IN RECENT years government regulation of lobbying activity has been of growing concern. However, the role of lobbying and lobbyists in the political process varies considerably across nations and so does the regulatory discourse. In Germany there is a very solid tradition of organising interests and representing these on a collective basis, so that lobbying has largely been pursued by interest associations whose contacts developed primarily with government. The role of, for instance, law firms, consultancy firms and other professional lobbyists has not been a widespread phenomenon; as a result, this form of lobbying outside associations has not received much attention by the regulators.

What is also interesting in the German case is that relations between government and different kinds of private actors (business, churches, scientific societies, unions, etc.) are almost never described as of lobbying. In German politics, lobbying has always been and still is considered a foreign word with strong connotations of secretive policy processes where illegitimate influence is sought. It is also regarded as a process where a range of competing actors are seeking influence but are not recognised by the authorities and are not routinely involved in policy-making. While this may apply to some actors in some policy fields, it is not a useful model to describe German politics. This does not mean that certain features associated with lobbying in the Anglo-American world are completely absent. To some extent the established tradition in Germany focusing on the perspective of interest group participation in government may close its eyes to alternative forms of actions. However, the way the notion of lobbying has been applied is not just a matter of semantics. Although other aspects deserve attention, it must be emphasised that contacts with political institutions are generally through associations. Even more important in the present analysis, regulation has in the main focused on this issue. It is from this perspective, therefore, that we consider lobbying in Germany.

This special form of representation and regulation of interests is also firmly rooted in history. Associational action evolved in pre-industrial society: before the formation of the German Empire in 1871, a very fragmented pattern of organised interests appeared but it was reshaped in the following decades through the emergence of new social interests in society and the creation of new state institutions.1 The early development of interest representation shows that collective action was a
determined effort to organise interests voluntarily, yet at the same time, government strongly influenced this development through defining the channels open to interest groups in the decision-making process. This influence has found its way into theories about the state and organised interests—and the special forms of German lobbying. Although the regulation of groups can be traced back in time, one should not exaggerate its continuity. The turbulence in this century is illustrated through the defeat of Germany in 1918 and the collapse of the Empire, the creation of the Weimar Republic and the rise and fall of the Third Reich, each changing the relations between state and society. Without neglecting the shifts in these relations during the last decades, including the consequences of reunification with East Germany, the period from the formation of the Federal Republic of Germany in 1949 can be seen as a relatively stable period. A new constitution was adopted and a regulatory system for relations between private actors and political institutions was formulated through the next decades. Occasionally, and in particular in the 1970s, the question of the political influence of associations was raised, but after heated discussion the situation went back to normal.

In Germany the features of postwar development in the regulatory system of lobbying can therefore be related to two general problems.

Scope of regulation. If a legal framework for the access of private interest to government and parliament is to be created, it could be argued that the problem should first be carefully scrutinised and a set of relevant issues identified which subsequently would pave the way for an encompassing procedural framework for the regulation of the political activities relating to lobbying. Another line of argument would rather stress the natural role of interest groups in the German polity as a key formula for policy-making: in that case, a general legal framework is hardly required and it is only necessary to define the forms of interest mediation in more details for some areas.

Degree of regulation. Many observers of German politics tend to believe that there should be a formal system with a series of rules for handling relations between political institutions and different forms of private organisations. If relations between them could be codified, this would have preference. Another view is that procedural matters should not necessarily be forced by formal rules but rather follow a more pragmatic pattern, where the historically evolved political culture is in itself sufficiently geared to the participation of organised interests in politics, making regulation redundant.

In what follows, these competing interpretations views lobbying will be discussed with regard to the current forms of regulation. First, we briefly sketch the relations between associations and other institutions of the political system at national level (ministers and ministries, their
committees, parliamentary committees and the special role of the judiciary). Although Germany is a federal state, we shall, not examine the sub-national forms of regulation and how these may correct the national pattern of regulation. Three examples of regulation are then reviewed: the registration of MPs’ connections with associations, the parliamentary list of recognised associations enjoying a consultative status, and their participation in expert committees under federal ministries. The examples illustrate that regulation is not limited to the activities of associations and the interplay with government, although this has been the key target.

**Dimensions in the regulation of lobbying in public policy-making**

The German constitution of 1949 is relatively young and was drafted at a time when mature forms of organising interests through political parties and associations had already developed. It was natural to incorporate this reality into the constitution, but attention was mainly directed towards the role of political parties, and only a few references can be found with regard to the role of associations. Most explicit are the articles which refer to the freedom of association, information, assembly and speech. The opportunity to draft a modern constitution which took full account of the realities of political life was missed and the regulation of different forms of lobbying was left to the legislative, executive and judiciary bodies.

Much later, in the mid-1970s, there was a debate about whether a special law on associations should be adopted to regulate interest groups. This discussion was initiated by the Christian Democrats and the Free Democrats. It expressed a concern that associations had gained too much power in society, partly through their access to parliament and government: the goal was to curb associational power in the policy process and reduce the influence of unions on the economy. Indeed, the Social Democrats saw the proposal as concerned less with associations in general than with trade unions. Instead of a regulation of associations, they proposed an economic and social council, to integrate key economic interest organisations into a corporatist body. This idea was rejected by the Christian Democrats and Free Democrats, as well as by the Enquete Commission, which was then considering a constitutional reform. It did not address the same range of questions as the call for a new law on association. In both cases, however, the key issue, what role organised interest should play in politics, was addressed without managing to create new institutions or adopt new legislation. No consensus could be reached. The discussion in the 1960s and 1970s nevertheless leaves several imprints on the regulatory system by new rules regarding interest representation (to which parliament, federal ministries and the constitutional court have made their own piecemeal contributions) without establishing any grand design.
Concerning the parliamentary scene, different categories of private groups have access through informal contacts to individual MPs and the political parties, but they also have access to committees. Needless to say, associations occupy a relatively modest role in a context where the battlefield is occupied by parties. One field of influence is through the system of specialised and sector-based committees where legislation is prepared and to which association representatives or independent experts can be invited. This does not mean negotiation; it would be more correct to speak of hearings, although the practice should not be confused with the well-known American Congress hearings or taking evidence. These were first regulated in the Rules of Procedure of the Bundestag in 1951, in particular in the original article 73 with regard to participation by associations, and changed on two occasions, in 1975 and 1980, which signalled an increased use of the hearings system.

The Rules of the second chamber, the Bundesrat, also cover the matter. The idea behind the hearings is basically to consult affected interests, gather relevant information and establish a certain degree of legitimisation for laws. A further goal is to improve transparency. Committees can produce special reports summarising the hearings, as stressed originally in the Rules of Procedure, but so far little use has been made of this. Many different groups participate in parliamentary activities through this channels, but access is not unlimited. The Bundestag has had a list of recognised associations since the early 1970s, and only those registered can participate in the hearings: the rules take no account of interest representation in a non-associational format.

In sum, the legislative process acknowledges that laws must to some extent build upon consultation with interest groups in society and cannot rely exclusively on the parties. As far as the associations are concerned, this channel is given different importance depending on their overall opportunity structures. Influence can be sought in the pre-legislative phase, which is generally recognised as one of the most important phases in political decision-making, but hearings are held very late in the process. In general, the agenda has been set already, decisions have effectively been made and most opportunities for influence have been missed.

As a consequence, lobbyists often seek influence at the pre-parliamentary stage in exchanges with the ministers, where different rules for contacts apply. Ministers can receive delegations according to article 10 of the General Rules of Procedure of the Federal Government. Such meetings may be important but problems are usually solved at lower levels. Indeed, contacts with the administration have preference for most associations. It is at this stage, when agendas are set, investigations are undertaken and laws drafted, that intense lobbying exists. However, there is no detailed, comprehensive system of regulation here: only some aspects are actually regulated.

The Rules of Procedure make a number of references to the problem
of lobbying. Article 23 emphasises that the ministries should only cooperate with national federations, i.e. organisations that represent interests across the states (Länder) and are thus compatible with the federal ministries. Reference is also made to the hierarchical level of organisations: consultation should be with peak associations primarily (a practice confirmed in interviews with civil servants). This may be one of the reasons why a large part of the associational landscape in Germany has also been organised around peak associations. Professional lobbyists are hindered by such rules, which may explain the absence of a more elaborate lobby representation with professional lobby firms. Studies on organised interests in Germany often emphasise the structuring role of the state which, as this example demonstrates, is not only accomplished through encouragement but may take legal forms as well.

Article 23 builds up a similar article in the General Rules of Procedure of the Weimar Republic and is intended to establish some rules across ministries but, according to the constitutional principle of ministerial autonomy, each ministry can implement such rules in its own way, according to its political and administrative strategies.

Many contacts between the administration and associations are on a day-to-day basis where private and public resources are combined to consider and prepare legislation. These interactions are quite important to understand the part both sides play. They are wide and diverse but only in part institutionalised through rules, making it impossible to give a systematic account of the process. One of the most formalised types of cooperation, however, is through the committees discussed later.

German laws are traditionally translated into rather detailed regulations (delegated legislation, etc.), and at this stage of implementation different forms of consultation apply. Procedures are diverse but interest group influence is important. Individual ministries define the selection criteria but cannot ignore vital affected interests and they also need the support of certain key associations. Some laws also require that consultation should occur and explicit reference may be made to the interests involved and the associations concerned. This reduces the administration’s room for manoeuvre.

The Federal Constitutional Court has dealt with the role of associations in a number of cases, and through a number of decisions it has cemented their political status in Germany. It has distinguished between the ‘societal-political’ and ‘state-organic’ fields in society and argued that civil society should, in principle at least, be a state-free zone; at the same time, the state should have some independence. It has also said that associations should not strictly be organised along guild-corporatist lines or formed through the state (as in the Third Reich or the German Democratic Republic). In general, a middle of the road solution between extreme corporatism and pluralism has been recommended. The Constitutional Court has fully recognised that associations
relate to parliamentarians and ministry officials, but it has been very
careful not to interfere with the traditions of the different institutions.
Thus, each parliamentary committee, each ministry and each expert
committee is free to adopt its own procedures and to define at what
stage and which interest groups to invite. In this way, the framework
for lobbying activities of interest groups has not been created by the
court but confirmed by it.

Although many areas have remained unregulated in the German
system of lobbying, there are some which have become regulated in
more detail. These include the extra-parliamentary activities of member
of the Bundestag, hearing status for recognised associations, and the
establishing of committees in the federal ministries. To these examples
we shall now turn.

Activities of Members of Parliament

MPs have strong economic, social and regional roots in Germany
and, independently of interest groups, they also pursue interests as of
lobbyists of one sort or another. At the same time, MPs are important
access points for interest groups in the policy process, as in other
parliamentary democracies. Most do things for them, supporting differ-
ent interests according to their preferences. This has been an distinctive
feature of associational life and has provided an important channel
for lobbying activities. To increase transparency in the intricate web
of relationships connecting MPs with private firms, public and semi-
public corporations, associations, etc., a Members of Parliament Law
was passed in 1977.7 This stipulate in section 10, under the heading of
Independence of Members of Parliament’, that the Bundestag should
adopt rules of conduct for the MPs. These rules require MPs to report
their involvement in extra-parliamentary activities which may be of
relevance for their parliamentary work. First published in 1986 and last
revised in 1995, the rules are now embodied in the General Rules of
Procedure of the Bundestag. They require MPs to notify to the president
(Speaker) of the Bundestag of all board membership in private compan-
ies, public agencies, associations, foundations, etc. The operational
details of their obligations are regulated through the Implementation
Provisions for the Rules of Conduct for the Member of the Bundestag
first adopted in 1972. This specifies, for instance, the forms of participa-
tion, relationships or income drawn from external activities that must
be notified.

A subset of this information (the names of organisations in which
MPs are board members) is regularly published in the official handbook
of the Federal Republic, and some of this data is also available at the
Bundestag’s internet web site. Analysis of this information shows the
current involvement of 482 MPs in 1,355 memberships of 1,070 boards
and councils in various types of organisations. In other words, almost
three-quarters of German MPs are members of at least one external
body. Almost a third are on the boards of regional institutions and public sector organisations (e.g. public administration or firms, banks and building societies in the public domain); 16% are board members in private companies. There are significant differences between parties. The highest percentage is found in the (Bavarian) Christian Social Union and the Free Democratic Party, the lowest is the Greens and the (former Communists) Party of Democratic Socialism. The major contacts of the Free Democrats are firms; many Christian Democrat links are with associations in agriculture and the church; Social Democrats relate to unions. The majority of MPs are only involved in a single external relationship, only a small percentage in more than ten. There is no further publicly available information on the intensity of these relations. Although there is some discussion on the income MPs gain through their external activities, which must be declared, those advocating for a higher degree of transparency have not been very successful. Voters cannot have a full profile of their MPs.

The list of recognised lobbying associations

A second example of regulation of lobbying activities concerns the status of officially recognised associations. As noted, a section of the General Rules of Procedures deals with procedures for committee hearings. As this form of interest representation was increasingly used during the 1960s, the need for more formal regulations emerged. The Bundestag began in the early 1970s to compile a list of recognised associations, annually updated and published in the official government bulletin. The concrete set of information is regulated through Annex 2 of the General Protocol of the Bundestag. To appear on this list, the following information must be provided: name of the association, composition of board and management, areas of interest, membership, names of political representatives and office address in Bonn.

It has been rightly noted that the content of information of this list is almost zero. In 1986 the peak association of industry, the Confederation of German Industry, registered 35 member associations, whereas the peak association of the German crafts (BDH) put 110 on the list. This gives no insight into the differences in political importance between the two: it would be relevant to add information about their budgets, staff, links to the parties in parliament, resources spent on public relations, etc. The lobbying list has indeed brought more transparency to the development of lobbying organisations and their participation in government, but when it was designed almost thirty years ago the ambitions were much higher. Now there seems to be little interest, inside or outside parliament, to produce a more informative list of recognised associations.

However, thanks to this list we have a clear picture of some aspects of the development in lobbying. Using a recent study on interest groups in German politics, we found that the first list of recognised associations,
published in 1974, contained 635 organisations, by 1994 the number had climbed to 1,572.

The registration of politically active associations is not mandatory. It is only relevant for those wanting to participate in parliamentary committee hearings. However, being listed does not automatically give access to the hearings and this has occasionally meant conflict. Committees and subcommittees can further choose between the groups they want to invite. There is a stipulation that minority groups and the local authority peak associations must be heard, but this too leaves room for interpretation. The Rules also say that the committees can produce special reports summarising hearings and describing the organisations involved, but very little use has been made of this possibility. The number of organisations involved and the degree of their involvement can only be reconstructed through extensive research.

**Committees and working groups related to ministries**

The last example of lobbying is related to committees attached to federal ministries or their specialised administrative agencies. It is here that the most intensive relationships can be found. There are essentially two forms of contacts: those through ministry hearings mainly held in the context of legislative drafting, and interest group participation can be found in specialist committees or working groups. Unlike parliamentary hearings, the hearings organised by the federal ministries and the meetings of their specialist committees and working groups are not public. In their capacity as experts, key persons from associations are invited to take part in the investigation of issues and negotiation about solutions, for a shorter or longer period of time. Large parts of the committee work is actually devoted to the preparation of laws but a number also assist in their implementation through the making of regulations.

Our knowledge on the number and membership of the committees and their role in the political process is rather limited. Information was compiled only on a few occasions back in 1969, 1977 and 1984, which makes it difficult to draw a coherent picture. We assume that they are important because interest groups attach importance to them and research ambiguously refers to their key role in the legislative process, but more profound and reliable information is needed.

There has been a general understanding in society and amongst decision-makers, both in government and opposition, that the involvement of associations and experts is a necessary ingredient in politics. This is accepted to such a degree that regulation has become a rather uncontroversial issue. As a consequence, there is a lack of interest in systematically differentiating between various forms of lobbying and creating a more elaborated system of regulation. In some countries consultancy firms have taken over much lobbying activity and added
new forms of interactions to those already established. In the German case, however, there is very limited information on whether such changes have actually occurred, though experience suggest that the German way of lobbying has not changed much in this direction. There is a sound tradition of informal contacts between the political institutions and private interests but, at present, there seems to be no strong political demand for regulation amongst the political and administrative elites to achieve a higher degree of transparency in this. Neither is there any pressure outside the established system of lobbying to correct this.

1 H.P. Ullmann, *Interessenverbände in Deutschland* (Suhrkamp, 1988).
5 Geschäftsordnung des Bundestages in *Bundesgesetzblatt*, 3.3.52.
7 See *Abgeordnetengesetz* (Sechtes Gesetz zur Änderung des Abgeordnetengesetzes vom 16.1.87) and *Ausführungsbestimmungen zu den Verhaltensregeln für Mitglieder des Deutschen Bundestages* vom 26.6.87 (BGBl I, s. 1757), geändert durch Bekanntmachung vom 14.12.95.
8 R. Steinberg, ‘Parlament und Organisierte Interessen’ in H.P. Schneider and W. Zeh (eds), *Parlamentsrecht und Parlamentspraxis in der Bundesrepublik Deutschland* (Walter de Gruyter, 1989).