

POLITICAL SCIENCES

LOBBYING AS DEMOCRACY BUILDING OR BUYING INFLUENCE

Mudrinić L.

Docent, Pravni fakultet, Univerzitet Megatrend, Beograd
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Abstract

Lobbying is a special form of gaining influential individuals or groups. It involves the process of developing effective communications with those who have a certain power. The process is considered successful if influential individuals or groups manage to support certain initiatives in the future and intensify their activities in the direction of realizing the planned goals. Lobbying means a way of representing interests in politics, in the executive and legislative power, and influence through personal contacts on public opinion through the media. This is where the method of selective influence on decision-making with a certain strategy comes to the fore. The main goal of lobbying is to gain influence in decision-making and it concerns the relationship with legislative and executive bodies. The term lobbying is associated with a negative perception due to its association with corrupt criminal acts, giving and receiving bribes, trading in influence, and the like. Legitimacy of lobbying derives from the legal regulation, which defines lobbying participants, the conditions they must fulfill in order to participate in the lobbying process, rights and obligations, the manner of conducting lobbying procedures, the content of the lobbying contract, keeping records, submitting reports, as well as penal provisions for non-fulfillment of rights. and the obligation of lobbying participants. That is why it is important to introduce lobbying activities through legal regulations both for action at the supranational European level and at the national level.

Is it and how is it possible to suppress corruption in the highest authorities through legal regulations and lobbying strategies and techniques?

Keywords: lobbying, democracy, corruption, legal regulation

1. INTRODUCTION

The term lobbying is of Anglo-Saxon origin and came from the British parliamentary tradition, from the word lobby, which since the 17th century has denoted the vestibule of the House of Commons of the English Parliament, where representatives met with representatives of various interest groups, who tried to persuade or dissuade them from adopting certain decision.²⁶ Lobbying deals with public decisions, and that's why everyone who tries to influence certain decisions revolves around the place of decision.²⁷ Lobbying can be said to be a specialized part of public relations whose purpose is to establish and maintain relations with state authorities, especially with the aim of influencing the adoption of laws and regulations.²⁸ Most often, lobbying refers to the actions of individuals and interest groups that influence the decisions of representatives of the legislative and executive authorities, and whose goal is to promote and protect certain legitimate interests that these individuals and groups represent or represent.²⁹ It is extremely important to correctly define the very term lobbying so that the main challenges of lobbying are recognized and successfully solved. Lobbying can refer to public activities such as demonstrations or public business activities of various institutions and non-governmental organizations or associations. In a narrower

sense, lobbying can be seen as an activity that tries to convince someone in the governing structure, usually an elected member of the government, to support rules or laws that give a certain advantage to a community, organization or industry over others. The Council of Europe by the term lobbying means a coordinated effort in order to influence policy and the decision-making process with the aim of obtaining a certain result from the government, authorities or elected representatives. In the voluntary register of lobbyists of the European Commission and the Parliament, the definition of lobbying is very similar, which considers the key action on EU institutions with the aim of influencing the process of adoption decision. The American Lobbying Disclosure Act of 1995 states that a lobbyist is one who, on behalf of a third party, wants to influence government structures, in this case members of the Senate and Congress. The elements that significantly determine lobbying practice are the representation of special interests, through communication with public office holders and the attempt to influence the formation of public policies. Therefore, lobbying is always an action with various individual interests whose goal is to influence decisions at the political level.

It is possible to achieve influence in several different ways, through direct and indirect communication

²⁶ Vidačak Igor (2007) Lobiranje, interesne grupe i kanali utjecaja u Europskoj uniji. Planetopija, Zagreb, str.11.

²⁷ Tomić Zoran (2008) Odnosi s javnošću, teorija i praksa. Synopsis, Zagreb, str.76.

²⁸ S Cutlip, s, Center, A., Broom, G (2003) Odnosi s javnošću Mate, Zagreb u Tmić, Z. (2008) Odnosi s javnošću, teorija i praksa, Synopsis, Zagreb, str.76.

²⁹ Golubović, Dragan (2009) Zagovaranje i lobiranje u parlamentu i organima izvršne vlasti: uporedna iskustva i preporuke za Srbiju, Beograd: Program ujedinjenih nacija za razvoj - UNDP. Str. 13.

with civil servants aimed at the general public, which should animate the public to take action to influence the formation of public policies.³⁰ The draft Law on Lobbying, which regulates this activity, should be prepared by the government. It defines concrete solutions - who can and who cannot lobby and for whom. Lobbying can be done by individuals, entrepreneurs, legal entities, business associations without legal entity status, as well as non-governmental organizations. This activity must be carried out in accordance with the law and the contract on lobbying. When talking about who may not lobby, the ban applies to public officials and their relatives, for a period of at least two years from the date of termination of the public official's office. Lobbyists have long been the target of criticism. Considerations are focused on whether their work is only a legitimate representation of interests or more manipulations inconsistent with democratic principles, even corruption. Most European countries have a law that regulates the area of lobbying and neighboring countries have gone much further, therefore this important area should be regulated because it is an important part of the overall economic and political life.

Serbia has a law on lobbying, and so does the Association of Lobbyists. The main activity of professional lobbyists is the work of passing laws and by-laws in favor of beneficiaries. Bosnia and Herzegovina needs a Law on Lobbying because this important activity must be legally regulated and introduced into the country's legal system. Adopting a law on lobbying defines the rules of the game in that area, because lobbying is often mentioned in a negative context. Individuals, companies and parties are ready to allocate large sums of money in order to reach their goal, to bring their political program closer to the statesmen of the world's largest powers, or to implement a program of national importance. The media often testify that political parties, companies, religious institutions, and even states today use the multiple advantages of lobbying without hesitation. Parties in power and opposition are equally interested in lobbyists abroad, regardless of whether they have just appeared on the political scene, stage or have many years of experience.

The first associations that the term lobbying evokes are precisely politics and persuasion, therefore this term is not sufficiently separated from politics. There are also bribes and corruption that are mentioned along with lobbying.³¹ Most people think that people who engage in lobbying are politicians, but also people who are persuasive, good speakers, influential, resourceful and rich internal and external politics, and business. People who are familiar with lobbying believe that lobbying is necessary and useful when thinking about the relations of a certain state with the world and improving its image in cross-border cooperation.

2. APPLICATION OF THE LAW ON LOBBYING

The law on lobbying in Serbia began to be implemented in 2019, and on the recommendation of the group of countries to fight corruption in the Council of Europe - GRECO, which should have been implemented by the end of 2016 as the most important measure to increase the publicity of the work of legislative bodies.³² The law was adopted as one of the last measures in the fight against corruption, although its adoption was planned in national strategic documents from 2005 and 2018. As a rule, the Law on Lobbying provides that the lobbyist must address in writing the official or official who is working on the adoption of a regulation and explain who he works for and which act is in question so that later they jointly report all contacts to the agency for the prevention of corruption. The problem is the application control. The drawback of this law is that it does not contain any mechanism to determine whether an interested person, instead of lobbying based on the prescribed rules, used some informal form of communication with decision-makers. The legislator completely excluded such informal contacts from the concept of lobbying, also missed is to ensure their transparency or to expressly prohibit them. However, it would be difficult to determine the extent to which everything was respected and if the rules on informal lobbying were much clearer. Clearer rules would make it easier to determine whether directly interested individuals, companies, organizations or associations have made formal addresses to government bodies, parliamentary groups and lobbyists in general. Authorities should keep records of such addresses because they may have the character of contact with unregistered lobbyists. The most information should be available when interested parties hire professional mediators or registered lobbyists to represent their interests before the authorities that pass general legal acts.³³

As a problem, GRECO recognized that this law regulates only lobbying that takes place according to formal rules, but not that which takes place through informal contacts of lobbyists with the president, the prime minister, the ministers and their advisers, and the heads of the cabinet. Another big problem is that there is no obligation for officials and state bodies to disclose who all of the formal and informal lobbyists have addressed them. Serbia had to fulfill all recommendations by the end of September 2023. The provisions of the Law on Lobbying provide that the authority is obliged to keep records of lobbying contacts for officials who are elected, appointed, appointed, employed or otherwise employed in that authority. It is also the duty of every lobbied person to prevent the occurrence of harmful consequences for the public interest that may arise as a result of lobbying. It can be reasonably assumed that the number of cases of lobbying, if not by registered lobbyists, then at least by unregistered lobbyists, is far greater than is thought. Since there are no reported cases of lobbying by unregistered lobbyists,

³⁰ <https://transparency.hr/hr/antikorupcija-detalji/sto-je-lobiranje-393> pristupljeno 19.01.2023.

³¹ https://rtv.rs/sk/drustvo/sta-je-u-srbiji-lobiranje_160506.html preuzeto 19.01.2023.

³² Zakon o lobiranju Republike Srbije, Sl. Glasnik RS, br. 87/2018 i 86/2019

³³ Transparentnost Srbije, (2022), Koruptivni rizici u propisima i lobiranje, str.7.

there is a strong suspicion that such cases are not reported. Unregistered lobbying exists, which the Law allows, and the information about their work published by associations that gather domestic or foreign businessmen, indicating the measures they proposed to the Government of Serbia or individual ministries, based on the interests and problems pointed out by their members, speaks of this.

This situation is caused by weaknesses in the Law itself, where there is no clear obligation for officials and other lobbied persons to report lobbying contacts within the authorities. In addition, the possibility of public control is minimal, because there is no duty to proactively publish data on work meetings of public officials. This is the reason why, in addition to improving the laws and practices of institutions, it is necessary to pay more attention to the training of public officials and employees in connection with the recognition of lobbying activities to which they are exposed and the proper recording of such activities.³⁴

Ethical rules on lobbying stem from the Code of Conduct for lobbying participants, with the aim of affirming the lobbying profession in the fight against corruption. All participants in the lobbying process are obliged to act in accordance with the principle of integrity, which includes legality, transparency and responsibility in work, as well as ethics in order to preserve the reputation of the lobbying profession itself and the personal reputation of each of the lobbying participants. All participants in the lobbying process should be guided by the principle of public interest protection. Therefore, they are obliged to prevent any harmful consequences for the public interest, as soon as they notice it. The shortcomings of the law on lobbying will necessarily have to be eliminated during its wider application in practice in order to improve its effectiveness in preventing corruption.

It is planned to keep registers of foreign natural and legal persons in which they can be registered only with confirmation that they are registered as lobbyists in their country. However, there is no guaranteed reciprocity for registered lobbyists.³⁵

The law on lobbying in Montenegro was adopted and entered into force at the end of 2014. But all other former Yugoslav republics also have a law on lobbying, Macedonia, Croatia, Slovenia and Serbia, all except Bosnia and Herzegovina. Not only does Bosnia and Herzegovina lack a law on lobbying, it also lacks a good lobbying organization that would facilitate the process of advocating state interests. If such a law were to be adopted, it would provide BiH with a safer path towards European integration, which is one of the primary goals of the foreign policy strategy. Given that the European Commission has given a recommendation for granting candidate status to Bosnia and Herzegovina, lobbying for the interests of this country in Brussels,

but also in other member states, would be of great importance. In order for any lobbying to be successful, there should be a clear goal and a clear strategy to reach that goal. Bosnia and Herzegovina has³⁶ almost no experience in the field of lobbying because very few lobbies and therefore this area needs to be regulated.

3. EU RULES ON LOBBYING

The most dominant technology companies in the world dominate the market so much that they have started to behave according to their own rules. The European Union is now encountering great resistance when trying to introduce some of its own rules in this sphere. The weight of such resistance is indicated by the fact that technology companies in Europe spend as much as 97 million euros per year on lobbying. It exceeds the pharmaceutical, chemical and financial sectors combined. Due to the attempt to bring the largest technology companies that dominate the market into line, so that they do not abuse their power, the European Union is working on two key laws. the Law on Digital Markets (ZDT) and the Law on Digital Services (ZDU). The first should force large companies to act responsibly, i.e. not to use their power to stifle competition and not to abuse user data for profit. The proposals of ZDT and ZDU for the EU are crucial in regulating the digital economy. Another law prohibits the publication of illegal and harmful content that may harm society in any way. "Facebook" did something like that with the disinformation it was making money from. This law also deals with improving the protection of user data, so that it is not misused for targeted marketing.³⁷

Although these new laws should come into force, they have already been declared the strictest digital regulation in the world due to the very high accompanying penalties. Even the biggest technology companies are apparently not ready to change the behavior that brought them to the top, so they are allocating huge money to lobbying houses in order to at least soften the new regulation, if they cannot change it. Tech lobbyists now outnumber and are better paid than pharmaceutical, chemical, and financial lobbyists combined.

In the list of 10 companies that allocate the most for lobbying, all the places are filled by technology and digital companies, except for two, which include the pharmaceutical company "Bayer" and the oil giant "Shell".³⁸ About 600 technology and digital companies are lobbying in Brussels, which annually allocate a total of 97 million euros so that their voices are heard in the right places. That's more than any other sector of the economy. Only the first 10 digital companies set aside 32.7 million euros for lobbying. This is more than the 10 largest chemical companies (17.7 million euros), the 10 strongest vehicle manufacturers (9.8 million euros) and the same amount of companies from the financial industry (12 million euros) put together for these purposes. However, not everything is technological and

³⁴ Transparentnost Srbija,(2022) Koruptivni rizici u propisima i lobiranje, str.9-10

³⁵ <https://www.politika.rs>, pristupljeno 28.1.2023.

³⁶ Lobiranje u 21.stoljeću – neiskorištena prilika Bosne i Hercegovine: Fredrich-Ebert-Stiftung Bosni i Hercegovini,

<https://bosnia-and-herzegovina.fes.de/vijesti/default-3d84bf2883>, preuzeto 28.1.2023.

³⁷ <https://www.bankar.me/2021/11/10/lobiranje-na-digitalnom-trzistu-eu-kad-tehnoloski-giganti-odrijese-kesu/>, pristupljeno 29.1.2023.

³⁸ Ibid

digital. companies so generous. In fact, most of them (75 percent) allocate less than 200,000 euros per year for lobbying, which means that this game is mainly led by the "big ones". A total of 612 companies, lobby groups and business associations work for all these corporations from the digital and technological world, which regularly send their representatives to meetings with European legislators. Their lobbyists are trying to influence the reduction of penalties, but also a different legal approach to law breakers. They believe that not every case of violation of regulations is the same and that the technology giants should therefore not be punished "standardly" but on a case-by-case basis. Proponents of these laws claim that it would completely destroy their purpose of creating a corporate culture in which it will be understood that companies behave responsibly towards their users.

Because of the whole situation with the digital giants and not only them, this is a unique opportunity for the EU not only to limit the power of the tech giants, but also to ban them from using loopholes and operating in the gray area. The Digital Services Act should stop the practice of spying on citizens, but also the spread of hate speech, disinformation and illegal content.³⁹

The largest percentage of companies lobbying in the European Union, 20 percent, comes from the USA, followed by European ones, mostly from Germany, Great Britain, and France. However, these data should be taken with a grain of salt, because some American companies, such as "Amazon", "Facebook" or "Dropbox", have registered subsidiaries on the old continent, so they are run as European companies. Less than one percent of lobbying companies come from China. Although they are not numerous, they have a certain influence, since they are big and powerful like "Huawei" or "Alibaba".⁴⁰

That every company wants a good lobbyist is indicated by the fact that after a career in high government positions, German politicians often move to companies as advisers - for high salaries and with high hopes of businessmen that they will get lobbyists who know how to use good connections. When former German chancellor Gerhard Schroeder became head of the North European Pipeline Company's supervisory board in December 2005, just months after retiring from political office, the German public was horrified. There were several reasons for this, and the biggest among them is not that Schroeder became an official of a Russian concern, but that the change happened so quickly and without twisting. This kind of transfer of politicians to the economy is actually said to be a legal form of corruption, unfortunately.

Great discussions were started about the morality and credibility of politicians, but it was only years later that the so-called Advisory Body of the Government, which deals with specific cases of officials who leave politics and move into the economy, began its work. It

is incredible that that body also consists of former politicians who resisted the challenge of big business. Now, no minister or state secretary can become an official of a private company until he passes their control. Unless, he is not separated from his new employment by more than 18 months.⁴¹

Every company dreams of a good lobbyist, since the best person who can lobby among MPs and ministers is someone who has spent years with them in the same party and dealt with the same political projects? This is also the reason why corporations open their pockets and pay large salaries to those who can be good lobbyists. It is considered that the legal regulation of lobbying in Serbia is characterized as crucial in the fight against economic and political bribery. There was a lot of talk about the great anti-corruption potential of the aforementioned law on lobbying. Trading in influence was a product of politics and cannot be suppressed only by criminalizing it in the Criminal Code. Until the rules of influence on decision-makers are made official and transparent, there will always be those who can end up with the authorities from the lowest to the highest level, so for one new arrest there will be three new influence peddlers.⁴²

Lobbying is regulated differently everywhere in the world, and the USA is a special case where lobbying is legally regulated in detail. Old and new EU members have a special approach to lobbying. The so-called "old members" of the EU, i.e. The countries of Western Europe adopted the basic principles of lobbying through practice in the 60s of the last century, and in them this area is regulated by rules and regulations, while the new EU members are trying to raise awareness of the obligation of lobbying rules with special laws and make the actors comply with those rules.

In any case, the legal regulation of the lobbying profession brings multiple benefits from the suppression of corruption to the legalization and decriminalization of this important area. Thanks to lobbying, decision-makers often hear the opinions and needs of voters from marginal social groups more loudly and clearly. Most citizens describe lobbying in simple language: a tycoon pays a minister, deputy or party leader, and then they do everything to satisfy the interests of the owners of the money. Soga is the basic reason for the adoption of the law is the suppression of corruption in making political decisions and the prevention of conflicts of interest of officials, but it is questionable whether this can be solved by a single law because there is no universally accepted way to regulate lobbying. Despite the law, America has a problem with lobbyists' decision-making methods and motives: they remain far from the eyes and ears of the public. In order for lobbying not to turn into legalized corruption, the penal policy should be very strict. It is necessary for the state to create a registry of lobbyists as it exists in America, but despite all this, many believe that the law cannot prevent corrupt behavior.⁴³ It is a fact that

³⁹ Ibid

⁴⁰ Ibid

⁴¹ <https://www.bankar.me/2020/01/09/zasto-je-dobar-lobista-san-svake-kompanije/preuzeto> 30.1.2023

⁴² <http://www.vreme.com/vreme/protiv-podmicivanja/preuzeto>, 30.1.2023.

⁴³ Ibid

everything boils down to the ways of money, and bribery cannot be put into law. No matter how much lobbying is put before the eyes of the public through the law, it will not be known if someone will push money to someone and when.

4. REGULATION OF LOBBYING IN THE EU

The European Union, i.e. Brussels as its seat, is the center of various interest groups, which, in different ways, try to influence the adoption or blocking of some decision by the EU institutions. The implications of the act in question may indirectly include a considerable number of participants, but its immediate effects are certainly greater.⁴⁴ Lobbying actors or participants in this process are different entities. They include a variety of groups, from multinational companies and trade associations, to local or regional authorities and public agencies.⁴⁵ Lobbyists do not have to come only from member states, but, e.g. from other countries such as China, Japan or the USA, and the officials and departments of the European Commission, Parliament, Council and other EU bodies and agencies are often activated as lobbyists. This shows how obvious it is on how many different levels lobbying can take place in the European Union and how dynamic the process is with how many participants. At the same time, it is not about the one-sided benefit of the lobbyist. Namely, the EU institutions also receive feedback on how certain measures are accepted among a certain group, as well as well-argued proposals for their further development, as well as very professional knowledge in a certain area, which unfortunately is not uncommon. aside when evaluating the results of lobbying. In addition, there is a constant tendency to increase the number of actors in this process, which can also be explained by the enlargement of the Union. Indeed, on the map of the world of lobbying, Brussels is placed right behind Washington in terms of the number and concentration of lobbyists, and although the estimates are very different, they generally hover around 15,000 lobbyists, and some even go up to 30,000.⁴⁶ The European Parliament continuously expresses its aspirations for the introduction of a mandatory transparency register. In 2014, the President of the Commission, Jean Claude Juncker, asked the question transparency of lobbying into the political agenda, promising that by 2016 a request for mandatory registration will be submitted. The anti-corruption report of the European Union from 2014 explains the importance of lobbying transparency, stating that in the overall complexity of creating public policies, it is desirable for the public administration to be involved in dialogue

with external participants, and all interested parties should have the right to express their opinion, but in a transparent way, in order to reduce the risk of corruption, which is possible through legislation or registration mechanisms.⁴⁷ Namely, the Commission also made an important undertaking regarding the transparency of lobbying. It introduced the practice of publishing information regarding meetings held between lobbyists and members of the Commission, their offices and executive directors. As far as the EU is concerned, it is possible to identify four main concerns related to lobbying activities, determining the exact number of interest groups, information on lobbying costs and determining conflict of interest. In this sense, the news from September 28, 2016 is very significant, namely the Commission's proposal on a mandatory transparency register for all EU institutions: the Parliament, the Commission, and the Council. Frans Timmermans, then First Vice-President of the Commission, proposed a simple solution; there are no meetings with decision-makers without prior registration. Through the registry, the public will see who lobbies, who they represent and how much they spend.⁴⁸ Namely, since the Commission introduced prior registration in the transparency register in 2014 as a prerequisite for establishing contact with its members, as many as four thousand new registrations have been recorded. For the sake of greater efficiency, the Commission is ready to provide additional funds and more effective mechanisms for monitoring compliance with the Code of Conduct.⁴⁹ At the same time, over a hundred associations and civil society organizations (led by ALTER-EU, Civil Society Europe and Transparency International EU) sent an open letter to representatives in the Parliament on March 17, 2017, fearing a reduction in the performance of the Registry, urging the representatives to advocate the following items during negotiations: meetings only with registered lobbyists, allocation of funding to the Joint Secretariat to ensure data quality, retention of the current definition of lobbying, which includes both direct and indirect lobbying and the obligation to create a legally binding and long-term register.⁵⁰ On that track, the Commission formally adopted a new Code of Conduct for Commission members. The most important news is the extension of the suspension period from 18 months to two years for former members of the Commission, and to three years for the former president of the Commission. For the first time, a conflict of interest was defined and situations that could potentially fall under that term were described, and members of the Commission

⁴⁴ <https://www.politika.rs/sr/clanak/80913/Prica-za-krupan-biznis-preuzeto> 30.1.2023.

⁴⁵ Vidačak, Igor, (2007), *Lobiranje, interesne skupine i kanali utjecaja u Europskoj uniji*, Planetopija, Zagreb, str.12.

⁴⁶ Chambers, Anthony, *The Lobbying of the EU-How to achieve greater transparency*, Civitas: Institute for the Study of Civil Society February 2016, dostupno na: <https://www.civitas.org.uk/content/files/Anthony-Chambers-EU-lobbying.pdf>, posjećeno 1.2.2023.

⁴⁷ Report from the Commission to the Council and the European Parliament-EU Anti-Corruption, Report, Brussels, 3.2.2014., dostupno na: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/arc_2014_en.pdf)

[trafficking/corruption/docs/arc_2014_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/arc_2014_en.pdf), posjećeno 2.2.2023.

⁴⁸ Reuters, EU executive proposes tighter lobbying rules, 28. septembra 2016., dostupno na: <https://www.reuters.com/arzicle/us-eu-ethics-lobbying/en-executive-proposes-tighter-lobbying-rules-idUSKCN11Y2PW>, posjećeno 3.2.2023.

⁴⁹ http://europa.eu/rapid/press-release_IP-16-3182_hr.htm, posjećeno 3.2.2023.

⁵⁰ Civil Society Europe, *The European Parliament must do more to improve lobby, transparency*, dostupno na: <https://civilsocietyeurope.eu/2017/03717/the-european-parliament-must-do-more-to-improve-lobby-transparency/>, posjećeno 3.2.2023.

must report every donation above 10,000 euros, regardless of whether it is a potential conflict of interest or not. Data on the travel expenses of Commission members were published for the first time on February 28, 2018, where data on expenditures and other costs are available for each Commission member, and travel should be carried out in the most economical way.⁵¹ It is also a big novelty in the area of application of the rules, and now the work will be assisted by an independent ethics committee that will be authorized to advise and make recommendations in relation to all issues related to the Code. In case of violation, he can issue a warning and publish it to the public. Members of the Commission are also allowed to run for office in the Parliament without taking leave, which will be applied after the Parliament agrees to update the Framework Agreement between the Parliament and the Commission. In order to increase transparency, the Commission will also publish annual reports on the implementation of the Code.⁵²

5. TRANSPARENCY OF LOBBYING AND LEGAL REGULATIONS

Brussels recognized the necessity of regulating lobbying as a legal and very important activity for the democratic process, especially for the importance of transparency and public availability of information. However, when it comes to individual members of the Union, the situation is very different and colorful. There are many reasons for this, but certainly the country's legal framework, political culture, or collective consciousness play an important role when it comes to the legal regulation of lobbying and its transparency. Nevertheless, it is generally accepted that lobbying regulation schemes are derived from concerns about the deficit of democracy, openness and transparency of government, equality and access to public relations, and the constant need to manage the flow of information to and from authorities. In addition, a certain regulatory model cannot simply be transferred to another country. There are certain gaps in existing legislation on lobbying, but often only better implementation is needed, not necessarily a complete overhaul of current regulatory policies. We should not forget the fact that lobbying is immanent in democracy, and different types of democratic systems, rules, customs, etc., result in different types of lobbying. That's why, even if there was a perfect model, it would be almost utopian to expect that it would produce the same effects in another country. This is precisely why the regulation of lobbying should not be studied for itself, but in a more general perspective of the current system of interest groups and the political and institutional framework. According to the European Parliament's data on the current situation in the EU countries, eight member states

have so far passed legislation on lobbying and introduced mandatory registration: France, Ireland, Lithuania, Austria, Poland, the Netherlands, Slovenia, which regulated this issue within the Law on Integrity and Prevention corruption, the United Kingdom as a recent member.⁵³ Croatia, Serbia and Macedonia also have laws on lobbying, while in Germany, Italy and Romania registration is voluntary. Belgium, Luxembourg, Denmark, Estonia, Sweden, Slovakia, Bulgaria, Greece, Cyprus, Malta, and Portugal have neither legislation on lobbying, nor a code of conduct, nor even a register of lobbyists. It should be said that in two countries, Germany and the Netherlands, lobbying is regulated in the parliament, but only in the lower house - in Germany by the Rules of Procedure of the Bundestag, and in the Netherlands by the Rules of Procedure of the House of Representatives. The upper houses of the parliaments of those countries did not regulate the contacts of lobbyists with their members either by the rules of procedure or by any other act.

In the last decade, the adoption of regulations in European countries has been intensified, and in that period about ten current regulations related to the regulation of lobbying activities were adopted. Improving transparency and greater participation of citizens in the adoption of legal regulations is their goal in general and is part of the broader fight against corruption in the sense of its prevention.

In the EU, there is a Transparency Register that was established on the basis of an agreement between the European Commission and the European Parliament from 2012, and supplemented in 2014. The Transparency Register was established to answer key questions such as the interests being represented, who is representing them and with what means. The transparency register system is jointly managed by the European Parliament and the European Commission.⁵⁴ Law offices, trade associations, non-governmental organizations, religious organizations and public bodies are registered in the Register. The register clearly separates the area of economic and non-economic activity. Registration in the register is not mandatory for all lobbyists operating in the European Union, but those who are not registered cannot access the premises of the European Parliament and the European Commission. In addition to the aforementioned Register, there is a Code of Conduct in the EU, adopted by the European Commission and the European Parliament. It establishes the rules for all those who are registered in the register and establishes basic

⁵¹ Access Info Europe European Commission stars publishing travel expenses proactively, dostupno na: <https://www.sccess-info.org/article/30403>, posjećeno 4.2.2023.

⁵² European Commission – Press release, New Code of Conduct strengthening ethical rules for Members of the European Commission enters into force, Brussels, 31. januar, 2018m dostupno na: http://europa.eu/rapid/press-release_IP-18-504_en.htm, posjećeno 4.2.2023.

⁵³ Grosek, Kristina, Claros, Eulalija, Regulation of lobbying across the EU, European Parliamentary Research Service, Members, Research Service, dostupno na: [http://www.europal.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS_ATA\(2016\)595830EN.pdf](http://www.europal.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS_ATA(2016)595830EN.pdf), posjećeno 4.2.2023

⁵⁴ Registar transparentnosti dostupan je na: <http://ec.europa.eu/transparencyregister/public/homePage.do?Locale=hr#hr> pristupljeno 5.2.2023.

principles for the norms of behavior in all relations with the EU institutions.⁵⁵

The issue of lobbying was also dealt with by the Council of Europe, which in 2017 adopted the Recommendation on the legal regulation of lobbying activities in the context of public decision-making.⁵⁶ This was also done by the Organization for Economic Cooperation and Development (OECD), which in 2010 adopted the Recommendation on Principles for Transparency and Integrity in Lobbying.⁵⁷ The OECD recommendation is aimed at building an efficient and fair framework for open and accessible adoption and implementation of public policies.

From an economic point of view, the interests that prevail in industrial waters, and for which certain companies and organizations on the market fight to achieve them, are the work of economic activity. The influence on the adoption of legal acts, as well as the discussion of their regulations and established norms, is the responsibility of law and political science. Influence on executive actors and legislative authorities, through agendas through communication channels, during the process of making specific decisions in the field of public policy, represent the part that defines the concept of lobbying from the aspect of political science grounded. One of the generally accepted reasons, from an economic but also a cultural point of view, is the developed level of business culture and a favorable climate in industrial relations. In these countries, awareness prevails not only among society, but also among individuals, about business ethics in which rules and legal norms are the basis for creating a business environment in which the rules of the game are respected. From there, you can see why it is no surprise for these countries that lobbying is perceived as any activity because the rules and behaviors of lobbyists who respect "moral principles" are harmonized and marked as highly moral. Therefore, most countries have either implemented this area with an ethical code of conduct for lobbyists and lobbyist organizations, or these activities are regulated by government decrees and parliamentary regulations.⁵⁸

For countries that have emerged from the communist regime and planned economy, which, unfortunately, are identified with the image of a less stable business ethics, with an insufficient degree of accepted business culture, but also an unstable market economic climate, lobbying should be regulated by law.

Regulating this activity by law with clear lobbying rules, especially for the countries of the former communist regime, is to provide an intensity of transparency that is strategically and legally framed by the fight against corruption, which contributes to the reduction of this vicious disease of society. On the one hand, this, in addition to the display of greater transparency, contributes to the relations between all actors operating within the postmodern society, as well as the holders of public functions, to be constructive and more realized, realizing together not only functionality but also legality in the interests achieved.

In the academic literature, there is no unified position on whether interest groups strengthen or weaken the democratic legitimacy of government in a political community. While some authors, such as Schwarzmantel (J. Schwarzmantel), believe that interest groups strengthen the democracy of the political process by representing the political and social demands of parts of civil society that have been neglected by official public institutions and because they represent sources of specific information and expertise, other authors, such as Dahl (Robert Dahl), Lindblom (Charles Lindblom) and Galbraith (John K. Galbraith), emphasize that the actions of interest groups hinder and "distort" the decision-making process by giving advantage and power to social actors and organizations with greater resources, abilities, time and social contacts necessary for the achievement of individual goals.⁵⁹

The basic assumption is that groups, associations and lobbying agencies that represent private or special interests disrupt the political process that takes place within the institutional framework of the European Union and in the long term harm community public interests, the realization of proclaimed democratic values and guaranteed human and civil rights. The management of public affairs at the supranational level by means of public policy networks that, often in an informal way, gather diverse technocratic, parapolitical and social actors, seems to increase the already existing democratic deficit, from which the European integrationist project has suffered since its inception.⁶⁰

6. LOBBYING STRATEGIES AND TECHNIQUES

The choice of strategy also leads to the field of using different techniques. In the modern world, two basic types of lobbying techniques are distinguished:

⁵⁵ Kodeks ponašanja dostupan na: <http://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=hr&reference=CODE OF CONDUCT> pristupljeno 5.2.2023.

⁵⁶ Preporuka CM/Rec(2017)2 o pravnom uređenju lobističkih aktivnosti u kontekstu donošenja javnih odluka (Recommendation CM/Rec(2017)2 of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making), usvojena 22. marta 2017. dostupno na stranicama Vijeća Evrope: https://search.coe.int/cm/Pages/result_details.aspx?ObjektId=0900001680700a40
<https://rm.coe.int/legal-regulation-of-lobbying-activities/168073ed69> pristupljeno 5.2.2023.

⁵⁷ OECD Principles for Transparency and Integrity in Lobbying dostupno na internet stranicama OECD-a

<http://www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm>

<http://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf> pristupljeno 5.2.2023.

⁵⁸ Randelović, Nebojša i Jelenković, Predrag (2014), Pravna regulativa, istorijski i politički aspekti lobiranja- Srbija i države u okruženju. Niš: Zbornik radova Pravnog fakulteta u Nišu. (66):197-206. str.200

⁵⁹ Endru Hejvud, (2004) Politika, Clio, Beograd, str. 173-7.

⁶⁰ Rozental je još sredinom sedamdesetih godina prošlog veka pisao da na politički proces u institucionalnom okviru tadašnje EEZ veliki uticaj imaju mreže elita i to korištenjem suptilnog lobiranja iza zatvorenih vrata (John Peterson and Elizabeth Bomberg, Decision-Making in the European Union, MacMillan Press Ltd, Basingstoke and London, 1999.p.6).

direct lobbying and indirect lobbying. Direct lobbying implies direct influence on legislative bodies, while indirect lobbying influences decision-makers indirectly, through the use of the media.

Direct lobbying involves personal meetings with decision makers. This means that it is necessary to establish a dialogue in order to be informed, as well as addressing a lower instance and moving up and not down the hierarchy.⁶¹ In most cases, direct contact is the most effective way to present our point of view on a certain problem, but it is also the most difficult to organize. Since politicians represent a large number of people, the request for such a meeting is very rare and may be one in a thousand. If this type of contact is made, the lobbyist must keep in mind that it will be easier to achieve your goal if you influence the interlocutor with meaningfulness, clarity and simplicity, by turning data into a clear and convincing synthesis. Professional politicians are used to not making impulsive and hasty decisions, therefore, after the first conversation, you should not expect a quick result.

Another type of direct lobbying is a telephone conversation. Telephone calls have the quality of immediacy and personal directness, are easier to arrange and are therefore more frequent than face-to-face meetings. By applying the tactics of telephone calls, lobby groups in international relations try to gain the support of decision-makers. Calls from several parties in a large number of cases express the same or similar demands, and a strong influence can be exerted on the interlocutors. It is especially easy to mobilize non-governmental organizations with telephone calls, in order to initiate political actions. The system of "telephone trees" is used by many organizations, which works so that each member of the lobby group is obliged to call and maintain contact with one or more activists in certain areas. These others then call the contacts that "belong" to them and thus the message about certain activities is transmitted very quickly until the whole group is informed.⁶²

Written address is also one of the forms of direct lobbying. A large number of lobbying strategies consists of tactical written address to members of various bodies, officials, officials and administration. These are exclusively private letters, as opposed to press releases or open letters. A written document has the advantage that it can be sent to several levels at the same time. The greater the number of different addresses from which letters on the same issue are sent, in which a large number of individuals refer to one organization, the greater the pressure that is exerted on the decision maker. Written petitions are a special technique. Lobbyists try in this way to involve as many individuals as possible in writing petitions to certain politicians, gathering them around a problem that they consider to be of general interest.

Indirect lobbying includes the use of the media. When making public decisions, there is a process of an evolutionary nature. In order to avoid outdated and unusable information, constant review is necessary because the status of each item can change daily. Tracking the development of the item in real time is necessary because opportunities to forward a message are rare.⁶³

Media propaganda by lobbyists is used as one of the indirect techniques of influencing public opinion. Public opinion is made up of current beliefs, attitudes and affectively colored judgments. That is why it is very fluid, subject to changes, control and manipulation of political and economic power centers. The mass media play a particularly important role in the formation of public opinion.⁶⁴ Lobbyists, through their influence on the means of information, that is, their good contacts with editors and journalists in general, indirectly influence the formation of public opinion in the direction they want.⁶⁵ In this way, lobbyists use public opinion through the mediatization of a problem, presenting it to the ordinary world as a problem that can affect each of us.⁶⁶ In this regard, lobbyists seek support for something that troubles the common man and thus try to create a critical mass of support for their cause. In these efforts, lobbyists seek the possibility of establishing contacts with as many media as possible. If a large number of media outlets publish the same information, commented on in a similar way, it will create an attitude among readers about the truthfulness and correctness of the information. So, when one piece of information unknown to people is published, from several sides and with the same comment, in their eyes the image is created exactly as the lobbyists wanted, taking care that it be published both in the local and national media.

How does all this affect decision makers? In every society, the government and other state bodies have great respect for public opinion, they try to create and preserve a positive image among their voters. That is why decision-makers tend to harmonize their interests with the interests of voters as much as possible, because their support in elections depends on it. In this way, by forming public opinion, lobbyists at the same time exert influence on decision-makers, who, to a greater or lesser extent, adhere to the court of public opinion. All this shows that when they schedule direct lobbying techniques, lobbyists always have public opinion at their disposal, which is a powerful weapon in the hands of capable lobbyists.

An indirect way of lobbying is also the media support of experts. Before a certain controversial subject goes to the public, lobbyists first inform the competent decision-makers about it. This is also a good chance for lobbyists to present their version of the emerging problem to politicians. To substantiate the seriousness of the situation, lobbyists occasionally hire experts in certain fields to provide expert opinions. Experts who give their opinion on an issue in their field can

⁶¹ Klamann, M. (2004), *Lobiranje*, Beograd, str.123.

⁶² Đorđić, A. (2007), *Interesne grupe i lobiranje kao postupak u međunarodnim odnosima*, Beograd, str.489.

⁶³ Klamann, M. (2004), *Lobiranje*, Beograd, str. 70.

⁶⁴ Vidanović, I. (2006), *Rečnik socijalnog rada*, Beograd, str.211.

⁶⁵ Lemert, J.B. (1981), *Does Mass Communication Change Public Opinion After All*, Nelson Hall, Chicago, str.32.

⁶⁶ Zetter, L. (2008), *Lobbying The Art of Political Persuasion*, Hampshire, str.91.

significantly contribute to the strengthening of the positions represented by lobbyists. Those expert opinions that correspond to the arguments presented by the lobbyists are taken and combined with the entire documentation that the lobbyists deliver to the politicians. Here, attention should be paid to the fact that lobbyists, even when hiring experts, try to leave the impression that the experts reacted independently. Lobbyists do this in order to avoid accusations that they influence experts, that is, that experts are financially dependent on lobbyists. Expert opinions that support a certain thesis will be less contested if it is not possible to establish any financial connection between the lobbyist and the experts whose opinions the lobbyist refers to.

Another way of indirect lobbying is securing public promises, which is a technique closely related to the technique of using the media. After mediating a certain problem, while they wait for the decision-maker to take a stand, to declare whether he supports the position of public opinion (in this case, lobbyists too), or not. Given that decision-makers are not inclined, at least publicly, to be against such orchestrated campaigns that are conducted in the name of general interests, lobbyists see this as a chance to get their promise to support the views of a certain group. If the lobbyists succeed in persuading the officials to make public positive comments regarding a certain problem, those statements are later used as part of the existing argumentation in the conversation with the officials. This means that lobbyists are now publicly advertising and calling for promises and the given word of officials in their favor.⁶⁷

7. CONCLUSION

If we start from the experience of the countries in whose legal systems the lobbying profession has taken root, as a natural conclusion the regulation of this area is imposed exclusively in the form of laws and not by rules, regulations or other by-laws. There are several reasons for this: The first is that in countries that are going through a socio-economic transition, where the path

for the establishment and development of strong democratic institutions is yet to be established and where there is not yet a sufficiently developed awareness of compliance with the rules, this area must be regulated by law, because in this way the lobbyist profession will be further strengthened and strengthened. Awareness of hiring a lobbyist and compliance with the lobbying procedure must have a legal basis to once again send a clear signal to all future participants

of the lobbying process, that there are clear rules and sanctions in the system. Another reason why it is necessary to legally regulate this area is the need for the state to send a clear message to the European Union that, like other Eastern European countries, it is ready to make corruption in this area completely meaningless, enabling all interested clients to protect and realize their interests in a legal and transparent way. The third reason lies in the fact that by passing this law, a certain country places itself on the same level as other coun-

tries in the region and promotes itself as a serious partner of the EU in the process of European integration. It can be said in the end that if lobbying is carried out publicly and if equal access of professional lobbyists to public decision-makers is foreseen, this will have the ultimate effect of improving the quality of the legislative process.

A critical examination of the structural characteristics of interest groups, their model of action and the institutional environment of the EU shows that there are indications that lobbying in the EU institutions does not always take place in accordance with the generally accepted standards of the democratic political process, nor does it correspond to the requirements of promoting public interests. This is especially the case with the lobbying activities of multinational corporations operating in the common market. The cases of corruption and conflicts of interest discovered in the work of Union institutions and the analysis of publicly available aspects of the activities of groups, associations and lobbying agencies that represent the business interests of the largest corporations present in the common market seem to testify to the exploitation of the purpose of the supranational political process. The goals and effects of corporate lobbying harm in the long term the realization of community public interests, proclaimed democratic values and guaranteed human and civil rights. The favoring of corporate interests by primarily officials and officials of the Commission is noticeable and leans on the tradition of pragmatic philosophy based on the argumentation contained in the analyzes and studies originating from the so-called community of knowledge. Lobby groups that represent corporate interests undermine the already weakened democratic legitimacy of the supranational political process because they try in various ways to make their own influence on community decision-making points dominant, if not the only one, thus closing the door to the influence of representatives of other social interests, creating a kind of cartel of the public policy network in some area that does not allow access to interested social parties that represent different views on public issues that are the subject of decision. The financial supremacy of corporate lobbies over other social interests enables their influence on supranational decision-makers in a large number of "small" issues of community public policy, such as regulatory measures and technical standards, while civil organizations have enough resources only for mobilization around the most important issues. In addition, corporate interest groups are in a more comfortable position because they usually defend the existing situation in some communitarian public policy and regulations, that is, preventing the introduction of changes and new measures. Civic organizations, on the contrary, generally advocate for changes and regulation of issues related to the social and environmental effects of corporations' operations, and this represents a far more complex operation in the realization of social interests.

The idea of European integration is based on the belief that supranational institutions can effectively

⁶⁷ Common Cause, Report from Washington, open and accountable government an action program for citizens in the 1974. elections, Washington, 1974.

solve the problems faced by modern consumer societies at the beginning of the new millennium. The reasons of efficiency and benefit were throughout the history of the European integration project the main arguments in favor of further strengthening the authority and expanding the competences of joint institutions. In accordance with the proclaimed values of democracy, the rule of law and human rights, the purpose of the activities of supranational institutions is the realization of the general interest - the satisfaction of the citizens' need for a dignified and quality life. Everyday life in the member states of the European Union is increasingly conditioned by the content and manner of implementation of decisions made at the community level. That is why it is important to properly regulate lobbying activities aimed at Union institutions in order to prevent the violation of democratic standards in the supranational political process and prevent the predominance of corporate and other private interests over the common good.

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