

Comparison of the EU and the US lobbying

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Abstract

Following the recent efforts to study EU lobbying in comparative perspective, this thesis examines EU lobbying in comparison to the US as both systems share similar federal arrangements and multi-level governance. The thesis analyzes the impact of the institutional setting on lobbying, the type of the interest representation and the lobbying legislation of the EU from the point of comparison, identifying obvious similarities along with differences and clarifying some points as well as contributing to the EU comparative studies. Along with the similarities, the thesis identifies a noticeable difference between these two systems: while the US has well-regulated lobbying legislation, the EU has so far regulated this industry by the non-compulsory Code of Conduct, which does not guarantee the transparency of the lobbying practices. While the thesis names the probable drawbacks that transparent lobbying legislation might bring for the EU including the threat to efficiency and effectiveness of the system, it stresses the need for robust legislation in order the EU to achieve the same standards that exist in the US.

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Introduction

There are number of models of democracy, each offering its own version of governing. Liberal democracy, which operates through the indirect and representative form and functions through regular elections has been the most practiced and accepted (Heywood 1997, p.66-75). The broad acceptance of liberal democracy, however, does not mean that it necessarily guarantees the equal representation of each citizen and a healthy distribution of political power. There are concerns that casting votes once every four or five years might not be enough to ensure that the link between governed and governors is always strong, or as strong as it is during the election times. Even though constituents delegate their power to representatives, nobody guarantees that they will always act on behalf of electorates and carry out the promises that they make at the election day.

The function of providing institutional linkages, parallel to the conventional democratic tools between government and public is provided by interest groups. They connect constituents to government and thus, compensate the probable democratic shortcomings that a liberal democracy might have. As Alex de Tocqueville (cited in Wilson 1990, p. 3) notes, interest groups not only provide a parallel function, but offer a superior form of political participation in certain respects by raising issues too detailed or specialized to be brought up by political parties. By doing so, interest groups promote debate and discussion (Heywood 1997, p. 259). One additional merit of them is their ability to check government's power and in the process, defend liberty by ensuring that the state is balanced against healthy civil society. Moreover, by enabling the public to air their concern between the elections, interest groups can bring stability to a political regime. Therefore, interest groups can complement, supplement or contest (or might acquire all functions altogether) traditional accountability mechanisms.

Contributing to democratic process, interest groups are expected to exist in every modern democratic system. The European Union (EU) from the point of interest group representation presents an interesting case study. Starting from its institutions such as the

European Commission, the European Parliament, the Council of Ministers and the European Court of Justice to the national governments of some 27 member countries, the EU offers interest groups multiple opportunities to explore numerous venues until they find the most sympathetic one(s) to their concerns. Apart from the institutional structure, the increased policy-making authority of the EU institutions makes Brussels attractive to the interest groups, more specifically, the Single European Act (1986) increased the policy-making authority of the institutions and especially of the Commission, in result of which thousands of groups emerged in Brussels and were ‘Europeanized’ (Gorges 1996; Mazey and Richardson 1993; Greenwood 2007).

Considering the sheer volume of interest representation expressed in number of groups, one might assume that the EU has a well-regulated system for lobbying. However, it is not true. The existent voluntary registering and Code of Conduct is not mandatory and can not regulate lobbying as to a larger extent it allows interest groups to decide whether they want to make their activities transparent or not. Opaque lobbying practices have caused a criticism as a response to which in 2006 the EC has adopted the Green Paper on European Transparency Initiative (ETI) and its follow up a year later aiming at pushing the transparency issue further (EC 2006; 2007).

The focus and the rationale of this thesis is the EU lobbying, greatly impacted by its institutional setting and decision-making rules. The EC’s latest transparency initiatives make the study of the EU lobbying even more relevant. This research embedded in the institutional framework aims at answering the following questions: 1) what is the impact of institutional setting and decision-making on the EU lobbying? 2) What type of interest representation does the EU have? 3) What is the role of the institutional setting in determining the lobbying regulation in the EU? Instead of studying the EU’s interest representation as a single case, however, this paper will compare it to the US interest representation.

The underlying principle behind choosing the US as a comparable system is the following: First and the most important, like the EU, the US has a multi-level structure. Federalism in the US creates numerous distinct venues for policy action. There are more than 80, 000 governments in the United States including one federal government, fifty states and thousands of municipalities, special and school districts (Baumgartner and Jones, 1993, p.216-7). The second factor that makes the comparison attractive is in fact not the similarity but the difference of interest representation of these systems. Unlike the EU that does not have a mandatory legislation for lobbying the US has adopted a well-established regulatory framework of lobbying dating back to early 1900s. Therefore, it would be interesting to study whether self-regulation of the EU lobbying industry is enough in order to achieve the same standards of transparency that exists in the US or not.

All in all, lobbyists in both polities interact with a fixed set of institutions that are comparable in terms of their functions and roles (Woll 2006, p. 457). Therefore, a comparison between Brussels and the DC can be a tool to better understand the ways in which institutional conditions in the EU determine lobbying methods and styles.

Literature Review

The sources produced solely about the EU lobbying are abundant. The last two decades have been particularly productive in generating the scholarly work on the EU interest representation. Numerous authors including Greenwood (2007), Mazey and Richardson (1993) and Michalowitz (2007) have mapped the general conditions of EU lobbying industry. Some authors (Gorges 1996; Cawson 1985; Eising 2007; Broscheid and Coen 2003; Schmitter 1985; Bowen 2002) have produced works with the effort to assign the EU lobbying to any one type of interest representation: corporatist, pluralist or elite/pluralist. As a result of debates over transparency of EU lobbying, many authors such as Lodge (1994) and Naurin (2002; 2007) have discussed the importance of transparency enhancing efforts of the EU lobbying in their works.

However, even though there are a lot of scholarly works produced on EU lobbying only a few authors (Mahoney 2007; Woll 2006) have examined it in comparative perspective. As Woll (p. 457) notes, although Washington and Brussels turn out to be very interesting comparable polities, only a few attempts were made to explore this connection. In her article “Lobbying in the European Union: From sui generis to a comparative perspective”, Woll points out the common features in comparative politics that could provide a considerable insight into the study of the EU lobbying. Even though she urges scholars to get away from ‘European exceptionalism’ and conduct comparative analysis, the article is rather a review of probable research topics of comparative studies of the EU and the US lobbying than the actual research. The same can be said about “EU lobbying: A view from the US” by Baumgartner (2007). The author in the article identifies the common features of EU and US lobbying such as numerous venue shopping possibilities, intergovernmental lobbying and dynamics that deserve a careful research.

Mahoney (2007) makes a step further and compares the determinants of lobbying success in the EU and the US. Based on interviews with advocates in Washington and Brussels, she identifies the important determinants of the lobbying success that depend on issue context as well as on institutional differences. According to her findings, the institutional differences, more specifically direct elections and campaign finance in the US leads to winner take all outcomes and favor business interests whereas the lack of these institutional characteristics leads to more balanced policy compromises in the EU.

Even though there have been some attempts to explore the US and the EU lobbying in comparative perspective, so far, the scholarly articles have added to empirical knowledge rather than contributing to broader theoretical understanding. To contribute to the scholarly work of overcoming this ‘empirical richness and theoretical poverty’ (Andersen and Eliassen, cited in Woll 2006, p. 458) this paper will examine how institutional arrangements determine the lobbying methods/outcome in both countries.

Methodology and Road Map

To carry out this project, I will employ comparative qualitative research design. The cross-national comparison of the EU and the US lobbying will enable me to identify the similarities and differences of Washington and Brussels lobbying that might lead to generalizing some findings - impossible in the case of single case study. Regarding the types of data, the research will be based on qualitative data- document analysis. I will employ scholarly articles and books as well as the internet sources, mainly the European Commission database. Keeping time and space limit in mind as well as the concern of following the coherence and logic throughout the whole paper, this thesis can not consider each lobbied institution in both comparable polities. This limitation, however, is compensated by choosing one most lobbied institution in each polity for examination - the European Commission in the EU and Congress in the US.

To answer the research questions, the thesis is structured as follows: the first chapter examines the interaction between interest groups and the most lobbied institutions, the European Commission in the EU and the Congress in the US by looking at the impact of changes of institutional decision-making on lobbying outcomes. Second chapter analyzes the interest groups' response to the institutional arrangements of multi-level governance and brings the discussion into issue of access to the institutions that accordingly shape pluralist, corporatist or elitist arrangements in the EU and the US and form the lobbying styles. The last third chapter introduces the issue of lobbying regulation and discusses the measures of both polities to regulate this industry. It looks at the transparency enhancing efforts of both comparable units. It examines whether self-regulation of lobbying industry of the EU can achieve the same transparency standards that exist in the US or the call for more robust and mandatory regulation is indeed a must.

Definitions

As different scholars emphasize different elements of interest group activities and functions, there is a need to determine what exactly constitutes an interest group or lobbying. For interest group definition, I will use the one provided by Thomas and Hrebenar (cited in Thomas 2001, p. 7-9) according to whom “an interest group is an association of individuals or organizations, usually formally organized, that attempts to influence public policy”.

For the term lobbying, I will refer to the definition given by the European Commission (EC 2006, p. 5) which defines the lobbying (interest representation) in a following way: “lobbying is a legitimate part of the democratic system, regardless of whether it is carried out by individual citizens or companies, civil society organizations and other interest groups or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers)”. Thus, I will look at groups that lobby for a section of society that share their values (civil society organizations, business interest groups, etc) as well as public affairs organizations, think tanks and lawyers that lobby for the third party.

Chapter 1: Institutions and interest groups

As the institutions' policy making authority, their decision-making rules and procedures greatly influence interest groups (Gorges 1996, p. 1-2), understanding the institutional environment where interest groups operate is crucial to study their behaviour in depth.

In this chapter I will examine the impact of changes of institutional decision-making in the EU and the US on interest groups and their responses to these changes. I will look at the interaction between interest groups and the most lobbied institutions, the European Commission (EC) in the EU and the Congress in the US. By looking at the interaction between the institutions and the interest groups in comparative perspective, I will identify interest groups' major features which are the result of the interaction with the specific institutions in specific political domain.

1.1. The EU decision-making rules and the interest group response

According to Gorges (1996, p. 19-20), interest groups have existed since the earliest days of the European Union. However, if from 1966 to the late 1980s they were influencing the EU institutions through their national governments and were relatively inactive in Brussels, from the late 1980s they quickly spread in Brussels, lobbying the EU institutions directly as well as through the national channels. The Europeanization of interest groups (Greenwood 2007, p.9-12) can be seen from the dramatic increase of the interest groups and lobbyists in number and level of activity in Brussels throughout the 1990s. According to Greenwood, even though the precise number of EU interest groups can not be determined, it is obvious that it is rapidly increasing. For example, while Eising counted about 100 groups in 1959 and Watson -1, 674 in 1994, Mark and McAdam estimated as high as 5 000 in 1999 (p.9-12).

The relocation of interest group activities in the late 1980s can be explained by the increase of the Union's policy-making authority along with the changing decision-making rules within the Council of Ministers. The Single European Act (SEA) signed in 1986 which formally established the single European market expanded the scope of EU's policies and included the sectors that previously were the exclusive responsibility of the national governments (Mazey and Richardson 1993, p.5-6). Accordingly, the volume of the legislation considering by the EU institutions and more specifically, by the European Commission increased considerably.

In addition to bringing many policy areas under the EU authority, the SEA changed the decision-making rules within the Council of Ministers. While during the time of the Luxembourg Compromise (1966 – 1986) the Council of Ministers had to cast a unanimous vote for the bill to be passed, after the Treaty entered into force, Qualified Majority Voting (QMV) allowed the Council of Ministers to adopt a bill with majority voting (Mazey and Richardson 1993, p. 5; Gorges 1996, p. 189-190). For interest groups, the changed decision-making system altered the rules of game. If before they needed to convince only one member state to block the legislation, now they needed to form coalition of states to defend their position. Therefore, expansion of policy-making authority along with QMV compelled interest groups to emerge at the EU level actively and to lobby the institutions directly as well as through their national governments.

Establishing in Brussels is one thing, but lobbying the right institutions is another and probably more important. The following section will examine the interactions of the interest groups with the EU's most lobbied institution-the European Commission.

1.2. Interaction between the EU Commission and the interest groups

Even though all the EU institutions are lobbied to different degree by different groups-either selectively or together to exert influence at the various stages of the EU legislative

process (Bowen, Mccown 2007, p.424), the EC attracts the most lobbyists (Mazey and Richardson 1993, p. 9-14) which is not surprising. According to the Treaty of Rome, the Commission has a sole power to propose legislation (Gorges 1996, p. 21). As influencing the legislation at the early stages of its elaboration increases the chances of success of lobbying, the Commission is the most favored EU institution among interest groups.

It is not only interest groups that need the Commission, however. As Greenwood (2007, p. 7) notes, the Commission, a relatively small bureaucracy with its small staff, acknowledges the need for outside input as it lacks technical capabilities in many policy areas for which it is responsible. According to Donnelly (1993, p. 79), the Commission needs external allies to ensure that national and sectoral interests that are most likely to be affected by its decision are consulted and that the policy proposals agreed through its complex internal co-ordination process are to be successfully translated into Community law.

Once the proposal is drafted, it is passed to the cabinet of the Commissioner responsible for a specific issue (Gorges 1996, p. 27-28). Even though there is an opportunity for interest groups to lobby the Commissioner, it is still difficult to amend the proposal by the time it is moved from the DG hurdle. Thus, the most important arena for concerned parties to influence policy is when it is being drafted in the DGs.

As the ultimate goal of interest groups is the outcome of the whole process of consultations, it is important to know to what extent interest groups are assumed to have Commission's ear or claim an exclusive access to the institution (Gorges 1996, p. 44-45). Even though the Commission needs information and seems to be receptive to various interest groups' concerns, as Gorges argues, interest groups experience numerous difficulties when interacting with the Commission, among which are the following: first, there is a limit on how much time a Commission staff member can spend listening to interest groups, thus, many interest groups are left untreated. Second, intervening in the Commission process by numerous groups with different kinds of information complicates

the process of keeping track of agreements. Interest groups never know that what is agreed on one day will actually be embodied in a proposal. What is most important, the Commission is highly compartmentalized which means that an interest group must follow the developments in different DGs. The compartmentalization often results in incoherent and inconsistent policy.

One should not forget that these difficulties that interest groups experience are not solely attributed to the Commission, however. Interest groups have to deal with multilayer structure of the EU, which is the combination of supranational and intergovernmental elements in decision-making with changing participants during the course of the policy-making cycle with specific rules, procedures, and practices (Kohler-Koch, p. 47-48). The success in this institutional labyrinth, according to Kohler-Koch, depends on actors' capacity to provide what is most needed in order to gain acceptance by the institutions. Therefore, only the ones equipped with the most relevant information for the Commission and coherent positions will be successful.

Having discussed the interaction between the EU institutions and the interest groups, the following sections will examine the impact of the decision –making of the US institutions and the interaction between the US Congress and the interest groups in the same manner as it did in the EU's case.

1.3. The US decision-making rules and interest group response

Like in the EU, in the US institutions and their policy-making rules have a huge impact on shaping the interest groups and tailoring their character. The institutional setting of the state helps explain many of the features of the interest group system. More specifically, the fragmented nature of the US that parts the state into competing, sometimes even conflicting institutions provides numerous opportunities for interest groups to exert influence by obtaining leverage in one or another branch of the government (Wilson 1990, p.40).

Therefore, given the multiple points of access, interest groups are able to find the part of the government where they can air their concerns and hope for sympathy.

Although historical roots of trade unions and associations date back to the beginning of the country, the US interest groups of regional or national scope developed significantly only after the late 1960s and increased in number, diversity and activity (Smith 1995, p. 89; Wright, 1996, p. 11). Their emergence was attributed to what David Truman (cited in Wright 1996, p. 15-16) calls the “disturbance theory” of interest group formation according to which, organizations are formed when interests common to unorganized groups of individuals are disturbed by economic, social, political or technological change. Due to the changes, society becomes more complex and individuals experience difficulties solving the problems on their own. In response, interest groups are shaped. Once interest groups begin to form, they tend to do so in “wavelike” fashion. The wavelike emergence of such groups is explained by the fact that policies that are designed to address one group’s concerns eventually disturb others, which encourages them to form their own group to defend their rights.

The emergence of numerous interest groups was coincided with the changing rules in the US House of Representatives in 1970s. In particular, 1970s was a crucial decade for the national legislative process as the US House of Representatives became more decentralized and fragmented (Heitshusen 2000, p.152; Wilson 1990, p. 46-47): the number of subcommittees increased, the multiple referrals was institutionalized and closed committee meetings gave way to open ones. The changes pleasantly altered the working environment for interest groups. While before 1970s lobbyists were unable to monitor whether the candidate that they lobbied actually acted in their favor or not, the changes enabled them to track down the activities of legislators.

Thus, the new policy-making rules along with the socio-economic, political and technological changes and the greater openness of American institutions to interest groups coincided with a significant upsurge in the number and range of interest groups (Wilson

1990, p. 50). Numerous interest groups started to lobby the institutions and, most extensively, Congress.

1.4. The US Congress and interest groups

Just as in the EU there is a trilateral decision-making structure -Commission-Council-EP, so is in the US- President-House-Senate (Coultrap 1999, p. 128). Thus, the US government's fragmented nature allows interest groups to try multiple venues. However, as the EU Commission attracts the most lobbyists groups, in the US, Congress is the institution most favored by interest groups. The study (Wilson 1990, p.54) showed that almost no interest group focused solely on the executive branch. While the majority of them claimed to concentrate on both executive and legislative branches, a large minority focused solely on Congress.

Interest groups' preference towards Congress is not surprising, however. First of all, the nature of American political parties which are fragmented, relatively ill disciplined and weak, allowing legislators not to vote along the party lines in case of strong constituency pressure (Wilson 1990, p. 40-47) attracts interest groups to the legislative branch. Second, the legislators may come from an area where an interest group accounts for a substantial proportion of electorates. Thus, motivated by reelection goals and also their duties to listen to the constituents, legislators are receptive to interest groups. Third, the representatives need information. The fourth and not the least reason why Congress is attractive to interest groups is the 1974 Campaign Finance Act allowing interest groups to form Political Action Committees (PACs) which could contribute up to \$10, 000 to each candidate per election.

The Campaign Finance Act passed in 1974 gives a relationship between a candidate and an interest group a completely different direction and causes a lot of criticism. Even though there is a problem of measurement in regards with the PAC, American politics has been increasingly concerned about the influence that PACs exert (Wilson 1990, p. 52; Smith 1995, p. 90-91; Wright 1996, p.153; Haider-Markel 1999, p. 114). According to

Haider-Markel, the greatest danger of PACs is that they are buying the allegiance of politicians. The same fear is expressed by Wilson and Wright, who argue that even though relatively small sums of contributions probably might not enough to ultimately change a candidate's voting behaviour if he/she is elected, campaign contributions buy access to legislators.

Having discussed the interaction among interest groups and the most receptive institutions in both systems, the following section will reconcile the findings and outline the major similarities and differences of the EU and the US lobbying in terms of the influence of the institutions on the characteristics of interest groups.

1.5. Institutions and interest groups in comparative perspective

As discussed in the previous sections, the multi-level governance in both the EU and the US shapes the interaction between the institutions and interest groups. Transnational, national and even local governments create different opportunities for lobbying and allow them to try numerous venues and lobby the ones that are most sympathetic to their concerns.

Multi-level lobbying creates political system with diverse interest groups. According to Baumgartner (2007, p. 483), if the small single states might be dominated by industrial and sectoral interests, different governance levels create the possibilities for presence of small, diverse interests. Anticipated by Madison in his Federalist Papers, the US's federal government with different levels, according to Baumgartner, exerts a possibility for the existence of diverse interest groups and does not allow powers of faction and parochial local minorities to be strengthened.

What Baumgartner observes in the US, is either expected or already detected in the EU by some scholars. According to Richardson (2000, cited in Dur and De Bievre 2007, p. 4), existence of additional venues in the EU can lead to the break up of established policy communities at the domestic level and allow the previously excluded actors to influence policy outcomes and encourage them to try different venues. Gorges (1996, p. 40) also

identifies so called “US” or “Anglo Saxon” style of lobbying in the EU. According to him, having realized that only peak and sectoral associations dominant at the early years of EU were not serving their interests in the labyrinths of EU’s complex institutional arrangements, not only the organized interest groups, but the representatives of individual firms, consultants, etc, established themselves in Brussels and started to lobby the institutions on their own as well as through national-peak associations. Thus, if during the early stages of the EU integration an interest group was trying one venue, either national or EU level, recently they started to pursue several strategies resembling more and more to a US style of lobbying.

Regarding the Commission-Congress similarities, the unpredictability of policy outcome is the thing that they definitely share. Because of the presence of the numerous “veto players”, the lobbied proposal, coming out of the DG hurdle, could be completely changed by the Commission, then Council and the EP. According to Mahoney (2007, p.41), so could the lobbied proposal be killed in the Congress at the sub-committee stage, at the committee stage, at the floor stage, at the veto stage and if the proposal does not move forward in the two – year Congressional session, it will automatically be killed and must be re-introduced.

However, even though both the EU and the US have similar federal arrangements exerting possibilities for interest groups for different venue shopping, the Commission and the Congress are different in terms of their expectations towards the interest groups that accordingly structure interest groups’ behavior. The EC is dominated by the informational lobbying. In other words, the institutions grant access and privilege the groups that have reliable and comprehensive information. Thus, the key to success for lobbying groups is to provide quality information. This is explained by the fact that the Commission, as a technical bureaucracy “does not seek funds for re-election but rather looks for a policy community that may provide a source of grass-roots and European-level information” (Broscheid, Coen 2003, p. 170). Therefore, the technical character and the non reelection

objectives clearly shape the Commission – interest group interaction and mark it as mostly of informational character.

On the other hand, the interaction between the US Congress and the interest groups exerts the different picture which exceeds boundaries of informational lobbying. The weak parties, in combination with an electoral system that concentrates electoral campaigns for members of the House of Representatives to relatively small districts (Dur and De Bievre 2007, p. 5) encourage candidates to finance their election campaign through the PACs. The PACs most likely determine the access to a legislator and block any other interest group that might possess relevant information. There is a legitimate fear that having a limited time and being unable to listen to all groups, legislators grant access to only those who contribute to their campaigns.

If the forms of interaction between the institutions and interest groups are compared, one might argue that the problems of corruption that threatens the US system are largely avoided in the Commission's case as it does not seek re-election. As Gorges (1996, p. 42) states, interest groups are not able to threaten Commission staff to withhold campaign contribution in return of the influence, as it might be a case in the US, thus, it puts the Commission in a more powerful position than the typical US representative or Senator. On the other hand, we can argue that non elected Commission officials can be still bribed. Moreover, as Mahoney (2007, p. 38) reports, the degree of democratic accountability of a political system should have an impact on the lobbying success. Since elections make officials accountable to the public, legislators become responsive to the interest groups' concerns, whereas in the political systems where policy-makers are not accountable to public, we can expect them to be less responsive.

Does the absence of democratic accountability ultimately mean that lobbying groups are more successful in the US than in the EU? While answering this question is almost impossible, still, we can assume that directly elected legislature does not necessarily lead to the better responsiveness towards the public. Due to the privately funded elections, policy-

makers may be responsive only to the wealthiest interest groups, to those who contribute to their campaigns (Mahoney 2007, p. 39). Thus, in this case, the Commission staff, not driven by re-election objectives might be more responsive, competent and less selective in listening to the certain interest groups than a typical US legislator.

Having reconciled the opportunities and constraints that the institutional arrangements exert for interest groups, we can conclude that the way interest groups and institutions interact is the result of reactions of groups to the requirements of different institutional arrangements. Since the Commission, a non-elected bureaucracy requires information of good quality, competition between groups takes place to provide relevant and comprehensive information in a timely manner, whereas, in the US, apart from the information needs, legislators have reelection objectives which shapes relationship between a legislator and a lobby in a different way.

Some scholars (Mahoney 2007, p. 55) go further and argue that institutional differences embedded in the US structure (direct elections and private campaign financing) leads to a winner-take-all outcomes that favors only the wealthier business interests, while the absence of these characteristics in the EU leads to a more balanced compromises that sympathies more groups.

Question whether there is enough evidence supporting this argument by Mahoney, is not easy to answer. Even though the Commission does not fight for re-election, this does not necessarily mean that it is impartial. The Commission, a small bureaucracy is said to prefer to negotiate with those interest groups who have to some degree already aggregated the positions of several groups or firms, without necessarily considering whether they represent some collective interest or not (Gorges 1996, p. 41). Granting access to certain groups causes the criticism that the Commission is not neutral. On the other hand, despite some arguments that the US lobbying system is dominated by business interests, the US political system is still famous for its Madisonian setting, according to which exactly the

fragmented institutional arrangements prevent the business interests from dominating and guarantee the equal representation of diverse interest groups in politics.

The next chapter will examine the conditions for granting the access to the European Commission and the US Congress that accordingly shape pluralist or corporatist models of interest representation.

Chapter 2: Interest Group Representation

Having analyzed the impact of institutional changes of multi-level governance on shaping the interaction between the interest groups and the most lobbied institutions in both polities, in this chapter I will examine interest groups' response to the institutional arrangements of multi-level governance. More specifically, this chapter will look at the issue of access to the institutions that accordingly shape pluralist or corporatist arrangements and form the lobbying styles. Following the order, this chapter will first analyze the EU interest representation followed by the analysis of the US interest representation and at the end the findings will be compared.

2.1. Traditional pluralist-corporatist debate in the EU

Traditional debate over pluralism-corporatism that is familiar to interest groups' literature is also known to the EU. In the pluralist model political power is dispersed among overlapping, competing, independent and voluntarily organized actors (Schneider 1985, p.175). These groups can not dominate but rather counterbalance each other's power. In pluralist paradigm, a state plays a passive role and instead a competitive political marketplace regulates the inequalities in power between groups and ensures equality of opportunity for groups to exercise power (Cawson 1985, p. 4-9).

The signs of pluralism are detected in the EU by many scholars (Heritier 1999; Eising 2007; Greenwood 2007). According to Greenwood (p.2), the fragmented nature of the EU's decision-making system, the tendency towards strengthening its supranational character and increasing unpredictability of the outcome of decision-making ensures the system from overdomination by any one particular type of interest. As Streeck and Schmitter (1991, p. 159, in Mazey and Richardson 1993, p. 24) argue, the European policy process is, even more than in the US, characterized by an absence of hierarchy and monopoly among a wide variety of players of different status. Nevertheless, despite the fact that the EU institutions

pursue pluralistic goals by designing the system that includes diverse interests (Greenwood 2007, p. 2), scholars (Bouwen 2002; Gorges 1996) also speculate about the existence of possible corporatist arrangements.

The corporatist model gives the completely opposite picture to pluralism. Unlike pluralism, which advocates diversity of interest representation, corporatism favors “a specific socio-political process in which organizations representing monopolistic functional interests engage in political exchange with state agencies” (Cawson 1985, p. 2), in other words, the number of actors are limited and the relationship is hierarchical and monopolistic, further from competitive. Also, there is a “risk that specific¹ interests will benefit at the expense of the unorganized” (Grant 1985, p. 25). A corporatist model (p. 7-9) assumes a state’s active involvement in establishing the activities of associations by formulating and implementing policies. The arrangement which usually involves tripartite relationships among state, labor and capital implies a trade-off of policies favorable for associations for compliance and enforcement by associations. It should be also noted that, despite the strong role of a state, to set up a corporatist model, there is a need for consent by all participants and the relevant capacity to deal with corporatist bargaining (Schmitter 1985, p.34-36).

Does Brussels favor corporatist arrangements? After a careful examination of peak associations of labor and capital such as UNICE (Union of Industrial and Employers’ Confederations in Europe) and the ETUC (European Trade Union Confederation), Gorges (1996, p. 190-93) concludes that attempts by the Commission to institutionalize EC-level tripartite bargaining among Community institutions failed. Among the reasons of failure he identifies the lack of willingness from the labor and business associations to delegate the

¹ The thesis will use the terms specific and diffused interests interchangeably with business and public interest groups. As Beyers (2004, p. 216) defines, the distinction between specific and diffuse relates to the concerns of the constituencies whose interests are advocated by these groups. Specific interests will denote groups which advocate the interests of concentrated constituency and convey professional, economic, social and commercial interests of their members. The specific interests, on the other hand, identify the groups whose concerns are linked to broad and general segments of society, generally with less or no financial resources and less mobilization skills, for example, consumers or environmental groups.

power and resources to the EU level federations along with their difference in ideological, organizational and policy preferences. However, while macro corporatism among the peak associations failed, he notices some elements of sectoral corporatism, though not institutionalized but somewhat ad hoc.

The absence of monopolistic arrangements and the existence of rather ad hoc relationships between actors and the institutions is confirmed by the analysis of Mazey and Richardson (1993, p. 22-23). According to authors, the desire and knowledge to avoid the uncertainty by arranging “negotiated environment” at the national level is absent at Brussels where, unlike national level, there is neither knowledge between policy actors nor sufficient common interest between them to underpin the development of stable agendas and processes. The case study provided by Knight et al (1993, p. 162-176) about the Federation of Stock exchanges proves that the structure of national sectors is often so different that it is almost impossible to develop an effective common position needed for establishing a corporate arrangement.

Thus, it can be concluded that the Brussels environment is difficulty for reconciling the diversity of 27 countries preventing it from institutionalizing the corporate arrangements. This diversity (Gorges 1996, p. 52) which is rooted in sectoral differences, organizational structure, type of ownership, the size of firms, ethnic, religious, or political cleavages, capital intensity, the degree of class conflict, the timing of economic development and etc. is probably hard to imagine to be reconciled for the benefit of corporate arrangements. This rather vague picture encourages scholars such as Sargent (1985, p. 252-53) to conclude that the EU demonstrates a combination of weak corporatist structures and weak pluralist arrangements.

As a continuation of this pluralist-corporatist debate, the following section will examine the access goods and conditions for access of interest groups to the institution.

2.2. Access goods; Conditions for access

The main objective of organized interests is to influence policy-making. However, influence can not be really measured. As Wright (1996, p.78; 81) correctly notes, legislators may change their beliefs and preferences not due to the lobbying efforts of interest groups, but as a result of other factors. Access, on the other hand, is more easily measurable and implies positioning by lobbyists favorably to convey a specific message. Thus, due to the problem of measuring influence, scholars (Bouwen 2004, p. 366) usually limit themselves by assessing the access. This chapter will also discuss access as a measurement of success of interest groups.

Despite the sheer number of diverse interest groups at Brussels, there is a common perception that access is mainly granted to business groups (Eising 2007, p. 384; Woll 2007, p. 57). However, some scholars (Grossman 2004, p. 637) argue that domination of the EU institutions by these groups and their overall importance is overstated. In order to falsify or validate common perception about the domination of organized interests in the EU and to determine the degree of openness of the Commission to diverse interests, scholars usually study the motivations and conditions of policy-makers towards interest groups that structure relations between institutions and private groups. In this case, it is important to analyze what the Commission looks for from interest groups.

As discussed in the first chapter, the major source that the Commission seeks is information of good quality. Based on informational relations of the Commission-interest groups, Bouwen (2004, p.368-69) examines the models of exchange theory and resource dependence according to which the organizations involved in an exchange of information make an implicit or explicit cost-benefit analysis on the basis of which they decide with whom to interact. Source dependence theory implies that organizations are not self-sufficient and they require resources from the environment. Therefore, they interact with those in the external environment who provide the resources they need. The important result

of this exchange is that institutions become interdependent on those organizations with which they interact.

At the first sight, these models, proposed by Bouwen, are relevant to the Commission's case. As the Commission looks for information of high quality- whether technical or political, one might assume that it may become dependent on powerful economic groups that are able to provide the information due to their extensive research capabilities. The fear that the Commission might rely solely on a small number of 'insider' groups is strengthened by Broscheid and Coen's (2003, p. 168) analysis on the insider/outsider lobbying groups within the Commission. They argue that although the Commission attempts to be open and transparent in its interaction with interest groups, certain group of insiders is still established.

The idea of domination of organized interests is further reinforced if one will consider their concentration compared to diffused public interests. Organized interests (Beyers 2004, p. 216-217) have well-defined, concentrated constituencies for whom they work while linking political activities with their constituencies that are broad and scattered becomes a problem for diffuse public interests. Therefore, apart from their R&D capabilities, business interests are usually better able to collect specialized and issue-specific information, while diffuse interests face greater difficulties in gathering the expert knowledge public officials need. The diffuseness results in difficulty to mobilize which prevent them from influencing political outcome in other ways but only through elections (Dur and De Bievre 2007, p. 6).

Neither Bouwen's resource dependence theory, nor elite-pluralist approach adopted by Broscheid and Coen or certain groups' privileged mobilization capacities can be generalized for the Commission, however. First of all, the EU institutions, and in this case, the European Commission have several sources of information (Eising 2007, p. 386) The EC can obtain valuable policy advice from international organizations, member state administrations, think-tanks, scientific experts, etc. Thus, the availability of multiple sources helps the Commission to diversify its resource base and avoid dependence on small

group of interests. Second, interest groups are not always able to provide the information that the Commission seeks. According to Bouwen (2002, p. 370-71), due to the constant challenge faced by the EU institutions to enhance the input legitimacy currently lacking in the EU, the Commission requires information that expresses the broad interests. In order the information to be 'legitimate', the Commission consults with numerous parties, thus, avoiding the possibility of overdomination of specific interests.

Apart from the Commission's own initiative to diversify the resource base, the institutional arrangements of the EU prevent the institution from being captured by particularistic interests. The constantly changing EU environment challenges the capabilities of business interests to always adapt to Brussels' environment and become successful and powerful (Grossman 2004, p. 637-50). Based on his analysis on banking groups from UK, France and Germany, Grossman points out some difficulties that initially prevented specific interests from 'Europeanizing' their lobbying in Brussels.

It is clear that despite the common perception of domination of special groups, different institutional opportunities exclude possibilities of establishing monopolistic hierarchical relationship. Overall, it can be asserted that the EU' interest representation is neither purely pluralist, nor corporatist but something in between. The fragmentation of the EU institutions' decision-making system, availability of different access points, and the types of access goods demanded by the Commission so far prevents the corporatist model from establishing.

2.3. The pluralism-corporatism-elitist debate in the US

American politics has been characterized by pluralist interest representation from the very beginning (Aspinwall, Greenwood 1998, p. 1). Numerous pluralist theorists including Tocqueville, Madison, Bentley, Truman, Dahl and many others (Ehrlich 1982, p. 97-129) though in their slightly competing works identified US as a pluralistic society with vast and diverse interest groups with dispersed power.

Various authors (Schneider 1985, Salisbury et al 1987) carried out case studies which eliminated existence of corporate arrangements in the country and reassured the plurality of the US politics. For example, in the comparison of regulatory policies of chemicals control in Germany and the US, Schneider (p. 174-91) concluded that the US political arena for actors was unlimited and inter-organizational relations -highly competitive against less competitive and hierarchical German politics. Analysis by Salisbury et al (p. 1217-18) of the US policy domains showed that interests were increasingly fragmented and differentiated with no picture of hegemony of any one group over another. The results (p.1228-30) also showed that some domains did not have peak associations and where they were detected, the group relations were more revengeful than cooperative. The findings of Salisbury et al as well as of Schneider reassured that the well-known Madisonian principles of fragmented institutions designed to curb the minority group domination over majority were still working.

However, despite its long traditions, the existence of pluralist interest representation is contested by many scholars (Gais 1998; Ethridge 1991; Wright 1996). According to Ethridge (p. 335-36), the fragmented nature of the US institutions produces opposite results and strengthens minority group position. The criticism of pluralist interest group representation was even strengthened by Mancur Olson's theory on groups' formation (Marsh 1976, p. 258-60) according to which the incentives for formation of a group is not a promotion of a public good, but rather an individual's self-interest to receive a selective benefit. However, mobilizing latent groups by offering them selective benefits is the ability of specific groups. Thus, this view has shattered the pluralist views about the US interest intermediation and encouraged the discussions about the elite capture of the US politics by specific groups.

The pluralist-elitist debates became even more relevant when the frustration of American political institutions and allegations that they distort or misrepresent people's will is further voiced in the US interest group literature (Gais 1998, p. 1). One of the criticisms

was the existence of so-called iron triangles that dominated the American politics during the 1940s and 1950s (Wright, p. 168). Iron triangles consisted of players from an executive bureau, congressional committees and special interest group(s) created crucial playing field for interest groups as they assisted bureaucrats building support for legislators and legislators in turn created programs for bureaucrats, who administered benefits for interest groups. Even though from the late 1960s the rapid expansion in the number and diversity of interests in US declined the power of subsystems and gave rise to more heterogeneous and loose issue-networks (Smith 1995, p. 114), some scholars claim that they are still common (p. 113-15).

Naturally, considering the monopolistic nature of iron triangles that prevent the diversity to be represented along with Political Action Committees (PACs) discussed in the first chapter that according to Wilson and Wright (1990 p. 52; 1996, p. 153), can buy an access to a legislator, undermines the pluralistic view of interest representation. The following section will deal with issues of access goods and conditions for access for the US politics in more detail.

2.4. Access goods – conditions for access

What kind of access good do legislators want from interest groups to listen to their concerns? To answer this question, the motives of a legislator must be examined. One of the most important motives named by the scholars of American interest group literature (Smith 1995, p.117-120; Wright 1996, p.82, Heitshusen 2000, p.158-60) is reelection. As discussed above, the importance of PACs is huge. As scholars argue, financial contributions can buy access. Apart from financial contributions, candidates for reelection need to know the preferences of their constituencies to act accordingly. Therefore, they grant access to those groups who satisfy two conditions (Hansen 1991, cited in Smith 1995, p.112): first, they must enjoy a competitive advantage over their rivals in meeting congressional reelection needs, which is providing accurate information about constituents' preferences, and second,

the issues and circumstances that established this competitive advantage must be expected to be repeated.

To find out constituencies' preferences some interest groups carry out grassroots lobbying, which implies mobilization of citizens to write or call their legislators and engage in other activities (Wright 1996, p.90). Groups endowed with finances, however, do not necessarily employ tactics of grassroots lobbying but lobby the US government directly. Achieving a competitive advantage and providing the accurate information about constituents' preferences are very costly. Apart from financial contributions which claim to be a major condition to gain access, obtaining the information of high quality requires financial resources as well. Thus, those specific groups gain access to legislators, who are endowed with resources and either contribute to PACs or spend a lot for information about constituent's preferences.

Some argue, however, that apart from the reelection motive, legislators are driven by goals of making a good public policy and promoting public goods. For example, the study conducted by Jackson and King (1989, p.1143) challenges the view that congressional decisions serve the particularistic interests of constituents. Based on their analysis of the House members' roll call voting decisions for the redistributive tax Reform of 1978, the authors show that the results of voting reflects the mean preferences of their constituents, which in turn serves the distribution of "public good" preferences. Nevertheless, the fact that the legal and institutional opportunities – more specifically PACs and reelection ambitions are often considered as the main reasons why legislators grant access to interest groups can not be overlooked.

Having discussed the US interest representation and the opportunities for access to the institutions, it can be concluded that US politics is characterized by diverse and dispersed interests who are more conflictual than cooperative. However, the existence of PACs creates the possibility to speculate that the US political environment favors business interests depending on the timing, venue, issue and etc.

2.5. Interest representation in comparative perspective

The examination of interest representation at Brussels and at Washington has showed the striking similarities along with some differences which will be reconciled and presented in this section.

Probably the most common characteristic of both comparable units is the similar interest representation – diverse and fragmented combining some elements of interest group models but mainly remaining as pluralistic. The explanation of this outcome lies in the complexity of their multi-level governance. As Baumgartner (2007, p. 482-3) notes, venue shopping, intergovernmental lobbying and dynamics of federalism of the US politics creates the conditions for acceptance of different groups unevenly by different levels of government. This enables groups rejected at one level to move to another. The whole process ensures the representation of diversity and rules out the establishment of permanent “insider” groups at all levels of government. However, this paper does not eliminate the possibility of existence of some ad hoc privileged groups at different governance levels with different degree.

The same can be said about the EU. Interest articulation, according to Aspinwall and Greenwood (1998, p. 2), is shaped in the same manner as in the US. Divided institutions and numerous points of access within the institutions all provide the policy opportunities for interest groups to contribute to policy-making. Moreover, the availability of numerous possibilities to influence policy might be even higher in the EU than in the US. As Schmitt and Thomassen (1999, p. 6) note, the institutional structure of the EU is a complicated hybrid of intergovernmental and supranational institutions. While the European Council and the Council of Ministers are purely intergovernmental, the Commission, the European Court of Justice and EP are supranational institutions. Thus, the groups not only deal with multiple venues within the same federal government as it is the case of the US, but with a complicated hybrid comprising of these institutions staffed with nationals of some 27 countries.

Even though the access good – information is the same in both systems, however, motives of policy-makers seeking information are fundamentally different, which overall might have a serious impact on interest representation. On the one hand, despite the institutional opportunities created for privileged access within the Commission, the absence of specific constituencies and reelection worries encourage one to assume that interest groups enjoy relatively fair access to the Commission. On the other hand, the existence of PACs is considered as a means of buying access to the US legislators captured by reelection goals. In addition, the special attention that the legislators give to their constituents- just a small part of nation might divert legislators' attention from their responsibility of promoting the welfare of the whole nation. Although one might argue the reverse, that for example, the Commission officials (Dur and De Bievre 2007, p. 4) not accountable directly to the EU public can give in to welfare-reducing demands from special interest groups to the extent that voters do not punish them for doing so, still, the financial contributions to elections remain a major worries of the American politics that greatly challenges the degree of equal access and the overall plurality of the US politics.

Apart from these differences, the lobbying styles of these two systems differ as well. The US lobbying is defensive and direct whereas the EU lobbying is constructive, cautious and consensus-oriented (Woll 2006, p. 463). The differences can be explained by the institutional environment. The EU is a technocracy meaning that political hegemony can not be established by fighting ideological battles in the political market-place (Kohler-Koch 1997, p. 48). Success depends much more on actors' capacity to provide what is most needed to induce acceptance of appropriate solutions to problems: expert knowledge, political insight, and bargaining experience. The Commission is the institution exceptionally open to external expert advice. It therefore attracts and organizes a dense net of consultation, including all kinds of interested parties. Apart from informational demand, there is a wide recognition in the Commission of the need to enhance input legitimacy of the EU. Thus, the Commission seeks out and sometimes even funds the public and private

interests in order to consult a wide range of groups (Coen 2007, p. 341; Woll 2006, p. 459). These distinct EU-led forum politics establishes the consensus-based lobbying and accordingly eliminates the one of defensive and aggressive kind.

On the other hand, the direct lobbying style of the US groups can be attributed to the legal and financial instruments that the interest groups acquire (Woll 2006, p. 462). The PACs are the strong financial tools that enable interest groups to be demanding and even aggressive from the legislators whose reelection is often depended exactly on financial contributions. The lobbying of the US legislature, unlike the Commission, takes place in highly political market-place that does not foster the consensus-based lobbying. Even the PACs (Gais 1998, p. 4-5) have important consequences in terms of changing the representation of policy views. The Campaign Finance Act is likely to disadvantage groups that support liberal policies and Democratic administration, whereas groups that are able to form and maintain PACs tend to support conservative policies and accordingly Republican administration. Thus, the political environment clearly encourages groups to be defensive and direct.

Having compared the findings from both polities, it can be concluded that even though both political systems might be under the danger of being captured by the particularistic interests, divided multiple institutions with different receptivity to different groups to a large extent enables both systems to stay pluralistic. In order not to fall out of democratic tracks, however, transparency of lobbying practices is important to be existed. Exactly the regulation of lobbying and transparency enhancing efforts in both polities will be the topic of the following last chapter.

Chapter 3: Transparency of the EU and the US lobbying

Although in many respects the multi-level governance in the EU and the US show similarities in terms of lobbying outcomes, regulation that determines the transparency of lobbying activities is different in these countries. While the US has adopted a well-established regulatory framework of lobbying that dates back to the early 1900s, the EU regulates this industry by voluntary Code of Conduct which does not have the force of law.

This chapter examines the transparency enhancing efforts in the EU and the US. It analyzes the impact of the institutional setting on determining the lobbying regulation and examines whether self-regulation of lobbying industry along with the European Commission's recent efforts to enhance transparency is sufficient or whether there is more robust and mandatory lobbying regulation in need for the EU to achieve the similar standards of transparency that exists in the US.

3.1. Transparency of the EU lobbying

The nature of the EU's decision-making, more specifically, innumerable informal committees and opaque policy networks as well as closed Council meetings have been criticized for the lack of transparency (Lodge 1994, p. 343; Heritier 2003, p. 821). According to the Commission (EC 2006, p.5-6), concerns voiced about the legitimacy of lobbying practices that there is no level playing field in lobbying because business sector is able to dominate lobbying, or by contrast, some NGOs are funded² by the EU budget which does not exert equal opportunity for other groups to participate.

Because of the specific institutional characteristics of the Union, the lack of transparency has probably been felt and noticed with even more sharpness than would have been in any member state. Unlike a nation state, the EU is not a representative democracy.

² The EU institutions and particularly the European Commission have been responsible for group formation and maintenance, funding some groups with up to 90 per cent of their income (Greenwood 2007, p. 208).

The central feature of representative democracy is that voters elect their government. In the EU relatively weak EP can not perform the same functions that are performed by parliaments at the national level, such as choosing a government or helping to determine the direction of public policy (Bogdanor 2007, p. 12). These factors along with the absence of “thick collective identity” that is considered as one of the basic elements for legitimacy (Thomassen and Schmitt 1999, p. 12) leaves the EU institutions unable to offer governance by the people (input legitimacy), but the governance for and with the people (output legitimacy). Thus, the EU institutions and particularly the EC have made some efforts to use interest groups as agents of accountability to enhance the democratic legitimacy of the EU, whether by means of benefit (output) or consent (input) (Greenwood 2007, p. 177).

As a response to a call for more transparency and inclusion of interest parties in the decision-making, the Commission adopted the White Paper on Governance in 2001 (EC, 2001). The Paper implied widening the consultation and dialogue with citizens and their organizations in decision-making and stressed the importance of involvement of civil society (EC 2001). In 2002, to further enhance transparency, the EC adopted “General principles and minimum standards for consultation of interested parties” (EC, 2002, p. 3-6). The minimum standards required that participants’ contributions to consultations be published on the internet. The principles were designed to encourage more involvement of interested parties through a more transparent consultation processes and reduce the risk of the policy-makers of listening to the one side of the argument. However, publishing the information on the database named CONECCS (Consultation, the European Commission and Civil Society) was not obligatory. The information of the lobbyists who did not provide their information (about which interests they represent and how inclusive that representation is) would be considered as individual contributions.

In 2006, the Commission adopted a Green Paper on European Transparency Initiative (ETI) to drive forward the ETI approved a year ago (EC 2006, p.2). The ETI which

established a special accessible register of documents related to Commission comitology³ committees and launched the database providing information about the consultative bodies was also designed to push the transparency issue further. The Green Paper created incentives for lobbyists to register voluntarily. It offered them to alert for consultations in replacement of registering. The follow up of Green Paper on ETI adopted in 2007 (EC, 2007, p. 2-3) reassured these points. In addition, it included the decision to establish a framework for its relations with interest representatives and decided to 1) create and launch a new voluntary Register (replacing CONECCS) for interest representatives in spring 2008, 2) draft a Code of Conduct 3) increase transparency through reinforced application of the Commission's consultation standards.

According to the principles of the Code of Conduct (EC 2008, p 6-7), interest representatives should identify themselves by name and the entity that they represent, should not mislead third parties by misrepresenting themselves, should ensure to their best that information provided is accurate and complete, and etc. The Code of Conduct, besides the principles, names the consequences of non-compliance with the Code, such as probable suspension or exclusion from the Register.

The efforts of regulating the lobbying activities in the EU, however, did not put an end to the criticism about the closed door decision-making. The dissatisfaction is mainly caused by the non-compulsory disclosure of information. Unlike the EP which runs a mandatory accreditation system for all needing frequent access to the institution (EC 2006, p. 7), the Commission has adopted neither an accreditation system nor a compulsory register for lobbyists. A considerable number of interested parties, mostly NGOs, advocated a compulsory approach as the only way to ensure full transparency (EC 2007, p. 3). For example, according to a global anti-corruption civil society organization Transparency

³ The Commission is assisted by the committees which are forums for discussion, consist of representatives from Member States and are chaired by the Commission. The procedure of consultation is sometimes referred to as comitology.

International (TI), there is a need of robust and mandatory European Commission lobbyist register (TI, 2008) and more detailed and properly enforced Code of Conduct.

The Commission, on the other hand, considers the incentive-based registration system the most appropriate for the institution (EC 2006, p. 8-9). According to the EC, the incentive-based registry along with the Code of Conduct which contains general provisions about ethical norms of interest parties is enough to regulate lobbying activities. It believes that integrity rules of the Code are the essential contribution to transparency in lobbying and so far are followed by the groups with no case of violation of the Code reported.

3.2. Will transparency deliver its goals in the EU context?

Having stressed the importance of inclusion of a wider public in consultations and the need of compulsory regulation of lobbying, it is important to examine whether these measures will produce desired outcome or not in the EU context. The European Union is perceived and hailed as an institution with efficient policy deliveries. However, the obligation to consult as many parties as possible might trap EU institutions in enormous delays in the process of decision making which may bring negative consequences for the efficiency of the processes and impede their problem-solving capacity (Curtin 2006, p. 137; Naurin 2007, p. 6). The fear of declining efficiency of legally-binding consultations is voiced by the Commission (EC 2002, p. 10). For the Commission, such an over-legalistic approach (if introduced) is incompatible with the need for timely deliver of policy which is the expectation of the EU community.

Apart from the concerns of efficiency and effectiveness, transparency might not bring the expected outcome due to the absence of “public sphere” needed for scrutinizing officials’ actions (Greenwood 2007, p.178; Curtin 2006, p. 140). Consultation should be a two-way process where citizens observe government’s actions and provide feedback. The EU, which is multi-level and multi-component entity, can not create a common forum for adversarial contestation. Because of the absence of common interests, distance from

Brussels, the lack of knowledge and skills and no interest in receiving more information on the EU, not many citizens participate in policy processes. Therefore, as scholars such as Bohman (1999, p. 184-7) and Naurin (2007, p. 6) note, there will be no publicity (actual exposure of political actions to a broader audience) if the available information about political actions is left unattended and unjustified. Thus, transparency without the effect of publicity loses much of its influence.

This fear is further strengthened if one examines the characteristics of the Commission and the Council. In order to receive the expected results of publicity, the institutions should be accountable to the constituents. However, these bodies are not directly elected. Thus, no matter how transparent they are, neither the Commission nor the Council can be held democratically accountable regardless whether European citizens approve of their policies or not (Naurin 2007, p. 2-3).

Some scholars (Gabel 1998, p. 472; Naurin 2007, p.1) go further and assume that closed-door meetings are even more preferred than open consultations, considering the institutional arrangements of the EU. The Union, which is composed of culturally segmented societies and without cross-national political cleavages, has favorable conditions for stable consociational governance which prefers closed door deliberation over the open one to maintain stability and reach compromise easier. Furthermore, as the study (Joerges and Neyer 1997, p. 279-198) of the EC's comitology committees shows, committees, despite their opaqueness are characterized by public spirit exploiting numerous resources of information.

This idea of 'public-spiritedness' of the EC is further reinforced by Naurin (2007). In order to find out whether publicity has a power to 'civilize' politics, Naurin conducted the analysis of business lobbyists- probably the most market oriented political actors in closed as well as in open door settings. Based on the innovative scenario interviews and confidential lobbying letters, he carried out the survey in the Commission and in Swedish government ministries (famous for their centuries-old institutionalized publicity principle)

and then compared the results. The analysis revealed surprising results (p. 144-7): it showed that business lobbyists in the EU and similarly in Sweden do not express their market selves backstage. Moreover, the degree of self-interest in their arguments was even higher in public than in closed door setting. Private meetings required them to search for better arguments and be open to the perspectives and preferences of others.

Having analyzed transparency enhancing efforts of lobbying in the EU, it can be concluded that institutional setting has a huge influence on the outcome of these efforts. The EU with its segmented societies and absence of common “public sphere” requires a careful examination of pros and cons of transparency in order not to sacrifice efficiency, effectiveness and social stability, the main driving forces that the EU is bound by. However, at the same time one must not forget that closed door deliberations makes consensus easier but sacrifices the accountability, a guarantee of democracy in a modern state.

3.3. Transparency of the US lobbying

The US has developed a strong tradition of open governance as evidenced by transparent legislative practices including open committee meetings and easily and quickly accessible documentation (Rekosh 1995, p. 241). Unlike the EU, the US has a well-regulated lobbying legislation. Concerns to control lobbying emerged as early as 1900s (Zeller 1948, p. 239). The first bills to regulate lobbying were adopted in 1907 and in 1913 the first broad investigation of lobbying were held. However, it was not until 1946 when Congress passed a general Regulation of Lobbying Act as Title III of the Legislative Reorganization Act which became the major control of federal lobbying till 1995 when the Federal Lobbying Disclosure Act was introduced.

The Federal Lobbying Disclosure Act (LDA) regulates lobbyists and organizations that they lobby (LDA 2008). The legislation defines a lobbyist, lobbyist activities, registration procedures, filing requirements for semi-annual reports and the penalties in case of noncompliance with the law. The compulsory register impose an obligation on individual

lobbyists and lobbying groups to list their clients, the issues their deal with and the money they are paid to perform their tasks.

As a result of a few scandalous cases of lobbyists' involvement in the corrupt deals in 2005-2006, proposals on several pieces of ethics reform legislation, Accountability and Transparency Act of 2006 and Legislative Transparency and Accountability Act of 2006 were passed to further enhance transparency (Ethics Reform Legislation, 2008). If adopted, the legislation would amend LDA. It includes the provisions such as quarterly instead of semiannual filing of lobbying disclosure reports; electronic filing and maintenance of certain lobbying disclosure reports and etc. The proposal of the Campaign Expenditure Transparency Act of 2007 amends Federal Election Campaign Act of 1971. It includes provisions such as prohibition of certain PACs from compensating the spouse of the candidate for services provided to or on behalf of the committee and requirement of such committees to report on payments made to the spouse and family members.

Transparent lobbying should be welcomed in every country. However, in order to avoid rent-seeking and government capture by interested parties, transparency of lobbying in the US is crucial. The reasons behind this lie in the specific institutional arrangements of the US that will be discussed in the following section in more detail.

3.4. The importance of transparent lobbying in the US

There is a widespread agreement that the lobbyists' activities should be transparent (Milbrath, 1963, p. 315). According to Milbrath, in order citizens to adequately participate in policy-making, they must know what is happening. If lobbying is not visible, subversion of the process is possible. Like in the EU, in the US without knowing whom an interest group lobbyist represents, it is impossible to know to what extent a lobbyist's claims are representative of the group (Ainsworth, 1993, p. 42). Without an assessment of the salience of interests that lobbyist represent, legislators will be unable to learn whose interests they

are balancing. Thus, in order to be accountable to constituents, the transparent lobbying regulation prevails to be crucial.

Apart from that, the Federal Election Campaign act of 1973 and the PACs discussed in the previous chapters make the compulsory lobbying and the overall transparent lobbying a must. Political Action Committees that allow interested parties to contribute to candidates create a danger of possible rent-seeking. To neutralize the possible negative consequences, well-regulated, detailed legislation on lobbying consisting provisions on compulsory registering is a key.

But, is mandatory regulation the only prerequisite to a clean lobbying sector? Or in other words, in case of the absence of the lobbying legislation, are general ethical norms enough to regulate this industry? According to Milbrath (1963, p. 324-7), since the policy-making system is a communication system, the most important rules of the game are related to communication. Very simply, once a lobbyist or a lobbyists' group is found to be engaged in unethical activities (spreading false messages, etc), the intended receivers cease to listen and pass the words to other receiver and the offender is automatically ejected from the system. Demands and sanctions, therefore, make actors (or the majority of actors) in the system comply with the rules of the game. As Milbrath notes, the best solution to the breaches of lobbyists' ethical principles which from time to time upset the US politics, is elections which allow citizens to elect highly qualified responsible persons in public office.

Votes can insure that the system operates honestly and fairly. As Stephen K. Bailey (in Milbrath 1963, p. 327) notes,

“No registration law, no listing of connections and salaries in the Congressional Record, no system of party responsibility, by itself, can scratch the surface of the problem of controlling pressure politics. In the long run, a civilized morality is the sole key to the survival of democracy”.

However, even though the rules of the game and fear of sanctions might operate effectively, the US institutional arrangements strictly require the maximum transparency of lobbying industry in order to prevent the country from falling out of democracy track. First and the most important, the US, a representative democracy makes each single legislator

accountable to his/her constituents. In order to make the system work, legislators must know who lobbies whom. Second, dependence of elected officials on pressure groups on their election contributions creates the fear of corruption. The stricter is the lobbying regulation, the better are the chances that the policy-making process will respond to votes rather than to money.

Having discussed the regulation of lobbying and its importance in the EU and the US, the following section will compare the findings.

3.5. Transparency of lobbying in comparative perspective

That the EU and the US with their multi-level governance sometimes produce the similar lobbying outcomes has been discussed throughout the paper. However, these two systems exert different picture in terms of regulation of lobbying. As analyzed, although there have been numerous efforts to make decision-making more transparent, inclusive and accessible to diverse interest groups, lobbying at the EU level is much less transparent in comparison with the US. The question is why the EU has not adopted the stricter regulation yet and whether it can achieve the same results of transparency as does the comprehensive legislation in the US.

As discussed throughout the whole paper, institutional settings greatly impact the lobbying outcome and the lobbying regulation is not an exception either. EU which is composed of culturally segmented societies finds it hard to become as transparent as the US is as it might have to sacrifice efficiency and effectiveness, hailed in the Union. Based on the previous analysis about publicity effects, one might even argue that publicity is not always conducive to a public-spirited behaviour. According to Eliasoph (1998, p. 2-7), participatory democracy in the US is failing not because there is no space available for citizens to participate, but participants sound better backstage rather than in public. They feel inappropriate to express their public-interest in open setting which is often decisive and

discouraging and which shifts mode of bargaining to arguing ending with less efficient outcomes.

The complexity of the EU is another factor that should be taken into consideration when discussing the EU lobbying regulation. In order to further integrate member countries within the EU and avoid social instability, there is a need for considering relevant national legislation before proposing any new legislation for the Union. Within the EU, the German Bundestag, for the first time being, is the only parliament that has introduced the formal rules of registration of lobbyists including providing their name and seat, sphere of interest, number of members, etc with no requirement to provide any financial information (EC 2006, p. 7). The immediate introduction of compulsory registration, noticeably different from its national parts, might make the EC's transparency enhancing process efforts a reverse process.

Should the difficulties of adopting the more robust lobbying legislation and the possible threat to its efficient decision-making processes allow the EU to ignore the calls for the more robust lobbying legislation? Or should and can the value of transparency be weighted against the ones of effectiveness, problem-solving capacity and free and frank deliberations? Considering the fact that existence of the interest groups in the society depends on the degree of trust given to them by public which is determined by the level of transparency of interest groups' activities, the answer is most likely no: the value of transparency to the democratic system is too much precious to be ignored.

Thus, this chapter has by no means undermined the importance of transparent lobbying. What it has explained is why further transparency enhancing efforts will be hard to be adopted in the EU. Therefore, this analysis should not be seen as an argument against transparency but one that stresses the importance of examining the nature of political entity and considering the probable effects of transparency enhancing efforts in the specific institutional context.

Conclusion

Given the aim of the thesis that has been to examine the EU lobbying in comparative perspective, I have chosen institutional framework as a research design and examined the EU lobbying from the perspective of the influence of the institutional setting in comparison with the US lobbying as it shares many similarities with the EU in terms of institutional arrangements.

By looking at the EU lobbying not as a unique phenomenon but rather as a normalized comparable industry, this work has revealed many interesting features of the EU interest representation and clarified some points as well as contributed to the comparative literature of the EU studies.

The first chapter has demonstrated how institutions and their decision-making rules impact the interest representation. Comparison of the EU and the US lobbying has revealed that emergence and the steady growth of interest groups are directly linked to the activities of the institutions, scope of their policy-making authority and changes in their decision-making rules. For example, as the DC in the late 1960s attracted thousands of interest groups due to some structural changes within the institutions, more specifically within the Congress, so did the EU in the late 1980s as a result of the increase of the decision-making authority of the EU institutions, and particularly of the European Commission. The first chapter has explained not only the growth of interest groups in number but also development of different styles of lobbying and establishment of so-called US' or 'Anglo-Saxon' style as a result of the emergence of many possibilities of lobbying due to the different layers of government and different venues. However, along with the similarities that these two polities share, the comparison has identified differences as well that can be accounted to the specificities of their institutional setting, including the PACs in the US shaping the interaction between groups and legislators in different way and the technocratic small EC with no re-election motives.

The second chapter has shown that as in the US, in the EU, fragmentation of power and existence of numerous venues protects the system from the domination of any one group and insures the pluralistic outcome. Accordingly, though it varies from institution to institution, access to decision-makers can not be monopolized. Thus, the cross Atlantic comparison strengthened the general common knowledge that multiple layers of institutions are most likely to yield the pluralistic outcome than any other type.

The last chapter has analyzed the lobbying regulation of both systems. Concerns about the absence of strong lobbying regulation along with the recent transparency-enhancing efforts of the EC have made this analysis timely and relevant, especially when compared against the well-regulated US lobbying legislation. The chapter has investigated the causes of the delays in the adoption of proper legislation requested by many civil society organizations in the EU and searched for the explanation in the institutional setting of the system. What the analysis has revealed is that adoption of more robust lobbying regulation does not necessarily depend on the good will of the Commissioners but on the complexity of the institutional set up and the decision-making rules within the system. More specifically, apart from the concerns about declining efficient decision-making processes that transparent lobbying regulation might bring, adoption of robust lobbying legislation for the system which consists of 27 countries requires a careful consideration of relevant national legislations before any decision is made.

Although I have outlined the difficulties of adopting more robust regulation for the EU, however, I have not argued that the principle of accountability, one of the building blocks of any democratic society must be sacrificed for the sake of efficiency in the system. As mentioned in the introduction, interest groups are supposed to connect constituencies to the government and play a role of parallel institutional linkages between them. In order to fulfill this function, activities of interest groups should be transparent. Furthermore, even though the existence of PACs and the elected legislature probably requires a more robust legislation in the US, it does not necessarily mean that the absence of these factors will avoid rent-

seeking practices in Brussels. The fact that Brussels has not so far been upset by serious scandalous cases related to lobbying as have been the case in the US does not necessarily mean that the industry is clean. On the contrary, we might assume that the absence of strict regulation excludes the possibility of detection of unethical activities which might exist.

In sum, having compared the EU lobbying model against that of the US, the thesis has demonstrated the necessity of transparent lobbying in the EU. The need for the transparency should be even more stressed when considering the so-called 'democratic deficit' that the EU is said to be plagued with and the lack of participation of the public in the political processes which adds to this deficit and deepens the gap between the public and the officials. Considering all these aspects, EU should not solely depend on 'civilized morality' but consider the issue more seriously, some of the signs of which we have already seen from the EU Commission.

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