

LOBBYING IN THE EU POLICY-MAKING ARENA

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ABSTRACT. Lobbying is part of a democratic political life. Today, EU lobbying, which is extremely active in democratic systems, is considerably more structured, institutionalized and regulated than at the beginning of the European construction. It represents an essential component of the relation between decision-makers and interest groups based on the citizens' fundamental right to bring their contribution to the policy-making process. Governmental actors need expertise for creating and implementing public policies, while interest groups need access to key decision-makers aiming to influence political decisions.

In this article, the author proposes an analysis of lobbying and EU policy-making as the relations between decision-makers and different interest groups are essential for developing a more transparent and efficient decision-making process.

Keywords: EU lobbying, EU policy-making, influence, interest groups, decision-makers

EU lobbying is perceived as legitimate and necessary because all businesses in the corporate area are influenced by the political acts and by the measures, the decisions taken by governments. Tomorrow's law is, therefore, today's base for global business strategies. Politicians cannot govern without taking into account industry and other societal actors.² In these conditions, those having a decisive role in the EU legislative process direct their attention considerably towards representatives of industries, associations, NGOs, law firms, lobbying consultancies etc. The aim is to obtain comprehensive information about technical, economic and legal

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² Andreas Geiger, *EU Lobbying handbook, A guide to modern participation in Brussels*, Berlin, Helios Media GmbH, 2006, p. 15.

matters, before decisions being taken, while this enables stakeholders to provide the legislators with constructive and substantive contributions during the decision making. European lobbying is a mutual political consultation process, where legal and societal actors exchange information about the discussed policies.³ "An issue ignored is a crisis invented" said Henry Kissinger⁴. An as good as possible management of the issues of interest is essential for lobbying. In this respect, the function of a good management is "to identify and solve potential crisis issues as early as possible".⁵

The first phase in such a situation involves scanning as many issues and opinions as possible, and obtaining a broad perspective on the issue under review. It is interesting to note the so-called 'discipline of preventive lobbying', meaning the possibility to contribute to potentially problematic issues right from the start. These types of lobbying can prevent certain trends, opinions from appearing on the political agenda.⁶ Public policy making requires "an on-going activity, with interest groups intervening at those points and moments that seem to be more possible for influencing".⁷ Obviously, for becoming part of the public policy mechanism, political interest groups need access to governmental institutions where decisions are prepared. "Even though the term often has negative connotations, in the democratic world the lobbyist work is essential for the policy-making".⁸ By noticing the relationship established between the access itself to public policy-making and the success obtained, David Truman says that "the result of effective access is a governmental decision"⁹.

The life cycle of a public policy usually starts with raising a social problem (phase 1), which can attract public attention (phase 2), thus becoming a political issue (phase 3); this problem can be placed on the official agenda (phase 4) and become the subject of a political decision (phase 5). Later, once passed, the law can be implemented (phase 6), monitored for establishing its efficacy (phase 7) and, where appropriate, discussed, legally supported (step

³ *Ibidem*.

⁴ Joos Klemens, *op. cit*, p. 46.

⁵ *Ibidem*.

⁶ *Ibidem*.

⁷ Carol Greenwald, *Group Power, Lobbying and Public Policy*, New York, Praeger Publishers, 1978, p. 266.

⁸ Raj Chari, John Hogan *et al*, *Regulating lobbying: a global comparison*, Manchester University Press, 2011, p.1.

⁹ *Ibidem*, p. 327.

8).¹⁰ Chari and Kritzinger mention a first stage, the 'initiative phase', when the institutional framework itself is being shaped, a framework responsible for thinking of new required rules, regulations, directives. The 'negotiation phase' then follows – meaning the dialogue that takes place between the two categories of actors involved in the process: public servants and actors in the private sector. In the first category there are the actors from the European institutions (like Council of Ministers, composed of ministers of national governments, the European Commission, whose commissioners represent, in theory, the Union's interests as a whole; the European Parliament, composed of members elected from each member state for a term of five years, the European Court of Justice - the highest judicial system of the European Union).¹¹ Actors in the second category - and private sector lobbyists - include stakeholders having economic, professional, public interests, aiming to influence institutional actors, especially during the negotiation of policies.¹²

The two phases of the policy formulation process - the initiative and negotiation - can take different forms, depending on the general context in which they are prepared: if the main role goes to the Commission, this shows the importance of the supranational governance; if the Council has a key role, then intergovernmentalism has an increasing importance; if several interest groups are allowed to intervene in the negotiations, this suggests pluralism; in case especially business groups are involved in developing policies, together with the EU executive, this means corporatism; if only economic, capitalist actors act to the detriment of other social interest groups, this is linked to the perspective of the dominant economic class.¹³

For being successful, lobbying must start before the societal actors' interests are endangered as a result of the political decisions taken. Therefore, through his actions, it is natural and welcome for a lobbyist to get a positive role in the legislative process by providing constructive contributions to the European Commission with reference to the legislative proposals which it initiates.¹⁴ A proactive lobbying is, therefore, preferred – in this case, the lobbyist becomes a permanent actor of the arena, increasing the chances that policy makers take into account his views or suggestions.¹⁵ The lobbyist can

¹⁰ Andreas Geiger, *op.cit.*, p. 89.

¹¹ Raj Chari, Sylvia Kritzinger, *Understanding EU Policy Making*, Pluto Press, London, 2006, p. 6.

¹² *Ibidem*.

¹³ *Ibidem*, p. 8.

¹⁴ Andreas Geiger, *op.cit.*, p. 90.

¹⁵ *Ibidem*, p. 91.

gain a comparative advantage in case he gets relevant positions in the EU decision-making process as, for example, becoming member of an advisory committee or group of experts of the Commission.

Expert groups are numerous (there are about 2,000 such groups), being composed of experts coming from public or private interest groups, and providing a type of semi-formal advice without formal decision-making power.¹⁶

Getting a position in an association with a profile corresponding to his field will provide the lobbyist a greater visibility, and it may increase the chances for his lobbying actions to be successful. Obradovic and Alonsa Vizcaino note, even though civil interest groups were involved in the decision making process of the Union since its creation, that incorporating them in a structured manner, in shaping European public policy is relatively recent (...). By formalizing the involvement of civil groups in designing and implementing European policies, it is intended to improve the effectiveness and legitimacy of the system.¹⁷ Interest groups can contribute to the political agenda setting and policy formulation in that it provides information to both citizens and government officials. Interest groups shape opinions and act as an interface between citizens and the representative government. They also can act as agents implementing decisions or monitoring the correctness of the implementations performed.¹⁸

By analyzing the phenomenon of interest representation, one can obtain relevant information for understanding how public policy-making changes over time and depending on the policy area in question: "(...) it can help show whether and how various rules and institutional structures constrain and shape actors' ability to influence the results of the decided policies".¹⁹ All these can be found in relation with what Schmitter calls a 'new kind of political system'. The decision-making within the EU is 'unique and fluid', creating an unpredictable and multi-level environment' for this.²⁰ There is the so-called phenomenon of 'institutionalization' of the activity led by the

¹⁶ *Ibidem*, p. 97.

¹⁷ Daniela Obradovic, Alonso Vizcaino *et al*, *Governance requirements concerning the participation of interest groups in EU consultations*, in *Common Law Review*, Kluwer Law International, 2006, p. 1049-1050.

¹⁸ Karolina Karr, *op. cit.*, p. 74.

¹⁹ Alex Warleigh, Jenny Fairbrass, (eds.) *Influence and Interests in the European Union: the New Politics of Persuasion and Advocacy*, Europa Publications, Taylor&Francis Group, 2002, Chapter I *The New Politics of Persuasion, Advocacy and Influence in the European Union*, p. 4.

²⁰ Sonia Mazey, Jeremy Richardson, *op. cit.*, p. 6-7.

lobbying groups in the European arenas where public policies are developed. A EU lobbying system, that was rather chaotic and open, was progressively replaced by a more formal one, regulated and, in some cases, less open, being based on an organizational culture, particularly at the Commission's level, which makes of a consultation a primordial norm.²¹ For Gorges, the configuration of the institutional framework in which public policies are developed can have a significant impact on the way private interests are organized.²² For this reason, private actors choose a certain type of strategy that is consistent with the existing institutional context.

In this respect, as Tenbucken believes, one of the most important variables is the distribution of decisional power between the European institutions (...); different power distributions require different strategies – based on these, interest groups organize their lobbying process in an effective way.²³ Institutions "do not determine behavior, but they can encourage or constrain it substantially"²⁴, while "a different logic of influence opens different access channels towards European institutions".²⁵ Since the process of policy formulation in the EU takes place at several levels (regional, national and supranational), "interest groups have adapted to the situation and are present at all three levels at the same time".²⁶

Traxler and Schmitter talk about a 'logical pluralism'²⁷, encouraged by the multi-layered aspect of European policies, determining the diversification of lobbying strategies and their adaptation to the complexity of the policies developed. "There is no general prescription for the representation of interests, and companies cannot rely on a single strategy to achieve the desired result; they must act at all three levels in a variety of forms."²⁸ In the decision-making process, a strongly and formally institutionalized system has been consolidated, but, at the same time, continuous negotiations between the

²¹ *Ibidem*, p. 123.

²² Michael Gorges, *Eurocorporatism ? Interest Intermediation in the European Community*, Lanham, University Press of America, 1996, p. 66.

²³ Marc Tenbucken, *op. cit.*, p. 68.

²⁴ Fritz Scharpf, *Political Institutions, Decision Styles and Policy Choices*, in Roland Czada, Adrienne Windhoff-Héritier, *Political Choice. Institutions, Rules and the Limits of Rationality*, Frankfurt, Campus Verlag, p. 56.

²⁵ Marc Tenbucken, *op. cit.*, p. 70.

²⁶ *Ibidem*.

²⁷ Franz Traxler, Philippe Schmitter, *The Emerging Euro-polity and Organized Interests*, in *European Journal of International Relations*, Vol. 1, No. 2, 1995, p. 208.

²⁸ *Ibidem*, p. 74.

involved actors are required.²⁹ Hence, an existing 'tension', in the sense that the policy-making must follow formal decision rules (respecting certain institutional limits) and also exceed institutional divisions to negotiate outcomes.³⁰ Interest representation is perceived as "collective activity conducted by organizations such as interest groups / pressure groups, rather than actions of individuals (who normally express their preferences by voting in local, regional, national or European elections)."³¹

"Interest representation has become crucial for all those seeking to influence the EU decision-making process, including actors within national and sub-national institutions and governments (...); persuasion is the way that ensures influence, and interest representation itself is an evolving practice that, at the same, is shaping and is being shaped by the development of the European Union".³² The studying of the phenomenon of interest representation can reveal much about the power relations existing in the EU: even if the European Union is a very complex and variegated system (...), it is still possible to understand how decisions are made, and by whom.

Thus, it can be analyzed how, through the representation of interests, decisions are being shaped, or how actors, in various stages of the decision-making mechanism, generate a certain impact on decision makers and the strategies used by each. So, it can be seen how actors in national, regional or local governments interact with each other in the EU.³³ Graham Wilson defines lobbying groups as "organizations separate from government, although often in close contact with it, that seek to influence public policies. As such, interest groups provide the institutionalized liaison between the government or state, and major sectors of society".³⁴

The interaction between the government and the many societal interests takes place through interest groups. Therefore, analysing them is of major importance for understanding the relationship between state and society. Interest groups not only provide an alternative to voting as political participation, or to being member of a political party, but, in some

²⁹ Thomas Christiansen, Simona Piattoni, *op. cit.*, p. 9.

³⁰ *Ibidem.*

³¹ Alex Warleigh, Jenny Fairbrass (eds.), *Influence and Interests in the European Union : the New Politics of Persuasion and Advocacy*, Europa Publications, Taylor&Francis Group, 2002, Chapter I *The New Politics of Persuasion, Advocacy and Influence in the European Union*, p. 2.

³² *Ibidem*, p. 3.

³³ *Ibidem*, p. 4

³⁴ Graham Wilson, *Interest Groups*, Basil Blackwell, Oxford, 1990, p. 1.

ways, they can provide a higher form of participation. Interest groups are helpful because they raise issues which are too detailed or specialized to be the concern of political parties or election campaigns.³⁵ The institutionalization of interest groups relies on collective action, meaning the set of behaviors based on involvement, outreach, advocacy and negotiation, through which social interests are formed, and political influence is being exercised. It is, therefore, about a complex range of differentiated behaviors, of individual or collective actors, while, most often, they associate cooperation with conflict (...)³⁶. With the evolution of the European construction and especially with the Single European Act, public action is profoundly transformed by diverse normative sources that define its shapes.

The legal area in which it takes place is not a national one any longer, but European, where community law comes first over the laws and constitutions of the member states.³⁷ European interest groups mostly act in "phases in which the European competences have a significant expansion, and when the interface between government decisions and interest groups' activities is more sensitive".³⁸ Lobbying is perceived and analyzed in direct connection with the democratic system of one society. Attention is being focused on the way in which interest groups can be integrated into the representative democratic systems "without destroying the democratic foundation of the decision-making mechanism".³⁹ In this context, "it is important to note the possible role and impact of the interest groups' involvement in a democratic system, both theoretically and in terms of actual experience, through lobbying in the European Union".⁴⁰

It is necessary that there is a balanced integration of lobbying interests within the processes and structures of the representative democratic governance. This integration should, on the one hand, ensure that the various interests found in society can be organized and represented, in a substantial way, towards decision-making institutions and their officials, and help resolve a growing number of complex issues. On the other hand, democratic principles should be protected from the dominance of special interests, which, otherwise, would mock freedoms offered by democracy, and could lead to

³⁵ *Ibidem*, p. 2-3.

³⁶ Richard Balme, Didier Chabanet, *op. cit.*, p. 27.

³⁷ *Ibidem*, p. 44.

³⁸ *Ibidem*, p. 49.

³⁹ Karolina Karr, *op. cit.*, p. 9.

⁴⁰ *Ibidem*.

political decisions that would not put all interests in balance, nor would take into account, in one way or another, the common interest.⁴¹

Ideally, lobbying should be 'integrated, in a sustainable manner, in a representative democracy', while the concept of 'legitimate lobbying interests' in a democratic society should be developed; lobbying should be perceived as a 'pertinent part of the modern political system'.⁴²

The existence itself and the substantial participation of interest groups in the decision-making processes are seen as signs of a functional democracy (...). The issue is not whether lobbying is needed – in fact, the relevant point is analyzing the way lobbying should be exercised in a democratic society.⁴³ As a matter of fact, Klemens considers that modern societies and democratic governmental systems are unthinkable without the aggregation, representation and the planning of interests (in an organized manner), while lobbying is not only necessary, but democratically legitimate.⁴⁴

The new EU governance "makes European politics more legitimate by strengthening its democratic structures and processes."⁴⁵ In this context, the concept of 'civil society' has gained unprecedented popularity in the European Union politics⁴⁶. The factors behind this are the 1999 crisis, when there was a 'departure' of the Commission, an extremely low participation at the European elections, an increase of euroscepticism in that time. On the basis of these efforts to strengthen democracy, it is expected that citizens, civil society and non-governmental organizations play a prominent role, since their active involvement is considered to be necessary to remedy varied defects or deficiencies (presumed or real).⁴⁷ The reason why the notion of 'civil society' 'is not clearly defined'⁴⁸ is "the groping of the European institutions in their attempt to decide who should be included in the policy-making and how".⁴⁹

Civil society organizations are valuable in relation with politics based on their ability to nurture civic prospects in the policy-making process⁵⁰, while "representativeness is one of the central issues in the

⁴¹ *Ibidem*, p. 11.

⁴² *Ibidem*, p. 15.

⁴³ *Ibidem*, p. 73.

⁴⁴ Joos Klemens, *Lobbying in the new Europe*, Wiley-Vch Verlag GmbH&Co.KgA, 2011, p. 43.

⁴⁵ Rebekka Goehring, *op. cit.*, p. 118.

⁴⁶ *Ibidem*.

⁴⁷ *Ibidem*.

⁴⁸ *Ibidem*, p. 121.

⁴⁹ *Ibidem*, p. 122.

⁵⁰ Rebekka Goehring, *op. cit.*, p. 122.

current debate about the legitimacy of the EU (...); it is clear that different types of representativeness and participation must be combined and strengthened to build a strong, extended, legitimate and political Union".⁵¹ Lobbying is partly criticized for causing possible harm to the democratic functioning of the EU. Van Schendelen emphasizes three such major criticisms associated to lobbying:

- there is the opinion that certain powerful lobbying groups create an imbalance, an inequality in the decision-making, to the disadvantage of weaker groups';
- some experts believe that, to a large extent, lobbying takes place behind closed doors, which creates a lack of transparency that frustrates competitors, media and EU officials;
- many lobbying activities were perceived as abuses or unethical practices, such as extortion, bribery or theft of documents⁵².

But the very concept of democracy implies that the decision-making system must offer openness to all categories of individuals and groups who wish to obtain a certain result. Some researchers say that the openness is not discriminatory or selective – instead, it provides an equal and fair opportunity in the case of every single desire for taking a decision.⁵³ Democratic representativeness is a fundamental feature of 'the multilevel European civil society', as part of a governance system based on central-peripheral multiplied structures. European civil society - this "new constellation of peripheries that are intertwined, which react and interact in the poly-centre of the European governance - is the mediation space of the EU actors' interests representing their electoral constituency (the voters), in a direct exchange and negotiation process with the European decision-making structures".⁵⁴ Including in the decision-making process all stakeholders that may be affected by a political decision is a fundamental principle of a democratic political debate. The inclusion of each interest is, therefore, a key-issue for the democratic quality of the decision-making. Deliberative democracy

⁵¹ *Ibidem*, p. 134.

⁵² Rinus van Schendelen, *More Machiavelli in Brussels, The Art of Lobbying the EU*, Amsterdam, University Press, 2010, p. 318

⁵³ *Ibidem*, p. 322.

⁵⁴ Hans-Jorg Trez , *Regulating lobbying : a global comparison*, Manchester University Press, 2011, p. 93.

requires that all arguments are equally included and considered for the development of public policies⁵⁵. However, it is "problematic to take into account arguments in the case of interest groups being disadvantaged in terms of resources and their level of organization."⁵⁶

Is lobbying really efficient in influencing the EU decision-making process? Here are the answers offered by some experts interviewed by the author of the present article as part of the PhD case study on "Lobbying and the EU Decision-Making Process" (during the interval April 2012 – September 2012). At the given time, the functions and titles of these experts were as mentioned:

Elena Višnar-Malinovská (Member of Cabinet, European Commission, Brussels): "Yes. (...) It is important that a lobbyist shows not only interest into a particular case, but also understands and knows to sell a wider political context – what are the wider implications/ramifications of such a decision".

Koen Roovers (Advocacy Lead, Financial Transparency Coalition, ex-Outreach & Coalition Coordinator, ALTER-EU, Brussels - The Alliance for Lobbying Transparency and Ethics Regulation): "It's highly effective".

Tamara Ramach (Director European Affairs, EACA, the European Association of Communication Agencies): "Lobbying in the EU ensures the possibility for interest groups to be represented and to have a say in the EU decision-making process. The European institutions can also benefit from the knowledge of the lobbying groups such as position and research papers. The consultation process in the European Commission allows lobbying organisations to contribute with information and data in a rapid and efficient manner. In this sense, lobbying can be regarded as a strong and efficient tool".

Stefan Moser (Deputy Head of Unit, Secretariat General of the European Commission, Brussels): "Lobbying can be very effective and efficient to the extent that it provides substantive arguments underpinning the respective points of view. The higher the technical quality of the input it, the more it will be taken into account (i.e. "we don't like it because we don't like it" is not convincing)".

In addition, as underlined by the author in the PhD Thesis on "Lobbying and the EU Decision-Making Process", proactive lobbying can

⁵⁵ Dawid Friedrich, Patricia Nanz, "Europe's civil society from a normative democratic point of view : the case of the European Union's migration policy", in Ruzza, C., Della Sala (eds.), *Governance and civil society in the European Union, volume 1, Normative perspectives*, Manchester University Press, Palgrave, 2007, p. 118.

⁵⁶ *Ibidem*.

make the decision-making more efficient and transparent due to an early access of lobbyists at the political agenda at an incipient stage or due to the ability of interest groups to contribute at formulating the political agenda. The chronological factor is crucial in lobbying. A successful lobbying strategy is based on a very early intervention of the interest groups in their dialogue with the decision makers. It is important - it can be even decisive - that lobbying takes place before the legislative proposal is launched by the European Commission. Lobbying can be extremely influential in the preparation phase of the legislative proposal when the Commission needs expertise from lobbyists. A strong proactive lobbying can establish priorities for the political agenda. So transparency of a proactive lobbying functions in two directions and refers to the fact that during the decision-making process interest groups have early access to the political intentions of governmental actors, while decision makers have access to the lobbyists' visions, expectations and arguments. This transparency corresponds to a global governance based on a democratic system. One of the lobbying functions refers to the political risk management. By developing a proactive lobbying a number of issues and trends in the political arena can be identified ; in addition, not only current legislation can be analyzed, but also legislation which is in an early stage of preparation. At the same time, various ideas can be transmitted through lobbying actions to encourage taking into account possible future legislative proposals, which have been not already shaped. To avoid major political crisis, the ideal scenario is that the legislative proposal does not advance before stakeholders being consulted, their views filtered and, where appropriate, integrated into the given legislative text.

Conclusions

EU policy-making is, therefore, a comprehensive and nuanced process, while it implies a permanent interaction between decision-makers and the interest groups directly affected by the political decisions. The route of the decision-making process is long. It involves - for both governmental actors and (mostly) non-governmental actors numerous debates and negotiations, intense lobbying, and - for achieving some excellent results - impeccable working strategies.

It is clear that lobbying should be an integral part of the democratic EU decision-making system (like it should be the case for any other democratic space, as a matter of fact). And this is because public policies

being developed must be deeply rooted in the civil society space. Otherwise, they would only move away from the healthy and natural contact with the reality that they need to reflect in an as precise form as possible and to the largest possible extent.

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