

# LOBBYING IN THE EUROPEAN UNION – REGULATION AND PUBLIC SECTOR ECONOMICS PERSPECTIVE

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## Abstract

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Lobbying has become an inseparable companion of the decision-making process and firms but also other social actors (non-governmental organizations, individuals, private and civil sector) are forced to reflect this fact, if they want to promote their interests effectively and if they want to avoid regulation that would harm their interests. The paper analyses the regulation of lobbying in European institutions and focuses on two major institutions which are under pressure of the lobbyists, the European Commission and the European Parliament. The paper discusses and presents the both ways of regulation which occur in the European institutions- the concept of self-regulation and the binding Code of Conduct under the Rules of Procedure in the European Parliament. The paper contains also possible economic consequences of lobbying based on the Public Sector Economics perspective and the methodology of the principal-agent relationship.

lobbying, EU, the European Commission, the European Parliament, self-regulation, the European Transparency Initiative, the principal – agent relationship, enforced demand

The real modern lobbying in the EU is associated with the 80s of the 20th century.<sup>1</sup> This is mainly due to the importance of the Single European Act, which involved the European Parliament in the decision-making process, accelerated completion of the single market and restored the qualified majority voting in the EU Council. This led to the strengthening of the supranational elements in the European Union. The power and influence of the supranational institutions was enhanced and the supranational methods of decision were restored (qualified majority, later veto of the European Parliament). Lobbying could therefore be targeted directly at the supranational level and was not limited by the influence of the Council's Representatives, who disposed of the veto. The

interests groups were also not any more limited by the national arena. The Single European Act and the following primary European treaties opened a new space for the interest groups and introduced new opportunities and possibilities for their actions. The increase in lobbying activities in Brussels therefore dates back to the second half of the 80s. The quantity of lobbying and its study further expands proportionally with closer European integration, along with higher level of transferring powers to Brussels. Currently Brussels is the second largest lobbying centre in the world, after Washington, D.C. The paper discusses the regulation and possible economic consequences of European lobbying through the Public Sector Economics Perspective.

<sup>1</sup> MAZEY, S., RICHARDSON, J. Ed. *Lobbying in the European Community*. New York: Oxford University Press, 2000. ISBN 9780198277897.

## MATERIALS AND METHODS

The aim of the paper is to analyse the brief history and the current status of regulation of lobbying in the European Commission and in the European Parliament. Further the paper use the methodology of the Public Sector Economics theory – the principal-agent dilemma and analyses the economic consequences of the lobbying. The data for this study were obtained from a wide range of literature as well electronic resources.

## RESULTS AND DISCUSSION

### 1 Lobbying in the European Commission

The European Commission is the most effective and therefore the most important access point for the organized interests. This is mainly because the Commission's monopoly of legislative initiative, which requires the activity of the European Commission in many areas. The attractiveness of the European Commission is mainly due to the effectiveness of intervention. Unlike other institutions, European Commission offers an opportunity to influence the legislative proposal from the very beginning. It is also attractive because of the interests, and because such contacts are not only legal but also highly welcome. The Commission welcomes the interests and their analyses and reports, because they serve as an information source from a particular sector. The interest groups often even serve as the controllers of the European legislation.<sup>2</sup> The phenomenon called "whistle blowing" means that individual actors (interest groups) monitor a certain area and alert the Commission if they detect non-compliance with binding rules. Lobbyists provide information and do this under "cost-effective conditions."

The Commission has long been the centre of the European lobbying with but a minimal regulation. The first step was taken in 1992, when the Commission presented the document *An open and structured dialogue between the Commission and special interest groups* (EC 1992). This was the initial step in the process of regulation and declaration of mutual interdependence of the interests and the Commission. This document is the first open statement about the dependency of the Commission on the interests in the common market. In this document EC declares the principles of European lobbying. It refers mainly to the the openness of the EU administration, equal access regardless of the size and type of representation, the need for

clear identification of the actors, independence of the EC negotiations on other EU institutions and the enforcement of such a solution that will enable efficient use of financial and personal resources for the Commission.<sup>3</sup> The resulting strategic concept of the Commission was the self-regulatory approach. The Commission invited interests in the legislative process to change their behaviour according to the rules. The Commission refused, however, to define the rules in the form of a code of conduct and just appealed to lobbyists to take this step. The starting point should be the parameters defined by the Commission.

Another attempt to regulate interests and to enhance the transparency of the legislative process was made after President of the Commission Jacques Santer's affair. The Commission had been accused of bad management of financial funds and Jacques Santer was forced to resign. The new Commission headed by Romano Prodi adopted a *Code of Good Administrative Behavior* (EC 2000, COM 2000 200) and afterwards, in July 2001, the *White Paper on European Governance* (COM 2001 428). The White Paper was a comprehensive response to the need for an internal reform of the Commission and an attempt to contribute to the discussion on the future of the EU.<sup>4</sup> The *White Paper* defined the basic principles of the European governance, such as openness, accountability, participation, effectiveness and coherence. The book took into account the need for greater involvement of civil society and the need to start shaping the policies from the bottom, including strengthening links and ties with non-governmental organizations outside the EU.

Probably the biggest achievement so far by the Commission in the regulation of lobbying is the release of the *European Transparency Initiative*. Commissioner Siim Kallas presented the intention of the Commission in 2005. The initiative calls for better monitoring of the use of the EU funds, monitoring the access to the EU information and documents and the professional ethics of its staff. One of the goals of the *Green Paper on the European Transparency Initiative*, published in May 2006, is the reform of mechanisms for consultation and disclosure of information about entities that access to the consultation. The Green Paper states that "public has a right to know" and that lobbying is a legitimate part of the democratic system. At the same time it opposes practices such as providing misinformation, abuse of modern communication technologies, financial imbalance of represented interests. The main rules expressed in the *Green Paper*

2 MAZEY, S., RICHARDSON, J. Interest Groups and EU policy making: organizational logic and venue shopping. In: European Union: Power and Policy making, Ed. Richardson, J., London: Routledge, 2001. ISBN 978-0-415-12917-6.

3 GREENWOOD, J. Interest Representation in the European Union. Palgrave Macmillan: Basing-stoke, 2003. ISBN 9780230271944.

4 Code of Good Administrative Behaviour, [online]. [cit. 2012-10-20]. Available on the website: <[http://ec.europa.eu/transparency/civil\\_society/code/index\\_en.htm](http://ec.europa.eu/transparency/civil_society/code/index_en.htm)>, White Paper on European Governance, [online]. [cit. 2012-10-20]. Available on the website: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001\\_0428en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0428en01.pdf)>.

are the external inspection of rules and fairness.<sup>5</sup> The EC, however, in the *Green Paper* continues in the doctrine of self-regulation on the part of the interest groups. Commission has been confronted by criticism for a lack of action and short-sightedness in promoting the concept of self-regulation.

Under the *Transparency Initiative*, the European Commission launched in June 2008 a voluntary register of lobbyists who intend to influence the EU institutions or the creation of legislation. The register should serve as a test for the preparation of an unified and compulsory register of lobbyists, which should cover all interest groups in the Parliament, the Council and the Commission in the future. The register is divided into three main categories: professional consultants and law firms, representatives of industry and business and nonprofit organizations and think tanks. The requirements on disclosure of information distinguish among these categories. The most stringent requirements (and therefore also the lobbyists in this group are not willing to register) are in the first group. Law firms and professional consultants must disclose how much money they have received (rounded to € 50,000) from their individual clients to promote their interests in the European institutions.<sup>6</sup> Lobbyists who want to be enrolled in the registry must also fulfill one more condition: undertake to comply with the rules of the *Code of Conduct for Interest Representatives*, which the European Commission approved on the 28th May 2008.

The Commission still continues to rely on the principle of self-regulation on the part of interest groups. Transparency Initiative is an attempt to increase the transparency of lobbying. However the effective tools targeting the gray zone and inappropriate practices have not been established yet and the register has been criticized for failing to improve transparency.<sup>7</sup>

## 2 Lobbying in the European Parliament

Similarly to Commission's officials, members of the European Parliament also need professional information on the consulted legislation, preferably from more competent sources in order to take a position supported by expert evidence. Lobbyists can penetrate into the Parliament by several channels – through its administration, political groups, Parliamentary Committees or through the intergroups. The interest groups focus mainly on the political parties and Committees, which represent the core of the Parliamentary

activities. In principle, only the largest political groups have the ability to influence the legislation the European People's Party-European Democrats and the Party of Socialists and Democrats. Organized interests mainly focus on leadership and secretariats of these two groups.

The starting moment of the lobbying in the European Parliament is considered to be the Committee's decision about who will be tasked to report about the draft (a person called rapporteur). The rapporteur studies and analyzes the draft and prepares a report about this draft, which would encompass the positions of the other members of the Committee and which would be the most acceptable. The rapporteur accompanies the report on the whole way through the European Parliament. Although the plenary session is the main decision-making body and the Parliament has the last word on the legislation, majority of the Parliament legislative activities take place in specialized Committees. The Committees' hearings are usually public, representatives of the interest groups thus have an access to their hearings. Another significant fact is that in the Committee an amendment to legislation can be made by any Member of the Parliament, whilst in the plenary session much stricter conditions are set. Therefore MEPs during plenary sessions have only very limited opportunity to influence the present legislative draft.

Other channels, which might be used by lobbyists, are the administrative structures of the Parliament – Secretariat, the Bureau, the Conference of Presidents and the College of Quaestors. At the time of the arrival of a new legislative proposal, Conference of Presidents is convened. There the presidents of the Committees decide to which Committee the proposal will be assigned. Some legal proposals have broader professional range, so sometimes it is not immediately evident to which Committee the proposal should be assigned. However, a fight for the allocation of legislation into a special Committee might occur. College of Quaestors is then charged with financial and administrative matters affecting members.<sup>8</sup> Likewise, they are responsible for the implementation of the rules on the influence of interest groups in the European Parliament, which are becoming increasingly complex and prolonged. The Secretary General of the EP secretariat decides which experts will be invited to the plenary session of the EP or to the Committees hearings and which experts will be allowed to express their opinions.

5 The Green Paper European Transparency Initiative, [online]. [cit. 2012-10-25]. Available on the website: <[http://europa.eu/documents/comm/green\\_papers/pdf/com2006\\_194\\_en.pdf](http://europa.eu/documents/comm/green_papers/pdf/com2006_194_en.pdf)>.

6 Transparency Register, [online]. [cit. 2012-10-18]. Available on the website: <[http://europa.eu/transparency-register/index\\_en.htm](http://europa.eu/transparency-register/index_en.htm)>.

7 Lobbyists register failing to improve transparency, new report shows, [online]. [cit. 2012-10-25]. Available on the website: <<http://www.alter-eu.org/press-releases/2012/06/25/lobbyists-register-fails-to-improve-transparency>>.

8 GUÉGUN, D. European Lobbying, Brussels, Europolitics, 2007. ISBN 9782930409061.

## 2.1 Intergroups

Intergroups are formed of Members of the European Parliament from any political group and any Committee, with the aim to hold informal exchanges of views on particular subjects and promote contacts between Members and civil society. The meetings are held on an informal basis. The intergroups are characterized as discussion clubs of deputies with experts and lobbyists. Intergroups do not represent the Parliament's opinion. Intergroups are subject to internal rules adopted by the Conference of Presidents on 16 December 1999 (last updated on 14 February 2008), which set out the conditions under which intergroups may be established at the beginning of each parliamentary term and their operating rules.<sup>9</sup> Chairs of intergroups are required to declare any support they receive in cash or kind, according to the same criteria, which are applicable to Members and individuals. The declarations must be updated every year and are filled in a public register held by the Quaestors.

## 2.2 Regulation of lobbying in the European Parliament

European Parliament became during the '80s the target of a growing number of lobbyists and MEPs began to complain that it interferes with their work and that thefts or sales of official documents occur. Therefore, as soon as in 1989 the deputy Alman Metten proposed the creation of register of lobbyists for the Commission and the Parliament in the model, similar to the one already existing in the USA and Canada. Such a register would contribute to a better identification of interest groups.<sup>10</sup> Although Metten's initiative didn't provoke a change in regulation, it had provoked a wide discussion and the first public hearing on eurolobbying was held.

In May 1991, the president of the Committee for procedural rules, verification and immunuit mandates was charged with preparation of a draft of a code of conduct and registration of lobbyists. Marc Galle's proposal in 1992, however, did not produce consensus. In 1995, deputy Glyn Ford prepared a report on lobbying in the Parliament. Ford's report was accepted together with Galle's report in a modified form in September 1995 and on this basis the insertion of three new paragraphs to Article 9 of the Rules of Procedure was done. The register was opened. The applicants for admission to the European Parliament have to register, pay an

annual fee and complete statement of its activities. All this must be done once every year. Signing in the register entitles the person to receive an entry pass to the European Parliament. For application of the rules and issuing passports are responsible the Quaestors. Lobbyists are also required to provide an overview of benefits, gifts and services provided to MEPs, officials or assistants of Members, which exceed the value of 100 euros.<sup>11</sup>

## 2.3 The rules of procedures

The main document regulating lobbying in the European Parliament is the *Rules of Procedure*, Article 9, which is further developed in Annex IX. Rules for special interest groups determine organizational issues like licensing, validity or removal of entry cards to the Parliament as well as the crucial Code of Conduct, which sets out the rules that accredited lobbyists must observe.

A new code of conduct for MEPs was endorsed by the Parliament in December 2011 and entered into force in January 2012. The code sets out rules and principles which MEPs will need to follow in their contacts with outside interests, so as to avoid conflict of interests. It is the first-ever code of conduct for MEPs and it is considered as a strong shield against unethical behaviour. The Code's guiding principle is transparency. MEPs will have to provide clear declarations of their paid activities outside the Parliament and their remuneration, as well as of any other functions which might constitute a conflict of interest. The code also contains an explicit ban on receiving payments or other rewards in exchange for influencing parliamentary decisions. There are clear rules on the acceptance of gifts and on the position of former MEPs working as lobbyists.<sup>12</sup>

## 3 The potential economic consequences of the lobbying regulation

This part of article should discuss possible benefits and especially economic risks of lobbying in the European Parliament. This analysis will be carried out from Public Sector Economics point of view. According to Jackson and Brown<sup>13</sup> this kind of relationship is common in contemporary public sector and it is called the *problem of principal and agent*.

This relationship between our principal (usually decision making body in public administration with legislative or executive power) and principal's advisor (agent) can cause an allocation of non-effectiveness except of common market imperfections caused

9 The Rules of Procedure of the European Parliament, [online]. [cit. 2012-10-27]. Available on the website: <<http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC>>.

10 GUÉGUN, D. European Lobbying, Brussels, Europolitics, 2007. ISBN 9782930409061.

11 The Rules of Procedure of the European Parliament, [online]. [cit. 2012-10-12]. Available on the website: <<http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC>>.

12 Parliament group leaders endorse new Code of Conduct for MEPs [online]. [cit. 2012-10-25]. Available on the website: <[http://www.europarl.europa.eu/former\\_ep\\_presidents/president-buzek/en/press/press\\_release/2011/2011-July/press\\_release-2011-July-6.html](http://www.europarl.europa.eu/former_ep_presidents/president-buzek/en/press/press_release/2011/2011-July/press_release-2011-July-6.html)>.

13 BROWN, C. V., JACKSON, P. M. Public Sector Economics, Wiley-Blackwell 1991, ISBN 978-0631162087.

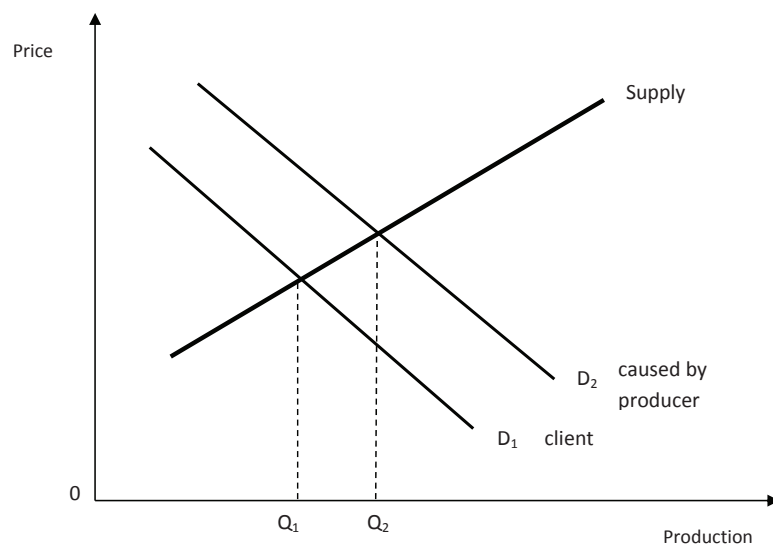
by public sector itself (e.g. pure public goods, transaction costs of collective choice). The point is that we can face so called *enforced demand* by agents. This possible non-effectiveness in allocation of EU budget's resources grows from the asymmetry in information, which is inevitable. The lobbyists are usually in position of agents and MEPs are principals demanding special information services for better decisions from lobbyists. It is necessary to realize, that this relationship needn't bring that non-effectiveness automatically and, as mentioned above, there is quite new Code of Conduct from 2011 in the European Parliament which aims to prevent possible conflict of interest. Therefore, lobbyists can not only improve the decision-making process thanks to their information and various interests knowledge, but they can contribute to the implementation of higher number of proposals of key economic players with potential multiple effects and social benefits for the general public. As Drutman claims<sup>14</sup>, once companies get on the track of *doing politics*, they are likely to stay on that track if it is working for them. So, to built up political capacity can become a strategic asset for the firm and it is advantageous to preserve lobbyist's presence close to public institutions and top officials. It seems to be very positive both for public sector and private sector, but the risk of gaining control over the public sector is high.

The relationship between principal and agent can work well unless agents will abuse their advantage in information and ways of it's usage. So lobbyists can become disinterested in principals' preferences and they can start endorsing of private, corporation's interest. This is the essential nature of the enforced

demand. Lobbyists can provide information causing higher public expenditures on certain expenditure activity, but this can bring benefits only for corporation itself. In fact, the public sector's demand on financial resources and certain producing factors of private sector (labour force, capital resources, information) is higher than the needful demand. This problem is described with help of simplified scheme (Fig. 1). There is a relationship between a producer (corporation with active lobbyists) and a client (e.g. MEP).

According to this scheme, producer tries to stimulate the public sector demand from the level  $D_1$  to the higher level  $D_2$ . The final output and price per product is increased in useless way, because the social optimum is on the intersection of supply (S) and the demands curves ( $D_1$ ). The difference between variables  $Q_1$  and  $Q_2$  is the extent of allocation of non-effectiveness caused by lobbyists (agents). The price for this overproduction is the extent of social costs for general public too. Except of overproduction it is possible to write about surplus quality of public goods or about unrequested innovations for voters too. The level and quality of public goods serve together to agent's interests, not to principal's ones.

The described general market imperfection can be eliminated absolutely at the European Parliament. Despite of quite strong regulative function of the contemporary Code of conduct, there is still chance for this kind of non-effectiveness. Possible weakness of such ethical code is the emphasis on ban on payments for influencing parliamentary decisions. The reason is, that this non-effectiveness emerges in indirect way. The real benefit (or excess utility



1: The enforced demand scheme

Source: BROWN, C. V., JACKSON, P. M., Public Sector Economics, Wiley-Blackwell 1991, p. 240

14 DRUTMAN, L. The Business of America is Lobbying, [online]. [cit. 2013-01-08]. Available on the website: <[http://www.leedrutman.com/uploads/2/3/0/1/2301208/business\\_of\\_america\\_is\\_lobbying.pdf](http://www.leedrutman.com/uploads/2/3/0/1/2301208/business_of_america_is_lobbying.pdf)>.

for producer) is given in form of public expenses on enforced expenditure activities and it is not hidden in payments for lobbyists. This acting can simply eliminate the codes rules and in fact, it is very hard to find out and to produce social optimum of public goods because of lack of information about accurate position of social equilibrium among deputies. We still do not know the real extent of possible advantages for firms in lobbying groups, but according to microeconomics they should be over costs for lobbying. The Corporate Europe Observatory is continuously mapping the corporate lobbying in the EU and according to one of last surveys from November 2012 the aggregate private costs for tobacco lobbying in the European Commission and the European Parliament reaches the amount of €5.3 million p. a.<sup>15</sup> This amount is officially declared in the Transparency Register together with 9 tobacco companies and 22 tobacco industry lobby groups, which have active lobbyists in the European Commission and in the European

Parliament. This amount of money can be very gross indicator of possible public overproduction requested by corporations in order to cover private costs for lobbying. The Corporate Europe Observatory turns the attention to at least two important facts. First, the register is not mandatory and it does not cover especially PR firms and law companies involved in tobacco lobbying for tobacco industry. Second, the real private (corporate) costs for lobbying (and additional costs for the EU budget) are probably 10 times higher, because official lobbying expenditures in the EU Transparency Register are unrealistically low.<sup>16</sup>

Relying on lobbyists' services only carries risks e.g. in form of moral hazard in the principal-agent relationship. It results to potential non-effectiveness in allocation paid by the tax payers. It is arguable, wheather additional public expenses on actions enforced by lobbyists bring more social profit than social costs for targeted groups of these activities, especially for the EU tax payers.

## CONCLUSION AND SUMMARY

The paper deals with analysis of the lobbying regulation in the European Commission and the Parliament. Lobbyists are perceived in the European institutions as the providers of professional information and they present a bridge between civil society, the public and the Brussels institutions. The media still don't focus on the European Parliament's or Commission's activities or on the work of Parliament Members or officials. The public has so little information on functioning of the European institutions. MEPs and EC officials in turn miss the feedback from the civil society. The interest groups and lobbyists are therefore welcome in the institutions. On the one hand, they provide the desired information and feedback of the European activities and policies, on the other hand, the lack of attention of the European public contributes to the lack of transparency in the decision-making process in European institutions. In the fight against unfair practices and corruption the European Parliament has advanced more than the European Commission. The regulation process started in both institutions almost at the same time, however, the development is different. The Parliament is the main initiator of the process of regulation and has regulated the access to the Parliament for all interest groups in the *Rules of Procedures*. Interests groups but also Members of the European Parliament have to observe the binding *Code of Conduct* under the Rules of Procedure.

The European Commission attempts since 2005 to strengthen the transparency in the decision-making process. In June 2008, a voluntary register of lobbyists was launched. There are different opinions about its functioning. Lobbyists consider it as a success, non-governmental organizations and some experts complain about the low quality of the information in the registry and ambiguity of rules. The introduction of a mandatory register can not be expected in the near future, as the Union is pushed to solve more burning problems and institutional issues.

The mutual relationship between MEPs and lobbyists (principals and agents) contains strong risk of moral hazard and has had strong economical consequences for the European economy. It affects especially the EU economic performance and the growth of public sector. Despite of the first Code of Conduct ever, the authors suggestions can be focused more on mandatory register's introduction in the future and especially on more transparent declarations of real costs for lobbying activities. These steps should be implemented in the first phase for another increase in transparency of lobbying profession at the EU level.

## Abbreviations:

MEP- Member of the European Parliament

EC- European Commission

15 Mapping the tobacco lobby in Brussels: a smoky business, [online]. [cit. 2012-11-20]. Available on the website: <<http://corporateeurope.org/publications/mapping-tobacco-lobby-brussels-smoky-business>>.

16 ARAUZO, E., HOEDEMAN, O., WESSELIUS, E., Dodgy data, [online]. [cit. 2013-01-08]. Available on the website: <<http://www.alter-cu.org/sites/default/files/documents/Dodgy-data.pdf>>.

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