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Lobbying in the European Union: Practices and Challenges

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Abstract: The aim of this paper is to present the concept of lobby activities and its regulatory methods in the European Union with a main focus on Belgium. Lobbying is a worldwide practice that can provide policy makers with invaluable insight and data for more informed decision making. However, lobbying is often perceived negatively, as giving special advantages to vocal vested interests. Concerns that negotiations carried out behind closed doors could override the interests of the whole community push lobbying to the political agenda in many societies. To maintain trust in government and in public decision making, many EU countries are considering developing or updating regulations to shed more public light on lobbying. Lobby activities represent a democratic mechanism for those actors who are involved and participate in the decision making process. The main objective of this paper is to analyze the reasons why civil society, institutions and companies have a special interest for developing lobby activities. The paper also presents the case of the largest lobbying association in Brussels which emphasize several reasons confirming the necessity and the efficiency of lobby activities. Based on lessons learned from EU lobby practices, the paper highlights the reasons why in Romania the legislative framework concerning lobby activities is absent.

Keywords: interest groups; NGOs; lobbying; globalization; EU public-policy making

Lobbying is a worldwide phenomenon and globalization has established similar lobbying techniques, standards and procedures for enhancing transparency across continents. Lobbying is a reality in government decision making. But some concerns in many societies are pushing lobbying onto the political agenda. Lobbying is often perceived negatively, as giving special advantages to „vocal vested interests" and with negotiations carried on behind closed doors, overriding the „wishes of the whole community" in public decision making. When lobbying reaches the political agenda, policy makers and legislators face the challenge of determining whether to develop standards and procedures for enhancing transparency in lobbying. If the response is yes, a further challenge is how to choose from available options, such as legislation, regulation - voluntary or mandatory - or a policy that is balanced, fair to all parties, enforceable and adequately addresses concerns within their own socio-political and

administrative context. The globalization has established similar methods of lobbying reason why actual lobbying practices are deeply embedded in a country's democratic and constitutional setting. That is why the legislation cannot simply be copied from one jurisdiction to another, as they are interrelated with constitutional traditions and rights, for example to petition government, and mechanisms for interest representation and consultation mechanisms, such as "social partnerships". Lobby practices are aimed at influencing the governmental decision-making, rather than simply at raising awareness and the advocacy is a constant component of lobbying without necessarily implying lobbying. If it is exercised properly, lobbying can strengthen accountability in government and the participation of citizens in policymaking. But if lobbying becomes an excessively elite profession, exclusively serving well-financed special interests, it can become quite damaging to the citizen's perception concerning the political legitimacy. Public authorities have a principal task to establish standards of conduct for public officials who are the target of lobbying. Public officials are responsible for ensuring that their contacts with lobbyists are conducted in accordance with relevant principles, rules and procedures, in particular to ensure impartiality, providing authorized information, enhancing transparency and avoiding conflict of interest.

Lobbying represents an effort to influence different levels of government (local, national, regional or transnational) or different branches of government (judicial, legislative or executive). It can be carried on by many different actors with very different objectives, such as corporate lobbyists, contract lobbyists, not-for-profit lobbyists, public relations professionals and even governments attempting to influence each other. Some lobbyists may carry out lobbying activities as incidental to other activities, such as lawyers pursuing the legal interests of their clients or political activists attempting to influence elections. Lobbying can take the form of "direct lobbying" contacts with government officials or as indirect appeals to the general public to influence governmental decisions, generally known as "grassroots lobbying." Lobbying serves a governmental function and its entire purpose is to influence public policy. In a democratic society, governmental functions need to be transparent for gaining legitimacy. A definition of "lobbying" provided by the Public Relations Institute of Ireland, Chartered Institute of Public Relations and the Public Relations Consultants Association reveals the specific efforts to influence public decision making either by pressing for change in policy or seeking to prevent such change. It consists of representations to any public officeholder on any aspect of policy, or any measure implementing that policy, or any matter being considered, or which is likely to be considered by a public body. This is an adequate definition for self-regulatory regimes of the profession, since self-regulation essentially relies on voluntary decisions to join a professional lobbying association or to voluntarily register as a lobbyist with any other entity. In a broad view, the term "lobbying" is used when speaking about the creation of an opinion trend favorable to changes. In a narrower view, lobbying is defined as the totality of actions developed by groups of interest or by their representatives through legal and legit methods, actions undertook in order to influence the drafting of policies and the decision making process in public institutions. This definition is also used by the European Commission, when defining the activity of interests' representation at the level of European institutions: "the interests' representation designates the activities developed with the purpose to influence the drafting of policies and the decision making processes of European institutions". The lobbying activity is complex and multidisciplinary. It includes substantial economical, juridical, sociological and political analysis as well as communication and public relations strategies. A part of this activity is the representational one; that refers to the direct contact between the factors of decision regarding specific issues having the purpose to influence the adoption and change of legislation, to introduce new legislative proposals or to influence the draft of public politics; all the above in the spirit of public interest.

Lobbying is a practice of attempting to influence legislation. Lobbying is performed by agents, called lobbyists, of a particular interested group, known as the lobby. The lobbyist may request votes either for or against pending legislation. The term derives from the way in which these agents formerly confronted legislators in the lobby or hallways directly outside a legislative chamber. Lobbyists may represent such varied interests as agriculture, transport, professions such as medicine and the law, or such groups as women voters or conservationists. The concept of lobbying goes back many centuries. The essence of lobbying involves solicited communication, oral or written, with a public official to influence legislation, policy or administrative decisions. Although lobbying most often focuses on the legislative branch, it does also occur within the executive and sub-national governments as well, for example by influencing the design of development projects and the award of contracts. Although lobbying is considered a legitimate activity *per se* across many EU countries, it has still various negative connotations in some societies. In order to combat outright abuses, countries have already established criminal provisions against illicit influencing of public decision making, such as trading in influence, bribery and other forms of corruption. Merely penalizing illicit influencing of public officials, however, may not be sufficient to maintain trust in public decision making. There is a growing recognition that regulations, policies and practices which require disclosure of information on key aspects of the communication between public officials and lobbyists have become vital aspects of transparency in 21st century democracies to empower citizens in exercising their right to public scrutiny. Measures promoting a culture of integrity are also an integral part of the "good governance" approach, particularly those that clarify expected standards of conduct in lobbying for both public officials and lobbyists. In any European society, a complex and fruitful interaction is constantly happening between public office holders and various stakeholders. Lobbyists can contribute to more enlightened decisions by public office holders since they provide, on behalf of stakeholders, an informed point of view which may merit consideration. Lobbying is an intricate part of this interaction between public office holders and the multifarious vested interests or interests groups that compose European civil societies. Due to this context of globalization, lobbyists even attempt to reach and to influence governments from outside their national boundaries.

Public officials should conduct their communication with lobbyists in a way that bears the closest public scrutiny, in particular:

- ensuring impartiality - by avoiding preferential treatment, providing balanced opportunities for various interest groups to make representations, and by ensuring that information provided to one interest group is also available to all other interest groups.
- providing authorised information - by avoiding the leak of "confidential information" that is not available to the public, such as classified government information (*e.g.* on policy intention).
- enhancing transparency - in public decision-making processes by disclosing information on communication with lobbyists and information received.
- avoiding conflict of interest - by disclosing relevant private interests, such as relationships, business interests, investments, outside employment negotiations or job offers that may create actual, potential or apparent conflict-of-interest situations in the decision-making process.

The first attempts to regulate lobbying in the USA were made in the early 20th Century. In 1946, the first normative act was endorsed, modified half a century later in the "*Lobbying Disclosure Act*" (1995). The Law defines lobbying as *any oral or written communication addressing any official in the legislative or executive powers*. It must be done on behalf of a client and seeks the drawing up, modification or enactment of a particular federal legislation or regulation, executive order, political programme or

position of the US Government. Lobbyists must be registered with the Senate and Chamber of Representatives administrative offices and they are submitting activity reports every six months.

The European and American lobby models have background differences due to the political systems. The existence of a lobby law in USA is explained by the over 100 years tradition of this activity allowing the development of well structured legal framework. The European lobby model is not based on a lobby law. In the European Union, especially in Brussels, such a law is not wanted, since there are other ways of maintaining a legitimate activity framework in the lobby field. In January 1997, European Commission (EC) published a catalogue of the groups of interests operating at a European level, after defining guidelines for EU lobbying in 1996. In exchange for the Parliament access permit, lobbyists are bound to register and sign a code of conduct similar to the American one. Nowadays there are more than 15,000 lobbyists in Europe's political capital, Brussels to promote private interests. As such, it comes second after Washington DC, where 25,000 lobbyists are known to lobby the Congress. There are only 6,500 Commission officials involved in policy making and they are the prime target of lobbyists. Out of the total number of lobbyists, only 40% (approx. 5,000) are accredited lobbyists to the European Parliament. The largest number of accredited lobbyists are Germans (approx. 640 accredited lobbyists) followed by English (approx. 350 accredited lobbyists), the French and the Italians (approx. 290 accredited lobbyists) and the Spanish (approx. 170 accredited lobbyists). The European Parliament acknowledges groups of interests as a positive fact in itself, and generally supports appeals to bind such groups to make public data on their activity. But certain voices in Parliament complain over the weakness generated by the heavy dependence on lobby group recommendations, and support, on the contrary, the employment of additional staff in expert committees.

The lobbyists as professionals go to great lengths to get close to the lawmakers. From invitations to dining in fancy restaurants to setting up television screens in the Parliament's long corridors in order to supply information displays are just some of the tricks of the job. The most important asset for lobbyists is the Contact book. A successful lobbyist spends years building up contacts and knowledge of the system. The key to good lobbying in Brussels is to build up strong relationships with bureaucrats, some of whom stay in office for decades. The decisive factor is not how big you are, but how influential you are. In the world of contacts, it is not the number of people that you know that counts, but who you know. More than half of the laws enacted by European national Parliaments now originate in Brussels. In areas such as environment, areas having a huge impact on business, the proportion can be 70% or higher, according to Enrique Tufet Opi, director at Weber Shandwick, leading communications consultancy. The institutions need lobbyists to provide them with an insight into the impact of EU policies on the real world. According to Michel Burrell, Vice-Chairman Edelman Europe, there is a mutual respect between the lobbyists and the decision-makers: "to be an effective lobbyist you need to build long-term relationships and this is possible if your interlocutor trusts you and acknowledges that you are operating to a set of appropriate ethical standards."

The European Commission spends over EUR 1 billion a year on developing the expertise of non-governmental organizations (NGOs) and on encouraging them to participate in the European decision-making (e.g. in the healthcare or environment sector) to make up for the much discussed *information shortage* in the European decision-making process. NGOs are a major feature of the Brussels networking environment and play an important role in the formation of policy at EU level. The NGOs further the democratic process and making the EU more accountable by allowing issues of concern to citizens to be put forward. Since Dutch and French voters rejected the EU constitutional treaty in 2005 this process of including civil society in EU decision-making is seen as even more important. But critics see some of these NGOs as seeking to influence policy at EU level to further their own ideological

views. Two areas where NGOs are both numerous and vociferous are international development and the environment. In some areas of development policy the European Commission has set up an elaborate process of consultation where NGOs can submit opinions on Commission initiatives, meet officials and commissioners. Since 1998 the Commission's Directorate-General (DG) for Trade has organized regular meetings with NGOs through the "civil society dialogue" aimed at involving all stakeholders in important trade negotiations and making the process more transparent. On some issues where NGOs are known to have a particular expertise, their views are welcomed and taken on board. This is mostly seen in the area of humanitarian assistance where the Commission does not deliver assistance itself but funds organizations such as the United Nations, Oxfam and Médecins Sans Frontières to decide what aid should be provided and how.

The European Parliament is also a sympathetic ear for NGOs and regularly launches joint campaigns to fight off unwanted policy moves by the Commission and member states. One example was a campaign by the Parliament's development committee with NGOs over the Commission's "development co-operation instrument" which sought to alter the way development money would be spent and reduce the need for consultation with the Parliament. Environmental NGOs appear to have had more success than development NGOs. Apart from running effective campaigns, a consensus has built up around the environment agenda which is broadly supported by the EU institutions. Successive environment commissioners have also been close to the environmental lobby groups and have been effective in batting off corporate interest groups which can be opposed to environment-friendly policies. Part of the reason for the success of the environmental NGOs in Brussels is the power that the Commission has to draft and enforce laws in this area and the fact that European citizens often see the EU as a watchdog against their own governments on environmental issues. Eighty percent of environmental laws are drafted by the EU. As consensus across EU governments is growing to address this problem further, environmental NGOs can expect continued success in the future.

The EU is a dynamic system under constant change due to its historical reasons, structural reasons, etc, having outstanding features such as a multi-layer structure and the combination of supra-national and inter-governmental elements in the decision-making. During the policy making cycle, responsibilities and competences shift and, with them, actor constellations and the rules of the game. Agenda-setting and policy-formulation are EU's prerogatives, whereas implementation is the sole responsibility of the Member States. Depending on the subject-matter, decision-making powers are distributed between Community institutions in different ways, which all add up to a highly complex system of governance. The European Parliament acknowledges groups of interests as a positive fact in itself, and generally supports appeals to bind such groups to make public data on their activity. But certain voices in Parliament complain over the weakness generated by the heavy dependence on lobby group recommendations, and support, on the contrary, the employment of additional staff in expert committees. The European inter-institutional approach is fragmented. Thus, the invitation to register and to accept the Code of Conduct applies for interest representatives in their dealings with the European Commission only. The voice of any group of interests should however be channeled in EU trough an inter-institutional one-stop-shop register and code. A closer cooperation in this area is expected from the Commission, the European Parliament, the Committee of the Regions and the Economic and Social Committee. The influence goes with an interest group's capacity to provide what is most needed: technical expert knowledge, assessment of political response and support in implementing chosen policies.

Society of European Affairs Professionals

The Society of European Affairs Professionals (SEAP) has been in existence for more than a decade. It is the largest lobbying association in Brussels with more than 260 individual members, and focuses on developing professional standards for lobbying the European Union institutions. Though SEAP offers some educational events and training seminars, its emphasis is on developing cooperative relationships between the lobbying community and members and staff of the European Parliament, European Commission and European Council. SEAP works with members and staff of the European Union institutions (EU) advising on proper procedures governing access to the premises and governmental officials. It also provides the networks making that access much easier.

To promote standards of professionalism within its ranks, SEAP has adopted its own SEAP Code of Conduct. The code was first adopted in 1997 and modified in 2009. Recent changes to the Code include creating a procedure to discipline members for violations and, importantly, mandating that all members take a 90-minute training seminar on the content of the code. The ethics code is succinct and non-prescriptive. It lays down general principles of behavior rather than an exhaustive list of do's and don'ts. The code requires that lobbyists disclose their identities and the identities of whom they represent. It also prohibits lobbyists from offering any financial inducements to staff, officials or members of the EU institutions, which includes a ban on employing current EU officers. Former EU personnel may be employed by a lobbying firm if in compliance with the rules of the EU institution. SEAP lobbied extensively on the European Transparency Initiative, a legislative campaign in the European Commission to establish a lobbyist registry. SEAP opposed a mandatory registry, but was comfortable with a voluntary system of lobbyist registration. The association opposed financial disclosure for lobbyists and the imposition of an ethics code by the government. The final registry of the European Commission conformed to much of what SEAP lobbied. Registration is voluntary and lobbyist names are not reported. Only total expenditures of a lobbying entity, such as a corporation, firm or organization, are disclosed and associations may follow their own codes of ethics rather than the code suggested by the European Commission.

Brussels is a "kind of village" and, as in a village, people need to be well plugged into the gossip that they need to know. The most effective lobbying is the one that is made in the early stage, early in the decision-making process. Good lobbying is based on in-depth knowledge of the subject and a clear understanding of how the institutions work. This is how the best client-consultancy relationships function with the client providing the facts from the front line and the consultant adding an appreciation of how those facts can most effectively be deployed. Clients can also benefit from the objectivity that their consultants can bring and their ability and willingness to convey unpalatable feedback. The interests promoted are primarily related to the European trade federations (35%), trade consultants (15%), private companies (13%), NGOs in healthcare, environment or human rights areas (13%), private business and trade union sectors (10%), regional representatives (8%), international organizations (5%) and think-tanks (1%). Adding to these are the official delegations of another 150 national governments, plus national lobby platforms (e.g. Dutch European Affairs Platform, Czech House).

European public policies swing between two poles of interest: national versus European and public versus private. Decision-making vectors emerge from specific national public or private interests who may be broadened to a European public or private level and vice-versa. While companies in the European Union recognize the importance of lobbying at the European and national level only a few have their own representation office in Brussels. Yet companies need to be compliant in many sectors

e.g. consumer protection and producer liability, work safety, product certification, technical regulations, standards, food quality and safety, environmental protection, rules of competition, labels, trademarks, patents without talking about the new legislation that is bound to affect their business. More than 70% of national commercial law is based on decisions taken in Brussels. Companies are finding more and more that their markets are shaped by regulations established in Brussels. Today's business strategy must therefore be based on the legal instruments that the EU is likely to introduce. Companies that understand and work to impact the EU legislative and regulatory arenas deliver great rewards to their shareholders. On the other hand those that ignore Brussels miss opportunities and are often left behind by policy-makers and more active stakeholders. For internationally oriented firms the EU legal and political framework is crucial for the development of their international operations and having a permanent representation in Brussels allows them to stay in direct contact with politicians and officials at the EU level. The prime purpose of the Brussels office is to promote and ensure the influence of the company in European policy and decision-making on both European and international issues that affect the company's business. The Brussels office allows a better coordination of the lobbying strategy, monitoring policy developments, building contacts with relevant MEPs and Commission officials and taking care of the company's senior officials when they come to Brussels for meetings. In view of the increasing number of European legislation as well as regulations this task is of increasing importance. For a company's long term strategy it is essential to be well informed about developments in the EU. The Brussels office facilitates swift and efficient cooperation with the institutions. In short, the Brussels office serves as the ears and the eyes of the company by monitoring and forwarding information to headquarter as well as the voice and the feet of the company on the Brussels playing field by fine-tuning the efforts to lobby the EU process. Of course the opening of a Brussels office does not mean that companies will stop using the services of law firms, consultancies and leave the industry associations that represent them.

On the contrary companies want to be represented through all channels at the same time to maximize contact and coverage of the EU institutions and their regulations. The open structure of the supranational institutions and the complexity of the decision-making processes have created a multitude of opportunities, and challenges, to influence the decision-making process. The typically elitist nature of the system of interest representation at the EU level, having the timely access to the right information and being able to influence in the decision-making process, requires a strong presence in Brussels and insider knowledge of how to play the "Brussels game". Having a permanent office in Brussels with knowledgeable and skilled staff allows a company to further its interests and ensures a better profile of their organization within the EU bodies and it facilitates access to crucial information regarding opportunities and threats to a sector's interests. The lobby regulation is both a normative, and an institutional matter. At a normative level, we may choose between legislating on lobbying activities and registration of interest groups with a distinction between advocacy and lobbying. At an institutional level, the monitoring of actors in the lobby arena may be entrusted to a self-regulation committee (an ethics committee, as requested by certain civil society organizations). The committee activity should be regulated so as to clarify aspects related to the registration, investigation and disciplinary procedures available to the committee, to ensure its financial autonomy, its independence, objectivity etc.

The issue of legislation on lobbying has also reached for political support in many European countries from Italy to Central European countries. In Central and Eastern Europe only Georgia (1998), Lithuania (2001) and Poland (2005) have regulations for the lobbying as a distinct law. The experience of Poland reveals how the scope of draft legislation moved from the original repressive criminal approach to a good governance approach to promote transparency and accountability in the law-making process.

At the present Romanian has no active voice within the European institutions. The number of Romanian experts working within the European Council, the Commission and the Parliament is to increase from 150 to 1500 persons. Since January 1st, 2007, Romanian local and county authorities have the opportunity to take part in EU consultation mechanisms and to promote their interests in the European arena. But this unfamiliar situation for us requires the existence of specialized structures to facilitate the access to the European decision making as efficiently as possible. Representatives of Romanian counties and cities are thus seeking ways to promote their projects, using their own means or jointly with other agencies. The representation of sub-national interests is entrusted to county authorities, most large-scale projects as well as the EU regional policy strategy focus on the eight development regions. In Romania's case, the eight development regions currently lack legal personality and, as such, international representation rights. Notwithstanding this particular situation, counties have learned that they must work together, both as regards the contact with European authorities, and in accessing major project funding. Lobby is and must remain an activity that has nothing to do with the stipulations of the Penal Code due to its structured and professional form of addressing the decision makers. Lobby is much more than a persuasive action: it is a strategically analysis of the entire decision making process and of the political systems. It is an activity which the professionals conduct in the most transparent way, through specific means. In June 2010 was founded The Romanian Lobbying Registry Association (RLRA) with the purpose of contributing to the popularization and promotion of the lobby activity, viewed as a multidisciplinary activity, which requires juridical, economical, sociological and communication knowledge. In order to achieve the proposed goal, RLRA has elaborated and adopted the common principles and values of its members as well as the ethics code which governs the lobby activity. RLRA encourages all the organizations and persons that represent interest groups in front of public authorities to adhere to the Association. Non-governmental organizations, professional associations, think-tank organizations, lawyers, lobby and public affairs agencies are also welcome to participate in the demythisation of the lobby and advocacy activity by creating a climate of transparency and adhering to a self regulation system. Also, in order to promote the transparency in this kind of activity, RLRA launched The Registry of the Representatives of Interest Groups in Romania, available to all persons with lobby activities. The Registry is organized following the model of The Registry founded by the European Commission. The registration is independent to the quality of member of the Association but mandatory for the members of the Association.

All these explained and sustained issues, backed up by an active initiative for the transparency of the decision making factors, will lead to high standards of lobby practice in Romania.

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