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The evolution of lobbying in the European Union

- Rezumat -

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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. Nevertheless, that took its time.

Lobbying in Brussels was born in the late 1970s. Up to that time, “diplomatic lobbying” at the highest levels remained the rule. There were few lobbyists involved in the system, and except for some business associations, representatives’ offices were rarely used. The event that sparked the explosion of lobbying was the first direct election of the European Parliament in 1979. Up until then the European Parliament consisted of members delegated from the national parliaments. Through that change, EU decision-making became more complex, and companies increasingly felt the need for an expert local presence to find out what was going on in Brussels.

The foundation of lobbying was therefore the need to provide information. From that developed the need to influence the process actively and effectively. The stronger the EU developed from a member-states organization to its own political player in the world, the more policy areas it covered, the more important it became as a lobbying target. With the EU enlargements in 2004 and 2007, this development has taken a further step, bringing in not only a lot more players and stakeholders but also a wide range of different political cultures and traditions.

While on the one hand, this process and the latest lobbying scandals in the U.S. and in some EU member-states have led the EU to push for stricter and more formalized lobbying rules, the EU institutions at the same time have expressively acknowledged the described function of, and the need for, lobbying the EU. Those involved in the legislative process in the EU are — as their counterparts in the U.S. have been doing for many years — increasingly turning to industry representatives, associations, NGOs, and law and lobbying firms in order to obtain comprehensive information on technical, economic and legal issues before making a decision.

The aggregation and articulation of interests is one of the central and broadly researched themes in the political science in the national contexts. In last decades interest intermediation in European Union has become a wide discussed theme, due to the deeper and wider European integration. The interest intermediation has been analyzed from very different perspectives: studies in single policy fields, interest representation in the context of democracy theories and

newly Europeanization studies. Firstly, research focused mostly on institutions and national states but in the last years, the focus shifted to private actors and their impact on European decision-making process.

The aim of this paper was to give an overview on the evolution and growth of this trend, on the recent studies devoted to interest intermediation and lobbying patterns. After the definition of lobbying and description of the actors, this paper relates to the discussion about the democracy (democracy deficit) in the EU and presents the approaches of political science to the phenomenon of lobbying. The chapters 3 and 4 deal with the creation of a European public space, the techniques of lobbying and particularities of EU institutions related to lobbying activities.

For a long time both the political and academic debates have focused on issues of territorial representation, the division of powers, and guaranteeing the individual rights of citizens. More recently, it has been argued that the involvement of civil society organizations in European policymaking may constitute a form of participatory democracy complementing representative democracy (Smismans 2003: 473f). The EU White Paper on Governance has raised some questions regarding the transparency, accountability and representative character of EU interest groups. Some authors argue in this context that organized interests could provide a core contribution to the reduction of the democratic deficit in the EU (e.g. Abromeit 1998; Heinelt 1998; Wendler 2002).

There are different approaches to lobbying. Some scholars see lobbying process as an exchange process, where supply side, the private actors, offer goods (expertise and specific information) in order to influence the decision making. The European Union institutions demand expertise, which they are not able to produce themselves. In this area, scholars discussed long time the way the interest intermediation is organized at European level: pluralist, corporatist or quasi-pluralist. Another approach was to see the interest intermediation as network, which has in every policy new actor constellations. New impulses came up also from social movement research, which recently took in the scope not only mobilizing for protest but also lobbying.

In such a complex policy process it is vital that future studies no longer focus on lobbying in single institutional venues, but instead attempt to tackle the difficult comparative study of interest strategies across different institutional levels (Beyers and Kerremans 2007; Eising 2007). Looking at the demand and supply in tandem, the rise of forum politics and the emergence of a distinct European public policy style helps to explain a 'bandwagon effect' pulling yet more

interest groups into Brussels (Broscheid and Coen 2007).

To sum up, there are different approaches with their advantages and disadvantages, empirical studies in different policy fields but no general theory of interest intermediation at European level.

There is a need for further investigation concerning special groups of actors like non-business actors and the integration of actors from new member states in the interest intermediation process at European level. Moreover, the main task, to develop a theoretically established framework of research hypothesis for the analysis of lobbying behavior is not finished yet.

Besides offering a selective overview of the literature covering the subject of EU lobbying, a theoretical approach combined into an analytical frame, the thesis delivers both the needed tools and assumptions about the formal and informal relations in the EU decision making-system. It furthermore permits a clear vision over the increasing evolution of the lobbying phenomenon, the assessment of the institutional setting for the EU policy-making process, the study of the most important aspects of the lobbying activity in the EU and of the actors active in the Brussels interest intermediation environment.

The thesis offers to demonstrate the evolution of the lobbying activity and its influence over the European Union. It also proposes a framework for possible resolutions of the current situation and improvement suggestions that should contribute to the amelioration of the future lobbying activity in terms of a better access to the EU institutions¹ and an earned recognition. The central question guiding this thesis relates to the ability of lobbyists to participate actively in the EU decision-making process and to influence the EU decision-making arena by making their issues and interests heard in Brussels. This question entails a series of other interrogations that need to be considered in the course of the study in order to provide an inclusive and comprehensive study of interest representation activity in Brussels: What are the characteristic traits of the EU decision-making arena in Brussels? Which actors are the main decision-making bodies and what are their relations to the different interest representations trying to influence

¹ 'Access' is defined in this context as "the channeling or exchange of policy-relevant information" (Beyers 2002: 587) through formal or informal contacts with the EU institutions. However, it should be emphasized that access does not necessarily mean influence. Political actors might gain access to the EU policy-making process without being able to translate this advantage into concrete policy outcomes.

their activity? Which role do the lobbying actors play in this decision-making environment? What opportunities are opened to them and are they able to use them? What challenges do these organisations working at the European level face? And to which extent are these challenges impacting their activity? To which extent are these challenges impeding an efficient and effective representation of EU interests?

In this context it is important to keep in mind that the capacity to engage in EU governance varies between different forms of organisation as well as policy fields and it has thus to be examined on a case-by-case basis (Pleines 2007: 56). Nevertheless, it is not sufficient to focus on only one aspect of policy-making and of the relationships between policy actors in the European multi-level system. The interest representations' activity and behaviour at the EU level should hence also be examined.

The present study concentrates also on the academic perspective of lobbying in the EU which argues that European lobbying is a legal and legitimate practice, present at all levels of EU governance, and that lobbyists are accepted stakeholders in the political decision-making process of the EU (Geiger 2006: 13 and Bouwen and McCown 2007)

Hence, by considering both official EU documents and studies of the EU regarding interest representation within the Union and the literature regarding the EU decision-making process and lobbying in the EU, the thesis presents an original insights and a fruitful contribution in addressing the general and particular aspects.

“Lobbying” is being referred to by both the European Commission (EC or “the Commission”) and interest representation practitioners as being “[...] all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions.” Hence, lobbyists “are defined as persons carrying out such activities, working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units (‘in-house representatives’) or trade associations.” (EU3: 5). Moreover, the present contribution extends the category of lobbyists to those activities which aim at influencing the EU decision-making arena from within and which are carried out by the very personnel of the European institutions. This form of interest representation will be called further on “institutional representation”. Van Schendelen adds a new aspect to the definition of lobbying: “Lobbying is the informal exchange of information with public authorities, as a minimal conception on the one hand, and as trying informally to influence public authorities, as a maximal description on the other hand” (Van Schendelen 1993). Koepl formulates the most

comprehensive definition: “lobbying is the attempted successful influence of legislative-administrative decisions by public authorities through interested representatives. The influence is intended, implies the use of communication and is targeted on legislative or executive bodies” (Koepl 2001, 71).

But the term “lobbying” has acquired negative connotations (see von Alemann and Eckert 2006: 4), as it is believed to bestow “[...] an unfair advantage of those that can afford to carry it out and therefore runs counter to the notion of democracy” (Warleigh and Fairbrass 2002: 2). This image problem of lobbying is mainly caused by the “grey” nature of any intent of influencing EU policy-making (Leif and Speth 2003: 7), meaning that this activity is often associated with uncontrolled political manipulation, or even corruption (Woll 2006: 34).

We argue that lobbying and other forms of interest representation have become crucial to all those who seek to influence EU decision-making.

The 279 directives that were to be passed before 1992 suddenly turned the EU common policy formulation into an important political arena. The growth of direct lobbying of the EU institutions has also contributed towards developing a European political system independent of the member states. All the important actors in European politics, e.g. businesses, trade unions and other interest groups, local and national authorities, have become more and more focused on the EU system (Andersen and Eliassen 2001: 50).

The purpose of the study determines the methodology that has to be chosen for the following analysis. While the overall character of the study is theoretical, the methodology applied to pursue the outlined goals consists of a systematic and critical assessment of both the EU decision-making processes and the roles played by the European lobbying in this process and its importance to the Brussels intermediation environment. The analysis proposes a theoretical framework that relies on an Interest Intermediation System as being a mix of pluralism, corporatism and policy network.

Pluralism, which is mainly based on the early works of David Truman (1951) and Robert Dahl (1961), has guided American studies on interest groups during the 1950's and 1960's, and it has largely influenced European research. Its main features were the interpretation of the role of the state as rather passive, providing the arena within which a competition between equal interests takes place, and the role of organised interests as competitive in a market-economical sense around the power of influencing the state of a vast number of interest groups. For every interest, a counter-interest was expected to exist. Finally state-interest group relations were

regarded as yielding indirect and non-binding contributions to decision-making, with the competitive nature of debating enabling the input of all aspects involved-interests are part of the debate, but they are not involved in the final decision-making. The competing groups lobby for their issues – lobbying is an essential element of pluralist structures.

It was however quickly criticised in comparisons with empirical observations. Not every interest was accompanied by a counter-interest, and the entire landscape of interest groups was characterised by the presence of a certain type of activists.

Mancur Olson (1965) developed the most devastating argument against pluralism. He brought in the rationalist argument of free riding. Potential group members would rather free ride than join a group if there were no selective incentives. Since small and specific groups were better able than large and broad-interested groups to provide such incentives, and since these groups were business interests rather than public interests, the difficulties of public interests in mobilising were made plausible and the pluralist assumption of public interests developing as counter interests to business was contested.

This argument had several consequences. One was that an altered form of pluralism developed: neopluralism. The neopluralist concept addressed the problem of upper-class accent. In its modified form, it was also found to be useful in the European debate. The neopluralist approaches consider the fragmented, decentralised and unequally distributed power structures of western systems by assuming that not all groups manage to raise awareness for their positions in the same way, but the possibility to do so is still open even to interests that have been neglected. The potential can lead to stronger efforts for participation by the actors involved. This alteration still failed to explain why public interests mobilise, or how interests' representation of public interests is generated.

The corporatist model, in contrast, assumes that there are only a small number of hierarchically organised and functionally divided organizations. They are representative for their respective categories and enjoy preferential treatment on the part of the state in the decision-making process. These interest groups do not have to lobby in order to be included; instead, they are integrated in public decision-making by the state.

Neocorporatist argumentation focuses on steering and on output aspects of modern political systems, whilst pluralist theories concentrated on the input side. In neocorporatism, the state is given an active role, since it incorporates rather than simply meets associations' consultative and decision-making networks (Czada 1994:46). Institutionalised and contemporary

connections are supposed to lead to homogeneous ideas of the common will between the actors involved.

In particular, pluralism and neo-corporatism, which were in competition with each other as concepts at least in the European context, were criticised for the lack of clarity about their function as descriptive or as normative concepts. Whereas the descriptive character was intended to identify the nature of state-interest group relations, the normative element of pluralism was the preference for a free market of interests to lead to a common good, adapting Adam Smith's concept of the invisible hand. The normative element of neocorporatism aims, considering the empirical fact that interests are not equal, to produce an institutionalised exchange of ideas in order to identify representatives of interests.

These models reach their limits when applied to interest intermediation on the European level. The decision-making process there is much more complex than in any national state, with its shared power through different institutions and its multitude of veto points, multi-level and multi-arena governance context, and the huge diversity of interest groups. Patterns of interaction could be at some stages pluralist, at some stages corporatist. A general application of either pluralist or corporatist approaches to the whole system of interest intermediation on the European level seems fruitless. This led researchers to speak about mixed models of interest intermediation or a patchwork of representation modes.

Some previous approaches defined the EU decision making system as rather pluralist in character (Mazey and Richardson 1997; Eising and Kohler-Koch 1994, Ayberg and Schenker 1998), pointing out the large number of lobbying actors and access points. Other approaches took a closer look and pointed out the Commission's tendency to consult interest groups or even create them, thereby rather favouring the neocorporatist perspective (Gorges 1996).

The difficulties in establishing theoretical concepts about the structure of lobbying relations and the lack of information about the way lobbying works may have had another consequence. This refers to the rise of a very different stream of literature that is on the one hand established by practitioners or former practitioners of lobbying, and on the other hand of scholars thinking more sociologically.

Empirical studies, as well as publications of the European institutions yield evidence that the dialogue with lobbyists is largely seen as an exchange by the institutional actors, which means that the system is open to external input.

The outlines on practitioners' contributions to the research already deliver some

arguments for two further specifications of research: policy network analysis and exchange theory. Since both the pluralist and the neocorporatist approach lacked a sufficient consideration of the potential impact of environmental factors, the theory of Policy Networks developed whose importance in the academic debate is increasing. It assumes an increasing impact as a result of the growth in number of organised interests. Such interests are based on the tendency of sectorisation and fragmentation of political decisions, which results in redistribution of negotiating and implementing resources between governmental and non-governmental actors leading to the establishment of networks (Michalowitz 2004: 34).

Policy network analysis encompasses the complexity of European decision-making largely than the other approaches.

Policy-network analysis takes the focus away from the categories of state and organised interests as such, and concentrates on the intermediating processes between sub-parts of them, assuming exchange relations. It takes into account that decisions and activities of collective and corporate actors increasingly influence policy areas. Policy-network analysis provides various ways of how to analyse, structure and interpret interaction between governmental and non-governmental actors, it is utilised as a methodological, typological, analytical or theoretical device. Networks are first defined in their limits, with the scope of the network, governmental and non-governmental actors, and the linkages via which they interact. Measures for these limits are the number and type of actors, the main network function, and the power balance within the network.

Since European decision-making cannot be characterised as being non-hierarchical and pursued by actors with common interests however, it might only be possible to speak about network-like features at the EU level. More fundamentally, the policy network approach has been criticised for delivering trivial answers, and for reductionism. As far as its application as explanatory theory is concerned, this may be right. It is necessary to reduce these factors to the most important ones. This is the only way to come to conclusions that can demonstrate why models can actually be seen as models, or, by designing comparative tests that include a relatively simple set of key variables, explanatory value for situations beyond the specific subject of analysis can be extracted (Michalowitz 2004: 35).

Policy-network analysis can only provide for a loose framework for empirical analysis. As a loose analytical framework, the network approach has helped the development of clearer definitions of the components of lobbying structures, and it has helped to build hypotheses about

their impact on the character of actor-relations.

Studies of lobbying can be divided into three major groups (Andersen and Kjell 1996: 49). A first group of studies looks at the role of national interest groups attempting to influence the EU decision-making system as an extension of national policy-making. The first studies of this kind date from the late 1970s (Auken, Buksti and Sørensen 1974; Kirchner 1977). During the 1980s there were also a few similar studies (Kirchner 1981; Buksti and Martens 1984; Sidjanski 1989), and in the early 1990s the interest in such studies with a national focus has increased (van Schendelen 1993; Bregnsbo and Sidenius 1992; Bindi 1994b).

Van Schendelen made the first attempt to provide a systematic description of national differences in the attempts to influence EU policies. Although he discussed theories of lobbying and the development of EU lobbying, his focus was on the articulation of national interests in Brussels. His study covered most EU countries and a couple of the EFTA-countries, where the interest groups try to operate from outside. His chief conclusion is that the attempts to influence the EU are increasingly based on spontaneous lobbying rather than through national power systems (van Schendelen 1994: 275-288).

A second group of studies focuses on both national interest groups' attempts to influence at the EU level and the overall pattern of interest articulation at the EU level. Butt Phillip made one of the first attempts to employ both a national and a European perspective on EU lobbying (1985). Mazey and Richardson (1993) discussed both the European lobbying process and sectoral variations in the lobbying patterns; their book combined academic perspectives with contributions from experienced insiders in the EU decision-making process covering the EU level activities of national and European interest groups but not from an EU political system level.

A third group of studies focuses on the EU-level. This group includes several articles and books, published in recent years, which focus on the practical challenges for EU - Lobbying in the 1990s (Mack 1989; Gardner 1991; Andersen 1992; Collins 1993; Stern 1992; Sasseen 1992) including a recent study by Club de Bruxelles (1994). These guides are often based on an anecdotal approach presented within the framework of strategic interaction and persuasion, though a few display a more systematic approach (Andersen 1992). Of particular relevance, here is *Organised Interests and the European Community* (Greenwood, Grote and Ronit 1992) which deals with lobbying at the EU-level, focusing on the relationship between organised business and the European community. Its aim is to explain how certain forms of interest organisation and

inter-mediation emerge and how the articulation of interest affects the integration of European markets. It explores organised interests in a trans-national perspective, dealing with complex and reciprocal influences exerted between organised interests as well as processes of economic and political internationalisation (Andersen and Kjell 1996: 50).

None of the three types of groups that we have commented upon addresses the systemic aspects of the EU as a new political system, and EU-lobbying as part of it. European Union interest representation in the late 1980s and early 1990s differs from the pattern in national Western European systems in two important ways. It is increasingly based on supranational authority, Europeanisation. Secondly, in the EU system, it is less corporatist and more lobbying-orientated than the national European systems. Whatever the national traditions are, each and everyone who wants to influence EU decisions have to engage in lobbying. In this way, lobbying reflects special features of interest articulation in the Community institutional set-up and decision-making models (Andersen and Kjell 1996: 51).

Few studies have systematically linked the analysis of lobbying to the more general question of democracy and legitimacy in the EU. To the extent that EU lobbying is viewed from the interest group or neocorporatist perspectives this is not surprising. An exception is Anderson (1976, 1977) who demonstrates the lack of a positive underpinning of direct interest articulation. As long as interest group representation was regarded as a supplement to numerical democracy, the problem of legitimacy was less acute.

The constant deepening of European integration makes interest representation at the EU level more complex, requiring lobbyists to develop a multi-dimensional strategy of parallel actions at several levels of governance and to use multiple channels of influence. The already existing complexity of the concept 'channels of influence' has been made even more complex by the fact that the EU-MS and the EU institutions are not only targets and objects of interest representation but also their subjects, since they actively participate in lobbying through the abovementioned 'institutional representation'.

Successful lobbying depends on a series of factors: economic and political importance, the scope of membership, representativity, adequate human and financial resources, internal cohesion and organization, expertise, lobbying skills and strategies (Greenwood 2003). Furthermore, in order to influence the EU policy-making process, lobbyists must employ miscellaneous strategies. Firstly, they must have detailed knowledge of the policy-making process. Then, they have to select their addresses according to the specific stages of the process.

Thirdly, close contacts based on trust and a high quality of information exchange enable lobbyists to get easier access to the main EU decision-makers when the policy cycle makes them the prime target of lobbying activities.

However, the lobbying activities in the EU are often associated to negative practices such as corruption, misuse of authority, dubious methods etc. In this context, the European institutions have sought to regulate the activity of the rapidly increasing number of lobbyists in Brussels. For example, the Commission has recently sought to establish a kind of ‘inner core’ of interest representation. The result of such an approach is a more competitive elite pluralist environment (Eising 2007), where access to decision-makers is restrictive. Moreover, these practices also lead to the development of a “secondary lobbying” within the EU, meaning that the less structured and less influential organizations of corporate actors lobby those assumed to have access to the Commission. (PE 2003: 38f)

Largely 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 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.

Any positive attitude towards lobbying activity should not induce to underestimate the shortcomings that it implies. Not only can interest groups end up with representing the needs of civil society more effectively than political parties, which theoretically should be the representatives of the European peoples, but there is also the risk that only some groups are taken into consideration by EU institutions because of their size and resources. Moreover, the questions of transparency about clients and how money is spent as well as the lack of compulsory codes of conduct, are still there.

Lobbying in the EU is 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 may constitute an important and decisive remedy for the so-called “information deficit” suffered by the EU institutions.

The problem of “democratic deficit” is closely related to the institutional structure drawn by the Treaties and, consequently, the Treaties themselves should put an end to this drawback. The lack of accountability of the Council of Ministers vis-à-vis the EP cannot be replaced merely by more participation of interest groups in the legislative process. On the contrary, lobbying can continue to be a means to increase the trust of the citizens in EU institutions. If citizens feel the EU a far away institutional complex, they do not know how it works and what it does; interest groups can represent a sort of transmission belt between “Brussels” and the European peoples. What is more, the Commission without interest groups would not be able to comply with the duty of legislative initiative envisaged by the Treaties.

Largely, scholars argue that interest groups increase both kinds of legitimacy. On the one hand, they constitute the ‘natural constituency’ of the Commission and Parliament who can rely on their information; on the other hand, they promote European integration as they persuade national governments to consent to broad EU competences and they contribute to legitimize the EU in the eyes of the citizens.

Interest groups play also the role of replacing the lacking European-wide political representation: European political groups do not always effectively represent the different European problems and in some cases, they do not even perceive them because they are too far from the grassroots. Interest groups, on the contrary, especially trade federations and European associations, can bring truly European priorities to the attention of the EU institutions. Whereas political representation is weak, interest representation is strong and effective. However, in Europe, there is no link between political parties and interest groups in terms of involvement of the latter in electoral campaigns; this may seem a contradiction, but it is due to the negative idea that prevails in Europe with regard to lobbying.

Lobbying has also contributed to the affirmation of an independent political system from that of the Member States and has increased the autonomy of the EU over the interests of national governments.

Although this work 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. Not only what Commissioner Kallas has highlighted, i.e. the lack of transparency particularly by profit-making organizations,

but also that not all interest groups are heard by the Commission.

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

As stated many times in this thesis, 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 that they bring to the table. Therefore, the whole structure is 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.