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A GUIDEBOOK ON LOBBYING

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Preface by Sandro Serenari, Ph.D

This Guidebook is a product of an effort to simplify the world of lobbying and transfer it from an academic dimension to a dimension closer to most readers. Still, it has been built on sound academic foundations and methodology, which guarantees the high level of quality of this joint research work.

This brief work realised by Duško Krsmanović effectively helps readers understand the subject and opens the debate to several significant opinions about participation in public economic life, seen from the standpoint of private and public individuals. Following the path of the most considerable studies in the matter of representation and interest promotion, the author's work retraces the continuity line that links the participation of stakeholders to public choice and the market.

The partial European reforms and judicial actions, which have never been fully completed, have recently relocated interest representation policies in an upward (Europe) and downward (Regions) devolution scenario, which altered the traditional perception of the relationship between politics and economy. On various authority levels, from local to communitarian through the different roles of the central governments, interest representatives need to develop progressive competences. These competences refer to the ability to sustain influence activities in the upper level, and this significant ongoing change opens the way for new European professions, but in a more competitive scenario which is more politically more democratic and at the same time more acceptable on the market.

Lobbying practices in Europe define the access possibility as that which allows exchange and, just as importantly, influence; the good is immaterial – *information*. The author underlines that the centre of the issue lies not in simply collecting

information, but mainly in the ability to create original information, through careful intelligence activities.

The young professional generation of the new Europe (as it is already in the US) is now faced with a dual task: to perform information activities aimed at influencing both the process of evolution of regulations and the use of financial resources. The frame of reference consists of formal and informal activities, or rather of the legislative process and opinions which lead to approvals which are developed around specific issues. The substance of these practices is therefore multipart: actors are involved in an extensive practice in order to produce aggregate information which has the potential to efficiently promote partisan interest. This happens through complex commercial diplomatic activities among individuals in a network, capable of creating a critical mass suitable for promoting the action of lobbying. By taking into account these variables, we need to emphasize the essential elements of this "network game". These techniques of institutional communication are today a fundamental asset in the context of both global and local issues, in the old and in the new Europe, in which the speed and hostility of information are the antagonists with which everyone will have to deal promptly.

The Complex World of Lobbying

Daniel Guéguen

European lobbyist for 40 years

Chairman of PACT European Affairs

Vice-chairman of Europolitics

There are as many ways of lobbying as there are institutional systems, but it is still a complicated job! This Guidebook offers a useful introductory path into this complex world.

What is lobbying? Basically, it is a counter-power, and every power needs a counter-power. Lobbying makes sure that the voice of business and civil society is heard in political debate. It is an important activity, even though its image is often tarnished due to manipulation and even corruption.

Having said that, it is difficult and challenging to talk about lobbying in general terms as lobbying actions are closely linked to the institutional system where they are applied. Lobbying in Washington is not the same as lobbying in Paris since the decision-making processes, the political culture and the way political parties are financed have absolutely nothing in common.

This is just as true on the European continent: lobbying in Brussels – the capital of Europe – has nothing in common with lobbying in Rome, Berlin or London. As the European Union is not a country, its institutional system differs profoundly from those of its member states. Therefore, in lobbying one must be specialised. That said, modern lobbying is a highly sophisticated activity involving a mixture of skills: political science, law, sectorial expertise. However, I often say that the two main assets of a lobbyist are his credibility and his network.

Indeed, lobbying involves convincing the civil servant or the politician, and who is more credible than a convinced lobbyist!?

Credibility means proposing reasonable – that is, objectively good – solutions. As for the network, this is the lobbyist’s main weapon. Building a network over a number of years, knowing “everyone” from the major decision makers to the lowest civil servants, being regarded as a provider of solutions, facilitating alliances, finding your way to the centre of power – all this contributes to the importance of the network. A last word: files and procedures are becoming more and more complicated, making it essential to keep communication simple.

The Importance of Understanding of Lobbying (Public Policy Advocacy) and its Role in the Modern World

*Wright H Andrews, lobbyist from Washington D.C.
Director of the International Public Policy Advocacy Association
Ex-president of the American League of Lobbyists*

Public policy advocacy has become an integral part of the democratic governmental process in many nations. Tens of thousands of individuals and organizations are now paid to represent diverse clients' interests before governmental institutions, and more are engaging in this activity every day. Their work derives from the fundamental democratic concept that in a democracy every individual and all other legitimate interests (corporations; associations; non-profit organizations; religious organizations; etc.) have a right to communicate their views and concerns to public officials who determine public policies on matters of interest to these parties. A corollary to this concept is that every party has a right to have another person or organization help communicate their views to these officials. Those who do so are both advocating their clients' interests and providing the information necessary for officials to make informed policy decisions.

While there are differences in certain practices, regulations and concerns in these and other jurisdictions, there also are many commonalities. For example, in general, regardless of where they are located, those who seek to influence public policies for clients are viewed negatively by many citizens and are often unjustly vilified in the media. Typically, there is a serious lack of public understanding regarding the legitimate activities lobbyists engage in, and a tendency to paint all lobbyists as guilty of the corrupt activities of a few "rotten apples." Therefore, it is essential to have both meaningful

regulation and great transparency of lobbying practices to overcome misperceptions and enhance trust in public policy advocacy and the democratic process.

Another commonality is that increasingly the term “lobbyist,” which generally has been viewed as meaning a party paid to have direct personal communications with government officials, should be redefined, or in my view, a different and more encompassing term such as “public policy advocate” should be used. This would better reflect the fact that those working to influence governmental decisions now include many other parties who traditionally have not been thought of as “lobbyists,” and who generally have not been subject to regulatory and transparency requirements that increasingly are being applied to those who engage in direct, personal contacts with public officials. The public advocacy process has become much more sophisticated and often involves large teams of individuals and organizations with various other specialties (e.g., communications and media experts, political strategists, coalition managers, grassroots organizers) who work in conjunction with those making traditional direct personal contacts to influence officials’ decisions. All of these parties are paid advocates seeking to influence governmental actions on behalf of their clients, they should be recognized and treated as such, and, at a minimum, should be subject to comparable transparency requirements.

This Guidebook on Lobbying offers much helpful information regarding how lobbying is conducted in general, and especially in the United States and the European Union. It is also an important contribution to the global effort aimed at improvement of understanding of the role of public policy advocacy in modern societies.

Introduction

This book has been mostly written for Serbian public employees, politicians, students, journalists and all those who would like to have a quick insight into the world of lobbying. The term "lobbying" still remains very confusing to most people, but the abovementioned groups should be certainly aware of its real meaning, nature and purpose. This is especially important for current and future politicians and administrative staff – as they appear to be targets of lobbying. They should be able to recognize it (distinguish it from corruption) and use advantages that come along with it without the fear of compromising their integrity.

The book has been written in a simple, non-academic and reader-friendly style. However, the quality of the content remains on a high level, and is based on academic methodology and the professional experience of the authors.

The content is divided into eight chapters: Introduction to Lobbying; Lobbying Fundamentals; Lobbying in the US, Lobbying in the EU; Lobbying Players; Lobbying Strategies and Tools; Lobbying in the Balkans and Serbia; and a Case Study from Croatia.

Section I – Introduction to Lobbying

In this part we will briefly explore what is actually considered to be lobbying and where it comes from. Nowadays, it is practically impossible to find a country where lobbying does not take place in some form. In countries where it is not fully recognized, it usually takes place under the names of advocacy, procurement, or intermediation. One of the reasons for this informal treatment of lobbying is that many countries still refuse to deal with it in regulatory terms, since the public has a negative perception of lobbying by default¹, and politicians tend to stay away from it. This is absurd to some extent, since lobbying regulation in fact contributes towards minimizing corruption and improves the integrity of the public sector. In many other countries, lobbying has been regulated either by regular laws or administrative decisions. This recognition contributes to a better understanding of the nature of lobbying and its benefits for society.

Lobbying as a term comes from the English word "lobby", and it is believed that it first emerged in the United States of America. One of the main explanations relates the term to the Willard Hotel and the period of US president Grant "who had lived for a while in a hotel after the White House had burst into fire. At that time, pressure groups would gather in the lobby of the hotel to pressure him" (Décaudin, 1997).

Nowadays, lobbying is explored from at least three perspectives. From an economic perspective, lobbying may

¹ The results of the survey, *Perception of Lobbying in Serbia*, (GfK Serbia, October 2009): 50% of respondents have heard of the term lobbying, one third believe that politicians are actually lobbyists, 35% believe that lobbying is just a "nice word" for "suspicious" activities, etc. Negative perception of lobbying is also to some extent present among politicians – for more see report "A Guide to Effective Lobbying in Europe", Burson-Marsteller, 2009.

be seen as a strategic economic tool for the advancement of the particular private economic interests of a company or industry. From a purely legal point of view, it is an activity that influences legal or administrative acts and procedures. And from a political point of view, it may be seen as an activity which facilitates and promotes the specific interests of groups in a society, or even compensates democratic deficit in some cases of indirect democracy.

However, it is essential to understand that the main bargaining tool for professional lobbyists is actually information in their possession, which is well described in the theory of access². This theory emphasizes that EU institutions (especially the Commission) suffer from general lack of administrative capacity³ and political legitimacy⁴, and that both are compensated through interaction with interest representatives. In order for information to be useful for lobbying, it has to be accurate, unknown and politically beneficial⁵. Then, by careful alignment of particular private interests with general public interest, lobbyists strive to exercise influence by highlighting political benefits for decision makers. In most cases, being the only party who has information, or being the only party able to utilize it, gives bargaining power to lobbyists. At the same time this information must have the potential to produce political benefits.

It also has to be emphasized that lobbying represents a fully legitimate set of activities aimed at the protection or advancement of particular economic or political interests. The right to petition or assembly that is incorporated in

² Pieter Bouwen, "Corporate Lobbying in the EU: The Logic of Access", *Journal of European Public Policy*, 2002.

³ "Političko i ekonomsko lobiranje", B.Kaščelan and D.Krsmanović, Zavod za udžbenike, Beograd 2012

⁴ This view is not shared by all authors – R. Van Schendelen, Machiavelli in Brussels, Amsterdam University Press 2010, p. 287

⁵ Mr. Dubravko Miholić, Lobbying conference, Croatian Lobbying Association, Zagreb 23.10.2010

many contemporary constitutions is the most solid legal foundation for lobbying. It actually helps these groups to articulate and promote their interests in the best possible way for themselves. That is exactly why we have so many syndicates, trade unions, professional associations and civil groups which strive to promote their common interest in a complex economic and political environment.

Section II – Lobbying Fundamentals

For a better understanding of lobbying it is essential to clarify some important categories related to this concept.

Advocacy is primarily related to the promotion of certain values through public engagement aimed at raising awareness and getting public support⁶. It does not necessarily involve lobbying (it does not have to be directed towards the change of a law), while lobbying mostly has elements of advocacy⁷. Public events, media coverage of citizen activities, and similar actions aimed at raising awareness among the general public are some of the most common activities associated with advocacy.

Interest group⁸ is a group of individuals acting towards promoting their common interest⁹. "An interest group is an association of individuals or organizations, usually formally organized, that attempts to influence public policy"¹⁰

Lobbying refers to the professional promotion and protection of a specific partisan interest aimed at influencing decision-making in the legislative or/and executive branch.

When it comes to the contemporary meaning of lobbying, there is no universally accepted definition. Definitions vary from broad ones (such as "political actions of firms that are

⁶ www.tasco.org

⁷ R.D. Herman and Associates, *The Josey-Bass Handbook on Non-Profit Leadership and Management*, Second edition, Josey-Bass, 2005.p.233.

⁸ What usually helps to distinguish an interest group from a lobby group is the level of consolidation of budget, endurance during the time regardless of partisan interest. Interest groups sometimes evolve into lobby groups if they persist long enough.

⁹ S. Serenari, "Lobbying in European Union: access to the decisional process", Budapest 2005., p.3.

¹⁰ Clive S. Thomas, *Political Parties and Interest Groups*, Lynne Reinner Publishers 2001. p.8

meant to influence public decisions including, inter alia, laws, regulations or other things¹¹) to more complex ones (“specific efforts to influence public decision-making either by pressing for changes in policy or seeking to prevent such changes. It consists of representations to any public officeholder on any aspect of a policy, or any measure implementing that policy, or any matter being considered, or which is likely to be considered by a public body¹²). This influence should result in specific and concrete legal or administrative action of legislative or executive authorities. It is important to highlight that influencing has to be legal and not related to any practice of corruption. In the European political tradition (conditioned by its legal tradition), lobbying in the judiciary would be impossible to imagine. However, in the US where judicial verdicts are precedents by nature (other courts have to rule by them in the same cases in the future), lobbying usually occurs in the form of financial support of the parties in that particular case, since the verdict might be affecting a private interest in the future¹³.

Lobbyist is a legal entity or natural person doing lobbying, either for his own interest or the interest of a client¹⁴, based on a contractual relation.

Additionally, we can distinguish among different types of lobbying according to the nature of interest promoted: corporate, institutional, and political lobbying.

¹¹ “Lobbying by firms to influence public decision: is it a legal or an illegal networking?”, M.Rival 2008.

¹² Definition provided by the CIPR (Chartered Institute of Public Relations) and the PRCA (Public Relations Consultants Association).

¹³ Especially with reference to the US Supreme Court. For lobbying in the judiciary system in the US see Lisa A. Solowiej-Paul M. Collins Jr, “Counteractive Lobbying in the U.S. Supreme Court”, *American Politics Research*, 2009, str. 670-699, Gregory A. Caldeira-John R. Wright, “Lobbying for Justice: Organized Interests, Supreme Court Nominations and the United States Senate”, *American Journal of Political Science* 1998, str. 499-523.

¹⁴ S. Serenari, “Lobbying in European Union: access to the decisional process”, Budapest 2005., p.3.

Corporate lobbying is lobbying where the interest that is promoted or protected comes from the commercial, industrial sector. Those are the interests promoted by trade unions, companies, but also syndicates and labor unions. Corporate lobbying may be direct or indirect and it represents the most common form of lobbying which is directed both towards rule-making and rule-enforcement.

Institutional lobbying is lobbying where the promoted interest comes from another unit of the public sector. Those are usually cases where regions, federal units, municipalities or their associations are engaged in lobbying institutions of the central government or the EU. They mostly engage in lobbying for the purpose of fund distribution for infrastructural projects or subsidy distribution.

International political lobbying refers mostly to institutional lobbying on the highest level, where representatives of a country lobby for their national political goals at political institutions of other countries. This occurs primarily in the US¹⁵, followed by the EU or major international organizations (the IMF, the World Bank, the UN, etc).

Professional Lobbying in a Legal Context

Strictly legally speaking, a lobbyist who provides a professional service to his client based on a contract is bound by the obligation of means¹⁶ and not by the obligation of results. This means that the lobbyist cannot be held responsible if he fails to

¹⁵ At this link you can search for registration of lobbying contracts within the US House, and see that many independent countries are hiring professional lobbyists for interest representation in the US – <http://disclosures.house.gov/ld/ldsearch.aspx>

¹⁶ Which is clearly defined in the freshest law on lobbying in the world at this moment – the Law on lobbying of Montenegro (Službeni list RCG 054/11)

fully influence decision makers because he cannot promise he will change a law or stop the enforcement of certain decisions. To clarify, the same type of obligation is applied in medical practice, where a doctor is expected to do his best to medically treat the patient, but he cannot be held responsible if the patient does not get better even though the doctor did his best to cure him.

This, of course, does not mean that lobbyists cannot be held responsible. In fact, a lobbyist is expected to undertake all necessary steps in order to act in the best interest of his client, and these steps have to be conducted in a professional and ethical manner. If the lobbyist fails to represent the interest of his client professionally and ethically, or if he harms the client's reputation by gross negligence, he can be held responsible for damages.

The nature of the obligation also influences the compensation practice in lobbying contracts. Lobbying fees are usually set as fixed monthly fees plus travel and other expenses in addition. In other cases, these costs are already included in the lobbying fee and there is only a single monthly/daily fee. Success fees are not common due to the nature of the contract and inability to guarantee specific results.

Lobbying – An Economic Perspective

Besides its political and legal component, lobbying also has an important economic dimension. Strictly economically speaking, the purpose of lobbying is the promotion of specific economic interests, and lobbying is used as a strategic economic tool for achieving this goal.

Analyzing lobbying from this point of view will also reveal benefits for the society resulting from lobbying activity. First of

all, lobbying facilitates and improves information transmission in the society – from the private to the public sector and vice versa. In economics, the problem of incomplete information (asymmetry of information) is well known as a negative phenomenon which harms the market.

In every society, the government collects revenue through taxation, creating social and economical rules via laws and regulations, and redistributing parts of the collected revenue back to the private side. Different states might have different approaches to redistribution, but they all seek to have effective and productive redistribution as much as possible according to the set goals. If they do not possess complete information about all market players, this prevents them from performing the task perfectly. Governments are not specialized in analytics of all industrial and market factors; moreover, obtaining precise information requires huge resources which often results in high costs while the government has limited resources.

An open lobbying arena allows the private sector that handles a wide range flow of information to transmit it towards the state, thus allowing the state to be more efficient in redistribution. In short, lobbying is a market where demand for information based on the public side faces supply of information on the private side. Moreover, providing sufficient and useful information from the private sector turns out to be more efficient in terms of social costs, because the private sector tends to have lower marginal costs (in comparison with the government) for generating specific information. Thus, lobbying enables some of the costs from the public side (the cost of obtaining the information) to migrate to the private side, which is considered to be the cheapest cost avoider. In the end, this also results in overall lower social costs.

Of course, the information voluntarily provided by the private sector is expected to be biased to some extent. Moreover, it

will be provided to the public side only when companies can utilize it for the advancement of their economic position. Even though it is impossible to force the private sector to send only fully neutral information, creating conditions for higher competition among confronted lobbying groups helps the public sector to cheaply evaluate the quality of the provided information, and to properly reward those who continuously provide good quality information with better access¹⁷.

However, we have to mention that stronger competition among lobbyists is not necessarily good for the society and the level of social costs. In fact, competition among lobbyists is considered to be unproductive mostly because it does not create value, and in the end the resources spent on harsh competition are actually a huge burden for lobbying players and the society¹⁸.

Hence, we can conclude that lobbying has a dual economic nature. On one side it reduces costs of the public sector (by reduction of asymmetry of information and transaction costs), but at the same time it creates higher costs for the private sector via lobbying expenditures that are especially high in a competitive surrounding. At this point we only wanted to mention some of the most important economic aspects of lobbying, and we will not engage in their more specific analysis in this book.

Lobbying Versus Corruption

The usual misperception of the meaning of lobbying causes the general public to perceive it as a synonym for corruption. Thus, we have to stress at the very beginning that lobbying

¹⁷ Pieter Bouwen, "Corporate lobbying in the EU: The logic of access", *Journal of European Public Policy*, 2002.

¹⁸ "Where Ignorance is Bliss, 'tis Folly to be Wise": *Transparency in Contests*, Dinter, Morgan and Sisak, 2011.

and corruption are two fundamentally opposite concepts. First of all, corruption refers to activities that are illegal (offering, giving or receiving bribes) and punishable by criminal laws. Contrary to this, lobbying does not involve a direct material reward for employees in the public sector or elected officials in exchange for favours.

Lobbyists influence public offices primarily by the provision of relevant information. This is not just any information, but information that is specific, unknown and useful for political purposes. Information is crucial in lobbying as it provides institutions with necessary expert knowledge and insight on public preferences, while at the same time it takes the pulse of public opinion, which is politically very important information for decision makers¹⁹.

Speaking from an economic standpoint, there are other relevant differences between corruption and lobbying. Some economic literature suggests that in developed and growing economies, firms actually prefer investing in lobbying to "investment" in corruption. In this scenario, they act as substitutes²⁰ and as the economy grows and rule of law gets stronger, firms find it more rational to invest in lobbying. This may produce long-term and more stable results, unlike corruption which may always be detected, simultaneously harming the reputation of the company, eliminating eventually-obtained results, and even triggering criminal responsibility of the company management. In addition, the price of corruption in the developed world may be extremely high; taking into account the risk involved, it becomes considerably safer and

¹⁹ Bouwen P., "The Logic of Access to the European Parliament: Business Lobbying in the Committee on Economic and Monetary Affairs", *Journal of Common Market Studies*, vol. 42, no. 3, pp. 473-495, 2004.

²⁰ Jakob Svensson, "Eight Questions about Corruption", *Journal of Economic Perspectives*, 2005, str. 20 i dalje, Bard Harstad-Jakob Svensson, "Bribes, Lobbying and development", *Economic Growth eJournal*, 2006, p. 2.

rational for an industry to invest in lobbying. This theory does not imply that lobbying entirely eliminates corruption; however, openness of institutions towards lobbying indicates that the economy and rule of law might be on a higher level.²¹

²¹ Such as in US, Germany, France, Israel, Australia, Canada and Taiwan.

Section III – Lobbying in the United States of America

In this section we will explore the institutional framework, political context and main characteristics of lobbying in the USA.

As mentioned earlier, lobbying has a long tradition in the US, and is considered to be an integral part of the political system. Moreover, lobbying is well-founded in the right to petition, as outlined in the First Amendment to the US Constitution. An additional peculiarity of US lobbying is that lobbyists do not necessarily represent domestic partisan interests, but they sometimes act on behalf of foreign clients, because the US is an important global political and economic stakeholder and numerous groups depend on its support.

With this, the entire size of the lobbying industry in the US amounted to more than three billion US dollars²² in 2010, which is the highest in the world and almost twice as much as in Europe; it is approximated that more than 100,000 professional lobbyists are active in the metropolitan area of Washington DC only.

Besides the unquestionable political and economic importance of the US in the contemporary world, it is important to mention that this country hosts several important international organizations that are also a frequent target of lobbying, especially political lobbying. Among them, the most important are the World Bank Group (five agencies in total) and the United Nations.

²² <http://www.opensecrets.org/lobby/index.php>

Institutional framework

In order to have a better insight into US lobbying, it is essential to briefly refer to the institutional context. The USA may be classified as a parliamentary democracy with bicameral legislation, and a strong function given to the president (the presidential system) who leads the entire executive branch divided in departments. However, independent agencies are not under the control of the president, but of the Congress. At the top of the judiciary is the Supreme Court and a network of subordinated federal courts.

During the work of the Congress, Capitol Hill in Washington is occupied by a number of lobbyists who, as part of a daily routine, attend congressional hearings in committees while subcommittees meet staff members and advisors, or sometimes even congressmen and senators.

It is extremely important to remain updated with all on-going issues, which is why all serious lobbying firms have large resources at their disposal. As monitoring and planning are essential for successful lobbying, there are entire teams working on various tasks geared towards preparing intelligence just a few lobbyists. Those people are usually experts in government relations, political, media and technical experts who provide necessary information for those who actually meet other people. In the US, networking and meeting is important, but most of the job still remains inside offices and teams who prepare strategies and work on issues in a more technical way.

The high level of dynamics of US lobbying is due to the specific political nature of its institutions, as election rules are set in a way that all holders of public seats are elected by different voting rules and their mandates are set to be as different as possible. Also, senators and congressmen are extremely

sensitive to their individual constituency (either from their federal state or from their districts), and they carefully follow the fluctuation of public opinion. This indicator is almost always more important in determining how they will vote, than is the membership in the Republican or the Democratic Party, which is usually not the case in European political systems.

The coalitions and the majority in the US Congress are considered to be very flexible and they usually change each time a new bill is introduced on the floor²³. The reason for this is exactly the fact that elected officials are more sensitive to the needs of their constituency than the need of their party, which at any rate cannot force them to vote in a certain direction. From the European point of view this seems to be unusual, as in European parliamentary systems coalitions are more solid and members of political groups usually vote based on the needs of their parties. This difference even better depicts why US legislative power is actually so interesting for lobbyists: because it gives enough opportunities to influence specific majority building, and consequently the voting record.

Yet another specificity of US lobbying is the work of so called PAC – Political Action Committees²⁴. This is a mechanism for financial contributions for political candidates or parties in the US. Such mechanisms can be established by a group of citizens, companies, trade unions, syndicates and other forms of organizations with the intention of securing financial support for a preferred political idea or individual. However, all of them are subject to restrictions in terms of amounts they can donate within a year. No matter how strong the industry is, it cannot provide more money than a PAC of another industry or that simple citizen association.

²³ Morten Bennesen, Sven E. Feldmann, "Lobbying legislatures", 2000.

²⁴ Denis Vilokos, Glen Kameron, Filip Olt, Voren Ejdži, *Odnosi sa javnošću, strategije i taktike*, Beograd, 2006, p.361.

They usually provide support to candidates whose political messages are clear and aligned with their own incentives. This means that they do not condition their support, but rather donate money to people who support their interest in their political attitudes and actions. Politicians who receive their support cannot be held responsible; they can change their politics without being requested to return the contributions, which ensures a certain degree of independence.

Perhaps for those and other reasons, the US lobbying style is considered to be more violent, dynamic, aggressive and short-term focused.

The Legal Framework – Regulation of Lobbying in the US

Regulation of lobbying has a long tradition in the US²⁵. It evolved through several phases and each of them increased the responsibility of lobbyists in terms of reporting and disclosure standards. This means that nowadays there is a duty to disclose the identity of the clients, the amount of investment, and the subject and object of lobbying. The aim of these rules is to bring more transparency and ensure that institutions have integrity, while democratic procedures are not harmed.

In the US, lobbying is currently regulated by the Honest Leadership and Open Government Act (HLOGA)²⁶. This law improved the previous regulation (LDA from 1995) by

²⁵ In 1876 the first law with characteristics of lobbying regulation was enacted, 1938 – Foreign Agents Registration Act (FARA), 1946 – Federal Regulation of Lobbying Act (FRLA), 1995 – The Lobbying Disclosure Act (LDA), 2007–Honest Leadership and Open Government Act (HLOGA).

²⁶ Besides federal lobbying regulation, each of the 50 federal states has its own lobbying regulation.

introducing quarterly (compared to semi-annual) reporting, by the introduction of gifts limits and other benefits for public officials, by the introduction of a cooling off period (former public officials were prohibited to work as lobbyists for a period of two years upon termination of their public office), etc. The HLOGA also introduces obligatory electronic lobbying databases for disclosure, which are easily accessible by the public. According to this law, lobbyists have a duty to register if they fall under the following categories:

- Natural persons-lobbyists, who have received at least \$2.500 for a period of three months.
- Consultancies-lobbyists, who have received at least \$10.000 for a period of three months.

Additional requirements for registration is that lobbyists must have signed at least two contacts with public officials within the period of three months, and that at least 20% of their working hours in that period²⁷ was dedicated to lobbying.

Moreover, the administration under president Obama also expresses a strong will to make lobbyist activities within executive branches as transparent as possible²⁸.

Even though from a political and legal point of view it sounds reasonable to keep expanding transparency, from an economic standpoint this may be questioned. More transparency in this sense will require more time spent on reporting and meeting disclosure rules as well as more time in monitoring and enforcement of those rules. This also means more staff involved on both the public and the private side, as well as

²⁷ "Lobbying Law in the Spotlight: Challenges and Proposed Improvements", Report of the Task Force on Federal Lobbying Laws, Section of Administrative Law and Regulatory Practice, American Bar Association, 2011.

²⁸ Executive Order (EO) 13.490

higher social costs, with no guarantee of how much benefit the society will have from such intensive monitoring.

Moreover, more disclosure may provoke more competition, which is already considered to be harsh. This could result more funds spent on competition among lobbyists, which is considered to be an unproductive type of competition that dissipates resources in society. This is why it has to be seriously questioned up to which point the US needs and wants transparency.

Depending on the jurisdiction (state or federal), disclosure requirements also vary, but in general, lobbyists in the US are required to report their clients and finances every couple of months so the public knows who is influencing the government and to what extent²⁹.

²⁹ At these addresses you can access lobbying disclosure databases: (http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisclobbyingdisc.htm#lobbyingdisc=fec) and (<http://lobbyingdisclosure.house.gov/>)

Section IV – Lobbying in the EU

The EU is the second biggest lobbying arena in the world with an estimated number of participants starting from 16,000 and up to 100,000, including those who contribute to EU lobbying but are employed across the member states³⁰. This arena continues to expand as more and more power is delegated to the EU, and it also continues to grow in terms of territory, people and market. Lobbying in the EU is not only corporate, but often also has institutional origins. This means that besides trade unions and corporations, numerous regions³¹ and cities often engage in lobbying and fight for fund distribution.

The European Union – Institutional Context

Before discussing European lobbying it is essential to have a basic understanding of the EU institutional framework and the roles of the main institutions. This is why we are first going to give a short overview of the institutional framework, after which we will explore the essence of EU lobbying.

The activities of the European Union are conducted by a number of institutions and bodies, supported by several decentralized agencies.

The main institutions, re-enforced after the Lisbon Treaty, are: the European Commission, the Council of the EU, the European Parliament, the European Court of Justice, the European Court of Auditors, and the Central European Bank. Besides these bodies, there are other institutional forms grouped according to their function: consultative bodies (the European Economic and Social Committee, the Regional Committee), financial bodies

³⁰ Daniel Gueguen, *Europsko lobiranje*, Miropictures, Zagreb, 2007.

³¹ For instance the region of Vojvodina for instance, www.vojvodinahouse.eu

and other inter-institutional organisms. Even though lobbying activities are present in all of the aforementioned institutions, it is particularly relevant in the first three bodies: the European Commission, the Council of the EU and the European Parliament.

The European Commission

The Brussels-based European Commission represents the general interest of the European Union and comprises one Commissioner per member state. However, each delegate is required to have complete independence from the member state which has nominated him. Members, including the President, stay in charge for five years: the members are appointed by the European Council but must have the approval of Parliament which can also replace them following a strict and complicated procedure. It is important to mention that commissioners are delegated by their countries, which means that the process of their election might be an arena for political lobbying.

Being one of the main institutions of the European Union, the Commission is an executive body that has exclusive power over the legislative process: it proposes adoption of normative community acts which must be approved by the European Parliament and the Council of Europe. It is also responsible for implementing policy decisions of legislative bodies, and it manages European Union programs and funds. Decisions are adopted following the absolute majority of votes of its members.

When it comes to lobbying, the Commission is certainly the most important institution³², given its central role in the

³² Broscheid, Andreas and David Coen. "Lobbying Activity and Fora Creation in the EU: Empirically Exploring the Nature of the Policy Good" *Journal of European Public Policy*, 14, no. 3: 346–65; D.Coen and J.Richardson "Lobbying the European Union: Institutions, Actors and Issues", Oxford University press, 2009. (Chapter 2)

European legislative process. "For this reason, the Commission represents the starting point to influence the decisional process, even if the mechanism for the adoption of a legislative proposal is long and complex and requires a continuous action from the groups of pressure"³³.

The Commission has the formal right to initiate the legislative process and is responsible for preparing the draft of law proposals. Due to a lack of internal resources and general willingness to maintain a dialogue with civil and business society³⁴, the Commission often needs support from interest groups. "The expert knowledge of interest groups represents a critical resource for the legislative work of the Commission"³⁵. Groups of pressure which offers this type of support also known as "Représentation d'élite" or "elite pluralism". This is restricted only to certain parts of the Commission's activity, in particular to the Consultative Committees and the Experts Committees of the Commission³⁶. Concerning the other Commission's activities, relations are carried out through personal connections, mass communications and other tools of minor importance. In order to regulate the excessive flow of lobbyists and groups of interests in Brussels, the Commission has tried to focus its attention on a restricted group of lobbyists to deal with, favoring small and well-structured groups³⁷ in order to avoid disorganization.

One of the principal objectives of the Commission is to stimulate *bona fides* and the transparent behaviour of the groups of

³³ Serenari (2005).

³⁴ The White Book (2001) and The Green Book (2006) were fundamental documents which opened the structured dialogue practice.

³⁵ Bouwen P., "The Logic of Access to the European Parliament: Business Lobbying in the Committee on Economic and Monetary Affairs", *Journal of Common Market Studies*, vol. 42, no. 3.

³⁶ R. Van Schendelen, *Machiavelli in Brussels*, Amsterdam University Press 2010, p. 81.

³⁷ Critique of the composition of these groups is not rare – *Bursting the Brussels Bubble*, ALTER-EU 2010, p.76-87.

interest, and it is precisely transparency that is the key tool of the Commission for preventing abuse of official documents and the fraudulent use of European Union symbols. In order to monitor these relations, the Commission established two useful mechanisms for achieving transparency in auto-regulation procedures of interest groups.

The first of these mechanisms is defined as the "Transparency Register" of interest representatives of the Commission and the Parliament. It has been operating since June 2011, and which guarantees the transparency of groups of pressure, systematically asking these groups to provide information on their objectives, their sources of funding and the interests they represent. Integrity rules are another key element in the transparency of lobbying activities, and they form the core of the second mechanism proposed by the Commission, the "Code of good practice", which exposes rules of conduct, both formal and implicit, between the bodies and the groups of interests.

It needs to be noted that the Commission has the least legitimacy (unelected bureaucratic organ) and administrative resources available when it comes to policy drafting. This is exactly why the Commission strongly depends on external stakeholders such as pressure groups who fill the gap of democratic deficit and provide essential expert knowledge³⁸.

The European Parliament

The European Parliament is the parliamentary assembly of the European Union that performs a control function, and is the only European institution to be directly elected by its citizens every five years. It is officially situated in Strasbourg

³⁸ Pieter Bouwen, "Corporate Lobbying in the EU: The Logic of Access", *Journal of European Public Policy*, 2002.

where, for one week each month, the Parliament has a plenary session. The Parliamentary Commission convenes in Brussels, where the most important Directorates Generals (DGs), political groups and delegations of the parties are also based.

Each single member state autonomously establishes the procedures for carrying out elections of MPs and the method of allocation of seats. The European Parliament has the legislative, budgetary and democratic control power, often shared with the Council. More specifically, the Parliament has the power to exercise political control over the work of the Commission through written and oral inquiries. It also has the power to examine the legislative proposals of the Commission (together with the Council of the European Union), the power to approve the annual budget of the European Union (together with the Council of the European Union), the power to appoint the Ombudsman, and to establish commissions of inquiry. The European Parliament acquired significant importance after the Maastricht Treaty (1992) and the Lisbon Treaty (2009). Before, it only had a limited consultative role, and was not the target of significant lobbying activity because of its former minor importance in comparison to the Commission at the time. In the last two decades it has acquired a stronger and more influential role, making it an attractive target for more pressure groups.

Generally, interactions among pressure groups and members of the Parliament³⁹ start as a consequence of interactions with the Commission; when experts are required by the Commission to review specific reports and when the discussion between the Commission and political parties starts, it triggers lobbying activity in the European Parliament. Generally, members of the European Parliament prefer to interact with individuals who are involved in the activity of the Commission. The most common

³⁹ Until recently, registration for access to the EP was symbolic and it did not contribute to higher transparency.

way of interacting with members of the European Parliament is through a private hearing, or through letters asking for aid and support. In most cases, national and European associations are the ones who have the highest access to and contacts with the Parliament.

Unlike the Commission, which has a demand for expert-knowledge information useful for bill drafting, the Parliament has a demand for information that reveals the distribution of specific interests across the member states⁴⁰. This sort of information flow is usually delivered by national and supra-national associations.

The Council of the European Union

The Council of the European Union, also known as the Council of European Ministers, is another important institution which is formed by representatives of each member state, at the ministerial level, in charge of the related subject at the state level. Depending on the issue on the agenda, each country will be represented by the minister responsible for that particular area (foreign affairs, agriculture, economics, etc.) plus the European Commissioner responsible for the topic under consideration. The presidency is assigned to a single member state and rotates every six months. Jointly with the European Parliament, the Council exercises the legislative and budgetary function; it coordinates the economic policies of the member states, defines and implements the Common Foreign and Security Policy, and concludes international agreements on behalf of the Union. Finally, it coordinates the actions of member states and adopts measures in the field of police and judicial cooperation in criminal matters.

⁴⁰ Bouwen P. A. "Theoretical and Empirical Study of Corporate Lobbying in the European Parliament", *EIoP*, vol. 7, issue 11, 2003.

Compared to the previous two institutions, the Council is considered the least accessible: it consults only with few carefully selected and influential stakeholders, almost ignoring smaller and less organized associations.

The most productive way to influence the Council's policies is to have contact with the representatives of the member states who have power within the Council.

Regulation of Lobbying in the EU

For EU institutions it is essential to preserve integrity and to maintain a sufficient level of transparency in decision-making. When it comes to lobbying, this is especially important because lobbying is usually misperceived as influencing decision-making processes in a fraudulent way. The EU regulation of lobbying can be discussed through two dimensions: the EU level regulation and regulation of national levels of the member states.

At the national level, the regulation of lobbying is subject to national laws, and, in most EU countries, lobbying is not directly regulated⁴¹. In some countries of the EU, such as Poland or Lithuania and, until recently, Hungary (which recently abandoned its lobbying regulation), lobbying has been formally regulated by a regular binding law⁴². In the Balkans, two countries have regulated lobbying through a regular law: Macedonia⁴³ and Montenegro⁴⁴.

In some other countries lobbying has been regulated through more general laws (or administrative rules) on public integrity

⁴¹ Chari, Murphy and Hogan *Regulating Lobbying: A Global Comparison*, Manchester University Press 2010.

⁴² Legislation on Lobbying in Europe, OECD Report, Paris 2007.

⁴³ Službeni vesnik na Republika Makedonija (106/2008 i 10/2010)

⁴⁴ Službeni list RCG (054/11)

and the prevention of conflict of interest, which is the case in Slovenia⁴⁵, Germany and France.

On the other hand, in countries such as Croatia, Serbia, the UK and Denmark, various draft laws on lobbying have been or are still subject to discussion. This indicates that there is a huge public concern about how lobbying influences decision-making. General rules that are applied to increase transparency are, amongst others, lobbyists' duty to register, duty to report who their clients are, what the income related to a specific lobbying task was, who was contacted in the institutions, etc.

At the EU institutional level lobbying is regulated by soft, non-binding legal mechanisms. Lobbyists also tend to self-regulate their behaviour. For instance the SEAP (Society of European Affairs Professionals) has adopted a code of conduct and all of the members have to comply with the rules set in the code. In addition, in June 2011, the Commission and the Parliament established a joint Transparency Register by an inter-institutional agreement⁴⁶, with a single code of conduct for all registered lobbyists⁴⁷. In the case that some of the lobbyists do not comply with these rules, they may be erased from the register and lose the possibility to interact inside of the institutions, but this is hard to imagine in practice. However, registration is not obligatory but highly recommended, and it can be reasonably expected that all lobbyists who regard their reputation as important will register⁴⁸.

⁴⁵ Zakon o integriteti in preprečevanju korupcije (ZIntPK), 26.05.2010.

⁴⁶ Official Journal of the European Union No.L 191/29; 22.07.2011.

⁴⁷ http://europa.eu/transparency-register/index_en.htm

⁴⁸ Many professional lobbyists still refuse to register for many reasons. One of the most important ones is that registration is not obligatory, and it is usually avoided by law firms. This creates unfair treatment and results in negative incentives for registration (interview with Mr. Daniel Gueguen, Pacteurope).

Section V – Lobbying Players

Even though there are some differences with respect to lobbying players in the EU and the US lobbying arena, they are not so significant so as to analyze them separately. The most obvious differences are the ones related to the role of law firms.

In the US, they are more active and engaged in direct lobbying while in the EU they mostly provide legal advising and interpretation of the complex EU legal framework.

The other significant difference is related to the work of think tanks. While in the US they are almost fully financed through private donations and contributions, in the EU they are more dependent on public sources of funding, which negatively influences their independence and scientific relevance⁴⁹.

Other differences are consequences of general differences of the lobbying context. Political, economic, institutional and legal frameworks are differently developed in the two cases and they condition the individual character of each type of lobbying player in both arenas. Some of those differences can be summarized as follows:

⁴⁹ Boucher, Stephen, "Europe and its Think-Tanks: a promise to be fulfilled", in *Notre Europe, Studies and Research*, No. 35, 2004, p.34.

	EU	US
Lobbying tools	Mostly consultations, legal advising, lower use of media and PR	Widespread financial contributions, formal and informal consultations, media and PR
Characteristics	Long-term approach based on good will and trust between institutions and lobbyists, more stable coalitions	Competitive, fragmented, more fragile coalitions and more aggressive lobbying
Style	Constructive approach, consensus-oriented, cautious	Defensive approach and more direct, mostly focused on temporary private interests
Regulation of Lobbying	Poorly regulated, only few member states have enacted specific laws. Non-mandatory register at the EU level	Regulated several times since 1946, recent tendencies are going towards stricter rules

It is very challenging to name all the players that are active, but we will stay focused on those who are most common and relevant and appear in both lobbying arenas. For example, law firms, consulting firms, NGOs, trade associations and think tanks. We will briefly explain the role and the nature of each of them.

Law Firms

Law firms are a category of lobbying players that are focused primarily on legislative monitoring and consulting related to the specific needs of their corporate and institutional clients. It has been estimated that there are about 260 law and public affairs firms operating in Brussels, with most of them specialized in European Union law with a special interest in

administrative and antitrust law. They account for about 14% of total lobbying participants in Brussels⁵⁰.

Franco Spicciariello, partner of Open Gate Italia public and media affairs, once said in an interview: "Abroad there are lawyers who do lobbying, because not only do they know the law, but above all they know the effects that the bills have on a client's activity"⁵¹. Law firms engaged in lobbying are an early warning system for new political issues and legislative trends in a complicated world of laws, politics and administration, and they are also inevitable partners of numerous major firms for whom they track and evaluate legislative actions and trends⁵².

Public Affairs Consultancy

Professionals in the public affairs sector are a crucial part of the democratic process and act as a link between the worlds of business, civil society and policymakers.

Their activity in Brussels acts towards influencing the development and implementation of European public policy. Consultancy firms generally provide advisory services and support clients in governmental relationships⁵³. Those services are not standardized and are customized on the basis of each particular situation.

The most common activities that consultancy firms offer their clients are: identifying the best way to engage with public institutions, and monitoring the latest news from top

⁵⁰ R. Van Schendelen, *Machiavelli in Brussels*, Amsterdam University Press 2010, p. 57.

⁵¹ Actavista, 2005.

⁵² D.Coen and J.Richardson *Lobbying the European Union: Institutions, Actors and Issues*, Oxford University Press, 2009, p.150.

⁵³ Apco, Fleishman-Hillard, Burson-Martsteller, Oglivy, Hill & Knowlton are some of the largest firms in the market (<http://euobserver.com/secret-ue/117736>)

media sources, statements from politicians, institutions, etc., in order to have an up-to-date scale of information. They receive a mandate in which they act on behalf of their clients⁵⁴. The mandate might either come from a single or group of companies, or other entities that are associated with the same interest group.

Generally speaking, when some private interest holders (companies, trade unions, or regions of a country) decide to interact with institutions, they have to choose whether to perform that interaction directly or to rely on an external firm with expertise in this job – a consultancy agency. This decision is determined by the nature of the interaction (short- or long-term), the economic and organizational strength of the client and its previous experience in government relations.

The main task of public affairs consultancies could be defined as the promotion and protection of clients' specific interests, based on contracts which determine the terms, timing and financial compensation for consulting.

Consultancy firms do not provide only lobbying services; their activities also involve deep political analysis, which enable them to provide better policy advice to their clients. Public affairs consultancies represent only one of all available channels through which companies or other organizations indirectly access dialogue with European institutions.

There are several common types of clients of consultancy agencies, based on the services they need. Larger companies might choose to rely on a consultancy agency to receive support with interaction with institutions through a memorandum or

⁵⁴ For more on top lobbying spenders in the EU see report „Lobbying in Brussels: How much do the top 50 companies in the EU spend?“, Friends of the Earth-Europe, 2010.

paperwork. On the other hand, smaller companies, which in most cases do not have any experience or capability to interact autonomously, might need a wider range of services from a consulting firm in order to be represented and supported in all the issues that involve lobbying.

Other clients, such as regional and local authorities, can ask to develop a relationship with the European Union, and check existing available grants and other funding streams in order to improve the quality of services they provide locally.

Moreover, corporations and trade associations might also rely on public affairs consultancies for representation and help with influencing policies and legislation processes that affect their interests.

In this way, threats and opportunities created by political and legislative activities will be identified, and the consultancy agency will support the client's decision process towards developing on-going new strategies.

Consultancy agencies also realise the importance of research, paperwork, forecasting, and evaluating of the effects of public policies on organizations, and provide feedback about on-going policy developments. This sort of information can improve development of new businesses by companies, and require consultancy agencies to check if legal conditions already exist, but it can also improve the management's decision process related to strategic corporate issues. Moreover, other research activities can be carried out with the goal of collecting specific data, in order to demonstrate to the institutions the value of the proposals nominated during the legislative process.

It is evident that consultancy agencies serve as a reference point for their clients; in order to provide quick and trustworthy service, they should focus on the importance of information

collected from reliable sources. This is why a good network of contacts is a competitive advantage for a public affairs consultancy in its market.

Key information comes from personal contacts, media sources and monitoring. Over time, a lobbyist learns to maintain personal contact with customers, members of corporations, politicians, staff in local authorities and regulatory bodies in order to brief them on clients' concerns and sensitize them to the sectors that are promoted or protected. In fact, other important activities carried out by consultancy agencies are somewhat based on periodical meetings, selected committee hearings and organized or attended banquet conferences with the aim of maintaining positive communication with relevant official bodies and stakeholders in order to be updated with news and changes in specific sectors.

Moreover, public affairs consultancies must follow both professional and highly ethical standards; their activities should be conducted without any dishonest means, both in obtaining information and influencing policymakers in the process of decision-making. They must not sell confidential information that comes from institutions to third parties, and must avoid any sort of conflict of interest that would have to be disclosed if such a situation occurred.

Non-Governmental Organizations (NGOs)

NGOs perform a broad variety of activities. In such a wide set of activities we shall focus on one in particular, that is advocacy⁵⁵. The relationship between NGOs and European

⁵⁵ However, recent reports support widening of the definition of lobbying in order to make NGOs activities more transparent: "Transparency International: Money, politics, power: Corruption risks in Europe", 2012.

institutions has been developed over fifteen years of close cooperation, commonly referred to as '*civil dialogue*'.

In fact, when we talk about NGOs, we have to take into account that since they are value-oriented organizations, their activity could be considered advocacy rather than lobbying. One of their main characteristics is fighting for certain values in the process we call advocacy, which is considered to be a broader category than lobbying. Advocacy has a broader meaning because it comprises all those activities that serve to defend and promote values and rights, with an emphasis on public awareness and mobilisation. Instead, lobbying as an activity more closely resembles organisations that are oriented towards influencing lawmaking.

The nature of advocacy, carried out by NGOs, has the purpose of improving international law, adapting the national jurisdiction to international laws and including issues with public interest character in the political agenda. NGO advocacy activities are aimed at raising awareness on different issues in various fields of interest, and they usually have good results with regards to the promotion of international regulations concerning human rights, labour conditions, the environment, accountability, transparency, etc.

Of course, some larger NGOs, for instance the World Wildlife Fund, engage directly in lobbying and are able to change, influence, or initiate policies, laws, practices, and behaviours in a systematic and organized way.

In order to have better impact, many of these NGOs are organized at the European level in *umbrella-type* networks⁵⁶. European NGO networks represent their members and constituencies on the political level by pushing political actors

⁵⁶ e.g. European Movement.

on specific issues. This activity is performed by collecting and channeling information between the national and EU levels and by drafting policies, position papers and press releases.

Some of the largest NGO-hired officials are specialized in European affairs. Others opened Brussels-based offices (Greenpeace, Amnesty International, Oxfam, etc).

Trade Associations

Trade associations are organizations that assemble companies involved in a particular industry, and enable them to interact internally and externally to the benefit of all those involved. Financed through contributions from member companies, trade associations often function as a tool to improve the public image of the industry, but also as a unified voice for lobbying on issues which are expected to have impact on the sector. Those associations could, for instance, be an association of beer-producers, bakers or a union of employers, etc.

Along with these two important functions, a trade association may also provide a forum to educate the public about a particular sector/issue and its main products. Trade associations, both national and European, are specialized in aggregating the interest of their members and displaying it in both scenarios. National associations have strong relations with their governments, before whom they represent unified interests of their members, but also the interest of the national industry in international industrial associations⁵⁷. Dealing with governmental bodies implies dealing with many policy issues and therefore adopting a more general view rather than a more specialized

⁵⁷ For instance, The Serbian Association of Vehicle Manufacturers represents this industry to Serbian institutions, but it also participates at the International Organization of Motor Vehicle Manufacturers (www.oica.net)

approach. This may affect their effectiveness in providing expert knowledge, and they usually have complex decision-making processes. When it comes to European associations, what they are able to provide is good information about European interests, even if, as national associations, their complex decision-making process slows down and affects the provision of knowledge.

Trade associations are so numerous in the EU lobbying environment because they are official representative bodies; they have the advantage of receiving information and, therefore, the possibility of being heard by politicians and institutional employees. The strongest and more effective trade associations are the ones which share similar interests and issues and are highly specialized sector-wise, such as pharmaceutical or restaurant associations. On the contrary, a great deal of them is not able to be cohesive, so often these associations do not provide perfect expert knowledge because of limited resources, but especially because of dealing with a wide range of issues and internal divisions.

As a member of an association, firms may carry out a dual lobbying strategy: lobbying through associations, by using their means, their contacts and their reputation and, on the other hand, lobbying for their own interests directly, if large enough. In such cases, small companies are definitely in a position of disadvantage, in being represented by their own association only when their interests coincide with the ones of larger members. However, in some cases where the interests are parallel and meet, they enjoy a high level of benefits as they proportionally bear smaller costs.

Today in the EU⁵⁸ and the US⁵⁹ there is a large variety of associations engaged in lobbying, some of them being even

⁵⁸ <http://www.eusalt.com>

⁵⁹ www.americanbakers.org

further integrated in international trade unions promoting and protecting the interest of employers or the industry as a whole⁶⁰.

Think Tanks

The recent increase in the number of (often self-declared) *think tanks* operating in the European context is inherently accompanied by confusion as to the meaning of their role. Think tanks are permanent organizations specialized in the production of public policy solutions thanks to the in-house staff dedicated to research (in the area of economics, public governance, security, ecology, etc). They generate an original production of ideas, analysis and advice, which is meant to be communicated to policy makers and the public. Generally speaking, they seek to maintain their research independence and they are not committed to particular interests.

Their main activity is not to train public officials; instead, their implicit or explicit goal is to contribute to the public good, unlike purely commercial groups.

According to research conducted by “*Notre Europe*” while dealing with European affairs, *think tanks* have as their purpose the following roles: Promoting better elaboration of policies through the diffusion of best practices, making citizens more informed and engaged in political issues, supporting policy-makers by getting them in touch with academics and supplying a platform or a forum to facilitate, for instance, a debate with experts, etc⁶¹.

⁶⁰ European Trade Union Confederation

⁶¹ Boucher, Stephen, “Europe and its think tanks: a promise to be fulfilled”, in *Notre Europe, Studies and Research*, No. 35, 2004.

Think tanks produce their innovative policy solutions through academic research they constantly perform, seeking to unite researchers with good academic credentials and experience in policy making. Various publications by think tanks are mainly short topical policy briefings but also longer policy papers, conference reports, books, journals, opinion pieces, articles and newsletters.

Boulanger's research (2004) identifies a wide variety of funding sources, both public and private, either for core activities or for research projects. Their most common sources are as follows:

- *State funding: whether from an individual ministry, a government research fund, a state-funded research council or from the regional government level*
- *European Commission: which has a specific budget line;*
- *Private sector: especially from large multinationals with a considerable business in the EU;*
- *Foundation and trust support;*
- *Research contracts: for specific projects from national and foreign governments, the European Commission, private businesses and universities.*
- *Other sources: publication sales, events, fees for training courses and consultancy work, donations.*

The main issue of concern for think tanks is the maintenance of their autonomy of thought, which may be limited by external sources of funding. Diversity, balance and permanence of funding are considered to be the key elements for independence.

It is considered that links with public institutions compromise their independence and credibility. It is often argued that the lack of funds for European think tanks, in comparison to their American counterparts⁶², makes them too vulnerable and dependent on EU institutions.

⁶² Some of the most well known US think tanks are the CATO Institute, The Brookings Institute, The American Enterprise Institute, etc. In Europe some of the most active ones are the CEPS, Carnegie Europe, European Policy Center, European Policy Forum, etc. For more information on active EU think tanks see www.eu.thinktankdirectory.org

Section VI: Strategies and Techniques of Lobbying

Before going into specifics, we shall note that strategies and tools that lobbyists use to influence the decision-making process depend a lot on the actual political, economic and social scenario as well as on the nature of the policy for which they are lobbying, which is why it is very hard to talk about standard strategies and tools for lobbying. However, lobbying as a process has its own unique logic which is independent of actual circumstances, and from this point of view it is possible to outline the key elements of the lobbying process.

Another parameter which has to be taken into consideration is time. In some cases lobbying is a short-term (ad hoc) reaction of an industry; in these cases it is hard to talk about a step-by-step approach. In other cases where lobbying has a more permanent nature, it is possible to distinguish key segments and explain their individual role and their interdependence in professional lobbying⁶³. In this guidebook we will try to provide insight on the key elements of a long-term professional approach to lobbying.

According to Georgen⁶⁴, the key elements of the lobbying procedure can be divided as follows:

- Identification of objectives
- Monitoring and observation
- Development of strategy

⁶³ *Političko i ekonomsko lobiranje*, B.Kaščelan i D.Krsmanović, Zavod za udžbenike, 2012, str.157-158.

⁶⁴ *Lobbying in Brussels*, Pascal Goergen, 2006.

- Deployment of tactics
- Follow up

1. Identification of objectives

The starting point of each lobbying activity is the current legal situation or anticipation of change of the legal framework which can influence someone's particular economic interest. Triggers could be changes in tax laws, reduction of subsidies, elevation of eco-standards which influence costs of production, etc. The reason does not necessarily have to be negative; lobbying equally takes place in order to enforce and support some change.

Thus, the objectives are most likely to be set towards the support or prevention of legislative or executive activity and the specification of laws and institutions that have to be addressed.

2. Monitoring and observation

This part is primarily focused on intelligence gathering. All types of relevant information are collected – legal issues, political life and relations, economic data and predictions, media coverage and public opinion are probably the most relevant parts of the complex puzzle. Collected data is assembled and analyzed, evaluated against a larger picture, and then linked with public interest in general to be later used as a tool for influence-making.

3. Development of strategy

After the successful completion of the previous steps, based on identified goals and provided that intelligence work has been done well, a more precise strategy with a time frame and sub-goals is defined in a document usually called a “position paper” (which can furthermore be partially made available to the public). In this part it is also decided if coalition-building is necessary, what the optimum choice for strategy is, and what the optimum time frame for different parts of the strategy is⁶⁵. At the same time it is important to identify relevant people to meet with, predict possible competition, evaluate their strengths and weaknesses and prepare counterarguments in time.

Special attention is given to selecting appropriate instruments for lobbying given the situation and goals to be achieved.

4. Deployment of tactics

Lobbying is a creative process, and lobbyists have an unlimited number of tools at their disposal. The only important thing is that those tools are in accordance with laws and high ethical principles. Lobbying in the US and the EU is slightly different in this sense. While US lobbying shows characteristics of short-term objectives, it is more aggressive and expensive – the EU style is more long-term, consensus-based and less aggressive. Keeping this in mind, the most common approaches are:

- **Consensus-based**, where lobbyists are engaged in the earliest legislative stages and work with other interested parties

⁶⁵ Time plays two important roles here. First, it is important to properly evaluate all stages of the legislative process and decide in which stage is most likely to be successful. Second, it is always very important to keep in mind the election cycle as it is easier/harder to lobby for some issues just before elections.

on building a consensus between themselves and the decision maker; they are usually financially less exhausting.

- **Opposing strategies**, where all available resources are employed in the protection and promotion of a single interest, regardless of the interests of other parties involved in the issue.

Further on, lobbying can be direct and indirect, not only in terms of actors (in-house and contractual lobbying) but also in terms of the employment of tools for pressure. Indirect lobbying refers to lobbying where pressure is exerted indirectly (through the use of media, social media, public activities, etc). The choice of instruments depends on various factors; they are often employed jointly or separately in different stages of the lobbying process. Some of the most important tools (primarily of US origin) are:

- **Grassroots lobbying** refers to the engagement of public opinion and groups of citizens to urge and ask for some legislative or executive action. In this case, lobbyists inform the target group within the society of the benefits or threats of some prospective policy which is related to their interest, in order to mobilise them to exert political pressure on responsible decision makers⁶⁶. In the US citizens usually make a large number of phone calls to their congressman or senator, send emails and letters and organise public events in their communities.

An example might be that in a given region the government plans to allow the mining industry to exploit natural resources. Lobbyists from an industry that is opposed to this decision (a tourism industry for example) will educate the affected population on the health and economic concerns related to this

⁶⁶ Jeffrey Miylo, *Moving down the grassroots*, Institute for Justice 2010.

decision and help them be heard by decision makers which are politically dependant on voters. In grassroots lobbying it is important to underline that the interest of citizens and lobbyists are almost aligned.

- **Top-roots lobbying** (direct lobbying) is a classical lobbying approach where decision makers are approached directly. For successful direct lobbying it is essential that lobbyists have a good reputation, personal integrity and a history of reliability. Moreover, they must always have accurate information which can be useful for the political goals of a responsible public body. Lobbyists usually meet with the heads of departments in ministries, chiefs of staff, senior advisors and presidents of legislative committees, while meetings on the highest levels are not as common, especially in the executive branch.

- **Astroturfing** is a type of indirect lobbying similar to grassroots lobbying. It is practically identical in terms of activities that are undertaken by citizens, but in this case they have been mobilised by unethical misinterpretation of facts⁶⁷. For instance, lobbyists overemphasize some facts related to the mining industry activities in order to make people address decision makers. This, of course, is far from ethical lobbying.

- **Use of media** is essential especially in grassroots campaigns where local media is the most relevant and influential⁶⁸. In the last decade, social media has become a very effective tool as well, even though it opens a large space for astroturfing⁶⁹. Media is often used as a supplement tool to backup other efforts.

⁶⁷ Robert.G.Kaiser, *So Damn Much Money*, Vintage Books 2010, p.241.

⁶⁸ Conor McGrath, *Grassroots Lobbying: Marketing Politics and Policy Beyond the Beltway*, Ulster University, 2004, p. 16.

⁶⁹ <http://www.guardian.co.uk/environment/georgemonbiot/2011/feb/23/need-to-protect-internet-from-astroturfing>

● **Coalition building** can be very useful because it empowers the arguments with additional support from the market or society. It is possible to form a coalition only where the interests of several players are almost perfectly aligned, otherwise they would find it more favorable to engage in lobbying individually, even though this would be more costly in terms of resources. Once a coalition has achieved its purpose, it ceases to exist, but if the nature of the represented interest is more permanent for all members, they will usually form a more solid kind of joint-interest representation – an association⁷⁰.

5. Follow up

This part starts after lobbying has been completed and legal consequences have already taken place – a law is adopted /prevented from being adopted, or other goals that were set are completed. At this stage, results are evaluated and analysed, the development of the situation after the new laws are enforced has are monitored, and predictions for the future are made in terms of legislative and political activity. In the case of trade associations, all members are informed on the achieved outcomes; sometimes even press conferences are organized to inform the public if necessary.

⁷⁰ www.afp.org for instance.

Section VII: Lobbying in the Balkans and in Serbia

Lobbying in the countries of the former Yugoslavia is a relatively new phenomenon, but it has been growing constantly over the last decade. However, most of the population and decision makers have a very unclear idea of what lobbying actually is. Some results of the research "Perception of Lobbying in Serbia" (conducted by the GfK on behalf of the Serbian Lobbying Association in 2009) have confirmed this misperception. For instance, lobbying is most frequently associated with corruption, while about one third of the sample believes that politicians are actually the ones who are lobbyists⁷¹!

In all the countries of the former Yugoslavia we can identify lobbying activities and attempts of lobbyists to get official recognition as a unique profession.

Slovenian lobbyists are professionally organized through the Slovenian Association of Lobbyists (www.slovenski-lobisti.si). The Slovenian parliament has also regulated lobbying activities, not through a specific law, but through specific lobbying clauses within a more general Law on Integrity and Prevention of Corruption from 2010.

The main issue related to the articles of this law is their real-life effectiveness, as there are serious problems in the enforcement of the reporting/transparency rules.

In Croatia, lobbyists are also organized through the Croatian Lobbying Association (www.hdl.com.hr), but there is no specific or general law that officially recognizes lobbying and

⁷¹ More details on the results of the survey are provided at the end of the Guidebook.

sets rules and standards for interaction between lobbyists and public officials. The association, however, has its own register and code of conduct which is binding for all members.

In Bosnia and Herzegovina, even though lobbying certainly does exist, there is no truly defined lobbying association or related law. In terms of political lobbying, the Republic of Srpska (a federal unit) is the most active entity which often hires professional lobbyists from Washington.

In Montenegro, the Parliament adopted the Law on Lobbying in 2011. The initiative officially came from the Ministry of Finance of Montenegro, but it was prepared in consultations with the Montenegrin Lobbying Association (www.ulcg.org). This association represents professional lobbyists in this country, and also has its own compulsory code of conduct.

Macedonia also has a specific law on lobbying, first adopted in 2008 but revised in 2011. The main problem that occurred was in relation to the complicated rules, and resulted in the fact that there has been only one lobbyist registered since 2008. These provisions are now simplified, and we will have to wait to see what the new effects of this law will be.

Finally, in Serbia, lobbyists have established their professional association – the Serbian Lobbying Association (www.drustvolobistasrbije.org). This association was established in 2009 and it assembles natural and legal persons engaged or interested in lobbying as well as the promotion of the lobbying profession and highly ethical principles. One of the most important tasks that still remains to be completed is the adoption of the Law on Lobbying by the Serbian Parliament. Serbian lobbyists have prepared a draft of this law⁷²; moreover,

⁷² *Političko i ekonomsko lobiranje*, B.Kaščelan i D.Krsmanović, Zavod za udžbenike, 2012. (II chapter).

the National strategy for fighting corruption within the Government of Serbia also indicated that adopting the law on lobbying would be an important part of fighting corruption.

The current Draft of the Serbian Law on Lobbying (created by the Serbian Lobbying Association) contains multiple mechanisms for enhancing transparency and making sure that lobbying satisfies highly professional and ethical standards. However, these rules always come at a certain cost. Drafting and implementing the rules and especially their enforcement may be very costly for the society, and from an economic point of view it is highly desirable that they remain as simple as possible. Moreover, complicated rules may fail to serve their purpose and present a burden for society (like in the cases of Slovenia, Macedonia and Hungary). Thus, besides purely legal objectives, the economic effects should be well estimated before the adoption of any law.

In Serbia, lobbying is usually practiced by prominent law and consulting firms, but also some high-profile individuals who are quite often former public employees or politicians, which in some instances may produce a conflict of interest. Thus, it would be useful to insert the so-called cooling off clause into the Serbian lobbying regulation. This provision prohibits elected officials and high-rank public employees to act as lobbyists or work for lobbying firms for some time upon expiration of their position in public office. In most cases, it is a period of two years, during which they cannot work for lobbyists or be lobbyists themselves.

A lack of these kinds of rules might provoke and stimulate undesired practices in interactions between lobbyists and public employees. This particular situation happened in the US, where lobbyists could offer better employment opportunities to public employees in exchange for privileged access to information or officials. The situation culminated in the *Abramoff* scandal in

2006, when several politicians were found guilty of corruption. Since this event, lobbying rules have been revised to be more strict and to take into consideration the cooling off clause.

It is important to mention that Serbia was and still is very active in terms of political lobbying in Washington⁷³. Since 2000, the Government of Serbia has been hiring lobbying firms to promote and strengthen Serbian political interest within the US legislative and executive powers. Even though the contracts were usually classified as confidential by the Serbian Government, the most relevant details of each of them were available at the of the Clerk of the House's or the US Senate's website. According to the US lobbying regulation, lobbyists have to register their contracts and make them publicly available, while at the same time disclosing who the clients are, the purpose of lobbying and the lobbying fee.

⁷³ To search for contracts where Serbia was a client of lobbying firms in the US, visit <http://disclosures.house.gov/ld/ldsearch.aspx>. One contract is provided in the annex of the Guidebook.

Chapter VIII – A Case Study on Lobbying Practices in the Balkans

An Example of Good Practice – Lobbying with the EU on Sugar Quotas⁷⁴

In order to complete our mission stated at the beginning of the book and provide a clearer picture of lobbying in practice, we are now going to analyze a real case from Croatia. This case study has the additional value of revealing the potential of lobbying in the EU from a position of a non-member state, like Serbia is at the moment.

Lobbyist: Croatian Export Association and Croatian sugar factories.

Purpose: Achieving the highest possible sugar export-quota in the EU (the EU offers 80,000 tonnes, Croatia anticipates 240,000 tonnes).

The background of the case:

- With the Stabilization and Association Agreement from 2001, Croatia secured unlimited export of its sugar in the EU market.
- Until 2005, Croatia was exporting up to 162,000 t/year.
- In 2005 the EU initiated a sugar-market reform process. Specific export-quotas were introduced and the plan for price reduction was set.

⁷⁴ From the book *Politicko i ekonomsko lobiranje*, Kascelan and Krsmanovic, Zavod za udzbenike, Beograd 2012.

- In 2005 the European Commission suggested that Croatia modify the Stabilization and Association Agreement from 2001, and to comply with the new rules on sugar export.

Strategic approach of the sugar industry in Croatia

- Close and continuous monitoring of sugar-related regulations and regulatory trends
- Intelligence gathering (both in Brussels and in Zagreb) on expected levels of restriction that the EU is about to introduce

Structure of the arguments used for exerting pressure:

- Sugar is Croatia's most important export product
- 99.99% of the product that is exported is produced in Croatia
- 300 million EUR is the estimated economic loss if the new rules are applied to Croatia
- About 1.500 jobs are in danger directly, and about 3.000 indirectly (moreover, the dynamics of Croatia's accession process to the EU is put under question)
- The entire export of Croatian sugar in the EU accounts for only 1% of the EU's total consumption

Activities from May until July 2005

Activities at the national level:

The Croatian Export Association gathers all sugar factories' representatives; the letters with information on the impact of the new rules are sent to the President, Government, Ministries, etc.

- Activities at the EU level: Meetings in the European Commission; Hiring professional lobbyists in Brussels
- The EU (unofficially) aims to set the limit on export to a maximum of 80,000 t/year. At the same time the Croatian sugar industry demands export up to 240,000 t/year (based on an average productivity in the EU per hectare)
- PR activities: Interviews with the industry, syndicates and experts in order to raise public concern. At the same time the responsible Minister in the Croatian government, announces he would resign if the EU were to radically cut Croatian sugar exports. The intention is to send a political message to Brussels about the sensitivity of this issue for domestic affairs.

Achieved results:

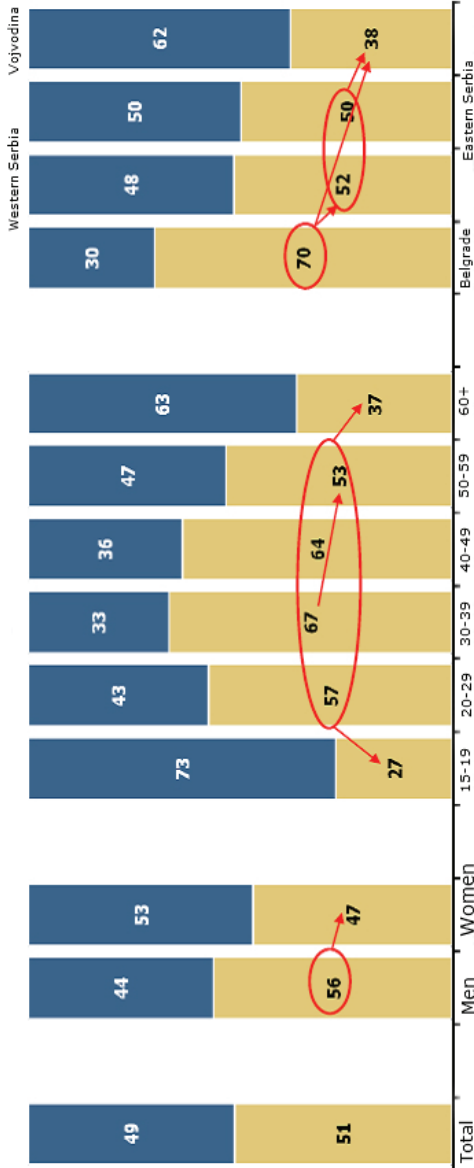
- On 14 April 2006, the modified Stabilization and Association Agreement is in Brussels.
- Up to 180,000 t/year of sugar can be exported from Croatia to the EU
- The “C-quota” rule does not apply to Croatia – the subsidized sugar from the EU will not be exported to Croatia
- December 2006 – The Croatian Parliament approves the new Stabilization and Association Agreement

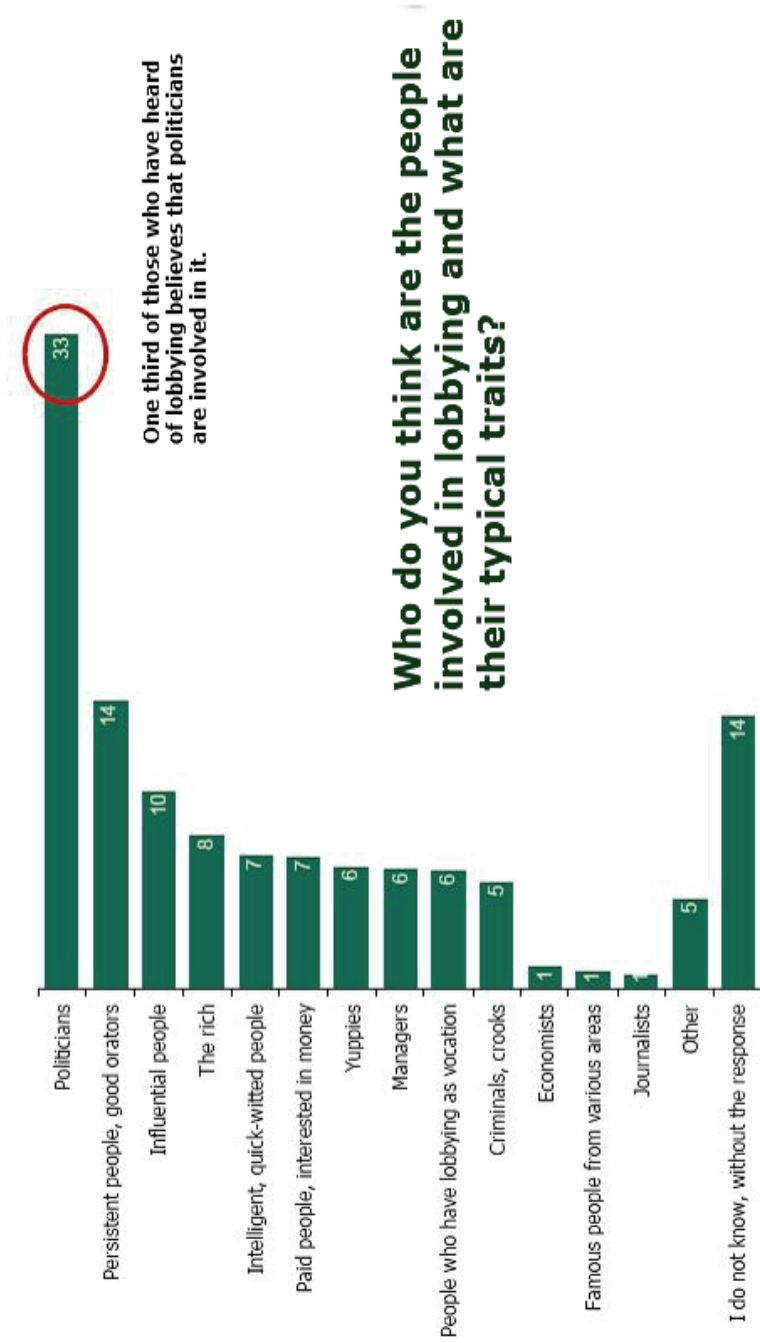
From this case study we can see that a successful lobbying campaign combines efforts of both the private and the public sector in order to achieve results at the EU level. The most impressive part is that in the end Croatia obtained the possibility to export more than double of what they initially hoped (180,000 t in comparison with 80,000 t).

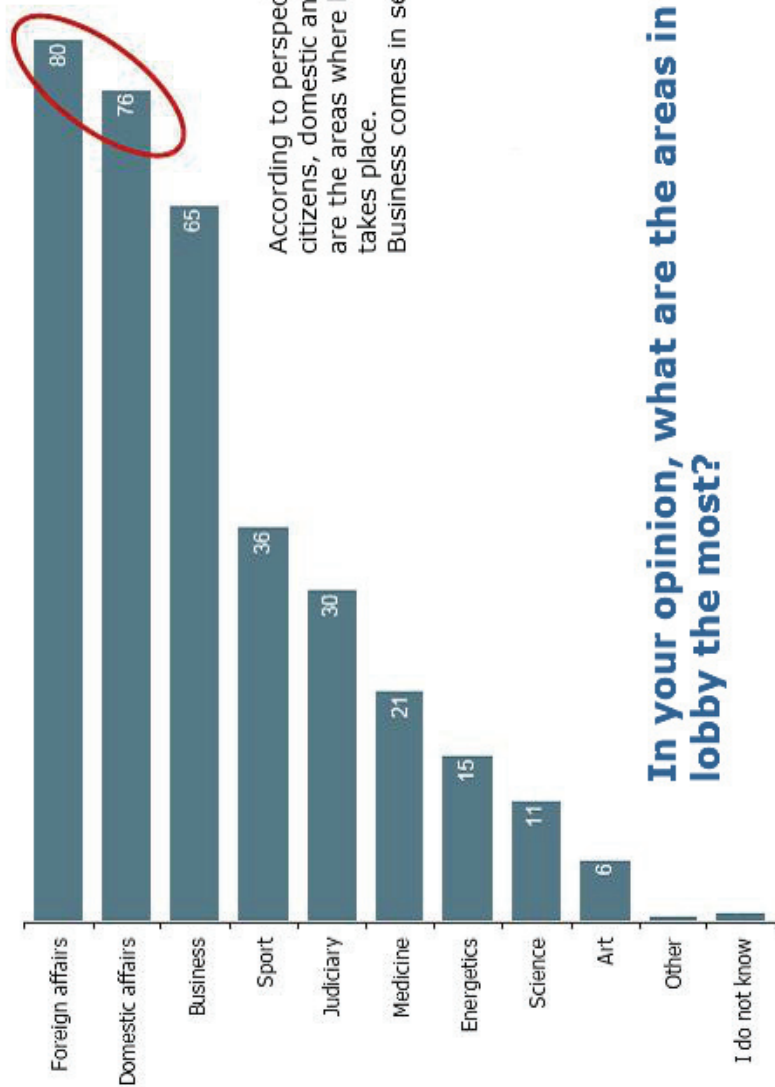
Results of the Research: "Perception of Lobbying in Serbia" GfK, October 2009.

- 50% of the people have heard of term "lobbying".
- The highest percentage out of those who have heard for lobbying is in Belgrade and the lowest in Vojvodina.

Have you ever heard of the term lobbying?
Results per gender, age and region (Belgrade, Western Serbia, Eastern Serbia and Vojvodina).

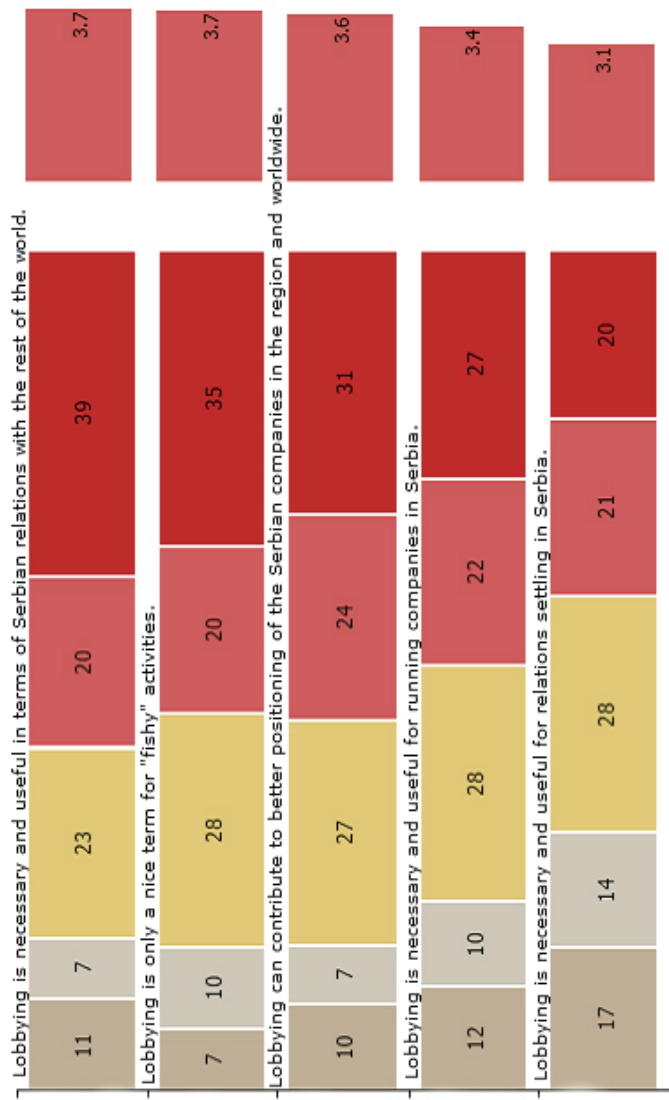






According to perspective of Serbian citizens, domestic and foreign affairs are the areas where lobbying mostly takes place.
Business comes in second place.

In your opinion, what are the areas in which to lobby the most?



To what extent do you agree with the given statements?

■ I completely disagree ■ 2 ■ 3 ■ 4 ■ I completely agree

The team

This Guidebook was created in academic cooperation with E.qo, a Brussels-based Italian Non-Governmental Organization which develops research projects, workshops and events and promotes initiatives in different fields of sustainability in order to integrate ecological concerns with social and economic commitment. The mission is to create careers in the field of European environmental affairs for young international professionals. The NGO supported the drafting of this guidebook about lobbying through the passionate work of its junior researchers and the coordination role of Valentina Rossi.

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Konrad-Adenauer-Stiftung

Freedom, justice and solidarity are the basic principles underlying the work of the Konrad-Adenauer-Stiftung (KAS). The KAS is a political foundation, closely associated with the Christian Democratic Union of Germany (CDU). As co-founder of the CDU and the first Chancellor of the Federal Republic of Germany, Konrad Adenauer (1876–1967) united Christian-social, conservative and liberal traditions. His name is synonymous with the democratic reconstruction of Germany, the firm alignment of foreign policy with the trans-Atlantic community of values, **the vision of a unified Europe** and an orientation towards the social market economy. His intellectual heritage continues to serve both as our aim as well as our obligation today.

In our European and international cooperation efforts we work for people to be able to live self-determined lives in **freedom and dignity**. We make a contribution underpinned by values to helping Germany meet its growing responsibilities throughout the world.

We encourage people to lend a hand in shaping the **future** along these lines. With more than 70 offices abroad and projects in over 120 countries, we make

a unique contribution to the promotion of democracy, the rule of law and a social market economy. To foster **peace and freedom** we encourage a continuous dialog at the national and international levels as well as the exchange between cultures and religions.

Human beings in their distinctive dignity and with their rights and responsibilities are at the heart of our work. We are guided by the conviction that human beings are the starting point in the effort to bring about social **justice** and **democratic** freedom while promoting sustainable economic activity. By bringing people together who embrace their responsibilities in society, we develop active networks in the political and economic spheres as well as in society itself. The guidance we provide on the basis of our **political know-how and knowledge** helps to shape the globalization process along more **socially equitable, ecologically sustainable and economically efficient lines**.

We cooperate with governmental institutions, political parties, civil society organizations and handpicked elites, building strong partnerships along the way. In particular we seek to intensify political cooperation in the area of development cooperation at the **national and international levels** on the foundations of our objectives and values. Together with our partners we make a contribution to the creation of an international order that enables every country to develop in freedom and under its own responsibility.