

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:¹⁹³ 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 (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 (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 (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 (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 (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 (accessed on 22 October 2012).
24. Transparency Register of the European Union, available at 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 (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 (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 (accessed on 24 October 2012).

