The lobby regulations caught between public policies and the interest of the groups

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Abstract. *The intensification of integration led to the establishment of supranational structures, which influenced the volume of regulations and interaction between states, interest groups and the will of the people. The European Union is beginning to regulate several areas of public life and is gradually shifting the balance of regulations in relation to internal policies. As a result, the national governments are trapped between the interests of different economic and social groups and domestic politics, which is gradually becoming an element that is no longer representative for nationals. This article proposes a historical analysis of the matter with emphasis on how, the new approach has changed the paradigm of formulating European public policies from a classic method of regulation, in which the Commission collaborated with stakeholders and expert communities in developing regulation, to a subsequent one that embraced the method of policy coordination. The paper also aims to demonstrate the usefulness of transparent legislation in the field of relations between interests and decision-makers, especially in Eastern European states. The analysis was elaborated by researching primary and secondary sources plus the presentation of a representative case study. Lobby regulation is a recent concept in most Member States. Currently, only seven Member States have legislation on lobbying, as well as a mandatory register of interest group representatives. In some countries, there are codes of professional ethics drawn up by public relations and consultancy agencies, but they are not included in any set of laws. Future regulation will have the capability to create the premise of drafting rules between interest groups and state structures? Which are the essential principles that must be respected in the interaction between lobbyists and decision makers? Is the transparency of their efforts essential to legitimate the service of democracy?*

Keywords: lobby, regulation, integration, public policies, interest groups, business ethics.

Introduction

In recent years, the process of public policies has become more and more complex, the role played by different interest groups in influencing the political decision is becoming increasingly difficult to ignore. At the same time, „in different EU countries, but also at international level, the way of regulating this complex phenomenon has remained more or less rigorous, with significant differences in approach” (Elena Simina Tănăsescu, Miruna Andreea Balosin, Cosmin Dima, Cristian Ducu, Ștefan-Ilie Oanță, Ramona-Delia Popescu – „Lobby în România vs. lobby în UE” – IER, 2015).

The first step towards the specialized regulation of lobby started from the question written by Alman Metten (Dutch MEP) in 1989, should there be a regulation for lobby? In 1991, Marc Galle (chairman of the Committee on Regulation and Procedure) was appointed to present proposals over a Code and a Register for interest groups. Among Galle's proposals were a code of conduct with minimalist standards aimed to prevent abuse, establish banned areas for general access (no go areas) in Parliament buildings (including parliamentary offices) and, taking into account the US model, the registration of lobbyists in a special register, emphasizing the rights and obligations of those registered in the register, and specifying sanctions for non-compliance. The most controversial proposal was for MEPs and their staff to declare their financial interests annually, in a separate register.

The next step towards the regulation of the field was made in 1993, together with the presentation of the communication from the Commission of the European Communities, which proposed clear relational boundaries between community institutions and interest groups. Following the 1994 elections, a second attempt to regulate the lobby was undertaken by the Committee on Regulation and Procedure, which requested the authorization of a report on lobbying in the European Parliament and on the financial statement of the Members. Later, in 1996, the European Parliament considered and approved the first proposals for the adoption of lobbying rules and imposed declarations of financial interests for MEPs. With this step, the Lobby Registry was set up, together with the College of Quaestors, which was responsible for implementing the new rules and issuing access authorizations for people who wanted to enter Parliament, in order to provide information to Parliament members. These rules have become "the cornerstone of Parliament's policy to regulate the interaction between members of Parliament and private interests".

An important role in improving lobbying regulations was the Green Paper entitled „The European Transparency Initiative“. It was published in May 2006 and the public consultation ended in August 2006. The document defined "lobbying" as "all activities carried out by a legitimate group of interests whose objective is to influence the definition of policies and decision-making processes by European institutions". Therefore, the lobbyist is defined as an individual who carries out specific activities, working in a variety of organizations such as public policy consulting companies, law firms, NGOs, think tanks, corporate lobby units (representatives), in-house trade associations. Thus, the 2006 document is transformed into a constitution of the field, its approach presenting two significant positions:

I. The lobby process is a legitimate part of the democratic system, whether it is carried out by citizens or by individual companies, civilians or other interest groups and companies working on behalf of third parties.

II. The lobbyist can help bring important issues to the attention of European institutions. In some cases, the Community can provide financial support to ensure that the views of certain interest groups are effectively expressed at European level (interests of consumers, citizens with disabilities, environmental issues, etc.).

In 2010, the Parliamentary Assembly of the Council of Europe issued a Recommendation on the European Code of Good Lobby, which emphasized that lobbying should be clearly defined, specifying the differences between conducting this professional activity and the activities of civil society organizations. At the same time, the obligation to define rules applicable to politicians, civil servants, members of pressure groups and companies, including those regarding conflicts of interest and the period of time after the termination of the mandate in which lobbying should be banned, is outlined.

In support of the Recommendation formulated by the Council of Europe, the Venice Commission has issued a Report which highlights the role of extra-institutional actors in the democratic system.

Thus, the Commission defines the activity as „the action of individuals and private groups, each with specific and varied interests, trying to influence decisions at political level“. By this definition, the Commission emphasizes that the attempt to influence can be made through various means, from discussions and presentations of reports to telephone calls. The Commission clearly distinguishes between a legitimate action and an act of corruption, lobbying is a central and legitimate part of the democratic process in all liberal democratic systems. The term lobby should not be confused with the term corruption. In support of this statement is quoted a report of

Transparency International that states, „Corruption is operationally defined as the abuse of power for private gain”.

EU standards for lobbying are based on a series of articles in the EU's Founding Treaties and the EU Charter of Fundamental Rights. According to the Lisbon Treaty, „the functioning of the Union is based on representative democracy. Every citizen has the right to participate actively in the decision-making process. The institutions maintain an open, transparent and regular dialogue with civil society representatives. The European Commission will conduct extensive consultations with stakeholders to ensure that the Union's actions are coherent and transparent”.

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Literature review

The European soft law

The study of the lobby is part of that branch of political science that deals with interest groups. Emiliano Grossman notes that „the issue of factions, corporations or groups is a common theme in all the writings that theorize the political systems for more than two hundred years. This theme is contemporary with the first writings on the modern state and its capacity to govern” (Grossman 2005, p. 13).

Since the purpose of this paper is to present multiple theories and controversies regarding interest groups, I will summarize in quoting some contributions that I consider essential.

Thus, Grossman considers that „we can distinguish two major currents (regarding the interest groups): the first rejects the groups, considers them unfavorable for the definition of the general will and therefore harmful for democracy. The second current, which we might call pragmatic, partially separates this analysis, but considers that it is impossible to eradicate groups from political life and that, for this reason, it is the government's task to regulate them with the role to limit their potential negative effects” (Grossman 2005, p. 13). In the nineteenth century the first current is represented by Jean-Jacques Rousseau with his *social contract*, and the second by James Madison, Federalist Paper No. 10, and Alexis de Tocqueville, „De la démocratie en Amérique”. In the twentieth century, the most favorable authors for the interest groups are Arthur Bentley, *The Process of Government* and Robert Dahl, *Who Governs?*

Luigi Graziano also has a dichotomous perspective on stakeholder theories. Thus, a distinction is made between the socio-centric and the state-centric perspectives. The first refers to the Anglo-Saxon tradition, and the second to the French tradition. These perspectives correspond to the notions of „public interest” and „general interest”. The two concepts illustrate two different views on what Public means. Public, in the first phrase, refers to what a community has in common, but also to a public space (as in a public garden, public square). It designates an arena that belongs to both the state and society. The public sphere for Habermas has a similar connotation: it refers to what is not private in civil society (public opinion, press, market, professions). By contrast, the general interest can only be the prerogative of the state and its institutions. It cannot be pluralized and involves a comprehensive view of society and its needs. Although social actors can freely pursue their various goals, what is common and of supreme importance for the nation, falls under the exclusive jurisdiction of the state” (Graziano 1998, p. 44).

This dichotomy is to some extent superimposed on the relationship between corporatist and pluralist theory. Here's how the Blackwell Encyclopedia of Political Thought presents how these theories approach interest groups: „Corporate theory has been firmly opposed to pluralism as a model of political life focused on interest groups, but as the theory refines progressively by capitalizing on empirical evidence, it is becoming increasingly obvious that pluralism and

corporatism should not be viewed as mutually exclusive alternatives, but as extreme points of a continuum defined by the degree to which monopoly and interdependence relations have been established between the organizations of interests and the state. Three are the key elements that distinguish corporatism from the pluralistic processes characteristic of the political life in the systems where interest groups operate. The first is the monopoly role played by corporate bodies; the second is the fusion of the representative role with the implementation one; and the third is the presence of the state both in authorizing monopoly representation and in co-determining the policy. While pluralist theory views interests as existing before political organization and mobilization, corporate theory sees the state as the main agent in shaping interests and determining the outcome of group processes (Cawson in Miller 2000, pp. 143-146).

Gianfranco Pasquino, in his Political Science Course, shows that the pluralist theory of groups has generated two types of reactions from a neo-conservative and a neo-corporate perspective. As the relationship between pluralism and corporatism has been presented above, we will render neo-conservative criticism. This criticism comes from Mancur Olson, being developed in his works: *The Logic of Collective Action* and *The Growth and Decline of Nations*. The neo-conservative critique „brought the old objections to the politics of the groups, understood not as channels of organizing and expressing the complexity of democracy, but as a diaphragm between citizens and rulers, as an obstacle to the achievement of the common good and as a tool for achieving particular interests. These criticisms were brought to the theoretical stage by Mancur Olson. Political science is not the only one that has dealt with interest groups. Kathleen Getz (2001) presents theories that can explain different aspects of interest groups. We will summarize each social science and the theories it has generated. Thus, in political science we have group theory; in economics there are four theories: collective action theory, public choice theory, transaction cost theory and games theory; in sociology we have the theory of resource dependence and the institutional theory; in management we can identify the theory of the agency, the behaviorist theory of the company, the theory of business strategy and the theory of population ecology. This paper uses the utilitarian paradigm. This paradigm states in principle that the behavior is motivated by its instrumentality in order to achieve the proposed objectives. The theory of the logic of access, by which we explain the interaction between lobbyists and the EU institutions, represents a combination between the pluralist and the neo-corporatist paradigm.

Methodology

The paper proposes a historical analysis of the field with emphasis on how, the new approach has changed the paradigm of formulating European public policies from a classic method of regulation, in which the Commission has collaborated with stakeholders and expert communities in developing the first rules and amendments, subsequent ones that went to the method of policy coordination. The paper also aims to demonstrate the usefulness of transparent legislation in the field of relations between interests and decision-makers, especially in Eastern European states, eroded politically by corruption. The analysis was elaborated by researching primary and secondary sources plus the presentation of a representative case study (Austrian law).

EU policy-making never takes place in a vacuum, but in a context with multiple locations for addressing political issues, from local to global, going through both formal and informal processes. The first regulations in the field came relatively late, after the Single European Act of 1986 and departed from the classic regulatory scheme, a scheme successfully used by the Treaty of Rome up to that time. Therefore, the European Union has a dynamic character, resulting precisely from the diversity of the component countries, but also from establishing the balance

between the delegation of policy responsibilities to the EU and the retention of those that are increasingly member states. In the shadow of the globalization phenomenon and the challenges that the Western economic model is facing, EU public policies change, adapt to new requirements and create new collaborative environments.

Under the EU regulatory method, the Council agrees on the minimum standards and guides the harmonization of the requirements with the Commission proposals, this process being complemented by the mutual recognition of national preferences and controls, operated differentially according to each Member State. Subsequent paradigm changes move the point of interest from the socio-centric perspective to the state-centric one.

After the first legislative attempts, the specific legislation is directed towards the method of policy coordination by its character as a "light form of cooperation and coordination in areas adjacent to the basic economic competences of the EU". I support the framing by the fact that the current regulations come in the form of the law of recommendation character without imposing a specific behavior to the Member States, but still having the purpose of modeling future internal legislative approaches. I also underline the assumption that states are motivated by interest in defining the legislative framework and will seek to maximize profits in this area, while still respecting the rules of international multidisciplinary play.

Another important aspect is the fact that, to date, the Commission has been concerned, in particular, with the strengthening of the rules regarding its own officials, the regulation of the lobby being left to the practitioners. Also, the minimum standards imposed by the Commission apply only to consultants. In this case, I came to the conclusion that the regulation was made by two types of measures. The first one was through measures regarding limits of transparency, for the governing act, and the second by establishing regulatory instruments.

Even if I go beyond Wallace's paradigm regarding the five methods of policy making, I think that European affairs in the area of interests are heading towards a zone of anticipatory regulations. Thus, anticipatory regulation is an emerging regulatory method that is proactive and responds to evolving markets through predictable actions. It is important to emphasize that this method could replace traditional methods of creating regulations to cope with the pace of change.

Discussions over the Austrian law

In Austria, public perception linked lobby to influence trafficking, and for a long time voters considered that interest group actions represent „deals behind closed doors” and do not empower the general interest. The need for legislation was born out of the fact that the lobby activities were opaque and represented an area where information was constantly circulating only between interest groups and politicians. The first law regulating lobbying activities and the limits of representation of interests entered into force on January 1, 2013. The law was adopted following the evolutions after the Second World War, in which the social partnership system (a specific version) of Austrian corporatism) becomes dominated by the lobby of groups and responds to pressure through legislative interference. Under the recently adopted law, the Lobby Registry was established and the prohibition for civil servants and politicians to act as lobbyists was drawn up. Although both provisions have proven to be positive, there is still a need for action, both from a legislative point of view and the definition of clearer regulations regarding the environment in which the lobby takes place.

Since Austria joined the European Union in 1995, conditions for the functioning of interest groups have changed steadily. Initially, their influence diminished, many of the decision-making processes moving to the sphere of influence of the EU institutions. Thus, the private

interest had to go through a reform in order to survive, the interest groups migrating to a new type of lobby, the strategic lobby, a game in which the actors specialized and became professionals.

As regards the financing of political parties, Austria is already a few steps ahead of other Member States. As of July 1, 2012, political parties are required to declare all donors whose total donations exceed the amount of 3,500 euros, in a calendar year. Donations in excess of € 50,000 must also be reported to the Court of Auditors. Also in 2012, new regulations were introduced that prohibit certain actors from making donations. This includes parliamentary clubs, public bodies and companies and in which the state has at least a 25% stake. Donations were also banned in exchange for certain benefits.

On September 29, 2014, almost 2 years after the law was approved, the Austria Lobby Registry had 245 companies, organizations and other stakeholders registered. However, the registry only gives the public access to the company name, without providing other general interest details (turnover, profit or contracts). It is estimated that in Austria approximately 4000 people are employed in lobbying.

Austrian law states that politicians are not allowed to lobby. Nor can civil servants work for lobbying companies. However, they can perform such activities, masked, in other private companies, even if the position is not in their lobby department. One of the vulnerabilities of the law is that there is no provision for legal entry for those who give up their political life and want to practice lobbying. Thus, it is necessary for such legislation to provide for a period of time before a politician can become active in certain, potentially, problematic sectors after the cessation of political activity.

Another measure was that in the capital, civil servants attended an online anti-corruption training course. Later, this course also became available to civil servants in other Austrian cities.

In conclusion, Austrian legislation draws the lines of a regulation that focuses on lobbying but offers little transparency regarding professional groups and social partners. The law in force has different levels of strictness depending on the category of the actor, the amount of information to be reported being different. This is even more obvious if the social partners who have no legal responsibility are taken into consideration. However, the Austrian model offers the premise of building a law, assimilating the good things and covering by additional regulations the cases not covered.

Study case - Ukraine: The influence of regulations in legislative approaches in the EU partner countries.

Lobby regulation at EU level has extended its influence to EU partner countries as well, to help these countries adopt national law in line with European Union law. I will refer, in particular, to the adoption and ratification of the Association Agreement between Ukraine and the European Union, notably the provisions of Article 444 of the Agreement where the parties undertake to promote dialogue and cooperation between civil society and interest groups. Surprisingly or not, lobbying regulation in Ukraine has become very important for the EU, especially in the light of the Anti-Corruption Strategy. The NGOs noted that the Kiev government did not carry out a systematic and regular activity to promote measures to combat corruption. Like other countries in Eastern Europe, large companies have continued to promote their interests in developing legislation through pseudo-lobbying structures. In some cases, their proposals have been transmitted even through some parliamentarians, the line between the public interest and the

group one being narrowed. Small and medium-sized enterprises, in fact, had no influence on the legislation. Therefore, the Parliament of Ukraine adopted the law on the principles of state anti-corruption policy (Anti-corruption Strategy 2014-2017). According to section 6 of the law, for the implementation of the Anti-corruption Strategy, it is foreseen the elaboration and subsequent approval of a series of laws, especially regarding the creation of a legal framework, transparent for the activity of lobbying. The adoption of the Anti-corruption Strategy was the result of the implementation by Ukraine of the roadmap for integration in the European Union. Following the approval of this law, in Ukraine the process of drafting the Law on Lobbying started.

The example of Ukraine seemed to be the right one, given that such legislation is not and was not taken under the transitional measures imposed by an Accession Treaty. Thus, by adopting such an act, Ukraine is manifesting its readiness to transpose the Community Acquis as soon as possible, starting with strong examples.

Conclusion

Lobby in the European Union is an integral and important part of decision-making within the EU institutions. From year to year, the regulations in the field are constantly improving, and the number of interest groups is constantly increasing. The main standards for regulating lobbying in the European Union are based on human and citizen rights and freedoms, transparency in EU decision-making, good governance, ethical behavior of civil servants and the use, as often as possible, of electronic tools. EU standards for lobbying influence the laws of EU member states and partner countries.

Lobby regulation is a fairly recent concept in most Member States. Currently, only seven Member States (France, Ireland, Lithuania, Austria, Poland, Slovenia and the United Kingdom) have legislation on lobbying, as well as a mandatory register of interest group representatives. Hungary's previous legislation on lobbying and registration was revoked in 2011 and the most recent law was adopted by France on November 8, 2016. In some countries (Denmark, Germany and Sweden) there are codes of professional ethics drawn up by public relations and consultancy agencies, but they are not included in any set of laws. The other Member States do not have legislation, a code of conduct or a register of lobbyists.

In Romania, attempts to regulate lobbying have emerged in the context of the fight against corruption. The anti-corruption strategies adopted in 2001 and 2004 mention among other objectives the elaboration of a draft law on lobbying activity, as well as ensuring transparency in the decision-making activity. Subsequently, in 2008 and 2011, the focus was mainly on transparency in the decision-making activity of public authorities, the regulation of lobbying activities was no longer a distinct or explicitly mentioned objective. However, there has been a parliamentary interest in legislation for over 18 years. Since 2000, the deputies have tried to regulate the lobbying activity in Romania, being formulated 5 legislative proposals in this regard, one being classified, two being rejected and two still being in the legislative procedure in the parliamentary committees. In September 2016, the Government introduced a public register of meetings with representatives of interest groups.

But the draft laws have never succeeded in reaching the plenary, for a vote. Older projects were sanctioned by various organizations for not being comprehensive enough and serving no purpose. The former Government has foreseen in the Government program the regulation of the lobbying activity, which is the responsibility of the Ministry for the Business Environment, Trade and Entrepreneurship. However, although there have been multiple regulatory attempts, the main theme, which is still unclear, is what we want to regulate. „Do we want transparency in order to

co-opt interest groups in the public decision making process or do we want transparency in order to protect public decision from the financial and political force of some interest groups?” (Radu Nicosevici - Legal Marketing interview). In the last year we observed in the political space a special interest for drafting a law, following the Austrian model.

According to Radu Nicosevici (president of the Advocacy Academy), a problem that could be related to the activity of lobbying is the legal assistance provided to the public authorities and institutions by private owned companies or interest groups.

Within the participatory democracies, those systems based on the interaction of the parties affected by a possible regulation, the lobbying activity becomes a legitimate service. Lobbying is part of a process of actions, of preparing the professional position of an interest group, which feels constrained by a present regulation, which wants to modify or feels threatened by a possible new regulation that limits them or constrain their future actions.

The regulation will create the premise of forming matrimonial rules between interest groups and state structures, an essential principle that must be respected in the interaction between lobbyists and decision makers. At the same time, the transparency of their efforts is essential and the interests are obliged to be legitimate and in the service of the largest number of beneficiaries. As a result, the public decision maker must make its regulatory intent known and each party affected by the new regulation notices, acts and must be aware of the influence of the other parties.

It useful and appropriate to regulate the activity, but only after real consultations, structured with all the parties involved. A law of transparency without real transparency behind its adoption would not be a good start. It is certain that a law could not cover all the gates through which lobbyists and the legislature could collaborate, illegitimately, to satisfy individuals or interests groups. Governing with and for the citizens must become and remain a partnership between them and the elected officials, in whom they have invested their trust. This confidence must extend to all civil servants and to all administrative institutions. In democratic countries from all over the world, this trust is established by honesty and transparency from the officials, respectively by the opportunity offered to people to play a role in the process of governance, even in the daily activity. The responsibility of the citizens is to find a way to benefit from these opportunities, and the administrations, both central and local, should encourage citizens to participate daily in the governance process.

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