel-quality-directive/

39 The paper 'ENERGY AND CLIMATE FRAMEWORK FOR 2030' was written for the College of Commissioners orientation debate of February 2013.

The high level of privileged access afforded to industry associations by the Commission was a slap in the face for an ambitious climate policy. In November 2013 BusinessEurope organised a day-long meeting at the Commission with Director Generals, Commissioners, and its biggest CEOs, including ArcelorMittal, BASF, Bayer and GDF-Suez, to get their message across, ending with a cocktail party and dinner. ERT has similarly high-level access, inviting German Chancellor Angela Merkel, French President François Hollande and Commission President José Manuel Barroso to dinner with its delegation to discuss climate policies in March 2014.

Personal connections are abundant. Energy Commissioner Oettinger discussed the 2030 targets with top executives at Royal Dutch Shell at the birthday dinner of a senior advisor to DaimlerChrysler. Both companies are members of ERT and BusinessEurope and strong advocates against effective climate actions.[40]

The 2030 plans make a mockery of EU claims to be a 'global climate leader' before the all-important UN climate talks in Paris in 2015, when all countries are supposed to come forward with post-2020 targets.

40 Corporate Europe Observatory and Friends of the Earth Europe, 2014, Ending the Affair Between Polluters and Politicians: How the industry lobby gutted Europe's climate ambitions, http://corporateeurope.org/sites/default/files/attachments/endingaffair_briefing_final.pdf

5. Agriculture

Siding with agribusiness on GMOs and pesticides

The years of the Barroso II Commission, 2010-2014, have not taken us any closer to a more sustainable food and agriculture system in Europe, on the contrary. By and large, EU policies still direct our food system to further industrialisation with more unsustainable input use, more soil and biodiversity destruction, fewer and fewer farmers and increasing dependence on imports of raw materials whose production (notably palm oil and soy plantations) create 'green deserts' in the South. There is far too little support from the EU for the green, local agricultural alternatives that are popping up everywhere in Europe.

While the new Common Agriculture Policy, concluded in 2013, completely fails to bring benefits for sustainable farming, this was largely due to the actions of the agriculture committee in the European Parliament and Member States. The Commission's role was most problematic in cases where DG SANCO (Health and Consumers) was in the driving seat. We can observe continuous clashes between DG Environment and DG SANCO. At the start of his second term, Barroso moved both the pesticides and GMOs dossiers from DG Environment to DG SANCO, generally seen as more industry-friendly. Something similar happened in the middle of this term, when DG SANCO suddenly interfered in DG Environment's first attempt to define what is an 'endocrine disrupting chemical' (EDC), a modest start to a crucial and long-standing problem of these harmful chemicals that are currently not regulated.

DG SANCO also failed in its responsibility to ensure the independence of the European Food Safety Authority (EFSA). The multiple and repeated scandals around conflicts of interest at EFSA, widely reported by the media, are one of the major flaws in the EU's food safety system. But DG SANCO never acknowledged there could be a problem, sticking to its opinion that preventing scientists from working with industry was "unrealistic"[41] and that it was convinced the agency's independence policy was robust enough. As a consequence, industry-linked people keep delivering official risk assessments of industry products and the agency's reputation keeps being undermined as scandals pile up.

41 http://europa.eu/rapid/press-release_SPEECH-11-656_en.htm

Agribusiness corporations have continued to dominate the local Brussels scene on these issues, vastly outnumbering those who lobby for fair and sustainable agriculture. Events such as the Syngenta Forum for the Future of Agriculture, held every year since 2010, always feature Commission presence at the highest level, including Barroso himself in 2013. Among countless examples, a lobby event organised by EuropaBio in April 2012 featured Health Commissioner John Dalli as well as Research Commissioner Geoghegan-Quinn, who later wrote a praising foreword to a report commissioned by the biotech lobby group. We found that 79% of the organisations lobbying on CAP reform, as listed in the EU's Transparency Register, were likely to be defending agribusiness interests, a sweeping imbalance that is all too typical.[42]

Genetically modified crops

As polls show, consumers in Europe still don't have an appetite for GM food, despite all the biotech lobby's PR efforts. In recent years however, the Commission has made various attempts to meet demands from the biotech industry to facilitate their business.

One attempt concerned the import of crops containing traces of illegal GMOs. In 2011, the Commission proposed to abandon the EU's so-called 'zero-tolerance policy' regarding contamination with non-authorised GMOs. The lobby campaign to break down this policy was headed by animal feed lobby group FEFAC, aided by biotech industry association EuropaBio, food companies such as Unilever, and the food industry lobby group, FoodDrinkEurope (then called the Confederation of Food and Drink Industries (CIAA)). They used scaremongering tactics, claiming that this policy would cause feed prices to soar, resulting in the starvation of the millions of animals kept in Europe's factory farms and a loss of competitiveness for Europe's meat industry. Internal FEFAC newsletters suggested excellent access to a high-ranking DG SANCO official.[43]

42 http://www.corporateeurope.org/sites/default/files/Appendix%201.pdf

43 http://corporateeurope.org/sites/default/files/sites/default/files/files/article/fefac_article.pdf

The Commission also tried to break the deadlock on GM cultivation in Europe. On 2 March 2010 John Dalli, in one of his first acts as Health Commissioner, gave the green light to BASF's controversial genetically modified Amflora potato for commercial growing in Europe. It was the first time in 12 years that a new genetically modified organism (GMO) was granted authorisation for cultivation in the EU. This decision was the result of an aggressive lobbying battle by chemical giant BASF, combined with disputed scientific advice from a European Food Safety Authority (EFSA) expert panel riddled with conflicts of interest and positively biased towards the biotech industry. The EFSA was strongly criticised over its advice that the fact that this potato contained an antibiotic resistance gene was not a problem.

BASF's lobbying strategy involved putting constant pressure on the Commission, with at least nine letters sent to the then Environment Commissioner Stavros Dimas and EU Commission President Jose Manuel Barroso, and an open letter to Commissioner Dimas published in major EU newspapers. BASF threatened to relocate its research activities outside the EU if the potato was not authorised before the end of February 2010. The Commission finally yielded to BASF pressure and gave the go ahead for Amflora just before BASF's 'deadline'. Nevertheless, the Amflora potato was a commercial flop, BASF withdrew it from the market, and two years later announced the relocation of its research facilities to the Americas after all.

Since then, the Commission has been wary of putting forward GMOs in the pipeline for cultivation approval up for vote to member states. That is, until 6 November 2013, when Dalli's successor Tonio Borg sent a proposal – with major legal gaps – to national ministers to decide about the cultivation of Pioneer's 1507 maize in Europe's fields. This maize is not only herbicide-tolerant but also produces various Bt-toxins (insecticides). Since it produces its own insecticides, it could pose risks to butterflies and moths and there has been no research on its impacts to other beneficial insects such as bees and other pollinators. Finally in February 2014, an extraordinary vote took place in which 19 countries voted against the maize, five voted in favour, and the rest abstained. But even this massive show of rejection did not deliver a 'qualified majority' against approval, and the Commission stubbornly insisted it had to approve the maize. The rumour goes that the Commission will not officially approve the GM maize until after the EU elections to avoid public upheaval.

To avoid these situations in the future, EU countries are now discussing once more the possibility for national bans on GMOs. While this sounds good, the proposal on the table is very bad. It gives biotech companies an official role in the process, and it could open the doors for many new GMOs to be grown in Europe.

Endocrine disruptors

The implementation of the EU's 2009 pesticide Regulation is still under way. One issue to be resolved is that of endocrine disrupting chemicals (EDCs), which includes many pesticides. December 2013 was the deadline set by the regulation for the Commission to develop criteria to define disruptors. DG Environment was charged with the job, and commissioned a study by independent experts.

Endocrine disruptors (EDCs) interfere with the human hormonal system and their toxicity only started to be fully acknowledged by scientists in the early 1990s. There is a high probability that these substances play a big role in the development of many "modern" diseases such as diabetes, obesity, and cancers but are also thought to have a detrimental impact on the development of foetuses and on male fertility. More than 870 potential EDCs have been identified so far, including widely used products such as the herbicide glyphosate (Roundup) and chemicals such as bisphenol A.

In early 2012, DG Environment finally published the report on EDCs, which included a broad definition of endocrine disruptors, and started bringing together numerous experts from member states, associations, industry and public research centres. But in came DG SANCO, taking many by surprise when it suddenly announced in autumn 2012 that it had tasked EFSA with forming a scientific opinion on endocrine disruptors, effectively creating a parallel process.[44] It was revealed in *Le Monde* that more than half of the members of the EFSA working group formed for the purpose had conflicts of interest, many of them with industry think-tank ILSI (International Life Science Institute)[45]. The Commission Secretary General Catherine Day added insult to injury in July 2013, when she required an economic impact assessment of the setting of criteria to define endocrine disruptors.

By December 2013, the Commission had officially missed the deadline set by the 2009 pesticide Regulation, nor did it schedule a new deadline. Pesticide Action Network Europe commented that the effects of the delay will be serious: "Many pesticides with endocrine disrupting properties such as glyphosate and 2,4-D will get a revised approval next year while their endocrine effects will not be assessed now the criteria and measures are missing".[46]

Because of this delay, industry has moreover managed to buy the time it needed to benefit from the deregulation, free trade dynamic offered by the EU-US trade talks. The chemicals and pesticides industries are putting strong pressure on the negotiators to halt any action taken on endocrine disruptors by the EU as it would 'distort trade' between the two blocks.

44 http://corporateeurope.org/efsa/2012/12/efsa-used-defend-industry-lobbying-battle-chemicals#footnote8_l8mb2u5
45 A report by freelance researcher Stéphane Horel, published on 11 December 2012, covered by Le Monde, http://www.stephane-horel.fr/efsa/
46 http://www.pan-europe.info/News/PR/131216.html

6.Water privatisation

Corporations over citizens

The European Commission has had an obsession with privatisation of urban water systems since the late 1990s. Urban water and sanitation networks are crucial public infrastructures whose correct development and maintenance has an enormous importance for public health. The way these networks is managed has always remained a member state competence, meaning they are free to decide whether these networks should be publicly or privately run and maintained. More than 80% of water supply and sanitation networks in the EU are publicly run, but for 20 years the Commission has been under strong pressure from private water companies[47] to find ways to force public authorities to outsource these networks' management[48] to the private sector. The Barroso II Commission did not depart from its predecessors' habits of carefully listening to these demands and doing what it could to satisfy them.

The most scandalous way it did just that was through the "Troika", imposing the privatisation of water supply in crisis-hit countries such as Portugal and Greece as conditions for their financial rescue. The Directory General for Economic and Financial Affairs (ECFIN) of the European Commission is part of the Troika together with the EU's Central Bank and the International Monetary Fund, and in this setting the Commission can dispense from respecting EU legislation as these "aid" deals are not made within the EU's legal system. DG ECFIN acknowledged that "the Commission believes that the privatisation of public utilities, including water supply firms, can deliver benefits to the society when carefully made," in a response to civil society groups.[49] As a consequence, water supply systems were almost entirely privatised in Portugal, and the privatisation process is ongoing in Greece's two largest cities, Athens and Thessaloniki. Ireland also had to introduce water pricing for the same reasons (Irish citizens were previously getting water free of charge), and Italy came under strong pressure after a national referendum that saw 96% of voters oppose water privatisation laws.

Within the EU legislation, a new threat to the public water sector by the Commission appeared in the form of a directive on concession contracts, a widely used form of outsourcing in the water sector. Developed by Internal Market Commissioner Michel Barnier (French), the proposal's stated objective was to "harmonise" legislation. However, it soon became clear that the proposal would severely limit possibilities for public-public partnerships and other forms of cooperation between public institutions, as well as force many public companies with a mixed capital to organise EU-wide tenders. Heide Rühle, a green MEP, described it as "market opening and increased pressure towards privatisation".[50] Very critical media reports on the plans sparked outrage in Germany and Austria: hundreds of thousand citizens in these two countries signed a European Citizens Initiative organised by public sector unions demanding the implementation of the right to water and the exclusion of water systems from the internal market, making it the first ever successful ECI. Eventually, the German government itself intervened and the Commission had to exclude water from the scope of the directive, to the fury of the private water companies' lobby.[51]

The Commission's push for privatisation is even more remarkable in that it goes against what happens on the ground in Europe and around the world in the water sector.[52] Paris and many other cities have recently remunic-

47 The biggest private water companies, Veolia Environnement and Suez Environnement, are both French as France is the only country in Europe where such private companies survived throughout the XXth century – while private companies often started building water networks in the XIXth century their economic inefficiency and absence of political accountability caused the public sector to intervene and run these networks in all other EU countries until the UK privatised its water systems in the late 1980s. The French state is the largest shareholder of both companies and tends to consider these companies' interests as its own.

48 But not the costs associated with actually building these very costly infrastructures, which is left to the tax-payer. This is the typical cost-benefits sharing found in most so-called "public-private partnerships".

49 http://corporateeurope.org/sites/default/files/reply_to_mrs_zanzanaini.pdf1_0.pdf

50 http://corporateeurope.org/water-justice/2013/03/battle-keep-water-out-internal-market-test-case-democracy-europe

51 http://www.aquafed.org/actu-42.html

52 http://corporateeurope.org/water-justice/2013/03/reversing-trend-towards-public-water

ipalised their water services due to negative experiences with privatisation. The Dutch government in 2004 passed a law banning private sector provision of water supply and the Italian Constitutional Court ruled that any future legislation attempting to privatise public services would be unconstitutional. Unfortunately, the Commission seems to either ignore these facts or only consider them as unjustified barriers to privatisation.

7. The citizens initiative

Mock participatory democracy – an experiment dead in the water?

The way the Commission answered the European Citizens Initiative (ECI) on the Right to Water is another example of obvious lack of will to consider alternative visions. The Commission pretended that it had answered positively to the signatories' demands, but in reality it just ignored them, listing already planned activities and pretending that organising a public consultation which was due to happen anyway was a meaningful response.[53]

Ever since the European Citizens Initiative (ECI) mechanism was launched a few years ago, the European Commission has not wasted any opportunity to use the ECI to polish its democratic credentials. Vice-President *Maroš Šefčovič, for instance, has called the ECI* an "unprecedented expansion in *participatory democracy*." These were hugely exaggerated claims for an instrument that is not in any way binding and merely obliges the Commission to *consider* proposals that have received backing of one million signatures from at least seven member states.[54] ECI organisers have to collect large numbers of signatures within just twelve months, facing a range of bureaucratic hurdles.[55]

Also, there is not – in contrast to the US or elsewhere where citizens' initiatives exist – the possibility of binding referenda or anything else that would justify the term participatory democracy. The Commission continues to have the absolute monopoly on making proposals for EU legislation.

With a non-binding ECI, the value of the mechanism fully depends on the Commission's goodwill to seriously consider the proposals. The first European Citizen's Initiative to pass the hurdle in 2013, having collected nearly 1,9 million signatures, called upon the Commission to propose legislation implementing the Human Right to Water and Sanitation, to promote the provision of water and sanitation as essential public services for all and to end the push for liberalisation of water delivery. The organisers aimed to bring an end to the Commission's repeated attempts over the last decade to bring drinking water supply under the rules of the EU's single market, which would lead to widespread privatisation.[56] The Commission's response to the ECI, a Communication presented in March 2014, was a major disappointment.[57] As the European Water movement pointed out in a reaction, the EC's response "lacked real legislative proposals" and "boils down to a compilation of already ongoing actions plus the announcement of a public consultation on the drinking water directive whose outcomes will not be binding."[58]

The Commission did commit to promote universal access to water and sanitation in its development policies, including the promotion of public-public partnerships, but without providing much detail.

The communication failed to respond to the key demand for new legislation to exclude water and sanitation from "internal market rules" and liberalisation. In spring 2013, a strong public backlash had forced the Commission to – grudgingly – exclude water and sanitation services from the concession directive. Water services are not excluded from trade negotiations (such as the Transatlantic Trade and Investment Partnership – TTIP) and the Commission failed to act on the ECI demand to end the liberalisation push once and for all.

The water ECI organisers, also because they were the first to pass the one million signatories hurdle, got significant

53 http://europeanwater.org/news/press-releases/399-european-commission-fails-to-take-real-steps-towards-the-recognition-of-the-human-right-to-water

54 "ECI participatory democracy?" Corporate Europe Observatory, December 2012, http://corporateeurope.org/news/eci-participatory-democracy

55 Hurdles vary from one country to another, as Member States are free to introduce quite excessive conditions (signatures should be complemented with ID numbers and perhaps even re-confirmed by the signatories).

56 "The battle to keep water out of the internal market – a test case for democracy in Europe", Corporate Europe Observatory, March 2013, http://corporateeurope.org/water-justice/2013/03/battle-keep-water-out-internal-market-test-case-democracy-europe

57 "European Commission fails to take real steps towards the recognition of the Human Right to Water", European Water Movement, press release 19 March 2014, http://europeanwater.org/news/press-releases/399-european-commission-fails-to-take-real-steps-towards-the-recognition-of-the-human-right-to-water

58 "While the Communication acknowledges the importance of the Human Right to Water and Sanitation and it confirms water as a public good, the EC fails to propose legislation that recognizes this right. "

media attention for their demands, but no real change in EU policy. This experience makes it questionable how motivated other citizens movements will be to embark on such tremendous signature-gathering efforts. The ECI in its current form has not brought about participatory democracy in any real sense, let alone increased democratic control over EU policy-making.

8. Regulation

REFITting the rules to suit business

Ever since President Barroso came to power with his first Commission in 2005 he has had an ambition to do away with what is described as “red tape” or unnecessary regulatory burdens. Over the years the Commission has launched several initiatives to roll back existing legislation or introduce new rules that would ease the so-called burden, including the “Better Regulation Initiative” and REFIT.

The fear among public interest groups was always that in practise the rules that would be targeted would be laws adopted to protect the environment, consumers, public health, or labour protections laws. This fear was sparked by statements made by José Manuel Barroso as early as 2005, when he and Enterprise Commissioner Verheugen identified 69 laws to be scrapped[59] and more to come, with little qualification as to the nature of the rules to be “axed”. The Better Regulation Initiative, launched in 2005, drew heavy fire from the public health community. For instance, in a report from 2010, the Smoke Free Partnership released a report that showed how the tobacco industry had managed to shape important parts of the initiative to fit its interests.[60]

More recently, REFIT (Regulatory Fitness and Performance Programme), launched in 2012, is the most significant current attempt to roll back regulation, and it seems that the Commission is now making serious progress on its agenda – to the detriment of the environment and labour rights. To spearhead the initiative, the Commission formed a “High Level Group on Administrative Burdens”, headed by German conservative Edmund Stoiber, to advise the Commission on the development of the initiative. While Edmund Stoiber himself was proved to have lobbied on behalf of the tobacco industry,[61] the group as a whole raised a more general concern: that 9 out of 16 members represented big business interests.[62]

Axing safety at work

The REFIT is seen as a major threat to workers’ rights and safety at work by, among others, the European Trade Union Confederation (ETUC). In a campaign dubbed “Rethinking REFIT” with the slogan, “Working rights are not red tape, Mr. Barroso”, the trade union body has gone to some length to prevent the REFIT agenda from encroaching on labour rights. But the Commission seems adamant and has, for instance, withdrawn a proposal for a directive on musculoskeletal disorders and the revision of a directive on carcinogens, considered “the two key legislative challenges regarding workers’ health and safety” by the ETUC.[63]

In addition, the Commission has hinted it intends to exempt small and medium size enterprises from the scope of EU rules on safety at work, listed in documents as one of the top ten most burdensome EU laws.[64]

Stopping environmental legislation

The Commission’s REFIT programme is targeting environmental legislation as well, raising serious concerns among environmental NGOs. In October 2013, three organisations – the EEEF, the European Environmental Bureau and BirdLife – sent a letter to the heads of governments of member states of the EU, warning them against the intentions of the Commission on key pieces of environmental legislation, set to be sidelined due to the REFIT programme.

In the letter targeting the Commission’s REFIT programme, the three organisations cited the Commission for threatening the “withdrawal of proposals for directives on soil and on access to environmental justice”.[65] Since then, the Commission has indeed frozen the directive on soil.

59 Financial Times, 14 September 2005, http://www.ft.com/intl/cms/s/0/0405f8e0-24bd-11da-a5d0-00000e2511c8.html#axzz311QOSgW9
60 Smoke Free Partnership; ”The origin of EU better regulation – the disturbing truth”, 2010, http://www.smokefreepartnership.eu/IMG/pdf/Report_version_27012010_-2.pdf
61 Friends of the Earth Europe, press release, January 2013, https://www.foeeurope.org/Commission-must-clear-smoke-tobacco-lobbying-170113
62 ALTER-EU, AK Europa, ÖGB; ”A year of broken promises”, 2014, https://www.lobbycontrol.de/wp-content/uploads/131107-Studie-Broken-Promises.pdf
63 ETUC resolution, December 2013, http://www.etuc.org/documents/etuc-resolution-stop-deregulation-europe-rethink-refit#.U2nmryj-tTZ
64 European Commission, Memo, 7 March 2013, http://europa.eu/rapid/press-release_MEMO-13-168_en.htm
65 WWF, European Environmental Bureau & BirdLife; ”REFIT – Fit for Growth Initiative”, letter to Heads of Government, October 2013.

9. Lobbying ethics and transparency

Fighting progress tooth and nail

The EU Transparency Commissioner for the past four years, Maroš Šefčovič, has been a real disappointment. With public anger about the role played by the finance industry in the economic crisis so high and faith in the EU institutions battered by the introduction of tough austerity measures imposed from above by a seemingly remote EU elite, you would have thought that these provided ripe conditions for a go-getting and ambitious Transparency Commissioner. Commissioner Šefčovič could have seized the opportunity to transform lobbying rules and improve transparency as a way of helping the Commission to better communicate with those who pay its bills – the EU public. Instead Šefčovič has been a conservative commissioner whose term in office has been characterised by tinkering at the edges of policy instead of implementing radical reforms to tackle the corporate capture of EU decision-making.

See no evil, hear no evil: Dalligate

Undoubtedly the biggest ethics scandal in recent years in the Commission was Dalligate,[66] a complex cash for influence scandal involving EU Health Commissioner John Dalli and the tobacco lobby. The scandal broke in October 2012. The best fiction writers in the world would struggle to come up with a tale as complex and as conspiracy-laden: a commissioner forced to resign; allegations of demands for €60 million bribes; leaked secret reports; dodgy middle-men; revolving door lobbyists; allegations of institutional cover-ups; vital public health legislation disrupted… And how did the Commission respond? Business as usual. At the time, the Dalligate scandal rocked the Commission but 18 months on, President Barroso and Commissioner Šefčovič have done their best to brush it under the carpet.

Dalligate revealed numerous problems with how the Commission conducts itself in the matter of ethics and transparency. In particular, Dalligate showed the Commission withholding key documents from public scrutiny, which the European Ombudsman has now said should be released,[67] following a complaint by CEO.

Dalligate also revealed commissioners holding meetings with unregistered lobbyists; that the code of conduct for lobbyists is not effectively enforced; and that the revolving door rules for EU staff are inadequate to prevent staff from lobbying the EU institutions whilst on sabbatical. But not even the Dalligate scandal would succeed in provoking Šefčovič to proactively tackle these issues.

Lobby transparency register: huge missed opportunity

The EU's Transparency Register[68] should tell us who is lobbying the EU, on what issues and how much they spend doing it, but the reality of the register means that it is far from providing this level of reliable detail for all lobbyists.

In June 2011, Šefčovič launched an updated lobby register, merging that run by the Commission and the Parliament's own scheme. The new register represented a step forward but mainly because the Parliament unilaterally made registration a condition for lobbyists receiving Parliament access badges. This has helped to increase registration rates substantially. Otherwise the register continues to suffer from serious shortcomings.

Firstly, the register is voluntary, which leaves companies and lobby groups free not to sign up, and indeed many do not.[69] A study by CEO in April 2014[70] found that 450 out of 700 of lobby groups, banks and financial industry

66 Corporate Europe Observatory; "A wake-up call for the Commission", October 2012, http://corporateeurope.org/lobbycracy/2012/10/wake-call-commission-lobbyists-exploiting-privileged-access

67 Corporate Europe Observatory; "The Ombudsman urges the Commission to release hidden documents on the Dalligate scandal", April 2014, http://corporateeurope.org/pressreleases/2014/04/european-ombudsman-urges-commission-release-hidden-documents-dalligate-scandal

68 The register can be accessed here; http://ec.europa.eu/transparencyregister/info/homePage.do

69 ALTER-EU; "Rescue the register", June 2013, http://www.alter-eu.org/documents/2013/06/rescue-the-register

70 Corporate Europe Observatory, AK Europa and ÖGB; "The firepower of the financial lobby", April 2014, http://corporateeurope.org/financial-lobby/2014/04/fire-power-financial-lobby

companies that are lobbying to influence the EU in the area of finance and banking reform are not in the EU's lobby transparency register. This includes major players like Goldman Sachs, HSBC, UBS, Royal Bank of Scotland (RBS), Banco Santander, and many more.

Secondly, disclosure requirements are very limited, so even if lobbies are registered they are not required to give a comprehensive picture of their lobbying. Finally, there is only very limited oversight of the information reported in the register, which is therefore often unreliable and outdated. Many industry lobbies are found to under-report on their lobby expenses[71] (preferring to appear small) and the register is also riddled with errors. This hardly gives the impression that the Commission is very serious about lobby transparency.

The Commission's lack of political will to fix the shortcomings of the lobby register again became clear during its 2013 review. During three months of negotiations with MEPs, the Commission's line was consistently to challenge and block proposals from MEPs for larger and smaller improvements of the register. The result is that improvements will be limited,[72] mainly due to the Commission lacking the political will needed to move to a high-quality lobby transparency register.

Biased consultations

One aspect of the review process on the register was a public consultation, carried out in the summer of 2012.[73] The three month consultation period was planned during the holiday months (June to August), which made it difficult for citizens' groups to participate. The bigger problem was that the questions were very narrow and it looked more like a user satisfaction survey about the register website than a proper consultation about how to best secure improved transparency around the role of lobbying in EU decision-making. The Commission favoured a continuation of the voluntary register without major changes and it was hard to escape the feeling that the consultation was shaped in a way that minimized the risk of a critical evaluation of the current register. This reflects a broader problem with the Commission's consultations.

According to the EU's treaties, the European Commission "shall *carry out broad consultations with parties concerned* in order to ensure that the Union's actions are coherent and transparent." In practice, however, the Commission's consultations on major new initiatives often fail to reach out widely and they are frequently biased towards pre-determined outcomes.

This is particularly clear in the Commission's (online) consultations and 'civil society dialogue' on EU-trade policy. Contributions to online consultations and attendees of the civil society dialogue, a 2013 report by the Alternative Trade Mandate (ATM) observes, "are dominated by lobby groups, mainly from the corporate sector and with an office in Brussels."The questions asked in the online consultations "are often leading and selective in terms of what is or is not asked." This suggests, the ATM concludes, that the Commission seeks to fulfil its consultation obligations "in a way that allows for consultation outcomes to be easily spun in support of predetermined policy initiatives."[74]

Examples include the consultation on the trade and investment negotiations with the US (see above). Also, in 2010, the online consultation on the EU's Concessions Directive used highly leading questions.[75] The questions made it almost impossible to participate for citizens or organisations with a different opinion than the Commission's. The Commission wanted a directive covering every sector, to

71 ALTER-EU; "Rescue the register", June 2013, http://www.alter-eu.org/documents/2013/06/rescue-the-register

72 ALTER-EU press release; "ALTER-EU verdict on the review of the EU Transparency Register: "hugely disappointing"", January 2014, http://www.alter-eu.org/press-releases/2014/01/27/alter-eu-verdict-on-review-of-lobby-register

73 http://ec.europa.eu/transparency/civil_society/consultation/transparency_register_en.htm

74 "Is thIs what democracy looks like?", Alternative Trade Mandate, 2013; http://www.alternativetrademandate.org/wp-content/uploads/2013/05/democracy-paper-FINAL.pdf

75 The consultation questions are online at http://ec.europa.eu/internal_market/consultations/2010/concessions_en.htm

bring these under Single Market rules and thereby promote further liberalisation and privatisation of public services. The questions focused almost exclusively on technical aspects of how to do this, not whether these were the right objectives for EU policy.

Commission advisory groups: backtracking on promises

The Commission's advisory groups, formally known as expert groups, play an important role in drafting new EU legislation. The advisory groups are considered by industry as one of the most effective ways to influence policy and legislation. Worryingly, during the last decade or so many of the most politically and economically important groups have been dominated by industry lobbyists.

CEO has been working as part of the ALTER-EU coalition and with civil society groups and MEPs from across the political spectrum to tackle the problem for more than six years, but it took the Parliament freezing the expert group budgets in November 2011 to make the Commission really committed to take action. Four conditions were set for the freeze to be lifted: an end to industry-dominated expert groups; no lobbyist could sit in a group as an independent expert; all calls for applications for membership of new groups would be made public and the criteria made clear; all groups would be transparent, with all documents published. The Commission agreed to the conditions in September 2012 and the budget was lifted,[76] launching an 'informal dialogue' between the two institutions to ensure the conditions were applied. However, results have been very mixed.

Research by ALTER-EU one year after the budget freeze was lifted shows the Commission has gone back on its promise: many groups created since continue to be dominated by industry, while lobbyists continue to sit in groups in a personal capacity. The worst offender was DG Taxation and Customs, with almost 80 per cent of new members representing industry, compared to three per cent from small businesses.[77]

Some departments are actively trying to ensure fair representation of all stakeholders in their groups, for example DG Enterprise and Industry (although admittedly finding it very difficult), but the latest message coming from the Commission appears to be a major step backwards: Šefčovič and the Secretariat General now deny any agreement was reached[78] about the agreement with the Parliament to reform expert groups and they claim they have done what is expected of them.

The revolving door keeps on spinning

In recent years, a significant number of commissioners and EU officials have walked through the 'revolving door' meaning that they have left their positions and started working for big business or lobby consultancies; and conversely, some lobbyists have passed through the revolving door from representing private interests to working for EU institutions. When this happens, big business gains huge opportunities to access inside-knowledge, vital contacts, and above all, powerful influence over the EU's policy-making process. CEO's RevolvingDoorWatch[79] aims to keep track of these moves – and EU institutions' failure to effectively regulate them.

Günter Verheugen[80] was the former European Commissioner for Enterprise and Industry who, upon leaving the Commission in 2010, immediately set-up the European Experience Company, a consultancy firm which offers to design "the best strategy for your success in dealing

76 ALTER-EU; "After the first round of the expert groups battle", September 2012, http://www.alter-eu.org/documents/2012/09/25/after-the-first-round-of-the-expert-groups-battle

77 ALTER-EU, AK Europa & ÖGB; "A year of broken promises", November 2013, http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf

78 Letter from the Secretariat General to MEPs, March 2014, http://corporateeurope.org/sites/default/files/ciolos_to_meps_march_2014.pdf

79 See Revolving Door Watch; http://corporateeurope.org/revolvingdoorwatch

80 http://corporateeurope.org/revolvingdoorwatch/cases/g-nter-verheugen

with European institutions", together with his former Head of Cabinet Petra Erler.[81] Meanwhile, Charlie McCreevy[82] was the European Commissioner for the internal market until 2010 and played a key role in developing the EU response to the early years of the financial crisis. Yet in 2011, he joined the board of bank BNY Mellon, as well as Ryanair. These and many other revolving door cases[83] illustrate the seriousness of the problem.

The European Commission has taken several steps in the past few years to try to tackle the problem of the revolving door, but the rules remain inadequate to the task.

In 2011, following the Verheugen and McCreevy scandals, negative media comment and a petition organised by ALTER-EU, the Commission finally gave in to pressure from MEPs and civil society and reviewed the commissioners' code of conduct and tightened up some of the revolving door rules. The new code[84] introduced a ban on former commissioners taking up lobby jobs in the 18 months after they have left office. Yet loopholes remain.

In January 2014, ALTER-EU wrote to President Barroso to set out proposals for a revised code of conduct for commissioners.[85] These included extending the current 18 month ban on former commissioners undertaking lobbying activities to three years. The Commission should also overhaul the current ad hoc ethical committee (which advises on commissioners' revolving door moves) and replace it with a professional and fully independent ethics committee.

For EU officials, the rule book which includes revolving door regulations was revised in 2012-13 with Commissioner Šefčovič spearheading the changes. Yet he neglected to make proposals to tighten up the rules although MEPs did introduce some amendments which were a slight improvement.[86]

Yet major loopholes remain within these rules too. In particular, these must be tightened to include a major category of officials (those on temporary contracts), who are largely excluded at the moment, and who, as a result, are able to move back and forth between the EU institutions and the private sector with little official oversight.

81 http://corporateeurope.org/revolvingdoorwatch/cases/petra-erler
82 http://corporateeurope.org/revolvingdoorwatch/cases/charlie-mccreevy
83 http://corporateeurope.org/revolvingdoorwatch
84 Code of Conduct for Commissioners, 2011; http://ec.europa.eu/commission_2010-2014/pdf/code_conduct_en.pdf
85 ALTER-EU, press release, January 2014, http://www.alter-eu.org/press-releases/2014/01/21/stop-2014-being-year-of-revolving-door

86 Corporate Europe Observatory; "New EU staff regulations adopted: small steps on revolving door, giant leaps still needed", July 2013, http://corporateeurope.org/revolving-doors/2013/07/new-eu-staff-regulations-adopted-small-steps-revolving-door-giant-leaps

Conclusion

As we have demonstrated in this report, the Commission has eagerly pursued a corporate agenda in all the areas investigated. Whether it is economic policy, financial regulation, agriculture, trade, or environmental policies, including climate change, the Commission has by and large pushed for policies in sync with the interests of big business. It seems the Commission has been convinced that such policies are generally synonymous with those of society at large, which is certainly not the case. There is constant struggle and debate within society over all the issues investigated here, and the fact that a powerful body of the European Union consistently follows the agenda of those with the money in a myopic manner is one explanation for a strongly growing critical attitude to the EU.

It can be argued that the developments analysed have always been present, and the work done by Corporate Europe Observatory since 1997 certainly bears witness to that fact. However, the Barroso II Commission seems to be a watershed in the history of the European Union. Its five years or so in office have been marked by economic and financial crisis, and for that reason we have seen a noticeable further concentration of power in the hands of the Commission, and the Commission pursuing a corporate agenda even more vigorously than in the past – and in many respects with more success.

That development can be viewed as a mere consequence of the combined personal qualities and political viewpoints of this particular Commission. That certainly is an important factor, but there's much more to the problem. First, there is one of the main missions of the Commission, namely to expand the EUs and its own competence by deepening economic integration. Second, there are the main pillars of European cooperation and the foundational elements of the EU Treaty; namely the economic freedoms, which are becoming vehicles for corporate interests. Third, there is the structure of the Commission itself – its independence, and all the highly developed channels that can be used by corporate lobbyists which are – as in the case of the advisory groups – put at their disposal. Fourth, there is the lack of accountability to the public at large, which makes it infinitely more difficult for public interest groups to have a say. The European Commission, in far too many cases, has proven to be *de facto* unaccountable not just to the public but to the European Parliament as well.

While overwhelming, these are not problems that are impossible to address. Indeed, they have to be solved somehow if European cooperation is to have a future. But it will not be easy.

The first steps would certainly be to have the Commission adopt strict rules on lobbying and lobbyists, including a mandatory register, a code of conduct, effective rules on revolving doors including a long "cooling-off" period, and a new culture in its advisory structure, with corporate dominated expert groups made a thing of the past. Despite the obvious need for such rules, however, the Commission is fighting tooth and nail to avoid any real reform.

This makes it all the more clear that it is unlikely the Commission will reform itself. There is a need for a broader political effort to mend things at the top of the European Union. One such effort should include a full stop for further competences to the European Commission, a deepening of democratic transparency for the Commission, and indeed a roll back of its powers. As it stands, the Commission is a disgrace to democratic traditions in Europe.