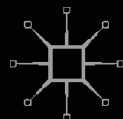


Lobbying in Europe

Public Affairs and the Lobbying
Industry in 28 EU Countries

Edited by **Alberto Bitonti**
and **Phil Harris**



Lobbying in Europe

‘Professors Bitonti and Harris have produced a timely, relevant work for anyone interested in the actual practice and effectiveness of lobbying in Europe. As Europe moves ever so gradually toward Brussels and the EU as the center of policy and regulations, so to must corporations and other interests learn to simultaneously carry out lobbying in the home country and in Brussels. It is a balancing act that requires skill and timing – and this work delivers on both.’

— Professor John Mahon,
University of Maine, USA

‘Bitonti and Harris have produced an impressive tome on the dark arts of how businesses and NGO should seek political influence. No self-respecting public affairs practitioner should be without this impressive, and thoroughly comprehensive, text surveying lobbying across all of the EU.’

— Professor Paul Baines,
Cranfield University, UK

‘The rich descriptions of lobbying and political processes across Europe provide a practical handbook for professionals as well as invaluable grist to the mill for academics and others seeking to better explore the workings of modern European democracies. It clarifies the role of and demystifies the misunderstood and misrepresented profession of lobbying. It also provides valuable insights into the complexities of BREXIT’

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*Chairman of Australian Centre for Corporate
Public Affairs and Director ACILAllen Consulting, Australia*

‘This is one of those books that gives professional insight into the working and traditions of European Public Affairs. It is a must read for anybody, lobbyist, government official, academic or student who wants to understand how Europe and the EU works. It reflects professional lobbyist and quality academic thought. A guide to lobbying in the EU.’

— Professor Henry Sun,
*International Director, Business Research Institute,
University of Chester, UK*

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Editors

Lobbying in Europe

Public Affairs and the Lobbying Industry in 28 EU
Countries

palgrave
macmillan

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ISBN 978-1-137-55255-6 ISBN 978-1-137-55256-3 (eBook)
DOI 10.1057/978-1-137-55256-3

Library of Congress Control Number: 2016961690

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Printed on acid-free paper

This Palgrave Macmillan imprint is published by Springer Nature

The registered company is Macmillan Publishers Ltd.

The registered company address is: The Campus, 4 Crinan Street, London, N1 9XW,
United Kingdom

ACKNOWLEDGEMENTS

In assembling, editing and turning this volume into a reality, we have a debt of immense gratitude which we need to make towards a number of key people that we wish to thank for their contribution, support and presence.

First, all contributors, some of you have never written for an academic research book, others have, we thank all of you for your enthusiasm, your patience and unfailing support to the project.

A special thank you to Conor McGrath, whose constant support and advice has meant so much, and to Simon Bryceson for agreeing to give us the measured EU view and being such a good friend with principled advice.

Jim Thurber for his constant friendship and the Center for Congressional and Presidential Studies and the American University of Washington DC for all their encouragement, help and academic support.

To Nikos Nikolakakis, your help at critical times was particularly precious and appreciated.

Giuseppe Mazzei, Micol Bertoni and all the friends of the Public Affairs Community of Europe and Il Chiostro: this volume was first conceived in one of our meetings, we hope it will contribute to our battle for greater transparency.

To our publisher Palgrave for supporting this initiative and being very patient, and especially Sara Crowley-Vigneau and Jemima Warren, our great editors, for their support and kindness throughout the journey. Without your support, this would never have happened.

Finally, to our wonderful and amazingly supportive wives, Claudia and Irene, who supported us with empathy, good humour and patience untiringly even though we were travelling around the world, rebuilding houses, advising politicians, officials, friends and stuck on keyboards or in Skype conversations constantly. You deserve a medal, we will celebrate with a dinner together in the near future. Promise. Thank you.

Alberto Bitonti and Phil Harris

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An Introduction to Lobbying and Public Affairs in Europe

Alberto Bitonti and Phil Harris

1.1 THE CHALLENGE OF AN EVER MORE COMPLEX AND MULTI-FACETED GLOBAL ENVIRONMENT

For those studying or working in the field of public affairs, in the broad area that connects politics, law, business and communication, Europe represents a fascinating, varied, multi-faceted challenge.

The European continent provides an incredibly rich picture of political cultures, of institutional frameworks, of governmental styles, of different social, economic and historical traditions, which make up probably the most complex and variegated environment we may find in the whole world. Any broadly accepted policies coming out of Europe will normally be well rounded and be a key influencer on world politics, making it a major arena and market place to share ideas, develop policies, exert influence. All crucial activities to businesses, civil society organizations, policy-makers, etc.

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Lobbying and public affairs play a core and pivotal role in the modern Europe, reflecting that it is the largest developed consumer market in the world, comprising more than 40 national states with the largest number of key international businesses, financial systems, organizations and regulatory bodies being based or headquartered in the continent. The main institutions of the EU in Brussels, representing the 28 member states of the EU, probably see the largest concentration of the public affairs industry in the world around them,¹ reflecting the fact that the EU economy is approximately 25 % of the world's GDP, with a geographically concentrated population of more than 500 million at the centre of the modern world trade routes.²

In addition to this, the Eurasian Economic Union, headquartered in Moscow and representing the key former USSR states, including Russia, Belarus and Kazakhstan (totalling approximately 176 million citizens), is also there, right on the Eastern side of the European continent. Other states not in these economic zones include Iceland, Norway, Ukraine, a number of smaller states and of course Switzerland. Switzerland, partially as a result of its historic neutrality and centrality in Europe, has become the home of one of the main headquarters of United Nations, of several UN agencies (such as the World Health Organization, the International Labour Organization, the International Telecommunications Union or the World Intellectual Property Organization) and a number of other international bodies, such as the World Trade Organization, the International Committee of the Red Cross or the International Organization for Standardization. The annual meeting of the World Economic Forum is also held in Switzerland (in Davos), bringing the top business and political figures together to discuss critical economic, environmental, health and societal issues impacting on the globe.

If we widen the perspective to the 47 member states of the Council of Europe, covering the whole European continent with their total

¹In fact, the area close to the EU buildings in Belgium has come to be known as “Brusslington”, reflecting the pivotal role EU plays in allowing businesses and organisations to influence and shape legislation and regulation of trade and the environment worldwide.

²The population of the EU (over 508 million people in 2015) is not homogenous and shows widely varying trends and different demographics, with a declining population in the East and some signs of growth in the West. The UK has the fastest population growth rate, followed by France and Germany amongst major countries, thus explaining some aspects of migration across the continent, although long-term trends have been exacerbated by instability and conflicts in the Middle East and North Africa most recently.

population of around 800 million people and broad GDP close to 40 % of the world's output, we can get a clear picture of the influence of the area and understand why public affairs has grown to be the substantive industry it is in the continent. Europe is the home in currency terms and finances to the Euro, UK Pound, Swiss Franc and the Russian Rouble amongst others. It exerts a leadership role in setting the standards in environmental, financial and market regulations, with centres such as Brussels, Geneva, Berlin, London, Moscow or Paris, all playing pivotal roles in fields relevant to worldwide markets.

Considering all of this, it is evident how Europe as a continent appears an extremely interesting area to study for those dealing with the study of politics and of public affairs in complex environments (Bitonti and Harris 2017).

1.2 AN OVERVIEW OF ALL EU MEMBER STATES

To be able to comprehend how the public affairs and lobbying industry works in such a complex and unique environment requires evaluating a significant amount of information not only about the public affairs industry itself, but on that particular environment as well. That is why, in conceiving this volume, we chose to focus on the EU and on the national democracies which compose it.

We decided to narrow our perspective to the EU countries for a twofold reason. First, we needed a clear and objective criterion to select the cases to analyse and so decide what countries to include in our overview, and EU membership appeared a sufficiently good and definite one (despite the Brexit vote of June 2016!), leading us to 28 different case studies (plus the one on the supranational environment of the “Brussels bubble”): a scale of data collection, which has stretched us considerably as we persuaded 29 groups of authors, both practitioners and researchers, to write about lobbying and the public affairs industry in their country (and in the EU). With this we fill a major gap in the literature and knowledge on the subject—for the first time covering the whole range of national cases within the EU itself.

Second, EU member states come up with a composite frame of political systems, with a multi-level layer of governance, a population of more than half a billion people speaking over 30 different languages and one of the most competitive and developed markets (as said, representing around 25 % of world GDP); nonetheless, unlike other European countries which are not members of the EU (in 2017 at least), such as Switzerland, Norway

or Ukraine, EU member states have witnessed a convergence and the development of common frameworks of values and institutional systems, due to the influence of the integration process and the shared belonging to an economic and political union, thus allowing common references to be found and making some comparisons easier for an observer. Both these factors led us to choose the 28 (+1) cases we present in this book.

1.3 PUBLIC AFFAIRS AND LOBBYING IN POLITICAL, MARKETING AND BUSINESS STUDIES

The object of our overview—the public affairs and lobbying industry—is meaningful in many regards.

For political analysts, the public affairs and lobbying industry represents a particularly relevant and interesting field of observation: in fact, analysing the dynamics of the influence of power and of public decision-making processes can tell us much about that power and those processes themselves. We can study lobbying and public affairs in order to study democracy then; this brings us to investigate the way democracy actually works today, with a multiplicity of political, social and economic actors—broadly defined as part of interest group systems—all playing a role in a multi-level and multi-faceted governmental process, with a multiplicity of political cultures and institutional frameworks affecting that process in different ways in different countries. As pointed out by Beyers et al.,

understanding interest group systems remains crucial to understanding the functioning of advanced democracies, especially in an era when these democracies are becoming increasingly embedded in supranational policy networks. (2008, 1104)

How do these policy networks influence public decisions? And how does the role of traditional political actors (such as political parties) change in this scenario? What is the weight of national institutional structures in the outcome of public policies? And are there relevant differences between the most consolidated democracies of Western Europe and the most recent democracies on the Eastern side? These are some of the questions that can drive a political reading of the essays included in this volume, offering up-to-date descriptions and views concerning the national political systems of EU member states.

For marketing, business and communication analysts, lobbying and public affairs also represent a promising field of observation (Harris and McGrath 2012): as highlighted by Harris, “the impact of corporate lobbying as a form of marketing communication is largely unresearched and this is rarely mentioned in marketing literature” (1999, 13). This, despite the fact that the seemingly inexorable expansion in the number of interest groups and social movements—and in the degree of their influence over policy—can be interpreted as coming at the expense of political parties which may be regarded as not being capable of maximising their share of the political participation marketplace (Bauer et al. 1996). Moreover, even the small amount of political marketing literature on lobbying tends to focus on the recruitment and retention of members and the provision of benefits to members by interest groups. Very little research has been undertaken to date on how (political) marketing theory can explain or illustrate the representation of interests by lobbyists, or their policy-influencing activities.

In this direction, a then British lobbyist now returned to politics outlined the similarities between marketing and lobbying:

lobbying can sometimes be seen as a specialist form of marketing communications, often engaged with similar concerns, measurements and promotional campaigns, contributing directly to business performance. Knowledge of the political market, understanding the relevance of one’s product or service, determining how to promote the product or service as meeting the needs of government or helping to meet its needs, demonstrating value for money and ability to meet targets for availability (product, promotion, pricing and place) are directly relevant skills. (Andrews 1996, 79)

Thus, a second set of issues tackled by chapters concerns the main strategies adopted by interest groups in order to gain influence in the political arena, and their relationship with other “competitors” of the market of influence such as political parties and think tanks.

So how is lobbying done in Europe today?

The key functions which a number of lobbyists have identified to the various authors and are evident in the literature as being essential to fulfilling their role include the following:

- Understanding own organization’s communication and decision-making process
- Knowing the policy formulation and policy-making process

- Network of contacts in area of operation
- Dealing with the civil service
- Dealing with Parliament(s)
- Dealing with politicians
- Dealing with Ministers
- Dealing with the media
- Dealing with regulators
- Dealing with local and regional government
- Dealing with trade bodies
- Dealing with transnational government and associated bodies
- Contacts with party organizations
- Managing relationships with policy think tanks, research centres, and so on.
- Coalition building with others around mutual policy interests
- Managing relationship with community stakeholders
- Gaining access to regular sources of policy information.

These functions form the core area of lobbying and associated public affairs work, explored throughout the cases and chapters throughout this book. They predominantly cover external relationships and avenues for exerting policy influence. Yet, the attention paid thus far to lobbying has tended to downplay or ignore many of these key public affairs functions.

Machiavelli and political analysts provide a useful guide to exploring government and where to focus influence to maintain market competitiveness (Van Schendelen 2002, and 2010). Considering the significant growth of the lobbying and public affairs industry, especially since governments have withdrawn from their role of owners in the economy to take the predominant role of regulators, many competitive companies and non-governmental organizations use issues management techniques, lobbying and media as part of their public affairs strategies to their own competitive advantage.

A growing trend is of course accountability, and lobbying has to be seen to be of a high ethical standard with interests declared. However, if politicians have difficulties in deciding what is a declarable interest, then how are we to expect other members of society and stakeholders to be able to? As society increases its demands on government for service quality delivery, so it will want its voice heard and society will become more consumer driven, and government will have to become more responsive to citizen and stakeholder needs. Consumers need to lobby for quality of life

issues, and for resources to be spent on these priority areas. Organizations can be seriously disadvantaged if they are not providing information to support their long-term business positions or counter their national and international corporate competitors by providing their case to relevant bodies.

Lobbying and public affairs management is part of modern political marketing and communication. As politicians become increasingly isolated and short of quality information, effective lobbying fills that vacuum and allows good decision-making (and of course sometimes bad decision-making). Globalization is meaning that to gain competitive edge trans-nationally, lobbying as part of a public affairs management strategy is essential to influence public decision-makers at all relevant levels.

1.4 THE GROWTH AND THE PROFESSIONALIZATION OF THE INDUSTRY

As said, it is worth studying public affairs and the lobbying industry in EU through the lenses of political analysis, in order to better understand modern democracy, and through the lenses of marketing, business and communication, as the public affairs arena is strategic for competitive advantages for one's organization.

However, an additional focus can be found in the chapters of this volume, concerning the lobbyists themselves: how developed is the industry of lobbying overall? Where do lobbyists get their education and training? Do they refer to shared professional standards? Are they organized in professional associations or not? Has the growth of the industry been accompanied by a growing professionalization of the job as well?

Lobbying and public affairs management has grown considerably in the past 30 years worldwide (Harris and Fleisher 2005, 2017). Precise information on the current scale of activity is hard to come by, due to a variety of reasons. Firstly, the difficulty of choosing what to measure and the lack of generally accepted definitions and criteria. As better discussed in the final chapter of the volume, the differences on the semantic and theoretical levels represent a strong obstacle against the convergence towards universally accepted indicators, as “the word lobbying has seldom been used the same way twice by those studying the topic” (Baumgartner and Leech 1998, 33). Secondly, the lack of transparency—allowed either by the absence of any regulation in the field in most countries or by inefficient, flawed and very partial

regulations in the countries which made steps ahead in this direction—makes calculations very hard, as concerns both the industry revenues and the number of professionals employed, leaving only space to estimates in most cases.

However, there is substantial evidence of dramatic increase of the industry internationally (Spencer and McGrath 2006). The growth of corporate lobbying and campaigning is a response to the complexities of modern business society caused by more pervasive government, and to an increased need for competitiveness in a global market by companies. Harris and Lock (1996) reported estimates that expenditure on commercial political lobbying in the UK, both in-house and by independent lobbyists, was between £200 and 300 million and that over 4000 people were directly employed in this activity. It was also estimated that expenditure at the EU level was at least one order of magnitude greater than that. Today we can certainly affirm how the lobbying and public affairs industry in EU (both at national and supranational level) is worth several billion euros and involves hundreds of thousands personnel.

To explain the reason for this growth, Harris (2001) outlined below a taxonomy of situations in which government is involved, suggesting the relative importance of lobbying and public affairs in influencing outcomes.

- *Government as Legislator and Regulator*

Legislation and regulations on matters such as product safety, packaging, intellectual property, fair trading, but also civil rights or broad economic or environmental issues, are obvious targets for business and non-business lobbying to ensure one's legitimate interests are protected or taken into consideration.

- *Government as Purchaser or Allocator*

- Winner takes all: In this situation there is only one contract or opportunity to bid. The public decision is usually very visible, and lobbying is very intense. Good examples are the awarding of national lottery licences, military contracts or gaining international sporting events such as the Rugby World Cup, FIFA World Cup or Olympics.
- Large, infrequent contracts: Defence and large public works contracts are typical of this category. Increasingly failure to obtain such contracts threatens the very existence of the company or a

strategic business unit with a visible and politically delicate impact on employment. Good examples are key international infrastructure projects, such as airports construction, railways and shipping complexes. Again lobbying plays an important role.

- Regularly supplied items: Apart from highly specialized items, these are usually supplied through standard purchasing procedures, notably by competitive tender. These procedures leave little scope for lobbying, except in so far as it may be necessary to qualify a supplier to be included on the approved list or to pass any other pre-tender hurdles.

- *Government as Initiator of Action*

There are a number of explicit circumstances in which the relevant government minister initiates action by an agency, board or similar body.

- *Government as Decision-Maker*

There is a range of other situations where the government has de facto or de jure powers to take decisions which affect business.

In the global marketplace, to be competitive means increasingly being able to exert pressure on government to gain a competitive edge. Let us give one example from the EU government, where if one can change the views of government, one can often gain advantage. It has been reported (Harris 2001) that a number of German and French car manufacturers—with Japanese support—successfully lobbied the EU to adopt catalytic converters as their preferred vehicle emissions measures. This became compulsory legislation, to the advantage of Mercedes, Audi, Volkswagen (VW) and Peugeot. At a stroke this wiped out €2 billion worth of investment by Ford in lean burn engine technology and an equivalent €1 billion investment by Austin Rover, who were also developing this technology. Both Ford and Austin Rover deemed this technology to be a lot cleaner than just using catalytic converters. They had opted to go for a higher specification system rather than the intermediate catalytic converters. Once the legislation was enacted across the EU, Ford lost its €2 billion investment in research and development, and had to reinvest in catalytic converters to catch up. Austin Rover, as a result of this policy, lost its investment, could never catch up and went bankrupt. Austin Rover was broken up into a number of businesses, the bulk car manufacturing business being sold as a complete off-the-shelf package to the Shanghai Automotive Industry Corporation.

The car, engine and vehicle industry is highly visual with global reach, well-respected brands, and lobbying in a multi dimensionally environmentally aware world has to be very balanced and constantly monitoring and engaging in its approach. A lack of strategic public affairs work can damage or wreck a car manufacturer for many years as can be seen in other global businesses. More recently in 2015 Volkswagen's admission that it installed "defeat-devices" in some diesel vehicles in the USA that emitted far more exhaust pollution than was legal has meant that the formerly respected people's sustainable car manufacturer's image has been tarnished and legal costs and lost margins will damage the company for some time. It was argued that VW, a world's top carmaker, could not count on much support in the USA legislature unlike Ford, GM and Toyota which had built-up more leverage across the political system to defend themselves as a result of effective lobbying operations to counter environmental and mechanical failure issues, thus highlighting a lack of planned lobbying and public affairs management in the USA by this major EU-based manufacturer (Greene and Biesecker 2015).

Alongside the growth of the industry, and in order to meet the increasing complexity of lobbying scenarios such as the one described above, a growing professionalization of the industry can also be observed in many cases.

The chapters provide a very precise overview of the current state of the art in each country, using indicators (McGrath 2005) such as the presence of specific educational paths (simple university courses or Master's degrees) dedicated to the profession, the presence of one or more professional organizations dedicated specifically to lobbyists or of broader associations entitled to represent communication and public relations professionals in general, the enforcement of codes of conduct or ethical guidelines for the members of these associations, and so on.

What emerges in many countries is a correlation between the expansion of the industry and a growing professionalization of the job, with new courses and Masters launched in universities and with a rising attention paid to ethical principles and professional standards, also aiming at eschewing misperceptions and improper confusion with corruption and influence peddling, still a strong problem in most EU countries.

1.5 PUBLIC AFFAIRS, LOBBYING AND THE PROBLEM OF REGULATION

A further topic that the chapters deal with concerns the regulatory framework of lobbying, the rules, the transparency requirements, the formal relationship between lobbyists and public decision-makers.

The issue of regulation has been in recent years investigated more than other sub-fields related to lobbying and public affairs, especially by public law scholars in national contexts and by political scientists in international comparative studies (Greenwood and Thomas 1998; Chari et al. 2007, 2010; Holman and Luneburg 2012; Millar and Köppl 2014; Veksler 2015).

It is widely acknowledged that “schemes to regulate lobbying derive from concerns over the democratic deficit, the openness and transparency of government, equality of access to public affairs, and the perceived need to manage information flows to and from governments” (Chari et al. 2007, 422). It will be evident from the analysis of the national cases, though, that regulation cannot be conceived as something to be applied in the same terms everywhere, like a model to copy, for two main reasons. The first reason has to do with the many loopholes and limits that the actual regulatory frameworks already in place in some countries (both in Europe and in the world) present, strengthening the need for better implementation or for complete redesigning of these regulatory policies. Thus, there is not a perfect model to look at, to simply “copy and paste” as it is in countries which still need to regulate the sector. The second reason is that lobbying is entrenched in democracy for its nature, and different types of democratic systems, rules, habits, produce different types of lobbying. That is why, even if there was a perfect model somewhere, it would be very difficult for other countries to simply consider it a mould to fill and replicate; that is also the reason why lobbying regulation needs to be analysed and studied not *per se* but in the more general perspective of an actual interest group system and of a political and institutional framework.

That is also why, in our opinion, when discussing lobbying regulation, much of the attention should be shifted from lobbyists and interest groups alone to the lobbied ones, that is, politicians and decision-makers; on this regard we are minded to remember Nolan (1995)

and his committee, who codified much of what underpins democratic principles, standards and good government, highlighting the importance of integrity, selflessness, objectivity, accountability, openness, leadership and honesty in public service.

However, European and national policy-makers willing to engage in an effective regulation of lobbying will certainly profit from the international overview and from the development of comparative references that this book tries to lay down on this aspect, looking at the experience of those who are already ahead in the path of regulation.

1.6 THE IDEA BEHIND THE PROJECT

This book is a genuine attempt by scholars, practitioners and researchers from across the EU to present original research and provide a clear, systematic and up-to-date picture of how lobbying and public affairs work in the EU, specifically in each of the 28 member states. By pooling groups of authors from each EU country, we have tempted to provide the community of scholars and practitioners in this field with the most complete overview on the industry of lobbying in Europe today, as never done before.

The original idea of the volume was sparked during one of the annual meetings of the Public Affairs Community of Europe network, involving lobbyists' professional organizations from various EU countries and single European lobbying and public affairs professionals. In consideration of the great value deriving from the comparative approach in this field (Kanol 2015), our aim was to try to assemble a vast collection of empirical material to offer to the community of practitioners, scholars, students and policy-makers.

This project has at least three remarkable features. Firstly, the dimension of the research, covering the totality of EU member states and not only a few of them. Secondly, the analysis of each country, not limited to the aspect of lobbying regulation, but providing a wider overview of the lobbying industry of each country. Thirdly, the method, not relying (only) on secondary sources but directly involving "privileged witnesses" (the authors of the chapters), who—as experts, scholars or professionals of the field—could help us collecting data and complex information concerning the country where, in almost the totality of cases, they are from. Thus we could break the linguistic barrier and take advantage of a knowledge "from inside" of each political and professional system, finding information very hardly accessible otherwise.

Please remember this has never been done before, as we have relied upon a comprehensive mixture of practitioners to underpin the work. Our thanks go to them for being so candid and understanding of our persistent demands.

In spite of huge obstacles—related to finding the right people in the various countries, to linguistic barriers and to the coordination of an objectively complex project for dimensions and people involved—we were able to collect a big amount of information (both of quantitative and qualitative nature) concerning the public affairs and lobbying industries of the considered countries. Our aim and hope is that the collection of this empirical material will facilitate further comparative work in this field, as it is a promising area of research and a crucial mission for the quality of our democracies.

1.7 THE OUTLINE OF THE VOLUME

While in this introduction we presented the aims of the volume and the context of its scope, in Chap. 2 an attempt is made to explore the theoretical connections between lobbying and democracy, by trying to answer a very simple question: Are lobbying and democracy friends or foes? Too often in political speeches or in the public opinion, lobbyists are perceived in negative terms, as “deviators” or even corruptors of the democratic game. Where does this negative approach come from, and on what theoretical grounds can we support the opposite vision, claiming the democratic essence of lobbying and its positive contribution to the quality of the law-making process? What is the relationship between the public interest and private interests? And what philosophical principles should shape any regulation of lobbying? In Chap. 2, Bitonti tries to draft some answers to these questions.

In the following section of the volume, 29 sub-chapters (authored by as many groups of contributors) present the main features of the lobbying industry at EU level (Chap. 3) and in each of the 28 EU member states (Chaps. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31). The basic structure of these chapters (with the partial exception of the chapter on EU, which of course deals with a different and unique institutional environment) is based on the following elements and questions:

- A short overview of the country’s political system (institutional structure, relative weight of legislative and executive branches, political participation, party system, etc.)

- Who is the main target of lobbying efforts and how lobbies operate? (think tanks, political financing, relationships with parties, etc.)
- Is lobbying industry developed? (How many workers in the sector? Are there Masters or other educational pathways specifically dedicated to lobbying?)
- Who is the lobbyist? (educational profile, perception from public opinion)
- Is there a public regulation of lobbying? If yes, what are its main provisions?
- Is there any type of professional organization representing lobbyists? Is there any code of ethics or deontological charter elaborated by lobbyists themselves?
- How do you see the future of lobbying in your country, also in relation to the European level?

These were the main questions and topics that the contributors were asked to try to cover, although everyone was free to adapt the scheme to each country's specific situation and characteristics.

In the final Chap. (32), we try to launch some first comparative insights that should be further developed, by highlighting some trends, analogies, differences and common problems, but also reflecting on some methodological problems and critical points of discussion.

Overall, we hope this volume will provide an important contribution in the study of the composite picture that European democracies represent today, facilitating a better understanding of the strategic and crucial industry of lobbying and public affairs.

We hope you enjoy this work, and are minded to remember the great commentator and shared source of inspiration, Niccolò Machiavelli, when he wrote:

“All armed prophets conquered, all the unarmed perished.” (*The Prince*, Chap. VI)

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The Role of Lobbying in Modern Democracy: A Theoretical Framework

Alberto Bitonti

2.1 INTRODUCTION

When considering the role of lobbying in a modern democracy, two different approaches are usually adopted: there are those who deem lobbying as a distortion of the democratic will (whereas the democratic will is or should be embodied only by a democratically legitimized assembly or institution); reversely, there are those who view lobbying precisely as a democratic right, having to do with petitioning the government and trying to interact with public decision makers as citizens or groups.

The former usually like to focus their attention on the power of special interest groups, who would bend the democratic game to their own particular interests, using money or other resources to affect or distort the decision-making process. The latter on the contrary like to highlight the contribution in terms of expertise, feedback and political support that interest groups can provide to public decisions, according to a scheme which improves the quality of law-making and keeps decision makers more accountable to the public.

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In general, the former have a very bad opinion of lobbyists, who are considered influence-peddlers and corruptors, while the latter see lobbyists as professionals of the democratic game, who provide their services to the interest groups which try to make their voice heard in the political arena.

The former like quoting Rousseau; the latter like quoting Bentham.

So, who is right, and which side would you feel to support?

In these pages, we propose to develop a third approach, which aims to comprehend the hidden connotations behind the two mentioned visions, to explain how different theoretical grounds can lead towards different conceptions of democracy and lobbying, and to make some reflections on how a good and healthy relationship between lobbying and democracy depends on a number of principles to take into account.

The objective of the chapter is then to offer some notes on the theoretical framework through which we can look at lobbying in modern democratic systems, interpreting facts like the public perception and the (usually bad) reputation of lobbyists in the various national contexts, or the different regulative attempts made at European Union (EU) and country level, whose account is given in the other chapters of the volume.

2.2 THE POLITICS OF INTERESTS

A first fundamental theoretical distinction that needs to be considered, and that too often seems forgotten (resulting in very misleading outcomes), is the one between analytical descriptions of the reality and normative prescriptions on the reality. Describing the realm of political phenomena *for what they actually are* is the duty of political science, at least since the times of Niccolò Machiavelli (1532); discussing what the political realm *should be*, how things *should work or be organized*, is the task of political philosophy and constitutional engineering. On this regard, David Hume's famous law is quite clear in remarking the inevitable separation between the two fields (Hume 1740), as science (and political science within it) is interested in the explanation of things, without any moral judgement (Weber 1922; Popper 1959), while ethics (and political philosophy within it) is interested in the prescription of what is right, or good, and the moral judgement (about the good society, justice or the good government, for political philosophers) is exactly the point (Dryzek et al. 2006).

Now, when dealing with democracy and lobbying, it is important to remember whether we are doing this as political analysts, trying to

understand and study how things actually work, or as political philosophers, trying to imagine how things should work. Of course the interaction between the two fields can be very strong (Deutsch 1971)—and political theorists, such as the author of this chapter, like to place themselves in the middle between the two and to study these interactions—but it is important to be aware of the epistemological difference.

In order to develop our original approach to the relationship between lobbying and democracy, we will consider both perspectives, the scientific (analytical-descriptive) and the philosophical (normative-prescriptive); in this paragraph we will focus on the political science angle, while in the following ones we will turn to the political philosophy side, analysing the theoretical grounds in both cases.

Most studies on “the politics of interests”, on pressure groups and on lobbying campaigns can be placed in the field of political science, and particularly in that branch of political science which focuses on groups and on their influence in the policy-making process. Some of these studies even try to interpret the dynamics of the governmental process itself in terms of interaction between different interest groups (institutional actors included). On this regard, the classical reference is given by the studies of Bentley (1908), Truman (1951), Latham (1952) and others. According to these authors, an effective way to frame the reality of politics (for what it actually is) is to conceive the political society as a multiplicity of interest groups competing with each other for power or for the influence of those with power.

In this perspective, democracy itself would be the institutional formal framework where this competition takes place, a framework where the formal exertion of power would be studied by law scholars, while political scientists would overcome appearances and formalities to study the actual behaviour of the various actors in a given political environment (in the behaviouralist fashion; see Easton 1969) with an eminent concern for empirical evidence.

Quoting Lasswell, we “think of politics in terms of *participants* (with identifications, demands, expectations; with control over base values) interacting in *arenas* (situations in which decision outcomes are expected) employing *strategies* to maximize value indulgences over deprivations by influencing *decision outcomes* and hence effects” (1958, 208).

Therefore, in the framework of political science, lobbying (in the various general forms it can take) refers to the activity of interest groups (or

lobbies¹), trying to influence the government and to affect public decisions. As a consequence, political science focuses on the phenomenological description of interest groups, tries to classify them, sees which factors have an impact on their success or failure, studies their strategies, observes how they actually relate with public decision makers, or how different regulatory environments or political and institutional conditions affect this relationship.

As said before, here we are not discussing whether lobbying is good or bad, but analysing how it works, just assuming that *lobbying is a political fact*, taking place anyway, whichever our thinking about it is, in democratic as in non-democratic regimes.

Deciding to focus our view on democratic regimes, we study the types of relationships of various interest groups with various institutions of modern democratic systems, such as legislative assemblies, executive branches, but also independent authorities, agencies, different Public Administration offices and of course supranational or intergovernmental bodies such as the EU Commission, the EU Council or the United Nations General Assembly.

These studies have come in years to various diagnoses about the weight of specific actors or about the balance of power in a political environment, resulting in very different conclusions about the characteristics of modern democracy and its relationship with interest groups. Elitism, pluralism, neo-corporatism, neo-pluralism or the policy networks theory are all examples of such diagnoses.

Now, the politics of interests—as described by Cochran (1973) and as outlined in this paragraph—is only one possible focus of political science, standing next to other branches (electoral studies, party politics, public policy, political communication, etc.) and other disciplinary perspectives (such as sociology, law, economics, psychology, marketing and communication studies), all useful when it comes to understanding the political realm and its dynamics.

Overall, we agree with Popper (1959) when he states that problems—and not the disciplines—are the core of scientific research. That is why in order to understand the functioning of democracy and the role lobbying plays in it, we cannot help being open to all possible contributions from

¹The lexical equivalence between lobbies and interest groups may be disputed by some: for a more structured reflection on the terminological issue look at Beyers et al. (2008) and at Chap. 32 of this volume.

every disciplinary corner, ready to revise our theories in an ever-lasting effort to fine-tune our comprehension of reality.

In conclusion, we remark once again that these different scientific perspectives aim to describe the way decisions are made, the way democracy works and what role is played by interest groups and lobbying within it, without expressing a normative evaluation about it (even if different diagnoses spark very different reactions of course), but simply recording things for what they presumably are, to the best of our knowledge.

A wholly different matter is discussing about whether lobbying *in principle* plays a positive or negative role in a modern democracy, but that is the type of question to be tackled through the lenses of political philosophy, and not of political science or other social sciences, as it implies a normative kind of reasoning. That we will discuss in the next paragraph.

2.3 PHILOSOPHY OF LOBBYING

Throughout the centuries, philosophers and political thinkers expressed very different ideas about the *best* form of government, about what values *ought* to shape a political society, about what democracy *should* look like. As the use of terms such as *best*, *ought* or *should* can suggest, here we steadily are in the field of political philosophy, of normative reflection, of metaphysical thinking, aiming not to describe the reality, but to shape it, or at least imagine a desirable version of it.

So, here we are entitled to ask: Should lobbying play a part in modern democracy? Is it a good or a bad thing in our vision of an ideal decision-making system?

The thesis we propose to address these questions is that *the answer depends on the conception of the Public Interest one adopts*, as that shapes both the way democracy is conceived and the role of lobbying within it (see also Bitonti 2017).

Aim of this paragraph then is to draft a few reflections of *philosophy of lobbying*, enucleating the different theoretical grounds on which every judgement of the relationship between democracy and lobbying relies.

As mentioned at the beginning, at least two possible approaches are possible when it comes to scrutinize democracy and lobbying: a negative one (claiming lobbying would be a distortion of democracy) and a positive one (claiming lobbying would be democracy in action); we think instead that at least five different approaches can be generally distinguished on this regard, corresponding to as many conceptions of the Public Interest.

By conception we refer to an articulation of content, a philosophical construction, a vision concerning a single concept (Rawls 1993), so that we have one concept of Public Interest, but various conceptions of it. In fact, even though the same expression (“the Public Interest”) has been used very often in the history of ideas, nonetheless philosophers, law scholars, economists and politicians meant very different things with it (institutional designs, political programmes, economic policies, etc.), also thanks to the vagueness and the ambiguity of the expression itself (Sorauf 1957; Schubert 1962), which led some to even deny the utility of the concept, if not for rhetorical purposes.

A few attempts have been made to elaborate typologies of conceptions of the Public Interest (Leys and Perry 1959; Friedrich 1962; Barry 1965; Mitnick 1976; Lewis 2006; Galston 2007; Box 2007; Bitonti 2017); as mentioned, here we recall five different ideal–typical conceptions, that we define as formal, substantive, realist, aggregative and procedural.

According to the *formal* conception, the Public Interest is whatever the formal governmental authority says it is; it is a philosophically naïve and somehow tautological conception, because it relies on the sheer form of a decision and on a subjective base (the subject making the decision, such as the Parliament, the Government or any public official), and not on the objective content of that decision. The assumption is that the public decision maker (a democratically legitimized body as well as a bureaucrat selected according to a meritocratic or any other criterion, it is not different in principle) expresses the Public Interest by definition. As a result, the approach towards lobbying in the formal conception is moderately negative, because any effort to change or affect public decisions would represent an undue intervention towards decision makers who already express the right vision; it is moderately—and not strongly—negative, because even considering some lobbying intervention, the final decision of the formal authority will be the right one, and the only legitimized one, by definition.

The second conception of the Public Interest we can focus on is the *substantive* one. All those supporting this conception have a very precise idea of what the Public Interest is, of its content, of its *substance*. In the most extreme cases, it takes the name of Truth, higher Good, Ultimate Goal or the like. Throughout the centuries, plenty of philosophical and political visions were founded on such a conception, usually assigning someone (those “owning” or simply knowing the Truth) the task to commit to those visions and “rule” the world accordingly (some examples may

be Plato's Republic, led by philosophers; a theocratic State, where a sin would also be a crime; or Hitler's supremacy of one race). This conception tends to express an organicist or holistic vision of society (Popper 1945), where the whole counts more than the parts, and where the interests or the rights of individuals can and should be sacrificed in front of the greater good of society considered as a whole. The greater good is the substance of the Public Interest: vested as a Truth, of course it tends to admit little discussion and to be quite dogmatic. That is why, in this conception, we find a strongly negative vision of lobbying: in fact, anyone trying to influence the rightful interpreters of the only "true" vision, especially representing the point of view of only a part of society (usually labelled as faction or special interest group), would actually contrast the Ultimate Goal itself, allegedly for selfish interests or for ignorance in the best case. Overall, this conception has a negative conception of modern democracy as well, privileging "enlightened" forms of authoritarian or totalitarian government instead, where absolute Truths justify absolute powers.

A third conception of the Public Interest practically implies a non-conception: in fact, according to the *realist* conception, the Public Interest simply does not exist. The realists are those who think that the only real thing is the clash between different visions and interests, all somehow *claiming* to be public (Dahl and Lindblom 1953). The "Public Interest" would only be a label then, used for rhetorical reasons by politicians or other political actors as a weapon to strengthen one's position, but nothing more. In a cynical interpretation of the formal conception, the realists would say that the Public Interest (as determined by the formal decision makers) would just be the expression of a particular balance of power at a given time, where the label would only result a kind of trophy for the winners of the clash between different interests. They support a science-driven approach to the Public Interest, where the values should be put aside (Weber 1922), and where the toolkit of political science (illustrated in the previous paragraph) is the only possible perspective which makes sense. In this conception lobbying is just an aspect of democratic regimes, a tool used by groups in order to prevail, a raw fact to be acknowledged in the analysis of the political arena (Olson 1965), without any ethical judgement on it.

The fourth conception of the Public Interest, the *aggregative* one, can be considered a liberal conception, supporting a limited amount of ethical content, meaning that, even if—unlike the realist one—it stands out with ethical prescriptions and values (such as the equality of individuals and their

freedom), it does so in a less “demanding” way than the substantive one, without any claim on the Ultimate Goal or on the Truth. The aggregative conception of the Public Interest is quite relativist, and only prescribes the aggregation (interpreted as at least peaceful coexistence) of various political visions and of various interest groups in a political society (Kelsen 1955; Rawls 1993). It not only recognizes the existence of these different groups (like the realists do), but also says it is a good thing that different opinions keep to exist and oppose each other, according to a liberal–democratic constitutional scheme. According to this conception, the Public Interest is represented by the rules of the game themselves, embodying that scheme. This conception has a positive stance on lobbying, deemed as a legitimate way to advance one’s interests in a democratic and open competition for consent, addressing both the actual decision makers and the grassroots at the base. Just like with the market economy, taken as a model by many authors supporting this conception (Mandeville 1714; Smith 1776; Schumpeter 1942; Downs 1957), the political competition (between political parties or players as well as between different interest groups at the broader level) should take place in a fair playground with “antitrust” guarantees and certain rules, where theoretically any minority can become the majority and where almost all political opinions are legitimate (except the intolerant and violent ones; see Popper 1945).

The fifth and last conception of the Public Interest is the *procedural*. According to this conception, the Public Interest may result from a procedure of rational deliberation taking place between rational actors, weighing the pros and cons of each option on the table, and reducing any possible bias in order to favour a final unanimous agreement on what is the best option. Only such an option can be deemed as being in the Public Interest. Evidently, the focus here is on the procedure of the deliberation itself, and that is why we call this conception procedural. It is an open-ended conception, which theoretically may go very far as concerns moral prescriptions. It is the conception embodied by the model of deliberative democracy (Bohman and Rehg 1997; Dryzek 2014). Here we find again a strongly negative vision of lobbying, as it would represent a channel of distortion and interference in front of a purely rational decision emerging from the deliberation process, taking place in an ideal discursive space (Habermas 1984).

Now, each conception can be associated with a particular vision of democracy (or non-democracy), with a particular vision of human epistemic conditions, of anthropology, of economic and institutional ideal

designs, and all these aspects should be properly assessed and developed when discussing a philosophy of lobbying.

As far as we are concerned here, out of five different conceptions of the Public Interest, two appear strongly against lobbying (the substantive and the procedural), one moderately against (the formal), one neutral (the realist) and only one definitely supportive (the aggregative).

An interesting exercise for the reader can be finding the connections of single political thinkers, as well as of single politicians, to one conception or the other: we are sure that surprising results may be observed.

These are just ideal-types though, and the reality can be trickier and more blurred in shades of grey. Nonetheless, much of the roots of the negative perception towards lobbying and lobbyists reside exactly in the two or three conceptions recalled above condemning lobbying as a danger to the Public Interest. And the philosophical culture of many European countries—shaping their legal systems and social attitudes—seems heavily influenced exactly by those visions, through ideas such as general will (Rousseau 1762), reason of State or administrative supremacy of public actors.

However, it is important to highlight the hidden connotations of those conceptions precisely as concerns their understanding of democracy itself. In fact, the substantive conception hides a potentially totalitarian vision and a denial of the same basic concept of democracy; the formal conception presents a naïve version of democracy, which is virtually void or may even leave room to the arbitrary will of those with formal power; and finally, the procedural conception defends a deliberative democratic model which fails to properly address the problem of the actual realization of an ideal discursive situation, stumbling into a further obstacle (just like the substantive conception) should one ask: “What does ‘rational’ mean?”

As said, the realist conception promotes a value-free scientific approach to the political reality, and does not offer any ethical defence of democracy nor of any other political regime.

At a closer look then, the only conception of the Public Interest that seems to positively engage in an ethical justification of the rules of modern liberal democracy in constructive terms is the aggregative one. It is not a chance that it is the only conception which completely legitimizes lobbying, prescribing the aggregation and the composition of different particular interests in such a way that the Public Interest lies just in the aggregation itself (Bentham 1789; Popper 1945). And it is exactly from that conception that we can draw the most interesting theoretical lessons

for a balanced and well-grounded regulatory framing of lobbying itself in developed modern democracies.

2.4 PRINCIPLES FOR LOBBYING REGULATION IN A MODERN DEMOCRACY

Modern democracy can be defined and conceived in multiple ways (Schumpeter 1942; Dahl 1956; Sartori 1993; Manin 1997; Canovan 1999), and—as seen in the previous paragraph—just considering alternative visions of the Public Interest leads to very different outcomes in the normative design of democratic structures and procedures, implying different types of lobbying regulations as well.

Choosing to focus our view on the aggregative conception and on its idea of modern liberal democracy, we can point out a few fundamental principles that may be considered particularly resounding and befitting in such a philosophical construction, founding its basis on the three main values of the formal equality of individuals, their freedom and their peaceful coexistence.

The first principle is *accountability*. By accountability we refer to the necessity for public decision makers to “justify” their actions, in such a way that they can be held accountable in front of the public, exactly because of their special status of public actors. A minimal level of accountability resides in the explanation of how public decision makers got to their positions (e.g. being elected by a majority, appointed by someone else or having won a public competition); a greater level of accountability resides in the justification of every action and every decision made in public office.

In order to actually realize the first principle, representative democracies need to enforce a second principle: *transparency*. By being transparent, public decision makers and public institutions allow public monitoring and greater accountability. Transparency also enhances the freedom of individuals and groups to mobilize when they have a stake, in order to support their interests and preferences in front of public decision makers. Transparency also guarantees an equal opportunity of access to information for all.

Acknowledging accountability and transparency, a third principle to be enforced is *openness*. Assuming that there cannot be a postulation of “superior knowledge” of public decision makers, the system should establish channels of communication with all the stakeholders involved in a decision: they can provide information and expertise and actively be

engaged in the actual realization of a public decision (considering they are the affected ones by definition).

The fourth and last principle we can recall here concerns the way openness and participation are enforced: these processes need to be designed according to a principle of *fairness*, which guarantees that access and possible participation of stakeholders into the decision-making process takes place in fair conditions, reasonably without unjustifiable privileges or distortions.

We believe that these four principles—accountability, transparency, openness and fairness—are those which shape a just lobbying regulation founded on the premises of modern liberal democracy, as conceived by the aggregative vision of the Public Interest, and that a decision-making process designed around these principles should presumably

1. increase the general confidence in the democratic decision-making process and institutions, and
2. improve the quality of decisions overall.

Of course, this is a hypothesis that should be empirically tested and further assessed with the tools of political science, even if starting from the point of view of political theory, as we did in this chapter.

2.5 CONCLUSION

As illustrated in the other chapters of this volume, various lobbying regulatory frameworks exist in the EU countries. Scholars have attempted in various ways to develop schemes of analysis, classifications of regulations, empirical studies to test those regulations (Lowery and Gray 1997; Thomas 1998; Chari et al. 2010; Greenwood and Dreger 2013; Flavin 2015). We think that a thorough analysis of lobbying regulatory environments cannot help considering also philosophical and theoretical aspects such as those we discussed here, weighing the role of philosophical and political traditions (conceptions of Public Interest shaping the way lobbying is perceived by politicians and by the public opinion), and assessing the way actual lobbying regulations deal with important ethical principles implied by a modern liberal democratic model, such as the four ones discussed in the previous paragraph. Normative political theory appears a fundamental framework on this regard.

In this chapter we also highlighted the epistemological difference between scientific analyses of the political reality and philosophical reflections on how that reality should function in our ideal visions. It is important to be aware of this difference, especially when dealing with both grounds just like political theory does.

Finally, we developed a typology of conceptions of the Public Interest, with five different ideal-types, relying on very different premises and entailing very relevant differences also in the outcomes. A formidable argument in favour of the role of lobbying in modern democracy comes from one of these conceptions, the aggregative one, implying the defence of a constitutional system where various interest groups are not only allowed to exist, but even encouraged to pursue their own interests, a conception where the Public Interest is exactly in the rules of the democratic game and in the minimal values of modern liberal democracy: the formal equality of all citizens, their peaceful coexistence and the freedom (compatibly with everyone else's freedom and according to the general principles of institutional accountability, transparency, openness and fairness) to stand up for one's interests and preferences. Freedom to lobby included then.

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The EU Institutions

Simon Levitt, Simon Bryceson, and Frederick van Mierlo

January 16, 2006. Strasbourg, France. Monday evening.

It is a cold, miserable January evening in Strasbourg. The 736¹ Members of the European Parliament (MEPs) have moved their papers and deliberations from Brussels, as they are required to do for a week most months. Cases full of papers have been arriving all day.

In two days' time, the Parliament will vote whether to liberalise the operation of shipping docks across Europe. A proposal has been received from the European Commission, the 'Port Package II'. The informed view suggests the Parliament will support the measure and will vote for liberalisation.

As darkness falls, the fireworks start. MEPs gather at the windows to see what is happening in the courtyard below, but police arrive to warn them away for their safety. Fireworks slam into the building. Windows shatter. Paving stones are ripped up and hurled in a pitched battle with the local

¹In 2006 (prior to Bulgaria, Romania, and Croatia joining the EU), the number of MEPs was 736. The Lisbon Treaty placed a cap of 751 MEPs to prevent growth of the parliament every time a country joins the EU. The cap was implemented after the 2014 European elections.

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police. Police fight back with tear gas and water cannon. The dockworkers of Europe—10,000 of them—are here to influence the vote.²

Beyond the violent protests in Strasbourg, dockworkers from Sweden to Greece are on strike. Outside Rotterdam, Marseille and Antwerp ships are queuing miles out to sea. The Parliament has received thousands of emails and letters. An Irish MEP, coming out of her local church the previous Sunday, is urged again and again by parishioners to support the dockers. MEPs across Europe swap stories of such local mobilisation.

Two days later, the Parliament, in overwhelming numbers, votes, 532 to 120, in favour of the dockworkers. There will be no liberalisation.³

If we can define lobbying as ‘a consistent and directed attempt to influence government policy’ (Franklin et al. 2009, p. 126), then this is lobbying at the European or Brussels level. In this case, extreme but successful. This chapter will attempt to look at how EU-level lobbying has developed and changed; who lobbies whom, and how; what lobbying works; and what the future holds.

3.1 THE EU: BEGINNINGS AND GROWTH

The process of European integration started in the 1950s, to bring European countries closer together after the Second World War. Belgium, France, Germany, Italy, Luxembourg and the Netherlands created the European Coal and Steel Community in 1951, and established the European Economic Community (EEC) through the Treaty of Rome in 1957. Western European countries continued to join in small groups over the years,⁴ while a major Eastern expansion saw ten new countries join in 2004⁵; in 2013 Croatia became the 28th ‘Member State’. The EEC became the European Union in 1992, and now represents over 500

²Official estimates of the protest, called for by the European Federation of Transport Workers, suggest around 6000 present. Unofficial estimates place numbers at around 10,000.

³While the Port Package II was rejected, in 2013 the Commission re-launched its attempts to liberalise the sector with a new, more limited, Port Package III initiative.

⁴Denmark, Ireland, United Kingdom (1973), Greece (1981); Spain, Portugal (1986), Austria, Finland, Sweden (1995).

⁵Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, Malta, Cyprus (2004); Bulgaria and Romania (2007).

million European citizens. Seven further countries are seeking to join, each at various stages of negotiation.⁶

As new countries joined, a series of Treaties incrementally widened the EU's powers or 'competences'. A Brussels merger treaty was signed in 1965, but the more significant milestones were the Single European Act of 1986 and the Maastricht Treaty of 1992, which set the path towards a more complete EU 'internal market' for all and a European Monetary Union for some (van Schendelen 2010). The Treaties of Amsterdam (signed in 1997) and Nice (2001) prepared the EU for enlargement, and the Lisbon Treaty followed in 2007, after a failed attempt at a European Constitution.⁷

The history of lobbying in the EU is intimately connected to the Treaty developments above. The early years can be seen as a 'pioneer' phase: many commercial and public interest groups were yet to focus on 'Europe'; there were a few lobbies that came early. The Common Agricultural Policy is one of the EU's oldest policies, with framework provisions already in place at the signing of the Treaty of Rome in 1957, and so the farming lobby was arguably the first sector to have a serious presence in Brussels.⁸

It was the momentum of the Single European Act and Maastricht Treaty in close succession that alerted many to the increasing power of the EU over their interests. By the late 1990s, many of the models of lobbying we see today were in place: industry presence growing year on year, the increase and staffing up of sectoral trade associations and professional lobbying consultancies. Some non-corporate advocacy groups had been present for years (the European Environmental Bureau and WWF were among the first to set up a permanent presence in Brussels in 1974 and 1989, respectively) (Long 2005), but the early 2000s saw increasing numbers of NGOs focused on EU policy.

Lobbying numbers continue to rise across the board and strategies have become more sophisticated. Many Brussels observers see a new phase of lobbying entering after the 2007 Lisbon Treaty, because in order to continue to reach decisions among 28 countries, the Treaty altered many

⁶Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey are official candidate countries, while Bosnia and Herzegovina and Kosovo have been promised the prospect of joining (called potential candidates).

⁷The Treaty of Lisbon was signed in 2007 but did not come into force until 2009.

⁸In 1958, the first European representative organisation, the European farmers' association (COPA), was created. In 1962, COPA merged with COGECA, the General Confederation of Agriculture Cooperatives, to form COPA-COGECA.

of the decision-making processes (e.g. Gueguen 2013). To understand these, we need first to look at the institutions and processes which are the focus of lobbying.

3.2 THE EU: INSTITUTIONS AND DECISION-MAKING

The EU makes policy decisions through a number of institutions, seven in all.⁹ The most important of these for policy-making are the European Commission, the European Parliament, the Council of the EU (commonly referred to as the Council of Ministers), the European Council, and the Court of Justice of the European Union (CJEU or ECJ). We often talk of ‘Brussels’, and this is indeed the centre of decision-making, but the Parliament must meet for 12 periods of monthly plenary sessions in Strasbourg; parts of the European Commission are in Luxembourg with additional agencies across Europe (e.g. the European Medicines Agency, based in London, or the European Environment Agency in Copenhagen). The ECJ is in Luxembourg, while the Council of Ministers divides its time between Brussels, Luxembourg, and the countries holding the rotating presidency of the Council.

For lobbyists all are important, though it is the European Commission, the European Parliament and the Council of Ministers which are often the major focus.

3.3 THE EUROPEAN COMMISSION: THE QUIET FOCUS

The Commission is lobbied on a wider range of issues than any other institution. Housing a staff of 33,197 officials in 2015,¹⁰ it is best seen as the EU civil service, though with an increasingly political President, currently Jean-Claude Juncker, and new vice presidents in charge of overseeing the work of commissioners in each policy area. For all pieces of EU secondary legislation, the Commission has a cherished ‘right of

⁹ Opinions vary on how many and to what extent the EU’s more specialised institutions and agencies have influence on the policy process. For the purposes of this chapter, we include the European Commission, the Council of the EU, the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, and the Court of Justice of the EU.

¹⁰ Figure includes Commission officials working in translation, other services, for example, OLAF and those not based in Brussels. An exact breakdown can be found here: http://ec.europa.eu/civil_service/docs/hr_key_figures_en.pdf

initiative'. This means that even if the Commission has been asked by the EU countries to create or revise a law, it gets to write the first draft, before others can review it. This has always been important, and is by common consensus more important since the Lisbon Treaty and Juncker's 'Better Regulation Package'¹¹ because more time and consultation goes into this first phase of the legislative process.

Not only do lobbyists increasingly focus on the Commission in this first phase of policy-making, but also since Lisbon, there is more emphasis after the secondary legislation is agreed on Implementing or Delegated Acts, and this is also firmly Commission terrain. Similar to French 'Décrets-Lois' or a UK 'Statutory Instrument', Delegated and Implementing Acts set out the detailed provisions after a directive or regulation is adopted by the Parliament and Council.

The Commission is also Europe's competition regulator, examining potential mergers and acquisitions and market abuses, and has in the last ten years been prepared to show its teeth, most famously rejecting GE's proposed takeover of Honeywell in 2001, imposing large anti-trust fines on Microsoft, and at the time of writing is investigating Google in the tech probe for this generation. It is consequently the focus of attention for most of Brussels's lobbyist-lawyers.

Further increasing its power and focus for lobbyists, the Commission is the sole negotiator for trade agreements between the EU and third countries. The mooted Transatlantic Trade and Investment Partnership (TTIP) agreement with the USA is, in 2015, the most discussed, but the EU has concluded trade agreements with over 50 countries and territories, with many more in late negotiation stages (European Commission 2013). Finally, the Commission represents the EU in international negotiations, for example, the international climate change negotiations, most recently in Paris 2015.

The upper echelons of the Commission (Commissioners, Cabinets and Director-Generals) have started to publish details of meetings they hold with lobbyists. No wonder a recent count showed 4547 meetings since records started in December 2014 (Transparency International 2015). Mandatory requirements to publish meetings are, at the time of writing, limited to top ranking officials only, though in time this first step will likely be extended to all EU Commission officials involved in policy-making.

¹¹The Better Regulation Package, May 2015, strengthened the consultation phase of policy-making, allowing the public to input even earlier in the drafting process.

3.4 THE EUROPEAN PARLIAMENT: THE LOBBYISTS' THEATRE

The European Parliament is the EU's legislature, with 751 MEPS, apportioned by country according to population, and MEPs representing eight political groupings, from centre-left, centre-right, Liberal and out to the fringes of the political spectrum. Since its evolution to a directly elected parliament in 1979, it has step by step argued for and received more powers in the decision-making process. In particular, the parliament has increased its power significantly on secondary legislation (directives and regulations).

Even if the Commission has power over and is lobbied on a wider range of issues, it is the Parliament that sees most lobbyists in its buildings. Some have pointed to lobbyists increasingly basing their offices near the Parliament as evidence of its increasing importance at the expense of the Commission. In reality, this may well relate as much to Brussels geography as anything else. The Parliament's home in Place du Luxembourg is a much nicer and impressive real estate location than the European Commission's Schuman home. The comparatively large numbers of lobbyists in the Parliament is also due to the unique openness of Parliamentary proceedings. Unlike other institutions, procedures are open to be viewed, with lobbyists rushing back to their desks to write up reports. The fact that decision-making, which starts privately in the Commission, draws towards a more public conclusion in the Parliament also contributes to the weight of lobbyists roaming the Parliament's corridors. Most charts that track ability to influence decisions over time show less influence at this late stage, but it is nevertheless the political theatre to watch the near final results.

3.5 THE COUNCIL OF MINISTERS: TRUE INFLUENCE FOR THE POWERFUL?

The European Council and the Council of Ministers are the meeting place of the Member States—Heads of State/Governments in the former, government ministers and national diplomats, for example, ministers for Energy, Transport, Environment, and so on in the latter. In institutional terms, the Council has always been powerful, arguably more so on the international stage since the creation of a permanent president, currently Donald Tusk, the former Prime Minister of Poland. If the Commission has power from 'devil in the detail' drafting and the Parliament makes the most noise, the Council quietly has the iron will. This is where important

issues for countries can get pushed through or blocked, often Germany and other ‘big six’ countries¹² can alter the course of decision-making. For Brussels lobbyists the Council is the enigma; it can be the most important place to make a single decisive intervention, yet its decision-making is famously opaque. Its meetings are closed and what emerges is an edited truth. Brussels lobbyists focus on the staff of the countries based in Brussels, in ‘Permanent Representations’, but usually these are lower-level civil servants compared to colleagues in the capitals. Most stories that emerge of true influence on the Council tell of quiet phone calls from the Rhine to Berlin, or the City of London to 10 or 11 Downing Street. In these cases, lobbyists in Brussels watch and report back to colleagues in HQ, then HQ picks up the phone to national capitals.

For those who mutter about lobbying influence, this is arguably the most unequal lobbying playing field. NGOs can find it more difficult to influence, as do companies based outside the EU or sectors without a significant economic footprint in one of the ‘big six’ countries. But for sectors with such a footprint, influence is possible, for example, financial services in the UK, the car or chemical industries in Germany, or the farmers’ lobby in numerous capitals.

3.6 HOW MANY LOBBYISTS?

Brussels has, in recent years, started to count lobbyists. Lobbyists are required to obtain a pass to regularly enter the Parliament, which is one count, but the more complete numbers are derived from a Transparency Register the European Commission started in 2008 (more of which below). According to the Register in 2015, there are approximately 8000 organisations involved in EU lobbying, 138,000 individuals who do lobbying for part of their job, which nets out at the equivalent of 95,000 people doing lobbying as their full-time job.

That is a lot of lobbyists. The reaction of some individuals and groups to these numbers has been to express concern about the extent of lobbying and potential undue or unbalanced influence. These concerns have some grounding in facts, which we discuss further below. However, seen another way, one of the *raisons d’être* of ‘Brussels’ was and is to avoid

¹²The ‘big six’ of Germany, France, UK, Italy, Spain, and more recently, Poland, have a larger share of votes in the council and exercise economic clout that the size of their economies gives them.

a return to the European wars of the twentieth century, and here is a group of 100,000 people living and working together who have come from all parts of Europe. If one accepts the wisdom of the EU funding the Erasmus programme for students to live and study in other European countries, then the idea of a large group of Europeans living in the same city, often intermarrying and procreating, has a value to Europe beyond the debates about who has more influence on the decision-making process. Many who become lobbyists are young people in their twenties who come to Brussels after university (often universities); a political science or law degree is a well-travelled route but by no means the only one.

The Commission's Transparency Register is not compulsory, unlike in Washington and several European capitals, so people complain about its accuracy. Several NGOs have emerged in the last ten years to lobby against lobbying,¹³ and the Brussels newspaper *Politico*, itself a new entrant in 2015, is fond of pointing out examples of organisations signing up to the Transparency Register an hour before their meeting with the Commission. The Register is likely to become a little more reliable over time, but there will always be a statistical inaccuracy. These authors estimate a current undercount of approximately 10–20 %.

3.7 WHICH INTERESTS LOBBY? WHO ARE THESE LOBBYISTS LOBBYING FOR?

One can spend an interesting half hour looking through the Register for names of eclectic organisations—both the European Beekeeping Coordination Association and the British Ceramic Association are represented. One can see how the numbers quickly add up, though in truth many such organisations have one lobbyist or are not based in Brussels but rather 'fly in and fly out' in a day (FIFO in Brussels-speak). A look at the flight arrivals at Brussels airport before 09.00 on a weekday morning is also instructive; a typical schedule shows flights landing from Berlin, Stuttgart, Frankfurt, Munich, Hannover and Hamburg, in time for Brussels committee meetings or expert groups. London is two hours away by train, Paris just over one. (The Dutch have been promised a similar fast train for 20 years!)

¹³ Corporate Europe Observatory (CEO) and Alter-EU are two examples. Alter-EU is a coalition of over 200 interest groups concerned about the influence of lobbying in the decision-making process.

But much lobbying firepower is in the hands of larger companies, their sectoral trade associations and some of the larger NGOs. Counter-intuitively NGOs sometimes have the larger staff; in a WWF or an Oxfam, a team of 10–15 is not unknown. Staff numbers in companies can be surprisingly low, and many of the Global Fortune 500 will have fewer than five full-time staff. But ‘corporate’ lobbying estimations then need to take into account colleagues back home ready to fly in for expertise, money spent with lawyers or lobbying consultants, and the larger staff in the sectoral trade associations. The Association for Financial Markets lists 69 declared lobbyists in 2015, CEFIC, the chemicals trade association, 74, and Insurance Europe, 43 (LobbyFacts.eu 2015).

If one looks at self-declared money spent on lobbying, the top ten spending companies are large multinationals, most of whom one might guess. ExxonMobil and Shell top the list, each declaring an approximate annual spend of €5 million in 2014, which includes staff costs, spend with trade associations, consultants, lawyers and others. Tech/ICT is well represented by Microsoft, Google, Siemens and Huawei, Deutsche Bank ranks fourth, Dow Chemicals fifth and GE seventh (Lobbyfacts.eu 2015). This gives the beginnings of an insight into lobbying spend by sector, where most studies show the biggest spenders to be energy, technology and finance. Chemicals, pharmaceuticals and agriculture would follow next (Transparency International 2015). It is perhaps hardly surprising finance regularly comes out as a top spender, when Mckinsey (2013) estimates as much as 50 % of the sector’s business earnings is dependent on government and regulatory intervention.

Some sectors have key issues that rise and fall, for example, the fishing industry which lobbies on the reform of the Common Fisheries Policy every ten years, or the chemical industry whose big issue in secondary legislation was the overhaul of chemicals regulation known as REACH, agreed in 2007. The energy firms constantly have big issues, as has finance increasingly since 2008, and the tech firms have beefed up lobbying most recently, both around big Microsoft and now Google anti-trust cases, data protection and the disruption pressures which tech places on more traditional economic models.

Discussions about lobbying often focus on lobbyist consultants, and a handful of the larger consultancies will have teams of more than 50. But compared to the number of organisations overall, the number of consultancies is low—the consultancy trade association EPACA has 35

member companies (including our company, HLC), and the number of consultants in Brussels is registered at 3000–4000, so about 5 % of the lobbyist total (Lobbyfacts.eu 2015).

Law firms have beefed up their teams in recent years, often focused on competition cases and trade agreements, though the numbers are smaller than consultants. At the time of writing, a debate continues whether law firms can register lobbying activity without breaking client confidentiality; therefore, counting law firm lobbyists is a difficult task (Politico 2015).

3.8 WHAT DO LOBBYISTS LOBBY FOR?

To read debates about Brussels lobbying, one might think all battles pit industry defending the status quo versus NGOs lobbying for change. There is some underlying truth in this; if one sees a key role of policy-making as internalising externalities into the legal operating framework and recognises that public companies have a legal obligation to maximise shareholder value under the existing framework, it is no surprise that the established companies, and hence some big spenders, do often lobby to maintain the status quo or to minimise or delay change. Debates about climate change, chemicals and banking reform would be classic examples; significant capital has been invested into defending the status quo.

But increasingly policy debates also see one industry sector or company competing against another, with emerging interests taking on established interests. Large energy firms may wish to slow down liberalisation of the European electricity market or maintain grid infrastructure to favour ‘big box’ power generation like nuclear, gas or coal; while emerging wind, solar and other companies lobby the opposite way. Healthcare debates will pit established ‘originator’ pharmaceutical companies against producers of generic medicines; tech debates pit Uber against taxis, AirBnB against hoteliers, and Google against smaller US tech firms.

A final trend sees EU policy-makers struggling to grapple with new, disruptive technologies, whose impacts they often take longer to understand, and therefore Brussels sees more concern voiced than in the USA. This is a useful lens also through which to see debates on GMOs and ‘novel foods’ from the 1990s onwards, on gene therapies and other advanced medical techniques, the debates on first and second-generation biofuels, and the ‘Uber wars’ of today. In these cases, established interests have invested capital in a new generation of technology, so in this case it is these ‘big spenders’ lobbying for change.

3.9 WHO WINS, AND WHY?

This is the million-dollar question in Brussels, or for Shell and ExxonMobil the five-million-euro question. Are there secret ‘ingredients’ to successful lobbying?

The first point to note here, is that apart from occasional significant interventions from industry into big Member States as described above, for many issues in Brussels the outcome will fall somewhere in the middle between status quo and change. This is because once the Commission picks up its pen, it is likely there will be change of some kind. After such a compromise conclusion, because all lobbyists have focused so clearly on their wish list, and not all wishes are granted, many feel they have not won. Daniel Kahnemann, Amos Tversky and others tell us that loss aversion theory means a loss is felt more strongly than a gain (Kahneman and Tversky 1984). You notice this in Brussels: if you privately discuss with both sides of a debate their feeling after the outcome, there is sometimes a gap which is less than a zero sum game. Add to this that many lobbyists will not discuss why they ‘lost’, or indeed why they ‘won’, it is not surprising there is a paucity of published case studies.

Below then are the reflections of these authors from 20 years in Brussels, and private interviews with 50 Brussels lobbyists.

It is true that on balance over many issues over the years, outcomes slightly favour established interests over those pushing for change. NGOs argue that industry draws ahead because of its spend on lobbyists in the classic battles of secondary legislation in Commission, Parliament and Council. Though this spend is easy to see, we are not so convinced. NGOs have become more effective per euro spent in these more public debates, particularly in the Parliament. In addition, NGOs generally outperform industry on another, non-monetary resource, trust. Established players do better with the Commission and the Council we argue, less because of an ‘army’ of lobbyists in the Brussels set pieces, but rather because of the occasional Council interventions into national capitals above, and because industry lobbyists can call on colleagues with expertise to meet with the Commission or join expert groups. If you wish to discuss the intricacies of electricity demand, the Commission is the place to do it, and industry will always have more ‘sweat equity’ to sit in technical meetings. When the devil is in the detail, the drip input of technical expertise often wins the day. ‘Yes-no’ bipolar debates of principle are fought more equally.

As mentioned in the Commission section above, more and more policy now gets shaped early before a draft leaves the Commission, and more gets left to the Commission after the Directive or Regulation is adopted, to deal with in Implementing or Delegated Acts (Gueguen 2013; Gueguen and Marissen 2015). The current view is this makes things more complex for lobbyists. This is true, but technical lobbyists are learning the new rules, while smaller companies and NGOs are finding life more difficult post-Lisbon.

3.10 SCANDALS AND TRANSPARENCY

When one reviews attitudes to lobbying in Brussels, a first point of interest is the historical difference between countries. Both the UK and the USA have had their famous lobbying scandals (Greer and Abramoff to name two), but there is a view in Brussels that in ‘Anglo’ culture lobbying is more acceptable. In contrast, lobbying in Germany was sometimes described as a ‘dirty word’ until recent times. In many countries, there is acceptance of lobbying as a fact, particularly if conducted by the interested party itself, but a little more suspicion of ‘guns for hire’. Hence, NGOs and others in the mid-2000s started their private sector focus on consultants; it is more recently that more attention has turned to ‘in-house’ lobbyists from large companies.

Faced with criticism, the consultancies set up several trade associations, SEAP for individuals in 1997 and EPACA for companies in 2005. Both have developed self-policing codes of conduct and have been active in the debates on whether the Transparency Register should become mandatory.

But some of the more infamous ‘scandals’ involve policy-makers themselves. In 2011, the British newspaper *The Sunday Times* approached 60 MEPs undercover in a ‘cash for amendments’ sting. Three MEPs took the bait and have subsequently been indicted or imprisoned; all were senior politicians, one the former Interior Minister of Austria, the others former Foreign Ministers of Slovenia and Romania.

The year 2012 saw the so-called Dalligate scandal, when the Maltese Health Commissioner John Dalli either resigned or was fired following allegations of a €60 million ‘cash for access’ agreement between a tobacco producer and a Maltese lobbyist. The EU’s anti-fraud office, OLAF, has investigated, yet the common view is that the full facts have not yet emerged.

Other concerns about policy-makers are less scandals, but rather question what role former policy-makers can play in the private sector, and with what gap, or ‘cooling off period’. This is the ‘revolving door’ issue, and several commissioners have come under scrutiny in the last ten years. Commission rules continue to be tightened, both on this revolving door issue, and on the publishing of meetings held, for example, the 4547 meetings with lobbyists in 2014 as mentioned above.

3.11 THE FUTURE

What does the future hold for lobbying in Brussels?

In some senses, this is a difficult question, because the EU itself has been under increasing pressure, from the Eurozone crisis which most see as unfinished, the response to mass immigration in 2015-2016, and the issue of the UK leaving the EU, the so-called Brexit. The view of some lobbyists is that Brussels’ influence over the countries has weakened, and therefore some lobbying money should be diverted back to national level.

However, in the day-to-day business of Brussels, lobbying will continue to grow. Large companies will continue to hire more staff, with the most recent growth being in the tech sector. There will always be complaints about corporate lobbying, though the actual fact of lobbying is more and more accepted, and the publishing of meetings and money spent should protect the activity outside of unethical behaviour.

What will lobbying look like in the future? In recent years, a Brussels dinner party topic (for those interested in these things), has asked ‘is Brussels turning into Washington DC?’ In some senses, yes. Brussels has definitely matured and settled into some fixed patterns where lobbying plays a central role. As companies and others look for TTIP and other harmonisation between the EU and other trading blocs, there is likely to be a more global policy debate. Should European rules on chemicals be the basis in case of a harmonised system with the USA? What should harmonised rules look like on copyright, data privacy?

But in some senses, no—Brussels will continue to be different to Washington. The political balance in Brussels will continue to be less right-wing than the USA; campaign finance will not be allowed here, so established interests will never have that additional advantage; the US first amendment (the right to petition) sees lobbying as part of the right to self-representation. Brussels will always have more suspicion of lobbying than in the USA; but in reality, it will be increasingly baked into the system.

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Austria

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During the past decades, observers both at home and abroad have repeatedly remarked that the Austrian political system shows some distinctive features. The unusual situation of two large, dominant political parties on the one hand and the overriding principle of social partnership as a strong social and political factor on the other, for a long time left its mark on the development of the republic.

4.1 THE POLITICAL SYSTEM

Austria is a federal democratic republic consisting of nine federal states. The head of state and its legislative organs are elected by the populace. Federal legislation is enacted by the two chambers of Parliament (National Council), ‘Nationalrat’ and ‘Bundesrat’. The latter chamber represents the interests of the federal states. The state diets exercise the legislative power of the federal states. The supreme federal executive organs are the Federal President and the members of the Federal Government, headed by the Federal Chancellor. The supreme state executive organs are the State Governments, each headed by the State Governor.

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The Austrian Federal Government is collective body that exercises executive power. It is composed of the Chancellor, the Vice Chancellor and senior ministers. The President is the Head of State who forms together with the Federal Government the executive branch. On the federal level, there are two main elections: for head of state (Federal President) every six years, and for the 183 seats of the National Council (Parliament) every five years by proportional representation.

In order to prevent political parties in Austria from becoming dependent on individual investors and lobbies, they are subsidized from tax revenue. The rules concerning the amount and the allocation of public subsidies as well as the limitation of campaign expenses are laid down in the Political Parties Act of 2012. In 2014, the public funding of political parties amounted to about 42.7 million Euros. To calculate the amount of annual public subsidies for political parties, the total number of citizens entitled to vote at National Council elections is multiplied by Euro 4.60. Each party represented in the National Council with at least five members (the minimum number required to form a parliamentary group) receives a basic amount of Euro 218,000. The balance is distributed among the parties represented in the National Council in proportion to their percentage of votes in the latest National Council elections. Since 2015 these allowances vary with the consumer price index.

Even if, internationally, Austria is not considered to be a special case, there is still widespread agreement on the fact that cooperation and the coordination of interests between the federations is one of this country's distinctive features. The common definition for this cooperation is social partnership. The Austrian social partnership consists of four chambers with mandatory membership: the Austrian Chamber of Commerce, the Austrian Chamber of Employees, the Federal Union and the federal umbrella-association of the agricultural sector.

The federations and chambers work in close contact with one or other of the two political parties, the Austrian People's Party or the Social Democratic Party of Austria. The considerable economic growth and rise in employment and wages during the 1950s and 1960s created a favorable basis for the exchange of economic and socio-political interests. All this contributed to the widespread establishment of the Austrian system of social partnership up from the 1960s. If the 1970s could be regarded as its heyday, the 1990s, in particular, have witnessed a change in this system's significance. Until then, social partnership was neither anchored in the Austrian constitution nor laid down in any specific law. It has been rooted in

the free will of the players concerned. To a large extent, it was implemented informally and confidentially and not normally accessible to the general public. In 2006, the social partnership, their mandatory membership as well as their contributing role in political decision-making was finally established in the Austrian constitution.

The umbrella federations of the social partners wield great influence as regards political opinion-forming and decision-making. Their co-operation has thus often been criticized as a ‘shadow government’, although the political omni-competence often attributed to the social partners has, in fact, never existed as such. As a matter of fact, their influence on almost all fields of politics is evident. A traditionally used channel is their close relationship with one or the other of the long-standing government parties, that is, the Social Democratic Party or the Austrian People’s Party. In addition, the federations are incorporated, both formally and informally, into the political opinion-forming process of the relevant ministries, as evidenced by their participation in a number of committees, advisory boards and commissions. Even at the parliamentary level, involvement of experts from the federations and chambers is a normal practice.

Throughout decades all of those institutions became a resourceful reservoir for staffers in parliament as well as in the Federal Ministers’ cabinets. Not only Members of Parliament were—and are—either elected representatives or high-ranking employees from one of the social partnership’s institutions but several members of the federal government also came directly from the social partnerships’ leadership offices. Furthermore, both big parties relied heavily on the policy making and interest mediation powers of the social partnership in almost all policy areas. Lobbying, by the way, was then considered something ‘truly American’, not necessary and non-existent in Austria (Köppl 2001).

4.2 THE PUBLIC AFFAIRS INDUSTRY ON THE RISE

According to some political scientists, Austria’s development in terms of political management and the modernization of the country’s interest mediation system may be characterized by one word: delay (Pelinka 2011, p. 25ff). As the development of democracy itself in general is delayed, supported by a still too strong functional as well as structural role of Austria’s political parties, developments in the field of professional political consulting are far behind common standards in other democracies. Political consulting never fully emancipated from the control of those normally

seeking consulting. Even today, a majority of those who offer political consulting in Austria are too close to and too dependent on those whom they consult to. Traditionally, the political system in Austria primarily produces political consultants by recruiting among its own elites. Thus, campaign- and public affairs consultants usually are former politicians, doing their work along party-lines. The system remains a fairly closed shop. Room to maneuver for party-independent professional advisors always remained limited.

Until the late 1990s, a transparent political consulting market, driven by professionalism and competition, was neither encouraged nor wanted—it simply did not exist. Therefore, there was simply no need for what was then internationally already widely known as public affairs.

Change came about, when Austria's Freedom Party (FPÖ) came into federal power as the junior member in the coalition with the People's Party in 2000. This marked an abrupt end to the system described above: The People's Party (ÖVP) cut its lines to 'its' social partnership institutions and the Freedom Party (FPÖ) never had a backbone like this. Quickly businesses were mirroring the change in the interest-mediation system, and the year 2000 became also the starting point for public affairs and lobbying-consultants in Austria, using this window of opportunity to establish new services on the market.

4.3 SHIFT OF POWER: AND ROLLBACK

Thus, the first public affairs and lobbying consultancies were established on the market. Businesses asked for these services to fill the gap that resulted from the cut-back in social partnership's powers. Furthermore, companies started to establish public affairs functions to enable them to professionally deal with the new political system (Köppl 2012).

The industry itself started to develop also: the first book on professional public affairs on the Austrian market was published in 2000, conferences, seminars and lectures on universities on public affairs followed in quick succession. All of this was new to a formerly closed system of political interest mediation in Austria. Up until 2007, these years can be considered as the first booming years of public affairs and lobbying in Austria. Reputation of the function was growing as fast as the business was growing. The federal elections in 2006 ended the coalition government between the People's Party (ÖVP) and the Freedom Party (FPÖ)—the latter had in between split up into two parties. Back into power came again a coalition government formed by Social Democrats (SPÖ) and the People's Party (ÖVP). Quickly,

the institutions of the social partnership successfully used their window of opportunity and lobbied heavily to have themselves established in the Austrian constitution: their mandatory membership as well as their contributing role in political decision-making is based on the constitution since then, more or less establishing a two-class system of interest representation in Austria. The social partnership's role in policy making and political coordination became as strong, as it maybe never was before.

As a matter of fact, the public affairs function came under pressure as well and the boom cycle declined fast. But public affairs did remain in place in Austria, both as a company function as well as a highly specialized field of consulting. The development of the industry went on and, among other aspects, brought about the establishment of a Master of Arts in Public Affairs program at the University of Vienna's department of Mass Communication. Furthermore, all this change brought about the creation of a new, broad trade association of the public affairs function. In September 2011, the Austrian Public Affairs Association (OePAV) was founded. Members are public affairs professionals from companies, associations, agencies and non-governmental organizations. The work of OePAV focuses on three goals being (a) to give Austria's public affairs community a strong voice, (b) to constructively cooperate with the political decision-makers in order to bring life and value to the new registration law (see below) and finally (c) to establish workshops, seminars and meetings for the members to foster a peer-to-peer environment.

4.4 THE AUSTRIAN LOBBYING-REGULATION: REGIME

Having gone through decades of a tightly closed interest-mediation system that gave exclusivity to only a few institutions, Austria faced a rush toward a pluralistic free-market interest-mediation system from the year 2000 onwards. This short but intense period was stopped short not only by a return to the traditional Austrian interest-mediation system but also by a series of scandals, involving corruption and in-transparent financing of political parties. These scandals were labeled 'lobbying scandals' leading to a quick halt of the developments public affairs had made in the years before. The political answer to this crisis was the introduction of a lobbying and interest representation registration law, enacted in January, 2013.

This law established a federal mandatory registration for 'all structured and organized contacts, aimed at influencing political decision making (including administration) in Austria'. The law specifies, that 'contacts'

in this context simply means ‘political decision-makers’, including their employees and civil servants on federal as well as regional level. Registration by consulting agencies, companies, non-governmental organizations, associations and chambers has to be made before lobbying activities are allowed to begin. Furthermore, companies and consulting agencies have to comply with a code of conduct, which has to be communicated via their respective websites. The online-register (<http://www.lobbyreg.justiz.gv.at/>) was implemented on January 1, 2013 and is administered by the Federal Ministry of Justice. As of November 2015, about 260 companies, agencies and associations were listed (approximately 700 individuals). According to experts, this is approximately one-fourth of the professional public affairs industry in Austria, if one includes the approximately 1800 lobbyists working at the institutions of the social partnership (Chamber of Commerce, Unions and Federal Chamber of Employees). The charges for registration are Euro 600 for consulting agencies, Euro 200 for companies and Euro 100 for associations. Sanctions for not registering or misleading registration are: administrative fines up to Euro 60.000 and/or to be removed from the register. But these sanctions are in place for agencies and companies only. Other actors can neither be sanctioned nor be removed from the register.

Following the unique characteristics of the Austrian political and interest-mediation system described above, it seems to be coherent, that the registration law with all its exemptions became something ‘typical Austrian’.

Exempted from the requirement to register are:

- lawyers, as long as they do not lobby
- members of Parliament, if they lobby on their respective policies
- political parties
- churches and religious groups
- organizations representing communities

Only limited requirements for registration are in place for the institutions of the social partnership, including their nine regional as well as their technical sub-organizations:

- Federal Chamber of Commerce
- Federal Chamber of Unions
- Federal Chamber of Employees
- Federal Organization of Agriculture

The mandatory register comprised of four sections, separating actors and establishing different levels of transparency.

As a matter of fact, many actors were involved in creating this registration law, but the political will and the influence of the social partnership to create exactly this system were overwhelming. This is the environment of professionals working in the field of public affairs and interest representation in Austria. A first-time ever study commissioned by the Austrian Public Affairs Association and conducted by its scientific advisory board member Julia Wippersberg shines light on the industry, its actors and the professional environment (see Köppl and Wippersberg 2014).

Box 4.1 The System of Lobbying Registration in Austria

Section A1 and A2: ‘Lobbying-companies’, meaning lobbying and public affairs consulting agencies and their clients

Required information in A1 (public):

- basic information about the lobbying-company plus their website
- description of their scope of activities
- code of conduct they comply to
- names and dates of birth of all employed lobbyists
- number of lobbying-clients and annual total turnover regarding lobbying-contracts

Required information regarding clients in A2 (this information is not public):

- names of clients and relevant information about each lobbying-client of a consulting agency
- the scope of the respective lobbying activities

Section B: Companies employing in-house lobbyists

Required information (public):

- basic information about the company plus their website
- description of their scope of activities
- code of conduct the company complies to

(continued)

Box 4.1 (Continued)

- names and dates of birth of all employed lobbyists
- annual expenditures for lobbying more than Euro 100.000— to either click ‘yes’ or ‘no’

Sections C and D: Self-governing bodies and associations
Required information (public):

- website
- number of employees, engaged predominantly in interest representation
- estimate of annual costs of interest representation

4.5 THE STATE OF THE AUSTRIAN PUBLIC AFFAIRS INDUSTRY

In October 2012, an online survey among 549 public affairs-professionals was conducted, 98 persons completed the questionnaire. The survey covered the wide spectrum of individuals working in this field (consulting agencies, in-house public affairs departments in companies and associations, non-governmental organizations) and was focusing on hard data like size of the consulting agency/the department, education of employees, scope of salary, but also on the self-image of the industry, core areas of action, working principles, the distinction between public affairs and public relations, modes of practice, and so on.

The collected data provide solid information about the public affairs industry in Austria for the first time, all data refer to Wippersberg 2012a: The majority of public affairs-experts in Austria is male (60 %). Seventy percent are working in in-house public affairs-departments in a company, 30 % are consultants in a public affairs-agency.¹ According to the lobbying-registration, which provides the most recent data, the average number of employees in

¹The result may be a biased: a lot of members of the OePAV were taking part in the survey. As disproportional many members of the OePAV are working in agencies, the ratio between agencies and in-house departments may show too many agencies. According to the lobbying register, many more practitioners from companies are registered.

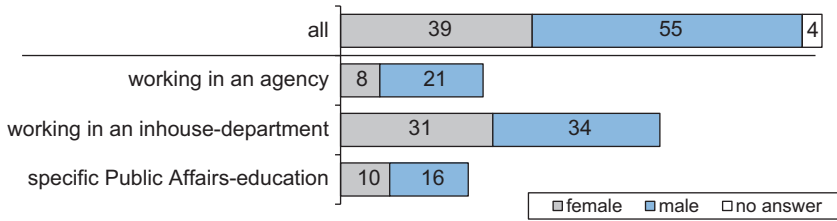


Fig. 4.1 Public affairs-experts in Austria ($n = 98$; in absolute numbers) (Author's own compilation)

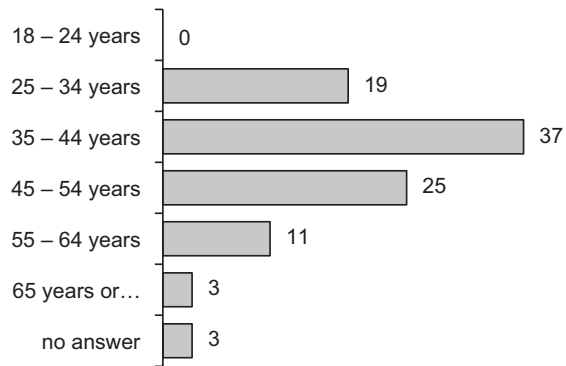


Fig. 4.2 Age of public affairs-experts in Austria ($n = 98$, in absolute numbers) (Author's own compilation)

agencies is 2.4 employees, in in-house departments it is three individuals. The public affairs industry is highly concentrated in Vienna (Fig. 4.1).

Most public affairs-practitioners are between 35 and 54 years old, beginners in the field are not younger than 25 (Fig. 4.2).

A large majority of public affairs-managers (80 %) has an academic education, whereof 25 % were confronted with public affairs-subjects during their studies. About 25 % of the interviewees have a specific education in public affairs (mainly academic education, e.g., master programs). The studies completed are of a big variety, but the main fields of study are communication science, political science, economic science, and law. Other subjects are very diverse, ranging from theology to biology, from architecture to landscape planning (Fig. 4.3).



Fig. 4.3 Education of public affairs-experts ($n = 98$; in absolute numbers) (Author's own compilation)

On average, the public affairs-practitioners work for already about ten years in this field; in addition, some very experienced persons can be found, who work in this field for 20–35 years (Fig. 4.4).

In general, this working field seems to be characterized by constancy and loyalty to one employer: the majority of the interviewees work for the same employer for already six years. Most employments last around 4–5 years. This time span corresponds remarkably with the creation of new public affairs-agencies and in-house departments (Fig. 4.5).

It is of great interest, where the public affairs-departments and -positions are functionally embedded in companies (Fig. 4.6).

The study shows that 12 % work in a specific public affairs-department, 28 % are part of the corporate communication department, whereas 2 % are part of the legal department. One-third is working in line functions, two-thirds are staff functions. In some companies, the public affairs-activities are conducted by CEOs, managing directors or members of the management board. About 75 % of public affairs-experts in companies report to the top management, more than 90 % are in ongoing close contact with the CEO or the management board. This shows the important position of public affairs-managers in Austrian companies.

Concerning the most important instruments in public affairs-work, the interviewees were asked to list those instruments that were used the most. Interestingly enough, typical public affairs-instruments and typical public relations-instruments gain about the same amount of mentions in this survey. The most important instruments therefor are lobbying

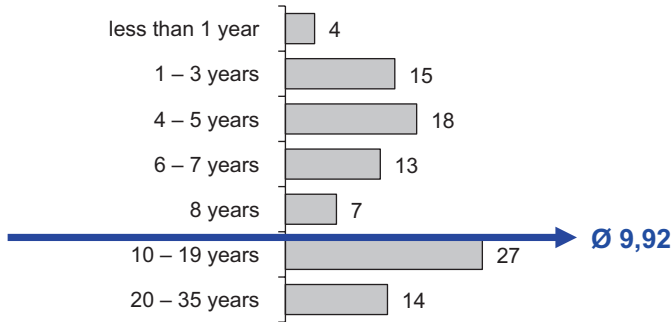


Fig. 4.4 Duration of working in the field of public affairs ($n = 98$; in absolute numbers) (Author's own compilation)

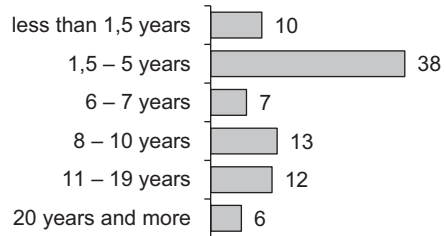


Fig. 4.5 Working with the same employer in the field of public affairs ($n = 98$; in absolute numbers) (Author's own compilation)

(60 %), governmental relations (57 %) and strategic press relations (56 %). Stakeholder-management follows with a short distance (47 %), clearly listed behind are issues-management, arena-analysis, Corporate Social Responsibility (CSR), campaigning, reputation management and issues advertising. Only a few stated contributing to strategy development, sustainability reporting, internal trainings and common sense (Fig. 4.7).

The most relevant specific activities in public affairs are (open answers) collecting, preparing, and comprising of information for decision-makers and different target groups, compiling arguments, and building networks. These activities are also ranked to be the most time-consuming share of work. When preparing and compiling information for decision-makers and other target groups, the big advantage of in-depth knowledge of different industries or the diverse academic background is evident. Other activities include maintaining relations with decision-makers, setup of in-depth knowledge of different industries and professions, bilateral talks

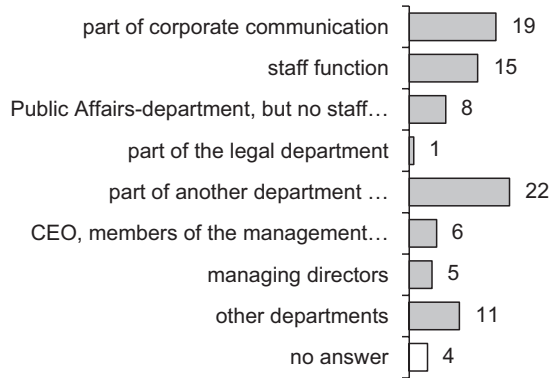


Fig. 4.6 Public affairs-departments and Public Affairs-positions functionally embedded in companies ($n = 69$; in absolute numbers) (Author’s own compilation)

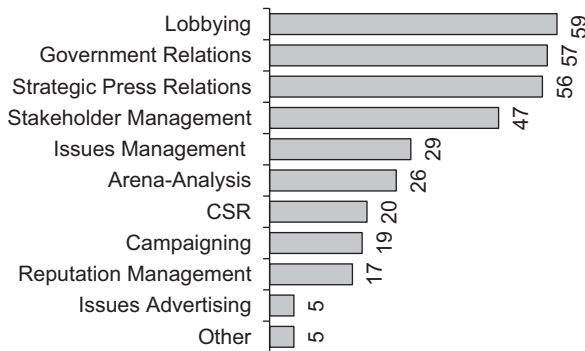


Fig. 4.7 Most important instruments in public affairs-work ($n = 98$; in absolute numbers; multiple answers) (Author’s own compilation)

with decision-makers, internal coordination within the company or with the clients, establishing personal relations with journalists, evaluation and measurement of success, reputation management and CSR (Fig. 4.8).

Finally, the public affairs-practitioners in this survey were asked what would be beneficial for achieving an ‘ideal state’ for the public affairs-industry (Fig. 4.9).



Fig. 4.8 Most relevant specific activities in public affairs ($n = 98$; rank within 11 items) (Author's own compilation)

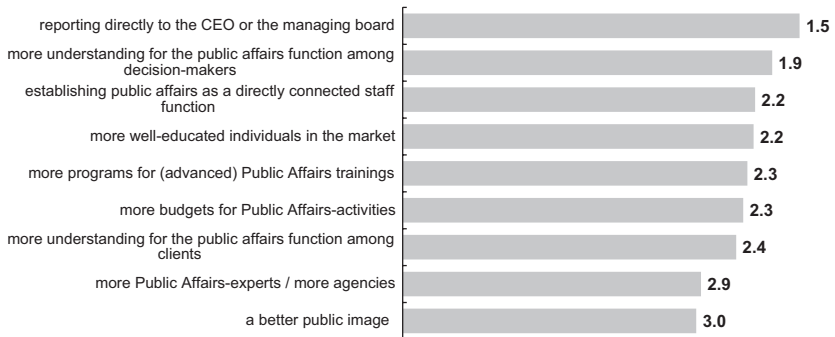


Fig. 4.9 Beneficial for achieving an 'ideal state' for the public affairs-industry ($n = 98$; 1 = very important, 6 = not important at all) (Author's own compilation)

Interestingly, a better public image was not ranked very high. The bad image of the industry seems to be not very pleasant, but not obstructive in the daily work.

4.6 CONCLUSION AND OUTLOOK

The future of the still young public affairs industry in Austria will be a continuing process of professionalization and international alignment—especially along the developments at Brussels’ level. The mandatory register following a series of so-called lobbying scandals and the exclusiveness in practical political influence wielded by the social partnership will make it a difficult and long journey for the public affairs industry in Austria to reach the levels of acceptance, influence and size of Brussels, Paris or London. But the public affairs function in Austria is here to stay.

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Belgium

Tine Destrooper

This chapter examines interest representation in Belgium and highlights similarities between Belgium and the EU as multi-level polities. The Belgian case provides an interesting example to assess the impact of multi-layered political systems on interest representation (Swenden 2005). This chapter first discusses some relevant characteristics of the Belgian political system and then presents some of the basic characteristics of the Belgian interest group (IG) population. The chapter concludes with a reflection on the policy challenges that IGs trigger in the Belgian context.

5.1 A NEO-CORPORATIST, CONSOCIATIONAL FEDERAL STATE

Belgium is traditionally defined as a moderately corporatist system, rather similar to Germany and Denmark (Bloodgood et al. 2013), meaning that there is a considerable institutionalization of state–society interactions, which results in a more top-down structure of interest representation. The generalized system of political exchange and interaction is regulated through extensive participatory systems, such as consultation arrangements,

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tripartite negotiations or advisory bodies that play an important role in transmitting societal concerns, political knowledge and policy expertise. Within this system, a limited number of actors—in particular umbrella organizations—enjoy preferred access to public authorities, mainly so in the field of labour and social policies, but by extension also in the field of education and health care, for example (Granadaos and Knoke 2005, 293). The Flemish advisory system, for example, consists of 12 Strategic Advisory Councils of about 20 seats each (Popelier et al. 2012).¹ Each Council can invite representatives of organized interests as possible members. Due to economic crisis and upheaval, the corporatists model is increasingly under strain and is sometimes abandoned altogether (Martens and Pulignano 2012). This opened up some opportunities for IGs that are not normally preferred partners within this system to have their voices heard. However, Fraussen et al. (2014) argue that the resilience of neo-corporatist practices continues to characterize the opportunity structure for IGs in the Belgian system.

The dynamic of preferential access remains important, however, because of the consociational legacy of the Belgian system. Political parties have historically been of crucial importance in shaping the nature of Belgian politics, and social organizations, education and professional associations have traditionally been structured along the lines of religious and ideological cleavages (Deschouwer 2009). This resulted in a relatively stable *pillarized* structure in which policy-makers tend to turn first to preferred partners from their own backbench for advice and expertise. Such a pillarized structure is traditionally less prone to interference from interest representatives who do not belong to one of these pillars.

Moreover the electoral system of proportional representation tends to contribute to relatively stable governments with bureaucrats who have long careers (De Winter et al. 2000). These long-term government professionals usually have stable networks and considerable expert knowledge. If we see the interaction between organized interests on the one hand, and policy-makers and bureaucrats on the other hand as a transactional process revolving around such expert knowledge, this would then mean that within the Belgian system, IGs—who are not preferred partners under the neo-corporatist logic—have a smaller comparative advantage than IGs

¹The system has been reformed in 2012 in order to allow for more transparency and more diverse participation (Fraussen et al. 2014). New reforms were underway at the time of writing.

operating in polities where the need for additional expert knowledge is great due to limited own resources or quick personnel turnovers, as is the case in the EU for example.

In spite of these features which tend to constrain the number of mobilized interests and to centralize access, other features of the Belgian system, and notably so its multi-layeredness, create additional entry points for IGs. The successive state reforms in Belgium have had a significant impact on interest representation in Belgium (Fraussen and Beyers 2015). These state reforms turned Belgium into a multi-layered federal state, which in many ways functions similarly to the EU. Such a system provides more points of access and allows IGs to target several levels. This has led to an increase in the size and scope of IGs in the past decades (Halpin and Thomas 2012). The principle of subsidiarity across different levels (supranational, federal, regional, provincial, *arrondissements*, and communities) in particular, makes it relevant for IGs to be active at different levels since each of these levels of government has its own competence (Hooghe and Marks 2001). Because some competences are shared between different policy-making levels, there is a dynamic interaction between these different levels, which IGs can tap into.

In addition to this, Belgium's complex multi-layered state structure complicates the policy-making process and renders it more difficult for policy-makers to correctly gauge the impact of their decision for other polities. Hence, even if bureaucrats on average have long careers and significant expertise in their own domain, uncertainty and complexity stemming from the multi-layered and multi-scalar nature of the polity can draw IGs which have expertise in this regard back in (Bouwen 2002).

Another effect of the federal and decentralized structure that affects interest representation is the strong reliance on committee governance. Committee governance creates small group environments in which personal networks and contacts are crucial. This is particularly favourable to groups that engage in sustained mobilization and that can establish durable relations with policy-makers. Fraussen et al. (2014) suggest that, since it is currently underspecified which actors are deemed representative of societal interest, existing bureaucratic routines and insistence on the part of the representative play an important role in deciding how seats in Advisory Councils are allocated. In this system, vested interests are more likely to be represented because of the resources they have at their disposition for sustained activism. This links to the next section of this chapter which explores some of the general characteristics of the lobbying population.

5.2 CHARACTERISTICS OF THE LOBBYING POPULATION

The interaction between organized interest and policy-makers is an important component of any contemporary democratic system because it allows for the transmission of societal concerns and expert knowledge to public authorities. However, in order to live up to this democratic ideal, organized interests that have access to policy-makers need to be sufficiently representative of broad societal concerns. In this section we consider what the IG population in Belgium looks like, and whether all sections have equal access to policy-makers. This means that we purposely adopt a broad definition of organized interests to account for the various expressions of interest representation that are active in the country.

5.2.1 *Organization and Composition of the IG Population in Belgium Today*

The broad definition of interest representation makes it difficult to estimate the number of active IGs and lobbyists in Belgium today. The presence of EU lobbyists in Brussels further complicates the task of arriving at a plausible estimate of how many lobbyists are active in Belgium. Recent research by Fraussen and Beyers (2015, 14) estimates that there are around 1013 national and sub-national IGs in Belgium and Flanders,² 729 of which are constituency-based, and that 352 of these groups can be considered policy-insiders, that is, actors that have access to the main consultative arrangements.

Broadly speaking, we can distinguish between five types of lobbyists: (a) the in-house representatives of corporate interests such as staff members of the public affairs department of large corporations which approach policy-makers directly to defend the interest of their own company; (b) lobby firms and consultants which act as external representatives of third parties and do not defend their own interest but that of their client; (c) think tanks and experts which use their expertise either to further their own goals or to defend someone else's point of view; (d) economic groups (consisting of business associations and labour unions); and lastly, (e) representatives of organizations of civil society, which often have a more indirect approach to interest representation than the other four (see *infra*). It should be noted that external lobbyists are less common in the Belgian context—and in continental Europe more generally—than in the USA.

²This excludes Wallonian and Brussels' groups, on which there are currently no data.

In terms of which interests are most represented, the picture is rather complex in Belgium—and its regions—IGs have boomed, and the social movements of the 1960s which mobilized around women's rights, the environment and civil rights, have evolved towards well-established organizations that actively seek access to policy-makers (Fraussen et al. 2014). Nevertheless, a dominance of business interest over societal interests can be discerned. Current estimates based on the INTEREURO-research project suggest that representatives of societal interests (NGOs, grassroots organizations, labour unions, consumer organizations) constitute less than 20 percent of the IG population. Also at the sub-national level, research shows that structural provisions have had exclusionary effects and that more professionalized and larger groups with high staff resources have the best chance at gaining access and becoming a preferred partner. In specific peak business associations and labour unions are more likely to be represented in several forums (Fraussen et al. 2014). While each forum might have a different dynamic—and while some fora may be more open to pluralist dynamics—the classic avenues for participation that require insider access seem to be dominated by a relatively small niche of 'usual suspects'.

Because of the presence of the EU institutions on Belgian territory, one could expect Belgian lobbyists to be particularly active at the EU level as well. However, the effect of this geographic proximity to EU institutions is partially levelled out by the fact that lobbyists already have many points of access at the national and sub-national level, and that they often have good networks within the Belgian state structures because of the small group environments and durable networks at this level (see e.g. Chalmers 2013). Also Beyers and Kerremans (2007) argue that while EU-level opportunities stimulate Europeanization, Europeanization is more complex and contextualized than the mere access to EU institutions. According to the authors, the perceived high budget competition, combined with government subsidies for actors like NGOs keeps Belgian NGOs—like Dutch ones—from Europeanizing fully. As a consequence, it is mainly corporate interest representatives—who also have the resources—that focus on the EU level. Also there however, differences can be observed between policy domains, with policy domains in which the EU has little competence not leading to much EU-level mobilization, because IGs are still able to realize benefits at lower policy-making levels.

It has been suggested that preferences for a venue can also be attributed to the professional and personal backgrounds of lobbyists. There are at present, however, no extensive studies on where Belgian lobbyists come from professionally and academically speaking. The *revolving door hypothesis*, which suggests that practitioners will often move between jobs as policy-makers and interest representatives, is plausible in the Belgian case, where the complex decision-making structures offer many possibilities to professionals for switching between these different functions (see Vidal et al. 2012). There is however no conclusive evidence of such a dynamic.

In terms of educational background of the lobbyists, we see that the increased importance of interest representation is partially reflected in academic interest for this activity. The University of Antwerp, for example, organizes an MA in Political Communication.³ Next to this, several privately organized trainings and workshops are organized in Brussels.⁴ The proximity of Belgian interest representatives to the capital of Europe, where the majority of these trainings are held, might in that sense constitute a comparative advantage for Belgian lobbyists, as they have easier access to a wide range of training opportunities.

Both the educational and the professional background of these lobbyists are an important factor in determining the strategies of the IGs, as the next section argues.

5.2.2 *Preferred Venues and Strategies*

Interest representatives in Belgium have a wide array of participatory systems at their disposition for interacting with public authorities in a systematic manner, as insider lobbyists. In addition to their participation in these advisory mechanisms of the legislative branch such as the Strategic Advisory Councils at the Flemish level, there is in theory also scope to directly lobby cabinets of ministers or even bureaucrats. Because of the very complex state structure of Belgium, there are many partially overlapping regimes and a degree of unclarity as to which rules prevail. This means that bureaucrats have a degree of discretion when implementing certain decisions (Majone 2001). Lobbying these bureaucrats is however not only relevant because of their potential influence in the policy process,

³<http://www.ua.ac.be/main.aspx?c=.OOD2012&n=105391>

⁴See for example <http://www.eu-academy.eu/>, <http://www.octopux.eu/training-courses/eu-lobbying-in-brussels/>, etc.

but also because bureaucracies less visible, and are not subject to the same amount of public scrutiny as high-ranking policy-makers. Bureaucrats are, in public opinion, often perceived as the agents of a state apparatus, and are not considered to have much leeway or much effect on policy formulation themselves. The perceived need for monitoring them is thus much smaller, meaning that the discretion of these bureaucrats when implementing certain decisions can be significant. This makes them an interesting target for lobbyists.

Next to this direct or insider lobbying, interests representatives can, in some cases, also adopt a strategy of indirect influence in some cases, that is, a strategy in which they target the media, mobilize grassroots movements or try to change public opinion on an issue, to pressure policy-makers in that way. This strategy is more often used by social actors, such as NGOs, organizations of civil society, or other membership organizations than by corporate actors, who tend to rely on direct lobbying (Dür and Mateo 2009).⁵ However, Fraussen and Wouters (2015) argue that outsider lobbying in general, and the media arena in specific, are reflecting the political power of insider lobbyists rather than offering challengers a level playing field, in the sense that the same actors that dominate the insider lobbying venues are also the ones that dominate the media arena—with the exception of a limited number of outsiders who are able to present their case in highly mediatized ways.

5.3 CHALLENGES: DEFINING AND REGULATING INTEREST REPRESENTATION

Much of this chapter is based on data derived from studies at the EU level (INTEREURO) and on the groundbreaking work by Fraussen et al. Yet, neither of these sources currently has a strong longitudinal component, making it difficult to make claims about causality or to compare or trace evolutions over time. This hints at one of the main challenges in the field of interest representation from an academic point of view, namely to further engage in the mapping and identification of these groups in order to be able to make more substantial claims about their nature, access and influence.

⁵Dür and Mateo also use the terms inside and outside lobbying to refer to these strategies.

Also from a policy perspective, certain significant challenges lie ahead. Both in literature and amongst policy-makers, the argument is often heard that the involvement of interest representatives has a democratizing effect, as it is seen as a fundamental task of consolidated democracies to give non-state actors the opportunity to organize and interact with government and to have their voice heard. The presence of IGs can, from this point of view, be seen as a win-win situation (Plaza-Úbeda et al. 2007). As the previous section argued though, the extent to which different types of actors actually find their way into the policy process is skewed and only the most resource-rich actors usually manage to carve out a sustainable niche for themselves (also see Halpin and Thomas 2012). Newcomers and outsiders have only limited chances of weighing on the policy-making process. This raises issues not only about legitimacy and representativeness, but also about transparency, since there is no framework for regulation or accountability of this sector in Belgium at present.

There is no professional association of interest representatives at the national or sub-national level which could issue sector-specific self-regulation or codes of conduct, neither are there efforts from the side of policy-makers to regulate this profession at the national level. At the time of writing, Green parties, were pushing for more regulation of this sector, arguing that the continued privileged access of professional resource-rich groups creates undemocratic biases and that the absence of regulation creates the condition for subornation (De Meulemeester 2013).

Any type of legislation would require a reflection or societal debate on what constitutes legitimate lobbying practices. So far, this debate is largely absent in the Belgian media. Neither the media themselves nor the public opinion seems to express a significant interest in the issue. A lack of pressure explains why regulation is lagging behind. The fact that there is currently no legislation or no compulsory registration for IGs and interest representatives at the national or sub-national level means that there are immense transparency issues in the Belgian context, both with regard to what IGs do and who they are, and with regard to how policy-makers act upon their input.⁶

This is also where the biggest challenge lies for policy-makers. There is an urgent need for regulations and mechanisms which assure not only transparency of lobbying activities, but which are also aimed at a more

⁶This is all the more striking when comparing this with the situation at the level of the EU, where registers are kept and where the practices of interest representatives are allegedly more closely scrutinized.

representative lobbying population. Belgium can look at the EU level as an inspiration, even though it might be advisable to go beyond this in its domestic regulation. Rules should, as a minimum, install auditing mechanisms on which policy-makers have been approached, by whom, with which demands, and what the outcome of the policy process was.

For Belgian interest representatives themselves on the other hand, one of the main challenges for the future lies in the development of a more integrated approach in which they use the advantages of their regional proximity to the EU institutions to engender a more encompassing multi-level and multi-scalar strategy. This is especially important in a Belgian context where the element of multi-level governance is potentially even more salient than in many other EU countries.

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Bulgaria

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6.1 COUNTRY OVERVIEW

Located in South-East Europe, Bulgaria has a territory of 110.993.6 km² and a population of 7.245.677 (2014). It is a parliamentary republic with a unicameral National Assembly, and has been a member of the European Union (EU) since 1 January 2007. Currently, Bulgaria has 17 seats in the European Parliament. In 2018, it will hold for the first time the Presidency of the Council of the EU.

6.2 OUTSET OF LOBBYING IN BULGARIA

Evidence of lobbying activities in Bulgaria is sometimes dated as far back as the years immediately after the Liberation of 1878 (Nikolov 2006). Certain elements of lobbying are thought to have existed as well during the pre-1989, ‘real socialism era’, which ‘from a practical point of view’ might be ‘characterized through syndical lobbying’ (Pirgova 2002,

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153).¹ As a whole, we may agree with the political scientist Ivka Tsakova (2005, 309) that it would be too far-fetched a notion for us to seek lobbying rudiments under the conditions of the *first Bulgarian capitalism* (1878–1944) or look for lobbying ‘in the Western sense of the word’ during the period of state socialism (1944–1989).

With the start of the Bulgarian transition, a ‘catching-up’ process began during which Western-type practices, with lobbying among them, were ‘imported’ into the country. Inevitably, the local cultural, economic, and political specificities imbued lobbying activities in Bulgaria with a distinct character of their own.² A big part was played by the immaturity of civil society in the country and the crisis of trust in the political leaders and institutions caused by the enormous social differentiation and disintegration during the years of transition (Tsakova 2005, 306–307).

6.3 CIVIL SOCIETY AND LOBBYING IN BULGARIA

Looking at the development of lobbying practices in Bulgaria through the prism of the process of democratization, it could be said that during the early 1990s, the nascent civil society structures were strongly influenced by the main political parties and thus politicized (Prodanov 2003, 119–121). What is more, the dependence of a substantial part of the newly introduced structures on financial support from external sources³ placed them under the direct influence of their foreign donors who each had their own strategic interests. In some experts’ opinions, during the first post-1989

¹ Unless stated otherwise, all translations from Bulgarian into English are the author’s. For transliteration, the Streamlined System for the Romanization of Bulgarian is applied.

² Tsakova (2005, 307) sees Bulgarian lobbyism as a unique combination of Western and ‘from-our-parts’, ‘Bulgarianized’ practices, of universal and local in the context of European integration and globalization. According to Prodanov (2012, 310), author of a profound study on the theory of the Bulgarian transition, ‘The belated and catching-up modernization of the country, its small size and high geopolitical dependence, due to which the main impulses of development are exogenous and not endogenous, create a peculiar interrelation between the sacred and the profane in the Bulgarian public space and political life, different from the ones in the developed Western states.’

³ During the 1990s, 95 per cent of the financing of the civil organizations in Bulgaria came from external sources: foreign foundations, international networks, embassies, and European and US programmes. To take as an example a single year, only one million USD out of the overall financial support for the Bulgarian NGOs (between 150 and 200 million USD) in 1997 came from the state budget and less than that—from the Bulgarian private sector (Prodanov 2003, 113, 119).

decade, instead of lobbying the state institutions in defence of organized civil interests, it was more a matter of exerting a ‘peculiar foreign influence’ on the development of civil society in the country and thus creating an ‘American lobby’, a ‘European lobby’, a ‘lobby of George Soros’ and so on for participation in the state institutions’ decision-making process (Tsakova 2005, 310; see European Institute 2011, ‘Background’, para. 2; see Prodanov 2003, 111–118).

6.4 CRITICISM OF THINK-TANK INFLUENCE

The debate on the role played by civil society organizations and most particularly by think tanks⁴ as a ‘form of expertise and lobbying’ (Lavergne 2010, 14) gained in force after the publication in Bulgaria of Dostena Lavergne’s study on ‘The Experts of Transition: Bulgarian Think Tanks and the Global Networks of Influence’ despite the fact that the ‘most vociferous “talking heads”’ in Bulgarian society (and ‘main characters’ in Lavergne’s book) remained behind a wall of silence (Parvanov 2011, para. 8). Since then, questions have arisen again regarding the ultimate effects on the Bulgarian state and society of the activities of the think tanks that ‘pretend for the role of the “brain of civil society”’ as well as of the ‘lasting loyalty’ created by external financial aid among members of the intellectual and political élite of the country (Lavergne 2010, 115–116; Tsakova 2012, 231).

6.5 EFFECTS OF THE BLURRED BOUNDARIES OF THE POLITICAL SPECTRUM

According to Lavergne, who ran as a candidate in the 2014 European Parliament elections as a member of the Bulgarian Socialist Party election list, the concepts of ‘left’ and ‘right’ have been confused in Bulgaria. Contrary to the consensus reached at the 1990 Round Table talks on the introduction of a market economy and a social state in Bulgaria,

⁴An interesting comparison between an NGO and a think tank is provided by Goran Buldioski, Director of the Open Society Institute’s Think Tank Fund. While they operate in the same political and social sphere, he says, think tanks and NGOs ‘discern significantly in their organizational cultures and often educational background’. And—what seems important in view of the current debate on think tanks in Bulgaria—‘Ever too often think tanks see themselves as part of the élites, closer to high politics and with exclusive (and often jealously guarded) access to decision makers’. (Buldioski, 26 May 2011).

the social aspect has been disregarded by the right-wing politicians, and the transition has been distinctly right-wing in character, defined by the internal processes of privatization and by the external ones of Westernization (Milev 2014, para. 4). But there seems to be more to this problem of unilateral representation and decision-making that might be defined rather as blurring the boundaries between the various parts of the political spectrum, the ultimate result being vast misrepresentation. Examining the activities of the political parties in the country, Tsakova (2012, 230) draws the conclusion that they reflect to a very limited degree the social and group interests of the citizens. In reality, the parties have turned into redistributing coalitions for the speedy transfer of means into the hands of the active participants in the political process. All this is accompanied by enormous injustice and corruption, which discredits the parties and imposes on the Bulgarian society an oligarchic type of capitalism.

6.6 INTERCHANGEABILITY OF LOBBYING AND CORRUPTION PRACTICES

In a socio-political environment where a substantial part of the influential structures of civil society and the political parties arouse distrust, and experts assess civil unrest as directed mostly towards changing the political model of the transition,⁵ it comes as no surprise that in popular opinion lobbying activities most often equal corruption (Pirgova 2002, 133; Mihailov 1999, 16). Transparency International's 2013 Global Corruption Barometer showed that according to 59 per cent of Bulgarians their government was run by a few big entities acting in their own interests. In a national report by Transparency International – Bulgaria (2014, 3–4), assessing the rules and practice of lobbying through the perspective of transparency, integrity, and equality of access, the country's overall score is merely 25 per cent (with 13 per cent for transparency, 25 per cent for integrity, and 38 per cent for equality of access, respectively).

⁵According to sociologists and political scientists, this model is based on oligarchic politico-economic control over the state and a clientelistic-clannish system of policy-making (Diskusiya, 12 March 2013).

6.7 THE MEDIA ON LOBBYING

Journalists in Bulgaria aim at making the activities of the various lobbies more transparent by revealing the mechanisms of decision-making. Some of the most often tackled sensitive lobbying-related issues concern energy and environmental issues (which often correlate). In the Bulgarian media, the terms ‘lobby’ and ‘lobbying’ are used in the positive sense when applied to the efforts of better integrating the country into the EU. In other cases, though, and much more often, lobbying is directly connected with corrupt practices. At other times, the meaning of ‘lobby’ is unclear and the result is a mixed impression (Tsakova 2005, 302–304).

6.8 CITIZENS AGAINST ANTI-NATIONAL-INTEREST LOBBYING ACTIVITIES

While in their everyday life ordinary citizens might look upon lobbying mostly as part of interpersonal relations, having to do with personal connections, intercession, arranging for certain favours as finding a job, providing a reference, and so on (see Tsakova 2005, 305), when long-lasting threats to the national interests are perceived, they have shown remarkable readiness to carry out significant (anti)lobbying activities of their own. This is what has happened in Bulgaria in the last few years when too strong a pressure, including top-political-level foreign lobbying, has been borne upon the country in relation to two issues—the demands to allow the use and sale of genetically modified organisms (GMOs) in Bulgaria and to grant the US corporation Chevron (former Texaco) a permit for the exploration of shale gas in northeast Bulgaria where the bulk of wheat and a large portion of the fruits and vegetables of the country are grown (Dineva 2015, 65–68; Istatkova 2014; 97 protsenta 2010; The GMO Saga 2010; Wikileaks 2011; Otvoreni 2010; Poslanik Uorlik 2010; Warlick 2012). So far, the victory has been on the side of the Bulgarian citizens, though no one imagines the struggle will not continue.

6.9 INITIATIVES TOWARDS REGULATING LOBBYING IN BULGARIA

To date, regulations and special legislation have been adopted, such as access to information, political parties’ financing and conflict of interests’ prevention laws, as well as criminalization of trading in influence,

but there is still much to be achieved in regard to their implementation (Transparency International – Bulgaria 2015, 8; European Institute 2011, ‘Law on Political Parties’, para. 5–6).

Since the late 1990s, several attempts have been made at passing a law on lobbying. The first bill, drafted in 1999 by a group of Union of Democratic Forces (SDS) MPs, was not even presented for parliamentary processing. In 2002, MPs from the ‘Novoto Vreme’ parliamentary group introduced a bill on Publicity and Registration of Lobbyists and Lobbying, and in the period 2006–2008 lobbying disclosure bills were introduced by MPs from the George’s Day Movement, the Movement for Rights and Freedoms (DPS), as well as by a working group coordinated by the Ombudsman of the Republic of Bulgaria (see Transparency International – Bulgaria 2014, 11–14). All of the bills envisage the creation of a register for lobbyists and their activities, but the fact that the said register, as proposed, is to be a part of public authority instead of an independent one, is seen as a weak point. There is also criticism on the lack of clarity in defining who is a lobbyist and how control over the functioning of the register will be administered (see European Institute 2011, ‘Proposed Regulation’ para. 1–15). Consequently, none of these bills is considered to have answered sufficiently the need for transparency, integrity, and equality of access (Transparency International – Bulgaria 2015, 10), and have not become laws. On the whole, legislation in the sphere of lobbying is considered to be lagging behind and inconsistent with the social, political, and economic trends in the country.

6.10 THE FUTURE OF LOBBYING IN BULGARIA

Looking to predict what is likely to happen in lobbying, the course lobbying-related developments could be expected to follow might be outlined as follows:

6.10.1 Increase in the Number of Professionally Trained Lobbyists

Presently, the number of professional lobbyists in the country is estimated to be very small (Lukarski 2014, para. 1).⁶ Very often, foreign compa-

⁶At a November 2010 conference on the regulation of lobbying activities in Bulgaria and the experience of the EU and the USA, the President of the National Assembly Tsetska

nies rely in Bulgaria on the services of local consultants well connected to politicians and government institutions in their capacity as ‘door openers’ (Mihova 2014, 80). Regarding the future of the lobbying profession, judging by the considerable number of seminars, round tables, conferences, workshops, and preparatory courses related to lobbying that have been organized at various institutions, as well as the increasing attention paid to lobbying in university courses, it can be expected that gradually a guild of lobbyists, though perhaps not particularly numerous, is going to form. It cannot be said, however, how many of that guild’s members would be ready to ‘come into the light’ and comply with the requirements of a future Code of Ethics, or a law on lobbying (see Lukarski 2014, para. 10).

As far as lobbying abroad—in Brussels and in Washington, DC—in support of Bulgarian interests is concerned, until now the bulk of it has been assigned to foreign-based lobbyists. And, bearing in mind the unattained results and even scandals related to some of the most important cases (Dineva 2010, 91–98), a change in the policy of choice is necessary (though hardly to be expected soon) both in regard to the strategy applied and to the lobbyists entrusted with particular tasks.

6.11 DEFINITIVE CHOICE OF A MODEL OF REGULATING LOBBYING ACTIVITIES

It is expected that some kind of additional regulatory legislation in regard to lobbying is going to be passed in Bulgaria in the near future, not the least reason for that being the fact that since the country’s accession to the EU, the risk of suspension of EU funds because of concerns about corruption has never stopped existing.

Regarding the choice of a regulatory model, it seems the inclination towards what is defined as the European model is stronger. In President of the National Assembly Tsetska Tsacheva’s opinion, the realities and the social practices in the country, and the state of the legislation as well, suggest the introduction of regulatory rules and norms comparable to the model of the European Commission (National Assembly 2010, para. 4).⁷

Tsacheva stated that there were no professional, paid lobbyists in Bulgaria working on putting legislative initiatives through the parliament (National Assembly 2010, para. 3).

⁷In his speech on ‘Lobbying: What Europe Can Learn from the US’ at a September, 2007 American Chamber of Commerce EU Plenary Meeting, Siim Kallas, then Vice-President of the European Commission responsible for Administrative Affairs, Audit and Anti-Fraud,

So far as the opinions of researchers and experts go, Tsakova (2012, 232) perceives adopting the European model of ‘lobbying through consultation’ as the ‘chance for Bulgaria and the Bulgarians in the sphere of lobbying’. What is more, she considers a special law on lobbying as in the US case as unnecessary for Bulgaria, and puts the emphasis on the effective enforcement of the already existing normative acts that have a bearing on lobbying. Others (European Institute 2011, ‘Conclusions’, para. 5) examine both the possibility of adopting a uniform law on lobbying and of incorporating chapters about lobbying into the already existing normative acts, adding to the latter the creation of new Codes of Ethics and the strict observation of the already adopted ones. In regard to both possible solutions, they emphasize the necessity of them being the result of a careful and consistent policy aimed at the elimination of the deficiencies of the existing legislation and the establishment of a new anti-corruption political culture.

Whether the Bulgarian society would take such legislation at face value, bearing in mind the discrepancy between words and deeds on the part both of the local players in this field, and of some foreign top-level proponents of transparency, is another matter entirely. To a certain extent, the public attitude in this respect might depend on whether a weak system of lobbying regulation emphasizing business access or a strong system emphasizing public transparency (see Holman and Luneburg 2012) is adopted.

6.12 CONCLUSION

An overview of lobbying in Bulgaria shows that as any ‘outside’ phenomenon, introduced on the local ground, it has developed its own, specific features. Therefore, it would be a mistake, when taking steps to treat its defects, both those that are inherent and the locally acquired ones, to try to do that by means of automatically introducing solutions incongruous with the local needs and specifics. Any steps towards better regulation of lobbying activities should involve a bespoke approach, tailored to the local conditions. It should be remembered, however, that even the best possible approach would not gain significant results without solving the deeply entrenched crisis of representation.

assessed the EC approach as very ‘soft’ in comparison with the US Lobbying Disclosure Act of 1995 (LDA). He considered the reinforced US rules as unnecessarily detailed for the European context, the administrative burden imposed by them—as too big, and emphasized his belief in the European system, ‘based on trust and self-regulation’ (Kallas 2007).

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Croatia

Natko Vlahović and Dubravka Sinčić Ćorić

7.1 COUNTRY'S PROFILE

7.1.1 Political System in Croatia

The Republic of Croatia is situated at the crossroads of Central and Southeast Europe and the Mediterranean. It borders Bosnia and Herzegovina, Hungary, Montenegro, Serbia and Slovenia. Its largest city and capital is Zagreb which has just over 800,000 residents although the municipal area has a population of over one million. The country's population is 4.28 million.

Croatia declared independence on 25 June 1991. During the four years following the 1991 declaration, Croatia successfully fought and went through the Homeland War. Today, the country is a member of the European Union (EU) and the North Atlantic Treaty Organization (NATO).

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Croatia is a parliamentary democracy and is organized as a unitary republic. The political system is based on the principle of the separation of powers between the legislative, executive and judicial branches.

The Croatian Parliament (*Sabor*) is the representative body of its citizens and exercises legislative power. The Croatian Government (*Vlada*) serves as the executive branch. It consists of the Prime Minister and one or more Deputy Prime Ministers and Ministers. It is responsible to the Croatian Parliament. From the lobbying perspective, as in other European Governments, the executive branch with its ministries and executive agencies is the most important and ultimate target of influencing.

The President of the Republic represents the Republic of Croatia at home and abroad. They act as commander-in-chief of the armed forces, can call referenda and elections to the Croatian Parliament, and cooperates with the Government in forming and implementing foreign policy.

The judicial system consists of the Supreme Court, county, municipal, misdemeanour and commercial courts, the High Misdemeanour Court, the High Commercial Court and the Administrative Court.

7.1.2 *Economic System in Croatia*

The Croatian economy is based on private ownership and the open market. The most important sectors of Croatia's economy in 2014 were wholesale and retail trade, transport, accommodation and food services (21.2 %), industry (21.1 %) and public administration, defence, education, human health and social work activities (15.4 %) (EU 2015). GDP is around 43 billion EUR, which is around 10.100 EUR *per capita*. One of the key sectors is tourism, which generated 16 % of GDP in 2014. The inflation rate is relatively low at approximately 3 %.

During six years of recession, Croatia was faced with significant economic imbalances, as a result of high unemployment rates, import dependency and problematic public finances. The reasons for that situation lie in a low competitiveness, unfavourable business climate, relatively high proportion of the state activity and ownership as GDP, and the relative inefficiency of public administration. Negative economic trends resulted in a low country credit rating. In 2014 Croatia implemented the excessive deficit procedure (EDP).

The European Commission predicted that the Croatian economy will recover very slowly, 0.3 % in 2015 and 1.2 % in 2016, mostly due to the lack of structural reforms to boost outputs. However, due to very good

results in tourism, as well as the economic recovery of the EU market, which boosted the export, Croatian GDP rose for 1.6% in 2015. It is expected that the efforts of the government elected in February 2016 in stabilizing the public finance and further structural reforms will end with the rise of 2.2-2.5% of GDP in 2016.

7.2 THE STATE OF THE LOBBYING PROFESSION IN CROATIA

Croatia has no history of professional lobbying or the regulation of lobbying. After the break-up of communist Yugoslavia and the first free elections in May 1990, the first pluralist government was constituted, after almost 50 years of a one-party communist regime.

Sinčić Ćorić and Vuković (2012) point out that democratization, which took part in Croatia and other transitional countries at the beginning of the 1990s, allowed its citizens to freely join in different types of associations aimed to protect or promote their opinions and interest. These circumstances, according to McGrath (2008), facilitated the exponential growth of different forms and options for lobbying political and public institutions. Despite numerous interest groups, Perez-Solorzano Borraran (2005 in Vidačak 2007) concludes that their activities are mostly characterized by the lack of clear strategies, skills and organizational abilities, as well as by the lack of the understanding of the rules, procedures and standards of lobbying.

After Croatia commenced EU membership negotiations with the European Commission in 2005, EU integration and the development of lobbying in Brussels started to attract attention in Croatia. However, Vlahović (2009) argues that there is no registration of lobbyists or of interest organizations of any political institution in Croatia, adding that it is hard to determine the source of revenues in the lobbying industry.

Since 2008, lobbying in Croatia has become a popular issue in the media and the lobbying phenomenon has become a common topic for news items and stories in the press. However, no substance is ever explored in depth, and the term 'lobbying' is primarily equated with the bribing of government officials.

After the political earthquake in July 2008 when former Prime Minister Ivo Sanader resigned and left the government, investigations opened a whole new series of questions about the need for adopting anti-corruption laws and introducing new governance mechanisms. The Croatian Society of Lobbyists (HDL), founded in 2008, has tried to familiarize stakehold-

ers with the issue. To that end, the HDL has initiated many roundtable discussions, presentations, training sessions and seminars to stimulate best practice and share knowledge. In addition, the HDL has also organized several international symposia with key note speakers from Washington, Brussels, Vienna and south-east Europe to further strengthen understanding and to develop the process.

A few years ago, research conducted by Sinčić Ćorić and Vuković (2012) presented different images of the prevailing tone and relevance of the term 'lobbying' in the contemporary media content in Croatia. The analysis reveals that the prevailing tone of the articles is dependent on specific circumstances. There is a clear dominance of positive tone in articles where lobbying is a major theme, which supports the presumption that lobbying as a profession or communication process is perceived neutral or positive among those who know enough about lobbying. However, due to the lack of a full understanding of lobbying among diverse stakeholders, including the media, journalists tend to use the word 'lobbying' to describe corruptive or unethical practices, solely because it is a trendy word, and thus they can gain greater attention from readers.

Most recent examples of diverse citizen-driven initiatives and pressure groups like 'Franak' or 'U ime obitelji' have shown an application of unconventional lobbying and advocacy techniques, which have resulted in successful outcomes in influencing government decisions and overall public opinion. It is worth noting that lobbying initiatives are more acceptable to members of the NGO sector than the business community, which is always the one that lobbies or at least they think they are lobbying for a just cause. One possible explanation is that the old-breed of (private) lobbying is more present and there are no mass-lobbying and grassroots activities, which are visible, whilst that of NGOs is.

The political parties have also opened doors to more transparent communication with different lobbyists, lobbying groups or lobbying companies. Traditionally, lobbying activities in Croatia were focused on the tobacco industry, taxation, agricultural subsidies, construction permits and land use. More recently, especially after joining the EU, lobbying efforts are increasingly evident and focused on the energy sector, banking, pharmaceuticals, tourism and acquisitions of EU funding.

Currently, the HDL membership, which is the only existing source of data on 'registered lobbyists' counts 71 lobbyists as members (HDL 2015).

7.3 CROATIAN SOCIETY OF LOBBYISTS: HRVATSKO DRUŠTVO LOBISTA: THE FIRST PROFESSIONAL ORGANIZATION REPRESENTING LOBBYISTS

In the spring of 2008, a few enthusiasts got together and organized the first ‘International Symposium on Lobbying’. Later that same year, a core group of ten individuals established the HDL. Vidačak (2007) says that this represents one of the most important steps in the professionalization and regulation of lobbying in Croatia.

The HDL promotes and works on raising awareness, transparency and accountability in the lobbying profession in Croatia and the EU. Its primary goal is to advocate for a public register and accreditation of lobbyists, a regulated code of conduct and the overall regulation of lobbying activities in Croatia. As the lobbying community in Croatia believes, future lobbying legislation should create a clear distinction between lobbying and corruption that is understandable for all stakeholders. Besides lobbying for the law, the association promotes the Ethical Code of Conduct, which is obligatory for all members, offers different forms of part-time education (primarily seminars) and organizes international conferences, thereby promoting lobbying as a legitimate business. The HDL to further foster the industry has supported the launch of lobbying organizations in Slovenia, Serbia, Montenegro and Macedonia.

In their annual report from 2009, the the Organisation for Economic Co-operation and Development (OECD) (2009, p. 25) described that, during 2008, the HDL ‘has initiated various activities to promote the lobbying profession and to create a legal framework for governmental recognition’, including organizing media campaigns and conferences explaining the advantages of regulating the profession. ‘Following the conference, the Croatian Society of Lobbyists issued a declaration supporting a creation of a mandatory public register of lobbyists, a creation of a bona fide code of conduct for lobbyists and establishment of a legal framework for lobbying activities. Early in 2009, the Croatian Ministry of Justice accepted the Association’s initiative and formed a special work group to study the issue and promulgate a draft for a new lobbying registry’. The HDL had been informing and educating the public about the benefits of regulating lobbying, as well as worked with the Ministry of Justice and drafted proposed legislation. Unfortunately, the legislative process was put on the ‘back burner’ for no

apparent reason. Despite a number of meetings with two ministers of justice in the past three years, constant communication with MPs and public support for anti-corruption efforts, the lobbying legislation has never been officially introduced or debated in the Government or the Parliament. However, the law was mentioned in the Anti-corruption Action Plan for 2014–2020 that was sent to the European Commission in Brussels. By July 2015, HDL had drafted a lobbying act, which has been introduced to all political decision-makers, business associations, Transparency International Croatia and other stakeholders. The Government has not yet acted upon this initiative.

It is absolutely necessary to have a transparent and public register, and a simple and efficient means of regulating the sector. However, over-regulation, such as the requirement of detailed and specific accounting of all lobbying activities to be reported to government regulators, will only result in the lobbyists (i.e. law firms, lobbying consultants, PR agencies, former politicians, etc.) registering their activities as PR, consulting, or attorney services, or something similar. This will lead to less transparency. Therefore, simple and effective legislation is required to encourage the public registration of legitimate lobbyists, as opposed to ‘hand-cuffing’ their legitimate business activities in the name of their clients.

7.4 BEING A LOBBYIST IN CROATIA

Lobbying has always been a controversial topic since the independence of Croatia in 1991. Firstly, Croatia has been an object of foreign lobbyists (i.e. high-level political lobbying) trying to secure political influence during the privatization process of state-owned companies (particularly in telecommunications, banks). Croatia has sold practically the whole banking sector to Italian and Austrian banks. The national telecom company was sold to Deutsche Telecom.

In this phase, foreign companies/investors were using local consultants, law firms and politicians to help them finalize such acquisitions and developments. No regulation or rules existed about how foreign agents could act. No transparency existed and the political system tolerated corruption and behind-closed-doors deals. The priorities for Croatia at that time were survival: recovery of the territory lost in the war, international recognition, privatization, and development of democratic institutions. Unregulated deals ended with a high perception of corruption, which is present until today (Croatia’s position on the corruption index is above EU average 66 points, with 48 points in 2014; see Transparency International

Croatia 2014), and lobbying is increasingly perceived in Croatia as being connected with unethical practice.

However, when in 2011, Sinčić Čorić and Kaurin researched the public attitude towards lobbying, concentrating on young professionals, all attitudes (measured by the Thurstone scale) were in a range from 4.25 to 7.42, with the overall attitude score of 6.13 (neutral to positive). Those who reported being familiar with lobbying showed more positive attitudes (6.4), as compared to those who reported that they could not declare their familiarity with the lobbying (6.02). One of the specific dimensions forming the respondents' attitudes was transparency and regulation of lobbying. The respondents agreed that lobbying in Croatia is not transparent enough (94 %), and that lobbying in Croatia is not regulated by the law (94 %).

Research presented by Polak Živković in 2011 shows that more than half of the respondents perceive lobbying as a positive profession, although the majority of them imply that it can contain some corruptive elements (and sometimes they perceive it does). The majority of the respondents, especially those younger than 45 years, agree that lobbying can be useful in their decision-making processes, and that it should become an obligatory part of their education. Yet, they perceive that the experts (as potential lobbyists) today only have limited influence in the political decision-making process. Both employees from the private and governmental organizations perceive that professionals/experts have very limited influence in the present (political) decision-making processes.

It is without a doubt that lobbying will grow and develop as a business, creating a new kind of business service in Central and Eastern Europe. It will have its own variations and local flavours. However, in order to make it more transparent and open to the public, lobbying will remain a permanent work in progress, and we will have to work on improving existing institutional arrangements, continually educating the public, media and politicians.

An additional problem for those who would like to become lobbyists is the fact that presently no formal educational programme about lobbying is offered in Croatia. 'Lobbying' as the course is mostly taught at the post-graduate study programme level (master, specialization level), within the Faculty of Economics & Business of the University of Zagreb, in two programmes: 'Business-to-Business Marketing' and 'Legal and Business framework in the EU', and undergraduate level at the private polytechnic VERN Business College.

On the more practical level, the HDL offers one- and two-day seminars with diverse themes about lobbying in practice, and, although these seminars are interesting to the participants, they do not assure any certification. Unfortunately, a systematic educational agenda cannot be set before the ratification of lobbying legislation, which will assure the integrity and legitimacy to lobbying as a profession.

7.5 FUTURE OF LOBBYING IN CROATIA AS A PART OF THE EU

Croatia is expecting its first lobbying legislation in 2016. The most recent proposal that was tabled by the HDL asks for a Transparency Register and mandatory registration. With the concept of governance in the world changing, the regulation of lobbying is becoming more and more an important part of this initiative. The Croatian lobbying industry is learning and maturing with lots of opportunities to start putting together more complex and sophisticated public affairs campaigns. Real advocacy techniques such as ‘grassroots’ campaigns need to be fully understood in Croatia and Europe.

Sinčić Ćorić (2014) emphasizes that, as the newest country in the EU, Croatia faces the challenges of transnational, supranational and industry-specific lobbying. Aside from many representative offices, opened in Brussels in the last decade, many corporate, organizational and individual lobbyists have registered themselves independently in the European Parliament and in the European Commission (40 organizations from Croatia in the Transparency Register).

We anticipate that the lobbying community in Croatia will continue to be an active member of the global debate on regulation of lobbying as well as one of the first movers in the Central and Eastern Europe.

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Cyprus

Maria Krambia-Kapardis and Christina Neophytidou

8.1 INTRODUCTION

Societies are built upon the premises of a collection of special interests whereby the objective is the public good. Many scholars have previously asserted that lobbying is an inherent aspect of democratic regimes across the globe as it can ensure the existence of robust debate on issues affecting public good (Besley 2001; Karr 2007; Weber 1996; Smismans 2003;

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Warleigh 2003). Indeed, lobbying is a means to express the essence of democracy as it allows *the will of people* to be publicly heard and taken upon consideration by decision-makers. When undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the decisions that may affect them. However, whether the ultimate outcome of lobbying is good or bad for the public good, it is still democracy in action (Samuelson 2008).

Problems arise when lobbying is non-transparent, and where privileged access is granted to a select few, while others are excluded from decision-making processes. When political institutions are weak, and voters cannot monitor what happens at a political level, corruption is somewhat encouraged. Undue influence through high-level bribery, lobbying or influence peddling occurs when powerful groups can exert their influence on decision-makers for their private gain. Thus, when lobbying is shrouded in secrecy, the risks of undue influence and state capture are more apparent than ever, hindering in that manner, the true essence of democracy.

As Kaufman (2009) noted, one of the causes of the 2007–2008 financial crisis was capture. He claimed that capture is when powerful corporations or persons exploit the regulatory, policy and legal institutions of the nation for their private benefit through bribery of high-ranking officials or by lobbying. In a country such as Cyprus, where political parties are

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considered to be amongst the most corrupt institutions,¹ where one gets appointed by who they know rather than on the grounds of meritocracy, lobbying practices appear to be far from transparent. Thus, capture, unethical lobbying and corruption are expected to thrive.

8.2 THE CYPRIOT INFRASTRUCTURE

Cyprus is strategically located at the crossroads of three continents, between Europe, Asia, the Middle East and Africa, and leverages its 900,000 highly educated, English-speaking population. Cyprus gained independence from the UK in 1960, became a member of the EU in 2004, adopted the euro as its national currency in 2008 and was listed by the IMF as one of the 31 advanced economies in the world in 2011 (Cyprus Profile). The country has been severely affected by the global financial crisis, and in 2013 it was forced by Eurogroup to have a bail-out (Forbes 2013). The main challenge facing the economy is to stabilise the banking system, tackle non-performing loans and increase foreign investment in an effort to encourage economic growth.

The executive power is vested in the President of the Republic, who is elected by the universal suffrage for a five-year term of office. The President exercises executive power through a Council of Ministers appointed by him. The Legislative Power of the Republic of Cyprus is exercised by the House of Representatives in all matters. Its members are elected for a five-year term. The judicial system in Cyprus is separate and independent. The Supreme Court, the Assize Courts and District Courts are the main judicial institutions of Cyprus. There are also independent officers and bodies which do not come under the jurisdiction of any Ministry. The independent officers of the Republic under the Constitution are the Attorney General, the Auditor General, who head the Law Office and the Audit Office respectively, and the Governor of the Central Bank of Cyprus. The Ombudsman (Commissioner for Administration) is also an independent officer of the Republic.

¹ According to the Global Corruption Barometer of 2013, 91 % of Cypriots felt that political parties in Cyprus are amongst the most corrupted institutions of the country (Transparency International 2013).

Cyprus has a multi-party system, with four parties generally dominating the political landscape. Political parties in Cyprus are very powerful and have a crucial role in nearly all aspects of political life as they exclusively nominate presidents, deputies, mayors and municipal councillors and appointed the Boards on State Controlled Entities (Katsourides 2013). On the other hand, civil society in Cyprus is extremely weak (CIVICUS: Civil Society Index Report for Cyprus 2005; Chabanet and Trechsel 2011; Katsourides 2013) as it is not provided with financial or other resources by either the public or private sector while at the same time volunteerism is not widely accepted in the country. Transparency International, Cyprus, was formed in 2011, but it has limited financial support from local institutions; thus, it has long-term sustainability concerns.

8.3 AN OVERVIEW OF LOBBYING IN CYPRUS

On first instance lobbying does not *appear* to ‘exist’ in Cyprus, as the terms ‘lobbyist’ and ‘lobbying’ are not in common use and are neither defined in the Cypriot law nor the Greek language. Currently in Cyprus, there is no specific obligation to register lobbyists or publicly disclose the interaction between public officials/politicians and lobbyists. In addition, there is no self-regulation of lobbyists’ activities, no professional association of lobbyists and no Code of Conduct for elected and appointed officials or lobbyists. The lack of regulating and monitoring mechanisms pertaining lobbying activities, means that one cannot be certain of who is lobbying and who is being lobbied in Cyprus. Thus, the scale and intensity of lobbying activities along with the estimates of total cash spend on lobbying activities, cannot be measured or estimated.

Although on paper lobbying does not exist, lobbying practices are simply happening in the shadows. It is a widespread belief that practices pertaining to lobbying activities are rife and very much prevalent within the political scene since 83 % of Cypriots believe that for their businesses to succeed, they need to have political connections (European Commission 2014a). A recent report published by Transparency International, Cyprus, and Cyprus University of Technology has asserted that lobbying in Cyprus takes place at social events like dinners and weddings, which of course, cannot be regulated (Krambia-Kapardis and Neophytidou 2014). This poses several challenges and fuels scepticism in the overall democratic system. Especially because lobbying occurs on the side-lines of the democratic process, the risk of altering policy to the benefit of narrow interests

at the expense of the wider public is maximised. Consequently, when deals between lobbyists and public officials are made behind closed doors, a sense of distrust is generated among the citizens and voters of the country, as participative democracy cannot be guaranteed. As a result, decision-makers cannot be held accountable, and thus, cannot reassure the public that the decisions made were based on the principles of accountability and transparency. One can therefore say that the decision-making process in Cyprus is neither open nor transparent.

8.4 LOBBYING: STATE OF PRACTICE IN CYPRUS

Currently in Cyprus, the public does not have sufficient knowledge in reference to the lobbying of public representatives, what issues are being lobbied, when and how they are being lobbied, how much is being spent in the process and what is the result of the lobbying efforts. The lack of transparency in lobbying is an outcome of many factors including absences of and omission of hard and soft legislation. Due to the absence of lobbying regulation in Cyprus, the common practice of interest groups trying to influence public decision-making processes is a cause for concern. This is largely due to the fact that lobbying gives an unfair advantage to the rich and powerful that can afford to lobby and have access to undue influence for their own narrow interests.

Although the society in Cyprus is aware that pressure groups representing specific interests are able to influence the decisions of public authorities, the practice as such is not identified as ‘lobbying’ (Krambia-Kapardis and Neophytidou 2014). This is mainly because Cypriots are not aware of the term ‘lobbying’ and do not understand what it means and entails. On the rare occasions that the public does hear about lobbying, both the term and the practice, it is through the media. However, due to the fact that scandals sell fast, the media only portray bad stories concerning lobbyists who are often involved in incidents of corruption, instead of also showcasing good examples of the lobbying practice. The term has been linked with favouritism, nepotism, corruption, manipulation and bribery, and is perceived with considerable suspicion and mistrust.

In Cyprus, the type of activities most perceived as lobbying revolve around actions by non-governmental organisations that aim to influence decisions made by the government (Krambia-Kapardis and Neophytidou 2014; Mulcahy 2015). Those who are most commonly understood as matching the description of a ‘lobbyist’, according to the 2014 report for

lobbying in Cyprus, are private sector representatives, for-profit organisation representatives, NGOs, trade unions and representatives from industry and professional associations (Krambia-Kapardis and Neophytidou 2014). The report states that there are a lot of individuals in Cyprus who are lobbying in an unofficial manner as a means of gaining access to public officials and luring influential people participating in decision-making processes by various means so that they will defend specific interests.

In summary, in Cyprus, the discussion on lobbying regulation is virtually non-existent and citizens have one of the highest rates of perception of state capture across the EU (Mulcahy 2015). The lack of transparency in lobbying is an outcome of many factors including absences and omissions in legislation. As a result, flaws within the broader legal environment are becoming more apparent, as the legal environment fails to provide transparency.

8.5 NON-EXISTENCE OF INVESTIGATIVE JOURNALISM & DEFICIENCIES IN ACCESSING INFORMATION

In the absence of a lobbying regulation for transparency, investigative journalists often turn to freedom of information laws as a means of uncovering details about who is influencing whom. This is not the case in Cyprus. The media in Cyprus is concentrated in the hands of a few wealthy individuals and/or elite political parties as well as the Church, who exert influence over the Cypriot media landscape. One could therefore assert that a high proportion of the media does not appear to be independent from political party influence.

Given the degree to which the public consider decision-making to be captured by a few big interests, one would think that the topic of lobbying would receive a lot of media attention in Cyprus. However, this is not the case. This is partially because investigative journalism is not developed in Cyprus, and also due to the fact that there is lack of transparency and absence of whistleblowing protection legislation (European Commission 2014b). It is worth pointing out that Cyprus and Luxembourg are among the only countries of the EU without general legislation on freedom of information (European Commission 2014b). A law on Accessing Information is currently located in the Legal Service, awaiting legal vetting (Neophytou 2015). The legislation is said to be prepared by October of 2015, however, the law has already been characterised as embarrassingly

weak as it excludes important public institutions such as the President, Cabinet, Parliament and Judiciary (Pavlou 2015).

8.6 POLITICAL PARTIES LEGISLATION IN URGENT NEED FOR REVISION

Although some EU countries' political party financing is considered to be relatively well regulated, a number of countries still suffer from substantial loopholes in their regulatory frameworks (Mulcahy 2015). In addition to that, Bulgaria, Cyprus and Hungary suffer from the lack of a strong enforcement culture (Mulcahy 2015). For Cyprus, the donations to political parties from wealthy individuals and business, along with the undue influence these donors have over the political parties are of major concern, due to the very close links between business and politics. This view is confirmed by the 2014 Special Eurobarometer Survey on Corruption, since only 9 % of Cypriots believe that political party financing is transparent and supervised (European Commission 2014a).

The legislators enacted the Political Parties Legislation (N. 175(I)/2012), however, it had serious omissions and deficiencies. As GRECO noted in its 2012 evaluation, three elements were not covered by the 2012 Act as it covered parties but not individual candidates; it did not contain separate provisions for the monitoring of finances related to election campaigns or of individual donations above a certain threshold; and timely and comprehensive publication of party accounts was not envisaged (Group of States against Corruption (GRECO) 2013). On 4 of February 2015, the draft law amending the Political Parties Law was approved by the Council of Ministers and on 19 February, it was submitted to the Parliament for its discussion and adoption (GRECO 2015). As GRECO (2015) noted in its recent report, the country has prepared a new set of amendments to the Political Parties Law, which still need to be adopted by Parliament (and subsequently enforced). This draft foresees a series of important changes such as a ban on anonymous donations and public sponsorship of political parties, the systematic recording of all donations and the disclosure of donors above a certain amount of support provided in a year (GRECO 2015). Although it would appear that the draft legislation amending the Political Parties Law goes in the right direction, Cyprus needs to pursue more vigorously its efforts in a series of areas such as the supervision of political financing and to ensure an independent and effective control mechanism will be established for the future (GRECO 2015).

At the time of writing, the Parliament has not yet voted the new set of amendments to the Political Parties Law. An number of issues are of concern to the present authors: (a) the transparency and disclosure of the funding received from both the government budget and private sources, (b) the annual reports of the political parties and their connected entities ought to be in line with the international financial reporting standards, (c) these annual reports ought to be audited and (d) the audited annual reports ought to be made publicly available.

8.7 INSUFFICIENT POST- AND PRE-EMPLOYMENT RESTRICTIONS

Although Cyprus has in place a Code of Conduct for civil servants, post-/pre-employment, restrictions only address ethical lobbying in a piecemeal and insufficient manner and are scattered across the ‘Incompatibility with the duties of Certain Officers of the Republic of Certain Commercial and Other Related Activities’ Law of 2008 (7(I)/2008) and 12(I)/2014. The legislation also establishes an obligation for any high-ranking government official (before accepting any office/position) to provide a written disclosure to the designating body for any existing prohibition relating to incompatibilities with his/hers duties. Interestingly enough, in July 2015, the Parliament enacted legislation 99(I)/2015² which allows public officials to hold political party positions simultaneously. Such legislation poses serious conflict of interest problems which could lead to corruption and open up the flood gates for more lobbying.

With regard to post-employment restrictions, the 114(I)2007 law³ in Cyprus provides a two-year cooling-off period for appointed government officials (ministers) and public sector officials; however, this does not apply to elected officers, such as MPs, Ministers or Commissioners. Furthermore, within the restrictions placed by L7(I)/2008 and the Regulations of the House of Representatives, MPs may hold other positions during their term as well as after it (e.g. many of the MPs have their own law practice

²Legislation 99(I)/ 2015 – Ο περί Νομικών Προσώπων Δημοσίου Δικαίου (Αξιολόγηση, Ελευθερία Έκφρασης Γνώμης και Πολιτικά Δικαιώματα Υπαλλήλων) (Τροποποιητικός) Νόμος του 2015 (99(I)/ 2015) Available at: http://www.cylaw.org/nomoi/arith/2015_1_99.pdf

³Legislation 114 (I) / 2007 – Ο περί του Ελέγχου της Ανάληψης Εργασίας στον Ιδιωτικό Τομέα από Πρώην Κρατικούς Αξιωματούχους και Ορισμένους Πρώην Υπαλλήλους του Δημοσίου και του Ευρύτερου Δημόσιου Τομέα Νόμος του 2007, Available at: http://www.cylaw.org/nomoi/enop/non-ind/2007_1_114/full.html

and are practising law at the same time). In accordance with the legislation N114(I)2007,⁴ governmental officials and public sector officials must seek and be granted a permit by an independent specialised committee, consisting of the three most senior prosecutors from the Office of the Attorney General. However, due to the fact that questions have been raised in the media about officers who did not comply with the two-year cooling-off period, and the fact that there is no public disclosure of the cases reviewed by the above committee, many unanswered questions remain.

8.8 CONSULTATION AND PUBLIC PARTICIPATION IN THE DECISION-MAKING PROCESS IS NOT GUARANTEED!

Parliamentary committees currently invite, without being prompted, organised groups and individuals who are involved in or affected by a bill. Stakeholders that are not invited by the Parliamentary Committees, but if they are interested in the topic discussed by a parliamentary committee, they can write to Parliament and ask to be invited to attend the meeting. However, although the Parliament meetings are open to the public,⁵ given the fact that it is up to each Parliamentary Committee to invite relevant stakeholders to the meetings they host, and because there are no specific time frames to provide sufficient notice for such consultation, the participation of the public might not always be guaranteed. In addition to that, in Cyprus, there is no law requiring the publication of a ‘Legislative Footprint’ as an annex to all legislative records, thus, citizens cannot keep track of the influence exerted upon decision-makers as regards external advice on new policies, legislation and amendments.

Currently in Cyprus, there is no legal obligation to have a balanced composition of advisory/expert groups between the private sector and civil society representatives. Indeed, a 2015 report published by Transparency International notes that the vast majority of EU countries are not at all concerned with ensuring a balanced composition of advisory groups, with Cyprus the Czech Republic, France, Germany, Hungary, Italy, Slovakia and Spain to be amongst the worst offenders (Mulcahy 2015).

⁴Ibid.

⁵1995 Regulation of the House of Representatives of the Republic of Cyprus, Section B Part II 46(A) 1.

8.9 THE WAY FORWARD

In order for lobbying to become a legitimate and positive force in Cyprus, it must come out of the shadows. Cyprus must address the lack of any meaningful regulation for lobbying within the broader integrity framework, including regulation in accessing information, whistleblowing protection, asset declaration of all elected and appointed officials, conflict of interests and revolving doors. Thus, the present authors are of the view that clear legislative measures ought to be put in practice for the following:

- (a) **Lobbyists and the practice of lobbying ought to be formally defined in Cypriot legislation.** This would not only raise awareness for the practice of lobbying in Cyprus, but it will also enable citizens to distinguish lobbying practices from corrupt incidents. By providing solid definitions and equivalent Greek words for the terms ‘lobbying’ and ‘lobbyists’, citizens will start to acknowledge that lobbying can also be a positive force within the decision-making process of a modern democratic state;
- (b) **The Political Parties funding legislation ought to be amended and take into consideration GRECO’s suggestions.** Once legislation is enacted mechanisms ought to be in place to ensure its enforcement and punishment of those violating it.
- (c) **The Cypriot government should take action by making mandatory a ‘Legislative Footprint’ as an annex to all legislative records.** Thus, citizens will know who had an input in the development and or amendment of a legislation to ensure there is no undue influence and or illegal gain.
- (d) **Asset declaration of all elected and appointed officials should be made mandatory through legislation in an effort to prevent illegal gains made through undue influence.** Such legislation would be a preventive factor against unethical behaviour, conflict of interest and a valuable deterrent in detecting abuse of power and corruption.
- (e) In order to maintain public integrity and trust in government, **revolving door regulation aiming to prevent real or perceived conflicts of interests should be streamlined with lobbying regulation.** Conflicts of interest rules should be introduced in order to assist in identifying and managing conflicts of interests to ensure that the decisions of appointed and elected officials are not biased or affected by any self-interest.

- (f) In an effort to guarantee integrity within the decision-making process, **a robust Code of Conduct for elected and appointed officials ought to be introduced. At the same time a code of conduct ought to be introduced for all parties actively engaged in lobbying in an effort to self-regulate both the lobbyist and the lobbied.**

8.10 CONCLUSION

In view of the risks stemming from unregulated lobbying, the risks to corruption and impact on financial economy, which often lead to the undue and unfair influence for vested interests over decision-making processes, it is rather crucial to safeguard the public interest through stricter regulation of lobbying activities. It appears that Cyprus has a long way to go before being able to support ethical lobbying due to gaps and omissions within the legislative and regulatory framework. The recommendations made above serve as a step-by-step guide aiming to strengthen the framework for lobbying regulation and integrity within decision-making processes. The disclosure of lobbying activities between lobbyists and government officials is also an essential step in monitoring lobbying activities. Thus, in order to move towards greater transparency and ethical lobbying in Cyprus, lobbying should be legally defined and regulated. As a means of fostering integrity, revolving doors should be blocked through stricter legislation on cooling-off periods in order to prevent high-ranking officials from entering the private sector soon after the end of their public duties. In addition, the legal framework for public participation in decision-making processes should also be strengthened in order to secure the participation of interested stakeholders in the discussion of legislative processes. By doing so, citizens' trust on politicians will improve the accountability on the decision-making process.

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Czech Republic

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The actual discipline of lobbying has no clear regulation and consequently not a good reputation in the Czech Republic. Very few practitioners would call themselves a lobbyist, and generally lobbying is seen as an evil profession in the Czech Republic. The general public perceive it as an attempt to control the majority by a few influential elements and individuals in society. Lobbying is a very new field in both meaning—as a profession and as a field in academic research. We will explore this more fully subsequently in the article. In order to understand the discipline in the Czech context, it is necessary to describe the party political system and briefly the modern

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history of the country, then focus on the definition of the lobbying and consequently on the current state of affairs.¹

9.1 INTRODUCTION TO THE CZECH POLITICAL SYSTEM

The Czech Republic is a parliamentary democracy. The current state and boundaries were established in 1993 when there was a peaceful separation sometimes referred to as the Velvet Split² of the then state of Czechoslovakia into Slovakia and the Czech Republic (Císař and Kopeček 2009: 227–262). This development followed the fall of the Communist Regime in 1989, which had ruled Czechoslovakia for more than 40 years (Balík et al. 2006: 159–162).

Since 1993, there have been three main institutional changes affecting the development of lobbying in the Czech Republic: the Senate was established and elections took the place in 1996 for the first time, regional councils were set up in 2000 and since 2013, the President has been directly elected by the people. Until 2013, the President had been elected by the Parliament (Chambers of Deputies and the Senate), and their legitimacy was based on elected and appointed politicians, not directly on the mass electorate. Since the introduction of the direct vote, the Presidency has derived increased legitimacy directly from voters, so they are more independent of the members of Parliament. This change has resulted in the need for full electoral campaigns and therefore increased fundraising and the environment as a consequence offers increased opportunities for the lobbyist to operate in. It is also worth noting that political consulting is increasingly showing signs of becoming a viable industry in the country and the situation is very similar to that of lobbying there is no clear definition or understanding of what political consulting is or should be. Also both activities are often confused.

¹For example, the current Czech government (coalition government of Czech Social democratic movement, Christian Democratic Party and centre-right political movement ANO 2011) just introduces altogether 16 laws dealing with corruption and next steps is lobbying regulation.

²It is the so-called Velvet Revolution, the period of the peaceful transition from the old Communist regime to the new democracy which started on November 17, 1989.

Legislative authority lies in the hands of Parliament which consists of two chambers. The Chamber of Deputies originated from the transformation of the Czech National Council and was established by the formation of the Czech Republic. A total of 200 MPs are elected every four years (Šedo 2007: 34–35), unless there are early elections—it happened in 1998 and in 2013 due to the government crises (Havlík 2014; Hloušek and Kopeček 2014). MPs are elected by the proportional electoral system, with the country being divided into 14 regions. Their size varies from 5 to 25 seats so the importance of each region for political parties differs. That is usually reflected in the geographical intensity of electoral campaigning. National and local topics are communicated in campaigns; and in most cases, these promises are not fulfilled since the Chamber of Deputies does not fulfil the role of a chamber of regions. The second chamber is the Senate, where the presence of local issues is even more visible. There are 81 Senators elected for six years in a two-round major electoral system (Chytilek et al. 2009: 141–158). A third of the Senate is elected every two years (except in 1996 when all of 81 Senators were elected). The small constituencies and proximity of candidates to the voters cause locally focused campaigns and promises. But the Senate is not a chamber of the regions, although some of the Senators act as if it were. So many voters think politicians elected in their region to the Chamber of Deputies or to the Senate should represent the interests of the constituency. And if they do not, voters are disappointed and feel frustrated. In such cases, the doors for the lobbyist are open if they are able to persuade the politicians about their interest or satisfaction of the regions voters and interests.

In the Czech Republic, the constitution is not formed by only one document or a constitutional act, rather it comprises several enactments and constitutional acts. The main documents are the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms. The Constitution of the Czech Republic has been amended on several occasions since it was first enacted in 1993. Mostly the amendments have amounted to partial or rather technical modifications and adjustments. The truly substantial change was introduced in 2012, when the direct national popular vote of the President was introduced as opposed to indirect elections (Musilová and Šedo 2013: 31–34; Gregor and Matušková 2014: 191–193). While modifying the way in which the Head of State is elected, the possibility of so-called impeachment was paradoxically made

more difficult. So the President has more significant legitimacy, greater independency, but his competences have not changed.

9.2 LOBBYING: THE STATE OF THE DISCIPLINE IN THE CZECH REPUBLIC

The only example of analysing lobbying during communism is the work of Oto Šik (Šik 1962) an economist, who belonged to the stream of “reformists” within the Communist Party. He published an article analysing the economy, interests and politics with relations to lobbying in the prominent communist daily *Rude právo* and also in a book about economy in 1962. This is one of the rare contributions to debate on lobbying in the country prior to democratic transition.

In the year 2005, agencies Donath-Burson-Marsteller and Factum Invenio conducted research among politicians on how they understood lobbying. The inputs showed very clearly, the lack of knowledge and need for regulations.

Early academic analyses of lobbying in the Czech Republic started to be published in mid-2000s, in the form of a few diploma theses and, especially, foreign literature dealing primarily with EU lobbying and European comparative practice (Harris and Fleisher 2005; Schendelen 2005). The first serious attempts by teams or individual researchers within the Czech academic sphere emerged later and can be dated from 2007 to 2013, the years marked by the tendencies of Lobbying Act adoption and an aroused anti-corruption fight led by various government committees and expert groups (Schneider 2007; Bažantová et al. 2007; Vantuch 2009; Laboutková et al. 2010; Smith et al. 2013).

The last book in the above-mentioned list (Smith et al. 2013) comprises a lobbying regulatory scheme outlined by the academic community of the Czech Academy of Sciences and non-governmental organisation Frank Bold which is the main promoter of anti-corruption laws in the Czech Republic. The only recent rigorous publication was released by Transparency International Czech Republic (Vymětal et al. 2014) which presented key issues related to the state of lobbying in the Czech Republic including negative media framing of lobbying often connecting with heavily publicised bribery and corruption affairs in the Czech public sphere, ambiguous political party fundraising and financial

management, revolving doors and public policy and administration flaws including Czech Civil Service Act. Some of the listed problems have been successively solved such as the Act which had become effective since January 1, 2015. It fundamentally changes the environment in which further lobbying theory and practice is assessed, thus there is an open space for fresh analyses including comparative studies.

In parallel to the core academic stream focusing on lobbying from law, policy and communications perspectives which is based at four main institutions—the University of Economics (Laboutková et al. 2010), Faculties of Law and Social Sciences at Charles University in Prague (Kollmannová and Matušková 2014), and the Czech Academy of Sciences (Smith et al. 2013)—there is an alternative game theory and political economy oriented theoretical stream represented by Martin Gregor (2011, 2015) and his colleagues at the Institute of Economic Studies, Charles University of Prague.

Beside the academia, there are numerous actors who shape the current state of lobbying in the Czech Republic in 2016 comprising government committees, NGOs, professional associations, public affairs agencies and individuals. The main government body which has been trying to revoke discussions on lobbying regulation is the Government Council for the Coordination of the Fight Against Corruption within the Office of the Government (2016a, b). Among NGOs, the primary actors are Rekonstrukce státu (2014), Respekt Institut (2015), Frank Bold (Kraus and Fadrný 2013), and Transparency International Czech Republic (Vymětal et al. 2014).

In the private sector, six public affairs agencies, that is, CEC Government Relations, Eurooffice Praha-Brusel, Fleishman-Hillard, Grayling Czech Republic, Merit Government Relations, and PAN Solutions, established the Association of Public Affairs Agencies (APAA) which adopted a shared ethical code of conduct and also serves as an advisory body in the process of preparing the regulatory scheme of lobbying in the Czech Republic (APAA 2012). Despite the pronounced increase of lobbying professionalism, there is still a huge grey zone of individuals and private sector representatives who do not need to follow any mutually agreed ethical or legally binding rules. Media do not usually help in the professionalism efforts and commonly connect the word “lobbying” with corruption, jail birding and serious law offences (Jílková 2014).

9.3 LOBBYING: THE LEGAL STATUS IN THE CZECH REPUBLIC

In the Central and Eastern Europe, there is a pronounced difference between countries in which lobbying is regulated by law. Some countries such as Hungary or Poland passed the regulation laws in the beginning of the twenty-first century, notwithstanding different follow-up experiences (OECD 2009). However, in the Czech Republic, lobbying is still in unregulated status quo position which slows down any process of lobbying image enhancement and professional establishment of the discipline (Chari et al. 2010; Kollmannová and Matušková 2014).

The Lobbying Act adoption efforts history can be tracked back to 2005 when Lubomír Zaorálek MP presented the Ethical Code of Conduct in the Chamber of Deputies, Parliament of the Czech Republic, including the Paragraph V, which specifically mentioned lobbying and the need of a parliamentary register. Since 2005–2013, there have been several attempts and parliamentary proceedings dealing with the proposals for the Lobbying Act, none of which have been successfully adopted (Chamber of Deputies of the Czech Republic 2010; Senate of the Czech Republic 2010).

A complex analysis of anti-corruption fight and government strategy for 2011 and 2012 was published by the Office of the Government (2011). A further Government Position Paper was published in May 2013 having claimed that the Government acknowledged that there were other ways to regulate lobbying than a mere adoption of the Lobbying Act (Office of the Government 2013). In 2013, a publication written by experts from Frank Bold and the Institute of Sociology within the Czech Academy of Sciences included the proposal of the Lobbying Act wording (Smith et al. 2013). Likewise, APAA (2012) published its position towards the preparation of the Lobbying Act including several issues and critical points.

The latest official Government document which encompasses lobbying and its regulation is the Action Plan of the Anti-Corruption Fight for 2016 which states that it is necessary to refocus on the future lobbying regulation scheme in 2016 and 2017 with a forthcoming “Thesis of the Future Legislative Regulation of Lobbying” in the Czech Republic to be published as soon as possible (Office of the Government 2015: 10).

9.4 CONCLUDING REMARKS

Our text introduces the complex problem of lobbying in the Czech Republic, the authors focus on how the “professional” part is conducted and what are the key areas of lobbying in the Czech Republic.

Lobbying is usually divided into four main fields: executive, legal, electoral and judicial activities. In the Czech Republic, it is mainly the executive and legal part. However, executive lobbying is strictly the activity of very small group of bureaucrats, officials or politicians, in some cases even only individuals. The motivation is usually to seek a decision in favour of participants such as nomination into official position, buying or selling, seeking for state commissions, applying for grants or funds or changing the procedural rules.

Lobbying as a professional field is very often conducted within the international or national companies and holdings such as Škoda Auto a.s., Investing group PPF and many others. Key sectors of activity are agriculture, automotive industry, pharmaceutical industry, atomic energy and various others.

Specialist and rather successful lobbying represents the non-governmental organisations such as Amnesty International, People in Need or Transparency International. This text is a brief theoretical introduction to the field of lobbying in the Czech Republic and we hope will be built on with further in-depth studies and research to reflect the size and depth of the industry.

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Denmark

Peter Andreas Münster and Andreas Hjørnholm

The political hit television series *Borgen* has introduced the world to Danish politics. Though entirely fictional, the trials and tribulations of the show's main character, Prime Minister Birgitte Nyborg, still offer important insights about the working processes of the Danish political system. In the show, a political culture is depicted in which pragmatic bargaining, compromise and consensus are valued and rewarded above all else.

10.1 THE DANISH SETTING

Though the political culture in Denmark is indeed largely one of inclusion, dialogue and even consensus, a more competitive, pluralistic environment is seeing the light of dawn for those who make and seek to influence policy.

The political culture of dialogue and consensus seeking is as old as democracy in Denmark. In 1849, with social upheaval and violent revolutions throughout Europe, the Danish King Frederik VII did his best to avoid revolution in his kingdom. To appease the public demand for

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democratic rule, a Montesquieu-esque constitution was drafted that paved the way to the first democratically elected assembly in Denmark. Through a series of constitutional revisions and without bloodshed the Danish democracy evolved to what it is today: a modern, pluralistic, constitutional monarchy based on the principle of negative parliamentarism.

The principle of negative parliamentarism is key in understanding the workings of Danish democracy in practice. As long as it does not face opposition from a majority in the parliament Folketinget, a government can be based on a parliamentary minority. Indeed, only four governments since 1945 have controlled a majority in Folketinget. Further, most recent governments have been coalitions consisting of several parties. On a day-to-day basis, the government parties need to seek the goodwill of other parties in parliament in order to obtain a majority for its legislative proposals. Ad hoc majority coalitions are common. Reaching a majority among the 179 MPs is popularly referred to as “counting to 90”—which there are many ways to do. The absence of a firm ruling majority increases the complexity of practical legislative work in Denmark and proposes a number of opportunities for the adept lobbyist to construct a new majority between the parties (of which usually between seven and nine are represented in Folketinget) around a policy proposal.

For national politics, another key characteristic of the legislative process is a cycle of three parliamentary reviews, where subcommittees composed by a representative selection of MP's deliberate on the proposal before submitting amendments to the proposal to be agreed on by the full Parliament. This iterative process of parliamentary review, subcommittee amendments and subsequent processing by public servants ensures both democratic legitimacy and legal soundness of finalized proposals regardless of whether they originate from members of government or opposition parties. It also allows for external expertise to be fed into the policy process by lobbyists or other interests with access to relevant knowledge. The importance and influence of the public servants manning the ministries should not be underestimated. The ministries generally have three roles that are relevant for the public affairs professional. First, they have access to the technical and judicial expertise that the government relies as necessary to produce sound legislation. Second, they draft the governmental policy proposals and to a certain extent act as political advisors to the minister in question. Third, they are responsible for implementing legislation that has been passed. This process usually involves a great deal of

interpretation and judgement of the legislation, which makes input from stakeholders relevant.

For EU politics, Denmark is no different from other Member States; however, there seems to have been a historic tendency for Denmark to choose a “best in class” position when transposing directives into national law, especially within environmental policies. As such, much can be won by the public affairs professional by first being in active contact with the Danish public servants doing the actual negotiations in Brussels, and then being active once more as these cases move from the EU arena to the national arena, typically following the process above.

10.2 COMPETING FOR ATTENTION

The Danish political system has undergone a dramatic structural change throughout the last few decades. Coming from a corporatist tradition where the most defining societal negotiations were handled by the trinity of the government, the unions and the employer organizations, the Danish politics are today defined as much by pluralism as any other modern democracy. Today, though of course some actors are more powerful than others, the structure of political power in the broad sense of the word is dispersed and decentralized with no interest group or organization holding innate, privileged access to political decision makers.

This has to do in part with the internationalization of Danish politics. The Danish membership of the European Community in 1972 and other international commitments have arguably lowered the political leverage of Folketinget and helped erode old, corporatist structure of policy negotiations between the state, the unions and the employers¹ (Christiansen and Nørgaard 2003a: 119–137).

Besides internationalization, the individualization of personal and corporate interests has also been responsible for the dissolution of the corporatist system. Individualization of interests in the workplace has ushered in the crisis of the unions who rely on collective values and unity for bargaining power. As of today, it is impossible for unions to exclude non-member colleagues from reaping many of the same benefits as the union members

¹Some scholars argue that the decrease in formal tri-party negotiations is mirrored by an incline in the number of informal contact between the government, labour unions and employer organisations, leading to the conclusion that it is not the decline, rather the reinvention of corporatism that we are dealing with (Christiansen and Sidenius 1995)

do in terms of salary, vacation, job conditions, and so on. This free-rider problem has caused the membership of the traditional unions to drop dramatically over the past ten years with ensuing loss of political relevance. For the public affairs, professional unions remain, however, an important source of legitimacy as an alliance partner.

While the largest industry organizations—along with the unions—remain dominant players in the Danish political life, they are facing political interest representation challenges of their own. The fragmentation of corporate interests has meant that the large trade organizations have difficulties in representing a very broad range of members effectively at the same time. Dissatisfied with what is perceived as organizational inertia and serving the lowest common denominator, many companies seek to maintain their political interests individually and directly (Christiansen and Nørgaard 2003b: 63).

Besides the large industry organizations and unions, there are cohorts of small and medium-sized organizations representing special interests vis-à-vis the decision makers. This group is extremely diverse, generally have few resources they are able to dedicate to political lobbying but can be very influential in their respective spheres of interest.

During the last 20 years, these developments, along with a dawning realization among many companies of the need for and value of professional public affairs, have given rise to the public affairs consultancy in the Danish political landscape. Their clients pay for expert advice and practical assistance on how to best navigate in the political landscape and advance their issues with decision makers.

Though the political culture in Denmark remains one of dialogue, inclusion and consensus, it will be fair to state that we have seen an increased competition for the attention of the decision makers. Public affairs is no longer a matter of innate, privileged access to the political decision makers, journalists and other influencers. Instead professionalism, trustworthiness and deep knowledge about politics and the media are crucial. The popular idiom that “trust is hard to gain and easy to lose” is as true as ever in Denmark.

10.3 THE DANISH LOBBYIST

The combination in modern day Denmark of the dispersion of power and a culture of dialogue and consensus means that professional lobbyists and anyone wishing to influence policy making in Denmark need a broad set

of competencies, including political savvy, analytical skills coupled with an ability to juggle complex and technical subject matter, as well as experience with campaigning, networking and media relations (Hegelund and Mose 2013: 27–45).

Although most Danish lobbyists do their job with a high degree of professionalism, lobbying in Denmark has not yet matured to a point where one can speak of a “profession” per se. Unorganized by any significant professional bodies, unbound by any broadly recognized professional code of conduct, and not holding a position obtained through education, certificate, or (necessarily) merit, Danish lobbyists are almost as diverse as the politicians they pursue.

With typical backgrounds ranging from journalism, law, economics and political science to something completely different, their approach to lobbying can vary greatly. As mentioned earlier, there is a great deal of small organizations with very limited resources that represent a certain cause or group of people. This has given rise to talk of an A-team and a B-team among the lobbyists. What makes the two groups different is the amount of time and resources that they are able to dedicate to public affairs activities, preparation, coalition building, and so on. Oftentimes the B-team lobbyists are heads of very small organizations who have many other daily tasks besides taking care of the organization’s political interests.

However loosely rooted in various backgrounds, lobbying in general in Denmark is undergoing increasing professionalization. Through the efforts of universities as well as a handful of political consultancies who see a commercial upside in presenting a structured approach to the discipline, methodology or best practices are slowly emerging from within the trade. Originally in a position where the quality of the lobbyist’s results was directly proportional to the people he knew on the inside or the number of votes he represented on the outside, the activity of lobbying decision makers is being absorbed by the more comprehensive toolbox of the broader public affairs discipline. Now, being able to navigate in the heterogeneous landscape of multiparty interests (and being trusted on both sides of the aisle), to be able to make an issue politically relevant, to communicate new information and, last but not least, to integrate the discipline of PR and strategic communications into a political issue campaign, the public affairs professionals are overtaking what used to be the domain of the single-issue lobbyists. Paraphrasing the old adage, it is no longer about whom you know, but what you know—and how well you can stimulate the political context around it.

10.4 FROM DEPENDENCE TO INTERDEPENDENCE

As the discipline becomes more broadly founded and dependent on the ability to influence the public agenda *through* the media, it also becomes more exposed and subject to closer scrutiny *by* the media. With lobbying halfway out the lobby and into the public domain, the discipline has developed two critical traits that differentiate it from the favouritism and illegitimate influence that still tend to cloak the image of the lobbyist.

First, the increased public attention to who shapes and makes political decisions has created a need for decision makers to be able to validate their decisions, which in turn has increased the need for lobbyists to make their case based on well-chosen facts and statistics—in other words, to document the legitimacy of their special interest rather than merely stating it.

Second, the need to be able to utilize the media to create or shape a larger political agenda demands that the public affairs professional be able to anchor his or her case in a “hot” political theme that goes beyond ideologies and single party interests.

Mostly driven by an ongoing pluralization of political power as well as a commercialization of political know-how (e.g. by consultancies), this development has expanded both the market for public affairs services and the competition for decision makers’ attention. Where the battle between lobbyists used to be a fight for access, getting face time with a member of parliament is no longer the biggest of the lobbyist’s worries. Today it is as much a question of both ensuring that the concrete case lines up with a larger political narrative and that beneficial media coverage of this political theme surrounds the topic of the meeting (Hegelund and Mose 2013: 36–38).

As a backdrop to the development of lobbying and public affairs, the more frequent use by legislators of framework legislation has increased the influence of the civil servants tasked painting the detailed picture within the framework. This *de facto* delegation of legislative power makes the civil servants even more relevant to public affairs professionals.

And vice versa. Increased complexity in society in general and the impossibility of counting in all factors in decision making make the specialized knowledge that lobbyists offer on their field of expertise relevant to both political and administrative decision makers. Regardless of the bleak image lobbyists carry across most political systems, Danish lobbyists practise their discipline in an interdependent relationship with policymakers, who need solid input from industry and other interest groups

just as much as the lobbyists need the influence of politicians. And while this interdependence does create a straightforward and honest relationship between the lobbyist and the person being lobbied, the two most fundamental implications are these:

- (A). As stated above, the weight of a lobbyist's influence is proportional to his ability to align his or her suggestions with a salient political narrative—or indeed make salient his or her own narrative. Done well, the work of a single lobbyist can have tremendous influence on everything from general principles to intricate details of new legislation.
- (B). As a lobbyists' trustworthiness is built through repeated interactions with policy makers, attempts to mislead, use of erroneous information, or lack of confidentiality will not only harm their case, but also may break their career entirely.

10.5 CASE STUDY: THE INTRODUCTION AND REVERSAL OF THE WORLD'S FIRST TAX ON SATURATED FATS

In 2009, the Danish government had appointed an expert commission to come up with policy proposal to improve public health in Denmark—a typical way policy ideas are introduced into the political system. Most of the proposals never saw the light of day. One particular proposal was, however, passed into law by the then right-wing government in 2011: The world's first tax on saturated fat in foods. The fundamental idea was that if foods with unhealthy saturated fat would become more expensive, people would buy less, leading to an improvement of the general health of the population.

The new tax was not without problems, however. Denmark is a food producing nation and the home country of several global food companies to whom the new piece of legislation represented another cost that they would obviously much rather have avoided.

The Confederation of Danish Industry and The Danish Agriculture and Food Council were among the most active lobbyists to remove the new tax. They were able to forge an alliance with the food workers' union, arguing that the new tax would cost jobs and put unnecessary burdens on the shoulders of some of the country's largest employers, the food companies.

In the meantime, there had been a change of government that—it seemed—intended to only make matters more difficult for the food producers. The new left-wing government was not only very comfortable with the idea of taxation as a means to regulate private behaviour but also sorely needed the revenue the “fat tax” created to deliver on other political ambitions.

It was not until an analysis was produced by the Economic Council of the Labour Movement that showed how the fat tax, in fact, *increased* social inequality with a larger portion of the revenue stemming from low-income groups that the tide changed for the food companies’ lobbyists. The analysis was presented to the far left party The Red/Green Alliance who had originally abstained from voting in favour of the tax exactly because of their worry about the social ramifications of the proposal.

With solid documentation of this effect, the Red/Green Alliance used its position as part of the left-wing majority supporting the Government and was able to change the Government’s view on the tax. By 2013, the world’s first tax on saturated fat also became the world’s first tax on saturated fat to be revoked, as a large majority in Folketinget voted in favour of cancelling it again.

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Estonia

Ott Lumi and Andreas Kaju

11.1 CENTRAL FEATURES OF POLITICAL SYSTEM

The basic framework of the Estonian political system was set by the republic's 4th constitution, which was adopted in 1992. The 1992 constitution was based on the principle of the restoration of Estonia's independence, returning to the state structure which was in force before Estonia's annexation into the Soviet Union in 1940. The new constitution adopted in the referenda in 1992 was a mix of earlier pre-war constitutions, particularly those of 1920 and of 1938. As a generalization, we can say that Estonian constitution and legal framework is primarily influenced and reflects very much the German legal thinking and traditions, though many ideas in the state-building phase were drawn in also from UK and Scandinavia (Maruste 2007; Devenney and Kenny 2013).

Estonia is a parliamentary democracy with a proportional electoral system based on party lists in single constituencies. It has a 101-seat unicameral parliament, the elections are held every four years, on the first Sunday in March. According to its constitutional framework, the Estonian parliament can be characterized as an institution with strong powers and

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functionalities inside a political system. The government doesn't have the power to dissolve the parliament. Any such attempts by the government or severe political crises caused by other factors in practice would not lead to extraordinary elections. Parliament has the power to force any minister to resign via a binding vote of no confidence, including the prime minister. Based on internal functionalities, the parliament's central institutions are parliamentary groups and committees. The house rules provide parliamentary groups with many legal and policy process-related privileges, making the group also a powerful unit vis-à-vis single MPs. From the perspective of legislative activity, the majority of the work in Estonian parliament occurs in committees, the role of the plenary sessions carries relatively less weight than in many other European legislative chambers (Jakobson et al. 2013). The parliament also has the power to elect the president of the republic. If the parliament fails to find a candidate who has the backing of at least a 2/3 majority, the elections move to the Electoral College, which consists of members of parliament and of representatives of municipalities. According to the constitution, the president has rather limited and symbolic functions, though their role in the field of foreign policy is according to political traditions, very relevant.

Despite the strong constitutional structures, political analysts and media in general have throughout the last decade characterized parliament as a "rubber stamp" political institution. Generally, what this means is that its legislative capacity and ability to counterbalance the executive branch, and especially its role as an important discussion fora that frames the relevant discussions of the times for the whole society, have been marginalized. Objectively, this view has a grain of truth in it, albeit much of this could be seen as well as a natural shift in the overall institutional power-balance structure, keeping in mind the general process of rebuilding the democratic politics since 1991. The number of legislative bills initiated by the parliament was naturally many times higher during the 1990s, as the state in general was under a vast pressure to legislate speedily because of the need to rebuild quickly its legal framework and specifically , to harmonize the laws with EU and other international counterparts. Therefore, the need to push legislation through the parliament was essential. These days, the majority of legislation is initiated by the government and the role of the parliament in the vast majority of cases is to be the fine-tuner and proof-reader to draft acts, or that of an organizer of public discussions around the more controversial legislative issues. In a nutshell, we can say that the Estonian parliament has the right

to challenge and strengthen its institutional capacity, especially vis-à-vis the executive branch, but this handicap is not Estonia specific, but rather can be seen in a vast majority of other European countries, with some nuanced differences (Peters et al. 2000).

Since the mid-2000s up until 2015, the Estonian party political landscape has been going through a remarkable phase of institutionalization. Though even before, based on the trends throughout the 1990s, it was defined as one of the role models of party system stability and functionality, at least among the group of countries with a similar past (Jungerstam-Mulders 2006). Since 2003, the number of party factions represented in parliament has not exceeded 6, and only 4 after the elections in 2011. Notably, Estonia was one of the few EU states where the parties were able to grow membership in the first decade of the century.

However, some of the political developments that started to occur after the 2011 elections have raised serious questions on the stability of the system. Firstly, the whole party system has been challenged strongly by the civil society activist groups, praising different models of direct democracy and its virtues over representative democracy. And secondly, the 2015 elections saw the success of two anti-establishment parties: the Free Party that rallies for more transparent and responsive political parties, and the National Conservative Party that could be described as radical right-wing party.

11.2 NATURE OF THE INTEREST GROUP SYSTEM AND GOVERNMENT RELATIONS

The importance of including interest groups in policy-making has been constantly emphasized by Estonian governments and parliaments during the last decade, and a series of practical steps have been taken to make this inclusion more effective. Currently, inclusion is specified by ten different statutes of national legislation (Kübar and Hinsberg 2014). The legal framework specifies quite a large number of entry points into the policy-making process that enable interest groups to participate in the decision-making process.

In many ways Estonian interest group system has inherited the strong corporative tradition of Central and Northern Europe, meaning that there are some organizations that represent domain-specific or professional interests and to whom the state authority has allocated a monopoly or at

least a privileged role in representing the domain in negotiations with the state (Eising 2004). At the same time, in the political arena of small states, policy makers are in essence accessible for different interest groups and promotion of well-developed internet-related inclusion practices has been an important counterbalancing factor for otherwise corporatist political tradition (Lumi 2015).

The main characteristic of a party financing model has been a ban of business contributions to political parties. This came into force in 2004 and at the same time the state budgetary grants to the political parties were tripled. Stable financing from the national budget has accelerated the institutionalization of the Estonian political party landscape and has also arguably served as an effective anti-corruption measure (Lumi 2015). During the last decade, the media and wider public have repeatedly raised the question of secret illegal contributions, whilst at the same time, notably, this kind of a party financing model has positively increased the need for argumentative issue advocacy. While banning corporate donations might have in effect raised barriers for new political participants, it can be criticized from the viewpoint of system openness (i.e. less possibility to rely on support from businesses it is hard to raise funds for political newcomers), then the links between party financing and political decisions have definitely grown weaker. This has also helped develop the government affairs service as the need for professional interest advocacy has increased.

In terms of the relationship mode between the political party and politically active interest groups relationship model, Estonia stands somewhere in-between cooperation/proximate ideology model and separation/pragmatic involvement model (Thomas 2001). It often occurs that there is a strong mutual interest in working in strategic cooperation between certain parties and interest groups; however, it is unlikely that this results in the dominance of one over the other. Such links are based on political ideology or agenda-setting necessities, which appears, for example, to be the case between the Social Democratic Party and trade unions; however, there is no such integrated political or organization bond as it is the case for instance in Scandinavia. Most often though, the relationship is based on pragmatic involvement. Meaning that groups have a very weak partisan attachment, if at all, and they are willing to work with any party in power to promote its goals. For example, if in the 1990s, the centre-right political parties were publicly linked to business groups and vice versa, then nowadays we see that in practical political battles or in the stage of

formulation of political rhetoric and business groups often create alliances with the political left, and vice a versa to achieve ends and goals.

11.3 THE INDUSTRY OF LOBBYING

The lobbying in Estonia is a new *profession*. There is still at the moment only one company on the market which explicitly speaks of itself as government relations service provider. Informally, there are a number of other service providers, but they prefer not to advertise their activities as such—due to anticipated social stigma or for more complex reasons. There are no educational pathways or university programmes that specifically address the industry, except for one course, part of the political communication MA curriculum, in Tallinn University.

The service providers in the field of lobbying, who do not publicly spell out their services as lobbying, could be divided into three groups. Firstly, there is a small group of lawyers who as a part of their practice provide also government relations services. Usually, these lawyers have a background in politics or in the civil service. By performing de facto government relations services, they act in a grey zone, as based on Estonian law lawyers can provide only legal advisory services. Secondly, there are a few communication agencies, who in part also provide lobbying services. Thirdly, there are a number of so-called private consultants, who usually provide lobbying services in a specific field, be it gambling, tobacco, alcohol, real estate planning process, energy etc. The value proposition of these private consultants is often based on their technical competence of the given field, although often it is still related to their close proximity to one or other political party.

To define the financial scope of the government relations business in Estonia is difficult. There are no empiric studies, which would allow one to validate any figures, as it is not mandatory for the service providers to declare their clients or payments by clients, nor is there a framework to do this on voluntary bases. However, the international rule of thumb that government relations turnover forms 1/5 that of a public relations organization seems to be accurate in a wider sense. As the public relations consultancies' consolidated turnover in recent years has stayed around 8 million EUR per year, thus the overall size of government relations "business" can be estimated at 1.6 million EUR per year.

Due to the absence of country-specific studies, it is hard to estimate which type of lobbying entities are more intensive or more efficient in

affecting the process of public policy-making. In the field of corporate business lobbying, the trend has been strongly towards representing the industry-related issues via the specific issue-related industry advocacy organizations. There are a number of new powerful players that have emerged in recent years, who have a strong say in the policy-field debates, such as the Association of Renewables or Defence Industry Association, and some of these that have grown steadily their policy-related weight throughout the past decades, good examples are the Information and Technology Association or Federation of Estonian Chemical Industries. Such type of industry-related advocacy groups has usually developed a strong policy involvement with key ministerial departments and parliamentary committees that are relevant for their field of activity. They have also developed a stable public expert profile, which enables them to be a primary agenda-setter in the policy field.

There are some advocacy organizations that enjoy the status of official social partner in economic and social policy dialogues. These are primarily the Estonian Trade Union Confederation, as an advocacy organization for employees, and the Employers Confederation, as a vocalizer of employers' interest. Thirdly, the Chamber of Commerce is the main dialogue partner to the government in tax, business environment and commercial law-related issues. There is also a newcomer to challenge the monopoly of the two older business umbrella organizations, the Service Industry Association (SIA), which is a professional membership organization representing more than 120 service industry companies from the fields of financial services, design, communication and marketing, IT and engineering, technology-related medicine and legal services. Although the focus and level of institutionalization of the SIA remain to be vague in comparison to the older umbrella organizations, it seems that it has found its place in the Estonian public policy field, as much of the public policy is driven by IT or innovation-related rhetoric, and government appreciates a dialogue partner that "speaks the language of 21st century".

Putting aside the traditional and newer advocacy organizations, the majority of the economic sectors have the experience in working with professional third party interest representing consultants, independent of their self-defined profession (as lobbyists, lawyers or something else). Naturally, it seems to be the case that the established local capital-based companies build relationship with the government more often via the industry advocacy organizations and foreign capital-based policy stakeholders, who are

often not part of the “natural and historical” local policy and regulatory community and use more regularly the services of specialized consultants.

11.4 LEGAL FRAMEWORK FOR LOBBYING

On the question of regulating lobbying, Estonia shares some of the basic attitudes common to the Nordic countries thinking, challenged by the political practices and realities of Eastern European states. Nordic countries have the tradition of considerably regulating lobbying as a potentially limiting step to the freedom of speech or limit to activities of interest groups or citizens. Of course, it is not a permanent state of affairs as discussions and initiatives to regulate lobbying have appeared there as well (Rechtman and Larsen-Ledet 1998). In Eastern Europe, however, the majority of post-communist countries have tried to implement Anglo-American lobby regulations in the past ten years, with limited success (Lumi 2014; McGrath 2008).

Up until now, the Estonian legal system does not recognize lobbying as a legal institute. The first time ever, there was serious political discussion on the legal framework of lobbying in 2012, when the Minister of Justice at the time, Mr. Kristen Michal from the still governing right-liberal Reform Party, took the issue into his annual working agenda, convening a working group (including market participants and other issue-related stakeholders), aimed at presenting a proposal for alternative solutions to include the legal institute of lobbying into Estonian law. Based on the analyses of the Ministry and discussions in the working group, the Minister did not impose immediate legislative actions, instead he proposed in a letter to parliament to further deal with the issue in order to find right and balanced solutions. He suggested to the parliament that while debating the issue of an ethical codex for members of parliament, the discussion might include the issue of interest representation and lobbying activities in the parliament. With regard to the regulation of lobbying, the ministerial letter left this open ended. It envisioned that lobbying also needed to be regulated in areas outside the circle of public officials, meaning that influence peddling as an act cannot solely be carried out by people in certain positions, but that responsibility should be regarded as universal (it could concern potentially also the lobbyists). At the same time, the letter also highlights the sensitivity of lobbying regulation, as it could harm the constitutional right to legal lobbying.

The issue steadily returned onto the agenda during the 2015 election campaign, as most of the larger parties addressed the issue in their election programmes. Though, no action was agreed on the issue in the 2015 coalition negotiations and the government action programme therefore does not foresee concrete action on the matter during the next four years—the duration of the government’s term.

11.5 THE FUTURE OF LOBBYING

It is unlikely that the discussion on lobbying has ended for good. Besides the local political aspects and interested stakeholders on the issue, there are also outside entities to raise the issue. For instance, GRECO has recommended for Estonia the introduction of rules on how Members of Parliament engaged with lobbyists and other third parties who seek to influence the legislative process (GRECO 2013). It can be foreseen as well that while the lobbying field is developing and new consultants are emerging in the process, the formulation of a self-regulatory code of conduct is a matter for the coming years

The main challenge for Estonian interest-group government relations, looking at a larger policy system level, is to achieve far more organized and systematic interest-group inclusion into the policy cycle. Too often today, an understanding dominates among policy makers that inclusion is an activity separate from the policy-making process (Kübar and Hinsberg 2014), which policy makers are ‘obligated’ to undertake from time to time when they choose to. The practices of the ministries and their agencies relating to inclusion and consultation also vary to a great degree (Praxis 2010). Often inclusion is only a formal legitimizing mechanism for a policy that has already been decided on. Often, inclusion is portrayed as a semi-open meeting of a narrow and closed-policy community (e.g. the deputy secretary-general of the domain and a few policy-related opinion leaders). The inclusion process of the Parliament also raises questions. The law prescribing the Parliament’s rules of procedure and work organization does include some principles that recommend inclusion. Nevertheless, the practices of the committees vary greatly (Jemmer 2014; Lumi 2015).

Based on the successful implementation of online voting, the online tax board and other innovative online-based public services and functions, one can assume that Estonia, as a small country with highly developed information technology, can provide new IT solutions for improving inclusion, as well as increasing the traceability and rationality of the political process.

Another feature that is still a challenging feature for the interest group and policy advocacy activity is the predictability and level of rationalization of policy space that is the basic precondition for creating a level of opportunities for interest groups to have same platforms for affecting policy-making. This is the basic challenge for all modern democracies. In Estonia's case, *Rules for Good Legislative Drafting and Technical Regulation* prescribing the requirements for planning and conceiving policies, conducting impact analyses and follow-up evaluations were supposed to be fully implemented since 1 January 2014. However, as initial surveys indicate, the implementation of the rules has often created problems (Praxis 2014). For example, as pointed out by the National State Audit of Estonia, the forecast for the long-term impact of the oil shale sector on environmental fees, which was confirmed in the autumn of 2014 based on a proposal from the Ministry of the Environment, was not based on any serious analysis. The latest example of lack of analyses comes from the spring of 2015, when the new government cabinet adopted a set of unexpected excise rises for many major sectors, based on vague and primitive socio-economic impact analyses, and motivated largely only by fiscal needs.

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Finland

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12.1 INTRODUCTION

Finland is a European parliamentary democracy with some Nordic and endemic characteristics. The society is based on the Nordic notion of a welfare state. There are no noteworthy parties or interest groups that challenge the welfare state and the role of a relatively large state (the overall tax ratio was 44.1 per cent in 2014¹ and public sector expenditure nearly 59 per cent of Finnish total GDP in 2014²) in providing universal benefits to its residents. In terms of lobbying, Finnish interest representation system

¹http://tilastokeskus.fi/til/vermak/index_en.html

²<https://www.veronmaksajat.fi/luvut/Tilastot/Julkisest-menot/Julkisten-menojen-kehitys/>

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can be identified as being “corporatist”, as categorized by professors Wiberg (2006) and Eising (2009) in their works, respectively.

12.2 EDUSKUNTA AND THE PARTY STRUCTURE

The 200-member parliament is called the Eduskunta (in Finnish) or Riksdag (in Swedish). The Eduskunta is the supreme legislative body and authority of Finnish political system. At the time when it was established, in 1906, it was the most strictly democratic parliament in the world. Eduskunta was unicameral and elected by universal suffrage, including all women.³

The key elements of this parliamentary organization have remained essentially unchanged during the entire existence of the Eduskunta. Until the election in 2011, the party structure had been consistently dominated by the Big Three: the secular Conservatives, the Centre Party and the Social Democrats. Each of the three parties received regularly between 17 and 26 per cent of the votes. With eight parties represented in the Eduskunta, the party structure is strongly fragmented and only once has there been a single-party majority (in 1916 when the Social Democrats gained 103 seats).⁴

The electoral system, which is proportional and based on open lists and multi-member districts, is an important contributor to the fragmentation of the party structure. Candidate lists are set up by the regional party structures, which enjoy strong autonomy over the central party organization. If there are more potential candidates than there are places on the list, a vote is taken among party members of the district (primary).

In recent decades, the “Big Three” (Centre Party, National Coalition Party and Social Democrats) have changed coalition partners after election with flexibility—the party losing by the biggest margin would go to the opposition and the other two big parties would form the government together accompanied with the Swedish People’s Party and in some cases a number of other smaller parties. The custom of the parties not revealing their coalition preferences prior to the election and the high level of consensus make this kind of flexibility and political manoeuvring possible.

³<https://www.eduskunta.fi/FI/tietoeduskunnasta/historia/Sivut/default.aspx>

⁴https://www.eduskunta.fi/FI/kansanedustajat/entiset_kansanedustajat/Sivut/default.aspx

After World War II, the radical left played an important role for some decades, and the Finnish People's Democratic League became the largest party in the 1958 election. However, support for the political left has been in steady decline and, in the general election of 2015, the two left-wing parties together gained only 46 parliament seats.

The fourth important party that has been around throughout the history of the Eduskunta is the Swedish People's Party (SFP). Support for the party has declined, along with the size of the Swedish-speaking minority, from 26 seats in 1910 to 9 most recently. Nonetheless, until the election of 2015, the SFP had been a "fixed" member of the government and held ministerial posts continuously since 1979.⁵ The reason for this peculiar phenomenon is the ideological position of the SFP in the political centre and its willingness to secure the rights of the Swedish-speaking minority through membership in any government coalition (Table 12.1).

The two most important "newcomers" to the Finnish political system are the Greens and the Finns Party. The Greens emerged in the Eduskunta

Table 12.1 Finnish political parties in 2015 political elections

<i>Political party</i>	<i>National election result % of votes in 2015</i>	<i>In government</i>	<i>European party affiliation</i>
National Coalition Party	18.2	Yes	European People's Party (EPP)
Finnish Social Democratic Party	16.5	No	Party of the European Socialists (PES)
Finns Party	17.7	Yes	European Conservative and Reformists (ECR)
Centre Party of Finland	21.1	Yes	Alliance of Liberals and Democrats for Europe (ALDE)
Left-Wing Alliance	7.1	No	European United Left/Nordic Green Left
Green League	8.5	No	The Greens-/European Free Alliance
Swedish People's Party in Finland	4.9	No	ALDE
Christian Democrats in Finland	3.5	No	EPP

⁵ <http://www.suomenmaa.fi/etusivu/7458815.html>

in 1983 and have consolidated their position as a medium-sized party and a long-standing member of government coalitions.

In Finland, where a change of 3 percentage points in election is considered dramatic, the parliamentary election of 2011 had nearly seismic consequences. The populist Finns Party quintupled their share of the votes and broke the traditional Big Three set-up, leaving the Centre Party behind and trailing the Social Democrats by only 1500 votes. The True Finns had struggled on the edge of existence since 1995, but after a landslide victory it became the largest opposition party.

In the following parliamentary election of April 2015, the Finns Party suffered only a minor loss and became, together with the Coalition Party, a government partner to the Centre Party which bounced back to the top after the disaster of 2011.

12.3 GOVERNMENT STRUCTURE AND HOW IT IS FORMED

Since the 1980s, Finland has moved from a semi-presidential political system towards a more parliamentarian structure. The government serves a four-year term and coalitions are based on strong majorities. This gives them confidence to believe with relative certainty that a sufficient majority can always be secured in the Eduskunta.

The fragmented party structure does not allow single-party governments and after the election a number of parties need to find common ground to form the government coalition. Surprisingly, this is not a very difficult or time-consuming task in Finland. The government formation process is not constrained by established party blocs or categorical refusals of cooperation between parties—even the extremes of the left-right continuum represented in the Eduskunta have found themselves in the same coalition on more than one occasion.

There is a tendency to take some “extra” parties to the government coalition to secure more than the necessary 100 seats in the Eduskunta. In addition to the Swedish People’s Party, there have been, in the last 25 years, one or even two “extra” small- or medium-sized parties that have been taken onboard for various reasons: alliance formation within the government, weakening the opposition, forcing a “difficult” party to take responsibility or just countering possible erosion in the ranks of the coalition. Thus, the government has had the backing of 114–144 MPs

during the past 25 years. The only exception is the last months of Finnish premier, Alexander Stubb's (National Coalition Party) government in 2015 which had to muddle along with 101 MPs.

The actual government coalition negotiations do not last as long as they do in other comparable multi-party countries such as the Netherlands. The negotiations of 2011 were regarded as long and difficult, but even then the coalition was established two months after the election.

The length of government programme documents has increased steadily. Whilst in 1991, the document consisted of 2700 words, 20 years later the government programme was ten times longer. The programme sets the framework for the legislative programme for the four-year election period. It includes, for example, government's political, legislative and financial commitments to very specific measures and more open policy targets, development projects and issues set under further investigation.⁶

The government formation negotiations, particularly the process, have not been very structured previously. In 2015, a new more business-like process was initiated by Prime Minister Designate Juha Sipilä. Lobbyists had less direct influence in the negotiations and the process was very similar to a company's strategy work. In addition to various high and senior level public officials from various ministries, only a selected few lobbyists, mostly representatives of distinguished academia, research institutes and some unions, gained access to these negotiations, as they were invited to hearings held during working group meetings. In the government programme, targets were defined and made measurable in order to increase accountability of the government.⁷

12.4 TARGETS FOR LOBBYING

The government programme is the main target for lobbying in Finland. Before 2015, the most important unions and industry organizations tried and usually gained access—get to be present—in the government negotiations. Representatives of the above-mentioned organizations can be invited to negotiations as expert guests or even gain status as “official members” in negotiation teams.

The success of a Public Affairs project is highly determined by whether and in what way the issue is visible in (or absent from) the programme

⁶<http://valtioneuvosto.fi/tietoa/historiaa/hallitusohjelmat>

⁷<http://valtioneuvosto.fi/hallitusohjelma-toteutus/hallitusneuvottelut-2015>

document. If the issue is mentioned in a positive way, the prospects of its realization are good, but naturally not inevitable. If it is explicitly rejected, new approaches must be sought. If no reference is made to it, the reason for the omission must be carefully examined. However, the government programme is revised at least once during the four-year election period and quite significant projects can also be initiated outside the programme. The best example of this is undeniably Finland's EU membership, which was completely ignored in the government programme.

The annual budgetary negotiations are, naturally, another pivotal point in decision-making, especially in taxation issues. The state budget draft is knit together in August on the basis of a proposal by the Ministry of Finance. The Eduskunta processes the budget so that it is adopted in December. Very few changes are made to the Government's draft by the Eduskunta and here, as anywhere in lobbying, early action during the preparation phase is of great importance.

A new element in the work of the government is the annual policy evaluation, which started in 2012. In the evaluation, the entire government participates in a strategy session whereby the line of the economic policy is updated and the budget framework is scrutinized. The legislative programme is also reviewed in this process.

Since the government coalitions very seldom carry over after election and the intra-party competition for minister posts is fierce, there are only very few cases when a minister has been able to run the same ministry for more than four years. This, together with the very limited number (1–6) of political aides for ministers, contributes to the accentuation of the role of the top officials within ministries.

An important aspect in the work of the government is compartmentalization on the political level. When most of the anticipated political controversies have been resolved in the coalition negotiations, ministers get a clear political mandate to do their job. Ministers and parties in the coalition are not eager to interfere in other ministers' work, and surprisingly, disputes seldom emerge to the public.

Due to the multi-party structure of the Finnish government, ideological arguments are difficult to use. They can hide on a secondary level but the main arguments need to be carefully disguised under the cloak of "neutral information" or "expert advice". Lobbying tactics are thus not based on the concept of "right and wrong" but rather to "efficient and inefficient".

12.5 MUNICIPALITIES: DEMOCRATIC BUT NOT PARLIAMENTARY

Even in the Nordic context, municipalities have strong power in Finland. They use about one fifth of the GNP, which is financed by direct income taxation (the level varies between municipalities and was 19.84 per cent on average in 2014),⁸ property tax (from 0.32 to 2.85 per cent) and general non-earmarked contributions from the central government.

The municipalities enjoy strong autonomy from the central government and take responsibility for primary and secondary education, health-care, social services and spatial planning, among other areas.

Most of the politicians on the municipal level are not professional politicians. Instead of elected mayors, the administration in municipalities is run by municipal directors who are, judicially speaking, hired civil servants.

The municipalities are not run “parliamentarily”, that is, there is no opposition and government. Instead, above a low threshold, all parties represented in the municipal council get seats in the municipal board and committees.

Municipalities cooperate extensively in education and health. They also form commercial companies that can provide certain services (energy, public transport, housing, etc.) under market conditions and competition legislation.

12.6 LOBBYING TRYING TO FIND ITS PLACE

Lobbying in Finland, a small, consensus-oriented and corporatist society, has traditionally been dominated by industry organizations, trade unions and various interest organizations. Only the largest private corporations and companies have sufficient and necessary resources at their disposal to set up their own public affairs divisions, teams or people. In most cases, general communications units or senior management deals with public affairs (PA)-related issues.

Another important aspect is that Finland is an open society where interaction between the political decision-makers, administration, citizens, media, and interest groups is rather straightforward. This inherent simplicity in domestic politics has limited the need for professional

⁸ <http://kuntalehti.fi/kuntautiset/talous/keskimaarainen-kuntavero-lahence-20-prosenttia/>.

intermediaries. The picture has slowly been changing since Finland joined the EU in 1995 as more professional help of experts has been required for public affairs activities in Brussels (Lahtinen 2008; Blom 2011).

Most PA work in Finland is still carried out outside of commercially functioning agencies. At the moment, most of the large- and medium-sized communications agencies offer services in Public Affairs, but only a handful of companies are specialized in the field. However, the number and volume of these specialized companies seems to be growing.

In a survey conducted by ProCom (Collander 2012)—the Finnish Association of Communications Professionals—two thirds of the respondents indicated that PA generates less than 15 per cent of their turnover and none of the respondents gave a figure of over 60 per cent. It is worth noting that this figure is from an election year (2011), when one would imagine that interest in those services would be at its peak.

According to similar ProCom survey (Taloustutkimus 2014), 55 per cent of respondents estimated that the significance of public affairs activities in the near future (2015–2019) will grow. Secondly, respondents shared a relatively unified view that Finnish “public affairs culture” differs from other countries’ PA-cultures. Thirdly, in 61 per cent of all respondent organizations, public relations or public affairs activities are produced as in-house services. The working time used to perform these in-house activities varied from 1 to 25 per cent. Fourthly, main targets of lobbying in Finland are politicians and senior level government officials. Fifthly, eight out of ten respondents regarded the “value of public affairs activities quite significant”. Finally, 39 per cent of respondents whether from PA-consultancies or their most prominent client organizations (industry associations, firms, etc.) indicated plans on launching public affairs schemes before the 2015 spring parliamentary elections. Most of the 2014 survey respondents supported self-regulation (code of conduct) measures, increasing industry’s transparency through registration and listing PA-assignment meetings, for the Finnish PA industry instead of drafting new legislation regulating public affairs or related services.⁹

Only one in ten employees of Public Relations agencies uses more than 25 per cent of his or her working time on Public Affairs. It is fairly typical that there are approximately two to five people in each agency in charge of PA customers. Almost every PR agency has domestic PA customers; few are active at EU level. From the perspective of PR agencies, a central

⁹<http://procom.fi/wp-content/uploads/2014/05/Vaikuttajaviestinta-2014.pdf>

obstacle in using PA communication services is the lack of financial or other resources at the client companies.

This is not surprising considering that only one fifth of the organizations have a documented PA strategy, although more than 70 per cent recognize the increasing importance of PA work. With no strategy or action plans, there are no resources. Potential business growth within PA is limited by the lack of purchasing know-how; every third employee finds that customers rarely understand the benefits of PA projects.

Lobbying as such is not regulated by national legislation. Naturally criminal anti-corruption provisions, administrative law provisions for civil servants and legal guarantees for publicity of documents are in place. Finland has ratified, in addition to several other international anti-corruption conventions, the Criminal Law Convention on Corruption of the Council of Europe, but made a reservation on article 12 concerning Trading in influence, which is closely linked to misconduct in PA (Finland, Ministry of Justice 2015).

In recent years, lobbying in Finland has suffered from a negative image in the eyes of larger audience. A defining event was the election financing scandal of 2007, in which a group of businessmen channelled financing to a number of candidates in different political parties. As a result, regulations on the transparency of party and election financing were clarified and made stricter in July 2010. The rules clarify reporting responsibilities and limit sources of party and election financing.¹⁰

The PA sector in Finland is being organized under a network, “Edunvalvontafoorumi”, which is an open forum for PA professionals in communications agencies, associations, and enterprises.¹¹ The Edunvalvontafoorumi, which started its activities in 2011, published a self-regulatory code of conduct in 2014. The Ministry of Justice has also considered to regulate lobbying. However, no decision has yet been made on the initiation of the formal preparation process.

Since the sector’s internal organization is taking its first steps, there are no professional registries, formal requirements for education, disciplinary measures, or anything else required for functioning self-regulation. However, Edunvalvontafoorumi and the Association of Communications Professionals¹² (ProCom) have “registers” of lobbyists committed to certain

¹⁰ <https://www.finlex.fi/fi/laki/ajantasa/1969/19690010#P8>

¹¹ <http://edunvalvontafoorumi.fi/>

¹² <http://procom.fi/procom/lobbarirekisteri/selaa-rekisterin-tietoja/>

principles in their professional conduct. Neither of these organizations has any kind of disciplinary power towards signatories who acted against the principles and registration is not mandatory either.

At present, one can estimate—without any registries or official statistics—that the most common university degree among lobbyists is a degree in political sciences. So far there are no accredited degrees for lobbyists in Finland.

A noteworthy and long-standing character in the Finnish lobbying business is the revolving door phenomenon—movement—between the government and the interest organizations. For example, some of the recent prime ministers have found employment in the lobbying business: Nokia,¹³ the Family Firms Association¹⁴ and one has advised Nord Stream.¹⁵ The term “revolving door” refers to influential politicians (ministers, members of parliament), high-level public officials (secretary of state) and political aides (government special advisers), who have been recruited, have resigned or ran out of political trust, to join the ranks of PA-agencies, large companies or industry lobbies (mostly Finnish). This behaviour could lead to conflicts of interest towards the rest of civil society. Former ministers, officials and special advisors hold sensitive and strategic information they were previously privy to in attempting to influence the political process on behalf of their former or new employers.

In addition to this, trade and industry organizations have managed to “place” their employees to important advisory posts: of the ministerial advisors served in 2011–2015, 27 per cent had a background in a lobby organization.¹⁶ Social Democrats had the highest percentage of lobbyists-become-advisors: 22 of their 39 political advisors served in 2011–2015 were recruited from trade unions, business confederations or PR companies.¹⁷ Quite often, advisors are on leave from their “day job” and return to their previous position after the advisor’s position.

The lack of “cooling-off periods” for government officials has been discussed due to some high-profile recruitments from the administration to private companies or industry organizations. After Jyri Häkämies

¹³ Esko Aho, Prime Minister from 1991 to 1995.

¹⁴ Matti Vanhanen, Prime Minister from 2003 to 2010.

¹⁵ Paavo Lipponen, Prime Minister from 1995 to 2003 (<http://www.nord-stream.com/press-info/press-releases/paavo-lipponen-to-advise-nord-stream-252/>).

¹⁶ <http://valtioneuvosto.fi>

¹⁷ <http://kaikuhelsinki.fi/fi/blogi/infografiikka-mist%C3%A4-ministereiden-erityisavustajat-tehty>

left his post as minister for Employment and the Economy to become the CEO of the Confederation of Finnish Industries, the discussion was intensified and the introduction of new legislation was taken on the agenda.¹⁸ However, so far there has not been any outcome from the process.

The public administration (ministries, municipalities) is quite open to receive lobbyists. In general terms, they appreciate having access to high-quality information which otherwise would not be so easy at their disposal. The Ministry of Justice (2009) has given guidelines on this conduct and these guidelines are currently being renewed. Recently, the internal rules of the state administration on receiving hospitality have been clarified by the Ministry of Finance, but they still leave room for interpretation. For example, no specified limits on the value of gifts have been set. However, studies by Transparency International confirm the perception that the Finnish administration has a high level of integrity and that it is not a soft target for inappropriate attempts of influence.¹⁹ In 2013 and 2014 Finnish parliament, Eduskunta, considered drafting rules for lobbyists entering parliament premises seeking to influence its members and possibly establishing mandatory register for all lobbyists. Despite good intentions, public discussion in the media on the subject and the widely accepted need to address the issue, these proposals were quietly buried. Currently, no policy or regulatory measure proposals on regulating lobbying in Finland exist and in general the opinion of most of the actors engaged in lobbying activities in Finland supports strongly self-regulation.

Both the small size of Finland and the deep-rooted culture of transparency are important factors in safeguarding the absence of unhealthy lobbying practices in Finland. In a globalized, complex, and intertwined world, it is quite evident that there is an increasing demand for fair, clearly regulated and knowledge-based lobbying in Finland.

¹⁸ See for example <http://www.ksml.fi/uutiset/kotimaa/tuomioja-ylessa-ministerien-siirtymiseen-pelisaannot/1268897>

¹⁹ [http://www.transparency.fi/sites/default/files/EU%20NIS_Finland_web_v2\(1\).pdf](http://www.transparency.fi/sites/default/files/EU%20NIS_Finland_web_v2(1).pdf)

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France

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13.1 INTRODUCTION

In France, lobbying and lobbyists are not welcomed with open arms. Ever since the late sixteenth century, legislators have sought to protect the general interest by limiting the development and the influence of private interest groups or intermediary bodies that could go beyond the full control of a centralized State. Understanding French lobbying landscape requires first exploring the specific features of the French political system and its underlying philosophical foundations since 1789 until the most recent constitutional developments. History can help a great deal in that respect. Nevertheless, in recent years the monopoly of the central State has been deeply challenged by a progressive decline of the political parties' capacity to represent the society, the emergence of new forms of multi-level governance, and by the process of Europeanization of national public policies. Such structural changes have created a fertile ground driving to the proliferation of various forms of lobbying that were not

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traditionally present in France. However, in spite of the growing presence of organized representations of interests, there is still a difficulty in accepting such a new constellation of influence in public decision-making. This contribution shows how, despite their recent fast-growing diffusion and differentiation, the lobbying activities are not yet culturally accepted in France. It also argues that the public and private regulatory efforts for these kind of activities are still far from obtaining the expected results of other countries in which lobbying is a natural and long-standing element of the democratic life.

13.2 THE FRENCH POLITICAL SYSTEM: THE LAW AS EXPRESSION OF THE GENERAL WILL

France's cautious view of lobbying is undoubtedly a consequence originating from the dichotomy between Rousseau's (1762) and Tocqueville's (1835–1840) visions of contemporary democracy. The first interprets the laws as an expression of the general will, consisting of the direct result of the decisions made by sufficiently informed people who are not subject or influenced by the outside intervention of a group or organization. The latter considers the laws as the result of a compromise between different interest groups represented by civil society. The predominance of the Rousseau's vision had a sustained effect on the relationship between the French State and intermediary bodies, with the latter struggling to establish themselves. Consequently, the State played a predominant role as the guarantor of the general will and did not limit itself to merely observing and regulating relationships between different groups but played a pivotal role by taking the exclusive initiative. Following that line of reasoning, General Turgot went as far as abolishing corporations in February 1776. The ban was lifted a few months later by Necker, who strategically placed them under his tutelage. Article 3 of the 1789 Declaration of Human and Civic Rights stipulates that “the principle of all sovereignty resides essentially in the Nation”, that “no body or individual may exercise any authority which does not proceed directly from the Nation” and article 6 states that “the law is an expression of the general will”. Following the French Revolution, intermediary bodies were banned. Furthermore, the 1791 Chapelier law and the decree d'Allarde, directly inspired from Rousseau's *Social Contract*, outlawed all “coalitions” of entrepreneurs or workers. The end of the nineteenth and dawn of the twentieth century saw a break from

this legislative trend with the 1884 Waldeck-Rousseau¹ law authorizing the creation of trade unions and the law on freedom of association being passed on July 1, 1901.² However, the intermediary corps of society are still considerably affected by the legacy of these restriction as it is shown by the very low presence and importance of trade unions' activity in France (Colson et al. 2014). Even in the twenty-first century, the French central administration, formed by selected independent officials, well educated at the *Grandes Ecoles*, plays a powerful role using its expertise to bolster the State's authority and applying the law uniformly. In France, the elite of the "Grands Corps" and the State administration remain the depository of the respect and application of the republic's values and principles. Such a vision can explain to a great extent French mistrust of private associations along with the desire to restrict their activities. Thus a vision that is in sharp contrast with the Anglo-Saxon openness to negotiate pragmatic decisions that take into consideration the specific aspects of individuals and peculiar situations (Suleiman 1974).

The constitution of the Fifth Republic dates back to 1958, when it gave birth to a rationalized parliamentary regime in which the Executive had a pivotal role and the Parliament a less prominent one in the French political system. Article 50 of the Constitution clearly outlines the principle of Government accountability to the National Assembly with the latter able to bring down the former via a motion of censure. However, several provisions were then adopted to address ministerial instability and shield the Government from a growing number of Parliament demands, especially regarding legislation. With a limitation of law to issues and the subsequent extension of the Executive's regulatory power, the Constitution extended the Government's control of the agenda in both chambers (the National Assembly and the Senate).

Whilst the 1958 Constitution bestowed upon the Head of State the right to dissolve the National Assembly, the introduction of the direct election of the President in 1962 further enhanced the legitimacy of this role as also the recent constitutional practice has confirmed.³ Outside of the so-called

¹ French act of March 21, 1884 which allowed the creation of professional trade unions.

² French act of July 1, 1901 on partnership contracts.

³ The reduction of the presidential term of office to five years and the fact that the election of the Head of State precedes the election of the National Assembly limit in theory the cases of coexistence between a President from one political majority and an Assembly from another; in practice that has strengthened even more the President's preeminence and as a consequence reduced the Prime Minister's role.

co-habitation (i.e. a specific case in which the parliamentary majority is not of the same political party of the Head of State), the President of the Republic has become the true leader of the Executive to the detriment of the Prime Minister, the nominal leader of the Government. Whilst the Government is legally accountable to Parliament, in practice, it is only accountable to the President of the Republic. Even when co-habitation occurs, the Head of State remains the centre of gravity of the French political system because of the autonomous decision-making power over diplomatic and military affairs and the power of veto on the passing of certain laws. Constitutional reforms undertaken in 2000 limited the presidential mandate from seven to five years, thus aligning the duration of presidential and parliamentary mandates. The alignment of parliamentary and presidential elections has progressively eroded the parliamentary character of the French political system accentuating its majoritarian way of functioning. With the presidential elections taking place every five years, the National Assembly elections are thus meant to consolidate the result of the presidential one, according to a two-round first past the post electoral system. As a matter of fact, the National Assembly's elections are instrumental to build a cohesive parliamentary majority that is able to bolster the President's power to govern and to support his policy's priorities. This trend corresponds to what Hugues Portelli defined already at the beginning of the eighties as the "presidentialisation of French political party system" (Portelli 1980). This dynamic has progressively contributed to create the concept of "presidential majority" and to a certain extent it has contributed also to marginalize the role offered to the opposition within the institutions.

On July 21, 2008, the French "Congress"—an exceptional joint sitting of the two chambers of the French Parliament, the National Assembly and the Senate—approved the most fundamental changes to the French Constitution since it was first set up in 1958. According to the reform, the President's role was to be limited reducing his office to a maximum of two consecutive terms; moreover, the President must now inform Parliament of any troop deployment overseas, and Parliament must approve any military deployment lasting over four months.

One of the central aims of this reform was to re-establish a better balance of power between the Parliament and the Executive. The key achievements consisted of a wider autonomy of Parliament in controlling and determining its own agenda; the possibility for a parliamentary commission to veto presidential appointments, notably appointments to the Constitutional

Council (Conseil constitutionnel), to the Senior Council of Magistrates (Conseil supérieur de la magistrature) and the new ombudsman. In addition to that, the reform gave more power to the legislative committees of the Parliament in tabling the legislative draft texts used in public debates instead of the government's version. Last but not least, the reform introduced considerable restrictions on the use of the much-maligned "Article 49.3" of the Constitution. This is the clause in the French constitution that allows legislation to be pushed through by the government without parliamentary approval. However, this article can now only be applied in the case of financial bills, bills dealing with the financing of the health service, and one other bill per parliamentary session.

13.3 FRANCE IN THE AGE OF MULTI-LEVEL GOVERNANCE AND NEGOTIATION

As mentioned above, the French political system has been recently the object of several adjustments and reshuffling of power equilibriums due to a constant tension between a majoritarian presidential turn and an emerging request for a greater participation of the parliamentary representatives of the National Assembly and the Senate. The French political landscape has also been deeply influenced by some structural changes within its society that need to be pointed out when we are to understand the emerging phenomenon of lobbying. In recent years, in contraposition with its centralized tradition, new centres of power have emerged contributing to a shift in the power-sharing equilibrium. Three main changes have created a window of opportunity for opening up the society to a new era in which lobbying is likely to flourish and possibly gain a pivotal role: the decentralization and the emergence of multi-level governance systems (Marks and Hooghe 2001), the declining role of representation of political parties and trade unions, the diffusion of interest group activity as a transmission belt between society and public institutions.

The central government in contemporary liberal democracies is subject to structural tension because of the affirmation and diffusion of what has been termed as "multi-level governance". According to that model, the authority and power of the central State is shared vertically between different layers (European, supranational, national and local) and also horizontally as decisions require more specialization and need to include a larger number of actors around the table. In this new scenario,

an increasingly high number of decisions are simply taken out the hands of the parliament and are delegated to independent bodies or regulatory agencies. The State is no longer the only one to be able to identify what is good for its citizens, people want to be involved in the decision-making, they want to have a say and a State unilateral action is no longer acceptable.

In France, the first structural change has been a strong impetus for decentralization of governance structures that began in the 1980s and is still gathering pace with more powers being assigned to the three different levels of local authorities, that is, region, department, municipality (single municipalities and groups thereof). The centralized character of the French political system has also been profoundly affected, as all the other Member States, by a rising pressure from the European Union and its influence on public policies. We have entered, to put with the words of William Zartman, in the “age of negotiation” (Zartman 1976). The growing push for a participatory democracy has moved the goalposts in the traditional face-off between economic interest groups and the State. The latter is now compelled to consult a broader range of civil society players and its role is developing into that of referee and regulator.

Secondly, the traditional role of trade unions and employers’ associations, with their intermediary function between State and society, has been progressively put into question. Despite the increased possibility to negotiate salary agreements in a decentralized manner, trade unions suffer from a lack of representation, a decreasing membership and a structural difficulty to deal with new unconventional issues that are not necessarily connected with salary negotiations (Colson et al. 2014).

France is also affected by a declining role of the political parties, whose function was to transform civil society and citizens’ requests into political programmes and then actions and policies. The political disengagement of French citizens is the main cause of their decreasing role (Haegel 2007); however, they are also being challenged by a new generation of major players such as the more than 160 think tanks, institutes and foundations present in France. Far from the influence of their peers in the United States, this new set of actors such as the Montaigne Institute, Fondapol and Terra Nova institutes along with the Jean-Jaurès Foundation have been able to elaborate new ideas and even enter public policy programmes challenging those of the classic political parties. Not rare are the cases in which successive governments are using their ideas or policy proposals as a starting point for public debates (Courtois 2012).

French society is progressively moving towards what Emiliano Grossman and Sabine Saurugger have labelled as a “society of interest groups” (Grossman and Saurugger 2006), in which the latter function as a more effective transmission belt between the society and the political institutions at large. They argue that the political engagement of the citizens is not necessarily decreasing, but is just changing under the shape of organized interest groups that contribute to constitute deliberative arenas, in which members can exchange points of view and can inform the political-administrative actors in the State machinery. With no doubt, the increasing role of interest groups and lobbies poses two major questions: first the regulation of their activity, their financing, their access to institutions and political actors; secondly, the professionalization of this activity and the *passerelle* or osmotic relation between the private and the public sectors.

13.4 WHO PRACTICES LOBBYING IN FRANCE?

In France, there are no accurate, recent data on what the public authorities refer to as “representation of interests”, that is, lobbying. The criteria for defining a lobbyist are as vague as the information on the number of lobbyists themselves.

The negative connotation of this profession and its role in society are the primary factors that help explaining the rarity of extensive qualitative and quantitative academic research on the topic (Courty 2006, 2010; De Beaufort 2008, 2011; Grossman and Saurugger 2006, 2012; Rival 2012a, b).

In some cases academic publications consist of some remarkable example of prescriptive manuals on how to learn being a good lobbyist. In an article entitled *Radiographie du lobbying en France* published in 2004, Guillaume Courty estimated the number of consultants in France to be 1300, but this figure only included lobbying advisers working for lobbying firms (Courty 2004).

Whilst it is now common knowledge that lobbying is an activity which aims to directly or indirectly influence decisions taken or policies adopted by the public authorities, there are many different forms of lobbying practices. There are three main categories of lobbying: corporate, industry organizations and consultancy.

Almost every large French company now has one or more staff members who are tasked with managing institutional relations or public affairs,

that is, managing the company's relationship with public authorities, with the aim of building up and maintaining a network of high-level contacts for company executives or stating and defending the company's interests to political decision-makers. Such activities were analysed by Madina Rival in her 2010 survey commissioned by the Association des Sciences Po, which quizzed 120 large-scale French companies and French-based subsidiaries (Rival 2010). Only 7 % of respondents did not have an in-house lobbying team. In the corporate hierarchy of such companies, the lobbying team was often positioned at management level, which is to say at an executive level (Rival 2011).

The most prevalent form of lobbying, regardless of whether a company has an in-house lobbying team, sees companies acting collectively, either through ad hoc partnerships with a view to influencing and having a stronger voice in public debate or within industry organizations or federations. Industry organizations serve to collectively represent and defend a sector or profession. There are several major players in this area including the "Mouvement des entreprises de France" (MEDEF), the "Association française des entreprises privées" (AFEP) and the "Confédération générale des petites et moyennes entreprises" (CGPME). The main sectors of the French economy are represented by federations such as "Union des industries et des métiers de la métallurgie" (UIMM), "Fédération française du bâtiment" (FFB), "Association nationale des industries agroalimentaires" (ANIA), "Fédération des entreprises du commerce et de la distribution" (FCD) or "Fédération bancaire française" (FBF). Trade unions, such as "Fédération nationale des syndicats d'exploitants" (FNSEA), and the massive national farmers' union also play a role in exercising pressure upon the public authorities. They all have their say on draft legislation which is relevant to their sector⁴ and, in what has become an almost ritual in France, during electoral campaigning with questions being put to the various candidates.

Lobbying consultancy firms, known in French as public affairs firms, first appeared in France in the 1970s. Their number swelled following political instability which saw many former cabinet members, who were

⁴The biggest professional organisations representing important economic sectors have developed close relationships over the years with their supervisory ministries. As a consequence, the latter consult them before drafting a new legislative or regulatory norm. They also have a certain number of parliamentary « friends » who relay their concerns at the Parliament (via the organisation of hearings or working sessions either in the framework of thematic study groups or of parliamentary colloquy organized on an ad hoc basis).

not civil servants, join the consultancy firms. It is estimated that there are currently around 50 lobbying consultancy firms in Paris alone, ranging in size from one to thirty consultants, thus reflecting the smorgasbord of different players involved.

Nevertheless, these firms can be divided up into three categories. Firstly, French subsidiaries of large public affairs firms such as Burson Marsteller, Edelman or APCO offer their international customers a wide range of services including lobbying, public affairs consultancy, which has lobbying at its core, and most recently lawyer-lobbyists. There are also a large number of legal consultancy firms specializing in management, strategy, crisis management, institutional relations, seminars where lobbying is only one of a multitude of services offered. Some see this as a new avenue which can be explored during an economic recession.

As the market develops and practices become more professional, niche markets are forming and offering ever more sophisticated lobbying-related services such as influence communication or reputation and image management to companies and their management.

Traditionally, lobbying would take place in the “lobbies”, that is, ante-rooms, or in corridors leading to a legislative chamber. However, institutional practices have changed over time and lobbying now takes place in many different settings and public affairs practitioners have adapted their practices accordingly.

Two examples of the changing practices:

- the emergence of local government which has led to the development of local authority lobbying activities with a view to obtaining financing but also to creating contacts with regional decision-makers⁵;
- the development of the European institutions has led French lobbyists to Brussels and the creation of strategies to combine national and European lobbying practices.⁶

⁵The recent act on the new organization of the Republic from August 7, 2015, has entrusted regions –whose number has been decreased- but also cities with new responsibilities namely in the field of economic development.

⁶French consultancies have opened offices in Brussels or vice versa in order to help their clients with their influence actions targeting decision-makers wherever they are: the political actors and the moments in which matters are treated are often the same which makes it easier for a company to entrust only one consultancy with a lobbying mission. In the same way, a large number of French companies have opened representation offices in Brussels such as

Whilst being underdeveloped in comparison to practices in the English-speaking world, lobbying in France is becoming ever more professional. Proof of this lies in the growth of training schemes and attempts to organize the profession through representative associations over the last ten years.

Whilst a few years ago, most lobbyists were graduates of the political studies institutes based in the Paris area, recruitment patterns have changed over the last few years. There are now dedicated master's degree-level university courses offered at Paris I Sorbonne, Paris II Panthéon-Assas, Paris X Nanterre, Paris XI Jean Monnet, Paris Dauphine, Versailles, Strasbourg, le Celsa and the Institut Catholique de Paris. In addition, specialist engineering and commerce institutes now offer training in lobbying to enable the managers of tomorrow to understand the system and use it to their advantage.

There are currently five organizations which represent lobbying professionals. Four are associations and one is a trade union. In chronological order of establishment, the associations are:

- The Association for Relations with Public Authorities⁷ (ARPP) created in 1985 by former cabinet members, the majority of whom were working in State enterprises.
- The French Association of Lobbying Consultants⁸ (AFCL) created in 1991, features 30 of the biggest consultancy firms.
- The latest association created is the Association of Lawyer-lobbyists⁹ (AAL) which was created in 2011.

Renault, Danone, EDF or Michelin (they meet in an informal club of big French companies).

⁷www.arpp.net. (currently it consists of approximately 40 people belonging to large firms or professional organizations and practising lobbying or, more broadly speaking, institutional relationships).

⁸www.afcl.fr. (the association gathers almost all the French consultancy companies dedicated to lobbying and public affairs, from the smallest ones with sometimes one or two consultants to the biggest ones).

⁹www.avocats-lobbying.com. (it is composed of around 10 law firms plus 10 individual lawyers who all offer lobbying services).

13.5 THE DAWN OF REGULATION: STILL A LONG WAY AHEAD?

Whilst lobbyists have become ever-present figures in French public life over the last few years, no legislative text or regulations have as yet been drawn up to directly regulate the sector. There are currently no French legislative texts which directly address lobbying practices. However, a legal framework seeking to fight influence peddling and corruption has been set up.

The article 27 of the Constitution of the 5th Republic states that any binding instruction (i.e. dictated by geographical or sectorial interest) shall be avoided in order to protect the autonomy of Members of the Parliament. Furthermore, articles 432 (11), 432 (12) and 432 (13) of the Penal Code target passive corruption, unlawful acquisition of an interest and influence peddling by public officials, and articles 433 (1) and 433 (2) address corruption and influence peddling committed by individuals.

Also, since 1995, strict rules have governed the political financing as public authorities decided to cut the umbilical cord linking corporate money to political party coffers by banning the participation of legal persons, whomsoever they might be, in political life. Whilst the French Parliament does not officially recognize lobbying, it has recently adopted regulation on “representatives of interests” who wish to meet Members of Parliament:

- In July 2009, the Bureau of the National Assembly adopted transparency and ethics rules which apply to interest representation activities in the National Assembly. The regulations state that representatives of a public or private interest who are on the list drawn up by the Bureau or its competent delegation shall receive one-day access badges which enable them to access certain areas of the Palais Bourbon on certain days.
- In order to figure on the list, representatives must fill in a form in which they must provide information on their activities and the interests they are defending and then present this to the General Secretariat of the Presidency. Representatives must also commit to adhering to the Bureau-approved code of conduct which states that “in their contact with Members, interest representatives must

state their identity, whom they work for and the interests they are representing”.

- Requests are then handled by the delegation responsible for interest representatives. The decision on whether or not to add a name to the list is taken by the Bureau or its delegation.
- A few months later, the Senate adopted more or less the same provisions with the aim of implementing tighter controls on interest group activities, that is, access to the Palais du Luxembourg granted only if a name features on a publicly available list, adherence to the code of conduct and a ban on paying fees for speaking time in seminars held at the Senate. The Senate code of conduct states that interest groups must declare event invitations that they send to Senators, their assistants or to civil servants or Senate bodies.

By way of Bureau decision in spring 2013, the National Assembly has strengthened its rules on lobbying.¹⁰ Drawing inspiration from the European model, the rules now feature an “entitlement to registration for all interest representatives who commit to transparency by completing a detailed form which will be made public on the Internet”.¹¹

Following the recommendations from the magistrate Jean-Louis Nadal in his report on the transparency of public issues “*Renouer la confiance publique*” (Nadal 2015), as well as from Transparency International France (2014), that regularly monitor contacts on a regular basis between public decision-makers and interest representatives, the French Parliament has foreseen to vote soon a draft law presented by Michel Sapin, Minister in charge of economy and finance, in order to “regulate” lobbying and to make mandatory for lobbyists to be registered in a digital directory.

Independent of the measures taken by Parliament, professional associations drawing together public affairs practitioners, such as ARPP, have also adopted codes of conduct which members agree to apply scrupulously and of which they inform their customers.

¹⁰See the report of the Member of Parliament Christophe Sirugue on lobbies at the National Assembly, resulting in the Bureau’s decision of February 27, 2013: http://www.assemblee-nationale.fr/representants-interets/rapport_bureau_2013.pdf

¹¹The list is available online at the following address: http://www2.assemblee-nationale.fr/representant/representant_interet_liste

Furthermore, AFCL has drawn up a charter which contains a number of principles which govern lobbying consultancy, public affairs, relations with institutions and rules for good conduct in dealings with customers, e.g. customer confidentiality, compliance with best practices, laws, regulations and respecting the confidential nature of information disclosed.

13.6 CONCLUSIONS

Lobbying, a historically and culturally controversial practice in France, might become a more accepted element of the political and public life in the following decades. The growing professionalization, the implementation of a regulatory framework, as well as the growing influence of Brussels and the European Union might certainly contribute to change the negative perception of it. However, the structural and cultural obstacles will remain and they might prove resistance to change. The ideology of the general interest defended by elected representatives will probably continue to render illegitimate other types of private interests. It is important to consider how the four factors might be able to explain the innate resistance to structural change in France towards negotiation, lobby, interest groups and diffuse systems of decision-making (Colson 2009):

1. a diffuse culture of conflict in which the society is conceived of antagonism between extremes;
2. a Jacobin conception of the state in which intermediary bodies are judged as an impediment to the accomplishment of the general will that should be carried out by a centralized state;
3. a unitary conception of the Nation that dislikes any specific or discretionary behaviour that would jeopardize the concept of “égalité”;
4. the self-conception of France as an example, the famous “exception française” that should be followed by other, non vice-versa.

The traditional and conservative character of the French political culture might show that, even in the age of negotiation, multi-level governance and multi-stakeholder dialogue, lobbying will need some time before being recognized and accepted as a natural element of the political arena in France.

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Germany

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14.1 INTRODUCTION

The following chapter argues that in recent years the representation of interests in Germany has undergone significant change. This transition concerns both the players relevant for the decision-making process and the forms and instruments through which specific interests are articulated. When the Federal Republic of Germany was founded in 1949, politicians as well as business representatives returned to a firmly structured system of representation of interests via large industry associations that had already been in place for most of the time since 1870. German reunification in 1990 did not notably affect this system; it has however been strongly challenged since the dawn of the so-called Berlin Republic. With the move of the legislative and (most of) the executive branch from Bonn (the former capital of West Germany) to Berlin at the turn of the millennium, representation of interests has seen the emergence of several new trends. These trends refer to the vast multiplication and professionalization of lobbying, the use of new methods to influence politicians as well as public opinion and the media. This development is often referred to as the *Americanization* of the lobbying scene in Germany. However,

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with a strong public debate on the legitimacy of lobbying and the call for new regulations to assure the transparency of political decision-making, German lobbying in the twenty-first century now faces the challenge of orderly consolidation and professional compliance after a period of rapid growth.

14.2 LOBBYING AND POLITICAL INSTITUTIONS

Germany is a Federal Republic, consisting of 16 states—the so-called *Länder*—which all have their own legislative, executive and judicial branches. On the federal level, Parliament consists of two chambers, the Bundestag (the lower chamber), which votes on and passes the bills, and the Bundesrat (the upper chamber), which has to give its approval of any legislation affecting financial and/or administrative competencies of the states. While the members of the latter represent and are appointed by the governments of the 16 *Länder*, the Bundestag members are directly elected by proportional representation. During federal elections, voters have two (non-transferable) votes: one for the direct representative from their constituency, and one for the political party of their choice.

On the federal level, the Bundestag is the only constitutional institution that is granted its democratic legitimacy directly from the people. This makes Germany a parliamentary democracy; especially so as all other constitutional institutions draw their legitimacy directly from Parliament (Papier 2006). The government—including the chancellor as the head of the executive branch—is elected by the Parliament. The German President, who has largely representative functions, is elected by the members of the Bundestag and by a number of delegates nominated by the state parliaments.

As it is to be expected, because of the Bundestag's powers, its members are exposed to numerous demands from a large number of interest groups. A priori, this is nothing unusual and can be considered a normal part of the democratic process. Being the elected representatives of the people, Parliament members are commonly confronted with concerns that exist within society; after all, this very society has to comply with the legislation voted by the Parliament. As a consequence, the interests of all stakeholders (citizens, companies, NGOs, etc.)—and thus also of the lobbyists who represent those interests—have a right to be considered by the legislative power. In order to regulate access of lobbyists to the Parliament, a list of associations—the so-called lobby list—was established as early as 1972. It

is a heritage of the former “Bonn Republic”, where the representation of interests was mainly the responsibility of associations. Only listed associations and organizations are allowed to take part in the debates on draft laws at parliamentary committee meetings. While registration on the list is voluntary and access to Parliament is not limited to registered associations only, today the list contains more than 2000 organizations.

However, on the federal level, the main focus of lobbying initiatives is not exclusively directed towards the Bundestag. While its members vote in favour of or against a bill, they only propose a low percentage of draft laws. It is the government which introduces by far the largest number of legislative proposals. In general, a bill is drafted by a responsible department within a respective ministry and then agreed upon by the cabinet before entering Parliament, where it passes through several readings. This means that both the elaboration of a proposal and the implementation of its provisions after passing Parliament happen within the ministries (von Alemann and Eckert 2006). Therefore, part of the lobbyist’s activities consists of attempting to approach the federal administration in order to support—or thwart—a bill from the very beginning.

14.3 THE EVOLUTION OF LOBBYING IN GERMANY

Germany has a strong tradition of large, sector-specific associations responsible for representing the interests of their respective economic and social clientele (Bührer 2006). For a long time, the representation of business interests was mainly confined to a tripartite system, which distinguishes trade associations, employers’ organizations, and the commerce and industry chambers. Labour interests are embodied by the large workers’ unions. Within society, a number of fairly big charitable organizations as well as the churches claim to represent the poor and socially deprived. Considering the associations’ close ties with the state and their inclusion in the political debate on economic and social policy issues, the German model of structured associational interest representation has certain corporatist traits. However, it does not go as far as to institutionalize the cooperation between associations and the state (Reutter 2000). So far, attempts to establish a more binding structure of concerted action, as was the case in 1967 and 1999, have ultimately failed (Bührer 2006, 23).

While large associations are still relevant factors when it comes to interest representation, their relative weight has certainly decreased during the last two decades. Business associations have been struggling with a

dwindling membership—a phenomenon that has also affected the trade unions and other large civic organizations as well as political parties. The shifting of political and economic weight to a supranational level in the context of both globalization and European integration has made it more difficult for organizations to deliver results on relevant issues to their members (Funk 2006). At the same time, larger associations have had difficulties integrating and representing a growing number of more specific, micro-issue related interests of their clients. This alleged associational sluggishness has prompted companies and small organizations to seek more individual interest representation. While an organization may incorporate a public affairs department responsible for elaborating its specific interests, the actual lobbying work, that is, the development and implementation of measures attempting to influence policy issues, including the establishment of contacts with policymakers, is frequently outsourced to specialized individuals and/or agencies. Their service portfolio can vary from public relations expertise to legal counselling offered by law firms. In contrast to the former predominant model of associational interest representation, today's lobbying thus takes the form of a professional service provided by organizations or individuals, who often dedicate themselves exclusively to this type of service. This does not mean that associations have ceased in performing their lobbying activities; on the contrary, in many cases they have merely reverted to the (additional) services of external lobbyists.

This modern form of interest representation as a professional service is not limited to the business sector. Non-profit oriented interest groups within civil society such as consumer protection organizations or environmental associations have also sought more direct access to politicians in order to voice their concerns and requests. Even if non-profit NGOs rely to a lesser extent on external services, their capacity of generating public attention and support makes them an important actor for parliament representatives and government officials, allowing them to defend their interests regarding specific policy issues.

The lobbying scene in Germany has thus undergone parallel processes of fragmentation (of interests), multiplication (of players), and diversification (of methods). The federal government's relocation from Bonn to Berlin symbolizes the spatial dimension of these developments. Lobbyists in Bonn often relied on personal acquaintances, which were common. Geographic distances between the main offices of business associations and the ministries, parliament, or party headquarters were almost insignificant. Overall, the political scene was manageable and close contacts between

politicians and the representatives of large associations were a common occurrence. This way of exercising political influence changed substantially upon moving to Berlin, where distances grew larger, new offices had to be set up, and political networks had to be restructured. The spatial opportunities certainly also made it easier for new players to establish themselves and become the brokers of numerous emerging interests, which lacked the proximity that had been characteristic in the “old days”. The expansion of a veritable lobbying community also explains why it is so difficult to determine how many lobbyists actually work in Germany. The previously mentioned lobby list includes more than 2000 associations and organizations; however, as the list is only voluntary, it is very difficult to estimate how many individuals there are performing lobbying activities. What can be said, however, is that despite the presence of large international agencies, the majority of the German lobbying sector is composed of smaller, inland-based companies and consulting firms.

14.4 THE PROFESSIONALIZATION OF THE LOBBYING SCENE

In the light of the expansion and diversification of lobbying activities, there have been efforts within the branch to promote the professionalization of lobbyists and establish common guidelines and a code of conduct. This has been the objective of the German Association of Political Consultants (de’ge’pol), founded in 2002, which is the main professional association of lobbyists in Germany. Since its formation, its members have sought to clarify the professional profile of political consulting, both within the branch and towards the public. In Germany, the term “lobbying” often evokes negative connotations, due to a predominant tendency to consider the state as the sole guardian of the broad public interest which is deemed to be more valuable than individual interests (von Alemann 2000). However, there have been some negative examples of lobbying practices, which have reinforced this and that is why the de’ge’pol has actively promoted the setting of quality standards for professionals (Meier 2011). At the same time, the idea is to achieve a higher level of self-regulation among political consultants. Therefore, the association has participated in the creation of mechanisms to voluntarily regulate and reproach unprofessional and unethical behaviour by lobbyists. Together with three associations of public relation professionals, the de’ge’pol forms the German Council of

Public Relations (DRPR), which has the competence to publicly rebuke any “black sheep” within the lobbying scene. Still, since not all German lobbyists are members of the *de’ge’pol*, the association continues to face the challenge of strengthening its representative function for a vast and diverse professional field.

The growth of the German lobbying sector as a whole has also been accompanied by the emergence of new educational pathways. In recent years, several German universities have started offering new master programmes that provide a growing number of students with a theoretical understanding and a practical approach towards the elaboration of public policy and the ways and means to influence this process. Such programmes are called “Master of Public Affairs”, “Master of Public Administration”, or “Master of Governance”, and their establishment was made possible by the Bologna reform process initiated in 1999. While such programmes may play a role in the education of future generations of lobbyists, there is still no emblematic educational path to become a lobbyist in Germany. This is also reflected when analysing the academic backgrounds of *de’ge’pol* members. Certain academic programmes, such as political science and communication, are clearly predominant, but many other fields, including journalism, sociology, economics, law, administration or marketing can also be found amongst today’s professional lobbyists. As such, there is a large diversity regarding the educational path of lobbyists, and much the same can be said about lobbyists’ professional background. There is no typical profile of “the lobbyist” in Germany. Professional lobbyists can be directly employed by large companies or industry associations, or work at consulting companies as well as public relations and public affairs agencies. Sometimes current or former party members and scientists also act as advocates for particular interests. While some professional lobbyists have previously worked within government ministries, Parliament or the civil service, many others come from the private and business sector.

What defines all of these different types of players as “lobbyists” is that they represent a specific political interest or objective, which can be either their own, their employer’s (if they are directly employed by a private company) or their client’s (if they work as external political consultants). In order to champion a particular interest or achieve a distinct goal, lobbyists have a number of specific tools and tactics at their disposal. Their work varies in accordance to the cause they are pursuing as well as to the recipients of their message. Information tools such as monitoring and strategic research provide them with an overview of developments that are rel-

evant for their respective interest. Strategic planning is the most important in defining a roadmap towards achieving the desired goal, whereas campaigning, lobbying and networking are instruments to implement any previously defined strategy. The common denominator of all these actions is the fact that they are knowledge-based. Whether it includes using one's contact portfolio to set up a meeting with certain politicians, starting a campaign targeting specific groups whose collective behaviour is highly relevant or organising a public event around a particular issue: Lobbyists are first and foremost knowledge workers who utilize information, expertise and ideas (de'ge'pol 2010). A proficient lobbyist thus possesses both generalist competencies as well as in-depth knowledge of specific and technical subjects, depending on the issues he is lobbying for. Moreover, professional experience and a network of influential contacts are essential for a successful lobbyist. This explains why many former politicians and high-ranking civil servants often offer their services as consultants to private companies upon their retirement.

14.5 FUTURE CHALLENGES: REGULATION, TRANSPARENCY AND PUBLIC PARTICIPATION

The self-regulatory initiatives from the de'ge'pol also point towards a major challenge which the lobbying branch as a whole will face in the future. In recent years, the public has become more and more aware of the impact of the particular interests on policy making. An often-cited example is the successful effort of four major German energy companies to extend the legal operating time of nuclear energy plants in Germany until 2032. The extension was proclaimed in 2010 by the governing Conservative-Liberal coalition, thus reversing a previous political decision from 2000 that had stipulated an earlier nuclear power phase out in 2011. However, after the nuclear catastrophe in Japan, the same Conservative-Liberal government overturned its own previous decision and Parliament voted for a revised and shorter phase out by 2022. It is a result of cases such as this that there has been an ongoing public discussion about the necessity of effectively regulating interactions between private interests and the political sphere. This also concerns the aforementioned employment of former politicians and civil servants by private companies shortly after the end of their public engagement. NGOs such as Transparency International have repeatedly called for a cool-down or waiting period of two to three

years before such rotation from the public to the private sphere can take place, in order to prevent potential conflicts of interest. Former German Chancellor, Gerhard Schröder, provides a prominent example for discussion and reflection. After having been actively involved in setting the political framework for the construction of the Nord Stream gas pipeline between Russia and Germany under the Baltic Sea, shortly after losing the 2005 federal elections he became the chairman of the operating company's supervisory board.

Such examples indicate that new regulation needs to focus on ensuring the transparency of the representation of interests. While the current parliamentary lobby list provides an overview of many business and civic associations that pursue lobbying activities, the list is neither binding (and therefore non-exhaustive), nor does it shed light on politicians' possible financial involvements with private businesses. The latter issue has been addressed with two recent reforms of the German MP law. Since 1972, MPs have been obliged to reveal any additional employment beside their parliamentary work. With the first reform in 2006, members of Parliament were forced to disclose their supplementary income—recurring and non-recurring—according to three categories (category 1 equalled a monthly salary between 1000 EUR and 3500 EUR; category 2 represented a monthly income of up to 7000 EUR; category 3 comprised all monthly incomes exceeding 7000 EUR). Back then, critics had already called for more extensive regulation. After 2009, the parliamentary opposition of Social Democrats and Greens (and, separately, the Leftist Party) started working on a proposal for a new lobbying index, which was also supported by the *de'ge'pol*, but which was ultimately rejected by the Conservative-Liberal governing coalition. In 2012, however, the issue resurfaced after the same governing coalition criticized the Social-Democratic opposition's candidate for the chancellery, Peer Steinbrück, for his numerous additional and supplementary revenues. Mr. Steinbrück responded by publishing his revenues in detail, followed by demands of the parliamentary opposition that the governing coalition enact stricter regulations for the disclosure of Parliament members' supplementary income. The new system, which was adopted by Parliament in 2013, now comprises ten categories (1000 EUR–3500 EUR; up to 7000 EUR; up to 15,000 EUR; etc. up to the last category of more than 250,000 EUR) which were first applied and published in March 2014. The current opposition of Greens and the Leftist Party as well as NGOs has criticized the regulation, stating that it does not go far enough and that Members of Parliament should be required to

disclose all their revenues in detail (“down to the last Euro and Cent”), including monthly revenues below 1000 EUR, of which disclosure still remains non-obligatory. These latest developments thus show that the regulation of interest representation, especially with regard to Parliament members’ potential financial dependency from private interests, continues to be a matter of concern for both politicians and the public.

Besides regulatory issues, another challenge for the lobbying community (and politics as a whole) may spring from the gradual evolution of popular participation and its impact on political decisions. A prominent example is the conflict around the construction of the new central rail station in Stuttgart, with mass protests peaking in 2010 and 2011 that have since abated, but not at all disappeared. The Stuttgart protests have since become symbolic of a plethora of citizens’ initiatives which intend to challenge conventional ways of political decision-making and administrative project management. Regarding a multitude of matters throughout the country and ranging from protests against the construction of wind turbines in communities to calls for the introduction of plebiscites on the federal level, such initiatives and action committees have proven that they need to be taken seriously by politicians and that their (oftentimes fiercely voiced) interests must be taken into careful consideration. It is not a coincidence that the phenomenon of the “angry citizen”—the literal *Wutbürger*, which was chosen as “Word of the Year 2010” by the Society for the German language (GfdS)—has received such strong media attention. Certainly, public protests about political decisions have existed for centuries. However, citizens’ organizational capacity and their access to information at early stages of a political project have reached a new quality today. It remains to be determined further what role an active public voice will ultimately take as a new player on the chessboard of political negotiation and brokering of interests.

In any case, lobbyists are likely to direct their present and future strategies not only towards political decision-makers and the media, but also towards the civil society. The German public and media are notably critical of lobbying in general and of corporate lobbying in particular, while NGOs are seen as representatives of the “good” side within the political spectrum. This public perception results in a remarkable level of influence being exerted by NGOs but which at the same time is not legitimized by any further democratic procedures. As such, these developments necessitate a more holistic approach to lobbying as a whole, one in which political influence is no longer determined by having access to central decision-

makers, but rather by being perceived as a credible and trustworthy actor both by decision-makers and the public sphere. This approach, known as lobbying leadership, provides the basis for the level of trust needed to successfully position oneself in the political arena. On the other hand, the growing importance and frequent use of campaigning tools (“lobbying is campaigning”) is another natural consequence of this new development.

14.6 CONCLUSION

Following a period of considerable growth since the turn of the millennium, the lobbying sector in Germany has consolidated in the last years. The earlier predominant larger interest associations have witnessed the emergence of new competitors in their fields of activity. While we have experienced a shift towards an increase of negotiations at the EU level—many Germany-based companies and organizations also have representations in Brussels—today’s lobbying scene in Berlin remains fairly extensive and diversified. Despite efforts by the de’ge’pol, the lack of integration of the numerous lobbying players has made it difficult to develop and promote a common professional approach. Therefore, public opinion often remains sceptical, if not outright critical of a branch associated with the secretive and illicit exertion of influence, rather than with the employment of professional and ethical instruments in order to represent specific and legitimate interests. After all, the representation of interests is a central component of democratic culture, preserved within and protected by the German Basic Law (in Articles 5, 9 and 17 specifically). In the context of an alert civil society that has become more self-confident and ingenious in voicing its concerns regarding political issues, lobbyists must increase their efforts to explain, promote and also to regulate their profession. Only then will the public acknowledge the voice of lobbyists to be a legitimate and necessary addition to the functioning democratic process.

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Greece

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15.1 THE POLITICAL AND INSTITUTIONAL FRAMEWORK

Since the end of military rule and the restoration of democracy in 1974, Greece has been a parliamentary democracy. The powers of the Head of State, the President of the Republic, which had always been limited, were further reduced by the revision of the constitution of 1985 and are now mainly ceremonial.¹ Thus in theory, power rests mainly with Parliament and the Cabinet. In practice, however, power is largely concentrated in the hands of the Prime Minister, who must command an absolute majority in Parliament.²

¹The President of the Republic, who has very limited powers, is elected by Parliament by a reinforced majority in a process that may involve up to three rounds. 200 votes out of 300 are required during the first two rounds, and 180 votes during the third round. If no candidate secures these votes, Parliament is dissolved and new elections are called. The new Parliament may then elect a President with a simple majority of 150 votes.

²The Prime Minister is appointed by the President of the Republic on the basis of a very strict procedure outlined in the constitution. The President invites the leader of the largest party to form a government, which must obtain a vote of confidence within five days. If he is unsuccessful, the leaders of the second and third party are then invited in turn. If they also

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Thanks to the electoral law of “reinforced proportional representation”, which gives a bonus of 50 seats, out of a total of 300, to the largest party and ensures that parliamentary majorities can be easily achieved; the leader of the largest party was until recently practically guaranteed the post of Prime Minister. As political parties have extremely weak democratic organizations, party leaders dominate their political parties. Thus the Prime Minister, once elected, could count on the unconditional support of his parliamentary party and look forward to an uninterrupted four-year term during which major policy decisions and legislative initiatives would be voted upon by Parliament with few, if any, changes (Pappas 2003).

Under this system, two major parties have alternated in government and dominated Greek politics since 1974: the socialist PASOK and the conservative New Democracy parties. Coalition government and the search for consensus were virtually unknown (Spourdalakis and Tassis 2006).

All this changed drastically after 2009 as a result of the financial crisis and the need to impose harsh austerity measures dictated by the “Troika” of our creditors (the IMF, the EU and the ECB). Over the last few years, PASOK and New Democracy saw their combined vote collapse from 70 % to just over 30 %. Support for “small” parties of the extreme left and right grew exponentially and Greece entered a new period of coalition governments (Teperoglou and Tsatsanis 2014). The legislative agenda comprising budget cuts, wage reductions, reform of the pension system, massive privatizations and structural reforms has met with fierce reaction. Members of Parliament can no more be expected to automatically follow the party line. Parliamentary majorities are only narrowly secured, through the threat of suspension of funding from our lenders and a return to the drachma (Teperoglou et al. 2015). In January 2015, a coalition of SYRIZA, a party of the radical left, and the Independent Greeks, an ultra-nationalist right wing party, came to power promising to reverse the austerity measures introduced by its predecessors. After protracted negotiations, and faced with the prospect of expulsion from the Eurozone, the government was forced to accept a new agreement involving further reforms and austerity measures in exchange for renewed funding.

A second peculiarity of the electoral system is the existence of large electoral districts where, in some cases, as many as 30 candidates from each party must compete for the voters’ preference. This leads to fierce

fail, the President mediates for the formation of a broader coalition government. If that too fails, fresh elections are called.

antagonism among candidates of the same party who are forced to spend their time and resources campaigning to prevail against their colleagues, rather than promoting their party's agenda against its opponents. This is often an expensive exercise which forces candidates to seek support from wealthy friends or interest groups. As a result, members of Parliament, once elected, have the tendency to adopt a favourable predisposition to the interests which supported them.

Individual candidates' finances are monitored by a committee of judges and tax officials, but this is largely a superficial process which has never resulted in a candidate being disqualified. Political parties, on the other hand, receive a yearly state subsidy allocated on the basis of the average share of the vote secured by the parties in the last elections. Parties also secure bank loans, usually using future state subsidies as collaterals. This system strongly favours established parties and makes it virtually impossible for newly founded parties to secure financing.

15.2 INTEREST GROUPS

Which interest groups seek to influence members of Parliament and the decision-making process? As in most democracies, business groups, trade unions and NGOs are prominent among them. However, two Greek peculiarities stand out and are worth examining in greater detail.

The first is *syntelmnia*, which is the literal translation of the term for the medieval guild. The term is used to describe a vested interest usually associated with a specific professional or labour group (Lavdas 2005). Typical examples are lawyers, pharmacists, doctors, taxi drivers, or employees of large public sector corporations like electricity, waste collection, or public transport companies. Most of these groups are perceived as enjoying special privileges like restricted access to their professions, high pay and early retirement on heavily subsidized pension schemes. Leading members of these groups are often elected to parliament and elevated to cabinet positions. One could describe this as a "revolving door" phenomenon, though the main flow is from interest groups to parliament rather than from parliament to lobbying. Over the years many efforts by consecutive governments to reform the public sector and deregulate the economy have stumbled on opposition from these groups. Recent governments, which have come under great pressure from EU partners and lenders to restructure the economy, open up closed professions, and privatize large

parts of the public sector, have discovered to their great detriment the resistive power of these groups (Mossialos and Allin 2005).

The second Greek peculiarity is *diaploki*, a term coined by a conservative prime minister of the early 1990s to describe the interconnection between large business interests and the media (Papatheodorou and Machin 2003). The Greek media scene, which is largely unregulated, is controlled by a small number of groups directly or indirectly owned by major players in the construction, energy and real estate sectors. These groups have loose political affiliations but tend to exploit the influence of the media branch of their empires to promote the interests of their core business, which is usually dependent on government decisions or contracts. Members of Parliament who have to rely on the media to communicate effectively with their voters soon find that they need to establish a relationship with these groups (Mylonas 2014).

15.3 LOBBYING AND THE POLICY-MAKING PROCESS

This state of affairs has led to the growing disillusionment with the political system and its failure to address national problems rather than specific sectoral interests. It is clear that there is a pressing need to establish formal mechanisms to allow those who wish to influence public policy to do so in an institutional and formal manner. Yet the concept of lobbying is unknown to Greek law and therefore it is not regulated.

There are very few public affairs consultants in Greece, most of them with a background in the legal profession or journalism. Since they are not officially recognized as such and not registered, it is hard to estimate their number. Most communication agencies include Public Affairs in their portfolio of services, but it does not amount to a substantial part of their business. Their clients include mostly foreign groups operating or seeking to operate in Greece and very few local firms. Meanwhile, several lawyers, journalists, retired politicians and former high-ranking civil servants act unofficially as lobbyists, targeting specific ministries. In the majority of cases, they fail to disclose their client or to abide by a specific code of conduct. Several major multinationals and a limited number of Greek companies also employ in-house lobbyists.

HACA, the Hellenic Association of Communication Agencies, is the official association representing Greek advertising and communications agencies. Founded in 1968, it currently brings together 95 companies. HACA has identified the problem of the unregulated operation of the

lobbying profession and has been working on establishing a comprehensive code of ethics which should govern lobbying activities. This code, which is currently being prepared, will address key issues such as conflict of interest, disclosure of clients' identity and interests, accuracy of information and dishonest practices, among other things. However, without political support and ultimately a legislative intervention, any initiative from public relations (PR) agencies alone will not resolve the issue. Unfortunately, although society clearly recognizes the need for greater transparency, there is no widespread debate, let alone consensus, over how more effective public scrutiny of the lobbying process could be achieved.

15.4 CONCLUSION

The need to restructure the economy and safeguard the country's position within the euro-zone will be the overwhelming government priority for the foreseeable future. It is therefore highly unlikely that any legislative initiative on the regulation of lobbying will be undertaken within the lifespan of this or the next parliament.

Whatever government is in power, Greece will need to implement a programme of far reaching structural reforms, including privatizations, deregulation of vital sectors of the economy and opening up professions. Clearly a number of interest groups will seek to influence this process in order to protect their privileges or to secure a prominent role in the day after. There is no doubt that a more robust regulatory environment with regard to lobbying activities would ensure greater transparency, integrity, and accountability in the decision-making process.

In Greece, as in all modern parliamentary democracies, a number of advocacy groups seek to promote and defend their interests by influencing the decision-making process. In the absence of a proper regulatory framework, lobbying activity is conducted unofficially by firms or—usually—by individuals who do not necessarily adhere to a code of conduct. Attempts to introduce a regulatory framework or at least an official code of conduct have so far not produced results.

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Hungary

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16.1 THE LOBBYING CONTEXT: PARTY STATE CAPTURE AND CRONY CAPITALISM

As a member of the European Union since 2004, Hungary has a democratic system with institutions that were originally established to respect the separation of powers and legal checks and balances. A consensus among political parties and in the public discourse existed between 1989 and 2010 that according to the eighteenth century's Montesquieu's doctrine, legislative, executive and judicial powers need to be separated and that the government needs to be controlled by independent institutions.

The government of the Fidesz party,¹ based on an overwhelming majority, i.e. more than two-thirds of the mandates in the parliament resulting from successive landslide victories in national elections in 2010 and in 2014, has broken this consensus and re-engineered the public arena

¹Fidesz is a right-wing party that belongs to the EU-wide European People's Party. It has been using nationalist rhetoric, sometimes with an adamant anti-EU tone since 2010 without questioning the EU-membership of Hungary (Ilonszki and Lengyel 2014; Martin 2014).

to its own liking. Essentially, Fidesz has constructed a de facto “upper house” of government by appointing its own loyalists to public institutions. As a consequence, state institutions initially designed to control the power of the government’s executive branch, such as, inter alia, the Constitutional Court, the Supreme Court and the judicial administration, the prosecution service, the Court of Auditors, the Media Board, the Economic Completion Office, the National Bank of Hungary, the National Election Committee and the country’s system of ombudspersons have been replaced with government appointees. The two Fidesz governments, post-2010, eliminated the autonomy of many of these institutions resulting in many of these bodies becoming the instruments rather than the control of the government’s power.²

The government’s determination to follow the path of “illiberal democracy”³ has in some cases run contrary to European legal standards.⁴ This has happened in the case of the President of the Supreme Court (now called the Curia), and the former Data Protection and Freedom of Information Parliamentary Ombudsman. The term of office of both of these authorities’ leaders has been terminated prematurely and the dismissed former leaders have been replaced with the government’s own appointees. In its respective decision issued in May 2014,⁵ the European Court of Human Rights held that the premature termination of the Supreme Court President’s mandate had violated the right of access to a tribunal. As regards the issue of abolishing the institution of the Data Protection Commissioner and the premature termination of the previous commissioner’s mandate, this case was brought before the Court of Justice of the European Union, which concluded that Hungary infringed upon

²For further analyses see the 21 September 2015 Joint Submission to the United Nations Universal Periodic Review 25th Session of the UPR Working Group by Transparency International Hungary, Transparency International, the global coalition against corruption and K-Monitor Watchdog for Public funds:

http://transparency.hu/uploads/docs/tih_ti_k-monitor_upr_hungary.271.pdf

³This term for Hungary was used first by Prime Minister, Viktor Orbán, in 2014, in one of his speeches in Romania when he stated that “the new state that we are building is an illiberal state, a non-liberal state”. The full text of this speech, see: <http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/10592>.

⁴However, the total number of infringement procedures against Hungary, although it has increased after 2010, its amount did not exceed until 2014 (Juhász 2014) and still has not transcended that of other EU member countries of the CEE region.

⁵See case *Baka v. Hungary*. Application no. 20261/12, judgment (merits).

European law.⁶ Furthermore, some provisions of the new constitution of Hungary known as the Fundamental Law were also in contradiction with European legal norms. As of 1 January 2012 when Hungary's new constitution entered into force, the mandatory retirement age of judges was lowered to the general retirement age, i.e. from 70 to 62 years. The Court of Justice of the European Union delivered a judgement⁷ concluding that Hungary has failed to fulfil its obligations⁸ deriving from the *acquis communautaire*.

The government's determination to weaken the capacity of independent institutions entailed an instrumental approach towards legal norms, including the Constitution. Between the takeover by the Fidesz government in 2010 and the entry into force of the Fundamental Law, Hungary's old Constitution was amended 12 times. The country's newly adopted Fundamental Law, although supposed to be long lasting, has been amended five times since it came into force. These constitutional changes have always lacked any proper *ex ante* public debate. The Council of Europe's Venice Commission concluded in its opinion that frequent constitutional amendments "are a worrying sign of an instrumental attitude towards the constitution."⁹

Through these measures Hungary has been steered in the direction of a centrally managed democracy and state capitalism. Although the quality of democracy has deteriorated since 2013–2014 in the whole Central and Eastern Europe (CEE) region (Freedom House 2014), moreover, the growth in the interlacement of oligarchs and politicians has been a worldwide phenomenon, with this shift catalysed by the government's obsession with centralization, Hungary made a unique U-turn in the region (Kornai 2015) and deviated from the Western concept of democracy and rule of law. The new Hungarian system in some cases and actions has challenged property rights¹⁰ and the freedom of civil society. The centralization has

⁶Hungary breached the requirements as enshrined in Directive 95/46/EC See: Commission v. Hungary, Case C-288/12.

⁷See: Commission v. Hungary, C-286/12.

⁸Under Council Directive 2000/78/EC.

⁹For the related criticism of the Venice Commission, see: *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, CDL-AD(2013)012, Strasbourg, Council of Europe, 17 June 2013, www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29012-e

¹⁰A number of examples indicate the government's intention to grant privileges to certain economic actors by legal means. The description of three emblematic examples of cronyism is to be found in Chapter IV.

reached an unprecedentedly high level as the central government has a tremendous power with the potential to imminently influence state institutions outside of the executive branch of power, which seems to be unusual in the EU.

The elimination of control institutions from Hungarian public life *per se* has increased corruption risks. According to Transparency International's Corruption Perception Index (CPI)¹¹ Hungary is deemed to be moderately corrupt in a worldwide comparison, reached 51 points in 2015 on a scale from 0 ("very corrupt") to 100 ("clean and non-corrupt"), which is 3 points less compared to the country's score in the previous year. With this performance, Hungary ranked 51st among 168 countries assessed, three ranks behind the 2014s assessment. The perception of Hungary's ranking¹² on anti-corruption performance has dropped in East Central Europe, among countries that have joined the European Union from 2004 or after. In 2004, the year of the country's accession to the European Union, Hungary was on the vanguard of this group of 11 jurisdictions, preceded only by Estonia and Slovenia. By 2015, Hungary's rank dropped to the bottom of the group, being followed only by Bulgaria and Romania.¹³ Table 16.1 shows the change in the perceptions of Hungary's anti-corruption performance between 2012 and 2014.

According to Transparency International the level of corruption in Hungary reached an institutional level by 2008 (TI-H 2008) which was demonstrated by repeated and regular abuses of power for private gains by both the central and local governments. After 2010, however, parallel to the major setback to the rule of law and to democratic principles, the nature of corruption has changed as it has become more centralized.

This led to a situation where Hungary has become vulnerable to a special kind of "state capture", i.e. in which parties re-politicize the state in

¹¹ CPI as a composite index scores countries on how corrupt their public sectors are seen to be by the business community and experts. A detailed description of CPI's methodology is available at Transparency International's website: <http://www.transparency.org/research/cpi/overview>

¹² The points for Hungary have not changed dramatically. What has worsened is the relative position with other countries. There was a methodological change in 2012 that makes it difficult to compare the *nominal* results before and after that.

¹³ The perceptions of Hungary's anti-corruption performance also worsened in the European Union as a whole. The country used to be the Union's 19th most corrupt jurisdiction out of 27 member countries in 2012. In 2013, Hungary's rank sank to the 20th among 28 member states, where it remained in 2014 as well. In 2015, Hungary dropped to 22nd among EU members.

Table 16.1 Perceptions of Hungary's anti-corruption performance between 2012 and 2014

<i>Country</i>	<i>CPI 2015</i>	<i>CPI 2014</i>	<i>CPI 2013</i>	<i>CPI 2012</i>	<i>Change of score^a</i>
1. Estonia	70	69	68	64	1
2. Poland	62	61	60	58	1
3. Lithuania	61	58	57	54	3
4. Slovenia	60	58	57	61	2
5. Latvia	55	55	53	49	0
6. Czech Republic	56	51	48	49	5
7. Croatia	51	48	48	46	3
7. Slovakia	51	50	47	46	1
7. Hungary	51	54	54	55	-3
10. Romania	46	43	43	44	3
11. Bulgaria	41	43	41	41	-2

^aFrom 2014 to 2015

Source: Transparency International Hungary

pursuit of political monopoly (World Bank 2000; Burai and Hack 2011; Innes 2014).¹⁴ This form of capturing the state entails systemic corruption and in a number of cases¹⁵ even takes a legalized shape. Powerful oligarchs either outwit the government or, more frequently, are in symbiosis with influential public decision-makers, allowing them to extract public money from the system through intentionally designed and professionally managed channels (Jancsics and Jávör 2012). Under this state capture, the corruption can be interpreted not necessarily or primarily in the traditional principal—agent model (Lambsdorff et al. 2005) but by the endeavours of the elite by which it shapes a system-like character.

The state capture in Hungary has entailed insider or crony capitalism (Kornai 2015), an economic system in which rent seeking crucially distorts the functioning of the market economy. Corruption itself appears a tool of rent seeking where money-making becomes possible based not on market performance but on political connections. Hungarian economic actors are in a number of sectors prone to seek the grace of the government instead of competing in a regulated market. Rent seeking and

¹⁴The other form of state capture is the *corporate* one where strong oligarchs take control of weak government.

¹⁵See these cases further down in Chapter IV.

cronyism enhance suboptimal transactions through the misallocation of resources thus preventing sustainable growth (Murphy et al. 1993). If the institutions do not serve the public good by being inclusive, they become extractive (Acemoglu and Robinson 2012), i.e. provide grounds for the elite's abuse of power for their private interests.

The combination of state capture and crony capitalism has led to a deterioration of institutional performance. In business sector players' judgement, the regulatory environment in Hungary is unpredictable, and investors face a huge administrative burden. This is illustrated by a recent survey of the World Economic Forum,¹⁶ which concluded that Hungarian state institutions' transparency and anti-corruption performance was particularly worrisome. Out of 140 economies surveyed worldwide, Hungary ranked 119 in "transparency of government decisions" and "diversion of public funds" and 125 in "favouritism in government decisions". Entrepreneurs find that corruption is the second most frequent hindrance in doing business in Hungary. Eventually, the business climate has been perceived unsatisfactory. In 2014, among the five countries of the region (Hungary, Czech Republic, Poland, Slovenia and Slovakia), the Hungarian environment was assessed the worst by the investors,¹⁷ and that had an obvious negative effect on the level of (private) investments.¹⁸

¹⁶These findings result from the Economic Opinion Survey of World Economic Forum's Global Competitiveness Report / Global Competitiveness Index 2015/2016, see: http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf. For a detailed description of the survey's methodology, see: <https://reports.weforum.org/global-competitiveness-report-2015-2016/appendix-methodology-and-computation-of-the-global-competitiveness-index-2015-2016/>

¹⁷See the survey of the German-Hungarian Chamber of Commerce ('DUIHK'): AHK-Konjunkturumfrage Mitteleuropa (2014), available http://www.dsihk.sk/fileadmin/ahk_slowakei/Dokumente/Wirtschaft/AHKKonjunkturumfrage_MOE_2014.pdf

¹⁸The investment rate (gross fixed capital formation per GDP) declined from 23 per cent in 2010 to 19 per cent in 2012 which was then the lowest figure in the region. Since then it has slightly increased but mainly due to the large inflow from the EU's cohesion funds. See: <http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00011&language=en>

16.2 LOBBY REGULATION IN HUNGARY

At present, Hungary is a state with no comprehensive lobby regulation.¹⁹ There is, however, a stand-alone law on legislative lobbying²⁰ (“Legislative Lobbying Act”) which governs the public consultations of legislative proposals in Hungary. The Legislative Lobbying Act provides for compulsory public and expert consultations prior to bringing legislative proposals to the Parliament, but no deadlines are prescribed for the consultation process, therefore swift, spurious consultations also meet the legal requirements. No rules are included as to how different opinions that are expressed in the consultative process shall be incorporated and there is no burden on the government to give a detailed, written explanation to the consulted partners that highlights which opinion and on what bases have been adopted and which have been set aside. As the Legislative Lobbying Act fails to introduce a “legislative footprint” informing the public on influence affirmed or articulated during the legislative process, it has so far proven incapable of fostering transparency of the legislature.

The Legislative Lobbying Act does not prevent the government from arbitrarily selecting certain partners to be involved as consultants in the legislative process, such selection need not to be publically explained. The Legislative Lobbying Act does not forbid fast track and extraordinary (“priority”) legislation either, where not just the consultation phase is skipped, but the adoption in the Parliament also lacks any meaningful political debate (Szabó 2014).²¹ The final vote in Parliament may occur on the day of submission of the legislative proposal also in case the proposal

¹⁹ Between 2006 and 2010, a stand-alone law on lobbying (Act XLIX of 2006 on Lobbying, ‘Lobbying Act’) provided a voluntary registration system for lobbyists, envisioned a common code of conduct, and prescribed reporting requirements for both lobbyists and executive decision-making bodies. In events of non-compliance, the Lobbying Act foresaw pecuniary sanctions, with a maximum fine of HUF 10 million (approx. EUR 33 thousand). Nonetheless, the Lobbying Act had a negligible impact on the transparency of lobbying (Burai and Hack 2011). This was mainly reasoned by the fact that it was technically easy to circumvent the regulation, because it had a jurisdiction only in regard to registered lobbyists, as a result of which anybody who omitted to register themselves were not impacted. There were only 600 registered lobbyists by September 2010 (OECD 2012).

²⁰ Act CXXXI of 2010.

²¹ Priority or ‘fast-track’ legislative processes have in a number of occasions resulted in the adoption at breakneck speed of legislations that seriously curtail access to information on public spending. See, inter alia, Act XI of 2013 and Act CXXIX of 2015. For a detailed analysis of priority legislation see Szabó (2014).

concerned is introduced by individual MPs, whose legislative drafts are exempt from consultations. This means that virtually no public or political debate precedes the adoption of legislative bills brought in by members of the Parliament, which not only signals the parliamentarians' endeavour to lift often questionable contents to the legislative level by misusing their public authority, but also demonstrates that democratic principles are placed into doubt by the Hungarian practice.²²

An even more troublesome shortcoming of the Legislative Lobbying Act is that it entirely omits to address lobbying outside of the legislative terrain. This deficiency is partially tackled by the government's decree²³ on integrity measures in public administration ("Integrity Decree"), which was introduced in 2013. The Integrity Decree expects public officials to provide their immediate superior with detailed information on lobbying contacts prior to accepting the lobbyist. Information should include the lobbyist's name, the name of the organization represented by the lobbyists and the time and place of the planned meeting. Public officials are also required to indicate in writing if the meeting with the lobbyists entails integrity risks, and they have to, on a yearly basis, report to their superiors on lobbying contacts. The public officials' superior may prohibit the meeting or specify a third person who should be present at the meeting. Leaders of public organs may generally restrict or prohibit meetings with lobbyists. Though the Integrity Decree seems to offer a comprehensive solution, it does not require either the mandatory registration of lobbyists or the disclosure of contacts with lobbyists to an independent control body, nor does it expect public organs to make reports on lobbying contacts publicly accessible.²⁴

According to the EU Anti-corruption Report published in 2014, this is, at best, a partial solution of the problem: "*The Government decree on the system of integrity management within public administration (...) obliges public servants to ask prior permission from their hierarchy to meet lobbyists and to also report back on the contacts or outcome of meetings. There is no*

²² Government MPs often propose drafts to comprehensively amend existing laws which are adopted with no prior public or expert consultations.

²³ Government's Decree No. 50 of 2013 on the Integrity Management of Public Administration and the Regulation of Accepting Lobbyists.

²⁴ TI-Hungary tried to obtain lobbying contact information and lobbying reports submitted by public officials, but it turned out, that none of the public organs addressed by such requests collected these data, a reason why TI-Hungary concluded that the current scattered lobbying regulation fell into desuetude.

mechanism in place targeting the monitoring of the implementation of these obligations.”²⁵

16.3 PRACTICE: LOBBYING IN A DISTORTED INSTITUTIONAL ENVIRONMENT

Party state capture and crony capitalism have transformed Hungary into a country where policy-making is dominated by unilateral decisions, and key political preferences are exclusively set and discretionarily implemented. As a result, independent policy initiatives of civil society actors, policy experts, professionals or business actors are often ignored and lobbying is understood as an unjustified pressure for particular business interests (Bartha and TI-H 2014).

As a consequence, lobbying in Hungary has ceased to function as an advocacy tool aimed at rationally convincing public decision-makers. There is no comprehensive lobbying regulation in place, which on the one hand contributes to opacity of lobbying, and, on the other hand, it indicates the vulnerability of democratic decision-making processes in the country. The persistence of informal influence makes much of lobbying invisible to the public eye (TI 2015). As a result, it is more and more difficult to distinguish between lobbying and undue influencing.

Key features of current Hungarian lobbying practices illustrate how political changes have distorted the terrain of interest representation and advocacy. Policy contacts between public officials and private companies have become more strongly dominated by political considerations since the 2010 office taking of the incumbent administration. In the lack of a supportive political signals preferably coming from a senior political actor, there is no chance of success in lobbying activities (Bartha and TI-H 2014). Moreover, influence in Hungary is deeply intertwined with familial, informal or business interest structures, creating opportunities for a culture of patronage (TI 2015).

In addition, new, unconventional forms of communication and informal lobbying are emerging. As business actors try to adapt to Hungary's unstable environment, they focus in their lobbying efforts to members of the political elite instead of lobbying bureaucrats or policy experts. In an environment where rent seeking and cronyism spread, the strive to

²⁵ COM (2014) 38, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_hu.pdf

achieve a supportive political signal has become vital, and has created new fora for lobbying. Participation in government business delegations and attendance of soccer matches with political leaders have been identified as new and informal communication space. Besides, another unconventional theatre has opened for communication between entrepreneurs and government, the hiring of research institutions. Businesses tend to generously support the work of such institutions in the hope of generating an opportunity to encounter members of the governing political elite (Bartha and TI-H 2014). A notable portion of influencing efforts in Hungary occurs outside of formal consultative channels. (TI 2015)

In the years after 2010, as crony capitalism emerged in the country, political decision-makers have discriminated among businesses in function of their political loyalty. It created special, and in a way, unique channels of lobbying. The relationship between the government and business players touched bottom by 2012 (Bartha and TI-H 2014) after the government had introduced measures to reshape the country's political structure that had a negative impact on the business environment. Even though an undisputed interest still remained among the political elite and corporate actors to maintain an avenue of rational discourse, the government's intention to distinguish between good, "productive" (manufacturing) and bad, "speculative" (service) companies have made it difficult to reopen previously blocked corporate lobbying opportunities.

The government offered to corporations the opportunity of concluding so-called Strategic Partnership Agreements (SPA) in 2012. SPAs function as policy tools aimed to mitigate the consequences of uncertainties of the business environment (Bartha and TI-H 2014). The Hungarian government concluded 54 SPAs between 2012 and 2014. Besides facilitating dialogue between policy makers and economic actors, the government has apparently succeeded by the introduction of SPAs in separating the economic weight and policy importance of corporate players from their lobbying potential. Thus SPAs proved instrumental for the government in preserving arbitrary distinctions between "productive" and "speculative" branches. On a rhetorical level, this distinction underpins the government's ideology of the "work-based society".²⁶

²⁶For PM Orbán, "we build not a welfare state but a work-based society". See: <http://www.fidesz.hu/hirek/2012-10-19/orban-nem-joleti-allam-hanem-munka-alapu-tarsadalom-epul-kepek/>

Bartha and TI-H (2014) made an empirical research on the SPAs as a special form of lobbying in order, inter alia, to distinguish among companies concerning their lobbying potential with the government. Companies that took the opportunity of concluding a strategic partnership agreement had the endeavour to this way mitigate the consequences of risks generated by unpredictable business environment. The firms with whom the government signed SPAs belong to the “ingroup”. Although the content of the SPAs is accessible on the internet for the general public²⁷ they are not legally binding, rather can be considered as political and communication tools. SPAs should therefore rather be looked at an endeavour of rational business players to re-establish potentially fruitful communication avenues with the government.

And, among major corporations absent from the list of SPAs, one finds two other different sets of companies: the “inner circle group” and the “outgroup”. The inner circle group of companies are those which win the public procurement bids in significant shares, thus a salient portion of their revenues is generated by public tenders. These companies have more favourable positions than the “ingroup” companies thus they do not need SPAs. The lobbying activity of this inner circle is totally non-transparent and usually lacks any formal elements of communication with the government. Thus none of the companies assumed to belong to the inner circle has concluded strategic partnership agreement with the government. These companies are close allies of the governing political elite with a seemingly unhindered access to favourable government decisions. In other words, business actors with a considerable lobby potential benefit from the luxury of following own, individual lobbying practices.

As opposed to companies of the inner circle, members of the outgroup are most exposed to unpredictable political risks in their economic activities. These companies mainly operate in the service sector and are deprived of any established and in a number of cases even informal ties with the government.

16.4 EXAMPLES OF UNDUE INFLUENCE

The three cases below illustrate how under the circumstances of crony capitalism and state capture opaque lobbying unduly influences public decisions, legislation and the allocation of public funds.

²⁷See for example an SPA with Unilever: <http://www.kormany.hu/download/2/08/70000/Unilever%20HU.pdf>

16.4.1 *The Case of Tobacco Kiosk Licences*

The government, by adopting the so-called Tobacco Retailing Act²⁸ redefined the tobacco retailing market by first introducing a government monopoly and then distributing new concessions to tobacco kiosk owners under the pretext of preserving the health of the youngsters.²⁹

At the end of this process, the number of licensed tobacco kiosks dropped from 40,000 to less than 6000. Hungarian investigative journalists found in April 2013 that a preparatory version of the Tobacco Retailing Act, submitted on 16 February 2013 to the European Commission in the framework of a so-called notification process, had been drafted on a computer belonging to János Sánta,³⁰ chief executive officer of the Hungarian tobacco company Continental and chair of the Federation of Hungarian Tobacco Investors, thus an influential representative of the tobacco lobby. Both the government and János Sánta have admitted the involvement of the CEO in continuous consultations leading up to the adoption of the Tobacco Retailing Act.³¹ Investigative journalists also uncovered that some 500 tobacco kiosk licences went to companies connected to János Sánta or belonging to his interest group of Continental Tobacco.³² In response to these findings, the government reasserted that the reshuffling of the tobacco retailing market aimed at improving the business environment of Hungarian tobacco companies.³³

The reshaping of the tobacco market showcased favouritism, illustrating the government's determination to employ its regulatory power to promote the business interests of political loyalists.³⁴ The new environment of tobacco retailing has had a controversial impact on the tobacco market, as the proportion of smokers dropped only by 2 per cent among

²⁸ Act CXXXIV of 2012 on tobacco retailing.

²⁹ The concept of the government was to decrease the smoking of the youth by restricting the number of tobacco shops and denying the entry of young people into them.

³⁰ http://hvg.hu/itthon/20120227_lazar_dohanylobbi

³¹ <http://www.168ora.hu/itthon/dohanykoncesszio-continental-trafikbotrany-santa-janos-114768.html>

³² http://hvg.hu/gazdasag/20130620_500_trafik_egyetlen_kezben_trafikmutyi

³³ <http://www.origo.hu/itthon/20130424-lazar-janos-segitoje-jol-jart-a-dohanyboltok-kal.html>

³⁴ The United States Country Reports on Human Rights Practices for 2013 concluded that this was the “most high profile alleged corruption case during the year” in Hungary. See page 34 of the report on Hungary, available here: <http://www.state.gov/documents/organization/220497.pdf>

adults,³⁵ while the government's revenues generated by tobacco excise decreased by 17 per cent³⁶ and the lawful commerce in tobacco products dropped by 40 per cent.³⁷ A considerable shift from lawful tobacco markets to unregulated and black markets may underlie these disproportionate trends.³⁸

16.4.2 *The Case of Savings Cooperatives*

The nationalization of savings cooperatives, privately owned financial (credit) institutions with a nationwide network of customer service points, also proved the administration's readiness to discretionarily design policies that incommensurately serve the interest of influential persons or oligarchs. In this specific case, the government, relying on its supermajority in Parliament, adopted a law in 2013³⁹ that forced savings cooperatives to join a non-voluntary integration framework entitled to substantially influence the members' business policy and even to veto any amendment to their deed of foundation. This newly designed integration mechanism is dominated by Takarékbank [Savings Bank] Ltd., a commercial bank originally under the principal ownership of savings cooperatives, which, through state-owned enterprises, has been nationalized.

As a second step, the government re-privatized the quorum of this bank's shares to an interest group close to the governing Fidesz party. The then appointed CEO of the Takarékbank Ltd., who acted in the

³⁵World Health Organization's global report on trends in prevalence of tobacco smoking 2015, page 150.

³⁶http://hirtv.hu/hirtv_gazdasagi_hirei/viragzik-a-feketekereskedelem-a-dohanypiacon-1274172

³⁷<http://444.hu/2015/02/11/havi-45-milliardos-bevetel-a-nemzeti-dohanyboltokban/>

³⁸The tobacco kiosk case has provoked immense media interest. See Politics.hu, 'Transparency International points to corruption in government takeover of tobacco business', 13 April 2013, www.politics.hu/20130429/transparency-international-points-to-corruption-in-government-takeover-of-tobacco-business, [Downloaded: 2015.10.21.]; Politics.hu, 'Court orders release of tobacco retail tender documents', 12 May 2014, www.politics.hu/20140512/court-orders-release-of-tobacco-retail-tender-documents, [Downloaded: 2015.10.21.]; Global Voices Online (Netherlands), 'Hungary: government limits FOIA transparency law', 8 May 2013. <http://advocacy.globalvoicesonline.org/2013/05/08/hungary-government-limits-foia-transparency-law> [Downloaded: 2015.10.21.]

³⁹Act CXXXV of 2013.

meantime as the government's commissioner to reshuffle the savings cooperatives sector was a co-owner of the single bidder, who, unsurprisingly, won the formally open tender. The government, due to clandestine "strategic" considerations,⁴⁰ gave green light to the corporatization of the Takarékbank Ltd. and exempted the process from the oversight of the Economic Competition Office. In sum, the government allocated public assets to augment the subscribed capital of a private savings bank which controls the savings cooperatives to later concede the newly acquired ownership rights to its cronies.⁴¹

16.4.3 *The System of Sports Finance*

The system of Hungarian sports finance (TI-H 2015; Ligeti and Mucsi 2016)⁴² introduced in 2011 serves as a third example of public authority being employed with the aim to promote political leaders' private obsessions. The government devised a new system of tax benefit scheme to channel significant amounts of financial support from businesses to the sports clubs and federations of spectator team sports. According to publicly available data, clubs of spectator team sports received tax-deductible company subsidies totalling HUF 204 billion (€649 million) in the span of four years, i.e. between 2011 and 2015. The imbalance between the amounts of subsidies is most apparent in the case of the Felcsút soccer club, which seems to be the most privileged recipient. This may not be independent of the fact that Hungary's Prime Minister, Viktor Orbán is an ardent football fan, and Felcsút happens to be his hometown. Over 1100 football clubs received subsidies, in the sum of HUF 74.5 billion (€240 million) over the span of four years. Almost one-third of this amount went to 13 soccer clubs, which thus received HUF 21 billion (€68 million). Among these privileged clubs one finds the soccer club of Felcsút, which absorbed over 12 per cent of all football subsidies equalling to HUF 9,2 billion (€30 million) in four years.⁴³ The imbalance between the amounts suggests that

⁴⁰ Government decree No. 48 of 2014.

⁴¹ For further analyses see: <http://budapestbeacon.com/public-policy/takarekbank-sale-completed-after-constitutional-court-green-lights-transfer-of-governments-shares/11082> and <http://budapestbeacon.com/public-policy/the-rape-of-takarekbank-crony-capitalism-at-its-very-worst/5520>

⁴² For details, see: http://transparency.hu/uploads/docs/sport_web.886.pdf

⁴³ This is the result of Transparency International Hungary's Freedom of Information Requests.

subjective considerations may override rational aspects in the grant award process. The huge differences are even more perplexing if we consider that the amount of subsidy the “median” soccer club receives a year is HUF 4.3 million (€ 13.6 thousand).⁴⁴ Under this system, the emergence of brokers in order to arbitrate between the recipient sport clubs and the donors (enterprises) may reasonably be supposed, which opens space of opaque and non-transparent lobbying.

The three examples enumerated shed light on how the disruption of control institutions results in systemic abuses of the rule of law and creates space for opaque lobbying. It also shows the systemic nature of undue influencing and corruption fostered by legal means. Common features of these cases are the exploitation of legislative power with the aim to promote partial interests and the lack of any effective domestic legal remedies. Both the tobacco kiosk regulation and the savings cooperatives regulation were challenged at law courts and at the Constitutional Court in Hungary and neither of these fora supported the petitions of previous owners stripped of their proprietary rights. This reflects how pivotal values of a democratic society and fundaments of a functional market economy, such as the rule of law, the sanctity of property rights and the prohibition for the government to arbitrarily interfere with current, existing individual contracts are outwit by political considerations.

16.5 CONCLUSIONS

In this chapter we aimed at describing the lobbying context, regulation and some aspects of its practices in Hungary. A possible distinction between lobbying and corruption might be that lobbying can be defined as an influence which does not immediately imply profits, as opposed to corruption, which precisely consists of activities aimed at providing direct gains (Giovannoni 2011). In Hungary scattered lobby regulations and their virtually non-existent enforcement facilitate undue influencing and open the door wide to shadow forms of interest representation. The opaque and obscure lobbying in many cases, some of them are mentioned above, can be considered as manifestations of corrupt activities as it entails the abuse of entrusted power for private gain. Lobbying in Hungary typically

⁴⁴This amount was determined by Transparency International Hungary by calculating the median value of subsidies in each of the four seasons and then using the average of the four to find out what an average soccer club receives each year.

happens in a non-transparent environment. Hungary is captured by its incumbent political elite and governed by a symbiotic conglomerate of the ruling Fidesz party and its closest, oligarchic allies. The peculiarities of Hungary's prevailing "party state capture" have distorted democratic processes and have called the fundamentals of a liberal-democratic society into question. The rise of rent seeking tendencies and the emergence of cronyism in the economy have been earmarked in Hungary by unilaterally designed legislations that hurt the rule of law thus the democratic participation and effect negatively the business environment. There is little hope that Hungary's lobbying landscape will in the near future be transformed into a more formalized and transparent terrain where different stakeholders have equal access to information and may reasonably expect that their counterparts behave impartially.

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Ireland

Gary Murphy

17.1 THE HISTORICAL AND POLITICAL CONTEXT

The independent Irish state came into existence in 1922, first as the Irish Free State and subsequently as Ireland, following the declaration of a new Irish constitution in 1937. It was titled as a Republic in 1949 following the Republic of Ireland Act of 1948. Before independence, Ireland was part of the United Kingdom of Great Britain and Ireland. The Irish state was born in violence and was the result of a war of independence with the British, which had begun in 1919. This was followed by a bitter civil war between those who supported the Treaty, signed in December 1921, establishing the 26 county Irish state which partitioned Ireland into North and South, and those who opposed it (O’Halpin 1999: 1).

Since its independence in 1922, Ireland has theoretically had a history of open government that encouraged participative debate with its citizens. Ireland adopted the British model of government on independence where the executive, composed of a cabinet of 15 ministers, led by the Taoiseach (prime minister), supported by civil servants, dominates the parliament. Formal responsibility for policy lies with the government and specific policy

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areas with relevant ministers. Power lies within the national government, which is responsible to the lower chamber of the parliament, DáilÉireann which currently has a membership of 166 TDs (TeachtaDala). The Dáil is a relatively young parliamentary institution having being created in 1919. It was based on the Westminster model and thus it shares many of the features of that model of parliamentary government (Murphy 2006: 437).

Ireland can thus best be described as a representative democracy where the government dominates parliament and has a central role in the policy-making process. Ireland also has an upper house of parliament, the Seanad, whose role is basically to act as a balance to the Dáil. The Seanad is not directly elected and its powers are quite limited, and for the most part, amount to little more than delaying legislation in the event of disagreement with the Dáil. Together both houses of parliament are known as the Oireachtas. In October 2013, the Fine Gael Labour coalition government held a referendum proposing to abolish the Seanad claiming it was an anachronistic institution but this was rejected by the people. The government's generally simplistic campaign based around reducing the number of politicians in the country, claiming that the Seanad was unreformable, was narrowly rejected by the electorate with 51.7 per cent voting against the proposal on a turnout of 39.2 per cent (MacCarthaigh and Martin 2015: 121).

The writing of a new constitution in 1937, by Eamon de Valera, leader of Ireland's then largest party FiannaFáil, strengthened the independence and legitimacy of the Irish Free State. This constitution (Bunreacht na h-Éireann) established the fundamentals by which Irish society is governed to this day. The constitution can only be amended by referendum and since its inception there have been 40 proposals put to the people of which 28 have been passed and 12 defeated. The constitution describes the government as 'collectively responsible' to the Dáil for all its decisions and actions. This principle lies at the heart of cabinet government in Ireland. In theory it means that all members of the cabinet are bound by, and must stand over, all cabinet decisions. Cabinet debate can, however, be extremely contentious, particularly in the context of coalition governments; the norm in Ireland since 1989. Yet once cabinet has taken a decision, it becomes a government position to which all members of the cabinet must give public support. In 1993, the Supreme Court addressed the issue of cabinet confidentiality and decided that while the government was accountable to parliament for decisions taken at cabinet, it was not required to disclose cabinet discussions (MacCarthaigh 2005: 207).

At the head of the cabinet is the Taoiseach and that position is considered to be one of the strongest of all heads of government in parliamentary democracies. The power of the Taoiseach stems from the control he has over the composition of the government, the conduct of cabinet business, and also on his influence as the leader of the main political party. The Taoiseach's power as chairman of the cabinet is reflected in the fact that no item can be put on the government agenda without his approval (Elgie and Fitzgerald 2005). The constitution provides a basic framework under which governments are formed. The Dáil votes a government into existence by first choosing a Taoiseach and then endorsing his choice of ministers who are ultimately appointed by the President (O'Malley and Martin 2010: 296). As a result, the nominee of the political party in the majority, or of a coalition of parties, will inevitably be elected as Taoiseach. The powers of the Taoiseach in areas such as the appointment of ministers, policy making, and the exercise of patronage are then used to control and influence elected party representatives.

In contrast with many other European Union countries, Ireland has a very weak system of local government due to strict central control, a lack of financial independence, and a narrow functional range. The functions of local authorities are limited to a small number of areas such as housing and building, road transportation and safety, and water supply. In 2015, the government removed the water-supply function from local government and set up a quango *Irish Water* to deliver such supplies. Although initially met with massive resistance and non-payment of bills, the establishment of *Irish Water* ultimately weakened Irish local government even further. Local authorities carry no responsibility for such areas as education, health, civil defence, and social welfare (Collins and Quinlivan 2010: 363–4). The state's birth in violence has led to a system of governance where strict centralised control was deemed necessary for a small and troubled state with a new government seeking both authority and respect. The new Irish state simply reinforced the centralism of the British government and the system of local government has not really developed to any significant degree since. Local government is effectively managed through a combination of a powerful manager at the head of all local councils, and locally elected representatives who discuss issues at council level and negotiate a budget for implementation in conjunction with the council manager (Collins and Quinlivan 2010: 364–5).

17.2 POLICY MAKING AND LOBBYING

The intersection between the policy-making process and those who want to influence it is an issue that has come to the fore in Irish public life over the past two decades. A number of tribunals of inquiry investigating payments to politicians have shown that the Irish governmental process was not as open and transparent as previously believed and that it was in many ways corrupt (Byrne 2012). In this context, the activities of individuals or groups attempting to influence national and local politicians, as well as public officials, have come under particular scrutiny.

Two levels of lobbying of parliament are apparent in Ireland. One seeks to influence national policy, the other local or constituency issues. While members of parliament are lobbied by the full range of interest groups, they are most sensitive to representations that have a constituency resonance, either because these concern a local issue, a national issue with a local dimension, or are simply so emotive that they can affect the electoral preferences of a significant number of voters. In this context, it is important to note that Ireland operates a proportional representation system of government whereby members of the same party compete against each other as well as other parties in national and local elections. The electoral system used in Ireland is proportional representation by means of the single transferable vote (PR-STV), a system unique in Europe to Ireland and Malta, to elect the lower house of its national parliament. This system has fostered a significant localism in Irish politics, which has played a major role in determining the relationship between individual TDs and the wide range of interest groups who lobby them. In essence, the defining feature of PR-STV is its focus on the candidate rather than the party (Gallagher 2005: 524–6).

Interest groups play a central role in Irish society by theoretically acting as a conduit between citizens and the government. Interest groups are, however, much more than simple conduits and lobby in the expectation that they will receive some tangible benefits for their efforts. In that context, the access and expectation such groups have to, and on, Irish policy makers can be of great significance for policy outcomes in the Irish state. Interest group activity in Ireland spans numerous strands and can be identified on three levels: social partnership, where sectional groups, such as trade unions, employers, and farmers' interests, had central roles in the economic governance of the state between 1987 and 2009; cause advocacy where groups attempt to influence policy outcomes in specific areas

such as the environment or on questions of morality such as abortion; and private lobbying where a feature of policy making in Ireland in recent years has been the increasingly vigorous lobbying on behalf of business or private interests, in an attempt to influence specific government policy (Murphy and McGrath 2011: 71).

Interest groups pursue their goals through a number of different channels. These include public and private pressure on government, individual politicians, and other interest groups, and the use of the mass media including a number of increasingly influential instant access news media websites. Yet despite all the other avenues open to interest groups, it is still the Dáil and its members, who remain the prime focus for such lobbying principally because parliament is the centre for information, access and publicity for such groups. TDs have access to insider information, can generate publicity, particularly given the televising of Dáil proceedings, and are in a position to put pressure on governments and individual ministers by tabling parliamentary questions.

17.2.1 *The Professionalisation of Lobbying*

Lobbying the government in Ireland has become a major industry in itself. The major sectional economic interests such as the Irish Farmers Association, the Irish Congress of Trade Unions, and the Irish Business and Employers Confederation have representatives on the boards of state companies, on various advisory and review bodies, and lobby both at the national and European level. They have adequate resources to carry out their own research and to analyse relevant decisions that might be taken at various levels. They have excellent access to the bureaucracy at both the national and international levels and they lobby continuously (Murphy 2010a: 340). Cause-centred groups (those who advocate for a specific cause as distinct from those with a sectional base) have been significant players in the Irish policy process since the early 1980s. Whether they are ad hoc groups formed to press for a single measure, as has become prevalent in the area of moral politics, for instance divorce and anti-abortion legislation, or organisations with a permanent mission, such as Greenpeace, their activities and influence have become much more visible (Murphy 2010a: 343). The campaign during Ireland's referendum on same-sex marriage in May 2015 was predominantly carried out by such interest groups. On the yes side the group *Yes Equality: The Campaign for Civil Marriage Equality* operated as an umbrella organisation for a number of

smaller groups and described itself as an independent nationwide civic society campaign working to secure a Yes vote in the Marriage Equality Referendum. The no campaign was much smaller and mainly consisted of a group called *Mothers and Fathers Matter* which was specifically set up to campaign against the government's Children and Family Relationships Bill of 2015 and the same-sex marriage referendum. Such interest groups have also become increasingly influential and vocal during referendum campaigns on European treaties and were active on both the yes and no sides during the two referendums on the Lisbon treaties in Ireland in 2008 and 2009 (Murphy 2010b: 577).

Up to very recently, Ireland had literally only a handful of lobbyists or public affairs consultants who catered mostly for foreign business interests wishing to operate in Ireland. Lobbying politicians is now, however, emerging as a specialisation within public relations and legal firms. In essence, the rise of the lobbyist has been one of the most striking developments of Irish political life since the late 1990s. The practice is also growing of firms employing people with direct experience of the political world. The list of professional lobbyists now includes former government press secretaries, former officials of all the major parties, some ex-TDs, and a host of former journalists. In general, lobbyists in Ireland are of the view that what they are doing is providing advice and access to the decision-making process for business people who are ignorant of the public-policy process and need a specialist to introduce them to the myriad workings of government. There are about 15 to 20 companies who offer such lobbying services within a wider communications and public relations brief.

Lobbyists talk of trying to convince their clients that on many occasions, if not all, there is no point in talking to the relevant government minister and that it is more important to talk to the senior civil servant who is handling a particular file. One Irish lobbyist, however, is of the opinion that it is the ear of the Minister, which is the key. He maintains that politicians are swamped with paperwork and that the case has to be made to them in a personal way: 'Our job is to get our client into a position to make their case but at the end of the day the decisions are made by the politicians themselves' (Murphy 1999: 252). While lobbyists deny that it matters who is in power, many major companies are now covering their options by having different lobbyists cover approaches to different political parties.

Such developments led the Public Relations Institute of Ireland (PRII), the organisation which promotes the professional practice of

public relations in Ireland, in December 2003, to adopt a specific code of professional practice for public affairs and lobbying. For the PRII, professional public affairs practice and lobbying are proper, legitimate, and important activities, which ensure an open two-way communication between national and local government including the Oireachtas, and the citizen. The PRII which itself reckons it has about 1000 members also believes that the existence of a defined code for the practice of public affairs and lobbying serves to enhance the integrity of the democratic process. Yet public relations lobbyists were up until the Regulation of Lobbying Act 2015 not obliged to make it publicly known whose interests they were representing under this code of conduct. The code also did not require PR professionals to tell the subjects of their lobbying exactly who they were representing. For the PRII ‘public affairs practice’ is taken to mean ‘all activity associated with representing the interests of a client or employer in relation to any matter of public policy’ including the provision of information and ‘professional advice’ and the ‘making of representations, or the advocacy of a point of view, to any persons or institutions’ (PRII 2003).

Thus, lobbyists themselves clearly recognise that ‘lobbying involves more than simply direct contact with policy makers, and that it does encompass information gathering and dissemination’ (McGrath 2011: 131). PRII members also subscribe to two other codes—the European Code of Professional Practice, adopted by the European Public Relations Confederation in 1978 and commonly known as the Code of Lisbon, and the International Code of Ethics, also known as the Code of Athens. Moreover, the PRII is a member of the Global Alliance for Public Relations and Communications Management, the confederation of the world’s major PR and communication management associations and institutions, representing about 160,000 practitioners and academics around the world. The PRII is also active in professionalising the lobbying and public relations industries and offers professional qualifications for entrants into the profession and for experienced practitioners. It offers an accredited PRII Diploma in Public Relations which it describes as the premier professional qualification in public relations in Ireland.

17.2.2 The Regulation of Lobbying

In March 2015, the coalition government of Fine Gael and Labour passed the Regulation of Lobbying Act 2015 which was then signed into law by the Irish President Michael D. Higgins. The purpose of the Act is

to provide for a web-based Register of Lobbying to make information available to the public on the identity of those communicating with designated public officials on specific policy, legislative matters or prospective decisions.¹ The Act also provides restrictions and conditions on the taking up of certain employments by certain designated officials for a specified period of time where a possible conflict of interest arises; the so-called cooling-off period (Chari et al. 2010: 4). The Irish state also appointed a Head of Regulation of Lobbying in the summer of 2015, Sherry Perreault, who had been a former senior director in Canada's Office of the Conflict of Interest and Ethics Commissioner.

Irish political parties had been actively considering the issue of regulating lobbyists for some time. Starting in 1999, the Labour Party introduced four private members' bills on this issue. None reached the statute book. In 2007, the newly elected Fianna Fáil, Green Party, Progressive Government coalition agreed in its programme for government to 'Consider legislation to regulate lobbyists'.² However, when the programme for government was renewed in late 2009, in light of changed economic circumstances, the pledge appeared to have become more concrete, and stated: 'we will introduce a Register of Lobbyists, including professional, corporate and NGOs.'³ By the time this government fell in February 2011, no such legislation had been introduced.

In March 2010, the then main opposition party, Fine Gael, published a comprehensive political reform plan entitled *New Politics*.⁴ This document called for substantial political and constitutional reform and provided specific details on how lobbying would be regulated under a Fine Gael led government (Murphy et al. 2011: 115). Fine Gael and Labour won a crushing victory in the February 2011 general election in which the governing Fianna Fáil party, which had dominated Irish politics since its foundation, lost a record 58 seats out of a parliament of 166 and only returned 20 TDs. Its collapse was almost entirely due to the country's dire economic situation. The new government promised in its programme

¹<https://www.lobbying.ie/about-us/regulation-of-lobbying-act>.

² See the Fianna Fáil, Green Party, Progressive Democrat Programme for Government 2007-2010 at http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/Eng_Prog_for_Gov.pdf at p. 87.

³ See the renewed Fianna Fáil—Green Party Programme for Government at http://www.taoiseach.gov.ie/eng/Publications/Publications_2009/Renewed_Programme_for_Government,_October_2009.pdf at p. 33.

⁴<http://www.finegael.org/upload/NewPolitics.pdf>

for government to introduce ‘a statutory register of lobbyists, and rules concerning the practice of lobbying’.⁵ This promise was fulfilled in 2015 with the publication and passing of the Regulation of Lobbying Act. The current author acted as an advisor, on a pro bono basis over the past three years, to the Government Reform Unit of the Department of Public Expenditure and Reform which initiated the legislation. As the Minister for Public Expenditure and Reform Brendan Howlin has commented on many occasions during the debate prior to the bill’s enactment and in subsequent discussions on it, the main focus of the act is for the public to know ‘who is contacting whom about what’.⁶ Lobbyists—the ‘who’—are defined in the Act as employers or their staff (where the employer has more than ten employees), third-party lobbyists (those who are paid by a client to lobby on the clients behalf), or anyone lobbying about the development of zoning of land. The lobbied—the ‘whom’—are referred to in the Act as designated public officials and are defined in the Act as, Ministers and Ministers of State, members of DáilÉireann and SeanadÉireann, members of the European Parliament for constituencies in the State, members of local authorities, special advisers, and senior civil servants. The matters about which lobbyists are communicating with the lobbied—the ‘what’ are defined in the Bill as communications about the initiation, development or modification of any public policy or programme, the preparation of legislation, and the award of any grant, loan, or contract.⁷ While it is only in its infancy, the Regulation of Lobbying Act 2015 has been broadly welcomed by both: politicians, interest groups and the general public alike as being an important step in ensuring that in Ireland transparency is an important element in Irish policy making.

17.3 CONCLUSION

At its heart, Ireland remains a small society, with a peculiar electoral system, which fosters a form of localism unsurpassed in Western Europe. Such localism benefits the small number of influential Irish lobbying firms, certainly no more than a dozen, who have copperfastened their position by

⁵ See the Fine Gael Labour Programme for Government 2011, at http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf p. 20.

⁶ <http://www.per.gov.ie/minister-howlin-announces-publication-of-registration-of-lobbying-bill-2014>

⁷ As above.

employing former political actors to ensure access to the lobbying market. Discontent within the Irish electorate means, however, that the traditional lobbying market might well change into the future as the old political certainties which characterised Irish politics since its independence are no more. Political competition is now more congested than at any time since the Irish state was founded. The old ties which tied citizens to political parties were ultimately cut as a result of the economic crash which resulted in Ireland seeking a bailout from the International Monetary Fund, European Union, European Central Bank Troika in November 2010. In that context, while we can expect the lobbying industry to remain indigenously Irish for some time to come, it is by no means certain as to what politicians such lobbyists will in fact be lobbying over the next decade. In any event due to the Regulation of Lobbying Act of 2015, we can also expect that unlike at any other time in the past such lobbying will be open and transparent.

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Italy

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18.1 INTRODUCTION

In Italy, the word “lobby” generally evokes something obscure, illegal or somehow having to do with corruption. In the collective imaginary, this term is synonymous with dishonesty and improper mediation. The reasons for this negative perception of lobbying can be attributed to three different aspects: philosophical, historical-political and legal.

First of all, the Italian legal culture has been highly influenced by the so-called Jacobin constitutionalism and by the “mythology” regarding the concept of “general interest”, as formed in the French revolutionary legal vision (Volpe 2000; Rossi 2002; Di Giovine 2004; Ridola 2005, 293–296). This conception was founded on the idea that the general interest was something *pre-existing* to the legal system, and whose concrete manifestation must be the law, according to a substantive vision of the Good, the Rational or the Public and Common Interest itself (Bitonti 2017).

Embodying this Jacobin-substantive vision, the French law called “Le Chapelier” (1791) is the finest symbol of this conception, representing the purity of the Legislator, banning citizens from “coming together to defend their common interests”, considering that “there is not a particular interest or the general interest” but only that of the State, so that “it is

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not permitted to anyone to inspire citizens with an intermediate interest, separating them from the public affairs within a spirit of corporation” (Colavitti 2005, 28). For a long time, this vision of society put the State in a situation of absolute supremacy over its citizens (Ridola 1987; Carrè De Malberg 1931; Maulin 2003; Cervati 2009; Decaro 2009); it was a State’s duty to exclusively decide what was in the general or Public Interest, and any confrontation with the organized civil society was considered unnecessary.

Secondly, from the adoption of the new republican Constitution after World War II (1948) until at least the 1990s, the prevailing idea was that only political parties could properly represent the citizens’ interests. According to this approach, political parties were the only legitimized “tools” for citizens’ participation in the national political process (Panunzio 1982; Rossano 1990; Elia 2006).

Within such defined framework, any intervention in the decision-making process not stemming from the accepted legitimate (and sometimes even illegitimate) channels represented by political parties was considered improper interference. Thus, it is not surprising to learn that very prominent scholars, adhering to a narrow interpretation of article 49 of the Constitution (the article concerning political parties), considered pressure groups as something to be kept outside the Parliament in order to preserve its “purity” (Zagrebelsky 1994) or as “the sickness of the representation system and an evil to be fought and deleted” (Esposito 1958, 201).

Thirdly, the negative perception of lobbying is also due to a legal framework of non-application of a certain number of rules introduced in order to make the interaction between public decision-makers and lobbyists transparent. Many rules in Italy govern the relations between lobbies and public decision-makers, but these rules are basically disregarded, making lobbying a completely obscure phenomenon, as much as the entire decision-making process (Petrillo 2015).

18.2 THE REGULATION OF LOBBYING IN ITALY

18.2.1 *The “Snake Model”: Rules and the Failure of Implementation*

Italy has no systematic regulation of lobbying. Nevertheless, over the last few years, legislation that seeks to guarantee transparency and participation in the decision-making process has been passed.

However, with regard to lobbies, there is a strong contradiction in the Italian legal system. The “snake model” theory (Petrillo 2011) explains the contradiction by comparing lobbying regulations to a schizophrenically slithering snake. Just like a snake, the rules and regulations on participation creep into Italy’s legal system because they are scattered across different provisions on different topics. Their implementation, too, can be defined as schizophrenic because, most of the time, they are disregarded by the very same legislator who adopted them.

Between 1948 and 2014, 54 bills relating to pressure groups were proposed in Italy. They reflect how perceptions of lobbying have evolved in the legislature and make it possible to identify three different phases in attempts to regulate the activity.

The first phase runs from around 1976 to 1988. During that time, bills were characterized by the confusion between lobbying and public relations and a very negative view of lobbying. Lobbies had to be regulated because their actions had to be restricted.

The second phase began in 1988 with an interview of the former Minister for Institutional Reforms, Antonio Maccanico, and ended 18 years later in 2006. In 1988, the Government had at last become aware of lobbies and Minister Maccanico unveiled a bill to regulate them together with a far-reaching reform of the institutional system. According to Maccanico there were no doubts: “[T]he lobbying issue is arising and we have to face it by making pressure groups public and legal, just as has been done abroad. Above all, we have to change the electoral and party financing systems.”

Every bill proposed during the second phase repeated the confusion between lobbyists and public relations practitioners, reaffirming the negative perception of lobbying.¹

The third phase was ushered in with an initiative of the former Minister for Implementation of the Political Schedule, Giulio Santagata. In November 2007 he proposed a bill on the representation of special interests (Bill no.1866). Although Parliament did not approve it, it marked a turning point in the regulation of lobbying: subsequent bills were very similar to Santagata’s, even reproducing its explanatory report.

Santagata’s bill met a number of important requirements. First, it came up with a definition of lobbying, as any activity not solicited by public officials and conducted by individuals or firms who represented special interests through proposals, requests, suggestions, studies, research, analysis,

¹Fotia (1997, 150–159) and Garella (1994, 94–ff.).

or any initiative or communication—oral, written, or electronic—in order to bring legal and special interests to the notice of public services.²

The second requirement met by the bill included duties and rights for advocates of special interests. They had to register in a special register and draw up an annual report on their lobbying activities and expenses. It was also stated that they could present proposals, requests, suggestions, studies, research, analyses, and documents in accordance with procedures established by the public services.

Finally, Santagata's bill underlined that it was not possible to regulate pressure groups only to curb them without introducing rules that applied to public service. The bill did not only set out lobbyists' obligations, it also recognized their rights, such as the right to dialogue with authorities. Furthermore, article 7 of the bill required public services to mention lobbyists' activity in the provisions' explanatory reports in order to disclose the reasons of their choices.

Then, at the end of the Council of Ministers' meeting on May 24, 2013, the former President of the Council of Ministers, Enrico Letta, presented a briefing note containing guidelines on the regulation of lobbying activities. The President tasked a number of experts with developing a new executive bill to legitimize lobbying and regulate all the related transparency and integrity issues. On July 5, 2013, the Council of Ministers decided to postpone the examination of the bill (drafted by experts but not published) because too many problems had arisen. Following comments in the press,³ there is still no agreement upon any specific regulation of lobbying. Nevertheless, the new President of the Council, Matteo Renzi, emphasized in the inaugural address, the need to ensure the transparency of the decision-making process and, consequently, to more consistently regulate the relationship between decision-makers and stakeholders.

No bill on lobbying has ever been approved, and of those that have been presented, only seven were discussed by the Assembly.

18.2.2 *Lobbying in the Italian Constitution*

In Italy, lobbying activities have been “basically ignored by the legislator. Not because lobbies did not exist here – far from it – but because of the concern that to regulate pressure groups was equivalent to legitimizing

² Art. 2, letter e), bill n. 1866.

³ *La Repubblica, Il Sole 24 Ore, Il Corriere della Sera*, July 6, 2013.

them. And this corresponds to a sort of curious reluctance to recognize that the King is naked” (Frosini 2000, 228). The lobbies consequently became a real legal taboo: not worthy enough to be analysed from a legal point of view, but at the same time very well known in newspapers. However, it is now peacefully recognized the fact that this activity represents the expression of a constitutional right. In this respect, there have been some decisions of the Italian Constitutional Court that since 1974 underline how influencing political decision-makers has to do with the equality and the participation of citizens in the democratic process, both safeguarded by the Italian Constitution (Constitutional Court, decisions No. 1 and No. 290 of 1974, and No. 379 of 2004). A number of articles of the Italian Constitution legitimize lobbying activities, although not explicitly. We can interpret in such way article 2 and article 18 of the Constitution, recognizing the constitutional role of the social formations and ensuring the right to free association; or article 3, when it states (second paragraph) an actual right to participation; article 49 as a source of “the right to permanent participation that exceeds and transcends the right to participation guaranteed by the right to stand for election” (Crisafulli 1969, 116); article 50, recognizing the right to present petitions to both the Chambers in order to request legislative measure or to express collective needs (not to be confused with the US *right to petition*); article 71 on the legislative initiative; article 75 on the abrogative referendum as well as other dispositions involving a portion of the electorate: articles 54, 97 and 98, where it is determined that civil servants (*rectius*; the public decision-makers) must fulfil their functions with discipline and honour, with effectiveness and impartiality and at the exclusive service of the nation (in the same way as established in article 67 for the MPs).

18.2.3 *Lobbies and the Parliament*

Although a comprehensive specific regulation of lobbying does not exist in Italy, there are many rules governing the participation of pressure groups in the decision-making process.

As far as current rules are concerned, let us first look at the Rules of the Chamber of Deputies (article 144) and the Rules of Senate (article 48). According to these provisions, every parliamentary committee may proceed to audit representatives of public and private organizations, territorial entities, sectorial associations or experts in the field, in order to acquire news, information and relevant documents for the parliamentary activity.

According to article 79 of the Rules of the Chamber of Deputies, the procedure for the examination of a bill in Committees must start with a preliminary examination including the acquisition of the necessary information to verify the quality and the effectiveness of the provisions in discussion. Where actually implemented, this legislative preliminary activity represents an important institutionalized moment of exchange between public decision-makers and stakeholders, where interest groups can represent their needs, and where decision-makers can get highly specialized and technical inputs and opinions, improving the quality of the law-making process overall. The theme of the “participation of external stakeholders to the decision-making process is linked to the quality of rule’s formation: under this direction also the ‘pressure’ activity exerted by the system of the organized interests [...] can contribute to a more ‘faithful’ interpretation of the common good in a pluralistic society” (Torretta 2007, 86).

The physical access to the Parliament buildings is instead regulated by customs. There are no specific rules enforcing an equal right of access to all the stakeholders.

The selection is totally discretionary although the competence to decide formally belongs to the “Security Office” of the Chamber.

18.2.4 *Lobbies and the Executive*

As concerns the Executive branch, law No. 50 of March 8, 1999 extended the requirement of the preliminary analysis of provisional legislative measures also to the Government. In particular, article 5 of the law provided, initially “on an experimental basis”, a discipline consisting of the prior analysis of feasibility of the normative acts promoted by the Government (Petrillo 2011, 340–348). According to these rules, the Government has the obligation to draw up a technical-normative analysis (TNA), necessary to verify the impact of the proposed regulation on the legal system in force, and a Regulatory Impact Analysis (RIA), in order to assess the effects of the normative on public administration, citizens, companies, indicating the precise objectives of the proposed regulation together with the alternative options and a cost-benefits analysis of the measures in discussion. In order to prepare this last relation, the attachment B of the Decree of the President of the Council of Ministers, of March 27, 2000 (on the basis of article 1, par. 2, of the law No. 50, 1999) introduced the possibility, for the proposing administration, to start public consultation procedures with all the potential beneficiaries, which must be open and transparent.

The “experimental” phase of the RIA concluded with the law No. 246 of November 28, 2005, which laid down a “fresh” and “permanent” discipline in article 14, par. 14.

The article 14 of the law No. 246, 2005, abrogating article 5, par. 1, of the law No. 50 of March 8, 1999, specified that RIA consists of “the prior evaluation of the effects coming from the proposed bill on citizens and companies, on the organization and the functioning of the public administrations, though the comparison among alternative options”.

In order to implement the article 14, the Decree of the President of the Council of Ministers, No. 170, of September 11, 2008, concerning the “Regulation on the implementation discipline on the Regulatory Impact Analysis (RIA)”, specified that RIA concerns the Government’s normative acts, included the one adopted by the single Ministers, the inter-ministerial measures and the legislative bills coming from the Government (article 2), excluding the constitutional bills, the normative acts regarding internal and external security and the bills of ratification of international treaties that do not result in expenses or in the establishment of new offices (article 8), as well as other measures described, for reasons of necessity and urgency, by the Department of Legal and Legislative Affairs of the Presidency of the Council, unless it is not specifically requested by the Parliamentary Committees (in this case, the RIA has to be done). The RIA report, according to the article 6 of the Decree, must give an account of the activities conducted during both the preliminary and cognitive phases, expressly indicating “the modalities and the results of the consultations with the stakeholders”.

Even if many provisions have been introduced (of different type and level), they say nothing about the actual modalities to consult the stakeholders. As a result, each central Administration has taken completely autonomously steps, providing, for example, online consultations opened to anyone interested (such as in the case of the Ministry of Education, University and Research) or targeted consultations behind closed doors with the aim to involve experts chosen by the government itself, on the model of parliamentary hearings.

Within this framework it is worth remembering the initiative taken by the Ministry of Agricultural, Food and Forestry Policies in 2012, which created a register of lobbyists establishing procedures for permanent consultations with them,⁴ initiative unfortunately interrupted the

⁴That register was created with Ministerial Decree No. 2284 of February 6, 2012. Inspired by the consultation procedures of EU Commission (Petrillo 2013, 75–93), the Decree regu-

following year, mainly because of the lack of political support and the prevalence of the prejudices on lobbying.

18.3 STRATEGIES OF LOBBYING

Lobbies in Italy operate through *back office* and *front office* activities, using direct and indirect techniques of political influence.

After a preliminary phase where all the interests involved (those who support or oppose a certain position) are mapped, it is essential to correctly identify the formal centres of competence and those who actually make the decisions. Within a context, such as the Italian one—characterized by a multi-level governance and by different decisional centres (European Union, State, Regions, Municipalities)—it is not difficult to get lost among a multiplicity of policy networks.

After these *back office* preliminary activities, the *front office* phase focuses on framing an issue and delivering the proper message in the actual contact with public decision-makers. It represents a very delicate moment that demands a complete comprehension of important psychological, political and communicational aspects, so that the right pressure may be exerted in the right situation. On this regard, the ability of coalition-building and grass-roots lobbying plays a very important role (Graziano 2002).

The Parliament is usually the centre of highly intense lobbying activities, because most of the conflicts also arising from the government's action are discussed within the Assembly, where the greatest number of interests can be addressed.

In times of intense conflict between political parties, the Italian political system saw an increasing relevance of some think tanks such as Italianeuropei, Magna Carta, Aspen institute: these usually present quite distinct political affiliations but escape the more rigid discipline concerning political parties (although, there are still vast lands of shade as concerns the discipline of political financing, changed in 2014 with the abolition of State funding to parties, and with the new regime starting completely in 2017, whose effects are yet to be observed).

lated (for the first time in Italy) the participation of stakeholders in the preparation of bills and draft regulations. The provision was fundamentally based on two points: a list of lobbyists (defined as those subjects, natural or legal persons, who professionally exercise an activity of influence on the public decision-making process) and a procedure for permanent consultation. At the end of the procedure, an RIA would illustrate why some lobbyists' proposals had been approved or not.

Therefore, front office lobbying activities are based not only on the organization of face-to-face meetings, but are also based on the promotion of prestigious think-tanks activities and the support of parliamentary inter-groups, composed by different MPs with a common interest.

18.4 TRAINING AND PROFILE OF ITALIAN LOBBYISTS

It is not easy to clearly identify a lobbyist's profile. There are lobbyists "for hire" who work in lobbying agencies, law firms or consultancies (such as FB & Associati, Cattaneo Zanetto & Co, Open Gate Italia, Reti, Utopia, or the national branches of bigger communication agencies such as APCO, Weber Shandwick or Burson-Marsteller) or in-house lobbyists, who work in top-level staff positions or in line positions as directors or managers of government relations or public affairs departments within other organizations, such as big companies (Eni, Enel, Fiat, Finmeccanica etc.), NGOs (Legambiente, Cittadinanzattiva, Arcigay, etc.) or sectoral and economic organizations (Confindustria, trade unions, Coldiretti, Confartigianato, etc.).⁵

Their training is quite different, as many have a background education or previous experience in the fields of politics, journalism, communication or law. This can easily be explained as all of these competences are quite necessary in the lobbying profession. There is not a single or consolidated path in the training of the Italian lobbyists then, even if there are a few postgraduate courses and Masters dedicated to the lobbying profession, provided by universities (LUISS or LUMSA in Rome, IULM in Milan) or other centres (Sole24Ore, Running), which started to offer such courses from the mid-2000s.

The presence of formal educational paths dedicated to lobbying can be considered as one of the two signs of growing professionalization in the field, the other being the presence of professional organizations developing a variety of activities.

Given the lack of specific regulation or registers, it is not easy to quantify the number of lobbyists operating in Italy. According to a research published by Open Gate Italia in 2012, there are around 1500

⁵Those working in the latter couple of types (NGOs and sectoral and economic organizations) would probably disagree on their definition as lobbyists—even if lobbying is exactly the core of what they do—because of the strong prejudice concerning lobbies and term "lobbying" in the country.

professional lobbyists in the country, who represent an annual turnover of approximately 150 million euros, and nearly 1800 Italian lobbyists working in Brussels (Honorati and Grimaldi 2012). An estimate could also be based on the number of associates of the few professional associations dedicated to lobbying and public affairs, namely Il Chiostro, the association of lobbyists and experts in the field, created in 2008 and having around 60 members, and FERPI (*Federazione Relazioni Pubbliche Italiana*), the association of public relations professionals created in 1970, with around 850 members today; both are voluntary associations though, and there are also professionals who do not join either.

Nonetheless, lobbyists enjoy a very bad reputation in the country (Transparency International Italia 2014), especially because of the use (or misuse) of the word by the media. Some empirical research explored the coverage of the Italian press on “lobbying” (Mazzoni 2012; Mazzoni 2015).

The big number of instances where newspapers refer to “powerful” and “influential” lobbies, or to their dangerous or illegal connotations, is probably not surprising, and certainly does not help to go beyond the misrepresentation of the term in Italian culture. Indeed, it is a strong sign of the philosophical and cultural problem which probably requires more than a national specific regulation in order to overcome.

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Latvia

Valts Kalniņš

19.1 THE POLITICAL SYSTEM

Latvia is a parliamentary democracy. It has 100 members in its unicameral parliament (*Saeima*) who are elected in a proportional representation nationwide election once every four years. However, the last regular elections of 4 October 2014 took place after a shortened parliamentary tenure due to the pre-term dissolution of the legislature in 2011. The Saeima has six political factions, three of which form a centre-right government coalition, with 16 standing committees as of June 2015.

The Cabinet of Ministers is responsible to the legislature and the Saeima can express its non-confidence in the Cabinet or individual ministers as appropriate and take direct action. The Cabinet comprises 13 ministers and the Prime Minister.

Latvia has a multi-party system with 75 registered political parties or unions of political parties (*Uzņēmumureģistrs 2015*). Not all of them participate in national elections though. Thirteen lists of candidates and parties were present in the last elections. The election turnout was 58.85 per cent and six lists won by being over the electoral threshold of 5 per cent—

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the Social Democratic Party *Harmony*, the party *Unity*, the Union of Greens and Farmers, the national coalition *All for Latvia/For Fatherland and Freedom/LNNK*, the Regional Alliance of Latvia, and Latvia from the Heart (Centrālāvēlēšanu komisija 2014).

Some commentators believe that Latvia's political culture has not caught up with the development of the country's democratic institutions. In particular, it is suggested that a significant part of Latvian society feels alienated from the state and is rather inactive politically (Ijabs 2014, 224). Meanwhile, prejudices exist against lobbying. In 2014, a representative survey revealed that 52.4 per cent of surveyed Latvian citizens viewed political decision making under the influence of a lobbyist as corruption (Kalniņš 2014, 192). Taken together, these characteristics tend to leave decision making in the hands of rather narrow circles of people while providing a disincentive for lobbyists to act transparently due to reputation risks.

19.2 MAIN TARGETS OF LOBBYING EFFORTS AND MODES OF OPERATION OF LOBBYISTS

As can be expected, lobbying is taking place mainly in relation to those areas of policy where there is extensive regulation (for example, banking, gambling, and alcoholic beverages), public investment (for example, infrastructures) or both (for example, energy). According to research by Mārtiņš Krieviņš, the companies that use lobbying come from the usual key sectors such as the 'pharmaceutical industry, developers and building industry, retailers, waste management industry, information and communication technology industry, non-governmental organizations, food processing industry and others' (Krieviņš 2012, 25). As is common across Europe, lobbying activity takes place on behalf of or by individual players of any major sector of the economy, which is subject to public regulation. Krieviņš also notes a trend of smaller players in particular sectors of the economy increasingly demanding professional lobbying services (Krieviņš 2012, 25). A particularly important focus of lobbying in Latvia is public procurement, for example, where private companies participate in developing technical specifications for tenders (Alksne 2014, 27).

The five to six key ministries connected with economy and business regulation as well as the Parliament and its Standing Commissions are the most frequent targets of lobbying activity; less commonly the Cabinet

of Ministers, the subordinated public institutions and local governments (Krieviņš 2012, 25).

Regarding lobbying methods, in a 2004 study, the financing of political parties was considered one of the most effective methods for lobbying in Latvia. A lobbyist can also join and be actively involved in a political party. Such pseudo-lobbying (because the distinction between the lobbyist and lobbied officials becomes blurred) is more likely in situations where parties serve as vehicles for particular private interests rather than broader platforms of the public interest (Kalniņš 2005, 35–6). A recent study reinforces the importance of party financing as part of lobbying with parties soliciting campaign donations in exchange for not amending legislation in areas such as excise duties, gambling, public procurement, environment, and construction (Alksne 2014, 27).

Otherwise, the default lobbying technique appears to be ‘continuous and persistent pressure, for example, constantly getting in touch with the deputies and reminding them of the particular issue’ (Kalniņš 2005, 36–7). Occasionally this may also involve the use of illicit means of influence (bribery), although the prevalence of such means in direct relation to lobbying activities is not known. Certainly, when lobbying is conducted within the confines of legality, then the formulation and putting forward of convincing arguments supporting or opposing a particular decision, form the core of lobbying activities. As in many European countries occasionally lobbyists even draft policy documents of legislative proposals and the relevant public officials use them as ready proposals. Although it is impossible to describe exactly how often it happens but it is surely one of the most effective lobbying methods (Kalniņš 2005, 37).

The increase of communication in the use of social media, for example, *Twitter* and *Facebook* has brought about a number of new opportunities for contacts between lobbyists and decision makers. In this regard, the director of TI-Latvia Gundars Jankovs shared his experience of his in vain attempts, for two weeks to arrange a meeting with the Minister of Environment and Regional Development through official contacts in the Ministry. They decided to approach the minister directly in *Twitter* and in ten minutes’ time they were able to agree on a meeting (Alksne 2014, 25).

Lobbying strategies can also involve the utilization of various public consultation mechanisms, carrying out of educational activities as well as striving to achieve coverage in the mass media. Although several think tanks operate in Latvia, their utilization as vehicles for commercial lobbying does not seem to be significant.

19.3 DEVELOPMENT OF LOBBYING INDUSTRY

Professional hired lobbying is a small industry in Latvia and lobbying does not have any official status as an occupation. A few public relations companies indicate lobbying, public affairs or representation of clients vis-à-vis public institutions as one of their services, for example, BPS PR (www.bps.lv), Deep White (<http://deepwhite.lv/pakalpojumi>), Hauska & Partner (www.hauska.com/lv), Hill+Knowlton Strategies (www.hkstrategies.com/global-presence/rija), Mediju tilts (www.medijutilts.lv), and P.R.A. E. Sabiedriskās attiecības (www.prae.lv). Some of the companies are more active in promoting such services, while others provide them only to existing clients in particular cases of strong need (Krieviņš 2012, 24).

No estimates exist about the size of the lobbying services market in Latvia as a whole. It is not developed, reflecting the small size of Latvia's society and the domination of personalized relationships in the political sphere. According to a self-evaluation of public relations companies a few years ago lobbying services constituted on average 15–20 per cent of their turnover. The companies do not see lobbying as a core field of activity but rather 'a necessary supplement in the list of proposed services' (Krieviņš 2012, 24). Meanwhile, lobbying services are said to be charged at higher rates than usual public relations services (Krieviņš 2012, 25).

19.4 WHO ARE LOBBYISTS?

The main types of lobbyists are corporatist organizations (trade unions, employers' organizations, business associations), civil society organizations, professional lobbyists (individuals and companies) who engage in lobbying for a fee, particular larger companies and influential individuals who lobby on their own behalf.

The circle of lobbyists and their activities has never been clearly identified and it is impossible to provide an accurate description of the profile of a lobbyist as an individual. Since effective lobbying requires a good understanding of the political and socio-economic situation, knowledge in several fields as well as acquaintanceship with decision makers, it therefore follows that usually in Latvia the most senior level of company management is directly involved in the provision of professional lobbying services (Krieviņš 2012, 25).

According to anecdotal evidence, people who are known to work as professional lobbyists on behalf of single private clients or organized

interests, normally have an academic education in social sciences and they are occasionally former public officials or advisors to political figures. A good example is that in 2011 the former state secretary of the Ministry of Finance, Mārtiņš Bičevskis, became the President of the Association of Commercial Banks. This move was considered to represent a strengthening in the bank lobby (Zālīte 2011). The leader of the Latvian Association of Ports, Kārlis Leiškalns, served several periods as a member of parliament between 1993 and 2010. The Chairman of the Board of the Latvian Association of Lobbyists, Guntars Grīnvalds, served as the Minister of Justice for a brief period in 2006.

In business sectors that strongly depend on relationships with public authorities, it is not uncommon for companies to hire former politicians or public administration officials (Alksne 2014, 22). A prominent example of this kind of association was the move of the former deputy secretary of state of the Ministry of Health, Juris Bundulis, to the post of Chairman of the Executive Board of the pharmaceutical company, Grindeks, in 2012 (LETA 2012). Latvia has no general prohibition against officials turning lobbyists after retiring from the public posts. Hence the phenomenon of the ‘revolving door’ is clearly very evident in Latvia’s lobbying scene.

19.5 PUBLIC REGULATION OF LOBBYING

Latvian legislation does not regulate lobbying as such and the term is not found in laws and regulations. Certain aspects of lobbying activities are subject to transparency requirements and regulation in legal acts, which apply to areas bordering with lobbying in some way. A good example is that draft legal acts are accompanied by annotations, which include information about *inter alia* societal participation and consultations in the drafting of the act (Rules of Procedure of the Cabinet of Ministers: Article 3; Instruction of the Cabinet of Ministers No. 19, 15 December 2009, Procedure for the Initial Impact Assessment of a Draft Legal Act: Articles 60–62; Rules of Procedure of the Saeima: Section 85, Paragraph 5, Item 6). Members of parliament are not required to disclose consultations in relation to proposals to modify bills already under parliamentary review.

The Law on Prevention of Conflict of Interest in the Activities of Public Officials prohibits a public official to accept gifts from persons in relation to whom the public official has in a period of two years prior to receipt of the gift carried out certain official functions. The acceptance of a gift disqualifies the public official in relation to the donor for two years

(Section 13.², Paragraphs 1 and 2). In addition, the Code of Ethics for Members of the Saeima requires that ‘a Member of Parliament refuses an invitation, does not participate in an event and tries to avoid any other situations that may give grounds for suspecting the presence of a conflict of interest or that may impair the prestige of the Saeima’ (Item 9). Even though not particularly targeted on lobbying, these provisions apply constraints in some ways, in which a lobbyist and a public official may interact. Moreover, codes of ethics of many public administration bodies, set rules for the interaction between civil servants and lobbyists, sometimes including the duty to disclose such contacts on the website of the institution. Still the enforcement of these publication requirements remains limited.

Proposals to adopt an explicit policy on lobbying have stalled. In 2008, the government approved the Framework Document on the Need for Legislative Regulation of Lobbying in Latvia. Later, in the heat of the economic crisis, the government effectively abandoned the initiative. In December 2011, the Cabinet of Ministers approved a revised framework document on the disclosure of information about lobbyists. Following this decision, the Corruption Prevention and Combating Bureau prepared a draft of the Lobbying Transparency Law. One of the basic principles of the draft law was the obligation of lobbied agencies to publish information on persons who have lobbied the respective agency. It decreed that it should be disclosed who has lobbied on what issue and in whose interest, but not the amounts of money paid for the lobbying effort. Both legislative and executive branches were covered in the draft law (*Korupcijas novēršanas un apkarošanas birojs* 2014). The legislative proposal faced criticism from various actors and interests and, in February 2014, a formal decision was made to terminate the draft law proceeding by the Cabinet of Ministers.

19.6 LOBBYISTS’ ORGANIZATION AND CODE OF ETHICS

On 30 March 2012, the Latvian Association of Lobbyists was founded, the first organization of its kind in Latvia. The founders of the Association were five individuals and seven companies—Šmits, Jēkabsons un partneri, Hauska & Partner, P.R.A.E. Sabiedriskās attiecības, Hill and Knowlton Latvia, Repute, MRS Grupa, and Deep White (BNS 2012), all known to a greater or lesser extent to provide professional lobbying services. According to Guntars Grīnvalds the Association’s participants represented a variety of professions—lawyers, teachers, PR practitioners, and former politicians (Ошкая 2012), mainly people whose activities or experience at least partially consist of lobbying on a commercial basis. Being a

voluntary organization, it comprises only such lobbyists who wish to join. The Association engaged in deliberations on the draft of the Lobbying Transparency Law but lately it has not been active in the public realm.

The Association also adopted its Code of Ethics. The Code requires that, in communication with public officials, a lobbyist discloses his/her identity, the identity of his/her client and goals of lobbying; provides true and verifiable information; is prohibited to intentionally mislead or deceive; shall not disclose confidential information (unless a client or employer grants permission or legal acts require such disclosure); shall not represent opposing or incompatible interests; and shall not act so as to place public officials in situations of conflict of interest. The Code applies to members of the Association only and contains no sanctions for breaches. However, at the time of writing this chapter, it was not possible to find the Code through the *Google* search engine.

19.7 CONCLUSIONS

Latvia has seen repeated but so far failed attempts to regulate lobbying activities more comprehensively and somehow formalize the status of the lobbyist. Should such regulation materialize at some point, the lobbyists' profession could become more visible. However, strict compulsory regulations could also prompt a more clear-cut divide between the lobbyists who work legally and those who prefer to operate in secrecy. Therefore, it is hard to say if the net result of the regulatory changes (should they take place) would lead to greater transparency.

A great deal would depend on how restrictive the approved policy would be (too liberal an approach will have little effect by virtue of its limited character and too harsh an approach will drive a lot of activity in the illegal realm). Also Latvia's long known problems of political corruption and the so-called state capture are key factors, which, even if diminishing, will hinder transparency for years to come.

Regardless of the policy, professional lobbying will not develop into a major industry because Latvian decision makers will remain accessible to interest groups and even single individuals without professional assistance. Not everyone is able to influence policies but finding a way to communicate with politicians is comparatively easy.

The national scene will remain a priority for most lobbyists, because even given the current level of EU integration, a portion of regulatory competence rests with the member state. The Latvian government's positions

regarding EU policies as such are an issue to be lobbied, the member state remains the key spender of public funds and most of Latvian lobbyists and their clients do not have the weight to make a significant impact on the European level. Meanwhile, some attempts to engage at the European policy-making level have taken place and will occur increasingly in the future.

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Lithuania

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20.1 THE POLITICAL SYSTEM

The Republic of Lithuania was established in 1918. In 1940, it was occupied by the Soviet Union, then by Nazi Germany, and then was re-occupied by the Soviets in 1944. Lithuania became the first USSR republic to declare independence in 1990. Since 2004, Lithuania has been a member of NATO and the European Union (EU).

Lithuania's constitutional regime is a parliamentary system and is made up of the key features of a mixed, semi-presidential form of governance (Matsuzato and Gudžinskas 2006, 146).

The 141 members of the unicameral Lithuanian parliament, the 'Seimas', are elected according to a mixed representation system: there are 71 members elected in single-member constituencies and 70 members in a nationwide vote by proportional representation. The Seimas is the main legislative body. It has the power to establish state institutions and appoint and dismiss their heads, supervise the activities of the government, and express no-confidence in the Prime Minister or a minister when necessary. The President has the right to veto laws adopted by the Seimas. But, the parliament may reconsider the legislation and pass into law with a majority of more than half of all the members of the Seimas.

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The Lithuanian head of state is the President, who is directly elected. The elected President is expected to suspend all his or her activities in political parties and political organizations and be fully independent upon entering office. The main function of the President is to outline and oversee the basic issues of foreign policy and, together with the Government, to conduct foreign policy. In general, the President cannot determine the composition of the government against the will of the majority of the Seimas. However, the opinion of the President must be taken into account by considering candidates for the position of ministers. The President usually exercises power by invoking the moral authority given to him or her as the directly elected head of state.

The Government is the main executive body. It administers the affairs of the country, guarantees state security and public order, executes laws, and has the right to bring forward legislature. The Government is accountable to the Seimas, which has the power to dismiss the government.

The political landscape of the multi-party system has been dominated by two parties, the Lithuanian Social Democratic Party and the conservative Homeland Union. Since the year 2000, the government has been composed of different coalitions of political parties (usually two-four). In 2006–08 the minority government of the Social Democratic Party was in power, which was supported by the Homeland Union.

20.2 BACKGROUND TO LOBBYING IN LITHUANIA

Lithuania is usually considered as a country with medium-scale regulation of lobbying and has been praised as one of the few European countries, which have adopted legislation regulating lobbying (Chari et al. 2011, 3, 25; Hogan et al. 2012, 6). The Law on Lobbying of the Republic of Lithuania was adopted in 2000. In 2003, a new version of the Law was passed.

The recent Transparency International ranking of safeguards against undue influence and rules to promote ethical lobbying places, Lithuania, in the top of the table second only to Slovenia among 19 European countries assessed. Lithuania scores 55 per cent out of 100 per cent, while the average score of 19 countries amounts only to 31 per cent (Transparency 2015a, 3, 4).

It is true that Lithuania has adopted a number of laws dealing with the transparency of decision-making, and the legal acts guarantee the equality of various interest groups. However, these legislative efforts have not produced a satisfactory result. The Law on Lobbying has proved to be

ineffective. According to critics, one of the substantial flaws of the Law is that it does not regulate the activities of NGOs and associations seeking to influence legislation and decision-making. Thus the activities of the representatives of various organizations are not subject to this Law, and the transparency requirements of the Law cannot be applied. The Law does also not draw the line between authorized and illegal lobbyist activity. This results in an inability to trace illegal lobbyist activity, with the exception in the case of evident corruption.

According to the Law on Lobbying, only those who are officially registered and included in the List of Lobbyists are recognized as lobbyists and have the right to pursue the corresponding activities. The list is made public on the webpage of the Chief Official Ethics Commission, an independent collegial public institution that is in charge of the control and supervision of adherence to the standards of institutional ethics in the civil service and control of lobbying activities (VTEK 2015). Upon registering, lobbyists have to pay a fee and are obligated in their activities to comply with transparency requirements, such as providing an annual detailed report of their lobbying activities. As mentioned previously, the associations and NGOs are not registered as lobbyists, although they have the right to represent their interests and influence decision-making. Because of this, the Law only serves to legitimize the activity of a few professional lobbyists and several private companies engaged in lobbying.

The Code of Conduct for Lobbyists has been prepared and approved by the Chief Official Ethics Commission, according to the provision of the Law on Lobbying. This means that the Code is not a self-regulatory tool.

The National Association of Lobbyists has been established with the aim to consolidate professional lobbyists; however, it attracted only a few members and is not active or visible.

In the period 2001–15, only 35 lobbyists were registered and included in the List of the Chief Official Ethics Commission. Only eight of them (five persons and three companies) declared lobbying activity in 2014. These numbers certainly do not reflect the actual scope or size of lobbying activities in the country.

The vague status of lobbyists and lack of transparency in the field makes it difficult and even impossible to evaluate the number of and to collect data on their background. The research on these aspects of the lobbying in Lithuania is not undertaken.

Among other laws important to lobbying activity, one can mention the Law on the Framework of Legislation, the Law on Development of

Non-governmental Organizations, the Law on Associations, the Law on the Adjustment of Public and Private Interests in the Public Service, the Law on Petitions, the Law on Funding of Political Parties and Political Campaigns, and Control of Funding, the Law on the Prevention of Corruption, and the Law on Public Service, and the Statute of the Seimas of the Republic of Lithuania. The principles and provisions established in these laws guarantee the right of citizens to receive public information and to influence political decisions. They also include provisions for transparency in legislation and anti-corruption measures.

One of the tactics companies use to influence decision-making has been donations to political parties. The financial backing of the political parties has become more transparent with reports of the remittances published on the webpage of the Central Electoral Commission. However, this transparency and publication of funding has often raised suspicions that some decisions of the ruling coalition of political parties have been biased towards donors. Because of this, the Law on Funding of Political Parties and Political Campaigns, and Control of Funding has been constantly amended. In 2008, the agreed funding of political advertising was significantly restricted with the aim of diminishing the demand for resources among the political parties. In 2011, donations to political parties and political campaign participants from legal persons, including business companies, were banned. However, the problem of indirect funding of political parties remains unresolved.

20.3 KEY TARGETS AND AREAS OF LOBBYING

The main lobbying target in Lithuania is the Seimas. The government primarily prepares the draft laws. But during the process of adoption, the Seimas usually introduces significant amendments. This is why the tactics to lobby the political groups of parliament, or even the parliamentarians themselves, seems to be the most effective mechanism for lobbying to exert influence. The Committees of the Seimas, in preparing the draft laws, usually organize discussions in which various interest groups present their position and proposals.

The second most important lobbying target is the Government, which is composed of the Prime Minister and 14 Ministers. Each question, which finds its way into the Government meeting, is prepared by the corresponding Ministry and this is why the Ministries are the important lobbying

targets. In this regard, the municipalities also have to be mentioned, as they pursue and supervise a lot of economic activities.

According to an opinion survey of Lithuanian businesspeople conducted by Transparency International, the top areas of activity of interest groups are energy (mentioned by 81 per cent of the respondents), construction (65 per cent), pharmacy and healthcare (58 per cent), alcohol, and tobacco markets (58 and 53 per cent) (Transparency 2015b, 12).

20.4 LOBBYIST ACTIVITIES

The pluralist model of interest representation prevails in Lithuania along with emerging elements of corporatism. Pluralism highlights the competition among interest groups and corporatism points to negotiations among state institutions and peak associations (Eising 2008). In the pluralist systems, all interest groups have an equal chance to be involved in a political process. In the corporatist systems, the state institutions formally recognize the exceptional role of the peak associations in the process of decision-making. The pressure of interest groups on decision-makers in Lithuania is generally spontaneous. The peak associations are not legally embedded as the main interest groups. The previously mentioned Transparency International ranking also confirms the notion that the various interest groups in Lithuania have equal opportunities to participate in public decision-making, as it gives Lithuania a score of 62 per cent in the dimension of Equality of Access, the highest among 19 countries (Transparency 2015a, 47–49). However, in this situation, some interest groups emerge, which are ‘more equal than others’.

The most influential lobbyists in Lithuania are business associations, due to their resources, expertise, and contacts. The central position among the business associations in Lithuania holds the Lithuanian Confederation of Industrialists. The Confederation is an umbrella organization bringing together 44 branch and 9 regional associations of different industrial branches. Almost all goods produced in Lithuania are products of the member companies. The Confederation has its permanent professional representatives in the Government and in the Seimas, and is distinguished from other interest groups by its extensive resources and ability to provide well-researched and comprehensive information to decision-making bodies. Among the special lobbying methods used by the Confederation, there are various agreements with the government and political parties. For example, there was an agreement of cooperation with the Homeland

Union in 1996 prior to their certain win by this party in the general election, and the National Agreement with the Government in 2009 on financial policy and business environment during the financial crisis. The Confederation is the only Lithuanian organization that has a permanent representative in Brussels.

Remarkably, the presidents or representatives of five business associations (aside from the Lithuanian Trade Union Coordination Centre) are listed in the contact list of the official website of the Chancellery of the Lithuanian Government as ‘Representatives to the Government’. Besides the Lithuanian Confederation of Industrialists, these are the Association of Lithuanian Chambers of Commerce, Industry, and Crafts, the Chamber of Agriculture of the Republic of Lithuania, the Lithuanian Business Confederation and the Lithuanian Business Employers’ Confederation. Among the most influential lobbyists is the association, ‘Investors’ Forum’, which should be mentioned. It consolidates the 50 largest and most active investors in Lithuania.

The most prominent representatives of the labour lobby are: coalitions of the labour groups, the Lithuanian Trade Union Confederation, the Lithuanian Labour Federation, and the Lithuanian Trade Union ‘Solidarumas’ (together they form the Lithuanian Trade Union Coordination Centre). Usually, the trade unions do not have sufficient resources to present proposals based on in-depth analysis and research of problems to the governmental institutions. However, the trade unions, like business associations, occasionally make an agreement with the political parties in pursuit of their goals. In 2011, six trade union associations and trade unions signed an agreement with four opposition political parties on the minimum wage, in which the political parties pledged to raise minimum wages while in power. The labour lobby often chooses contentious forms of persuasion, such as demonstrations, pickets, or petitions. However, the membership in the trade unions amounts only to nine per cent of the working population. The low participation correspondingly diminishes their influence (Freedom House 2014, 392).

It is often stated that the business lobby in Lithuania is much more influential than the labour lobby (Hrebenar et al. 2008, 51–54). This assessment has to be taken with some reservation because the trade unions can exercise their influence through the Tripartite Council of the Republic of Lithuania, which is composed of representatives of employees, employers, and the Government. The labour unions have effectively used this institution for many years by maintaining tight employment regulations.

However, recently the Government retreated from the obligation to get the Tripartite Council approval for all decisions dealing with employment matters. It was particularly evident in the process of the preparation of the new Labour Code in 2015.

The Catholic Church does not participate directly in the political life of the country; however, it manages to pursue its influence in the area of human rights. Aligned with the church are such organizations as the Forum of Parents of Lithuania and the National Association of Families and Parents. On the opposing side, one can find the National LGBT Rights Association.

The concept of ‘lobbying’ on behalf of the public in Lithuania mostly has a negative connotation and is associated with corruption or personal influence. The political culture prevailing in the country does not lend itself favourably to transparent lobbying. In the survey of businesspeople conducted by Transparency International, the key activities mentioned for influencing decisions were: using personal acquaintances (59 per cent), offering financial incentives for favourable decisions (53 per cent), donating or otherwise financially supporting political parties (53 per cent), negotiating during unofficial meetings (52 per cent), promising employment for favourable decisions (39 per cent), participation in official working groups (22 per cent), participation in official meetings (19 per cent), and official submission of legal proposals (18 per cent) (Transparency 2015b, 12). Other researchers arrived at similar conclusions (see, for example, Hrebenar et al. 2008). International companies in Lithuania prefer the legal way of lobbying and are more ready to hire professional lobbyists (Transparency 2015b, 15).

20.5 DEBATES AND NEW INITIATIVES

The topic of lobbying and the influence of interest groups are being constantly discussed in society and among politicians. The largest amount of public interest is on ways and modes of lobbying on big energy infrastructure or supply projects, on alcohol control, or on the surfacing scandals dealing with corrupt business relationships with politicians.

Public attention is almost constantly focused on the ongoing battle of the lobbyists for the regulations on alcohol selling and advertising (see, for example, Paukštė et al. 2014). The most prominent players in this are the Lithuanian Brewers Guild and the Alcohol Trade Association on one side and on the other side is the National Tobacco and Alcohol Control

Coalition. The strong advocacy of both sides resulted in a record number of amendments to the Law on Alcohol Control. The Law was amended six times in 2014 alone. Many more of the proposed amendments were rejected.

The Law on Lobbying has been criticized specifically for regulating only the activity of professional lobbyists and disregarding all other lobbying activity. In 2013, the Seimas initiated a working group with the aim of preparing the new draft Law. In 2015, the new draft Law on Lobbying was presented in the parliament. According to this draft Law, all lobbyists, including those of the NGO's, would be obliged to register with the Chief Official Ethics Commission and to report any lobbyist activity. However, the critics of the draft Law point out that the aspiration to register and control all lobbyist activities may fall short of what is expected. That is due in part to the obvious lack of control mechanisms (to establish efficient control is really a challenge) and the firm habit on the part of businesses to influence the decision-makers in informal ways. The strong incentive to pass the new law comes from the Organization for Economic Co-operation and Development (OECD). The OECD decided to open accession negotiations with Lithuania in 2015 and during the negotiations it raises the strong requirements for transparency of the lobbying activity.

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Luxembourg

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21.1 BACKGROUND TO LOBBYING IN LUXEMBOURG

Luxembourg is a small landlocked country in Western Europe. Bordering it to the West and North is Belgium, Germany to the east and France to the south. It comprises two principal regions: the Oesling in the North as part of the Ardennes massif, and Gutland in the south. It has an area of only 2586 square kilometers and is one of the smallest sovereign states in the European Union (EU). It has one of the highest living standards in the world per capita, and has very pleasant green environment with 87 % of Luxembourg being forested or agricultural land.

The total Luxembourg population is approaching 600,000 residents, of which almost 50 % are foreigners. This resident population is insufficient to fill all of the available jobs and is augmented by 150,000 cross-border workers commuting every day to work from Belgium, Germany and France. During normal working hours, the populations of Luxembourg City and Kirchberg, the two principal business enclaves, can reach 70 % of foreign nationals. In addition to a thriving International business location with many European Headquarters subsidiaries for multinational companies, particularly financial service companies and Banks, followed

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by IT and logistics companies, Luxembourg is also the location for over 1/3rd of the EU institutions and bureaucracies and employees.

Luxembourg is a constitutional monarchy (Grand Duchy) headed by a hereditary Grand Duke. Following 16 years in office, Christian Socialist, Prime Minister, Jean Claude Juncker, became the current President of the EU Commission and was one of the most respected and longest serving Prime Ministers in Europe. Luxembourg is now headed by Prime Minister Xavier Betel, from the Democratic Party (DP) in a coalition with the Socialist Workers Party (LSAP) and the Green Party. Mr. Betel rules through a 60 member Chamber of Deputies in a unicameral legislature within which The Christian Socialist Party (CSV), of ex-Prime Minister Juncker, holds the greatest number of seats, just a few votes short of a voting majority. Also in the Chamber of Deputies are the Alternative Democratic Reform Party (ADR), which is a rightwing conservative party, and the Pirate Party.

With the second highest per capita gross domestic product globally, Luxembourg residents enjoy a very high standard of living. Prosperity is based on the very strong international financial sector, a strong international base of companies and the significant concentration of major EU employers including the European Investment Bank, the International Court of Justice and the European Board of Auditors. This varied base of activities ensures stability and hedges against economic events impacting on any one sector.

There is no legal prescription for lobbying activities within the Grand Duchy. Lobbyists are not registered or otherwise recognized. This makes sense in the context of Luxembourg's small size and the normal methodology of doing business. The Luxembourg citizens who make up the Luxembourg government are most comfortable doing business with people that they know ... and have known for a long time. Because of its small size, most citizens and long term residents have reasonably opportunities to know one another, or at least to know someone who knows someone ... Hence it is much easier in Luxembourg for decision makers to know other decision makers than it is in larger countries. Decisions are made based on consultations between decision makers. As just one example, the government partners with the unions and employer representatives in a "tri Partite" arrangement to discuss and resolve worker issues such as indexed pay rates and salary increases thus avoiding a culture of national labor unrest and strikes.

Despite the fact that the national motto is “We want to remain the way we are”, it is possible for Luxembourg decision makers to make decisions quickly when they have a good reason to do so. A perfect example of this can be found in the speed with which Luxembourg was the first nation in Europe to adopt new EU Regulations and thereby be the first country in Europe to create the best environment for the development of the investment fund industry. This speed of execution brought about by the close relations between decision makers in industry and government to work together has been repeated in recent years by Luxembourg’s success as an e-commerce location. The small size of Luxembourg and the close proximity of business professionals and government functionaries mean that everyone of importance knows one another. Small is beautiful.

There should be no doubt that the government decisions are, in the end, controlled by the local population. Expats vote only in local elections and the government and political parties are very responsive to the perceptions and wishes of the voting (Luxembourg) local population. This local control was further reinforced by the June 2015 Referendum in which 80 % of the local population voted to affirm they would not give national voting rights to foreigners who were not resident for a minimum of 10 years within the country.

Still, to the credit of the local population, there is a strong appreciation of the value added intellectual capital, expertise and external investment funds brought into Luxembourg by foreign companies. This appreciation translates into fair and generous welcome and treatment by governmental authorities and the institutions which represent the different business sectors. The government both welcomes and listens to the concerns of foreign companies and their employees resident in Luxembourg and works hard to ensure a business friendly working and living environment. As one example, Luxembourg is one of the few countries with a National Council for Foreigners (CNE), composed of 50 % Luxembourg citizen appointees and 50 % foreign community elected residents. This CNE has consultative powers to advise the government on the impact of proposed legislation on foreign residents and their interests, as well as to raise issues of interest to the government on a self-selected basis by the members of the CNE.

Because of the small size of the country, it is relatively easy for foreign companies to meet with appropriate governmental decision makers (up to and including Ministers). This direct access is much easier in Luxembourg than in most other countries in the EU.

The same applies to private industry associations which welcome, accept as members and encourage the participation of expat companies alongside local companies. Of these the largest and most influential are the Luxembourg Federation of Industry (FEDIL), the Luxembourg Bankers Association (ABBL), the Luxembourg Funds Association (ALFI), and the American Chamber of Commerce, which is the largest private Chamber of Commerce in Luxembourg and the de facto International Chamber of Commerce. All of these organizations include and function by bringing together governmental decision makers to mix with local corporate experts and owners and with the employees of the international companies operating within Luxembourg. It is all a very cooperative and inclusive consensus building process.

So, rather than a formally structured lobbying industry per se, the process is more interactive with associations and institutions lobbying alongside other activities.

While there is no identification and regulation of lobbying activities per se, there are, of course, organizations which have influence and impact both with the politicians and with the civil servants of the government.

First among these is the Catholic Church. With 87 % of the country self-identifying itself as Roman Catholic, the Church headed by the Bishop of Luxembourg wields considerable influence particularly in the rural countryside where local parish priests have a significant and well-respected voice in the decision-making process. Add to this, the fact that the Church has significant land holdings and ownership of the most influential newspaper in the country and also strong historic links and engagement with the Christian Socialist Party, the dominant political party, shows the power of the RC Church within Luxembourg.

Local politics are also influenced by the national labor unions, most especially the Onafhängege Gewerkschaftsbond Lëtzebuerg (OGBL), the dominant, largest and centre-left-based labor union in the country. OGBL takes its base from the steel industry from whence it grew and developed into the broad range of blue collar activities and industries within Luxembourg. OGBL exercises great influence over the Social Workers Party (SWP), which is the second coalition partner in the government.

Decisions impacting on the business sector are well influenced by select organizations which have gained a reputation of trust over many years. These organizations of trust include the previously mentioned Federation of Industry of Luxembourg (FEDIL), the Luxembourg Bankers Association (ABBL) and the Luxembourg Fund Industry Association (ALFI). These

three associations can be considered to be “inside the system” and hence have access and influence as trusted partners. All three associations include in their membership international companies headquartered outside of Luxembourg but with substantial Luxembourg based workforces and presence.

In addition to these business associations, the big four accountancy companies of PWC, Deloitte, Ernst and Young and KPMG acting collectively or individually have a certain lobbying role on behalf of their clients which is respected and appreciated by the government and the political decision makers. They are included in the consultative process before changes are made which impact on the business environment.

Lawyers, and particularly certain individual law firms, also fulfill certain functions influencing as agents on behalf of their clients with governmental representatives and bodies. Singularly among these law firms of influence are the local law firm of Arendt-Medernach and the Luxembourg affiliate of the international law firm of Allen & Overy.

One of the principal strengths of Luxembourg is its strong multilingual and multicultural foreign population which, as previously said, encompasses 50 % of the local population. Of this amount, the largest group is the Portuguese population who migrated to Luxembourg after the end of the Second World War to fill blue collar jobs that were unattractive to the local population. At the same time, there has been a growing population of foreign university graduates and their families who have been recruited to Luxembourg because they possess critical skill sets in banking and possessed other high level knowledge insufficiently available within the local economy.

These white-collar foreign workers and their families, who very often have English as a first or second language speakers, constitute a privileged new addition to the ranks of Luxembourg decision influencers. Many come with no expectation of staying for more than a few years only to find themselves 15 and 20 years later still successfully resident in Luxembourg.

Disproportionally influential in the international business activities in Luxembourg because of their education and skill sets, these English-speaking expats, who have recently replaced German as the third most spoken language group in the country, are only recently starting to find their political voice. During the most recent communal elections, 18 % of the eligible members of this population registered and voted as compared to almost 100 % of the local population. While this 18 % figure represents a 40 % increase over the expat participation rate in the previous election,

nonetheless, the political life of the country remains, for the moment, firmly in the hands of the locally born and resident population.

This absolute local control over the political life of the country is starting to become more and more into question over the past 10 years. While historically the international business leaders have been content to leave the management of the country and decisions to others, the ever increasing pressure of the living and working environments are gradually forcing the business community, and most especially the international business community, to lobby to ensure that the Luxembourg politicians, largely elected by the local population, retain and enhance policies favorable to the international business community.

There is a realization by the local population and the international companies who are resident in Luxembourg that the needs of the expat companies must be addressed in an increasingly internationalizing world to ensure that Luxembourg remains a very attractive location for inward investment and for international subsidiaries to operate from. The majority of the local population is therefore receptive and understands that the fundamentally locally dominated decision-making must be open to be influenced to ensure that Luxembourg remains international company friendly. At the same time, the international companies have come to appreciate as well that they need to be locally involved to make sure their issues are understood and address. The results have been an increased involvement of the international companies in the FEDIL, ABBL, ALFI and the American Chamber of Commerce (AMCHAM). As a consequence, the use of English as a language of discussion is increasing substantially in these organizations, which historically have been francophone.

Over the past 10 years, AMCHAM has expanded to assume increased importance. During these years, AMCHAM has responded to the increasing realization that the International Business Community needs (and has a preference for) local English language networking, information resources, problem solving and lobbying organization by recreating itself into an English language International Chamber of Commerce with a membership that is 70 % non-US companies and with a mission increasingly including lobbying and problem solving, alongside its traditional role as the largest of the internally focused networking and information access organizations.

Also expanding in influence, is the development of women's business groups which lobby for greater access and influence on behalf of their

constituencies. The oldest and most active of these is The Network, which has existed in Luxembourg for 25 years.

In an effort to gain greater influence for the diverse membership of the International business community, The Network has joined with AMCHAM and 11 other business organizations to create a federation of these clubs/organizations for the purpose of coordinating responses to issues of common concern. This new federation has been given the name AIESBO, the Association of International English Speaking Business Organizations, and has sent its first lobbying letter to the government advocating increased provision of English-speaking educational resources, and support of the removal of structural barriers inhibiting expansion of international trade in goods and services.

In summary, Luxembourg is a small country where access and influence can be easily arranged through personal contacts and local organizations without the need for dedicated lobbying organizations which exist in larger countries.

Malta

Mark Harwood

Malta, the smallest EU member state, is a former British colony in the Mediterranean with a political system based on the Westminster/Whitehall ‘export model’ (Warrington 1997: 86). Politics centres on a two-party system, the ‘purest’ in Europe, with the result that Government always enjoys an absolute control over Parliamentary business, heavily empowering the political class and, in particular, the Office of the Prime Minister.¹ These characteristics influence the nature of lobbying in Malta.

22.1 THE MALTESE POLITICAL SYSTEM

Malta constitutes a group of three inhabited islands situated midway between Italy and Libya. With a population of 420,000 (in addition to an annual influx of one million tourists) and a territory of 316 km²,

¹It is very rare for a ruling party to lose its absolute majority within parliament, though the closing days of the Nationalist administration in 2012/2013 was such an example, when a backbencher resigned from the party removing the government’s one-seat majority in the House.

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Malta is one of the smallest and most densely populated countries in the world. The Maltese political system owes much to the British colonial period from 1800 to 1964 and as a Parliamentary democracy is centred on regular elections to the Maltese Parliament, which is constituted by the President and a unicameral House of Representatives which has, on average, between 65 and 69 members.² The latter appoints the President whose role is largely ceremonial with executive power exercised by a Prime Minister and Cabinet, formed from the ruling party in Parliament. Even though Malta has utilised the Single Transferable Vote electoral system since 1921, which traditionally leads to the emergence of multiple parties, in the case of Malta only two parties have been elected to Parliament since 1966, with the Labour Party (Socialists) to the left and the Nationalist Party (Christian-Democrats) to the right. Because the ruling party always enjoys an absolute majority within Parliament, the executive enjoys considerable power over the legislative branch, due to its control over its own Members of Parliament (MPs); the political parties within Parliament are small, on average 35 members in each party, and backbenchers rarely outnumber the party's front bench while MPs need their party's support to be re-elected (each party has extensive media interests and impact the exposure candidates are given).³ Thus, the key players in Maltese politics—and therefore the prime target for lobbyists—are the two political parties and, more importantly, their party leaders, hence the extensive power enjoyed by the Prime Minister who rules over the party which dictates legislative business and the running of the state (Harwood 2014: 39).

As with the British Civil Service upon which it is based, the Maltese public service is a politically neutral body but due to the pervasive influence of the political class, the public service can often be subject to accusations of bias, undermining its effectiveness as a lobbying target. Efforts to remedy this, as with the introduction of an ombudsman in 1995, have been only partially successful. In this way, the Maltese political system is highly parochial, subject to political interference and driven by clientelism, reconfirming the importance of the political class for lobbyists (Mitchell 1993).

²While the Maltese parliament normally has 65 members, changes to the electoral laws in 2007 meant that parties can be compensated with extra seats to ensure that their percentage of the national vote is reflected in the allocation of seats from the 13 electoral districts. For this reason, the current parliament has 69 members as opposed to 65.

³An example in point would be the 2003–2008 parliament. The ruling party had 35 MPs of which 19 were members of cabinet.

A final consideration for lobbying in Malta is the consequence of Malta being a small state; politics is often informal and based on networks underscored by party and family ties, and this reality is reinforced by the spatial ramifications of a small- or micro-state. Valletta, the capital, is a city of 6000 people, housing Parliament, the Prime Minister's Office, most major ministries, the law courts and the central bank, all situated within walking distance of each other. As with micro-states, where politics is more informal and 'almost everything depends on personal relationships' (Kanol 2014: 51), obligations to immediate and extended family precede any obligations to society as a whole (Corbett 2015). The result of this, for lobbyists, is that 'who you know may be much more important than what you know (information) ... networking skills, therefore, may be particularly important for exerting influence in micro-states' (Kanol 2014: 51).⁴

22.2 CLASSIFYING LOBBYISTS AND MALTESE LOBBY GROUPS

A central polemic for any discussion about lobbying is the core definition of who is taken to be the lobbyist. Based on a behavioural approach with the emphasis upon observable policy-related activities (Baroni et al. 2014), we take our subject to be those organisations which are 'actively trying to influence the distribution of political goods' (Berry 1977: 10). Some consider this too broad a definition and focus on organisational set-up, in particular, membership-based organisations (a feature we will ourselves accommodate) but as the lobby groups in Malta are relatively few, a narrow definition would merely preclude reference to the majority of local groups and hence our decision to utilise a broader, behavioural definition.

With no previous classification of Maltese groups upon which to build, this chapter adopts a loose framework to distinguish between groups. Karr (2008: 66) distinguishes between groups with public or private interests as well as groups that are nationally or internationally focused, while Baroni et al. (2014) distinguish between group membership structure, geographical level of mobilisation, staff size and lobbying budget. Because some of these criteria have little application in Malta where all groups are small, we distinguish between Maltese groups in terms of their focus (local, national

⁴ Malta is regularly defined as a small-state and sometimes a micro-state. In the context of Kanol (2014), Malta would be classified as a micro-state.

or European-level politics) and their organisational structure (voluntary organisations as opposed to professional bodies).

As noted, the range of actors involved in lobbying in Malta is small. Three Government related bodies deal directly with socio-economic groups and civil society. The first, the Malta Council for Economic and Social Development (MCESD), was established in 2001 as a means of involving the main socio-economic groups in the governmental process through consultation, having a Core Council comprised of eight entities (in addition to the government), primarily unions, business representatives as well as the University of Malta.⁵ The Malta-EU Action and Steering Committee (MEUSAC), established in 1999 within the context of Malta's EU application, now provides EU-related briefings to socio-economic groups and civil society and is also a key source for EU-funding advice. Its core group comprises nine socio-economic partners (largely the same entities as represented in the MCESD Core Council), in addition to the two main political parties, the Green Party (which has never been represented in Parliament) as well as three representatives of civil society elected by the NGOs which participate in the nine sectoral committees.⁶ The latter committees involve 211 organisations ranging from the major unions down to voluntary organisations such as the pro-hunting groups and the environmentalists. In terms of voluntary organisations, the Office of the Commissioner for Voluntary Organisations was established in 2007 to strengthen the voluntary sector, and as of 2015 its website lists 850 such organisations, the majority constituting band clubs, football clubs, schools, parish organisations, lay groups and *ad hoc* groups with little traction or public profile.⁷

Adopting the classification outlined above, we can distinguish between three types of lobby group in Malta. The first group (Group I) constitutes those organisations which are primarily focused on local-community issues with few funds and comprised of a small group of volunteers. These small, voluntary organisations may dip their toes into local-community politics from time to time but are generally so small and have such limited resources that they tend not to engage in national politics. Prominent

⁵The list was compiled from information available at www.mcesd.org.mt (accessed 10/09/15).

⁶The list was compiled from information available at www.meusac.gov.mt (accessed 15/09/15).

⁷The list was compiled from information available at https://socialdialogue.gov.mt/en/vo_home/Pages/vo_list.aspx (accessed 16/09/15).

examples include band clubs, non-mainstream religions, youth groups and some Catholic, lay groups.

The second group (Group II) represents larger, more structured civil society groups which will engage in national politics and have a national, media profile but still depend on volunteers and have limited resources. Within this group, we include prominent pro-hunting organisations like the FKMK, environmentalists like Birdlife Malta, social groups, like the gay rights group MGRM and lay groups associated with the Catholic Church, such as Catholic Action.⁸ These groups have a greater tendency to lobby Government and also engage in national (and EU) politics, either directly, through structures like MEUSAC, or indirectly through the media; and while their members may not be numerous, they enjoy a high profile and have accessed EU funds which have, at times, allowed them to recruit full-time employees so as to better campaign.

The third group (Group III) represents interests which have structured organisations, full-time employees and wider interests which may not merely involve lobbying but also the provision of commercial services. In this category those included are fewer but their influence is far greater, such as the unions, the Chamber of Commerce, Enterprise and Industry, representatives of the services' sector, private companies and the Catholic Church. All these organisations have the resources to protect their interests and actively engage with the Government, again directly and indirectly, to influence decisions taken. Because of their importance in the country's economic and cultural landscape, they enjoy the greatest of influence and have regular, formal contact with the Government through MEUSAC and the MCESD.

Finally, we must mention the professional lobbyists in the guise of consultancy firms operating on the island. Apart from the presence of international consultancy groups such as KPMG and PricewaterhouseCoopers, Malta has a plethora of legal firms which, as part of their function, often advise clients on lobbying Government and, now, the EU. These companies are numerous but the more prominent firms are often perceived as having a 'political orientation' meaning that their fortunes ebb and flow depending on the party in government.

⁸The FKMK stands for the *Federazzjoni Kaccaturi Nassaba Konservazzjonisti* (Federation for Hunting and Conservation Malta); The MGRM stands for the Malta Gay Rights Movement.

Considering the three categories of groups in Malta, how is lobbying undertaken? First, there are no laws regulating lobbying in Malta and, more importantly, inadequate rules governing party financing (European Commission 2014: 4), though the Government did adopt the *Protection of the Whistle-blower Act* in 2013, which applies to the public sector and large, private companies (and which has already resulted in a high profile court case involving a private company owned by the husband of a former minister). As with lobbying in any democracy, this can be undertaken directly, by accessing politicians and public servants or indirectly, through media pressure, party financing and obstruction of Government business.

When referencing our three groups in Malta, lobbying can be differentiated primarily in terms of focus (local, national or European-level decision-making) with smaller lobbyists from Group I being primarily focused on local-community issues. These smaller groups will try and gain direct access to local politicians (local councillors) to try and influence decisions; even if the issues are primarily local, MPs may be lobbied to act as intermediaries with the local council to influence outcomes. If the lobby group is associated with a political group not in power, then the group may go public, trying to influence decisions made, accessing the national media where 'local' issues are often given national prominence.

When the focus relates to national issues, the larger, more organised lobbyists from Group II and III will normally operate by adopting a direct route to influence outcomes. If the Government is sympathetic, much of the lobbying will take place informally through direct communication with politicians and the Prime Minister's Office. If the Government is not sympathetic then pressure can be applied through the media or through direct action, such as demonstrations or strikes. Beyond the ruling party, the Opposition is not a lame duck and can prove useful, either by raising issues in their own media or liaising with the Government as well as public officials sympathetic to the party. These tactics are more pronounced in terms of Group III lobbyists who have greater opportunity to interact with Government (especially within the MCESD and MEUSAC) and also greater scope to bring pressure indirectly, especially as nearly all major companies and high profile organisations in our third category offer some degree of support to one or both parties; this can be direct financing of

parties and their candidates, which is widespread,⁹ or supporting parties through word of mouth.

However, while structures like the MCESD and MEUSAC could suggest that links between Government and lobbyists is highly structured, and counter to our initial discussion of lobbying in micro-states, lobbying in Malta is still very *ad hoc*, governed by networks of interpersonal relationships built on trust. This *ad hoc* nature reflects the fact that, in addition to there being no rules regulating lobbying, there is also no clear professional ethos and no formal qualifications for lobbyists, with most people engaged in such activities normally being university graduates in law, social sciences or commerce. It appears that lobbying is a skill one learns through work experience and the networks one cultivates on the job, as discussed in the opening section; ‘if politics in micro-states is personalistic in nature, then the organised interests should master the art of establishing personal relationships, in order to exert influence on the policy-making process’ (Kanol2014: 51).

22.3 ADDITIONAL CONSIDERATIONS

As we have seen, a tight network links socio-economic groups, civil society and Malta’s political elite and, as in other small- or micro-states, informal networks based on trust often determine outcomes. The above discussion may imply that Government has the upper hand, but in such a small polity, the Government can still be easily influenced; even though the current Labour Government enjoys the largest majority seen in Parliament since independence, there are still examples of it having retreated on important policy, as with the controversial opening and closing of the hunting season in spring 2015. In a political system where the 2008 general election was won on a difference of 1500 votes, staying sensitive to popular sentiment remains a key consideration for the political class. However, it is not unreasonable to state that the balance shifts directly in the Government’s favour if one considers that many of the lobby groups depend on Government largesse on two counts.

The first relates to the EU. Most Maltese groups, including private companies, do not have the resources to operate in Brussels, except for

⁹In a 2013 Euro-Barometer survey, 44 % of companies based in Malta believed that funding political parties in exchange for influence or public contracts was widespread (European Commission 2014: 4).

the Malta Business Bureau (MBB), an EU-business advisory office for the Malta Chamber of Commerce, Enterprise and Industry and the Malta Hotels and Restaurants Association (MHRA). Therefore, groups often depend on the Government to keep them informed of EU policy formation, as well as utilise the Government to try and influence EU decision-making (Vassallo 2015: 18). In formulating a national position for Malta, the Government liaises with entities like MEUSAC and therefore Maltese lobbyists can best protect themselves by convincing Government that their individual concerns are national concerns, making the lobbyist dependent on the Government to wield any influence over decision-making in Brussels.

The second factor in Government's favour relates to funding. Some entities are competent in applying for funds but others depend on Government agents to facilitate the process, even having Government officials completing the funding application for them. As EU money grows in importance as a revenue source, this gives the Government a new form of patronage over lobbyist but at no cost. What does cost, however, is the Government's direct monies provided to lobby groups, as with the Civil Society Fund (which facilitates the participation of local groups in European wide umbrella organisations) as well as direct funds, one for civil society and the other for local councils, to meet the co-financing element involved in EU projects as well as to meet travel expenses (these funds amount to €200,000 for civil society and €500,000 for local councils annually). The Government also provides the large socio-economic groups with €52,000 a year for various expenses related to the EU, including travel to Brussels. The importance of these funds is seen by the fact that the MBB, referenced above, is subsidised by the Government and would not be affordable without Government monies. In this way, the networks linking Government to socio-economic groups and civil society is underscored by the obligations such largesse creates.

A final consideration is the impact of ten years of EU membership on lobbying in Malta. The impact can be considered to have effected lobbying in three distinct ways. The first relates to targets in that, in EU matters, the EU institutions represent an alternative forum for addressing issues, especially if the Maltese Government is not sympathetic to a group's concerns. The anti-hunting groups can be considered a prime example of this; no Government actively wishes to antagonise the hunting lobby so anti-hunting groups have often resorted to the Commission and non-Maltese

MEPs as a means of maintaining pressure on the Maltese Government to ensure the proper application of the Birds Directive in Malta.

Second, access to EU funds has allowed groups to recruit full-time employees. This has allowed groups to be more professional, devising long-term strategies and work programmes. Third, in addition to increasing venue shopping, EU membership allows more sophisticated issue framing. A notable example was the promotion of gay rights after 2008. By framing the issue of gay rights as one of ‘European equality’ rights, the gay lobby was able to gain greater prominence and acceptance for their position and this ‘reframing’ was facilitated by their membership of European umbrella organisations (Harwood 2015). In this way, Maltese lobbying has become more diversified and more sophisticated (Vassallo 2015: 19).

However, while lobbying has grown in sophistication in recent years, and especially the degree of information being exchanged, ultimately the features outlined in our opening paragraph remain, namely that Malta is a very small state where politics is highly informal and parochial with a single party controlling the apparatus of government. Access to that party then becomes the key determinant in any lobbyist’s strategy and, as already discussed, that may depend more on who you know as opposed to what you know, a fact which is unlikely to change in the future.

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The Netherlands

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The history of the parliamentary democracy of the Kingdom of the Netherlands starts on November 3, 1848. In that year, King William II founded a constitutional monarchy. Since that moment on, the Government and two Houses of Parliament became responsible for policymaking and implementation. On historic grounds, the city of The Hague was chosen as centre for the country's democracy, although Amsterdam remained the capital.

King William II's father was Willem I. He was also known as "King and Merchant". Till today, Willem I is used as reference to the DNA of the Dutch: given the size and location of the country in the perspective of a greater Europe, the Dutch economy has always been very open. This made it crucial for the Dutch to actively peddle for interest of the country. So lobbying is a genetic part of the inhabitants of the Netherlands.

23.1 A COHERENT DEMOCRATIC SYSTEM

The Dutch parliamentary arena consists of a Second Chamber counting 150 directly elected MPs organized in different factions (parliamentary groups). It is the primary legislative branch which has the right to check,

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amend and file legislation. Once legislative or policy proposals have been approved by a majority of the Second Chamber, the First Chamber (or “Senate”) is responsible for reviewing it. The First Chamber counts 75 MPs, who are indirectly elected. The Senate’s primary role is to review the legislative (in)consistency and the quality of legislation. It lacks the power to amend. For Senate members, their position is usually a part-time job. Since they have other professional functions as well, they are sometimes criticized for non-transparent combining potentially conflicting roles. A recent report of a group of 49 states fighting corruption by monitoring their compliance with the Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure fuelled a debate about this subject (GRECO 2013).

Parliament and Cabinet share legislative power. The Cabinet—led by the Prime Minister—has the executive power and consists of ministers and deputy ministers. They head a ministry and work closely together with civil servants. On all hierarchical levels, civil servants in the Netherlands are non-politically driven appointees, as they remain in their position when cabinets change.

As “head of State”, the King (currently King Willem-Alexander I) has limited powers other than ceremonial.

In this policymaking framework, lobbying in the Netherlands is “hot”. The number of lobbyists is increasing, not only because the Dutch economy and political system is open to voices in the decision-making arena. But also because companies, federations, associations and governmental agencies recognize the interest of having their voices heard in the political and decision-making process. In this chapter, I will further focus on a historical perspective on lobbying in the Netherlands, how the scene has developed in The Hague, what the consequences have been for lobbying, and how lobbyists organize themselves in this dynamic political era.

23.2 THE DIVERSIFICATION WITHIN THE “POLDER MODEL”

The increasing involvement of lobbyists in the decision-making process comes from a trend of political diversification in the Dutch policy process. Traditionally, the Dutch decision-making process was characterized

as a so-called polder model.¹ In this model, partly originating from the “verzuiling”,² decision-making was prepared (if not “pre-cooked”) by civil servants, employers’ organizations, labour unions, NGOs and other stakeholders with a natural interest in a certain policy area. By agreeing on policy views at an early stage, policy proposals were not stigmatized as “controversial”. They therefore did not need any lobbying higher up in ministries or even in the houses of Parliament. Since everyone already added their bits and pieces of information to the bill early on, everybody agreed at the end.

However, the “polder model” has been under pressure for quite some time now, for various reasons, two of which are relevant in this context. First of all, the classic closed-shop representative organizations like trade unions are losing their legitimacy as their representativeness declines because of a decrease in members. This assumption is based on the fact that these organizations cannot participate in pre-policy negotiations with one view or one voice as they did before; many members prefer to have their own voice heard in the process as well. Because of this, the in-house lobbyist is gaining ground. This has led to fragmentation, which makes it impossible to negotiate a single view on one level. Second, the pre-policy dynamics of the “polder model” have been affected by a trend of more transparency of the overall policymaking process. This trend can be explained through the fact that nowadays it is possible to gain access to information in an early stage of policy development. Draft proposals are being made public, and consultation is often part of the policymaking process. This consultation input is being made public as well. Once this information is out, organizations take a position and as a result, deal-makings behind closed doors happen less and less.

¹ A polder is part of a country that is below sea level. A substantial part of the Netherlands is polder. To maintain the polder and prevent flooding, the Dutch had to come to agreements and set aside their differences. By continuously reaching consensus, the polders remained in the right shape. Ages later, this same consensus was recognized as the success factor for social and economic issues. Unions, employers, and government actors met and agreed on policy issues, even before these issues were introduced in parliament.

² The “verzuiling” (“columns”) refers to a vertical structure in society in which people organized themselves along a shared vision on life, ideologically or religious. Each “zuil” used to have its own associations, schools, unions, hospitals, etc. This structure was abandoned gradually since the late 50s in the last century.

23.3 INSTITUTIONAL CHANGES WITHIN A DYNAMIC POLITICAL ENVIRONMENT

On the institutional side, a similar change has taken place. First of all, civil servants realize more and more that they need political support for policy proposals. The decision-making process has become more politicized in that respect. At the same time, the number of political parties has increased substantially. Due to discussions, conflicts and rivalry within political factions in Parliament, many MPs leave the faction they initially had been elected to: this led to a current amount of 16 factions out of 150 MPs in the Second Chamber of parliament in 2015 (in 2003 they were nine).

This high number of factions has led to a trend that I refer to as “the competition of attention”. Although working for the general interest, the competition between MPs from different or the same political parties has increased the need to be more visible than in earlier days, which has increased the need for exclusive “results” with which they can “score”.

Lobbyists focus not only on MPs, but also on the government and on the competent ministries. In fact, almost 3000 legislative proposals are sent annually to the houses of Parliament by the Government, so that once policy proposals are finalized by the Government and shared with the Second and First Chamber, lobbyists shift their attention to the legislative branch. In some cases, MPs can also file the so-called initiative law proposals, even if between 2000 and 2015 only 43 of the pieces of legislation initiated by MPs have been approved.

23.4 PARALLEL CHANGE OF THE LOBBYING INDUSTRY

Both trends have led to a convergence: on the one hand, the total number of lobbyists has increased as is shown on membership base of the professional Public Affairs association (BVPA) in the Netherlands. Currently almost 700 lobbyists are members of that association, although an exact total number of lobbyists in the country is not available (Transparency International Netherlands 2015). On the other hand, it takes more effort to reach a majority vote. Also, in order to emerge, lobbyists need to become more professionalized, which is exactly what has happened.

The lobbying and public affairs profession in the Netherlands has become more professionalized over the last ten years, not only in terms of instruments and strategy, but also in terms of responsibilities and positions.

Despite these changes, the Netherlands can also be perceived as a traditional “lobby-market” in which the profession is still developing and the reputation is under discussion, following several “incidents”.³ The Netherlands is lacking a think-tank culture (other than institutionalized governmental think tanks), neither citizens nor companies are allowed to give (much) funding to political parties (although parties set different self-imposed limits to private donations), and Brussels has become more and more important. Although “The Hague” is still considered to be the “centre of influence” of Dutch lobbyists, an additional focus on The Hague as a means to influence the policy process in Brussels can be identified. This is also true for a regional and local level.

There has also been an increase in the dynamic of the Dutch political system, caused by several high-impact events: Pim Fortuyn, a powerful and upcoming political leader of a party he founded himself (LPF—*List Pim Fortuyn*), was killed by a political activist in 2002; more recently, the rise of a relatively right-wing oriented party (PVV—Freedom Party). During the general election of June 2010, PVV became the third biggest party in the country. With their voting power, they decided to support the current Cabinet but without participating in the Cabinet itself. It created a novelty in the Dutch political context.⁴ Additionally, the mistrust of citizens towards the political elite keeps to grow (Sociaal Cultureel Planbureau 2014). For lobbyists, all these developments have led to a situation where dealing with continuously changing political majorities and minorities became more and more important.

What else does this overall environment mean for the lobbying industry? First of all, the complexity of the political process takes more effort and asks for more professionalism on the part of lobbyists. It also led to a demand for more education as well. Leiden University offers a combined Master’s programme in Public Affairs. A similar programme focused on

³ Among these, a TV programme that staged a fake lobby, a promotion research by a junior professor of the University of Utrecht examining the influence of companies on sustainable policy, and a Dutch bank that was criticized for non-transparent lobbying to the minister of Finance on a complex piece of legislation.

⁴ In October 2010, this led to the creation of a “tolerance Cabinet”. In this situation, the governing parties—a coalition of Conservatives (VVD) and Christian Democrats (CDA)—do not rule based on a parliamentary majority, but rule by majority with support of a third party (the Freedom Party—PVV). This is done based on a written agreement on certain issues. On issues on which nothing has been agreed upon, the PVV can take a position differing from the coalition.

European Public Affairs is offered since 1999 by Maastricht University and comparable programmes are offered by other universities. However, the curriculum of these programmes focuses more on the institutional aspect—as part of the study of Public Administration—than on the practice or profession of lobbying. In addition to these Master’s programmes, a post-doc university programme is being offered for public affairs and lobbying professionals for two to four years of additional study and experience at Campus Den Haag, Leiden University. Several Dutch universities have shown an interest in further developing a specific study or specialization in Public Affairs and combine it with a more general curriculum of Public Administration or Political Science.

23.5 QUESTIONS REMAIN ABOUT LOBBYING

As said, the exact amount of lobbyists in the Netherlands is not known. However, it is clear that the total number of lobbyists has increased, on a consultancy level as well as in-house, within companies as well as with NGOs. This can be seen through the growth of membership of the professional public affairs association, the number of vacancies as well as the feedback shared by those being target of lobbyists. Also, governmental agencies have their own lobbyists. Most of the time, they have a different title, but in essence, they do the same work. The increase in educational programmes partly helps to improve the reputation of lobbyists. However, it differs by issue and industry. Because lobbyists are and lobbying is increasingly visible, the BVPA underlines more and more what the added value of lobbying is, with the objective that stakeholders increasingly understand that lobbyists improve the decision-making process and in the end improve democracy. Looking at a general profile of lobbyists, a 2014 research by BVPA on its members shows how 88 % have a university degree. The background of lobbyists is very diversified: from former politicians to civil servants, from CEOs to lobbyists recently graduated from university. Education is mainly based on practice courses. A research in 2007 asked all 150 MPs about their trust in lobbyists and showed that 55 % of MPs have slight to high trust in lobbyists (“Ruim helft Kamerleden vertrouwt lobbyisten” 2007). However, on a more general public level, the term “lobbying” has a less positive connotation. The context in which media talk about “lobbying” and “lobbyists” is generally critical. The perception towards lobbyists in the Netherlands among general public was researched by TNS NIPO in May 2015, showing how

39 % of the Dutch population has “trust” in lobbyists, while 55 % opposes politicians becoming lobbyists.

23.6 SETTING THE RULES FOR PUBLIC AFFAIRS PROFESSIONALS

Now that lobbying is more visible, regulation of the profession surfaces now and then, partly as a national issue but partly as spill over of the discussion about regulation in Brussels. The Dutch professional association of lobbyists—the *Beroepsvereniging van Public Affairs*, founded in 1999—has a code of conduct to self-regulate its members. As said, it currently counts almost 700 individual members, working in-house, consultancies, governmental bodies, federations, NGOs, etc. By becoming a member, a lobbyist agrees to abide by the Code and its general rules for the PA profession. If a lobbyist disrespects the Code, he or she can be disbarred from the association. This has not happened as of yet; however, one complaint was filed against a member of the association, leading to a warning for bad behaviour. The Code of Conduct is about transparency, openness and honesty and it defines general rules for lobbyists to abide by.

There is no legislation in place closing “revolving doors” for civil servants. Although, the Ministry of Defence (MoD) has adopted a code of conduct, forbidding former employees to have business contact with their former colleagues within one year. Because of former ministers switching to companies, a discussion about revolving doors has been initiated. Members of the First Chamber—a part-time job—have also been criticized for combining a role as MP as conflicts of interest with their parliamentary responsibility and other paid jobs. Nor for ministers, nor for civil servants or First Chamber members, this has (yet) led to changes.

The House of Parliament (Second Chamber) considered establishing rules on access to the House itself in 2012. However, these rules were not fully implemented. Under the proposed set of rules, it would become more difficult for lobbyists to gain access to parliament. In the current system, rules about accreditation are quite informal. It is considered important that lobbyists are present a certain number of days a week in parliament, before they receive an access pass. Because of this more or less random basis, some lobbyists receive an access pass and some do not. This has led to an uneven playing field for lobbyists. In May 2015, two MPs opened a consultation on transparency, including topics like lobbying,

revolving doors and a lobby-register, which eventually led to the approval of a majority motion prescribing the inclusion of a legislative footprint in all pieces of legislation, disclosing all the inputs that the Ministries received by the interest groups involved in the topic.

23.7 PERSPECTIVE FOR THE SHORT TERM

The profession of lobbying is expected to change further in the future, in amount and in approach. More and more lobbyists will enter the Dutch political arena competing for the attention of civil servants and/or politicians. Therefore, it is crucial that lobbyists professionalize the way they work. Knowledge of the technical decision-making process will become ever more important. In relation to Brussels—which is even more complex than local lawmaking—a decentralized lobbying process in provinces and municipalities will lead to a changing profession. Parallel to future developments, it will become more important to become an expert in an industry or sector: content will lead along with process. In the past years, a lobbyist could focus only on process, but in the upcoming years, this will no longer suffice and will be combined to a more and more content-driven lobbying. Finally, the importance of media, old as well as new, for lobbyists will increase. The old school “network lobbyist” will gradually disappear, and they will be replaced by a young new generation of lobbyists, operating as public affairs generalists looking at the influence-making process from a multi-discipline perspective (regulatory, communications, strategy management, and political). One final bottom-line question remains: what do the target audiences expect from the modern Dutch lobbyist? Only those who know and anticipate the answer will be assertive enough to stay in the influence game.

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Poland

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24.1 POLITICAL BACKGROUND

Poland is a parliamentary republic. The supreme law of Poland is the Constitution passed in 1997 and ratified by a national referendum. The government system of the Republic of Poland is based on the separation of and balance between the legislative, executive and judicial powers.

The national legislature is bicameral and is vested in the Sejm and the Senate (respectively the lower and upper houses of the Parliament). The Sejm consists of 460 members. The Sejm votes on laws, establishes directives for the activities of the state and supervises the activities of all the other state bodies, including appointments to the Council of Ministers.

The Senate is a representative body. Its role is not as important as of the Sejm. Its major task is to participate in the legislative process and to propose bills. The Senate consists of 100 Senators.

Executive powers are entrusted to the Prime Minister and his Cabinet, referred to as the Council of Ministers, and to the President of the Republic of Poland. The Prime Minister is appointed by the President and approved by the Parliament. He manages the work of the Council of Ministers,

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supervises local government and is officially the head of the government administration.¹

The President of Poland is the head of state, the supreme representative of Poland who guarantees the continuity of the state power. This means that the President, who heads the executive authority, is appointed to represent Polish interests on the international arena and to ensure the obedience to the Constitution. He is also responsible for the security of the state. The President calls elections to the Sejm and Senate, and in unprecedented situations has the right to shorten their terms. He can call a national referendum in matters important for the state which require a decision of all the citizens (such a referendum decided of Poland's accession to the EU).

The President has the opportunity to influence the legislative process by using his veto to stop a bill. As a supreme representative of the Polish state, he ratifies and cancels international agreements.²

Poland has a three-level division of the state's territory, separated into *gminas*, *powiats* (both local authorities) and *voivodeships* (regional authorities). The basic (lowest) organizational unit of the local government is the *gmina*—an urban or rural administrative district. A few *gminas* make a *powiat*. A group of *powiats* form a *voivodeship*. At present, in Poland there are 16 of them.

Local government's decision-making and supervisory bodies are the councils, which operate at three levels. The councils make local jurisdictions, supervise the budget, impose local taxes and charges (on the grounds of existing legislature) and adopt resolutions on matters of property rights. The councils appoint and dismiss the local administrative officers such as the *wójt*—the chief administrator of a *gmina*, the mayor or a president of a town, the *starosta*—the chief administrative officer of a *powiat*—and the *marszałek* of *voivodeship* council. Council members are elected in general, direct and equal ballot.

The Polish political system is based on a party system. Therefore, in the parliamentary, presidential, and local elections candidates supported by significant political parties have a better chance of success. Parliamentarians belonging to the same political group create their parliamentary groups

¹Warsaw Destination Alliance—"Polish political system".

²Marek Dutkowski—"Poland", 2010—2016 Akademie für Raumforschung und Landesplanung.

within the Sejm and Senate. In practice, most of the bills and legislative amendments are prepared within the parliamentary groups.³

24.2 LOBBYISTS AND THEIR PUBLIC PARTNERS

Due to the nature of the legislative process in Poland, the government (ministries, various agencies) is the primary initiator of new legislation. This is the reason why most of the lobbying efforts are directed at establishing contacts and influencing governmental institutions.

As regards the legislative lobbying, it is important for all interest groups and other stakeholders to learn as early as possible what new initiatives—policies, regulations, and so on—particular ministries put in the government legislative plans. Most of regulatory initiatives announced by the ministries are based on these plans, and they are closely monitored by all kinds of legislative lobbyists.

Another group of lobbyists watch governmental strategies, programmes, especially those leading to public procurement announcements. Public orders, especially those in such areas as privatization, defence, energy, health care, transport, infrastructure development, and so on are traditional objects of interest to domestic and international lobbyists.

The parliamentary committees are also interesting targets for lobbyists, but not so much as governmental institutions, mainly because their work covers the end-side of the whole legislative process, when future shape of a particular draft law has already been developed.

Who are the biggest lobbying groups in Poland? Interestingly, a poll among members of parliament showed that representatives of trade unions and local governments are among the most visible groups. Others include NGOs, business organizations, professional associations, and the Catholic Church. Less frequently, the parliamentarians admit direct contacts with representatives of international corporations, big Polish companies, consulting, law or lobbying firms.

Since 2005—the year of introduction of the Law on Lobbying Activities, which in practice strongly discriminates professional lobbyists in their access to the decision makers, a lot of lobbying is done via associations or other institutions, which are not controlled by the law on lobbying activities.

³ elib.kkf.hu/poland/lengyel/politics/EN.htm

Political financing does not have a prominent place on a list of lobbying instruments in Poland. There is a Law on Political Parties' Financing, which gives to those parties, who won 3 per cent or more votes in the parliamentary elections access to the specially allocated state funds. Access to those funds constraints their needs to increase the financial strength by seeking outside political financing, which itself is also strictly regulated.

Although maintaining long-term relationships between potential lobbyists and individual politicians is practised and is quite common, only few associations, unions or business organizations openly admit that they support or are associated with a particular political party.

24.3 PROFESSIONAL LOBBYING

Professional lobbying does not have a long history in post-war Poland. Only less than 20 years ago one could notice first moves in that direction inspired by business culture brought in by international corporations developing their business in Poland. This progress was slowed down by the series of corruption scandals caused by individuals wrongly labelled by the media as "lobbyists". The famous Rywin's Affair is the most well-known corruption affair in Poland that initiated an inquiry by the Special Parliamentary Commission. It is named after the businessman Lew Rywin, who offered his help to change the "Media Law" in return for a large bribe. He said that he stood on behalf of "the group of people who are ruling". After the "Rywin's affair", corruption was ranked as the fourth biggest "national problem" of Poland (Galkowski 2008).

From then on politicians realized that "accusing" a political opponent of having contacts with the lobbyists was an effective weapon in political fight. That created an unfavourable climate for institutional development of the lobbying profession.

Currently there are only a handful of companies publicly announcing that they provide professional lobbying services. There are more of them hidden behind the names of various law, public relations or consulting firms.

There is a limited group of sociologists who do research on lobbying in Poland. Most of them have good contacts with the lobbyists' community, publish articles and results of their research. However, it should be noticed that over time they focus less and less on lobbying in Poland and turn to the public affairs issues and activities at the EU level. There were some attempts to establish a permanent postgraduate studies devoted to public

affairs (e.g. in Collegium Civitas of Warsaw), but after a few years of its activities, organizers had to withdraw, mainly due to insufficient demand. Comparatively, high fees were to be paid by the students of such faculty. Probably the main reason of a declining demand was that the political climate is unfavourable for professional lobbyists, so only few students were willing to invest believing that they would be really successful in this profession in near future.

Professionals are aware that one cannot become a successful lobbyist obtaining only a theoretical, academic knowledge from the university. Since the public affairs companies are usually very small in Poland, those who want to work in that profession usually start getting their experience elsewhere: in business associations, NGOs, chambers of commerce, trade unions or law or public relations companies. Only a small number of lobbyists are the former politicians or high-level government officials. They are mostly employed by international corporations or consulting companies.

24.4 LOBBYING REGULATIONS

After numerous attempts to regulate lobbying, Polish parliament in 2005 adopted a national regulation on lobbying—the Law on Lobbying Activities.

In principle the law relates only to activities of professional lobbyists. Its main provisions related to professional lobbying state that:

- Lobbying activities are all legal activities leading to influence the public authority in the legislative process,
- Each stakeholder wishing to submit her/his opinion in the legislative process has to fill in a special questionnaire,
- Professional lobbyists have to register at the Ministry of Administration and Digitization,
- There is a financial penalty for conducting professional lobbying without registration,
- Special Certificate of registration is issued and valid for 3 months. The Certificate has to be presented by the professional lobbyist while contacting a politician or representative of the public administration,
- There is an obligation on the side of public administration officers to prepare a detailed report on every contact with professional

lobbyists, including level of their influence on the decisions made by the public body,

- All such reports have to be made public.

Due to these provisions professional lobbyists have more obligations and restrictions in their contacts with the government administration and politicians than other lobbyists acting as representatives of associations, unions or business organizations. The law imposes on government officials an obligation of preparing detailed reports (direct and annual) after having contact with each individual who can be perceived as acting in capacity of a professional lobbyist. As a consequence, the government officials try to avoid contacts with professional lobbyists. On the other hand, lobbyists, being aware of these barriers, mainly act as representatives of various organizations and associations, which are not covered by the provisions of the Law on Lobbying Activities.

Recently more and more experts active in legislative and lobbying fields are convinced that the current law on lobbying activities is ineffective and has to be amended in near future.

24.5 ASSOCIATION OF LOBBYISTS

There is not a strong tendency among lobbyists in Poland to unite forces and actively defend their interests. In 2003 the Association of Professional Lobbyists in Poland (*Stowarzyszenie Profesjonalnych Lobbyistów w Polsce*) was formed by ten co-founders. The organization was most active during parliamentary discussions over the upcoming law on lobbying.

The association worked out and adopted a Code of Ethics. It is based on international best practices. The main provisions are that lobbyists

- have to obey the Polish law, especially related to corruption;
- while contacting decision makers should always introduce themselves and the client on behalf of whom they act;
- should never distribute false information;
- should never use unlawful or dishonest methods to obtain information from the public bodies;
- should obey confidentiality and loyalty principles in relations with the client;
- should avoid conflicts of interest; and
- should inform the client if expected objectives are potentially unlawful or unethical.

In recent years, members of the association have participated in occasional public debates on lobbying and much more intense discussions on how to improve the law-making system in Poland. In this area, lobbyists cooperate with the lawyers, NGOs, business organizations and others. Some positive results of such cooperation are already visible as the improved regulation of the legislative process was adopted by the government in 2014.

Looking at the future of lobbying in Poland, it is important to realize that there will not be much progress in establishing working relations between the government administration and professional lobbyists until there is a better understanding among Polish officials of the important role the lobbyists play in modern democracies, which leads to better quality of adopted law. Good way to achieve that understanding would be to apply international best practices already developed in this difficult but vital field of public life.

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Portugal

Joaquim Martins-Lampreia

25.1 POLITICAL OVERVIEW

After the revolution of April 1974, known as the “Carnation Revolution”, Portugal became a presidential parliamentary democracy leaving behind almost half a century of dictatorship.

The political system is governed by four separate bodies: the Parliament, the President, the Government and the Constitutional Court.

The Parliament consists of a single chamber known as the Assembly of the Republic (*Assembleia da República*), which represents all Portuguese citizens.

It consists of 230 Members (*Deputados*), elected for four years, from closed lists that Parties or coalitions put forward in each constituency, according to a proportional system.

In the current legislature, there are six parliamentary groups corresponding to the political parties with Members elected on October 4, 2015. These are the Social Democratic Party (PSD), the Socialist Party (PS), the Social Democratic Center/Popular Party (CDS/PP), the Communist Party (PCP), the Left Block (BE) and the Ecologist Party/

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Greens (PEV). Since 1974, the Portuguese political scene has been dominated by the PS and the PSD.

The President is the Head of State, elected for a five-year term, for a maximum of two consecutive terms. Under the Constitution, he represents the Portuguese Republic and is the guarantor of national independence, the unity of the state and the proper working of democratic institutions.

Anibal Cavaco Silva was the 19th President, elected by universal suffrage in 2006 and re-elected in 2011. His successor, Marcelo Rebelo de Sousa (also from PSD), took office in March 2016, after having won the last elections of January 2016, by 52 % of the votes.

The current Portuguese Government is Socialist. After the general elections, the Socialist Party leader Antonio Costa was appointed as PM on November 24, 2015. However, his “left-center” Government, who has the support in Parliament of the Communists and the BE (kind of Portuguese Syriza), is likely to face medium-term instability.

While Socialists, who won 32.3 % of the votes, are pro-Europe, pro-euro and pro-NATO, both Communists and Bloquists (who won 18.4 % of votes jointly) are decisively eurosceptic. That is why there is not a really left-wing coalition, but only a punctual support, which suggests that the Portuguese political situation will be highly unstable for the foreseeable future.

As in all parliamentary representative democratic republics, the Prime Minister is the Head of Government. Although the President of Republic is the Head of State and has several political powers, the Executive Power is exercised by the Council of Ministers, and the Legislative Power is vested in both the Government and the Parliament.

The current Portuguese Government is composed by a majority coalition of PS, PCP, BE and PEV under Prime Minister António Costa, succeeding to the centre-right coalition PSD/CDS, with Pedro Passos Coelho as previous Prime Minister.

Finally, the Constitutional Court is defined in the Constitution as a completely autonomous institution that operates independently from the other branches of Government, such as the Executive or the Legislative. The judges of the Constitutional Court are independent, cannot be impeached, and their decisions are above the decisions of any other authority.

Portugal joined the European Community in 1986 (together with Spain), having experienced significant growth during the last quarter of the twentieth century.

On July 5, 2004, José Manuel Barroso, then Prime Minister, was nominated President of the European Commission, and on December 1, 2009, the Treaty of Lisbon entered into force, being signed by all Members States on December 13, 2007, in Lisbon.

Economic disruption in the wake of the financial crisis led the country to negotiate in 2011 with IMF and EU, a loan to help the country stabilize its finances.

Although Portugal left the EU bailout mechanism without additional need for support on May 2014, the crisis had significant adverse economic and labour market effects, with high unemployment rates and poor economic growth.

At the European Parliament there are currently 21 Portuguese MEPs, the majority of which are in the groups of EPP (PSD and CDS) and the S&D (PS).

25.2 POLITICAL FINANCING

The regulation of political financing has taken place through successive waves of reform since the adoption of the first Decree which gave legal recognition to parties in 1974 (De Sousa [2004](#)).

The Decree Law 595/74 of November 7, 1974 (*Lei dos Partidos Políticos*) gave juridical status to political parties. This early document was not primarily concerned with political financing. The transition from authoritarianism to pluralist democracy had to set priorities for legislators, and it was the functionality of the system rather than its qualitative problems that proved the order of the day. While it is therefore perhaps understandable that this Decree Law scarcely set any rules regarding the financing of parties, it is nevertheless striking to note that this legal framework remained operational and unchanged for almost two decades.

The Law 72/93 of November 30, 1993, was the first attempt to regulate the financing of parties and elections. Although there was general agreement that the issue of political finance had to be addressed, legislators seemed unclear why this was the case. Their reluctance, and the relegation of the issue to a secondary position in the reforms of the political system, led to the adoption of a document that lacked a comprehensive and integrated vision of the instruments and sanctions that were put in place.

The Law 72/93 introduced a mixed system of political financing. Company donations were legalized (Article 3c), public subventions to

parties represented in parliament were maintained (Article 7) and a flat-rate reimbursement of electoral expenses was introduced (Article 27). A vote threshold rule was also introduced to limit the number of parties that could claim reimbursement of election expenses. This rule created an important financial safety net for the major parties, while making it almost impossible for new parties to emerge.

By the mid-1990s, the Social Democrat majority was yielding to increasing demands from the opposition and other institutional bodies on various issues, including ethical standards in public life. Particular concern has been raised with regard to the vagueness of the legal controls set by the 1993 regime regarding company donations and the weakness of the sanctions that were intended to curb any corruption associated with party and elections financing. The Law 27/95 of August 18, 1995, introducing new changes to the rules on party and election financing, was one of several legislative pillars of the “*pacote transparência*” (“transparency package”) proposed by the social democratic majority.

Following the elections of October 1999, in which the Socialists were re-elected, the issue of party financing re-entered the agenda for reform. Indeed, “reform” was the keyword of the XIV government programme. Two legislative proposals were presented to parliament and were finally embodied by the Laws 4/2000 of April 12, 2000, and 23/2000 of August 23, 2000. A series of changes were also introduced to the instruments adopted under the 1998 regime, but the most relevant reform was the decision to ban political donations by companies.

25.3 PUBLIC AFFAIRS AND LOBBYING

Lobbying is not regulated in Portugal. At a public opinion level, “lobbying” is still a taboo word in Portugal, and the same goes for “lobbyist”.

Although we might be one of the very few countries which has translated the word as “Lobi” and “Lobista”, in the Portuguese Academy Dictionary, the term has a bad connotation. That is why no Portuguese professional calls himself a lobbyist, but rather an expert in Institutional Relations or a consultant in Government Affairs.

As for Public Affairs, the term is not yet well understood in the Portuguese market and, as the direct translation to “Assuntos Públicos” would be a nonsense, professionals preferably call themselves “Consultores em Relações Institucionais”, meaning “Institutional Relations Consultants”.

In short, we can say that common citizens tend to perceive a lobbyist as an influential person, who makes undercover contacts with politicians, frequently in a secretive way and with a complete lack of transparency (De Sousa 2008; Sampaio 2014; Transparency International Portugal – TIAC 2014).

There are many reasons for this situation; the main one might be the fact that Portugal had a dictatorship until 1974, lasting half a century. So the idea of having a democratic process, in which civil society can influence political decision makers, is not yet part of the mindset of most Portuguese citizens.

Secondly, we should blame the media. During decades, until the last couple of years, each time a journalist referred to the term, it had to do with a suspicious way of handling a murky relationship behind the scenes, between a government body and a company or a group of businessmen.

We can say that the press is most responsible for having linked the word “lobby” to a synonym of influence peddling, bribery and corruption.

On the political side, Members of Parliament and Government Officials are more familiar with lobbying activities, especially those who have already worked at the European Parliament. Although they do not use the term “lobbies” very often, preferring to refer to it as pressure groups, interest groups or interest representatives, most of them fully understand the whole mechanism and the democratic perspective behind it.

Some previous Governments have often hired US lobbyists in Washington to defend specific Portuguese interests, like the East Timor case against Indonesia, or the nomination of António Guterres, ex-Socialist PM, to UN High Commissioner for Refugees.

The 1974 democratic revolution brought back the resurgence of Unions, corporate sectors Associations and Confederations and NGOs, in defending their interests.

These are the most active bodies in Portugal and, although ironically they do not consider themselves as engaging in any lobbying activity at all, as a matter of fact they represent important sectors of our society, and defend intensively their interests.

In terms of legal frameworks, there are no specific rules or registers concerning pressure groups or their activities. The same goes for individuals, being consultants or ex-politicians.

So, who are the lobbyists in Portugal?

At a first level, they are all people working for pressure groups: NGOs, corporate associations or Unions, fully recognized in the Portuguese Constitution; their number can be estimated of around 300 active persons.

At a second level, there are about 50–60 external Consultants, with different backgrounds.

About half are lawyers, from the main law firms, with good connections to Government.

Normally they work at direct and top lobbying level (also known as inside lobbying).

The remainder are ex-politicians, who had in the past a seat at Government or Parliament, and offer their services, based on a good network of influential people and political decision makers. Normally they also work, like the lawyers, at a direct lobbying and top lobbying level.

There are also about a dozen people with a Communications background, who work in the Public Affairs department (or so called Institutional Relations department) of the biggest PR Consultancies. They mainly work at the grassroots level, using the Media, Internet, events and so on, and putting pressure on decision makers through the mobilization of public opinion.

What happens frequently for a foreign company wanting to implement a lobbying campaign is to hire a law firm for the contacts and negotiations with Government (direct and top lobbying) and, at the same time, to hire also the services of a PR Agency, to give visibility to the whole process (grassroots lobbying).

Just for the records, in recent years there were only two Portuguese Public Affairs consultancies acting in the national market and at European Institutions level (Omniconsul and Eupportunity).

In short we can say that in this small country of 10 million inhabitants, there are about 60 people working as consultants in the field of Public Affairs.

Looking at the Portuguese landscape, it is easy to understand why until now there is no professional organization representing lobbyists or Public Affairs professionals, nor any code of conduct applicable to them.

During the last decade, and due to formal contacts with the main parliamentary groups and Government bodies, on several occasions it has been announced by decision makers that lobbying should be regulated in order to have more transparency but nothing has happened so far.

The biggest problem lies in the fact that about one third of MPs are not working in exclusivity at their job, but only in part-time. And what do these 75 MPs do when not in the Parliament?

They work for big law firms or in big companies of the private sector (Iberdrola, Microsoft, Novabase, etc.). In other words they are part-time

MPs and “part-time lobbyists”, naturally defending the interests of clients or the companies they work for.

And, let us be clear about that, their situation is totally legal, as the Portuguese constitution allows it.

So, while those 75 “MP-lobbyists” continue to exist, it will be difficult to pass any bill, in order to regulate such activity.

25.4 LOOKING AT THE FUTURE

But now the situation seems to be changing at a fast rate, due to several facts that happened quite simultaneously.

Like in some other countries, Portugal saw several high profile cases of corruption and influence peddling in recent years, committed by high-level politicians and civil servants (we even have an ex-Prime Minister in jail waiting for a verdict). These events, occurring in the middle of the economic crisis with a huge media coverage, almost led to a revolution by the public opinion, against politicians.

This sensitive situation drove all the political parties in Parliament to discuss new ways of fighting corruption and to propose projects of laws, aiming at this specific objective.

With this landscape in mind, three facts occurred almost simultaneously:

1. At the end of 2014, the Portuguese chapter of Transparency International released its report on lobbying and the influence market in the country (Transparency International Portugal – TIAC 2014), bringing for the first time the idea that “to fight corruption it is necessary to regulate Lobbying activities”.
2. This was the first trigger, which drove all sectors of our society to look closer at the relationships and influences between politicians and the representatives of bigger corporations of the private sector, like in energy, financial, construction and public works.

Two months later, the Government (a coalition of Social Democrats/Christian Democrats) with the next elections in mind, decided to prepare a new legal framework on transparency, to be presented during the month of July 2015, aiming to fight corruption. And, of course, under the “umbrella” of transparency, the regulation of lobbying and Public Affairs was going to be one of its main cornerstones. Unexpectedly, this proposal was never discussed on time in Parliament before the elections, but its most relevant

“side effect” was that the official programmes of both PSD and PS mentioned the fight against corruption, the need for more transparency and a regulation of lobbying activities as priorities.

3. And finally, the EU–US Transatlantic Trade deal (TTIP) seems to have awakened up everybody for the need to understand and control the Public Affairs activities, before starting any negotiation with their American counterparts.

As a result of this perspective, several things are happening.

Industry, Agriculture, Trade Associations and Confederations began to implement Public Affairs training courses and seminars for their associates, in order to provide them with a “new” and powerful Management tool. Besides ourselves at Omniconsul, these training courses are being held by foreign consultants and scholars coming from Brussels, London and even Washington.

Several big companies, such as Novartis, Pfizer, Central Cervejas (Beers) or EDP (energy), started the restructuring of their corporate structure, creating a Public Affairs department.

Some Portuguese PR and Communications Consultancies are starting to transform themselves into PA Consultancies, with new activities like lobbying, political intelligence, stakeholder management being offered in their portfolios. This might lead to a development of the industry, with around a dozen professional consultancies dealing with PA and lobbying in Portugal in 2016.

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Romania

Laura Florea and Bogdan Dima

26.1 FROM COMMUNIST RULE TO CONSOLIDATION OF DEMOCRACY

Romania's accession to the European Union (EU) starting with 1 January 2007 marked the formal end to the transition period from a totalitarian to a stable democratic regime. After 25 years of post-communism, Romania is now member of the EU, member of NATO, enjoys a decently high-level political rights and civil liberties protection, a high degree of economic liberty, with stable political institutions and a relatively functional separation of powers' system (see Table 26.1). From a big picture perspective, together with its democratic neighbours from Central and South East Europe, Romania successfully passed the test of transition, closely scrutinized by the vigilant and relentless eye of consolidated democracies in the West, especially those assembled in organizations such as NATO and EU (Sadurski 2006, 27–49; Sajó 2006, 175–92; Mungiu-Pippidi 2010, 59–81).

The democratic transition started in December 1989, when the Romanian Revolution led to the collapse of the communist regime and

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Table 26.1 Indicators for Romania

Romania	UE member	NATO member	Economic liberty index rank/score	Democracy level Freedom house index	Economist intelligence unit index rank/score	UNDP human development index
	Since 2007	Since 2004	57/66.6	Free	50/7.06	54

the end of Nicolae Ceausescu's sultanistic-type leadership (Snyder 1998, 77–8). Communist party officials from low levels of former *nomenklatura* dominated the government until 1996, when the first power turnover of the democratic transition took place. The opposition forces gathered under the umbrella of a political and civic movement called Romanian Democratic Convention, won the president office with Emil Constantinescu and a narrow parliamentary majority in the legislative (Pavel and Huiu 2003, 244–86).

A new shift in power came after the 2000 parliamentary and presidential elections, when the socialists won once again the presidency and formed a parliamentary majority and a new government. According to Huntington's theory, Romania passed the two-turnover test, demonstrating its commitment towards democracy and market economy (Huntington 1991, 266–7). Afterwards, each general election brought significant changes regarding the parliamentary majority; thus, new coalition governments with different prime ministers were formed in 2004, 2008, and 2012.

After 2000, regardless which parties formed a parliamentary majority and a governmental coalition, two major objectives were consistently followed by the Romanian elites: the NATO and EU membership. The negotiations' process has been a powerful engine for institutional change generating a complex legal and economic transplant of trans-Atlantic and European values within the Romanian society (Nutu 2007, 254).

Judicial reforms and the fight against corruption were the last stumbling blocks for EU admission and they still remain sensitive topics to be addressed in the near future. After 2007, under the influence of the EU institutional leadership (Europa 2015a), a control mechanism on judiciary matters for Romania and Bulgaria was established, called the Cooperation and Verification Mechanism. Under such a strong European level influence, the domestic political landscape started a massive changeover. Fight against political corruption is still an ongoing process, with an independent judiciary and strong prosecutor's office, showing remarkable success for the time being in dealing with corrupt key politicians (Europa 2015b). However, this specific and full-grown anti-corruption fight in the nowadays *justiciary* Romania has a substantial impact on how the word *lobbying* is perceived by the media and used in public discourses, hence generating controversial and emotive reactions at normative and institutional level (see also Sects. 26.3 and 26.4 below).

26.2 INSTITUTIONAL SPECIFICS OF THE POLITICAL SYSTEM

Romania is a semi-presidential republic, with a directly elected President for five years' mandate (Deaconu 2008, 765; Dima 2014, 170–8; Elgie 2005, 102; Iancu 2015, 157; Iorgovan 2004, 295–8; Verheijen 1999, 193). The Government is politically responsible in front of a bicameral Parliament, also elected on the basis of a universal direct suffrage for 4 years' mandate (Dima 2014, 77–91; Tănăsescu 2008, 1061–2; Tofan 2008, 957).

The executive branch in Romania is dualistic; the President and the Prime minister are both chiefs of the executive branch. From a narrow constitutional perspective, the key institution in Romania is the Parliament. However, from the larger perspective of post-communist political practice, the Government is the most influential institution to take sensitive political decisions and implement them with the support of the parliamentary majority, usually a coalition of several political forces represented in the Parliament (Dima 2009, 14–29; Pavel 2010, 3–21). Despite his/her limited formal powers, the directly elected President also plays an important role in the constitutional architecture of power, influencing the formation of the Government and the adoption of relevant legislation, conducting the foreign affairs of the country and dealing with intelligence agencies and the military as President of the Supreme Council for Country's Defence.

The political party system in Romania has changed from extreme pluralism in early 1990s to moderate pluralism between 2004 and 2012, exploring now a disturbing period of new transformations. One can observe the consolidation of major parties following the doctrinal division right-left: the political scene is dominated by a still solid socialist party (PSD) and a unified liberal party (PNL), the product of a very recent merger between old liberals and democrat-liberals.

Even though the traditional doctrinal dividing lines between left and right is recognizable at least formally if not consistently, the Romanian political parties are still not fully democratized and coherently functional on the basis of shared traditions and assumed ideologies. Therefore, one could reasonably argue that the Romanian political party system is one of the least stable institutions of the whole power structure in the Romanian state, generating unstable coalitions, still prone to strong internal conflicts and treason.

From an electoral perspective, between 1990 and 2008, the parliamentary elections were held using a proportional electoral formula, with closed party lists. Since 2008, the parliamentary elections have been conducted in electoral colleges, using a mixed electoral formula, based on a uninominal voting system, but with strong proportional features. However, the structure of the Parliament, the number of MPs, and the electoral formula are still sensitive and always prone to change topics in Romania. In 2015, a new law on parliamentary elections was adopted, which brought back the proportional electoral formula, with closed party lists at county level, and a d'Hondt redistribution mechanism, favouring thus the big parties.

26.3 OVERVIEW OF THE LOBBYING LANDSCAPE

26.3.1 *Evolution*

The first attempts for a more systematic and organized approach of public affairs and lobbying activities started in the mid of the 1990s, together with the entry of multinationals in the new Romanian free market and the establishment of the first lobbying firm in Romania (Tănase 2014, 166). However, only after 2000, the Romanian state truly began a process of increasing openness towards citizens and interest groups, when two important laws on public participation were adopted in 2001 (The Law on free access to public information), and respectively in 2003 (The Law on decision-making transparency in public administration). While the former has given ever since the possibility to access public interest information, the latter has allowed public consultations between central and local administration and interest groups (Tănăsescu et al. 2015, 51).

The public affairs sector has developed at a considerable pace after Romania joined the EU in 2007. In 2015, there were some 15 consultancies specialized in this area of expertise, employing some 100 people directly involved in lobbying (Transparency Register 2015). In addition, there are more than 50 trade and business associations, dozens of NGOs, as well as lawyers, think tanks, and freelancers engaged in advocacy and lobbying activities, of which over 180 organizations are publicly accredited for consultations at the Chamber of Deputies (Chamber of Deputies 2015a). There are also several types of formal consultations between the administrative structures, the civil society, and the business community, by means of Consultative Councils or Social Dialogue Committees

established around different Ministries and coordinated each by a secretary of state.

However, over the last two years, the most influent Government's consultation platform with the business community, and yet the most discrete one for the general public, has been the Coalition for Romania's Development. According to some of the founding members' websites (AmCham 2015; Romanian Business Leaders Foundation 2015), the Coalition is a private, non-political initiative, gathering the most representative business environment organizations in Romania. It is constructed as a formal collaborative arrangement by its combined membership, all of which have good standing as organizations in Romania. Coalition's main purpose is to provide a cohesive basis for consultation with the Government and other public institutions on topics with a relevant impact on the Romanian business and economic climate. The Coalition gathers 20 business associations, 17 organizations as associated members, aiming to become a common voice of the business community, to offer private sector's expertise within the consultation process regarding the adoption of public policies, and to promote a more transparent consultative process.

26.3.2 *Reluctance*

In Romania, legitimate interest groups, mostly led by large and multinational corporations, avoid political contributions, mainly because such actions would automatically be associated with influence peddling. Although buying influence by illegitimate parties or, even worse, extorting businesses by politicians are still recurrent practices, fight against corruption practices at political and administrative level is an ongoing process, relentlessly followed by special prosecutors' office under the evaluation of the European Commission via the Cooperation and Verification Mechanism (see Sect. 26.1).

Not so very different from other European countries, there is a reluctance of many actors who influence public policies to present themselves and to be called lobbyists. Let aside the fact that once such a complex and disputed concept is officially used and publicly recognized, the probability of regulating that specific concept grows, the reluctance towards the term is also justified due to a general negative connotation of the word (Tănăsescu et al. 2015, 33; Moraru 2010). However, there are some recent studies showing that only 16 % of the Romanians consider that lobbying has a negative connotation (Tănase 2014, 191). In the absence

of more detailed and methodologically flawless sociological studies about public perception regarding lobbyists and lobbying, the feeling of reluctance among actors equipped to influence the decision-making process remains a given fact. Therefore, whether they are representing companies, trade associations, chambers of commerce or NGOs, people prefer to call the act of influencing public policies advocacy or public relations, or—in case of lawyers—professional services.

At academic level, things slowly started to change, as several master programmes, university and private lectures were dedicated to lobbying and European affairs. Even though the impact of such studies is still relatively low, no one should ignore the existence of these programmes and lecturers, as also the growing interest of scholars regarding this field of study. However, it is still true that the skills for lobbying activities are still mostly developed through internships and coaching by consultancies and in-house experts.

26.3.3 *Targets and Methods*

Generally, the main targets of lobbying activities are central executive and legislative authorities, mainly the specialized Ministries, Government, and Parliament. However, the chances to influence a piece of legislation are higher when operating within Parliament and working with MPs rather than focusing on the main executive and administrative bodies, as the latter have developed a closed corporatist model of decision-making.

The ministries and the Government prepare most of the draft laws submitted to Parliament. In fact, in a study taking into consideration the Parliament's activity in the first legislative session of 2014, out of the total number of draft laws which became adopted laws, 83 % were proposed by the Ministries via Government and only 17 % were initiated by the MPs. Moreover, the Government's influence over the majority in the Parliament is so forceful that most of the time the political majority within parliamentary committees and the plenary of each Chamber blindly adopt the draft bills proposed by the Government (Public Policies Institute 2015).

The Parliament is the focus point and the main arena of lobbying activities, as most of the lobbying activity remains reactive and its objectives are to mitigate legislative abuses or unreasonable excessive regulation. The decision-making process within the Parliament is more accessible and more transparent than the decision-making process within the executive structures, such as Ministries and Government. This augmented transparency

and accessibility rest upon the fact that Parliament is the arena of conflicting political factions, such as the opposition parties versus the parties in power, as also within the parties themselves, regardless of their statute; basically, one can always address a MP concerning a piece of legislation he/she does not approve for various reasons.

Most lobbying activities are based on a high degree of research on specific topics regarding the clients' business, followed by position papers on the issues one is trying to influence. The core activity involves direct meetings with the key players or other tactics and strategies developed on the basis of the specific context (hearings, round tables, talk shows, media campaigns, and so on).

26.4 SELF-REGULATION VERSUS LEGAL REGULATION

In any organized society, the private interests of the individuals and groups of individuals will attempt to influence authorities' decisions (Watts 2007, 6) and a democratic society should secure a free competition of all the interest groups so that no particular group would gain the full control over the government (Hague and Harrop 2007, 213–4; Tănăsescu et al. 2015, 20). The same applies to Romanian post-communist society. In fact, lobby exists as long as the right to address petitions to the public authorities is fully recognized and operational. However, some major questions are still to be debated and answered at domestic level. From a public authority perspective, what should be the best way to deal with such a daily life phenomenon? Should it be regulated by laws? Should it be self-regulated? Maybe a combination of the two? In such a case, how much legal regulation, how much self-regulation? We shall not answer these questions here; the answers demand massive research and a complex methodological apparatus, exceeding the scope of this more descriptive Chapter about general features of the lobbying activities in Romania.

26.4.1 *Self-Regulation*

As a direct result of the lobbying activities evolution and growing complexity, the Romanian Lobbying Registry Association was established in 2010 by the main public affairs and communication consultancies, in order to set a common view of the industry regarding the need for transparency in political decision-making. The Registry of the Representatives of Interest Groups in Romania was also created by the Association.

In 2013, the Association took a further step and outsourced the Registry, transforming it into The Transparency Registry for Lobbying and Advocacy, supported by various organizations and supervised by a Commission led by civil society representatives. The Registry is inspired by the Joint Registry of the European Commission and the European Parliament. The registration is voluntary and it is available for free online registration to all those who conduct lobbying and advocacy activities. However, registration is mandatory for the members of the Association.

Furthermore, since its establishment, the Association adopted a Code of Ethics. In 2015, the Code has been revised by the Transparency Registry Supervisory Commission. The Code establishes the principles of representation activity that should be respected by the undertakings, consultancies, organizations, and persons who exert influence in public policy making: integrity, transparency, accuracy, confidentiality, and professionalism. Moreover, the Code of Ethics regulates conflicts of interests, obligations toward public institutions and conditions regarding the practice of employing former civil servants. The code is mandatory for all those registered in the Transparency Registry.

26.4.2 *Legal Regulation*

The phenomenon of lobbying has not been ignored at domestic level, and there have been many political and academic debates regarding the opportunity of promoting a specifically designed law regulating the lobbying activities. Between 2002 and 2011, six draft bills attempted to regulate lobbying. Four of them were rejected, while two of them have been lingering within the Parliament for four years, even though several attempts were made to pass them.

Some of these early attempts to regulate the lobbying activities occurred in 2001 and 2004, within the context of a massive debate regarding the need for more concrete anti-corruption measures, while later attempts occurred in 2008 and 2011, when the public debate were focused on the need for more transparency in the decision-making process conducted by public authorities (Tănăsescu et al. 2015, 67).

A strong opposition to these draft bills has come from the quasi-majority of the stakeholders involved, although for different reasons. Some parties have considered that there are enough laws regulating transparency in the decision-making process; therefore, one should just focus on the better enforcement of these already existing rules.

At this stage, while the right to petition is recognized by the Romanian Constitution, and it is one of the milestones of a representative democratic society alongside the freedom of expression and the right of association, there is also an impressive inventory of 21 laws, five Government ordinances and eight Government's Decisions, thus influencing the activity of all stakeholders involved in the lobbying activities (Tănăsescu et al. 2015, 67–70).

Other parties, including the Ministry of Justice, have suggested that the adoption of the draft law on lobbying activities might be conducive to a decriminalization of influence peddling, as the definition of *lobbying activities* proposed by the draft law is similar to a great extent to the definition of *influence peddling* regulated by the Criminal Code (Chamber of Deputies 2015b). The Association of Lobbying Registry has also criticized the different draft bills on the grounds of very narrow definitions of the term *lobbyist*, very wide definitions of the term *lobbying*, and unreasonably excessive reporting rules. Whether one speaks about specialized lobbying firms, trade associations, NGOs, unions, employers' representatives, professional think tanks, or even lawyers, one refers in fact to various and legitimate interests within a democratic community. Therefore, a law on lobbying activities should impose to all these entities the same rules in order to guarantee a fair competition between them, and common transparency requirements.

Last but not least, and although it is something still largely unknown by the general public and not applied in practice, the occupation of lobbyist has been recognized since 2011 at normative level, as it is now part of the Occupation Code of Romania.

26.5 CONCLUSIONS

Synthesizing 25 years of post-communist development towards democracy in Romania, it seems that three main stages occurred after 1989. First, in the 1990s, the Romanian political class learned the basics of how to democratically exercise the political power, building a reasonably safe and balanced institutional infrastructure dividing the political power at national level amongst multiple power holders. Second, in the 2000s, Romanian political, economic, and intellectual moderate elites, regardless of their ideological and doctrinal differences, committed themselves to adopt and follow the democratic, economic and constitutional values of the western democracies. Third, after 2010, Romania started to develop

and enforce the rule of law, building a strong justice system, and started to learn also how to deal with economic globalized problems, in a vast and complex single European market system.

The ability of the domestic civil society and the business developing entrepreneurship in Romania to challenge and influence the authorities is growing at a fast pace. As a result, one cannot speak of an already established practice of advocacy and lobbying developed by the multinational business, but still underdeveloped by the NGO sector and local business in relation to decision makers.

Lobbying practices are also developing in Romania as they are developing in Brussels and within the Member States. The economic situation at EU and global level, characterized by acute recession, makes lobbying and advocacy necessary, yet very difficult to practice. Major decisions in times of crisis tend to be taken by small groups of potent economic and political leaders, using a less transparent decision-making process.

The next challenge of Romanian society will most likely be to push for more transparent channels of communication between legitimate groups of interests and decision makers, to enhance participative democracy, and effective consultations between all stakeholders. Either that or the consolidation of Romanian democracy is at risk.

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Slovakia

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27.1 OVERVIEW OF THE SLOVAK POLITICAL SYSTEM

Given the fact that Slovakia as country was established only in the last decade of twentieth century, it has a short tradition of democratic institutions. The political system is characterized by a multi-party system in a parliamentary republic. It is split among the legislative branch represented by the parliament, executive branch exercised by the government led by the Prime Minister and the independent Judiciary. The head of the state is the President although with a limited role in policy-making, as the office is largely ceremonial. According to the constitution, the president is the supreme representative of the state both in Slovakia and abroad.

The President is directly elected by the people for five years, and can be elected for a maximum of two consecutive terms. Following the parliamentary elections, the leader of the winning party or the leader of the majority coalition is usually appointed Prime Minister by the President. The Cabinet, appointed by the President on the recommendation of the Prime Minister, has to receive a majority vote in the parliament.

Slovakia's constitutional and unicameral legislative body is the 150-seat National Council of the Slovak Republic (Národná rada Slovenskej

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republiky). Delegates are elected for a four-year term on the basis of proportional representation. The country is a single multi-member constituency. Voters may indicate their preferences within open lists. The election threshold is 5 per cent.

The National Council considers and approves legislation and constitutional laws. It also approves the state budget. It elects some officials specified by law as well as the candidates for the position of Justice of the Constitutional Court of the Slovak Republic and Prosecutor General. Prior to their ratification, the parliament should approve all important international treaties. Moreover, it gives consent for dispatching of military forces outside of Slovakia's territory and for the presence of foreign military forces on the territory of the Slovak Republic.

The Slovak political scene sees a wide spectrum of political parties from left to right, from minorities to nationalists. New parties arise and old parties cease to exist or merge at a frequent rate. Currently, the dominant party is the Social Democratic party (SMER) which dominates the left spectrum. The centre-right spectrum is fragmented with more parties. Political parties receive funding from the state budget based on the performance in the parliamentary elections.

The last parliamentary elections took place on 5 March 2016. The winner of the elections was SMER-SD (Direction-Social Democracy), followed by ISaS (Freedom and Solidarity), OLaNO—NOVA (Ordinary People and Independent Personalities—New Majority), Ludova strana—Nase Slovensko (People's Party—Our Slovakia), Sme rodina (We are a Family), Most-Hid (Bridge) and Siet (Network).

On 22 March 2016, a coalition agreement on the new government was signed among the social democratic SMER-SD, nationalist Slovak National Party, inter-ethnic liberal Most-Hid and centre-right Siet.

27.2 LOBBYING INDUSTRY IN SLOVAKIA

27.2.1 *Targets of Lobbying*

The main targets of lobbying efforts in Slovakia are the government, independent regulatory authorities, the Parliament and the President.

Primary target of lobbying is the government and independent regulatory authorities, responsible for preparing new laws and by-laws. The government runs a specific legislative web portal (www.slov-lex.sk), where all of the draft laws (including the comments of interested parties

submitted in the decision making process) are published, so it is easy to get access to information. The comments to draft laws can be submitted via email by anybody. This web portal is accessible by everyone and administered by the Ministry of Justice. You can look up at any law and also secondary legislation and see at what stage of approval it is at the moment.

Secondary target is the Parliament which is also free to access for public. In comparison to European Parliament (EP) for Slovak parliament, it is still rather rare to hold public hearings. They usually organize it only for major or controversial laws. Due to a tradition of a relatively large number of political parties within the parliament and also multi-party coalitions it may be quite difficult to influence the final shape of certain laws at this stage.

The last possible resort for lobbying is the President himself. However, this is used only when a certain interest group is not happy about the approved law. In this case, the lobbyists try to achieve so that president vetoes the law in question. If the parliamentary coalition is strong, it can overturn the presidential veto by a simple majority vote in the parliament.

27.2.2 *Who Are the Lobbyists*

The lobbying industry in Slovakia is underdeveloped due to a short tradition of influencing the political system in the country. The perception of lobbying among the general public is bad and most frequently it is attributed to activities like bribery and corruption. The media and politicians also contribute to bad image of lobbying as they only attribute the word “lobbying” to something negative. The lobbying profession is not officially recognized by the law as an area of business or as a profession. Under the law, the professional lobbying companies function as simple consultancies.

Furthermore, there are no specific educational or training programs for lobbyists, and there is not any industry association for the profession.

The industry can be divided into several groups:

- Industry associations, employers, trade unions—the traditional ones, however, often ineffective, due to conflicting interests within their organizations and weak leadership. The largest ones (Employer’s Association and the Confederation of Trade Unions) have easy access to the government and therefore can achieve some results for their members.

- Think tanks, NGOs—do not want to be perceived as lobbyists; often weak due to methods they use; they lack professional PR skills to achieve greater visibility to their work.
- Professional lobbyists, PR/advertising agencies, law firms, consulting companies – effectiveness depending on the individual company.
- Individual companies—can be very effective in achieving their goals; they have in-house lobbyists usually at government/regulatory affairs managerial positions.
- Municipalities, regions—although they have access to politicians they are fragmented when it comes to building coalitions.

Only two international public affairs companies are present on the market, following international standards with their own codes of conduct. All other professional lobbyists (altogether three to four companies) are local boutiques consisting of former government officials, politicians following their own methods of working—mainly relying on personal connections.

27.2.3 *Regulation of Lobbying*

There have been several attempts to regulate lobbying in the history of the country. First attempt was in 2002 when the government prepared a draft law on “the Participation of the Public on Legislative Process”. This draft law failed due to the parliamentary elections as the new government after the elections decided not to pursue it. The new government later prepared a new law which wanted to regulate lobbying including introduction of the register of lobbyists, compulsory register of meetings of members of parliament with lobbyists and so on. This law failed due to the approaching parliamentary elections in 2006 and different priorities.

In subsequent periods of its history, Slovakia has made significant progress in introducing innovative elements in the areas of transparency, such as the business register online (available on the website www.orsr.sk, where you can search information on individual companies, including the address of the company, seed capital and legal representatives), the legislative portal, the register of all public contracts online (available on the website www.crz.gov.sk), a Freedom of Information Act. All of these help to make the political system more transparent and accessible to public and help developing the lobbying profession.

The lobbying industry in Slovakia is in stagnation at the moment. With the departure of multinational companies and shift of government affairs

positions in international companies to a more regional level, there is less interest in lobbying in Slovakia. Also, as most regulations originate in Brussels at EU level, many companies are shifting their attention on EU institutions rather than the national government, especially in some heavily regulated industries such as pharmaceuticals, banking and so on. As a result of this, many lobbying companies are moving mainly into the public relations business.

Slovenia

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28.1 INTRODUCTION

Lobbying—in terms of Western understanding—started to develop in Slovenia during the country’s transition to democracy, which entailed the creation of a modern political system based on the liberal-democratic model, the development of a capitalist economy, and the establishment of an independent state (Fink-Hafner 2010). Only some five years after independence (declared on 25 June 1991) did Slovenia officially begin intensive integration into the European Union (EU), becoming a full member on 1 May 2004 (Fink-Hafner and Lajh 2005, 2008). EU membership meant that both the Slovenian national political system as well as the various policy actors had to (re)learn their roles in the ever more EU-embedded policymaking processes (Fink-Hafner and Lajh 2005, 2008; Fink-Hafner 2008). Both clusters of change—indigenous domestic changes as well as EU-related changes—required the development of a more systematic and professional lobbying industry, yet domestic circumstances have hindered such developments.

When looking at the determinants that have been reshaping lobbying in Slovenia, the following explanatory factors and related theoretical

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approaches are crucial: (1) the modernization of the political system; (2) (neo)corporatist traditions and institutions¹; and (3) the predominant political culture and rules determining the characteristics of lobbying.

This chapter will first describe the key characteristics of the Slovenian political system, including Slovenia's neo-corporatist idiosyncrasy among the wave of 2004 EU newcomers. The section on the ethical aspects of lobbying and its regulation in Slovenia is followed by a presentation of the challenges of Slovenian lobbying in the EU context, and by the concluding section.

28.2 POLITICAL SYSTEM CHARACTERISTICS: PARLIAMENTARISM WITH A NEO-CORPORATIST FLAVOUR

The Slovenian political system as determined by the 1991 Constitution is crafted as a parliamentary democracy with a rather weak, although directly elected, President of the Republic of Slovenia. The legislative work is concentrated in the lower chamber, the National Assembly, which is composed of 88 MPs elected through national elections and two MPs representing national minorities (one each elected to represent the Italian and Hungarian minorities, according to electoral rules determined by the particular national minority). The National Council, the upper chamber, was created as a chamber representing territorial interests (local community interests hold 22 out of the 40 seats, and their representatives are elected on behalf of local community representative bodies) and functional interests (four representatives of employees and of employers; four representatives of farmers, crafts and trades people, and independent professions; and six representatives of non-commercial fields, all elected by interest group constituencies). Although the National Council is elected indirectly and is meant to be non-partisan (in the sense that it is expected to counter-balance the party-based representation in the framework of the National Assembly), party politics occasionally plays an important role. In particular, political parties find ways of influencing the National Council via representatives

¹Slovenia has a tradition of neo-corporatism comparable to the tradition developed in Europe especially after the Second World War for managing the business cycle and economic growth. It is a special type of institutionalized voluntary participation of big social groups which are recognized by the government as partners in policymaking and policy implementation in economic and social policies. For more, see the classic text by Lehbruch 1974; and reprinted in: Schmitter and Lehbruch, eds. 1992; Christiansen et al. 2010.

of the 22 local interests. While the National Assembly fiercely controlled the executive branch during the early phase of Slovenia's young democracy and often even asserted its will on the government, the executive has (particularly since the end of the 1990s) been gaining in power in relation to the parliament—similarly like in other Central European post-communist parliaments (Norton and Olson 2007; Zajc 2009).

Even though the 1991 Constitution specifies that MPs—members of the National Assembly—are representatives of the people rather than of political parties, the parliamentary groups (except the two MPs representing national minorities) have in fact been increasingly controlled by the party central offices (Krašovec 2000). It is because there are party central offices that control the selection of candidates for party lists, which actually compete at elections (Krašovec and Haughton 2011).

Over the last two decades both the legislative and the executive branches have remained rather fragmented due to the proportional electoral system, which since 2004 has required a 4 % threshold. At every national election since the 1992 elections, the number of parliamentary parties gaining seats has been either seven or eight. Nevertheless, the number of the government coalition parties has somehow varied between the maximum of six (in 1990) to the minimum of three (in 1996 and 2014).

The institutional opportunity structure for lobbying in Slovenia is not only determined by parliamentary constitutional choice and a proportional electoral system (the impacts of which we have already mentioned), but also some institutional veto points. Among the most critical institutionally determined veto points are the National Council's suspending veto which can order the National Assembly to revote on a decision concerning a piece of legislation that has been passed; however, in order for a law to be adopted, a majority of all members of the National Assembly is required (unless the Constitution stipulates that a higher number of votes is required for the particular law in question).² Among the veto points in the political system useful for influencing the strategies of interest groups (besides convincing the National Council to use its 'veto') are the various kinds of referenda.³ The legislative referendum is particularly applicable to interest groups, but needs to be initiated before the law is decreed.

² For more details, see The National Council (2015).

³ For more on types of referenda and their usage, see The National Electoral Commission (2015).

Interest groups may also demand a national referendum⁴ in order to prevent a particular law from being enacted.

It is no surprise that interest groups tend to consider the executive their most important lobbying target; more precisely they contact persons who prepare policy proposals, relevant officials in ministries, working bodies within ministries, and, to some extent, also ministers and the Prime Minister (Fink-Hafner 1997; Fink-Hafner and Krašovec 2005; Fink-Hafner and Lajh 2006; Fink-Hafner et al. 2012). The National Assembly may be seen as the second most important lobbying target, while the National Council is more or less a marginal lobbying target. It comes as no surprise that the President is perceived as the least powerful and probably also the least lobbied institution.

Among the key tendencies in the political system developments of the last two decades, which are crucial for the lobbying practices have been partitocratic tendencies, party feudalization of the government ministries and the creation of informal political and policy networks. These developments seem to have favoured personal networks over professional lobbying as well as secrecy over transparency. When interest groups exhaust the available institutions, they may turn to mass media, to (relatively frequent) referenda, as well as to unconventional political practices, such as demonstrations and strikes.

Because of the generally negative attitudes towards politics in Slovenia in general and in spite of the emergence of a more positive connotation for lobbying (through political communication between civil society and policymakers ensuring that they make better policies), a negative image of lobbying prevails in Slovenia. In the described political circumstances professional lobbyists struggle to establish their professional status and achieve recognition in real-life policy processes.

However, in Slovenia there is also another segment of interest group-government relations that functions differently than the liberal-based interest group politics mentioned so far. Indeed, Slovenia has remained rather idiosyncratic among the 2004 post-socialist countries that joined the EU in terms of both the strength of its trade unions and the level of institutionalization of its neo-corporatist arrangements, which, as a rule, make a difference to policymaking on key economic and social policies in Slovenia (Bohle and Greskovits 2007; Stanojević 2010; Stanojević and

⁴Referendum and Popular Initiative Act—ZRLI-UPB2, *Zakon o referendumu in ljudski iniciativi*, 2006.

Krašovec 2011). Interest groups involved in neo-corporatist arrangements tend to combine neo-corporatist as well as liberal-democratic paths to influencing policymaking and policy-implementation. In fact, economic interest groups use all three routes to influence policymaking: (1) the neo-corporatist institution (the Economic and Social Council)⁵; (2) functional representation in the National Council; and (3) lobbying both the executive as well as the National Assembly. Non-economic interest groups more or less depend on financial support and the openness of the (Slovenian and/or EU-level) state—and therefore face difficulties with actively and autonomously engaging in policymaking processes.

The recent poor management of the financial and economic crisis in Slovenia has impacted on the overall functioning of the political system. Not only has it led to two pre-term elections (2011 and 2014), but also to considerable electoral gains by completely newly established parties, some of which have even become the dominant party in the governing coalition and assuming the position of Prime Minister. Two important impacts can be observed. Firstly, with the instability of the executive and parliament, political linkages between parties and lobbies have been shaken. Secondly, the judicial branch of power has gained in confidence and has been more efficient in prosecuting historical illegal enterprises with the support of certain parties in power. Nevertheless, the activity of the Commission for the Prevention of Corruption (CPC)⁶ declined drastically after it was politically undermined (the Commission for the Prevention of Corruption 2015b: 16). The CPC was widely held to be a trusted and efficient organization as a result of its vigorous investigation into the corruption of several high-ranking politicians. Public trust declined however due to the CPC's lack of political power and normative basis for prosecution and sanctioning. When the CPC failed to gain political support to introduce more robust anti-corruption mechanisms its top leadership resigned in protest on 29 November 2013. Currently the CPC is described as a 'toothless tiger' (Božič 2014).

⁵For more on this institution, see Skledar (2002) and The Economic and Social Council (2015).

⁶The CPC was established in 2010 as an independent state body like the human rights Ombudsman, Information Commissioner or the Court of Audit Ombudsman with a mandate to prevent and investigate corruption, breaches of ethics and integrity of public office. See more at The Commission for the Prevention of Corruption (2015a).

28.3 ETHICS, REGULATION AND THE LOBBYING PRACTICE

In the process of establishing the new political system, lobbying had increasingly become part of its day-to-day functioning. According to survey of MPs during the 1990s, MPs observed a rapid increase in interest group activity and lobbying, but for the most part they regarded the increase in lobbying as part of democratic practice and only some of them considered lobbying a danger to Slovenia's young democracy (Fink-Hafner 1997).

As most of lobbying seem to take place through the personal networking involving the leaders of interest groups and company managers or other 'in house' lobbyists lobbying is still not an officially recognized profession. Since there are also no particular educational pathways for lobbyists, they enter the job with various formal educational profiles and essentially learn by doing. Politicians even added to a negative connotation of lobbying by including lobbying as 'a secretive activity' into the Integrity and Prevention of Corruption Act (ZIntPK), adopted in 2010 and amended in 2011.⁷

According to the ZIntPK only registered lobbyists are permitted to be involved in lobbying activities. However, individuals, informal groups, or interest groups acting to promote the rule of law, democracy, and the protection of human rights and fundamental freedoms are exceptions to the rule according to the amended act.⁸ No particular education is required in order for a person to register as a lobbyist. According to the Article 56 lobbyist can be 'any person, who has reached the age of maturity who is not employed in the public sector, has not been deprived of the capacity to enter into contracts, and has not been sentenced by way of a final judgment for an intentionally committed criminal offence, or prosecuted ex officio in the Republic of Slovenia to a prison sentence of more than six months'. Former political officials may only become lobbyists two years

⁷The Integrity and Prevention of Corruption Act (2010) and The Integrity and Prevention of Corruption Act—amended (2011).

⁸Article 56a (Exceptions to lobbying): '*Actions taken by individuals, informal groups or interest groups for the purpose of influencing the decision-making of State bodies, bodies of self-governing local communities and the holders of public authority in the consideration and adoption of regulations and other general documents in the area directly relating to the systemic issues strengthening the rule of law, democracy and the protection of human rights and fundamental freedoms are not considered lobbying under the provision of this Act*'.

after the termination of their office not enter the lobbying business earlier than two years after finishing their political role.

While there were only 59 officially registered lobbyists on 21 January 2012 and current records⁹ reveal a slight increase to 63, the real number of practising lobbyists (lobbying either at the national or the local level) is estimated to be between 200 and 300. Although an individual lobbying contact should be agreed by the persons lobbied and may be refused (Article 69) and also lobbied persons are obliged to report any lobbyist whose actions violate the code of conduct (Article 71) the early enforcement of the law was rather poor. It has improved somewhat after the mass media criticism. In 2014, 1118 lobbying contacts were officially reported.¹⁰ Nevertheless, in spite of a provision in law for the removal of lobbyists from the register in the instance of their being registered with false documents, or in the case that the lobbyist ‘*has been sentenced to prison for more than six months by way of a final judgment for an intentionally committed criminal offence prosecuted ex officio in the Republic of Slovenia*’ or ‘the lobbyist states in writing that he no longer wishes to be a lobbyist or carry out lobbying activities’ (Article 62), no such cases have so far been reported.

The nascent professionalization of lobbying found its place within the framework of public relations when the Public Relations Society of Slovenia was established in November 1990. The Lobbyists’ Group (*Sekcija lobistov*) of the Society was established in 1994, and the Public Sector Group (*Sekcija za javni sektor*) was established shortly afterwards (1998–2001), and was rather unsuccessfully re-launched in 2009. The embedding of lobbying in communications has also been evident in the establishment of the Slovenian School of Public Relations (in collaboration with the London School of Public Relations), as well as an undergraduate course in Public Relations (*Odnosi z javnostmi*) co-chaired by a PR expert with university habilitation and a university teacher specializing in communication studies at the Faculty of Social Sciences, University of Ljubljana. However, this education is not formally recognized as a necessary requirement in order to become a professional lobbyist. Encouraged by the Integrity and Prevention of Corruption Act, the Association of Lobbyists was established on 16 July 2010. While the early professional association did produce some written ethical norms, signing the Ethical

⁹ See Register of Lobbyists (2012).

¹⁰ The Commission for the Prevention of Corruption (2015b).

Code of the Slovenian Association of Lobbyists became obligatory for all members in 2011.¹¹

In spite of professional lobbyists reacting to the public equating bribery with lobbying in relation to particular exposed cases¹² this notion persists although corruption has developed to a lesser degree in Slovenia than in many other post-communist countries (Fink-Hafner 2011). The establishment of a new tool for public oversight over lobbying by the Transparency International Slovenia ('Legislative Monitor'¹³) have so far not made a positive difference in changing such a notion.

28.4 SLOVENIAN LOBBYING IN THE CONTEXT OF THE EU POLITICAL SYSTEM

The process of integrating Slovenia's political system into the EU political system since 1 May 2004 has made the challenges for lobbyists even greater. Lobbying on behalf of Slovenian interests has become much more complex in the context of a multi-level EU political system. This is especially true since Slovenia's full membership signified a move from the status of 'policy-taker' to 'policymaker', as Slovenia acquired the right to take an active part in EU policymaking. Policies decided at the EU level need to be influenced by interest groups at an early enough stage and also need to be continuously monitored. This can be done either via the national route (lobbying the Slovenian parliament and—more efficiently the Slovenian government) or via the European route (influencing EU-level processes at the EU level either directly or by joining Eurogroups). However, Slovenian lobbying in the EU context does not have any firm basis due to low levels of political participation (Hafner-Fink et al. 2011). The situation is even less well established when it comes to EU 'soft-law-making'. Similarly, the transposition of EU laws and domestic policymaking largely depends on the resources of interest groups and their informal access to decision-makers, particularly the executive. Although Europeanization of interest groups has proved to impact on the higher level of their policy activities (Fink-Hafner et al. 2015) this does not seem to have added to the development of professionalized lobbying.

¹¹ The Slovenian Lobbyists' Association (2011).

¹² For example, the article relating to the case of mayor Drolc (PopTV 2011).

¹³ Platform to provide some public insight into legislative decision-making, lobbying contacts and MPs' voting patterns (The Legislative Monitor 2015).

While European integration processes support a shift towards more executive-centred and simultaneously less neo-corporatist patterns of decision-making in the domestic arena, they also bring about contradictions in the development of lobbying by Slovenian interest groups. Slovenian non-governmental organizations appear to use their access to European institutions primarily to enrich their resources and by so doing become dependent on the European Commission and Eurogroups. Slovenian lobbyists who work internationally are more occupied serving foreign firms lobbying the Slovenian government than serving Slovenian non-governmental organizations and firms lobbying in the international arena. Some support to both governmental and some non-governmental interests from Slovenia in Brussels is provided by a rather idiosyncratic institution—the Slovenian Business and Research Association (SBRA), which is co-financed by Slovenian governmental and non-governmental resources. Among the less common examples of Slovenian lobbying campaigns relating to the EU have been the lobby against the Abolition of Duty Free Shops in the accession process (Lajh 2003), and the lobby relating to the Registration, Evaluation and Authorisation of Chemicals (REACH) directive favouring the interests of small Slovenian chemical enterprises.

28.5 CONCLUDING REMARKS

Slovenia appears to be at a crossroads where the prevailing future trend remains to be determined. Even though Slovenia's lobbying legislation has been estimated by Transparency International to be the best in Europe, the Slovenian Lobbying Association warns of many grey areas that allow for the non-transparent influencing of public-office holders (Habič 2014; STA 2015). Furthermore, corruption has been estimated to be growing in the context of recent economic and political crisis—particularly transnational bribes (OECD 2014). The destabilization of parliamentary politics and radical change in the political elite after the two consecutive early elections may open the space for corruptive relationships between the more stable economic elites and the political elite. Indeed, in such circumstances the development of transparent and professional lobbying has become even harder.

The embedding of Slovenia in the EU political system will probably continue to have a limited impact on lobbying in Slovenia and only selected professional lobbyists (lobbying firms) are likely to expand the scope of their activities at the supranational level, since the limited

resources of interest groups to undertake autonomous activities and the prevailing political culture of economic interests are unlikely to change until Slovenia surpasses its current level of social and economic development. However, political communication on behalf of external interests in Slovenia may become more active—especially when the Slovenian government publishes its public procurement notices or—as more recently—its list of companies to be privatized.

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Spain

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29.1 AN INTRODUCTION TO SPAIN'S POLITICAL SYSTEM

Spain enjoys a relatively young democracy. The current political system was established by the 1978 Constitution as a parliamentary monarchy in which the King is the Head of State (Ferrerres Comellas 2013). The legislative power is vested in the two chambers of the Parliament, or *Cortes Generales*: the Congress of the Deputies (*Congreso de los Diputados*) and the Senate (*Senado*),¹ while executive power lies with the Government, whose head is the President of the Government (*Presidente del Gobierno*).²

As a multi-party system, elections to the Parliament take place every four years. The seats in Congress are allocated in proportion to the population of each of the 50 provinces. Members of the Senate are elected

¹Section 66.1 of the Spanish Constitution: “The Cortes Generales represent the Spanish people and shall consist of the Congress and the Senate”.

²Section 99.2 of the Spanish Constitution: “The President shall direct the Governments’ action and coordinate the functions of the other members thereof, without prejudice to the competence and direct responsibility of the latter in the discharge of their duties”.

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on a provincial basis. The electoral system allocates seat in a proportional manner applying D'Hont correction formula, with closed lists for Congress and “open” lists for the Senate. Additionally, some Senators are designated by the Regions.

Only three parties have governed in Spain since 1977: UCD – *Unión de Centro Democrático* (Union of the Democratic Centre) which no longer exists, PSOE – *Partido Socialista Obrero Español* (Spanish Socialist Workers' Party) and PP – *Partido Popular* (People's Party). As a result of the electoral system, the Spanish party system has been a two-party system where the mainstream parties alternate government majorities. UCD and PSOE until 1986, and since then PSOE and People's Party (PP) gathering around 75 % of all votes and above 80 % of Congress and Senate members. They always governed alone, with no needs of resorting to a coalition.

In 2014 and 2015, two new national political forces emerged: *Podemos* and *Ciudadanos*. Both parties saw an impressive and constant growth since the 2014 elections to the European Parliament, and have been the main script-writers of the weakening of Spain's traditional bipartisanship, as they have obtained more than 100 of the 275 seats of the Congress of the Deputies in their first national elections, a result which has provoked an unprecedented fragmentation of the Spanish Parliament, resulting in a substantial change in national politics: a coalition agreement is needed in order to form the government and avoid a repetition of the elections.

Other national parties are the Communist Party (*Izquierda Unida*) while in the regional sphere we find several Nationalist Parties, like *Democracia i Llibertat* (former *Convergència Democràtica de Catalunya*) or *Esquerra Republicana de Catalunya* in the Northeastern region of Catalunya, or the Basque Nationalists (*Partido Nacionalista Vasco*). Some of them have played a very important role in the past, endorsing the two largest parties in government, and could be key players in the creation of Transparency Registers by Regional Governments and Parliaments, following the initiatives developed in their respective regions. For example, *Democracia i Llibertat* (former *Convergència Democràtica de Catalunya*) has created the first Transparency Register in Spain, applying to the Catalan Government.

There are several other regional parties, but attentions should be focused on the above-mentioned groups, which currently have significant parliamentary representation through a Parliamentary Group, and hence are relevant stakeholders from the lobbying perspective at national level.

The Congress of the Deputies (*Congreso de los Diputados*, hereinafter “the Congress”) is intended to be the chamber of political representation, while the Senate is aimed at territorial representation.³ However, some provisions in the electoral and the law-making process imply that the weight relies almost exclusively within the Congress, as the Senate can amend or veto proposed legislation, but the Congress can at all times ignore these amendments, or reject vetoes.

At the same time, the high level of decentralization of competences established in the 1978 Constitution allow the 17 Regions (*Comunidades Autónomas*) to enjoy a large degree of autonomy in the management of competencies such as health, environment, taxation, education and consumer rights, among others.⁴ Hence, in order to know which institution is responsible for an issue, a constitutional check must be carried out, as the competencies are assigned in the Constitution and subsequently developed in each of the Region’s Statutes of Autonomy in the case of regional issues. Sometimes, competencies are shared, and therefore interests are addressed both at regional and national level.

This has an impact on the lobbying and government affairs perspective, as a regional approach has to be adopted in some cases, depending on the issues to be addressed. Each of the 17 Regions have their own Regional Government and Parliament to ensure the enactment of legislation in those matters of their competence.

The executive power in Spain lies with the Government as represented in the Council of Ministers (*Consejo de Ministros*). The Council of Ministers is headed by the President of the Government, who is appointed by the King, based on the proposal made by Congress. The President creates his or her Government, and chooses the rest of the members of the Council, who are then also appointed by the King, based on the proposal put forward by the President.

As mentioned before, the legislative power relies exclusively in the Parliament, while the Congress has the exclusive competence to approve laws and international treaties. However, it is also true that the Government develops a large legislative portfolio via Royal Decrees, Royal Decree-Laws and Ministerial Orders,⁵ notwithstanding their competence

³ Section 69.1 of the Spanish Constitution.

⁴ Sections 148, 149 and 150.2 of the Spanish Constitution.

⁵ Sections 81–92 of the Spanish Constitution.

in shaping public policy. As a consequence, a large portion of lobbying activity is focused upon the Government as well.

Spain approved its Transparency, Good Governance and Access to Information Law in 2013 (Ley 19/2013, hereinafter “Transparency Law”) which is binding only for the Government. It does not establish any rules regarding lobbying to the Government, and it does not create a Transparency Register. However, during the parliamentary debate all Groups proposed amendments to include some kind of regulation for lobbies in the law, the majority Parliamentary Group (*Partido Popular*) rejected them.

Spain is one of the countries with the most extensive regulation of political financing (Del Castillo 1985; García Viñuela 2009; Ariño Ortiz 2009). Nominally, the financing system is a hybrid, allowing public and private funds. However, Spanish parties are largely funded from public sources and every new change in party funding regulation has resulted in more public resources for parties, and the amount of public subsidies has constantly grown. After some scandals, in 1987, strict limits were applied to private funding (Ley Orgánica 3/1987 sobre *Financiación de los Partidos Políticos* – LOFPP). In 2007, anonymous private donations were forbidden (Ley Orgánica 8/2007). In 2012, the law was reinforced (Ley Orgánica 5/2012), in order to improve the existing system of donations to political parties, imposing several incompatibilities and increasing transparency. The new rules forbid donations from private corporations that receive public funding. It also imposes restrictions on the debt emission for political parties from credit institutions up to 100.000€ per year, while it became compulsory to inform the Court of Auditors (*Tribunal de Cuentas*) and the Bank of Spain (*Banco de España*).

This reform seeks to avoid malpractice from the ruling party such as arrangement of public tenders, the award of contracts or favorable treatment. Despite this, there had been no significant advances toward better funding, transparency and publication of the political parties’ accounts, even if they are included within the scope and subject to the obligations of the Transparency Law.

29.2 THE REGULATION OF LOBBYING

It is believed that one of the Fathers of the 1978 Constitution, Mr. Manuel Fraga Iribarne, tried unsuccessfully to include the representation of interests in the constitutional text, showing a great high-mindedness.⁶

⁶See the Plenary Session n. 38 of the Congress de los Diputados, July 13, 1978.

Although he did not fully succeed, there are several provisions that recognize the direct participation of citizens and organizations in public affairs, and provide a legal basis for future regulation of lobbying activities. These provisions are Sections 9.2, 23.1 and 105.b of the Constitution.

Section 9.2 establishes the responsibility of the public authorities to facilitate the participation of all citizens in political, economic, cultural and social life. Section 23.1 more clearly establishes that citizens have the right to participate directly in public affairs.

On the other hand, Section 105.b ensures the involvement of citizens, either directly or through the organizations and associations recognized by law, in the creation of the administrative provisions that affect them.

In spite of the aforementioned constitutional provisions, the activity of interests group is not regulated *per se* in Spain, as it is by the institutions of the European Union and in many other countries (Rubio Núñez 2003; Rotondo Ruiz et al. 2014; Transparency International España 2014). Therefore, this activity is largely performed in a non-transparent manner.

However, lobbying is not new in Spain. On three occasions, the Congress discussed different Non-Binding Provisions (*Proposiciones no de Ley*), in 1990, 1993 and most recently in 2008. These initiatives did not lead to subsequent regulatory developments. The last time lobbying appeared in the political debate was during the State of the Nation debate (*Debate del Estado de la Nación*) in 2013, when President Rajoy stated that “*it would be positive to consider [in the Congress of Deputies’ Statutory rules] the inclusion of interests’ representatives (so-called “lobbies”), establishing the scope of their activities and which should be their limits*” (Rubio Núñez 2013).

The year 2015 saw the creation of the first Transparency Register in Catalonia on its own Transparency Law (*Ley 19/2014 de transparencia, acceso a la información pública y buen gobierno de Cataluña—December 29*). Other Regions (Aragón, Castilla La Mancha) and even the Local Council of Madrid have announced regulation or are in the process to regulate lobbying within their respective scopes. These promises show the awareness and the acknowledgment of both the society and the politicians to recognize and regulate the de facto existence of lobbying activity.

It is also worth mentioning, that for the first time in history, four out of five national parties competing in the 2015 General Elections (*Partido Popular, PSOE, Podemos and Ciudadanos*) included in their respective programs the intention to regulate lobbying.

29.3 REVOLVING DOORS: ONLY IN PAPER

When leaving office, the members of the Government are subject to Law 5/2006 of 19 April, on Incompatibilities of Members of the Government and High Officials of the General State Administration. This Law establishes rules about the incompatibilities regime, but it contains also important loopholes. For example, according to the Law, it is forbidden that high-rank officials (from Ministers to Director-Generals) accept jobs with companies affected or influenced by their areas of decision when at office. This interdiction has failed to prevent numerous cases of revolving doors. On the other hand, there is absolute lack of rules applying to high-rank technicians, such as State Attorneys or State Economists, Tax Inspectors or Bank of Spain's technicians, which also play a role in the drafting of legislation, or have access to relevant and confidential information.

Parliamentarians, on the other hand, approve or decline each specific conflict in a special Committee. Discussions are held privately, and each member of the Congress exhibits its own authorizations in the Congress webpage. General compatible activities are teaching in university, lectures, law practice and TV and radio speaking opportunities. However, in recent years, different congressmen faced a number of scandals related to works done during their mandate, so the problem is not making stricter rules—the rules are sufficient—but rather applying them convincingly and effectively.

29.4 THE PROFESSIONALIZATION OF LOBBYING: THE SPANISH LOBBYIST PROFILE

There is no uniform profile of a Spanish lobbyist. Spanish lobbyists have either a legal or a PR/Communications background, and some experience in the political field, although we can find economists and other backgrounds too. It is nonetheless true that while there is no specific educational program, there is an increasingly interesting offer of postgraduate studies offering specialized education in prestigious institutions such as *Instituto de Empresa*, ICADE, the *Escuela Internacional de Comunicación*, the *Carlos III University* and the *Camilo José Cela University*.

From a professional point of view, lobbying is carried out through a variety of organizations. There are specialized Public Affairs firms, PR firms with PA practice areas, law firms, and some consultancies that operate worldwide, apart from corporate lobbyists.

Lobbying and Public Affairs in general are experiencing a sweet moment in Spain. Although in the absence of a proper register there is no data, it is estimated that there are about 500 lobbyists in Spain, including in-house lobbyists, those working for PA firms, PR firms, law firms, associations, NGOs and other non-governmental bodies and think tanks. There are about a dozen well-established Public Affairs firms, and the number keeps growing.

The Public Affairs industry in Spain is not quantified in terms of employees, turnover, or other factors. As a relatively recent activity, there are neither specific publications nor tools for the industry.

From the industry association's point of view, the only existing association representing lobbyists is APRI (*Asociación de Profesionales de las Relaciones Institucionales*), whose main goal is to promote the recognition of the activity by the Government, the Parliament, and society in general, and the enactment of specific deontological and transparency rules.

APRI was founded in 2007 and currently gathers more than 70 professionals, who join the association as individuals. Corporations, PA firms, Universities and NGOs are welcome in APRI's *Forum of Corporations*.

APRI is focused on promoting the conditions for the professional and ethical development of Public Affairs in Spain, and for this purpose, it advocates for the establishment of Lobbyists' Registers by the National and Regional Parliaments and Governments, following the system established by the European Institutions, and the Organisation for Economic Co-operation and Development (OECD) Recommendations.

APRI approved the first and only Code of Conduct for Spanish lobbyists in February 2011, introducing exactly the same obligations that the European Commission imposed on lobbyists acting at EU level at that time. This Code of Conduct, based on seven very simple and clear points, includes the following requirements for lobbyists. Lobbyists must:

1. Identify themselves by name and by the entity(-ies) they work for or represent;
2. Not misrepresent themselves as to the effect of registration to mislead third parties
3. Declare the interests, and where applicable the clients or the members, that they represent;
4. Ensure that, to the best of their knowledge, information that they provide is unbiased, complete, up-to-date, and not misleading;
5. Not obtain or try to obtain information or any decision dishonestly;

6. Not induce staff to contravene rules and standards of behavior that apply to them;
7. If employing former political staff, respect their obligation to abide by the rules and confidentiality requirements which apply to them.

29.5 HOW TO LOBBY IN SPAIN

As previously mentioned, lobbying the Parliament and the Government is unregulated. Interest representation is largely developed by several interest groups.

Only the participation of Labor Unions and Trade Associations is institutionalized as a part of the law-making process. According to the Spanish Constitution (Section 7) “Trade unions and employers’ associations contribute to the defense and promotion of the economic and social interests which they represent”. This defense is not only the representation of the workers, but also is the exercise of a collective representation during the political process (STC 29.11.1982). Both are prominent interlocutors (Hamman 2012) and the Constitution (Section 131.2) spells out the obligation to consult these social bodies during the legislation process in economic issues: “The Government shall draft planning projects in accordance with forecasts supplied by Self-governing Communities and with the advice and cooperation of unions and other professional, employers’ and financial organizations. A council shall be set up for this purpose, whose membership and duties shall be laid down by the law.”

Unions are part of legislative process not only for laws concerning labor, but also in other laws like, for example, Tax Laws (*Ley General Tributaria*, Section 88), which establishes this obligation too. They are key players in the collective agreements, which have norm-setting effectiveness (Royo 2002; Baamonde 2014).

Companies lobby either directly, through specialized agencies and law firms, or through the sectorial associations. Lobbying is normally carried out in Spain through one-to-one meetings, PR tools (press releases, open letters to the Government). More recently, grassroots and other effective advocacy tools, including social media campaigns are being used in Spain.

Public consultation processes are not clearly specified. These should be regulated by Law 6/1997, on the Working and Functioning of the State’s General Administration (LOFAGE). On the other hand, the parliamentary proceedings are regulated by the Constitution and by the respective Regulations of the Congress of Deputies and the Senate.

As said before, while Trade Associations, Unions, NGOs and consumer organizations are normally consulted in the law-making process, corporations and associations need to be more active in order to be heard in the law-making process. Unfortunately, public consultations in the process of drafting legislation are not mandatory neither by the Government nor by the Parliament (Section 44 of the Statutory Rules of the Congress and Section 67 of the Statutory Rules of the Senate^{7 8}) and hence, wider consultation processes depend largely on the will of the regulator.

Each government defines its own structure as it wishes, and there may be different Ministries in different governments. However, from the lobbying perspective it is fair to think that heavy-lobbied Ministries include Economy and/or Finance (sometimes the same Ministry, sometimes different), Industry, Health or Environment.

The Regions follow the same ever-changing scheme but the national structure is often replicated. Regional Parliaments do not always play an important role in a lobbying strategy.

A second level of lobbying and influence includes the political parties and partisan think tanks.

The influence of the political parties will vary depending on the party that holds the Government. However, political parties do retain a large portion of influence in the policy-making process, not only in the Government's action, but also in parliamentary work. The reason for this

⁷Section 44 of the Congress Statutes: "Committees may request, through the Speaker:

- i. Such information and documentation as they may require from the Government and administrative bodies, subject to the provisions of Section 7, paragraph 2.
- ii. The attendance of members of the Government to report on matters relating to their respective Department.
- iii. The attendance of authorities and civil servants competent by reason of the subject-matter of the debate in order that they report to the committee.
- iv. The attendance of persons competent in the subject-matter for the purposes of reporting to and advising the committee."

⁸Sections 67 of the Senate's Statutory Rules: "The Committees may perform enquiries or studies on matters of their jurisdiction, provided a Committee of Enquiry or a Special Committee has not yet been constituted, and entrust several of their members with the carrying out of an information. Furthermore, they may, through the intermediary of the Speaker of the Senate, request the information and assistance they may need from the Government and its Departments and from any State and Autonomous Communities authorities, as well as the necessary documentation at the request of one third of the members of the Committee, subject to the provisions of Section 20, paragraph 2.* Furthermore they may demand the appearance of other people in order to obtain information on matters of their jurisdiction."

might be that in 1978, when Spain was a young democracy after a 40-year long dictatorship, political parties had to be encouraged and strengthened. Nowadays, the system evolves largely through the Political Parties, and the Members of the Parliament do not have freedom of decision or vote in the Parliament. MPs and Parliamentary Groups follow the Party's instructions in each vote (except for the very few occasions in which freedom is granted due to exceptional circumstances). From the lobbying perspective, this control on the MP's voting means that the success of a lobbying strategy largely depends on the governing Political Party.

Among think tanks we can find political ones, as FAES or *Fundación Alternativas*, led by political party leaders and financed by public funds, because of their relation with the political parties, and the independent ones which could play an interesting place to support lobbying campaigns.

Finally, it is worth mentioning that perception indicators about the connection between money and politics and about corruption in the business sector in Spain display alarming results. According to the Euro-barometer of 2013, 77 % of Spanish citizens believe that corruption plays a role in the business culture of the country (the European average is 67 %), 84 % of citizens think that bribes and being well connected are the easiest mean to obtain public services (European average of 73 %), and 67 % consider that the only way to become successful in business is through political connections (the European average is 59 %).

Spain is the European leader regarding the belief among companies that corruption is widely spread in public contracts: 83 % at national level and 90 % at regional and local levels (the European averages are 56 % and 60 %, respectively). Spanish companies also hold the European record for corruption perception, along with Greek and Italian companies: 97 % (the European average is 75 %).

According to the Euro-barometer flash 374, 52 % of Spanish companies believe that the only way to become successful in business is to make good use of political connections (the European average is at 47 %).

In addition, 88 % of businessmen think that bribing and abuse of authority are widespread among politicians (the European average is 70 %).

Finally, according to 93 % of Spanish politicians, lobbying is not sufficiently regulated in Spain, even though 44 % of politicians are optimistic and believe that the sector will be regulated in the next three years. The lack of regulation can explain the fact that 46 % of the surveyed Spanish politicians believe that opacity is the worst aspect of the lobbying industry (the European average is barely 26 %).

In this context, it is not surprising that political parties consider that lobbying regulation is one of the many measures needed to enhance transparency and change the public perception of the relationship between companies and politicians.

CONCLUSION

Spain may be facing specific lobbying rules in the near future, perhaps during the 2015–2020 legislative period (XI Legislature) and deeper changes in the Congress as well, in order to adapt the Parliament to the new transparency requirements. This is due to the new entrants in the political arena, *Ciudadanos* and *Podemos*, which take a proactive stance in favor of the regeneration of politics and institutions.

At the same time, lobbyists will continue developing a more professional profile and the industry will define better its players.

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Sweden

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Sweden has been a monarchy since the tenth century and had a golden age in the seventeenth century when it was one of Europe's great powers. The borders that define Sweden today were formed when the union between Sweden and Norway ended in 1905. Sweden is still a monarchy, yet, today in a constitutional form with a representative democracy founded on popular sovereignty and parliamentarianism.

Sweden is quite a small country in terms of inhabitants, but it is Europe's third largest country by area. Consequently, the country is rather sparsely populated but urbanization has led to 60 percent living in cities in southern Sweden. One-fifth of the population live in the capital region of Stockholm.

The immigration rate to Sweden is quite high, with approximately 200 nationalities represented among the 9.4 million inhabitants. Today, 19 percent of the population originate from other countries. Being a small nation in the outskirts of Europe that is heavily dependent on trade and exports (45 percent of industrial production is exported), Sweden has a long tradition of openness towards and commitment to the rest of the world. The country is an active member of various international organizations, in particular the United Nations and, as of 1995, the European Union.

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The Swedish constitution in its current form dates from 1975 and rests on principles adopted in the eighteenth and nineteenth centuries. Sweden has been a forerunner of democracy and was the first country to introduce freedom of press, in 1776. Sweden made voting rights reforms in 1909, introducing universal male suffrage and proportional elections. In 1921, universal suffrage was extended to women.

The political and administrative system is divided into three levels; national, regional, and local/municipal. The political parties operating on regional and local levels are mainly the same as on the national level. Compared to the USA, the ties between different administrative levels within the parties are quite strong. Thus, political parties as whole entities play a more important role in the lobbying process, as opposed to individual politicians and party representatives being the main focus.

General elections are held every four years, and all Swedish citizens age 18 and above may vote. National, regional, and local elections are always held on the same day. There are 349 members of the national parliament (Riksdag). Parties must receive at least 4 percent of national votes or 12 percent in a single constituency, to be represented in the Riksdag, which limits the number of parties involved in political decision-making processes on the national level. The Prime Minister is formally elected by the parliament but is proposed by the Speaker of Parliament. All laws are to be signed by the Prime Minister who also appoints the ministers that will form his or her cabinet.

Sweden is divided into 290 local municipalities and 20 regions. Based on the concept of thematic autonomy, each of these wields great decision-making power within their geographical area. Municipalities and regions have the authority to decide on many issues; they have the right to taxation and the right to implement service fees, but they do also receive significant subsidies from the government.

Although Swedish authorities execute public policy, they also have considerable room to act on their own. The Swedish national authorities are compelled to follow government directives but have great independence in their execution and exercise of authority.

30.1 POLITICS BASED ON CONSIDERABLE OPENNESS AND INVOLVEMENT

The political culture in Sweden has certain features, all of which have consequences for lobbying. The political culture is characterized by *cooperation* and *consensus*. Traditionally, Sweden has had a very stable government,

due to the dominance of one party, the Social Democrats. They have held the governmental power during a large part of the twentieth century. As a consequence, civil servants and politicians had a significant amount of experience, expertise, and contacts, which reduced the need for professional lobbyists.

Politics today, however, are characterized by a general trend of political pluralism marked by increased complexity and speed. This enables more extensive lobbying as the lobbyists often serve as sources of information for politicians.

During the last decade, the parliamentary situation has become more complex with growing difficulties to form political majorities. Since 2010, eight different parties are represented in the parliament.

Transparency permeates Swedish political culture, resulting in an ‘open government’ where all citizens are entitled access to official records. This principle is enshrined in the Constitution and in the Freedom of the press Act, based on legislation from 1772, which entails that any non-classified documents of the state as well as regional and municipal records are available upon request, that is, correspondence and letters to and from various officials, including ministers and mayors.

Another characteristic of Swedish politics is *involvement*. Political decision-making, for instance on taxation rates, impacts the everyday life of the Swedes, and Swedes are fairly active in politics. The voter turnout in Swedish elections is normally around 80 percent, the exception being elections for the European Parliament where the turnout is usually some 40 percent.

There is a high degree of voluntarism in Sweden. The civil society consists of around 200,000 organizations, which can be divided into three different types: voluntary organizations, co-operative organizations, and foundations. Forty-eight percent of Swedes state that they are involved in some kind of voluntary organization.

Swedes, including politicians and lobbyists, are relatively egalitarian and non-hierarchical. This creates a natural *closeness* between individuals that facilitates approaching one another.

For many years, Sweden has been listed as one of the world’s *least corrupt* countries. This low degree of corruption is mainly attributed to a combination of strong institutions, perceived as trustworthy, and the Swedish culture of trust and confidence in the community at large among the people. Yet, there is an increasing awareness of problems that need to be addressed. Sweden has been criticized repeatedly by the Council

of Europe for the lack of a legal framework regulating transparency with regard to the funding of political parties. The need for legal protection for whistle-blowers is another issue that has been debated as well as the rules concerning quarantine for politicians when leaving the political system for jobs in the private sector.

30.2 YOUNG BUT INCREASINGLY ASSURED LOBBYING PROFESSION

Lobbying has occurred in Sweden in various forms throughout history. Swedish research, however, is scarce on this subject. This can be attributed to a lack of consensus on what lobbying is and the absence of a structured discussion on lobbying. This makes lobbying difficult to discuss in a broader sense. It is challenging to estimate the number of lobbyists in the country. What can be said is that lobbyists are found in various stakeholder environments, such as interest groups, member organizations, and in communications' or public affairs' departments of enterprises.

The word 'lobbying' is quite negatively charged among Swedes and Swedish media. In this negative sense, lobbying is considered as secretive and mystified, and political influence as dependent on economic power. The term lobbying generally associated with American politics and there is popular scepticism towards American-style lobbying, which is quite different to the customs of Swedish politics. Individuals engaged in lobbying, consequently, refer to it using other terms, in order to mute the issue. It is unusual for people to be mere lobbyists, as lobbying often is part of a larger context, often described as 'public affairs', 'public relations', 'European affairs', or 'government affairs'.

As in many other countries, there is an ongoing debate in Sweden whether regulation of lobbying is needed and if yes, to what extent. So far, it has not been considered necessary to establish any regulations. Regulation could entail, for instance, the requirement of a public record for lobbyists, similar to the EU 'Transparency Register'. Until now, industry standards in the field have deemed sufficient as a guide for lobbyist practices.

The PR industry standards issued by the Association of Public Relations Consultancies in Sweden (PRECIS) are used as ethical guidelines, which member consultancies are committed to follow. The PRECIS standards are more or less identical to the Stockholm Charter by ICCO (The

International Communications Consultancy Organization) To be transparent on who you represent in lobbying contacts is one important part of these guidelines.

Not surprisingly, the main target of lobbyists are civil servants of the Government Offices who prepare legislative proposals, Members of Parliament and their staff, local and regional politicians and officials, as well as civil servants of authorities on all levels. Also, in view of the increasing power of the European Union, politicians and civil servants of the European institutions have become an important target for lobbying efforts as well.

A broader definition of lobbying involves opinion-makers, media, and interest groups. While few choose to call themselves lobbyists and few politicians choose to report their contacts with professional lobbyists, lobbying is quite common in Sweden. In 2009, 75 percent of Swedish parliamentarians claimed to have been contacted on a weekly basis by lobbyists. Fifty-five percent reported that they were usually approached by business organizations, 37 percent by companies, 25 percent by trade unions, 19 percent by PR consultants, and 12 percent by local governments (Möller 2010).

Lobbying is not about one meeting, it requires great knowledge of the political system and a thorough insight into decision-makers' everyday work, as well as into the surrounding world. There are still many myths about lobbying; for example, there is somewhat exaggerated importance given to bonds of friendship or personal contacts.

A recent study by Jesper Strömbäck on officials subjected to lobbying described their approach to lobbyism. A general point of view is that lobbying works as preparation for the political drafting process, and assists decision-makers in understanding the consequences of different alternatives. Lobbying's most important contribution to political decision-making is information, facts, arguments, and perspectives (Strömbäck 2011).

Lobbying is important as it contributes to a more comprehensive illustration and continuous public discussion. Lobbying also opens up politics to the possibility of mutual influence, making it possible for decision-makers to communicate with those who try to affect the political decision-making process. Furthermore, lobbying increases knowledge of the political system, the political processes, and the political logics. This is, however, not the general opinion and the man on the street is quite likely have a different view on what lobbyism is.

30.3 WHO ARE THE LOBBYISTS?

The main lobbyists in Sweden are the members and staff of interest organizations, as well as professional lobbyists working in companies as public affairs or communication managers or, occasionally, governmental affairs or legal affairs professionals. They mostly work with positioning the brand of their company on the societal arena, and on particular lobbying efforts. Furthermore, there are also communications and PR consultancies working, in part, to support the abovementioned individuals in their lobbying. Some law firms also assist their clients in interpreting the legislative environment.

In Sweden, consultants play a very small part in the actual lobbying process. This is because in Sweden, it is very unusual for a consultant to act as a spokesperson. Thus, normally, consultants do not represent the interests of a company in meetings with policy makers but, instead, they act more as sounding boards, providing support and strategic advice. There are no consultancies focused solely on lobbying in Sweden.

In addition, similar to lobbyists are think tanks. They are important for opinion-making and issue-awareness raising in general. Sweden has a number of think tanks developing, formulating, and advocating ideas. The two major think tanks are the industry-funded, free-market-oriented *Timbro*, and the popular movements' social justice-oriented think tank, *Arena*. There are also some think tanks who are more green and/or environmentally and ecologically oriented, such as *Fores*.

The professional Swedish lobbyist can have almost any academic or professional background. Quite often, they are former politicians or have experience from a role as a political advisor or press officer. There are at the moment no formal regulations on how to handle the "revolving door" in these cases but the subject is under investigation.

Lobbying is mainly based on practical experience. There is no specific academic education in lobbying. Instead, a variety of communications courses are available at both public universities and private institutions. There are also a few private courses in advocacy, involving major established players such as political parties, business associations, and trade unions.

The main firms working with public affairs and lobbying are all members of the trade organization PRECIS, which is the dominant Swedish organization of the companies operating in the PR and communications consultancy sector. In total it has 40 members. There are no organizations for individual professional lobbyists instead.

30.4 SPECIALIZATION AND PROFESSIONALIZATION FOR THE COMMON GOOD

Lobbying is a relatively new business in Sweden, but it is constantly evolving. Only a very small proportion of the public has thorough knowledge and understanding of what lobbying is and how lobbyists work. There is, however, a lack of a clear definition and of academic research on the subject. This is likely to change; as the business grows and becomes more professionalized, the interest among academics and the general society will increase.

During the last decades, politics and public decision-making have become more complicated and diverse on all levels. This has increased the need for professional support, both among those who wish to gain influence in politics and those who make the decisions.

As part of the professionalization of lobbying, the definition will grow and become broader. This development will make lobbying an important part of democratic society.

As lobbying grows as a business, it is important to maintain good principles and ethics. Imposing regulations on lobbyism is not necessarily a guarantee for a more transparent business. Regulations could, on the contrary, lead to lobbyists trying to find ways around the rules, making the business more secretive.

Lobbyists must continue to have respect for the political process, for politicians and for the general public in order for the business to grow and prosper. Working respectfully and honestly is the key to lobbyism becoming a respected business in the future.

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United Kingdom

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31.1 THE BRITISH POLITICAL SYSTEM

As an island, the UK has always been a trading nation; its global empire was built on a connected network of colonies from which raw material was shipped to the factories of the Industrial Revolution and transformed into goods bought by the rest of the world. Perhaps, though, the most enduring and significant export from the UK was not a product but an idea: its system of parliamentary government. The ‘Westminster model’ is traditionally thought of as encompassing several principal features (although elements have been modified in those nations which adopted the basic framework):

- A bicameral Parliament, in which the lower House is elected on a ‘first past the post’ basis.
- An assumption that electoral politics will be dominated by two large parties.
- The government is chosen on the basis that it holds a majority of seats in the lower House, and most of its members will be drawn from that elected chamber.

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- The leader of the largest party is appointed Prime Minister, and presides over a Cabinet which is collectively responsible for the work of the executive branch.
- Government is accountable to Parliament and will lose office if it no longer commands the confidence of a parliamentary majority.
- The civil service is politically neutral and serves successive governments regardless of their partisan ideology.

Certainly, there have been adjustments—often quite substantial adjustments—to this model as it operates in the UK, but the fundamentals remain distinctive and recognisable today. Most significant in recent years has been the devolution of limited executive and legislative powers to the regions of Scotland, Wales, and Northern Ireland. The UK remains a unitary, rather than a federal, state but power is less concentrated in Westminster (where the Parliament is located) and Whitehall (the centre of government and civil service) than was the case two decades ago. In addition, the 2010 general election pointed towards the breakdown of two party politics, as neither of the main parties (Conservative and Labour) won an outright majority in the House of Commons: thus, the Conservatives took office only as the senior partner in a coalition government alongside the Liberal Democrats. A more usual pattern emerged, though, from the 2015 election which saw a return by the Conservatives to single-party majority government.

So far as lobbying is concerned, the UK's political system has several important implications. To begin with, the system of parliamentary government is very different to the separation of powers which exists in the USA, for instance. In the UK, the government generally has a solid majority in the House of Commons and thus can be reasonably confident of having its legislation passed. The vast bulk of public policy decisions in the UK are taken by the executive rather than the legislature, and so it is natural that most organised interests will focus their efforts and attention on ministers and civil servants rather than on backbench Members of Parliament. In turn, this creates a certain incentive for groups to play a role partly dictated by government. Groups wish to become 'insiders' (regularly and quietly consulted by government in the policy formulation process) and so it becomes in a group's interests to emphasise direct advocacy rather than very public and vocal grassroots tactics. The facts that the UK has strong and cohesive national political parties, and that outside funding of political parties in the UK takes place on a comparatively small scale

and is tightly regulated, mean that (other than the trade unions which are historically linked to the Labour Party) most interest groups try to avoid becoming too obviously associated with one political party, in order that they can continue to attempt to influence policy whichever party is in government. Groups therefore seek to position themselves as technical experts on policy details rather than as partisan cheerleaders. And interest groups will usually prefer to encourage their members and supporters to comply with or implement government policy, rather than to challenge it on the streets or in the courts as is more common in other nations. In other words, it is possible to some extent for government departments to 'capture' interest groups by drawing them into policy consultations, thus inhibiting the groups from employing other tactics which may put at risk the long-term relationships built up with relevant policymakers.

While it is essentially true that government dominates British politics, nonetheless parliamentary procedures do offer a number of useful access points for lobbyists. Select committees, which scrutinise the work of government departments and hold inquiries into policy issues, often attract input from organised interests. Legislation is debated in detail by standing committees, and while the government always has a majority in these committees, it is possible for interest groups to alter legislation as it may only require two or three government backbenchers to vote for an amendment in order for a specific change to be made. During periods when the government has a substantial majority in the House of Commons, the House of Lords takes on increasing importance to interest groups because no political party has a majority of seats in the House of Lords and because party discipline is relatively weak there. For instance, over the course of Margaret Thatcher's administrations from 1979 to 1990, the government was defeated on legislation only twice in the House of Commons but well over 100 times in the House of Lords. One rather unusual feature of the British Parliament is the number of former lobbyists who become legislators. Indeed, there are many members of the House of Lords who were ennobled because of their careers spent leading interest organisations (such as former trade unionists, industrialists, heads of medical and legal associations, and so on). In recent years as political careers have become increasingly professionalised, it is by no means uncommon for someone to move from a job as a researcher with a backbench MP to an adviser to a government minister then into lobbying for a few years before being elected to the House of Commons: around 70–80 current MPs have been professional lobbyists in the past.

31.2 HISTORICAL DEVELOPMENT OF LOBBYING

As recently as 1991, a parliamentary committee was able to report that ‘The terms “lobbying” and “lobbyist” are still not widely used in the United Kingdom’ (Select Committee on Members’ Interests 1991, v). This is no longer true: lobbying has matured into an important and vibrant industry which occasionally attracts considerable media attention, although it remains a long way from achieving public recognition and acceptance as a profession (McGrath 2005). Indeed, while the word ‘lobbying’ was not common, the activity of lobbying has had a long history in the UK.

Prior to the 1800s, there were relatively few trade associations which were actively lobbying government on a regular basis, lobbying techniques were often fairly crude, and the process of attempting to influence government was not yet even known as ‘lobbying’. It is possible to point to isolated examples of industries or causes successfully persuading government of their particular policy preferences, yet it could not be said that an organised interest group system had been established. In a novel population analysis of UK associations, Jordan and Greenan (2009) examine the number of bodies in existence in 2006 and note that around 300 of these were formed prior to 1900. We speak too easily of periods of ‘explosion’ in interest group activity as each new generation of scholars discovers and maps the field, but it does seem clear that the nineteenth century must have witnessed something of a boom in the sheer scale of organisations communicating with policymakers. It further seems reasonable to assume that this rise in activity was most likely accompanied by a corresponding shift in professionalism or effectiveness. An analysis by McGrath (2011) based on contemporaneous newspaper reports presents evidence that lobbying emerged during the 1800s as a systematic and national practice, that it was undertaken by a wide range of interests which were increasingly organised, and that it exhibited many of the characteristics of the major industry it has become. In the second half of the nineteenth century, we see a definite transformation—from purely local or regional interests to national bodies; from ad hoc and uncoordinated advocacy to structured and systematic lobbying; from individual to associational mobilisation; and from commercial interests to wider sectional and cause interests. This happened not in a vacuum but as a direct response to changes in the socio-economic environment, in the nature of political parties and electoral competition, and in the relationship between the various institutional components of the policymaking process.

By the early part of the twentieth century, interest group politics became increasingly central to the governmental process in the UK. The first person in the UK who had ‘parliamentary lobbyist’ as an explicit job title was Charles Weller Kent, who served in that capacity as a consultant to the National Farmers’ Union from 1913 to 1916 (McGrath 2013). Watney & Powell, the UK’s first parliamentary consultancy firm, was established in 1928. Interest groups representing manufacturing, labour, farmers, raw materials and so on, were central to the state’s centralised planning and implementation of both the war effort and the recovery process from the 1930s to 1950s. We have in the works of Stewart (1958) and Finer (1966) a clear overview of the extent and diversity of interest representation from the 1940s to the 1960s, a period in which group politics became absolutely central to the political and governmental process. The 1980s witnessed an explosion in lobbying, as the Thatcher governments deregulated and privatised huge swathes of the British economy. The lobbying industry has maintained itself at this plateau ever since with successive governments asserting an activist role in society.

31.3 SCANDALS: MONEY AND ACCESS

Throughout its history, lobbying in the UK has suffered from reputational (mis)perceptions, and failed to achieve widespread public legitimacy and understanding. Most lobbying scandals relate either to financial relationships between interest groups and politicians or to the personal access to politicians enjoyed by individual lobbyists. During the nineteenth century, for instance, it was common for MPs to hold directorships in firms such as railway companies and to promote those commercial interests in Parliament. In 1948–49, a judicial inquiry into the business dealings of a so-called contact man called Sidney Stanley resulted in the resignation of a Labour minister who had received gifts from Stanley, and Stanley fleeing to Israel. The Poulson affair in the 1970s mostly involved corruption in local government, but also caught up a few MPs who were found to have taken money in return for advancing the interests of major property developers. One feature of the lobbying boom of the 1980s and 1990s was that scores of MPs supplemented their income by working as consultants to lobbying firms and business groups—indeed, some went so far as to actually set up their own lobbying agencies while simultaneously sitting in Parliament.

The 1990s was not a good decade for the reputation of lobbyists in the UK. The industry was convulsed by two major scandals which forced lobbyists out of the shadows and into the glare of unprecedented media scrutiny. The most prominent lobbyist in Westminster at the time was Ian Greer, a former Conservative Party staffer, who was revealed to have paid Members of Parliament commissions for introducing him to potential clients. Moreover, in what became known as the ‘Cash for Questions Affair’, the *Sunday Times* newspaper revealed in 1994 that Greer had been paying MPs to table parliamentary questions on behalf of his clients. The affair led to a spectacular libel case; to the resignation of a Conservative minister, Neil Hamilton; and to the establishment of the Committee on Standards in Public Life, which continues to sit to this day. Nor was inappropriate access to policymakers confined only to the Conservative Party. In July 1998, the *Observer* newspaper reported that lobbyists with the highest-level connections to the Labour government were guilty of serious ethical shortcomings. While posing as a businessman, an investigative journalist was faxed by a lobbyist a copy of a House of Commons Select Committee report the day before it was officially published. He was also told by another lobbyist—Derek Draper—that there were only 17 people who exercised real power in the Labour administration and that Draper, as a former adviser to Peter Mandelson (one of Tony Blair’s closest colleagues) could introduce his clients to them. And in fact, at a reception hosted by his lobbying firm, Draper did introduce the journalist to Blair’s adviser on European policy, who offered to help the journalist once he became one of Draper’s clients.

More recently, three former Labour ministers had their parliamentary passes revoked in 2010 after being secretly filmed offering to sell their services to business interests and boasting about how they could influence public policy. The following year, a Conservative Cabinet minister was forced to resign when it was revealed that he had allowed a personal friend to attend official meetings related to the friend’s private business interests. And in 2012, the Conservative Party’s treasurer resigned in the wake of allegations that lobbyists were being paid by clients to facilitate meetings with the treasurer at which he was offering the clients privileged access to ministers and the policy formulation process in return for substantial donations to the Conservative Party.

31.4 THE LANDSCAPE OF THE LOBBYING INDUSTRY

In the wake of the Ian Greer affair, five lobbying firms set up the Association of Professional Political Consultants (APPC) in 1994; it has since (as of December 2015) grown to 80 member companies who between them account for in excess of 80 per cent of the political consultancy sector in the UK as measured by turnover (and since 2013 membership has also been open to individual practitioners and in-house teams, although take-up has initially been low). Initially, the APPC favoured statutory regulation of lobbying by government but subsequently changed its position as it began to develop a self-regulatory framework for its members. APPC members adhere to a code of conduct and publicly register their public affairs staff and clients. Its website (www.appc.org.uk) contains both register and code, as well as its membership list, information on its structure and workings, and the minutes of its regular meetings. Among other provisions of the APPC's code of conduct, the staff and consultants of its member firms

- must 'ensure that the reputation of the Association or the profession of political consultancy is not brought into disrepute' (clause 1);
- are obliged to take reasonable steps to satisfy themselves as to the accuracy and honesty of information provided to clients and to policymakers (clause 3);
- must clearly state to policymakers on whose behalf they are working (clause 4);
- are not permitted to offer any inducement or incentive to public officials beyond 'entertainment and token business mementoes' (clause 7);
- are prohibited from employing or making any payment to an MP, Peer, MEP, or member of the Scottish Parliament, Greater London Authority, National Assembly of Wales, or Northern Ireland Assembly (clause 8);
- must keep their professional work separate and discrete from any personal partisan activities (clause 12); and
- may not hold an official pass which confers privileged access to the premises of government institutions, except when the pass is held because the institution itself is a client of the lobbyist or because the

lobbyist is entitled to the pass either as a former member, or as a spouse of a current member of that government institution (in which case the pass should not be used when accessing the premises in a professional capacity) (clause 14).

Established in 1969, the Public Relations Consultants Association (PRCA) represents about 350 public relations consultancies in the UK, and accepts individual members and in-house lobbyists also. The 80 or so member firms which are involved in public affairs and lobbying are required to comply with a Public Affairs Code of Conduct, and to make publicly available a register of their public affairs staff and clients (available on the PRCA website at www.prca.org.uk/Public_Affairs_Group). The PRCA Public Affairs Code of Conduct is relatively detailed, containing 18 specific clauses, most of which are virtually identical to those of the APPC's code.

The third key body involved in the self-regulation of lobbying in the UK is the Chartered Institute of Public Relations (CIPR), the organisation which represents individual members of the public relations industry (as opposed to the PRCA's main remit of representing firms). The CIPR has been in operation since 1948 and has over 10,000 members (see www.cipr.co.uk). It has a network of sectoral groups, one of which is the Public Affairs Group with around 700 members. Like the other two organisations, CIPR Public Affairs Group has adopted a code of conduct for its members, although it is much less detailed and prescriptive than the others. It merely requires that members are honest to public officials, clear about whose interests they represent, do not abuse the confidential nature of any information they receive, do not offer a bribe to a public official or attempt to improperly influence them, and do not represent conflicting or competing interests without the consent of the relevant organisations.

Lobbying is a significant component of the UK politics industry, although its exact size can only be estimated. In December 2015, the 80 firms then in APPC membership employed between them around 1400 registered consultants. Although most of the large agencies are APPC members, there are many smaller or regional firms which are not, along with individual freelancers. It is generally believed that the APPC accounts for around 80 per cent of all lobbyists-for-hire, which suggests a total of something like 1800 consultant lobbyists. Most observers further accept that the ratio of consultants to in-house lobbyists (working in companies, charities, trade unions, trade associations, law firms, and so on) is

about 1:4, so that there are likely to be in the region of 7200 professional lobbyists in the UK.

Lobbying in the UK suffers from something of a split personality. In terms of education and training, it tends to be regarded as a subset of the public relations industry rather than as a separate organisational function. This was reflected, for instance, in the fact that for decades no specialised higher education programme was available, with students instead sometimes taking a module on lobbying as part of a broad Masters course in PR. The first dedicated Masters course—first titled Political Communication and Public Affairs, and later renamed Political Lobbying and Public Affairs—was launched by the University of Ulster in 2000, with this author as its course director. It was followed by an MA in Public Affairs and Lobbying at Brunel University and by an MSc in Political Communication, Advocacy, and Campaigning at Kingston University. More recently, in 2011 the CIPR introduced a Public Affairs Diploma aimed at junior/mid-level practitioners wishing to obtain a more academic perspective on their work. So far as employment is concerned, the most typical profile of someone in an entry-level job is probably that of a politics graduate with one or two years of experience working in an MP's office or for a political party or campaigning group. However, there are multiple routes into the industry, and young entrants may come from a law or business degree, or with a background in corporate communication or journalism.

31.5 THE FAILURE OF SELF-REGULATION

Britain's lobbyists have made some genuine and well-intentioned efforts to regulate themselves. As noted above, the APPC was formed in 1994 as a reaction against the Ian Greer scandal, and the various industry associations have all adopted codes of conduct. This approach, however, is inevitably flawed—no lobbyist is required to be a member of any association and thus bound to adhere to a code of conduct; the codes which do exist are quite basic and not particularly rigorous or demanding; they are essentially toothless in terms of enforcement; and they treat lobbying as an 'insider' activity by failing to recognise the legitimate public interest in having meaningful disclosure of lobbying activity.

In 2007 and 2008, the House of Commons Public Administration Select Committee (PASC) held an inquiry into lobbying in the UK. Its report appeared in early 2009, along with transcripts of the written

and oral evidence which the committee received (PASC 2009a, b). A comprehensive analysis of the inquiry can be found in McGrath (2009), but an overview of its key findings and recommendations may be useful in setting the context for subsequent developments. The committee of MPs began their report with a robust defence of lobbying: ‘The practice of lobbying in order to influence political decisions is a legitimate and necessary part of the democratic process. Individuals and organisations reasonably want to influence decisions that may affect them, those around them, and their environment. Government in turn needs access to the knowledge and views that lobbying can bring’ (PASC 2009a, 5). However, the committee concluded that there is currently no practical or purposeful self-regulation of the lobbying industry in the UK: ‘In the final analysis, what lobbying organisations refer to as “self-regulation” appears to involve very little regulation of any substance.... In the current climate of public mistrust, voluntary self-regulation of lobbying activity risks being little better than the Emperor’s new clothes’ (PASC 2009a, 22 and 38).

An innovative recommendation of the PASC committee was that lobbyists themselves should establish a single umbrella body whose membership could include individual consultants and in-house staff as well as lobbying agencies, in order to set and enforce uniform ethical standards to which all professionals would be subject. The PASC committee called for introduction of a mandatory lobbying register, on which all lobbyists would be required to disclose their names and those of their employer or clients, and details of any public offices which had been held in the past by the lobbyist. That register need not include financial information, since while that may be of interest, the committee concluded that it is difficult to achieve reliable data in this regard. The register ought in addition to provide details of contacts between lobbyists and policymakers, using ‘diary records and minutes of meetings’, so that the public can ‘see what contacts are taking place, and to reach a reasonably informed judgement as to whether decision makers are receiving a balanced perspective from those they are meeting’ (PASC 2009a, 54).

In response, the three main industry associations—the Association of Professional Political Consultants, Chartered Institute of Public Relations and PRCA—came together to establish in March 2010 the UK Public Affairs Council (UKPAC). UKPAC was governed by a board consisting of one representative of each of the member associations and three independent directors. Its key functions were to maintain a register of lobbyists, to adopt a set of guiding principles and assess how they might be translated

into a common code of conduct agreeable to each member association, and to promote high ethical standards in lobbying. The compilation of a register should have been a fairly straightforward task: given that the APPC and PRCA already held registers of their member firms and could simply copy that information over to a UKPAC register, the only new material to be included was the registration of individual CIPR members who worked as lobbyists. Despite this, UKPAC struggled with IT platforms for about 18 months before it was able to produce a relatively comprehensive register—and even that only covered members of the three associations. Any lobbyist who worked in-house but was not a CIPR member was not included in the UKPAC register; nor were the staff of any consultancies which had not joined either APPC or PRCA. At best, UKPAC registered perhaps 40 per cent of the industry. In December 2011, the PRCA—one of the three founding members—decided to withdraw from UKPAC, citing disillusionment with UKPAC’s inability to publish an accurate and credible register. Although UKPAC continued to hold a register, the organisation was closed down in June 2015 and its voluntary register transferred to CIPR.

31.6 INTRODUCTION OF STATUTORY REGISTRATION

By January 2012, it was clear that the government had determined that a statutory approach was necessary. The Cabinet Office published a consultation paper setting out the government’s thinking and calling for written submissions by April 2012, with the intention of introducing legislation later that year. The consultation paper suggested that a statutory register would be established, but that it would only apply to those who lobby on behalf of a third party client. In other words, it would be a register solely of lobbying agencies, rather than of the entire industry. The information to be registered quarterly was very minimal: the names of the lobbying firm, lobbyists, and clients. No detailed financial information about lobbying income or expenditures would be disclosed, and nor would details of meetings between lobbyists or clients and policymakers (Cabinet Office 2012, 14). Crucially, the government viewed a register simply as a list of names, and did not intend that it should be linked to a mandatory code of conduct. In other words, the government was explicitly interested only in registration of lobbying consultancies, rather than in registration and regulation of the whole industry. It was encouraged to go further by a report from a House of Commons Select Committee which held an inquiry into

the consultation paper (Political and Constitutional Reform Committee 2012a, b), but ultimately the government chose not to impose more rigorous regulation.

The legislation ultimately produced by the coalition government—the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill—was widely criticised on a number of fronts. As its title suggests, it combined lobbying registration with other (largely unrelated) topics, and thus the issue of lobbying transparency was somewhat submerged in a sea of diverse concerns during debate on the Bill. More significantly, the conflation of lobbying reform alongside more overtly partisan measures to do with electoral campaigning by groups other than political parties and with the administration of trade unions' membership lists, created an impression that the whole Bill was overly politicised. The timing of the Bill's progress through the House of Commons was also unsatisfactory—it was first introduced the day before Parliament began its summer recess, received its second reading on the third day back after recess and its committee stage the following week. This meant that it was impracticable for parliamentary committees to subject the Bill to any form of pre-legislative scrutiny.

So far as its actual content is concerned, the law's requirements regarding lobbying are certainly weak by international standards. The government consistently ignored the advice of virtually all stakeholders—including the lobbying industry itself, other political parties, transparency campaigners, and academics—to strengthen its initial proposals. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014) which was passed by Parliament and granted Royal Assent on 30 January 2014 provides that:

- It is illegal to work as a consultant lobbyist without having registered as such (section 1);
- The conditions which define 'consultant lobbyist' are: that the person communicates 'in the course of a business' with a UK government minister or permanent secretary (the most senior civil servant in each department) about legislation, government policy, or the awarding of contracts and licences; and that the person does so on another's behalf in return for payment (section 2);
- However, there are significant exceptions to this definition. In particular, in-house lobbyists and their employers are not required to register—thus the Act is aimed solely at contract or commercial

consultants. Nor is registration necessary if the person's business 'consists mainly of non-lobbying activities' and any lobbying communication they make is merely 'incidental' to those non-lobbying activities (Schedule 1);

- Sole practitioners must register individually, but in the case of lobbying agencies only the agency must register and not its individual employees (section 2);
- A post of Registrar of Consultant Lobbyists is established to operate the register, but the Registrar cannot hire subordinate staff, instead he or she may request the secondment of existing civil servants (section 3);
- Each individual or company must provide details on the register of their business name and address, the names of any directors, a statement as to whether or not they subscribe to any relevant voluntary code of conduct, and a list of lobbying clients in that quarter. The register is to be available on a website (sections 4–7);
- The Registrar is required to monitor compliance by lobbyists, and is empowered to seek certain information necessary for such monitoring. A range of criminal and civil penalties are set out to punish those guilty of the offences of operating as an unregistered consultant lobbyist or of failing to provide the Registrar with information (sections 8–20); and
- The Registrar is authorised to issue guidance to lobbyists on how to ensure compliance with the law, and to charge registration fees at a level designed to cover the costs of maintaining the register (sections 21–22).

Since its introduction, this legislation has been widely criticised by the lobbying industry itself for not being sufficiently rigorous. The UKPAC argued that a statutory register should apply across the entire industry. In its view, any effective reform needed to be 'based on a definition of lobbying that would deliver a register that added to the levels of transparency already in place on a voluntary basis. The approach being taken by the Government risks creating a "White Elephant" Register with almost no-one listed' (UKPAC 2013). Highlighting an additional concern with the definition, the APPC pointed out that most lobbyists are in-house employees and that most lobbyists communicate primarily with ordinary MPs and junior civil servants—but that none of that activity would trigger registration. Indeed, analysing records of ministers' meetings with

external organisations, the APPC concluded that just 1 per cent of such meetings were with consultant lobbyists, and asserted that, ‘It would be difficult to produce a worse Bill’ (APPC 2013). The Act does not establish a statutory code of conduct to which all registered lobbyists must adhere; it does not require lobbyists to identify which policymakers they met on behalf of which clients; and it does not include on the register any information about the policy issue which was the subject of lobbying activity.

The Registrar of Consultant Lobbyists was appointed (in a part-time role) in September 2014, with the register being launched in March 2015 (its website is available at <http://registrarofconsultantlobbyists.org.uk/>). By December 2015, four sole practitioners and 110 lobbying firms had registered—most of whom were already providing significantly more detailed information as registrants to either or both of the APPC and CIPR/UKPAC registers. Indeed, given that those registers also include many individuals and organisations not signed up to the statutory register (because of the narrow way in which the legislation defines consultant lobbyists), the perverse possibility exists that if the various trade associations withdrew their own voluntary registers, the government’s register would provide us with much less transparency than was the case before it was established.

While the new system can be expected to operate in the medium term, it seems improbable that such weak registration can do much to enhance public confidence in the policymaking process. One of the lessons of lobbying regulation in other nations is surely that systems tend to be modified over time as flaws become evident in practice. It thus is likely that the UK’s new system of lobbying registration will need to be strengthened in the coming decade.

31.7 THE FUTURE OF UK LOBBYING

While this chapter has focused to a large extent on the regulation of the lobbying industry in the UK—precisely because that has been the dominant issue over the last few years, punctuated only by occasional media coverage of various scandals—it is appropriate to conclude with a rather wider assessment of the industry’s future. In the absence of a comprehensive register, one cannot be definitive about the state of UK lobbying, though it is possible to make relatively educated guesses. Westminster has always been one of the larger and most significant of the global lobbying marketplaces, and the anecdotal impression today is of an industry which

is thriving in many ways. Commercially, the larger consultancies appear to be expanding at present, and there are increasing numbers of smaller firms and one-man-bands. In-house lobbyists working in companies, trade associations, unions, charities and so on, seem generally to be busy and productive. Reading the trade publications targeted at lobbyists—such as the *Public Affairs News* website—one sees an industry which is dynamic, is enjoying reasonably steady growth, and has a small number of informal leaders who are interested in promoting and defending their sector. The tactics and strategies employed by the lobbying community are sophisticated and often highly effective.

So far as the in-house sector is concerned, a 2012 report by an executive recruitment firm provides insight into how corporate public affairs is evolving in the UK. It suggests that the proliferation of external stakeholders, and their capacity to connect and communicate with each other through social media, is imposing on corporations an obligation to better integrate public affairs with other core organisational functions. This—coupled with a need for business to be increasingly transparent, and the reality that policy influence is founded on expertise and evidence rather than access to decision-makers—is embedding UK public affairs closer to the senior management of the company. The report notes ‘a higher degree of board level engagement, in both directions – public affairs with the board and the board with the public affairs agenda. Our research found a general trend towards greater involvement of the public affairs function in strategy and business planning’ (Watson Helsby 2012, 3). The report concludes that: ‘Those people pursuing a career in public affairs will continue to come from politics since an understanding of policy and the political world will always be an important attribute. But it is clear that the industry will increasingly recruit from a wider gene pool and the public affairs professional of the future is as likely to have a business, legal, analyst, campaigning or policy background as a purely political one. This may well have implications for the routes that new graduates take to enter a career in the public affairs industry. And it also presents a challenge for those who are more established in the industry, as they seek to find effective ways of updating their skills base to meet the changing requirements of the role’ (Watson Helsby 2012, 31).

These conclusions suggest an industry which certainly faces internal issues of renewal and evolution over the next few years, but which is equipped to address them effectively. Lobbyists must recognise that the role they play in the policymaking process makes their activities a

legitimate subject of public concern; they can no longer avoid exposing themselves to greater transparency and accountability (Cave and Rowell 2015). The closing statement of one classic work on British lobbying pleaded for, ‘Light! More Light!’ (Finer 1966, 145). Half a century later, real and meaningful transparency remains a pressing public demand on lobbyists, but happily is a demand which—if the lobbying community considers it seriously—points the way towards public trust and confidence in the industry, and provides (if the demand is met) a route by which lobbying in the UK can develop into an accepted and acceptable profession.

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Lobbying and Public Affairs in Europe: Some Comparative Remarks

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The public affairs and lobbying industry represents an extremely relevant and fascinating field of observation to political analysts and to everyone engaged in the comprehension of complex political and economic environments such as the European one. To analyse how the influence of power works and what role interest groups and the various actors of a political system play in public decision-making processes is extremely useful to understand those processes and how the system operates. That is why, in collecting the data and all the points of view provided in the various chapters of this volume, we hope to have laid down the basis for a new and more complete perspective on what European democracy is today.

The intellectual datum here is that understanding interest group systems remains crucial to understanding the functioning of advanced democracies, especially in an era when these democracies are becoming increasingly embedded in supranational policy networks. (Beyers et al. 2008, 1104)

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The main aim of this volume is to fertilize the ground for further research and for the development of new and stronger theories, able to explain what are the conditions and the factors affecting the development of public affairs in a country, the regulation of lobbying, the relationship between interest groups and traditional political actors, the weight of institutional frameworks, the influence of the European integration process on national developments, and so on.

The widest part of scientific literature on lobbying and interest groups seems to focus on the theoretical and historical analysis of interest groups and their role in democratic systems (Bentley 1908; Truman 1951; Latham 1952; Benn 1959–1960; Meynaud 1965; Olson 1965; Pasquino 1988; Morlino 1991; Graziano 1995; Rozell et al. 2006; Andres 2009; Lowery 2013; Bitonti 2017), on the description of single political systems (e.g. Klüver 2013; Mihova 2014 or the recent Transparency International reports of 2014 and 2015 on various European countries), on particular lobbying campaigns (for instance, Sarlos and Szondi 2015; Taghizadeh 2015) or on the topic of regulation (Brinig et al. 1993; Greenwood and Thomas 1998; Chari et al. 2010; Holman and Luneburg 2012; Lumi 2014; Veksler 2015). However, as highlighted by Thomas and Hrebentar (2009) or Kanol (2015), comparative research on lobbying looks particularly promising and needs to be expanded, as analogies and differences between different countries or areas of Europe (see e.g. Woll 2012; Fink-Hafner 2011; Millar and Köppl 2014) may shed additional light on old theories or even bring to attention new categorizations and theories in the strongest cases. As Almond put it sixty years ago:

we turn to the comparative study of interest groups not with the hope that these rather than parties or governmental institutions will yield the principles of discrimination between types of political systems, but rather with the expectation that the systematic examination of interest groups in their complex interrelations with public opinion, political parties and formal governmental institutions will enable us to differentiate more accurately between political systems as wholes. In other words, the growing concern among scholars with interest groups and public opinion is the consequence of a search for a more complete and systematic conception of the political process as a whole, rather than a search for an approach which is an alternative to the present emphasis on formal governmental institutions. (1958, 271)

Therefore, our aim in this concluding chapter is to begin to draft some preliminary comparative remarks which have emerged from the collection

of cases presented in the volume, in the hope that they pave the way for further analysis and for new and additional readings and interpretations on lobbying and public affairs in Europe.

32.1 METHODOLOGICAL PROBLEMS

Let us begin from some methodological observations.

The first remark concerns the lack of a certain theoretical framing of lobbying and public affairs, according to a well-defined conceptualization of boundaries. As is evident from the chapters of this book—academic literature does not seem to offer univocal solutions either—we are in front of a meaningful definitional problem, represented by the partial overlap between the domains of lobbying, public affairs, public relations and communication more generally (Baumgartner and Leech 1998; Harris and Moss 2001). On the one hand, it is true that—practically speaking—these domains are actually intertwined, both for competences and organizational functions in agencies or companies; on the other hand though, for comparative research purposes, it is of the utmost importance to work out the problem of being able to compare information and data referring to the same object, even in different times and different places, in order not to sink into a sea of incommensurable figures, hardly meaningful when placed together.

To make an actual example from our chapters: if for the UK and Italy (as well as for Austria, Spain, Germany, Poland and others) we were easily able to find the professional associations of lobbyists (with their relative number of members, rules or codes of conduct), in other cases (such as Sweden, Slovakia, Greece or Latvia) we only found associations of public relations or communication professionals/agencies. In some other countries (e.g. in Slovenia, Italy or Lithuania) associations of both types are present, with important overlaps translating in shared memberships or competences. It is worth remembering that, for instance, two of the three organizations at the base of UKPAC (the lobbyists' organization of UK) refer to the world of public relations, while the third focuses on political consultants. Can we actually compare these different types of associations? And should we distinguish the industry of lobbying from those akin—but different—of public relations, communication, political consulting and in general of public affairs? We think such a distinction is not fully possible; that is why, in this volume, the authors of each chapter—as experts of the field (either scholars or practitioners)—were asked to focus on the

lobbying industry, considering the professional associations which best can be said to represent lobbyists, even if in many cases these could only be associations of public relations or communication, maybe with subsections dedicated to public affairs and lobbying. However, in each case an explanation is provided concerning the actual situation of the country. Probably, as suggested by McGrath (2005), in order to record a complete recognition of the professional status of lobbyists in a country, the presence of a distinct professional organization and the self-recognition of the industry's own specificities are among the key elements to consider, but any assessment is necessarily needed on a case-by-case basis.

Directly connected to the previous consideration, there is a second remark concerning the reliability of data and collected information, such as those concerning the number of professionals working in the industry.

In this regard, the registers of lobbyists can be one obvious source; but it is quite problematic to compare systems with mandatory registers (such as Slovenia, Lithuania or UK), systems with voluntary registers (such as Germany, Romania or EU institutions) and systems with no registers or regulations at all (such as Bulgaria, Finland, Portugal or Belgium). Furthermore, an additional issue concerns the possible difference between lobbyists "for hire" and in-house lobbyists, where some regulatory frameworks (such as the UK law) totally exclude the latter.

In the countries where there is not any register, we may refer to the number of members of professional associations: though, aside from the overlaps and uncertainties mentioned above, it is quite intuitive that if they are voluntary associations (and not professional orders with a mandatory registration to a bar, such as for lawyers in France or Italy), they cannot expect to bring the totality of the professionals inside, so that a (more or less significant) part of the phenomenon would escape the net of the researcher.

Furthermore, a substantial problem remains, regarding the self-perception of lobbying professionals as lobbyists. Accepting Thomas and Hrebear's definition of what a lobbyist is:

A person designated by an interest group to facilitate influencing public policy in that group's favor by performing one or more of the following for the group: (1) directly contacting public officials; (2) monitoring political and governmental activity; (3) advising on political strategies and tactics; and (4) developing and orchestrating the group's lobbying effort. (2009, 135)

we can easily consider a number of professionals as lobbyists (e.g. those working in NGOs, trade unions, sectional associations etc.), who in many European countries would hardly define themselves as such.¹ As a consequence, neither the legal criterion involving registers nor the membership of professional associations can be sufficient sources of information, leaving much space to estimates to be done again on a case by case basis (in this regard, better theorization and deeper attempts of operationalization would certainly help). This is the reason why we relied on the assessment and the point of view of our contributors, as recognized experts on the professional environment of their country.

32.2 GROWTH, PROFESSIONALIZATION, REGULATION

Moving to the merit and to the analysis of trends, a growth of the industry seems to be evident in most countries, at least in terms of people employed and turnover. Especially in the bigger European countries (Germany, UK, Italy, France, Spain, etc.), the number of lobbying firms or in-house public affairs departments seems to be on the rise, proving a general expansion of the industry.

In around half of the cases, the presence of university courses and Master's degrees in lobbying or public affairs seems to corroborate the hypothesis of the expansion of the industry and also of a growing professionalization of the job.

However, in order to assess the degree of professionalization of lobbying in each country, the number of firms and of specific educational programmes are not sufficient. We agree with McGrath when he says that multiple factors are necessary in order to recognize a full professional status to lobbyists, such as an intellectual tradition and an established body of knowledge, membership in strong professional organizations, the adherence to professional norms, codes of conduct and so on (McGrath 2005). In most European countries, these factors are still absent or only

¹ It is worth considering how this is probably one of the main cultural differences between most European countries and the American context, where instead the word "lobbyist" is much more accepted and commonly used by lobbyists themselves (Thomas and Hrebener 2009). In Europe various studies noted "the plethora of terms used by lobbyists to describe their work—parliamentary relations, government relations, public affairs, political PR, parliamentary counselling, political opinion forming, issue management, among others—before noting that the one word which tends not to appear in any agency's brochure is 'lobbying'" (McGrath 2005, 127).

very recently beginning to emerge. Thus we can observe very different situations in each specific country, even if a general trend towards professionalization is visible, with the creation of lobbyists' associations, codes of conduct and signs of more professional awareness in many countries, in big as in medium-size EU member-states, in older as in younger democracies. We think that, in this regard, a key role can be attributed to the common EU framework, considering a decision-making process in Brussels which traditionally enhances the participation of stakeholders and lobbyists, thus providing an easy example to look at from the member-states (Greenwood 2011; Klüver 2013).

Another very important set of indicators to look at in each country comes from the presence—and the type—of lobbying regulation.

It has been made evident in the literature (Thomas 1998; Chari et al. 2007; Transparency International 2015; Veksler 2015) and in most cases presented in this volume (see e.g. the chapters on Lithuania, Italy or Slovakia) that by “lobbying regulation” we cannot strictly refer only to laws on lobbying registers, but we should also consider an additional number of legislative and regulatory measures, concerning revolving doors, conflicts of interests, political financing, anti-corruption, the physical access to governmental buildings, and in general the transparency and the openness of public decision-making processes (participatory democracy and what may be broadly defined open government, see Lathrop and Ruma 2010).

As mentioned above, we have cases with a stronger regulatory framework (such as Austria, Ireland or Lithuania), cases with a weaker regulation (such as Germany) and countries where lobbying is not considered at all, at least not by any dedicated regulation (such as Luxembourg, Malta or Belgium).

Besides the issue of what relationship can be found between growth of the industry and regulation, or of which conditions favour the adoption of regulation (recalled for instance in Lumi 2014), we can highlight an increasing attention all over Europe on the issue of lobbying regulation, probably once again as a consequence of a major influence from Brussels (both as an example of a policy-making arena open to interest groups and as the location of important NGOs promoting transparency, such as Transparency International) or of a strong mobilization of lobbyists associations in various domestic environments (for instance in Romania, Italy or Spain).

As noticed in the same chapters concerning countries where lobbying regulation has been adopted (e.g. UK or Austria), though, major flaws and loopholes persist in all cases, for example, in the unjustified recalled distinction between lobbyists “for hire” and in-house, or in the scarce implementation of the provided measures. A sign that the debate on lobbying regulation has still a long way ahead.

32.3 A UBIQUITOUS NEGATIVE PUBLIC PERCEPTION

What seems a constant in all the presented cases (with the meaningful exception of Luxembourg and partially the EU institutions) is the negative public perception of lobbying and lobbyists.

When looking at public opinion or media reports, the term “lobbying” is overlapped with corruption in the worst cases or with opacity of decision-making in the best. Overall, this is an interesting indicator, which crosses different historical traditions and legal systems, bringing most European lobbyists to choose other labels to describe their job. Thus we go back to the definitional problem, where a greater collaboration between scholars and professional associations of lobbyists would certainly help (McGrath 2005, 133), but where a strong cultural problem is evidently present (see also Chap. 2). In fact, it is worth noting how this negative perception is absolutely transversal and ubiquitous, both in common law and civil law countries, both in neo-corporatist and pluralist systems, in the West as well in the East, in the North as well in the South. The only exception among the member-states seems to be Luxembourg, where a diffused pro-business culture may be the compensating factor against a prejudice which usually connotes lobbying as undue political influence of wealthy companies or organizations. As evidenced in Chap. 2, part of the problem may concern the conception of the Public Interest and the common philosophical tradition at the base of most European legal systems, especially as concerns continental Europe.

Very interestingly, much of the problem may also be simply lexical, having to do with the perception of lobbying as something exotic, mainly American, which would be something different from the influence of policy-makers put in place by civil society organizations or professional associations, even if lobbying—just looking at the technical definition provided above—is exactly what everybody does, both in neo-corporatist and in pluralist systems (Schmitter 1974).

32.4 THE CRISIS OF TRADITIONAL POLITICAL REPRESENTATION AND THE CHALLENGE OF EUROPEAN DEMOCRACY IN THE TWENTY-FIRST CENTURY

Certainly, the growth of the lobbying industry can also be explained by a significant crisis of representative democracy and of its traditional actors, especially in older democracies. In the twentieth century, political parties, and additionally trade unions and business associations, were the main characters of the political scene and the main reference for anyone wishing to influence a public decision; at least from the last two decades of the century, and ever more in the following years, a paramount evolution took place, involving historical, technological, social, economic and political changes, shaping the world of today and of the next decades.

The end of the Cold War, a closer European integration, the spreading of Internet and of digital technologies, a large process of liberalization of many economic sectors and of privatization of previously State-owned companies, the crisis of old parties and of classical representative democracy (proved by decreasing party memberships and electoral turnouts), the rise of NGOs and other private actors in the public arena, the increased importance of political marketing and communication, the personalization of politics and a growing concentration of power in the executives in comparison to legislative assemblies, the development of a more complex, multi-level and multi-dimensional political environment overall are all factors which play a fundamental role in changing the European panorama, creating more favourable conditions for the development of a public affairs industry, particularly where the roots of a lively civil society are more vigorous. In fact, political parties and the traditional labour and employers' organizations, despite keeping to play a predominant role in many countries (especially those with a neo-corporatist tradition), do not fulfil the need of political representation as completely as before, allowing new subjects (single corporations, SMEs, NGOs, professional associations, etc.) to emerge in the public scene on their own, trying to influence the governmental process even without and outside political parties.

Different declinations of this picture can of course be found in the various national contexts and in the cases presented in this volume, for example, with some common characteristics shared by the younger democracies of Eastern Europe—where the weight of the old authoritarian culture still plays a role (McGrath 2008; Duvanova 2009; Fink-Hafner 2011)—by the Nordic countries—where the consensual type and the traditional openness

and transparency of the decision-making system are still crucial factors (Lijphart 1984, 1999)—or by the micro-states such as Malta or Cyprus—where the dimension of the State is evidently a determining factor in shaping the type of decision-making process (Kanol 2014). It is important then to take into account the influence of the specific political culture, the development of particular political structures and channels of access to the “black box” of decision-making, in order to assess the conditions of development of a public affairs industry in each country. Nonetheless, some general trends can be highlighted, all having to do with the change of representative democracy and its conditions in the twenty-first century.

The wave of populism and “anti-political” parties rising in many EU countries in the recent years is probably a further symptom of the crisis of representative democracy as we knew it. In this regard, the development of a healthy and vibrant public affairs scene may even aspire to be an answer to this crisis, allowing a wider circle of subjects to earn a voice in the public arena of the future, flanking the old traditional actors and inserting new flows of legitimacy into the system.

Of course, in such a scenario, it is of the utmost importance to facilitate the best conditions for the development of a decision-making process fulfilling the requirements of accountability, transparency, openness and fairness, through effective regulations and smart policies favouring the actual functioning of representative democracy in the new scenario. In order to do so, scholarly research and deep understanding of the actual dynamics involving decision-making systems and the role that interest groups play in it are fundamental.

In the end, without an integrated vision of the interest group system of EU countries, with their different institutional structures, systems of political representation, political cultures, philosophical and legal traditions, social and economic frameworks, one can risk to focus a comparative overview of the European lobbying industries on the most apparent and easily detectable aspects of the phenomenon, ignoring, though, the most important part of the iceberg, represented by the system of influence and by the real decision-making processes of each country.

We hope that the analysis, data and the insights presented in this volume from over 40 contributors from across Europe will help pave the way for researchers to strengthen our understanding of the area in future years, allowing a deeper comprehension not only of EU lobbying and public affairs industries, but of European democracy itself.

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