

**MAKING LOBBYING REGULATION WORK:
ENHANCING THE LOBBYING TRANSPARENCY
IN THE EUROPEAN UNION**

By

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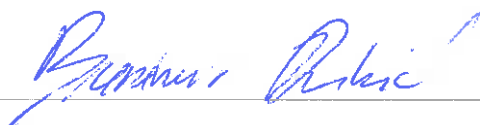
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ABSTRACT

This thesis is analyzing current state of affairs in regulating lobbying on the EU level and discussing about the necessary reform of the existent regulatory system. First, the author is analyzing theoretical justifications for regulating lobbying. After that, by exploring current lobbying practices and specific lobbying regulations in three “core” EU institutions – the European Commission, the European Parliament and the Council of Europe – the author is determining key problem areas and pointing out specificities of lobbying in each institution. Afterwards, the focus is on recent initiatives on regulating lobbying in the EU, where the emergence and evolution of the Transparency Register is particularly analyzed and assessed. Lastly, the author is discussing and answering the research question, by proposing the mandatory Transparency Register, introduction of stricter Code of Conduct for lobbyists and comprehensive system of monitoring which would include all three “core” institutions.

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Table of Contents

ABSTRACT	ii
ACKNOWLEDGEMENTS	iii
Table of contents	iv
List of Figures.....	vi
List of Abbreviations	vii
Chapter 1. Introduction.....	1
Chapter 2. Methodology	6
Chapter 3. Transparency, interest representation and democratic deficit in the EU	8
Chapter 4. Current lobbying practices in Brussels	13
4.1. The European Commission:	15
4.2. The European Parliament:	17
4.3. The Council of the European Union:	20
Chapter 5. Recent policy initiatives on increasing transparency in the European Union	23
5.1. Regulating Lobbying in the European Union	24

5.1.1. Emergence of the Joint Transparency Register	27
5.1.2. Evolution of the Transparency Register and current data	30
5.2. Policy recommendations and final discussion	35
Conclusion.....	40
Reference List.....	42

List of Figures

Figure 1. A System of Theory of the EU: Input, Output and Throughput, source: Schmidt (2010, 10).	9
Figure 2. Evolution of registrations 2011-2016, source: JTRS's Transparency Register statistics, 23/5/2016	31
Figure 3. Sections and subsections of interest groups in TR on 08/06/2016, source: Transparency Register website	32

List of Abbreviations

ACEA - Association des Constructeurs Européens d'Automobiles

COEC- Chief Institutional Ethics Commission (Poland)

DG- the Directorate-General

EC - the European Commission

ETI- European Transparency Initiative

EU – the European Union

IIA- Inter-Institutional Agreement

IT - Information Technology

JTR- Joint Transparency Register

JTRS-Joint Transparency Register Secretariat

LLA- Law on Lobbying Activity (Lithuania)

MEP- Member(s) of the European Parliament

NGO- a non-governmental organizations

OECD – the Organization for Economic Co-operation and Development

QMV – Qualified Majority Voting

TR- Transparency Register

U.S. - the United States

VDA -Verband der Automobilindustrie

Chapter 1. Introduction

Interest group representation and interest group politics is a relatively small field within social sciences. Nevertheless, it constitutes an important and lucrative area of political science which can on the one hand, expose main contemporary issues regarding the transparency of such a complex/multi-level process, and on the other, create policy alternatives and proposals which in turn can create regulations that could help to raise the lobbying transparency standards and minimize corrupt practices that can occur in day-to-day practices. Why are interest groups so important in decision-making processes? If endowed with particular resources, they could easily leave an impact on the policy outcomes (Dür 2008). The European Union and its distinct institutional and political character, spontaneously created multiple venues for interest representation. Cohen recognizes that interest groups and their public/private interests have a “legitimate and important role to play in the public policy process” (Cohen 2007, 2). Indeed, European public policy is highly saturated with a great number of interest groups and their representatives. Cohen (2007), Greenwood (2002a) and EU Commission reports (2001) note that 15,000 Commission and European parliamentary officials face 20,000 lobbyists every day, while Chambers (2016) estimates that there might be between 15,000 and 30,000 lobbyists present in the EU institutions on a daily basis.

Brussels, *de facto* capital of the European Union, gradually transformed into an extremely diverse lobbying “eco-system” which spontaneously became a constituent part of the EU policy-making process. As Cohen noticed, activities related to interest representation in the EU have been clustered mainly around and in the “institutions that have the greatest regulatory output and competencies” (Cohen 2007, 4). European Commission, the formal agenda-setter, is seen among many interest groups as an important venue for lobbying (Cram 2001; Pollock 2003 in Cohen 2007). The power of agenda setting and administrative authority give the

European Commission a special position in the institutional constellation of the EU. The European Commission became fully aware of its position already in the early 2000s, and by issuing the White Paper on Governance which was seen as a step further in achieving democratic legitimacy, it acknowledged the importance of pluralization of interest representation and transparency of lobbying process (Greenwood 2011). The special position of the European Commission and its unique way of dealing with interest groups was noticed by a number of authors in the late 1990s and early 2000s (Coen 1997, 1998; Bouwen 2002; Woll 2006; Schmidt 2006; Mazey and Richardson, 2006). They all agree upon the fact that European Commission managed to create and cultivate an *élite pluralist* environment, tailored for “trust-based relationship between insider interest groups and EU officials” (Cohen, 2007: 3). For example, EP’s report (2003) and Greenwood (2003) estimated that business and professional organizations “represented approximately 76 % of EU interest groups compared to 20 % of public interest groups” (Cohen, 2007: 3). Eising’s survey on 800 business associations and 34 firms underpinned previous work on the EU policy-making cycle and concluded that the European Commission’s position is, indeed, central for the interest representation and negotiation on the supranational level (Eising in Cohen 2007).

Lobbying activities inside the EU institutions have intensified rapidly during the last 30 years. Reasons for that may be identified in the EU’s rising autonomy over some policy areas (Chambers, 2016). Transfer of some regulatory functions¹ from national governments to the EU, accelerated so-called Europeanization of lobbying groups and increased the importance of EU institutions (Young and Wallace 2000; Mazey and Richardson 2006; Cohen, 2007). Relatively fast process of EU integration during the 1990s and subsequent higher regulatory power of the EU institutions logically attracted a number of interest groups, which switched

¹ Areas such as „product quality, health and safety, employment and competition law, and environmental standards“ (Young and Wallace 2000; Mazey and Richardson 2006 in Cohen, 2007: 2).

their attention to decision-makers on the supranational level. As Chambers notes, increased presence of lobbying groups and lobbying activity in Brussels, “led to allegations that lobbying diminishes the transparency of European Union governance and opens the door to the possibility that legislation is being written contrary to the public interest” (Chambers 2016, 5). Furthermore, OECD, as well as the Council of Europe and the United Nations, identified a number of corrupt practices and offences in the current EU framework (Chambers 2003; OECD Observer 2007). More precisely, corrupt practices that occur in lobbying include:

Bribing officials and trading in [influence], defined as the solicitation or acceptance by a public official...of an undue advantage for himself or herself...with a view to obtain from an administration or public authority of the State Party an undue advantage... (Wilkinson in Chambers, 2016: 5)

Corruption and transparency issues are considered as a serious problem in the European Union². Both citizens and EU officials consider corruption as a direct threat to the economic and social wellbeing of European citizens and of EU institutions (Chambers, 2016). Furthermore, Transparency International emphasizes the great importance of lobbying transparency and public scrutiny of information. Circulation of information between actors that influence the EU decision-making process and EU officials needs to be present in the form of “playing field for all interest representatives and thus balanced legislative outcomes” (Berg and Freund 2015, 4). In the last few years, EU officials and EU institutions experienced a number of scandals regarding the lobbying transparency and lobbying process. One of the biggest scandals in the recent EU history revealed the full grandeur of EU’s regulatory powers and pointed out serious loopholes in the EU decision-making process. The strong influence of the German car industry on EU officials raised many debates. After the scandal where Volkswagen cheated US nitrogen oxide emission tests, other car companies, including Volkswagen,

² „Corruption alone is estimated to cost the EU economy EUR 120 billion per year, just a little less than the annual budget of the European Union“ (EU Anti-Corruption Report, 2014: 3).

successfully lobbied for looser regulations on pollution limits, thus sparking a huge political debate. Environmental and consumer groups fiercely criticized this decision, claiming that corporate interest once again prevailed over the wellbeing and interest of EU citizens (Dyrhaug 2015). Bas Eickhout, a Green Party member of the European Parliament said in an interview for the *EUbusiness* that there is “a huge gray zone” in a lobbying process between business representatives and EU officials (EUbusiness, 2015). According to Eickhout, conflict of interest is one of the most alarming features of current lobbying framework in the EU (EUbusiness, 2015). He concluded that “the technical information and the political decision making are happening at the same time”, where the biggest problem is in the nature of the position lobbyists have in the decision-making process at the highest level (EUbusiness, 2015). Lobbyists from important business sectors (e.g. auto and agro industries) have become very influential actors in the EU decision-making process, in addition to their assumed position of information providers.

Constant upgrade of transparency regulations and insisting on openness in lobbying practices are important assets in the fight against corruption on the EU level (EU Anti-Corruption Report, 2014). Even though the European Commission’s anti-corruption report recognized transparency of lobbying as an ongoing issue that should be given more attention, it did not formulate coherent guidelines for concrete actions in order to change current practices and introduce new policy alternatives. Effects of corrupt practices, especially in EU institutions, are not just negatively affecting the economy, but also other aspects, such as reputation and legitimacy of the European Union and its political elite. Eurobarometer results from 2013 show that at European level, more than 4 out of 10 companies consider corruption (including patronage and nepotism) as an obstacle for doing business (EU Anti-Corruption Report, 2014). Also, two big business sectors – construction and telecoms/ IT companies – identified

corruption as a serious problem ³ (EU Anti-Corruption Report, 2014). The European Commission recognized the importance of lobbying transparency and rules that regulate transparency by stating that “lobbying activities can raise risks of corruption and regulatory capture...thus, it is important to have mechanisms in place to frame such activities, be through legislation or a voluntary registration of lobbyists” (EU Anti-Corruption Report 2014, 20).

The main goal of this thesis is to dig deeper into the existing EU framework for interest representation. That means that emphasize is going to be on the analysis of current lobbying practices in Brussels from a transparency point of view. Furthermore, identification of biggest issues related to transparency of lobbying practices, and ultimately answering the research question – “how can lobbying transparency be upgraded in the EU framework of interest representation?” are going to be central parts of the thesis. Finally by pointing out possible solutions for current and future policy-makers and contributing to the existing academic discussion, the thesis is going to conclude the discussion and finalize the thesis with the closing chapter.

³ According to EU Barometer results, when asked specifically whether corruption is a problem for doing business on the European level, „50 % of the construction sector and 33 % of the telecoms/IT companies felt it was a problem to a serious extent... the smaller the company, the more often corruption and nepotism appears as a problem for doing business“ (EU Anti-Corruption Report, 2014: 7).

Chapter 2. Methodology

The lack of studies, primarily focused on current transparency issues regarding lobbying practices and existing system of interest representation at the EU level is one of the reasons why this thesis is relevant and contributes to the existent body of literature fixated on the role of interest representation in the European Union. The main focus of this thesis is set in the research question: “How can lobbying transparency be upgraded in the EU framework of interest representation?” The goal of the thesis is to achieve the deeper understanding of the issues at hand, simultaneously problematizing and exploring current situation in the domain of interest representation and offering policy alternatives and recommendations for current and/or future policy makers.

The main research question, presented above, will be answered by using qualitative techniques and methods. First, in the introductory part, we are setting working definition of lobbying. Second, the thesis sets the theoretical framework which problematizes lobbying transparency in the context of democratic deficit of the EU. Theoretical arguments are used in order to justify the importance of lobbying regulations and its impact on the overall transparency levels on the EU level and on the perception of legitimacy of EU institutions. Third, secondary data analysis which encompasses the examination of EU documents and agreements was helpful in understanding lobbying processes in three EU institutions – the European Parliament, the European Commission and the Council of the European Union. The combination of other research papers and actual articles from the official EU documents and agreements, gave us a serviceable overview of how EU institutions deal with lobbying and how they regulate it.

The backbone of the third chapter is primary data analysis of the current situation in the EU Transparency Register. By doing this we got a better preview of current situation regarding the number of registered lobbying organization and on the general trend through the last five years.

Data is collected from the Register database and official annual JTRS reports, including the latest one from early 2016. Lastly, we propose policy alternatives for current policy-makers, based on best practices, with a central focus on making lobbying regulation in the EU mandatory for all parties.

Chapter 3. Transparency, interest representation and democratic deficit in the European Union

Democratic legitimacy, democratic deficit and interest group representation were often analyzed in relation with each other. Lobbying and impact of interest representation have been in the focus of Europe's democratic deficit debates (Hauser, 2011). Lobbying activities have been present at all levels of EU multi-level system and thus has an impact on national, sub-national, local and supranational policy outcomes (Hauser, 2011). For many years, the intellectual and academic debate about EU's democratic deficit has given us a number of conflicting opinions and positions. On the one part of the spectrum we have, Majone's and Moravcsik's defense of EU's democratic legitimacy, where they argued that EU is essentially democratic enough, at least democratic as it could be. Hix's and Follesdal's response criticize Majone's and Moravcsik's optimistic response in one key element. They argued that EU institutions need to "ensure that EU policies are responsive to citizen's preferences, rather than matching by happy coincidence" (Follesdal and Hix 2006, 556). The purpose is not to dig deeper into the fundamentals of the EU's institutions and their legitimacy, but to explore how interest representation transparency can help improve the democratic legitimacy of the EU. General discussions about the democratic legitimacy of the EU institutions also tend to focus on mechanisms that Sharpf (1999) has described in terms of input and output legitimacy (Schmidt 2010). Output legitimacy is "a performance criterion centering on the ability of EU institutions to govern effectively for the people" (Schmidt 2010, 5) while input legitimacy "involves political participation by and citizen representation of the people" (Schmidt 2010, 5). The third mechanism of legitimacy is throughput. Schmidt contends that the focus of throughput legitimacy is primarily on deliberative processes in EU institutions which, "promote accountability, transparency and access to civil society... and as such, it is more focused on the quality of the relationship among actors" (Schmidt 2010, 8). These interactive

and coordinative relationships between different actors usually include deliberations of experts, debates among MEPs in the European Parliament and interactions between the EC and Council, as well as the “involvement of organized interest groups with EU institutions” (Schmidt 2010, 8).

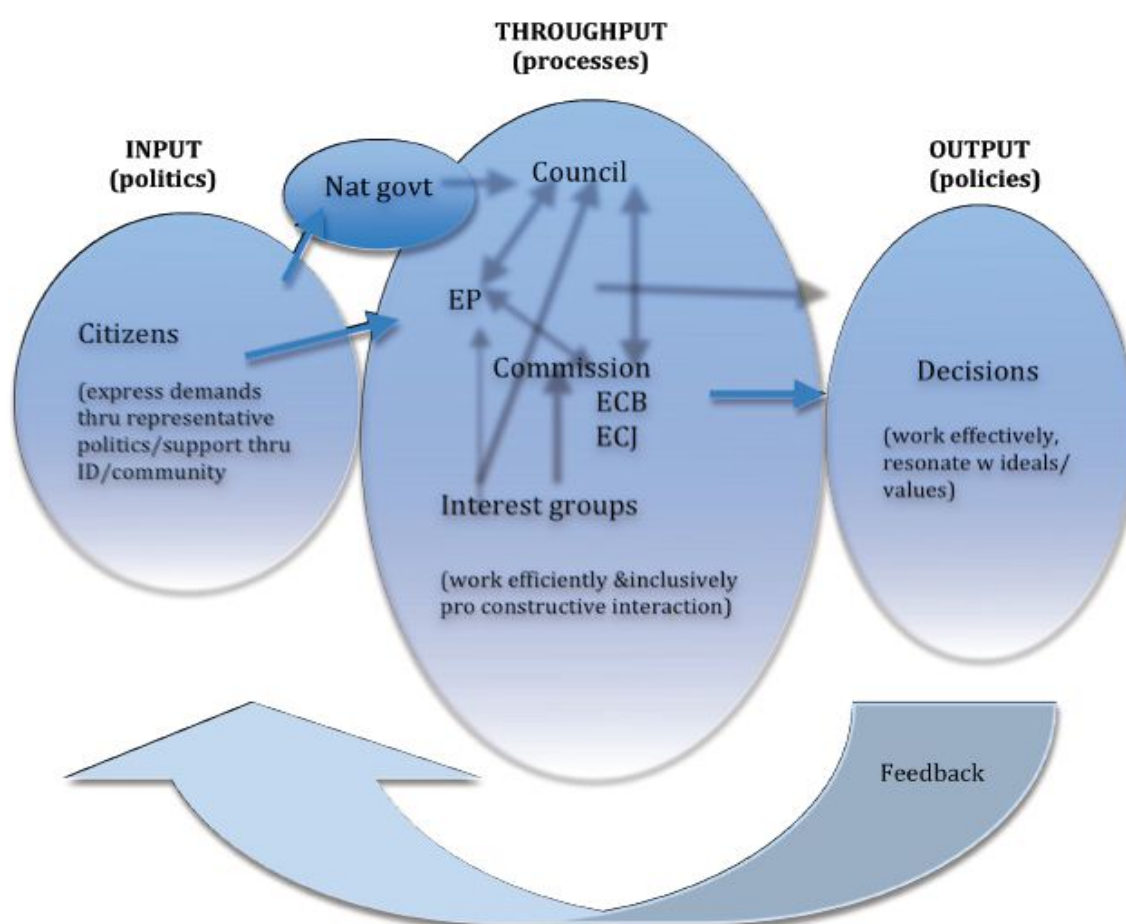


Figure 1. A System of Theory of the EU: Input, Output and Throughput, source: Schmidt (2010, 10).

According to Eising, there is a general consensus in the literature on the nature of the EU’s political system and interest intermediation in the EU (Eising in Beyers *et al.* 2010). First of all, Eising contends that there is a broad agreement that “cross-sectoral interest intermediation at the EU level is best characterized as a form of pluralism” (Coen 1998; Cowles 2001; Schmidt 2006 in Beyers *et al.* 2010, 65). Even though there is a broad consensus on the nature of the

interest intermediation in the EU, some authors point out different aspects of the pluralist character. For instance, Schmidt argues that phases of policy process on the EU level are significantly different (Schmidt 2006). In comparison to the US system, EU interest representation is slightly more biased in favor of business interests, while organizations representing the public interest and social groups “fail to galvanize public opinion” (Schmidt 2006, 106). On the same track, Coen argues that there is a bias towards the resourceful and wealthier actors, which include big businesses, firms and trade associations (Coen 1998). Nevertheless, Eising points out that EU interest representation system is “highly fragmented and [that] groups enjoy great legitimacy but are for the most part confined to providing policy information... the [dominant] mode of governance appears to be negotiations rather than hierarchical rule-making” (Eising 2010, 73). Second, the EU-level interest intermediation is frequently “depicted as a form of network governance or negotiation system” (Grande 1994; Peterson 2001; Ansell 2000 in Beyers *et al.* 2010, 65). And third, some authors (Della Porta 2007; Finke 2007) contend that “recent trends towards institutionalizing state-group relations can be traced to the dynamic evolution of the political order and discussions surrounding the democratic deficit in the EU. EU institutions “combine and reinforce diverse forms of representation and participation” (Goehring, 2002: 118), and maintain communication with networks of citizen groups, businesses, trade associations who influence policymakers (Hauser, 2011). Some authors (Cooter in Hauser 2011) argue that in practice “some citizens and interests tend to enjoy ‘superior representation and disproportionate power’ (Hauser, 2011: 683). Schattschneider’s famous remark that “the flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent” (Schattschneider, 1960: 147), ironically and skillfully at the same time, shows the shortcomings of the pluralist theory⁴. European

⁴ Political theory which argues that „various segments of society organize successfully to bargain with each other and influence politics, which, in turn results in higher quality information flow between policymakers and citizens“ (Hauser, 2011: 683).

Commission's perception of lobbying indeed points into the direction of pluralist ideals. Directorate General for Research declared in 2004 that:

Lobbying is a legitimate part of the democratic system, regardless of whether it is carried out by citizens, companies, or firms working on behalf of third parties, think tanks, lawyers, or public affairs professionals... (Directorate General for Research 2003)

Indeed, a lot of things have changed after 2003, including frequent discussions among EU citizens/public⁵ on EU's democratic deficit, corruption and lack of transparency in the EU decision-making process. The ideal of pluralism encounters criticism as soon as a system proves that is "incapable of prioritizing relevant interests and when better organized and more highly funded groups have superior access to political resources" (Hauser 2011, 684). The unbiased and comprehensive mechanism of interest representation at the EU level can help bridge the gap of suspicion and distrust between EU institutions and its citizens by "[enhancing] the legitimacy of EU legislation" and letting interest groups to provide and offer their expertise, knowledge and experience in order to "support the policy formulation, implementation, and monitoring functions of EU institutions" (Greenwood in Hauser 2011, 684). The power imbalance between business and trade and the interests of civil society groups is present and it is real. Also, because of the fundamental differences in the nature of these interest groups, their lobbying activities differ as well. Expertise and technical knowledge, as it was mentioned before, are oftentimes very helpful for legislators and decision-makers. Transparency and openness of the EU lobbying system are crucial for a healthy and vibrant system of interest representation. By making lobbying activities more transparent and exposed to the scrutiny of all stakeholders involved in the EU lobbying system, as well as encourage stakeholders to exchange mutually beneficial information, we are simultaneously raising

⁵ For example, in 2013, Eurobarometer results show that 70 % of respondents believe that corruption is present within institutions of the EU (Eurobarometer, Special Report, 2013).

legitimacy and trust in EU institutions. On the same line of this argument, Naurin argues that legitimacy of political institutions can be strengthened “if transparency can civilize elite behavior” (Naurin 2007, 209). Lastly, the dangers of moral hazard arise where there is no regulation, increasing the risk of representatives and legislators pursuing private interests over the interests of citizens who elected them (Hogan *et al.* 2008, 128).

Chapter 4. Current lobbying practices in Brussels

Lobbying is a complex and delicate activity which is often differently perceived and defined by a number of scholars. For the purpose of this thesis, we have to establish a working definition for lobbying activities, which will further help us in understanding the phenomenon itself and potential issues that stem from it. As Chambers points out, lobbying is seen as a “traditional method used for influencing political decisions on behalf of the corporate sector and non-governmental organizations” (Chambers 2016, 6). Methods lobbying groups or lobbyists use vary from sending letters and making presentations to providing explicit material to legislators or organizing rallies (Parliament.uk, 2016). Interest groups use a number of different types of resources in order to influence the officials in the EU institutions. Resources available to interest groups and often mentioned in the literature include “money, legitimacy, political support, knowledge, expertise and information” (Dür 2008, 112). We are going to use Transparency International’s definition of lobbying which reads as follows:

Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making, and carried out by or on behalf of a client or any organized group... (Transparency International EU, 2015: 5)

Lobbying in the EU is indeed an activity that is integral to democracy and broader democratic processes (Transparency International EU, 2015). A great number of people active in the decision-making or legislative process perceive lobbying as an activity crucial for enhancing the decision-making process by “providing channels for the input of expertise on increasingly technical issues to legislators and decision-makers⁶” (Transparency International EU, 2015:5).

⁶ A Burson-Marsteller's survey of 600 members of the EU Parliament and officials, conducted in 2013, showed that 89 per cent of respondents „agreed that ethical and transparent lobbying helps policy development“ (Effective Lobbying in Europe, 2013).

Lobbying and activities related to lobbying happen on multiple stages of the EU's legislative process (Transparency International EU, 2015). From the moment of policy formulation to the moment of legislative initiative happening in the EU Commission, through the impact evaluation phase and EU Parliament readings, as well as further negotiations happening in the Council of the EU, lobbyist groups and individual lobbyists participate and influence the legislative process (Transparency International EU, 2015). European Union's interest groups system is according to Greenwood, "essentially pluralist in character" (Greenwood 2011, 22).

As it was previously mentioned, lobbying activities on the EU level are mostly concentrated on three central EU institutions: the European Commission, the European Parliament and the Council of the European Union. The decision-making process has been gradually diluted through the years of institutional microevolution. The European Commission's usual procedure of legislative initiation has been "progressively eroded by the contemporary expansion and normalization of co-decision" (Ponzano *et al.* 2012, 41). The relatively recent developments in the EU institutional architecture, such as the legal effects of the Lisbon Treaty, the Qualified Majority Voting (QMV) in the Council and a new relationship between the EU Parliament and the Council, increased the unpredictability of the legislative procedures (Greenwood 2011) and opened a space for an extensive participation of interest groups. This had a direct impact on the nature of interest intermediation and representation at the EU level. As Greenwood notes, this new nature of the EU institutional framework and fragmentation of decision-making process prevented different interests to dominate in the lobbying process (Greenwood 2011). Furthermore, this "fragmented, multi-level structures" (Greenwood 2011, 23), opened space for a diverse body of interest groups, simultaneously weakening their direct impact on decision-makers and enhancing the "prospect of competitive lobbying" (Greenwood 2011, 23). The result was a creation of complex and interlinked networks, venues, policy arenas and points of

access which connected actors from member states, sub-national and supranational levels of authority (Greenwood 2011).

According to Obradovic, lobbying in the EU is not regulated in a uniform or coherent way (Obradovic 2009). The EU institutions, along with their distinct way of internal functioning, also have different regulations which orchestrate the lobbying practices. For the purposes of this thesis, it would be beneficial to present current interest representation frameworks of three arguably most important EU institutions: the European Commission, the European Parliament and the Council of the EU. As Bouwen notes, it would be misinforming to present lobbying in the EU as a unidirectional activity between the interest groups and institutions (Bouwen 2009). Instead, it would be better to see this relationship as an “exchange relation between interdependent public and private actors” (Bowen 2009, 19). In order to explore the nature of lobbying in these institutions, we will have to present particularities inherent to these institutions.

4.1. The European Commission:

Some authors (Nugent 2001; Christiansen 2006; Bouwen 2009) argue that the European Commission shouldn't be seen as a monolithic body, but as an internally fragmented organization. Internal fragmentation of the European Commission is a key for understanding current lobbying practices present in the Commission. Many have already noted that the Commission heavily depends on the external resources and information, necessary for its smooth operation (Edwards and Spence 1997; van Schendelen 2003 in Coen and Richardson 2009). Institutional features, such as a relatively small budget and administrative staff smaller than that of some European cities, shaped the institutional nature of the EU Commission. Legislative lobbying, considered by some as a major lobbying activity in the EU (Buholzer, 1998: 8; Bowen 2009), starts early and happens in the European Commission, which is

regarded as an “agenda-setter during the early phases of the EU legislative process (Gardner 1991; Nonon and Clamen 1991; Buholzer 1998 in Coen and Richardson 2009, 20). In the early stages of policy formulation, when no formal documents are produced, lobbyists can make changes to legislative proposal much more easily, which is on the other hand, crucial for the EU Commission, which in return “demands resources that are crucial for its own functioning: expert knowledge and legitimacy” (Bouwen 2002, 369). Legitimacy is also an important part of the European Commission’s institutional character. By involving representatives of civil organizations, which lack specific expertise and technical information that could help them influence the policy formulation phase, the European Commission is building its own reputation and legitimacy in the EU’s inter-institutional decision-making process (Bouwen 2006). Problems arise when interest groups and representatives of the civil society do not have equal access to the decision-making process. When NGOs, civil society organizations and public interest groups are not equally treated by the Commission, subsequent perception of inequality, impotence and arbitrariness can decrease the legitimacy of the European Commission. In upcoming chapters, we will analyze current situation regarding the accessibility and openness of the EC.

Commission’s inter-service consultation process plays an important role in establishing connections and communication between external interest representatives and internal officials, as well as respective Directorate-General (DG) (Bouwen 2009). Internal coordination and consultation services are responsible for connection and formal involvement of interested DG’s and lobbyists, who subsequently make contacts and “mobilize their natural allies within the Commission” (Bouwen 2009, 25). Decision-making procedures in the Commission include a number of phases in the policy formulation process. This is the reason why lobbyists and interest groups are mostly present in the “early stages”. As Nugent points out, early phase includes “the initiation phase, the drafting phase, inter-service coordination, agreement

between specialized members of the cabinets, by the *chef de cabinet*, and finally by the college of commissioners itself (Nugent 2001, 250). Private interest lobbying is happening on the lower levels and direct interaction between lobbyists and officials is often taking place. As Bouwen notices, when the legislation reaches higher administrative levels and highly ranking Commission officials or commissioners, “the higher degree of formality of the legislative document hampers considerably successful private interests lobbying” (Bouwen 2009, 26).

4.2. The European Parliament:

In contrast to the European Commission and its relatively assertive institutional powers that dominated the first few decades of the European Community and the European Union, the Parliament was left without any significant role. The change in power and subsequently, its inter-institutional position happened started to happen with new treaties. As Lehmann argues, over the past 20 years, “the European Parliament has become an equally important addressee of companies, trade associations, public affairs consultants, and citizens’ action groups” (Lehmann 2009, 39). The ultimate goal of these lobbyists/interest groups is to present specific information to Members of the European Parliament (MEPs) and “influence the regulatory environment on their behalf or on behalf of their clients” (Lehmann 2009, 40). The Parliament is unlike “streamlined hierarchical organizations such as national ministries or Commission” (Lehmann in Coen and Richardson 2009, 40), a “heteroclit and multipolar institution...with multiple veto points and opportunities for horse trading” (Bouwen 2002; Coen 2007 in Coen and Richardson 2009, 40). If interest groups want to maximize their own influence and success in the institutional environment of the European Parliament, they need to master certain lobbying techniques such as lobbying coalitions and skilled networking combined with familiarity with particular specifics of “regional or even local political priorities” (Lehmann in Coen and Richardson, 2009:40).

Same as the EU officials from the different DGs in the European Commission, MEPs of different ideological and political orientations are aware of the importance of lobbyists in their everyday working life. Lehmann argues that without pertinent and up-to-date information, “work in legislative committees would be much more difficult” (Lehmann in Coen and Richardson 2009, 51). “Real” lobbying in the European Parliament, starts in special Parliaments committees, more precisely, as soon as the rapporteur of the respective committee is appointed and starts working on its legislative report (Lehmann in Coen and Richardson, 2009). The role of the rapporteur is essential and highly important in the EU Parliament. According to the EU Parliament article about the role of the rapporteur in the legislative process:

The rapporteur’s key task is to analyze the project, consult with the specialists in the particular field and with those who could be affected, discuss with other members within the committee and recommend the political “line” to be followed. All of these considerations flow into the report they submit to the Committee... (European Parliament Article, 2006)

At this stage, as Lehmann argues, rapporteur, shadow rapporteurs, and committee chair “are the main gatekeepers in forming the opinion of the Parliament” (Lehmann in Coen and Richardson, 2009: 52). As can be seen, the rapporteurs are highly dependent on the technical expertise and practical help of officials and the committee’s staff. This is a perfect environment for lobbyists and specialized lobby groups which can on the one hand, provide the officials with very much needed technical knowledge and on the other, make for themselves useful acquaintances for future lobbying efforts. The importance of internal committee debates is evident in the way a draft report is being drawn up. Again, according to the European Parliament article:

Based on the results of the debates, a draft report is drawn up which will be discussed and amended until it is ready to face a plenary session...The report adopted by the committee comprises an explanatory statement, a motion for a resolution and amendments... (European Parliament Article, 2006)

The tactics lobbyists use to influence the members of committee's range from usual lobbying technics to more disturbing ones. Particular experience with usual lobbying tactics in the European Parliament, though before the recent rule where lobbyists have to wear special badges in order to enter the parliament building, is described by Scottish MEP Catherine Stihler as follows: "MEPs are phoned by lobbyists demanding urgent meetings or find them knocking on the office door without an appointment" (Stihler in Lehmann, 2007: 14). During the 10 year period of debates and aggressive lobbying on Directive 98/44/EC on the Legal Protection of Biotechnological Inventions, big pharmaceutical companies, such as SmithKline Beecham, Boehringer and Aventis used particularly hawkish tactics, such as "bombardment with letters and phone calls" (Lehmann, 2007:14), in order to influence the MEPs (Lehmann, 2007).

Regarding the level of openness to external pressure and reliance on the technical knowledge and expertise, the European Parliament is probably as open as the European Commission (Lehmann in Coen and Richardson, 2009). Important factor that influence the MEPs attitude or receptiveness to outside interest is the nature of interest groups and their agenda. Lehmann shows that MEPs mostly give preference to interest groups that "either represent a broad constituency such as trade unions, social movements, or political parties, or those that can provide them with an aggregate view on the most efficient ways to deal with the problems and economic consequences" (Lehmann in Coen and Richardson, 2009: 58). Non-business interest groups are more successful, and better organized than business-lobby groups for the simple reason. Members of the European Parliament are politically responsible for their decisions to people who voted for them and who gave them legitimacy to represent them on the

supranational level. That is why a great number of MEPs communicate mostly with civil organizations, NGOs and public interest groups whose advice or support can increase their chance of re-election or professional success in the specific institutional environment of the European Parliament.

4.3. The Council of the European Union:

When talking about accessibility and openness to external pressure/interest, the European Parliament and the European Commission probably rank the highest in the present EU institutional arrangement. The case of the Council of Europe is slightly different. As Fiona Hayes-Renshaw call it – “least accessible but not inaccessible” (Hayes-Renshaw in Coen and Richardson, 2009: 70) EU institution – the Council institutional nature is distinct and interesting to explore more deeply. Some argue that the Council is probably the single most important and powerful actor in the European Union today (Hayes-Renshaw in Coen and Richardson, 2009). Despite the new post-Maastricht role of the European Council, which became “the new center of political gravity in the context of EU politics” (Puetter, 2014: 148), the Council of the European Union remains the “heart of the EU decision-making” (Lewis in Puetter, 2014: 148). Relationship between the Council and the European Parliament has been seen lately as a central to the EU decision-making processes, where the traditional role of the Council as the most important legislative institution has been challenged “by the fact that the European Parliament became an effective co-legislator, and that the relative importance of legislative decision-making declined in the post-Maastricht era” (Puetter, 2014: 148). The Article I-23 of the Constitutional Treaty (A Constitution for Europe) specifies that the main task of the Council, along with the European Parliament is an exercise of legislative and budgetary functions, as well as coordination and policy-making functions (The Constitutional Treaty, Article I-23). Also, Articles I-23 and I-24 clearly point out main actors of the Council,

which consists of “representatives of Member States at ministerial level” (The Constitutional Treaty, Articles I-23 and I-24). This makes the Council a unique institution, which functions are mainly based on high-level politics and negotiation. Some authors argue that the Council’s long-standing reputation of impenetrable and secretive institution through many years influenced the lobbyist’s hesitant behavior towards the Council (Meynaud and Sidjanski 1971; Nicoll and Salmon 1990 in Coen and Richardson 2009).

The Council’s intra-institutional arrangement is complex and it is not going to be analyzed in details. It consists of the General Secretariat, which task is to assist, advice and help coordinate the work of the Council, to support the presidency of the Council and to provide logistical support. Furthermore, Coreper I is composed of deputy permanent representatives for each member state. Informal group called “Mertens Groups” prepares necessary documentation and form the ideas for positions that member of various member state delegations will adopt on the official Coreper meetings. Coreper II is composed of permanent representatives of each member state country. Same as in the Coreper I, the work of Coreper II is prepared and coordinated by the “Antici group” which helps in forming the official position that the various member state delegations will adopt at the meetings. As Hayes-Renshaw points out, Council meetings occur “at an advanced stage in the decision-making process on any particular issue” (Hayes-Renshaw in Coen and Richardson 2009, 86), which ultimately makes lobbying more difficult. The same as in the European Parliament and the European Commission, lobbying efforts in the Council are rewarded almost exclusively in the early phases. The Council is functioning by gradually accumulating agreements which are often based on compromises, which means that “the further up the hierarchy a dossier progresses, the harder it becomes to try to unpick agreements already arrived at” (Hayes-Renshaw in Coen and Richardson 2009, 86). Unlike the European Commission and the European Parliament, the Council is highly dependable on already negotiated agreements which are also sometimes highly politicized.

As it was already mentioned, interest groups can find multiple access points in EU decision-making process and enter the decision-making stage, simultaneously establishing “informal and formal contacts with the Council, the European Parliament, and the European Commission to shape the final legislative act” (Klüver 2013, 181). Lobbying through Council’s channels can vary from influencing or contacting national ministries to “the Permanent Representations of the member states in Brussels, or the preparatory bodies that consist of national officials which prepare the discussions at the ministerial level in the Council” (Schneider and Baltz 2005; Hayes-Renshaw 2009; Saurugger 2009 in Klüver 2013, 181).

Chapter 5. Recent policy initiatives on increasing transparency in the European Union

Regulation of lobbyists and concept of regulation in interest representation usually refer to “a set of codified, formal rules which are passed by parliament and written in law (which is enforced), and so must be respected” (Chari *et al.* 2010, 4). Such regulations are usually formal registration of lobbying groups in a public register, which is required before they make a contact with political and administrative officials (Crepaz and Chari 2014). Registration of lobby groups/interest groups involves “the disclosure of information regarding the lobbying activity, the spending involved and the targets of the activity” (Crepaz and Chari 2014, 75), while sometimes, these registers also include and establish sanctions for misbehavior which can sometimes result in “banning from exercising lobbying activity, to a fine or even imprisonment” (Crepaz and Chari 2014, 75). As Greenwood notes, “ ‘lobby regulation’ can embrace a variety of goals, on a spectrum ranging from limited aims of avoiding corrupt practice through to contributing to the more complex regulation of access to political institutions” (Greenwood 2011, 53). The literature on lobbying regulation generally perceives introduction of regulation as an essential tool in the fight against corruption, while other reasons and justification of regulation stem from a viewpoint where lobbying regulation is seen as an essential instrument of participatory and deliberative democracy (Crepaz and Chari 2014). Francis for example points out how “such regulations, or state constraints on the activity of interest organizations, help promote the public interest” (Francis in Chari *et al.* 2010). Theory of deliberative democracy, as it was mentioned already in this paragraph, can indeed be helpful in justification of lobbying regulation and transparency in the interest representation/lobbying practices. Along the same lines as Francis, Stasavage argues that “advocates of deliberative democracy emphasize that the deliberation that occurs in public increase the quality and legitimacy of decision taken” (Stasavage 2004, 668). Naurin argues that “transparency is

believed to strengthen public confidence in political institutions and increase the possibilities of citizens holding decision makers accountable” (Naurin 2007, 209). The literature on lobbying transparency usually struggles with finding the “theoretical justification” for the regulation of lobbying, especially on the supranational level. Deliberative democratic theory advocates simple and articulate reasons for improving transparency and upgrading lobbying regulation. Despite the fact that deliberative democracy theorists do not advocate the concept of ‘more regulation’, they perceive lobbying regulation as an exception and necessity (Chari *et al.* 2010). The problems that arise from the lack of transparency, such as moral hazard and opaqueness in decision-making processes, can be directly addressed and eliminated by making an agent’s behavior more observable (Stavasage 2003, 389). Lobbying regulations have a potential to increase the transparency and accountability and to “shed the light on an aspect of the black box of policy making, and improve the overall nature of the political decisions reached by the polity” (Dryzek 2000; Elster 1998; Keohane and Nye 2003 in Chari *et al.* 2010, 5).

5.1. Regulating Lobbying in the European Union

According to Obradovic, lobbying in the EU is not regulated in a uniform or coherent way (Obradovic in Coen and Richardson 2009). Every EU institution has its own way of dealing with the transparency issues. The European Parliament’s idea to start regulating and controlling access to the Parliament was one of the first concrete political initiatives in the EU, aimed at increasing lobbying transparency. The basic idea behind the initiative was to introduce the yearly pass for lobbyists who were concentrated on lobbying inside the European Parliament (Crepaz and Chari 2014). Lobbyists who were interested in getting access to the MEPs and the Parliament were required to “provide personal information and details about the organization and the activity pursued by it” (Crepaz and Chari 2014, 77), as well as to accept a ‘code of

conduct' which defined the behavior standard while lobbying in the Parliament. Biggest loophole and problem of this regulatory system was the fact that these rules didn't apply to lobbying outside of the Parliament building, but only required registration of lobbying activities inside the European Parliament (Crepaz and Chari, 2014). According to Holman and Luneburg, the new Parliament's registry, even though it was a cornerstone of the first wave of strong EU lobbying regulation, "was largely modeled after the weaker regulatory regimes of some European countries" (Holman and Luneburg 2012, 12). European Commission has, on the other hand, moved "more slowly from the open access policy for lobbyists towards the adoption of regulatory standards for this activity" (Obradovic in Coen and Richardson 2008, 298). As Craig Holman argues, Commission started a debate on the issue of lobbying reform "at least since 2005" (Holman 2008, 1), when Estonian Commissioner for Administrative Affairs, Audit and Anti-Fraud, Siim Kallas initiated the "European Transparency Initiative (ETI)" (Holman, 2008; Crepaz and Chari 2014). As Crepaz and Chari argue, "ETI represented an institutional response of the Commissioner Kallas, to an open letter of the Corporate Europe Observatory (CEO) and other interest groups representing civil society" (Wasselius in Crepaz and Chari 2014, 77).

Commission's Green Paper on ETI from 2006, initiated a process of consultation between the "Commission and interest groups which lasted for four months and subsequently established of a voluntary register of lobbyists in 2008 (Holman 2008; Crepaz and Chari 2014). According to Chari and O'Donovan, voluntary lobbying register "reflected the Commission's historical preference for self-regulation" (Chari and O'Donovan in Crepaz and Chari 2014), which was constantly opposed by non-lucrative organizations (Michel 2004). It is interesting to notice how the initial Commission's position on the importance of "self-regulation" didn't coincide with the preferences of a great number of politicians, civil servants and lobbyists, active in Brussels. Disharmony between the institution and actors was shown by a survey which was

conducted in 2005 and 2006 by Hogan *et al*⁷ (Hogan et al. in Crepaz and Chari, 2014). Furthermore, voluntary registration system managed to achieve “modest registration rate which peaked to around 4000 in 2011” (Crepaz and Chari, 2014: 78). If compared with the usual estimations of more than 15,000 lobbyists present on the day-to-day basis in Brussels, the successfulness of voluntary lobbying register is questionable. In 2011, the European Parliament and the European Commission reached an inter-institutional agreement, which launched the Joint Transparency Register (JTR) based on previous systems. Article 2 of the JTR stresses that:

Establishment and operation shall be built upon the existing registration systems set up and launched by the European Parliament in 1996 and the European Commission in June 2008, supplemented by the work of the relevant European Parliament and European Commission joint working group... (Article 2, Agreement between the EP and EC)

Joint Transparency Register was first tangible positive change that started the era of awareness among the political elites and EU officials and one small step further in dealing with corruption and lack of transparency on the EU level. Interestingly, the emergence of the JTR happened in the wake of one of most shocking lobbying scandals in the EU and EU institutions. So-called *Cash-for-Law* scandal happened in March 2011 and involved MEPs who promoted and passed amendments in exchange for bribes⁸ (Laurence 2011; Crepaz and Chari 2014). The scandal has deeply shaken, until then, relatively uninterested EC and EP leadership. According to Holman

⁷ As Hogan *et al.* point out, “Almost two thirds of actors believed lobbyists should be required to register, although lobbyists were slightly less sympathetic to the idea... The vast majority of interviewees felt lobbyists should file spending reports at least annually, and their contributions to political parties should be made public... A majority of respondents believed if legislation regulating lobbying was introduced, transparency, accountability, and effectiveness, in policy-making would be improved” (Hogan et al. 2008, 143).

⁸ Undercover reporters were posing as lobbyists and offering money to certain MEPs. For example, Mr Zalba, Spanish MEP said that he was the „victim of a 'trap' in which the pretend lobbyists had requested two amendments to draft legislation on consumer protection“ (Laurence 2011). Slovenian MEP Zoran Thaler and Austrian MEP Ernst Strasser resigned from the parliament, while Romanian MEP Mr Severin, also accused for corruption, was expelled from the Socialist & Democrats bloc, but remained in the parliament as an independent MEP until 2014.

and Luneburg, the scandal led to “a wave of demands for reform, in particularly from the EP President Jerzy Buzek, who established a working group in charge of reforming the lobbying regulation” (Luneburg and Holman 2012, 19).

5.1.1. Emergence of the Joint Transparency Register

Joint Transparency Regulation was primarily created in order to craft a more efficient monitoring system, both in the European Parliament and the European Commission. Even though the regulatory system was still voluntary, the new system minimized the previously existent loopholes and increased the quality of regulation by enhancing the accessibility of data and disclosure (Crepaz and Chari 2014). Voluntary character of the JTR was still seen as a problem. European Commission tried to mitigate the problem and encourage the lobby groups to “register in order to gain email invitations to meeting with registered interest groups and the Commission/EP when the policy is discussed” (Crepaz and Chari 2014, 79). Of course, for the biggest lobbying groups and experienced lobbyists this “incentive” was not attractive, mostly because “established interest groups already hold a considerable amount of information, access, and knowledge about who to target in the lobbying process” (Crepaz and Chari 2014, 79).

The monitoring agency of JTR, the Joint Transparency Register Secretariat (JTRS) is composed of EP and EC officials and was in charge of “running the register and monitoring compliance to its rules” (Crepaz and Chari 2014, 79). Again, the voluntary and non-binding character of the JTR, prevents JTRS to exercise its monitoring powers over organizations which refuse to register in the JTR database. This detail set the register on a distinct course, simultaneously making the enforcement of the rules much harder (Crepaz and Chari 2014). Punishments, such as penalties, fines or imprisonment for lobbyists who are were engaged in illegal activities/corrupt are not involved in the EU regulation rules. The only thing JTRS can decide is to “name and shame the organization by publishing the decision on the register’s

website”, or even “suspend or remove the organization from the register and withdraw EP-passes” (Crepaz and Chari 2014, 80). As it was previously pointed out, these rules do not guarantee that more experienced and wealthier interest groups which were caught in unlawful and corrupt actions, will be able to contact legislators or EU officials by other means and other locations. On the other hand, when comparing achievements of the JTR with the condition before 2011, we can conclude that ‘upgraded’ regulation has minimized the loopholes in the system, slightly tighten the sanctions against the corrupt practices and generally increased the quality of information offered at the official website of the Transparency Register.

The question of the evolution of lobbying regulations and transparency register cannot be adequately assessed without mentioning the lobbying regulations in EU member states and needs to be put in comparative perspective. A question such as whether national lobbying regulations have an impact on the transparency reforms on the supranational level or whether the EU can learn from certain member states is challenging and not easy to untangle. Nevertheless, first thing when analyzing member states and their national lobbying regulations, not surprisingly, we can notice a great diversity of practices. Lithuania, Poland, and Hungary⁹ were among the first European countries that adopted mandatory lobbying regulations. Lithuanian regulatory system is based on Law on Lobbying Activity (LLA) regulation, which came into force in 2001. All lobbyists are required to register in publicly available on-line lists. The main regulatory body which supervises adherence to ethics standards and regulates public and private interests is Chief Institutional Ethics Commission (COEC) (European Parliament, Transparency of lobbying in the Member States, 2016). If caught in “illegal lobbying activities”, lobbyists can be suspended or fined. Polish regulations are also mandatory and came

⁹ Hungarian government abandoned the lobbying regulation and replaced it by Act CXXXI of 2010. Hungary also abandoned the code of conduct, while „there is no official entry option to the Parliament building...lobbyists and lobbying organizations have lost their privileges and obligations“ (European Parliament, Transparency of lobbying in Member States, 2016).

into power on 7 March 2006 (European Parliament, Transparency of lobbying in Member States, 2016). There is no such thing as a strict code of conduct, but all entities involved in lobbying activities must register into a public register, which is also in the form of an on-line database and it is publicly accessible. Lobbyists who are registered and who want to enter the Sejm premises are required to wear special red badges (European Parliament, Transparency of lobbying in Member States 2016). Sanctions for unregistered lobby groups or lobbyists are financially fined ranging from around €700-12,000 (European Parliament, Transparency of lobbying in Member States 2016). These two cases are examples of strong lobbying regulations enacted before the actual EU JTR initiative. But, what about other EU member states? According to the EU Parliament's Transparency Unit, "there has been a considerable evolution in the area of regulation over the past few years, as Member States respond to increasing public concerns about the transparency of interest representation (European Parliament, Transparency of lobbying in the Member States 2016).

The most recent mandatory lobbying regulation laws have been passed in Austria (2013), the United Kingdom (2014), Catalonia (2014) and Ireland (2015). Currently, there are six Member States with statutory lobbying regulation¹⁰ and four Member States with voluntary system of lobbying registration – so-called soft regulations¹¹ (European Parliament, Transparency of lobbying in Member States 2016). Among the remaining Member States who do not have lobbying rules¹², six of them have self-regulation mechanisms which are "set up by the public affairs community to promote the transparency of lobbying" (European Parliament, Transparency of lobbying in Member States 2016). After all, EU Member States are slowly adopting lobbying regulations, necessary to maintain a certain level of transparency in a

¹⁰ Countries with statutory rules: Austria, Ireland, Lithuania, Poland, Slovenia, the UK

¹¹ Countries with soft regulations: France, Germany, Italy, the Netherlands and the EU

¹² Countries with no statutory rules: Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Luxembourg, Malta, Portugal, Romania, Slovakia, Spain, Sweden.

decision-making process. The fact that only six EU member states adopted mandatory lobbying regulation is not encouraging. Due to these reasons, EU's responsibility to set the example for its Member States is even greater. The external impetus for a reform can and should be coming from the EU. Increasing the transparency of lobbying on the EU level is not going to be an easy task without spreading awareness and reforming national legislations.

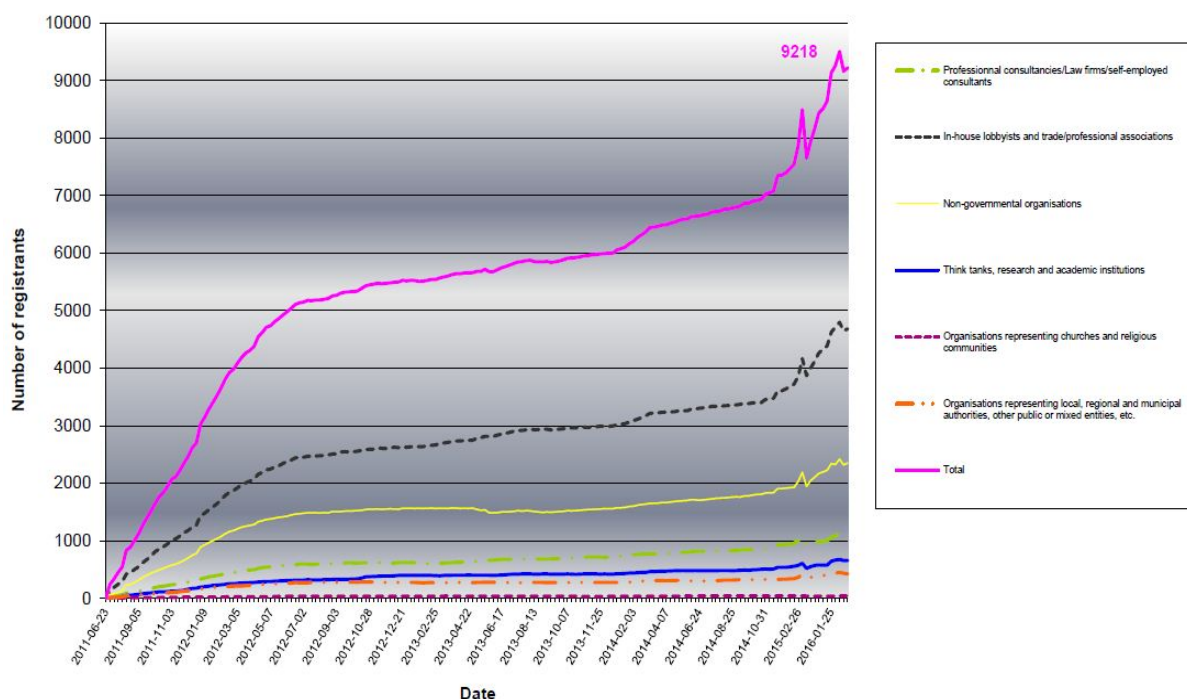
In order to get the better picture of the current situation on the EU level, we will present data acquired from the online Transparency Register database and analyze which interest groups are the most active in the European Commission and the European Parliament and eventually examine the general registration trend from 2011 until the January 2016. This will give us a short overview of the current Transparency Register composition and its evolution in a time period of 5 years.

5.1.2. Evolution of the Transparency Register and current data

The backbone of the modern/latest version of EU's lobbying register is the online website which contains a full database of business organizations, NGOs, civil society representatives, and think tanks involved in lobbying. Online Transparency Register offers the possibility to register or update the data about the organization which are currently lobbying or are planning to lobby, consult the register and get the statistical data about every registered organization, and submit complaints or alerts regarding the register and its transparency. A great number of authors who analyze lobbying and interest representation in the EU estimate that some 15,000-30,000 interest groups operate (actively or passively) in Brussels each year (Coen and Richardson 2008; Greenwood 2011; Chambers 2016; Crepaz and Chari 2014; Corporate Europe Observatory 2011). As it was already mentioned in this chapter, official numbers of interest groups registered in JTR are not even close to the number of 15,000, claimed by a

reasonable number of scholars, researchers, and NGOs. Nevertheless, data available to public shows a steep rise in the registration of interest groups at the EU level.

Figure 2. Evolution of registrations 2011-2016, source: JTRS's Transparency Register statistics, 23/5/2016



As it can be seen from the *Figure 1*, a number of registered organizations is on a constant rise, except a brief fall of registered organizations in late 2015. In the end of May 2012, there was a total of 4924 registered organizations, of which almost half (2343) were registered as in-house lobbyists and trade/professional organizations (Transparency Register statistics 2016). In late May 2013, the register kept growing and had 5678 registered interest organizations. Again, the largest group were business organizations and in-house lobbyists (2813 organizations). In May 2014, there were around 1000 more interest groups, than in May 2013 with 6590 interest groups voluntarily registered in the Transparency Register (Transparency Register statistics 2016). In late May 2015, 7650 organizations registered in the JTR and eventually on June 8th there are 9333 registered organizations of which 4775 are classified as in-house lobbyists, trade/professional organizations (Transparency Register statistics 2016).

Statistics for the Transparency Register	
I -Professional consultancies/law firms/self-employed consultants	1,063
Professional consultancies	647
Law firms	107
Self-employed consultants	309
II - In-house lobbyists and trade/business/professional associations	4,748
Companies & groups	1,728
Trade and business associations	2,129
Trade unions and professional associations	611
Other organizations	280
III- Non-governmental organizations	2,358
Non-governmental organizations, platforms and networks	2,358
IV- Think tanks, research and academic institutions	678
Think tanks and research institutions	469
Academic institutions	209
V - Organizations representing churches and religious communities	43
Organizations representing churches and religious communities	43
VI - Organizations representing local, regional and municipal authorities	433
Regional structures	108
Other sub-national public authorities	99
Transnational associations	60
Other public or mixed entities	166

Figure 3. Sections and subsections of interest groups in TR on 08/06/2016, source: Transparency Register website

In-house lobbyists and trade/business organizations are, again, the biggest group currently present in the EU Transparency Register. Companies & groups subsection includes a broad specter of privately and publicly owned enterprises and firms. Firms such as Toshiba Corporation, Stadtwerke Hannover, Vimeo LLC and Louis Vuitton are all registered members of TR. The biggest subsections are trade & business associations. According to the latest data, there are 2129 registered associations. It is important to notice that in addition to being a single largest interest group in the register, business and trade associations are also very influential. They possess resources, technical expertise and knowledge valuable to either MEPs or officials

employed in any EU institution. The car industry in Europe and particularly in Germany is one of the most powerful and effective industries in the world. Their lobbyists are present in Brussels and are constantly increasing lobbying efforts (Corporate Europe Observatory 2015). Car manufacturers' trade associations, such as ACEA (Association des Constructeurs Européens d' Automobiles) and VDA (Verband der Automobilindustrie) spent €2.5m in 2014 (Corporate Europe Observatory 2015). Such trade and business associations are skillful in utilizing and “providing a cost-effective means for companies to access key decision makers, develop contacts and to understand the legislative agenda” (Fagan-Watson *et al.* 2015, 21). Big companies such as VW, BMW and Daimler are all member of trade associations and are at the same time, independent lobbying actors which are actively involved in the EU's legislative process.

On the other hand, business and trade associations are also passionately “fighting” on other legislative fronts. Climate change and its effects on the wellbeing of citizens and businesses in the EU is an important policy area. Fagan-Watson *et al.*, argue that companies operating in the EU which are specifically interested in influencing the EU's climate policy also recognized that “trade associations can be a powerful tool for influencing policymakers” (Fagan-Watson *et al.* 2015, 9). Trade associations for energy-intensive sectors and the fossil fuel industry are according to Fagan-Wilson *et al.*, specifically interested in two policy areas – “the EU's 2030 framework for climate and energy policies, and structural options to strengthen the EU Emissions Trading System” (Fagan-Watson *et al.* 2015, 7). The fact that companies realized the adverse effects of climate change on the global economy, and are aware of risks for their businesses, reputation, as well as the risk of burdensome regulations, engaged companies in lobbying activities on an unprecedented scale. For these reasons they are often well prepared and organized, and use a variety of mechanisms in order to influence the particular political/legislative decision (Fagan-Watson *et al.* 2015, 6-7). The tactics and tools most often

used by trade associations and their partners are pointed out by Fagan-Watson *et al.* (2015), and include:

- Establishing key relationships and briefing policymakers;
- Shaping the policy agenda at an early stage, including pushing new policy initiatives and agendas within the European Commission, Parliament, and Council of Europe;
- Utilizing companies and other stakeholders to drive messages home – organizing meetings and dinners between CEOs of large companies, and EU Commissioners;
- Press work, publishing open letters and adverts;
- Writing briefing papers and formal letters, and sharing information with policymakers and companies;
- Providing technical information and advice.

(Fagan-Watson *et al.* 2015, 7)

Finally, by showing statistical data and historical trend of registrations in the Transparency Register, as well as presenting stakeholders and interest groups currently registered in the TR, we can draw some conclusions. Even though the general trend of registrations in the TR is positive, due to its voluntary nature, it cannot be considered as a reliable and fully comprehensive source of information. Transparency register should be seen as a central station and a hub of transparency and accountability. Current information provided by the Register is not seen as helpful in determining or monitoring lobbying activities and sometimes includes data that is either obsolete or incomplete (Transparency International, Public Consultation 2016). In the next chapter, we will assess and present recommendations for the EU decision-makers, based on the professional consensus of lobbyists and organizations specialized in

issues of transparency and corruption and corruption control. After that, we will draw some conclusions.

5.2. Policy recommendations and final discussion

The debate about transparency and tighter and more comprehensive lobbying regulations smoldered for many years in European political and public space. Occasional lobbying scandals such as *Cash-for-amendments* scandal (2011), Dalligate scandal (2012-2013) and the VW scandal (2015), shocked and provoked discussions on all levels of the EU. More than anything, these scandals revealed and showed to the public that the EU institutions suffer from the lack of transparency and do not possess instruments or mechanisms which could at least mitigate or suppress corrupt practices in the lobbying process. Before Jean-Claude Juncker became a president of European Commission, he created and presented a program of governance reform, in which he emphasized the importance of enhancing transparency in the EU institutions. Juncker promised that he will propose an Inter-institutional Agreement to Parliament and Council “to create a mandatory lobby register covering all three institutions” (Juncker 2014). A year later, in September 2015, the Commission issued a progress report and list of its 10 priorities for 2016. Issues regarding the transparency register or lobbying regulations remained on the Commission’s main agenda, but now they are mentioned only in the context of future, but not present plans. Commission expects a “conclusion of the negotiations for an Interinstitutional Agreement between the European Parliament, the Council and the Commission on Better Regulation by the end of the year” (European Commission, Letter of Intent 2015).

Current complex political and economic situation in the EU, contributed to the slowdown of the lobbying transparency reform, opening a potential space for political confusion and frustration. Inter-Institutional Agreement (IIA), between the Commission, the European

Parliament, and the Council is a complex and ambitious reform that should be taken seriously and implemented thoroughly. In the light of these events, this thesis is going to provide some solutions for the current situation and, thus answer the research question. The Transparency Register reform should be one of the central pieces of the much broader transparency reform and will be included in this proposal as an important asset that can enhance the transparency of the overall lobbying process.

First of all, lobbying registration must be mandatory for all parties and all stakeholders involved in the lobbying process. As Luneburg and Holman argue, previous examples from the US and the current situation in the EU show that voluntary registration programs are not effective in capturing lobbying organization in the Transparency Register (Luneburg and Holman 2012). Furthermore, lower levels of registration in the voluntary register, “might be explained by concerns regarding the competitive disadvantages of registration when others are not required to register” (Luneburg and Holman 2012, 16). Most important of all, registration and public disclosure of all stakeholders involved in the lobbying at the EU level has to be uniform across all sectors of interest representation, including business interests. If not, “registration records will not reflect the reality of money and influence peddling” (Luneburg and Holman 2012, 16). Also, Transparency International believes that mandatory registration which is legally binding for every interest group or individual lobbyist “is the best tool to bring about meaningful lobbying transparency” (Transparency International, Public Consultation 2016).

Strict rules and penalties for illegal activities should be an important mechanism which could have a substantial impact on the behavior of individuals and groups present in the decision-making process. Unregistered lobbyist should not have access to any EU institution, while visitors that are not listed in the Register should sign a declaration that they are not representing nor lobbying for any group or organization (Transparency International, Public Consultation

2016). Furthermore, unregistered lobbyists should not be able to attend meetings with the EU officials and MEPs. This is crucial measure and should be applied not just to interest groups, but also to the EU officials, the president of the European Commission, committee chairs, rapporteurs, and commissioners. Also, penalties for illegal actions should be harsh. That includes fines or even imprisonment up to three years. Organizations and individual lobbyists which broke the rules or have had bad entries should be temporarily suspended and no longer get access to the Commission, European Parliament or Council.

The Code of Conduct exists, it is relatively appropriate and covers the most important aspects of lobbying ethics, but it is not adequately enforced and it is sometimes vague. The part of the problem is the fact that the Code of Conduct does not sufficiently define certain parts, such as “inappropriate behavior” or “providing misleading” information (Code of Conduct 2014). It is very hard to control information provided by lobbyists if the Register is voluntary and do not control or penalize the lack of or verity of provided information. On the other hand, “inappropriate behavior” does not define what instances are considered as an inappropriate behavior. Despite all the scandals that happened in the last few years (e.g. *Cash-for-Amendments*), no lobbyist or lobbying organization have faced neither a public condemnation nor any kind of penalty. Currently, sanctions predicted for a breach of the Code of Conduct include removal from the Register, which is voluntary. As it was already mentioned in this chapter, introduction of sanctions cannot be properly done without implementing serious and comprehensive rules that would regulate actions of interest groups. Current limited monitoring and absence of strict ethical code does not incentivize stakeholders to provide or update their information, which leads to dismal quality of data (Transparency International, Public Consultation 2016). For example, in Transparency Register, “as a part of the annual updating cycle, [only] 58 % of organizations have simply changed the financial year to the next – not

making any changes whatsoever to the legislative files they work on” (Transparency International, Public Consultation 2016).

EU institutions should establish a legislative footprint which would include and publish the details about every step of a particular lobbying activity. It should include details, such as time, names of clients and officials and topics of conversation between them. All three institutions of the EU should have a comprehensive and robust system of disclosure, which could be able to record and disclose input received from interest representatives, which include policy proposals, draft policies, amendments, and laws. By doing this, all EU officials, including high positioned politicians, as well as everyone who is involved in the decision and policy-making process, should record and present data on their contacts with interest groups. Disclosed data should include dates, names of the individuals and lobbying organization, clients, and topics of discussion (Berg and Freund 2015). It is also important to disclose the lobby information in a timely manner, which means that it should be posted close to real time, without any substantial delay.

Lobbying regulation must be focused on a broader issue of “equality of opportunities of access, structural imbalances in resources and the integrity in interest representation” (Transparency International, Public Consultation 2016). Indeed, an ideal set of lobbying regulations would encompass and address all potential issues that could arise from lobbying activities but that is almost impossible and unreal to expect. Instead, the EU should focus on improving transparency in order to provide citizens and stakeholders involved in the lobbying process with enough information which will demonstrate who is influencing decision-making process and how are the officials and politicians representing and protecting the common interest in front of interest represented by much smaller, but very influential entities. Politicians and lobbyists should be interacting in a specially designed and strictly defined “arena” which will

make them aware that citizens and other stakeholders, interested in the particular issue, are watching and constantly monitoring their interactions with interest groups. More precisely, politicians, high-ranking officials, from all EU institutions, should not meet with unregistered interest groups or lobbyists.

Conclusion

The main purpose of this thesis was to dig deeper into the EU's lobbying regulations system, explore current regulation of lobbying practices in three central EU institutions – the European Commission, the European Parliament and the Council of the European Union, scrutinize recent policy initiatives, as well as the current trends in regulating lobbying which include emergence and evolution of the Transparency Register. Ultimately, we emphasized the need and importance of the stronger and more comprehensive lobbying regulation system, in which the EU's Transparency Registry should play the main role. Lobbying regulations on the EU level exist and they are valuable, however, they are neither comprehensive, robust nor mandatory.

This thesis analyzed current regulatory framework of three “core” institutions, current lobbying practices in these institutions, emergence and evolution of the Transparency Register and concluded that lobbying transparency on the EU level is showing some positive signs and it is gradually improving. For example, if we compare a number of registered interest groups in 2011 and 2016, we can see a slight improvement. As shown in the *Figure 1.*, registrations are growing each year and the Register is becoming more sophisticated. Nevertheless, a number of scholars suspect and agree that the actual numbers of interest groups and lobbyists are much higher. This raises the question of the usefulness of the Transparency Register and implies that a great number of unregistered interest groups “secretly” operates in Brussels.

There are also other problems such as the voluntary nature of the Register, vague Code of Conduct, lack of strict penalties for violation of the Code of Conduct, and the Transparency Register which does not cover the Council and other EU institutions, that have to be addressed and solved in order to increase the transparency, increase the trust in EU institutions and regulate interest representation more efficiently. The analysis of structural problems that affect

the process of lobbying on the EU level, examination of deficiencies of the Transparency Register, and providing of constructive critiques and recommendations for policy-makers, we contributed to the current literature and debate on the importance of lobbying transparency.

Future of the lobbying regulation research is undeniably going to be interesting. If or when the proposed reform of the lobbying regulations takes place, it would be necessary to gradually explore the effects of mandatory Transparency Register on the quality of the lobbying process, as well as on the level of transparency. In order to achieve that, the Register and overall situation would have to be monitored for a few years. It is going to be vital to determine whether tighter and more comprehensive lobbying regulations actually have a substantial and positive impact on the lobbying process and whether the perception of EU institutions is going to be more positive among the EU citizens.

Lobbying is essential democratic tool or mechanism, important for every healthy democratic system. It provides politicians, legislators, civil servants and officials with valuable insights, technical knowledge and expertise which are crucial for an effective policy and decision-making process. On the other hand, interest representation is sometimes associated with secrecy and unfair advantages for certain groups which are either wealthier or possess specific technical knowledge, valuable for decision-makers. Public interest should be protected by specific regulations which will safeguard transparency and integrity of the lobbying process, simultaneously widening the space and including interest groups which advocate all sorts of interest.

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