

INTEREST REPRESENTATION: CAN LOBBYING REGULATION HELP EU OVERCOME DEMOCRATIC DEFICIT?*

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ABSTRACT

This paper contributes to the discussion surrounding involvement of interest groups in the political process of the European Union. My purpose here is to inspect current political studies on democratic deficit of the EU and try to find out which mode of lobbying regulation could mostly contribute to overcoming the democratic deficit. The analysis is based on two major democratic notions: accountability and transparency. Bringing theoretical considerations on democratic deficit with lobbying regulation approaches, I argue that an adequate regulation of interest groups representation increases accountability and transparency and, therefore, it can be considered to be a method to deal with the problem of the democratic deficit. The results suggest that attempts of self-regulation did not bring the desired effect, which is why mandatory regulation is expected to be more effective. At the same time, I have discovered a range of limitations of mandatory regulation, and my take on it is also exposed in this paper.

KEY WORDS

Interest groups; democratic deficit; lobbying; accountability; transparency.

INTRODUCTION

European Commission is constantly engaged in designing various initiatives in order to increase participation of interests groups, particularly NGOs, in politics and therefore increase the level of the democratic legitimacy of the organisation. However, Commission has faced harsh criticism for the lack of transparency in the way the interest groups participate in policy-making process. Any democratic political system should envisage regulation for political actors' behaviour, and the EU is not an exception here. Lobbying regulation is particularly important, because European political system is characterised by high degree of reliance on civil society. Surprisingly, only few studies have dealt with the question why do some lobbyists reach their goals and others do not. Do their goals correspond to common interests? What criteria should be used to decide which groups of interests merit political involvement? Even though proper consideration of this issue could shed the light on one of the central aspects of EU policy making, existing studies propose nothing but contradictory hypotheses and biased findings.

It is widely agreed, that lobbying regulation is characterised by two major aspects: public officials' behaviour and lobbyists' code of conduct. Speaking of lobbying regulation, I consider both of these notions. Bringing together theoretical considerations on democratic deficit with lobbying regulation approaches, I argue that an adequate regulation of interest groups representation increases accountability and transparency and, therefore it can be considered to be a method of dealing with democratic deficit. I will support my arguments with several case studies using the so-called "policy-tracing" method, which enables a detailed focus on a specific policy area.

First of all, let us define what is democracy and what is democratic deficit. A clear definition was given by Beetham who says that democracy is about popular control and political equality (Beetham 1994, 4-5). Both of these concepts require accountability which is the central element in any democratic system, be it national or supranational. In a democratic system of governance, rulers should be accountable for their actions as they defend public interests and represent people who have elected them. Here we come to the second major characteristic feature of democracy which is transparency. It is obvious that transparency itself is presupposed by accountability. Lack of transparency leaves accountability in serious doubt (Persson 2009, 144). Of course, there might be plenty of other more sophisticated designs of democratic systems depending on interpretations, positions and scholars' opinions. But talking about democracy in the EU while trying to not compromise any of the complexity of interest representation practices would only make it tangled. I assume that an adequate regulation of interest groups representation increases accountability and transparency and, therefore it can be considered to be a method to deal with the problem of democratic deficit.

DEMOCRATIC DEFICIT OF THE EUROPEAN UNION

The issue of the democratic deficit of the European Union seems to have been there forever. Yet there is no common attitude among scholars to this problem. On the one hand, we have such prominent intellectuals as Giandomenico Majone and Andrew Moravcsik who argued that the EU should not necessarily meet all the expectations in what is considered to be democratic, meaning that the EU is already as democratic as it could, or should, be. On the other hand, there is a polar point of view articulated by Simon Hix, who called the EU policy-making an "enlightened form of benevolent authoritarianism" (Hix and Follesdal 2006, 534). Most researchers' position falls somewhere in between.

A "standard version" of democratic deficit elaborated by Weiler and his colleagues (Weiler and Mayer 1995, 4-39) and, then, improved by Simon Hix still reflects the EU situation. Five major claims described by Simon Hix and Andreas Follesdal are still relevant even after reforms under the Treaty of Lisbon came into force (Hix and Follesdal 2006, 533). Obviously, we are witnessing "an increase in executive power and a decrease in national parliamentary

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control” (Hix and Follesdal 2006, 534; Jans and Piedrafita 2009, 19) which became especially problematic in light of Eurozone crisis.

One would argue that growing role of the European Parliament is a step forward on the path to a more democratic union. On the one hand, there is a clear tendency of the enforcement of the European Parliament’s role that has been described by democratic deficit scholars since the mid-1980s. The Lisbon Treaty extended Parliament’s legislative power making it a lawmaker equal to the Council. Among other important decision-making procedures and budgetary powers the role of Parliament is bolstered by election of the President of the Commission. Jean-Claude Juncker became the first elected head of the Commission, which is definitively a step forward.

Nevertheless, along with these positive tendencies there are still no “European” elections. The European Parliament elections 2014 have raised the question of interest groups involvement in the electoral process. There is no clear data on their, in contrast to other political actors, influence on the outcome of elections as well as the level of democratic legitimacy. Recent elections again revealed a number of trends in politics across the EU like rise in support for eurosceptic and far-right parties but that does not change the perception of European elections as a second-order national elections (Hix and Marsh 2011, 5). We still observe tendencies like protest votes against governing parties and low turnout. The lack of a “European” element in the past elections means that interests of EU citizens’ will have low impact on the EU policy agenda. So, the key default here is that the outcome of the elections in the EP has no direct influence on the European agenda setting which subsequently causes the lack of accountability.

The reason for such a default is that the electorate has significantly changed for the last 30 years but newly raised interest groups were overlooked by policy-makers and most of European parties. These overlooked interest groups are ethnic and religious minority communities who compose about 12% of the total European population which is approximately 60 million people. But despite the fact that they could make a significant impact on the elections, they simply have not been actively involved in the process of agenda setting, or even considered as a core audience for any political campaign. Of course, they cannot be considered to be formed lobbying coalitions, however they could contribute to democratisation. These minorities are likely to support mainstream European parties if the latter demonstrate the will to defend their interests in elected bodies. The point is that the level of minorities’ political representation in European bodies remains low and does not reflect electorate’s changes, which also affects the democratic deficit in Europe. Mobilising specific interest groups could be one of the ways to overcome it.

Another aspect of the European democratic deficit, which is connected to the previous one, is that the EU is too distant from its voters in both institutional and psychological senses. Despite all the attempts of the EU to become more “user-friendly” to its citizens, the last Eurobarometer survey shows the lowest level of trust to the EU institutions since 2004 (Eurobarometer 2014, 9) which definitively indicates the lack of accountability. Such an attitude is not groundless. Electoral control over the Commission and the Council is scarcely perceptible. Along with that, the EU-type institutions and policy-making differs from the EU-member states domestic institutions. This causes difficulties in understanding the EU and even encourages misperception of European politics. That leads to physiological alienation of European citizens. We should acknowledge that the whole picture of responsibilities, procedures and functions of the European institutions along with system of commitology are difficult to perceive at a glance. Especially taking into consideration that the evolution of the EU is an ongoing process.

Finally, there is a clear tendency of “policy drift” on the supranational level. The EU takes political decisions that are not popular in member states. Of course, it is not a common case but the whole institutional system of the EU empowers governments to conduct policies at the European level that they could hardly follow at the national level. Because at the domestic level they are controlled by national political actors like parliaments, courts, groups of civil and corporate interests. Common Agricultural Policy and the single market neo-liberal regulation may serve good examples here. Such a “policy drift” is highly criticised by most social democratic scholars for the lack of transparency, lack of accountability (Chrysochoou 2010, 377-89) and groups of interest inclusion in the decision-making process (Scharpf 1999, 72-89).

INTEREST GROUP PARTICIPATION IN EU POLICY-MAKING

There is a suggestive cleavage between business and civil interest groups on their lobbying aspirations. Since the European Parliament does not determine the EU politics, corporate interest groups do not strive to influence party politics in the policy-making process. For them it is much more convenient to articulate their interests on the European level. While civil interest groups such as trade unions and NGOs show greater diffusion by acting mostly on national level.

Among all European institutions, the Commission has been criticised for the lack of transparency more than the others have (Heard-Laureote 2010, 31-33). The inconsistencies in Commission’s functions we are facing today stem from the early intension of Jean Monet to hold this body as a functional representative board assisting technical experts. Lately the technocratic and elitist nature of this institution became salient and accompanied by the weak democratic legitimacy (Featherstone 1994, 154). The Commission was blamed for being a “black box” in which political decisions were taken by unelected elite technocrats. Therefore, from the late 1990s The European Commission launched several new initiative trying to fix the issue of its technocratic lack of accountability. It has deliberately drawn groups of interests in capacity of experts into decision-making process, both to compensate the lack of democratic participation and improve the effectiveness of policy outcomes (Kohler-Koch and Eising 1999, 25-29). Today’s situation has not changed dramatically, except for the post of the Commission’s President who is to be elected by the European Parliament according to the Treaty of Lisbon. The problem of democratic deficit is officially recognised as Jean-Claude Juncker has stated among his political guidelines a need for a democratic change (Juncker 2014, 10). It is also important that the

President-elect declared his commitment “to enhanced transparency when it comes to contact with stakeholders and lobbyists” (Junker 2014, 11).

Being “understaffed and overstressed” (Greenwood 2003, 180), the Commission launched new initiatives to grant access for those lobbyists who are able to provide them with technical expertise on issues that exceed competences of its members (Hauser 2011, 689). As Henri Hauser notes, “By involving a range of public and private interests in discussions concerning policy initiatives, the Commission circumvents “obstruction of national governments” (Hauser 2011, 696). Interest groups participation in the decision-making process allows the Commission to find a consensus among key stakeholders.

This was definitively a shift to a neo-corporatism type of political organisation (Coen 2007, 333-345). On the one hand, advocates of this type of political organisation claim that groups of interest participation in the consultations with the Commission serves better regulation, improves the level of legitimacy and effectiveness (Broscheid and Coen 2007, 346-365; Michalowitz 2005, 23; Heard-Laureote 2010, 155). On the other hand, it seems to be a rather strained and rather limited argument. Firstly, how to make sure that lobbying participation in policy-making does not harm common European interest? Secondly, which type of regulation will allow interest group to contribute to the policy-making process? Finally, is it possible to improve the situation with the democratic deficit through regulation of interest group participation?

REGISTRATION OF LOBBYISTS: OPTIONAL OR MANDATORY?

Given that the Commission is “understaffed and overstressed” (Greenwood 2003, 180) and cannot do without engaging groups of corporate and civil interests in consultations we should admit that the only way to decide who merits participation in the political process is at least proper regulation of access. “Regulation of lobbyists refers to the notion that there should be rules which the interest groups must abide by when trying to influence public decision-making” (Kanol 2012, 522). Being one of the most lobbied institution of the EU Commission still envisages no regulation of lobbying practice, which takes place every day. We cannot ignore the Commission’s engagement in designing various codes of conduct and registers for lobbyists under the European Transparency Initiative (ETI). But after years it was launched we saw no definite progress. There is also concern about the financial information disclosed by lobbyists (Greenwood 2011, 324) because a number of revisions conducted have showed that the information in the registry was highly inaccurate (EU Observer 2010). It is no surprise because there are not enough benefits for interest groups in voluntary registration. It is difficult to argue that self-regulation initiative had any substantial effect in terms of transparency improvement. The whole ETI seem to have failed due to above described reasons (ALTER-EU 2009, 13; ALTER-EU 2012, 3). Self-regulation is not a remedy in the case with interest groups participation (Chari 2010, 4).

As Chari has noticed, “The basic rationale behind implementing regulations is that the public should have some insight into, as well as oversight of, the mechanisms that draw lobbyists into the policy-making environment, in order to better understand how they influence policy outputs” (Chari 2010, 2). Enacting a mandatory lobbying register could increase the level of transparency and accountability. Apart from that, regulation of lobbying promotes political equality.

Numerous researchers’ attempts to reveal the key elements of successful lobbying make us believe that information supply and financial recourses are determinative (Bouwen 2004, 337-369). That is why groups of business interests seem to be the most successful lobbyists while civil interests seem to be depressed (which in fact is not as dramatic as it sounds). Recent empirical study conducted by Heike Klüver tries to overcome shortcomings and contradictions of previous researches. Professor Klüver assumes that “lobbying is a collective enterprise in which information supply, citizen support and economic power of entire lobbying camps account for variation in lobbying success” (Klüver 2012, 73). It is important that citizen support is treated as one of the major determinants of lobbying success. It means that even without strict regulation lobbying is not as vicious as sometimes perceived by scholars and activists. In order to succeed in a lobbying campaign one has to take civil interests into consideration. Another notable issue in Klüver’s approach is identifying lobbying camp not as a single player but as a “set of actors who share the same policy goal” (Klüver 2012, 64). Meaning that lobbying is not an individual enterprise, but a complex collective process which involves multiple interest groups including business and civil society. Being united by one political goal, they are trying to shift the policy outcome towards their ideal point.

A good example here would be a case study of lobbying campaign around the Proposal for a Council Regulation on defining criteria determining when recovered paper ceases to be waste (Commission 2013). The European waste paper sector has been divided on two major lobbying camps: the merchants (represented by the European Recovered Paper Association (EPRA) welcomed the proposed legislation and paper mills operators (headed by the Confederation of European Paper Industries (CEPI) were on the opposite. The European Commission proposed to change the criteria when paper ceases to be a waste from its current position at the paper mill to an earlier stage in the collection and sorting process. The Commission believed that these measure could have helped to improve the quality of recycled paper and minimise administrative loses. Despite their arguments, both lobbying camps consisted not only of business giants but were supported by trade unions and even NGOs. They tried to attire citizens’ attention through media coverage making this issue the problem of the European scale. Finally, both sides were consulted by the Commission and then by the Parliament Committee on the Environment, Public Health and Food Safety before the Commission’s proposal was opposed by the Parliament. At the same time this case once more shows us the Parliament’s role enforcement as the proposal was returned to the Commission with the remark that “the draft Council regulation exceeds the implementing powers conferred on the Commission under the basic act” (European Parliament 2013).

Another supportive argument to Klüver’s approach was also proposed by Coen and Katsaitis who think that “it is too simple to posit that business groups dominate across all policy domains” (Coen and Katsaitis 2013, 1105). Prior

to that Coen and Richardson revealed limitations in elite pluralism approach defining interactions between interest groups and the Commission. They see it as “a form of chameleon pluralism, where interest group type, density and activity is a function of the policy type, age and capacity of the Directorate-General’s responsible for policy-making” (Coen and Richardson 2009, 8).

While analyzing different lobbying campaigns, approvals of Coen’s assumption can be easily found. When studying case of “herring wars” between the Commission and The Faroe Island I have found that Directorate-General for Maritime Affairs and Fisheries is not the easiest one for lobbyists to access. The Common Fisheries Policy refers to the First Pillar Policy. It has come a long way of transformations since the first instruments of common fisheries policy were established in the early 1970s. We can hardly say that this DG is “understaffed”: a number of scientific committees and observatories supply the DG with all relevant information minimising access points for interest groups (for instance, Scientific, Technical and Economic Committee for Fisheries and European Market Observatory for Fisheries and Aquaculture Products). More than that, the names of the participants of scientific committees are available online and not all interest representatives want to leave their tracks. At the same time, lists of participants of most other expert groups including the social dialogue committees are not publicly available.

According to the procedure, if a DG decides to establish a new expert group, it needs only the Commission’s General Secretariat’s approval and no further public announcement is required. An expert group can be both formal and informal. Formal groups can be established only with the Commission’s decision or a legal act which is time consuming, to say the least. While establishing of informal experts groups requires no public document announcing or results reporting. Consequently, a huge amount of existing expert groups are informal meaning that they are non-accountable. Only mandatory lobbying registration could put an end to this type of unreported consultations.

Making it clear who is lobbying for what along with penalising codes of conduct can increase the level of transparency and accountability in the Commission and promote political equality. It is up to Commission to decide to reveal the information about its experts or not. But it is evident that without mandatory registration of lobbyists and public announcement of experts involved there will be low transparency and the democratic deficit will persist.

IS THERE A PATH TO MORE DEMOCRATIC EU THROUGH INTEREST GROUP REGULATION?

Lobbying regulation’s impacts are highly controversial. We should admit that we have no strong empirical proof that strict regulation of interest groups representation and the level of democracy are directly correlated. However, positive effect of lobbying regulation on political equality may be contested. Absence of access regulation only exacerbates the inequality of political influence among groups of interests: “This absence of regulation seems to reinforce a situation in which groups possessing financial and social resources are privileged whereas the voices of small interest groups, be they general interest or small business groups, are not heard quite as loudly in the consultation process” (Saurugger 2008, 1283).

Certainly, lobbying regulation will have some side-effects. For example, entering the lobbying industry and starting lobbying campaign would become more costly and, consequently, would limit participation of some interest groups, which is, of course, normal for any political process. At the same time, lobbying regulation influences the level of transparency and accountability that are constituents of democracy. In this respect, we can consider the necessity of lobbying regulation to be a way of overcoming the democratic deficit in the EU. But still, regulation of interest group participation has limited effects and it won’t ever be a 100% remedy. Democratic deficit is a systematic problem and should be addressed on all levels and not only on the level of interest representation. Apart from lobbying regulation other means to overcome democratic deficit should be undertaken.

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European Politics, Interest Groups, Lobbying Regulation, Democratic Deficit, Effectiveness and Legitimacy

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