

1. Introduction

1.1 OVERALL RESEARCH QUESTION

Steven Lukes stated in 1974 that one should study power as having three 'faces' or dimensions. The first dimension concerns the power of political leaders to fight observable conflicts in the decision-making process; power is winning the political battle. The second dimension is the power to control agendas; what is discussed and what is excluded. Previous discussions on the concept of power had been limited to those forms of power that could be seen, that is, these two first dimensions, and the overt use of power in political decision-making processes. It is not sufficient, however, to study concrete, observable behaviour. Therefore, Lukes argued, that the third 'critical' dimension of power should be considered in political analysis (Lukes 1974).

Lobbying belongs to this third dimension. It is not obviously measurable as it often takes place behind the scenes and hidden from public scrutiny. Therefore, the third dimension deals with the hidden use of power. Overt and also covert observable conflicts should be included in political analysis. Such 'latent' conflict 'consists in a contradiction between the interests of those exercising power and the real interests of those they exclude' (Lukes 1974, 24–5). Furthermore, 'The conflict is latent in the sense that it is assumed that there would be a conflict of wants or preferences between those exercising power and those subject to it, were the latter to become aware of their interests' (*ibid.*, 25). Because not all conflicts are measurable, we must infer their existence.

In other words, lobbying can impact on the first, second and third dimensions of power: by shaping decisions that are taken, by ensuring that some decisions are never taken, and by shaping the culture and the consciousness of actors to ensure that some issues are not recognized as being those for which decisions should be taken. Lobbying then raises the prospects of decisions that are supposedly

in the public interest being distorted by the power of private actors. Clear issues of democracy and accountability emerge, which raise questions about how to assess the impact of lobbying and potentially also how to regulate the processes therein. According to Gouldson and Murphy (1998, 8), government and industry may, for example within environmental policy, 'attempt to alter the climate of opinion that surrounds the policy process to ensure that particular issues do not come to be perceived as problems that need to be addressed by policy-makers'. Thus, where the need for action is recognized, 'they may seek to change the nature of the decisions that are taken so that they reflect or at least fail to challenge their own interests' (ibid., 9). Therefore, it is unlikely that the decisions that are taken will lead to the optimal outcome. Interest groups may distort macroeconomic decisions.

Hidden lobbying may, for example, benefit some producer groups at the expense of consumer groups (Daugbjerg and Svendsen 2001). A given interest group will, in practice, take on a professional representative, a lobbyist, to secure the overall goal of the group; for example to obtain environmental target levels and higher market shares. Interest groups want to maximize profits just like firms in the market, for example by achieving environmental target levels and higher future market shares. The lobbyist will negotiate on behalf of the group and must seek to maximize the total benefit of the group. If this does not happen, the leaders of the interest group will find another and more efficient lobbyist.

What are the potential impacts of lobbying and possible attempts to persuade political decision-makers in the European Union (EU)? Here, rational choice theory may offer an important insight when focusing on the role of lobbying. Establishing clear rules of the game for lobbying may reveal how various interests influence political decision-makers and political outcomes. Such regulation of lobbying exists at the moment in the United States (US), but not in the EU. Thus, we highlight the hidden lobbying problem in the EU and consider a possible best-practice system for regulating such activities. The overall research question in this book is: Should lobbying be regulated in the EU?

1.2 LOBBYING

The word ‘lobby’ means a large foyer, in this context outside a parliament, where representatives for external groups (lobbyists) can meet and try to persuade the political decision-makers. Lobbying is the practice of trying to influence political decisions through a lobbyist who acts on behalf of another person or interest group. Lobbying involves face-to-face interaction and individual communication between lobbyists (those seeking to influence) and political decision-makers (those to be influenced). Hillman (2003, 447) writes that lobbyists do not present themselves with the challenge of ‘What productive activity can I undertake today to earn income?’; rather, they ask the question, ‘What can I convince someone to do for me today?’ Lobbying is relevant in all situations where ‘people feel that people in government are amenable to persuasion to provide privileged personal benefits’ (*ibid.*).

Economically harmful lobbying is therefore to seek redistribution in one’s own favour at the expense of one’s fellow citizens. These redistributive gains could come in several shapes and forms, such as granted monopoly power, quotas, subsidies or other types of market protection (Buchanan and Tullock 1962; Posner 1975).

To most people, the word ‘lobbying’ sounds like a bad thing. Special interest groups are often perceived as actors that pursue their own interests at the expense of the public good. Specific labour unions and companies, for example, might persuade policy-makers to protect them from foreign competitors by imposing trade restrictions. It may also be that one person’s ‘special interest group’ is another person’s ‘deserving workers’ or ‘crucial national industry’. Lobbying, however, is not necessarily a bad thing. On the contrary, clever bureaucrats or politicians may use lobbyists in a positive sense through professional meetings and obtain ‘balanced’ information from both sides, that is, from both strong and weak groups (Svendsen 2010).

The risk of hidden lobbying, however, is that some groups typically have stronger incentives to act and overcome the problem of collective action than do other groups. Asymmetric organization in the political arena can therefore cause distortions of political decisions that benefit some special interest groups but not others and may, at the same time, not serve the needs of society as a whole (Schendelen 2010). Symmetric information, by contrast, is feasible if

'good lobbying' prevails; that is, if political decision-makers openly use lobbyists from both strong and weak camps to obtain free information. As demonstrated in this book, the problem is, however, that producers are often far stronger than consumers and are thus better represented by lobbyists. To this we may add a lack of transparency and openness, hence also a demand that everything must be able to bear scrutiny. In general, we argue in this book that lobbying is constrained by institutions and that it can take place in a legal form (lobbying) as well as an illegal form (corruption) (Svendsen 2011).

1.3 TRANSPARENCY

A hidden lobbying problem is the current state of affairs in the EU. In the absence of mandatory registration for lobbyists in Brussels, it is not yet possible to establish the actual number of lobbyists. The European Commission has guessed that around 15000 full-time lobbyists work in Brussels (Commission 2006a). Another guess is that 16500 full-time lobbyists is a more appropriate number, and that the number of 'part-time lobbyists' amounts to around 100000 (Guégen 2007). Thus, there is a strong need to develop better data on lobbying and interest organization politics in the EU (Coen 2007; Berkhout and Lowery 2008; Kurrild-Klitgaard 1998). In contrast to US scholars, who can take advantage of much research on US interest organizations using lobby registration data, EU scholars do not have access to such high-quality data sources due to the fact that lobbyists are not yet registered and regulated. Formal legislation in the EU corresponding to the US Lobbying Disclosure Act of 1995 does not exist.

Due to the persistent lack of transparency in the EU system, the Commission launched its Transparency Initiative in 2005 (Kallas 2005). Lobbying activities should be made more transparent via the implementation of three proposals (Commission 2006b). First, information on the cooperation between special interest groups and lobbyists should be published on the Internet, including data on who the lobbyists represent, their general goals and how they are funded.

Second, there is voluntary registration of special interest groups in the EU's database for interest organizations. A voluntary registration system gives lobbyists an incentive to register; namely that consultation regarding EU initiatives is contingent upon registration.

Moreover, lobbyists must sign a declaration that they will adhere to an established 'practice for good lobbying'.

Third, the Commission encourages voluntary self-regulation among lobbyists in relation to the 'practice for good lobbying', recommending that that lobbyists fulfil the following three minimum standards in their self-regulation: (1) interest groups are honest about their motives when they contact the Commission; (2) interest groups do not give the Commission misleading information; and (3) interest groups do not offer inducements in return for favourable regulation. The operative word in the Commission's proposal is 'voluntary': voluntary registration and voluntary self-regulation for special interest groups; so formal and mandatory regulation of lobbying in the EU still remains lacking.

Concerning this 'practice for good lobbying' and voluntary self-regulation, the European interest organization for lobbyists, SEAP (Society of European Affairs Professionals), has its own rules for good conduct. SEAP was founded in 1997 and its goal is to encourage professionalism and self-regulation among lobbyists. SEAP finds that self-regulation is the most effective way to control lobbyists and has therefore prepared a recommended code of conduct (SEAP 2007). The code is formulated in broad and vague terms and talks about professionalism and so on, but has hardly any effect in terms of regulating behaviour. The European Parliament also requires 'practices for good lobbying', but just as with the SEAP code, it is unclear what 'good conduct' means (European Parliament 2004). According to Kanol (2012, 522): 'Regulation of lobbyists refers to the notion that there should be rules which the interest groups must abide by when trying to influence public decision-making.' But when have the rules been broken?

The need for quick intervention and regulation is strengthened by the tendency for still more aggressive lobbying strategies. Brussels is now the centre of power in Europe, and this is where interest organizations are fighting for a larger piece of the cake. Concurrent with an increasing EU budget and more regulation of the market, the producer groups' net benefits from successful lobbying are increasing as well. During his involvement in the preparation of a draft for a new EU treaty, one of the veterans, the experienced lobbyist Christian D. Fouloy, declared that self-regulation of lobbying does not work. Consequently, the Commission must use all means available to radically change present policy in the area (CEO 2004; Svendsen 2008).

Basically, Siim Kallas, who initiated the European Transparency Initiative, has fallen short of getting results (Kanol 2012, 525).

Chari and O'Donovan (2011, 122) argue that the ongoing voluntary register, called the Transparency Register from 2011, does not work in terms of participation from lobbyists and ask: 'What is the commission waiting for?' As stated by Transparency International (2014, 54):

The most pressing issues regarding lobbying at EU level are the reform of the voluntary EU Transparency Register; increasing decision-making transparency in all the core institutions by, for example, creating effective legislative footprints; strengthening the post-employment rules; and ensuring that there are meaningful sanctions for breaches of lobbying and transparency rules.

The Commission, however, has not yet been willing to push for such needed reforms.

Kanol (2012, 524) refers to research showing that the 'fifty largest companies in the EU have not in fact registered to the voluntary register and they are lobbying in secret'. This means that, for example, companies including Apple, General Motors Europe, Deutsche Bank, Goldman Sachs, and so on, are not in the register. Moreover, companies can leave the register and enter again whenever they like. Still, in spite of this confusion and lack of transparency, it is methodologically possible to accumulate some knowledge by partial analysis and focused research questions. Rational choice theory, for example, allows the formulation of strong and testable hypotheses (Levi 2000, 835–7). So partial analysis based on focused research questions and strong rational choice theory is the methodology this book rests on.

1.4 CORPORATISM AND PLURALISM

In the rational choice approach, the state is pushed and pulled by lobbies and interest groups that are more interested in redistribution and favouring their own groups than in economic growth for society overall. In a pluralistic system characterized by free competition between interest groups to influence decision-makers, resources will be redirected from production to lobbying. Relevant for policy choice is also that the institutional set-up in the political arena of the EU can be characterized as a pluralistic system with free competition

among the lobbying groups (Woll 2006). Consequently, Brussels resembles Washington, DC more than the national capitals in the EU. Pluralism primarily favours small producer groups who have a clear interest in preferring pure pluralism over corporatism, which automatically includes larger groups of consumers and more weakly organized producer groups (Svendsen 2003).

Thus, the Commission may distort the representation of producers from different sectors or countries in relation to the situation under free competition. As the initiator of legislation, the Commission can thus use its discretion to choose which producer groups it wants to incorporate in the legislative preparation processes (Schmidt 1999; Wallace and Wallace 2001). This is in stark contrast to, for example, the Scandinavian corporatist model with its formalized rules for incorporating all affected interests in the decision-making processes, that is, both producers and consumers (Christiansen and Rommetvedt 1999; Christiansen et al. 2010). Lobbying plays an important role in a pluralistic system, and it is crucial for any interest group to hire the best lobbyists and build a base in Brussels. Thus, the EU interest politics have been named an 'elite pluralist environment' (Coen 2007).

Furthermore, we know that most interest groups represent producers. In their study from 1995 of 693 formal EU interest groups, Greenwood and Aspinwall (1998) found that two-thirds were producer groups; approximately one in every five represented non-profit interests such as environmental or aid organizations; whereas only one out of 100 represented consumer organizations. Greenwood (2003) has estimated that business and private organizations represented 76 per cent of EU interest groups compared to 20 per cent of public interest groups. Coen (2007, 335) refers to a similar result: 'recent figures from the European Parliament, which assert that of the 5039 accredited interest groups 70 per cent are business oriented and 20 per cent are non-governmental organizations'.

Unregulated lobbying means that things take place beneath the surface and hence do not reach the general public. The lobbying problem is reinforced by the so-called 'democratic deficit' in the EU since the power is rooted in bureaucracy (the Commission) rather than in the Parliament (George and Bache 2001). The fact that the Commission has the legislative initiative in the EU makes it easier for well-organized interest groups to lobby for their own benefit at the cost of taxpayers, consumers and economic growth (Murphy et al. 1993). Kanol (2012, 520) puts it this way:

Undue and opaque nature of influence of interest groups on the policy-makers may have serious implications for the democratic legitimacy of a polity, and not least the European Union where a crowded number of interest groups lobby Brussels intensely. Therefore, regulating lobbying should be put on the top of the agenda of policy-makers that are concerned with the democratic deficit of the EU.

While consumers lose consumer surplus, producers experience an increase in producer surplus because they can increase their prices (due to reduced competition) and still sell more. Although society at large is worse off, the producers prefer this situation (compared to the free trade situation). Thus, to fully understand the choice of regulation, it is crucial to identify the potential winners and losers from the status quo or new government intervention. Producers will in fact be willing to invest in persuading the political decision-makers up to the point where their gain from market protection matches the total lobbying costs. Without enforcement of lobbying regulation, even more interest groups will accumulate over time, and reduce the efficiency of the economy (Heckelman 2007; Olson 1982).

As described in Chapter 2, The EU budget is a manifestation of that situation. Out of a yearly budget of approximately €143 billion, three-quarters goes to the two main redistributive policies (structural funding and agricultural subsidies), and is paid out as subsidies and market protection instead of being invested in collective goods that further enhance free trade and economic growth. Even though society as a whole benefits from free trade, individual industrial groups might nevertheless face losses and therefore oppose free trade. In short, the paradoxical result is that these lobbying groups will ask for more regulation and bigger government; that is, less market and free trade (Berggren 2003).

Consequently, intervention is crucial to eliminate the negative form of lobbying which concentrates on providing special advantages for a small number of people at the expense of the larger population. High sugar prices, for example, are a result of a high and guaranteed minimum price above the free market price, to the benefit of sugar beet producers in the EU but at high costs for taxpayers and consumers. In this way, this book introduces the concept of redistribution in its negative sense, namely as a harmful economic redistribution of money from consumers and taxpayers to particular producer groups. In that sense, harmful economic redistribution is in direct opposition to the European dream of free trade.

1.5 OVERVIEW

The idea of this book is that ‘imbalanced’ and negative lobbying may lead to corruption, subsidies and trade barriers rather than the desired free trade. Such policies do not serve the entire cause of the EU. Unregulated and hidden lobbying may make it difficult to build up more trust in the EU system. If we do not have a clear picture of how political decision-makers in Brussels are influenced and by which interests, there is a risk that money from the EU citizens is not managed in an economically optimal way and thus ends up in the wrong pockets.

To answer the overall research question about whether lobbying should be regulated or not in the EU system, the book proceeds in the following way. First, by means of the rational choice approach, Chapter 2 examines how power centralization in the EU may affect lobbying and economic growth. In the line of bureaucratic power centralization and the current institutional set-up, Chapter 3 focuses on the risk of budget maximization and corruption problems. Chapter 4 uses the case of trade in greenhouse gases (GHGs) as a case study on how to measure lobbying indirectly, and discusses the risk of cheating in the trading system as well.

Chapter 5 then uses the case of green industries (organic farming and wind turbines), considering their lobbying strength in relation to the group size theory by Olson (1965). Successful lobbying from green industries may result in the use of economic instruments that promote an earlier switch point in time, for example from brown to green energy, and potential first-mover advantages and market protection are considered. Chapter 6 deals with countervailing lobbying among brown and green power plants and discusses the potential waste of resources. Chapter 7 gives examples of alignment of incentives and potential coalitions among lobbying groups. Finally, Chapter 8 discusses whether lobbying should be regulated or not to make the European Dream come true. Here, possible policy choices are considered based on the US experience.