

LOBBYING IN THE EUROPEAN UNION AND THE CZECH REPUBLIC

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Abstract

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Transparent lobbying is a natural and desirable part of the functioning of each democratic state. The paper analyzes the specific ways, perception and regulation of lobbying in the European Union and the Czech Republic. In the European Union it focuses mainly on two institutions which are under pressure of the lobbyists, the European Commission and the European Parliament. Furthermore, paper presents the situation in the perception and regulation of lobbying in the Czech Republic, and clarifies several unsuccessful attempts to regulate lobbying. In conclusion paper compares specific lobbying environment and regulation in the European Union and the Czech Republic and formulates recommendations for the Czech lobbying practices.

lobbying, EU, European Commission, European Parliament, self-regulation, the European Transparency Initiative, The Czech Republic, anti-corruption strategy, corruption

The article freely follows the article Lobbying in the European Union: Regulation and Public Sector Economics Perspective.¹ After introduction of the lobbying in the European Union it focuses on the comparison with the regulation process and perception of the lobbying in the Czech Republic.

Transparent lobbying is a natural and desirable part of the functioning of democratic political system. 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. Legal regulation helps cultivate lobbying activity and contributes to the formation of better quality and more transparent decision-making. Transparency in decision-making process further leads to greater public confidence in politics.

Lobbying is becoming hotly contested as well legitimate way to affect legislation. Social, political

and legal science and part of the institutional economists consider lobbying as very positive, welcome and as a legitimate part of any democratic system. The decision-makers or legislators simply do not have all information which is needed to make a well-balanced decision or to approve a bill with regards to all interest groups which will be affected. The interest groups serve as an information providers. Similar position is hold by the European institutions, notably by the European Commission.

On the contrary, among mainstream economists there is a widespread belief, that lobbying is something negative in economic process. Economists speak about the forced demand, which causes allocative inefficiency. This allocative inefficiency grows from the asymmetry of information between lobbyist and legislator. Lobbyists can provide information resulting in higher public spending on specific activities of the public sector, which bring only benefits for the corporation itself. The final product, and the price per unit of production is so unreasonably increased.

¹ DVOŘÁKOVÁ, D., PETRŮJ, M., 2013: Lobbying in the European Union: Regulation and Public Sector Economics Perspective, In: Acta Univ. Agric. et Silv. Mendel. Brunen., 61, 2: 327–333. ISSN 1211-8516.

The price for this overproduction also expresses the extent of social costs for the public. In addition to the overproduction, it is also possible to speak about parallel effects in the form of extra quality public goods or unsolicited innovation for voters.²

MATERIALS AND METHODS

The main materials and methods used are literature and electronic data research on the European and Czech lobbying and qualitative analysis of these data, resources, as well legal norms relating to lobbying. The contribution uses theoretical political, legal and institutional economics approaches. The contribution does not address the negative effects of lobbying on the social optimum. It introduces specific ways and regulation of lobbying in the European Union and the Czech Republic. It performs and formulates recommendations on the basis of qualitative document analysis.

RESULTS AND DISCUSSION

1 Lobbying in the European Union

The real modern lobbying in the EU is associated with the 80s of the 20th century.³ 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. 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 Single European Act and the following primary European treaties opened a new space for the interest groups, which weren't limited by the national arena anymore. The quantity of lobbying and its study expands proportionally with closer European integration, along with higher level of transferring powers to Brussels. Gradually Brussels became the largest lobbying centre in Europe.

The European institutions give a warm welcome to lobbyists. Essential to the European lobbying is to be known, transparent, visible, to have worked out analyses, to be flexible and able to form targeted coalition and to make compelling arguments. Lobbying takes place in public and is well visible.

On the contrary in the Czech Republic lobbying is considered as something negative what happens rather in the background and many entrepreneurs even do not want to talk about they are lobbying for something.

In the European Union it is about a public lobbying where you need to make your voice heard as much as possible and not about a secret conspiratorial meetings and discussions behind closed doors related to the transfer of suitcases full of money as many people in the Czech Republic imagine. Lobbyists in the EU need to be known and have a good name. Register of lobbyists is therefore considered rather as the promotion and demonstration of reliability and quality. Lobbyists in Brussels simply must have instead of suitcase of money suitcase of arguments.

1.1 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 the legislative initiative, which requires the activity of the European Commission in many areas. The European Commission offers an opportunity to influence the legislative proposal from the very beginning. It is also attractive because the interests are highly welcome and appreciated by the Commission. Interests serve as an information source from a particular sector.⁴

The Commission has long been the centre of the European lobbying with but a minimal regulation. In 1999, as the President Jacques Santer's affair broke out, the Commission was accused of bad management of financial funds and Jacques Santer was forced to resign. The new Commission headed by Roman Prodi responded quickly and adequately to this corruption case by adoption of the *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* 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.

The biggest achievement so far by the Commission in the regulation of lobbying is the release of

2 BROWN, C. V., JACKSON, P. M., *Public Sector Economics*, Wiley-Blackwell 1991, ISBN 978-0631162087. More about the topic economic perspective of the European lobbying see: DVOŘÁKOVÁ, D., PETRŮJ, M., 2013: Lobbying in the European Union: Regulation and Public Sector Economics Perspective, In: *Acta Univ. Agric. et Silv. Mendel. Brun.*, 61, 2: 327–333. ISBN 1211-8516.

3 MAZEY, S., RICHARDSON, J. Ed., *Lobbying in the European Community*. New York: Oxford University Press, 2000. ISBN 9780198277897.

4 DVOŘÁKOVÁ, D., PETRŮJ, M., 2013: Lobbying in the European Union: Regulation and Public Sector Economics Perspective, In: *Acta Univ. Agric. et Silv. Mendel. Brunen.*, 61, 2: 327–333. ISSN 1211-8516.

the *European Transparency Initiative* in 2005 by Commissioner Siim Kallas. Under the *Transparency Initiative*, the European Commission ran 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.⁵ 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 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.⁶ Meanwhile the Commission continues to rely on the principle of self-regulation on the part of interest groups.

1.2 Lobbying in the European Parliament

Similar 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 takes 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.⁷

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. College of Quaestors is then charged with financial and administrative matters affecting members.⁸ 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 to express their opinions.

Another channel where the lobby groups might assert their interest are intergroups. The intergroups are characterized as discussion clubs of deputies with experts and lobbyists. The meetings are held on an informal basis and don't 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.⁹ Chairs of intergroups are required

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.

6 Transparency Register, [online]. [cit. 2012-10-18]. Available on the website: http://europa.eu/transparency-register/index_en.htm.

7 DVORÁKOVÁ, D., PETRŮJ, M., 2013: Lobbying in the European Union: Regulation and Public Sector Economics Perspective, In: Acta Univ. Agric. Silv. Mendel. Brun., 61, 2: 327–333. ISSN 1211-8516.

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

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>.

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.

1.2.1 Regulation of lobbying in the European Parliament

European Parliament became during the '80s the target of a growing number of lobbyists, thus regulation was required and later in 1995 accomplished by the insertion of new paragraphs to Article 9 of the Rules of Procedure. The main document regulating lobbying in the European Parliament is the Article 9 in the *Rules of Procedure*, 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. 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.¹⁰

In December 2012 a new Code of conduct for MEPs was endorsed. 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.¹¹

2 Lobbying in the Czech Republic

The regulation of lobbying in the Czech Republic is relatively new topic. Public opinion consider lobbying as something negative which is often associated with corruption and bribery.¹² The need to regulate lobbying is related to this serious problem. According to the Corruption Perception Index, which annually assesses 176 countries, the Czech Republic places for many years around 54th position, which is the same result as states like Latvia, Malaysia and Turkey.¹³ Transparency International has consistently emphasized the poorly functioning government, poor functioning of political parties and uneffective anti-corruption policy.

2.1 The current situation regarding regulation of lobbying

The first attempt to regulate lobbying in the Czech Republic was taken in 2004 after the corruption case "Kořistka". The social democrat deputy, former chairman of the Czech chamber of deputies Mr. Lubomír Zaorálek prepared the Ethical Codex of Parliamentarian. The proposed regulation was very soft. The lobbyist should register in the Parliament and it was not obligatory to sign this codex, but the deputy promised to meet only with registered lobbyists. The sanctions for breaching this codex were more moral than financial – a public apology on the plenary session of the Chamber of Deputies. Even though very soft regulation this attitude was refused by the Parliament in November 2005 as uneffective.¹⁴

Another draft was proposed by social democrats Mr. Bohuslav Sobotka and Mr. Jeroným Tejc in Mai 2005. The proposal contained a definition of lobbying and lobbyists. It sought to create a statutory register of lobbyists. Lobbyists would also be obliged to report to the Ministry of Interior on the lobbying contacts made within certain period. This draft included financial sanctions for both lobbyists

10 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>>.

11 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.

12 Otáhal, Wawrosz and Palát focused deeper on the issue of corruption in the article: OTÁHAL, T., WAWROSZ, P., PALÁT, M. What is the Contribution of the Theory of Redistribution Systems to the Theory of Corruption? *Národohospodářský obzor*. 2013, 1, ISSN 1213-2446.

13 The Corruption Perceptions Index ranks countries based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. A country's rank indicates its position relative to the other countries included in the index. The least corrupt countries in the world include constantly Denmark, Finland and New Zealand. At the other end of the scale end Afghanistan, North Korea and Somalia. Available on the website: <http://www.transparency.org/cpi2012/results>.

14 ŠPOK, R., WEISS, T., KRÍŽ, J., Regulation of Lobbying in the Czech Republic. History, Debate and Perspective, Available on the website <http://www.europeum.org/en/freedom-security-justice/132-analyses-articles-comments/1736-regulation-of-lobbying-in-the-czech-republic-history-debate-and-perspective>.

and lobbied persons (from 5,000 CZK for missing a deadline for reporting to 100,000 CZK for some more serious insufficiencies). The proposal was rejected by the right-wing deputies and returned for revision. The revised proposal was submitted on the 9th December 2009 by the social democrats Mr. Bohuslav Sobotka and Mr. Jeroným Tejc, the Greens' deputies Ondřej Liška and Věra Jakoubková and by the Communists' deputy Paul Kováčik. This proposal was approved by the Chamber of Deputies, however it was rejected on the 23th June 2010 in the Senate. The Chamber of Deputies didn't revote due to the election in Mai 2010.

As far as support a lobbying act, the Czech political scene remains clearly divided on the critical right and left (which was joined by Greens), which supports the proposal. Critics claim that such a complex proposal should be worked out by the government itself rather than by opposition and there is also a traditional dispute over the definition of lobbyists and setting penalties. Furthermore, the right-wing criticism focuses on the register of lobbyists which should not be compulsory but voluntary and the overall regulation should be based on self-regulation.

On the 5th January 2011, the Government adopted the *Strategy of the Czech government in the fight against corruption for the years 2011 and 2012*, prepared by the Ministry of Interior. According to this Strategy, the Ministry of Interior should prepared to 31. December 2012 an analysis of the

complex legislation on lobbying. The performance indicator is in the Strategy set out as follows: *submit to the government analysis that reveals what type of regulation of lobbying will be most suitable for the Czech Republic. Its aim will be to clarify issues relating to the transparency of the relationship between politicians and civil servants on the one hand, and those involved in lobbying on the other hand, the definition of lobbying, lobbying contact and compulsory registration of lobbyists (register of lobbyists will be accessible on the internet, penalties for non-compliance will be defined by law as well the mechanism of their implementation).*¹⁵

On the 14th July 2011 the Respekt Institute organised in cooperation with the deputy Lenka Andrýsová an expert meeting with non-governmental organizations and think tanks dealing with anti-corruption measures. The result of this wide discussion was to create a comprehensive legislation on lobbying and to make appeals on government to the rapid work on lobbying act.

At present, the issue of lobbying is led by the vice-chair woman and President of the Legislative Council and Chairman of the Government Committee for the coordination of the fight against corruption, Mrs. Carolina Peake. After almost a year of preparation and experts' opinions, after processing and analysis of lobbying, however, in January 2013, Mrs. Carolina Peake and government didn't recommend that an lobbying act would be passed because of number of contradictions and proposed to replace it with other measures.

CONCLUSION

The paper deals with the analysis of the specific ways of lobbying and its regulation in the European Commission, the European Parliament and in the Czech Republic. 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. MEPs and EC officials do not have all information which is needed to make a well-balanced decision or approve a bill with regards to all interest groups which will be affected and they miss the feedback from the civil society. The interest groups and lobbyists are therefore warm welcome in the institutions. On the contrary in the Czech Republic lobbying is perceived highly negatively, as something that is associated with non-transparent and corruptive practices. Despite negative perceptions, high Corruption Perception Index and despite the conclusions of the experts tables and several attempts to regulate lobbying there is still no legal act on lobbying, even not a Code of conduct for the deputies.

In the European institutions the regulation varies. The Parliament 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 relies rather on the principle of the self-regulation, however increasing attempts were undertaken 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.

Due to the high corruption rate and negative perception of lobbying in the Czech Republic an lobbying act would be highly appropriate, however sufficient political support is missing. The possible regulation could use the model of the European Parliament, as well some elements of the attitudes from the European Commission – notably to facilitate the access of the non-governmental

¹⁵ Strategy of the Czech government in the fight against corruption, available on the website: <http://www.mvcr.cz/clanek/boj-proti-korupci-strategievlady-v-boji-proti-korupci.aspx>.

organizations and civil society actors to the Parliament to take into consideration their opinions. In Brussels, a key to successful lobbying is to be well visible, known and transparent. Lobbying is discussed on daily routine. In Czech Republic lobbying is done more in the background, and many entrepreneurs even do not want to admit that they are lobbying.

Abbreviations

MEP- Member of the European Parliament

EC- European Commission.

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