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Bachelor Assignment:

EU Lobbying – Between Pluralism and Criminality?

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Erklärung

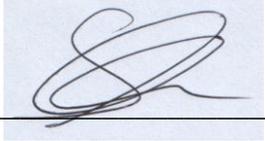
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Abstract

Lobbying in general but also on the EU level is confronted with the media's and the public's perception of being close to criminal actions, involving most of all bribery and corruption (Koch-Mehrin, 2007; Langguth, 2007). The current bribery scandal in the European Parliament underlines this impression (Public Service Europe, 2011). Some call it a fifth power (Leif & Speth, 2006) or entitle Brussels the Champions League of lobbying (Schendelen, 2006).

Is lobbying on the EU level indeed a dangerous activity close to or even involving criminal actions? In this Bachelor assignment, the question shall be answered by clearing what lobbying in general is, how it looks like on the EU level and if it is possible or likely that lobbyists in EU policy making become criminal while doing their work. Dealing with these issues, the questions arise if lobbying in general is legal and legitimate and where the borderline between lobbying and criminal activities as for example corruption is.

Regarding the research design it has to be kept in mind that lobbying is considered to be mostly direct and informal (Heins, 2006, p. 69; Leif & Speth, 2006, p. 14). Empirical evidence for theoretical assumptions is therefore barely available. Thus, the answering of the research question will rely on literature review and own theoretical reasoning.

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Abbreviations

DG	Directorate-General
EU	European Union
EC	European Commission
EP	European Parliament
QMV	Qualified Majority Voting
MEP	Member of the European Parliament
ECJ	European Court of Justice
REACH	Registration, Evaluation and Authorization of Chemicals
TEU	Treaty on the European Union
TI	Transparency International
EU	European Union

1. Introduction

“The Sunday Times’ revealed on March 20, that three members of the EP allegedly agreed to change EU legislation in exchange for money. The newspaper posed as lobbyists for an industrial client and offered 60 MEPs €100,000 per year to influence decision-making in Brussels and Strasbourg”.

This is what Public Service Europe (2011) reported on April 5th, 2011. Lobbying in general but also at the EU level is confronted with the media’s and the public’s perception of being close to criminal actions, involving most of all bribery and corruption (Koch-Mehrin, 2007; Langguth, 2007). Some call it a fifth power (Leif & Speth, 2006) and entitle Brussels the Champions League of lobbying (Schendelen, 2006). The current example, stated above, appears to underline the truth of these perceptions.

Is lobbying at the EU level indeed a dangerous activity close to or even involving criminal actions? The present paper aims at dealing with this question – arising from the stereotype of a lobbyist as a person carrying around a suitcase full of money. A cliché which can be found in scientific literature (e.g. Koch-Mehrin, 2007; Langguth, 2007) as well as in newspaper articles (e.g. Olényi, 2006; Pinzler, 2010). Is it possible or likely, that those lobbyists in EU policy making become criminal while doing their work? Dealing with these issues, questions arise if lobbying in general is legal and legitimate and where the dividing line is between lobbying and criminal activities as for example corruption. The present paper can be regarded as an attempt to show, up to which point lobbying can be contributing to democracy and when it slides towards undemocratic behavior.

Only little literature on this specific topic can be found. Whilst literature on lobbying at the EU level is available on a large scale (e.g. Greenwood, 2007; Michalowitz, 2004; Michalowitz, 2007; Schendelen, 2006) and also literature on corruption and white-collar crime can easily be found (e.g. Benz, 1992; Hoogenboom, 2010; Siegel, 2007) it appears as if there is hardly any literature dealing with interconnectivity of EU lobbying and criminality. This is especially astonishing regarding the well-known stereotypes mentioned before. There is literature on the relation between lobbying and corruption (e.g. Campos & Giovannoni, 2007; Harstady, & Svenssonz, 2010). However, it is mainly dealing with it as a problem regarding developing countries.

Chorus concludes for the European Union that “the relation between lobbying and corruption is non-existent.” (2008, p. 154). It has to be analyzed whether he is right in his assumption or if there is a lack of research so far.

Dealing with the question mentioned before it must be kept in mind that lobbying is considered being mostly direct and informal (Heins, 2006, p. 69; Leif & Speth, 2007, p. 14). Therefore empirical evidence for theoretical assumptions is barely available. Hence, quantitative research is no option in deciding about the research design. This research can be considered a case study of lobbying in a certain political sphere, namely the European Union's institutions, mainly consisting of literature reviews. Since there is little research to be found on the specific topic itself, own theoretical reasoning will make a substantial part of the research as well.

A comparison of different cases could be the basis for further studies but in a first step it appears logical to use the little space given in a Bachelor assignment to concentrate on only one case, appreciating that little was researched in this field before. As there is no possibility to achieve reliable data it is so far the only way to achieve any basic results at all.

The present approach will start with a definition of lobbying. To get an impression of its meaning for democracy and its functioning the term will be put in relation to the theories of pluralism and neo-corporatism. The concept of the policy cycle will be described in order to finally analyze some assumptions on lobbyists' practical work involving actors, targets, methods and strategies as well as first brief discussion on the legitimacy of lobbying in general.

In a second step, the concept of lobbying will be applied to policy making at the EU level. The European Commission, the Parliament and the Council as well as the European Court of Justice as targets for lobbying will be analyzed, followed by a discussion of different actors in EU lobbying. It will be discussed why the Commission is considered being the most attractive target and why actors engage in lobbying even though having little expectation of success. Before illustrating the findings, in an example the legal backgrounds for lobbying in the European Union will be further displayed.

In order to deal with the underlying question, it subsequently has to be discussed what a crime in general is. In doing so, the consensus, conflict and interactionist view of crime will briefly be compared. Even though, many theories explain why individuals become criminal (Siegel, 2007) the rational choice theory of crime is the one to explain crime in this context most adequately and will be introduced in the subsequent part followed by the concept of white-collar crime.

On this basis lobbying will finally be contrasted with corruption – the criminal way of influencing political decisions. Parallels and differences will be discussed in order to conclude whether EU lobbying or at least aspects of it are a crime.

Before recapitulating the results of the analysis it shall be shown how transparency can contribute to lobbying and what has been done so far towards transparency in lobbying in the EU.

2. Lobbying: Theoretical background

2.1. Terminology

Talking about lobbying, as a first step the term itself needs to be defined. „Lobbying ist die Beeinflussung der Regierung durch bestimmte Methoden, mit dem Ziel, die Anliegen von Interessengruppen möglichst umfassend bei politischen Entscheidungen durchzusetzen“ (Leif & Speth, 2006, p. 12). Especially the desired influence on political decisions is an aspect that appears in many definitions of lobbying (Kleinfeld, Willems & Zimmer, 2007; Michalowitz, 2004; Greenwood, 2007).

Expert opinions are even more controversial when it comes to the details of lobbying. Kleinfeld *et al.* (2007) see lobbying as the *legitimate* attempt to influence policy results and identify criticism on lobbying only in individual cases as valid. Leif and Speth (2006) on the other hand even critically call it a ‘fifth power’. To them, those who try to gain influence on political decisions through lobbying are not part of the decision making procedure (p. 12) whereas Redelfs is assuming that also politicians can represent interests of certain interest groups (2006). Whether or not politicians actually are or should be able to become lobbyists and this development’s meaning for policy making procedures can be considered as part of the problem dealt with in this work. It will be further discussed in chapter 5.

Also, considering the differentiation between interest representation and lobbying a common opinion cannot be found. Busch-Janser and Vondenhoff come to the conclusion „Lobbying vermittelt zwischen Gesellschaft, Wirtschaft und Politik. Lobbying gibt nicht nur denen, die vertreten werden, eine Stimme gegenüber der Politik, sondern übersetzt auch den Code der Politik“ (2008, p. 16). They see, just as Althaus (2001, p. 221) does, lobbying not only as an influence on certain planned policies but also as a mediator between politics, business and society whilst Leif and Speth (2006, p. 12) differentiate clearly between lobbying and interest representation. In their opinion, the latter is the diffuse representation of interests as well as values and ideologies in the political space (which does, from their point of view, include the public) whereas they consider the former as not directed towards the public. It is an articulation of single interests and the influence on or prevention of planned legislation.

Taking these different views of lobbying into account it must – under the impression of this work’s topic – be seen in a broad way as the attempt to influence policy making with the background of a certain interest.

Lobbying can be subordinated to the concept of Public-Affairs-Management and has to be seen as a part of it. „Public Affairs sind von einem Unternehmen getroffene Maßnahmen um die folgenden Ziele zu erreichen: a) Eine Verbesserung des wirtschaftlichen Klimas durch die Beeinflussung von Regierungen, Meinungsbildnern und der breiten Öffentlichkeit. b) Eine Begrenzung der negativen Auswirkungen der Aktivitäten einer Regierung in wirtschaftlichen und sozialgesellschaftlichen Angelegenheiten, die das Unternehmen betreffen.“ (Althaus, 2001, p. 175).

2.2. *Pluralism*

In order to get a vague understanding of the theoretical concept of lobbying some theories need to be broadly discussed. The theory of pluralism is a central starting point for analyzing the representation of interests. A plurality of interests has to be assumed which do not follow the same goals but are heterogeneous interests of individuals with own preferences. As a part of society they can be allocated in certain milieus but do not have to stick to these because milieu boundaries are seen as modifiable. Pluralism assumes interest aggregation to articulate individual interests (Fraenkel, 1991, pp. 261).

The evolving interest groups find themselves in a distribution conflict. They are competing. The assumption of interest group conflict can be seen as the basic assumption of pluralism theories. The indirect and non-binding contributions to political discussions by interest groups in a competitive manor should lead to a fair decision (Michalowitz, 2007, p. 30).

Pluralism demands a certain citizen enlightenment including interest, information, critical understanding, rationality, values and a willingness to participate (Fraenkel, 1991, p. 272). Classical pluralists consider themselves as liberal democrats mainly concerning how to achieve stability and peace in a conflict-ridden society (Cunningham, 2002, p. 73).

2.3. *Neo-Corporatism*

The concept of neo-corporatism evolved from criticism on Pluralism and became an alternative model. The same as for pluralism, the intermediary function of organized interests is central. Organized in interest groups it is their task to integrate their members' private interests in legislative processes. In difference to pluralism, the relationship between state and interest group is institutionalized and affected by mutual influence. The number of associations is limited by the state and membership can be due to coercion. The state can have further influence on associations for example by the ability of authorizing the board of management. However, resulting is not a one-sided dependence but a both-sided one. It is only possible to legitimate decisions if the associations give the required input. The state permits access to legislative procedures for legitimation of its actions (Lehmbruch & Schmitter, 1982).

Hence, pluralism is assuming competing aggregated interest. Heterogeneous interests aim at different goals without any governmental influence on interest groups.

Neo-corporatism in contrast approves governmental influence on interest groups. It can exert influence on the number and structure of associations, as well as on membership.

2.4. *Policy Cycle*

In both cases it is helpful to glance at how political decisions are made in theory. For the problem underlying this work the policy cycle model appears adequate. In this model the decision making process is subdivided in several phases within a circular model. Starting with the problem definition the decision making process begins with the identification of a problem. Ideally the identification of such a problem is initiated by organized interests within a society. The next step consists of taking the problem on the political agenda. Generally this will be initiated by political parties but also through the executive. The media can contribute to this phase of the policy cycle as well. This process is followed by a policy analysis in which relevant data and information is collected, objectives are clarified and key questions resolved and options and proposals are developed. Afterwards, the decisions made before are transformed to and implemented in legislation. Furthermore, this stage contains of law enforcement. In this case, policy implementation equals policy enforcement or policy ignition. During the following phase of evaluation it will be observed through practical experience if the decisions have weaknesses and require correction. Because of the circular logic there usually is no terminal phase. However, the decision making process can be terminated if no re-definition of the problem takes place (Jann & Wegrich 2003; Everett, 2003).

2.5. *Assumptions on praxis*

This theoretical background however cannot describe how lobbying actually works in praxis. Who is lobbying whom and why? How does it work? And is this behavior legitimate? Those questions cannot be answered by theoretical assumptions but have to rely on generalization of observations.

2.5.1. *Actors*

Regarding actors influencing political decisions one cannot exclusively focus on interest groups in form of associations, as classical pluralism and neo-corporatism assume. Michalowitz (2007, p. 73) names interest groups, in-house-lobbyists and commercial public-affairs agencies as actors. The latter group has to be seen as external actors getting involved on behalf of associations or companies. In contrast, interest group lobbyists and in-house lobbyists are regular employees of the association or company.

The variety of actors also results from the logical argumentation that „die zur vollständigen Kontrolle politischer Entscheidungen notwendigen Ressourcen auf unterschiedliche private wie staatliche Akteure verteilt [sind]“ (Schmedes, 2008, p. 60). Concurrently, Wehrmann (2007, pp. 41) as well as Lösche (2006, p. 62) observe a decreasing relevance of associations as such. Wehrmann grants more influence to the more flexible in-house lobbyists. It is important to say that ideally lobbyists should not only concentrate on their own benefits but have to take stakeholders' interests into account (Althaus, 2001, p. 178).

2.5.2. *Targets*

Based on the definition of lobbying, targets can be all political participants in the process of the policy cycle. This does not solely have to be the legislative as such. Although the legislative part is the part of a democratic state structure that is able to legally pass laws, the executive as well as other key figures can become target of lobbying (Leif & Speth, 2003, p. 15). Especially the parts of the executive involved in policy implementation and evaluation have to be named in this context. Key figures can be influential single persons within the political space. Mainly legislative and executive as well as influential persons within the party landscape have to be mentioned.

2.5.3. *Methods & Strategies*

It can be differentiated between direct and indirect lobbying. Whilst in the case of direct lobbying the communication is personally, communication in indirect lobbying is operated including a third party (Köppl, 1998, p. 13). As already covered by the definition of lobbying, for the current study it has to be considered as direct influence on political decisions. This is assumingly in indirect lobbying only possible to a limited degree. Therefore it shall be concentrated on direct lobbying in this case.

Regarding lobbyists' instruments, it becomes clear that not contribution to the formal legislative process alone is relevant. Collection, analysis and transmission of information on the relevant processes, relation to contacts, dialogue with decision makers, networking, letters and petitions are what Wehrmann (2007, p. 46) considers the important tools. With the help of these tools not only standpoints are demonstrated but also information and insider knowledge is exchanged between lobbyist and target.

Relations can be further divided into formal and informal (Wehrmann, 2007, p. 50). Formal relations are relations situated under legal conditions as they are typical for neo-corporatist systems. Hence, informal relations have to be considered as all lobbying relations outside this formal arena. Authors as Heins (2006, p. 69) and Leif & Speth (2006, p. 14) consider lobbying as mainly direct and informal.

Consensus can be observed among authors concerning lobbyist's most important tools. Certainly, the observation of political processes – most often called 'monitoring' – as well as the maintenance of important relations to contacts, is of extraordinary significance (Michalowitz, 2007; Leif & Speth, 2006). In order to be able to intervene in the policy-making as illustrated by the policy cycle, monitoring has to start at an early point during this process.

Another important strategy to be mentioned is 'agenda-setting'. Defined as the active control of societal, social, political or economic issues this can, related to lobbying, be considered as intervention in the agenda setting phase of the policy cycle and the input of own issues (Busch-Janser & Vondenhoff, 2008, pp. 25).

2.5.4. *Legitimacy Problem in General*

Admittedly, informal relations are liable to be overrated or underestimated. They can also easily be subject to speculation. This arises from the fact that they do not necessarily reach the public due to their informal nature. „Diese Kontakte vollziehen sich überwiegend auf informeller, unregulierter Ebene. Sie finden in Form von Schriftverkehr, Telefonaten oder persönlichen Gesprächen statt“ (Wehrmann, 2007, p. 51).

The background for this way to establish contacts results from the policy cycle mentioned before. Much earlier than during the policy implementation stage, political actors decide in favor of or against certain positions. Therefore, an early intervention in the process of political decision making can lead to a more sustainable positioning of the represented interest. Furthermore, the interest representatives are well aware of the competition among interests. In order to prevail, an early intervention arises (Althaus, 2001, p. 217).

It cannot be disputed that this informal, the public excluding procedure might appear condemnable at first glance. In contrast, Wehrmann argues that generally political decisions are made with public participation. She further says that it can be more efficient to discuss subjects without public participation being more un-ideological, less party-focused and unprejudiced (2007, p. 52). Van Schendelen draws parallels to other parts of the society concluding that lobbying is the core of politics. Seeking for influence in decision making can be found in families, peer groups, communities, working places and associations (Schendelen, 2007, p. 134).

The public anticipation of legitimacy cannot coercively be assumed being negative but will depend on the lobbyist's intention. An attempt of the tobacco lobby to influence the taxation of cigarettes certainly will be considered negative. Smoking nowadays is among a broad part of the public regarded as harmful. If, however, producers of solar panels lobby with the same intention or aim at subvention, it would not necessarily be condemned. In both cases initiative results from the interests behind a lobbyist's activity.

Besides these examples of concrete influence, it has to be considered that, especially in EU politics, politicians can also just collect information in this unprejudiced, informal manner to analyze a problem from different angles (Greenwood, 2007). In this case, the government takes initiative. Especially in cases of lacking resources in government, lobbying can be a welcome opportunity to gain access to a problem. The legitimacy problem of lobbying and the dangers and benefits in EU politics will further be discussed in chapter 5.

In summary, the actors in lobbying are, generally speaking, interest groups, in-house-lobbyists and commercial public-affairs agencies. They mainly address the legislative and executive parts of governmental power. Lobbying itself can be divided into being direct and indirect as well as formal and informal. Besides active lobbying, monitoring and agenda-setting are considered to be important strategies. An early point of ignition has to be assumed. Lobbying is considered to be mostly direct and informal.

3. EU Policy-Making and Lobbying

3.1. Targets in EU Policy-Making

In order to gain influence in the European decisive procedures, lobbyists can choose two 'routes of influence'. Thereto, the 'Brussels route' describes the attempt of gaining influence directly at the European level whereas the 'national route' is an indirect seek for influence at member state level aiming at national politicians to give interests a voice in the European decision making procedure (Greenwood, 2007, p. 25; Langguth, 2007, p 190). However, the national route is seen as secondary venue and shall therefore only be discussed as far as it affects procedures in the European Council.

As targets for lobbying in EU politics are most of all regarded the European Commission, the European Parliament and the European Council (Michalowitz, 2007) because they are the main institutions involved in decision-making (The European Union). Those institutions and their values in EU lobbying will be introduced on the following pages. Greenwood (2007) also includes the European Court of Justice as a target of lobbyists. Whether or not this can be seen as an equally important target for lobbying shall also be discussed in this section.

3.1.1. Commission

"Formally, the Commission consists of twenty-seven Commissioners, with one Commissioner from each Member State. [...] The Commission is appointed for a five-year term. Once appointed, the Commissioners are allocated portfolios by the president. Each Commissioner is then primary person responsible for all the work of the Commission that falls within that policy area" (Chalmers, Davies & Monti, 2010, p. 54). Commissioners shall

not have other obligations than their work in the Commission; its president is proposed by the European Council through QMV and gets elected by the European Parliament.

European equivalents to national ministries are the Directorates-Generals. “They fulfill many of the same functions: policy development, preparation of legislation, distribution of revenues, monitoring of legislative implementation, and provision of advice and support to the political executive” (Hix, 2005, p. 46). The DGs employ the majority of the Commission’s employees and can be considered the administrative part. They fall within the portfolio of at least one Commissioner and are answerable to him but their duties are to the Commission as a whole and they are rather autonomic (Chalmers, Davies & Monti, 2010, p. 57). The Commissioner’s office is the cabinet. Those cabinets are in between the individual Commissioner and the DGs, preparing weekly meetings and agendas (Hix, 2005).

Whilst the Commission has only very limited direct legislative power it has in most fields a monopoly on the legislative initiative, decides the legislative program for each year and has the power of financial initiative (Chalmers, Davies & Monti, 2010, p. 61). Together with its role in monitoring legislative implementation, this is what makes the European Commission the most important target for lobbying in EU policy making (Greenwood, 2007, p. 24; Langguth, 2007, p. 190).

Because of a lack of employees, the Commission is considered to be dependent on external information (Greenwood, 2007, p. 7; Koch-Mehrin, 2007, p. 40; Michalowitz, 2007, p. 66). It is especially sought at the lowest level of the Commission’s hierarchy and it also seems to be most influential at that stage (Michalowitz, 2004, p. 62). Lobbyists gladly take this possibility of providing knowledge to reach influence. Interns as for example Schulz (2007, p. 23) regard this procedure as being part of political business for reaching complete and sustainable legislation, assuming that officials hear more than one voice. Furthermore, the involvement of individual interests, not only in the Commission’s work but especially there, is seen as a substitute for the lack of a functioning European public sphere (Michalowitz, 2007) which was detected for example by Strohmeier (2007).

Information can be brought in on a formal level – as in hearings and round tables – but also and most notably on an informal level (Langguth, 2007, p. 190). Michalowitz (2004, p. 61) considers as most relevant information all those with (1) representativeness of the source and (2) substantiveness of the material. Besides the provision of knowledge, Greenwood (2007) identifies further benefits of interest representatives for the Commission: “a source of support for drafting legislation; a means of ‘testing out’ proposals among stakeholders, and the ways they are likely to be received in different national settings ahead of the Council of Ministers; and, in the Commission’s role as a guardian of the Treaties, information about the implementation of measures and their impact” (p. 6).

3.1.2. *Parliament*

Even though playing a crucial role in initiating policy making, the Commission has only little influence on final decisions. The Parliament can enforce influential changes and has nowadays a strong position towards the European Council (Michalowitz, 2007, p. 70).

Its seats are not distributed equally per country, the procedure for proportional representation can be different among the countries and there are no European but national parties providing candidates for the election. Nevertheless, most MEPs sit in party groupings which heavily affect their voting behavior (Chalmers, Davies & Monti, 2010, p. 83). Hence, “the European Parliament is dominated by ideological conflict rather than national conflicts” (Hix, 2008, p. 113) and therefore Parliament’s decisions are – even though it lacks ‘European parties’ – oriented on party lines instead of national lines.

The Parliament’s power varies depending on the policy field in question. The two dominant legislative procedures are the consultation and the ordinary or co-decision procedure (Chalmers, Davies & Monti, 2010; The European Union). During the consultation procedure the Parliament is only consulted on a legislative proposal, having the opportunity of proposing amendments (The European Union). The ordinary procedure gives the Parliament the possibility of enforcing amendments more effectively. After a first reading of a Commission’s proposal by the Parliament, it issues an opinion on that. If amendments are made, the Council can either agree or pass the act to a second reading by the Parliament – after having adopted a ‘common position’ on the act. Having the chance of either agreeing on the common position or making further amendments the act will be adopted or a Conciliation Committee will be established if no agreement is reached. This Committee will approve a joint text (Chalmers, Davies & Monti, 2010, pp. 104).

Because there is no in-built majority the Parliament can be considered as being oriented towards consensus and coalition forming (Greenwood, 2007, p. 36; Hix, 2008). This makes it hard for lobbyists to find contact persons among the MEPs. On the other hand, because of their increasing power and little budget for research, MEPs are dependent on external information provided by lobbyists to an opinion about complex policy issues and to compete effectively with the Council and the Commission (Hix, 2005, p. 228). According to Schulz, it must be assumed that most contact between MEPs and interest representatives takes places through deputies and assistants and is therefore indirect (Schulz, 2007, p. 26).

3.1.3. *Council*

The European Council only has limited initiating power – even though it sets a general course for the Union – and little potential to make amendments within the ordinary legislative procedure in particular. However, the Council is the deciding institution (Chalmers, Davies & Monti, 2010, p. 76).

Comprising the Heads of Government of the Member States, its president and the President of the Commission – and its therefore mainly intergovernmental nature – the Council can be considered as being most of all a target for national lobbyists who seek for influence on the European level. Especially where unanimous decisions are prescribed – which will lead to consensus and intergovernmental negotiations – this national route is only secondary venue (Greenwood, 2007, p. 25). Other authors agree that the Council is less interesting for lobbyists in EU policy making (Langguth, 2007; Michalowitz, 2004).

3.1.4. *European Court of Justice*

Greenwood (2007, pp. 39) and Pollack (1997, pp. 581) also consider the ECJ a possible target for interest representation. In their argumentation, the attempt of interest groups to prevail through jurisdiction is lobbying as well. Taking into account the broad definition underlying this work one could doubtlessly come to conclusion that jurisdiction can have influence on policy making, if for example certain legislation is recognized as not being in line with the Treaties underlying European policies.

On the other hand one could argue, using a narrower definition, that influence must be sought before implementation. However, assuming policy making as being circular, the use of jurisdiction could be considered to be part of a problem re-definition.

Hence, even though being no classical form of lobbying, it appears that Greenwood's (2007) integration of the ECJ to targets for lobbyists is quite reasonable. It must certainly be regarded as indirect lobbying but can lead to influence on policy making.

3.2. *EU Lobbying*

Because of its open outcome, resulting from fragmentation and dispersal of power, which in many cases leads to orientation towards consensus, one could get the impression that EU policy making is not very interesting for lobbyists. To provide knowledge without any security on gaining influence in exchange can appear useless at first glance. Nevertheless, because of its multi-level structure, the dependence on external knowledge and its open outcome the EU provides easy access for lobbyists (Greenwood, 2007, p. 209; Pollack, 1997, p. 576). This access is gladly taken. Not because they equal little chances with no chances at all but because for most interests having little chances means that it still might be possible to gain influence (Michalowitz, 2007, p. 71).

However, the Parliament is regarded to be an unpredictable body. Members of the Council in many cases depend on consensus or at least on finding partners for building a majority. And influence on the Commission cannot guarantee success. Thus, all three actors have different degrees and different kinds of influence and interests must aim at a certain amount of influence at all levels (Michalowitz, 2004, p. 70).

Greenwood differentiates actors in lobbying into group actors and non-group actors. To him, group actors are all organized interests whilst non-group actors are containing companies, single interests and commercial providers as for example consultancy agencies. Through this differentiation he avoids labeling organized business interests, which stand for a part of the public, as being no public interests at all (Greenwood, 2007). On the other hand for example Michalowitz (2007) uses the classic differentiation into public and business interests while distinguishing more rigorously between actors and represented interests.

The differentiation into group and non-group actors appears more useful in this context. Conflicts in labeling certain interests – as for example organized labour and employers interests can both be considered as parts of public interests – can be avoided by this definition. Less specific interests representing a broader part of the population will further be considered as ‘diffuse public interests’ which is a subgroup to group actors.

3.2.1. *Group Actors*

Organized interest groups as lobbying actors can be considered to be the classical interest representatives according to pluralist and neo-corporatist theory and on the European scale they are regarded as the most important interest representatives. Within the policy making process they can claim a certain representativeness of their interests due to a variety of individual interests behind them. Intern democratic structures and the need for compromise between individual member interests invests a certain degree of democratic legitimacy on their involvement in policy making even though they never can represent the people as a whole (Michalowitz, 2007). Diffuse interests in sense of counterparts towards business interest can be assumed to aspire a sort of balance through delivery of information on acceptance of a certain policy among a broad part of the public whereas business interests are often able to provide detailed specialist knowledge and can even be considered to having sometimes a kind of monopoly on information (Michalowitz, 2004).

According to Greenwood (2007), the European association’s landscape can be considered to be very fragmented especially with business interests having small specialized groups for certain special interests. Furthermore, he states that EU funding would ensure that asymmetries are only little, especially between diffuse and business interests. Langguth (2007, p. 194) and Michalowitz (2004; 2007) do not agree and see public actors with less specific aims having less resources in a weaker position. Schmedes (2010) counter argues that the EU multi-level system ensures that no interest can enjoy a stronger influence than others. However, business interests can be considered to be represented the most in the EU (Hix, 2005, p. 212).

3.2.2. *Non-Group Actors*

Non-group actors are not representing an accumulation of individual interests but just one single interest which can be in line with interests simultaneously represented by a group actor. According to Michalowitz (2007) non-group actors as in-house lobbyists and public affairs agencies fulfill two tasks. They (1) close a possible gap between the association-intern compromise and a company's individual interest and they (2) intermediate between politics and the company if no matching interest group exists. The latter actor's task in this constellation is to give advice and support as well as to get involved for short terms if more staff is needed.

Individual business interests can be seen to be increasingly represented on the European level and becoming at least equally strong as national counterparts (Hix, 2005). Nevertheless, companies that get active in EU lobbying are assumingly large in size as they need a certain amount of resources to engage further than just with the help of associations (Michalowitz, 2007).

If business associations are able to provide specialist knowledge individual lobbyists can achieve even more. Having a closer contact to politicians (Greenwood, 2007), they also have a closer connection to their own companies and therefore more detailed knowledge to share with their targets.

3.2.3. *Regional Interests*

It is not very clear within the literature, to which kind of actors regional interests belong. Hix (2005) deals with them as group actors whereas Greenwood (2007) regards them as being non-group actors and Michalowitz (2007) even sees them as co-existing to organized and individual interests. No matter as what kind of actor those interests are labelled, they are a further kind of interest representation on the European level. European regions have their own agency in Brussels and try to gain influence as well as business and diffuse public interests.

3.3. *Legal Background for EU Lobbying*

Regarding the importance of individuals and associations contributing to policy-making, Art. 11 TEU explicitly enforces consultation during that process. It further "sets out three underlying principles – dialogue, transparency and pluralism – that must inform such consultations" (Chalmers, Davies & Monti, 2010, p. 373).

On the one hand, based on this legislation the actors mentioned before are encouraged to represent their interests and to seek influence. The Union's institutions are committed to join that dialogue. Pluralism in this context has to be understood as listening to more than one voice. This can happen in official round-tables which would be in accordance with neo-

corporatist behavior. Even though Art. 11 TEU does not explicitly mention any form of consultations it has to be considered as covering mostly formal lobbying. The inherent responsibilities and obligations as for example being a public exchange (Art. 11 I TEU) and the call for open, transparent and regular dialogue (Art. 11 II TEU) hardly cover any informal activities. On the other hand, the nature of lobbying, earlier described as mostly indirect and informal, does not naturally contribute to transparency. If current principles for transparency, as they are laid down in the 2002 Commission Communication (European Commission, 2002), counteract in-transparency effectively will be discussed later on.

3.4. *REACH – an example for lobbyist’s influence on EU politics*

As it was mentioned before, lobbying activities are direct and informal in most of the cases. Therefore, empirical evidence for lobbyists’ influence in legislative processes is hard to find, if possible at all. Even if comparison of different legislative drafts showed changes in details, it would not be possible to trace back those changes to certain lobbying actors. However, it is possible to analyze legislative processes on general lobbyist involvement. A useful, well documented, and regarding the content controversial issue was the REACH regulation that was enforced in 2007. Its aims are “to improve protection of human health and the environment from the risks of chemicals while enhancing the competitiveness of the EU chemicals industry” (European Commission, 2007). It contains a requirement for producers and importers of both ‘new’ and ‘existing’ chemicals to prove that their products are safe before they can be placed on the market (EurActive, 2010). With the protection of health and environment in mind this regulation burdens especially the chemical industry but also heavily affects stakeholders, as for example producers using chemicals. The legislative process therefore attracted international attention (Florenz, 2007) and even alarmed traders in far away Hong-Kong (Hong Kong Trade Development Council, 2003).

Briefly explaining the incidents leading to the final legislative act, the release of a White Paper by the Commission on the Strategy of a future Chemical Policy in February 2001 can be regarded as ignition point. Going through a first and a second reading in the Parliament the Council agreed on the REACH regulation in December 2006 by unanimity (EurActive, 2010).

During the whole policy-making Florenz (2007), as an MEP involved in REACH policy making, observed three different strategic stages. Initially, the chemical industry clearly rejected the reform as such without any wish for debate whereas environmental and consumer protection associations took a similarly clear position in favor of the reform. In a second phase, it became clear that the Commission was not willing to take back their proposal. The chemical industry therefore moved away from their stiff counter position and joined a more open debate. In this debate, they were still aiming at substantial changes in

the proposal during the first reading in Parliament. Industry's environmental and consumer protecting counterpart developed, in Florenz' (2007) opinion, as an advocate for the reform. During a third phase, which is according to Florenz (2007) the second reading, broad branch-wide interest representation got unimportant whilst legislative details came into focus. Single companies with particular interests got involved.

Keeping the EU's legislative procedure in mind it can be noticed that such late involvement will not lead to any outstanding changes. Further, it is astonishing that the chemical industry, according to Florenz (2007), was not involved during the Commission's work on the proposal. That environmentalist and consumer protectors were strongly in favor of the reform underlines the image of a legislation that highly influences strongly affects the industry.

On the other hand, it is surprising how those latter associations could be satisfied while a former BASF employee got involved in work on REACH in the European Commission and later went on working in the German economics ministry, still paid by BASF (Adamek & Otto, 2008, pp. 16). This fact raises suspicion and leads to the question if he integrated BASF interests into the REACH proposal and how such a proposal still can be attractive for environmentalists and consumer protectors. The picture of the legislative process becomes even more colorful introducing the fact that more than half of all amendment proposals on REACH originated from written sources by industry lobbyists (Martin, 2011).

However, especially because of all this controversial lobbyist involvement during the legislative process, REACH is a very useful example for the discussion of the very thin line between democratic interest representation and illegitimate if not even illegal involvement or interruption of democratic processes. Before distinguishing lobbying from criminality and looking for parallels the former findings shall be summed up.

In policy making in the European Union it can be distinguished between Group and Non-Group actors – the former consisting of associated business and diffuse public interests, the latter of in-house lobbyists and public affairs agencies – as well as regional interests, all aiming at the Commission, the Parliament and the Council, in special cases also at the European Court of Justice. The representation of interests bases on Art. 11 TEU and is in theory initiated at an early point of policy making. While the Commission is very influential in issuing policies, the Parliament's power lies in amending legislative proposals. The Council is the finally deciding force.

The example of the REACH regulation illustrates that lobbying does not only consist of controversial discussions between politicians and interest representatives but can also be the introduction of pre-written legislation to politicians and the personal involvement within democratic institutions.

4. EU Lobbying and Criminality

4.1. *Criminological Terminology*

It is not easy to generally define the term 'crime'. Hoogenbom (2010, p. 151) even regards the definition of crime as an 'unsolvable problem'. Siegel (2007) divides the anticipation of crime into three categories: (1) the consensus view on crime, (2) the conflict view on crime and (3) the interactionist view on crime. In the following they shall briefly be introduced. An integrated definition of crime will finally be introduced to underlie the further research.

4.1.1. *Consensus View of Crime*

The implication of a general agreement among the majority of citizens of what should be illegal is inherent to the consensus view on crime. "The substantive criminal law, which is the written code that defines crimes and their punishments, reflects the values, beliefs and opinions of society's mainstream" (Siegel, 2007, p. 16). According to the consensus view on crime behavior that is harmful to other or society in general must be controlled. Also victimless crimes are included because the public regards them as undermining the social fabric and threatening the well-being of the society.

4.1.2. *Conflict View of Crime*

On the other hand, Siegel (2007) regards the conflict view of crime as based on a constant conflict in society among different social groups. It founds on the marxist theory of class struggle. Criminal law, in this view of crime, determines the haves from the have-nots and protects the haves. According to conflict criminologists, this assumption manifests in minor penalties for even extreme white-collar crimes and major penalties for minor violations. "Crime [...] is a political concept designed to protect the power and the position of the upper classes at the expense of the poor" (Siegel, 2007, p. 16). According to the conflict view, crimes of economic and political domination would be 'real' crimes

4.1.3. *Interactionist View of Crime*

Finally the interactionist view of crime traces back to the symbolic interaction school of society. "This position holds that (1) people act according to their own interpretation of reality, through which they assign meaning to things; (2) they observe the way others react, either positively or negatively; (3) and they reevaluate and interpret their own behavior according to the meaning and symbols they have learned from others" (Siegel, 2007, p. 16). There is no objective reality and crime reflects the preferences and opinions of people who hold social power in a particular legal jurisdiction. Criminals get labeled as such by society and therefore law is conforming to the beliefs of moral entrepreneurs.

According to Siegel (2007) all three definitions of crime are influenced by an anticipation of how law is made. He calls for an integrated definition of crime, combining all three schools: “Crime is a violation of societal rules of behavior as interpreted and expressed by a criminal legal code created by people holding social and political power. Individuals who violate these rules are subject to sanctions by state authority, social stigma, and loss of status” (Siegel, 2007, p. 18).

4.1.4. *Rational Choice Theory*

While other theories of crime take into account personal traits or social circumstances to explain why people become criminal, the theory most suitable to explain this behavior in context with white-collar crime is the rational choice theory of crime. According to this theory “law-violating behavior occurs when an offender decides to risk breaking the law after considering both personal factors [...] and situational factors [...]” (Siegel, 2007, p. 98).

Thus, a criminal considers risks and benefits before breaking the law. The differentiation between offense-specific and offender-specific crime is elementary. Offenders act selectively in choosing particular profitable crimes, taking into account own abilities. According to Felson (1986), “a criminal act has three minimal elements: a likely offender, a suitable target, and the absence of capable guardians against crime” (p. 343). Siegel further adds that “rational choice is a function of a person’s perception of conventional alternatives and opportunities” (2007, p. 99). If a person realizes that his economic opportunities might be a lot better if he committed a crime, he might do so.

Regarding the first edge of Felson’s triangle, a possible offender will, according to the Rational Choice approach, make the decision to commit a crime because of certain offender specific criteria. Those could be the economic opportunities, meaning “a person’s perception of conventional alternatives and opportunities” (Siegel, 2007, p. 99) as well as personal experiences in committing crimes or the knowledge of criminal techniques.

The second and third edge of Felson’s triangle can be seen as part of the offense specific criteria. Before thinking about a suitable target or its guardians, a decision on the type of crime has to be made. This decision might be influenced by offender-specific criteria as knowledge of techniques and experience. Depending on the type of crime, first of all the choice of a target might be done. After having chosen a target, a decision on time and place of the crime might be made.

According to Siegel (2007), crime is an event whereas criminality is a personal trait. Criminality relies on the economic situation and opportunity, learning and experience, and the knowledge of criminal techniques. On the other hand, the crime consists of choice of the type of crime, choice of the time and place, and choice of the target of a crime.

4.1.5. *White Collar Crime*

Finally the concept of white-collar crime is a very important aspect to analyze whether lobbying can be considered to be close to criminality. It can be traced back to Edwin Sutherland who defines: "White-collar criminality in business is expressed most frequently in the form of misrepresentation in financial statements of corporations, manipulation in the stock exchange, commercial bribery, bribery of public officials directly or indirectly in order to secure favorable contracts and legislation, misrepresentation in advertising and salesmanship, embezzlement and misapplication of funds, short weights and measures and misgrading of commodities, tax frauds., misapplication of funds in receiverships and bankruptcies" (Sutherland, 1940, p. 6).

Concerning political criminality, Siegel (2007, pp. 399-405) regards the individual exploitation of an institutional position as most important which is to forcing victims to pay for a service to which they have the clear right. Influence peddling and bribery are further to be mentioned. The latter is the receiptment of payments or money-worth services and gifts in exchange for benefits. A very specific problem in that context is corporate crime. In this case, the perpetrator is a legal fiction (corporation) and no individual. Employees act within the scope of their employment and have authority to engage in the act.

Recapitulating, it can be said that different views on crime and criminality exist. In this context, the integrated definition of crime according to Siegel is very useful, because it describes crime as violation of societal rules of behavior as interpreted and expressed by a criminal legal code. The rational choice theory further designates criminal actions as being dependent on a perpetrator's rational reasoning on personal and situational factors.

White-collar crime finally covers crimes in context with business. Political white-collar criminality as a small part of this area is only covering bribery in Sutherland's original view whereas Siegel integrates further aspects. As they are aspects of corruption, the subject will be deepened in the following.

4.2. *Lobbying in Contrast to Corruption*

Moving back to the original problem, it can now be dealt with the question whether lobbying is a crime or how criminal lobbying is. First of all, it can be distinguished from corruption. If this distinction is useful in the present context as and if there are forms of lobbying that do not clearly match one of these two categories will be discussed later on.

4.2.1. *Definition of Corruption*

Corruption is a phenomenon which is neither bound to certain forms of society nor to certain historic periods (Alemann & Kleinfeld, 1992, p.262). It cannot simply be defined as the deviation from formal legislation in administration. Formal actions as they are laid down in legal and other written documents contrast with informal actions which are not covered by those. They complete, change or partly substitute the formal constraints without deviating from the basic interests. It is not legally covered and therefore not per se illegal but contains the danger of slipping on illegal tracks (Schulze-Fielitz, 1992, p. 235). The need for problem-oriented, professional and flexible actions in modern administration and therefore the need for close contact with different interests and intern decentralization make informal actions necessary in order to fulfill the administrative task (Benz, 1992).

Corruption, in contrast, is defined by Benz as the granting of advantages for material reward or the expectation of reward and personal enrichment in office (1992, p. 52). Regarding bribery as the classical form of corruption, Alemann and Kleinfeld (1992) distinguish corruption between taking advantage of otherwise accurate actions on the one hand and bribery in the sense of an official claiming, accepting or taking the offer of advantages in exchange for illegal actions. Furthermore, political corruption is according to them "die Beeinflussung politischer Entscheidungen, indem dem oder den Entscheidungsträgern sonst dafür nicht zur Verfügung stehende mittel- oder unmittelbare spezifische Vorteile gewährt werden. Hierdurch grenzt sich politische Korruption von politischer Erpressung ab, die eine derartige Beeinflussung nicht durch Vorteilsgewährung, sondern durch Androhung von Nachteilen zu erzwingen versucht" (Alemann & Kleinfeld, 1992, p. 278). Therefore, political corruption is aiming at influence on political decisions in exchange for not only immediate advantages like money but also for more discrete benefits. Prospective positions in exchange for political influence can be regarded as a different form of corruption. As a kind of exchange on credit, it is only working if the actors trust each other. This kind of corruption is especially important to politicians who do not have any possibility of moving back to their former profession in case of political losses (Priddat, 2010, p. 4).

4.2.2. *Parallels and Differences to Lobbying*

The definition of corruption as an exchange of political influence and personal advantages is reminiscent of the definition of lobbying. Lobbyists also seek for influence but ideally do so by persuasion or, as Michalowitz (2004) states, in exchange for information. According to Priddat (2010), the main difference between lobbying and corruption is that corrupt actors do not try to change the legislative and institutional environment by influencing policy making but by accepting and undermining it. This can only be applied to corruption in administration. In context with lobbying, corrupt actors also try to change the legislative and institutional

environment, in other words try to gain influence on political outcomes, but do so by undermining it. This is, according to Priddat (2010), done for the same reason as lobbying. Benefits that do not evolve from the normal market anymore are generated by minimizing, avoiding or changing the legislative framework to their own profit. The choice of corruption is evolving from the aversion to the expenses of regular lobbying in order to lower transactions costs.

It has to be made clear that corruption is illegal. Lobbying in the EU, on the other hand, is legal in terms of interest representation, as stated before. However, Campos and Giovannino (2007) regard lobbying and corruption as substitutes. According to them, lobbying is the more effective instrument. Returning to the rational choice model of crime, it can be said that if a likely offender who is willing to commit a crime in sense of using corruption as a measure to gain influence, finds a suitable target in form of an influential person involved in policy making, willing to act corrupt and in the absence of capable guardians who could control his actions, corruption takes place. Thus, the likeliness to choose corruption instead of lobbying evolves from the assumption that lobbying will not achieve the desired outcome.

However, the line between lobbying and corruption is assumingly thin. Corruption can evolve from lobbying activities. And it is not always easy to detect whether it is a case of lobbying or corrupt action. If a politician is invited to dinner by a lobbyist to talk about current legislation on an informal level, this can already be seen as a corruptive gesture. It could also be a simple matter of politeness. And if it is considered corrupt to accept an invitation to dinner or lunch, how should an invitation for a drink be classified? It is hard to draw a line between corrupt and legal manners in those cases. Transparency International's "Code of conduct for interest representation" for the European Union offers only little help (Transparency International, 2008). They state „not [to] offer any gifts, hospitality or expense compensation whenever such arrangements could affect the outcome of legislative or administrative actions and are not reasonable and bona fide“. This matches the definitions of lobbying and corruption clearing the main difference which is not the intention but the course of action. If influence shall be reached by gifts instead of information and persuasion we can talk about corruption. But where does corruption start?

Furthermore, the employment in an official position as well as the employment in business after having an official position cannot be seen as corrupt in itself. Basically, it should be open to everyone to engage in politics and to gain office. For officials leaving office it should, on the other hand, be possible to find an employment wherever desired. Nevertheless, it can be seen critically if the time between public office and employment in business or even lobbying is too short. Insider knowledge would be too current, bonds to former employers could still be strong and maybe even payments are still done. In contrast, one could argue

that it does not matter whether an official is also paid by a company for employment as long as the public is informed and he makes up his own mind.

Concluding, it can be said that lobbying and corruption cannot always be separated clearly in practice. Therefore, it is useful to introduce the term 'criminal lobbying' or 'corruptive lobbying' as a third category. Filling the grey area between lobbying and corruption, it describes the originally intended lobbying attended with corruptive actions. It covers TI's definition of gifts, hospitality and expense compensation with the intention of gaining influence. Those activities fit in the category of white-collar crime.

It also clears out that lobbying can only be regarded as interest representation as long as it focuses on persuasion and information exchange without any further manipulation.

5. Is EU Lobbying a Crime?

Corruption in its pure sense therefore cannot, as Chorus (2008, p. 154) states, be considered as "non-existent" in European Union politics. The current example of a bribery scandal around some members of the European Parliament (Public Service Europe, 2011) shows, that there are cases of corruption occurring every now and then.

However, it has to be kept in mind that the separation of powers in the European political system, as in most democracies, is installed with the intention to prevent criminal actions and to ensure that the original democratic ideology persists. Thus, one could come to the conclusion that criminal events will be rare and prevented by the political system itself. On the other hand, it is still possible that there is criminal motivation in lobbying in spite of separation of powers.

Even though single corruptive events oppose the impression, EU lobbying can be considered to be highly resistant to criminally intended lobbying. Because of its strong separation of powers, its interweaved methods of policy making, and its orientation towards consensus, lobbying can mainly serve to the policy making process by contribution of information in most of the cases. The EU policy making process, as displayed above, offers little possibility for effective corruption. To keep it simple, there are so many heads involved that only broad influence will finally change political outcomes towards the actor's desires. The open outcome of European policy making can be assumed as working counter-corruptive. Breaking it down to Felson's triangle, even though there might be a likely offender and a lack of capable guardians, the target appears not very suitable. The political system itself promises little benefits from bribery. Thus, only big international companies with strong relevance for a large part of the European Union have the resources to implement their interests sustainable through other means than democratic participation.

As it was mentioned before, if corruption is illegal and lobbying, in terms of its definition, is legal, there is a grey zone remaining in-between. Evolving from the example of the REACH legislation as well as from the theoretical assumptions on lobbyist's work, there are some parts that do not fit in any of the categories. Is it a crime if a lobbyist provides draft legislation to an official in the Commission and the paper is directly integrated in the political process? Or if an official passes out of his office and takes an employment in business – as well as vice versa, a former business employee changes into a political office – will that necessarily have to be considered a crime?

It can be assumed that Sutherland (1940), even though he only names bribery, was talking about corruption in general as being a white-collar crime. It was shown above, that changing between business and politics must not necessarily be considered to be corrupt. Therefore, this behavior itself is not necessarily corrupt. In contrast, to get an employment after leaving public office in exchange for former accommodation must be considered as corrupt, according to the definition.

On the contrary, it is not as clear if officials take over draft legislation from lobbyists. According to the integrated definition of crime, there is no obvious violation of any legal code if a politician takes over draft legislation. On the other hand, he clearly fails the task awarded to him. Not representing his voters, nor his party, nor the people's will but a single interest in a pluralistic process, he violates at least the intangible right inherent to his position and the processes he is involved in. Not acting illegal but illegitimate his action cannot be labeled criminal. However, it has to be his task to critically review any information delivered to him, whether by lobbyists or other consultants. To take over drafts after critically having weighed them can then not be considered illegitimate. If anything, he is doing his task in the pluralistic system by dealing with several opinions and making up his own mind.

6. Transparency as a Core for Democratic Lobbying

Although it could be shown that lobbying itself can contribute to democratic decisions in a pluralistic society, it has also been observed that there is only a thin line between lobbying and corruption. This relation might explain the often cited fear for illegitimate policy making through non-elected people in the back. The grey zone between lobbying and corruption might deepen the public's mistrust.

To support trust in politics and to motivate critical journalists (Redelfs, 2006) authors in the past called for more transparency in European lobbying (e.g. Leif & Speth, 2003; Lösche, 2006; Redelfs, 2006). Greenwood (2007) even called transparency "a core democratic mechanism" (p. 182). In order to establish this, the European Commission launched a transparency initiative in 2005 by publishing a Green Paper (Billet, 2007).

Positions on the Paper were clearly dividing into two contrasting positions. Represented by mainly NGOs, one position was in favor of a transparency reform. It was supporting strict

rules including for example a mandatory register of lobbyists including the represented interests. A 'two way revolving door' should be prevented by proposing certain ban periods for EU officials leaving office before working in the lobbying sector as well as by behavioral codes for lobbyists gaining office in the EU, and overview on their activities including expenditures. On the other hand, the private sector was initially opposing any reform. Later on, as registering the reform and contributing to the discussion was inevitable, they called for voluntary registration. Their argument was that most organizations and actors would register anyhow as a sign of integrity. They were especially sensible towards any disclosure of financial data (Billet, 2007). Comparing those two positions, Billet concluded that there would be "not much room for ecumenism" (p. 319).

Finally, to gain more transparency in interest representation in the European Commission, a code of conduct and a voluntary register for lobbyists were introduced in 2008. After an evaluation in 2009 the Commission came to the conclusion that the register was so far a success even though many law-firms and think-tanks did not register by the end of that year. They decided to further stick to the voluntary register approach (European Commission, 2009).

In contrast, the European Parliament established an accreditation system regulating physical access to the EP for those who need frequent access that is five or more days per year. However, the register comprises only a list with the names of badge holders and the organizations they represent. It is published on the EP website without any indication of represented or promoted interests (Obradovic, 2009).

Since May 2010, Commission and EP re-launched work towards a joint register and code of conduct for lobbyists also applicable for the Council. Taking a critical position towards these efforts, Obradovic (2009) regards it as "very unlikely that a common lobbyists' register in the EU will be put into operation anytime soon. The obstacles are numerous, including the autonomy of EU institutions to regulate their internal affairs according to their own operational rules as well as dissimilarities in lobbying situations across different institutions" (p. 321).

It is disputable whether a register is able to achieve more transparency in lobbying procedures at all. Taking into account the mainly informal nature, Obradovic (2009) criticizes that a register for the Commission will hardly be able to restrict lobbyists' efforts to gain influence since it only covers the Commission's consultation processes. In her opinion, information collected in consultations is of little relevance. Even though it is arguable if she is right in denying the relevance of information collected in consultation, it cannot be denied that the informal nature of lobbying makes it hard to gain any control at all. If a lobbyist cannot get access to his target because he is not registered, he might find other ways of contact. Thus, lobbying is hard to detect in political processes, is hard to cover by law and

finally hard to make transparent at all. Furthermore, the inherent resistance towards outside influence in EU policy making because of the need for consensus and the openness of the outcome jeopardize the importance of any registration at all. This is underlined by Greenwood's (2007) impression that "the grand bargains of European integration are influenced more by open political debate, and resolved in forums and through complexities in which private interests are no more than background information" (p. 22). It can therefore be argued that a transparency regime in the European Union only pretends legitimacy for lobbying to gain trust among the public.

Nevertheless, it has to be noticed that trust in the institutions of the European Union and critical journalism are able to enforce public debates and to uncover misuse. Lobbying itself might be contributing to the democratic process. But its adjacency to corruption makes it necessary to gain public support and trust.

7. Conclusion

Lobbying as the attempt to influence political outcomes has per definitionem similarities to corruption which is aiming at political influence as well. The latter is trying to achieve this influence by granting personal advantages to officials whereas the former ideally is based on exchange of information and dialogue. Lobbying therefore can be considered to be close to criminality in form of corruption. There is a grey zone between the two consisting in lobbyist behavior that is neither legal nor illegal but depending on public perception of the processes.

Considering EU lobbying in peculiar, these parallels can be considered to be less important. EU policy making in itself is highly resistant towards corruption because of its open outcome and its need for consensus. As the institutions involved have different degrees and kinds of clout, it is hardly possible to influence outcomes by corrupting individual officials. Only broad influence on all levels would guarantee the desired outcome. Concerning corruption, this would lead to the assumption that the broader the influence the easier it is to detect. However, because of its multi-level structure, the dependence on external knowledge and its open outcome the EU is easily accessible to lobbyists.

The reasons preventing corruptive influence can also be considered to be valid for lobbying. Only broad influence on all levels can guarantee the desired outcome. However, little chances of success do not stop lobbyists from taking action. Gladly taking the advantage to represent their interest at all, they take the little chances they have as the institutions are dependent on the exchange of information with lobbyists. Whilst corruptive influence contains risks of being detected and prosecuted, lobbyists can refer to Art. 11 TEU, which encourages interest representation in the institutions of the European Union and provides a legal basis.

Being close to corruption, it is no surprise that lobbying appears as dubious practice in public perception. Even though being it is resistant to corruption, advanced transparency in

EU interest representation can prevent single deviating events in EU policy making. On the other hand, because of its direct and informal nature lobbying can hardly be covered by law and is even less detectable. Above all, it provides trust in EU policy making for citizens, encouraging public oversight of interests influencing outcomes. Further encouraging critical journalism to detect deviating activities, transparency efforts can contribute to EU policy making.

It has been shown that lobbying in itself is highly contributing to and important for EU policy making. Lobbying itself has no criminal aspects. But its nature of being close to corruption runs the danger of drifting towards illegal actions. Further research might show the effect of transparency efforts in the Union on EU policy making. An efficient transparency regime could provide further empirical data allowing further research. Comparing the present results on the European Union with other political systems showing different relations between corruption and lobbying would be another task for further research.

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