

**On the Threshold of Political Corruption: The Case against  
Lobbying in Germany**

A Research Paper submitted to the Faculty of Law of the University of the  
Western Cape, in partial fulfilment of the requirements for the degree of  
Masters of Law

by Laura Kollmar

Student number: 3208286



Prepared under the supervision of Prof Raymond Koen

Faculty of Law, University of the Western Cape

LLM Programme

Transnational Criminal Justice and Crime Prevention -  
An International and African Perspective

October 2012

**Plagiarism Declaration**

I declare that this research paper is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Student                    Laura Kollmar

Date                        -----

Signature                -----



Supervisor                Prof Raymond Koen

Date                        -----

Signature                -----

## Table of Contents

List of Abbreviations and Acronyms.....	IV
Key Words.....	V
Chapter One: Introduction.....	1
1.1 Setting the Scene - Background and Motivation.....	1
1.2 Scope of the Research.....	6
1.3 Methodology.....	7
1.4 Chapter Overview.....	8
Chapter Two: Lobbying - The German Case.....	10
2.1. Forms of Lobbying.....	10
2.1.1 Associations and NGOs.....	11
2.1.2 Companies.....	12
2.1.3 Lobbyists on Demand.....	13
2.1.4 Built-in-Lobbyists.....	14
2.2 How Lobbyists work.....	14
2.2.1 Formal and Informal Contacts.....	16
2.2.2 Direct and Indirect Lobbying.....	17
2.2.3 The Professionalisation of Lobbying.....	18
2.3 Lobbying Locations.....	18
2.3.1 Lobbying in the Ministries.....	19
2.3.2 Lobbying in Parliament.....	21
2.3.3 Outsourcing.....	22
2.3.4 Revolving-Door Effect.....	22
2.4 Impact on Democracy and the Rule of Law.....	23
2.5 Impact on Good Governance.....	25
2.6 Impact on Society.....	26
Chapter Three: Lobbying and Political Corruption.....	28
3.1 A brief overview of Political Corruption.....	28
3.2 Comparing Lobbying and Political Corruption.....	29
3.2.1 Similarities.....	29
3.2.2 Differences.....	31
3.3 Political Corruption and Lobbying as two different Ways of State Capture.....	34
3.4 The Purpose of the Criminalisation of Corruption.....	35
3.5 Conclusion.....	36
Chapter Four: Regulation of Lobbying.....	38
4.1 Regulation under International Law.....	38
4.2. Regulation under Domestic Law.....	41
4.2.1 Germany.....	41

4.2.1.1 Regulations.....	41
4.2.1.2 Critical Remarks.....	42
4.2.2 USA.....	43
4.2.2.1 Regulations .....	43
4.2.2.2 Critical Remarks.....	44
4.3 Initiatives of Companies.....	45
4.4 Criminalisation of Lobbying.....	45
Chapter Five: The Need for Better Regulation.....	51
5.1 Measures.....	51
5.1.1 Educational Measures.....	51
5.1.2 Increasing Funds.....	52
5.1.3 Corporate Governance.....	52
5.1.4 Documentation of the Law-making Process.....	52
5.1.5 Change of the Regulation of Donations.....	53
5.1.6 Disclosure of Additional Business and Incidental Earnings.....	55
5.1.7 Cooling-off Period.....	56
5.1.8 Ratification of UNCAC and the CoE Criminal Law Convention.....	57
5.1.9 Disclosure in a Lobby Register.....	59
5.1.10 Lobbying as an Offence.....	61
5.1.10.1 The Offence.....	61
5.1.10.2 Rationale.....	63
5.1.10.3 Criminal Liability of Legal Persons.....	63
5.1.10.4 Further Criminalisation.....	64
5.2 Conclusion.....	64
Chapter Six: Concluding Remarks.....	66
Bibliography.....	69

**List of Abbreviation and Acronyms**

CoE	Council of Europe
EC	European Commission
EnWG	Energiewirtschaftsgesetz
EP	European Parliament
EU	European Union
GRECO	<i>Group d'Etats contre la corruption</i> (Group of States against Corruption)
MP	Member of Parliament
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OLAF	<i>Office de Lutte Anti-Fraude</i> (Anti-Fraud Office)
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Document
US	United States

**Key Words**

Criminalisation

Democracy

Disclosure

Hidden Lobbying

Influence

Information

Interest Group

Interests

Lobby Register

Lobbying

Pluralism

Political Corruption

Regulation

State Capture

Trading in Influence

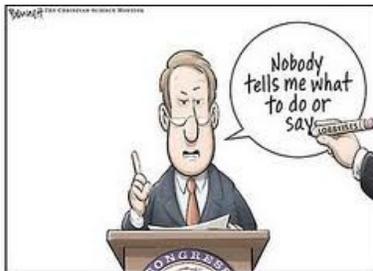
Transparency



## Chapter One

### Introduction

#### 1.1 Setting the Scene – Background and Motivation



Political lobbying is a recent and widespread phenomenon that arises in countries where many big and economically important companies are located. It is a relatively new phenomenon and the term 'lobbying' has featured in political science literature only since the 1990s.<sup>1</sup> Lobbying groups are ubiquitous and are located in the centres of competence where political decision-making takes place.<sup>2</sup> One can distinguish two main aims of lobbying: lobbying for a government contract (*Beschaffungslobbyismus*) and lobbying with regard to laws (*Gesetzeslobbyismus*).<sup>3</sup> The focus of this paper is on the latter. It is concerned to analyse how lobbyists influence the law-making process and what the consequences are for society.

Lobbying is the influence on decision makers and decision-making processes through the provision of information.<sup>4</sup> Politicians need information to contribute to ministerial or

1 Wehrmann (2007: 37).

2 In Berlin there are approximately 4 500 lobbyists, in Brussels between 10 000 and 25 000. See Leif & Speth *Zeit online* (2006). That means that there are eight lobbyists for one MP in Berlin. See Bülow (2010: 18).

3 Wehrmann (2007: 38).

4 Wehrmann (2007: 39).

parliamentary discussions and for their decisions in elections and votes. They often do not have the capacity to collect enough information. That is when the lobbying groups become important. They provide the politicians with information needed and thus ensure that their point of view ends up in the draft law and later in the law.<sup>5</sup>

There is also lobbying in the private sector. Representatives of the pharmaceutical industry, for instance, try to influence doctors by giving them free specimens and computer programmes, paying for education workshops and other benefits with the aim that the doctors prescribe the products of the pharmaceutical companies.<sup>6</sup> To analyse this aspect of lobbying as well would exceed the scope of this paper and will not be attempted.



An interesting aspect is that lobbying has become more integrated and international. Lobbyists do not work exclusively in their countries of origin. In the EU it is as important to lobby decision-makers in the European institutions as to lobby them in the national institutions because a significant part of politics is decided now in Brussels.<sup>7</sup> Furthermore, lobbyists from different countries meet to harmonise their lobbying strategies. In Brussels, for example, American and German lobbyists meet regarding restrictive export rules into the US and the EU. The American Chamber of Commerce (AMCHAM) is an American interest group that works in Brussels to ensure the effective representation of US businesses in Europe.<sup>8</sup>

---

5 Campos & Giovannoni (2007: 2); Leif & Speth *Zeit online* (2006).

6 Bartsch (2011: 165).

7 Eckert (2005: 279).

8 Georgen (2006: 25).

Nevertheless, the national level remains important for lobbyists. The policy of the EU relies always on national policy and through the Council of Ministers - as the most powerful part of the EU - national interests are represented strongly in Brussels. Directives, moreover, have to be implemented on a national level. One can see that national lobbying is also an important tool to influence European policy.<sup>9</sup> The scope of this paper, however, is to shed light on lobbying activities in the Federal Republic of Germany. Therefore, lobbying in the EU will play a lesser role.

The term 'lobbying' comes from the Latin word *lobia*, which means covered walk or cloister. But there is no universal definition.<sup>10</sup> The term 'lobbying' as it is used today derives from the time when Ulysses S Grant was President of the United States. After a big fire destroyed the White House partly and made it uninhabitable, President Grant had to move to the Willard Hotel. In its entrance hall - or lobby - representatives of different interest groups tried to exert political influence on President Grant, who then referred to these people as lobbyists.<sup>11</sup>

Lobbying is a very common method of political influence in Germany. One can speak of German society as a 'network society'<sup>12</sup> where political alliances are important for the exercise of influence. In recent years there has been a trend towards draft laws being written mainly by lobbying groups.<sup>13</sup> Therefore, laws are adopted without proper parliamentary influence, as the main intellectual work is not done by the members of parliament (MPs) any longer.

---

9 Zerfaß, Bentele & von Oehsen (2009: 30).

10 Joos (2011: 15).

11 Georgen (2006: 14).

12 Slingerland (2010: 2).

13 Leif & Speth *Zeit online* (2006).

The primary targets of lobbyists are the German Parliament and the federal ministries as they are the main actors in the law-making process. There is an academic debate on how to deal with this development. For more transparency a compulsory register for lobbying groups is demanded. Thus far there has been no analysis of the necessity of more drastic means, such as the criminalisation of lobbying. This research paper tries to show that in countries with a strong economy lobbying is a bigger problem than corruption. Therefore, it is important to find harsher means to deal with lobbying. More transparency is an important step but it is not enough.<sup>14</sup>

For this purpose, what is meant by lobbying and what kind of lobbying is problematic have to be clarified. Lobbying is defined 'as strategic influence exerted on a public policies (sic) and its formulation in line with the partial interests of some group or an individual'.<sup>15</sup> Lobbyists seek to influence public officials with information. Therefore, a 'lobbyist is like a merchant of information'.<sup>16</sup> They never call themselves lobbyists as the term has a negative association. Different descriptions like 'Head of Policy Sector' or 'Head of Government Relations' are used.<sup>17</sup> The aim of lobbying groups is to achieve their economic targets or those of the companies they represent by improving the applicable legal conditions. Those targets can be beneficial national competition laws, a moderate economic policy or advantages in economic competition.<sup>18</sup>

It is necessary to identify which form of lobbying is condemnable. Lobbying *per se* is not objectionable. Politics lives through information, analysis and evaluation provided by political and

---

14 Maras (2009: 38).

15 Begović (2005: 5).

16 Giuliani JD quoted in Georgen (2006: 14).

17 Zerfaß, Bentele & von Oehsen (2009: 29).

18 Maras (2009: 36).

social stakeholders. One can designate Germany also as a cooperative state, where political stakeholders are dependent upon the cooperation of civil society.<sup>19</sup> The political process of decision-making becomes more and more complex because of the political specialisation it involves.

Lobbying is conditioned by a capitalism that is orientated towards competition. More and more companies are in competition and try to implement laws favourable to themselves.<sup>20</sup> A pluralistic democracy such as Germany which accepts diversity of interests in a state aims at the participation of many stakeholders as they represent the diversity in the country. But a society can be pluralistic only if all interest groups have the same possibilities of participation. The contact with public officials has to take place on a transparent level where every stakeholder - from the big commercial enterprise to the non-governmental organisation (NGO) - has the same opportunities to be heard. In Germany the distribution of influence is not equal. Companies have much more power as they have more financial capacity to provide the ministry officials and the MPs with information. It must be ensured that pluralism does not develop into a 'pluralistic anarchy'<sup>21</sup> in which competition is unrestricted and the law of the strongest dominates.

The concept of lobbying that will be analysed here is the one behind closed doors. Big companies and influential lobbyists prefer to talk to public officials and MPs in a clandestine manner. As they have more money and economic power, their access to the decision maker is easier. Lobbying activities which are transparent, regulated and equal for everybody are legitimate. What has to be

---

19 Von Winter (2004: 761ff).

20 Reich (2008: 18).

21 Sebaldt (2007: 103).

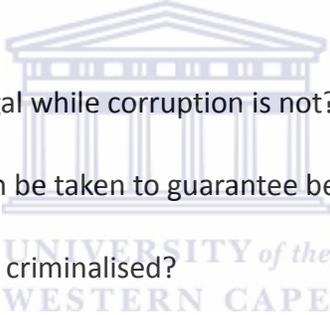
regulated, if not criminalised, is the hidden lobbying, the influence behind closed doors.

## 1.2 Scope of the Research

The paper gives an overview of the phenomenon of lobbying in Germany. It compares political corruption and lobbying and raises the question why corruption is illegal and lobbying is not?

Therefore, several questions will be discussed. These include:

Are hidden lobbying and corruption moral equivalents?

- 
- Why is lobbying legal while corruption is not?
  - What measures can be taken to guarantee better regulation of lobbying?
  - Should lobbying be criminalised?

Corruption is regulated in Germany by the criminalisation of most of its forms. Active and passive bribery, acceptance of benefits by a public official and granting of an undue advantage are all criminalised. There is a social consensus against corruption as it is seen as something immoral and condemnable.<sup>22</sup> Lobbying, however, is still socially accepted and its negative impacts are only slowly being recognised. If lobbying fulfils the requirements of the above-mentioned criminal offences, it is corruption. It becomes difficult where lobbying is in a grey area between illegal corruption and legal forms of influence.

---

<sup>22</sup> Ocheje (2011: 262).

The paper tries to show that certain aspects of lobbying are on the same moral level as corruption. Therefore, it will discuss the purpose of the criminalisation of corruption. One reason, for instance, is to guarantee the independence of the law-making bodies. MPs are not bound by specific assignments and instructions.<sup>23</sup> Therefore, lobbying which tends to influence the law-making processes ought to be subject to the same restrictions as corrupt acts.

Furthermore, lobbying is more common in rich countries whereas bribery is more common in poorer ones.<sup>24</sup> So, there is a significant need in European countries to regulate hidden lobbying.

### 1.3 Methodology

The paper gives an overview of the situation of lobbying in Germany and will use different cases and examples to prove its propositions. Moreover, it will analyse the regulation of lobbying in different legal systems. The theoretical part deals with the question whether corruption and lobbying are substitutes for each other.<sup>25</sup>

This study is a desktop study, so it will concentrate on the primary sources concerning corruption and lobbying, mainly UNCAC, the CoE Criminal Law Convention, the US Disclosure Act on Lobbying, and different lobby registers.

The paper will be a contribution to the insufficiently-researched topic of lobbying. There is a lot of literature about corruption but little about lobbying. As to lobbying, there is a strong economic approach to the topic which compares lobbying and corruption regarding their economic effectiveness. It is important to look at lobbying from a different angle. This research paper

---

23 See article 38 of the Basis Law for the Federal Republic of Germany (German Constitution).

24 Harstad & Svensson (2011: 46).

25 Harstad & Svensson (2011: 46); Giovannoni (2011: 13).

approaches the topic from a socio-legal perspective and tries to show that certain ways of lobbying are on the same level as corruption and must be the focus of attention. Therefore, it is important to state what lobbying is, where it happens, to give a definition and to try to clarify the murky concept of hidden lobbying.

#### **1.4 Chapter Overview**

In the second chapter of the assignment the situation in Germany will be examined. The different forms of lobbying which occur in Germany will be explained and consideration will be given to how lobbyists act and what negative consequences occur from their action. How lobbying harms democracy, the rule of law and causes public damage, and what impact it has on good governance will be discussed.



The third chapter will compare the concepts of hidden lobbying and political corruption. It is an analytical chapter which examines the differences and similarities between lobbying and corruption and the intention behind the criminalisation of corruption.

The fourth chapter deals with the regulation of lobbying and gives an overview of the current legal situation. Here some lobby registers and codes of conduct will be discussed. Furthermore, the question will be raised as to whether the criminalisation of trading in influence could be understood as a criminalisation of lobbying.

The fifth chapter discusses the need for better regulation. Here different solutions to control

hidden lobbying will be discussed. Furthermore, it will deal with the possibility of criminalising lobbying.

The sixth chapter will offer concluding remarks.



## Chapter Two

### Lobbying - The German Case

*'It takes two to lobby.'*<sup>26</sup>

This chapter deals with the phenomenon of lobbying in the Federal Republic of Germany. The different types of lobbying will be outlined and their operation will be sketched. The places and situation where lobbying occurs most often will be identified and their negative impact analysed.

#### 2.1 Forms of Lobbying

One can distinguish three main lobbying practitioners: associations and NGOs, companies, and lobbyists on demand. In addition, there are action alliances, which align with one another spontaneously around a certain issue.<sup>27</sup> In general, the number of lobbying stakeholders has increased in recent years.

Interest groups with a rent-seeking ambition lobby the decision-making process. These rents can be private and financial as well as public and ideological. They are offered by the state through regulations and laws. Lobbying groups seek to influence the different phases of the legislative process in order to have an auspicious law that will increase their rent. Lobby work is done also to ward off damage that can occur through a change in the legal situation.

---

26 OECD Report (2010: 2).

27 Wehrmann (2007: 40).

When, for instance, a new law is enacted that contains a tax relief or a tax enhancement for a certain economic sector, this means a higher or a lower rent for the companies that are located in this sector. Therefore, companies that belong to this sector will try as soon as possible to lobby this law and modulate it according to their financial advantage or disadvantage. NGOs will do the same to increase their ideological rent.

The different types of lobbying will be considered below.

### 2.1.1 Associations and NGOs

Associations or *Verbände* were for a long time the most important lobbying groups in Germany. They combine members that have similar political goals and thus create a strong platform for political influence. The members of associations are companies or legal persons. Associations, because of their long tradition, have a good network within the political arena. They are accepted as interlocutors as they gather and formulate interests. Thus they contribute to the pluralistic system of democracy, in which the different interests of groups in a society should be considered.<sup>28</sup>

But associations are losing members and influence.<sup>29</sup> The reasons therefor include, first of all, that interests have become more specific. Many companies have started to employ their own lobbyists or to hire so-called lobbyists on demand (see 2.1.3) to promote their own interests. There is a movement away from the influence of associations towards the representation of sectoral

---

28 Zerfaß, Bentele & von Oehsen (2009: 18).

29 Speth (2010: 9).

interests.<sup>30</sup> Moreover, associations have to represent all members and therefore have to find a common position. In big associations representing many companies it can happen that a collision of interests occurs. Also, associations are structured democratically, as a result of which decision-making processes are often slow. Therefore, companies often prefer to go solo.

By contrast, the number of NGOs is increasing. NGOs represent general social, political or environmental interests. They try to focus attention on topics that do not have a dedicated lobby or have only a weak lobby, such as children, animals or minorities.

### 2.1.2 Companies

Companies have begun to use their own lobbyists to represent their specific interests. This is often more efficient. Lobbyists have become an integral part of the staff of a company. Big companies with a dedicated lobbying department are located at the seat of government in Berlin so as to be close to the decision-making process. This kind of lobbying often takes place simultaneously with association lobbying, to produce a stronger effect.<sup>31</sup> Companies sometimes also have their own associations to discuss their lobbying strategies and aims.<sup>32</sup> Research in 2000 found that big companies increasingly pursue independent lobbying and that there is a shift in lobbying from the associations towards the big companies.<sup>33</sup>

---

30 Von Winter (2004: 764).

31 Wehrmann (2007: 42).

32 For example the 'Collegium of the 30 DAX Companies' ('Collegium der 30 DAX Unternehmen') and the 'Young Lobby' ('Die junge Lobby').

33 Research from Mayer & Naji from 2000 quoted in Wehrmann (2007: 37).

### 2.1.3 Lobbyists on Demand

Lobbyists on demand offer an external lobbying service. They are used by companies for topics considered not to be sufficiently represented by an association or for topics of special importance. Most of companies in question are medium-sized companies that cannot afford their own lobbying office in Berlin or that do not find it profitable to have an office in Berlin.<sup>34</sup> They do not have enough resources or the necessary specialisation. Furthermore, external lobbyists often have better access to the political network. Associations also rely upon external lobbyists from time to time.

It appears that lobbyists on demand and the internal lobbyists of companies are taking over the place that associations once filled. And they will gain more importance. Reasons therefor include increasing complexity of the legal situations that have to be regulated, a tendency towards social individualisation and pluralisation, and increasing competition between companies and other social stakeholders.<sup>35</sup>

Lobbyists on demand - also called guns for hire - monitor the political fields and trends passively and start to lobby actively when their clients wish them to do so.<sup>36</sup> The spectrum of lobbyists on demand is large. There are agencies, public affairs consultancies, management consultants, law firms, company lawyers, public relations professionals, foundations, centres and institutes financed by the companies, marketing companies and many more. Also, experts are paid to write reports in favour of their client.<sup>37</sup> In Berlin, there are around 30 agencies that offer lobbying as a

---

34 Zerfaß, Bentele & von Oehsen (2009: 20).

35 Wehrmann (2007: 42ff).

36 Sebaldt (2007: 112).

37 Reich (2008: 208).

service. None of them has the word 'lobbyist' in its name.

#### **2.1.4 Built-In Lobbyists<sup>38</sup>**

The term built-in lobbyists describes politicians or employees in a ministry who are also members of associations or work (as secondary employment) for social organisations or companies. The most significant example of built-in lobbying is the initiative by the German government to let employees of companies work for a certain time in different federal ministries. Here lobbyists were given the possibility of working in ministries to get an 'inside look' at the ministerial work. The problem was that they still were paid by their sending companies. This led to a wide discussion of the influence of companies on political decisions and the programme was stopped.<sup>39</sup>

There are, moreover, many MPs who work also in boards of an association (*Aufsichtsrat*).<sup>40</sup> Politicians are becoming 'servants of two masters'. Those politicians can be classified as lobbyists because their political decisions will be determined also by other obligations. What makes it even harder to see how much influence organisations or companies can have on the decisions of politicians and employees in ministries is the fact that additional or auxiliary income that is paid by those organisations or companies does not have to be made public.

## **2.2 How Lobbyists Work**

To understand the phenomenon of lobbying one has to have a closer look at how lobbyists work.

---

38 Zerfaß, Bentele & von Oehsen (2009: 22).

39 Zerfaß, Bentele & von Oehsen (2009: 22); Leif (2010: 4).

40 Reinhard Schultz, for instance, is MP and of the supervisory body of a subsidiary company of Vattenfall Europe.

When we talk about lobbying in general we can distinguish five phases.<sup>41</sup>

In the first phase the objectives must be identified. The second phase is the monitoring phase involving the identification of information providers and decision makers in order to gather, organise and analyse information. Political developments have to be followed up. Lobbyists on demand also have to find an issue in which they can specialise.<sup>42</sup> The information has to be analysed and a network has to be created on that basis. The people in the network should have key information, knowledge of institutional systems and analytical experience. The information must be set in a wider context to determine where policy could affect interests.

In the third phase a strategy has to be developed to decide upon which arguments and tactics should be used. It must be established who the key persons are and when it is the right time to act. The normal rule is that the earlier lobbying begins, the better chance it has of succeeding. The optimum is to become involved already while the law is being drafted.

In the fourth phase the active lobbying begins. The tactics to be used have to be considered. One important issue is whether a confidential or public tactic should be used. A public tactic, for instance, would be sending e-mails and letters or organising a demonstration. Confidential tactics rely upon personal contacts and interlocutions with decision makers. The most powerful form of lobbying is face-to-face argument, followed by written contacts or telephonic contacts.<sup>43</sup> The choice of a confidential tactic can render lobbying clandestine.

---

41 For the different phases see Georgen (2006: 16ff).

42 Zerfaß, Bentele & von Oehsen (2009: 24).

43 Wehrmann (2007: 46).

A very powerful way of lobbying is for the lobbyists to produce their own draft laws and convince the ministries and the parliamentarians to support them. Lobbyists or the companies they represent also work with donations to parties and financial aid for election campaigns. Parliamentary evenings - where politicians and lobbyists meet - play a secondary role and are held mainly to refresh contacts. The last phase is dedicated to evaluation.<sup>44</sup>

To sum up, the instruments of lobbying are collection, evaluation and passing on of information.

### 2.2.1 Formal and Informal Contacts

The work of lobbyists can involve both formal and informal contacts. Formal contacts are those that are governed by regulation, whereas informal contacts are those that happen outside the regulations and are often clandestine.



Both the Rules of Procedure of the German Parliament (*Geschäftsordnung des Deutschen Bundestages (GOBT)*) and the Common Rules of Procedure for the federal ministries (*Gemeinsame Geschäftsordnung der Bundesministerien (GGO)*) provide for hearings of presentations by associations during the law-making process (GOBT, § 70; GGO II, § 24). Also, in ministries and advisory councils, commissions staffed with lobbyists can be set up.

The hearings of the Bundestag Committees offer fewer possibilities for influence than the hearings of the ministries, as the former take place at an advanced phase of the law-making process.<sup>45</sup>

---

44 Georgen (2006: 16ff).

45 Wehrmann (2007: 51).

In the official hearings of the Bundestag Committees only the associations that are registered in the lobby-list of the German Bundestag are allowed to send experts. However, few of those that are registered are allowed this opportunity.

Informal contacts are those that exist between the lobbyist and the addressee on a personal level. This level generally is not regulated. The informal influence occurs at an early phase of the law-making process, as the main aim of lobbyists is to influence draft laws while they are being developed.<sup>46</sup> Here the problem of clandestine lobbying arises: it is not transparent and is without democratic control.

### 2.2.2 Direct and Indirect Lobbying

There is also a difference between direct and indirect lobbying, forms which overlap with informal and formal contacts.

Indirect lobbying takes place in public and tries to reach and mobilise many people. It uses such measures as letter and e-mail campaigns and demonstrations. This kind of grass-roots lobbying<sup>47</sup> is used primarily by NGOs and can be directed also at private parties (i.e. companies) with the objective of making them change their policies.<sup>48</sup> Direct lobbying works through *vis-à-vis* influencing of the decision makers. Here companies are especially active.<sup>49</sup> NGOs search for public attention while other lobbyists, such as company lobbyists, avoid it and prefer to influence

46 Zerfaß, Bentele & von Oehsen (2009: 25).

47 Wehrmann (2007: 36).

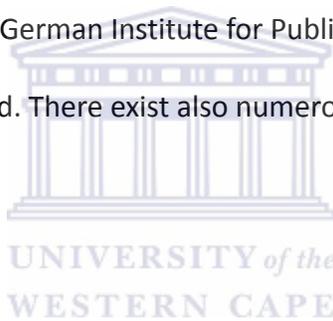
48 Baron (2002: 1227).

49 One can go a step further and argue that the work of NGOs is not lobbying. Lobbying is here seen as restricted to securing financial advantages. The work of NGOs is altruistic and their client is the community, whereas

without being noticed by the public.<sup>50</sup>

### 2.2.3 The Professionalisation of Lobbying

Lobbying has become more professionalised. Lobbyists and public affairs consultancies have started to organise themselves. In 2002, an association for policy consultation (*Deutsche Gesellschaft für Politikberatung [degepol]*) was founded. There is also the German Public Relations Association (*Deutsche Public Relations Gesellschaft [dprg]*). Moreover, there is a MA in 'Public Policy' offered at the Erfurt School of Public Policy (the school belongs to Erfurt University) that started in 2003. In 2004, the German Institute for Public Affairs (*Das Deutsche Institut für Public Affairs [DIPA]*) was founded. There exist also numerous training and further education programmes for lobbying.<sup>51</sup>



### 2.3 Lobbying Locations

In the Federal Republic of Germany the bulk of lobbying takes place in parliament, in the ministries and in the federal government, as the aim of lobbying activities is to influence the decision-making process. The German legislative process starts either in the ministries or in parliament as the draft laws - that will go later for voting to the plenary - are elaborated there.

Besides parliament and administration of the ministries, the supreme federal authorities, the federal Council and parties are also targets of lobbyists.<sup>52</sup>

---

companies work for their own profit. See Fischer (2011: 150).

50 Eckert (2005: 269).

51 Wehrmann (2007: 58).

52 Wehrmann (2007: 43).

As Germany is a federal state lobbying exists on the state as well as on the federal level (*Länderebene und Bundesebene*). The scope of this research is restricted to lobbying on the federal level.

In the following it will be shown where lobbying occurs in the ministries and parliament and where it is hidden and clandestine.

### 2.3.1 Lobbying in the Ministries

The main targets of lobbyists are the government and the ministries as the government introduces the most draft laws in the law-making process, which draft laws were formulated by the ministries. The aim is to influence a draft law already in the development process as a ministry draft (*Referentenentwurf*). Thus, those who are responsible for the ministry draft are the main target of lobbyists. One may conclude, therefore, that lobbying in Germany is directed mainly towards the executive.<sup>53</sup>

As an example of the influence of lobbyists or the companies that use them, one can take the law on the energy industry (*Energiewirtschaftsgesetz [EnWG]*). This law is supposed to regulate the German energy market, which was not competition-friendly enough for European guidelines. The old German law did not allow entities other than the big four German suppliers of electrical energy access to the electricity networks. Here the influential suppliers of electrical energy and the associations lobbied intensively to create a law that is competition-friendly, and that does not include too many disadvantages for the suppliers. They used 'strong arguments', raising threats of

---

<sup>53</sup> Sebaldt (2007: 104).

the reduction of jobs or the relocation of places of production.<sup>54</sup> This kind of lobbying is called 'oligopolistic lobbying', as the companies involved have little competition in their sector and have a big impact on society.<sup>55</sup>

The suppliers of electrical energy also employ many lobbyists. Every big supplier has five to ten professionals in Berlin who are responsible for contact with the politicians.<sup>56</sup> Furthermore, they have the necessary expert knowledge that the ministries need, especially when it comes to technical questions. But this is not a valid argument to justify the enormous influence of the electricity companies. Politicians and representatives of the companies and their lobbyists met regularly in secret meetings. They discussed the EnWG from its drafting to its passing. Expert knowledge is important but can be presented in a transparent way, with participation of environment and consumer associations, for instance.<sup>57</sup>

It is important to consider the opinions and concerns of the electricity groups because finally they generate the electricity and provide it to the consumer. But in this case there was no acceptable balance. Only the Federal Council took the position of the opposition and tried to include consumer interests. In the end, many suggestions that were made by the energy suppliers were accepted.

---

54 See Gammelín & Hamann (2006).

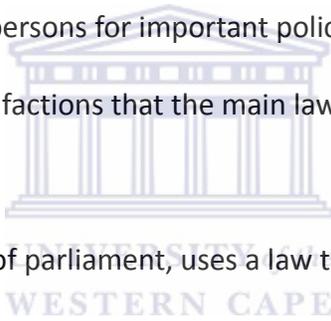
55 Maras (2009:36); See also Eickhof (1985: 73).

56 Bülow (2010: 8).

57 Gammelín & Hamann (2006: 216).

### 2.3.2 Lobbying in Parliament

The German Parliament is normally the second location where lobbying takes place. After a draft law is written by a ministry, it has to be referred to parliament for consultation. Lobbyists always try to be the first to provide information, especially if it is a complicated and very technical law and with many MPs being laymen. Once lobbyists supply them with a range of arguments, it becomes difficult for other groups to convince them with counter-arguments. As the companies have the best chances of making contact with the MPs, they are often the first to influence them. Other targets of lobbyists are desk officers in the governmental factions, important politicians like heads of committees, or faction spokespersons for important policy areas such as health, pension, finances and economy. It is in the factions that the main law-making work takes place.<sup>58</sup>



Marco Bülow, himself a member of parliament, uses a law that has to be passed by the Bundestag to describe very illustratively how lobbyists try to influence parliamentarians. He counted how many times lobbyists contacted him in two weeks. The result was 400 times: via e-mail, telephone and letters. There were also many requests for a personal meeting.<sup>59</sup> Moreover, he shows the distinction between lobbying by companies and NGOs: companies asked mainly for private interlocutions and meetings, whereas NGOs sent mainly identical e-mails or faxes containing their position to all parliamentarians. Bülow tells that he himself was lobbied by other MPs after they had been lobbied by companies. He sees as a main target of parliamentary lobbying the desire to have co-operative parliamentarians.

---

58 Leif & Speth *Zeit online* (2006); Wehrmann (2007: 43).

59 Bülow (2010: 7).

### 2.3.3 Outsourcing

It happens more and more often that MPs outsource the drafting of laws. The Social Democratic Party of Germany, for instance, asked the law firm Hogan & Hartson Raue LLP to write a partial draft of a law that creates a basis for the possibility of private companies constructing and administering public buildings.<sup>60</sup> Often, the entrusted law firms represent involved companies at the same time. Consequently, the private sector has a significant influence and can model the laws actively.<sup>61</sup>

### 2.3.4 Revolving-Door Effect

The revolving-door effect describes the phenomenon where former politicians work in the lobbying sector.

The most prominent example of the revolving-door effect is the case of former German Chancellor, Gerhard Schröder, who, shortly after his withdrawal from politics, became a member of the supervisory body of the German-Russian company responsible for the building and operation of the Baltic Sea Gas Pipeline.<sup>62</sup> Schröder, when he was still chancellor, supported the project vigorously. He still has an office in parliament.

Another interesting example is Otto Schilly, a former minister of the interior, who strongly supported having biometric features in identification documents. After his period as a minister he became a member of the supervisory body in two companies that produce biometric items.

---

60 Leif & Speth *Zeit online* (2006).

61 Maras (2009: 34).

62 NEGO, now Nord Stream AG, is a participated company of Gasprom, BASF and E.on.

Big and wealthy companies can afford to pay former politicians a high salary. Often, their primary function is political counselling. It cannot be excluded that chances for employment in one of those companies influence decisions politicians make while they are still working in politics. When it comes to choices regarding laws and regulations politicians might decide in favour of their future employers. Furthermore, politicians are profitable for companies as they bring weighty insider knowledge and their old contacts in the ministries or parliament.<sup>63</sup> Needless to say, they are tempted to use information that is meant to be internal and to use their contacts to gain advantages for their new employer.

#### **2.4 Impact on Democracy and the Rule of Law**

The German democracy, in the ideal case, should work as follows: draft laws are formulated either in the responsible ministry or by the MPs and are approved or rejected by parliament.

Here the politicians have to be free in forming their opinion about the advantages and disadvantages of a new law. As Germany is a pluralistic country, the different opinions of interest groups have to be heard and considered. But at the end of the day, it is the elected people's representatives who have to decide. Hidden lobbying undermines this ideal. When draft laws are written by companies or when parliamentarians, without reflection, adopt a complete train of thought presented by companies, democracy is abandoned and the legislative competence of parliament is affected. Parliamentarians have to represent the whole nation and, therefore, have to consider the plurality of opinions and interests that exists within the country. Simply relying on arguments presented by only one interest group is a violation of their duty. This disequilibrium

<sup>63</sup> Klein & Höntzsch (2007: 1ff).

occurs because the private sector has the capacity to be active in direct lobbying, while social interest groups have to rely more on indirect lobbying.

An important role is played here by the change from influence through associations to influence through lobbying groups. Traditionally, associations play an important role in Germany. They bring interests together and ensure that those interests are considered by the politicians. Now there has been a change from the influence of the associations to the representation of sectoral interests.<sup>64</sup>

This weakens the exchange between politics and associations. This exchange has a long tradition and established rules, regulations and transparency. Also, associations are said to be orientated towards the public good as they are trying to collect and define interests of several parties, and therefore cannot be classified as lobbyists.<sup>65</sup> Now, more and more interest groups try to exert influence without being governed by sufficient regulation.<sup>66</sup> Therefore, even if the exchange of interests in a pluralistic democracy is important, the new growth of lobbying derogates from the old system of interest representation. Now professional lobbyists take over, and their target is to increase profit.

There is also a disequilibrium between the possibilities of NGOs and companies influencing decisions. NGOs do not have abundant financial and personnel resources. Often NGOs and scientists are not heard by parliament when a draft law is presented for discussion. Environmental associations, moreover, only have the opportunity to talk to high-ranking politicians every few years, whereas such meetings with the management of big energy companies take place several

---

64 Von Winter (2004: 764).

65 Speth (2010: 10).

66 Leif & Speth *Zeit* online (2006).

times a year.<sup>67</sup> Furthermore, decision making takes place not just in national parliament but also on the European level in Brussels. Thus NGOs with a small budget have another disadvantage, as they cannot afford to have an office in Berlin as well as in Brussels.

The negative impact on democracy is thematised by Colin Crouch in his theory of postdemocracy. He argues that our society is moving towards a postdemocracy in which democracy formally continues, but the influence of the legitimate representatives is transferred to economic powers.<sup>68</sup> Democracy has become nothing more than a 'blunt weapon'.<sup>69</sup> Through lobbying, companies have more influence on the government than other interest groups or NGOs. For him, companies aim to get government out of the way of commercial activities and to weaken state efforts to hamper business with social reforms.<sup>70</sup>

Moreover, the rule of law is affected by the development of lobbying. Rule of law means that all important areas of social coexistence shall be regulated by law. Lobbying changes this situation as many laws do not result from a parliamentary debate any longer but are dictated by lobby groups. Even though those laws are still laws in a technical sense, many of them no longer fulfil the necessary democratic criteria as they are not the product of a parliamentary discussion and decision.

## 2.5 Impact on Good Governance

Good governance means that the government has to respect transparency, accountability,

---

67 Bülow (2009: 18).

68 Christof *Supertaalk* (2011).

69 Crouch (2011: 13).

70 Crouch (2011: 12).

participation, the rule of law, effectiveness, efficiency, proportionality, consistency and coherence.<sup>71</sup> According to the Secretary-General of the UN, good governance means creating well-functioning and accountable institutions - political, juridical and administrative - which citizens regard as legitimate, through which they participate in decisions that affect their lives, and by which they are empowered.<sup>72</sup>

For the purposes of this paper, the principle of transparency is crucial. Hidden lobbying does not fulfil the democratic requirement of the greatest possible transparency and of governmental action to follow rules and regulations.<sup>73</sup>

## 2.6 Impact on Society



Hidden lobbying also has a negative impact on society. As many important laws are formulated with the help of big companies, those laws are deficient in social welfare aspects. It can be said that the more powerful lobbying has become,<sup>74</sup> the weaker the *Sozialstaat* (welfare state) has become. Analysis of the reforms in the health sector in Germany show that between the first reform in 1976 and the last reform in 2011 many benefits of health insurance have been restricted.<sup>75</sup> It is to assume that health insurance companies did a lot of lobby work here to reduce their expenses. Environmental regulations are another good example of the influence of lobbying. Many important regulations for environmental protection do not find their way into the law because the atomic or the black coal lobby, for instance, work against them.

---

71 Nanda (2006).

72 De La Harpe, Rijken & Roos (2008: 6ff).

73 Leif & Speth *Zeit online* (2006).

74 One has to bear in mind that in contrast to the US, lobbying is a relatively new phenomenon in Germany.

75 Bandelow (2004: 59).

It can be said that lobbying causes a waste of resources.<sup>76</sup> If a lobbying group - let us take the hotel lobby as an example - manages to reduce the turnover tax for its sector, resources (the money that the state would have earned with a higher tax) go missing. A big waste of resources lately was caused by lobbying activities of the financial sector. Intensive lobbying by the financial, insurance and real estate industries in the US caused, at least partially, the current financial crisis. Laws to protect the financial sector were lobbied away so that high-risk lending practices were possible which, in the end, proved to be very harmful for the stability of the sector.<sup>77</sup>

Another very problematic point is the possibility of big companies imposing pressure with the threat of changing their location.<sup>78</sup> The aim of lobbying groups is to influence and change national competition and environmental laws to create an advantageous legal basis for their own interests. Those interest can be advantages in economic competition or relaxed environmental regulations.<sup>79</sup>

---

76 Lambsdorff (2002: 97).

77 OECD Report (2012: 3).

78 See Maras (2009: 38) and the example given under 2.3.1.

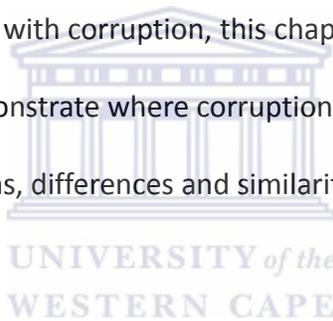
79 Maras (2009: 36).

## Chapter Three

### Lobbying and Political Corruption

*'The old business of corruption is meeting a new rival: the Washington-style business of persuasion'.<sup>80</sup>*

This chapter compares the concepts of lobbying and political corruption. An idea of what lobbying is, where it occurs and what negative impact it has, was given in the first two chapters. In order to have a basis to compare lobbying with corruption, this chapter outlines the concept of political corruption. Furthermore, to demonstrate where corruption and lobbying overlap and what consequences this overlapping has, differences and similarities between lobbying and corruption will be given.



In keeping with the title of this research paper, this chapter tries to demonstrate that hidden lobbying ought to be treated as corruption.

#### 3.1 A Brief Overview of Political Corruption

The word corruption comes from the Latin word *corrumpere* and means to spoil, to annihilate, to bribe. There is no universally accepted definition of corruption. A prevalent (but narrow) one is given by Transparency International which identifies corruption as 'the misuse of entrusted power for private gain'.<sup>81</sup> Political or grand corruption is defined as the

'manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who

<sup>80</sup> International Herald Tribune, 31 May 2006, found in Harstad & Svensson (2011: 46).

<sup>81</sup> Transparency International (2012: 14).

abuse their position to sustain their power, status and wealth'.<sup>82</sup>

According to the principal-agent theory, a corrupt action involves three parties: the corrupter (client), the corruptee<sup>83</sup> (agent) and the principal of the corruptee (principal). The principal and agent have a contractual relationship wherein the agent is enabled to make certain decisions on an exclusive basis. The agent takes advantage of this position of power in favour of the client and for his or her own private benefit in exchange for an undue advantage from the client.<sup>84</sup>

Corruption can be active as well as passive. The undue advantage can be tangible as well as intangible and must be meant to convince the official to act contrary to his or her duty.<sup>85</sup>

### **3.2 Comparing Lobbying and Political Corruption**

To obtain a better understanding of how political corruption and lobbying are connected, their differences and similarities will be highlighted.

#### **3.2.1 Similarities**

An important similarity is the target of both lobbying and political corruption. The aim is to influence political decisions, either with legal methods such as sharing expertise, donations and campaign contributions, or with illegal methods such as bribery. Both lobbying and political corruption seek to obtain help from the ministries or the parliament in exchange for a favour. The effect of lobbying is said to be bigger than the effect of corruption. While corruption tries to avoid rules, lobbyists try to make them. One can go a step further and compare lobbying politicians in

---

82 Transparency International (2012: 35).

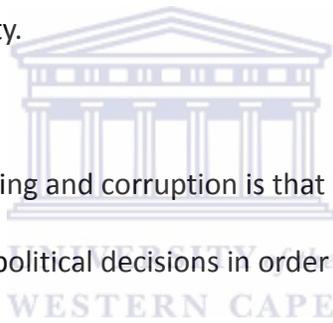
83 Chinhamo & Shumba (2007: 5).

84 Argandona (2007: 481).

85 Bönkost (2009: 196ff).

general with bribing them.<sup>86</sup> The bribes that are paid by lobbyists are often not tangible values but consist of information which the politicians use for their political decisions.

A corrupt public official acts contrary to his or her duty as he ought not to accept bribes or other forms of undue advantages when making decisions. Also, politicians who have been lobbied tend to act contrary to their duty. Ministry officials are supposed to make their own decisions independently of interest groups. Parliamentarians are supposed to consider all interests equally. It follows that a parliamentarian who bases his decision solely on information provided by lobbyists acts in dereliction of duty.



Another similarity between lobbying and corruption is that both are rent-seeking activities.<sup>87</sup>

Rent-seeking aims at influencing political decisions in order to secure economic advantages, the so-called 'rent'. Corruption and lobbying have different methods of rent-seeking. Corrupt individuals act generally with the aim of bending existing rules. A bribe is paid in order to avoid rules or regulations being applied. Lobbyists act generally to block the creation of rules that could have a negative impact on them or their customers. Here the politician is nothing more than a 'passive broker among competing private rent seekers'.<sup>88</sup> The outcome is the same. Through influencing political decisions an economic advantage is achieved.

Lobbying can also occur in a democratic, open and pluralistic manner. Several interest groups,

---

86 Campos & Giovannoni (2007: 1ff).

87 Beckmann & Gerrits (2008: 1).

88 McChesney (1987: 2).

corporations, NGOs and others try to be heard by politicians. This kind of lobbying is competitive,<sup>89</sup> while in corruption cases usually only one perpetrator is at work with the authorities.<sup>90</sup> In hidden lobbying, however, only one lobby group is in contact with the authorities and tries to influence them behind closed doors. In such cases the parallel to corruption is obvious.

### 3.2.2 Differences

The basic difference between lobbying and corruption is that lobbying is legal while corruption is not.<sup>91</sup> However, this distinction cannot be used for a proper explanation of the concepts of lobbying and corruption. Just because an action is not illegal does not mean that it should be legal. There are many social and political reasons for some acts being crimes and others not. Corruption is an old phenomenon and its criminalisation has developed over a long time. The lobbying of today, in its rapid growth and professionalisation, is a recent phenomenon.

Comparatively, providing politicians with expert advice in order to influence their voting or any other form of decision is lobbying while paying the politician for the same action is corruption. Moreover, campaign contributions are accepted by law in some countries<sup>92</sup> while bribes are not. The question is, where do those two payments differ?<sup>93</sup>

Another approach to compare corruption and lobbying is to analyse their objectives.

---

89 See also Sebaldt (2007: 103).

90 Begović (2005: 8).

91 Harstad & Svensson (2011: 46).

92 Begović (2005: 6).

93 Giovannoni (2011: 12).

Corruption is *per definitionem* always directed at obtaining private benefit as it can be defined as 'the misuse of power for private gain'.<sup>94</sup> The corrupter and the corruptee act to secure a tangible or intangible advantage for themselves or another person. Importantly, it always aims at an enrichment. Lobbying, by contrast, is not always aimed at private benefit. Here it is necessary to distinguish between the aims of lobbyists and the aims of the public officials or MPs who are lobbied. When lobbyists approach the decision maker to influence him or her, their aim is to obtain a benefit. If, for instance, a company sends its lobbyists it wants that a law will be changed or will not be introduced or will be introduced on the basis of the company's ideas. If lobbyists approach public officials or MPs on behalf of a company, they do so because they get paid for it. Therefore, companies and lobbyists act to achieve a private gain. If public officials and MPs act because they achieve material advantages (such as invitations to dinners) or if they receive immaterial advantages (such as the expectation of a job in a company), their actions are also directed to private benefit. In many cases, however, the advantage is the collection and presentation of information. This information is used by public officials and MPs to form a political decision and not for private gain. One could argue that there is a private gain, as they do not have to use their own resources to collect the information. But this argument seems very artificial. So one can conclude that public officials and MPs do not always act to obtain private benefit as they may use lobbyists to receive political information.

There is an ongoing discussion as to whether lobbying and corruption are complements or substitutes. The argument for lobbying and corruption being complements is that lobbying is a tool of corruption. Lobbying can be used to make corruption easier. The aim is to convince

---

<sup>94</sup> Johnston (2005: 11).

politicians not to create laws that encumber corruption. Lobbying can be used, for instance, to hinder the criminalisation of campaign contributions.

The argument that is used for proving lobbying and corruption substitutes is that lobbying, as it changes laws, makes corruption redundant.<sup>95</sup> This submission is more convincing. Lobbying is not always directed at law enforcement and does not always aim to facilitate corruption. With lobbying, companies can change the rules whereas with corruption they only can hope that the public official will not enforce them. A lobbyist acts with the intent to influence a political decision in order not to be subject to those decisions.<sup>96</sup> Companies that decide to lobby do so because it is legal and does not carry the danger of punishment. Penalties for corruption make companies more likely to lobby than to bribe.<sup>97</sup> It is also more effective.<sup>98</sup> A politician who has been corrupted can change his or her mind, whereas a law that has been lobbied successfully is difficult to modify. When a law is lobbied in the right way, there is no need for future bribery. Moreover, the results of lobbying often affect the industry in its entirety, whereas the favour that is done because of a corrupt act is company-specific.

With regard to development, lobbying increases in countries where the level of development is relatively high, whereas companies are more tempted towards corruption where the level of development is low.<sup>99</sup> There is evidence that the extent of lobbying increases with income.<sup>100</sup> A higher political stability makes lobbying more effective. When government changes often or an

---

95 Giovannoni (2011: 13); Harstad & Svensson (2006: 27).

96 Georgen (2006: 15).

97 Harstad & Svensson (2011: 46ff).

98 Campos & Giovannoni (2007: 1).

99 Harstad & Svensson (2006: 1).

autocratic regime is in power, lobbying cannot be sustainable. In a stable democratic country politicians are mostly professionals. They start their political career at a young age and work in politics for many years. They often change from one influential position to another. For lobbyists it is important to create a lasting relationship with them. In this way, the lobbyists can be sure about their influence on politicians.

### 3.3 Political Corruption and Lobbying as two different Ways of State Capture

Another approach is to understand lobbying as a route to state capture.

'State capture means the creation of a legislative regulatory framework which suits the interests of particular economic agents'.<sup>101</sup>

Corruption normally is chosen when the amount of rent is small, lobbying when the amount of rent is large.<sup>102</sup> Corruption represents the transfer of wealth but also an exchange of a favour.

Corruption is a direct transfer of wealth from the corrupter to the corruptee and, in case of state capture, the transfer is to the one who formulates regulations (the legislator).

Lobbying is also a solution to problems that arise from the fact that direct transfers which fulfil the requirements of corruption are forbidden by law. This corrupt form of state capture is not desirable any longer as it leads to punishment. Lobbying is chosen therefore as second-best route to state capture.<sup>103</sup> So one can assume that many lobbying activities are chosen simply because corruption is illegal. Lobbying activities extend to where the threshold of corruption starts.

Lobbyists try to gain as much influence as possible in a still legal sphere.

---

100 Harstad & Svensson (2011: 46).

101 Begović (2005: 3).

102 Begović(2005: 1).

103 Begović (2005: 9ff).

### 3.4 The Purpose of the Criminalisation of Corruption

It has been noted already that a distinction between lobbying and corruption is that corruption is criminalised, whereas lobbying is not. Therefore, the purpose of its criminalisation and its background teleology will be discussed here.

One reason for the criminalisation of corruption is that corruption is seen as something immoral, something bad.<sup>104</sup> Corruption saps a country's values and its moral standards. Thus, one aim of criminalisation is to combat the immoral elements in a society and to punish a person who acts against a state's code of values. Corruption also influences national and international economic development as a whole and is a threat to social wealth because it distorts the market.<sup>105</sup> It costs the state and therefore the taxpayers a lot of money. Moreover, corruption is a threat to society. It contributes to environmental damage, worsens the health system and endangers human rights standards. It undermines democracy, good governance and the rule of law. So a second aim is to protect the state from financial damage and to protect democratic and social values. Therefore, corruption has to be combated.

As shown in chapter two,<sup>106</sup> those are the same values that hidden lobbying targets. Hidden lobbying also distorts the market by influencing laws in a non-balanced and undemocratic way. Market relations cannot flow freely any longer and regulate themselves through offer and demand because companies influence the market according to their interests. Corruption and hidden lobbying have the same negative effects on a country's moral values, economy and

---

104 Ochulor & Basse (2010: 469).

105 Hess (2009: 20).

106 See 2.4 to 2.6.

society. Corruption is criminalised because it harms the democratic law-making process. Corrupting politicians to achieve specific decisions is contrary to how laws should be developed. The same is valid for hidden lobbying. The influencing of politicians behind closed doors so that they decide in one's favour undermines the rules and regulations of decision-making processes. Therefore, there is no reason to criminalise corruption on the one side and to allow hidden lobbying on the other side.

### **3.5 Conclusion**

There are many differences and similarities between corruption and hidden lobbying. Both lobbying and corruption are directed at influencing political officials,<sup>107</sup> both aim at rent-seeking and state capture. An important difference is that passive lobbying is often not directed to private gain and therefore does not fit under the definition of corruption. Where lobbying is directed to achieve private gain it fulfils the criteria of corruption and is, therefore, not mere lobbying but corruption and ought to be punishable.

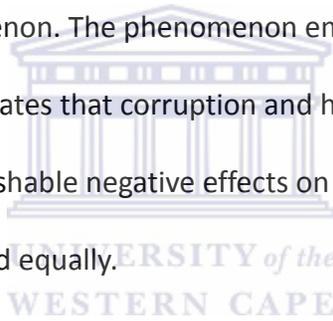
But as discussed, corruption and lobbying are not complements. They are two different concepts deployed to gain influence. Therefore, it is not necessary that lobbying fulfils the criteria of corruption. Lobbying cannot be subsumed under what is understood as the concept of corruption. In this regard, the differences between lobbying and corruption are unimportant.<sup>108</sup> Moreover, there does not exist a universally accepted definition of corruption. Therefore, it is more important to examine which values anti-corruption laws try to protect. In this regard, the

---

107 Campos & Giovannoni (2008: 1).

108 Giovannoni (2011: 12).

analysis comes to the conclusion that corruption and hidden lobbying harm the same interests, namely morality, society and democracy. It is important to highlight here that there are empirical studies that come to the conclusion that lobbying is always statistically significant, while political corruption seldom is. It means that lobbying has a larger political effect than corruption and is therefore a more effective way than corruption of exerting political influence on decision makers.<sup>109</sup> One can discern an 'evolution from bribery to lobbying'.<sup>110</sup> Lobbying has become more and more important for the political exertion of influence. However, it carries the same dangers as corruption and, therefore, must be regulated. The evolution of corruption shows that it always takes time to regulate a phenomenon. The phenomenon emerges first and then the law interferes. This analysis demonstrates that corruption and hidden lobbying are two different concepts but have the same punishable negative effects on democracy, society and human rights. Therefore, they have to be treated equally.



---

109 Campos & Giovannoni (2006: 3).

110 Harstad & Svensson (2011: 46).

## Chapter Four

### Regulation of Lobbying

*'The history of lobby regulation is one of periods of inaction interspersed with spasms of reform triggered by scandal.'*<sup>111</sup>

As discussed in the previous chapter, political corruption and hidden lobbying are two concepts with similarly disastrous effects. Therefore, this chapter will analyse what measures against lobbying - and especially hidden lobbying - have been taken so far. It will give an overview of regulations on the international level as well as of regulations in Germany and the US. Moreover, it will discuss how far the criminalisation of lobbying has come. Two classes of policy actors are targeted by regulations governing lobbying. The first are public officials, including MPs, who are themselves lobbied and the second are lobbyists.

#### 4.1 Regulation under International Law

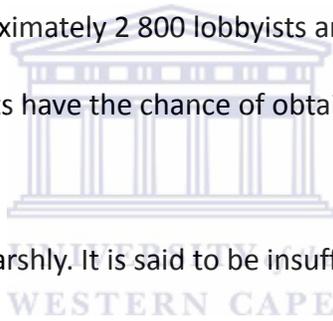
In 2010 the OECD Council approved the OECD Recommendation on Principles for Transparency and Integrity in Lobbying. This is the first international policy instrument to provide guidance for policy-makers on how to promote good governance principles in lobbying. These recommendations are of course not mandatory.

Other regulations on the international level are mainly those of institutions of the EU. In the last few decades lobbying in relation to European institutions has increased and there are today about

<sup>111</sup> OECD Report (2007: 38).

15 000 individual lobbyists working in Brussels.<sup>112</sup> Therefore, transparency has emerged as a concern. The main targets of European lobbying are the European Commission (EC) and the European Parliament (EP) as they are responsible for drafting and passing laws.

Since June 2011 there has been a joint Transparency Register of the EC and the EP. Over 4 000 lobbyists are registered in the new Transparency Register. All lobbyists who register have to declare the identity of their clients. The EP gives frequent visitors who seek to supply its members with information a pass to enter the parliament in return for respecting a code of conduct and signing a public register.<sup>113</sup> Approximately 2 800 lobbyists are holders of a long-term access pass to the EP. Only registered lobbyists have the chance of obtaining an access pass to the EP.



The register has been criticised harshly. It is said to be insufficient as it is not mandatory and the only penalty for non-compliance is to be deleted from the register. Moreover, companies only have to give minimal information about their lobbying activities. They do not have to give a full list of their clients or to disclose exactly what kind of lobby activities they undertake. The Transparency Register is, furthermore, not sufficiently overseen and monitored.<sup>114</sup> There is no cooling-off period<sup>115</sup> for EP civil servants and MEPs who give up their official functions. ALTER-EU has identified 120 companies which lobby in the EU but are not listed in the Transparency Register.<sup>116</sup>

The EP has a new code of conduct which became operative in December 2011. Codes of conduct

---

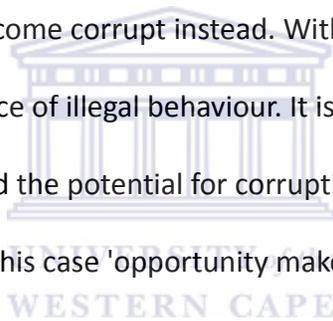
112 Hoppe (2009: 39).

113 Malone (2004: 3); Rule 9(4) of the Rules of Procedure of the EP.

114 Alter-EU Report (2012: 2).

115 A cooling-off period prohibits public officials and MPs from working in the free economy for a specific time after they have left politics.

seek to impose binding and enforceable rules to define what is acceptable and what is not regarding behaviour in the EP. One reason to renew the code of conduct was a scandal involving European MPs.<sup>117</sup> Some MPs agreed to influence the law-making process in exchange for payments from investigative journalists who posed as lobbyists.<sup>118</sup> This case satisfies the requirements of corruption and is, therefore, punishable. It exceeds legal lobbying. Nevertheless, it also concerns lobbying and links lobbying and corruption. It demonstrates how easily legal lobbying can become illegal corruption and how difficult it is to control and regulate this grey area. Lax regulations make it easier for lobbyists to gain access to the EP and to talk to MPs. Thus, it is easier not to lobby and to become corrupt instead. Without sufficient transparency regulations there is a bigger chance of illegal behaviour. It is not said that lobbyists always intend to bribe, but one can comprehend the potential for corruption in terms of the proverb 'opportunity makes a thief' or in this case 'opportunity makes a corruptee'.



The EC also has a code of conduct. It derives from the obligation of independence and integrity of the EC which is governed by article 17 of the Treaty on European Union and article 245 of the Treaty on the Functioning of the European Union. The code of conduct includes rules on how Commissioners shall behave during their term of office, including their contact with lobbyists. Commissioners are not allowed to engage in any other professional activity during their term of office.<sup>119</sup> For 18 months after a Commissioner has left office, he or she is not allowed to lobby members of the Commission.<sup>120</sup> According to section 1.11, Commissioners shall not accept any

---

116 EU Observer (2012).

117 'Cash-for-Laws' scandal.

118 Toornstra (2011: 6).

119 Section 1.1 of the Code of Conduct.

120 Section 1.2 of the Code of Conduct.

gift with a value of more than € 150. Furthermore, the EC has adopted a code of conduct containing rules for interest representatives in their dealings with Commission staff and setting out general principles such as openness, honesty and integrity. The Code has been criticised as being too weak.<sup>121</sup>

## 4.2 Regulation under Domestic Regulation

This section will discuss critically the regulation of lobbying in Germany and the USA.

### 4.2.1 Germany

#### 4.2.1.1 Regulations



Germany is one of only four countries in the EU<sup>122</sup> that has introduced regulations regarding lobbying.<sup>123</sup>

The notion of lobbyists is very narrow as only associations and their member are included.

The lobby register is published annually and is available to the public in the federal gazette

(*Bundesgesetzblatt*).<sup>124</sup> The rules are set out in the rules of procedure of the Bundestag (section

18). Annexure 2 of the rules of procedure requires that all groups and organisations wishing to

express or defend their interests before the Bundestag or the Federal Government must be

entered in the register. Only the lobbyists that are registered can obtain a *Hausausweis* (a pass

---

121 EurActive (2012).

122 The others are Hungary, Lithuania and Poland.

123 Toornstra (2011: 21).

124 Malone (2004: 3).

that allows them to enter the Bundestag) and can participate in hearings.<sup>125</sup> In principle, lobbyists may not be heard by parliamentary committees or be issued with a pass admitting them to parliamentary buildings until they are registered. Lobby representatives have to give information about the name and seat of the association, the composition of the board of management and the board of directors, the sphere of interest of the association, the number of members, the names of the association's representatives and the address of its office at the seat of the Bundestag and of the Federal Government.<sup>126</sup>

The Bundestag also has a code of conduct. It obliges the MPs to disclose their former and current functions in associations.<sup>127</sup> For making the work in the federal ministries more transparent, there exists a Freedom of Information Act (*Informationsfreiheitsgesetz*). This law allows citizens access to all information in a ministry. Such laws existed in over 50 countries before Germany implemented its own in 2005.

#### **4.2.1.2 Critical Remarks**

The main point of criticism is that the lobby register is very restricted as only associations and their representatives can register. This is out of date because it ignores the 'new generation of lobbyists' who are private lobbyists such as public affairs agencies, lobbyists of companies, law firms and NGOs.<sup>128</sup> Another point of criticism is that the Bundestag and its committees can refuse to hear registered representatives or may invite associations or experts who do not appear in the

---

125 Zerfaß, Bentele & von Oehsen (2009: 32).

126 Toornstra (2011: 52).

127 Annexure 1 section 1.1 of the Rules of Procedure of the Bundestag.

128 Schmedes (2009: 70); OECD (2007: 6).

register to their meetings if they find their consultation useful. Therefore, not being entered in the register does not necessarily prohibit contact with parliamentary committees or MPs.<sup>129</sup>

Moreover, the information about contacts and funding is not sufficient. It should be more detailed to create a proper overview of what lobbyists do and how they are connected.<sup>130</sup> The information required is too general and does not promote transparency.<sup>131</sup> The Freedom of Information Act has been criticised as it can be seen as a compromise to which there are many exceptions.<sup>132</sup>

## 4.2.2 USA



### 4.2.2.1 Regulations

In the USA lobbying has a much longer tradition than in Germany.<sup>133</sup> Therefore, the American regulatory system is more advanced. The first attempt to regulate lobbying was the Federal Regulation of Lobbying Act of 1946. It was replaced by the Lobbying Disclosure Act of 1995 and its Amendment of 2007 which seek to tackle 'the efforts of paid lobbyists to influence the public decision-making process in both the legislative and executive branches of the Federal Government'.<sup>134</sup> In terms of the Act, lobbyists must register and disclose their activities. Lobbyists who expect to receive more than \$ 5 000 in a six-month period, or organisations that expect to spend more than \$ 20 000 in a six-month period on lobbying with their own employees have an obligation to register. Lobbyists must also disclose their campaign finance activities. Section 7 of

129 Malone (2004: 13).

130 Sebaldt (2007: 109).

131 Zerfaß, Bentele & von Oehsen (2009: 32).

132 Zerfaß, Bentele & von Oehsen (2009: 31).

133 See Sebaldt (2007: 106): The first attempts at 'lobbying reforms' can be dated back to 1907. The first laws

the Amendment Act provides for penalties up to \$ 200 000. Besides this civil penalty, the Act also provides for a criminal penalty. However, a corrupt intent is required.<sup>135</sup> There is a 'cooling-off period' regarding former Members of Congress and Senators. For 18 months they are not allowed to interact with their former colleagues. This should help to avoid the revolving-door effect.

The definition of lobbyists was widened to include all those who seek to influence Congress, congressional staff and policy-making officials of the executive branch including the President, senior White House staff, Cabinet members and their deputies, and independent agency administrators and their assistants.<sup>136</sup>

There is also an Ethical Codex for members of the Congress with a limit for additional income and a prohibition on lobbying activities immediately after leaving office.



#### **4.2.2.2 Critical Remarks**

A serious point of criticism is that the US regulations have not yet created a level political playing field. In other words, regulation has not reduced markedly the power of many 'insider' interests or increased the effectiveness of 'outsider' interests.<sup>137</sup> Powerful companies continue to have better opportunities to contact politicians than, for instance, NGOs. Moreover, even if politicians have a cooling-off period regarding contacts to their former colleagues, they can start to work in companies or lobbying firms right after they leave politics. That entails the danger that politicians

---

regarding lobbying appeared in the 1930s.

134 Section 2(1) of the Lobbying Disclosure Act.

135 Section 7(b) of the Amendment Act reads as follows: 'Whoever knowingly and corruptly fails to comply with any provision of this Act shall be imprisoned for not more than 5 years or fined under title 18, United States Code, or both'; In Canada non-compliance can be punished with imprisonment of up to two years.

bring their insider knowledge to the companies and wait for the end of the cooling-off period to start with their lobbying work.

Even if the Act criminalises non-compliance with its provisions – which should not be confused with the criminalisation of lobbying – the necessary corrupt intent is difficult to prove.

### **4.3 Initiatives of Companies**

Companies have launched initiatives against lobbying. These are mainly codes of conduct which are not binding. An example is the directive of the Society of European Affairs Professionals (SAEP). The *Degepol*, a German society for political consulting, also has a code of ethics.

The codes do not have legal standing and there are no possibilities of sanctions. The problem with these codes is that they are deceiving. They make the companies appear to be doing something against lobbying. However, they remain internal rules and are beyond any impartial control.

### **4.4 Criminalisation of Lobbying**

In some international conventions, as well as in some national legal regimes, the relatively new criminal offence of trading in influence has been introduced. The offence is based on a trilateral relationship in which one person has a connection to a public official and sells his or her potential influence to a third party. The trilateral relationship, therefore, consists of a person who seeks access to influence, an influence peddler and a public official. The public official who performs the act is not part of the illegal process.

---

136 Malone (2004: 22).

137 Malone (2004: 22); Sebaldt (2007: 108).

At first sight it seems as if trading in influence could cover lobbying cases also. This question will be analysed below by taking into account the provisions of UNCAC, the CoE Criminal Law Convention and the criminalisation of trading in influence in France. As those provisions are similar, they will not be discussed separately but the interpretation will contain an amalgamation of their legal meanings. Article 18 of UNCAC serves as the basis to discuss the offence as UNCAC is 'the first truly global instrument to combat corruption built on a broad international consensus'.<sup>138</sup>

Article 18 of UNCAC reads as follows:

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Active (article 18 [a] ) as well as passive (article 18 [b] ) trading in influence is criminalised. Also, the CoE Criminal Law Convention in its article 12 and France in its *Nouveau Code Pénal*,<sup>139</sup> criminalise active and passive trading in influence. The French regulation is extensive and criminalises passive and active trading in influence in relation to public officials as well as private individuals.

---

138 Argandona (2007: 481).

139 Articles 432-11, 433-1 to 433-2, 435-1 to 435-4, 435-7 to 435-10 of the *Code Pénal*.

In the case of trading in influence, the decision of a public authority is not obtained by legitimate but by illegal means of influence. The influence peddler has to use his influence to obtain a decision from a public authority, whereas the offence of bribery requires that the briber's decision is part of his or her area of responsibility. In the case of trading influence, the public official does not act in the context of his or her duty.<sup>140</sup>

In general, the concept of trading in influence refers to a private person giving an undue advantage to an influence peddler – he or she can be private or a public official – who allegedly is able to influence a public authority and to obtain from this public authority an undue advantage. The influence trader has to abuse his or her capacity to manipulate public decisions.

The undue advantage can be something tangible or intangible.<sup>141</sup> Intangible advantages could include insider information. The offender must be placed in a better position.<sup>142</sup> An advantage is undue if it is not allowed. The Explanatory Report of the CoE Criminal Law Convention states that the term 'undue' should be interpreted as 'something that the recipient is not lawfully entitled to accept or receive'.<sup>143</sup>

The aim of the offence is to prevent public officials and private individuals who have a good relationship to public authorities from gaining any advantage by commercialising their ability to influence the public decision-making process.<sup>144</sup> As the Explanatory Report on the CoE Criminal

---

140 Van Aaken (2010: 421).

141 UNODC (2006: 101).

142 Explanatory Report on the CoE Criminal Law Convention, para 37.

143 Explanatory Report on the CoE Criminal Law Convention, para 38.

144 Slingerland (2010: 2).

Law Convention puts it, the criminalisation of trading in influence aims to prevent corrupt behaviour of persons who are 'in the neighbourhood of power'<sup>145</sup> and who seek to profit from their position.

The influence, according to article 12 of the CoE Criminal Law Convention, must be improper which means that the influence peddler has to act with corrupt intent.<sup>146</sup> The influence he or she is peddling must be illegitimate. UNCAC also only covers influence paddlers who 'abuse' their influence.<sup>147</sup>

Therefore, one could assume that it would be possible to subsume unconscionable lobbying under trading in influence: a lobbyist gives a MP an undue advantage and in exchange the MP obtains something from the public authorities. Another possible scenario is that a company pays a lobbyist (in this case the influence peddler) to influence a politician. In the first case, both lobbyist and politician would be held liable. In the second case just the company (or its representatives) and the lobbyist would have committed the crime of trading in influence.

That would mean that with the ratification of UNCAC and the CoE Criminal Law Convention and their implementation in national law (as in France), forms of unconscionable lobbying would be criminalised. This is a very questionable assumption and there are many reasons to reject it.

To begin with, both conventions deal with corruption. The concept of corruption as used in the

---

145 Explanatory Report on the CoE Criminal Law Convention, para 64.

146 Explanatory Report on the CoE Criminal Law Convention, para 65.

147 OECD Glossaries (2008: 30).

conventions does not include lobbying. As discussed in Chapter Three, lobbying and corruption are on the same moral level but cannot be collapsed into one concept. According to the spirit and purpose of the laws, the intention was to harmonise the criminal policy against corruption and not to criminalise lobbying.<sup>148</sup>

It is also said that the given provisions cannot tackle properly the phenomenon if somebody trades his or her influence.<sup>149</sup> The difficulty in criminalising trading in influence is that the corrupt act is not obvious. It is hard to prove tortious interference with a corrupt intent. It is also difficult to prove whether the exercise of influence is really causally related to the undue advantage.

The Explanatory Report on the CoE Criminal Law Convention states in para 65 that

'Improper influence must contain a corrupt intent by the influence peddler: acknowledged forms of lobbying do not fall under this notion.'

UNIVERSITY of the  
WESTERN CAPE

The question here is, what are the acknowledged forms of lobbying and what not?

It is not easy to distinguish between legitimate and illegitimate influence. During the process of the drafting of UNCAC, several states objected to criminalising trading in influence as they were concerned that it could interfere with legitimate political activities.<sup>150</sup> The concept of trading in influence is broad and, therefore, quite difficult to understand.<sup>151</sup> Hence, it has not been criminalised in several States Parties as it has been seen as too wide and unclear.<sup>152</sup>

---

148 Explanatory Report on the CoE Criminal Law Convention, para 65.

149 Slingerland (2010: 9).

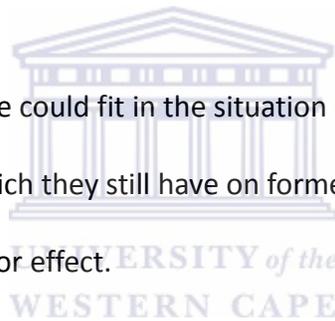
150 UNDOC (2003: fn162).

151 Slingerland (2010: 4).

152 UNODC (2011: 4).

Besides the drafting background and the intention of the conventions, it is also doubtful whether the concept of trading in influence covers lobbying cases. Often it is a public official in a ministry or a MP who is influenced but acts then in his or her sphere of influence. As trading in influence requires another party who is not criminally involved, a constellation with a knowing and therefore involved public official or MP would not comply with the requirements of trading in influence. Moreover, if the advantage which the official is obtaining is information, it is difficult to classify this as 'undue'. Also, when the lobbyist who makes use of his or her influence as part of the company, the relationship lacks the necessary third party.

The offence of trading in influence could fit in the situation where politicians who are not in office any longer sell their influence which they still have on former colleagues. It could therefore help in the control of the revolving-door effect.



Therefore, although the offence of trading in influence comes closest to the criminalisation of lobbying, it is not sufficient. The corruption conventions are not aimed at the criminalisation of lobbying. Furthermore, many lobbying situations are not covered by the provisions of the conventions. There are many influential relationships between wealth and power that are questionable and that should be criminalised, but by way of a clearer concept than that of trading in influence. The criminalisation of trading in influence shows that the threat of those relationships to democracy is becoming more and more acknowledged and that there is a need to regulate them.<sup>153</sup>

---

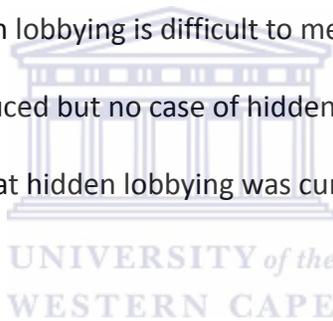
153 Slingerland (2010: 10).

## Chapter Five

### The Need for Better Regulation

#### 5.1 Measures

This chapter will discuss the steps needed for a better regulation of lobbying. The focus is on Germany but many of the concepts used can be transferred to other countries as they are universally applicable. Hidden lobbying is not only widespread and often harmful but also difficult to detect. It creates an environment where coercion and corruption easily can occur.<sup>154</sup> Also, success in the fight against hidden lobbying is difficult to measure. If, for example, a measure against hidden lobbying is introduced but no case of hidden influence occurs it can mean that the measure is ineffective but also that hidden lobbying was curtailed successfully.



Therefore, the suggestion which is made here is to introduce diverse measures to regulate and control lobbying and to hamper hidden lobbying. Thereby, the probability of success increases.

##### 5.1.1 Educational Measures<sup>155</sup>

A first step is to inform public officials in the ministries and MPs about lobbying and how it can harm good governance and the democratic process. Therefore, there should be brochures, workshops, training programmes and other measures. One could visualise the staff of each ministry together formulating a code of conduct in workshops. That would increase the awareness of lobbying and ensure the acceptance of the code of conduct as everybody was part

---

<sup>154</sup> OECD (2007: 5).

<sup>155</sup> Following article 7(1)(b) of UNCAC.

of its development.

Also, the public has to be informed better about forms and consequences of lobbying. Here NGOs such as Transparency International or LobbyControl can play an important role with grass-roots campaigns.<sup>156</sup>

### **5.1.2 Increasing Funds**

As MPs tend to complain about not having enough resources to become informed sufficiently, funding for research has to be increased. It must be ensured that the extra money is used only for research purposes.



### **5.1.3 Corporate Governance**

A step that companies ought to take is to introduce a code of ethics with rules regarding their own lobbying activities. However, this should only be a supplementary measure as otherwise companies can hide behind the excuse that this is enough for the fight against hidden lobbying activities.<sup>157</sup>

One cannot rely on the self-regulation of the business sector. It will not happen that companies follow their own ethical guidelines for fear of loss of reputation.<sup>158</sup>

### **5.1.4 Documentation of the Law-making Process**

Another step that would help to detect the influence of lobbyists and to frustrate hidden lobbying

---

156 LobbyControl developed two measures against lobbying which promise to attract people. The first are lobby guide-books for Berlin and Brussels called LobbyPlanet. The second is an internet platform with information regarding lobbyists, lobbying scandals and other topics related to lobbying called LobbyPedia.

157 Reich (2008: 20).

158 Wehrmann (2007: 52).

is the exact documentation of how a law is created, thus leaving a 'legislative footprint'.<sup>159</sup> Here it is important to disclose which suggestions are made by lobbyists and whether they formulated entire draft laws or passages of draft laws.<sup>160</sup> In this way it will be traceable also how often it occurs that public officials or MPs simply adopt suggestions by lobbyists word for word without any critical reflection.

It should be ensured that draft laws are written only by MPs or public officials in ministries. If help is needed, a code of conduct should ensure that necessary information is always obtained from several interest groups which represent the different interests regarding the subject matter of the law.<sup>161</sup> If, for instance, a new law regarding health insurance is planned, the health insurance companies as well as consumer protection experts have to be heard.



### **5.1.5 Change of the Regulation of Donations**

A very important step is to change the regulations regarding donations given to MPs and political parties. MPs themselves can receive donations for their political work. Donations over €5 000 per calendar year have to be disclosed and donations over €10 000 per calendar year have to be published.<sup>162</sup> All donations can be made in cash.<sup>163</sup> This is very problematic. With those regulations donations can be confused easily with bribes. This is - strangely enough - also an argument used by some parliamentarians against tightening the criminalisation of bribing MPs

---

159 Schmedes *ZParl* (2009: 549).

160 Gammelín & Hamann (2006: 274).

161 Leif (2010: 8).

162 Rule 4 (3) of the Code of Conduct of the Bundestag.

163 GRECO Report (2009: 23).

and, therefore, against the ratification of UNCAC.<sup>164</sup> This argument is weak insofar as the acceptance of donations by MPs should be prohibited because it is a gateway to corruption.

If no prohibition can be realised, at least the rules regarding the acceptance of donations have to be changed. Politicians have to publish every donation they get and should not be allowed to take a donation in excess of a certain amount.

Party funding is quite liberal in Germany.<sup>165</sup> Political parties can accept donations from natural and legal persons. The donor's name must be disclosed to the president of the Bundestag only in respect of a donation over € 10 000. Donations can be made in cash up to € 1 000 and anonymously up to € 500. Those regulations have to be repealed. Moreover, the donor's name must be published immediately only if the donation exceeds € 50 000. This threshold is definitely too high and must be lowered. It is easy to split the donations and thus circumvent the rules on transparency. Donations are needed by political parties but the public has to know who gives which party money. Therefore, disclosure alone is not satisfying. All donations should be made public and anonymous donations should be prohibited entirely.

There are no restrictions in German law regarding income from sources other than donations.

Political parties are entitled to take part in economic life and, therefore, those sources can include properties, business activities and shares in companies.

A recent scandal in Germany shows that this can be problematic. Journalists found out that the

---

164 Van Aaken (2005: 424).

165 GRECO Report (2009: 10); Party funding is regulated under the Political Parties Act of 1967.

FDP (the liberal party of Germany) received hidden donations. A close advisor of Gauselmann, a producer of gaming machines, invested € 2 500 000 in a one of the FDP's companies but the investment was economically unreasonable. At least a part of the money went directly to the party.<sup>166</sup> What is even more alarming is that the FDP hindered a recent change of the anti-money laundering law which would have imposed costs on the gambling machine industry. The law intended to obligate the companies to build into their machines a mechanism to make money laundering more difficult.<sup>167</sup>

#### 5.1.6 Disclosure of Additional Business and Incidental Earnings<sup>168</sup>

In Germany - contrary, for instance, to France and Italy - there is no economic incompatibility, which means that MPs can take other employment while having a political mandate.<sup>169</sup> The regulations are very lax. Employment during the mandate and the last employment have to be disclosed and published. Activities such as being a member of a section of a company have to be disclosed to the president of the Bundestag but not made public. Also, MPs' contracts of employment or other pecuniary benefits after leaving office do not have to be published.<sup>170</sup> If MPs act contrary to these rules, the only sanction is an investigation and the publishing of the results of the investigation.<sup>171</sup>

This regulations should be changed. Consideration ought to be given to the introduction of

---

166 Presseportal.de (2012).

167 Teevs *Spiegel online* (2012).

168 Compare also article 8(5) of UNCAC.

169 Van Aaken (2005: 431).

170 Rule 1(1) numbers 2 - 4 of the Code of Conduct of the Bundestag.

economic incompatibility because having several duties can lead to serious conflicts of interests.<sup>172</sup> However, the provisions of article 12 of the German Constitution ensures professional freedom. Therefore, the introduction of economic incompatibility will be difficult to realise under constitutional law. Thus, one should rather think about stricter regulations. Disclosure is important also to show which person is connected to which company. An comprehensive disclosure of all outside activities, employment and assets of MPs is fundamental for the fight against hidden lobbying and the achievement of transparency. This could be made broader to include the income of family members.<sup>173</sup> Also, there should be financial sanctions in case of non-compliance.



There are many politicians who are also members of company boards or consultants and get paid without fulfilling any proper task.<sup>174</sup> Such employment should be prohibited entirely. There would not be a problem with article 12 of the German Constitution as no proper work is done here.

Of course, these legislative changes will be difficult to realise as MPs would have to decide about a tightening of regulations which concern them personally. Here one can see a parallel to the hesitation of the Bundestag to ratify UNCAC.

### **5.1.7 Cooling-off Period**

To hamper the revolving-door effect there must be a cooling-off period for former politicians and

---

171 Rule 8 of the Code of Conduct of the Bundestag.

172 Van Aaken (2005: 434).

173 Eckert (2005: 280ff).

174 DokZentrum (2012).

public officials who start working in the free economy. Those cooling-off periods are common practice in the business sector if an employee wants to start working for a rival business.<sup>175</sup>

The period should be at least three years<sup>176</sup> to ensure that the insider knowledge which politicians could bring to companies is unlikely to be up-to-date. The cooling-off provision should be very general and include all politicians and public officials as well as all business companies.

The decision to work in the free economy cannot be forbidden as there is a constitutional right of professional freedom (article 12 of the German Constitution). A further suggestion is to cancel the pension of ministers and public officials if they move to a company during the cooling-off period.<sup>177</sup>



### 5.1.8 Ratification of UNCAC and the CoE Criminal Law Convention

Germany has to ratify UNCAC and the CoE Criminal Law Convention and thereafter tighten the laws applicable to bribing of MPs.<sup>178</sup> The current German regulatory regime does not satisfy the requirements of the conventions as bribing of MPs is not criminalised *in toto*. Only the direct buying and selling of a vote is a punishable offence. This regulation does not reflect the reality of political corruption. So far, there has not been any conviction for bribing an MP. The situation in which a corruptor comes to a MP to give him or her money to secure a favourable vote in the plenary will be the exception. There are many more occasions of corrupt influence such as the giving of loans which are much cheaper than normal or payment for a company employment which has been suspended until the person leaves politics to start working again in the company.

<sup>175</sup> After the shift of Ignacio Lopez from Opel to Volkswagen, cooling-off periods are contractually agreed in most companies.

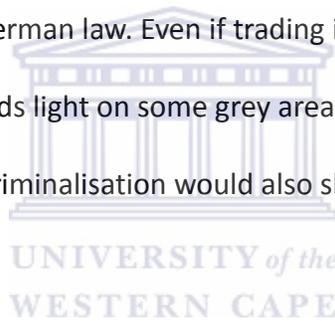
<sup>176</sup> Leif (2010: 7).

<sup>177</sup> Gammelín & Hamann (2006: 275).

<sup>178</sup> See § 108e of the German Penal Code which currently only penalises the purchase or sale of voting when the

There are more and subtle forms of corruption that are not punishable because of the restricted German law. Those situations are counted, therefore, as forms of legal lobbying still. This cannot be convincing at all because they fulfil all the requirements of political corruption: an undue advantage, a private gain and a corrupt intent. Where possible, obvious illegitimate lobbying acts should be included in the bribery of MPs.<sup>179</sup>

Even though the criminalisation of trading in influence under UNCAC and the CoE Criminal Law Convention is not mandatory, once UNCAC and the CoE Criminal Law Convention are ratified it should be made a crime under German law. Even if trading in influence does not entail the criminalisation of lobbying, it sheds light on some grey areas and helps to tackle at least some forms of hidden lobbying. Such criminalisation would also show that a concern about the harm of lobbying exists.



A recent case demonstrates the importance of criminalising trading in influence.

On the 16 October 2012, the EU Commissioner for Health and Consumer policy, John Dalli, resigned from his position. The reason was that Swedish Match, a Swedish company manufacturing tobacco products, complained at OLAF<sup>180</sup> because a Maltese entrepreneur approached the company with an offer to influence the office of the Commissioner regarding a law concerning tobacco-products (the export ban on snus, a chewing tobacco which Swedish Match produces) if Swedish Match would pay him money for his influence. This is a classic

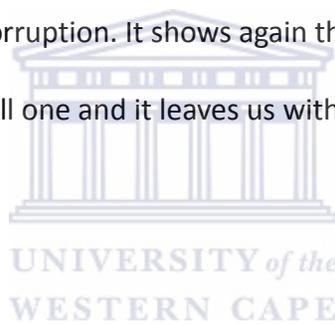
---

voting takes place in the plenary or committees. That does not include votes in caucuses or working groups.  
179 Van Aaken (2005: 427).

180 The European Anti-fraud office which is also in charge of anti-corruption issues (the acronym comes from the French name *Office de Lutte Anti-Fraude*).

example of - at least - attempted trading in influence. It is not yet clear how deeply Dalli himself is involved in this attempt. As he is a Maltese citizen and trading in influence is a crime under Maltese law he, as well as the Maltese lobbyist, could be held criminally liable. It is, of course, positive that this scandal came to light in such an early stage and that OLAF did its job. Nevertheless, it was not the anti-corruption mechanisms of the EU which exposed the scandal but the Swedish company which blew the whistle.

This example demonstrates that it is necessary to criminalise trading in influence and to strengthen measures to detect corruption. It shows again that the threshold between lobbying and corruption can be a very small one and it leaves us with the question of how many of those incidents remain undiscovered?



### **5.1.9 Disclosure in a Lobby Register**

Of crucial importance is an effective lobby register. Lobbyists have to disclose who they work for (such as companies and their subsidiaries), in which field they work and how much they earn (income source). Companies have to disclose how much they spend on lobbying. This is vital for transparency and integrity.<sup>181</sup>

To be successful, the lobby registration and disclosure requirements have to be mandatory and have to include sanction mechanisms.<sup>182</sup> Those sanctions should be fines. As already mentioned in chapter four, the register of the German Bundestag is too narrow. It is even confusing to call it a

---

<sup>181</sup> OECD Report (2010: 1).

<sup>182</sup> Kretschmer & Schmedes (2010: 119).

lobby register as only associations can register. This has to change. The registration has to be compulsory for every company and every person who tries to influence the decision-making process. Moreover, it is not enough that the register is regulated in the rules of procedure of the German Bundestag only. There has to be a law which prescribes a lobby register.<sup>183</sup>

In such a register it is important that the concept of lobbying is defined exactly. The concept should be defined broadly to include every attempt at direct influence.<sup>184</sup>

In addition to a lobby register, the code of conduct for parliament should be made broader.

It should provide a level playing field by granting all stakeholders fair and equal access to parliament. This can be achieved if only registered lobbyists have access to the Bundestag. It should be agreed also that political contacts outside of parliament be prohibited. Also, their appearance in hearings should be balanced. If, for instance, an environmental issue is discussed, companies concerned with the topic as well as environmental organisations have to be heard and the arguments of both have to be taken into consideration.<sup>185</sup> The code of conduct should also include sanctions in case of non-compliance.

Here, transparency requirements are especially important. Transparency requirements - as a crucial principle of good governance - should demand documentation of all meetings between politicians and lobbyists. In the age of technology it is easy to keep comprehensive records. All MPs should be asked to post on their websites the date of the meeting and an outline of the topic discussed. There must also be the possibility of obtaining more detailed information on enquiry.

---

183 Schmedes *ZParl* (2009: 556).

184 OECD Report (2007: 3).

185 OECD Report (2010: 3).

Not transparent are all contacts that happen outside of parliament and are not documented. Thus, contacts such as having dinner together or the organisation of political evenings by lobbyists are prohibited. This is very important as the bulk of political influence happens not in parliament but outside.<sup>186</sup>

Those regulations have to be valid also for the federal ministries, that is, no contact with non-registered lobbyists and no contacts outside of the ministries should be allowed. Also, ministries should have their own code of conduct.

There should be an anti-lobbying official or ombudsman who monitors the development of lobbying in Germany and compliance with the lobby register.<sup>187</sup>



## **5.1.10 Lobbying as an Offence**

### **5.1.10.1 The Offence**

The most drastic step would be to transform hidden lobbying into a punishable offence.

As discussed in the previous chapters, hidden lobbying is on the same moral level as corruption and, therefore, there is no reason not to criminalise it.

One can identify two possibilities of criminalisation. A criminalisation such as in the US Lobbying Disclosure Act is possible. This would not criminalise the phenomenon of hidden lobbying itself but non-compliance with the lobby register. This is problematic insofar as it does not condemn

---

<sup>186</sup> Eckert (2005: 279).

<sup>187</sup> Leif (2010: 8).

the phenomenon of hidden lobbying *per se*, but only the absence of disclosure.

Therefore, the suggestion which will be made here is to criminalise the phenomenon of hidden lobbying itself.

Below an attempt is made to formulate a possible criminal offence of hidden lobbying. It is based on the example of trading in influence. The offence of hidden lobbying may be defined in the following terms:

*The following conduct shall be a crime when committed intentionally*

*(a) The promise, offering or giving to a public official or a member of parliament, directly or indirectly, of an advantage in order to influence a decision of the public official or member of parliament within his or her competence when this results in a breach of duty by said the public official or member of parliament. The advantage may be tangible or intangible.*

*(b) The solicitation or acceptance by a public official or a member of parliament, directly or indirectly, of an advantage for himself or herself or for another person when this result in a breach of duty by said public official or member of parliament and the advantage is meant to influence his or her decision which is within his or her competence. The advantage may be tangible or intangible.*

Here it is necessary to define what breach of duty is. Breach of duty will be every non-compliance with the obligation which the public official or the MP has. This should include also the codes of ethics of the ministries and Bundestag and the lobby register. Therefore, it can lead to criminal responsibility if transparency requirements are not observed and a lobbyist tries to influence the decision-making process behind closed doors. As the advantage can be tangible as well as intangible, information which is given to the MP or public official is included if this is a breach of duty.

It is important that this lobbying-offence is not understood as a criminalisation of a corrupt act. Hidden lobbying has to be seen as an independent phenomenon. It has to be emphasised again that corruption and hidden lobbying are not substitutes and that lobbying is a concept in its own right. Therefore, no corrupt intent is necessary and the offence can be committed also if the public official or MP acts without seeking a private gain. The intent has to include:

for (a) the knowledge of the breach of duty and the intent to give an advantage to influence;  
for (b) the knowledge of the breach of duty and that the advantage is meant to influence.

#### **5.1.10.2 Rationale**

The rationale for this formulation of the offence is to try and criminalise all attempts of lobbyists and public officials and MPs to avoid the regulations written down in the lobby register and the code of ethics. From the example of the US it can be observed that even with codes of conducts and a proper lobby register which includes punishment, hidden lobbying still occurs widely. Therefore, to bring lobbyists out of the dark it is indispensable to have the threat of a criminal offence.

#### **5.1.10.3 Criminal Liability of Legal Persons**

A problem will be that legal persons cannot be held criminally liable under German law. This is a concept that needs to be changed as big companies should not be able to hide behind their legal status. But as long as there is no regulation there must be other forms of liability which will have civil or administrative consequences.<sup>188</sup>

---

<sup>188</sup> See article 26 of UNCAC and article 18 of the CoE Criminal Law Convention.

#### 5.1.10.4 Further Criminalisation

Another problem will be that in many cases lobbying/corruption is hard to prove. Often investigations do not even start. Therefore, it should be a crime also if someone pays money to a MP or public official in a ministry without this payment being properly justifiable.

This must not be confused with the offence of illicit enrichment.<sup>189</sup> Illicit enrichment is the criminalisation of a significant increase in the assets of a public official without reasonable explanation and cannot be made a crime under German law because of the German comprehension of the presumption of innocence.<sup>190</sup> In the above-mentioned case the presumption of innocence is not endangered because it has to be proved that money was given by one person to another without justification as, for example, a contract or an employment relationship.

This was the case when German politician, Laurenz Mayer, was paid by VEW AG<sup>191</sup> without a proper *quid pro quo*.<sup>192</sup>

## 5.2 Conclusion

To tackle the problem of hidden lobbying it is important that diverse measures be introduced. Preventive measures such as educational attempts are as important as regulatory measures such as a lobby register. However, this will not be enough. The US is the country with the widest anti-lobbying politics. Still, there is a lot of hidden lobbying going on. Therefore, this chapter comes to the conclusion that the step of introducing hidden lobbying as a punishable offence is necessary

---

189 See, for instance, article 20 of UNCAC.

190 Van Aaken (2005: 412).

191 A German electric supply company which merged with RWE in 2000.

192 Grassmann *Süddeutsche.de* (2012).

to end the possibilities of companies and their lobbyists influencing the law-making process without the public being aware of such influence. This conclusion is in accordance to the findings of chapter three that political corruption and hidden lobbying have the same punishable negative effects and, therefore, must be treated equally. That means, that both have to be made criminal offences.



## Chapter Six

### Concluding Remarks

This research paper has discussed critically the topic of hidden lobbying on the threshold of corruption. The topic was chosen as lobbying has become an increasingly urgent issue in Germany. The phenomenon of corruption is well known and most of its forms are regulated and criminalised. Lobbying, however, has been neglected thus far. Therefore, the aim of the research paper was to shed light on the negative impact of lobbying and to present regulatory solutions.



The analysis has shown that the number of lobbyists has increased and that their methods of influence have become more professional. Their main aim is to influence the law-making process and to modulate laws to their advantage. What made lobbying difficult to control is the development of Germany from a pluralistic democracy based on associations to a pluralistic democracy based on lobby groups. Lobbying has become a field of employment where educated and well-connected persons sell their ability to influence politics. This becomes apparent where lobbyists on demand are employed by companies to lobby a once-off situation. Lobbyists have become very professional. They study and monitor their target - public officials and MPs - accurately. That also makes them powerful. Moreover, they are employed mainly by powerful companies which can put pressure on public officials and politicians.

Therefore, lobbying stands often on the threshold of political corruption and it is necessary to draw the line between legitimacy and illegitimacy. However, it is not possible simply to subsume

hidden lobbying under political corruption. They have many similarities but are two different concepts of rent-seeking and state capture. However, lobbying is not less disastrous than corruption because its consequences, such as lobbied laws, are lasting.

Therefore, it is not acceptable that lobbying is regulated so poorly and lobbyists and politicians can collude without restraint. Various political scandals involving lobbyists illustrate the necessity of action and the analysis has pointed out which measures ought to be taken. The US example shows that even with broad anti-lobbying regulation a level political playing field has not been created yet and powerful companies still have better opportunities to gain influence.

In order to tackle lobbying sufficiently it is important to identify all locations where it occurs.

Lobbyists operate in ministries, the German parliament and all its committees, the government, the parties, in short, every organisation with political and legislative influence. Therefore, in all these institutions, anti-lobbying measures ought to be introduced. A lobby register for the parliament - even if mandatory - is not enough to hinder lobbying also in other institutions. Anti-lobbying measures must be broadened as far as possible. There should be lobby registers and codes of conduct for every public authority.

But even with a closely-meshed regulatory system, lobbying will still occur. Companies and lobbyists will make an easy cost-benefit calculation. They will value how much it will cost to break anti-lobbying rules. For rich and powerful companies it will be always more profitable to lobby against the rules and risk a fine. Here one can follow a theory which was developed for anti-

corruption:<sup>193</sup> to fight corruption, it is important to make it more expensive so that, in the end, it does not pay to be corrupt. But how does one make lobbying more expensive? As mentioned, especially big companies with a big budget lobby. Increasing the fines, therefore, does not help much. Also, other administrative or civil measures would end invariably in monetary sanctions.

The only measure which would increase the cost of lobbying is to condemn it morally by criminalising it. Companies are loath to be associated with a crime. Also, lobbyists as individuals do not want to commit a crime usually. Therefore, the recommendation of this research paper is: to fight hidden and therefore condemnable lobbying with a tight net of regulations and to go a step further and criminalise hidden lobbying.

word count: 17078



---

193 See Begović (2005) and Harstad & Svensson (2011).

## Bibliography

### Primary Sources

1. Amendment of the US Lobbying Disclosure Act of 2007.
2. Basic Law for the Federal Republic of Germany of 1949.
3. Code of Conduct for Interest Representatives of the European Commission of May 2008.
4. Code of Conduct of the European Commission of January 2011.
5. Code of Conduct of the European Parliament of December 2011.
6. Council of Europe Criminal Law Convention on Corruption, adopted 27 January 1999.
7. Explanatory Report on the Council of Europe Criminal Law Convention on Corruption of November 2001.
8. French *Nouveau Code Pénal* of 1994.
9. German Freedom of Information Act of 2005.
10. German Penal Code of 1872.
11. German Political Parties Act of 1967.
12. German Prevention of Money Laundering Act of 1993.
13. Rules of Procedure of the European Parliament of July 2012.
14. Rules of Procedure of the German Bundestag of April 2003.
15. Treaty on European Union, signed on 7 February 1992, entered into force on 1 November 1993.
16. Treaty on the Functioning of the European Union, signed on 13 December 2007, entered into force on 1 December 2009.
17. United Nations Convention against Corruption, signed 31 August 2003, entered into force on 14 December 2005.

18. US Federal Regulation of Lobbying Act of 1946.
19. US Lobbying Disclosure Act of 1995.

## Secondary Sources

### Books and Chapters in Books

1. Bartsch G 'Lobbyismus in der Gesundheitspolitik' 160 - 166 in Hensen P & Kölzer C (eds) *Die gesunde Gesellschaft : sozioökonomische Perspektiven und sozialetische Herausforderungen* VS Verlag für Sozialwissenschaften, Wiesbaden, 2011.
2. Bönkost KJ 'Was ist im Geschäftsleben in Deutschland erlaubt, unerwünscht und was ist verboten?' 195 - 231 in Sell A & Krylov AN (eds) *Interaktionen zwischen Wirtschaft, Politik und Gesellschaft* Verlag Peter Lang, Frankfurt am Main, 2009.
3. Eckert F 'Lobbyismus - zwischen legitimem politischem Einfluss und Korruption' 266 - 288 in von Alemann U (ed) *Dimensionen politischer Korruption: Beiträge zum Stand der internationalen Forschung* VS Verlag für Sozialwissenschaften, Wiesbaden, 2005.
4. Fischer C 'Advocacy und Lobby im Gesundheitswesen' 149 - 159 in Hensen P & Kölzer C (eds) *Die gesunde Gesellschaft : sozioökonomische Perspektiven und sozialetische Herausforderungen* VS Verlag für Sozialwissenschaften, Wiesbaden, 2011.
5. Gammelin C & Hamann G *Die Strippenzieher. Manager, Minister, Medien – Wie Deutschland regiert wird* Econ Verlag, Berlin, 2006 (5 ed).
6. Georgen P *Lobbying in Brussels - A practical Guide to the European Union for cities, regions, networks and enterprises* D & P Services, Brussels, 2006.
7. Johnston M *Syndromes of Corruption - Wealth, Power and Democracy* Cambridge University Press, Cambridge, 2005.
8. Joos K *Lobbying in the New Europe* Wiley-VCH Verlag, Weinheim, 2011.
9. OECD Glossaries *Corruption: A Glossary of International Standards in Criminal Law* OECD, Paris, 2008.
10. Reich R *Superkapitalismus: wie die Wirtschaft unsere Demokratie untergräbt*

Campus Verlag, Frankfurt am Main, 2008.

11. Sebaldt M 'Strukturen des Lobbying: Deutschland und die USA im Vergleich' 92 - 123 in Kleinfeld R, Zimmer A & Willems U (eds) *Lobbying. Strukturen, Akteure, Strategien* VS Verlag für Sozialwissenschaften, Wiesbaden, 2007.
12. Wehrmann I 'Lobbying in Deutschland – Begriffe und Trends' 36 - 64 in Kleinfeld R, Zimmer A & Willems U (eds) *Lobbying. Strukturen, Akteure, Strategien* VS Verlag für Sozialwissenschaften, Wiesbaden, 2007.
13. Zerfaß A, Bentele G & von Oehsen HO 'Lobbying in Berlin, Akteure, Strukturen und Herausforderungen eines wachsenden Berufsfeldes' 15 - 35 in Sell A & Krylov AN (eds) *Interaktionen zwischen Wirtschaft, Politik und Gesellschaft* Verlag Peter Lang, Frankfurt am Main, 2009.

#### Articles and Essays

1. Argandona A 'The United Nations Convention against Corruption and Its impact on International Companies' (2007) 74 *Journal of Business Ethics* 481 - 396.
2. Bandelow N 'Akteure und Interessen in der Gesundheitspolitik: Vom Korporatismus zum Pluralismus?' (2004) 37/2 *Politische Bildung* 49 - 63.
3. Baron DP 'Review of Grossman and Helpman's *Special Interest Politics*' (2002) 60 *Journal of Economic Literature* 1221 - 1229.
4. Bülow M 'Die Lobby-Republik' (2010) *Institut solidarische Moderne, Schriftenreihe Denkanstöße* 1 - 29.
5. Campos NF & Giovannoni F 'Lobbying, corruption and political influence' (2007) *Public Choice* 1 - 21.
6. Chinhamo O & Shumba G 'Institutional Working Definition of Corruption' (2007) *Southern Africa Working Paper Series ACT/1/2007/WPS* 1 - 7.
7. Crouch C 'Brand Values' (2011) *RSA Journal* 10 - 13.
8. De La Harpe S, Rijken C & Roos R 'Good Governance' (2008) 11 *Potchefstroom Electronic Law Journal* 1 - 15.
9. Eickhof N 'Wettbewerbspolitische Ausnahmebereiche und staatliche Regulierung' (1985) 36 *Jahrbuch für Sozialwissenschaft* 63 - 79.

10. Giovannoni F 'Lobbying versus Corruption' (2011) 1 *CESifo DICE Report* 12 - 16.
11. Harstad B & Svensson J 'Bribes, Lobbying, and Development' (2011) 105 *American Political Science Review* 46 - 63.
12. Hoppe T 'Transparenz per Gesetz? Zu einem künftigen Lobbyisten-Register' (2009) 2 *ZRP* 39 - 41.
13. Kretschmer H & Schmedes HJ 'Enhancing Transparency in EU Lobbying? How the European Commission's Lack of Courage and Determination Impedes Substantial Progress' (2010) 1 *Internationale Politik und Gesellschaft* 112 - 122.
14. Lambsdorff JG 'Corruption and Rent-seeking' (2002) 113 *Public Choice* 97 - 125.
15. Leif T 'Von der Symbiose zur Systemkrise' (2010) 19 *APuZ* 3 - 9.
16. Maras K 'Lobbyismus in Deutschland' (2009) 3 - 4 *APuZ* 33 - 38.
17. McChesney FS 'Rent Extraction and Rent Creation in the Economic Theory of Regulation' (1987) 16 *Journal of Legal Studies* 101 - 118.
18. Nanda VP 'Good Governance' (2006) 603 *Annals of the American Academy of Political and Social Science* 269 - 283.
19. Ocheje PD 'When Law Fails: A Theory of Self-Enforcing Anti-Corruption Legislation in Africa' (2011) 4 *The Law and Development Review* 238 - 280.
20. Ochulor CL & Basse EP 'Analysis of Corruption from the Ethical and Moral Perspective' (2010) 3 *European Journal of Scientific Research* 465 - 476.
21. Schmedes HJ 'Mehr Transparenz wagen? Zur Diskussion um ein gesetzliches Lobbyregister beim Deutschen Bundestag' (2009) 3 *ZParl* 543 - 560.
22. Speth R 'Das Bezugssystem Politik - Lobby - Öffentlichkeit' (2010) 19 *APuZ* 9 - 15.
23. von Winter T 'Vom Korporatismus zum Lobbying. Paradigmenwechsel in Theorie und Analyse der Interessenvermittlung' (2004) 4 *ZParl* 761 - 776.
24. van Aaken A 'Genügt das deutsche Recht den Anforderungen der VN-Konvention gegen Korruption? Eine rechtsvergleichende Studie zur politischen Korruption unter besonderer Berücksichtigung der Rechtslage in Deutschland' (2005) 65 *ZaöRV* 407 - 446.

## Internet References and Documents

1. ALTER-EU 2012 'Transparency Register remains opaque and poorly scrutinised' 21 September 2012, available at [http://www.alter-eu.org/sites/default/files/documents/Transparency%20Register%20remains%20opaque%20and%20poorly%20scrutinised\\_FULL%20ARTICLE.pdf](http://www.alter-eu.org/sites/default/files/documents/Transparency%20Register%20remains%20opaque%20and%20poorly%20scrutinised_FULL%20ARTICLE.pdf) (accessed on 23 October 2012).
2. Beckmann K & Gerrits C 'Lobbying and Corruption as substitute forms of rent-seeking' 4 November 2008, available at [http://smye2009.org/file/254\\_Gerrits.pdf](http://smye2009.org/file/254_Gerrits.pdf) (accessed on 23 October 2012).
3. Begović B 'Corruption, Lobbying and State Capture' CLDS Working Paper, March 2005, available at [http://pdc.ceu.hu/archive/00003104/01/corruption,\\_lobbying\\_and\\_state\\_capture.pdf](http://pdc.ceu.hu/archive/00003104/01/corruption,_lobbying_and_state_capture.pdf) (accessed on 24 October 2012).
4. Christof F 'Postdemocracy - Interview with Colin Crouch' Supertaalk, 8 November 2011, available at <http://nonapartofthegame.eu/?p=3142> (accessed on 26 October 2012).
5. DokZentrum 'Die Berliner Puppenkiste - Lobbyismus in Deutschland' available at [http://www.anstageslicht.de/index.php?UP\\_ID=2&NAVZU\\_ID=24&STORY\\_ID=29](http://www.anstageslicht.de/index.php?UP_ID=2&NAVZU_ID=24&STORY_ID=29) (accessed on 23 October 2012).
6. EU Observer 'EU lobbyist register gives incomplete picture' 25 June 2012, available at <http://euobserver.com/institutional/116742> (accessed on 26 October 2012).
7. EurActive 'Commission adopts code of conduct for EU lobbyist' 30 May 2008, available at <http://www.euractiv.com/pa/commission-adopts-code-conduct-eu-lobbyists/article-172840> (accessed on 22 October 2012).
8. Giridharadas A 'Indian's new lobbyists use American methods; Subtler approach replaces cold cash' 31 May 2006, available at <http://anand.ly/articles/indias-new-lobbyists-use-american-methods-subtler-approach-replaces-cold-cash> (accessed on 24 October 2012).
9. Grassmann P 'Ermittlungen gegen RWE' Süddeutsche.de, 17 May 2012, available at <http://www.sueddeutsche.de/politik/abfindung-fuer-meyer-ermittlungen-gegen-rwe-1.798197> (accessed on 24 October 2012).

10. GRECO 'Evaluation Report on Germany on Transparency of Party Funding' 4 December 2009, available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)3\\_Germany\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)3_Germany_Two_EN.pdf) (accessed on 23 October 2012).
11. Harstad B & Svensson J 'From Corruption to Lobbying and Economic Growth' CEPR Discussion Paper 5759, 25 February 2009, available at <http://people.su.se/~jsven/LB2009.pdf> (accessed on 23 October 2012).
12. Hess D 'Corruption in the value chain: private-to-private and private-to-public corruption' Transparency International Global Corruption Report 2009: Corruption in the Private Sector, January 2009, available at <http://www.cgu.gov.br/conferenciabrocde/arquivos/English-Global-Corruption-Report-2009.pdf> (accessed on 23 October 2012).
13. Klein H & Höntzsch T 'Fliegender Wechsel - die Drehtür kreist. Zwei Jahre danach - Was macht die Ex-Regierung Schröder II heute?' Lobby Control, 15 November 2007, available at <http://www.lobbycontrol.de/download/drehtuer-studie.pdf> (accessed on 24 October 2012).
14. Leif T & Speth R 'Lobbyismus - Die fünfte Gewalt - Wie Lobbyisten die Prinzipien der parlamentarischen Demokratie unterlaufen' Zeit online, 22 February 2006, available at <http://www.zeit.de/online/2006/10/lobbyismus> (accessed on 23 October 2012).
15. Malone MM 'Regulation of Lobbyists in Developed Countries, Current Rules and Practices' Institute of Public Administration, available at <http://www.envron.ie/en/LocalGovernment/LocalGovernmentAdministration/StandardsinPublicLife/PublicationsDocuments/FileDownload,2048,en.pdf> (accessed on 25 October 2012).
16. OECD CleanGovBiz Report 'Lobbying Rules: preventing state capture' March 2012, available at <http://www.oecd.org/cleangovbiz/50101671.pdf> (accessed on 24 October 2012).
17. OECD Report 'Lobbying - Models for Regulation' 7 May 2007, available at <http://www.oecd.org/gov/fightingcorruptioninthepublicsector/38944782.pdf> (accessed on 23 October 2012).
18. OECD Report 'The 10 Principles for Transparency and Integrity in Lobbying' January 2010, available at <http://www.oecd.org/gov/fightingcorruptioninthepublicsector/49051351.pdf> (accessed on 26 October 2012).
19. Presseportal.de 'ARD-Magazin MONITOR: Verdacht auf verdeckte Parteispende über FDP-Unternehmen' 9 September 2012, available at <http://www.presseportal.de/pm/6694/2321794/ard-magazin-monitor-verdacht-auf->

*verdeckte-parteispende-ueber-fdp-unternehmen*  
(accessed on 22 October 2012).

20. Schmedes HJ 'Die im Dunkeln sieht man nicht' Berliner Republik, March 2009, available at <http://www.b-republik.de/archiv/die-im-dunkeln-sieht-man-nicht2> (accessed on 24 October 2012).
21. Slingerland W 'Trading in influence: Corruption revisited - How a better understanding of the systemic character of trading in influence can help the Council of Europe and its Member States choosing the right instruments to tackle this form of corruption' Saxion University, School for Governance and Law, Enschede, the Netherlands EGPA Study Group on Ethics and Integrity of Governance Toulouse, 8-10 September 2010, available at [http://www.law.kuleuven.be/integriteit/egpa/egpa2010/slingerland\\_trading-in-influence.pdf](http://www.law.kuleuven.be/integriteit/egpa/egpa2010/slingerland_trading-in-influence.pdf) (accessed on 24 October 2012).
22. Teevs C 'Zockerlobby entschärft Geldwäschegesetz' Spiegel online, 27 September 2012, available at <http://www.spiegel.de/wirtschaft/soziales/streit-ueber-geldwaesche-automatenlobby-entschaerft-gesetz-a-858299.html> (accessed on 25 October 2012).
23. Toornstra D 'Parliamentary Ethics – A Question of Trust' Office for Promotion of Parliamentary Democracy, available at [http://www.europarl.europa.eu/pdf/oppd/Page\\_8/codes\\_of\\_conduct\\_FINAL-ENforweb.pdf](http://www.europarl.europa.eu/pdf/oppd/Page_8/codes_of_conduct_FINAL-ENforweb.pdf) (accessed on 22 October 2012).
24. Transparency Register of the European Union, available at [http://europa.eu/transparency-register/index\\_en.htm](http://europa.eu/transparency-register/index_en.htm) (accessed on 26 October 2012).
25. Transparency International 'The Anti-Corruption Plain Language Guide' available at [http://www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) (accessed on 22 October 2012).
26. United Nations Document 'Revised draft United Nations Convention against Corruption' General Assembly, 12 May 2003, available at [https://www.unodc.org/pdf/crime/convention\\_corruption/session\\_6/3rev4.pdf](https://www.unodc.org/pdf/crime/convention_corruption/session_6/3rev4.pdf) (accessed on 24 October 2012).
27. United Nations Document 'Review of the implementation of the United Nations Convention against Corruption: criminalization and law enforcement and international cooperation' Conference of the States Parties to the United Nations Convention against Corruption, 25 August 2011, available at <http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1185288e.pdf> (accessed on 23 October 2012).

28. United Nations Office on Drugs and Crime 'Legislative Guide for the implementation of the United Nations Convention against Corruption' 2006, available at [http://www.unodc.org/pdf/corruption/CoC\\_LegislativeGuide.pdf](http://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf) (accessed on 24 October 2012).

