

**Service bureaux of decision-makers
or successful spin-doctors:
Assessing interest group influence in the EU and the US**

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Abstract

It is generally held amongst scholars of interest intermediation that interest groups are quite influential for policy-making. This has been demonstrated in studies of the national level and features very strongly in studies of US lobbying. It is also evident in the fact that interest group activities at the European level have been studied in great detail and are considered an important element of the EU's system of multilevel governance. In the context of these studies, recent research by the author has come to a surprising result: in six case studies of day-to-day EU policy-making in the transport and IT sectors, private actors and interest groups could only influence the smaller details of legislation. In addition, they were only influential when the general political will of the decision-makers was either in support of their demands or indifferent to them. These findings lead to the question of what determines the success of interest groups, especially in light of the fact that studies of US lobbying come to very different results. Why is interest representation in the US so influential when it seems that at the EU-level this is not quite the case? This paper compares findings on the influence of US lobbying with that of the EU-level and discusses what this means for democratic governance and the relationship of decision-makers to societal groups.

1. Introduction

EU lobbying has long been perceived as influential for EU decision-making. An increasing stock of political science literature on EU interest representation has developed especially since the 1990s (see Mazey and Richardson 1993, 2001; Greenwood 1997, 2003; Wallace and Young 1997) – suggesting that nonstate actors must play an important role for the shaping of European policymaking.¹ This assumption is reinforced by the crucial role nonstate actors are attributed by models of multilevel governance (Kohler-Koch and Eising 1999) or by the special attention the European Commission has given to civil society interests.² However, most empirical studies of EU lobbying limit themselves to describing lobbying cases, but stop short of determining actual influence gained by lobbying. EU lobbying researchers seem to assume that the empirical evidence demonstrating influence of lobbying groups in other political systems, notably in the US, is a sufficient indicator to assume that the same holds true for EU lobbying. However, if it is not, important conclusions could be drawn for the relationship between decision-makers and nonstate actors in the context of European multilevel governance concepts.

Recent empirical findings suggest indeed that there might be less influence than assumed. Instead, influence may depend on the political will of decision-makers. An recent extensive data set with survey data on the transport and information technology sector and with qualitative data on six lobbying cases shows this. Lobbyists with different opportunity structures supporting or hindering their work were successful whenever their interests were in line with a political will that had already been developed, or when decision-makers were indifferent towards the policy-outcome.³ They were unsuccessful in each issue in which their interests differed from those of the decision-makers (Michalowitz 2005). Lobbying outcomes that were satisfying for private actors analysed were strikingly in line with the political will of institutions, whereas dissatisfying outcomes seemed to be related to an opposite political will.⁴ These findings are supported by a number of scholars' interpretations of well-known lobbying cases.⁵ These observations should be analysed in more detail: if reasons for differences in lobbying impact lie in constraints and opportunities offered by the political systems themselves, this could have consequences for the relation between the voicing of interests and governance in a representative democratic democracy.

¹ Policymaking already indicates that with regard to the European system, this paper's analysis is limited to the creation of legislative acts under the community method of the Union.

² Culminating in a special chapter of the White Paper on European Governance (European Commission 2001).

³ The data was collected on the basis of 46 expert interviews on the 6 cases. For a more detailed account on the data collection and the cases, see Michalowitz (2005).

⁴ When comparing the initial political will driving a regulation with the goals of the analysed actors, evidence suggested only weak lobbying influence. Lobbying interests in allegedly successful cases largely corresponded to an already present political will. Also, the impression of the political will driving lobbying influence was not weakened by the assessment of the shift of position of decision-making institutions over the course of the decision-making processes as well as sidelining and counter-lobbying activities (see Michalowitz 2005).

⁵ For instance, the allegedly extraordinary lobbying successes in high-politics cases, such as the influence of the European Roundtable of Industrialists (ERT) on the development of the European Single Market, support the findings (Apeldoorn 2002; Cowles 1996). While the ERT claims to have initiated the Single European Market, the political dynamics of that period are sufficient evidence to argue that the Single Market was already on the EU agenda and received wide support not only from the ERT and a wide range of high-level companies but also from the Member States (Greenwood 2003: 257 and 258).

The question is therefore what could cause the apparent weakness of EU lobbyists. Under what circumstances do interest groups gain influence? Which factors influence interest group impact on political decision-making? Are EU lobbyists applying inadequate lobbying tactics? Is it indeed the European political system restraining lobbying in a way that limits the influence external actors can have on the decision-making?

The above-cited evidence indicates that the success of EU lobbying activities may largely depend on or at least correspond to the political will that had generated independently from the exerted external pressure within the European institutions themselves. Hence, interest groups may contribute to EU decision-making – i.e. serve as service bureaux to the European institutions –, but it appears highly likely that they do not steer it – they cannot claim to be successfully spin-doctoring EU decision-making. It appears puzzling that US scholars of interest intermediation, for instance, draw a different picture for their country (see Berry 1979; Kollman 1998; Schier 2000; Rosenthal 2001).⁶ Based on the above-cited initial observations in EU and US lobbying literature and previous original investigations of the author, the following article therefore seeks to identify factors of interest group influence. It will do so primarily by taking into account lobbying behaviour and institutional settings. This will be done with a comparative analysis of lobbying in the EU and the US. The reason to select a comparative design of these two political systems is twofold. Firstly, the question as to why EU lobbying may be less influential than it appears from literature is difficult to answer from looking at the EU alone. Literature so far has neither come up with a definition of influence, nor with a design to research factors determining it; what has been shown in studies of the author however, are situations in which lobbying has *not* been influential. However, the evidence was not sufficient to go beyond hypotheses to explain why. Gathering more data that are empirical, either on further non-influential and influential cases in the EU or in other states for comparison is therefore crucial to assess factors leading to influence on decision-making. Since US literature provides data already, it appears most useful to begin with a comparison of EU and US lobbying before going into more detailed studies of EU interest group (non) influence.

The availability of US literature on the topic is the second reason to decide for a comparative analysis of the EU and the US. Interest group influence has already been studied for the American political system and definitions have been developed. Additionally, patterns of lobbying behaviour have been observed that, at least at a first superficial sight, suggest similar features as those of EU lobbying (see Rosenthal 2001; Gardner 1991). This impression is backed by practitioners' claims that Brussels lobbying is in many ways similar to US lobbying.⁷ EU lobbying is increasingly

⁶ Berry cites various examples of successful lobbying cases where strong indicators for mind changes through interest group pressure can be pinpointed (Berry 1979). Kollman begins his book on lobbying strategies with an impressive example of successful pressure on the US Congress by mobilised senior citizens (whilst the targetted congressman did not change his mind, other congress members did and rejected the legislative proposal) (see Kollman 1998). On the basis of numerous of such case studies, more refined theoretical reflections about how lobbyists lobby successfully are made by authors such as Austen-Smith and Wright (1994) or, very recently, Baumgartner and Mahoney (2004) on the success of interest group coalitions. Exception: Whereas a study from the 1960s purports similar findings for the foreign trade sector of US policy-making – US lobbyists are identified as service bureaux for congress men and women (Bauer et al. 1963).

⁷ Various conversations with American lobbyists in Brussels, and UBI lecture of John Disharoon, Caterpillar Public Affairs office Brussels (2000).

perceived as „going American“ – lobbyists have increasingly adopted the level of professionalism of Washington, D.C. lobbying, and the structures as well as formal and informal rules which are used in the US in order to carry out successful lobbying.⁸ Comparing allegedly unsuccessful EU lobbying with allegedly successful US lobbying in terms of their similarities and differences may therefore serve to determine which factors may be decisive for lobbying influence. This impression is also the reason determining the choice of a ‘most similar’ research design, which is explained in more detail below.

Methodologically, the evidence provided for comparison in this paper will be limited to already published evidence on EU or US lobbying. The published data, together with own experience in EU lobbying, will be put into context. While original systematic empirical studies should follow, an assessment of literature is sufficient to produce first insights into the question of interest group influence.

The question whether interest groups are influential certainly primarily depends on the definition of influence. Research aiming to answer questions about influence is difficult, because the subject proper – influence – can hardly be operationalised, and the impact of individual factors can hardly be distinguished from the impact of other factors. The most basic definition of influence as it is also applied in the cited US studies is for interest groups to achieve the fulfilment of their interests – the end results (see Berry 1979: 183). As Steven Schier formulates: „Influence is the ability of a group to produce a desired outcome in government – whether that outcome involves stasis or change.“ (Schier 2000:158). Results, however, may not always be linkable to lobbying activities. A more neutral definition might be to identify influence as the achievement of a mind change of decision-makers. Max Weber’s definition of power can serve as a reference point to justify this understanding of influence. According to Weber (1980) [1921] power is the ability of an actor to force another actor, even against his own will, to pursue a certain course of action. Influence can be understood as a weaker form of power. An actor is being persuaded to perform a certain action, even if he initially did not want to do it. When applying this definition, the question whether or not persuasion has taken place most likely becomes visible in a comparison of policy outcomes and initial intentions of decision-makers.

The following sections will firstly outline the methodological and theoretical framework in more detail – why apply a most similar research design rather than a most different design, and how does it apply to an EU/US lobbying influence comparison? What are the underlying hypotheses guiding the analysis? Then, two hypotheses competing in literature are tested according to the most similar research design. Factors of lobbying strategy, organisation, constraints, and opportunities for interest groups provided by the two different political systems are examined in order to single out variables that differ between the two systems. Finally, conclusions are made as to why lobbyists appear influential in the US but not in the EU.

It has to be mentioned at this place that the analysis rests on a number of prior assumptions that would appear problematic in a larger empirical research framework. Thus, differences in lobbying strategies, structures, actors etc. between the two

⁸ For instance, political consultancies with commercial lobbyists have become important players in Brussels. In-house lobbyists of large companies play a major role in EU lobbying, whereas the formerly most important associations are still indispensable, but rather serve as a necessary information provider than as the only source of lobbying activities to their more financially potent members (see Michalowitz 2005).

systems are assumed to either be spurious, thus to not have an impact on influence, or they are induced by differences in the political systems. Essentially, the study does not take into account the possibility that policy fields display different logics of lobbying influence or failure; that the lack of representativeness of the data on which the original assumption of EU non-influence rests could bring a bias into the examination; and that factors other than those derived from the EU and US lobbying literature might be missed.

The findings based on the six case studies indicating a weakness of EU lobbying certainly have to be examined on a more representative basis in order to qualify for a generalisable research outcome. Also, comparative research with a methodologically sound empirical research framework on US lobbying influence would have to be conducted in order to find out whether US lobbying is indeed more influential than EU lobbying and to provide comparable empirical data on differences between US and EU lobbying impact and the potential reasons for them. However, the current literature on both the EU and the US provides sufficient material to develop a set of hypotheses in this paper, with which such kind of research can be conducted at a later stage. The following outlines are intended to serve the purpose of developing such hypotheses. Hence, for the time being, the larger influence of US lobbying is therefore simply assumed based on the strong indicators of US lobbying.

2. Methodological framework: the ‘most similar systems’ EU and the US

Comparative analysis typically applies either “most similar” or “most different” research designs (see Przeworsky and Teune 1970). The comparison of cases with a ‘most similar’ design works with the assumption that factors that are similar between the compared cases are irrelevant to explain variance. It is assumed that a number of theoretically significant differences can be found between very similar systems, and that these differences contribute to a causal explanation. Most different research approaches aim at a largest possible heterogeneity of the selected cases. They are based on the assumption that certain characteristic common features of the analysed objects can be found despite these differences – ‘most different’ designs work with the assumption that factors that are different are irrelevant to explain variance (see Przeworsky and Teune 1970: 35). The aim is thus to isolate variables with explanatory power (Burnham et al. 2004: 63-64). In the case of a comparison between EU and US lobbying, the most similar approach appears most suitable because, as above outlined, literature suggests more relevant differences than relevant similarities between EU and US lobbying. If lobbying strategies similar to those applied in the US are not influential in the EU is not influential, but they are in the US, then this difference raises the question what determines lobbying influence. The pre-assumption is that EU lobbying is not, or weakly, influential while US lobbying does have an impact. Hence, variance in the effect on the dependent variable ‘lobbying influence’ in this case is to be explained by factors that differ between the two systems. Hence, the ‘most similar’ design appears most suitable as a research framework for analysis in this case because it helps to focus on factors that differ between the systems.

Przeworsky and Teune criticised the ‘most similar’ approach for the strong way in which the initial assumptions determine the research outcome. Since differentiating factors take the centre stage, the approach is at the end of its explanatory power if differential factors turn out to be less important, i.e., the approach does not allow for

the possibility that similarities between systems are more crucial than differences (Przeworsky and Teune 1970: 32). The scholars maintain that the ‘most different’ design is more open at the outset of an investigation because it can identify both differential and similar factors, which then allows for an adjustment of the initial research hypotheses in the course of the study. However, maintaining openness towards the result should also be possible when starting out with a ‘most similar’ design. Proper research conducted along the ‘most similar’ design should either confirm the initial hypothesis or indicate at an early stage that more significant similarities with explanatory power have to be taken into consideration than can be justified with a ‘most similar’ systems approach. Burnham et al. assume correspondingly that

“[...] a comparative research design can test hypotheses through isolating the effect of one variable on another. Inasmuch as doing so throws up new ideas and possibilities, it can also suggest how the hypothesis might be usefully refined or reformulated.” (Burnham et al. 2004: 69).

In that case, the approach will have to be changed and a ‘most different’ design appears more suitable.

Such argumentation already implies the relevance of underlying research hypotheses for the selection of the methodological design. Using a comparative design with different outcomes but similar variables enables in the case of lobbying influence to test two competing theoretical approaches for explaining lobbying and state relations: exchange theory and rational choice institutionalism.

The relationship between public and private actors has long been regarded in terms of an exchange relationship (see Bouwen 2002) The exchange approach can be found as an implicit research paradigm throughout different concepts of previous studies on national and European interest representation (Mayntz 1993: 45). This mainly refers to the relationship between public and private actors. The approaches of exchange theory model the interaction of at least two actors in an exchange relationship around certain goods, determined by supply and demand. The basic assumption is that the exchange reaches an optimum when both sides manage to maximize their profit (see Walras 1984). It appears very plausible to conceptualise EU lobbying with a relationship determined by supply and demand. A demand for influence for interest groups can be derived from previous studies (see Bouwen 2002; Henning 2000). In addition, the demands of public actors for information from private actors are widely acknowledged. As regards interest group influence, the exchange-theoretical view would assume that the way lobbying strategies are organised through functional division between lobbyists and through strategies of approaching lobbying targets could determine the influence they can gain; i.e., the better the exchange between demand and supply is met, the more successful lobbying should be. Hence, if lobbying strategies and/or lobbying organisation differ between the US and the EU, this could be a factor determining influence.

Most empirical research with case studies of EU interest intermediation implicitly assumes a relationship between public and private actors that corresponds to a rational choice-institutionalist view. New institutionalism rests on the assumption that behaviour of actors is shaped by institutional norms and rules – political institutions as decision-makers and political actors define the space in which politics develops. The rational choice variant of institutionalism concludes that actors adapt a means-to

an end-strategy to achieve their goals; they will adapt to the norms and rules of the political system as far as they have to in order to fulfil their aims (March and Olsen 1989; Hall and Taylor 1996). The rational-choice institutionalist view found implicitly in many case studies on EU lobbying is that private actors adapt to demands of the political system, and the political system shapes their behaviour. The political system determines whether lobbyists can be influential; if the political system necessitates for decision-makers to consider external interests because they could otherwise lose their posts, lobbyists can be more influential than in political systems where the consideration of external interests is irrelevant to the political future of the decision-makers. Hence, if the political system of the US renders it more necessary for decision-makers to consider lobbying interests than in the EU, this factor could be crucial for the influence lobbyists can exert.

The two hypotheses do not necessarily rule each other out – however, one may have stronger explanatory power for a certain political system than the other and should therefore be the dominant theoretical approach, into which the other can be integrated. In our case, EU lobbying may be best explained with an institutionalist approach while for the assessment of US lobbying, the currently predominant exchange approach appears appropriate.

Comparative analysis assumes an impact of variables on each other (Burnham et al. 2004; Pickvance 2001; Przeworsky and Teune 1970). Applying a most similar research design means that in order to single out variables affecting the degree of influence of lobbying in a particular political system, we need to identify factors that influence lobbying outcomes per se in the EU and the US, and then we need to single out similarities and differences. Differentiating factors affecting lobbying processes and outcomes should, according to the assumptions underlying a most similar research design, determine the differences in degrees of influence obtained in the EU and in the US. Hence, we need to define variables that might have an impact on the dependent variable ‘lobbying influence’. Approaches to identifying and explaining lobbying in both systems⁹ share three elements on which particular focus is directed; these are the actors involved in lobbying processes, strategies applied by private actors in order to gain access and influence, and the possibilities and constraints which are placed on lobbying by rules and norms of the respective political system. The assessment of private actors would give information about the first, exchange-theory-guided hypothesis. Information about public actors would shed light on the demand side of the potential exchange, and it would enable to determine the impact of the political system. It would thus give information about the second, institutionalism-guided hypothesis. The analysis of the variables is therefore structured along the lines of the hypotheses.

3. Hypothesis-testing I: examining lobbying behaviour as explanatory variable

The first hypothesis assuming an exchange relationship between public and private actors requires private and public actors to interact in an exchange of demand and supply. If the exchange concept accurately describes lobbying, we would have to detect a less well-matched demand and supply in the EU than in the US. The problem should be inherent in the way lobbyists react to demands of public actors, because

⁹ such as pluralist or corporatist studies, policy network analysis or exchange theory (see Michalowitz 2005).

public actors are, due to their right to make final decisions that lobbyists seek to influence, in a better initial position of negotiating an exchange. Let us therefore look at public and private actors involved and their way of interacting in the two systems.

For the European Union, three categories of interest intermediation are identified in the relevant literature:¹⁰ direct lobbying via individual interest representations of specific interests (Greenwood 1997: 2) – so-called in-house lobbyists –, joining forces by following collective interests in the form of formal or non-formal associations, either at the national level or/and at the European level – so-called Euro groups –, and ‘hired-hands’- or commercial – lobbyists (Greenwood 1997: 3).

Euro Groups generally consist of smaller, either national or other member–units and concentrate in their work on technical and/or political lobbying aspects of European legislation (see Sidenius 1998; McLaughlin and Jordan 1993; Greenwood 1997). Most of them represent a large range of European member states within the sector they cover. They provide their members with a representative forum of their interest sector, with a certain presence in Brussels, with information services and with contacts with European Union officials. They are a platform for information exchange amongst their members and they produce position papers and other documents that are given to the EU institutions, constituting their active lobbying part. Via those groups, members can obtain certain positions in formal consultative or even decision–making committees, e.g. in the comitology system. However, since Euro group members perceived difficulties of the associations to sufficiently represent their interests and additionally wished to be present in Brussels themselves, more and more enterprises as well as national associations - mainly of the business sector - installed their individual public affairs offices in Brussels (Coen 1997). Most of these offices are small; the majority consists of two to four staff members, i.e. a director, a secretary/assistant, and possibly one or two additional assistant managers and interns. The relationship between Euro groups and in-house lobbyists has become one of cooperation and complementation. Central tasks are the lobbying of Members of the European Parliament (MEPs) and officials from the Permanent Representation of their respective nation state; influence of the Eurogroup/inclusion of the national perspective and the coverage of issues specific to the national/company/association member constituency (Michalowitz 2005).

Commercial lobbyists seem to become increasingly important with the extent to which companies lose interest in being represented themselves and pay more attention to the costs of intensive self-lobbying. Political consultants are mainly used long-term or short-term to help start Public Affairs work in Brussels, to monitor specific issues or institutions which would be too costly to cover with own staff, and for crisis management (see Michalowitz 2005; Lahusen und Jauß 2001). They appear to mainly constitute a back up to make sure influence is obtainable despite institutional steering efforts that diminish the potential to gain influence. Their greatest asset is a very detailed knowledge and contact network of and within the European decision-making process and its negotiation circles. Their use is apparently rooted in cultural traditions – whereas Anglophone lobbying actors in Brussels are more used to, and more likely to employ, political consultants, actors of a Germanic origin are more likely to rely on their Euro Groups and to see little value in political consultants (Kohler-Koch 1997).

¹⁰ Apart from them, other loose forms of collective and individual action at different levels can be found. Some authors, for instance, distinguish additionally between promotional groups and territorial groups, coalitions, networks and alliances (see Bindi 1996; Coen 1997; Pijenburg 1998).

The relationship between these lobbyist types is to some extent competitive, but largely one of functional divisions and of cross-control for clients. Overall, the way different lobbyists divide their work between each other or are used for different functions by their clients, members or employers demonstrates a high degree of professionalisation that appears to be capable of very quickly adapting to changing needs and preferences of decision-makers (see Michalowitz 2005).

The increasing differentiation is often attributed to learning from US lobbying structures.¹¹ At first sight, US lobbying uses a different jargon but appears to be essentially structured similarly. Alan Rosenthal distinguishes between contract lobbyists – which would correspond to political consultants –, association lobbyists who work for interest groups representing various interests, company lobbyists who correspond to the in-house lobbyists, and he names two more categories: government and cause lobbyists. Government lobbyists belong to local authorities and lobby on their behalf.¹² ‘Cause lobbyists’ appear to be a uniquely American lobbying type. Rosenthal describes them as groups who rally around a specific issue, generally with a moral background:

“Their clients normally have no commercial, material, or governmental interests – rather, their concerns are philosophical and ideological. They generally appeal to moral principle.” (Rosenthal 2001: 19).

Berry distinguishes US interest group types which roughly correspond to internal structures of Euro groups and their member organisations on the national, regional and local levels; these are umbrella organisations, such as the American Chamber of Commerce or the National Federation of Independent Business; so-called restricted umbrella groups which consist of companies in groups of industries, such as the National Association of Manufacturers or the National Retail Federation; trade associations, professional societies and a wide range of specialised business associations (see Berry 1979; Wittenberg and Wittenberg 1991; Kollman 1998; Rosenthal 2001). Like Euro groups, these differ in the interests they represent. As regards the relation between different types of lobbyists, Rosenthal maintains that association and corporate lobbyists have long-term commitments to their employers, while “contract lobbyists have divided loyalties to legislators and to clients” (Rosenthal 2001: 39). For companies, associations rest important forums despite their own efforts to conduct lobbying.¹³ Contract lobbyists are hired due to own staff shortage and due to the experience they bring (Rosenthal 2001: 53–54).

Hence, overall, the US situation appears to be very similar to EU lobbying. The only striking difference in interest organisation appears to be a significantly larger presence or at least visibility of non-profit interests, or more precisely, of cause groups, professions groups and public interest groups lobbying in the US. Labour unions are relatively strong in US interest representation, as well as so-called citizen groups. Citizen groups cover a wide span of economic, occupational or other backgrounds and represent any type of citizen interest – from pensioner interest groups to the National Rifle Association (Berry 1999). The strength of citizen groups is reflected in

¹¹ Various conversations with American lobbyists in Brussels.

¹² The Brussels-counterpart would be the various regional offices which also perform lobbying tasks.

¹³ Rosenthal cites a survey in which “[...] 260 companies responded found that 98 percent of them belonged to business associations and 99 percent belonged to trade associations”. (Rosenthal 2001: 46).

significant campaigning successes described, for instance, by Ken Kollman (1998). In addition, intergovernmental groups, i.e. organisations of state and local governments organise to lobby.

Their presence alone is unlikely to be a factor for differences in lobbying influence, but it is worth looking at the lobbying strategies used by these groups and reasons for their stronger presence.

US lobbying strategies also appear largely similar to those used in the EU (see Clamen 2000; Mack 1997; Köppl 2000; Gardner 1991). On both sides of the Atlantic, lobbyists develop larger networks, and in specific lobbying issues generally first define their target groups and then approach them with communication strategies adopted to the informal rules of their legislative systems (see Mack 1997; Gardner 1991; Greenwood 1997). Primary lobbying targets are the different components of legislative decision-making– legislators, executive branch officials, regulators and key staff aides. Additionally, indirect lobbying channels, such as constituents and other contacts that can help carry the lobbying message to those officials are contacted (Mack 1997: 236-237; Köppl 2000: 123). Lobbying in the EU is less focused on indirect channels of lobbying but also involves lobbying fellow association members or seeking allies of other branches – preferably public interest groups – for a common interest. In both systems, lobby groups seek allies that they find in other sectors, with groups who are outside the usual interest coalition partners, as well as in local community officials and in opinion leaders, academics and think tanks, political parties and their members and the voter. Effective lobbyists in either system will have to be able to identify the necessary target groups and to interrelate with all of them adequately. The ability to identify the appropriate target categories has to be complemented by an overarching communications strategy (Mack 1997: 243). Lobbyists need to be able to adapt to their individual targets’ demands within their negotiation strategy, and how these demands are being sold technically – practical advice that applies to the EU and national political systems as well (see Köppl 2000; Lahusen and Jauß (2001: 117; Mack 1997: 239). (see Schendelen 2002; Clamen 2000; Picard et al. 2000). Overall, communication strategies differ between the US and the EU due to different demands in the two systems. For instance, linguistic skills are important in the EU, the ability to relate to different cultures, and the overall lobbying style is less aggressive.¹⁴

Hence, lobbying strategies and the behaviour demanded again appears to be very similar in the EU and the US. However, one important difference may indeed account for a potentially different lobbying impact in the EU and the US. US lobbying is strongly characterised by activities targeted at the mobilisation of the public, and at the shaping of a public opinion, so-called “outside lobbying”. Outside lobbying describes activities aimed at the mobilisation of certain publics in order to motivate “[...] citizens outside the policymaking community to contact or pressure public officials inside the policymaking community“. (Kollman 1998: 3). The most frequent term for such kind of activities is grassroots lobbying (Berry 1979). According to Schier, it involves a set of activities ranging from research of target groups, identifying key targets within that group in especially important districts, “mass issue marketing”, phone and mail contacts. With these activities, members of the public are motivated to contact public officials, thereby supporting the interest group’s inside lobbying activities (Schier 2000: 173-174). This method is not or only rarely used in

¹⁴ Lecture at UBI of John Disharoon, Caterpillar Lobbyist.

EU lobbying. According to Schier (2000: 158) as well as Ken Kollman (1998), outside lobbying today plays a much greater role for American decision-making than traditional instruments and strategies of lobbying directed directly at decision-makers - the inside lobbying:

„Old-fashioned inside lobbying [...] may only have limited effect today. Just as elected officials in Washington feel the need to monitor and assuage public opinion through polls and public relations, modern lobbying increasingly requires sophisticated methods of public mobilisation. Lobbying in Washington is not just a game among well-paid lawyers, ideological activists, and legislators in the Capitol. The outside public is increasingly involved.“ (Kollman 1998: 3).

Outside lobbying is also the reason for a strong significance of the media in US lobbying (see Mack 1997; Rosenthal 2001; Kollman 1998). Media are needed to create a public for the interest represented – and opponents have to be dealt with in order to understand their arguments and be able to react to them. EU lobbyists rarely concentrate on media lobbying, most likely because no European public exists, or at least none that could be easily reached via a modest media strategy.¹⁵

However, outside lobbying appears to make a lasting impact on politics. Kollman concludes that policies are influenced by an interdependent dynamic of opinion shaping between the American public and special interest groups (Kollman 1998: 158). If this is so, and if it remains the only factor of differentiation between EU and US lobbying, the successful application of outside lobbying may indeed be the or at least one important factor for determining the influence of lobbying. If outside lobbying is the crucial factor determining lobbying influence differences in the US and the EU leads back to the two initially formulated hypotheses. Perhaps EU lobbyists have simply missed out on this lobbying instrument, i.e. they make a mistake by not applying outside lobbying strategies. This explanation would support the exchange-theoretical hypothesis.

However, EU lobbying has been around for some time, and American lobbying strategies have largely been adopted on the EU level. It would seem odd that the apparently most successful instrument has unintentionally been left untouched. Outside lobbying is perhaps not as easily applied in the EU as it is in the US. Hence, a second explanation appears more plausible; European decision-makers may react differently to outside lobbying pressure than US decision-makers. This would mean that outside lobbying would not lead to success in Brussels and is therefore not employed by EU lobbyists. Such an explanation would strengthen the institutionalist-guided hypothesis. In the terminology of a comparative research design, the question is hence whether outside lobbying constitutes an independent variable that affects the degree of lobbying influence, or a spurious variable that stands in a wider context to the degree of lobbying influence, but does not affect it (Pickvance 2001).

The next step of analysis should therefore be the assessment of the lobbying receptiveness of European and American decision-makers. This also enables us to test the second hypothesis: what is the role the political system, opportunities and constraints offer to lobbyists?

¹⁵ An American company that tried to employ a media strategy even had to realise that such tactics can backfire in Europe; the decision-makers in charge of the case were appalled, no public could be mobilised to share the company's interest in less restrictive legislation on genetically modified organisms.

4. Hypothesis-testing II: examining institutional constraints and opportunities

The rational choice-institutionalist hypothesis is based on the assumption that constraints and opportunities for lobbying outcomes are provided by the political systems in which lobbyists and decision-makers operate. If this assumption can be confirmed, interest group influence is primarily determined by the political systems, whereas lobbyists can change little through their behaviour or adaptation to the demands of decision-makers – lobbyists are service bureaux rather than equal negotiation partners. In this section, we will therefore examine the opportunity structures of lobbying provided by the European Union and the United States of America, by looking at their political institutions and balances of power.

EU decision-makers targeted by lobbyists are essentially located in the three main decision-making institutions European Commission, European Parliament or Council of the European Union. The Commission is very open about its interest in interaction with private interests. Its initiating role in the legislative process and its openness can be seen as core factors rendering this institution so attractive to private interests. Oftentimes the small bureaucratic apparatus of the Commission is mentioned to explain a need for external information provision. At first sight, the Commission therefore seems to be a target that will easily accept a lobbyist's arguments. However, the Commission takes an active part in structuring external input. Before a planned regulation is formulated in a draft, a consultation process is started which invites a number of preferred interest groups to comment on the legislative plans in order to ensure practical implementability at a later stage (See Aspinwall and Greenwood 1998: 4; Michalowitz 2002).

External interests are not actively invited any more throughout the rest of the process within the Commission and until an official proposal is offered to the Council. Instead, the Commission seeks to keep lobbyists out of the decisive stages of the negotiating process. Private actors can only stay involved if they manage to present fresh information that is relevant to the decision (Michalowitz 2002: 43-48).

The Commission's role as initiator of legislation also puts the institution as a unit in a strong position vis-à-vis other institutions involved in the decision-making. The institution can supply a large degree of influence to private actors due to this very crucial role in the decision-making process. Proposals by private actors for a legislative act that are taken up by the Commission are likely to have a large impact on the overall policy outcome, and proposals that are not considered by the Commission are not likely to find their way into the document at a later stage. The decision-making process enables changes and the omitting of certain parts of a proposal, but the possibilities to insert new ideas at the Parliamentary or at the Council stage are very limited.

Although still seen as a weak actor, the European Parliament has steadily won influence in European decision-making (Corbett et al. 1995: 235). The Parliament can issue amendments to Commission proposals treated in co-operation and co-decision procedures. Amendments are drafted in parliamentary committees. A rapporteur¹⁶ will be put in charge of organising amendment proposals, which are first agreed upon within the committee and then put to a vote in the plenary. This means that core

¹⁶ A rapporteur is a committee member who is assigned to chair and prepare the committee's handling of a particular issue. Their committee counterparts are "shadow rapporteurs" who do the same, but unofficially, for different political groups in the committee.

lobbying targets are found on three levels: the rapporteur and his counter-parts (shadow-rapporteurs of opposite parties), key figures within the committee and key figures within the parliament. Furthermore, political groups and intergroups, committees as well as the plenary play a role. Once the amendments are drafted and negotiations begin within the committee, these consultations will stop, and bilateral talks between MEPs and lobbyists will depend on the initiative of the private actors.

The Council of the European Union as the body of the national representatives has less of a need for any additional information from private actors at the European level, and its representatives in Brussels do not have the freedom to take up fresh external input. Nonetheless, it is a target for lobbying, for it is the institution vested with the final decision-making power. Lobbyists in general remark that the influence of the Council administration is not very great, and lobbying would be wasted. At the same time, those who manage to establish good contacts with Permanent Representations of individual Member States see a chance to make an impact. It is certainly true that substantial changes cannot be made at this final stage, but the influence of the preparation body might be understated in the literature and also by its members. Although the main decisions of the Council are taken at the Member-State level, the working parties up to COREPER are able to influence the 'fine tuning' of decisions. Lobbying still takes place, albeit more subtly and informally (see Hayes-Renshaw and Wallace 1997).

Both the Commission and the Parliament communicate clearly, what they want from lobbyists. Generally, the receptiveness of Commission departments seems to depend on the representivity of the source, and on the substantiality of the material. Representivity is highly valued because decisions will have to be applicable in all member states and for all involved parties, which means that a single company or NGO opinion can rarely be regarded sufficient evidence for the inclusion of an argument. On the other hand, the received material must be substantial. Both institutions thus show strong efforts to steer and shape the input offered to them. The institutions are not free in deciding how much influence they return as a reward to services, even if they wanted to. They cannot make decisions independently from each other in most cases in which lobbyists are involved, because they need each other's agreement in order to get a measure passed. Governmental actors are the only ones who can make a binding decision, but their ability to grant influence depends very much on the decision-making procedure. Decision-making power is hence dispersed intransparently among the individual bodies. Influence obtained over one part of an institution does not guarantee influence of private actors on the overall process, and it can remain unclear why interests were not taken up in the final decision. Since lobbyists have to deliver their information if they want to obtain any influence at all, the institutions can make use of the situation.

Hence, the balance of power between the EU institutions supports the institutionalist-guided hypothesis of lobbying influence being determined by the targeted political institutions. The question is how much power American political bodies possess to steer lobbying influence.

While the division of powers is even stronger in the American political system, US decision-makers appear to be much more affected by outside pressure than EU decision-makers. The most important target for US lobbyists is the US Congress. Pressure is perceived as being so intense that frequent complaints are made about a Congress hamstrung by lobbyists and special interests – a development that has, on

some issues, led to a shift of powers to other branches of the political system (Berry 1979; Rosenthal 2001). The primary reason for complaints is the power that interest groups in particular can exert on the election and re-election chances of a congressional member. US scholars stress that legislators are essentially 'careerist legislators', i.e. they do not have outside income. Hence, they depend on staying in office, and this is what drives their decisions (Rosenthal 2001). US lobbying is driven by "[...] the issue at hand, the stage it is at in the policymaking process, and the organizational constraints of the group limit the choices [of strategies (I.M.)]. (Rosenthal 2001: 90).

Due to the direct election process of Congress members, the re-election depends more on constituency interests in the respective states than on national parties and their positions. At the same time, the American political system is characterised by a relatively strict division of powers between the legislative, executive and judicial branch. Unlike EU lobbyists with a focus on executive and legislative lobbying, US lobbyists concentrate on the legislative and judicial branch with the strongest efforts directed towards the legislative. This is due to the threatening power towards the Congress, but also due to the key role Congress has in creating legislation (Berry 1979; Kollman 1998). To just describe the American legislative process briefly: being introduced in either the Senate or the House of Representatives passes legislation in form of bills or joint, concurrent and simple resolutions. A bill can be introduced by any one member of the Congress in the House he or she is a member of by simply "sponsoring" it, i.e. by introducing a draft proposal signed by the respective member. This proposal can but does not have to be co-sponsored by other members. The next step is the submission of the proposal to a primary and possibly multiple additional committees. As in Parliamentary systems in general, these committees are the most important element of the legislative process in the Congress, because they thoroughly review and debate the proposal. The legislative proposal goes through subcommittees, and debates are accompanied from advice sought by the congressional members from various departments. Once a legislative act is approved in one house, the procedure is repeated in the other house. Only if both houses come to an agreement, the proposal is referred to the US President for approval. Otherwise, the proposal is referred back to the initiating house with proposals for amendments.

Driven the rules imposed by the decision-making process on creating legislation, lobbyists primarily seek to find a congress member to support the respective interest in a legislative act. Gaining the support of a congressional member is indispensable for the success of a lobbying interest (Schroeder 1989).

To achieve support in Congress, the most important lobbying strategy in US lobbying is long-term influence on the composition of the Congress – a feature of lobbying that is not found in EU interest intermediation. Interest groups usually support a congressional candidate's election campaign, through so-called Political Action Committees (PACs). Electoral campaigns cannot be sponsored directly, but money can go into a committee that then finances the campaign. While much concern has been voiced in scholarly debates about how much direct influence interest groups can exert via the PACs, general conclusions have been that PACs do not buy influence. However, they buy access, which can be seen as an important precondition for influence (Berry 1979; Bouwen 2002).

Looking at powers of the American executive reinforces the crucial role of Congress. Executive lobbying concerns interest representation towards the US President and

executive agencies. These organs are lobbied and lobby themselves. In terms of finalising a legislative act, the President has the possibility to approve a bill, to approve by failing to return the bill with objections to the Congress within ten days, to veto or to “pocket veto”.¹⁷ Lobbying the President is interesting due to his broad constituency that gives him more freedom of manoeuvre than the individual congressional members. The core part of executive lobbying however appears to be Presidential lobbying of the Congress. The President himself needs to persuade the public of the necessity of a proposal, he collaborates with representatives of specifically affected groups and he activates his legislative liaison staff to lobby members of Congress. The Washington White House lobbying staff engages for the President in lobbying the party leadership, engaging in political horse-trading and contacting opposing party members when their votes are needed on major issues. When the President makes policy proposals, these usually require Congress to pass specific pieces of legislation. Interest groups have to accept his cabinet secretaries, so they are heard before the appointment of cabinet members. However, the key Presidential target is the Congress. The President’s need of Congressional approval is an important difference in power balance as compared to the EU system. With the President and his staff, contacts are the most important aspect of lobbying for interest groups – more than lobbying for specific interests, contacts with the President are a means of political symbolism for both the President and the respective group (Berry 1979: 173). However, access to the White House is very selective – in 1979, Berry quoted a rate of 8% of the Washington lobby groups to have regular contacts (Berry 1979: 174). Numbers may have changed, but more recent descriptions of lobbying strategies suggest that the tendencies are still the same (see Rosenthal 2001; Mack 1997).

Executive lobbying in terms of lobbyists lobbying the executive concentrates on lobbying agencies that implement legislation and thereby create administrative law (Berry 1979: 168). The independent regulatory commissions constitute important policy makers – which makes them interesting lobbying targets especially for private interest groups. Having been created to regulate and control certain activities of private industry, they have sometimes become lobbyists for the groups they are supposed to supervise. They possess quasi-legislative and quasi-judicial power; the former because Congress lacks expertise and time, so it passes general laws, and the commissions are to fill in the details; the latter because the agencies can hold hearings, for instance on applications for licensing new carriers for more competition in national air traffic. They can bring charges, and they can impose penalties on violators of their rules. What causes some concern is the likeliness of agencies to get captured by lobbyists – due to their workload and the readiness of lobbyists to provide support, some regulatory agencies are serving those they are to control (Berry 1979).

Finally, as already mentioned, the judicial branch plays a major role for lobbying efforts in the American legislative process (Berry 1979:175 onwards). In the EU, judicial lobbying is also the last resort in a lobby fight – but US lobbies appear more ready to go the judicial route than EU lobbies. Again, influencing the composition of the judicial branch, or the respective courts, is an important strategy of US lobby groups. The way US judges on various levels are appointed differs largely from the way the European Court of Justice is staffed. The executive branch appoints federal judges, i.e. the US President appoints them with advice and consent of the Congress.

¹⁷ Whenever Congress by their adjournment prevent the return of a bill, the bill does not become a legislative act, although the President has not objected (Schroeder 1989: 41).

Legislators, political parties and pressure groups therefore seek to exert maximum influence. Judges are appointed for a lifetime and can therefore make a major impact on legislation.¹⁸

However, judicial lobbying is very cost-intensive and is generally only pursued by financially strong associations. Like Congressional lobbying, it starts with influence seeking on the appointment of judges, especially on the federal level. Before actual hearings, indirect court lobbying takes place via a variety of measures aimed at influencing the climate of the judicial opinion; usually via lancing articles on the issues. Direct court lobbying comprises primarily the sponsorship of litigation and the filing of so-called *amicus curiae* briefs. Litigation means that interest groups pay for the costs of taking a case to the courts. Interest groups thus seek to find or create an appropriate case in order to get courts to rule a precedence ruling. Since litigation can only scarcely be applied, interest groups more often turn to the writing of *amicus curiae* briefs. This is one of most frequent forms of judicial lobbying. The briefs consist of written arguments submitted to court in a particular case in support of one side. To do so, interest groups need permission of one of the affected parties. This is usually easily obtained, since the presence of a large number of supporting *amicus curiae* briefs tends to create the impression that the respective party has popular support (Berry 1979).

All these outlines indeed help to come to conclusions on what is driving interest group influence. The core differences found to have an impact on the influence interest groups can exert were outside lobbying, stronger efforts to influence the composition of decision-making bodies, and a different degree of threatening power due to the possibility to influence voting behaviour. However, on the basis of the previous discussion of the political decision-making processes in the EU and the US, it can be suggested that differences in lobbying tactics between the US and the EU are not the source of the different impact of lobbying in the two territories. Instead, they are a consequence of the impact of the political systems, and especially of the way representation is organised in the EU and the US. Hence, the institutionalist-guided hypothesis seems to be closer to reality. Just as US lobbyists react to the opportunities and restraints of their political system, EU lobbyists have adapted to theirs – which means that certain tactics are worth to be copied; others are unlikely to succeed or be too cost-intensive in the EU. In the US, influencing who becomes a member of congress makes sense because congress is the strongest organ. In the EU, influencing who becomes a member of the European Parliament is first of all difficult to judge since a company would have to be familiar with a complexity of party politics not only in fifty federal states but in 25 sovereign nation states which partially again have federalist structures. Second, it would not even make much of a difference in legislation because the European Parliament is despite gains of strength not the most important organ of the EU. The process for naming Commission officials works differently, and the Commissioner himself is not the most important person in order to reach a legislative change. Grassroots strategies are likely to fail due to the

¹⁸ An example given by Berry (1979) of the Ronald Reagan's legislature may clarify the dimensions. After the Presidential election in 1980, more than half of the 750 judges had been appointed by Reagan. An unwritten rule which also plays a role in the selection of judges is a courtesy practice towards the Senate; senators get to reward their party with court positions for judges close to their party. For the appointment of judges to appeals courts, the President usually follows the preferences of his senators. When it comes to the Supreme Court, the president is more influential than the Senate in the appointment of judges.

heterogeneity of the EU and the resulting difficulties in mobilising a sufficiently large crowd of like-minded activists. Influencing the media is a difficult task because no European-wide accepted European media has developed yet, and it is unlikely to emerge. Getting a general message across might be possible in the end, but would require a lot more financial resources than the same task in US lobbying.¹⁹ In more abstract terms, the interdependencies between the European institutions lead to an unbalanced exchange relationship between European private and public actors (see also Bouwen 2002; Michalowitz 2005). Whenever private actors offer information, individual governmental actors are not able to guarantee influence over policy outcomes in return. This means that European governmental actors, seen as an entity, may possess a monopoly on influence, but each individual institution or institutional unit may not be able to grant influence for received information. The scope of influence granting seems to depend very much on the decision-making procedure and on the stage of the process. Since the decision-making process consists of a multitude of steps and interdependencies of the institutions, an individual institution's power of influence depends essentially on the importance of its role in the process. Private actors have little threatening power because they cannot directly influence the reappointment of decision-makers. Only the European Parliament is directly elected in the member states. Influence is even rare for the EP elections because most Member states elect via lists. This renders the candidates largely independent from specific constituencies.

In the US, however, two apparently equally powerful systems – politics and lobbying – are competing, and both have negotiation assets with which they become true exchange partners. Lobbyists can threaten with voting power; congressmen and women possess the decision-making power. Additionally, the division of powers is more open to outside participation – and outside pressure – in the US. In Brussels, the legislative and executive are united – but the body is composed like an executive. Hence, lobbyists have to deal with the problems of lobbying an executive in legislative issues as well; the relationship is unbalanced. In the US, legislative lobbying is an exchange, whereas the less applied executive lobbying displays features comparable to those of traditional Brussels lobbying:

„[...] administrators also value autonomy and balance their desire for outside support with their desire to make decisions themselves.“ (Berry 1979: 171).

This also indicates how outside lobbying success could be related to the dependent variable of lobbying influence. Outsider lobbying may be influential precisely because the American political system allows such pressure to play a role in US policy-making. Hence, outsider lobbying is a result of the variable constraints and opportunities offered by the political system.

¹⁹ This is not just an expectation or assumption but is backed by various examples of failed American company lobbying in the EU – companies that tried to succeed in Brussels with American-style lobbying.

5. Conclusions

This paper set out to test two hypotheses on lobbying influence via a comparative analysis of EU and US lobbying. The first hypothesis motivated by exchange theory was that the way lobbying strategies are organised through functional division between lobbyists and through strategies of approaching lobbying targets could determine the influence they can gain; the better the exchange between demand and supply is met, the more successful lobbying should be. Hence, if lobbying strategies and/or lobbying organisation differed between the US and the EU, this could be a factor determining influence.

The competing hypothesis motivated by rational choice institutionalism maintained that the political system might determine whether lobbyists can be influential. If the political system necessitated for decision-makers to consider external interests because they could otherwise lose their posts, lobbyists could be more influential than in political systems where the consideration of external interests is irrelevant to the political future of the decision-makers. Hence, if the political system of the US rendered it more necessary for decision-makers to consider lobbying interests than in the EU, this factor could be crucial for the influence lobbyists can exert. Confirmation of the first hypothesis would have expected differences in the behaviour of lobbyists, who did not adequately fulfil their exchange role. Confirmation of the second hypothesis would have necessitated crucial differences in the constraints and opportunities provided by the two political systems to lobbyists.

A comparison of lobbying actor organisation, lobbying strategies, decision-making processes and the division of power between the institutions demonstrated that differences in the behaviour of lobbyists can indeed be observed, but that they are consequences of different opportunity structures provided by the respective political systems. Essentially, the differentiating variables found in the comparative analysis were the use of outsider lobbying in the US as opposed to the restriction to insider lobbying in the EU, and the degree of representation in the two systems – US lobbyists possess threatening power through their ability to affect voting behaviour over the US key legislative institution Congress, whereas EU lobbyists do not possess any sanctioning means if their interests are not taken up.

The analysis certainly lacked a number of systematic assessments. It remains to be tested whether US lobbyists really are more influential than European lobbyists – the studies claiming US lobbying influence do not provide systematic information about initial intentions in diverse involved bodies and lobby groups, the entire lobbying process and the impact on the outcome. In addition, the question as to whether outside lobbying really makes a crucial difference for the degree of lobbying influence has not been answered. One could compare lobbying cases of periods in which outside lobbying was not as important as is stated in the literature of the 21st century with recent cases. If outside lobbying does not make such a big difference in lobbying influence, the assumptions of this paper would have to be revised.

As for the current state of the literature, however, the evidence for US lobbying power and a certain weakness of EU lobbying seems sufficiently strong.

One conclusion for the larger context of consequences of representative democracy is that the more representative a democratic system becomes, the more powerful lobbyists can be expected to become. The less representative, the more independent governmental actors will be from external pressure. The less representative, the less

likely is a capture, and lobbying may thus be a healthier contributor to political decision-making than in a more representative system. The EU-system, with its lack of rigorously democratic checks and balances, can still be seen as relatively immune against outside pressure (from voters *and* from specific interests). Institutional officials can select whom to listen to – which may not seem any closer to a truly democratic solution than a capture of politicians by lobbyists, but which leaves the power to the governmental actors. In a more democratic system, with a dependency of governmental actors on votes, the lobbyists can be expected to become stronger. This is obviously the case in the US, but also in individual nation-states.

Capture by interest groups is a problem for democratic governance, and so is a restrictive handling of access and pressure by interests. This study aims by no means to suggest a less democratic structure of governance in order to solve potential problems with overly influential lobbyists. However, this weakness of democratic cultures deserves to be pointed out, and it should be considered as a problem inherent in the freedom of speech, association and in governance by the citizen.

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