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LOBBYING IN A EUROPEAN PERSPECTIVE

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ABSTRACT

Although the importance of lobbying has grown in recent years there are a number of challenges in terms of reputation (i.e. ethical considerations), regulation and strategic approaches. The Eurozone crisis and new societal agendas impact on the legitimacy of lobbying both as a practice and profession and that is why concepts such as transparency and trust have to be explored carefully. This paper sets out to provide an evaluation of lobbying in the EU through combining practical insights with academic research.

KEYWORDS: lobbying in Europe, public affairs, transparency, trust.

1. INTRODUCTION

Lobbying practice has increased significantly in recent years as nowadays “approximately 80 percent of national laws in the European Union originate at EU level.” (EU Insight, 2008). That is why lobbying processes have to be dealt with in more detail than before.

However, lobbying faces a range of issues with regard to practices (industry level), regulation (level of professionalization) and its body of knowledge (level of the discipline).

This essay will combine insights and case studies drawn from the Erasmus Intensive Programme (IP) on *Government Relations and Lobbying in a European Perspective* with academic research in the field of public affairs in order to evaluate the role of lobbying in Europe.

The essay will also highlight the rise of transparency agendas and the issue of delineating actors in lobbying processes.

2. THE EU GREEN PAPER ON TRANSPARENCY

The EU Green Paper addresses a range of issues related to the practice of lobbying. This section will provide a critical perspective on the EU’s approach to transparent consultation processes.

The Green Paper (2006, p. 2) highlights “the importance of a ‘high level of transparency’ to ensure that the Union is ‘open to public scrutiny and accountable for its work’.” The idea that citizens should be able to hold the EU institutions accountable has become increasingly relevant in the context of the Eurozone crisis. According to Heald’s (2006) model which distinguishes between four different varieties of transparency the goal of the EU refers to both *downwards* (i.e. accountability because employees can observe the institutional operation) and *outwards* (i.e. the public can observe institutional operation) transparency.

One can see that in 2006, when the Green Paper was published, the concepts of transparency and disclosure were not yet separated carefully. In the paper there are still instances where the term transparency is used to refer to acts of disclosure (e.g. publishing information about how funds are allocated).

In order to become more transparent and establishing legitimacy the Green Paper outlines measures that rely heavily on online resources. This however is not consistent with the EU’s

principle of *inclusiveness* as there are European citizens who do not have access to the internet. The paper fails to address this issue. The visit to the Commission during the IP has shown that in terms of online features on both institutional websites and social media outlets the EU has not provided many features which encourage two- or three-way communication. The degree of interactivity between representatives and citizens is therefore low (Ferber, Foltz and Pugliese, 2007).

The Facebook page of the European Union for instance is primarily used as a means of *informing* (one-way) the public about upcoming events, decisions and debates. The posts usually generate few comments and there is no dialogue between the EU and individuals but instead it functions as a forum for discussions between Facebook users. In this sense one cannot describe these efforts as helping to drive a bottom-up approach to communication which might result in more active participation in government.

In the Green Paper (2006, p. 5) it says that lobbying is a legitimate part of the democratic system, regardless of whether it is carried out by individual citizens or companies, civil society organisations and other interest groups or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers). When lobby groups seek to contribute to EU policy development, it must be clear to the general public which input they provide to the European institutions. It must also be clear who they represent, what their mission is and how they are funded.

From this excerpt one can see that the Commission is keen to draw attention to the fact that the lobbying community in Brussels is very diverse. The implications of such a heterogeneous profession are mentioned only briefly.

The paper suggests that in terms of regulation it is necessary to bear in mind that there are groups which lobby only occasionally (e.g. law firms and think tanks) and permanent lobbyists. This diversity and the non-uniform system where different institutions use different codes of conduct and registers with varying degrees of obligation makes the European lobbying activities even more opaque.

The Green Paper also introduces the idea of providing incentives for lobbyists. It suggests that being part of a register in which lobbyists disclose their interests and clients could mean that the Commission alerts them to consultations which are important for them.

Although the Green Paper points out which activities are considered to be improper use of lobbying it lacks specificity.

3. LOBBYING STRATEGIES

With regard to different lobbying forms one broadly distinguishes between *direct* (e.g. face-to-face meetings) and *indirect* lobbying (e.g. buying shares).

Rik Otten (2012) listed the following major lobbying strategies: deny-delay, building a blocking minority¹, protests (e.g. Greenpeace), informing commissioners and networking (e.g. *becoming part of the decision making process* through access to work groups or DGs).

The aspect of active participation in government has also been highlighted by Florence Ranson, Head of PR and Communication for the European Banking Federation (2012). She argued that lobbyists are often not part of the decision making process but are asked to communicate (i.e. “sell”) outcomes of a debate they have not been involved in.

Lobbying is supposed to be a democratic process and its primary function should lie in mediating between organisations and the public.

But if the practitioner’s perception is correct how can legitimacy of the profession be established?

For lobbying to be effective lobbyists must be part of decision-making processes as much as PR practitioners need access to the dominant coalition to work most effectively (Grunig, Grunig and Dozier, 2002).

Lobbying tactics for those strategies are meeting regulators and legislators by organising conferences or invite MEPs or Commissioners for a visit. Position papers and press releases can be useful tools as well. In general, lobbyists have to monitor information campaigns and conversations carefully in order to develop appropriate proactive strategies.

Dealing with strategies must also entail a reflection on access to the relevant decision-makers. The European Commission is considered to be the most accessible institution to lobbyists. Lobbying at Commission level is often about addressing specific Directorates General (DGs) which have to undertake lots of research and therefore need to consult with different interest groups.

The European Parliament is important for lobbyists because there they can contact MEPs directly. Many MEPs depend on expert knowledge provided by lobbyists because they might

¹ The Council of Ministers votes via *QMV* (Qualified Majority Vote) which means that at least 255 out of 345 votes in favour are necessary. A blocking minority consists of 91 votes. The European Parliament on the other hand usually uses the method of *simple majority* 50% + 1

not be experts in their field. That is why they need the expertise and technical know-how from the private sector to understand market developments. A downside of this relationship is its reputation. Recent years have seen a number of scandals where lobbyists bribed MEPs (e.g. 'Cash for laws' scandal). As a consequence, the debate on registers should also consider the role of MEPs.

Most speakers at the IP agreed on the fact that the Council of Ministers is least accessible to lobbyists.

Lobbyist Hans Hack (2012) however pointed out that in most cases it is necessary to lobby on all three levels. He argued that the Commission is particularly important because of its right of *initiative* and especially in an early stage they have to be lobbied first.

All European lobbying strategies however have to be adjusted to their different target audiences.

The institutional triangle can be described in terms of the aggregation of different interest. The Commission looks after *European interests* whereas the Council is about the specific interests of the member states. Finally, the Parliament looks after the interests of the EU citizens. Although the arguments within a strategy should be consistent it is nonetheless important to account for the different objectives of each institution.

3.1 EXAMPLE DENY-DELAY STRATEGY

This section will explore an example which according to the Green Paper (2006, p. 6) would be classified as improper lobbying: "Distorted information is provided to the EU institutions about the possible economic, social or environmental impact of draft legislative proposals."

For years the car industry has been lobbying in order to undermine EU fuel efficiency legislation. The lobbying strategy can be characterised as attempts to both weaken and delay the introduction of fuel efficiency standards:

Leaked cables show that in 2008 Audi officials were arguing that the EU legislation would destroy the European car industry and fail to contribute to addressing climate change (Greenpeace, 2011, p. 3).

Only a few years after the introduction of the legislation however the industry has created much more energy efficient cars. According to car industry expert Dudenhöffer (2010) the laws have triggered the greatest innovation push since World War II. Strikingly, these mandatory standards have even been realised long before they were supposed to.

Cases like this harm the reputation of lobbying. Because of such practices regulation of lobbying activities, which also includes punishments for breaches with the code of conduct, seem to be necessary.

This case is also interesting because it illustrates that it is not only the lobbyist as an individual who prefers not to disclose his operations. In most cases it is an organisation which prefers not to be recognised by the public as an interested party. Audi, for instance, has not publicly criticised EU standards because it felt they were unjustified but instead turned to those lobbying tactics (e.g. private reports) which lack transparency. Only because this information leaked Audi was held accountable for improper lobbying. If the industry fails to understand that lobbying, which drives political process, has to be transparent the profession will continue to suffer.

4. THE STATE OF LOBBYING

Joos (2011) suggests that lobbying drives social progress in that it encourages public debate. Only lobbying practices which promote “special interests at costs to the public interest” (Moloney, 2006, p. 88) must be considered a threat to the political process because an “asymmetry of communication expresses and reinforces unequal power relationships” (ibid). Similarly, L’Etang (2008, p.113) argues that “theoretically, anyone can lobby, but in practice it is carried out by interested organizations or organized interests.” Schepers (2010, p. 478) even suggests that lobbying “can be seen as a natural, modern extension of the traditional right of petition”. The introduction of the *European Citizens’ Initiative* can be seen as a step towards encouraging this form of lobbying.

Attempts to build legitimacy with society are thwarted by lobbying scandals and the opaqueness of the profession. Nicholas Baygert (2012) defines lobbying as an *interdependent exchange relation*. Baygert draws attention to the issue that rapporteurs who have to produce reports for the politicians often copy the information lobbyists provided. He claims that almost 80 per cent of those reports are partially written by specific interest groups.

Recent years have been characterised by a decrease of public trust in politics (evidenced by the Eurobarometer 2011, Edelman Trust Barometer 2012, Golin/Harris Trust Index and Gallup polls). Since lobbying, and more broadly public affairs, is concerned with relationships to politicians one has to consider to what extent attempts to legitimise lobbying practices in the current climate can be successful.

The IP has shown that there is a gap between practice and research. Even though research in the field and the media (EU-wide) consider the transparency agenda to be particularly relevant for lobbying the IP demonstrated that lobbyists do not address those issues. In this sense one might argue that there is a clash between the academic view and the practitioner's perspective.

5. CHALLENGES FOR THE DISCIPLINE

This section will illustrate that the challenge of building legitimacy for lobbying processes is twofold: On the one hand public affairs as a discipline is not yet fully developed² and on the other hand its professionalization is still in progress.

5. 1. RESEARCH

The IP has shown that public affairs lack thought leadership. Dahan (2009, p. 112), for instance, explains that Up till now, the relative dearth of concepts and techniques to facilitate the analysis of a firm's political environment has only been addressed in a significant manner by the issue management literature.

This is also an aspect Hans Hack (2012) highlighted in his presentation: Most companies turn to lobbyists when they realise that an upcoming EU legislation harms their business. The private sector's attitude towards lobbying seems to be limited to averting crises instead of engaging in proactive, long-term relationships with decision-makers in order to establish mutually beneficial relationships.

Only recently Michael E. Porter (2011) argued that it is the concept of *Shared Value* which promises to help overcome the crisis of capitalism. Drawing on Porter's approach for public affairs research might be useful in order to show that reducing lobbying to a crisis communication strategy is less effective than adopting a proactive approach.

According to Schepers (2010, p. 478) few public affairs studies exist because "lobbying, by its nature a publicity shy activity, is difficult to research, and because few practitioners have an academic interest beyond their own commercial interests". The IP has shown that practitioners are unaware of such models which could be integrated into their strategies. This

² L'Etang (2008) argues that public affairs is increasingly described as becoming a discipline in its own right (distinct from PR).

might be due to the lack of studies which draw on theoretical frameworks from other fields (such as business and PR) and apply these to lobbying.

As a result, in practice one encounters cases where models from business contexts have been unsuccessfully applied to lobbying. Florence Ranson (2012), for instance, described the issue of embracing corporate social responsibility (CSR) approaches as a lobbying organisation. She argued that CSR initiatives by banks which set out to contribute to financial literacy initiatives in schools are not welcome because it is regarded as a form of advertising.

This shows that in terms of theorising the discipline still has to grow significantly. Developing discipline specific models which inform the practice seems to be essential.

5.2. PROFESSIONALIZATION

In an article in the *Financial Times* Bounds and Formentini (2007) explain that associations like EPACA (European Public Affairs Consultancies Association) argued that the interest register proposed by the European Commission is “discriminatory and unworkable”.

Even though there are numerous professional public affairs bodies on a European level (e.g. AALEP – Association of Accredited Lobbyists of the European Parliament, SEAP – Society of European Affairs Professionals) as well as on member state levels it is striking that many associations have opposed the register.

However, these associations have codes of conduct which is an important element of the professionalization process. The growth of training (e.g. university degrees in PA) also helps to move beyond the idea that lobbying is a craft and not an academic discipline. This development is very similar to the development of PR as a discipline. Avenarius (2009) argues that it is necessary to abandon the idea of primacy of experience over academic approaches.

In an article in PRWeek Cartmell (2012) explains that the PRCA has proposed a definition of a lobbyist as a professional that deliberately and intentionally conducts the ‘act of lobbying’, rather than focusing on the profession of the individual itself. [...] The PRCA suggests that a definition that focuses on the act rather than the profession will ensure that all lobbyists will be placed on the register, including professionals that lobby as part of in-house teams, think-tanks, trade unions, NGOs and trade association bodies such as the PRCA.

6. CONCLUSION

Lobbying in the EU is a special case of contested space in that Brussels is characterised by a magnitude of rival objectives (Moloney, 2009). This does obviously not only refer to industry specific goals but also to specific national interests (van Schendelen, 2010).

Kirchgaessner and Buck (2005) point out that because Brussels is one of the two hubs of global policymaking non-member states are also an important part of the discourse.

The lobbying practices in Brussels are shaped by three major variables: EU treaties (e.g. Lisbon treaty), societal agendas and cultural changes.

Many researchers (e.g. Davis, 2007, L'Etang, 2008, Moloney, 2009) draw on the Habermasian framework of the public sphere when they describe lobbying. What the IP has shown however is that the ideas of Habermas are not a key concern for lobbying practices. Lobbyists tend to be unaware of the importance of rational-critical debate which shapes the public sphere. Andrea Catellani (2012) even argued that there is no European public sphere at all. He supported this claim by drawing attention to the role of EU media and the fact that participation in the elections for MEPs in the member states is alarmingly low. Moreover, Catellani pointed out that EU institutions are perceived as remote, intangible and bureaucratic which inhibits two-way symmetric communication. An increase of lobbying such as grassroots lobbying where "citizens/voters demonstrate support for an issue through attending rallies, signing petitions, or contacting political representatives" (Coombs and Holladay, 2010) can help establish a European public sphere.

With regard to legitimacy issues MEP Doris Pack (2012) has suggested that lobbyists are important for both parliamentarians and commissioners. Lobbyists are an invaluable source of expertise. Pack emphasised that teacher associations, for instance, have specialist knowledge that she draws on when forming her own opinion.

Interestingly Pack also pointed out that for various reasons comparisons with America's political system and lobbying practices are not relevant in that the EU cannot become the United States of Europe. The media tends to compare European forms of lobbying with those dominant in the US. In an article in the Financial Times (Kirchgaessner and Buck, 2005) lobbyist Gerald Cassidy explains that the American political system is very different from Europe in terms of its history. Whereas the American system is "open to much wider participation" Europe has established a "system where power elites resolve problems." With the treaty of Lisbon and the transparency agenda this is about to change. If we consider the European Union to be more open than it has been before it is clear that lobbying strategies must reflect these new developments.

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