ANALYZING EU'S LOBBYING

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Abstract

"There still is a lack of research on and understanding of the relations between the EU institutions and private actors, especially in the context of EU enlargement"**1**

The overall relationship among different EU actors is characterized by a general absence of hierarchies. Compared to national governments, the EU is not a strong polity. No single set of actors, whether the Commission, the Council, or interest groups, can make effective policy on their own. They depend on each other for the different resources and attributes which they bring to the table. Consensus among the actors is necessary to create coherent long-term policy. This gives interest groups a very significant and, in many respects, unique role in governmental processes. The resulting increased need for information on complex issues now offers interest groups more opportunities than ever to influence EU legislation.

Keywords: European lobbying, transparency, interest groups, legitimacy.

In an article published by The Washington Times, Gareth Harding**2** has drawn the picture of Brussels in relation to the phenomenon of lobbying: "here are not many growth industries in Brussels, the capital of Belgium and headquarters of the EU, but lobbying is definitely one of them". Due to the institutional multi-level governance structure of the EU and to the weakness of the European parties, interest groups have easy and effective access to the EU institutions, particularly to the Commission, to put pressure on them and to influence legislation. Not only can they highlight their interests and try to satisfy them, but they provide the so-called "Eurocracy" with the necessary technical information to make and implement EU laws. In other words, the effect of lobbying in the EU is twofold: on the one side, pressure groups raise their priorities; on the other side, the Commission receives expertise and assistance for making its job.

The uneven character of the European institutions and the division of attributions with the member states, transform the European planet of lobbying into something less transparent, more complicated and more subtle. The Commission, Council and European Parliament open up to different channels of influence. The first institution has the primacy of legislative initiation, and clearly represents the main target of pressure-groups. The Parliament comes next, following its constant increase in power. The Council arena is a little bit more

[1]K. Charrad (2008), "Lobbying and European Civil Society: Problems and Perspectives of Civil Society Actors from Visegrad Countrie*s*". In: Freise, M. (ed.) (2008): *European Civil Society on the Road to Success?* 1st edition. Baden- Baden: Nomos Verlagsgesellschaft, p. 110.

[2] Cf. Gareth Harding, "Analysis: Reining in EU Lobbyists", The Washington Times, 8 March 2005.

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complicated. The lobbyists chase indirectly the national delegations in Brussels; the members of different expert working groups are a target and direct influences can be put into effect through national governments.

Current estimates indicate that there are approximately 15,000 lobbyists and 2,500 lobbying organizations in Brussels who aggressively lobby the dozens of major European Union (EU) institutions that controls tens of billions of Euros in funding as well decide the strict environmental, labor and financial rules that govern the 27 EU member countries. Lobbyists in the EU generally fall into one of three major groups: industry associations, non-governmental organizations (NGOs) / interest groups, and regional representations Some 90% of these lobbyists are believed to work on behalf of industry, with civil society groups such as environmentalists and trade unions making up less than 10%. Together they spend an estimated 750 million Euros ($1 billion) a year to influence the European bureaucrats**3**.

Lobbying is still enjoying a negative image mainly because of four powerful myths spread around especially by mass-media, like:

The legislator is dominated by the lobbyist

Money is the key of lobbying

Industry destroys NGO's

Corruption increases because of lobbyism

The definitions of lobbyism are wide and are not limited to one authorized definition only. In this paper, lobbyists are defined as persons that are neither government officials nor politicians within the European Parliament or Commission, who try to influence the decision-making processes in the EU. This broad definition captures lobbyists who are solely engaged in lobbyism directly for their employer, like professional lobbyists working for customers, e.g. consultants and lawyers; and lobbyists not working as professional lobbyists but who are nevertheless engaged in lobbyism, i.e. members of think tanks**4**.

The background of lobbyism in the EU is that openness of the administration must be considered a basic condition of the relationship between administration and citizen in any democratic society. Openness of the administration is a necessary precondition for the public to control the decisions made by the government in power. During the past years, Europe has focused more and more on openness within public administration. However, the decision-making phases are nevertheless obscure and close to a degree that makes it difficult for the public to get a genuine overview of where and how the decisions are made.

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[3] Pratap Chatterjee (2007), *Sunshine Laws to Track European Lobbyists*, http://www.spectrezine.org/europe/chatterjee.htm, [accessed 10 May 2008].

[4] Martin Bækgaard, Flemming Svith Dicar (2004), *Report on EU Lobbyism*, www.lobbyisme.info/eng/report.doc, [Accessed 5 March 2008].

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Lobbyism is often mentioned in connection with the working processes of the EU, however, nobody has an overview of the number of people engaged in lobbyism, the number of individuals/companies involved, their country of origin, the industries involved, how they work or how much money they spend. The internet has several databases containing overviews of lobbyists. The only problem is that the databases are either incomplete, imperfectly updated or access to them is limited and thus access is not granted to the publicity as such. This constitutes a need for the lobbyists and their work to be subjected to surveys that are independent of special interests**5**.

The European lobbying is perceived as becoming more American, due to the increase of the professionalism, efficiency, success, but also because of the ideas of secret, non-transparent activity, another name for traffic of influence and corruption.

In response to this increasingly crowded and competitive lobbying environment, public and private interests have evolved new direct lobbying strategies, collective action arrangements, and complex political advocacy alliances. Accordingly, EU interests have matured into sophisticated interlocutors that often have more awareness of inter institutional differences than the functionaries they lobby. The result is EU interests now have unparallel access and understanding of the multilevel governance structure and lobby with a multitude of political voices. Albeit, this unprecedented lobbying explosion provided legitimacy for the European integration program, it also has put a strain on the openness and transparency of EU policy-making, and pressure for the creation of rules and regulation of interest representation. However, as a result of the multilevel and institutional lobbying it is important that policy-makers and academics can first and foremost map interest group inputs across the whole policy process**6**.

A not less important question is when to lobby, the time point and strategy of lobbying depend on each over. The kinds of lobbying relating to the time point in policy process are summarized by Bender and Reulecke. They differentiate between 3 kinds of lobbying: "lobbying as prevention", "lobbying as reaction" and "lobbying as action" **7**. According to the authors, the most difficult one is preventive lobbying which aims to prevent or to postpone a particular legislation before the call for legislative action exists. Lobbying as reaction means that the legislative proposal already exists and lobbying reacts to the legislative process.

[5] Martin Bækgaard, Flemming Svith Dicar, op. cit.
[6] David Coen (2007), *Lobbying in the European Union. European Parliament's Committee on constitutional affairs*, http://www.ipolnet.ep.parl.union.eu/ipolnet/cms, [Accessed 20 March 2008].
[7] G. Bender, L.Reulecke (2003), *Handbuch des deutschen Lobbyisten. Wie ein moderns und transparentes Politikmanagement funktioniert*. Frankfurt/M, F.A.Z Institut, p. 117.

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Lobbying as action refers to the need of legislation seen by lobbyist and his actions to initiate the legislation.

Today we are faced with how EU institutions can manage and regulate the expanding numbers of interests and conversely how interests groups can continue to influence and contribute to the EU public policy process in a positive and constructive form. Few would question the importance of interest groups to facilitate policy, advocate positions, provide expertise and at times scrutinise authority. What is more difficult to agree is how we monitor and regulate their access to the policy process without constraining information exchange and political trust.

Lobbying and Democracy

If one looks at the decades of the European experience, the Single European Act of 1986 can be rightly considered to be one of the strongest examples of the will of the Member States to achieve a closer and more significant integration. Under heavy pressure from business groups to relaunch the European economy that had lost competitiveness in comparison to Japan, North America and South-East Asia during the 1980s, the SEA represented the possibility for both big and small companies to trade without barriers and to make profit in a larger market. Due to the relevance of these interests and to the crucial role played by the European Commission in setting the rules to implement the internal market, Brussels soon became the lobbying target for many companies and trade associations.

Another important event in the development of lobbying in the EU was the Treaty on the European Union (TEU) of 1992 which introduced the Committee of the Regions and the principle of subsidiarity. As a result of this, Brussels has seen the arrival and the establishment of many regional and local authority offices to represent their interests directly at the heart of the EU.

The development of lobbying has been the result of two other aspects of the Community legislation: not only the EU Justice takes precedence over the Member States legislation, but 80% of Community law is "made in Brussels"**8**, so that national parliaments and governments have to comply with it when they pass national laws.

By and large the EU has benefited from lobbying. In fact, by gaining easy access to the EU and providing the bureaucracy and policy-makers with relevant information and support for

[8] Cf. European Parliament, Directorate-General for Research (2003), *Lobbying in the European Union: Current Rules and Practices*, Working Paper, Luxembourg: Publications Service, http://ec.europa.eu/civil_society/interest_groups/docs/workingdocparl.pdf, [Accessed 15 October 2009].

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the implementation of the European policies, interest groups have contributed during the 1980s to the realization of the internal market through their input and support.

Lobbying in the European Union has represented an important source of legitimacy because interests groups have given to the EU's policies support for their implementation and have promoted the European integration among the Member States and the citizens. They have sponsored the increase in the EU competences to convince national governments to broaden the sphere of action of Brussels and have looked for support among their member associations. Nevertheless, lobbying has not affected the political legitimacy of the EU as a whole: the EU continues to derive its legitimacy from the Treaties and the direct elections of the EP, so that interest representation and the process of consultation carried out particularly by the Commission are sources of input to the legislative process. Lobbying can help the EU to make its job, but it is not a way to solve the problem of the "democratic deficit"

The debate on the democratic deficit is ongoing for a long time and is still not resolved. What role in this context can take interest groups? Are their activities to be seen in a positive or in a negative light? The relationship between interest groups and the European institutions has been described as being "clientela", with "the Commission selecting a few groups with which it felt comfortable as the appropriate representatives of social interests"**9**. The interest groups' lobbying activities have been seen as destructive to the democratic functioning of the whole EU. But, as Van Schendelen argues, lobbying can be seen also from another perspective. He suggests alternative frameworks for approaching the "lobbying" phenomenon: integration perspective, perspective of efficient EU decision-making and perspective of citizens' welfare**10**. According to Greenwood**11**, "Political systems need legitimacy from their subjects in order to undertake a full range of governance functions. Legitimacy arises from two sources: inputs (the ability to participate in political decision making); and effectiveness (results). The limited nature of the EU as a political regime can partly be explained through its lack of input legitimacy". In his opinion, interest groups not only help in policy making, but also make the EU closer to the citizens: they "assist in the popular identification with the European Union"**12**.

[9]B. G. Peters (2004), "Interest Groups and European Governance: A Normative Perspective", in: Wonka, A. and Warntjen, A., (Eds.) (2004), *Governance in Europe. The Role of Interest Groups*. Baden-Baden, Nomos**,** pp. 57-65.

[10] R. Van Schendelen (2002), *Machiavelli in Brussels: the Art of Lobbying the EU*, Amsterdam, Amsterdam University Press.

[11] J. Greenwood (2004), "The search for input legitimacy through organised civil society in the EU." in: Transnational Associations (No. 2/2004), p. 145.

[12] Idem, p. 146.

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Lobbying and Transparency

Politics in Brussels is less than transparent, which is one reason why interest groups develop government affairs offices to manage the EU policy cycle. EU officials recognizing the uniqueness of the European Lobbying process have over the last 20 years attempted to define an informal code of conduct and improve openness and transparency.

In May 2006, the European Commission presented its Green Paper on the European Transparency Initiative, which sought to build on "better law-making" policy and wider stakeholder consolations proposed in the European Governance White Paper (2001). The object was for a more structured framework for interest representatives, feedback from the Commission's minimum standards for consultation, and mandatory disclosure of information about the beneficiaries of EU funds. In terms of lobbying it suggested a voluntary registration system, a common code of conduct, and a system of monitoring, and sanctions to be applied in the event of incorrect registration and/or breach of conduct. The Commission takes a broad approach to "lobbying" and "lobbyists" and includes think-tanks working with "the objective of influencing the policy formation and decision-making processes of the European institutions"**13**; therefore EU think tanks should apply basic transparency standards and the Commission's definition is useful in that this is recognized.

The Commission in its Green paper states that for those engaged in lobbying, "it must be clear to the general public which input they provide to the European institutions. It must also be clear who they represent, what their mission is and how they are funded."**14**

Moreover, on 21 March 2007, the Commission adopted the Communication "Follow-up to the Green Paper European transparency Initiative" (EC 2007) that included the decision to establish a framework for its relations with interest representatives. Among the steps that were drafted and accepted, we can mention the creating and launching of a new voluntary register for interest representatives. On June 23, 2008, the official European registry (EU-RIR 2008) has been introduced for a trial period of one year. Lobbyists will register voluntarily in this registry; however the distinction between voluntary and mandatory becomes irrelevant since the official registration is the only way to obtain a valid entry ticket in the Parliament. The Commission opted for a voluntary scheme in the belief that peer pressure from the registrants would provide enough motivation for others to sign up.

However, despite these intentions, the actual proposals in the Green Paper remain inadequate. Here, the Commission proposes a voluntary transparency register with light incentives for

[13] European Commission (2006), *European Commission Green Paper*: *European Transparency Initiative*, COM (2006) 194 final.
[14] Idem.

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compliance. Responses to CEO's survey indicate that such an incentive is highly unlikely to encourage EU think-tanks to disclose their funding sources**15**. The European Commission must develop a set of rules that make lobbying transparency a de facto obligation. The work on defining the problem has been done and now it is time to implement solutions.

On the occasion of the register's first birthday in June 2009, the EU executive accepted the need for "fine-tuning" but stressed the importance of judging the register on qualitative rather than simply quantitative terms**16**. Jens Nymand Christensen, director of better regulation and institutional issues at the Commission's secretariat-general declared that "We chose a voluntary system believing that it would work, and we feel vindicated, because many of the big players in Brussels have joined. The pressure for mandatory is not as high as it was a year ago"**17**.

Actors

The lobbying activity is not only a way for lobbyists to bring to the attention of EU policy-makers the priorities of the associations they represent, but it is also a mechanism through which the EU political bodies and administration can gain information. Lobbying in the EU resulted to be necessary, and in some circumstances even vital, for the policy-making process as well as for the implementation of policies. Therefore, what is fundamental is the exchange of information, both under the form of political input and technical suggestions especially towards the Commission, and the feedback and support that the institutions receive from interest groups.

Lobbying in the European Union plays a double role: on the one hand, it is an instrument for interest groups to represent the priorities of their associates and to influence the decisional process; on the other hand, it constitutes an important and decisive remedy for the so-called 'information deficit' suffered by the EU institutions.

In order to explain how the information exchange works, which actors are involved and what kind of information they provide each other, Pieter Bouwen has presented the theory of demand and supply of access goods**18**. According to his theory, what is crucial in the whole EU decision-making system is information: the whole lobbying process can be described as

[15] Corporate Europe Observatory (2005), *Transparency unthinkable? Financial secrecy common among EU think tanks*, http://www.corporateeurope.org/thinktanksurvey.html, [Accessed 20 March 2008].

[16] Euractiv, *Commission hints at July changes to lobby register*, 08/06/2009, http://www.euractiv.com/en/pa/commission-hints-july-changes-lobby-register/article-182948#, [Accessed 20 October 2009].

[17] Euractiv, *Commission 'satisfied' with lobby transparency progress*, 23/06/2009, http://www.euractiv.com/en/pa/commission-satisfied-lobby-transparency-progress/article-183410, [Accessed 20 October 2009].

[18] Cf. Pieter Bouwen, *Corporate Lobbying in the European Union: Towards a Theory of Access, Firenze: EUI* (Working Paper SPS), 5, 2001.

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being a market where the access good at stake is information. Hence, like every market, also this one implies that someone asks something and someone else provides it in exchange of something else: whereas the EU bodies need information to carry out their activities, interest groups need to have access to these institutions to influence their decisions. Both sides gain since the latter acquire the information and expertise they need to formulate the policies, while the former get in contact with policy-makers. Nevertheless, the private actors supply the access goods if the access good is demanded by that institution. Besides, not all access goods play the same role and have the same relevance: it goes without saying that the criticality of an access good for the functioning of an EU institution determines the degree of access that the institution will grant to the private sector's group.

Actors, seeking to participate in European policy process have to take into consideration the 'routes' of influence: "At its most simple level, the 'national route' refers to the use of national contacts and national governments to influence the EU decision-making, whereas the 'European route' involves seeking to exert influence by representation direct to the European institutions themselves"**19**. If they choose the 'European route' they have to take into account that the fundamental relationship between them and European institutions is one of exchange: EU institutions seek information, interest groups seek influence. If they want to take influence, they have to provide information. According to Greenwood, "Interests contribute to, and are highly influenced by, the climate of ideas of EU policy making in the circles to which they have access. Brussels can be an insider's town, where operating effectively depends upon a dense network of interpersonal and inter-organizational links, and where it is very difficult for outsiders to arrive, win the day through persuasion, and go home again"**20**.

Lobbying is a difficult task and requires not only financial and personal resources but also a profound knowledge about the EU institutions. Each institution has different ways of dealing with external input, the lobbyists need to adapt to the structures they find. Greenwood describes the relation between interest groups and EU institutions as interdependency, what explains the growth of interest groups while widening the EU competencies: "Special to the EU is its multi-level context and the way in which this shapes EU interest representation, and the intensity of the dependency of central EU institutions upon outside interests as a whole."**21**

[19] J. Greenwood (2003), *Interest representation in the European Union*. Basingstoke, Palgrave, Macmillan, p. 32.
[20] Idem, p. 2.
[21] Ibidem, p. 27.

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Many actors are involved in lobbying the European Union: associations**22**, especially trade associations, business and industry groupings**23**, chambers of commerce, trade unions, regions, public relations consultancies, law firms, think tanks**24**, issue specific conferences, NGOs**25**, non-profit organizations, and church associations. Other actors involved in the lobbying activity are the permanent representations of the Member States to the European Union as well as the offices of the sub-national and local authorities of the EU countries. Sub-national interests are promoted by the Council of European Municipalities and Regions (CEMR) and the Assembly of European Regions (AER). In addition, Brussels hosts the delegations of third countries.

Each of the key institutions— the European Commission, the Council of the European Union, and the European Parliament—has developed its own system for working with interest groups.

The European Commission, the executive arm of the European Union, charged with proposing legislation and overseeing its implementation, offers the greatest access to lobby groups via its Directorates General (DGs). DGs are distinct departments that are responsible for specific tasks or policy areas. DGs frequently consult with experts and interest groups when researching specific issues falling within EU jurisdiction. In June 2008, the European Commission launched a voluntary register of lobbyists (or "interest representatives") who seek to influence EU decision-making.

The Council of the European Union, which comprises the ministers of each Member State and is the main decision-making body of the EU, is the least accessible of the main EU institutions in terms of lobbying. The Council maintains no register of lobbyists and refers contact with interest groups to the European Commission. However, national ministers frequently maintain relationships with relevant local and regional lobby groups under the aegis of the national lobbying regulations of their Member State.

The European Parliament, a directly elected body that co-legislates with the Council, is a key target for interest groups. The European Parliament maintains a register of approximately 5,000 accredited lobbyists who subscribe to a specific Code of Conduct and receive special passes to access Members of the European Parliament (MEPs). In 2008, the European

[22] Some of the most influential are the Union des Industries de la Communauté européenne (UNICE), the American Chamber of Commerce to the European Union (AmCham EU), European Trade Union Confederation (ETUC), EUROCHAMBRES (The Association of European Chambers of Commerce and Industry), etc.

[23] The Conseil Européen des Fédérations de l'Industrie Chimique (CEFIC), the European Federation of Pharmaceutical Industries and Associations (EFPIA), etc.

[24] European Policy Centre (EPC), the Centre for European Policy Studies (CEPS), Friends of Europe, etc.

[25] European Environmental Bureau (EEB); the European Platform for Social NGOs; Greenpeace; Amnesty International; the World Wide Fund for Nature (WWF); the European Youth Forum; the European Women's Lobby, etc.

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Parliament proposed the development of a single register for lobbyists, which would be common to the Parliament, the Commission, and the Council of the European Union.

In the EU policy-making process, there is actually a mutual interdependence between the various actors: politicians, bureaucrats, and interest groups (and hence, citizens). These actors have different needs, which motivate and structure their interactions. Administrators and politicians need political support, legitimacy, information, coalition partners, and assistance in the implementation of policies. Interest groups need access to public policy formation and implementation.

The overall relationship among different EU actors is characterized by a general absence of hierarchies. Compared to national governments, the EU is not a strong polity. No single set of actors, whether the Commission, the Council, or interest groups, can make effective policy on their own. They depend on each other for the different resources and attributes which they bring to the table. Therefore, the whole structure is very interdependent, and none of the actors possess too much power in relation to others. Consensus among the actors is necessary to create coherent long-term policy. This gives interest groups a very significant and, in many respects, unique role in governmental processes.

Although this paper has repeatedly stated that lobbying activity and the European Union are interdependent and that above all the latter needs the former to carry out its actions and policies, the role of lobbying should not be overestimated. In fact, if on the one hand nobody can question the idea that lobbying is not a danger to democracy, on the other hand it is necessary to point the finger at those aspects that still show some shortcomings, like the lack of transparency particularly by profit-making organizations, but also that not all interest groups are heard by the Commission.

Conclusions

EU lobbying nowadays is seen as the professional practice of advocating private and public interests versus legislators and decision-makers. Consequently, lobbying is no longer seen as an annex to PR only, but rather, as a high-end management discipline dealt with by lawyers and former politicians. But that took its time.

Where is this process going? Outlooks are always difficult and in some cases are nothing more than looking into the crystal ball. Definitely, EU lobbyists, much more in the future, will have to take into account one fact: They cannot act in isolation; they are part of a global lobbying agenda. Consequently, EU lobbying will be a strategic core business function for companies and all other stakeholders that wish to compete successfully and operate

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internationally in the future, since EU lobbying will be at the leading edge of complex governmental policies and respective stakeholder demands.

This paper has tried to describe the lobbying activity within the European Union and to highlight its pros and cons. With respect to the relationship between lobbying, 'democratic deficit' and legitimacy of the EU, some elements that characterize the European process of interest representation can be summed up. Firstly, lobbying in the EU developed during the 1980s when Member States agreed to launch the SEA to complete the single market. As a consequence of the broader sphere of competences achieved by the European institutions, interest groups started to lobby them in order to influence decisions and policies. Over the decades the lobbying activity has tried to adapt itself and its tactics to the changing institutional system: not only have interest groups turned their attention to the EP, but also new actors such as the Regions have started to put pressure on the EU.

Secondly, lobbying has constituted a benefit both for the EU and for interest groups: the latter have provided the policy-makers with information and suggestions, both of political and technical nature, and support for sponsoring all over the EU the policies agreed in Brussels. They have been an important transmission belt between the decision-makers and the stakeholders, so that they have promoted the European integration among the citizens and partially substituted the political parties in representing the interests of the EU peoples. On the other hand, companies, associations and NGOs as well as Regions have taken advantage of the opportunity to influence the EU and to raise their priorities before it. Therefore, lobbying should be looked at being a phenomenon that has enriched both sides and has contributed to give legitimacy to European policies.

Thirdly, the political legitimacy of the EU is not questioned by lobbying, since "Brussels" is legitimized by the Treaties and the direct elections of the MEPs: however, interest groups have allowed a broader involvement of citizens and interested parties in the EU political and decisional process, so providing the EU policies with legitimacy and support. On the other side there are still questions to be solved: the lack of transparency by the public affairs consultancies and the lack of regulation for lobbyists.

Finally, despite the shortcomings of the system, lobbying in Brussels has turned out to be the combination of the necessity to give representation to the interests of economic, sub-national and social actors, and of the need of the EU for information. In other words, interest representation and need for information.

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