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WAYS OF INFLUENCING THE PROCESS OF LAW ESTABLISHMENT BY LOBBY GROUPS IN THE EUROPEAN UNION

The notion of lobbying

Lobbying turns out to be hard to categorize a phenomenon, both in the sphere of “field” it belongs to and also in social assessment of such activity. As Bernard le Grelle, French expert on lobbying points out, effective lobbying comprises: 20% of law, 20% of politics, 20% of economy, 20% of diplomacy, and 20% of communication”.¹ However, because of multi-dimensional character of activities involved, there is no widely accepted definition of lobbying.

Common understanding of the term *lobbying* carries the idea of influence on the decision process, where one side persuades authority representatives to use specific legal, administrative, etc, solutions that are beneficial for the employer of lobbying.² It is the ability to persuade a policy-maker to do something which he would not normally do without this persuasion. *Lobbying* is also defined as a tool, technique of formulating and presenting arguments and reaching policy-makers³, and as direct contacts between representatives of organized pressure groups and policy-makers.⁴

Lobbying is a complex phenomenon and its definitions depend on the field that serve as a point of reference. Nevertheless, one could attempt to

¹ B. le Grelle, *Profession lobbyist: le pouvoir des coulisses*, Paris 1988, p. 8.

² K. Jasiocki, M. Mołęda-Zdziech, U. Kurczewska, *Lobbying. Sztuka skutecznego wywierania wpływu*, Kraków 2000, p. 16, P. Kotler, *Marketing*, Warszawa 1994, p. 621.

³ M. Mołęda-Zdziech, *Lobbying a inne formy komunikowania*, (in:) *Media, komunikacja, biznes elektroniczny*, ed. B. Jung, Warszawa 2001, p. 108.

⁴ M. Gajda, K. Tarnawska, *Lobbying a budżet Unii Europejskiej*, Zakamycze 2002, p. 11. More on the definition of lobbying see: M. Romanowska: *Co to jest lobbying?*, <http://artelis.pl/artykuly/6197/co-to-jest-lobbying>, access date 11.02.2011.

recapitulate and focus on the common elements of existing definitions:

- lobbying bases on exertion of influence on decisions made by the bodies of public authority (state and above state ones),
- its specific target are policy-makers and their associates from the institution of public authority,
- lobbying is an activity that does not break the law,
- lobbying bases on communication with various groups, persuasion, giving and obtaining information for the promotion of specific solutions.

Lobbying is connected with the whole issue of exerting influence on the decision-making process in the institutions of public authority. Other than that, this phenomenon is difficult to define. It could be considered in a wide and in a narrow scope. In the widest view, lobbying will mean actions taken by individuals or groups to influence decisions of public authority bodies. In the narrowest view it will refer to the network of institutional connections which aims to prepare action strategy and to exert influence on the content of legislative solutions (here lobbyist is a formalized representative of third party interests – employer of lobbying).

The main feature of classic lobbying must be stressed here, i.e. actions of registered lobbyist who gets paid and works for a third person (employer of lobbying) and whose actions are only in accordance with the law. Thus, “illegal lobbying” or “black lobbying” is against the nature of lobbying because its more or less secret influence is exerted in order to meet particular interests.⁵ Also, illegal actions of political corruption, bribery or paid protection are only seemingly similar to lobbying. Lobbying is also confused with the right to petition the authority, which attempts to influence political decisions for the sake of own interest of a given subject.

Finally, it is worth mentioning the definition officially used by the European Commission. Since the terms “lobbyist” and “lobbying” are sometimes perceived pejoratively, the Commission adopted neutral terminology based on the terms “interest groups” and “representing interest groups”. Green Paper from 3 May 2006 and announcement from 21 March 2007 introduce definition of “representing interest groups”, which is used by the Commission for the sake of European initiative for transparency. In the documents the Commission adopted a view that representation of interest groups (which requires registering) means actions aiming to exert influence on the policy-making processes and decisions-making by the European institutions.⁶ The definition does not encompass:

⁵ M. Clamen, *Lobbying i jego sekrety*, Warszawa 2005, p. 16.

⁶ COM (2006) 194 final version: “Green Paper – »European Transparency Initiative«”.

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- activity based on legal and specialist consultancy when it refers to fundamental right of the client to a fair trial, including the right to defence in administrative proceedings, conducted by lawyers or other specialists;
- activity of community partners within community dialogue, e.g. trade unions or employers' organizations (however, if these subjects get involved into activities beyond the ones specified in the founding treaties of the Union, they are expected to enter them into the register to guarantee equality of all represented interest groups);
- activities resulting from direct instructions of the Commission, such as one-time or regular applications to obtain information, to enable access to data, to prepare expert opinion, to invite to participate in public hearing, in consultation committees or such other forums.

Activities of most organizations that represent interest group are varied and often reach beyond registered activities. Nevertheless, the Commission assumed that activities which are based on preparation of analysis, statistics, or documentation, or which involve training services for either members or clients also fall into the definition category of “representing interest groups”, provided the activities are connected with representation of interest groups.⁷

The definition used by the Commission was created on the basis of activities of interest groups. They aim to exert influence on the policy-making and on decision-making processes. The character of the subject or the kind of represented interests is not taken into account for classification of a given interest group. Consequently, the definition is quite capacious and encompasses all possible subjects – domestic, European, and international associations functioning in sectors of social and economic life – companies, law offices, consulting companies relating to public affairs, but also non-government organizations and groups of experts (so called think-tanks).

Specification of lobbying in the European Union

On the level of the states lobbying is often treated as representation of partial, particular interests which are a threat to public interest.⁸ Institutions of the European Union have a more lenient approach to lobbying. In its

⁷ Commission announcement – European Transparency Initiative. *Principles on relations with representatives of interest groups (register and code of conduct)*, SEC(2008) 1926, Brussels 2008, p. 4.

⁸ K. Jasiński, *Lobbying w USA, Europie Zachodniej i Polsce*, “Studia Europejskie” no. 4/2002, p. 118.

circles, a lobbyist is considered as a non-treaty partner in passing Union bills and their activities are thought to be an element of specific social dialogue. In Union's institutions lobbying (differently than in European states⁹) has been well known and quite commonly accepted since the beginning of the Higher Authority in the European Coal and Steel Community.¹⁰ Actually, ever since the creation of European Communities, all subsequent reforms have led to constant growth of areas of their activities. This unavoidably involved growth of legal rights of their institutions. When the decision-making centers moved up onto the Union level, directly influencing rights and duties of individuals, the Union institutions became targets of more and more intensive lobbying.

Because of the role of particular institutions and organs in the creation of the Union's law, lobbying groups focus their activity around the European Commission, the European Parliament, the Social-Economic Committee and the Region Committee. Union procedures that form legislative and executive acts are very complex and that is why lobbying activities specialize in simultaneous monitoring of a few institutions.

Due to mentioned growth of influence of the Union's bodies on various areas of activities, regional authorities of member states, companies, international organizations, or third states create branches in Brussels or hire professional consultants. Obviously, all these actions aim to gain influence on the decision-making process and on the collection of information relating to interest areas. Lobby organizations that function on the Union level can be divided into the following groups:¹¹

- European associations – e.g. Association of Industry and Commerce Chambers – EUROCHAMBRES¹², General Confederation of Agricultural Cooperatives – COPA/COGECA, Union of Industrial and Employers' Confederations of Europe – UNICE¹³, European Trade Unions

⁹ This is the result of the fact that lobbyists' actions focus around executive bodies which have the greatest influence on legislative issues. Such contacts are often kept secret, groups representing specific interests do not operate openly which intensifies distrust of the public towards such activities. What is more, in majority of member states the issue of lobbying is not regulated and each state differ in their assessment of the character and scale of lobbying activities.

¹⁰ See more: S. Mazey, *Conception and evolution of the High Authority's administrative services (1952–56): From supranational principles to multilateral practices*, "Yearbook of European Administrative History", Baden-Baden 1992, pp. 31–48.

¹¹ See S. Mazey, J. Richardson, *Interests*, in: *Developments in the European Union*, ed. by L. Cram, D. Dinan and N. Nugent, St. Martin's Press, INC 1999, p. 108.

¹² Polish Trade Chamber is one of the members.

¹³ Confederation of Polish Employers is one of its many members.

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Confederation – ETUC¹⁴, The European Consumers’ Organization – BEUC¹⁵, Association of European Airlines, European Chemical Employers Group,

- national associations – e.g. American Chamber of Commerce to the European Union, Asociación Sindical Española de Técnicos de Mantenimiento Aeronautico, ASSILOB – Associazione Italiana Lobbisti, Brazilian Association of Vegetable Oil Industries, British Chambers of Commerce, Confederation of Danish Industry, Polish Banks Association, Turkish Business Association – Brussels,
- individual firms – e.g. AB Volvo, AIR FRANCE, American Airlines, Bayer AG, BONDUELLE, AXA, Colgate-Palmolive Sarl,
- lobbying consultancy firms – e.g. Butler Kelly Ltd, BXL Consulting s.r.o., Central Lobby Consultants Ltd, Hill & Knowlton International Belgium, The Whitehouse Consultancy Ltd,
- public bodies – as regional governments and local authorities – e.g. The Norwegian Association of Local and Regional Authorities, Conference of European Cross-border and Interregional City Networks, Municipal Government of Trento, Union of the Baltic Cities,
- ad hoc coalitions for a single issue¹⁶ – e.g. Association for Organics Recycling, European Council for Construction Research, Development and Innovation, Vision and Strategies around the Baltic Sea, World Expert Centre for Climate Change Vulnerability Studies,
- organisations of experts and epistemic communities – e.g. Association of Independent Tobacco Specialists, Architects’ Alliance, Council of Bars and Law Societies of Europe, Council of European Dentists, European Heat Pump Association.¹⁷

In recent decades the activity of lobbying groups has considerably grown. According to the data of the European Commission¹⁸ in 1992 there existed about 3.000 various interest groups in Brussels (lobbying sector employed around 10.000 people). Among them, about 500 subjects were the

¹⁴ For example, NSZZ “Solidarność” is one of the members.

¹⁵ Polish Federation of Consumers is a member.

¹⁶ On this specific form of lobbying see interesting remarks of B. Pijnenburg, *EU Lobbying by ad hoc coalitions: an exploratory case study*, “Journal of European Public Policy” 1998, Vol. 5, No. 2, pp. 304–308.

¹⁷ Groups of interest based on the official Interest Groups Register of the European Commission – <https://webgate.ec.europa.eu/transparency/regin/welcome.do>, access date 11.02.2011.

¹⁸ *An Open and Structured Dialogue Between the Commission and Interest Groups*, SEC (92) 2272 final, Brussels, European Commission, p. 1.

European and international federations. Länder, regional and local authorities had 50 offices in Brussels and, according to the Commission's records, there were over 200 individual firms with direct representation, about 100 consultants (management, and public relations) with offices in Brussels and many others dealing with Community affairs. In Belgium itself there were about 100 law firms specializing in community law.

Among the above mentioned, it is the European associations that are the most significant and that are in a way preferred by the Commission during the consulting process. In 1985 there were about 500 of such associations¹⁹ and in 1997 the number rose to almost 700.²⁰

The present estimations prove that there are 15 to 20 thousand lobbyists working around the main institutions of the European Union – Councils, Commissions and European Parliament. It is also estimated that in Brussels there are offices of about 2600 interest groups. In February 2011 official Register of interest groups of European Commission²¹ there were 3664 subjects divided into the following categories and subgroups:

- professional consultancies/law firms involved in lobbying EU institutions – 244
 - law firm – 19
 - public affairs consultancy – 119
 - independent public affairs consultant – 46
 - other (similar) organisation – 60
- «in-house» lobbyists and trade associations active in lobbying – 1.735
 - company – 456
 - professional association – 972
 - trade union – 85
 - other (similar) organisation – 222
- NGO/think-tank – 1.177
 - non-governmental organisation/association of NGOs – 916
 - think-tank – 117

¹⁹ Given after A. Butt Philip, *Pressure Groups In The European Community*, London 1985, p. 1.

²⁰ *Directory of Interest Groups*, Brussels, European Commission 1996, p. 4.

²¹ Internet Register of interest groups representatives was enacted by the Commission on 23.06.2008. The Register is open to all citizens. It was created within European Transparency Initiative. Organizations that enter the register must specify whom they represent, what are their objectives and tasks, and with which areas of politics they are mainly concerned. Moreover, they will be able to describe their basic activities connected with representation of interests and creation of contact network. They will also have to present financial information to dispel any doubts about their lobbying motivation. Organizations involved in lobbying for third parties will be asked to disclose their clients.

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- other (similar) organisation – 144
- other organisations – 508
 - academic organisation/association of academic organisations – 122
 - representative of religions, churches and communities of conviction – 17
 - association of public authorities – 65
 - other (similar) organisation – 304

The European Parliament introduced its own accreditation system for lobbyists. In February 2011 it featured almost 1800 organizations representing interest groups and over 4000 representatives of various interest groups. Special IDs allowing access into the Parliament building were given to over 2800 people from that list. Each organization may select up to four members who will gain the right to hold the lobbyist ID in the Parliament.²²

In May 2008 the Parliament proposed creation of obligatory public register of lobbyists which would be common to the Council, the Commission and the Parliament. Three institutions formed a common working group which is to prepare a proposal on the common register.²³

Due to the specificity and incredibly wide scope of decision competences, information has become one of the most important “goods”. Actually, it is perceived as such by the lobbyists. It must be remembered, however, that decision-making process is always linked with some degree of “uncertainty” about the effects and their acceptance by the subjects designated for their realization. As a matter of fact, a decision-maker never has all objective knowledge at their disposal – thus, actions of an effective lobbyist may have crucial significance for the final outcome of the decision-making process.

In the European Union lobbyists operate on various levels depending on the realized goal. They may take forms such as:

- participation in advisory committees and expert groups by the Commission and the European Parliament (including Social-Economic and Committee of the Regions),
- cooperation with MPs reporting on the proceedings of the parliamentary committee,
- informal contacts on the expert level

²² European Parliament Register, <http://www.europarl.europa.eu/parliament/expert/lobbyAlphaOrderByOrg.do?language=PL>, access date: 07.04.2011.

²³ European Parliament resolution from 8 May 2008 on defining the framework for the activity of interest groups (lobbyists) in European institutions (2007/2115(INI), final version – P6_TA(2008)0197, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0197&format=XML&language=PL>, access date 07.04.2011.

- participation in consultations connected with the Green Papers of the European Commission
- lobbying on the forum of the European institutions (mainly European Commission and the European Parliament).²⁴

Lobbying frequently is considered a specific form of consulting which, according to its specificity is also defined as *public affairs, government relations, parliamentary relations*.²⁵ Lobbying organizations function in a way which, in return for access to European institutions (in order to exert influence on the decisions), provide the Union bodies with²⁶:

- specialist knowledge necessary to prepare and assess the effectiveness of Union's legislature in a given field,
- information on the general interest on the European Union in a given sector,
- information on the general interest of the representatives of the given branch in a specific country.

Apart from the already mentioned increase in the number of interest groups, another tendency becomes apparent – lobbyists in the European Union tend to direct towards lobbying in the Union institutions, which is perceived as a much more effective form of influence on the decision-making processes. As a result, the role of advisory committees as Union's institutions for informal contacts with lobbying groups decreases.²⁷

The phase of optimal influence of lobbyist on the decision process of the European Union is the phase of initial preparation of the legal act project by the Commission and the stage of the report preparation by the reporter of the European Parliament Commission.²⁸

As early as at the stage of initial consultations on the future bill, the Commission aims to get to know the viewpoint of all potentially interested

²⁴ See. K. Kukier, *Lobbing w Unii Europejskiej*, "Biuletyn Analiz UKIE" no. 1/1999, pp. 2–3.

²⁵ K. Jasiocki, *Lobbing...*, p. 121.

²⁶ P. Bouwen, *Corporate Lobbying in the European Union: Towards a Theory of Access*, EUI Working Paper SPS 5/2001, p. 7.

²⁷ See. J. Greenwood, *Representing Interests in the European Union*, Palgrave Macmillan 2002, pp. 33–50.

²⁸ R. van Schendelen, *Machiavelli In Brussels. The Art of Lobbying in EU*, Amsterdam 2002, p. 213. See also remarks on the specificity of "national" lobbying – *ibidem*, pp. 119–128. On the effective lobbying in European Parliament, for example see: B. Kohler-Koch, *Organized Interests in the EU and the European Parliament*, (in:) *Lobbying, Pluralism and European Integration*, ed. by P.-H. Claeys, C. Gobin, I. Smets, P. Winand, Brussels 1998, pp. 144–157. See also assessment of M. Tenbücken, *Corporate Lobbying in the European Union. Strategies of Multinational Companies*, Peter Lang GmbH 2002, pp. 98–100.

subjects by the policy of so called “open doors”.²⁹ Interest groups have got the opportunity of presenting their opinions on the consulted issue. If their stand differed from the proposition of the Commission, they may come forward with their own concepts.³⁰ Functioning of this mechanism may be best illustrated on the example of consultations regarding the Green Paper “European Transparency Initiative”.³¹

Since May to August 2006 Commission held extensive consultations, mainly by means of generally accessible internet site. What is more, in June 2006 European Economic-Social Committee called a meeting for representatives of over 60 subjects, including European groups of interest. Within the internet consultations, the Commission obtained answers from over 160 interested subjects. The answers included opinions presented by some member states, groups of interest representing the private sector, numerous non-government organizations and many individual citizens.³²

During work on specific project, lobbyists concentrate their actions on the lower clerks of the Commission (so called bottom-up lobbying), since this is where the regulations are written down in the form that formally or politically depends on the officers. Also, since during the work numerous expert committees are used, they also become the target of lobbying actions which aim to prepare, in the best and fastest way, all information materials so that experts are warmed towards a specific concept.³³ Officials and politicians have always been subjected to various form of pressure and influence, regardless of the structure (domestic or Union), very often with limited possibility of analyzing a lot of data. Nevertheless, because of its crucial role, the information must be precise, coherent and concrete.

Lobbyists base their actions on “persuasion”, convincing a decision-making representative of the arguments of the represented group. The information may be passed in various ways – that is why a lobbyist’s actions may be of direct or indirect lobbying character and may take different forms. Direct methods include meetings, telephone calls, public appearances, receptions and conferences, auditions in commissions, presentations, preparation

²⁹ See. B. Woszczyk, *Lobbying w Unii Europejskiej*, Toruń 2004, p. 174 and next.

³⁰ Only a few percent of all initial legislative projects examined by the Commission comes from the Commission itself – quoted after F. Fries, *Spór o Europę*, Warszawa 1998, p. 26.

³¹ COM(2006) 194 final version from 3.05.2006, European Communities Commission, Brussels.

³² Commission announcement Green Papers “European Transparency Initiative – secondary actions, KOM(2007) 127 final version from 21.03.2007, Brussels, p. 3.

³³ U. Kurczewska, M. Mołęda-Zdziech, *Lobbying w Unii Europejskiej*, Warszawa 2002, pp. 27–31.

of argumentation, information materials, internet or traditional mailing. Indirect lobbying may use so called “grassroots lobbying”, media campaigns with leaders of social organizations, circle authorities, experts (sponsoring, conferences, publications), mobilization of public opinion through petitions, demonstrations, and e-lobbying with the use of the internet.³⁴

As it has already been mentioned, most lobbying actions base on methods of direct lobbying which is perceived as the most effective form of influence. A lobbyist is required to skillfully choose appropriate methods so that his actions were most effective.³⁵ Lobbyist is expected to warm his target to the stand represented by a specific group of interest. He accomplishes it by winning the recipient over, by arousing his interest and gaining his understanding and approval. Such actions will be effective in the following circumstances:

- common interests of both sides (in case of lobbying in the Union bodies, it can be justified by the will to make a decision that will be supported by most member states),
- positive intentions of the sender (a lobbyist cannot assume taking actions for the disadvantage of the side that is being persuaded),
- no time pressure,
- the level of the recipient (lobbyist arguments must be well suited so that the recipient accepts and understands them),
- situational context (circumstances in which a lobbyist contacts the recipient cannot relate to any kind of conflict, prejudice, or distrust, etc.)³⁶

Conclusion

The institutions of the European Union are quite open towards interest groups whose actions facilitate and complete decision-making processes (“expert” function of lobbyists). Additionally, such actions facilitate access of citizens to information and aspirations to even greater openness and transparency of Union institutions. Lobbying activity specificity, including informal contacts with workers of Union institutions and the value of information, can arise suspicion that lobbying leads to corruption of officials

³⁴ R. van Schendelen, *Machiavelli In Brussels. The Art of Lobbying in EU*, Amsterdam 2002, pp. 220–227.

³⁵ See, for example J. N. Gardner, *Effective Lobbying in the European Community*, Kluwer Law and Taxation Publishers 1991, p. 72.

³⁶ J. Fras, *Język propagandy politycznej*, (in:) *Teoria i praktyka propagandy*, Wrocław 1997, pp. 46–47.

and their violation of professional ethics. Thus, it is crucial that maximum transparency and precise rules of conduct in contacts with interest groups are ensured.

Improvement of contacts and guarantee of greater transparency requires systematization and formalization of mutual contacts of lobbyists and representatives of Union's institutions. It must be noted that there have already been some achievements in this field, such as European transparency initiative, creation of public register of interest groups, the code of conduct for interest representatives, or the code of conduct for Commissioners etc.³⁷ It seems that the most difficult task that lies ahead is the full unification and systematization of the sphere of lobbyists' activity in the Union institutions, in the same way they are regulated in the United States.

S U M M A R Y

Lobbying is a complex phenomenon difficult to define. In the European Union it is a highly significant element of the decision-making process. In its essence lobbying is always an activity in accordance with the law in force, conducted for the benefit of a specified subject. However, there are various forms of representation of interest groups in the European Union institutions, European associations and individual experts, as well as fixed groups working on definite areas and ad hoc coalitions. Due to the role of particular institutions in the decision process in the European Union lobbyists activity is focused, above all, on the Commission and the European Parliament. In order to increase transparency of the activity, both organs created own public lobbyists register at the same time working on their standardisation.

³⁷ Documents defining rules of conduct towards lobbying, <https://webgate.ec.europa.eu/transparency/regrin/infos/codeofconduct.do?locale=pl#pl>, access date: 07.04.2011.

