FAKULTÄT FÜR !NFORMATIK
Faculty of Informatics

# Lobbying and its influence on the draft of a General Data Protection Regulation of the European Union unveiled in 2012

DIPLOMARBEIT

zur Erlangung des akademischen Grades

**Diplom-Ingenieur**

im Rahmen des Studiums

**Business Informatics**

eingereicht von

**Lukas Schildberger**
Matrikelnummer 0925409

an der
Fakultät für Informatik der Technischen Universität Wien

Betreuung
Betreuer: Ao. Univ.-Prof. Dr. iur. Markus Haslinger

Wien, 30.05.2016

(Unterschrift Verfasser/in) (Unterschrift Betreuer/in)

FAKULTÄT FÜR !NFORMATIK
Faculty of Informatics

# Lobbying and its influence on the draft of a General Data Protection Regulation of the European Union unveiled in 2012

MASTER'S THESIS

submitted in partial fulfillment of the requirements for the degree of

**Master of Science**

in

**Business Informatics**

by

**Lukas Schildberger**
registration number 0925409

to the
Faculty of Informatics at the Vienna University of Technology

Advisor: Ao. Univ.-Prof. Dr. iur. Markus Haslinger

Vienna, 30.05.2016

(Signature of Author) (Signature of Advisor)

# Erklärung zur Verfassung der Arbeit

Lukas Schildberger
Ötschergasse 14
3252 Petzenkirchen
Österreich

Hiermit erkläre ich, dass ich diese Arbeit selbständig verfasst habe, dass ich die verwendeten Quellen und Hilfsmittel vollständig angegeben habe und dass ich die Stellen der Arbeit – einschließlich Tabellen, Karten und Abbildungen – , die anderen Werken oder dem Internet im Wortlaut oder dem Sinn nach entnommen sind, auf jeden Fall unter Angabe der Quelle als Entlehnung kenntlich gemacht habe.

(Wien, 30.05.2016)

_____

Lukas Schildberger

# Declaration of Authorship

Lukas Schildberger
Ötschergasse 14
3252 Petzenkirchen
Österreich

I hereby declare that I have written this Diploma Thesis independently, that I have completely specified the utilized sources and resources and that I have definitely marked all parts of the work - including tables, maps and figures - which belong to other works or to the internet, literally or extracted, by referencing the source as borrowed.

(Vienna, 30.05.2016)

_____

Lukas Schildberger

# Kurzfassung

Lobbying als Tätigkeit, um politische Entscheidungen zu beeinflussen, hat in den letzten drei Jahrzehnten massiv an Bedeutung gewonnen. Jedoch wird dabei vor allem im deutschsprachigen Raum fast ausschließlich von einer negativen Tätigkeit ausgegangen, mit welcher durch großteils korrupte Methoden Politik nach Belieben geschaffen oder geändert werden kann. Im Zuge dieser Masterarbeit versuche ich nun, dieser Thematik etwas genauer auf den Grund zu gehen, indem ich mich im Detail mit den Themen Lobbying, Demokratie und Transparenz auseinandersetze.

Die Europäische Union und ihre Rechtsetzungsorgane, sprich die Europäische Kommission, das Europäische Parlament und der Rat der Europäischen Union, dienen dabei als Ausgangspunkt meiner Nachforschungen und werden im Zusammenhang mit den genannten Themen genauestens untersucht. In einer allgemeinen und in erster Linie theoretischen Ausarbeitung werden der Begriff Lobbying sowie die Ziele, Akteure und Methoden der Tätigkeit behandelt, die Prinzipien Transparenz und Demokratie erläutert und in einen Kontext mit der zugrundeliegenden rechtlichen Basis gebracht. Mögliche Ansätze, um diese Prinzipien zu wahren beziehungsweise sie zu verbessern werden an dieser Stelle ebenfalls genannt. Immer wieder wird dabei auch auf die Situation und rechtliche Basis in den Vereinigten Staaten von Amerika hingewiesen und diese mit der europäischen Situation verglichen.

Neben der allgemeinen Ausarbeitung dient die im Jahre 2012 von der Europäischen Kommission vorgeschlagene Datenschutzgrundverordnung als Hauptanlaufpunkt, um den Einfluss von Lobbyisten auf den EU-Gesetzgebungsprozess zu analysieren. Diese Verordnung benötigte aufgrund einer Vielzahl verschiedener Interessen, welche berücksichtigt werden mussten, ganze vier Jahre bis zu ihrer Finalisierung. In Fachkreisen gilt sie als das am stärksten lobbyierte Gesetz in der Geschichte der Europäischen Union. Inwieweit dieser Lobbyismus Einfluss auf die ursprünglich geplanten Prinzipien der Verordnung nahm und was dieser sowohl für die individuelle Legitimität der europäischen Gesetzgebungsinstitutionen als auch für die Legitimität der EU als supranationales Konstrukt bedeutet, soll in diesem Zusammenhang geklärt werden.

In einer kurzen Zusammenfassung lässt sich sagen, dass Lobbying im Allgemeinen eine legitime Tätigkeit in einer Demokratie ist, welche nicht nur von verschiedenen Verbänden, Unternehmen oder sonstigen Organisationen und Akteuren genutzt wird, sondern auch aktiv von Politikern verwendet wird. Da jedoch vor allem Akteure aus dem Unternehmens- und Wirtschaftsbereich mehr Ressourcen und Möglichkeiten zur Verfügung haben, bedarf es Regeln und eines Maximums an Transparenz während des Gesetzgebungsprozesses, um die Grundprinzipien einer Demokratie zu wahren. Wie das Beispiel der Datenschutzgrundverordnung aufzeigt, haben die EU beziehungsweise ihre Institutionen in diesem Bereich teilweise noch gehörigen Aufholbedarf, um ihre Legitimität in Bezug auf die BürgerInnen der Mitgliedsstaaten zu wahren.

# Abstract

Lobbying as a function to influence political decisions got more and more important within the last three decades. However, especially the German speaking area considers it as a bad and negative function that changes or even makes politics at discretion with largely corruptive methods. In the process of this master thesis I want to analyze if it is indeed like that by analyzing the matters of lobbying, transparency and democracy in more detail.

The European Union and its decision-making institutions, i.e. the European Commission, the European Parliament and the Council of the European Union, are the basis for this research process, which is why they are discussed in detail with regard to lobbying, transparency and democracy. In a general and primarily theoretical discussion about these matters, the term lobbying, its purposes, actors and methods as well as the principles of transparency and democracy are analyzed, explained and connected to the legal basis of the European Union and its institutions. By doing so, possible improvements and recommendations to strengthen these principles are outlined. Additionally, the situation and the legal basis of the USA is discussed and compared to that of the EU and its institutions.

Besides this general research process, the General Data Protection Regulation unveiled by the European Commission in 2012 is analyzed in detail to figure out the influence of lobbyists on the European Union's ordinary decision making procedure. As a result of strongly diversified interests that had to be taken into account the regulation needed more than four years for a final decision that will in any case take place in 2016. In internal circles it is known as one of the, if not the most lobbied legislative act in the history of the EU. How far lobbying influenced the original principles of the regulation and what this influence means for the individual legitimacy of the European decision-making institutions and the legitimacy of the European Union as a supranational construct should be clarified in this analysis.

In a brief conclusion it can be said that lobbying is a legitimate function needed in every democracy. It is not only used by associations, corporate actors, all kinds of organizations or other actors, but also by politicians. However, due to the fact that in particular corporate actors have lots more resources and possibilities on their disposal it needs rules and regulations as well as a maximum on transparency during the decision-making procedures to protect the fundamental principles of a democratic system. As it is shown by way of analyzing the the General Data Protection Regulation, the EU and its institutions sometimes lack in this field, hence why they should act to provide better legitimacy towards their the citizens of the member states.

# Danksagung

In erster Linie gilt mein Dank meiner langjährigen Freundin Carina sowie meiner Familie, welche mich während dieser Masterarbeit und während des gesamten Studiums in allen erdenklichen Wegen unterstützten und mir auch in schwierigen Zeiten mit Rat und Tat zur Seite standen.

Des Weiteren möchte ich mich bei jenen Personen bedanken, die maßgeblich an der Verwirklichung dieser Arbeit mitwirkten. Hierbei gilt mein Dank insbesondere meinem Betreuer Ao. Univ.-Prof. Dr. iur. Markus Haslinger, welcher mir in vielerlei Hinsicht immer wieder mit seiner Fachkompetenz und Erfahrung zur Seite stand und jederzeit als wichtige Ansprechperson zur Stelle war. Auch möchte ich mich bei all meinen Interviewpartnern, welche sich trotz eines vollen Terminkalenders Zeit dafür nahmen, mir Ihre Ansichten zu diesem Thema zu erläutern, bedanken. Zu guter Letzt gebührt mein Dank meinen Korrekturlesern, vor allem meinem alten Schulfreund Dominik, welche mir dabei halfen, den einen oder anderen rhetorischen oder grammatikalischen Fehler auszumerzen.

Natürlich möchte ich mich hiermit auch bei allen anderen Wegbegleitern während dieses Studiums bedanken.

# Table of Content

*"The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action."*[1]

***Article 11 §1, Treaty on European Union, 2012***

*"Data is the currency of today's digital economy."* [2]

***European Commission, 2014***

[1] [1].
[2] [2].

# Introduction

This thesis was written between June 2014 and November 2015 as a part of the master's program 'Business Informatics' at the Vienna University of Technology. It is based on a wide-spread offline and online literature review, which sources range from scientific books over various scientific studies to legal acts of the European Union and its member states, as well as interviews made with experts in the fields of data protection and the European decision-making process. In total six semi-structured interviews were conducted in July 2014 and in the period of February 2015 to March 2015 to provide a better understanding and a more detailed insight into issues relevant for this thesis. By doing so, two were made with European officials, one of the European Commission and one of the European Parliament, two with Austrian officials and two with independent experts. Transcripts of all of them as well as further details of the interviewees, the interview method and questions can be found in Annex E.

The goal of and motivation for this thesis may be best described in a brief manner as finding answers to the following questions:

- How is decision-making done in the European Union?
- What is lobbying and how is it done?
- What means transparency and democracy and how is it ensured in the European Union and its decision-making institutions?
- How was the General Data Protection Regulation lobbied and from whom?
- How did lobbying influence the General Data Protection Regulation and what does this mean for the legitimacy of the European Union and its decision-making institutions?

While the first three questions are more of a general nature, which is why these are tried to be answered in a general research process within chapters 1 to 3, the last two questions are much more specific and related to a special legislative act of the European Union. Therefore, they are tried to be answered within a case study about lobbying on the General Data Protection Regulation, which is based on the general research process conducted in the chapters before and finally analyzed and evaluated in chapters 4 and 5.[3]

In general, the latest studies indicate that lobbying and its influence on the decision-making process of the EU is assumed very high[4] and that trust in the European Union as well as in the national governments of the member states is still on a quite low level although it has slightly increased within the last year after big losses in the years before caused by the financial crisis in 2008.[5] These findings are, of course, also relevant for the legislative procedure of the General Data Protection Regulation, which is largely seen as the legislative act lobbied the most in the history of the EU.[6] Consequently, a critical review of the current situation in Europe and the principles of transparency and democracy, while having regard to the questions listed before, should be provided in this thesis.

All in all, the thesis has five chapters, each of it dealing with certain issues.

---

[3] The case study, including chapter 1 to 3, bases on the theoretical framework of Yin (2009). See [3].
[4] See [4].
[5] See [5], p. 6.
[6] See [6].

Chapter 1 briefly outlines the European Union, its history, architecture, decision-making institutions and legislative procedures. Thereby, the focus lies on the institutions and procedures relevant for adopting the GDPR.

Chapter 2 deals with lobbying in general. It provides a general definition of the term and the function. Furthermore, the purposes of lobbying and its characteristics are analyzed. By doing so, the actors and methods used for lobbying, possible access points in the EU's decision-making institutions and some general principles are discussed. In the end of the chapter a comparison of lobbying in the EU to lobbying in the US is provided.

Chapter 3 discusses the principles of transparency and democracy in general and in relation to the EU. In this process, the legal bases of the European Commission, the European Parliament and the Council of the European Union regarding these principles are analyzed in detail. Following these analyses rooms for improvements and general criticisms on the legal settings are outlined. Again the final part of the chapter provides a comparison of the EU's system to the system of the USA.

Chapter 4 is dealing with the General Data Protection Regulation. After a general overview of its necessity and objectives is given, the lobbying on the decision-making institutions is analyzed individually. It should be noted that the focus of this chapter lies on the positions of the individual institutions and not on the final outcome of the General Data Protection Regulation, which was not yet available at the time this thesis was finished.

Chapter 5 provides a brief overall conclusion having regard to all of the chapters discussed. The conclusion includes points of chapters 1 to 4 with a special focus on chapter 4.

Moreover, chapters 1 to 3, which deal with general aspects, are individually summarized by an executive summary at the end of each chapter. Because of its specific nature chapter 4 has no executive summary. However, a brief summary of chapter 4 can be found in chapter 5.

Generally, it should be noted that to improve readability of the text, the separation of genders is not explicitly done in this paper. As a result the reference to a person of male or female sex is in any case also applicable to the other sex, unless the context clearly indicates otherwise.

CHAPTER 1

# The European Union

The European Union describes itself as

> *"a unique economic and political partnership between 28 European countries that together cover much of the continent."* [7]

Another definition of the political scientist Weidenfeld reads as follows:

> *"The European Union is a unique model of governance beside national states, which want to preserve the identity as well as a scope of action of the national states."* [8]

These two citations provide an overview of the European Union in a single sentence. As one can read out of them the EU consists of 28 member states at the moment and is acting in sort of an economical and political cooperation across the borders of its members respecting their individuality. A further important attribute, the partly transfer of the national sovereignty to the Union, is also stated in the definition of Weidenfeld.

In this first chapter a brief overview about the history of the European Union since its origin, followed by its actual architecture and its legislative processes, will be given. For further and more detailed information, research can be done on the websites of the European Union[9], where all important events, treaties and amendments can be found.

The focus of this part will lie on the institutions and processes relevant for passing the new General Data Protection Regulation (GDPR). Hence, not all institutions and procedures are outlined.

---

[7] [7].
[8] [8], p. 9. Translated from German: "Die Europäische Union ist ein einzigartiges Modell des Regierens jenseits des Nationalstaates, das gleichwohl die Identität und einen Gestaltungsspielraum der Nationalstaaten bewahren will."
[9] See [9]; [10].

## 1.1 History

The European Union is a project of "a peaceful, united and prosperous Europe"[10] that had its origin shortly after World War II. In 1949 the Council of Europe was founded to discuss opinions and to exchange ideas between different nations.[11] Two years later, in 1951, the six nations Germany, France, Italy, the Netherlands, Belgium and Luxembourg signed a special cooperation for their heavy industries, the so-called European Coal and Steel Community, or in its short version ECSC. This cooperation was founded on the initiative of the French foreign minister Robert Schuman and involved a common strategy, a common supervision and a common usage of their heavy industries. As stated in Article 97 ECSC, the Community was defined for a 50-year period, wherefore it existed from 1952 to 2002.[12] According to Article 7 ECSC it consisted of four institutions that should ensure its functioning, namely

- a High Authority, assisted by a Consultative Committee, having executive power,
- an (Parliamentary) Assembly, providing a council for discussion and supervision,
- a Council of Ministers having legislative power and the right to pass directives and
- a Court of Justice to ensure the correct implementation of the Community and its policies.[13]

Apparently, the institutional framework of that time was already the basis of that we have today.[14]

Because of the success of the ECSC the founding members planned to establish a European Defense Community (EDC) as well, but after a veto of France this political project failed in 1954. As a next step, the six members decided to expand their existing cooperation by adopting the famous Treaties of Rome in 1957. Thereby, the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) were established. The main purpose of the EEC was the creation of a common market to move goods, services, capital and people for free across the member's national borders.[15] Euratom pooled the member's specific knowledge about nuclear industry.[16] In the course of it better research and development, higher and more uniform safety standards and a regular and fair supply of nuclear energy should be achieved. The structures of the two new Communities were based on the existing structure of the ECSC having the same institutions for every single Community, apart from the small difference that the High Authority was called Commission in both cases.[17] At the beginning only the Court of Justice and the Parliamentary Assembly were common for all of them. The other institutions (i.e. the Councils and the High Authority/Commissions) were merged in 1967 by the so-called Merger Treaty to impose the principle of a budgetary unity.[18] By doing so, the European Communities, a construct of three Communities with individual scopes, but common administration, were born.

At the same time a flop in the otherwise very successful history of the European Communities and their successor, the European Union, happened in 1966. Originally it was planned to change the voting system about important topics in the Council of Ministers to qualified majority instead of unanimity with 1 July 1966, but because of a blockade of France, also

---

[10] [11].
[11] See [8], p. 17.
[12] See [12], Article 97 ECSC.
[13] See [12], Article 7, 18 ECSC.
[14] See [8], p. 63.
[15] See [13], Article 3 EEC.
[16] See [14].
[17] See [13], Article 4 EEC; [14], Article 3 Euratom.
[18] See [15].

known as the "empty chair" policy[19], the planned modification was revoked. The solution for this predicament, the 'Luxembourg compromise', was a step backwards as the right of veto kept persisting.[20] Each member was still able to block decisions, wherefore the tough negotiations for compromises were going on and slowed down the evolution of the European Communities for the next decades.

Nevertheless, new member states were accepted for the first time over 20 years after the foundation of the first Community. In 1973 Denmark, Ireland and the United Kingdom joined the EC. Norway, which was also a candidate, had to refuse its membership after a negative national referendum.[21]

The 70s led also to a change of the budgetary power of the European Parliament and the Council. With the 'Treaty amending certain budgetary provisions' signed in Luxembourg 1970, the replacement of the financial contributions of the member states through equity capital of the Communities was implemented.[22] Thus, the Parliament and the Council were both responsible for the budget and had to work together. With the 'Treaty amending certain financial provisions' signed in 1975, the Parliament got the additional right to reject the budgetary plan on its own and a Court of Auditors was implemented to audit the finances of the Communities.[23] These measures strengthened the power of the EC in general, but also of the European Parliament as an institution.

Besides that, the European Council (not to be confused with the Council of Europe and the Council of Ministers) was formally established in 1974 to circumvent the unwanted consequences of the 'Luxembourg compromise'. It had, and still has, the purpose of bringing the heads of state or heads of government of the member states together to make important decisions.[24]

As the European Communities as well as its institutions got more and more power over time without being elected by citizens, the first direct election of the Members of the European Parliament (MEPs) by citizens of the nine member states in 1979 was a milestone for democracy even though the European Parliament had not that much influence on legislation than it has today.[25] The weak involvement of especially citizens did not ensure a democratic participation on legislation. At a time of global change the lack of democracy as well as the outdated and inefficient structures of the EC led to increasing calls for a reform establishing a European Union. For that purpose a commission for institutional affairs was implemented on the initiative of the Italian politician Altiero Spinelli in 1981. This commission had the mission to create a draft treaty that should replace and combine the existing ones. Its final result was passed by the European Parliament in 1984 providing lots of possible modifications and amendments, which should lead to a modern and independent European Union.[26] As a first consequence of this, the Single European Act (SEA), the first major adjustment since 1957, was adopted in 1986. It contained the will to form a European

---

[19] Due to a breakup of negotiations about the Common Agricultural Policy on 1 July 1965, France did not send its members to meetings of the Council anymore. Thus, the institution was not able to vote. See also [8], p. 68.

[20] *"Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community […]."* Out of [16], p. 9.

[21] The referendum led to a close vote against an accession to the European Communities. 53.5% voted against a membership. See [17] for detailed results.

[22] See [18].

[23] See [19].

[24] See [20].

[25] See [8], p. 70.

[26] See [21], p. 55ff.

Union[27], several modifications of the existing institutions and enhanced competences for the European Parliament. Moreover, it specified among other things that the European Political Cooperation (EPC), which primary focused on issues and fields regarding a common foreign and safety policy, became a contractual institution.[28]

Along that reform process Greece (in 1981), Spain and Portugal (both in 1986) entered the EC and raised the number of member states to 12.

In 1992 the next milestone was achieved as the 'Treaty on European Union' (TEU) was signed in Maastricht. It replaced the European Communities by the European Union, a construct with three pillars for all member states based on the suggestions of Spinelli and the SEA.

These three pillars were

- the European Community (EC), which replaced the European Economic Community, the ECSC and Euratom, designed as a supranational body;
- the Common Foreign and Security Policy (CFSP) designed as an intergovernmental instrument; and
- the Cooperation in the fields of Justice and Home Affairs, which was also designed in an intergovernmental way.[29]

In the following figure the political fields of each pillar are illustrated.

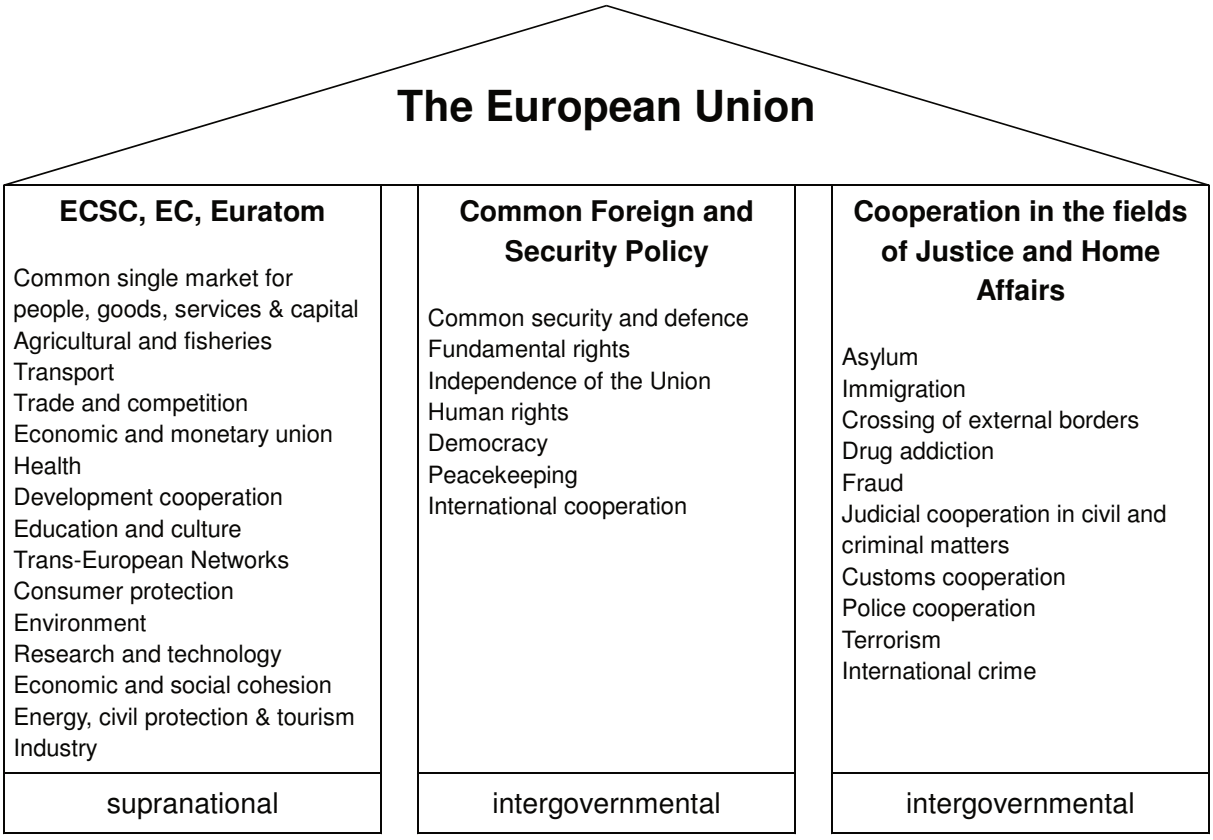



**Figure 1: Three pillars of the European Union stated in the Treaty of Maastricht[30]**

[27] See [22], Article 1 SEA.
[28] See [22], Article 3 §2 SEA.
[29] See [23], Article G-K TEU (1992).
[30] Own diagram based on [23], Article G point B, J.1, K.1 TEU (1992).

In addition to the mentioned adoptions regarding the structure, several changes on the functioning of the EU were stated in the treaty that also led to an enhanced element of democracy. In this context the legislative power of the only directly elected institution, the Parliament, was largely increased. From now on, it had the power to co-decide in certain political fields together with the Council of Ministers. Moreover, the EP got the power to initiate parliamentary inquiry committees and each EU-citizen was provided with the right to petition the Parliament or to file an inquiry to the newly introduced European Ombudsman.[31] With these changes the EU became more democratic as it involved citizens more than ever.

Three years after the foundation of the EU Austria, Finland and Sweden entered in 1995 and increased the number of member states to 15.

Due to the fact that the Treaty of Maastricht was just an intermediate step on the way to an efficient and powerful Union across Europe, the Treaty of Amsterdam and the Treaty of Nice were passed in 1997 and 2001 to bring the Union another step forward. With the Treaty of Amsterdam the Parliament's power and tasks were enhanced again. The institution got legislative power in still more political fields and the task to appoint the president of the Commission.[32] Furthermore, the treaty enhanced the Council's majority voting system, introduced a High Representative for the EU foreign policy[33], established a basis for closer cooperation[34] and swept the division of Justice and Home Affairs (JHA) from the third to the first pillar[35]. The Treaty of Nice prepared the EU and its institutions for the next big enlargement to the east (the EU-27). It modified the weighting of votes and the allocation of seats of the institutions. Moreover, an important declaration about the future face of the EU was appended that served as the basis for the next reform process.[36]

Three years later, in 2004, the stated enlargement was realized. The Czech Republic, Cyprus, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia joined the European Union. In 2007 Bulgaria and Romania followed and established the EU-27.

As a consequence of a still not satisfying structure after the expansion, the Treaty of Lisbon modified the Treaty on European Union signed in Maastricht 1992 and additionally replaced the Treaty establishing the European Community of 1957 with the Treaty on the Functioning of the European Union (TFEU) in 2007 to "take Europe into the 21st century"[37]. This was an essential reform that changed the Union to that one we know today. The three pillars, except Euratom, were merged to one Union, causing several roles and powers to be modified.

The most relevant issues of the treaty were:

1. The EU had to become more democratic and transparent. Therefore, the role of its only directly elected institution by European citizens, the European Parliament, was strengthened. It got more power on legislation to be at the same level as the Council in most of the political fields.[38] Furthermore, the competences of the EU and its member states were re-clarified and the principal of subsidiary was introduced.[39] Since the entry into force of this treaty, EU-citizens can also call the Commission for new policy

[31] See in [23], Article G §41 TEU (1992).
[32] See [24], Article 214 TEC (1997).
[33] See [24], Article 207 TEC (1997).
[34] See [24], Article 11 TEC (1997).
[35] See [8], p. 85f.
Only the Police and Judicial Co-operation in Criminal Matters (PJC) is left in the third pillar.
[36] The detailed declaration can be found in the Appendix of the Treaty of Nice. See [25], declaration 23.
[37] [26].
[38] See [27], Article 2 point 2c (p. 42) .
[39] See [27], Article 1 point 6 (p. 12).

proposals if they find more than one million supporters in a quarter of the member states.[40]

2. Decision-making as well as all other mechanisms had to be more efficient, which is why the qualified majority voting was revised and extended to further areas. Moreover, a President of the European Council was introduced.[41]
3. Freedom, solidarity, security, fundamental rights and values were established at the level of primary law by the Charter of Fundamental Rights.[42]
4. The common foreign and security policy and the EU itself should be strengthened on the global level.[43]

These points established the European Union as a strong and democratic actor that plays an important role for its members as well as for third parties all over the globe.

For the sake of completeness, the last significant structural change should be mentioned as well. In 2013 Croatia entered the EU, which led to the actual EU-28. Figure 2 shows the member states - in a yellow color - and the candidate as well as the potential candidate states (Bosnia and Herzegovina, Kosovo) - in a green color - by September 2015. Although there are several candidate states, it can be assumed that none of those will join the EU in the next 5 years, as it still has to stabilize itself after the last big enlargement and several crises in the subsequent years.

[40] See [27], Article 1 point 12.
[41] See [27], Article 1 point 16.
[42] See [27], Article 1 point 3, 4, 8.
[43] See [27], Article 1 point 24, 49; Joos in [28], p.32f.


**Figure 2: The European Union - member and candidate states (as of September 2015)**[44]

In table 1 a graphical summary of the progress of the EU is provided. The major treaties and the Communities since beginning are illustrated in the columns. The time period indicates the signing years of the treaties and the row below the number of their member states at that time.

| 1951<br>Paris | 1957<br>Rome | 1965<br>Merger | 1986<br>EEA | 1992<br>Maastricht | 1997<br>Amsterdam | 2001<br>Nice | 2007<br>Lisbon |
|---|---|---|---|---|---|---|---|
| 6 members | 6 members | 6 members | 12 members | 12 members | 15 members | 15 members | 27 members |
| | | **European Communities** | | **Three pillars of the EU (vertical)** | | | |
| | Euratom | | | | | | |
| ECSC | | | | | | until 2002 | EU |
| | EEC | | | renamed to EC | | | |
| | | | | JHA | PJCC | | |
| | | | EPC | CFSP | | | |

**Table 1: The progress of the EU (own diagram)**[45]

[44] Available on [29].
[45] Own diagram based on [30].

# 1.2. Architecture

The architecture of the European Union, including the amount of institutions and their influence, changed over the years as it is outlined in the part before.

Since the Treaty of Lisbon the actual framework of the EU consists of seven institutions, namely

- the European Parliament,
- the European Council,
- the Council of the European Union,
- the European Commission,
- the Court of Justice of the European Union,
- the European Central Bank and
- the Court of Auditors.[46]

These institutions and their advisory bodies should ensure the functioning of the Union and a trouble-free process of integration. In doing so, they should work together and act in their scope of authorization regarding their individual functions, powers, limits and structures stated in the Treaty on European Union and the Treaty on the Functioning of the European Union.[47]

Hereafter, the most relevant institutions and bodies for the adoption of the General Data Protection Regulation, which are in fact the three decision-making institutions and the advisory bodies, will be briefly described.

## 1.2.1. European Parliament

Over the years the European Parliament changed its role from a discussion forum to a powerful part of European legislation and a guardian of democracy. It got more and more influence, tasks and competences, consequently becoming one of the three components of the so-called "institutional triangle"[48] together with the Commission and the Council. This triangle is responsible for the legislature and executive power of the Union, whereby the Parliament's tasks are related to the legislative part.

The institution is operated from Strasbourg (France), Brussels (Belgium) and Luxembourg. Its main working place is Brussels, its plenary sessions take place in Strasbourg and its administrative office, also known as the General Secretary, is situated in Luxembourg and Brussels. In the last years the high efforts and costs of travelling between Brussels and Strasbourg have led to heated discussions about closing the department in Strasburg, but the needed unanimity in the Council to adapt the contractual settings cannot be reached, because of a permanent veto of France.[49] Thus, MEPs, their assistants, staff and stuff still have to travel once a month to vote on policies.

As already mentioned the EP is co-responsible for the legislative procedure in most of the political fields as well as for the budgetary plan jointly with the Council.[50] Political fields in the area of Common Foreign and Security Policy and Justice and Home Affairs are mostly excluded of the Parliament's scope. In those fields it will be involved as it is stated in the

[46] See [1], Article 13 §1 TEU (2012).
[47] See [1], Article 13 §2 TEU (2012).
[48] [31].
[49] See [32].
[50] See [1], Article 14 §1 TEU (2012) and Article 314 TFEU (2012).

treaties, which means no involvement at all or a consultative or consenting role. Anyhow, the EP is permitted to address inquires or recommendations to the Council or the Commission even in these fields.[51] It has also a right to request the European Commission to draft a legislative proposal.[52]

Besides its legislative and budgetary tasks, the European Parliament has several functions to ensure a kind of checks and balances in the EU. Very important tasks in this context are related to its interaction with the Commission. It has to confirm a new Commission before it will start to work and can force the Commission to resign with a motion of censure by a two-thirds majority of the votes cast.[53] On a request of a quarter of its members it is eligible to set up a temporary Committee of Inquiry to investigate institutions or bodies as long as there have not been any legal proceedings about the matter.[54] Moreover, it elects the European Ombudsman. A final aspect in the scope of democracy that should be mentioned is the possibility of any EU-citizen or any natural or legal person that is registered in the EU to send a petition on a matter concerning the working area of the Union and him-, her- or itself directly to the Parliament.[55] Thus, the EP is an essential intermediary between citizens and the institutional framework of the EU.

To fulfill its tasks satisfactorily it is composed of a maximum number of 750 MEPs plus an additional president that is elected by the members for two and a half years with the option of re-election.[56] One member state sends out between 6 and 96 representatives depending on the number of citizens per state distributed in a degressively proportional way.[57] Every 5 years MEPs are directly elected by EU-citizens.[58] However, according to Pollak and Slominski and Weidenfeld these elections are largely seen as a "second-order-election"[59], because on the one hand there is a lack of information about the work and power of the European Parliament respectively the European Union in general, and on the other hand the national parties use the elections to cover national topics or to teach the ruling party (or parties) a lesson.[60] Such a call for a 'punishing election' was among others done by the Austrian party FPÖ in 2014. They called explicitly for a vote against the Austrian ruling parties to teach them a lesson.[61]

In its current configuration the Parliament composes of eight political groups[62] and several independent members. The distribution of the seats per fraction and per state as of September 2015 is shown in table 2. As one can read out of it, there are two big political groups, namely the Group of the European People's Party (EPP) and the Group of the Progressive Alliance of Socialists and Democrats in the European Union (S&D), representing more than 50% of MEPs. Therefore, they may act like a great coalition as it was suggested by their leading

---

[51] See [1], Article 36 TEU (2012).
[52] See [1], Article 225 TFEU (2012).
[53] See [1], Article 234 TFEU (2012).
[54] See [1], Article 226 TFEU (2012).
[55] See [1], Article 227 TFEU (2012).
[56] See [1], Article 14 §2, 4 TEU (2012).
The actual president of the European Parliament is Martin Schulz, a German member of the S&D fraction.
[57] See [1], Article 14 §2 TEU (2012).
[58] See [1], Article 14 §3 TEU (2012).
The legal framework for the elections of MEPs is stated in the 'Act concerning the election of the representatives of the European Parliament by direct universal suffrage', also known as Direct Elections Act, of 1976 amended in 2002. See [33].
The last election was carried out in 2014. The next one will be in 2019.
[59] The term second-order-election was introduced by Reif and Schmitt in 1979. See [34].
[60] See [8], p. 110ff; [35] p. 76 .
[61] See [36], the election poster of the FPÖ for the election of 2014.
[62] To form a political group it is necessary to canvass 25 members elected by at least a quarter of member states. For further information see [37], Rule 32.

candidates Jean-Claude Juncker (EEP) and Martin Schulz (S&D).[63] Furthermore, it shows that Germany, France, Italy and the United Kingdom have the most representatives in the European Parliament, because they are the most populous states. Subsequently, the least populous states are Cyprus, Estonia, Luxembourg and Malta as they are represented by the minimum possible number of six members.

| Country | EPP | S&D | ECR | ALDE | GUE / NGL | Greens / EFA | EFDD | ENF | NI | Total |
|---|---|---|---|---|---|---|---|---|---|---|
| **Austria** | 5 | 5 | | 1 | | 3 | | 4 | | **18** |
| **Belgium** | 4 | 4 | 4 | 6 | | 2 | | 1 | | **21** |
| **Bulgaria** | 7 | 4 | 2 | 4 | | | | | | **17** |
| **Croatia** | 5 | 2 | 1 | 2 | | 1 | | | | **11** |
| **Cyprus** | 2 | 2 | | | 2 | | | | | **6** |
| **Czech Republic** | 7 | 4 | 2 | 4 | 3 | | 1 | | | **21** |
| **Denmark** | 1 | 3 | 4 | 3 | 1 | 1 | | | | **13** |
| **Estonia** | 1 | 1 | | 3 | | 1 | | | | **6** |
| **Finland** | 3 | 2 | 2 | 4 | 1 | 1 | | | | **13** |
| **France** | 20 | 13 | | 7 | 4 | 6 | 1 | 20 | 3 | **74** |
| **Germany** | 34 | 27 | 8 | 4 | 8 | 13 | | | 2 | **96** |
| **Greece** | 5 | 4 | 1 | | 6 | | | | 5 | **21** |
| **Hungary** | 12 | 4 | | | | 2 | | | 3 | **21** |
| **Ireland** | 4 | 1 | 1 | 1 | 4 | | | | | **11** |
| **Italy** | 15 | 31 | 2 | | 3 | | 17 | 5 | | **73** |
| **Latvia** | 4 | 1 | 1 | 1 | | 1 | | | | **8** |
| **Lithuania** | 2 | 2 | 1 | 4 | | 1 | 1 | | | **11** |
| **Luxembourg** | 3 | 1 | | 1 | | 1 | | | | **6** |
| **Malta** | 3 | 3 | | | | | | | | **6** |
| **Netherlands** | 5 | 3 | 2 | 7 | 3 | 2 | | 4 | | **26** |
| **Poland** | 23 | 5 | 19 | | | | 1 | 2 | 1 | **51** |
| **Portugal** | 7 | 8 | | 2 | 4 | | | | | **21** |
| **Romania** | 12 | 15 | 1 | 3 | | | | 1 | | **32** |
| **Slovakia** | 6 | 4 | 3 | | | | | | | **13** |
| **Slovenia** | 5 | 1 | | 1 | | 1 | | | | **8** |
| **Spain** | 17 | 14 | | 8 | 10 | 4 | | | | **53** |
| **Sweden** | 4 | 6 | | 3 | 1 | 4 | 2 | | | **20** |
| **United Kingdom** | | 20 | 21 | 1 | 1 | 6 | 22 | 1 | 1 | **73** |
| **EU** | **216** | **190** | **75** | **70** | **51** | **50** | **45** | **38** | **15** | **750** |

**Table 2: European Parliament - Seats by political group and Member State as of November 2015[64]**

In addition to the different fractions the Parliament has 20 specialized standing committees and 41 delegations. Every MEP is a full member of at least one committee and delegation and can be a substitute member in others. Committees have a focus on a certain political field and are composed of 25 to 71 full members and an equal number of substitute members.[65] Delegations should maintain contacts with countries outside the EU and are composed of 12 to more than 70 members.[66]

[63] See [38].
[64] Own diagram based on [39].
[65] See [40].
[66] See [41].

Generally, the European Parliament is assisted in its duties by a Secretariat, where more than 7500 officials are working. Moreover, it can be advised by the Economic and Social Committee (ESC) and the Committee of the Regions (CoR).

### 1.2.2. Council of the European Union

The Council of the European Union (short Council) is a European institution since the establishment of the ECSC in 1952. It is located in Brussels and Luxembourg and equipped with a lot of power in all fields of the EU. As the top level of the institution's organizational hierarchy is composed of one representative of each member state at ministerial level, who is authorized to decide for his member state, it is also known as the Council of Ministers.[67] Usually, the ministers change with respect to the policy field being discussed in a meeting. If, for example, the meeting's policy field is agriculture and fisheries, the configuration will be different than in a meeting on justice and home affairs. However, each of the ten configurations of the Council can adopt an act in any policy field.[68] The meetings are chaired by the representative member of the country holding presidency, which rotates every half year, or in case of a foreign-ministers-meeting by the High Representative of the Union for Foreign Affairs and Security Policy.[69]

Together with the European Parliament the Council is responsible for the legislative processes and the budgetary plan[70], but contrary to the EP it can also act in issues related to foreign affairs and security policy. In these specific fields it acts with the High Representative of the Union for Foreign Affairs and Security Policy on the guidelines and strategic goals defined by the European Council.[71] Additionally, it coordinates and defines guidelines in the areas of freedom, security and justice as well as in the field of economic policies of the member states[72] and may request the Commission to draft a legislative proposal.[73]

In general the Council of Ministers decides by a qualified majority, except there are other declarations in the treaties.[74] Since 1 November 2014 a qualified majority on a proposal of the Commission or of the High Representative of the Union for Foreign Affairs and Security Policy can be reached with "55% of the members of the Council, representing the participating member states, comprising at least 65% of the population of the Union".[75] Members representing at least 35% of the participating member state's population plus one member can initiate a blocking minority.[76] One member can at most take the vote of one other member[77] and may absent from voting without affecting a needed unanimity.[78]

Similar to the other institutions it is assisted by several preparatory bodies. In its case these are also known as the Council's preparatory bodies that consist of the Committee of

---

[67] See [1], Article 16 §2 TEU (2012).
[68] The different configurations of the Council are Agriculture and fisheries; Competitiveness; Economic and financial affairs; Education, youth, culture and sport; Employment, social policy, health and consumer affairs; Environment; Foreign affairs; General affairs; Justice and home affairs; Transport, telecommunications and energy. See [42].
[69] See [1], Article 16 §9 TEU (2012).
The role of the High Representative of the Union for Foreign Affairs and Security Policy is currently practiced by the Italian Federica Mogherini.
[70] See [1], Article 16 §1 TEU (2012).
[71] See [1], Article 26 §1-2 TEU (2012).
[72] See [1], Article 68, 121 §1-2 TFEU (2012).
[73] See [1], Article 241 TFEU (2012).
[74] See [1], Article 16 §3 TEU (2012).
[75] [1], Article 238 §3 TFEU (2012).
[76] See [1], Article 238 §3 TFEU (2012).
[77] See [1], Article 239 TFEU (2012).
[78] See [1], Article 238 §4 TFEU (2012).

Permanent Representatives (COREPER) and more than 150 highly specialized working parties and committees.[79] They prepare the ministers' work, execute all kinds of tasks and even decide in cases defined by law. Thereby COREPER, which is responsible for the ministerial agenda, uses a special decision and discussion system with A- and B-items. If a consensus is reached during the preparatory work, the dossier is referred to as an A-item that will not be discussed by the ministers anymore, otherwise it is referred to as a B-item that will be discussed by the ministers.[80]

The Council of the European Union is assisted by a joined General Secretariat together with the European Council. Furthermore, it may be advised by the Economic and Social Committee and the Committee of the Regions.[81]

### 1.2.3. European Commission

After the European Parliament and the Council were outlined in the previous sections, the European Commission as the third part of the institutional triangle shall be described briefly at this point. Similar to the other two institutions it exists since the beginning of the ECSC in 1952 and has undergone various structural and functional changes over time. At the moment it consists of one independent representative per member state including its president[82], who is elected by the European Parliament based on a recommendation of the European Council, and the High Representative of the Union for Foreign Affairs and Security Policy[83]. Each member is responsible for one political field, which is assigned by the president. Because of the high costs and the decreasing amount of possible political fields with each additional Commissioner it was planned to set the amount of Commissioners to two thirds by 1 November 2014 with a system of strictly equal rotation between member states.[84] The European Council skipped that reduction in 2013, resulting in each member state having its own Commissioner until the EU counts 30 member states or the year 2019 is reached.[85] Apparently, this means that the reduction has to be done after the next election in 2019, because it is rather unlikely that the EU will consist of 30 members before that time. The members of the European Commission should act completely independently and are announced every five years by the member states.[86] They operate by a principle of collective decision-making, which ensures that the collective institution is responsible, although a decision may be made by a simple majority vote.[87] Additionally, this principle gives equal power and rights to all Commissioners in a decision-making process.

The key functions and tasks of the Commission are described at a glance in Article 17 §1 of the Treaty of the European Union. This reads as follow:

> *"The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the*

---

[79] See [43].
Dondi even argues that all-in all there are about 250 working groups, committees, attaché groups, ad-hoc groups and high-level groups. See Dondi in [28], p. 92.
[80] See [8], p. 125; [35], p. 88.
[81] See [1], Article 300 §1 TFEU (2012).
[82] Since 2014 the former Luxembourgish Prime Minster Jean-Claude Juncker acts as the president of the Commission.
[83] See [1], Article 17 §4, 7 TEU (2012).
The High Representative of the Union for Foreign Affairs and Security Policy also acts as one of actual 7 vice-presidents of the European Commission. See [1], Article 17 §5 TEU (2012).
[84] See [1], Article 17 §5 TEU (2012).
[85] See [44].
[86] See [1], Article 17 §3 TEU (2012).
[87] See [45], ANNEX, Article 1.

> *Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements."*[88]

It shows that the Commission is the Union's executive branch having the exclusive power to draft proposals if it is not defined otherwise.[89] To ensure the execution of its tasks it may request any information and conduct any investigations within its limits with respect to guidelines defined by the Council.[90] Moreover, it may negotiate (international) agreements with third countries or international organizations if it is authorized by the Council.[91] Examples regarding the Commission's right to negotiate international agreements are the currently highly discussed Comprehensive Economic and Trade Agreement (CETA), Transatlantic Trade and Investment Partnership (TTIP) or the Trade in Services Agreement (TiSA).

Depending on the point of view its preparatory Directorates-General (DGs) consists of 23.000 to 33.000 staff members.[92] Each DG is responsible for a political field and is conducted by one Commissioner, who in turn has an assisting cabinet. They may also be assisted by temporary expert groups or so-called comitology committees if needed.

### 1.2.4. Advisory Bodies

In the Treaty of Lisbon three further bodies to the before listed seven institutions of the EU are specified, namely the European Economic and Social Committee (EESC), the Committee of the Regions (CoR) and the European Investment Bank (EIB), but, of course, there are a lot more. The European Union has several mainly financial and interinstitutional bodies and lists over 40 agencies on its site.[93] Moreover, there is a large number of private and public organizations and experts consulting the institutions. These consulting agents will be elaborated on in the next chapter.

Hereafter the most relevant advisory bodies for a legislative process, the European Economic and Social Committee and the Committee of the Regions, will be briefly described.

#### *1.2.4.1 The European Economic and Social Committee*

The EESC consults the European Parliament, the Council and the Commission[94] and consists of 350 independent members at most, plus an additional president[95], who are appointed by the

---

[88] [1], Article 17 §1 TEU (2012).
[89] See [1], Article 17 §2 TEU (2012).
Besides the Commission, the Council and the European Parliament or a group of at least one million EU-citizens from a significant number of member states may initiate the Commission to draft a proposal. See [1], Article 11 §4 TEU (2012).
[90] See [1], Article 337 TFEU (2012).
[91] See [1], Article 207 §3 TFEU (2012).
[92] As of 14.03.2015 the European Commission lists 33,197 staff members on its website. See [46]. The new Commission elected in 2014 lists only about 23,000 employees as of 27.02.2015. See [47].
[93] The EU's agencies, which are divided into 5 groups, can be found on the EU's website. See [48].
[94] See [1], Article 300 §1 TFEU (2012).
[95] See [1], Article 301 TFEU (2012).

Council based on a list of the member states for a five year period with the possibility of renewal.[96]

Its members are derived from representatives from organizations for employers as well as for employees and of other representatives of the civil society, especially of the socioeconomic, civic, professional and cultural areas.[97]

The EESC may be heard by each part of the institutional triangle and may issue its opinions.[98]

#### *1.2.4.2 The Committee of the Regions*

The CoR has a similar structure and similar functions as the EESC. Like the EESC it consists of 350 independent members at most, plus one president appointed by the Council for a five-years-period on the basis of a list of the member states and with the possibility of reappointment.[99]

The members represent regional and local bodies, by either holding a regional or local authority electoral mandate or being politically accountable to an elected assembly.[100]

The Committee of the Regions may be heard by the European Parliament, the Council and the Commission and may issue its opinions.[101]

## 1.3. Legislative procedures

Before the legislative procedures of the EU are discussed some general characteristics about European law as well as forms of legal acts are presented.

In 1964 an essential judgment (Costa versus Enel case of 15 July 1964) relating to European legislation was done by the Court of Justice, defining that European law has to be integrated into the legal systems of the member states, which are obliged to comply with it.[102] Because of this, European law takes precedence over national laws. Although it is not noted in any European treaty it is generally accepted.[103] A further relevant principle in the context of European legislation is the principle of conferral, which implies that the Union may only act within its limits and competences that are transferred from the member states.[104] Therefore, the EU is not allowed to expand its competences or limits by its own. These two principles are common for every European legislative act. For a special type of European acts, namely regulations, an additional principle of subsidiary is relevant. As the General Data Protection Regulation is a regulation it also applies to it. In such a case a policy will be passed by the EU-institutions and will directly become binding within national law of every member state one by one. The principle can only be used when a sufficient implementation cannot be achieved by the member states on their own.[105]

With the principle of subsidiary one type of legal acts, namely regulations, was already mentioned. All in all the EU distinguishes between five different types of legal acts, whereby

---

[96] See [1], Article 302 §1 TFEU (2012).
[97] See [1], Article 300 §2 TFEU (2012).
[98] See [1], Article 304 TFEU (2012).
[99] See [1], Article 305 TFEU (2012).
[100] See [1], Article 300 §3 TFEU (2012).
[101] See [1], Article 307 TFEU (2012).
[102] See [49].
[103] See [8], p. 150f.
[104] See [1], Article 5 §1-2 TEU (2012).
[105] See [1], Article 5 §1 TEU (2012).

three of them, (regulations, directives and decisions) are binding for the involved actors and two of them are non-binding (recommendations and opinions).[106]

In Article 288 TFEU the binding acts are declared as followed:

> *"A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.*
>
> *A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.*
>
> *A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them."*[107]

These binding legal acts are passed by the Union either via the ordinary or the specified legislative procedures. To start an ordinary legislative procedure, as it is shown in figure 3 and applied in the case of the GDPR, the Commission has to submit a proposal to the European Parliament and the Council.[108] The Parliament in turn appoints a rapporteur for each proposal, who is a member of the competent committee.[109] He has the leading responsibility for the proposal in the EP and is assisted by several shadow rapporteurs and the responsible committee. In a first reading the European Parliament makes several (internal) votes to approve, reject or propose amendments to the Commission's proposal.[110] The final text, as approved by the Parliament, is then forwarded to the Council, which may approve the Parliaments formulation and thus passes an act in the wording of the actual position or formulates its own position at first reading and communicates it to the Parliament with detailed information according to its position.[111] However, before the Council and the Parliament approve their positions at first reading, the Parliament, the Council and the Commission usually meet in so-called trilogues either directly in the period before both approve their first reading having a mandate to do so or in the period between the Council's internal agreement (also known as political agreement or general approach) and its common position at first reading.[112] In the latter case the EP has already approved its position in first reading. Generally, such informal meetings are used that persons and committees responsible in each of the three decision-making institutions meet each other to negotiate a common position that can be formally voted on in first or in second reading depending on the time of

---

[106] See [1], Article 288 TFEU (2012).
[107] [1], Article 288 TFEU (2012).
[108] See [1], Article 294 §2 TFEU (2012).
[109] There is a complex informal scoring system that is used by the European Parliament to assign special positions such as a rapporteur. At the beginning of a legislature period every party gets an amount of points depending on its number of members. These points can be traded against special positions such as a rapporteur. Each position 'costs' a fixed amount of points. The party with the most points left, at the time a special position is available, has the possibility to take the position for one of its members, otherwise the second-best party has the possibility and so on.
The rapporteur responsible for the General Data Protection Regulation is the German MEP Jan-Philipp Albrecht, a member of the Greens.
The competent committee is the committee of Civil Liberties, Justice and Home Affairs (short LIBE), which is chaired by the British MEP Claude Moraes, a member of S&D.
[110] According to rule 59 of the Parliament's Rules of Procedure MEPs "first vote on the amendments to the proposal with which the report of the committee responsible is concerned, then on the proposal, amended or otherwise, then on the amendments to the draft legislative resolution, then on the draft legislative resolution as a whole". See [37], rule 59, 171.
[111] See [1], Article 294 §3-6 TFEU (2012).
[112] See [50].

trilogues. Having regard to the latest parliamentary term, about 80% of legislative acts were agreed in first reading mostly following agreements of trilogue negotiations. This number has dramatically increased with the coming into force of the Treaty of Lisbon.

If Parliament and Council have a different position approved at first reading they move to the second reading. There, the European Parliament has to decide about the Council's position at first reading by considering the Commission's opinion on this within three months.[113] As one may imagine, even partly agreements reached in trilogues can be very helpful as the EP has only three months to decide about further steps after receiving the Council's common position of first reading. Within this time it can approve and subsequently pass an act, reject the position with a majority of its members, which leads to an abortion of the act, or forward it with the majority of its members in an amended version to the Council and to the Commission.[114] As the Commission has no formal power at this stage it should only submit its opinion on the Parliament's amended position to the Council.[115] The ministers have to vote by a qualified majority - unanimously if the Council's amendments were rated negative by the Commission - within three months again and may approve and thus pass the actual version of an act or may not approve, which leads to a meeting of the Conciliation Committee within six weeks arranged by the president of the Council.[116] Contrary to trilogues, which are usually held in an informal framework, the Conciliation Committee has formal rules and specifications to mediate between the three decision-making institutions as a last resort. It consists of representatives of the Commission and an equal amount of members of the Council as well as of the European Parliament and should reach an agreement by a qualified majority of the Council or its representatives and by a majority of the representatives of the European Parliament within six weeks based on the positions at second reading.[117] If there is no agreement within these six weeks the act fails.[118] If there is an agreement on the different positions of the second reading the third and final reading begins. In this final reading the Council, voting via a qualified majority, and the European Parliament, voting via a majority of its members, have a timeframe of six weeks to accept and pass the joint text reached in the Conciliation Committee; otherwise the act will fail.[119]

The House of Lords of the United Kingdom provides a good graphical overview of the ordinary legislative procedure, shown in figure 3. As it is sketched, the European Commission is very powerful in the beginning of a legislative act because it has the exclusive power to draft and formulate a proposal. In the later stages the European Parliament and the Council of the European Union are primary responsible for passing an act. In these stages the Commission has rather low influence on the final output. With this separation of powers the Commission can be seen as the executive part and the Parliament together with the Council as the legislative part.

For cases provided by the treaties the special legislative procedure will be performed by the European Parliament or the Council, whereby the other institution will participate with the respective form of participation defined in the treaties.[120]

Legislative acts that are passed are signed by the president(s) of the institution(s) that adopted them and published in the Official Journal of the European Union.[121]

---

[113] See [1], Article 294 §6-7 TFEU (2012).
[114] See [1], Article 294 §7 TFEU (2012).
[115] See [1], Article 294 §7 TFEU (2012).
[116] See [1], Article 294 §8-9 TFEU (2012).
[117] See [1], Article 294 §10-11 TFEU (2012).
[118] See [1], Article 294 §12 TFEU (2012).
[119] See [1], Article 294 §13 TFEU (2012).
[120] See [1], Article 289 §2 TFEU (2012).

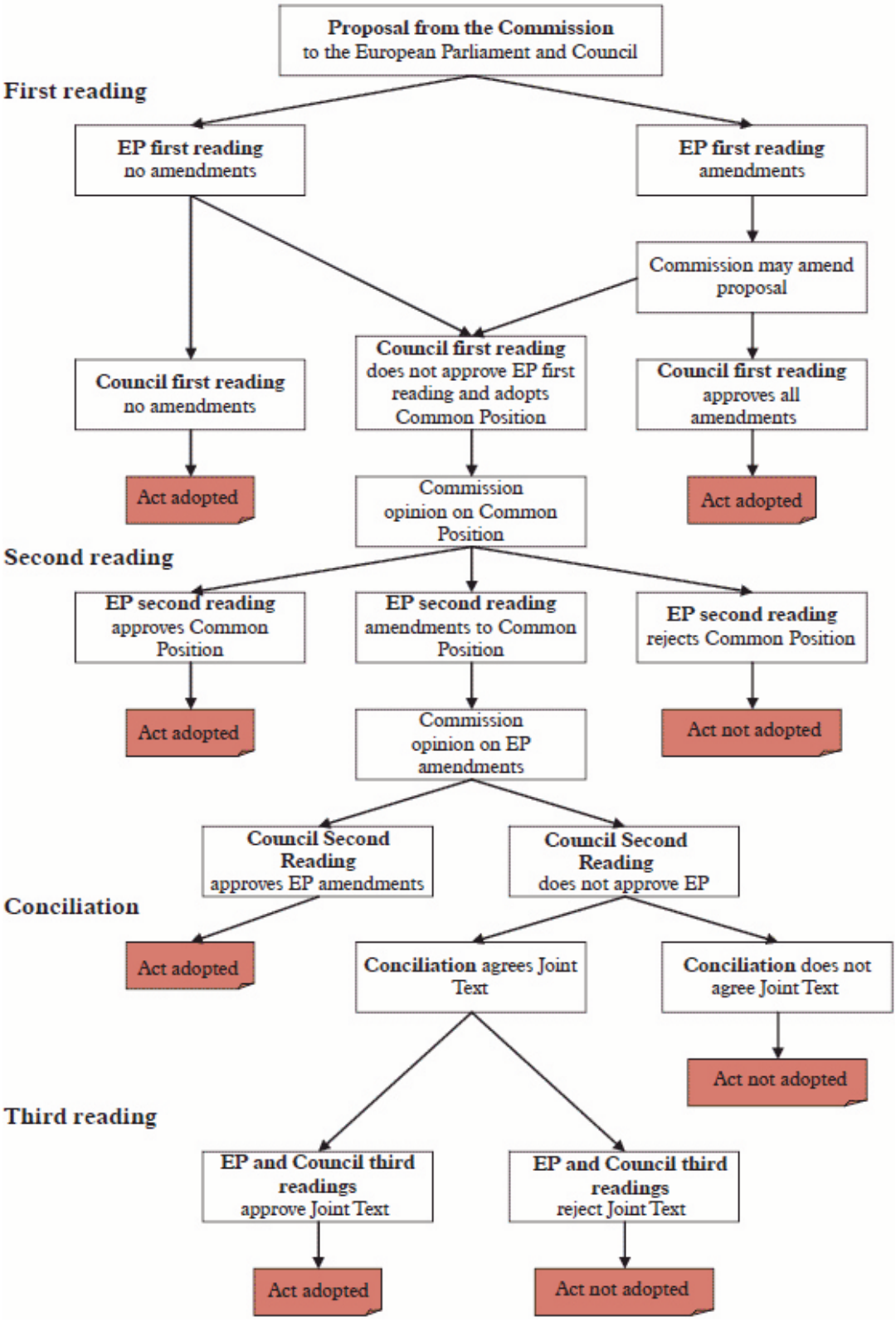



**Figure 3: Ordinary legislative procedure of the EU**[122]

[121] See [1], Article 297 §1 TFEU (2012).
[122] See [51].

## 1.4. Executive Summary

In this first chapter the European Union, its history, architecture and legislative procedure were briefly described having the focus on the institutions and procedures relevant for the General Data Protection Regulation.

It was outlined that the Union's origin goes back to 1951, where the treaty founding the European Coal and Steel Community was signed. Since then it developed into the most important economic actor in the world, with a current construct of 7 institutions and 28 member states. This construct has changed a lot over time, its composition as well as its functionalities, and powers were subject to a constant change. Every treaty and every new member state brought the European Union a step forward and finally led to its actual characteristics.

The last major reform was made via the Treaty of Lisbon, by which the Treaty on European Union and the Treaty on the Functioning of the European Union were amended. Since that time the European Union consists of the mentioned seven institutions and has more legislative, executive as well as budgetary power than ever before. Figure 4 on the next page shows a sketch of the Union's composition and relations of the current framework focusing on the involved parties regarding the General Data Protection Regulation.

As a final aspect, the legislative procedures, especially the ordinary legislative procedure, which applies to the GDPR, were outlined. The ordinary legislative procedure consists of two major phases, where the Commission, the Parliament and the Council are cooperating to establish an act. After the Commission unveils a proposal and forwards it to the other two bodies, the Parliament and the Council have to find an agreement to pass an act. The proposal is subject to change and can be amended during the whole process. Depending on the type of policy, the final outcome will be individually implemented by member states based on approved guidelines and rules or directly applied to national legislation. The General Data Protection Regulation will be directly applied within national law of the member states as it is a regulation. This means that it will homogenize the rules and obligations regarding data protection across the EU.

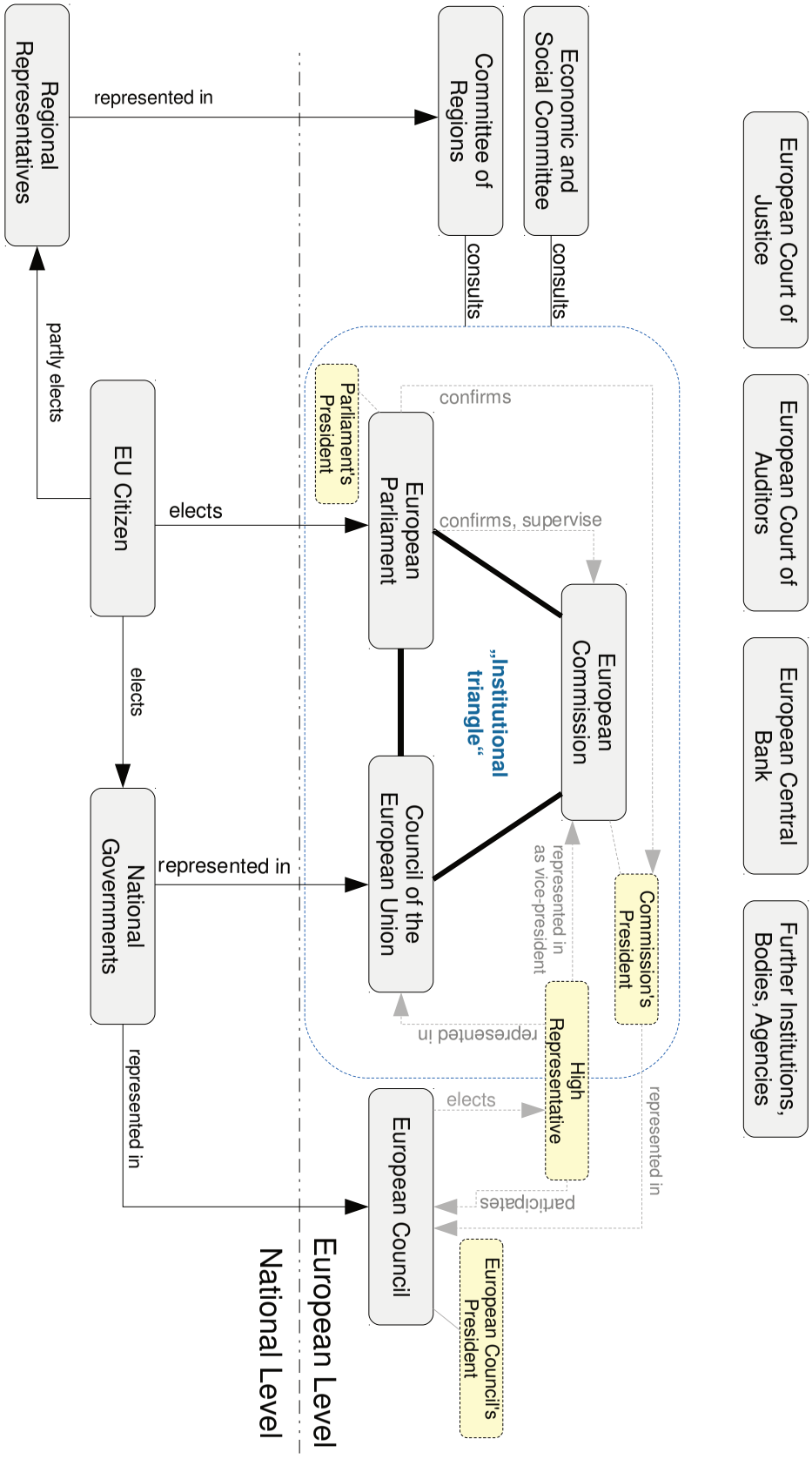



**Figure 4: Summary of the European institutions and their relations with a focus on the involved parties regarding the GDPR[123]**

[123] Own diagram based on the Treaty on European Union and the Treaty on the Functioning of the European Union. See [1].

# CHAPTER 2

# Lobbying

Lobbying, as a term, is used quite often in our daily life and may also be seen as some kind of buzzword that may be used alone or as a phrase in connection with words mainly referring to industry branches or even to an entire state. Almost every day newspapers refer to the tobacco lobby, the pharmaceutical lobby, the financial lobby, the US-lobby or any other lobby. In most of the cases lobbying seems to be a bad opaque function or sometimes even a sort of cancer that levers out democracy, forces corruption and is abused by powerful and evil companies. Thus, lobbying has a negative connotation, although it has also useful and helpful aspects that are necessary in every democratic system.

In this second chapter of the thesis the term 'lobbying', its functionalities, characteristics, purposes and different methods will be defined. Afterwards a brief comparison of lobbying in the EU versus lobbying in the USA will be given. For that, some findings of the expert interviews will be integrated and analyzed.

## 2.1. General definition

Lobbying is anything but a new phenomenon, as it had already existed in times of pharaohs and imperators and will probably still exist in hundreds of years. Van Schendelen explains in Leif and Speth that "[a]lthough the word lobbying is only 150 years old, the activity it describes has always existed throughout the world."[124]

In fact, the origin of the word lobby itself is not totally clear. The Online Etymology Dictionary lists two different roots with a similar background that both can be found in literature. These are:

1. 'lobbying' (Lobby) derives from the Latin word lobia or laubia of the 16th century, which refers to a cloister or covered walk, or
2. 'lobbying' derives from the lobby (i.e. hall) of the UK's Houses of Parliaments or/and the US Congress, where people, who had no access to the parliament, gathered to talk to officials beginning with the 19th century.[125]

According to these definitions, the word lobby and thus the word lobbying come either from a place within a monastery or a political institution. As both are related to powerful people at their time it can be said that lobbying may be done in areas, where a certain degree of power exits. Unfortunately these origins do not clarify and define the term and the function of lobbying in an appropriate way. To resolve this problem various definitions and explanations

[124] Rinus van Schendelen in [52], p. 132. Translated from German: „Obwohl das Wort Lobbying lediglich 150 Jahre alt ist, hat es die Tätigkeit immer und überall gegeben."
[125] See [53].

about lobbying had been analyzed during the research-process of this thesis. Some of those pointed out its negative nature, others its positive characteristics, some were hold in a general and neutral way and some were trying to define it in an abstract and scientifical way. Consequently, it can be concluded that similar to the origin of the word, no singular definition of lobbying exists. To get a better understanding of the varieties and also an idea of the subject some of the definitions are discussed hereafter.

The Corporate Europe Observatory (short CEO), a non-governmental organization with a focus on lobbying in the European Union, defines lobbying in its lobby guide about Brussels as follow:

> *"Lobbying is usually defined as seeking to influence legislation, policy or regulation, usually in return for payment. A narrow definition of lobbying focuses solely on direct representation by those seeking to influence legislators. A broader and more realistic picture includes the different forms of communication and research activities which underpin, inform, and support the formation of policy."*[126]

Köppl[127], Leif and Speth, Michalowitz[128] and the Merriam-Webster dictionary[129] describe lobbying in a similar way as it is done by CEO. In the words of Leif and Speth

> *"[l]obbying is the influence on governments through specific methods with the aim to assert ones interests as much as possible in the context of political decisions. Lobbying is done from people that are not directly involved in a decision-making process."*[130]

All of the mentioned definitions provide a general view on lobbying at a glance and mention the most important characteristics associated with it, which is the usage of different methods and actions to fulfill different functions in a political context. It should be noted that these characteristics will be discussed in more detail afterwards. At this point the priority lies on a first contact with the subject.

In contrast to the rather general view of those authors, Joos, who is based on Knott and Voigts, sees lobbying from another perspective, the business perspective:

> *"Lobbying can also be defined from a business perspective as 'political risk management' aimed at ensuring a company can 'quickly and efficiently meet the ever more rapidly changing challenges and demands of customers, an informed public and the legis1ature'"*[131]

In their view lobbying has a different and more individual purpose as from the above general point of view. It is seen as an instrument for business to keep up-to-date and to take corrective or proactive adaptations, if necessary.

---

[126] [54], p.7.
[127] See [55], p. 196.
[128] See [56], p. 19.
[129] See [57].
[130] [58], p. 12. Translated from German: "Lobbying ist die Beeinflussung der Regierung durch bestimmte Methoden, mit dem Ziel, die Anliegen von Interessengruppen möglichst umfassend bei politischen Entscheidungen durchzusetzen. Lobbying wird von Personen betrieben, die selbst am Entscheidungsprozess nicht beteiligt sind."
[131] [59], p. 39 based on Knott and Voigts in [60], p.69.

Another more scientifical definition was given by Milbrath, who was one of the first political researchers in the field of lobbyism. In 1963 he proposed lobbying to be

> *"the stimulation and transmission of a communication, by someone other than a citizen acting on his own behalf, directed to a governmental decision-maker with the hope of influencing his decision."*[132]

His argumentation has a very interesting point, namely the exclusion of citizens as lobbyists when they are acting on their own behalf. Of course, it can be argued that lobbying can be done by anybody, which includes every citizen as well, but the essence of the statement is that a citizen will not be able to do so, because he is too weak and has not enough legitimization to influence a political decision-maker on his own. In a broader context, the argumentation of Milbrath is supported by the explanation of the European Commission, which states in its Green Paper on a European Transparency Initiative of 2006 that every person, who carries out activities

> *"with the objective of influencing the policy formulation and decision-making processes of the European institutions"* and who is *"working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units ('in-house representatives') or trade associations"* is a lobbyist.[133]

In the Commission's definition it is indicated that a person has to work in a variety of organizations, which represent the opinions and interests of several people, members, clients or employees. Therefore, a citizen acting on his own behalf is no lobbyist as it was already argued by Milbrath. This is an important aspect, because otherwise at least in theory every citizen voting in an election could be called a lobbyist, due to the fact that he tries to influence the government and its decisions by voting for a party or person. An additional characteristic that can be found in this definition is the presence of different and specific actors.

Alongside to the literature review the expert interviews provided similar findings and the certainty that there is no unique definition. Everyone defines the term in other words regarding to his or her point of view (see table 3).

| **Interview Partner / Organization** | | **Definition** |
|---|---|---|
| A | Independent expert | Lobbying is the aggressive way to alter things in one's interest, whereby it is not comparable to representation of interests.[134] |
| B | Austrian Politician | Lobbying is an approach to influence decision-makers on shaping legal acts. Thereby, the exclusion of the common welfare and the focus on subjective interests of a single organization is an essential aspect of it. A lobbyist acts on behalf of an organization and may be employed or hired to enforce the interests of that organization.[135] |
| C | European Commission | Lobbying is the representation of interests. It should ensure that interests, which are represented by someone, are considered in a proposed legislation.[136] |
| D | Austrian ministry of interior | Lobbying should be seen as opinion-forming or as transmission of interests and not as negative as it is in the public society.[137] |

[132] [61], p. 8.
[133] [62], p. 5.
[134] See Interview A, lines 332-341.
[135] See Interview B, lines 349-361.
[136] See Interview C, lines 278-280.

| | | |
|---|---|---|
| E | European Parliament | Lobbying is an effort to influence political decisions from the outside, whereby a direct non-public contact to decision-makers exists.[138] |
| F | NGO | Lobbying is an effort of business to alter public policy and particular legislation, generally with the view to protect the short-termed trust of their sector and on their business.[139] |

**Table 3: Definition of Lobbying stated by interview partners**

Apart of the diverse wording through different focuses in both literature and interviews, all definitions have some similar aspects. In nearly every argumentation it is stated that lobbying is an approach to influence the political environment to get one's (mostly subjective) interests considered by decision-makers. This may be the most characteristic feature of lobbying. Moreover, lobbying is done by certain actors, which are not directly involved in the decision-making process, using special methods to fulfill several tasks. Hence, information and communication are important attributes regarding lobbying. Florenz argues in Dagger and Kambeck that "[i]nformation and communication are methods"[140] for lobbyists to get their interests considered by politicians. For Michalowitz "information is the pre-product of the good of influence".[141] As argued by both, lobbying cannot work without information and communication.

This leads to another characteristic that can be identified, namely the usage of the terms 'lobbying' and 'representation of interests'. Sometimes they are used synonymously[142], sometimes they are strictly separated[143] and sometimes lobbying is seen as a special, particularly hidden and non-transparent form of representation of interests[144].

Through the different and blurred definitions Joos complains about a "degree of terminology confusion" due to wrong terms, like public-affairs, governmental relations, political consulting or public relations, used instead of lobbying, which leads to a misunderstanding of these words and its functionality.[145] In contrast to him van Schendelen says that the representation of interests as it is done by a lobbying actor is more extensive nowadays and therefore it should be recognized as public affairs management.[146] Transparency International confirms this terminological confusion by arguing that different terms are used depending on the represented position, as civil society groups prefer the term 'advocacy' instead of 'lobbying', while others use 'public affairs' or 'public relations'.[147]

The same can be said about the term political consulting. In most of the cases there is an explicit distinction between (political) consulting and lobbying in political science[148], but Florenz in turn argues that „[i]n a public view political consultants won't be seen as personal political advisors, but as lobbyists in the majority of cases."[149] He underpins the negative and critical view of the public community through a wrong understanding. As stated in the beginning, this may be because lobbying seems to be done by actors from the business side only, which do not consider the common welfare and consult officials at every hierarchy level

---

[137] See Interview D, lines 274-276.
[138] See Interview E, lines 344-349.
[139] See Interview F, lines 173-175.
[140] Florenz in [52], p. 59. Translated from German: „Information und Kommunikation sind nur Methode."
[141] [63], p. 90.
[142] See [62], p. 5; [56], p. 19; [59], p. 15; Interview C, lines 278-280; Interview D, lines 274-276.
[143] See [58], p. 13f.
[144] See [55], p. 119; Priddat and Kabalak in [64], p. 64f; Interview A, lines 332-336.
[145] See [30], p. 15f.
[146] See van Schendelen in [52], p. 144.
[147] See [65], p. 14.
[148] See [58], p. 28f; Priddat and Kabalak in [64], p. 64; Interview B, lines 297-298.
[149] Florenz in [52], p. 58. Translated from German: „In der Öffentlichkeit ist Politikberatung meist nicht die des persönlichen politischen Beraterstabs sondern trägt einen anderen Namen: Lobbying oder Lobbyismus."

in a way that suits them best. In the definition of the interview partners B and F the exclusion of the civil society is mentioned as well, but as the representatives of the civil society are also lobbying, this exclusion is only partially correct. The negative connotation also depends on languages, cultures and political systems, where misunderstanding of its functions as well as a bad translation and interpretation of the term are common.[150] A lobbyist of IAB Europe confirms this by saying that he has to be careful in which country he is declaring himself a lobbyist.[151]

In theory, lobbying may be described best as the (legitimate) effort of all kinds of organizations (including a group of persons) that are not directly involved in the decision-making process, to participate in the political environment through special methods and several actors.

## 2.2. Purpose of Lobbying

For lobbyists the main purpose seems to be the participation and influence in political decision-making processes as it is largely conceived by the public. Obviously, this is an important purpose for them, but one should not forget that lobbying is much more and by no means a one-way street. It is an exchange, which is also relevant for the decision-making side.[152] In the following subsection it will be discussed why lobbying is relevant for both, starting with the perspective of private and public organizations.

Particularly for corporate organizations lobbying is an essential instrument to get in touch with policy- and decision-makers. The European Union states in its Flash Eurobarometer 374 that for 70% of the surveyed 7,842 businesses fast changing legislation and policy is a very serious or quite serious problem.[153] For 53% restrictive labor regulation is seen as another problem.[154] Consequently, the achievement of (measureable) influence on political decisions to obtain competitive advantages or to prevent competitive disadvantages, which may arise by way of new regulations and changing legislation, can be seen as the main purpose for businesses and also for other organizations.[155] The German lobbyist adds in this context that lobbying is important for those to turn away or weaken political decisions and restrict the effects on a company's activities as low as possible.[156] In some cases lobbying may be even used by them as a form of political crisis management if regulations cannot be prevented otherwise.[157] Hence, it can be concluded that lobbying should ensure the competitiveness, the profitability and the efficiency of an organization. By doing so, it is important that especially businesses have a look on the future, because a too short-termed perspective may hamper their long-term interests and strategy. This was also criticized in the interview with a representative of a NGO, who said that businesses are often too focused on protecting their current situation, which may lead to cases where they lobby against their own medium- or long-term interests.[158]

However, lobbying is more than the approach to influence decision-makers. Gretschmann lists in Dagger and Kambeck several functions, which are covered. He points out that trends,

---

[150] See [55], p. 109, 118; Rödlach-Rupprechter in [28], p. 146
[151] See [66], min 16:00f.
[152] See [55], p. 129.
[153] See [67], p. 4.
[154] See [67], p. 4.
[155] See [55], p. 49; [59], p. 37.
[156] See Zumfort in [58], p. 119.
[157] See [59], p. 52ff.
[158] See Interview F, lines 173-184.

moods, problems, interests, positions, formulations, planned policies and their consequences are analyzed and monitored via lobbying.[159] With these enhanced actions an organization, no matter if it is a company or not, can minimize its risks on its future development. Thereby, the aim of monitoring every detail of the political environment and analyzing the gathered information is probably the most important and most time-consuming one.[160] As long as there is no need to contribute to a decision-making process, analyzing and monitoring all relevant actors and their environment may be the primary purposes of lobbying. Michalowitz argues that this task corresponds up to 80% of a lobbyist's work.[161] In this stage lobbying is like an early warning system that reacts when a planned policy is affecting one's sector or organization. Such an early warning system is essential for organizations, because it can be assumed that they only participate actively in political decisions if they are affected directly by the effects of a planned policy. In the course of this a not functioning early warning system or wrong conclusions drawn from monitoring may lead to major disadvantages for a private organization, or in the case of an organization representing the civil society, for the public. Understanding the political processes and their environment as well as information advantages over others are essential objectives for organizations and closely related to the purposes mentioned before.[162]

For the sake of completeness, an additional purpose, namely the improvement of an organization's public reputation or, in other words, the organization's image, should also be stated. Although Joos strictly excludes this from the domain of lobbying as it "is [in] the domain of PA and PR"[163], it is widely accepted in the scope of lobbying since Public Affairs (PA) and even Public Relations (PR) are also widely accepted as forms of lobbying.[164] Organizations may try to improve their public reputation through certain events or via the press or media. Further information on this can be found in chapter 2.3.3, where the methods of lobbyists are explained.

At the same time the aim for organizations to lobby the institutions of the EU becomes evident by considering the importance of European legislation. Since the powers and competences of the European Union have been steadily increased in the last decades, lots of significant policies have their origins in its institutional framework. Older studies and argumentations assumed that some 80% of national laws have their origins in the EU[165], but in the last years these numbers were revised. In fact, about 30-40% of national policies and national legislation go back to the EU with a rising tendency.[166] Nevertheless it is necessary to lobby there directly as policies of the EU are mostly quite important and may also affect an organization or its sector in a crucial way. Besides that, policies made by the EU may have an effect on each member state, which means that they are more far-reaching than national or local policies. Influencing such a policy may bring advantages or prevent disadvantages in several national states at once. It may also bring benefits and higher yields, as a study of lobbying in the United States shows. Strategas Research Partners found out that companies that are very active in lobbying the government and decision-makers in the USA have much higher yields than companies that are not participating in such an active way.[167] They created an own index, the so-called Strategas Lobbying Index, for the 50 most active lobbying

[159] See Gretschmann in [52], p. 80f.
[160] See [58], p. 24; [56], p. 75.
[161] See Michalowitz in [28], p. 22.
[162] See [55], p. 13f, p. 135.
[163] [59], p. 37.
[164] See [56], p. 93ff.
[165] See Pollack cited in [68], p. 148.
[166] See [69]; [70].
[167] See [71].

companies and compared it with the Standard & Poor's 500 index (S&P 500). In its researches the Strategas Lobbying Index outstripped the S&P 500 index in every year for the last 15 years by an average of 11.3%, varying from 0.4% up to 25.5% a year.[168] These results are underpinned by a study of Alexander et al., who state that firms, which are lobbying, "have a return in excess of $220 for every $1 spent on lobbying, or 22,000%".[169] Following this, it can be concluded that lobbying may be a good investment for an organization as it may lead to a much higher return. Unfortunately the stated studies are all corresponding to the US-market and the political system of the US and not to the European market as well. Even though figures for the EU are currently missing it can be assumed that lobbying will bring benefits and higher yields in the EU as well, but as the political systems have several differences (see chapter 2.4) it may be questionable if they are as high as in the US.

As a result of the various needs and possible advantages the amount of lobbyists acting in Brussels has rapidly increased in the last decades. Currently more than 8,600 organizations (most of them with a corporate background) are listed in the joint transparency register of the Commission and the Parliament.[170] This number is continuously rising since the first establishment of the register. Anyway, it does not represent every organization and every single actor acting as lobbyist in the framework of the EU. In 1993, the Commission estimated that there were already 3,000 lobbying organizations with 10,000 lobbyists.[171] In 2004, Machold estimated about 12,000 lobbyists[172] and current estimates reach from 15,000 up to 30,000.[173]

Further functions of lobbying, which are often not visible at a first glance, are related to the decision-makers side. In Article 10 of the Treaty on European Union it is defined that "[t]he functioning of the Union shall be founded on representative democracy" and that "[d]ecisions shall be taken as openly and as closely as possible to the citizen."[174] Therefore, decision-makers have to obtain information on the consequences of a policy on the general public, the environment and the economy and have to search for the 'best solution'. From this perspective, lobbying may be essential for every democratic system[175] to minimize the risk of wrong decisions, avoid major conflicts and focus on realistic, intelligent and 'right' decisions with a regard to the common welfare[176]. Of course there is no single or general solution, so one has to find a legitimized decision that can be justified in the eyes of the public. The current President of the European Parliament, Martin Schulz, argued in Dagger and Kambeck that a MEP should find a solution, which is the 'right' decision for his (national) electors and is also reflecting his political beliefs.[177] With regard to this, the opinion of the civil society is essential, but as the connection between EU-citizens and decision-makers is rather weak to a large extent, lobbying may be the only realistic and most effective way to get the civil concerns and wishes heard.[178] As a result, lobbying may also be seen as an appropriate method for the civil society to be considered by decision-makers.

In the case of the Commission Article 11 §3 TEU even states that the institution should carry out broad consultations with all parties concerned to ensure coherent and transparent

---

[168] See [71].
[169] See [72], p. 1.
[170] As of 19 November 2015, 8,632 organizations were registered in the Transparency Register of the Commission and the Parliament. See [73].
[171] See [74], p. 2.
[172] See [75].
[173] See [54], p. 3; [28], p. 1.
[174] [1], Article 10 §3 TEU (2012).
[175] See Heins in [58], p. 114.
[176] See [55], p. 66, 127f; [52], p. 14; [56], p. 53.
[177] See Schulz in [52], p. 23.
[178] See [56], p. 193; Šefčovič in [76], p. 2.

decisions.[179] Hence, lobbying is no secret or unwelcome methodology as it may be assumed by the public, but rather the opposite and even forced by officials and decision-makers. They need consultations as they have a lack of information, which can lead to bad decision having unwanted impacts on a large group of people or organizations. Moreover, policy-makers of the European institutions are working under enormous time pressure and do not have enough employees and resources to inform themselves on every effect of an increasing amount of complex policies on their own.[180] To get a better understanding of the amount of policies that is processed by the European Union, the activities of the European Parliament, which struggles probably the most with the lack of resources as it has the smallest preparatory body, should serve as a reference. Even though an own resource-rich research division is missing MEPs have to work on several texts and policies simultaneously. They adopted about 2,800 texts in the period of 2009-2014[181], which means that they adopted approximately 560 texts per year. Thereby, it can be assumed that it is even a little bit more in non-election years, because they usually need a short period of vocational adjustment in years of elections. As every MEP has an equal vote, everyone should at least have some knowledge about the text he is voting for. Obviously they may primarily focus on the political fields of their committees and delegations, but also if they are only focusing on these they have to handle several partially rather complex texts at the same time. Thus, they have to gather a certain amount of specialized and actual information and build up some knowledge to make coherent decisions. In case of the Parliament the Corporate Europe Observatory even assumes that "a key aspect of their work, even perhaps the main priority" for MEPs is meeting with lobbyists.[182] Although the stated situation focuses on the EP, it holds probably also true for the other European institutions, even if they have more internal support and know-how through their preparatory bodies. A further aspect in this context is mentioned in an article of Machold, who argues that decision-makers get their political positions because of their political instinct and are in most of the cases no experts in the division or ministry they represent.[183] This may also lead to an increased need of information from external parties. All in all, decision-makers and officials in all institutions need lobbyists as experts and as a source of legitimacy, who can inform them about the impacts of their planned dossiers on different groups or states, and help them with technical and legal specifications.[184]

A study conducted by Burson-Marsteller, which surveyed 600 politicians all over Europe in 2013, shows why political decision-makers need lobbying and what are the aims of lobbying for those. According to that paper the following aspects are most important for politicians:

1. ensuring the participation of social and economic actors and citizens in the political process (37%);
2. providing useful and timely information (28%);
3. raising the local/national importance of an issue (20%);
4. translating technical/scientific information into relevant information (10%);
5. others (3%).[185]

These findings underpin that lobbying is not only important for organizations but also for citizens and decision-makers as it was outlined before.

---

[179] See [1], Article 11 §3 TEU (2012).
[180] See [55], p. 128; Redelfs in [58], p.334; Stein in [52] p.128; [77], p. 16; [59], p. 33f; Griesser in [28], p. 63.
[181] They adopted 2,790, whereby 1,071 of these were legislative acts. See [78].
[182] [54], p. 12.
[183] See [75].
[184] See [79], p. 174f; Stein in [52], p.128 or [80], p.3.
[185] See [76], p. 9. The missing number to 100% gave no answer.

Beside the primary tasks and purposes of lobbying that have been mentioned, some additional indirect aspects are important. As lobbyists have to follow and influence positions of several member states and political groups to be successful at a European level, lobbying may be used to (pre-) aggregate interests[186] and to mediate between different cultures, parties, organizations, institutions or even nations[187]. The mediation between cultures is an essential aspect, although it may be forgotten sometimes. Information about different cultures and their characteristics are very important for lobbyists as well as for decision-makers. Lobbyists should know about the cultural background of a decision-maker to submit customized information and decision-makers should be aware about the effects of their policies on the different cultures of the 28 member states. Van Schendelen argues in Leif and Speth that these additional aspects of lobbying lead to a better mixture of national cultures and a higher awareness of politics, while supporting the integration process of the EU.[188]

## 2.3. Characteristics of Lobbying

The following subsection focuses on the different and general characteristics of lobbying actors and methods used by them, as well as on their possible access points for lobbying an ordinary legislative procedure.

### 2.3.1 Lobbying Actors

As indicated before, a mass of individual lobbyists and lobbying actors is directly or indirectly represented in Brussels to act on the European decision-making level. These actors differ in their forms, structures, sizes, powers and intensions. Their size varies from global, multinational companies and groups to small national ones and their represented sectors range from every branch of industry through culture to human rights. Consequently, there are several different categories of them in the EU's framework that changed notably within the last years.

In one of its first approaches defining lobbyists and lobbying organizations (i.e. lobbying actors), the Green Paper on a European Transparency Initiative of 2006, the European Commission mentioned six categories of lobbying organizations, namely "public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units ('in-house representatives') and trade associations"[189], which can still be seen as the most important. However, the list excluded some relevant actors that can be found in literature since a long time. Particularly public relations agencies and regional offices, but also some others like religious organizations were missing.[190] As this list was primary seen as a list of examples for lobbying organizations, these categories were included over the years, finally resulting in the comprehensive structure nowadays known from the joint transparency register of the Commission and the Parliament shown in figure 5.

---

[186] See [59], p. 33.
[187] See [56], p. 64; Griesser in [28], p. 63.
[188] See van Schendelen in [58], p. 159f.
[189] [62], p.5.
[190] See among others [63], p. 96ff; [52], p.13; [54], p.7f.

**Sections of the transparency register**

I. Professional consultancies/law firms/self-employed consultants
   - Professional consultancies
   - Law firms
   - Self-employed consultants

II. In-house lobbyists and trade/business/professional associations
   - Companies & groups
   - Trade and business associations
   - Trade unions and professional associations
   - Other organizations [1)]

III. Non-governmental organizations
   - Non-governmental organisations, platforms, networks, ad-hoc coalitions, temporary structures and other similar organizations [2)]

IV. Think tanks, research and academic institutions
   - Think tanks and research institutions
   - Academic institutions

V. Organisations representing churches and religious communities
   - Organisations representing churches and religious communities

VI. Organisations representing local, regional and municipal authorities, other public or mixed entities, etc.
   - Regional structures
   - Other sub-national public authorities
   - Transnational associations and networks of public regional or other sub-national authorities
   - Other public or mixed entities, created by law whose purpose is to act in the public interest

[1)] Including: event-organising entities (profit or non- profit making); interest-related media or research oriented entities linked to private profit making interests; ad-hoc coalitions and temporary structures (with profit-making membership).
[2)] In the implemented transparency register it is just 'Non-governmental organisations, platforms and networks and similar'.

**Figure 5: Sections of the joint transparency register as of 2015[191]**

These categories of lobbying actors will be briefly analyzed hereafter without following the register's structure one by one, as associations and unions will be separated from other in-house lobbyists because of their importance and high number.

### *2.3.1.1 Associations and Unions*

Bodies such as associations and unions are the oldest and most common lobbying actors in the European Union. They have a long history in a regional as well as in a national context - just remember the medieval guilds of branches for example - and in the meanwhile also in a European context. Beginning with the ECSC in 1952 they got active on a European level. However, for that step across their national borders, they had to expand their operating range and put themselves on a wider basis to fulfill the needs of their members in a supranational construct. Adapted structures, strategies and methods applicable on a European level were needed. The realization of these adoptions established associations and unions as the most common and until the late 70s almost only lobbying actor in Europe. Because of their importance, high number and long history they have been analyzed and discussed in depth.

One of the first, who took a closer look on them, was Theodor Eschenburg. He already discussed the behavior of associations and unions in Europe and their influence on political officials in 1955. In his pioneer work he accepted their general right to represent their interests, although he was already worried about an overstress of politicians, wherefore he asked about the domination of associations.[192] His concerns about the domination of

[191] Own figure based on [81], ANNEX I.
[192] See [82], p. 82ff.

associations and lobbying in general still holds true these days, as it is confirmed among others by Lösche about 50 years later. Similar to Eschenburg he argues that the characteristics and functions of associations and lobbyists in general may at the same time support and challenge democracy.[193] Following both authors, associations and unions have positive as well as negative functions in the field of politics. It should be noted that this statement holds also true for all other categories of lobbying actors, which established over the years, as it was mentioned by Lösche.

The new lobbying actors, which became active at a European level due to the increased Europeanization and globalization, led also to the major change regarding associations and especially unions since the work of Eschenburg. They lost their unique selling point they had at the beginning of the European Communities, hence why they are struggling more than ever. Furthermore, they cannot homogenize the interests of their members in a way that is acceptable for those anymore as it is argued by Michalowitz and Joos. According to them European groups suffer from the constant search for compromises, which results in positions that represent the lowest common denominator of their members who may be spread within a single country, multiple European countries or worldwide.[194] As the main aim of associations and unions as a lobbying actor is to represent the interests of their members in a political context they have to negotiate a common position for them. By representing its members they should act as a strong actor providing a high reputation and a certain degree of legitimacy vis-à-vis decision-makers, other sectors and the civil society. These members may be natural or legal entities or both. Legal entities of a European association or union are often national associations or unions because groups acting at a European level are often organized as an umbrella association of several national associations.[195] This may in turn lead to a situation where national members have to make a double compromise at the national as well as at the European level. Thus, interests of a national member may be strongly watered down at the European level, which may result in the stated problem of the lowest common denominator. With regard to this another important aspect of an association or union is its capability to organize itself. It can be assumed that this is easier for a national one than for a European one, because they are mainly focused on a single national market. Contrary to them groups at the European level have to be aware of different national interests of their members through different markets and different political systems, which can be seen as a big problem for usually national oriented unions.[196]

Schmitter and Streek in this context speak of four logics that in turn can be divided into two pairs of competitive logics regarding associations. The first pair consists of political imperatives. It deals with a "logic of membership", which is an association's power to recruit and keep members, and a "logic of influence", which indicates the grade of influence on public authorities.[197] The second pair can be seen orthogonal to the first and handles organizational imperatives. In more detail a "logic of effective implementation" refers to the grade of organization, administration and functionality and a "logic of goal formation" explains the incorporation of members and the establishment of a broad common position that is represented by the association.[198] As all of the four logics, especially within a pair, have an opposite focus, associations have to make trade-offs between them. If an association or union sets a higher focus on its amount of members it will have a higher representativeness and legitimateness vis-á-vis decision-makers, but at the same time it will not be able to react

[193] See Lösche in [58], p. 54.
[194] See [63], p.124; [59] p. 124ff.
[195] See [56], p. 61.
[196] See [63], p. 102.
[197] See [83], p. 19f.
[198] See [83], p. 19f.

quickly and to cater to everybody's needs, as the involvement of every single member will require more time. Moreover, too many members may lead to an association's position that is rather general because of a compromise that has to be reached among all members. In such a case its importance for decision-makers and its corresponding influence on decision-making decreases as its position and information may not be attractive enough. On the other side, fewer members entail in a decrease in legitimacy and importance of an association. Consequently, associations as well as unions have to be aware about the conflicts through the different logics and have to find a compromise between their number of members, their importance for decision-makers through covering a broad spectrum of specific interests and their grade of self-organization. As argued by Speth, the recognition of homogenous interests, while increasing the number of members, is a key issue for the lobbying efforts of an association.[199] In conclusion, it can be said that neglecting the different logics and the resulting conflicts may lead to a weaker position of associations, especially because there are other possibilities for lobbyists to get active.

Due to these problems European groups are largely used for lobbying tasks of a secondary priority and only rarely for active lobbying tasks.[200] In other words, lots of organizations are primary circumventing associations and unions as active lobbying actors via additional actors. Mostly only small and medium enterprises (SMEs) use them as primary actor, because those have no other or only limited possibilities to participate in the political process.[201]

In general, the main reason for using groups as a lobbying actor may be their high representativeness and their provided legitimacy, which ensure a certain weight and attention in the political process. Further reasons for an organization to use an association are

- their large networks,
- their well maintained contacts, which will be also interesting for their members,
- the provision of information,
- the monitoring of political processes and the political environment,
- the possibility to gather information about other, competing companies,
- the possibility to act 'anonymously' and
- the use of it as a discussion platform.[202]

From the perspective of decision-makers associations are very welcome as they pre-aggregate individual interests and legitimize their decisions.[203]

Because of their broad portfolio useful for both organizations and decision-makers they are still very active and powerful although they changed their role from an active player to a primary inactive one. Moreover, they are still the most common lobbying actor as it is shown in the transparency register of the EU, where about a third of the registered organizations are associations or unions.[204]

#### *2.3.1.2 In-house Lobbyists – Corporate lobby units*

A lobbying category continuously becoming more important within the last 30 years is the so-called 'in-house Lobbyist', also known as a corporate lobby unit. This kind of lobbyist is part of a company or sometimes even of an association and is directly representing the interests of

---

[199] See Speth in [58], p. 48.
[200] See [63], p. 123ff.
[201] See Haacke in [58], p. 182f.
[202] See [63], p. 123ff.
[203] See Lösche in [58], p. 56f.
[204] As of November 2015, about 2,700 associations and unions are registered in the joint European Transparency Register of the European Commission and the European Parliament. See [73].

its employer.[205] In the European transparency register about every 6th entry, which is corresponding to more than 1,450 registered organizations, is a corporate lobby unit.[206]

There are several reasons why one establishes a separate lobbying department. First of all, and probably the most important one, in-house lobbyists are directly representing the interests of their employers.[207] Hence, they do not have to make compromises with others and do not have to share capabilities. Individual interests are not weakened and can be directly communicated.[208] As this kind of lobbyists is integrated in a department of their employers they have a high solidarity and a strong loyalty, which is why they can be controlled, monitored and sanctioned more easily than other lobbying actors.[209] The higher controllability and loyalty is a big advantage for organizations due to the fact that lobbyists have to know detailed figures or even some secrets of an organization to make their job in a satisfactory and effective way. Obviously confidential information may only be shared if a certain degree of trust and solidarity exists. It can be assumed that this is the case with lobbyists who belong to oneself.

An organization that establishes a corporate unit has to be aware about the location of the unit's office as it is essential for lobbyists to be where the action is.[210] If it is acting at a European level it should build its own office in Brussels. A representation in a national capital may be only preferable if one is focusing on national legislation, otherwise one will be too far away from the place where decisions are made. Although national governments have a certain degree of influence in the decision-making procedures of the EU (primary via the Council), they enter this process rather late, which may be too late for an effective lobbying approach. Moreover, a lobbyist that is located where decisions are made plays an important role in the context of image building for organizations as he can be present on events and debates on-the-spot bringing in an organization's interest.[211]

Further relevant aims and tasks of in-house lobbyists are

- the provision of contacts,
- maintenance of relationships,
- networking,
- the provision of expertise for interns as well as externs,
- monitoring of the political environment,
- supervising activities of other lobbying actors,
- gathering of specific information that is important for their employers and cannot be supplied by associations, and
- preparing of information in a way understandable for the internal responsible persons, which are in most cases the members of the management board.[212]

All of the mentioned lobbying tasks are usually customized for an organization and show that in-house lobbyists are lobbying in both sides, external as well as internal. Particularly the importance of lobbying within the organization through provision of expertise, as well as through well-prepared information about the current issues and possible next steps, should not be underestimated. On the one side corporate units have to justify their existence and on the

---

[205] See [63], p. 108; [54], p. 7.
[206] As of November 2015, about 1,450 corporate lobby units are registered in the joint European Transparency Register of the European Commission and the European Parliament. See [73].
[207] See [63], p. 107; [59], p. 132f.
[208] See [63], p. 107; p. 132f.
[209] See p. 47, 107, 134; [59], p. 135.
[210] See [54], p. 10.
[211] See [63], p. 129; Priddat and Speth, p. 184; p. 133.
[212] List based on [63], p. 128f, 135; Priddat and Speth in [64], p. 178; [59], p. 133.

other side managers may struggle with complex definitions and the (informal) characteristics and rules of decision-making.[213] Priddat and Speth even argue that internal lobbying is more important than external lobbying.[214] From the tasks related to external lobbying the provision of contacts and the maintenance of relationships may be the most essential as in-house lobbyists have a lower representation, wherefore they need good contacts to be considered by decision-makers.

Since the stated aims and tasks fulfilled by in-house lobbyists are rather similar to those of an association, one may assume that they are used instead of associations, but this is not the case. Through their higher flexibility and their possibility to react much quicker than associations they are used as a complementary or even as a backup actor to collective actors.[215] Their individual and specialized focus should compensate the weaknesses of collective actors and vice versa. In view of the fact that in-house lobbyists are only representing interests in the perspective of their employers, the provided legitimacy for decision-makers is mostly lower than of collective actors, which makes it harder for them to play an active role in the decision-making process, especially if the organization is only representing a (strong) national position. However, by way of the provision of specialized information, a good contact management and a flexible and well-planned strategy, in-house lobbyists may be able to overcome this problem.

In the course of this an organization also has to think about the resources granted for such a lobby unit. As European decision-making is very complex and a mass of actors and organizations represent all kinds of positions at different levels, one will need highly qualified and well-connected employees using various (costly) approaches to ensure an effective representation and a certain degree of influence. Thus, former officials, Commissioners or MEPs are very useful as they have good contacts and expertise in European decision-making.[216] Because those are usually very expensive they have to justify their existence constantly, which may be tough as this is not that easy than in a traditional sense, where the costs and the revenues can be compared.[217] The output and success of lobbying is much harder to measure. If the costs cannot be justified satisfactorily, an organization may limit the budget or outsource several tasks to other (hired) lobbying actors.

#### *2.3.1.3 Hired consultancies*

Similar to in-house lobbyists the amount of hired consultants has rapidly increased in the last two decades. They are independent actors, often former officials, who act as experts that can be commissioned to all kind of lobbying tasks for a certain fee.[218] In doing so, different types of them are focusing on different tasks and fields. The most common type, which is sometimes even used as a synonym and general term for hired consultants, is called public affairs.[219] Public affairs agencies are discrete actors that are primary used for indirect, but also for direct lobbying tasks. They focus on relations between organizations, the civil-society and decision-makers as well as an organization's public and political perception.[220] Further subcategories are public relations agencies, law firms and governmental relation agencies. Although all of these types can be used for the same tasks, they usually have different focuses. Public relations agencies are, as it is in the nature of PR, mainly acting at the

[213] See Priddat and Speth in [64], p. 182ff.
[214] See Priddat and Speth in [64], p. 182.
[215] See [63], p. 129, 133; [59], p. 132f.
[216] See [59], p. 134.
[217] See [84], p. 146.
[218] See [54], 8.
[219] See van Schendelen in [52], p. 144.
[220] See [55], p. 19.

interface between organizations and the public society through all kinds of media and events to build up the desired image and reputation.[221] Law firms are experts in legal issues and may be hired by every actor or party that is participating in a political process to provide expertise and advices in legal cases or in formulating a position.[222] Last but not least governmental relation agencies focus on a direct exchange of private and public actors with politicians, thus also being called professional lobbyists.[223] The transparency register of the EU distinguishes between professional consultancies, law firms and self-employed consultants, which sum up to about 1,000 registered entities as of November 2015.[224] Public-affairs agencies and governmental relation agencies can be either found in the section of professional consultants or in the section of self-employed consultants. As the number of registered hired consultants is quite high, it can be expected that there is a strong competition between them.

Hired service providers may be specialized in a certain field and can fulfill several direct and indirect lobbying tasks as a single lobbying actor or complementary to others. In general they are mainly used for indirect lobbying tasks listed in the following:

- help to build up a lobbying department,
- help to develop a lobbying strategy,
- advise one with political expertise,
- bring in legal expertise,
- organize and coordinate campaigns and public relations work,
- help to improve one's image,
- carry out analyses and monitoring tasks in every possible field,
- organize events and discussions,
- issue management,
- network and provide useful contacts or
- act as a mediator between different stakeholders and actors.[225]

This list does not guarantee to be complete, as they may be hired for special tasks too, but it definitely covers the most important tasks of hired consultancies. Of course, they are also used as active lobbyists in certain cases, especially in event of a crisis or if one needs to react fast and has not enough manpower or know-how.[226] In such a situation hired consultancies may be the best solution for complementing one's active lobbying strategy as they are an effective and cheap alternative for organizations, no matter of which branch or sector. Their flexibility and efficiency may lead to lower costs for an organization and can be seen as their biggest advantage.[227]

Because of the high number of various consultants organizations can choose the right consultant or agency for every concern and hire them very flexible to fulfill certain tasks or just to increase their man-power. This flexibility is seen as both the main advantage and the main disadvantage of political consultancies. Through their special configuration they are working for several clients, sometimes even in parallel, which may result in a lack of loyalty and trustworthiness.[228] Furthermore, they cannot be controlled in a way as it is done by in-house lobbyists as they are no division of their principals. Because of the lack of trust, the missing loyalty and their fast changing clients, an organization has to be aware about the

[221] See [55], p. 60; [59], p. 17.
[222] See [59], p. 136f; [54], 7f, 10.
[223] See [59], p. 138.
[224] See [73].
[225] List based on [55], p. 23, 28f; [63], p. 114, 134f; Lianos and Kahler in [58] p. 290ff; [64], p. 169ff; [59], p. 137ff.
[226] See [63], p. 136.
[227] See [63], p. 136f; [59], p. 139.
[228] See [63], p. 111ff, [59], p. 140f.

information it is giving to them and about the incentives of such an agent. They may act selfish and in their own interest as they want to keep their job.[229] However, as there are lots of competitors their image and professionalism play an essential role. If they get a bad reputation or act in an unprofessional way it may be hard for them to survive, but also by acting properly they are seen critical as they do not have a direct link to private, public or political actors and suffer from misbehaving colleagues that are acting too aggressive.[230] Although organizations and decision-makers have a critical view on external consultancies, they are using them extensively. For decision-makers primary law firms are very important, as they provide professional legal expertise and advice, which are needed to avoid complaints and legal actions after a law has passed.[231] Organizations may use them, because they can fulfill all kinds of tasks. Additionally, they may also be directly recruited by other lobbying actors to optimize their activities.[232]

#### *2.3.1.4 Non-Governmental Organizations (NGOs)*

Non-Governmental organizations are a different type of lobbying actor than those stated before. They have their roots in social movements and represent interests of the public, like environment, animal protection or public welfare, in every political domain. Hence, they have a strong emotional motivation, which is mentioned as an advantage by Michalowitz, but at the same time as a disadvantage by Burson-Marsteller.[233] Together with independent institutions and some non-corporate associations, especially those representing certain groups of the society like workers or retirees, they constitute the main counterpart to corporate actors. Contrary to them, they have a greater focus on the long-term impact of policies.[234]

The European transparency register lists lots of NGOs acting in all political and social fields of the European decision-making processes. In total about a quarter of organizations registered are representing this category of lobbying actor.[235] If one takes a closer look on the entries, one can see that NGOs have much less financial and human resources then corporate lobbyists. Due to their limited resources they may not provide the same quality of specific technical information and have to choose other lobbying methods, like protests, petitions or public campaigns.[236] Nevertheless, they also use traditional methods and approaches.[237]

Similar to associations, European non-governmental organizations are often structured as umbrella organizations of several national or other European NGOs. In doing so, it is quite common that NGOs of different fields are bundling their resources and coordinating their lobbying activities as they are all focusing on the same objectives, namely an increased position of the civil society and the representation of public goods.[238] Such coalitions may raise the attention from and the importance for decision-makers.

As NGOs represent common interests while having a view on the public welfare, they usually provide a high representation and legitimization in the eyes of decision-makers. They can deliver information about the acceptance of acts by citizens and are able to reach and mobilize

---

[229] See [63], p. 94, 138.
[230] See [63], p. 111ff; Linder in [28], p. 50.
[231] See [79], p.174f; [54], p. 10.
[232] See Lianos and Kahler in [58] p. 290f.
[233] See [63], p. 87; [76], p.16f.
[234] See Interview F, lines 177-184.
[235] As of November 2015, about 2,200 NGOs are registered in the joint European Transparency Register of the European Commission and the European Parliament. See [73].
[236] See [63] p. 85f; [56], p. 63f, 146.
[237] See [56], p. 146.
[238] See [63] p. 87; Long and Lörinczi in [68], p. 176.

a certain number of them.[239] These aspects are very important for political officials, because they should act on the behalf of citizens.

Besides that, non-governmental organizations fulfill several lobbying tasks that are similar to the other actors, but first and foremost they are lobbying actively and mediate between politicians and the civil society. Thereby they are also hiring consultancies to support and coordinate their activities.[240] Another relevant task is monitoring of the implementation and the enforcement of a legal act as well as of politicians and other actors participating in a decision-making process.[241] By doing so, they act like a watchdog that checks if everything is done correctly.

In summary it can be argued that NGOs have a specific focus and act differently than other actors, but as decision-makers are instructed to decide in a neutral way and to pass a policy that is best suited to all, they are treated in the same way as representatives of private interests.

#### *2.3.1.5 Think tanks, Research institutions, Academic institutions*

Lobbying actors that do not lobby on decision-makers in such a direct way are think tanks, research and academic institutions. Although their direct influence is limited they are often used for the provision of specific information and neutral studies and for the organization of events and debates.[242] Usually their neutral and well-prepared expertise is highly relevant for decision-makers to build up their opinions and to legitimate their positions.[243]

Private as well as public organizations strive for collaboration with think tanks or academic institutions as they may increase an organization's reputation and influence or provide exclusive information from studies and researches. On the other hand, think tanks, research and academic institutions may also benefit from collaboration as they get access to data and even more important funding and sponsorships on which they are highly dependent to a large extent. However, this dependence on funding may lead to a big problem that should be always kept into mind by all sides. As some think tanks and research institutions are not financially independent they need money from third parties, which is why these actually neutral organizations may shape studies in a way that is beneficial for their sponsors.[244] In such a case, of course, they cannot be seen as neutral organizations anymore.

#### *2.3.1.6 Regional offices*

With associations and unions, in-house lobbyists, hired consultancies, non-governmental organizations and think tanks, research and academic institutions the most important lobbying actors were already listed, but with regional offices and religious organizations two additional ones should be briefly outlined in this and the next subsection as they are also part of the transparency register.[245]

Since about two thirds of municipal regulations have their origin in Brussels, a lot of national regions have decided to establish an office in Brussels to represent the interests of their area or municipality at a European level, but, of course, also European interests at their area or

---

[239] See [56], p. 63.
[240] See Lianos and Kahler in [58], p. 290.
[241] See Long and Lörinczi in [68], p. 176f.
[242] See [59], p. 141f; Dialer and Füricht-Fiegl in [28], p. 309f.
[243] See Dialer and Füricht-Fiegl in [28], p. 309f.
[244] See [54], p. 10; [59], p. 142.
[245] As of November 2015, about 400 regional offices and only 37 religious communities are registered in the joint European Transparency Register of the European Commission and the European Parliament. See [73].

municipality.[246] Those offices are closely interacting with the Committee of Regions, but according to Huysseune and Jans "[t]he COR is often seen as a vehicle through which the represented regions can capture the attention of European Commissioners or the Council Presidency rather than an institution with a decisive impact on EU policy outcomes."[247] As the CoR has low influence on decision-making regional offices try to bring in the perspectives and interests of their regional area and of regional actors, who have no resources to participate at a European level. Similar to other lobbying actors they want to strengthen their interests or turn away disadvantages related to their field. However, because of a huge number of other lobbying actors that want to get a piece of the cake and the fact that they are only representing a small local area of Europe, it can be assumed that they do not have high influence on European decision-making. Thus, regional offices mainly fulfill tasks of a secondary priority. They deliver information about policy making and funding possibilities to their regions and to their regional actors, advise their local authorities and actors, represent and advertise their area, and network with other regions.[248] These tasks should help their represented regions to act and react in the most efficient and successful way.

It is hardly surprising that national states with a federalist structure like Germany or Austria have more offices of that type than non-federalist states due to the fact that their federal regions have more power and rights at their national level.[249]

#### *2.3.1.7 Representatives of churches and religious communities*

A very small number of organizations representing churches and religious communities is lobbying in the EU, wherefore they are rarely covered in literature. This makes it quite hard to define their tasks they provide and methods they use.

In most of the political fields their influence may be rather low, but in issues regarding fundamental rights they may have a certain degree of power. Although most religious institutions are struggling with decreasing adherents and several scandals, they are still able to mobilize a lot of citizens for protests and petitions, which can raise the attention of decision-makers and therefore influence policies.[250] Similar to other public representatives they may be used by officials to ensure the support of the civil society. It can be assumed that religious organizations fulfill similar tasks with almost the same methods like NGOs.

#### *2.3.1.8 General characteristics*

According to a study of Burson-Marsteller the description of a 'lobbyist' matches best with trade associations, followed by public affairs agencies, professional organizations, NGOs, companies and trade unions.[251] The detailed numbers are illustrated in figure 6. It can be deducted from this figure that views of national politicians are rather different than views of officials solely from the EU institutions. Almost every actor is having a lower result and thus a lower recognition as lobbyist, when taking all of Europe and not only EU officials into account. The reason for this may be that in most of the member states lobbying is not as present as in Brussels. As a result the awareness of it is not as high.

---

[246] See Stahl in [28], p. 128f.
[247] [85], p. 7.
[248] See [63], p. 117f; [85], p. 4f.
[249] See [63], p. 116.
[250] See Holzhauser in [58], p. 271.
[251] See [76], p. 6, 23.

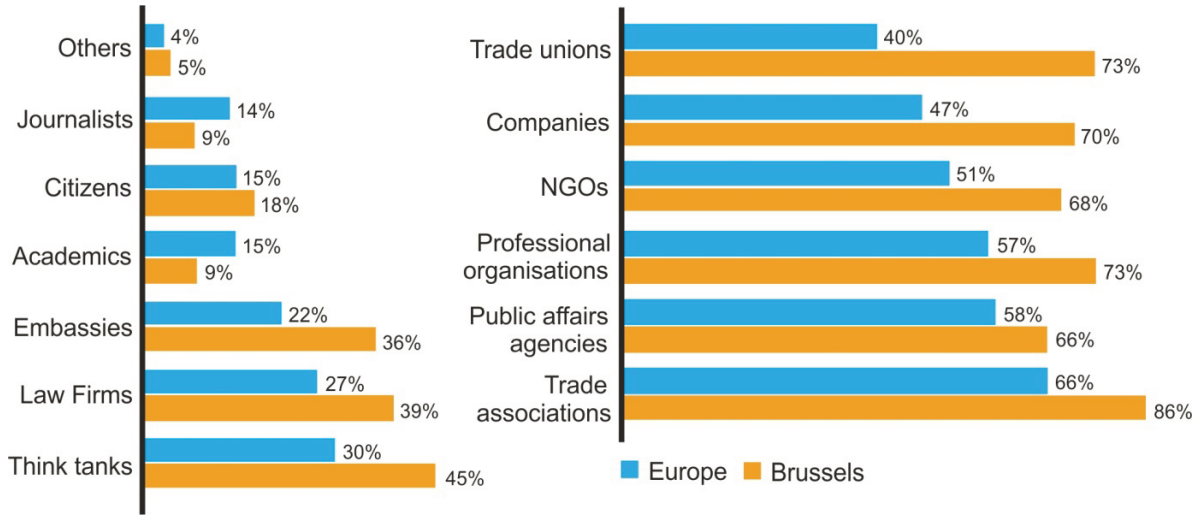



**Figure 6: Lobbying actors matching the description of 'lobbyist' (2013)**[252]

If one takes a closer look, one can see that especially the results regarding journalists and academics are very interesting. While journalists and academics are seen as lobbyists in most European regions, they are only mentioned by a few respondents in Brussels. For the remaining actors it is the other way round. They are more often associated as lobbyists in Brussels than in the rest of Europe, while they are highly rated from both national and European officials to a large extent. It has to be said that there are significant differences depending on the member state. In France, the United Kingdom, Estonia, Finland, Latvia and the Netherlands the results are comparable with those of Brussels, but in the remaining states they are falling away.[253] This leads to the following assumptions:

1. there are different views on lobbying depending on the (national) perspective; or
2. lobbyists are mainly focusing on Brussels and several member states; or
3. they are simply not visible equally in every member states; or
4. they fulfil different tasks in the member states, by which they are not primary seen as lobbyists.

A detailed analysis of these assumptions may be very interesting, but goes beyond the scope of this thesis. Generally, several of them may be applicable in each member state.

Aside the association of lobbying actors to the definition of 'lobbyists', Burson-Marsteller analyzed some additional matters regarding lobbying. Among others they found out that politicians see trade associations as the most effective lobbying actors, followed by professional organizations, NGOs and companies.[254] On the other side citizens, academics and law firms are considered as the least effective lobbyist actors, which is not surprising at all, because they are much less than those ranked at the top and have a focus on lobbying tasks of a secondary priority.[255] Lobbying actors, which are assumed to be effective, have a greater focus on direct lobbying activities. Moreover, the ranking shows that corporate and private lobbyists are primary challenged by NGOs. Three of the four top answers given are mainly used by the corporate sector. Only NGOs are primarily representing positions of the public.

---

[252] Own diagram based on See [76], p. 23. The results of EU politicians (i.e. Brussels) are also included in the results of Europe. Therefore the difference would be even a little higher in fact.
[253] See [76], p. 64.
[254] See [76], p. 14, 69.
[255] See [76], p. 14, 69.

To lobby effectively it is in general essential for organizations to know about their friends and foes and the advantages and disadvantages of every lobbying actor to develop an efficient and successful lobbying strategy.[256] There is no general strategy or pattern that can be applied for every case. Lobbying depends on individual issues or situations and it is even possible that an irrational, reactive, ad-hoc or not well-planned approach is successful as well.[257] However, such emergency lobbying and uncoordinated approaches will not work as a general rule.[258] If an organization wants to be effective, efficient and also takes an eye on its long-term relations and effects, it should establish a well-prepared lobbying strategy that involves proactive actions and focuses on its objectives. By doing so, it has to think about the European decision-making process, which is totally different from those of its national counterparts. Joos explains that "[a]pproaches which appear feasible at a national level are frequently only the 'second-best' solution in Europe, if not wholly ineffective."[259] Following his explanation a national organization has to adopt its approaches and methods to affect European decision-makers. At the same time it has to pay attention to a broader scope, as European legislation is based on a multi-layered system that is distributed across the whole continent. European lobbying begins in Brussels and shifts to the member states without losing the European dimension at a later stage in the decision-making process[260], which reflects an ordinary legislative procedure that starts in Brussels and ends up in Brussels and the member states (see chapter 1.3). Hence, the most effective strategies have to ensure support at every institution and level, including the governments of the member states.[261] To establish such a broad and effective strategy an organization has to gather information about every possible aspect and effect in the short as well as in the long term and monitor each involved party at both levels.[262] Based on the information gathered through these processes, organizations have to choose the right lobbying actors and methods at the right time to achieve their objectives.[263] It can be summarized that the bases of a successful lobbying strategy are monitoring the political environment and analyzing the gathered information, followed by drawing the right conclusions out of these, which means in the field of lobbying nothing else than using the right actors and the right methods at the right time. In this process one has to be aware of the different characteristics and qualities of various lobbying actors.

It is recommended to use several actors and multiple methods simultaneously that complement each other and are tailored to the actual stage of the political process.[264] In order to avoid them standing in each other's way an organization should also be clear about the tasks covered by each actor. Furthermore, the location of their offices may also be relevant. It is an advantage if a lobbying actor has a representation at the location where decisions are made as he is able to participate in important events and meetings on-the-spot.[265] Following this, a lobbying strategy should include various actors that are located at strategically important places and fulfill different tasks. To get an understanding of the linkages of actors in such a lobbying strategy, Microsoft should serve as an example. The Corporate Europe Observatory states in one of its papers that Microsoft lobbies directly, hires several consultancies and is also a member of around 40 lobby coalitions and think tanks.[266] This

---

[256] See [55], p. 123.
[257] See [63], p. 40.
[258] See [59], p. 141.
[259] [59], p. 80.
[260] See Burgmer in [75].
[261] See [54], p. 16; Joos in [28], p. 42.
[262] See van Schendelen in [58], p. 147ff.
[263] See van Schendelen in [58], p. 147ff; [59], p. 161.
[264] See [63], p. 144; [68], p. 7.
[265] See Speth in [58], p. 45.
[266] See [54], p. 34.

means that the company has several approaches that are spread over the whole continent to participate in a political process. As such a large volume costs a lot of money the efficient interaction of those actors and approaches is an important criterion, too.

An organization's lobbying strategy depends on the resources available and on the importance of an act.[267] A strategy covering every possible aspect may not be possible, but it must be the goal to establish one covering the most important objectives and providing enough influence.[268] Thereby, it can be assumed that private actors may mobilize much more resources than public actors, as the amount of possible resources may depend on the size of an organization. Michalowitz argues that big multinational organizations have several advantages in comparison to national ones, no matter what size they are.[269] According to her, they have more resources as well as a higher impact on the economy and alternative markets, by which they are able to fuel a significant potential of conflict.[270] Even though large national organizations may have a lot of resources too, they have the disadvantage of only one or a few national markets.[271] Small or medium organizations, which are representing the majority of organizations in the EU, have too little political weight and resources, and in most of the cases they are not interested in lobbying at a European level.[272] The stated potential of conflict goes hand in hand with the importance of an organization and delivers certain legitimacy for decision-makers. Particularly, NGOs, multinational companies and organizations affecting a large part of the society or economy are able to generate conflicts. If an organization is not satisfied with its potential for conflict or his position, it should try to increase it by building coalitions, alliances and networks, which can raise its representativeness and legitimacy.[273] Additionally, an organization may act more efficiently and save at least some resources if it forms alliances and coalitions. Priddat and Speth call this "multi-voice lobbying", where organizations use several actors and channels to lobby their position.[274] Lobbying over multiple channels and actors usually increases an organization's chance to get heard dramatically.

Nevertheless, the best lobbying can be worthless if no decision-maker pays attention to it, but the likelihood to be successful is much higher with than without it.[275]

### 2.3.2 The good of information and possible access points

As it was discussed in subsection 2.2 of this chapter, lobbying is an exchange of information, in which both lobbyists and decision-makers have to gather and deliver information at the same time.[276] If this is done in a trustworthy and sustainable way, both sides can benefit. On the one side, decision-makers can get information about the effects of a planned policy and can legitimize their decisions vis-à-vis others and on the other side, lobbyists can participate in the decision-making process and get information about actual issues and discussions, which are important for their early warning system and their lobbying strategy. Such an exchange process can be compared with a principle of demand and supply of information. Michalowitz, however, argues that it is an asymmetric trade, as politicians have a monopoly on granting

---

[267] See [63], p.81.
[268] See van Schendelen in [58], p. 144ff.
[269] See [56], p. 54ff.
[270] See [56], p. 54ff.
[271] See [56], p. 54ff.
[272] See [56], p. 54ff.
[273] See [55], 131; Leif and Zumfort in [58], p. 120f.; van Schendelen in [58], p. 137.
[274] See Priddat and Speth in [64], p. 178f.
[275] See [56], p. 71.
[276] See [55], p. 129; [58], p. 24.

influence, contrary to lobbyists and their good of information.[277] Each lobbyist has to compete with lots of others, so he has to improve his exchange good (i.e. information) and his reputation to obtain at least some influence.[278] Better, reliable and more unique information customized for an individual institution, a decision-maker or member state may increase his chances to obtain influence or to gather useful information in exchange.[279] By doing so, the focus will mostly lie on decision-making institutions, as they may grant the most influence. At the European level these are the European Commission, the European Parliament and the Council of the European Union and the governments of the member states. Due to the fact that lobbying European legislation is quite expensive and requires a lot of resources it may be even difficult to concentrate only on these three institutions. For that reason further bodies like the European Economic and Social Committee and the Committee of Regions have a secondary priority and are primarily used to gather some information.[280]

When lobbying the European decision-making institutions, lobbyists have to be aware that most of the methods and information have to be tailored for each institution as each institution has different demands and different possibilities for an exchange depending on its role in the decision-making process as well as on its composition. In general, every political official is looking for reliable and credible information of good quality, preferably by a source with a high representativeness that legitimizes his decision towards the civil society and the other institutions.[281] The reliability and creditability of information are essential preconditions to satisfy the demand of any institution. Furthermore, individual needs as well as supply possibilities of the three decision-making institutions are outlined in the following starting with those of the Commission.

The primary demands of the European Commission, the initiator of an ordinary legislative procedure, are technical "information and data relating to practice".[282] In this first stage reliable data about the feasibility and impacts of a planned policy are very important to compose a realistic and useful proposal.[283] Otherwise a planned policy may be doomed to fail right from the beginning. Similar to the Commission, Members of the European Parliament and its assistants search for technical information, but also for information that improves their individual reputation, especially in their home country.[284] A good reputation is important for MEPs, who want to be re-elected. For that reason they may have an open ear on information about the implications on and acceptance of the civil society and other weakly represented actors, whereby interests and concerns of their home country may be preferred. The Council as the third and final institution has different demands since it enters the decision-making process at a later stage and has a different structure than the other two bodies. On the one hand, the Brussels-based part of the Council, the preparatory bodies, need information about the positions of the member states and proposed amendments to coordinate and negotiate a common solution and on the other hand, the governments in the member states search for national information about the consequences on their citizens, environment and economy.[285] It can be assumed that the preparatory bodies do not need such an amount of technical information, as they get instructions of their national governments. Their main task is to find a common position to get an act passed. This can be rather tough, particularly in the case of a

[277] See [63], p. 50.
[278] See [55], p. 50; [63], p. 72, 93.
[279] See [55], p. 126ff.
[280] See Westlake in [68], p. 139f; [8], p. 143; Rödlach-Rupprechter in [28], p. 154.
[281] See Haacke in [58], p. 176; [68], p. 7.
[282] [59], p. 104.
[283] See [55], p. 159.
[284] See Lehmann in [68], p. 52f; Michalowitz in [28], p. 23f.
[285] See Hayes-Renshaw in [68], p. 77f.

regulation, where 28 member states may fight for their national interests to get them involved in the common EU act. In such a situation, information about everyone's position, priorities and potential amendments may be even more important. The need of technical information for governments in their capitals varies, because some may already have far-reaching policies or regulations regarding a certain topic and subsequently a certain degree of know-how and expertise. But even it is like that, it can be expected that they are open for additional information related to their national situation.

Since lobbying is seen as an exchange process, institutions and officials participating in the decision-making process have to supply something too, to get the needed information and expertise. Similar to the different demands of each institution, each institution has different supply possibilities. The Commission can provide an important "path-structuring role" at the beginning, financial support or a limited membership in an advisory expert group.[286] Interests of lobbyists, considered at this early stage, may have a large probability of success on the output of a legislative act, as it was said by an US-American in-house lobbyist in 2001, who argued that "[t]he Parliament can put in a hundred amendments or more, but these are likely to only affect twenty per cent of the decision. About eighty per cent of the directive is already fixed at the Commission level."[287] Even though the Commission has a lot of influence on an act, it is highly questionable if it is that much. It is more likely that the mentioned lobbyist refers to the importance of early lobbying, which is commonly argued in literature. There, lobbying is seen much easier and more influential during the policy formulation stage and more difficult in later stages.[288] Hence, lobbyists should enter the political process as early as possible to increase their chance of success. Once again an effective monitoring and early warning system may be an essential precondition.

An organization that decides to lobby the Commission directly has several access points for doing so. Following Köppl the easiest und probably most efficient way to access this institution is via its lower levels and working groups, where civil servants are doing their jobs.[289] Obviously, higher levels of top civil servants, cabinet members, and Commissioners are more powerful, but it is much more difficult to get access at these levels.[290] This has two reasons: first, with increasing hierarchy level the number of possible access points decreases and second, higher officials enter the policy formulation process in later stages, which makes it more difficult to bring in new interests as the degree of formulation is increasing with each level.[291] At the same time higher hierarchy levels mostly do not have as much know-how as lower levels that have to formulate a legislative text. Commission's working groups or civil servants may understand complex, technical and specific studies and calculations more easily. Consequently, an organization's problem or need may be easier to transmit. Lobbying the DG-level can also have some indirect advantages, because each DG responsible for a legislative act communicates and coordinates its position with the corresponding working group in the Council and the corresponding committee in the Parliament, through which decisions and positions of the other institutions may be influenced.[292] This natural process of a legislation procedure may lead to indirect lobbying for an organization's interest. Another relevant access point is provided by the heads of cabinets of all Commissioners, who prepare

---

[286] [63], p. 88.
[287] US-American in-house lobbyist in [63], p. 63, note 29.
[288] See [55], p. 163; [58], p. 21; Bouwen in [68], p. 20; [8], p. 147f; [59], p. 39; Rödlach-Rupprechter in [28], p. 150.
[289] See [55], p. 163; Bouwen in [68], p. 25f.
[290] See Bouwen in [68], p. 25f.
[291] See Bouwen in [68], p. 25f.
[292] See Bouwen in [68], p. 25f.
An example for such inter-institutional discussions are trilogues and technical meetings of the three institutions often held before and after trilogues to pre-negotiate compromises or formulize agreements reached.

Commissioner's meetings by using the same system of A- and B-items as the preparatory bodies of the Council.[293] Granted influence at this level may be very powerful, but as mentioned before hard to achieve. A final approach of lobbying the Commission is taking advantage of its principle of collective responsibility.[294] Regarding this principle each Commissioner has an equal vote on the final decision and may bring in his opinion. The principle provides the opportunity of lobbying a DG or a Commissioner that has no legal responsibility on a legislative act. This DG or Commissioner may then block a decision or propose changes.

In summary, it can be said that the Commission, as intended, offers several entry points for lobbyists. Commissioners and their officials need external information, because they have to consider and integrate as much information on every affected party and sector as possible.

Even though the Commission provides a lot of access points and influence an organization has to be aware of the other two institutions as the Commission's influence is primary limited to the first (initial) phase of a legislative procedure, while it becomes rather low in the later process when the Parliament and the Council are the key actors. The corresponding roles and powers of those as well as their interaction with each other have changed a lot over time, leading to a configuration, where both are of the same importance in an ordinary legislative procedure nowadays.

The Parliament's influence has grown with each one of the last treaties, especially with the treaties of Maastricht and Lisbon, and the expansion of the ordinary legislative procedure to almost all political fields of the EU. Because of its increased powers it can provide a high influence on the final output. As a consequence, the Parliament has become a key target for lobbyists, too.[295] The importance of lobbying the Parliament can be pointed out by two small papers provided by it. These declare that the EP had voted on 48,747 amendments in the term of 2004-2009[296] and on 39,102 amendments in the term of 2009-2014.[297] About 50% of amendments were adopted in each term. This means that the institution does not only provide high influence it also grants it. According to Michalowitz legislative acts may be significantly amended in this institution, but at the same time the outcome of the Parliament seems to be unpredictable as it acts very confident and tries to position itself as a strong body.[298] Contrary to the Commission the EP is responsible for passing an act together with the Council. In doing so it provides a lot of entry points. First of all and probably most obviously each single MEP or even each employee of his small team may be lobbied, as each MEP has an equal vote in the plenum. In view of the fact that decisions are made by a simple majority vote in the first, a simple or absolute majority vote in the second and an absolute majority vote in the third reading an organization has to find a sufficient amount of MEPs to get its proposed amendments passed. Since lobbying on enough MEPs for voting in one's interest can get very expensive, lobbyists largely focus on "the main gatekeepers [in] forming the opinion of the Parliament"[299], which are the rapporteur, the shadow rapporteurs and the corresponding committee and working group[300]. Single MEPs that are no gatekeepers may be primary useful for secondary lobbying tasks like information gathering. The enumerated key players are commissioned to find and formulize a common position for the Parliament. Thus, it can be assumed that they have more expertise in the particular field as other MEPs. As already stated

[293] See [59], p. 103.
[294] See Bouwen in [68], p. 25.
[295] See Schulz in [52], p. 24f.
[296] See [86].
[297] See [78].
[298] See [56], p. 66.
[299] Lehmann in [68], p. 52.
[300] See [59], p. 110ff; [28], p. 236.

in the previous part regarding the access points of the Commission, the responsible committee of the Parliament is interacting and negotiating with the other two bodies. This offers an indirect lobbying possibility during the whole legislative procedure. Thereby, it is easier for lobbyists to bring in their interests in an earlier phase during the first reading than in the later stages as especially the second and third reading have a strict and short timeframe defined in Article 294 TFEU.[301]

The Parliament also has lots of special characteristics that should be kept in mind. In general it has no coalition and opposition in the sense of national parliaments although the S&D and the EPP may act as a coalition if they want to do so. The voting behavior of MEPs is usually oriented on the opinion of their party or on the cross-party position of their home country, but of course there are also other relations they follow.[302] As they want to be re-elected they have an eye on the civil society and their home country, which should be considered by lobbyists as well. Several MEPs are also members of a national or a European association and may be accessed and influenced by them.[303] Moreover, there are many internal cross-party meetings in the Parliament to form an opinion and to find compromises, which may lead to a kind of domino-effect, where one MEP is convincing others with his opinion.[304] This makes it easier for lobbyists as lobbying the 'right' MEP may improve their position, as he may spread their opinion without the need of additional effort. Generally, it can be assumed that the mentioned gatekeepers are such MEPs. In this context Lehmann also argues that it is possible that parliamentarians lobby their own government and fulfill further brokering activities.[305] Another relevant aspect regarding the EP is related to the institutional framework of the EU. Schulz explains that the Commission often searches the Parliament as an ally against the Council to enforce the European position,[306] which sounds more than plausible, because both try to act in a way that is suited best for the EU. The Council on the other side is strongly influenced by national interests, which are mostly not focusing on the best solution for the Union as a whole.

Contrary to the Commission and the Parliament it has a primary focus at the national level and thus other supply possibilities as well as other access points. Together with the European Parliament it can supply high influence on the later stages, but the Council's points of access are widely spread across Europe. Lobbyists can influence it via the national governments or the Council's preparatory bodies in Brussels. In literature there is a common basis about lobbying the Council, which says that it is easier to get access by way of a national state, but it is probably more successful to lobby the preparatory bodies, as their influence may be higher.[307] It can be assumed that lobbyists use both approaches. At a national level they may receive influence via the government, the responsible ministers and its staff, the governing parties and some other groups that are well connected with national decision-making and search for information that is corresponding to their national impact. Obviously, this national way will be the easiest one for national or local organizations. Once a national government has been successfully lobbied it may lobby other governments or representatives in the Council to get its national interests included.[308] Again, this can be seen as a kind of domino-effect, where few member states or even a single member state can be enough to get certain interests involved. In any case the permanent representatives as well as the working groups

[301] See Lehmann in [68], p. 46.
[302] See Rödlach-Rupprechter in [28], p. 149.
[303] See [55], p. 122f.
[304] See Schulz in [52], p. 27.
[305] See Lehmann p. 59.
[306] See Schulz in [52], p. 28.
[307] See Hayes-Renshaw in [68], p. 74ff; [59], p. 99.
[308] See Hayes-Renshaw in [68], p. 78ff; Dondi in [28], p. 106.

are important components with a degree of influence not negligible because of the applied system of A- and B-items. Studies found out that around two thirds of drafts and documents are agreed in working groups, special committees and COREPER, and only one third are agreed during the Council's meetings of the ministers.[309] Thus, a focus on the preparatory bodies may be rather influential. Although the preparatory bodies have to agree at a European level, it can be assumed that they are strongly influenced by their national governments.[310] A further possible access point of the Council, which is in between the national and the European level, is lobbying the country that holds the presidency. The country holding the presidency has high influence on the discussed paragraphs and documents due to its agenda-setting power.[311] As a result the presidency may force or block an agreement.[312]

An important aspect of the Council in this context is its high and irregular fluctuation. The presidency shifts every six months and the national politicians exchange very elusive. Therefore, the preparatory bodies as well as the General Secretariat and its officials, which assists the Council as well as the European Council, can be seen as a rare constant and as potential "sources for information and allies for those who want to affect outcomes".[313] Consequently, the Council's preparatory bodies are both influential lobbying actors and important sources of information.

In summary, each decision-making institution is a powerful actor at its stage in the legislative procedure. They all have several access points where information and influence can be exchanged.

Nonetheless there are some additional general aspects and functions that have to be considered. First of all, well maintained and trustworthy relationships and resilient networks make it much easier to exchange information.[314] They will lead to a higher efficiency and feasibility of lobbying. A well established contact management can be seen as an important precondition for success, since it may be even possible to gather special and sometimes even exclusive information from the other side. Joos argues that the maintenance of important and trustworthy contacts should be a part of one's long-term lobbying strategy having a view on possible key actors in the future.[315] Another general aspect, which one has to take care about, is the exact understanding of political processes, its informal and formal rules, its characteristics and its framework and access points in each institutions.[316] With regard to this, professionalism, reliability and well-prepared materials are very relevant.[317] If a lobbyist tries to enter the political process in a wrong way, badly prepared, too late or even too early it could cause considerable damage. The importance of the stated general aspects and characteristics is pointed out by a study of Burson-Marsteller.[318] They analyzed poor practices of lobbying of NGOs as well as of actors acting on behalf of the corporate sector. As one can read out of figure 7, both, NGOs and the corporate sector, have problems with the rules of the political and legislative processes and procedures, a bad timing, an aggressive performance and inappropriate briefing material. Additionally, they are lobbying by press release, which is not well received by decision-makers. The same can be said about the emotion based

---

[309] See [87], p. 53; [88], p. 546; [89], p. 1102.
[310] See Dondi in [28], p. 93.
[311] See Dondi in [28], p.98f.
[312] See Hayes-Renshaw in [68], p. 83; Dondi in [28], p.100f.
[313] Hayes-Renshaw in [68], p. 83.
[314] See [58], p. 25**;** Hayes-Renshaw in [68], p. 75; [59], p. 47; Rödlach-Rupprechter in [28], p. 153.
[315] See [59], p. 47.
[316] See [59], p. 29; Michalowitz in [28], p. 23.
[317] See Lehmann in [68], p. 55; Zumfort in [58], p. 121f .
[318] See [76], p. 16f.

lobbying style done by NGOs and unethical inducements and not transparent procedures of corporate lobbyists.

This leads to the conclusion that lobbyists have to expand their knowledge of the political framework, improve their strategies as well as their good of information and choose the right method or tool at the right time to increase their efficiency and effectiveness. In doing so, transparency and reliability on information and data are important key figures for a successful exchange.[319] More about transparency can be found in chapter 3.

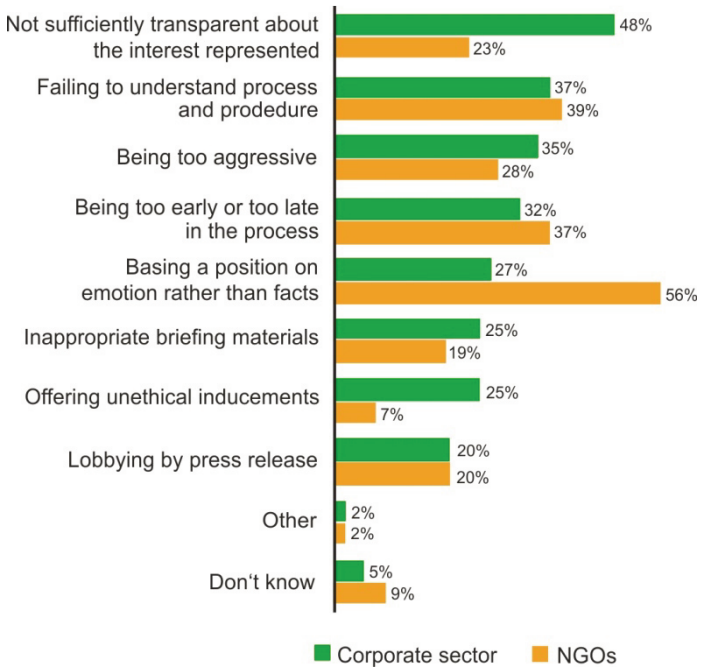



**Figure 7: Poor practices of lobbyists by Burson-Marsteller (2013)[320]**

## 2.3.3 Lobbying methods and tools

Lobbyists have many methods and tools at their disposal to get involved in political processes. These are used at different stages in the decision-making process and thus targeting different persons and levels. All of them can used for their own or simultaneously and tailored depending on the situation. In the following subsection the characteristics of the most relevant tools will be presented, starting with those primary used for direct lobbying, which does not exclude them of being used for indirect lobbying too.

### *2.3.3.1 (Personal) Meetings and Events*

Meetings and a vast amount of various events largely organized in locations, where decision-making is done, are highly relevant lobbing tools. They are held all over Brussels, Strasbourg or national capitals in various forms and with various actors. On the one side institutions and decision-makers organize meetings like expert round tables, workshops, conferences and public hearings to gather information and to build up their mind.[321] These events can be used for direct lobbying approaches by public as well as by private actors, as they offer a great possibility to submit studies and papers directly to decision-makers. On the other side, events such as parliamentary evenings, receptions, cultural programs or others are organized by lobbying actors to get in contact with policy-makers.[322] Depending on the incentive of the

[319] See [59], p. 48.
[320] Own diagram based on [76], p. 17.
[321] See [59], p. 112, 159; Kotzian and Quittkat in [28], p. 76f.
[322] See [58], p. 26, Haacke in [58], p. 179.

organizer they may be discrete and private or accessible for third parties and journalists. Generally, events have benefits for both sides, hence why there are plenty of, as the former Austrian MEP Martin listed while he was in office. He recorded more than 1.000 event invitations in just two years, whereby the majority of them were invitations for lunch, dinner or conferences with reception.[323] Events organized by lobbyists are mainly used to get to know each other, to maintain and intensify relationships, to talk about politics in a relaxed atmosphere and to enhance one's image and reputation.[324] At a later stage these contacts and relationships may be useful for both sides to gather and submit information more easily in a familiar atmosphere. Personal contacts and personal conversations are seen as the most powerful method to get one's interests involved.[325] It is needless to say that these personal conversations are most effective in small rounds or in personal meetings, where a certain degree of trust and discretion may exist, but due to the fact that decision-makers lack the time to do so it may be rather difficult to arrange such private meetings. This is why a submission of a (short) paper with the most relevant arguments is seen as a must in any case.[326]

#### *2.3.3.2 Papers*

The usage of various papers is a relevant and very popular method to contribute to the decision-making process. However, as there are several different forms and terms to describe this instrument, a confusion of terminology can be observed. Briefings, fact-sheets, written statements, non-papers, white papers, position papers or draft bills are examples that can be found in literature. These are used quite similar or even synonymously as they are all written documents, either digital or analog, containing information, positions or own proposals together with detailed suggestions and recommendations. Since their characteristics are very vague and there is no unique definitions of neither, Graham argues that one will likely get 12 different answers if one asks any 10 people what is a white paper.[327] The statement of Graham reflects the missing definition of various types of papers, which makes it hard to draw a line between the different terms. The only possible distinctions refer to their length and complexity, which may increase with each term in the stated list above. As there are no general rules for any type, this assumption cannot be generalized. In some cases a simple briefing may be equal to a white paper or to any other type and vice versa. Nevertheless, all of them have a common purpose, which is the written submission of information, positions and objections on a policy to a decision-maker or his staff. In doing so, a lobbyist has to think about the appropriate form of his paper, which may depend on the contact person. Schulz argues that even though longer papers or advanced studies may be highly interesting and scientifically prepared they are very hard to manage for a MEP, as they have limited time to read it.[328] Haacke confirms this by saying that the success of position papers depends on the point in time, the right length and the quality of the "punctuation".[329] With regard to the point in time she suggests to act as early as possible.[330] The European Law Monitor indicates that "[a]t the most basic level, a simple letter outlining your concerns sent to the appropriate person at the right time may be have the required impact."[331] Concluding from these statements, lobbyists have to be aware of the right time, the quality as well as of the length of their material. Moreover, they have to provide information in a form that is easily

[323] See [90].
[324] See [58], p. 25f; Haacke in [58], p. 179; Säckl in [52], 162f; [59], p. 50f, 159.
[325] See Haacke in [58], p. 177; [59], p. 154.
[326] See [55], p. 138.
[327] See [91].
[328] See Schulz in [52], p. 26.
[329] See Haacke in [58], p. 177.
[330] See Haacke in [58], p. 177.
[331] See [92].

understandable for their addressees, who may be not as familiar with the field as they are. Hence, it is also a common approach to send completely formulized draft bills or amendments to decision-makers that can be used by them one-to-one.[332] In such a case it is not unusual that decision-makers try to involve a paper or parts of it word for word into a legislative act.[333] Michalowitz even says that some of them only accept papers that can be used one-to-one.[334] Because of their lack of time officials welcome well-elaborated texts or phrases, especially of trustworthy and reliable contacts.

Another possibility is the transmission of anonymous papers, mostly called non-papers or white papers, which have no reference to the source of information or sender and can be used by decision-makers to reason their opinion without revealing their source.[335]

Regardless of the chosen type, papers have a big advantage over most other tools as they can be reconsidered and reflected by decision-makers at any time.[336] After a verbal communication this is not possible, which may result in a non-consideration as parts or relevant details of the conversation may be forgotten. Furthermore, it is rather easy to submit a paper via e-mail, post or personally. This easy transmission can be seen as another positive, but also as a negative aspect, because it leads to a huge amount of papers and information on the side of decision-makers. Consequently, a good reputation and trustworthy relationships may increase one's chances to get noticed.

#### *2.3.3.3 E-mails*

The usage of e-mails makes it very easy to send and share texts, papers or invitations to several recipients at the same time. It can be assumed that this tool is representing the one that is used the most by lobbyists as it is very fast and can be used from everywhere. A lobbyist does not have to be on-the-spot to send an e-mail, which may be the biggest advantage of it. Furthermore, they can be stored and reviewed on every device and are accessible from everywhere.

According to Lehmann as well as Joos e-mails are not used as a direct lobbying tool, but rather as an opportunity to request for help, support the other side, gather information or invite officials to events.[337] A reason for the indirect use may be the missing personal connection. Only well-known contacts that proved already their reliability and trustworthiness may use it as a direct lobbying tool. Less known senders have to consider that decision-makers receive a vast amount of e-mails, which makes it difficult to get noticed or to get an answer in a short time.

#### *2.3.3.4 Telephone calls*

Contrary to e-mails, telephone calls carry a higher personal note, as emotions can be additionally transmitted through one's voice. Due to the fact that a call is also only targeting a single recipient or few recipients if it is a telephone conference, it can be seen as an effective and discrete tool for direct lobbing. Besides that, calls can be used to stay in contact with each other, to keep each other up to date and to gather exclusive information from both sides, since their focus is not only on decision-makers, but also on their staff and other officials.[338] Like in

[332] See [58], p. 21.
[333] See Stein in [52], p. 128.
[334] See Michalowitz in [28], p. 23.
[335] See [59], p. 156.
[336] See [59], p. 51.
[337] See [59], p. 153f.
[338] See [59], p. 152f.

almost each lobbying method the precondition for getting heard is a reliable and trustworthy relationship.

A problem of calls may be the volatility of the discussed issues. Thus, it is a good idea to send a summary of the discussion afterwards.

#### *2.3.3.5 Membership in an Expert/Advisory Group*

As mentioned in the section before, the easiest way to get one's interests and opinions into a legislation act is lobbying at the earliest possible stage. It is much harder to amend an existing text. Therefore, formulizing parts of a draft by oneself can be assumed as the most effective way to include one's position. This contribution may be possible through getting a member of an advisory group, which assists decision-makers in the formulation stage. Particularly, the European Commission has a big amount of advisory groups composed of experts from organizations and national administrations, of individual experts representing their own personal view and of individual experts representing a common interest of several stakeholders.[339] In its register of expert groups and other similar entities the Commission lists more than 800 records.[340] The Corporate Europe Observatory even assumes that there are more than 1.000 of those.[341]

Being a member of an expert group can have multiple benefits and offers a great and exclusive opportunity for lobbyists since the amount of members is limited. Although these groups have no formal decision-making power[342], they provide an early insight into the plans of the Commission and in most cases even an important role to contribute to the formulation process[343]. For that reason a membership or invitation to such a group may be an objective pursued by lobbying actors. As the number of actors in every political field is quite high and the number of members is limited only few of them get the chance to be a part of an advisory group.

#### *2.3.3.6 Press and Media, Campaigns, Grassroots-lobbying*

Lobbyists do not only lobby directly, they also lobby indirectly, especially via press and other media, campaigns, protests, surveys, petitions, strikes and so on. The main objective of these indirect strategies is to primarily target a broader audience, which may result in a certain degree of conflict and public attention. This form of lobbying is often used by representatives of the public, particularly of NGOs and non-corporate associations, but of course also by other lobbying actors. Even decision-makers use media to spread their interests and opinions, but as they are no lobbyists in the common sense their activities can be ignored.

Although Haacke argues that the listed methods are second order lobbying methods used in case when direct lobbying fails[344], they are widely seen as important tools that should be minded in every lobbying strategy[345]. In general, support of the civil society increases one's position vis-à-vis decision-makers as those should act on behalf of them. Since most people obtain their information from press or other kinds of media such as internet, television or radio, feeding the media with studies and information about a specific policy, a campaign or an event may shape the opinion of the society. Priddat as well as Köppl point out that journalists, publishers and editors have a "gate-keeper" and "agenda-setting" function,

---

[339] See [93], Annex, Chapter II, rule 8.
[340] As of November 2015 there are 816 records in the register, tendency rising. See [94].
[341] See [54], p. 10.
[342] See [93], p. 3.
[343] See Bouwen in [68], p. 29f; [28], p. 254.
[344] See Haacke in [58], p. 180.
[345] See [55], p. 62; [58], p. 303.

because they can influence the public opinion with the information they are publishing.[346] Through their high power, media are often even called the fourth power of estate beside legislature, executive, and judiciary.[347] However, with a lot of power a lot of responsibility goes hand in hand, hence they should comply with a generally accepted code of ethics, for example from the Society of Professional Journalists (SPJ), the National Union of Journalists (NJU), the International Federation of Journalists (IFJ) or similar.

To avoid biased and incorrect information journalists and publishers have to ensure the authenticity and the truthfulness of it through critical researches on their own, which is seen critically in literature. It is argued that most of the mass media are open for information that can be used as a lead story and that they do not have enough time and resources to research about information and their source.[348] As lobbyists are aware of this, they may use the press and other media as lobbying instruments for their own interests. It is also possible that they try to influence the course of politics in the long-term by generating moods and trends.[349] In this context spin-doctoring, where information get the 'right spin' to cause attention,[350] and grassroots lobbying are functions and terms that are often used when organizations lobby via media. According to Köppl "grassroots-lobbying is a process through which companies or other organizations try to identify, recruit and activate people having a common view like them to contact decision-makers and represent the interests of the organization."[351] In other words citizens (i.e. the political grassroots of politicians) are mobilized to get active on their own and to contact officials over various channels. By doing so, e-mails, (online) petitions and telephone calls are the main instruments as they are easy to use, but also simple letters, faxes or personal contact with decision-makers or their staff are options.[352] To activate people for such a grassroots movement, organizations carry out (PR-) campaigns and spread them over all kinds of (social) media and in personnel conversations. The mobilization of citizens may also result in protests, strikes and demonstrations. Following Hayes-Renshaw those have to be done early enough as holding them during meetings, where decisions are made, is too late.[353]

In conclusion, it can be said that enough supporters or signatures can serve as a multiplier of a certain interests and increase an organizations position and representativeness.[354] The created headwind can lead to an increased attention from decision-makers. How powerful the public opinion can be was already proved by several cases, where the mobilization of the civil society led to amendments or even to a fail of a planned policy. As an example the Anti-Counterfeiting Trade Agreement (short ACTA) can be mentioned, which failed in the European Parliament after strong protests of the public.[355]

#### *2.3.3.7 Foundation of ad-hoc networks and alliances*

To increase the representation and the legitimacy of an organization, no matter if it is a company, an association, a NGO or another one, the foundation of ad-hoc networks and alliances with others having the same interests or problems can be seen as a standard

---

[346] See [55], p. 63, 126; [64], p. 97.
[347] See [95]; [96].
[348] See Kambeck in [52], p. 261.
[349] See [97].
[350] See [55], p. 62f, p. 178f.
[351] [55], p. 141. Translated from German: "Grassroots Lobbying ist ein Prozess, durch den ein Unternehmen oder eine Organisation Personen identifiziert, rekrutiert und aktiviert, die im Interesse des Unternehmens oder der Organisation aufgrund einer übereinstimmenden Auffassung politische Entscheidungsträger kontaktieren."
[352] See [55], p. 141; Breiteneder in [28], p. 119ff.
[353] See Hayes-Renshaw in [68], p. 80.
[354] See Breiteneder in [28], p.114.
[355] See [98].

discipline of lobbyists.[356] Organizations may bundle their resources and powers to gain higher influence and to increase their representativeness. In certain cases it can be even possible that actors of different fields or rivals are working together, especially in areas related to the common welfare.[357]

It can be assumed that alliances act quite similar to associations, but contrary to them they may just be founded to lobby on a single policy. As they have the same objective they may not have to coordinate their members and search for compromises in a way associations do.

#### *2.3.3.8 Bring an action before the Court of Justice*

As a final method that is applicable after an act has passed, lobbyists can try to bring an action before the Court of Justice of the European Union. This may be the case if an organization's lobbying strategy during the decision-making stages was not successful and it has enough resources to try it via the Court primary following Article 263 TFEU.

A judicial intervention can be very powerful, because if a case is won it will be binding all over the EU, which may lead to an amendment or cancellation of a legal act.[358] At the same time it is a very time-consuming and resource-intensive approach. However, according to McCown there are even two strategies for this method, namely

- a sequential litigation strategy, where several suits are brought in after one case, that serves as a precedent, has been won, and
- a simultaneous litigation strategy, where several slightly different suits are brought in at the same time.[359]

It should be noted that the Court usually decides pro-integration in case of doubt, wherefore it is also called the driving force for integration.[360]

#### *2.3.3.9 Conclusion and general characteristics*

All of the listed methods and tools have some common characteristics and can be used simultaneously, in combination or separately. An exception is the involvement of the Court of Justice that can be seen as a last resort after an act has passed.

Generally, Köppl argues that personal meetings, papers, campaigns and lobbying via media are the most efficient methods for lobbyists.[361] This is confirmed by a study of Burson-Marsteller, who found out that for decision-makers "[i]nternal meetings, national authorities' documents, meetings with industry and written briefing materials were perceived as the most useful types of information to make an informed decision."[362] A combination of those over several channels may be the most influential approach, but usually lobbyists have to make a strategic selection of the available instruments in relation to time and efficiency criteria.[363] To use the right method at the right time they have to be aware of the operating range of every instrument.

---

[356] See Haacke in [58], p. 180.
[357] See [55], p. 145.
[358] For example: With the judgment in the joined cases C-293/12 and C-594/12 (announced in April 2014) the Court of Justice of the European Union declared the data retention directive passed in 2006 as invalid following requests of the High Court of Ireland and the Constitutional Court of Austria, which were claimed by an Irish NGO, Austrian officials and representatives of the civil society. See [99], [100] and [101].
[359] See McCown in [68], 96f.
[360] See [8], p. 137.
[361] See [55], p. 150.
[362] [76], p. 6.
[363] See [59], p. 53.

At the beginning it may be useful to be a member of an expert group that is contributing to the formulation of a legislation act. But as the legislation process of the EU has several levels and opinions of decision-makers are usually built up in the course of time, lobbyists have to ensure that the final position of a decision-maker is still representing their interests. This can be ensured with a constant contact to officials, which requires well-maintained and reliable relationships together with a high reputation. With such relationships it is easier to submit materials like papers and to gather (exclusive) information as it was stated before. To establish new contacts or to maintain existing ones lobbyists use a vast number of events, meetings and networks. Moreover, they try to increase their position through influencing the civil society and through the foundation of ad-hoc networks. In this context another common lobbying method, which is highly questionable as well as largely unwanted by the civil society and decision-makers, is the use of false information and false data.[364] By doing so lobbyists, no matter if they are representing private or public interests, are trying to scaremonger decision-makers and the civil society with an aggressive style, wrong information, biased studies or information that were taken out of their context.[365] Although this approach may decrease the reputation of lobbyists, it may be a way to succeed, especially if one is targeting a single policy and needs a certain result. According to van "scandals are the ultimate corrective".[366] Hence, decision-makers have to be careful about figures concerning job losses, an economic collapse, weakening of the competitiveness of the EU, impacts on society and so on. These as well as further unethical practices, which are near to corruption, like the provision of career possibilities or astroturfing, can be assumed the main reason for the negative connotation of lobbying.

## 2.4. Lobbying EU vs. USA

As the United States of America have a much longer history and another political framework, values and perception than the European Union lobbying has some other forms and characteristics as well. Starting with an overview of the different political systems these disparities will be outlined in this last subsection of chapter 2. Later on, in subsection 3.3, a more detailed analysis and comparison regarding their different regulations on lobbying legislation will be done.

An integral aspect of the US-system, which is also implemented in the framework of the EU, is the separation of powers that is stated in detail in the constitution of the United States of America and has its origins in their foundation over 230 years ago.[367] Following this, executive, legislative and judiciary are strictly separated so each power is executed by an independent institution. The Congress, which is composed of two chambers, namely the House of Representatives and the Senate, has the legislative power, the President of the United States has the executive power and the Supreme Court has the judiciary power. Through the system of checks and balances the President and the Congress have to work together to pass a policy. As the President has no legislative power, he has to persuade a member of the Congress to initiate a legislative process. On the other side the Congress has to convince the President, who has a right of veto, to pass an act. However, contrary to the President, the Congress may overrule the position of the President by a two-thirds majority in

---

[364] See Stein in [52], p.132.
[365] See [102]; Florenz in [52], p. 45; [77], p. 77; [54], p. 10.
[366] van Schendelen in [58], p. 158. Translated from German: "Das ultimative Korrektiv ist die Skandalisierung."
[367] See [103], Article I-III.
Since the Treaty of Lisbon such a system of checks and balances is also implemented in the framework of the European Union, but because of the different political frameworks of the US and the EU it differs significantly.

both of its chambers. Ziegler argues that this difference to the European decision-making procedures, where the Commission has no possibility to pass an act on its own, "has repeatedly led to frustration on the side of the U.S. negotiators."[368] In a legislation procedure the two chambers of the Congress are equally involved and have to individually pass a bill by a simple majority vote. Similar to the European institutions each chamber has a certain amount of standing committees and subcommittees that are specialized in a political field. In these committees the preliminary work is done. Consequently, they have much power and influence and are consulted by several actors and organizations.

The House of Representatives is composed of 435 members that are representing the 435 constituencies, where they are elected. The Senate consists of two senators per state, which mean that there are 100 senators in total, that are directly elected by the citizens of a state. As each member of the Congress is directly elected by a first-past-the-post voting system, the impact of citizens on them and subsequently on the Congress in general can be seen as quite high. Each member of the House of Representatives, each senator as well as the similarly elected president[369] need the support of their electors, which is why they have a strong focus on their opinions and interests. This is contrary to the European Union where elections of MEPs as well as elections of national governments are widely performed by a party-list proportional representation system. In such a voting system there is a stronger connection of parties and electors than of individual candidates and electors. Candidates in Europe are, of course, also focusing on the interests of their citizens, but their individual dependency on their electors is not as high as in the US, where the weakness of political parties leads to a situation, in which each candidate has to consider the interests of his political grassroots to stay in his position.[370] As a result, grassroots-lobbying is used much more in the United States than in the European Union, where it is still in its infancy.[371] When talking about grassroots-lobbying in the USA one has to mention another method called astroturfing that got popular in the last 5 years.[372] Thereby, lobbyists try to influence political officials by acting under a false flag and behaving like a grassroots movement, but in fact they are just a fake movement heavily sponsored by organizations that try to recruit citizens with means of deception.[373] Astroturfing can be done online via faked opinions, recommendations, news and websites as well as offline through speeches, events and similar.[374]

Beside these approaches, there are almost the same actors trying to bring in their interests with similar methods as in the EU. The only differences regarding actors are the usage of (Super) Political Action Committees, which have a low direct influence on legislation[375], and the higher importance of think tanks, which have a much longer history in the US.[376] All in all it can be said that almost the same actors lobby legislation with similar methods. In the end, however, the style of lobbyists and the role of lobbying are different to that in the European Union.

---

[368] [104], p. 83.

[369] The president is elected indirectly by citizens through an electoral college. This college is composed of a certain number of representatives of each state, who usually vote based on the vote of their associated citizens. See [103], Article II, Section 1.

[370] See [59], p. 206.
The political scientist Tocqueville wrote already 160 years ago that: "The people reign over the American political world as God rules over the universe." See Tocqueville in [105], p. 60.

[371] See [59], p. 209; Breiteneder in [28], p. 116.

[372] The term astroturfing comes originally from the US-company AstroTurf ®, which produces synthetic turf and plastic grass (i.e. fake grass). See [106], p. 1.

[373] See [107].

[374] See [108], p. 2ff.

[375] See [59], p. 210. (Super) Political Action Committees are briefly explained on the next two pages.

[376] See [59], p. 210; Redelfs in [58] , p. 341; Dialer und Füricht-Fiegl in [28], p. 307.

Lobbying in the USA is seen as a constitutional right. The First Amendment of the Constitution of the United States of America refers to their freedom of speech, freedom of assembly and right to petition the government. In the pronouncement of the amendments to the constitution this is called the establishment clause and reads as follow:

> *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peace-ably to assemble, and to petition the government for a redress of grievances."*[377]

With regard to these fundamental rights every citizen and every organization can strive for their interests and lobby the US government. Therefore, Washington D.C. is also called the town of lobbyists, as lots of lobbyists lobby and counter-lobby almost every issue and political field in a massive way.[378] They are acting more openly and aggressive than in the EU, have a greater focus on outside lobbying and follow a hop or top strategy, which means that they mostly try to amend or block a piece of legislature as a whole.[379] Lobbying in Europe is carried out more quietly, is more contributive and focuses on representativeness and expertise.[380] At the same time European law-making is seen as more conservative as it "is more precautionary than U.S. regulatory law."[381] In summary it can be said that although the actors and methods of lobbyists are quite the same in the USA and in the EU, their style and role in society are varying because of the different rights and perceptions in the two systems.

The interviews made for this thesis confirmed the stated points to a large extent. It was mentioned that US-lobbying is done more openly and transparently and particularly much more aggressively or even decisively.[382] One said that they (i.e. US-lobbyists) know about the importance of lobbying and try to influence decision-makers with every possible approach.[383] Another one argued that they stop at nothing and want to get their interests involved regardless of the resulting costs.[384] Furthermore, two interviewees said that US-lobbyists have problems with the different legal understandings and fundamental rights as they mix the political systems and insist on their national rights in Europe and also in other countries.[385] Once again this problem shows the importance of knowing the political processes, its rules and characteristics.

As one can see there is a certain gap between the style of lobbying in the USA and in the EU, even though a representative of a NGO argued that the differences are not so big anymore as EU-lobbying comes closer and closer to US-lobbying.[386]

One particular difference was given by an interviewee, who reasoned an interesting statement about regulations in the USA. He said that the US has no rules and regulations resulting in every organization or actor with enough financial power being able to buy politics.[387] This is only partly true due to the fact that the United States have the strictest transparency rules on lobbying legislation worldwide also regulating financial contributions (see next chapter). More likely it can be assumed that he was referring to another common field of lobbying in

---

[377] See [109], Amendment I.
[378] See [55], p. 93ff.
[379] See [59], p. 209. Glatz calls a block of a whole act a „kill the bill" strategy. See Glatz in [28], p. 291.
[380] See [56], p.174.
[381] [104], p. 85.
[382] See Interview A, lines 230-234; Interview B, lines 335-336.
[383] See Interview C, lines 268-275.
[384] See Interview B, lines 344-345; Interview C, lines 271-274.
[385] See Interview A, lines 240-257; Interview B, lines 329-335.
[386] See Interview F, line 167.
[387] See Interview B, lines 337-344.

the USA that seems to be barely regulated, although it is not, namely lobbying during elections. As most of the US-decision-makers are directly elected by citizens, lobbying plays an essential part during presidential or congressional elections to strengthen or weaken a candidate and to force an acceptable candidate. According to Köppl organizations do not lobby, because they expect a candidate's vote, but rather to get a better access in the next period.[388] Generally, funding, donations and other forms of support are essential for candidates. To show the importance of these, the elections of 2012, where the current President Obama and the Congress were elected, should serve as an example. They were the most expensive elections of all times and cost an astonishing amount of $6.3 billion as it is shown in an analysis of OpenSecrets.[389] Following their figures it can be assumed that the next big race for political positions in 2016 will even top this enormous amount of money. As financial contributions are strictly regulated US organizations make use of special actors to circumvent these. In elections, candidates are mainly supported by so-called Political Action Committees (PACs) and Super PACs. While PACs are allowed to directly support a candidate with up to $5,000 for each election (primary and general elections are separated), Super PACs are not allowed to support them directly or coordinate their actions with them, but contrary to PACs, which may only receive up to $5,000 from individuals, another PAC or a party committee a year, they can raise unlimited sums to indirectly support or combat candidates through campaigns, advertisements or other methods on their own.[390] In doing so they are circumventing the strict regulations and limits regarding election campaign expenses by relying on their right of freedom of expression that is stated in the first amendment of the US-constitution.[391] As this form of electoral support is frequently used in the USA it may explain the statement of the interviewee.

In conclusion lobbying in the US has some differences to lobbying in the EU, especially in its style, role and during elections, but as it was mentioned in an interview the gap in lobbying legislation is getting smaller.

## 2.5. Executive Summary

Lobbying is a term with a bad public connotation although it has many useful aspects that are needed in every democratic system. The function exists since a long time and can be described as the efforts of public and private organizations, which have no direct influence on decision-making processes, to participate in the political processes through special methods and over several channels. It is used by organizations, as well as decision-makers. Organizations primarily try to obtain influence on political decisions and to gather exclusive information, which should lead to the achievement of advantages or to the prevention of disadvantages. Decision-makers in turn rely on information about the effects of their planned policies gathered by lobbyists.

As on the one side political processes are quite complicated and have several formal and informal rules and on the other side certain degrees of representativeness and legitimacy are needed to get noticed by decision-makers, organizations use different actors to get involved. These actors can be roughly divided into public and private representatives. Associations, trade unions and in-house lobbyists are mainly used by private actors and represent individual interests of companies and businesses or certain economic branches. Their public counterpart is composed of NGOs, public associations, representatives of churches and suchlike, and

[388] See [55], p. 97f.
[389] See [110].
[390] See [111]; [112].
[391] See [113], p. 1491.

engages for interests of the civil society and weak actors or interests regarding a common wealth. Hired consultancies, which are also very popular, can be hired for every kind of lobbying task by both. Furthermore, independent actors like think tanks, research and academic institutions as well as regional representatives can be used to lobby as well. All of these actors fulfil several tasks specialized for certain purposes (see table hereafter).

| Actor | Main tasks | Mainly used from |
|---|---|---|
| Associations and Unions | provide representativeness and legitimacy; pre-aggregate interests; direct lobbying of a common position, contact management; networking; gather every kind of information inside and outside; monitor political environment; provide possibility to act 'anonymously'; serve as a discussion platform | Private, but there are also a few public associations and unions representing interests of a certain public sector |
| In-house lobbyists | direct lobbying of individual interests of an organization; provide contacts and expertise; maintenance of relationships; monitor political environment; supervise activities of other lobbying actors; gather specific information that is important for their employers and cannot be supplied by others; prepare information in a way that is understandable for interns; image building; issue management | Private |
| Hired consultancies | help to build up a lobbying department; help to develop a lobbying strategy; advise one with political expertise; bring in legal expertise, issue management, organize and coordinate campaigns and public relations work; carry out analyses and monitoring tasks; organize events and discussions; provide useful contacts; act as a mediator between different stakeholders and actors; direct lobbying | Private, but also Public |
| NGOs | provide legitimacy; mobilize citizens; direct lobbying; organize and coordinate campaigns and protests; gather information; monitor political environment and implementation of policies; mediate between officials and the civil society; network | Public |
| Think tanks, research and academic institutions | provide representativeness; create specific information, neutral studies and expertise; organize events and discussion | Private and Public |
| Regional offices | provide contacts and access to decision-makers; strengthen interests of a region; gather information about policy making and funding possibilities; advise local authorities and actors; represent and advertise their area; networking; direct lobbying | Public, but also from private regional organizations |
| Religious representatives | provide legitimacy; mobilize citizens; direct lobbying; organize and coordinate campaigns and protests; gather information; monitor political environment and implementation of policies; mediate between officials and the civil society; network | Public |

**Table 4: Summary of lobbying actors and their tasks**

Every actor needs know-how about the political processes, its formal and informal rules, possible access points and the demand of decision-makers. These vary across the stage and

the appropriate institution of a legislature procedure. An organization can use lobbying actors individually or in combination to achieve the involvement of its interests. To ensure an efficient usage of them an organization should establish a lobbying strategy, by which it coordinates every actor, method and tool and ensures the achievement of its goals and priorities.

The most relevant instrument for lobbyists is personal contact with officials. It will be most effective in small rounds or face-to-face. Beside personal contacts, e-mails and telephone calls provide the possibilities to submit papers, invite officials, ask for support or communicate one's interests and opinion to decision-makers or their staff. In this course, papers vary in their quality and volume and range from simple letters to detailed draft bills that can be used one-to-one by decision-makers. Moreover, a vast amount of events serve as basis for lobbying, as new contacts can be made and existing ones can be maintained. Trustworthy and reliable contacts are the most essential preconditions for lobbyists to increase their chance of being heard and involved. Additionally, representativeness and providing legitimacy are also key aspects. These can be reached best through improving one's reputation and image via events, the foundation of ad-hoc alliances or influencing the civil society. Particularly the mobilization of citizens via campaigns as well as news, opinions and articles can be seen as a standard discipline. By doing so, lobbyists increase their legitimacy vis-à-vis decision-makers and may also shape the public opinion in a way that they are finally acting for their interests (grassroots lobbying). As the majority of decision-makers are elected by citizens and should act for them, they shall consider the opinion of those. Further methods and tools that are used by lobbyists are: membership in an expert group of a European institution, by which they can directly contribute to the formulation of a policy and bringing an action before the Court of the European Union to amend or invalid a policy after it has passed.

However, even though an organization has a well-planned lobbying strategy that uses lots of methods to influence decision-makers over several channels the final involvement of its interests in a policy cannot be guaranteed as European decision-making is done in a multi-layered structure, where three institutions and 28 member states have different interests and powers on the final outcome. This is contrary to the United States of America, where the Congress has the possibility to pass a policy by its own. Thus, organizations that lobby in the USA may focus on this institution and its members in the Senate and the House of Representatives. Organizations lobbying in the EU have to focus on all institutions of the decision-making process, i.e. the Commission, the Parliament and the Council.

Nonetheless, US-lobbyists use similar actors and methods as in the EU. The main differences of the two systems can be seen in the style and the role of lobbying, which is much more aggressive in the US, but also more openly practiced because of their constitutional rights and more far-reaching rules and regulations on transparency (see next chapter). Moreover, there is a difference in the importance of elections and the connection of decision-makers to electors. Since almost all US-decision-makers are directly elected by citizens, lobbyists have a greater focus on their electors. Grassroots lobbying and its opaque form astroturfing, by which organizations use fake social movements and fake opinions to manipulate citizens, is done excessively in the USA. As such approaches as well as the US-style of lobbyists are getting more and more visible in Europe the differences of lobbying legislation are fading out. Anyhow, there is still a noticeable gap.

# CHAPTER 3

# Lobbying regulations and Transparency

Regulations and transparency are aspects often associated with lobbying. As the connotation of lobbyists and its functions is quite bad, they are also seen critical in the public view. If one asks an EU-citizen about these terms and their connection to lobbying, one will mostly get the feeling that lobbying is not well regulated, not transparent and everybody can get anything if he knows the right people and has enough money. In fact, it is a little different, because there are lots of rules, regulations, codes of conduct and so on to ensure a democratic participation of each actor. Whether these are sufficiently far-reaching or not should be discussed in the following.

In this third chapter the focus lies on transparency of political processes, its participating actors and on regulation of lobbying. First of all, a general overview about transparency and democracy will be given, followed by the situation in the European Union and its decision-making institutions. Afterwards criticism and recommendations referring to the actual settings will be outlined and some findings of the interviews will be discussed as well. Finally, the rules and regulations of the EU will be compared to those of the United States, which have a long history in regulating transparency and lobbying.

## 3.1 Transparency and democracy

In a democratic system the power is held by its citizens, who from a general point of view, exercise this power on their own or by electing representatives, who do that for them.[392] Consequently, interests and positions supported by the majority of people are essential and should have priority over individual interests that are only relevant for a few. In order to ensure that common interests are taken into account, everybody should have equal possibilities to participate in political processes directly or indirectly via periodically elected political representatives or third parties like lobbyists, who both represent interests of a certain amount of natural or legal persons. Following this, and taking the widely accepted pluralistic view into account, lobbying is a legitimate function in a democratic system, because it helps to find the best solutions for the civil society.[393] It is legitimate as long as every person has the possibility to represent his interests and the final outcome is in the sense of the public majority. As it is explained by Joos "lobbying ensures the formation and diversity of opinion and thus the plurality of opinions and views in political discourse."[394] In practice not every actor, much less citizen, can participate, as not everyone has enough representativeness,

[392] See [114].
[393] See Stein in [52], p. 130; [65], p. 6.
In a pluralistic approach power and influence is distributed among different interests groups that limit each other and ensure a balance of power of different interests. See [58], p.17.
[394] [59], p. 33.

legitimacy, amount of financial and human resources, know-how about or interest in political processes. Thus, an equal representation of interests in the sense of pluralism does usually not exist,[395] which may lead to a one-sided representation of interests or to a situation, in which positions of individuals are permanently preferred. If this is the case, democratic systems and their corresponding parliamentarianism will get a serious problem, as decisions may be made against the civil society, which undermines the legitimacy of the political system. To avoid such a situation regulations on lobbying are needed. Furthermore, the highest degree of transparency is needed to make political processes, consultations and the participating actors comprehensible.[396] Politicians and their process of opinion building as well as lobbying actors, their incentives, clients and sponsors must be transparent, especially in a time when lobbing is largely done by hired professional actors. Without rules and regulations on lobbying respectively transparency an effective and democratic functioning of a political system cannot be achieved. In the course of this, the right balance of regimentation and transparency on the one hand and discretion and independence on the other hand has to be found, as too little transparency and regimentation may force biased decisions or even corrupt practices and too much may lead to inefficient processes and an overload of information.[397] With the right balance the civil society and all other actors like lobbyists can equally contribute to policy-making, control how decisions and opinions are coming into being and react if any actor or decision-maker behaves inappropriate.[398]

As a rule politicians and political institutions should act as transparent as possible. The former Commissioner Kallas, introducer of an initiative on transparency in the 2000s, emphasized that each political institution in a democratic system should see transparency as an integral part increasing its integrity and credibility.[399] Besides that, transparency is seen as a key factor for the acceptance of both, politicians and lobbyists.[400] If policy-making is done in a black box, where its actors operate in an opaque form, far away from citizens, it will not be trusted and accepted. The missing connection and tangibility will create mistrust and a bad connotation. Moreover, it will hamper a system of 'checks and balances' of interests, where the influence of lobbyists on decisions as well as the opinion formation of decision-makers can be controlled. In its worst case missing transparency (i.e. missing controllability) can force corruption, misuse of power and preference of certain actors.[401]

As one can see transparency of actors and processes as well as regulations and rules on lobbying go hand in hand with democratic values. They get even more important in democracies with a great power like the EU, because in the words of Julian Assange, chief of the whistle blowing website WikiLeaks,

> *"[t]he greater the power, the more need there is for transparency, because if the power is abused, the result can be so enormous."*[402]

---

[395] See [63], p. 26; Redelfs in [58], p. 334.
[396] See Michalowitz in [58], p. 27; Griesser in [58], p. 66f.
[397] See [115].
[398] This can also be seen as a system of 'checks and balances'. See Rödlach-Rupprechter in [58], p. 144, 159.
[399] See [115].
[400] See [115].
[401] See Griesser in [58], p. 64.
What happens if transparency is missing can be seen in the largely discussed opaque system of the Fédération Internationale de Football Association (short FIFA), where several high officials are in the focus of judiciary, because they were acting in a corrupt way. See [116].
[402] [117].

To get an understanding of the situation in the European Union and its decision-making institutions their configurations regarding transparency and regulation on lobbyists will be outlined next.

## 3.2 Situation in the EU

Through its permanent structural changes, its growing powers and the technical evolution in the last 30 years the European Union became more and more democratic over time. In the course of this democratization progress, transparency of processes, officials and other actors as well as regulations on lobbying turned out as central issues of its institutional framework. Beginning with the SEA and the treaty of Maastricht in the late 80s/early 90s, the decision-making institutions, but also the other institutions, agencies and bodies[403] established several rules and regulations in these fields.[404] Although they have been strengthened since then, they have still potentials for improvements in every institution, mainly because of the ever-changing structure of the Union and an increased public awareness. Additionally, most regulations are still in its infancy or in a testing phase. Nonetheless they are getting better and better resulting in rules stricter and more far-reaching than ever.

### 3.2.1 General aspects and regulations

There are several declarations in the treaties pointing out the EU's attitude towards the issues of transparency and democratic participation. Two of them read as follows:

> *"The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society."*[405]

> *"In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible."*[406]

With regard to the stated articles transparency and democratic participation can be referred as key matters of the European Union, its institutions, agencies, bodies, officials and others linked with it. Particularly the decision-making institutions have to be aware of this. Consequently, they try to involve citizens directly and indirectly on multiple layers via several approaches to ensure participation and consideration of them. Firstly, and most obviously, Members of the European Parliament and national governments, which ministers finally decide in the Council of the European Union, get a mandate to act for citizens through periodical elections. By doing so, citizens have a direct influence via elections and at the same

---

[403] In literature the focus is largely on the decision-making institutions as the other institutions, agencies and bodies (except the EESC) have almost no individual regulations and are only bound to the general 'Regulations laying down Staff Regulations of officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community' described hereafter. See Obradovic in [68], p. 298.

[404] On a national level the purposes of transparency and regulations on lobbyists exists much longer, at least in some countries. After the Second World War individual states in Europe started to pass the first simple rules and regulations regarding these issues. See[55], p. 108.

[405] [1], Article 11 §2 TEU (2012).
Hüttemann criticizes that the term 'associations' does only represent a small part of different forms of interest representation. He would suggest that the phrase 'associations and civil society' should be replaced by "interest representatives and civil society". See [118], p. 5.

[406] [1], Article 15 §1 TFEU (2012).

time an indirect influence through the elected representatives. Secondly, all of the decision-making institutions, in particular the European Commission, search for consultations when they plan to pass a policy so that everyone has an equal possibility to participate in political processes directly or indirectly via third parties like lobbyists. Thirdly, the EU (again mainly the Commission) creates societal and environmental interest groups on its own and funds weak actors to involve as many perspectives as possible and to force actors, who are usually not able to participate, to do so.[407] This strategy leads to a very open and easily accessible framework, where every citizen has the possibility to participate.

If they cannot do that, because institutions lack on good governance or for any other reason, the European Ombudsman may help EU-citizens or natural or legal persons residing in the EU to complain about any kind of maladministration in one of the Union's bodies, offices, agencies or institution (except the Court of Justice acting in its judicial role).[408] She can conduct inquires and report her findings with recommendations to the parties concerned.[409] Although recommendations of the Ombudsman are not binding they have political weight and are widely accepted. Primarily through raising public and political attention the Ombudsman's proposals have a compliance rate of about 80%, which is quite high for non-mandatory recommendations.[410]

Similarly, the European Anti-fraud Office (OLAF), settled as a General Service in the European Commission, fights against fraud, corruption and other illegal activities in the Union's institutional framework.[411] OLAF's investigations are totally independent[412] and focus on either a single actor or an institution in the EU and its member states. Its investigations lead to a report, containing results of the investigation as well as recommendations on disciplinary, administrative, financial and judicial action of examined actors, institutions or member states.[413] Since its foundation in 1999 the office became an important actor for better democracy operating all over Europe.

Beside these two bodies, a lot of regulations and rules should make the European Union, its institutions, staff, actors and processes transparent and accessible. As every institution has other functions, powers and compositions, it needs regulations tailored for it. Otherwise they seem to be hardly applicable and also hardly acceptable. For that reason regulations are largely not uniform across the EU, with only a few exceptions discussed hereafter.[414]

First of all, the 'Regulations laying down Staff Regulations of officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community' are binding for every official of the EU. The act is divided into two parts, namely the 'Staff Regulations of Officials of the European Union' (henceforth abbreviated as 'Staff Regulations'), dealing with officials appointed on an established post on

---

[407] See [68], p. 8; Michalowitz [58], p.24.
[408] See [1], Article 228 TFEU (2012).
Since October 2013 the Irish Emily O'Reilly is holding this position.
[409] See [1], Article 228 TFEU (2012).
[410] See [119], Chapter 8.
[411] See [120], Article 1.
Although it is a General Service it is under the responsibility of a Commissioner. Since 2014 it is under the responsibility of the Commissioner for Financial Programming and the Budget. This post is currently held by the Bulgarian Kristalina Georgieva, a Vice President of the Commission.
[412] See [121], Article 3.
[413] See [120], Article 11.
Following the latest annual report of 2014, OLAF opened 234 investigations (based on 1,417 allegations) and issued 397 recommendations that recommended among others financial recoveries for the EU budget of 901 million Euros and several disciplinary and judicial sanctions. See [122], p. 11.
[414] See Obradovic in [68], p. 298.

the staff of any institution of the EU[415] and the 'Conditions of Employment of Other Servants of the European Union' (henceforth abbreviated as 'Conditions of employment'), dealing with temporary staff, contract staff, local staff, special advisers and accredited parliamentary assistants.[416] Among other things the rights and obligations of (temporary) European civil servants as well as disciplinary measures in case of non-compliance are stated therein. Because both parts are largely common for any kind of official, whether it is appointed on an established post or employed under contract or something else from the list before, the following applies to all of them.

Probably most important in the sense of good governance, Article 11 of the regulations defines that an official has to operate "solely with the interests of the Union" and "shall neither seek nor take instructions from any government, authority, organisation or person outside his institution."[417] Hence, European civil servants are bound to their appropriate institution and have to observe the interests of the EU in their daily work. While acting for an institution, agency or body of the European Union and also after leaving it, they are not allowed to disclose any information received during their occupational activities without authorization.[418] Moreover, an official is not allowed to accept "any honour, decoration, favour, gift or payment of any kind whatever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service", from any government or other source without the permission of the appointing authority.[419] Observed illegal activities, including fraud and corruption, or violations of obligations specified in the Regulations must be reported without delay.[420] Additionally, he has to inform the appointing authority immediately if his duties are in conflict "with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests."[421] The same applies if he or his spouse wants to engage in any paid or in the official's case also in unpaid outside activity.[422] All of the stated rights and obligations indicate that European officials have to carry out their duties in a way that ensures the highest integrity and loyalty towards the Union and its interests, even after they leave their service and start to work somewhere else.[423] If they will not be able to do so they have to be pro-active, as in case of non-compliance they face disciplinary sanctions imposed by the appointed disciplinary board, which can range from warnings over downgrading and reduction of financial services up to removal of posts or reduction of future payments like pension or invalidity allowances.[424] Cases related to corruption or other serious misconduct may even lead to civil and criminal proceedings in the member states.[425]

---

[415] See [123], Article 1 (Staff Regulations).
The regulation referred to in this thesis is the 136th version (2014) of the original document passed in 1962.
[416] See [123], Article 1 (Conditions of employment).
Depending on the type of contract temporary staff may be engaged for a maximum of 6 up to 10 years. See [123], Articles 8, 85 (Conditions of employment).
[417] [123], Article 11 (Staff Regulations). See [123], Article 11 (Conditions of employment).
[418] See [123], Article 17 (Staff Regulations), Article 11 (Conditions of employment).
[419] [123], Article 11 (Staff Regulations). See [123], Article 11 (Conditions of employment).
[420] See [123], Article 22a (Staff Regulations), Article 11 (Conditions of employment).
Linder in [28], p. 54 mentions that this can be seen as whistle blowing as well.
[421] [123], Article 11a §1-2 (Staff Regulations). See [123], Article 11 (Conditions of employment).
[422] See [123], Article 12b (Staff Regulations), 13 (Staff Regulations), Article 11 (Conditions of employment).
[423] See [123], Article 16 (Staff Regulations), 17 (Staff Regulations), Article 11 (Conditions of employment); [1], Article 339 TFEU (2012).
[424] See [123], Article 86 (Staff Regulations), ANNEX IX (Staff Regulations), Article 50a (Conditions of employment).
[425] See [28], p. 55.

Even though EU-officials have to respect the interests of the European Union, they are not hindered to meet lobbyists or other third parties. There is no regulation, obligation or rule, neither in the Staff Regulations nor in the Conditions of employment, prohibiting or regulating contacts with lobbyists. It is only stated that they are not allowed to take instructions from actors outside their institution, which does not exclude contact to those. Lobbyists that do not give any gift or payment to them and respect the facts that officials are not allowed to hand out information without authorization and have to act in a way best for the Union can lobby them with every possible method.

Organizations may even legally employ an official for any position (including lobbying) as long as they are aware of certain conditions stated in Article 16 that should curb direct job changes. According to this article, an official has to notify his institution if he wants to begin an occupational activity, whether paid or not, within two years after leaving.[426] If that activity is related to duties he had fulfilled within the last three years, the appointing authority may forbid the engagement "or give its approval subject to any conditions."[427] In event of approval, he can start the new engagement immediately.

If the official is a senior official he has to consider a further rule. Since the last strengthening of the Regulations in 2014 those are not allowed to lobby or consult staff of their former institution in general for the first 12 months after they have gone.[428]

By respecting these conditions an organization can employ any official not affected by them or approved by the appointing authority. Generally, direct changes from civil servants to organizations acting in the same political field or branch are also known as 'revolving door' movements and are highly disputed (see part 3.2.5). To make them more transparent an annual list containing all cases assessed has to be published by every institution.[429]

In summary, the general Staff Regulations and Conditions of employment cover the most important issues regarding lobbying and conflicts of interests and serve as a solid and good basis for all officials working on staff or under contract in any institution, agency or body of the EU. Their continuous reinforcements over the last 50 years framed a clear demarcation from dos and don'ts and steadily increased the integrity and loyalty of officials.

A second more or less common act in the fields of transparency and democracy is the inter-institutional agreement on better law-making of 2003, which contains common guidelines and obligations on transparency and on comprehensible processes for the decision-making institutions. The agreement includes principles such as "democratic legitimacy, subsidiarity and proportionality, and legal certainty" and promotes "simplicity, clarity and consistency in the drafting of laws and the utmost transparency of the legislative process" in the Commission, the Parliament and the Council.[430] The three institutions oblige themselves to transparent, effective and efficient decision-making processes with a clear schedule and broad consultation, which results will be made public.[431] Inter-institutional dialogues during legislative processes (i.e. informal trilogues), increased transparency and involvement of the public at every stage, as well as an enhanced co-regulation through involvement of third parties, should ensure the stated principles and result in a better law-making.[432] The stated self-obligations are important as they enhance the cooperation of decision-making institutions

---

[426] See [123], Article 16 (Staff Regulations), Article 11 (Conditions of employment).
[427] [123], Article 16 (Staff Regulations). See [123], Article 11 (Conditions of employment).
[428] See [123], Article 16 (Staff Regulations), Article 11 (Conditions of employment).
Such a period is also known as cooling-off period.
[429] See [123], Article 16 (Staff Regulations), Article 11 (Conditions of employment).
[430] [124], point 2.
[431] See [124], points 4, 25, 26.
[432] See [124], points 6, 10, 18.

and the involvement of citizens and third actors. Due to the fact that the rules and obligations of this agreement are mostly outdated nowadays and not far-reaching enough anymore, especially in issues regarding efficiency, transparency and democracy the Juncker-Commission decided to renew them until the end of 2015. It sets a new inter-institutional agreement on its agenda, which should in the Commission's words

> *"boost openness and transparency in the EU decision-making process, improve the quality of new laws through better impact assessments of draft legislation and amendments, and promote constant and consistent review of existing EU laws, so that EU policies achieve their objectives in the most effective and efficient way".*[433]

It will be exciting how the Commission's plan will look in the end. Currently it looks ambitious, but as the final outcome is still under discussion a detailed view on it will not be possible.

Another common policy ensuring transparency in the decision-making institutions was passed in 2001 with the 'Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents'. It is based on the principles of equality, in particularly on the right of access to documents, defined in Article 42 of the 'Charter of Fundamental Rights of the European Union' of 2000.[434] According to that regulation every document created by any of the decision-making institutions or received by any should be publicly available, except of documents that undermine the protection of

- the public interest,
- privacy and integrity of an individual,
- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice and
- the purpose of inspections, investigations and audits.[435]

To make the huge amounts of documents public available the European institutions began to (re-) build up individual registers and a common online portal, called EUR-LEX in 2002.[436] In EUR-LEX all documents related to legislation are available in every national language of the EU. The common platform contains millions of documents and serves as a central database, where everybody can search for treaties, policies, cases, opinions and several other types of documents. It provides citizens with insight in the inter-institutional procedures and processes of the EU. The enhanced openness and transparency through the individual registers, EUR-LEX and some additional databases lead to a greater legitimacy, effectiveness and accountability.[437] Public availability of legal documents and traceability of legislative proposals from the beginning until the final adoption can be seen as essential parts of democratic systems. This large public availability of documents makes the EU and its

---

[433] [125].

[434] Article 42 of the Charter deals with the right of access to documents and reads as follow: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents." [126], Article 42.

[435] See [127], Regulation (EC) No 1049/2001, Article 2, Article 4.
Documents that may undermine public interests are related to the areas of "public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State". [127], Article 4 §1a.
According to Article 3 "'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility." [127], Article 3, point a.

[436] See [128], p. 9.

[437] See [127], recital 2.

institutions, especially the Commission and the Parliament, very transparent. Some even say that it is too transparent as it may be hard to find a certain detail in the mass of available information.[438]

With the EU-wide Staff Regulations and Conditions of employment, the inter-institutional agreement on better law-making, and the Regulation (EC) No 1049/2001 the most common regulations regarding transparency and lobbying applicable across the EU were mentioned, but as already said before, every institution has compulsory rules and regulations. Thus, the settings of the three decision-making institutions, the European Commission, the European Parliament and the Council of the European Union, will be analyzed as well.

## 3.2.2 European Commission

The European Commission is the main contact point for lobbyists as it has the right to initiate legislative procedures and the possibility to formulate policies from scratch. In doing so, it depends on information from practice and society, hence why it actively tries to involve every actor living or operating in the European Union. To ensure an equal participation and an equal involvement of every actor it needs far-reaching regulations on transparency and lobbying, codes of conduct and open processes that can be observed by everybody. The current configuration in the Commission has to be seen as a stage of a process that started around the turn of the millennium after scandals related to the Santer-Commission were revealed.[439]

At that time the institution realized that its loose guiding principles, voluntary self-commitments and the creation of a weak directory for interest groups introduced in the 90s were totally insufficient. As a consequence, a process on more transparency and good governance combined with rules for lobbyists and Commissioners was started. Over the time the Commission on its own as well as in cooperation with the other decision-making institutions adopted and published several acts and papers in these fields. In the following subsection, which is divided into three parts that may overlap sometimes, the current situation will be outlined.

### *3.2.2.1 Regulations on transparency, consultations and contact to third parties*

The Commission has to comply with principles of good governance, which are openness, participation, accountability, effectiveness and coherence.[440] It has to act in a way that ensures democratic values and legitimizes decisions of the institution and its members. Therefore, it needs open consultations with widespread participation as well as transparent, accountable and effective processes.

To guarantee such consultation processes it introduced minimum standards on consultation in 2003, which are consisting of five rules based on the principles of good governance and read as follows:

---

[438] See [129].

[439] The Santer-Commission resigned in 1999 after a whistleblower found out that fraud and corruption were widespread across the Commission. Particularly the scandals related to the French Commissioner Èdith Cresson led to the resignation. Besides repeated fraud, embezzling of EU-funds and other forms of corruption, she hired an unqualified friend as high paid personal advisor. Although the European Court of Justice declared that she acted in breach of her obligations in 2006, she was not sanctioned and does still receive her full pension. See [130].

[440] The principles were originally proposed by the white paper on good governance from 2001 (see [128], p. 7f) and implemented through a Communication from the Commission from 2002 with the name 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission'. See [131], p. 16ff.

> *"A. All communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses.*
>
> *B. When defining the target group(s) in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their opinions.*
>
> *C. The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultations should be published on the Internet and announced at the "single access point".*
>
> *D. The Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings.*
>
> *E. Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on the Internet."*[441]

According to these rules, the Commission should carry out clear, well-defined and target-group-oriented consultations. At the same time it is obliged to non-discrimination, equal treatment and involvement of members of the public in a lawful, proportionate and consistent way[442], by giving all "interested parties a voice, but not a vote."[443]

If every interest is represented with the same power the compliance with these minimum standards and the appropriate obligations might even be enough to achieve democratic participation, but as representation of interest is in most of the cases unbalanced, further regulations are needed. Without further regulations there is a danger that strongly represented interests are taken into account although they are not in the common sense. Thus, the Commission has additional rules and obligations for lobbyists as well as regulations on transparency that should avoid an unequal involvement.

They are, in particular, results of a European Transparency Initiative (ETI) initiated by Commissioner Kallas in 2005 and finally adopted in 2008. It was started to regain trust in the work of the Commission and the European Union, and to guarantee democratic values after the upcoming enlargement to the EU-28. In the course of this, lobbying, its necessity, functions and problems were analyzed and defined in detail for the first time in the EU. Building upon the findings of its analytical process, the initiative proposed

- "[a] voluntary registration system, run by the Commission, with clear incentives for lobbyists to register" like "automatic alerts of consultations on issues of known interest to the lobbyists";
- "[a] common code of conduct for all lobbyists, or at least common minimum requirements, developed by the lobbying profession itself"; and

---

[441] [131], p. 19ff.
[442] See [132], p. 3f.
[443] [131], p. 5.

- "[a] system of monitoring and sanctions to be applied in case of incorrect registration and/or breach of the code of conduct."[444]

In addition, increased transparency standards of consultation and a code of conduct with seven clear and simple rules were introduced.[445] Registrants of the transparency register had to agree with the rules stated in it and were sanctioned through temporary suspension or exclusion from the register in case of non-compliance.[446] By way of the implementation of the proposed measures lobbying on the Commission began to get more transparent and comprehensible for everybody.

However, a first evaluation of the European Transparency Initiative concluded that the intended automatic alert function and an increased representativeness were relatively weak incentives to register, as Brussels-based actors usually monitor every activity of the institution on their own and the Commission did not have any obligation to incorporate with actors.[447] Moreover, it was observed that the register was not far-reaching enough and contained too little information about its records. Hence, an inter-institutional agreement between the European Parliament and the European Commission launched the first generation of the joint transparency register (TR) in 2011. The agreement was revised again in 2014 to eliminate deficiencies and weaknesses leading to the second and actual generation of the TR introduced in January 2015.

It bases on the approaches of the Commission of 2008 and the Parliament of 1996 and should record and monitor organizations and self-employed individuals, which try to influence politics of the two institutions directly or indirectly.[448] The actual realization is formally still voluntary, but a registration is needed if someone wants to get a badge for long-term access to the Parliament.[449] Furthermore, President Juncker announced in November 2014 that every Commissioner, Cabinet Member or Director-General must only meet with professional organizations and self-employed individuals registered in the transparency register and that they also have to disclose those meetings.[450] Organizations wishing to speak at hearings organized by the European Parliament have to be registered as well.[451] The instructions can be seen as a first step to launch a mandatory register, which is already planned by Juncker and his First Vice-President Timmermans, who is responsible for the coordination of the work on

---

[444] [62], p. 10.
Although several contributors preferred a compulsory approach, a voluntary register was established in spring 2008 to cover as many actors as possible, without losing flexibility. See [133], p. 3f.
[445] See [134], p. 2.
The Code of Conduct of 2008 stated following 7 rules:
"(1) identify themselves by name and by the entity(ies) they work for or represent;
(2) not misrepresent themselves as to the effect of registration to mislead third parties and/or EU staff;
(3) declare the interests, and where applicable the clients or the members, which they represent;
(4) ensure that, to the best of their knowledge, information which they provide is unbiased, complete, up-to-date and not misleading;
(5) not obtain or try to obtain information, or any decision, dishonestly;
(6) not induce EU staff to contravene rules and standards of behaviour applicable to them;
(7) if employing former EU staff, respect their obligation to abide by the rules and confidentiality requirements which apply to them." [134], p. 7.
[446] See [134], p. 4f.
[447] See Obradovic in [68] p. 310ff.
[448] See [135], points 1, 2, 8; [81], points 1, 7, 8.
[449] See [81], point 29.
[450] See [136], p. 9.
[451] See [137].

transparency and on better regulation.[452] It can be assumed that the register will be mandatory after its next evaluation in 2017 at the latest.

But as that is still up in the air, a view on the actual register should be made at this point. In comparison to its earlier generations it is more detailed and affects more actors than ever. Activities covered and in particular those not covered as well as the affecting actors are formulated much clearer. This had to be done, because some of the main target groups did not register as they did not feel affected by the definitions.[453] The refined agreement leads to a structure, in which each registrant must join one of the (sub-) sections shown in figure 5 before (chapter 2).

Once an actor decides to register, he has to be aware of the obligations accepted by doing so. Among others the actor has to accept a strengthened code of conduct[454] and has to disclose general as well as specific information about its organization, its finances and activities. By accepting the code registrants commit to act honestly, openly and respectfully. In case of non-compliance a temporary suspension or removal from the register, combined with a withdrawal of the authorization for access to the Parliament, are possible sanctions.[455] Moreover, they have to accept obligations of disclosure, which should make them and their activities more transparent. If one violates them the same sanctions may apply. Pursuant to ANNEX II registrants have to provide several figures, in fact:

- general information like name, address, phone number, name of legally responsible, etc.;
- the persons with badges for the Parliament and the lobbying actor's number of persons involved in lobbying activities;
- the time spent by each person for activities covered by the register in percentages of a full time activity (25%, 50%, 75% or 100%);
- their goals, activities, networks, memberships and fields of interest;
- details regarding activities to influence legislative proposals or policies;
- their links to EU institutions (consultative committees, expert groups or others);
- the amount and source of funding from EU institutions and others;
- detailed information about their annual budget, annual turnover and annual revenue per client (inclusive name) relating to (lobbying) activities covered by the register.[456]

To a large extent the required information is the same for each lobbying type, but some may depend on it. While, for example, professional consultancies have to provide information about the revenue per client, NGOs do not have to do that.

As somebody has to verify the entered information or examine complaints, a joint transparency register secretariat (JTRS) composed of officials from the Commission and the Parliament was established to react in case of misuse and to ensure the functioning of the register.[457]

---

[452] The Commission's working program of 2015 already included a planned proposal for a mandatory joint transparency register for all of the three decision-making institutions based on an inter-institutional agreement. See [138], p. 10.
However, as the institution did not reach an agreement in 2015 it moved its plan of a mandatory transparency register to 2016. See [139], p. 12f.

[453] According to ALTER-EU, these were especially financial lobbyists, lobby consultancies, law firms, but also some others. See [140], p. 3.

[454] The full code of conduct can be found in Appendix F of this thesis.

[455] See [81], ANNEX IV.

[456] See [81], ANNEX II.

[457] See [81], points 24, 31-34.

Complementary to the joint transparency register, the Commission has another register for its advisory groups. It was introduced in 2005 to provide information about the composition and members of expert groups.[458] The register was also created to show that the Commission involves different experts in line with its self-obligations regarding such groups. Those oblige the institution to choose the members following a public call for application, and as far as possible in a way that guarantees a balanced representation of relevant stakeholders with respect to an equal distribution of geographical location and gender.[459] Information about public calls and the conditions to get a member of a newly created expert group are published on the website of the register.

With that register the current approaches on transparency of consultations and third parties have been mentioned, but as transparency and regulations are not only necessary for actors outside the framework of the EU, the issues also have to be considered for actors operating inside the Commission.

#### *3.2.2.2 Rules and obligations for Commissioners and their staff*

All rules and obligations regarding Commissioners and their staff emphasize Article 17 §3 TEU and Article 245 TFEU, which oblige the Commission as a body and its members (i.e. Commissioners) to:

- carry out its responsibilities completely independent, without seeking or taking any instruction from any government or other institution, body, office or entity;
- refrain from any action incompatible with their duties or the performance of their tasks;
- do not engage in any other occupation, whether gainful or not during their term of office.[460]

Concluding from that, total independence against every political or private actor is an essential characteristic related to the members of the Commission and the institution as a whole. They should act and decide loyally, discretely and in the interest of the Union. If they are not acting like that Article 245 TFEU also defines that in event of any breach of their obligations members of the Commission may be compulsorily retired or deprived of their right to a pension or other benefits related to their stead.[461]

To avoid breaches or unclear situations, permitted and prohibited actions are clearly specified in a code of conduct of 2011, guidelines on gifts and hospitality of 2012, and a decision 'on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals' of 2014. Together with the already outlined Staff Regulations and Conditions of employment they contain the most important rules for Commissioners and their staff currently in force.

The mentioned code of conduct was totally renewed in 2011 after six out of 13 Commissioners went directly into private sector in 2010.[462] It deals among other things with the revolving-door problem and a cooling-off period for members of the Commission.

---

In the period of March 2012 to October 2013 it made 1,141 quality checks (about 20% because of alerts). About two thirds indicated non-compliance with the code of conduct. See [141], p. 6ff.
In 2014, 212 organizations or persons were removed following the result of 900 checks. See [142] p. 7f.

[458] See [93], Annex - chapter IV, rule 17-18.

[459] See [93], Annex - chapter IV, rule 9.

[460] See [1], Article 17 §3 TEU (2012); [1], Article 245 TFEU (2012).

[461] See [1], Article 245 TFEU (2012).

[462] See [54], p. 48.
The original code of conduct was one of the first decisions made by the Prodi-Commission after the resignation of the Santer-Commission in 1999.

Although these issues are already stated in the Staff Regulations and the Conditions of employment, they have to be explicitly defined for Commissioner, as they are not covered by them. Accordingly, Members of the Commission have to inform the institution when they plan to engage in an occupation within the next eighteen months.[463] Thereupon the Commission together with an Ad Hoc Ethical Committee decides if the occupation is related to their former portfolio and compatible with Article 245 TFEU.[464] If it is compatible they may approve the occupation; otherwise they should prohibit it. Regardless of the decision, Commissioners have to observe an eighteen months cooling-off period, during which they are not allowed to lobby or advocate members of the Commission and its staff on matters of their former portfolio.[465] With these rules, direct changes into the private sector as they had happened in 2010 should be curbed. They are an important step for more trust towards the institution and its members, but of course not the only one for more transparency and legitimacy.

The code of conduct also specifies activities members are allowed to do alongside their institutional duties as well as further obligations and declarations they have to comply with during they hold an office and afterwards. Following them, a member of the Commission must declare any financial interest, asset, property owned and former or actual professional activity of him and his partner or spouse.[466] This declaration has to be refreshed at least once a year[467], because with up-to-date information everyone can control if a conflict of interest exists. In this context Commissioners must refrain from any activity that may result in a conflict of interest with their portfolio, personal, family or financial interests.[468] Consequently, "[s]pouses, partners and direct family members shall not be part of the cabinet of the Member of the Commission."[469] This explicit exclusion of family members can be seen as a result of the scandals of 1999.

Furthermore, the code of conduct as well as the Commission's guidelines on gifts and hospitality of 2012 state that Commissioners and their staff have to take care about any gift, hospitality, decoration or honorary offered to them. While the code of conduct contains rules affecting Commissioners, the guidelines on gifts and hospitality are based on the general Staff Regulations and the Conditions of employment clarifying rules for officials on staff or under contract. Both documents define strict rules to avoid any form of corruption or similar. The guidelines on gifts and hospitality "stress that as a general rule, staff member should not accept direct or indirect gifts or hospitality offered by third parties."[470] They are only allowed to do so if gifts are in line with or required by social, courtesy or diplomatic usage, keeping in mind that money is always forbidden.[471] Gifts with an accumulated worth up to €50 will not need a permission, worth up to €150 need a permission by the appointing authority and worth more than €150 will be refused or donated for charity.[472] Hospitality is only accepted during a mission or as an occasional refreshments and snacks.[473] This is similar to the rules for Commissioners in the code of conduct. They are not allowed to accept any gift worth higher

---

[463] See [143], p. 7.
The Staff Regulations and the Conditions of employment define 24 months for that.
[464] See [143], p. 7.
The Staff Regulations and the Conditions of employment define 12 months for that.
[465] See [143], p. 7.
[466] See [143], p. 7.
[467] See [143], p. 8.
[468] See [143], p. 8.
[469] [143], p. 10.
[470] [144], p. 4.
[471] See [144], p. 4f.
[472] See [144], p. 4f.
[473] See [144], p. 7.

than €150 and shall refrain any hospitality except if they are in line with diplomatic and courtesy usage.[474] Gifts worth more than €150 will be donated and registered in a public register of gifts.[475]

In conclusion, Commissioners have to abide a lot of rules and obligations for disclosure. They have to provide information about interests, properties and activities of them and their private surrounding, and should refrain from any kind of gift or courtesy worth more than €150. Besides that they must disclose meetings held by them or their Cabinet with lobbyists and are only allowed to meet registered lobbyists.[476] Moreover, far-reaching disclosures should ensure their legitimacy. Beyond this, public access to documents and further information should make their decisions comprehensible.

#### *3.2.2.3 Public access to documents and information*

With respect to the rights laid down in the treaties and the Charter of Fundamental Rights of the European Union the already mentioned 'Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents' obliges the Commission to make every document, created by itself or received by anyone, publicly available, except a disclosure would undermine the protection of defined issues.[477] For that reason the Commission launched a register of documents where every applicable document is published since 2001. Together with the common online portal EUR-LEX, it provides a mass of information about the institution and European legislation.

Special documents regarding transparency, regulation of lobbyists and good governance related to the Commission, its members and staff as well as information about actual (public) consultations and further issues can also be found via a transparency portal, which was created in 2012. The portal serves as a one-stop shop for open decision-making in the European Commission and should help citizens to participate.

If an information or document is not published or cannot be found, neither in a register nor on the portal or website, anybody may enquire for it. Officials have to answer in the most appropriate manner and as quickly as possible.[478] This fast response to questions of any kind was also observed while writing this thesis. Several enquires, among others about an interview, were answered very quickly and helpfully.

The uncomplicated communication with the Commission as well as the huge amount of published information makes it very accessible and transparent, which is similar to the Parliament that is discussed next.

### 3.2.3 European Parliament

The only directly elected European institution, the European Parliament, became a forerunner in the fields of transparency and regulation of lobbyists about 30 years ago. Beginning with its first simple code of conduct in the 80s (about 10 years before the Commission), it set up lots of rules, obligations and guidelines establishing a transparent, open and democratic institution.

In the previous sections about the general situation in the EU and the Commission several of its actual policies have already been outlined. Together with compulsory rules and regulations

---

[474] See [143], p. 7.
[475] See [143], p. 7.
However, this register is poorly refreshed. In July 2015 the last update was made 4 months ago in March.
[476] See [145], Article 1.
[477] See [127], Article 2.
[478] See [132], p. 5.

tailored for the EP these are largely stated or referred in the comprehensive Rules of Procedure of the European Parliament, which serve as a summary containing important information about the Parliament's actors and the functioning of the institution.[479] It can also be seen as a central document regarding transparency and regulation of lobbying in the Parliament.

In the following subsection, the Rules of Procedure as well as further specific policies relevant in that scope will be discussed in detail. To provide a better overview they are divided into four parts.

#### *3.2.3.1 Obligations and rules for Members of the European Parliament*

Members of the European Parliament must exercise their mandate given by electors of their home countries independently and free from any instructions.[480] They are only allowed to become a member if they do not hold any office incompatible with their duties in the Parliament.[481] During their service they have to comply with a code of conduct, which was substantially revised after the cash-for-amendments scandal happened in 2011, where three MEPs (Romanian MEP Adrian Severin, Austrian MEP Ernst Strasser and Slovenian MEP Zoran Thaler) accepted an offer from fake lobbyists of the Sunday Times to amend EU law for €100,000 a year. The strengthened and more far-reaching codex is in force since 2013 and obliges MEPs to

- act solely in the public interests;
- avoid any situation of corruption or bribery;
- declare their financial interests; and
- immediately take action if they have a conflict of interest, either financial or personal.[482]

---

[479] The current version for the 8th parliamentary term (2014-2019) composes of 231 rules, divided into 14 titles, and 21 annexes. According to Article 232 TFEU the Parliament may adopt or amend it in compliance with the treaties and the legal framework of the EU at any time. See [1], Article 232 TFEU (2012).

[480] See [37], rule 2.

[481] See [37], rule 3.

According to Article 7 of the Direct Elections Act of 1976 following offices are incompatible with the membership in the European Parliament:

- "member of the Government of a Member State;
- member of the Commission of the European Communities;
- Judge, Advocate-General, or Registrar of the Court of Justice of the European Communities or of the Court of First Instance;
- member of the Board of Directors of the European Central Bank;
- member of the Court of Auditors of the European Communities;
- Ombudsman of the European Communities;
- member of the Economic and Social Committee of the European Economic Community and the European Atomic Energy Community;
- member of the Committee of the Regions;
- member of committees and bodies that by virtue of the Treaties establishing the European Economic Community and the European Atomic Energy Community manage funds of the Communities or perform a permanent direct administrative task;
- member of the Board of Directors or of the Management Committee or an official of the European Investment Bank;
- an active official or servant of the institutions of the European Communities or of the specialized bodies attached to them or of the European Central Bank; […]".

Further offices stated in the article are:

- member of a national parliament;
- any further domestic incompatibles defined by the member states.

See [33], Article 7.

[482] See [37], ANNEX I, Articles 1-4.

Moreover, it guides MEPs to follow general democratic principles such as disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament's reputation.[483]

The declaration of financial interests required through the code of conduct must include up-to-date information about occupations, remunerated activities, holdings and memberships within three years before becoming a MEP.[484] As it is not forbidden for MEPs to practice other unpaid or paid activities alongside their office they have to provide annually refreshed information about them as well. Any income received has to be placed in one of four ranges reaching from '€500 to €1,000 a month' up to 'more than €10,000 a month'.[485] Although the EP has a committee to verify these information they are primary controlled by NGOs, which may also confront single members with inappropriate earnings or report them to OLAF.

Like Commissioners, MEPs have to refuse gifts and similar benefits worth over €150, except they are reimbursements of travel, accommodation and subsistence expenses of members, but contrary to members of the Commission, they are allowed to take benefits while performing their duties following an invitation to events organized by third parties.[486] In case of uncertainty about the rules of the codex and their interpretation, an Advisory Committee on the Conduct of Members can provide support and clarification.[487] This Committee also controls and assesses alleged breaches of the Code, which may lead to one or more disciplinary sanctions from a reprimand up to suspension or removal of a MEP's offices.[488] Massive breaches, as in the case of the cash-for-amendments scandal of 2011[489], may even result in legal consequences in the national states.

Through the obligations of disclosure, but also through the other rules stated in the code of conduct, members should become controllable by actors inside and outside the institutional framework of the EU such as the European Ombudsman, OLAF, the European Data Protection Supervisor and especially European citizens, who in the end decide about their re-election.

All in all the obligations should ensure an independent and transparent mandate, without prejudicing or restricting members and their freedom of speech.[490]

#### *2.3.3.2 Obligations and rules for assistants and staff*

Assistants, whether accredited or not, policy advisors and officials on staff in the Secretary-General or somewhere else in the Parliament have to comply with the Staff Regulations and Conditions of employment. To get a better overview of the rules and obligations stated therein, a 'Guide to the Obligations of Officials and Other Servants of the European Parliament' of 2008 summarizes the most important articles relevant for officials and other

---

[483] See [37], ANNEX I, Article 1.
[484] See [37], ANNEX I, Article 4.
[485] See [37], ANNEX I, Article 4.
[486] See [37], ANNEX I, Article 5.
The Implementing Measures for the Code of Conduct from 2013 refine the handling of gifts and other benefits. Consequently only the attendance at events organized by third parties has to be disclosed if they are not related to certain (mainly institutional) actors listed in Article 6 of the code. The single costs of meals, tickets or similar worth less than the threshold of €150 are not under the obligation of disclosure. Only gifts or benefits from third parties that are not listed in Article 6 and with a value higher than €150 have to be registered. See [146].
[487] See [37], ANNEX I, Article 7 §4.
[488] See [37], rule 166; [37], ANNEX I, Articles 7, 8.
[489] As a result of the cash-for-amendments scandal in 2011 the former MEPs Thaler and Strasser were found guilty by a Slovenian and Austrian court and sentenced to 2.5 and 3 years in jail. The third suspect former MEP Severin has been accused in Romania, but until 2015 the judgment is still pending.
[490] See [37], rules 1, 11.

servants working in the Parliament. Furthermore, it refines and adds some obligations. One of these additions defines that they have to answer any written request sent by a citizen or other external person as quickly as possible.[491]

It is needless to say that they must act loyally, independently and in the interest of the Union as defined in the Staff Regulations and Conditions of employment.

#### *3.2.3.3 Transparent consultations and contact to third parties*

Almost all specifications related to transparent consultations and openness vis-à-vis third parties are covered by the joint transparency register of the European Commission and the European Parliament of 2011, or rather of 2014. As mentioned before, the transparency register is based on the former individual registers of the two institutions. On the side of the Parliament the predecessor was established in 1996 and combined a transparency register with a process of accreditation through nominative passes given by so-called Quaestors.[492] This combination of accreditation and registration still exists in the current configuration and serves as one of the main incentives for lobbyists to sign in. Long-term access badges are only given to them if they have a valid record and comply with the appropriated rules and the code of conduct annexed to the inter-institutional agreement.[493] After registration lobbyists can apply for a badge through contacting the Quaestors, who decide about the request and may issue a personalized badge to a person for a maximum period of one year with the possibility of renewal.[494] Quaestors are also responsible for (temporary) withdrawals of badges if a person violates the code of conduct or other relevant rules.[495] In general, a badge permits a person to move free inside the buildings of the EP, which leads to a kind of pseudo-transparency. Without a doubt it is good to have accreditations combined with rules that indicate the incentives of a person, but as a badge is issued for a year and no timestamps or further disclosures about the usage are carried out it leaves room for improvements. Nevertheless, the system ensures openness and accessibility of the Parliament without being negligent. In this context it has to be pointed out that such badges are not valid for buildings of other institutions including the Commission. By contrast, Commissioners, Cabinet Members and Director-Generals of the Commission must disclose meetings with lobbyists and meet only with registered lobbyists. MEPs do not have this obligation so they can meet with everybody they want to, whether a person has a badge and is registered or not. However, more and more members disclose their meetings and do only meet with registered lobbyists on a voluntary basis. Further information and details related to the joint transparency register are outlined in the previous part concerning the Commission's rules and regulations.

#### *3.2.3.4 Public access to documents and transparency of parliamentary sessions*

Equal to the other two institutions involved in the EU's legislative procedures the Parliament has to comply with the 'Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents'. Thus, it has to make its official documents and protocols, also those from single members or parties, publicly available, except for certain types listed in the regulation.[496] In compliance with the act and with Article 15 §3 TFEU, which states that the Parliament and the Council have to publish all relevant documents

---

[491] See [147], p. 14.
[492] See [148], p. 72ff.
Quaestors are responsible for administrative and financial matters directly concerning MEPs. See [37], rule 28.
[493] See [37], rule 11 §5-6.
[494] See [37], rule 11 §5; [37], ANNEX IX, section A.
[495] See [37], rule 11 §8.
[496] See [37], rule 116.

related to legislative procedures,[497] those can be found through the Parliament's legislative observatory (short OEIL) or its Register of Documents. Both are accessible via the website of the EP and contain a mass of documents reaching from debates and activities in plenary, over amendments on proposals to adopted texts.

Generally, the Parliament should act as transparent as possible to ensure democratic values and the rights of citizens. For that reason debates in Parliament, plenary sittings as well as meetings of committees are usually held in public.[498] Public streams and audiovisual records of the Parliament's proceedings allow every citizen to follow parliamentary activities live or on demand. If they want they can also watch locally as a visitor sitting on the public gallery.

After the most important aspects regarding transparency and regulation of lobbyists have been outlined it can be said that the European Parliament is fairly transparent and open - in most cases even more than its national pendants. As a forerunner in these fields it has wide experiences on far-reaching rules and obligations, but still room for improvements. In comparison to the other two main institutions it is quite at the same level with the Commission, which overtook the EP in the last years, and at a higher level than the Council outlined next.

### 3.2.4 Council of the European Union

With its multi-layered structure the Council of the European Union distinguishes itself strongly from the Parliament and the Commission. The multiple layers make it much harder for the institution to regulate lobbyists and to achieve transparency. On the one hand, national governments of the member states and their ministers are subject to their corresponding national laws, hence why they are bound to their national regulations and rules regarding lobbying and transparency. On the other hand, European officials and other staff in the Council and COREPER are acting and bound at a European level. The widespread responsibilities as well as the demand for a confidential atmosphere, which seems to be very necessary for national leaders and ministers, lead to an institution that is rarely open and difficult to track. To get a better understanding of the situation both levels and the institution's settings should be briefly analyzed.

#### *3.2.4.1 National level*

Across the 28 member states of the EU there are no common rules in the fields of transparency and regulation on lobbying. Each country has its individual ones, which vary strongly from each other. As a look on all of the specific implementations would go beyond the scope of this thesis, the focus should lie on some relevant aspects.

In general, all of the member states have rules on good governance and obligations to disclosure towards their citizens and the EU. They use various approaches to establish an open government with transparent procedures. By doing so, each country has at least some kind of access to information law, providing a mostly retrospective overview of decision-making. Furthermore, about half of them have a code of conduct for their public sector and parliamentarians. Because of these aspects, transparency can be referred as a common objective across the member states, sometimes more important and sometimes less.

Contrary to that, regulations on lobbying are not as widespread. They do not exist in each member state, although the awareness has been raised over the last years. According to a study of Transparency International a minority of only 7 out of 19 examined European

---

[497] See [1], Article 15 §3 TFEU (2012).
[498] See [1], Article 15 §2 TFEU (2012); [37], rule 115.
Trilogues are usually not held in public, but they should be announced. See [37], ANNEX XX.

countries have laws or regulations in the context of lobbying.[499] Concluding from this, the majority of member states still do not have any rules, much less laws, to regulate lobbying. Those few having regulations mainly use voluntary or mandatory transparency registers combined with a code of conduct for lobbyists, which is in theory comparable to the approach of the European Commission and the European Parliament. In more detail the implementation of registers and codes varies a lot and ranges from almost useless realizations to approaches that are stricter and better than the European register and its related code of conduct.

The wide range of individual and largely insufficient configurations in the member states, especially in the case of regulating lobbying, reflect one of the main problems of the Council: No one can exactly say who is lobbying it via the member states as most of them do not have any or just bad regulations on that.[500] In some countries this unfavorable situation is even amplified by a minimal degree of transparency.

#### *3.2.4.2 European level*

After governments have formed their opinion via consultations at the national level, the main work of the Council is done at the European level in its preparatory bodies as well as in the meetings of ministers. At this level the Council as a body is subject to the regulations of the European Union.

Consequently, European officials and other staff in the service of the Council are bound to the Staff Regulations and Conditions of employment. Furthermore, the institution must comply with the 'Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission', by which all of its documents, except certain types stated in the regulation, have to be publicly accessible.[501] Just as the Parliament and the Commission, the Council ensures public accessibility with a public register of documents on its website with contents of or references to official documents produced by or submitted to it.[502]

Apart from these general regulations it has almost no additional rules on transparency or on lobbying. The Council does neither take part in the joint transparency register of the Commission and the Parliament, although it has been officially invited to join the register for several times,[503] nor has it a code of conduct for its staff or for lobbyists. Moreover, it has only weak incentives to get more transparent. In line with the principles of transparency the Council's Rules of Procedure only state that certain meetings like final deliberations and votes on legislative acts shall be public, which means that the majority of meetings is not public.[504] The institution only publishes the final outcome of most of its meetings with some more or less general minutes and references in footnotes, but mostly, it is only indicated if certain member states are for or against a modification or need a scrutiny reservation, but not their proposed wording.

As a result of the lack of rules and regulations on both, national and European level, it is anything but surprising that the Council is seen as the least accessible and least transparent institution of the decision-making institutions of the European Union.[505] Even in comparison

---

[499] See [65], p. 8.
These seven member states are Austria, France, Ireland, Lithuania, Poland, Slovenia and the United Kingdom. Austria, for example, adopted a 'Lobbying and Interest representation Transparency Act' (short LobbyG) in 2012, right after the cash-for-amendments scandal, in which the former Austrian MEP Strasser was involved, was unveiled.
[500] See Stein in [52], p.135.
[501] See [149], ANNEX II, Article 1.
[502] See [149], ANNEX II, Article 10.
[503] See [135], point 28.
[504] See [149], Articles 5, 8.
[505] See Lehmann in [68], p. 58; Hayes-Renshaw in [68], p. 73.

with national governments in the member states the institution is at the lower end regarding these fields.[506] Thus, there is a huge amount of criticism pertaining to its settings, causing an onslaught of recommendations.

### 3.2.5 Criticism and recommendations

Although the improvements of the last 15 years established a level of regulation on lobbying and transparency that never existed before, every European institution as well as every government of the member states is still facing harsh criticism in these fields. Nearly all of their approaches have critical issues and several possibilities for further developments. As a result, various detailed recommendations can be found in literature and different studies, primary published from NGOs like The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), Transparency International, Corporate Europe Observatory or LobbyControl, but also from political institutions themselves.

Following them, four main issues have to be fixed along the whole decision-making procedures in the EU to create a satisfactory configuration, namely:

1. increase of overall transparency;
2. involve every stakeholder, especially those from the civil society, equally;
3. strengthen and enlarge the transparency register and its appropriate code of conduct; for lobbyists and also strengthen respectively introduce sanctions for lobbyists;
4. strengthen rules and obligations for decision-makers and their staff.

If measures to combat these issues are implemented, it is largely assumed that democratic values and the legitimacy of political systems will be considerably enhanced, which will subsequently increase the trust of the civil society and establish a functioning and robust democracy.

Due to the fact that the listed points are nothing else than a summary of certain recommendations they should be analyzed in more detail in these subsections to get an insight into the problems of the EU regarding transparency and lobbying. Additionally, the thoughts of the interviewees will be discussed.

#### *3.2.5.1 Transparency in general*

Insufficient transparency is probably the most crucial issue, because, as already mentioned, transparency is a key factor in a democratic system to make processes and actors controllable and to create a system of checks and balances. As the current configurations of both, the European institutions and especially the member states, have considerable limitations in this field, the need for increased transparency is commonly stated.

The missing transparency in the EU is getting obvious when one is taking a look on the study of Transparency International of 2015. It shows that only one country, namely Slovenia, exceeds 50% in the dimension of transparency, closely followed by the European Commission, the European Parliament, Ireland and Lithuania with scores between 45 and 48%.[507] Overall the 19 examined countries plus the three European decision-making institutions reach an unflattering average score of only 26%.[508] These alarming numbers may be a little bit exaggerated as a score of 100% seems to be not expedient as it may be even too transparent for a functioning policy-making, but they underpin the widespread criticism and concerns specified in literature and similar independent studies.

---

[506] See [65], p. 2f.
[507] See [65], p. 2f, 12f.
[508] See [65], p.2ff.

There it is criticized that the EU's decision-making procedures still have several blind spots, where meetings are held behind closed doors, which lead to a missing controllability and traceability.[509] In this context, secret meetings with lobbyists, trilogues, conciliation discussions, and the work of the lower levels of the Council (i.e. preparatory bodies, member states) and the Commission (i.e. expert groups, committees) can be seen problematic. They are not or just barely transparent. Besides that, weak implementations of transparency regulations across the EU member states as well as poor preparation of and late accessibility to relevant information, are a thorn in the side of many.[510]

The combination of these issues makes it impossible for almost anybody, whether is is an official, lobbyist, civilian or any other, to get an overview of the bigger picture. For the majority it seems even impossible to find out how senior officials or decision-makers build up their position. They cannot get a clear picture of those, who have influenced them. In other words a 'lobbying footprint' along the whole decision-making process is missing. Thus, the establishment of such a 'lobbying footprint', which is also known as 'legislative footprint', is one of the most required measures for more transparency. Following various recommendations each European institution should ensure it through proactively publishing any external input from lobbyists, member states or others and any contact between third parties and officials during ongoing legislative processes.[511] Furthermore, blind spots should be eliminated by publishing at least the negotiation outcomes of expert groups, committees, trilogues[512] and the different levels of the institutions involved in the decision-making process without undue delay.[513] It has to be noted that an immediate publication may not be the best solution, as there are usually drafting sessions within a few days, where the points of the negotiations are reflected and brought to paper. After reflection and validation of the outcome, however, the texts should be published. In the sense of legitimacy it is also recommended that decision-makers publish information explaining their position and why they voted like they did.[514]

The published information must be easily accessible for the public and should ideally provide nearly a live overview of the actual statuses and positions. As this step would be probably too challenging right now, an annexed list to legislative reports is largely seen as a good start that should be done as a first step.[515]

With the implementation of the stated measures the European institutions would lift their level of transparency on the highest one, by which legitimacy and controllability at every stage of the decision-making procedures would be ensured. Citizens, watchdogs, independent media or anybody else interested in it would be able to see how positions are formed and could scrutinize misbehavior. Every stakeholder could see what is going on and intervene if something is not in his interest. Consequently, lobbying would probably lose its bad connotation, because it would be clearly evident, which official is meeting whom to form his position and who overtook suggestions or positions of whom.

---

[509] See [150], p. 10; Griesser in [28], p. 64ff.
[510] See [4], p. 10; Rödlach-Rupprechter in [28], p. 156; [65], p.8.
[511] See [4], p. 3, 10; [151], principle 6; [28], p. 251; [150], p. 10; [65], p. 10f, 26.
The European Parliament stated already in one of its resolutions from 2008 that rapporteurs may use a 'legislative footprint' of a parliamentary report on a voluntary basis and proposed the Commission to do it as well. See [152], point 3.
However even this weak implementation of a legislative footprint was never done.
[512] In the case of trilogues the European Ombudsman started already an own-initiative inquiry concerning their transparency in 2015. Currently the three institutions are requested to answer her questions regarding the actual situation. See [153].
[513] See [150], Perera/Hancisse/McMenamin/Patz (2014) p. 11.
[514] See Gretschmann in [52], p. 88; [4], TNS opinion (Jan 2013) p. 3.
[515] See [65], p. 29.

It can also be assumed that increased transparency would lead to a higher professionalism of lobbying without changing the imbalance of lobbyists representing corporate interests versus lobbyists representing public interests.[516]

### *3.2.5.2 Equal participation of stakeholders*

In the actual settings, stakeholders representing private interests of big businesses have an advantage over others, especially over those representing public interests, as they are better involved in every stage of the decision-making process, primarily due to their enhanced resources and specialized knowledge.[517] To get an understanding of the resources private organizations have at their disposal for lobbying activities, an analysis from Consumer Watchdog about lobbying in the USA should provide an overview. They monitored 15 tech and communications companies (e.g. Amazon, Apple, AT&T, Cisco, Comcast, Facebook, Google, IBM, Intel, Microsoft, Oracle, Sprint, Verizon, Yahoo) and found out that each of them spent between $3 and $16.8 million on lobbying the US federal regulators and lawmakers in 2014, which sums up to a total amount of $116.62 million in 2014 and $120.28 million in 2013.[518] It can be assumed that companies spend similar amounts for lobbing in the European Union, but the voluntary transparency register provides neither reliable numbers nor a full list of clients/members of lobbying actors, which is why a comparison of the two systems cannot be made satisfactorily. However, according to an analysis of LobbyFacts, the top 10 companies of the European transparency register spend already an average of €4 million ($4.25 million) only on their in-house lobbyists.[519] Having into account that they use several additional ways to lobby the Commission or the Parliament and these numbers do not include lobbying efforts in the member states, the amount of money known from the US may be already quite similar to that in the EU.

Corporate lobbyists, in particular, dominate in the early formulation and advisory stages in each institution, but are also very powerful in the later stages. Their dominance in the early stages can be verified by having a look at the composition of the Commission's advisory groups, which are an important, if not the most important, contributor to the formulation of proposals that in turn serve as the basis for every directive and regulation of the EU. As it is shown in figure 8, an average of 52% of stakeholders in these groups represents a direct corporate interest from large companies.[520] This means that there are usually more direct representatives of industry than of all others combined. Obviously, there are some DGs with advisory groups having less than 50% of representatives from large companies, but a majority of 17 out of 28 DGs deploy advisory groups with more than 50% of these representatives, reaching up to 100% in DG Home Affairs.[521] This effect is even intensified by the fact that several of the other stakeholders have also a corporate background. Particularly SMEs, trade unions, professional associations, but also hybrids can be largely seen as lobbyists representing the corporate sector.

---

[516] See Stein in [52], p.135.
[517] See Griesser in [28], p. 64.
[518] See [154].
[519] See [155].
[520] See [156], p. 7, 12.
[521] See [156], p. 13.

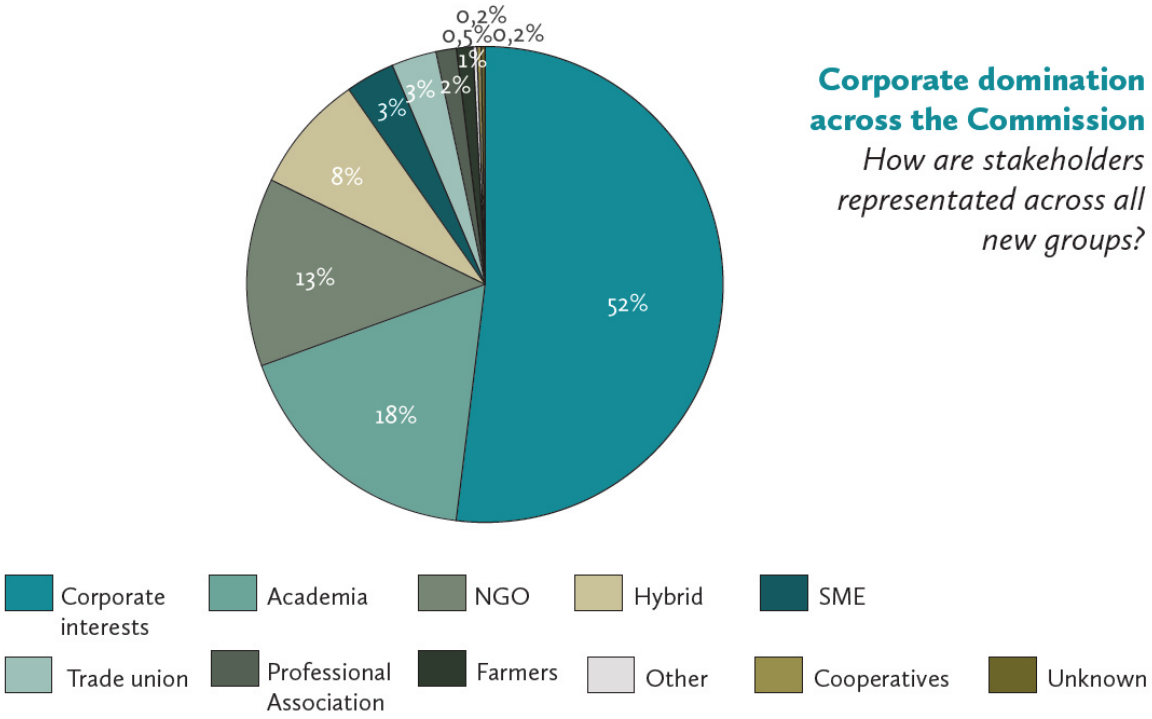



**Figure 8: Average composition of Commission's expert groups of the period 2012-2013**[522]

Because of the imbalance of the Commission's expert groups, the European Ombudsman opened an investigation concerning the composition of them in 2014.[523] Moreover, the European Parliament froze the budget for them in 2011 and partly in 2015.[524] Both require the Commission to

- ban lobbyists sitting in a personal capacity;
- introduce an adequate conflicts of interest policy;
- hold open calls for applications with common and publicly available selection criteria, which is by far not the state of the art;
- guarantee balance across all kinds of stakeholders;
- ensure full public transparency of membership, agendas, minutes and submissions of groups.[525]

In addition to the unbalanced advisory groups the unequal situation of stakeholders is apparent all over the decision-making procedures. This is, of course, mostly in the nature of things as certain stakeholders have more financial and human resources as well as more specialist and technical knowledge than others. In this sense Schulz argues that although every lobbyist should be seen as an equitable representative of special interests, important for him, one has to be aware of different resources and capabilities of lobbyists.[526] If all stakeholders are equally involved and the final decision is in the sense of the public majority, democratic participation is ensured. However, the equal involvement is not always the case in the EU and rarely in the member states, where a few big players from the business side enjoy privileged access.[527] According to the EU Integrity Watch the high officials of the European Commission, who should publish their meetings since December 2014, meet for

[522] Taken out from [156], p. 12.
[523] See [157].
[524] See [158], point 68.
[525] List based on [159]; [65], p. 11, 58, 61.
[526] See Schulz in [52], p. 23.
[527] See [65], p. 9.

approximately 71% with corporate lobbyists and only for about 29% with others, including consultants, which may also be largely acting on the behalf of the corporate sector, until July 2015.[528] The disclosures also show that lobbyists with higher expenditures on lobbying have more meetings than lobbyists with lower expenditures.[529] This means that the available resources are a key factor for meeting officials and decision-makers, which is not democratic at all. It can be expected the situation is similar or worse in the lower levels of the Commission and in all levels of the other institutions, which do not have to publish their meetings. In fact, it is not even sure if the disclosures of the Commissioners, cabinet members and directors of the DGs are completely correct, as there are no formal sanctions for them if they do not disclose everything in the right way. Nevertheless, they serve as a first overview regarding that issue. Because of the unequal participation it is recommended that the EU institutions and the governments in the member states should create a transparent framework, where

- every lobbyist is clearly labeled, including his clients and his represented interest;
- information about consultations, their results and the views of their participants are proactively published on a common platform;
- companies act in coherence with their corporate social responsibility; and
- all stakeholders, especially the underrepresented citizens and representatives of the public, have a legal right to bring in their positions at every stage and are consulted equally.[530]

Alternatively to these the European institutions may increase their internal research capabilities, which would decrease the dependence on external information from lobbyists in general.[531] As this seems not to be intended it can be concluded that in the end an equal participation of every stakeholder is closely connected to increased transparency combined with balanced consultations and robust ethical rules (i.e. a code of conduct), by which decision-makers as well as lobbyists have to justify their decisions and activities. An essential part of this could be handled with a functioning transparency register plus far-reaching disclosures, a strict code of conduct and meaningful sanctions imposed by an independent authority discussed next.

#### *3.2.5.3 The joint transparency register*

The joint transparency register of the European Commission and the European Parliament serves as the main source of information about lobbyists, their incentives and actions. Together with its code of conduct it also serves as the main regulatory instrument with regard to these. Through its continuous strengthening and enhancing in the last years it has developed into an important tool for every actor, whether it is directly participating or only interested in European decision-making. The Commission even argues that the current TR is in line with the 'Recommendations of the OECD Council on Principles for Transparency and Integrity in Lobbying',[532] but it is not comprehensible how this is possible, as much of the recommendations of the OECD are not or only inadequately dealt with. This inadequate

---

[528] See [160] as of July.
[529] See [161].
[530] List based on [4], p. 4; [156], p. 30; [151], principles 1, 3; [65], TI (2015), p. 11, 58.
In the sense of democracy the effectiveness of the European citizens' initiative (ECI) should also be increased, as it is required by the European Ombudsman, who suggests 11 guidelines to strengthen ECIs following her investigation. See [162].
[531] See Glatz in [28], p. 293.
[532] See [141], p. 9f.
The complete recommendations of the OECD Council on Principles for Transparency and Integrity in Lobbying are listed in Appendix G.

situation is confirmed by various organizations and political scientists, who attest serious shortcomings to the transparency register.

The major source of criticism is its voluntary implementation. Almost everyone in literature as well as the European Parliament, the European Ombudsman and even lots of lobbyists require a legally binding mandatory register with clear, robust and far-reaching definitions of both, 'lobbying' and 'lobbyists'.[533] In best practice, these definitions should be complemented by explicit specifications of actors (e.g. citizens) and activities (e.g. attendance at public hearings) that are not affected.[534] It must be clear for every actor if he has to register or not. Every external actor, acting on its own behalf should register if he wants to influence decision-makers or other officials with his action. Hence, far-reaching definitions are essential to reach unwilling actors.

Particularly law firms and lawyers have to be reached as they are currently largely refusing to register, because the obligations of disclosure required through the registration are against their confidentiality agreements and their attorney-client privilege stated in national laws.[535] Due to the fact that more and more law firms are acting as lobbyists this has to be corrected.[536] They have to be obliged to register, because otherwise even a mandatory register provides a large loophole.

By getting everybody registered in a common database a first step would have been done. In this course it is recommended that every European decision-making institution participates in this common register, which means that the Council has to join as well.[537] The actual absence of the Council reflects a big weakness regarding transparency and regulation on lobbying in the European decision-making process. Until now the institution rejected every approach from the Commission or the Parliament to get involved. One of the reasons why it is still denying any participation may be the fact that for an effective realization every member state, which largely have significant shortcomings in this issue as mentioned before, should also implement a suitable solution. Because of this, an implementation covering only the Council's preparatory bodies could be seen as a first step forward. The Commission proposed already a plan for a new inter-institutional agreement on a mandatory transparency register for all decision-making institutions,[538] but as its plan is based on an inter-institutional agreement and not on a legally binding act it is not seen as the best solution. To establish an effective monitoring and sanctioning process, which is essential for the functioning of the register, a legally binding approach would be needed. Of course an inter-institutional agreement is easier to implement than a legislative act, which is probably the main reason why the Commission prefers that way, but it establishes a register that may be called mandatory while being voluntary in reality due to missing incentives. In this context it should be noted that the actual legal basis for a mandatory transparency register is uncertain. The European Union is only allowed to get active on its own if it has a legal basis related to the European treaties. In case of a transparency register this basis is largely seen in Article 352 TFEU, but for passing an act using this article unanimity in the national states is needed.[539] Since the Council does not even want the current TR it is hardly imaginable that its members will support a mandatory one unanimously. Thus, it needs either amendments in the treaties or another option via the current treaties as it is explained by Krajewski. He is convinced that the usage of Article 352

---

[533] See [163], p. 97f; [76], p. 23; [151], OECD (2013) principle 4; [164], points 1-4; [165]; [166].
[534] See [151], principle 4.
[535] See [28], p. 250.
All in all it is estimated that about one third of lobbyists is not registered. See [167], p. 6.
[536] See [168], p. 119; [169].
[537] See [28], Dialer/Richter (2014), p. 252; [65], p. 61.
[538] See [139], p. 13.
[539] See [164], point 3; Linder in [28], p. 56.

TFEU is not needed. Instead Article 298 §2 TFEU combined with the doctrine of implied powers can be used to establish a mandatory transparency register via a regulation.[540] According to him, the Commission only has to start an ordinary legislative procedure to make the TR compulsory.

But even by doing so, the simple change to a legally binding mandatory implementation would not be sufficient to ensure an efficient, useful and far-reaching register. There are some more things to consider.

First of all, the required disclosures have to be refined and prepared in a better way. More detailed information about lobbyists, their activities on each law or policy, their memberships, their clients, their financial figures and funding should be available for everybody.[541] This would contribute to the legislative footprint mentioned before and would open the door for 'watchdogs' or other interested parties. For that, all information has to be easily searchable and traceable, which requires regular updates. It is recommended that registrants should update their entries at least once every three months and not only once a year.[542]

Furthermore, the code of conduct must be strengthened. A robust framework of strict rules on ethical principles has to be established to ensure that lobbyists are accurate, honest and open through putting their cards on the table and acting in a way that meets with their corporate responsibility.[543] Therewith inappropriate scaremonger as well as other questionable methods should be doomed. Robust ethical rules would in the end help to regulate lobbying without restricting it. Probably they would make it also more professional and honest.

Anyway, all of the stated improvements would be inoperable without a functioning and effective monitoring and sanctioning process. Particularly the usage of fake data in the TR, no matter if they are not disclosed or just under-reported, must be heavily sanctioned to guarantee correct information. Without enforcement mechanisms, sanctions and penalties on wrong records, the transparency register will not be useful as everyone could enter anything. To find wrong information permanent checks and an easy possibility for complaints are essential.

Currently there are lots of fake data in the register, but no satisfying checks by an independent authority are performed.[544] Obviously, there is the sparsely staffed joint transparency register secretariat, which is running the register, searching for improvements and monitoring it at the same time, but it has too limited resources and also not enough powers to sanction misbehavior. The needed independent authority, no matter if it is a revised and repositioned JTRS or any other independent one, must have the possibility to execute regular checks, fully investigate complaints in a short period and to impose effective fines or meaningful sanctions if lobbyists are acting wrong.[545] As every kind of misbehavior should be sanctioned, no matter if lobbyists are disclosing fake information, violating against the code of conduct, lobbying without registration or acting unscrupulously, an independent authority needs legal power, wherefore it needs a register established on a legal basis.

All in all, a legally binding transparency register combined with far-reaching obligations for disclosure, a strict code of conduct, meaningful sanctions and rules for officials and decision-

---

[540] See Krajewski in [28], p. 271ff.
[541] See [4], p. 6.
[542] See [170].
[543] See Glatz in [28], p. 292; [65], p. 11.
In this context the 'Iron law of Responsibility' from Davis and Blomstrom 1975 should be referred to. It defines that "[i]n the long run, those who do not use power in a manner which society considers responsible will tend to lose it". See [171], p.50.
[544] See [172]; [173].
[545] See [65], p. 11, 33, 61.

makers, which oblige them to only meet with registered lobbyists and to disclose those meetings, would usher in a new era of democracy and transparency without regulating lobbying in general. The specified implementations would primarily focus on increased transparency instead of regulating lobbying.

#### *3.2.5.4 Rules and obligations for decision-makers and their staff*

The last major issue relates to regulation of officials and decision-makers. At the moment they have to comply with lots of individual obligations and different codes of conduct, which were mainly established and strengthened in the last few years after various scandals were unveiled. As most of the codes have room for improvements the next scandal may be just a matter of time. The actual configuration is just not far-reaching enough and by far not in line with international standards like the OECD guidelines.[546] To prevent a new scandal, which might reduce the trust in the European Union once again, several modifications must be implemented as fast as possible.

Generally, it must be clear for every official or decision-maker what is legitimate and what is illegitimate, as it is the case for lobbyists.[547] Furthermore, they have to act in a completely transparent way and in the interest of the majority, hence why they need clear ethical principles, rules, code of conducts and standards that provide definitions of and guidance on dos and don'ts as well as detailed obligations for disclosures and strict sanctions in case of misuse. By doing so, it is important that the vast majority of these apply to all kinds of officials, whether they are at the lower level or at higher hierarchy levels such as Commissioners, MEPs and ministers in the Council. Evidently, politicians at higher hierarchy level need even stricter settings, as they are more powerful and probably more in contact with third parties, but the lower levels should not be forgotten as they have a high influence on the initial formulation. Paradoxically, several of the current rules and obligations for politicians at a higher level are currently less rigorous than those for officials at a lower level. Hence, they should be adjusted to each other, without weakening them. In this process critical issues mentioned in the following should be fixed.

The main point of criticism about specifications for officials and decision-makers is that they are too weak regarding conflicts of interest. While officials and Commissioners are not allowed to work in other jobs along their service, the majority of MEPs engage in paid external activities according to their financial disclosures.[548] As every additional (paid) activity implies at least a small conflict of interest, especially if MEPs are on the industry payroll or acting as lawyers, which weakens the trust in the Parliament, it is largely recommended that they should be forbidden to the greatest possible extent similar to the settings of Commissioners and other officials on staff.[549] Although some activities may be compatible with the duties of a MEP they are questionable, because, as it is argued by the German MEP De Masi, an office as a member of the European Parliament is no half-time job, it needs full commitment.[550] If the Parliament remains unwilling to forbid secondary jobs it should at least introduce further measures to prevent conflicts of interests. More detailed financial disclosures with precise listings of external activities and earnings, a clearer and more robust definition of conflict of interest and ethical principles in the code of conduct

---

[546] See [150], p. 12.
[547] See [151], principle 7.
[548] Following the disclosures from March 2015 about 52% engage in 1 up to 45 paid external activities. By doing so, they earn between €0-499 up to over €15,000 a month. Collectively they earn between 5 and 18 million Euros extra per year. See [174].
[549] See [4], p. 15; [28], p.244.
[550] See [175].

combined with quarterly updates and checks of disclosures are recommended.[551] These should make Members of the European Parliament more transparent and should increase their awareness of possible conflict of interests.

Regardless of that it needs an independent authority, either in every institution or one for all, instead of the current committees, which are only composed of internal members. It has to verify if disclosures are complete and valid, external activities induce a conflict of interests and every public official is complying with his appropriate code of conduct.[552] Furthermore, it needs the power to investigate possible breaches and to recommend sanctions or fines imposed to misbehaving members.[553] The actual authorities of the institutions are not or only rarely sanctioning misbehavior. Such an independent authority should also take care about conflicts of interests through the revolving door, which are contrary to secondary jobs omnipresent in both, the European and national institutions. The authority must guarantee that every kind of official going through the revolving door is not acting in a branch that is similar to his former duties and is not lobbying at all within a specified period. If there is any suspicion that a new occupation within the notification period may overlap with the former duties it must be rejected. Equally lobbying within the specified cooling-off period must lead to meaningful sanctions. On condition that both, the notification and the cooling-off period, are extended and applicable to all hierarchy levels in every institution, a rigorous practice of an independent supervisor may reduce the excessive use of the revolving door dramatically.

When taking a closer look on the current situation one will see that closing the revolving door must be done in every institution. Through the rarely existing post-employment obligations (see figure 9) and weak authorities it is not uncommon to read about officials, Commissioners, MEPs, national ministers or officials, who changed directly into industry. The former Commissioners Karel De Gucht and Viviane Reding or the former MEPs Olle Schmidt and George Lyon are just a few of the recent past.[554] They all went into industry or started as political consultants within one year after leaving their office.

[551] See [175]; [176], p. 24.
[552] See [150], p. 12; Tansey in [28], p. 267.
[553] See [150], p. 12; [176], p. 24.
[554] A more detailed list is provided by the Corporate Europe Observatory. See [177].

## POST-EMPLOYMENT OBLIGATIONS BY INSTITUTION

| INSTITUTION | WHO | COOLING OFF PERIOD[1] | DURATION (MONTHS) | MUST INFORM INSTITUTION OF PROPOSED NEW WORK | FOR HOW LONG AFTER LEAVING INSTITUTION (MONTHS) | CAN INST'N PROHIBIT NEW WORK? |
|---|---|---|---|---|---|---|
| **EP** | MEPs | ✗ | N/A | ✗ | N/A | ✗ |
| | Assistants[2] | ✗ | N/A | ✓ | 24 | ✓ |
| | Local assistants (employed in MEP's home country) | ✗ | N/A | ✗ | N/A | ✗ |
| **European Council** | President | ✗ | N/A | ✗ | N/A | ✗ |
| | Members | ✗ | N/A | ✗ | N/A | ✗ |
| **Council** | Ministers | ✗ | N/A | ✗ | N/A | ✗ |
| | National official | ✗ | N/A | ✗ | N/A | ✗ |
| **European Commision** | Commissioner | ✓ | 18 | ✓ | 18 | ✗ |
| (Applies to all institutions) | Special Advisors | ✗ | N/A | ✗ | N/A | ✗ |
| (Applies to all institutions) | Permanent staff member (Official) | ✗ | N/A | ✓ | 24 | ✓ |
| (Applies to all institutions) | Senior officials | ✓ | 12 | ✓ | 24 | ✓ |
| (Applies to all institutions) | Fixed-term staff (Temporary agents) | ✗ | N/A | ✓ | 24 | ✓ |
| (Applies to all institutions) | Fixed-term staff (Contract agents)[3] | ✗ | N/A | ✗ | N/A | ✗ |
| (Applies to all institutions) | Seconded National Experts (SNEs)[4] | ✗ | N/A | ✗ | N/A | ✗ |
| **CJEU** | Members[5] | ✓[6] | 36 | ✗ | N/A | ✗ |
| | Referendaires[7] (staff in the private offices of Court members) | ✗ | N/A | ✗ | N/A | ✗ |
| **ECA** | Member[8] | ✗ | N/A | ✓ | 36 | ✓ |
| **OLAF** | Director General | ✓ | 12 | ✓ | 24 | ✓ |
| **Europol** | Management Board Members | ✗ | N/A | ✗ | N/A | ✗ |
| | National Liaison Officers | ✗ | N/A | ✗ | N/A | ✗ |

1 Period during which an individual is prohibited from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during their time at the institution.
2 Rules only apply if they serve for 5 years.
3 At the Commission, obligations applying to officials also apply to contract agents if they had access to 'sensitive information'
4 At the Council, former SNEs must inform the Council General Secretariat for 3 years after secondment, of any duties or tasks which could raise a conflict of interest in relation to the tasks carried out during secondment.
5 After office, they cannot be in any way involved in pending or concluded cases which they handled while at the CJEU.
6 After office, they cannot represent parties, in either written or oral pleadings, in cases before the EU judiciary.
7 After office, they cannot be in any way involved in pending or concluded cases which they or their Member handled while at the CJEU.
8 ECA members are alone in the EUIS in having an obligation to complete a declaration of interest when *leaving* office.

**Figure 9: Post-employment obligations in the EU[555]**

Consequently, it is important to establish an independent authority, strengthen ethical principles and extend the notification period as well as the cooling-off period to 2, 3 or even 5

[555] Taken from [150], p.242.

years in every institution.[556] Depending on the period officials should not be allowed to start occupations in similar branches or to lobby their former institution. This does not mean that they are forbidden to get a new job after leaving their office, which is the main argument of opponents of these periods, but instead they should search a job where their insider knowledge is not used for personal gain and does not help a single actor to get priority access.[557] A general prohibition would be counterproductive as competent people might refrain from taking a public office.

By talking about obligations for post-employment, conditions of pre-employment should also be considered. A temporary cooling-off period for lobbyists, who plan to become an official, and full transparency about the latest activities, offices and posts are key.[558]

Apart from the problems regarding post-, pre-employment and other forms of conflicts of interests regarding officials there are two more aspects that are seen critical and need improvements.

First, the current specifications on gifts and hospitality should be expanded as the dividing line from gifts or inventions to corruption is very narrow in certain cases, especially when there are exclusive or even immoral offers and invitations. For that reason the threshold for them should be reduced to €50 or they should be generally forbidden. At a European level this would mainly concern MEPs who have softer rules in that field.

Second, the applied code of conducts and obligations of disclosure should be enhanced to create the basis for a legislative footprint. As already mentioned every official should disclose meetings with lobbyists and materials handed in from external actors. Moreover, they should only meet with lobbyists registered in the joint transparency register. Together with clear behavioral standards that specify how to interact with lobbyists, ethical awareness must be ensured and sanctioned in case of violation.[559] These measures would increase the legitimacy of officials and decision-makers and would increase trust into the EU.

#### *3.2.5.6 Findings of interviews and conclusion*

In the interviews conducted for that thesis one of the questions was pointing to possible improvements of the existing regulation on lobbying and transparency in the EU. The answers given by the interviewees revealed that the current situation is seen quite critical. In particular interviewee A mentioned several critical issues and possible improvements, while all others focused on only one or two major issues important for them that have to be changed (see table 5).

---

[556] See Lösche in [58], p. 66; Tansey in [28], p. 267; [175].
The missing measures against the revolving door and the fact that cases are decided by an authority that is not independent lead to an investigation of the European Ombudsman, who proposed several guidelines for the Commission to get rid of that problem in 2014. See [178].
[557] See Tansey in [28], p. 267.
[558] See [151], principle 7.
[559] See [65], p. 11.

| Inter-viewee | critical points | recommendations |
|---|---|---|
| **A** | The missing transparency and controllability of the Council and the member states, bad preparation of amendments in the European Parliament, voluntary implementation of the transparency register, use of proposed amendments from lobbyists one-to-one and MEPs spending their money and time on other things than on gathering specific information on on-going acts are problematic, and lead to serious concerns regarding democratic principles and the legitimacy of the EU.[560] | Amendments and their source as well as further information about who is lobbying whom and when should be published and provided in a machine-readable form to make them evaluable like it is done by LobbyPlag or ParlTrack.[561] |
| **B** | Hidden lobbying of particularly law firms, which do not disclose their clients.[562] | The highest possible transparency as well as obligations of disclosures combined with an effective monitoring and enforcement mechanism (e.g. removal of access-badges) should be established at the national and the European level.[563] |
| **C** | Style and methods of lobbying have to change because scaremonger, fake information and other unethical approaches are not okay.[564] | The interviewee did not explicitly mention any recommendations, but said that contrary to counteractions regulations are always welcome. In general the Commission needs as much external information as possible.[565] |
| **D** | The interviewee did not explicitly mention any critical points. | It needs enhanced transparency as well as control mechanisms and limits, but no counteractions and no immediate disclosure of every meeting.[566] |
| **E** | The voluntary implementation of the transparency register, missing disclosures, and unequal powers and participation of stakeholders are problematic.[567] | The transparency register has to be mandatory and meetings should only be held with registered lobbyists. Disclosures of amendments and its sources in a unique format would be nice, but may lead to an increase of secret meetings and hidden handovers. [568] |
| **F** | There is not enough transparency.[569] | A lot more transparency and checks are needed.[570] |

**Table 5: Overview of critical points and recommendations of interviewees**

Concluding from the recommendations of the interview partners, primarily more transparency and enhanced disclosure from both, lobbyists and officials, are needed, but in no way

[560] See Interview A, lines 35-46, 345-375, 433-439, 445-449.
[561] See Interview A, lines 345-363, 369-393.
[562] See Interview B, lines 297-303.
[563] See Interview B, lines 303-313.
[564] See Interview C, lines 230-235.
[565] See Interview C, lines 225-229.
[566] See Interview D, lines 242-243, 249-252.
[567] See Interview E, lines 254-257, 263, 331-341.
[568] See Interview E, lines 254-257, 263, 307-311, 319-331.
[569] See Interview F, lines 147-148.
[570] See Interview F, lines 147-158.

counteractions on lobbying, as every institution depends on external information.[571] Furthermore, their answers lead to the conclusion that a lobbying footprint, ethical principles for lobbyists and officials as well as effective monitoring and sanctioning processes would contribute to fix most of the current problems. In this context the interview partner of the European Parliament mentioned that it is interesting how quickly lobbyists register if one is only meeting with registered people.[572]

As one can see the criticism and recommendations of the interview partners are to a large extent in line with those outlined in the previous parts based on literature. This confirms that the stated measures should be implemented to fix the critical issues as soon as possible, but, it can be assumed that it will not be easy to implement them. Lobbyists and especially politicians will probably try to prevent or weaken them.[573]

## 3.3 Situation in the USA and the difference to the EU

The United States of America have a long history in regulating lobbying and ensuring transparency. Their first general legal act at the federal level regarding these issues was passed in a time Europe struggled with the aftermath of World War II and the establishment of a European Community, much less Union, was not planned at all. In 1946 the Federal Regulation of Lobbying Act was adopted to oblige lobbyists to register and disclose certain interests and financial figures. Even though the act was quite inefficient and provided several loopholes it was a first approach that existed almost for 50 years. After the power of lobbyists was becoming too high, the totally revised Lobbying Disclosure Act (LDA) was passed in 1995 and strengthened again by the Honest Leadership and Open Government Act (HLOGA) in 2007. While the LDA aims at far-reaching transparency and disclosures of lobbyists, the HLOGA primary deals with conflicts of interests of officials and principles of ethics. In more detail they specify the following rules and obligations for lobbyists and officials shown in table 6.

| | |
|---|---|
| **rules and obligations for lobbyists** | • the need of a mandatory registration within 45-days of first contact for every person who is paid or retained to make lobbying contacts or spends more than 20% of his time on lobbying activities within 3 months and has a quarterly income of more than $3,000 for lobbying on behalf of one client or quarterly expenditures for lobbying of at least $12,500.[574]<br>• the registration and all other restrictions on lobbying apply also on every person of a firm partnership, or other business organization if any person who is employed or a member of those serve as a House committee consultant<br>• obligation of quarterly online disclosure in reports containing<br>◦ general information<br>◦ general client information (they need to make one full disclosure per client)<br>◦ estimated incomes from and expenditures on lobbying |

[571] Interviewee A even spoke of a "transparency drama" in the EU, which has to be resolved. See Interview A, lines 363-365.
[572] See Interview E, lines 257-263.
[573] In this course Holman and Luneburg argue that mainly governments and officials are fighting against stronger regulation and not lobbyists themselves, which is the greatest presumed obstacle and nothing else than a largely myth. See [163], p. 97.
[574] The money thresholds are adjusted every few years.

| | |
|---|---|
| | ◦ lobbied policies<br>◦ lobbied houses and agencies<br>◦ involved persons (including their former public offices in the last 20 years)<br>◦ interests of foreign entities<br>• obligation of semiannual online disclosure in reports containing<br>◦ contributions to candidates and political committees<br>◦ contributions and disbursements to entities controlled by executive or legislative branch officials<br>◦ contributions and disbursements for events held in the name of executive or legislative branch officials<br>◦ contributions and disbursements to honor executive or legislative branch officials<br>◦ certification confirming that every registrant has read the rules of the Senate and the House of Representatives relating to the provision of gifts and travel and is familiar with them<br>◦ certification that contributions and disbursements do not violate the gift and travel rules of the Congress<br>• obligation to respect thresholds for direct funding during elections<br>• the compliance with all rules and obligations; otherwise a sanctioning process will be introduced by the responsible authorities or committees (Clerk of the House and the Secretary of the Senate, United States Attorney for the District of Columbia) and may impose a meaningful sanction (civil fines up to $200,000, imprisonment up to 5 years) in case of violation |
| **rules and obligations for officials** | • obligation of an annual online disclosure of several detailed financial figures including incomes and properties of an official and his spouse<br>• prohibition of lobbying contacts to one's spouse<br>• prohibition of taking gifts or travel offers<br>• acting in line with appropriate principles of ethics<br>• prohibition of contract negotiations on future occupations while holding an office<br>• prohibition of conflict of interests, especially through secondary jobs, combined with detailed information when to consult ethic commission<br>• prohibition of influencing employment decisions of private organizations because of political affiliation<br>• limitation of political appointee's outside earned income to a maximum of 15% of their current salary for their public office[575]<br>• obligation to respect thresholds for receipt of direct funding during elections<br>• general prohibition of paid external activities in certain positions<br>• cooling-off period depending on the position<br>◦ members and officers of the House of representatives: 1 year<br>◦ senators: 2 years<br>◦ officers and staff of Senate: 1 year<br>◦ cabinet secretaries and other very senior executive personal: 2 years<br>• sanctions in case of<br>◦ violation: disciplinary sanctions like reprimands, disapprovals, |

[575] See [179].

| | |
|---|---|
| | temporary suspension, loss of financial accountabilities<br>◦ fraud, corruption and similar heavy violations: meaningful civil fines up to $50,000 and imprisonment for up to 15 years<br>imposed by the appropriate responsible authorities which are as follow:<br>◦ House of Representatives: :'Committee on Ethics' and 'Office of Congressional Ethics'<br>◦ Senate; 'Select Committee on Ethics' and 'Department of Justice'<br>◦ Executive: 'US Office of Government Ethics' and 'Department of Justice' |

**Table 6: rules and obligations for lobbyists and officials in the USA stated in LDA (1995) and HLOGA (2007)[576]**

In addition to the stated points the Lobbying Disclosure Act provides clear and profound definitions of 'lobbyist', 'lobbying firm, 'lobbying activity', 'lobbying contact', 'client' and more, which is an important precondition for a functioning and efficient register.[577]

All in all the configurations of the USA are stronger and more detailed than those of the EU, although they also have several points of criticism, as well as room for improvement. Particularly, the absence of an independent authority monitoring and punishing violations, too little disclosures regarding lobbying actions and contacts to specific lawmakers or agencies, too little transparency on grassroots-lobbying or astroturfing and too weak regulation on funding during elections are seen critical.[578] Nonetheless, the US-configuration deals with a lot of issues currently demanded in the EU, but still missing.

The deviation of the two systems is probably reducible to the different understandings of regulating lobbying. In the USA, the fundamental freedom of speech, freedom of assembly and right to petition the government as protected by the First Amendment to the United States Constitution lead to a strong pluralistic understanding that exists for more than 200 years. Because of this, they do not restrict lobbying in general, but instead try to make it transparent via mandatory registers and far-reaching obligations for disclosure combined with severe sanctions in case of violation. With the prohibition of any form of gifts, travel or other preferential treatment to officials and their obligations on transparency, every interested actor could have an equal possibility to lobby decision-making processes. As argued by Holman and Luneburg "[l]obbying regulation from the North American perspective is designed largely to enhance transparency, reduce corruption in the policymaking process and promote public accountability of decision makers."[579] Moreover and contrary to the EU, lobbyists may primarily focus on a single institution, which is in particular the Congress or an executive branch agency that are able to pass a policy on their own.[580]

The European Union on the other side prefers a "free flow of specialized information, so long as it does not harm the integrity of the institution."[581] With its widespread legislation procedure, where three institutions and 28 member states have to work together to pass an act, lobbying shall be self-regulated to a large extent.[582] For a long period this approach to control lobbyists just for the minimum and to let them regulate on their own authority was more or

[576] See [180], [181].
[577] See [180], Section 3.
[578] See [163], p. 81, 101; Krick (2014) in [182], p. 240.
[579] [163], p. 77.
They talk about Northern America, because Canada has similar configurations and approaches than the USA.
[580] Ziegler states that the rule-making of agencies according to the Administrative Procedure Act of 1946 is also known as administrative rulemaking. See [104], p. 79.
[581] [183], p.75f.
[582] See Krick in [182], p. 258.

less successful, but after several scandals, enhanced powers and an increased public awareness the EU had to get active and to start regulating lobbying as well as to introduce obligations for officials. Unlike to the USA, the Union tries to regulate lobbying on a voluntary basis and with rules on ethical principles and weak sanctioning possibilities. According to Flannery "[i]t is plausible that the EU's current efforts to regulate lobbying are comparatively weak, but are consistent with the EU's objectives and goals."[583] The rules and obligations for officials and decision-makers have been made much stronger, but still are considerably weaker than in the USA. Generally speaking, the by large weak implementations in comparison to the States can be traced back to the fact that the Union is quite new in regulating lobbyists and officials. Hence, it should take a look on the other side of the Atlantic Ocean, as it would also benefit from stronger rules and regulations, especially in times where the differences of lobbying in the US and lobbying in the EU are diminishing.

In a brief conclusion the EU should adopt the mandatory registration with far-reaching obligations of disclosure and the strict rules for officials from the USA having into mind that those weaknesses have to be fixed. In case of concerns on the side of the EU regarding stricter and mandatory regulation Holman explains that after a decade of LDA everyone in the USA has got used to the rules and disclosures regarding lobbying, which is why they are not seen as much of a burden anymore.[584] Consequently, it can be assumed that an increased burden for all actors should not be seen as a reason for the European Union not to take action.

[583] [183], p. 76.
[584] See Holman in [184], p. 293f.

## 3.4 Executive Summary

After discussing the terms transparency and democracy the actual configuration of the European Union and its decision-making institutions regarding these issues have been outlined in the previous chapter. Thereupon, criticisms and recommendations on the current settings as well as the differences to the US-system have been analyzed.

In summary, it can be said that lobbying is an important, legitimate and often-used function in politics. It is legitimate as long as it is done transparently and the interests of the majority are involved. As such a democratic participation in the sense of pluralism is hardly existing far-reaching rules and regulations are needed to ensure an equal and transparent treatment.

The European Union and its institutions have adopted several regulations on transparency and lobbying. Most of them are tailored for each individual institution, but some are also common across the whole EU or at least across the decision-making institutions. They regulate the public access to information, transparency of processes and obligations for lobbyists and officials. By doing so, the most important instrument can be seen in the joint transparency register of the European Commission and the European Parliament and its appropriate code of conduct for lobbyists. Even though it is voluntary it is frequently used and provides an overview of lobbyists that are lobbying the institutions.

As the settings of the EU are comparatively young they have several rooms for improvements. Particularly, too little overall transparency, unequal treatment of stakeholders, unsatisfactory regulation of conflicts of interests from politicians at all levels and missing enforcement mechanisms by an independent authority are seen as main problems. These affect all of the decision-making institutions and the governments of the member states acting through the Council, hence why several recommendations to improve the state-of-the-art can be found. In most of them it is recommended that

- a lobbying footprint should be established through proactively publishing
    - any external input from lobbyists, member states or others
    - any contact between third parties and officials
    - far-reaching information of lobbyists, their activities, clients, sponsors and more
    - the source of an amendment;
- every stage, meeting and discussion within the decision-making process should be as transparent as possible;
- all stakeholders should have a legal right to participate equally, especially in advisory groups or other forms of consulting meetings;
- the transparency register has to be mandatory on a legal basis and should also involve the Council, which is currently not part of it;
- lobbyists have to comply with a strict code of conduct containing ethical principles;
- every hierarchy level of officials is obliged to a strict code of conduct with ethical principles that specifies among others any possible conflict of interests in detail and cooling-off periods;
- an independent authority is established to monitor if lobbyists and officials are behaving in line with their applied code of conducts and ethical principles;
- meaningful sanctions or fines are imposed on both, lobbyists and officials, in case of violations.

Implementations of several of these recommendations can already be found in the United States of America, which have a long history in regulating transparency, lobbying and conflict of interests. On the basis of their fundamental rights stated in the First Amendment to their

constitution they have mainly two federal acts, namely the Lobbying Disclosure Act of 1995 and the Honest Leadership and Open Government Act of 2007, strictly regulating these issues. Although their configuration has also several weak points it may serve as a basis for the EU to adapt effective, stricter and more far-reaching regulations than it has today.

# CHAPTER 4

# The General Data Protection Regulation

On 25 January 2012 the European Commission unveiled a proposal for a General Data Protection Regulation that should establish common and strict online privacy rights across the whole European Union and start a new age in Europe's digital economy.[585] Since that time the package is under discussion within the three decision-making institutions. This means that the decision-making process is ongoing since almost 4 years.

Although such long policy-making periods are not unusual in the EU - they can be found again and again in its history - this special act has reached new levels, especially in connection with lobbying. All over Europe officials and lots of other actors from various sectors said that they have not seen something like that before. The mass of external players, their used actors and methods was astonishing and not comparable to other legislative acts before.[586]

In this final chapter it will be analyzed why it was like that and how the massive lobbying approaches influenced the decision-making process over the years. By doing so, the different positions of the Commission, the Parliament and the Council and their individual policy-making processes will be discussed in chronological order, focusing on certain heavily lobbied paragraphs. With the help of data and information provided by online platforms like LobbyPlag[587] or Parltrack[588], NGOs and the interviews made for this thesis as well as own experiences the impact of lobbying on each individual institution will be clarified. Additionally, the actors and methods used for lobbying will be figured out as far as possible.

## 4.1 General Overview

First of all a brief overview of the General Data Protection Regulation should provide information about the regulation's necessity, objectives and progress so far. It should provide some general information to get familiar with the GDPR.

### 4.1.1 Necessity

With the coming into force of the Lisbon Treaty in 2009 the Charter of Fundamental Rights of the European Union became part of primary law of the EU. Therewith, the European Union

[585] See [185].
[586] See [6].
[587] LobbyPlag.eu provides rankings of MEPs and member states, which illustrate if they tried to weaken or strengthen the GDPR with their submitted amendments. Furthermore, it provides lots of leaked documents regarding lobbying the GDPR.
[588] ParlTrack provides easily understandable and well elaborated overviews of amendments submitted by MEPs.

and its member states oblige themselves to ensure a legal framework, which guarantees the fundamental rights stated in it to every citizen of the EU or living in the EU.[589]

Among other things the Charter specifies that the right for respect for private and family life (Article 7) and the right for protection of personal data (Article 8) are fundamental rights in the EU.

In detail the two principles read as follow:

> ***Respect for private and family life***
> *"Everyone has the right to respect for his or her private and family life, home and communications."*[590]
>
> ***Protection of personal data***
> *"1. Everyone has the right to the protection of personal data concerning him or her.*
> *2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
> *3. Compliance with these rules shall be subject to control by an independent authority."*[591]

According to these fundamental rights, the European Union has to guarantee its citizens' privacy and data protection as cited above. Nowadays, this is mainly ensured by individual laws adopted by every member state around the year 2000 following the EU's Data Protection Directive 95/46 EC of 1995. In certain fields there are additional policies and agreements at the European level (e.g. international agreements) and the national level (e.g. national laws for telecommunication, e-commerce, etc. largely from 2000 to 2005) dealing with these fundamental rights. Over time the variety of rules and regulations established a complex patchwork that reveals more and more problems caused by the fast technical progress and the dramatically growth of data processed and transferred all over the world without taking national borders into account.

To get an understanding of how the amount of data traffic has changed over the last 15 years a study of Cisco Systems, an American multinational company, should provide an overview of the growth of mobile data traffic (see figure 10).

---

[589] Great Britain and Poland negotiated an opt-out of the Charter of Fundamental Rights. Therefore, they are not obliged to guarantee these rights. See [1], Protocol no. 30 TEU (2012).
Even though they are not obliged to it, they have to ensure the right to the protection of personal data as it is also specified in the Treaty on Functioning of the European Union. There it is stated that "[e]veryone has the right to the protection of personal data concerning them". See [1], Article 16 §1 TFEU (2012).
[590] [126], Article 7.
[591] [126], Article 8.

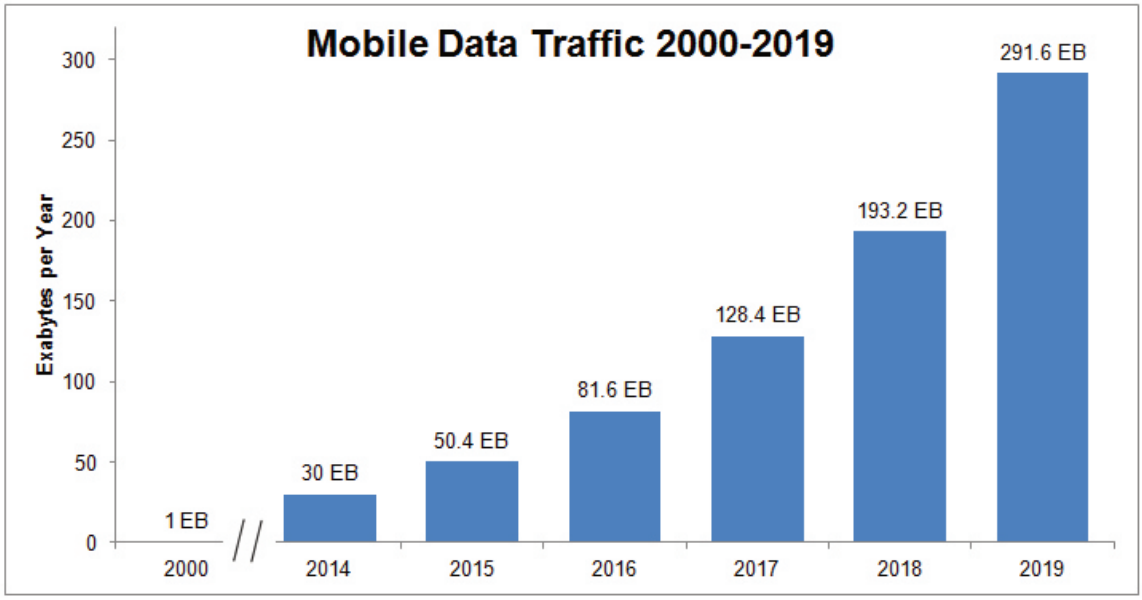



**Figure 10: Mobile Data Traffic 2000-2019 by Cisco Systems**[592]

According to Cisco the mobile data traffic of 2014 "was nearly 30 times the size of the entire global Internet in 2000."[593] Until 2019 the company estimates a compound annual growth rate of 57 percent, which means that the amount of estimated mobile data traffic in 2019 would be 10 times the size of 2014 and in turn 300 times the size of the entire global internet in 2000.[594]

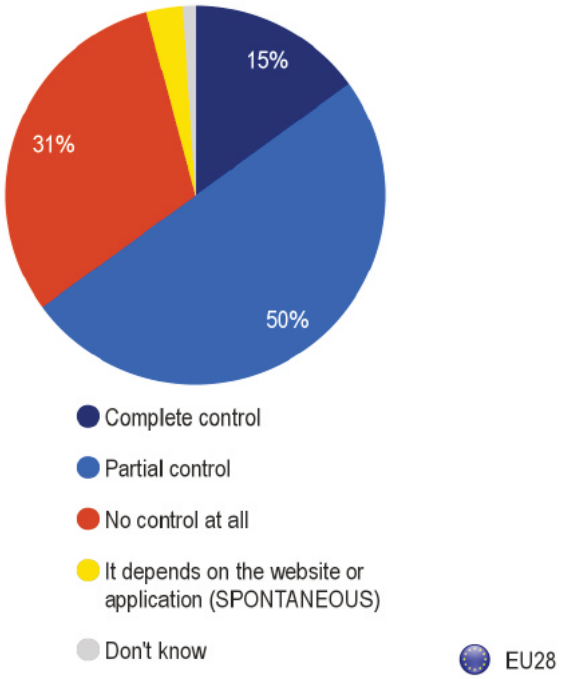
It can be assumed that the rise of the internet, especially of services like social networks, streaming or cloud computing, increased global interactions and the permanent online connectivity via smart phones or other smart devices that are part of the internet of things are the main drivers of this progress. Moreover, data are collected, processed and accessed in a way that never existed before.

Even though data traffic has not reached its limits by far, as illustrated in the figure before, the current European patchwork of regulations cannot ensure citizens' privacy and data protection in a proper way anymore. Today, there are almost no consequences if a company is processing data in a wrong way or collects data without permission for any purpose. Hence, it seems that everyone collects as much data as possible, processes them as one likes and draws conclusions about a data subject based on these information, whether they are provided consciously or unconsciously.[595]

The problems caused by this situation were indicated by the latest EU-Eurobarometer survey 431 about Data Protection of 2015. It stated that an all-time high of more than 8 out of 10 persons do not feel that they have complete control over the information they provide online (see figure 11).[596]

---

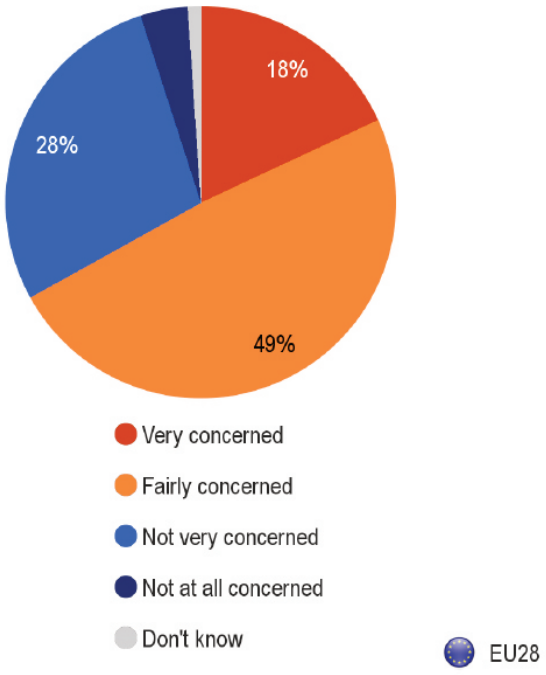
[592] Own diagram based on [186].
[593] [186].
[594] [186].
[595] Just one of many examples regarding the arbitrary collection and proceeding of data is the social network Facebook. Following a study conducted by the KU Leuven in 2015 (see [187]) or the legal action of Max Schrems (see [188]) the company is violating against European law since years without any consequences.
[596] See [189], p. 9.




*Base: Respondents who provide personal information online (n=19,430 in EU28)*

**Figure 11: Eurobarometer survey 431 about Data Protection: "How much control do you feel you have over the information you provide online, e.g. the ability to change, delete or correct this information?"[597]**

Furthermore, about 70% of those, who feel that they do not have complete control over their information, said that they are concerned about this situation (see figure 12).[598]




*Base: Respondents who feel like they do not have complete control over the information they provide online (n=16,244 in EU28)*

**Figure 12: Eurobarometer Survey 431 about Data Protection: "How concerned are you about not having complete control over the information you provide online?"[599]**

[597] Taken from [189], p. 9.
[598] See [189], p. 12.
[599] Taken from [189], p. 12.

Concluding from the Eurobarometer's findings, a new legislative framework is indispensable to eliminate the stated concerns and worries and to give citizens control on their personal data back as stated in the Charter of Fundamental Rights.

Primarily the Data Protection Package, proposed by the Commission in 2012, should establish such a profound legislative framework. The package contains a General Data Protection Regulation for common and strong rules across the EU based on the Data Protection Directive 95/46 EC of 1995, which should boost Europe's digital economy and reinforce consumer confidence in online services[600], and a publicly less known Data Protection Directive for Police and Criminal Justice Authorities to regulate "the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data".[601] Besides, there are several other policies and agreements dealing with the matters of privacy and data protection currently under discussion, but these are mainly for specific purposes in the scope of criminal offences, public and national security and of course have to be in line with the Regulation and the Directive. One of these compulsory policies is the so-called Data Protection Umbrella Agreement between the EU and the USA, which should specify how data for law enforcement purposes are transferred between the EU and the USA. Another one is the EU Passenger Name Record (PNR) Directive dealing with personal data of airplane passengers. The latter should be even passed together with the Data Protection Package.

In this chapter, however, the focus is solely on the General Data Protection Regulation. The other policies, agreements and acts dealing with the matters of privacy and data protection are just mentioned to get an overview of the current progress regarding these matters.

### 4.1.2 Objectives

As already mentioned, the General Data Protection Regulation is based on the Data Protection Directive of 1995. Therefore, it has similar, but more far-reaching objectives that should increase the level of that directive. The most important objectives proposed by the Commission in 2012 are summarized and briefly outlined in the following list:

- **common rules across the EU**
  If the European Union adopts a legislative act as a regulation it directly applies to all of its member states following the principle of subsidiary. As the GDPR is designed as a regulation it will in general provide only one set of rules valid across the whole Union. In other words, it will homogenize the EU's rules on data protection and will replace a large part of the existing legal patchwork. Particularly the individual national laws resulting of the Data Protection Directive 95/46 EC will be replaced therewith. By doing so, the "race to the bottom", where companies search for the country with the weakest rules and law enforcement mechanisms in the EU to be only obliged to them, will be stopped.[602] The regulation should be relevant to everyone, who offers goods or services in the EU or processes data of EU citizens. Hence, it will be an

[600] In the Commission's words the adoption of the GDPR will "do away with the current fragmentation and costly administrative burdens, leading to savings for businesses of around €2.3 billion a year. The initiative will help reinforce consumer confidence in online services, providing a much needed boost to growth, jobs and innovation in Europe." See [185].
[601] [190].
[602] See [191], p. 3.

essential precondition to establish a European Digital Single Market as planned by the European Commission.[603]

- **broad and future proof definitions**
  In times of big data and fast technical progress on the one side and slow legislative procedures with slow adjustments on the other side future proof definitions are key. Definitions, especially those of fundamental terms like 'personal data', need to be specified far-reaching but also detailed enough to prevent the same problems and discussions we have nowadays. The GDPR should provide definitions that are future-proof, technology-neutral and practicable at the same time.[604]
- **right to erasure / right to be forgotten**
  The right to erasure of personal data, also known as the right to be forgotten, should allow people to delete their data - even from third parties as far as possible - if there is no (legitimate) ground for retaining.[605] It must be combined with specific rules and derogations to ensure that the fundamental right of freedom of expression is not undermined. This objective is probably the most popular one and largely discussed in public.
  In the Special Eurobarometer 359 of 2011 75% of internet users said that data should be deleted when they decided to do so.[606] Concluding from this, a right to erasure is strongly wanted from the civil society.
- **explicit knowledge and consent about data processed**
  As stated before, data are largely collected, processed or transmitted to third parties without any knowledge, much less consent of a data subject. With the GDPR this should be changed.
  Whenever personal data of a data subject are required it should need explicit consent. A data subject should know in detail as well as easily understandable why data are required and how they are processed. In the best case, data should be only used for the purpose(s) a person has agreed to. Despite that, there should be some alternative ways like a legal basis or a reasonable and well-defined legitimate interest that allow processing of personal data. In any case a data subject should be informed about the processing of its data.
  The foreseen implementation means that, for example, an e-mail address used for online shopping cannot be used for marketing purposes without an explicit consent of the person anymore, as data cannot be processed for the purpose of marketing on the basis of any other legal ground.
  Once again this suits well with the opinion of the majority of the civil society. According to the Special Eurobarometer 431 of 2015 69% of respondents say that it should require their explicit approval when their data are collected.[607]
- **privacy by design / privacy by default**
  Everyone who collects or processes data should ensure that he uses a minimum of data. Data-minimization is one of the key principles of the regulation. Only data needed for using a service should be collected and processed. For example: a flashlight on a smartphone does not need contact information if its sole purpose is producing light.[608] Thus, it should not collect or process any additional data. Data-

---

[603] A European Digital Single Market, tearing down regulatory walls and moving 28 national markets to a single one, is one of the ten priorities of the European Commission. See [192].
[604] See [6].
[605] See [193].
[606] See [194], p 158f.
[607] See [189], p. 58ff.
In 2010 even 74% said that their approval should be required when their data are collected. See [194], p. 148ff.
[608] See [195].

minimization, data protection and privacy should already be considered when controllers or processors design a service or good, not afterwards (privacy by design).
Moreover, privacy settings should be set to the maximum by default (privacy by default), which implies that people, who are using a service, may be able to ease their privacy settings if they want to do so, but should not need to strengthen it by default.
Privacy by design and privacy by default will increase the responsibility and accountability of data processors, which is why consumers' trust will increase too.
To help controllers or processors with these as well as all other principles of the regulation, an internal data protection officer shall assist them to ensure that they act in line with the regulation.

- **right of data portability**
  Consumers should get a right to easily transfer their personal data from one service provider to another one (e.g. from one social network to another one). Thereby, access to their data is a precondition of this right.
  It can be assumed that the right of data portability will increase competition of service providers and will lead to new innovations and less service monopolies.
- **administrative sanctions / law enforcement mechanisms**
  As the Data Protection Directive 95/46 EC does not provide satisfying enforcement mechanisms with meaningful sanctions, the General Data Protection Regulation should introduce them. Meaningful sanctions that are imposed in case of misbehavior will motivate controllers and processors to comply with the rules and obligation.
  Due to the fact that the rules of the GDPR should apply to everyone, who collects or processes personal data of EU citizens no matter where he is located (even if a company has its head quarter in a country outside the EU - e.g. USA, China), sanctions should also apply to everyone. As a result multinational companies or other multinational organizations or bodies may also be sanctioned when they are violating against the regulation.
- **one-stop-shop**
  The rules currently in force have a big problem with clear responsibilities, because almost nobody, neither controllers or processors nor citizens, know which national authority is responsible for them. With the General Data Protection Regulation this should be changed through the introduction of a so-called one-stop-shop system.
  In doing so, individuals can always contact their national data protection authority, whether they want to complain about a controller located somewhere else[609] or they want to have some information about data protection or something else. At the same time a controller or processor only has to deal with a single national data protection authority of the EU country where it is registered.
  As the current data protection authorities are to a large extent rather weak, they should also be strengthened via the GDPR.
- **boost (digital) economy**
  Last but not least, the GDPR should boost European economy in all kinds of fields.
  Through the removal of unnecessary administrative burdens and the assurance of legal certainty in all member states of the EU, controllers and processors should benefit from the regulation. In 2012 it was estimated that a common single law will lead "to savings for businesses of around €2.3 billion a year."[610]

[609] Currently this is only hardly possible, as it was shown by the case of Max Schrems, who needed about three years to get a clarification about the responsible authority for data protection issues concerning Facebook. In this process he had to bring an action before various courts. See [196].
[610] See [185].

> Beside cost savings through harmonization, it can be assumed that the increased level of data protection combined with meaningful sanctions would lead to a worldwide leadership role of the EU generating competition between and incentives for businesses to invest in data protection. Thus, it will be a chance for the weak European digital economy to catch up against the big and powerful US companies.

All in all it can be said that the General Data Protection Regulation should ensure the protection of fundamental rights through far-reaching rights for individuals, strong rules and obligations for controllers and processors, meaningful sanctions and strong law enforcement mechanisms. Additionally, it should simplify the legislative framework for controllers and processors, and regulate the usage of personal data, while having an eye on the economy.

As stated by the Parliament's rapporteur Jan Philipp Albrecht, the GDPR should correct the imbalance of companies and individuals we have today.[611]

On the basis of the listed objectives the progress of the General Data Protection Regulation will be analyzed in the next subsection, but before, the timeline of the regulation will be summarized.

### 4.1.3 Timeline

The most important milestones of the General Data Protection Regulation are/were:

2009: The Commission launches a review on the current legal framework on data protection.

25.01.2012: After years of preparation the European Commission unveils a proposal for a General Data Protection Regulation.

12.03.2014: About two years after the Commission proposed the GDPR, the European Parliament votes on its position at first reading in plenary. There, a large majority of 621 MEPs voted for the position, 10 voted against it and 22 abstained from voting.[612]

15.06.2015: The member states agree on their general approach in the Council of the European Union. Only Austria and Slovenia vote against this approach.[613]

Since July 2015: Based on their individual positions the three decision-making institutions try to find a compromise agreement to adopt the GDPR as fast as possible.

End 2015/Early 2016: With regard to actual estimations the General Data Protection Regulation will be passed by the Parliament and the Council and enter into force.[614]

Early 2018: About two years after entry into force the regulation will apply to all member states of the EU.

## 4.2. Lobbying on the GDPR

After some general information about the GDPR was outlined the influence of lobbying on it will be clarified in the following subsection. This will be done by having a look on the individual institutions and their individual formulation processes in the chronological order

---

[611] See [197].
[612] See [2].
[613] See [198].
[614] See [199].
Although an agreement may be reached until the end of 2015, the Regulation will not be voted in Parliament's plenary before March, as a lot of administrative processes, including translating the text, have to be done first.

they are participating in the decision-making process. In doing so the focus lies on some major issues that were lobbied the most in the appropriate institution.

### 4.2.1 European Commission

In 2009 the European Commission began its work on the General Data Protection Regulation by launching a review process about the current framework on data protection. To get an understanding of how the situation was in line with the requirements of citizens and industry it held several conferences and meetings at that time and initiated a public consultation in 2009 as well as multiple targeted stakeholder consultations in 2010. The findings of those led to the conclusion that a new policy has to be adopted to revise the current policies implemented pursuant to the Directive 95/46 EC. Consequently, the Commission described its position and ideas on 'a new comprehensive approach on personal data protection in the European Union' in October 2010. This document contained already strong implementation proposals for the main objectives of a General Data Protection Regulation without defining them in detail.

Before formulating them in detail the Commission conducted a public consultation from 4 November 2010 until 15 January 2011 to gather opinions from citizens, organizations and public authorities about its implementation proposals. Although such public consultations are not seen as lobbying in a classical sense they give a good overview about the situation in the Commission prior to the presentation of the proposal on the GDPR. In the course of the consultation about 289 opinions were submitted (46 from citizens, 121 from organizations registered in the transparency register of that time, 91 from non-registered organizations, and 31 from public authorities).[615] One can see that about 75% of submissions were made from organizations, while only about 10-15% of them had no corporate background. The corporate sector was very active, because the proposed rules meant unwanted and unpredictable changes. For most of them the status quo was good and far-reaching enough. They feared additional costs or losing the basement of their business model. Therefore, some of their submissions contained heavily aversions against new and stricter rules on data protection in all points.[616] They had only a common agreement regarding the need for more harmonization of the existing rules to decrease legal uncertainty and administrative burdens. Contrary to the corporate sector, other organizations, citizens and most of the public authorities welcomed almost all measures of the proposed text. They only suggested stronger definitions, stricter principles and a broader scope of the legislation. Particularly rules for employee data should be included and processing on the ground of legitimate interest and profiling should be refined or deleted.[617] In general, the public consultation served as a good basis for the creation of a legislative proposal, which was done in the following year.

Originally, it was planned to propose the legislative acts of the Data Protection Package in 2011,[618] but because of the need for more consultations and fierce lobbying from all sides throughout the formulation process the Commission had to slightly shift the publication to the beginning of the year 2012. Regardless of this short delay the responsible Commissioner of

---

[615] There are different figures about the total number of respondents. On the website about the consultation the Commission states that there were 288 submissions, but lists 289 submissions of different respondents. See [200]. In its proposal on a GDPR it states that there were even 305 respondents. See [201], Explanatory Memorandum, p. 3.

[616] An example for a very strong aversion against a new legislation on data protection was the Association of Consumer Credit Information Suppliers (ACCIS), which was totally against any change except of an enhanced harmonization of rules and definitions across the EU. See [200], ACCIS – Association of Consumer Credit Information Suppliers.

[617] See [200], Aktion Freiheit statt Angst e.V.; Deutsche Vereinigung für Datenschutz e.V..

[618] See [202], p. 18.

DG Justice in 2012, Viviane Reding, said that she finally proposed the legislation she wanted to have and that lobbying was fierce, but not efficient at all.[619]

In fact, it seems that lobbying was not as inefficient as she mentioned, as it is indicated by a leak of a Commission's intermediate version on a General Data Protection Regulation from November 2011. It shows some major differences to the version finally proposed two months later. Even though the largest part of the regulation remained the same and lots of definitions were specified in more detail and in a clearer way in the final version, some key factors were substantially modified in the interest of certain actors by which the whole proposal was weakened. In particular sanctions and fines, rules on data transfers, protection of children and obligations of public authorities and SMEs had partly dramatically changed:

- While the intermediate version stated three categories of fines up to a maximum of "1,000,000 EUR or in case of an enterprise up to 5% of its annual worldwide turnover"[620], the final version decreased the maximum fine for an enterprise to 2% of its annual worldwide turnover and the individual maximum fines for each category.[621] Furthermore, minimum fines as well as some specific types of violations, which should be sanctioned, were removed from the Article. In the leak, it was stated that a breach should impose a minimum fine between 100 EUR and 100,000 EUR depending on the administrative offence.[622]
- Public authorities were partly excluded of carrying out data protection impact assessments.[623]
- The need to obtain an authorization of a supervisory authority prior to the processing of personal data when "a judgment of a court or tribunal or a decision of an administrative authority of a third country requests a controller or processor to disclose personal data" was removed.[624]
- The data subject's right for data portability was narrowed from "where personal data are processed by automated means"[625] to "where personal data are processed by electronic means and in a structured and commonly used format".[626]
- A newly created Article 8 states that "the processing of personal data of a child below the age of 13 years shall only be lawful if and to the extent that consent is given or authorised by the child's parent or custodian"[627], which implicates that the processing of personal data of a child aged 13 or older is lawful. In the leaked version children were generally protected if they are under the age of 18.

Beside those modifications, notifications and responsibilities of controllers and processors were weakened and exceptions for micro, small and medium enterprises as well as data concerning health were included.

Although it is not totally clear why the Commission changed all these points shortly before publishing its proposal, it can be assumed that interests of the corporate sector and the US-government were the main driver for this.

Particularly when taking the submitted positions during the public consultations and the lobby papers known from all institutions into account, it gets obvious that lobbying groups of the

---

[619] See [6].
[620] [203], Article 79 §4.
[621] See [201], Article 79 §6.
[622] See [203], Article 79.
[623] See [201], Article 33 §5; [203], Article 30.
[624] [203], Article 31, 42.
[625] [203], Article 16.
[626] [201], Article 18.
[627] [201], Article 8 §1.

corporate sector and the US-government managed it to get at least some parts of their positions included in the end.

With regard to the major changes listed before, two points, namely the narrowing of the right for data portability and the weakening of fines, can be mainly attributed to the corporate sector.[628] Both are in the nature of companies, as they usually oppose to share their acquired data and users with their contributors and fear high fines and strong sanctions. On the other hand, the points regarding disclosure of data following judgments in third countries[629] and the protection of children[630] can be attributed to lobbying efforts of the USA,[631] while the point about impact assessments for public authorities can be seen as a general problem for member states, which is why their political pressure probably forced the Commission to exclude public authorities from the assessment. In general the US-government was very active and submitted several briefing materials including lots of concerns about the strict regulations on data transfer to third countries, which is quite uncommon in that stage.[632]

All in all, it can be concluded that the influence of lobbying in the Commission was perhaps weak and inefficient for the longest period of its formulation process[633], but finally lobbyists from the USA and the corporate sector, in particular big multi-national online companies, companies from the health or financial sector and some others, had a notable influence on the proposed General Data Protection Regulation of the Commission in 2012. Successful lobbying from the civil society or from NGOs can only be hardly found as the initial proposal was already quite strong. Nonetheless, it seems that they got their chance too, as it was mentioned in the interview with a representative of a NGO. He said that the Commission was seeking to produce a useful and good data protection regulation, hence why NGOs were well involved and noticed.[634]

According to the interviews made for this thesis and to the findings of the research process, corporate lobbyists succeeded through fierce lobbying at every possible access point at the Commission. In the interview with one of the leading experts in the Commission regarding the General Data Protection Regulation most of the lobbying methods outlined in chapter 2 were mentioned. The interviewee explained that the Commission was lobbied via various channels and with several methods at the same time.[635] He also said that a mass of lobbyists tried to arrange a meeting with the responsible head of division or his close staff to argue their positions and submit their position papers.[636] This was not only done at the unit level, but also at the higher levels (i.e. directorate level, directorate-general level) of the responsible DG Justice and even at the Commissioner level, where the same people argued the same positions with the same paper - largely prepared by law firms - in a way that was often understanding in the beginning, but scaremongering, aggressive and totally exaggerated in the end (e.g. 'If you

---

[628] See [200]; [204], Article 18 §1, Article 79.
[629] In an informal paper from the US-government it urges the Commission to delete this paragraph because of security reasons. See [205], p. 12, 14f.
[630] This age limit reflects the same age limit as stated in the American Children's Online Privacy Protection Act. See [206]. It cannot be found in the member states of the European Union.
[631] See Interviewee B, lines 43-49.
[632] See [207].
[633] Also BITKOM, a German-based multinational association for Information Technology, Telecommunications and New Media, complained in early 2011 about the fact that the arguments of the industry sector hadn't been considered until that time. See [200], BITKOM - The Federal Association for Information Technology, Telecommunications and New Media.
Interviewee A also mentioned that DG Justice primary tried to only accept positive suggestions and no deteriorations or negative suggestions from lobbyists. See Interview A, lines 21-28.
[634] See Interview F, lines 65-67.
[635] See Interview C, lines 86-101.
[636] See Interview B, lines 12-18; Interview C, lines 93-101.

adopt it that way the world we know will end!' or 'Europe's economy will be ruined!').[637] By doing so, each chapter of the regulation was lobbied hard without any exception.[638] As one can see multi-voice lobbying was a common principle in this context. Additional to meetings, events were held to invite speakers of the Commission and others to talk about the regulation.[639] Other methods used were circular letters or the establishment of special associations and task forces for the sole purpose to lobby the regulation.[640] It should be noted that there were not only special associations or tasks forces, but also non-independent NGOs, which will be further outlined in the subsection about the Parliament. A final approach mentioned by two interviewees was lobbying the responsible DG Justice over other DGs not responsible for the regulation.[641] Mostly business-minded DGs like DG Digital Agenda (Commissioner Neelie Kroes) or DG Trade (Commissioner Karel de Gucht), but also others like DG Home Affairs (Commissioner Malmström, who is said to have only lifted her veto after modifications on rules on security cooperation between the EU and the US were made) were in the focus of lobbyists.[642]

In respect of the enormous pressure and the large efforts made by lobbyists the statement of Commissioner Reding can be seen as correct as lobbying was not efficient at all, but it was at least a little successful and thus weakened the proposed regulation of 2012 in some points in favor of certain actors before it was passed to the European Parliament and the Council of the European Union.

After it was passed, the pressure of lobbyists decreased dramatically in the Commission, as they changed their focus to these institutions and the governments in the member states.

Anyway, lobbying in the Commission never stopped. It just cooled down for a while, without being stopped, and restarted after the Parliament voted on its position at the end of 2013 or rather the beginning of 2014 at the latest to 'prepare' the Commission for the upcoming trilogues that started in 2015.

In this secondary lobbying process, a new indirect lobbying method is used in addition to the methods described above. As the Commission started to negotiate a Comprehensive Economic and Trade Agreement (CETA) in 2009 as well as a Transatlantic Trade and Investment Partnership (TTIP) and a Trade in Services Agreement (TiSA) between the EU and several other third countries around 2012/2013 particularly corporate lobbyists and third countries discovered a new chance to get their positions involved. They began to lobby the secret negotiations to get the matter of data protection included in the agreements. Thus, the rules and obligations specified in the GDPR should be circumvented and indirectly watered down through the agreements. This method was not known for a long time, as the negotiations are conducted behind closed doors. Only after a leak of the whistle blowing platform Wikileaks in 2014 and strong pressure from the Parliament, the European Ombudsman, several NGOs and the civil society, intermediate results of the agreements had been partly published in 2014 and 2015. Apparently, data protection is a matter discussed in

---

[637] See Interview A, lines 12-13; Interview B, lines 15-18, 26-28; Interview C, lines 111-112.

[638] See Interview C, lines 50-74.
Interviewee F even said that "pretty much every single word has been lobbied on extensively right from the beginning of the document […]". Interview F, lines 20-21.

[639] See Interview C, lines 101-105.

[640] See Interview C, lines 124-128.
The Interviewee mentioned that the American Chamber of Commerce established such a task force.

[641] See Interview A, lines 28-33; Interview C, lines 112-115.

[642] See [207].
Currently the newly appointed Commissioner for Digital Economy and Society, Günther Oettinger, serves as the best example for lobbying the Commission via multiple DGs. He is largely meeting with corporate representatives and has recited their positions for multiple times in various fields. See [208].

the course of these agreements and is heavily influenced by lobbyists of the corporate sector and the US government again.[643] Again, special associations were founded to influence the negotiations and to include principles like interoperability, which means, that data protection regulations from countries should be mutually recognized; however, the USA do not have data protection rules for the private sector, hence why a mutual recognition would void most of the data protection rules and principles of the EU.[644] As the negotiations are still in process the influence of lobbying via that method cannot be determined right now. Generally, there is the hope that there will not be any rule regarding data protection in the final agreements. This is also the position of the European Parliament, which will be outlined next. A few months ago it voted against the inclusion of data protection in the agreements.[645]

In summary it can be argued that the GDPR was excessively lobbied in the Commission via multiple methods over multiple channels. Nevertheless, the final influence was not dramatical, but notable. Anyway, the influence through the secret TTIP, TiSA and CETA negotiations conducted by the Commission is still unclear. It seems that those may circumvent the rules laid down in the finally agreed GDPR.

### 4.2.2 European Parliament

After the Commission proposed the General Data Protection Regulation in 2012 the European Parliament came into the focus of lobbyists at the latest. As lots of those had not yet reached their preferred result, primarily because the Commission was too resistant, they started to lobby the Parliament in an excessive way, too. As a result, several Members of Parliament said that they had not seen such fierce lobbying before, which sounds similar to the words of Commissioner Reding.[646] The fierce lobbying in the Parliament led to an astonishing number of 3.999 amendments submitted during the Parliament's formulation process at first reading.[647]

Like the Commission, the Parliament was lobbied from all sides, in particular from multinational online companies of the US, digital technology lobby platforms or groups (e.g. DigitalEurope, BITKOM, Amcham EU), which have among others the same multinational organizations as their members, and the US-government.[648] Beside those, multinational online organizations of other third countries such as Japan, South Korea or Canada, representatives of the financial, insurance and health sector as well as employers' associations and some others were trying to weaken the proposed text.[649] They formed a broad front against stricter rules and obligations regarding data protection and privacy, and tried to water down the regulation. On the other side, only a few NGOs or consumer associations were trying to increase or keep the level of the regulation as proposed by the Commission.[650] Due to the fact

---

[643] See [209].
[644] See [210].
[645] See [211], point 2.(b)(xii).
[646] See Interview A, lines 72-74; Interview E, lines 15-21.
According to the Austrian MEP Lichtenberger it was "one of the biggest lobby wars of all times". See [212].
[647] These were either directly submitted to the leading committee LIBE or through one of four other committees, which drafted an opinion. In fact even 5088 amendments were submitted, but about 2000 of them were already summarized by the four committees that drafted an opinion. Finally, 3133 amendments were directly submitted to LIBE, 226 (of 459) through IMCO, 417 (of 917) through ITRE, 27 (of 128) through EMPL and 196 (of 451) through JURI. See [213].
[648] See [212]; Interview A, lines 66-68; Interview B, lines 35-36; Interview F, lines 22-24.
[649] See Interview B, lines 31-35; Interview E, lines 54-62; Interview F, lines 24-26.
[650] See Interview A, lines 132-139; Interview E, lines 41-45; Interview F, lines 31-34.
According to the transparency register some representatives of churches and other religious organizations were also covering the regulation, but it is nothing none about their approaches. See [73]. Because of their very small number, the influence of them is assumed as negligible.

that all of them had limited resources and were, compared to corporate actors, quite few it can be said that almost everybody was trying to weaken the draft regulation. Through the massive overweight of the corporate sector and foreign governments, economic interests and security concerns stood in the foreground of lobbying efforts, as it was already the case in the Commission. To get their interests involved lobbyists used various methods and channels at the same time.

The most common way was the arrangement of personal meetings with those MEPs responsible for the formulation of the Parliament's position, or their close staff, as well as inviting them to events like discussions or parliamentary evenings combined with the submission of more or less detailed papers and studies.[651] By doing so, MEPs not only got information about the problems and concerns of different sectors, but also tons of false information underpinned by biased studies that should prevent a strong data protection regulation. In most of the cases such studies concluded that enhanced data protection, as proposed by the Commission, would mean substantial expenses for companies causing massive job losses, a decrease of the EU's gross domestic product (GDP) up to several percentages or a welfare loss of thousands of Euros per household.[652] Others revealed a decrease in security, which will result in an increased risk of money-laundering and similar matters.[653] Obviously, all of that information was also sent via round mails to reach as many persons as possible.

In addition to such scaremongering studies and false information, allegations against supporters of a strong regulation reproached those for destroying the European economy, public welfare or even the internet as it was explained in the interviews.[654] Although lots of studies and allegations were based on biased models that were only correct under certain conditions, for certain sectors or just taken out of context, some of them fulfilled their purpose and led to amendments submitted by MEPs. Thereby, it can be assumed that especially biased studies created or supported by actually independent and serious research organizations, think tanks or NGOs were the main reason for the success of this method. One interviewee said that some pharmaceutical and health organizations managed it to get independent and serious organizations like the German Research Foundation on their side.[655] Another confirmed that "there were no significant independent think tanks, but various groups that were paid by industry to act independently, like the European Privacy Association, whose job it was to amplify the industry voice, rather than being actually independent."[656] In this context a further interviewee added that the new method of astroturfing was also used by the corporate sector to manipulate MEPs.[657] Concluding from that, the incentives and backers were only hardly visible and highly dishonest, which is why it sounds very comprehensible that MEPs, who are nothing else than representatives of the civil society that should act in the interests of the

---

[651] See Interview B, lines 24-28; Interview E, lines 88-120.
Basically, these responsible MEPs were rapporteur Albrecht and his shadow rapporteurs of the LIBE committee as well as the rapporteurs of the four other committees, which drafted an opinion (i.e. IMCO, ITRE, JURI, EMPL). More than 40% of the amendments were submitted by these 10 persons. See [213].

[652] For example: A study conducted by the US chamber of commerce revealed that only the introduction of the 'right to be forgotten' as proposed by the Commission should cause a GDP decrease of up to 3.9% and a welfare loss of €3,500 per household. See [214], p. 3.

[653] See Interview E, lines 54-58.

[654] See Interview A, lines 165-187.

[655] See Interview E, lines 74-77.

[656] Interview F, lines 40-43, 107-110.
The European Privacy Association, as mentioned from the interviewee originally declared itself as a NGO without funding from industry, but in fact it had and still has several multinational companies like Microsoft, Facebook, Google or Yahoo as its members that pay an annual fee of €10,000. This was uncovered in May 2013, when lobbying in the Parliament was at its maximum and the EPA was already lobbying since years. See [215].

[657] See Interview A, lines 68-72.

society, tried to modify laws following serious doubts coming from (in their eyes) independent organizations or organizations claiming to act for citizens. However, even by knowing that certain independent actors were actually not independent at all, the pressure on MEPs was enormous at that time. They had to resist very aggressive multi-voice lobbying over various channels as it was argued in an interviewee, who explained it as follow:

> *"You have the core group of companies that is a post from the American online companies. They lobby on their own behalf. Then they mobilized a lot of trade associations to lobby on their behalf as well. Then they lobbied to the European small business federations to lobby against their own interests and in favor of the position of big businesses and there is even an association of associations lobbying for the Americans as well. [...] Then you often have the so-called independent think tanks and independent academics lobbying as well. So you got one group of businesses that is combining their voices to reproduce their message over and over and over again and that was quite new."*[658]

Accordingly, American online companies were spending plenty of money to get their interests involved over various channels. Among others, they established lobbying departments led by former high officials or even MEPs that used the revolving door. The most prominent case in this field is probably Erika Mann, who was acting as a MEP for over 10 years and finally ended as the head of Facebook's lobbying department in Brussels.[659] Another channel not directly mentioned in the statement of the interviewee, was lobbying MEPs via their networks and cross-party groups (not to be confused with intergroups), which are not bound to transparency and ethical rules and largely funded by industry and lobby consultancies. In the case of the GDPR the European Internet Forum (EIF), composed of MEPs from every party, business members and associate members, was one of the most important cross-party groups. Its corporate members are largely the same organizations that were strongly lobbying on the regulation, wherefore they used the EIF as another channel to lobby MEPs. Several MEPs such as shadow rapporteur Voss or IMCO rapporteur Comi were members in the European Internet Foundation at the time the Parliament discussed its position at first reading. Hardly surprising, most of them were largely acting in favor of the corporate sector and tried to weaken the regulation. In total it can be assumed that at least one third of amendments were submitted by MEPs, who were members in the EIF at the appropriate time.[660]

The online platform lobbyplag even unveiled that several MEPs copied proposals from the corporate sector and submitted them one-to-one as an amendment.[661] This procedure was harshly criticized in the media and also by some MEPs[662], although it is largely practiced with opinions of all sides as it was discussed in chapter 2. Lobbyplag also unveiled that there was another bizarre issue in the Parliament during its formulation process of the GDPR. The platform published that the Belgian MEP Louis Michel submitted about 230 amendments, whereby over 150 meant a worsening of the regulation, which ranked him at place two (behind Voss) of its ranking for less data privacy in Europe.[663] So far, so good, the strange thing in this case was that Michel had never seen these amendments submitted under his name. They were signed and submitted by his assistant[664], who was probably heavily

---

[658] Interview F, lines 111-122.
[659] See [212].
[660] See [213].
[661] MEPs Harbour or Chichester can be mentioned as examples. See [204].
[662] See [216].
[663] See [204].
[664] See Interview A, lines 403-416.

influenced by lobbyists as it can be seen in his amendments, which were to a large extant submitted one-to-one from proposals of the American Chamber of Commerce or the European Banking Federation.[665] This case reflected a very negative light on the internal processes in the Parliament, as it seemed that nobody knew about that possibility. In the end an assistant submitted about 230 amendments largely beneficial for the corporate sector without attracting any attention. Additionally, it showed that lobbyists really used all possible access points and channels to get influence.

All in all, the most common methods and channels of lobbyist have been discussed so far. Those were very diversified and led to lots of submissions of amendments primarily influenced by the corporate sector. Nevertheless, one should not forget that there was also a notable amount of amendments without any connection to the corporate sector, which can be seen as a result of the lobbying efforts of independent NGOs, independent research organizations or experts trying to influence MEPs via personal contact, position papers, studies as well as some media campaigns without such excessive usage of various voices and channels.

As already mentioned the fierce lobbying efforts led to a final amount of 3999 amendments until March 2013 that had to be discussed by the responsible members of the LIBE committee. According to the analyses of lobbyplag following Articles were lobbied the most:

- Article 4: Definitions
- Article 6: Lawfulness of processing
- Article 14: Information to the data subject
- Article 15: Right of access for the data subject
- Article 17: Right to be forgotten and to erasure
- Article 20: Measures based on profiling
- Article 28: Documentation
- Article 35: Designation of the data protection officer
- Article 79: Administrative sanctions
- Article 83: Processing for historical, statistical and scientific research purposes[666]

In total, about one third of amendments were submitted to modify these ten Articles. Having in mind that the Commission proposed 91 Articles and 139 recitals a third of amendments for only 10 Articles is quite a lot. Half of those amendments were trying to weaken formulations, a quarter was trying to strengthen them and another quarter was trying to modify formulations in a neutral way.[667] What is striking, when having a more detailed look at them, is that a great number of proposed amendments, whether positive or negative for the regulation, were defined with very similar words or even totally similar. As an example Article 4 §3 can be stated. There it was tried to insert a new definition about ‘profiling’ into the regulation. The definition of that term was quite similar in 6 out of 7 amendments submitted by various MEPs over different committees at different times.[668] Consequently, it can be argued that either MEPs tried to increase their chances via multiple submissions or multi-channel lobbying was very successful. Anyway, it led to a huge amount of submitted amendments that had to be considered by rapporteur Albrecht and his shadow rapporteurs to formulate a position that should get a majority in the Parliament’s vote. By deciding about which amendments will be finally involved in the text, he and his shadows were also deciding about the influence granted to certain lobbyists. Apparently, the amount of submitted amendments does not indicate the real influence on the Parliament’s positions, but rather the dimension of lobbying.

---

[665] See [204], Article 14 §1, Article 35 §7.
[666] List based on the analysis of lobbyplag (see [204]) and an own evaluation.
[667] See [204].
[668] See [204], Article 4, point 3a.

The text finally accepted with a great majority of 95% by the Parliament on 12 March 2014[669] had many modifications vis-à-vis the proposed version of the Commission, but in the end it was at a similar level than the Commission's proposal, including some weaker articles, but also some stronger.

The ten Articles that had the most amendments submitted, serve as the best examples to show the balanced situation, as four of those articles had weakened, five had strengthened and one had changed in a neutral way.[670] In the words of rapporteur Albrecht the proposed version of the Parliament "is the best data protection regulation of the world, which does not mean that there are no rooms for improvements."[671]

Hence, it can be argued that the Parliament was largely resistant against the excessive lobbying approaches and was not granting much influence when taking the bigger picture into account. Beside the efforts of those MEPs and groups, who were despite strong corporate lobbying efforts supporting stronger rules, especially the Snowden-unveilings about the NSA in summer 2013 might be a reason why the fierce lobbying efforts were not very successful at the end after they resulted in a huge amount of submitted amendments before. Even though lobbying was not that successful, it had an influence on the Parliaments version: an influence that strengthened and weakened the regulation at the same time.

The weakening of some rules may also be the main reason why Albrecht saw rooms for improvements. In this context, particularly the introduction of the criticized concept of pseudonymous data as a measure to ensure data protection[672], changes regarding profiling specifying that a controller or processor does not need explicit consent of a data subject anymore when applying such a measure but should give the possibility to opt-out of it[673], and the radical elimination of obligations for documentation[674] can be mentioned. Furthermore, the easing of the legitimate interest clause, which was initially even eliminated in Albrecht's first draft[675], to third parties meant a notable weakening.[676] In general, all of these modifications that weakened the regulation followed interests of the corporate sector. They show that lobbying from this side had a certain degree of influence on the final text, but in consideration of their efforts their influence was not high at all and their involvement was not disproportionate as several other principles and rules were notably strengthened in a way suggested by the public sector. The major strengthening related to administrative sanctions[677],

---

[669] See [2].

[670] In a holistic view, Articles 6, 20, 28 and 83 were weakened, Articles 4, 14, 15, 35 and 79 were strengthened and article 17 had changed in a neutral way.

[671] Albrecht in [217].

[672] Interviewee E mentioned that there was a campaign regarding pseudonymous data from Yahoo. They tried to include that everything can be done with pseudonymized data without any limit. See Interview E, lines 65-72. This proposal can also be found in a text of Amazon and others. See [218], p. 14, 16.

[673] In contrast to the Commission's formulation, which states that every natural person has the right not to be subject to profiling, the Parliament's formulation only states that there must be a possibility to object to profiling. See [219], Article 20 §1.

[674] See [219], Article 28.

[675] See [213], Amendment 99.
According to an interviewee it was largely tried to open this clause, as he said that corporate lobbyists wanted to use the legitimate interest clause to process data for purposes incompatible to the original purpose. See Interview E, lines 47-53.

[676] See [219], Article 6 §1(f).

[677] While the Commission proposed that administrative sanctions shall be up to €1,000,000 or in case of an enterprise up to 2% of its annual worldwide turnover, the Parliament proposed that they shall be up to €100,000,000 or up to 5% of the annual worldwide turnover in case of an enterprise, whichever is higher. See [219], Article 79.

the territorial scope of the regulation[678], the provision on information[679] and the competences of authorities, i.e. the Commission and the European Data Protection Board[680]. These changes balanced the involvement of the corporate sector by supporting stronger and more effective data protection standards.

Although the opinions of the interviewees differ, it can be concluded that the fierce lobbying in the Parliament was not successful to a large extent, but rather led to a quite balanced text that set the EP's position at first reading at a similar level as the proposal of the Commission. While the interviewee from the Commission said that it has some points that are not acceptable for the Commission[681], the individual expert interviewed for this thesis argued that he favors the Parliament's paper.[682] In fact, both opinions are understandable, as the Parliament's version had strengthened some points, while weakened some other points. Depending on the point of view the proposed regulation may be seen stronger or weaker, but from a neutral perspective it is on a similar level than the draft regulation proposed by the Commission.

Therefore, it can be argued that the Commission and the Parliament are both searching for a regulation that strongly increases the data protection standards of the Directive 95/46 EC. In doing so, they were both largely resistant to lobbying approaches that would only benefit a few stakeholders and influence the act in a very biased way. With regard to their positions, the influence of lobbyists can be seen legitimate in the Parliament and the Commission. However, this was barely the case during their initial formulation processes, where especially corporate lobbyists tried everything to get their interests involved. In this process, lobbying went beyond the scope of a legitimate function, as it was just too much, too dishonest and too biased.

### 4.2.3 Council of the European Union

Similar to the other two institutions, the Council and the national governments in the member states were massively and continuously lobbied[683], but contrary to the Parliament this was not only done after the Commission unveiled its proposal, but even while the proposal was formulated and prepared. In particular the politicians of certain powerful and relevant member states were already strongly lobbied, while the Commission was working on the original draft.[684] By doing so, it can be assumed that lobbyists tried to create an early political pressure on the Commission and to shape the opinions of the member states and thus the position of the Council as early as possible. However, the early approach to indirectly influence the formulation processes of the other two institutions was not or only very barely successful, because the proposal of the Commission and also the position of the Parliament at first reading were not influenced that much as discussed before. Hence, lobbying the Council at these stages may probably be best described as another channel in a multi-channel lobbying strategy of a lobbyist.

---

[678] The Parliament added that the regulation also applies to the processing of personal data if it does not take place in the Union. See [219], Article 3 §1.
[679] See [219], Article 13a.
[680] Generally, the Parliament transferred almost all supervisory and regulative powers from the Commission to the independent European Data Protection Board. Furthermore it introduced a lead authority that better suits the principle of a one-stop-shop. See [219], Article 54a.
[681] See Interview C, lines 145-151.
[682] See Interview A, lines 267-269, 301-305.
[683] See Interview A, lines 33-34.
[684] See Interview B, lines 54-59; Interview C, lines 24-28.

After the proposal of the Commission was unveiled, the Council became an active part of the decision-making process on its own. Consequently, the lobbying approach of lobbyists changed automatically to a direct one without stopping the indirect approach, which still remained important since the institution represents only one of three actors finally negotiating for a common outcome in the following trilogue negotiations.

The broad and aggressive lobbying approaches can also be seen as one of the main reasons why the Council needed almost 3.5 years to adopt its position in a general approach that is used as the basis for trilogue, but due to the fact that lobbying in the Council as well as its widespread formulation process are very opaque, it is not much known about these approaches undertaken by lobbyists. In the end the efforts of lobbyists on the Council's formulation process can be only partly captured via individual freedom of information acts of member states or similar measures.[685] Thereby, especially the usage of the freedom of information act in Germany, which is seen as one of the main blocking member state trying to weaken the legislative act together with the United Kingdom[686], was a proper way to get at least some information about the contribution and influence of lobbyists on the GDPR. Another method to verify the influence of lobbyists on that file is the comparison of positions and proposed amendments of lobbyists already known from the other two institutions to the published texts of the Council after meetings. The latter method, however, provides only a general overview of interests involved, because usually the Council does not indicate which member state proposed a certain wording.

Nonetheless, the usage of these two approaches shows that there was almost no difference to the other institutions when taking a view on the active lobbying actors. Once again, multinational companies and industry associations from various sectors, like ICT, health, finance and insurance were the main lobbyists.[687] They tried to water down the regulation and to get their interests involved with the same methods as described before in the subsections of the Commission and the Parliament. In summary, invitations to events, discussions and workshops, submission of papers and studies and especially a large number of personal contacts through meetings, calls and emails were the most common. Because of national particularities all of these had to be adapted depending on the lobbied member state. Austria, for example, accepted only written statements in the formulation process of the GDPR, although personal meetings had been largely wanted,[688] but such a limitation may be rather the exception than the rule and does not mean that lobbyists did not try it via other methods. In fact, the information gathered via the German freedom of information act show that a big majority of (multinational) companies and corporate associations tried and succeeded to meet with the responsible politicians or to invite those to often unbalanced discussions and workshops.[689] In the course of this, an interviewee mentioned that associations like the American Chamber of Commerce organized a series of meetings across a lot of member

---

[685] See Interview A, lines 35-46.

[686] See Interview A, lines 309-325; Interview F, lines 89-91; Reding in [220].
Interviewee B also explicitly mentioned Poland and Latvia (see Interview B, lines 189-193), but Interviewee F in turn argues that Poland was not against it (see Interview F, lines 86-91).
According to lobbyplag the top 5 countries trying to weaken the regulation were: Germany, the United Kingdom, Ireland, Czech Republic and Sweden. See [221].

[687] See [222]; [223].
In talks with representatives of the Council especially associations were mentioned as the main lobbying actors in the institution. See Interview D, lines 85-82.

[688] See Interview D, lines 14-20, 124-132.
According to Köppl lobbyists active in Austria also have to consider the special standing of the social partners, who are an important contributor and part of Austrian politics. See [55], p. 111.

[689] See [222].

states' capitals to get their message involved.[690] Another one explained that especially US-Americans invited persons (i.e. politicians) familiar with and responsible for data protection to the US to get both a practical introduction to the US-data protection system and a sightseeing trip,[691] which can be seen as highly questionable and near to corruption if it is accepted by an official.

In general, the high numbers of consultations and meetings with the corporate sector as well as the familiar style of communication between lobbyists and politicians were largely criticized, because politicians conducted discussions and workshops without any representative of the public or consulted certain lobbyists right before their official political meetings, which is not in the sense of democracy.[692]

Additionally to consultations, invitations and meetings, lobbyists submitted many (non-) papers and studies containing alarmistic numbers, statements, concerns and proposed amendments.[693] As it was already observed in the Parliament and the Commission lots of these studies, whether submitted or referred to, were funded, taken out of context or not comprehensible at all.[694] By doing so, dubious studies were not only submitted by lobbyists, but also conducted by governments on their own in that stage of the decision-making process. A German reportage unveiled that an important study about the effects of an adoption of the General Data Protection Regulation conducted by the German government and officially provided by the Federal Statistical Office of Germany was written and produced by the corporate sector.[695] Hardly surprising, the findings of this study matched almost perfectly with the concerns and proposed amendments of the corporate sector. Such behavior casts quite a bad light on the unbalanced situation in the governments of the member states, were corporate lobbying was granted special access and contribution. Of course, this was already at least partly noticed in the other two institutions, but in the Council it was done to a larger extant.

On the other side, lobbyists from NGOs and other representatives of the public seemed to be less present and thus only little included at that stage of the ordinary legislative procedure. They had to struggle with the special and widespread configuration of the Council, which made it very hard for them to lobby it effectively. According to an interviewee, they just did not have the resources to lobby every country, which is why they mainly focused on the General Secretariat located in Brussels or on their appropriate national member state where they have their headquarter and lobbied the Council as a body and the national governments only little.[696] Consequently, the representation of interests was quite unbalanced, which lead to a dominating position of economic concerns.

Besides the economic pressure caused by the domination of the corporate sector, political pressure primary in the field of security from governments within and outside the Union had been a big issue in the Council's formulation process and probably also the main reason for the slow movement of it. Member states feared of losing sovereignty and powers and of weakening international relationships to important (trade) partners, in particular the USA.[697]

---

[690] See Interview F, lines 48-53.
[691] See Interview B, lines 151-161. It should be noted that even though several interviewees were explicitly asked about this method, none of them could confirm such an approach.
[692] See [224].
One of many examples for unbalanced discussions conducted by the German ministry of Interior was held in August 2014. There, only representatives of the corporate sector and politicians were invited to participate it. See [222], message from 12.04.2014.
[693] See [222], message from 16.07.2014.
[694] See [222], message from 12.04.2014.
[695] See [225].
[696] See Interview F, lines 56-73.
[697] See [226].

This weakening of international relationship as a result of stricter data protection and stronger law enforcement mechanisms combined with meaningful sanctions can be seen as the biggest issue for member states with good and important international relationships like Germany and the UK. Hence, especially Germany tried to water down the regulation, while at the same time, behaving like the guardian of data protection in the public that tries to align the European level on the German level of data protection.[698] This approach, however, was very strange since the Commission already tried to orient its proposal on the German data protection standards as it was argued by the former Commissioner Reding.[699] Because also the UK was strongly against several rules of the GDPR, the Council faced with big problems, as these member states and their economies are very important and powerful in the Union.[700] Although it would be formally possible that decisions are taken against them, it is almost never done in fact. In the course of this it should be noted that basically the Council even searches for unanimity alongside all of the member states. Since it was not possible to find an agreement including those important countries the regulation was put on hold.[701]

By talking about political decision-making a further aspect has to be kept in mind: politics is largely related to daily business, which means that positions may change quickly without taking long term impacts into account. It is quite common that certain issues may be much more important from one day to another and therefore influence positions of member states. Due to the fact that the Council had a very long formulation process for the GDPR through the block of several member states, lots of different focuses had to be taken into account over time. An interviewee pointed out that discussions were largely driven by the individual agenda-setting power of the appropriate presidency, the current decisions of the CJEU and other relevant issues popping up.[702] The various focuses through those events were also not supporting a quick agreement in the institution.

In the end, the slow decision-making process combined with strong lobbying efforts lead to a kind of circle that watered down the regulation more and more. First, the Council blocked an agreement, because of too strong concerns caused by economic and political pressure. In doing so, lobbyists got the chance to further lobby the formulation process, which in turn tightened the position of the blocking states and led to further blocks. The only way out of this circle was a movement of the other member states towards the positions by the blocking member states, which led, of course, to a weaker final position and an increased involvement of interests raised by lobbyists. Particularly corporate lobbyists got more influence and lots of their interests involved. Their approach of raising economic concerns important for member states and national governments seemed to be successful, as lots of member states argued that they fear of economic problems when too strong data protection rules are in force, wherefore they tried to align the regulation to the needs of their respective economy. This gets obvious when having a detailed view on the Council's general approach and on the interests brought up by the corporate sector, as many of these interests can be found in the institution's position.

Generally, it has to be said that the Council's general approach has almost no stronger formulations or principles vis-à-vis both, the Commission's and the Parliament's positions, but lots of weaker ones and a strongly revised structure through the addition, deletion or movement of several articles and paragraphs. Thereby, primary those articles strongly lobbied in the Commission and the Parliament show major differences. In the following the most

---

[698] See Interview A, lines 309-325.
[699] See Reding in [220].
[700] See Interview F, lines 89-93.
[701] See Albrecht in [217].
[702] See Interview D, lines 54-80.

substantial modifications to the texts of the other institutions and their connection to the interests of certain lobbyists will be analyzed.

- **Opening clauses**
  After long discussion about the legislative type of the act, member states decided to keep a regulation instead of a directive, which seemed to be under discussion at the beginning.[703] Obviously, this issue was primarily a political one, as member states feared about losing sovereignty, if a regulation will be in place instead of the Directive 95/46 EC. Some lobbyists were also in favor of a directive, but the overwhelming majority was for a harmonization through a regulation, as already mentioned in the part about the Commission.
  Following the agreement on a regulation member states tried to align it on their individual national implementations.[704] Hence, they included lots of opening clauses in the general approach of the Council, by which they will have the power to individually revise certain rules and obligations. More than 30 articles with flexibility clauses can be found in the Council's general approach.[705] Originally, only about half of them were proposed by the Commission. This means that the number of articles with a flexibility clause in the general approach is about a third of all articles of the new regulation and more or less the same as the number of articles in the whole Directive 95/46 EC.

- **Conditions for consent**
  While both, the Commission and the Parliament, proposed that a data subject's consent has to be explicitly given, the Council removed the explicit indication.[706] By doing so, the member states included an interest of the corporate sector, which were largely lobbying for a removal.[707] The removal of the explicit indication of consent will lead to a situation where consent can be obtained through the back-door, for example via long and hardly readable terms of conditions, as it is done nowadays to a large extent, or via other 'hidden' actions. It provides the possibility to get consent without an active and explicit action of the data subject. An explicit consent is also important for the principles of privacy by default, purpose limitation and data minimization. Without a consent that is explicitly given, controllers or processors may be able to obtain consent for several purposes at once. The Council's addition in Article 6 §1(a) of an unambiguous consent providing a legal basis for processing of personal data may be not far-reaching enough to counteract this issue.[708] The need for an 'unambiguous' consent instead of an 'explicit' can be found in several proposals of the corporate sector.[709] Moreover, the deletion of Article 7 §4 was largely required by them.[710] In the Commission's proposal this Article stated that "consent shall not provide a legal basis for processing, where there is a significant imbalance between the position of the data subject and the controller." [711] This was even strengthened by

[703] See Interview D, lines 74-78.
[704] See Interview D, lines 145-158.
[705] The exact number of opening clauses is hard to specify, as not all of those are totally clear or very nested. In this thesis a more conservative approach is used by taking only clear specifications into mind. Depending on the source the number varies from 30 up to 48 opening clauses in the 91 Articles of the general approach.
[706] See [227], Article 4 (8).
[707] See [222], message from 19.09.2014; [228], p. 10.
[708] See [227], Article 6 §1(a).
[709] See [223], Facebook (59 pages), p. 27-28.
[710] See [222], message from 31.08.2012; [228], p. 9.
[711] [201], Article 7 §4.

the Parliament's position that also makes a reference to purpose-limitation.[712] The removal of this Article together with the deletion of an explicit consent changed the whole principle and provided a much weaker approach. In the end, it can be concluded that particularly multinational companies managed it to get their interests involved regarding this principle.

- **Purpose limitation**
  The principle of purpose limitation does not exist anymore in the Council's general approach.[713] Beside the modification regarding consent, the amended Article 6 provides further legal bases for processing personal data without limitation to a single purpose. After the processing of personal data on basis of the so-called legitimate interest was already extended in the Parliament, the Council extended it again in a crucial way. It removed the exemption clause under which personal data can be processed by third parties on ground of the legitimate interest, enabling those to process it in any case, and also enabled further processing on incompatible purposes on grounds of the legitimate interest without knowledge of the data subject.[714]
  Basically, the legitimate interest is always an objective interest that is not defined in detail in the regulation. Therefore, it depends on the point of view if an interest is legitimate or not. For a company direct marketing and big data processing might be a legitimate interest, while this will not be the case for a citizen.
  Nowadays, all big IT-companies like Google, Facebook or LinkedIn process tons of data on the ground of the legitimate interest.[715] Consequently, it is in the interest of the corporate sector to extend the legitimate interest as much as possible and to remove the purpose limitation as well.[716]
  This can also be seen elsewhere, where the special categories and special purposes for further processing of personal data without a legal ground were extended.[717]
  After corporate lobbying approaches on the Commission and the Parliament mostly failed on this issue, they finally got their interest involved in the Council.
  In total it can be argued that the modifications regarding purpose limitation made by the Council fall even far below the current rules from the Directive 95/46 EC.[718]
- **Data minimization**
  Another principle of the GDPR closely related to those already discussed is the principle of data minimization. The Council deleted this principle as well. Once again, the pressure of the corporate sector brought member states to amend this principle in favor of them. The modification from 'limited to the minimum necessary' to 'not excessive' was required by several companies to open the door for big data processing.[719] According to a working paper of the Council in particular the United Kingdom was in favor of the rewording.[720]

---

[712] See [219], Article 7 §4.
[713] See [227], Article 5 (b).
[714] See [227], Article 6 §1(f), 4.
The further processing of an incompatible purpose was deleted from the Parliament, after it was already proposed by the Commission, but not on ground of the legitimate interest, which is much more far-reaching.
[715] See [229], p. 6ff.
[716] See [222], message from 16.07.2014; [228], p. 4.
[717] See [227], Article 5 (b), Article 6 §2, Article 9 or Article 9a.
The German chancellor Merkel even mentioned that there is an urgent need to allow the processing of health data, which are one of those special categories, as otherwise Europe will lose its standing. See [230].
[718] See [231], Article 7.
[719] See [204], Article 5 (c); [228], p. 13.
[720] See [232], Article 5 (c).

In connection with an opt-out for automated processing (e.g. profiling) and several new exceptions, the amended version of the Councils allows far-reaching processing of data far behind necessity.[721] This is a contrary approach as proposed by the others, including that the term data minimization cannot be found anymore.

- **Risk-based approach**
  The Council intensified the risk-based approach for controllers and processors, which was only restricted proposed by the Commission and the Parliament. With the extension of a risk-based approach, controllers and processors are primarily self-responsible for accessing their individual risk and thus for deciding about their compliance with certain obligations as well as the implementation of appropriate measures. They have to decide on their own if they are processing personal data in a context of higher risk or not. If they determine that they do so, they have to comply with stronger obligations, like increased notifications and documentations, a prior consultation, a data protection impact assessment or the announcement of a representative in the Union[722], and have to implement stronger measures.[723] This modification was totally in line with the interest of the corporate sector, which was in favor of self-responsibility as well as appropriate obligations and measures depending on the risk.[724] Generally, such an approach aims at the accountability and responsibility of a controller or processor and is neither weakening nor strengthening the regulation if the needed counteractions are strengthened. To not have an effect on the regulation it needs meaningful sanctions and strong law enforcement mechanisms to counteract misbehavior, as it was also mentioned by an interviewee.[725]
- **Enforcement mechanisms/sanctions**
  Although the extension of a risk-based approach requires strong enforcement mechanisms and meaningful sanctions, the Council weakened both. On the one side, the possibility of organizations acting in the public interest to take judicial actions on behalf of one or more data subjects or on a mandate of more than one data subject was deleted.[726] Thus, class actions will not be possible anymore and collective actions only in limited cases. This will strongly restrict the right of data subjects to lodge a complaint. Particularly corporate lobbyists tried to remove both class actions and collective actions.[727] Even though they succeeded only partly, as collective actions were not totally removed, their interests had been involved to a large extent.
  Moreover, meaningful sanctions were weakened too, by setting back fines to the level of the Commission, after the Parliament strongly increased them.[728] By doing so, changes in the categories were also made. Several violations of a controller or processor were weakened or even deleted. This was again mainly in the interest of companies or other representatives of the corporate sector, which may be mostly affected by this.[729]
  After the changes of the enforcement mechanisms and sanctions were indicated, it can be concluded that the extension of the risk-based approach mentioned before will weaken the regulation, as the only instrument that may set incentives for controllers and processors to behave in line with this approach was weakened instead of

[721] See [227], Article 20.
[722] See [227], Article 25, Article 28, Article 31, Article 32, Article 33.
[723] See [227], Article 22.
[724] See [223], American Chamber of Commerce.
[725] See Interview E, lines 166-179.
[726] See [227], Article 73, Article 76.
[727] See [222], message from 26.07.2012; [223], European Banking Federation (67 pages). p. 60f.
[728] See [227], Article 79, Article 79a.
[729] See [223], American Chamber of Commerce p. 47ff.

strengthened. With weak enforcement mechanisms and sanctions the risk for misbehaving controllers or processors decreases. In the worst scenario, the payment of little fines may be a better solution for them as acting in line with the rules and obligations.

- **Transfer to third countries**
  A last issue indicating the influence of lobbyists on the General Data Protection Regulation in the Council is the issue regarding transfers to third countries. According to the Council's general approach this may also be possible if a controller or processor has an approved code of conduct or an approved certification.[730] Both may provide loopholes and undermine the principles of the Directive 95/46 EC, as each of them can be used as the single safeguard enabling transfer to third countries. Furthermore, the usage of private bodies that are empowered to issue and renew such a safeguard may provide further loopholes in this context.[731] It can be assumed that the easing of safeguards for transfers to third countries may be particularly in the interest of multinational organizations.

Of course, there were more issues and principles lobbied in the Council as those mentioned above, but in my opinion they represent the most important ones and provide a good overview of the group of lobbyists having succeeded to influence the institution. As it is shown, primarily corporate lobbyists managed it to get their interests involved in the most important issues. This was not only the case for these few issues, but also for the majority of the other principles, rules and obligations amended by the Council.

Consequently, there was a strong criticism from the other sectors, in particular from NGOs, which harshly criticized the wide influence granted for the corporate sector. According to the French NGO La Quadrature du net "the EU Council has proposed a text far too liberal and with very little protection for European citizens' rights vis-à-vis private companies and third countries. [...] The EU Council is trying once again to override the rights of citizens in favor of large companies that make a lucrative market of personal data."[732] Statements of other NGOs and representatives of the public sector go in the same direction. The interviewee from an NGO argued in a very dramatically wording that "the Council is systematically destroying all of the cornerstones and then stomping on the destroyed bits and burning the bits they have destroyed and jump on to make sure that they are absolutely dead."[733] All of their worries and criticisms are comprehensible, as the corporate side managed it to get a lot of its interests included, by which interests stated by NGOs or other public organizations were largely ignored.

In general, it has to be said that the weakening of public interests important for the majority of citizens, while involving and strengthening interests of comparable few (corporate) actors lead to a situation, in which lobbying cannot be seen as legitimate anymore.

Corporate lobbyists managed it to water down the general approach of the Council in a way, that falls below the existing rules and obligations we have nowadays. As a consequence one of the main objectives of the GDPR, namely the strengthening of Directive 95/46 EC, would not be fulfilled anymore.

---

[730] See [227], Article 42.
[731] See [227], Article 38a, Article 39a.
[732] [233].
[733] Interview F, lines 82-85.

# CHAPTER 5

# Conclusion

As it was outlined in Chapter 2 and 3, political scientists agree that lobbying is an essential part of every democratic system, which includes, of course, also the European Union. Hence, both politicians as well as all kinds of organizations take use of it. In the European Union these are on the one side primarily the EU-institutions responsible for the decision-making process, briefly mentioned in Chapter 1, and on the other side various organizations acting or interested in the Union such as companies, associations, NGOs or think tanks, to name just a few of them. By doing so, both sides take use of lobbying, which is usually done via various actors and methods, to adopt better legislation that should increase the common welfare of the persons living or operating in the European Union by having a focus on the needs of and (long-term) effects on those. However, as it was also discussed in chapter 3, lobbying should be only seen as an important part of a democracy, if it is done in a legitimate way with respect to the common welfare, especially in the long-term perspective.

Due to the fact that the legitimacy of lobbying is largely criticized from various sides the influence of lobbying on a specific European legislative act was analyzed in chapter 4 by taking a closer look on the ordinary legislative procedure of the General Data Protection Regulation that was unveiled by the Commission in 2012 and would probably be adopted in 2016.

This analysis revealed that the legislative act was fiercely lobbied in each one of the three institutions responsible for the decision-making process. While the Commission and the Parliament were largely resistant against lobbying efforts, it seems that particularly corporate lobbyists succeeded in the end, as the Council's general approach dramatically changed the regulation in the interest of those. Although the Council's general approach does not represent the final outcome of the regulation, it can be assumed that it will lead to a significant weakening of the original proposal, as the final text of the regulation will be somewhere in between the Parliament's position at first reading, which is quite at the same level as the Commission's proposal, and the general approach of the Council. The outcome of the trilogue negotiations confirms this statement by showing that the overall level of the regulation moved much closer to the Council's general approach and thus lowered the level of the regulation.[734] Even though the outcome of the trilogue does not reflect the final outcome, due to the fact that both sides still have to formally adopt the regulation, which may lead to some more or less minor modifications, it shows already that corporate lobbyists will finally get a lot of influence on it. As they are largely lobbying for rather individual interests primary relevant for a business model of a certain company or branch the influence of lobbyists on the GDPR cannot be seen as legitimate in the end.

In general, the lobbying of the corporate sector was mainly successful because they overruled the voices of representatives of the civil society through aggressively lobbying approaches of

[734] For the outcome of the trilogue see [234]. For the finally adopted regulation see [235].

a high number of lobbyists. Consequently, they managed it to shape the positions of decision-makers over time, which, in the end, echoed lots of the points raised by them.

Of course, the GDPR, as voted on after the trilogue negotiations, means still an essential step for the future of the European Union that harmonizes the level of the Directive 95/46 EC and even increases this in several points, but compared to the initial ambitious proposal of the Commission and the Parliament's first reading it will be at a much lower level when it is finally adopted after more than four years.

Concluding from that the influence of lobbyists on the General Data Protection Regulation will be significant. As particularly corporate lobbyists got a lot of influence over time this influence cannot be seen as balanced and thus legitimate anymore. Obviously, it can be argued that decision-makers, especially in the member states, acted on their own independent beliefs; however, as most of the final modifications represent interests that can already be found in the consultation of the Commission of 2011 it seems that they rather acted on behalf of the corporate sector, which fiercely lobbied them before. It seems that massive and aggressive lobbying approaches finally convinced decision-makers to give certain groups of the society more influence than others. They probably succeeded by raising issues important for decision-makers like job or GDP losses through increasing costs. Arguments as such, however, are highly questionable, as there are several studies and papers that contradict the raised issues. It is for example stated that a stronger data protection is a source of growth and not an economic burden as largely argued during the decision-making process.[735] The resulting democratic issue through the unbalanced involvement of interests leads to an increased mistrust of the civil society in the European institutions and the governments in the member states.

To overcome the democratic problem of unbalanced influence on legislation the realization of at least some points discussed in chapter 3.2.5 could be a solution. Increased transparency, better ethical rules and the equal active involvement of stakeholders may ensure a balance and lay down the basis for lobbying that is always legitimate in the EU. The current framework of rules and regulation as described in chapter 3 is just not far-reaching enough. Anyway, latest news from the European Commission and the European Parliament show that both are aware of the problem and want to fix it as soon as possible to rebuild citizens' trust in politics. We will see how and when they will react to this issue.

In closing the thesis, it should be noted that the high influence granted to lobbyists on one of the most important legislative acts of the 21st century, namely the General Data Protection Regulation, should not be seen as a general rule. Depending on the legislative act the influence granted to lobbyists may vary strongly.

[735] See [236]; [237], point K.

*"Looking for the few who are powerful, we tend to overlook the many whose webs of influence provoke and guide the exercise of power. These webs, or what I call 'issue networks', are particularly relevant to the highly intricate and confusing welfare policies […]."*[736]

[736] Heclo in [238], p. 102.

# Appendix

## A. List of abbreviations

| | |
|---|---|
| **ALTER-EU** | The Alliance for Lobbying Transparency and Ethics Regulation |
| **CEO** | Corporate Europe Observatory |
| **CETA** | Comprehensive Economic and Trade Agreement |
| **CFSP** | Common Foreign and Security Policy |
| **CJEU** | Court of Justice of the European Union |
| **CoR** | Committee of the Regions |
| **COREPER** | Committee of Permanent Representatives |
| **DG** | Directorate General |
| **EC** | European Community/European Communities |
| **ECSC** | European Coal and Steal Community |
| **EDC** | European Defense Community |
| **EEC** | European Economic Community |
| **EESC** | European Economic and Social Committee |
| **EIF** | European Internet Foundation/Forum |
| **EMPL** | European Parliament's Committee 'Employment and Social Affairs' |
| **EP** | European Parliament |
| **ETI** | European Transparency Initiative |
| **EU** | European Union |
| **EU-XX** | European Union composed of XX member states |
| **Euratom** | European Atomic Energy Community |
| **GDPR** | General Data Protection Regulation |
| **HLOGA** | Honest Leadership and Open Government Act of 2007 (USA) |
| **HR** | High Representative of the Union for Foreign Affairs and Security Policy |
| **JHA** | Justice and Home Affairs |
| **JURI** | European Parliament's Committee 'Legal Affairs' |
| **ICT** | Information and communications technology |
| **IMCO** | European Parliament's Committee 'Internal Market and Consumer Protection' |
| **ITRE** | European Parliament's Committee 'Industry, Research and Energy' |
| **LDA** | Lobbying Disclosure Act of 1995 (USA) |
| **LIBE** | European Parliament's Committee 'Civil Liberties, Justice and Home Affairs' |
| **MEP** | Member of the European Parliament |
| **NGO** | Non-Governmental Organization |
| **OECD** | The Organisation for Economic Co-operation and Development |
| **OEIL** | The Legislative Observatory of the European Parliament |
| **OLAF** | European Anti-fraud Office (from French: Office européen de lutte antifraud) |
| **PA** | Public Affairs |
| **PAC** | Political Action Committee |
| **PJC** | Police and Judicial Co-operation in Criminal Matters |
| **PR** | Public Relations |
| **SEA** | Single European Act |
| **SME** | Small and Medium-sized Enterprises |
| **S&P 500** | Standard & Poor's 500 |

| | |
|---|---|
| **TEC** | Treaty establishing the European Community |
| **TEU** | Treaty on the European Union |
| **TFEU** | Treaty on the Functioning of the European Union |
| **TiSA** | Trade in Services Agreement |
| **TR** | European (joint) transparency register |
| **TTIP** | Transatlantic Trade and Investment Partnership |

# B. List of Figures

# C. List of Tables

# D. Bibliography

[1] European Union, "Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union," *Official Journal of the European Union*, vol. 55, no. C 326, pp. 1–391, 26-Oct-2012.

[2] European Commission, "Progress on EU data protection reform now irreversible following European Parliament vote," MEMO/14/186, Mar. 2014 [Online]. Available: http://europa.eu/rapid/press-release_MEMO-14-186_en.htm. [Accessed: 22-Jan-2015]

[3] R. K. Yin, *Case study research: design and methods*, 4th ed. Los Angeles, Calif: Sage Publications, 2009.

[4] TNS Opinion, "EU Citizens Opinion Poll on Transparency, Ethics, and Lobbying in the EU," Poll was supported by the Austrian Arbeitskammer (AK Europa) and is part of the twelve-month ALTER Citizens Project run by Access Info Europe, AITEC, Environmental Law Service, Friends of the Earth Europe, Health Action International and Spinwatch, Jan. 2013 [Online]. Available: http://avada.access-info.org/wp-content/uploads/Infographics_EU_citizens_Opinion_Poll_ENGLISH_ONLINE.pdf. [Accessed: 01-Aug-2015]

[5] TNS Opinion & Social (at the request of the European Commission, Directorate-General for Communication), "Public Opinion in the European Union - First Results," co-ordinated by the European Commission, Directorate-General for Communication, Standard Eurobarometer 83, Spring 2015 [Online]. Available: http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_first_en.pdf. [Accessed: 08-Oct-2015]

[6] M. Warman, "EU Privacy regulations subject to 'unprecedented lobbying,'" *The Telegraph*, 08-Feb-2012. [Online]. Available: http://www.telegraph.co.uk/technology/news/9070019/EU-Privacy-regulations-subject-to-unprecedented-lobbying.html. [Accessed: 11-Aug-2015]

[7] European Union, "EUROPA - The EU in brief," 15-Oct-2015. [Online]. Available: http://europa.eu/about-eu/basic-information/about/index_en.htm. [Accessed: 08-Nov-2015]

[8] W. Weidenfeld, *Die Europäische Union*. Paderborn: Fink, 2010.

[9] European Union, "EUROPA - About the EU," 28-Oct-2015. [Online]. Available: http://europa.eu/about-eu/index_en.htm. [Accessed: 08-Nov-2015]

[10] European Union, "EUR-Lex," *EUR-Lex*, 08-Nov-2015. [Online]. Available: http://eur-lex.europa.eu/homepage.html. [Accessed: 08-Nov-2015]

[11] European Union, "EUROPA - The history of the European Union." [Online]. Available: http://europa.eu/about-eu/eu-history/index_en.htm. [Accessed: 03-Mar-2015]

[12] Belgium, Germany, France, Italy, Luxembourg, Netherlands, "Vertrag über die Gründung der Europäischen Gemeinschaft für Kohle und Stahl." Paris, 18-Apr-1951 [Online]. Available: http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11951K/TXT:DE:PDF. [Accessed: 03-Mar-2015]

[13] Belgium, Germany, France, Italy, Luxembourg, Netherlands, "Verdrag tot oprichting van de Europese Economische Gemeenschap." Rome, 25-Mar-1957 [Online]. Available: http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11957E/TXT:NL:PDF. [Accessed: 03-Mar-2015]

[14] Belgium, Germany, France, Italy, Luxembourg, Netherlands, "Vertrag zur Gründung der Europäischen Atomgemeinschaft." Rome, 25-Mar-1957 [Online]. Available: http://old.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11957A/TXT:DE:PDF. [Accessed: 03-Mar-2015]
[15] Europäische Gemeinschaften, "Amtsblatt der Europäischen Gemeinschaften," *Amtsblatt der Europäischen Gemeinschaften*, vol. 10, no. 152, pp. 1–22, 13-Jul-1967.
[16] European Economic Community, "Bulletin of the European Economic Community," vol. 9, no. 3, Mar. 1966 [Online]. Available: http://aei.pitt.edu/54209/1/BUL063.pdf. [Accessed: 03-Mar-2015]
[17] Statistics Norway, "Folkeavstemningen om EU - SSB," 01-Jan-1999. [Online]. Available: http://www.ssb.no/valg/statistikker/euvalg/aar/1999-01-01. [Accessed: 03-Mar-2015]
[18] Europäische Gemeinschaften, "Vertrag zur Änderung bestimmter Haushaltsvorschriften der Verträge zur Gründung der Europäischen Gemeinschaften und des Vertrages zur Einsetzung eines gemeinsamen Rates und einer gemeinsamen Kommission der Europäischen Gemeinschaften," *Amtsblatt der Europäischen Gemeinschaften*, vol. 14, no. L 2, pp. 1–11, 02-Jan-1971.
[19] European Communities, "Treaty amending certain financial provisions of the Treaties establishing the European Economic Communities and of the Treaty establishing a single Council of the European Communities," *Official Journal of the European Communities*, vol. 20, no. L 359, pp. 1–19, 31-Dec-1977.
[20] European Union, "The European Council: History of the European Council." [Online]. Available: http://www.consilium.europa.eu/en/european-council/. [Accessed: 03-Mar-2015]
[21] H.-J. Seeler, *Geschichte und Politik der Europäischen Integration*. Baden-Baden: Nomos, 2008.
[22] European Communities, "Single European Act," *Official Journal of the European Communities*, vol. 30, no. L 169, pp. 1–29, 29-Jun-1987.
[23] European Communities, "Treaty on European Union," *Official Journal of the European Communities*, vol. 35, no. C 191, pp. 1–67, 29-Jul-1992.
[24] European Communities, "Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts," *Official Journal of the European Communities*, vol. 40, no. C 340, pp. 1–91, 10-Nov-1997.
[25] European Communities, "Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts," *Official Journal of the European Communities*, vol. 44, no. C 80, pp. 1–87, 10-Mar-2001.
[26] European Union, "EUROPA - Treaty of Lisbon - Taking Europe into the 21st century." [Online]. Available: http://ec.europa.eu/archives/lisbon_treaty/take/index_en.htm. [Accessed: 04-Mar-2015]
[27] European Union, "Vertrag von Lissabon zur Änderung des Vertrags über die Europäische Union und des Vertrags zur Gründung der Europäischen Gemeinschaft," *Official Journal of the European Union*, vol. 50, no. C 306, pp. 1–146, 17-Dec-2007.
[28] D. Dialer and M. Richter, Eds., *Lobbying in der Europäischen Union: Zwischen Professionalisierung und Regulierung*. Wiesbaden: Springer VS, 2014.
[29] European Union, "EUROPA - Countries." [Online]. Available: http://europa.eu/about-eu/countries/index_en.htm. [Accessed: 04-Sep-2015]
[30] Wikipedia, "European Union," *Wikipedia, the free encyclopedia*. 03-Mar-2015 [Online]. Available:

http://en.wikipedia.org/w/index.php?title=European_Union&oldid=649714573. [Accessed: 04-Mar-2015]
[31] European Union, "Institutional balance." [Online]. Available: http://eur-lex.europa.eu/summary/glossary/institutional_balance.html. [Accessed: 11-Nov-2015]
[32] C. Hecking, "EU-Parlamentarier wollen Zweitsitz in Straßburg loswerden," *Spiegel Online*, 19-Nov-2013 [Online]. Available: http://www.spiegel.de/politik/ausland/eu-parlamentarier-wollen-zweitsitz-in-strassburg-loswerden-a-934184.html. [Accessed: 04-Mar-2015]
[33] The Federal Returning Officer, "Direct Elections Act: Decision and Act concerning the election of the representatives of the European Parliament by direct universal suffrage," 2015 [Online]. Available: http://www.bundeswahlleiter.de/en/europawahlen/downloads/rechtsgrundlagen/direktwahlakt_engl.pdf. [Accessed: 23-Jun-2015]
[34] K. Reif and H. Schmitt, "Nine second-order National Elections – A conceptual framework for the analysis of European Election results," in *European Journal of Political Research*, vol. Volume 8, Blackwell Publishing Ltd, 1980, pp. 3–44.
[35] J. Pollak and P. Slominski, *Das politische System der EU*. Wien: facultas.wuv., 2012.
[36] S. Ozsváth, "EU-Wahl 2014, Wahlkampfplakat FPÖ." 19-May-2014 [Online]. Available: http://blog.br.de/studio-wien/?attachment_id=7595. [Accessed: 15-May-2015]
[37] European Parliament, "Rules of Procedure of the European Parliament," 8th Parliamentary Term, Jan. 2015 [Online]. Available: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+RULES-EP+20150101+0+DOC+PDF+V0//EN&language=EN. [Accessed: 20-Jun-2015]
[38] W. Mussler, "Europawahl Große Koalition für „mehr Europa"," *Frankfurter Allgemeine Zeitung*, 26-May-2014 [Online]. Available: http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/europawahl-grosse-koalition-fuer-mehr-europa-12959705.html. [Accessed: 04-Mar-2015]
[39] European Parliament, "MEPs by Member State and political group - 8th parliamentary term," 11-Nov-2015. [Online]. Available: http://www.europarl.europa.eu/meps/en/crosstable.html. [Accessed: 11-Nov-2015]
[40] European Parliament, "About committees." [Online]. Available: http://www.europarl.europa.eu/committees/en/about-committees.html. [Accessed: 15-Apr-2015]
[41] European Parliament, "EP delegations: strengthening external relationships," 03-Apr-2012. [Online]. Available: http://www.europarl.europa.eu/news/en/news-room/content/20120322STO41654. [Accessed: 15-Apr-2015]
[42] European Union, "Council configurations," 24-Feb-2015. [Online]. Available: http://www.consilium.europa.eu/en/council-eu/configurations/. [Accessed: 05-Mar-2015]
[43] European Union, "Council preparatory bodies." [Online]. Available: http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/. [Accessed: 16-Apr-2015]
[44] dpa, "Regierungen beschließen: EU-Kommission wird nicht kleiner," *Handelsblatt*, 22-May-2013. [Online]. Available: http://www.handelsblatt.com/politik/international/regierungen-beschliessen-eu-kommission-wird-nicht-kleiner/8241488.html. [Accessed: 05-Mar-2015]
[45] European Union, "2010/138/,Euratom: Commission Decision of 24 February 2010 amending its Rules of Procedure," *Official Journal of the European Union*, vol. 53, no. L 55, pp. 60–67, 05-Mar-2010.

[46] European Commission, "Who we are," 14-Mar-2015. [Online]. Available: http://ec.europa.eu/civil_service/about/who/index_en.htm. [Accessed: 11-Nov-2015]
[47] European Commission, "About the European Commission," 27-Feb-2015. [Online]. Available: http://ec.europa.eu/about/index_en.htm. [Accessed: 05-Mar-2015]
[48] European Union, "EUROPA - Agencies and other EU bodies," 27-Oct-2015. [Online]. Available: http://europa.eu/about-eu/agencies/index_en.htm. [Accessed: 11-Nov-2015]
[49] European Union, "Precedence of European law," 01-Oct-2010. [Online]. Available: http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14548_en.htm. [Accessed: 05-Mar-2015]
[50] European Union, "Codecision: Council common position," 31-Jan-2012. [Online]. Available: http://ec.europa.eu/codecision/stepbystep/text/index3_en.htm. [Accessed: 11-Nov-2015]
[51] House of Lords, "Codecision and national parliamentary scrutiny," *parliament.uk*, 2009. [Online]. Available: http://www.publications.parliament.uk/pa/ld200809/ldselect/ldeucom/125/12504.htm. [Accessed: 06-Mar-2015]
[52] S. Dagger and M. Kambeck, Eds., *Politikberatung und Lobbying in Brüssel*, 1. Aufl. Wiesbaden: VS Verlag für Sozialwissenschaften, 2007.
[53] "Lobby," *Online Etymology Dictionary*. Douglas Harper [Online]. Available: http://www.etymonline.com/index.php?term=lobby&allowed_in_frame=0. [Accessed: 10-Mar-2015]
[54] Corporate Europe Observatory, "Lobby Planet - Brussels The EU quarter," Brussels, Lobby Planet Guide 4th Edition, Sep. 2011 [Online]. Available: http://corporateeurope.org/sites/default/files/publications/ceolobbylow.pdf. [Accessed: 11-Feb-2015]
[55] P. Köppl, *Public affairs management: Strategien & Taktiken erfolgreicher Unternehmenskommunikation*. Wien: Linde, 2000.
[56] I. Michalowitz, *Lobbying in der EU*. Wien: Facultas. WUV, 2007.
[57] "Lobby," *Merriam-Webster Dictionary*. Merriam-Webster, Incorporated [Online]. Available: http://www.merriam-webster.com/dictionary/lobby. [Accessed: 22-Jan-2015]
[58] T. Leif and R. Speth, Eds., *Die fünfte Gewalt: Lobbyismus in Deutschland*, 1. Aufl. Wiesbaden: VS Verlag für Sozialwissenschaften, 2006.
[59] K. Joos, *Lobbying in the new Europe: successful representation of interests after the Treaty of Lisbon*. Weinheim: Wiley-VCH, 2011.
[60] R. Ritter, D. Feldmann, H.-H. von Arnim, and Forum WHU--Wirtschaft in der Verantwortung, Eds., *Lobbying zwischen Eigeninteresse und Verantwortung*, 1. Aufl. Baden-Baden: Nomos, 2005.
[61] L. W. Milbrath, *The Washington Lobbyists*. Chicago: Rand McNally, 1963.
[62] Commission of the European Communities, "Green Paper - European Transparency Initiative," Brussels, COM(2006) 194 final, May 2006 [Online]. Available: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0194&from=EN. [Accessed: 07-Feb-2015]
[63] I. Michalowitz, *EU lobbying - principals, agents and targets: strategic interest intermediation in EU policy-making*. Münster; Piscataway, NJ: Lit; Distributed in North America by Transaction Publishers, 2004.
[64] B. P. Priddat, *Politik unter Einfluss: Netzwerke, Öffentlichkeiten, Beratungen, Lobby*, 1. Aufl. Wiesbaden: VS Verlag für Sozialwissenschaften, 2009.
[65] S. Mulcahy and Transparency International, *Lobbying in Europe: hidden influence, privileged access*. 2015.

[66] C. Feld, "Das Wunder von Brüssel - Die schwere Geburt eines Gesetzes," *WDR Weltweit*, 25-Mar-2014 [Online]. Available: https://www.youtube.com/watch?v=cXvdsnngZNw. [Accessed: 27-Apr-2015]
[67] TNS Political & Social (at the request of the European Commission, Directorate-General for Home Affairs), "Businesses' attitudes towards corruption in the EU - Summary," co-ordinated by the European Commission, Directorate-General for Communication, Flash Eurobarometer 374, Feb. 2014 [Online]. Available: http://ec.europa.eu/public_opinion/flash/fl_374_sum_en.pdf. [Accessed: 09-Jan-2015]
[68] D. Coen and J. J. Richardson, Eds., *Lobbying the European Union: institutions, actors, and issues*. Oxford ; New York: Oxford University Press, 2009.
[69] H. Kafsack, "Neue Statistik EU macht weniger Gesetze als angenommen," *Frankfurter Allgemeine Zeitung*, 03-Sep-2009 [Online]. Available: http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/neue-statistik-eu-macht-weniger-gesetze-als-angenommen-1858607.html. [Accessed: 26-Mar-2015]
[70] Wolfgang Böhm, "Gesetze: EU-Dominanz ist ein „Mythos"," *Die Presse*, 24-Mar-2010 [Online]. Available: http://diepresse.com/home/politik/eu/548258/Gesetze_EUDominanz-ist-ein-Mythos. [Accessed: 26-Mar-2015]
[71] D. Eckert and H. Zschäpitz, "Wie der Finanzmarkt Lobbyismus belohnt," *Welt Online*, 02-Oct-2014 [Online]. Available: http://www.welt.de/wirtschaft/article132847664/Wie-der-Finanzmarkt-Lobbyismus-belohnt.html. [Accessed: 02-Mar-2015]
[72] R. M. Alexander, S. W. Mazza, and S. Scholz, "Measuring Rates of Return for Lobbying Expenditures: An Empirical Case Study of Tax Breaks for Multinational Corporations," Social Science Research Network, Rochester, NY, SSRN Scholarly Paper ID 1375082, Apr. 2009 [Online]. Available: http://papers.ssrn.com/abstract=1375082. [Accessed: 21-Apr-2015]
[73] European Union, "Transparency Register," 19-Nov-2015. [Online]. Available: http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en. [Accessed: 19-Nov-2015]
[74] European Communities, "An open and structured dialogue between the Commission and special interest groups," *Official Journal of the European Communities*, vol. 36, no. C 63, pp. 2–7, 05-Mar-1993.
[75] U. Machold, "Die Einflüsterer," *Welt Online*, 07-Mar-2004. [Online]. Available: http://www.welt.de/print-wams/article107412/Die-Einfluesterer.html. [Accessed: 04-Feb-2015]
[76] Burson Marsteller, "A Guide to Effective Lobbying in Europe - The View of Policy-Makers," Burson-Marsteller's lobbying survey 5th edition, 2013 [Online]. Available: http://lobbyingsurvey.burson-marsteller.com/wp-content/uploads/2013/05/european_lobbying_survey_2013.pdf. [Accessed: 03-Feb-2015]
[77] S. Adamek and K. Otto, *Der gekaufte Staat wie Konzernvertreter in deutschen Ministerien sich ihre Gesetze selbst schreiben*. Köln: Kiepenheuer & Witsch, 2009.
[78] E. Anosovs, J. Avau, and G. Sabbati, "The European Parliament 2009-14 - Five years' work in figures," European Parliament, May 2014 [Online]. Available: http://www.europarl.europa.eu/EPRS/140781REV1-The-European-Parliament-2009-14-FINAL.pdf. [Accessed: 07-May-2015]
[79] C. Gammelin, *Die Strippenzieher: Manager, Minister, Medien, wie Deutschland regiert wird*, 1. Aufl. Berlin: Econ, 2005.
[80] M. Šefčovič, "Lobbying and transparency – a challenge for young professionals," Brussels, 05-Jun-2014 [Online]. Available: http://europa.eu/rapid/press-release_SPEECH-14-433_en.htm. [Accessed: 24-Feb-2015]

[81] European Union, "Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation," *Official Journal of the European Union*, vol. 57, no. L 277, pp. 11–24, 19-Sep-2014.
[82] T. Eschenburg, *Herrschaft der Verbände?*. Stuttgart: Deutsche Verlags-Anstalt GmbH, 1955.
[83] P. C. Schmitter and W. Streeck, "The Organization of Business Interests - Studying the Associative Action of Business in Advanced Industrial Societies," Max-Planck-Institution für Gesellschaftsforschung, Cologne, MPIfG Discussion Paper 99/1, Mar. 1999 [Online]. Available: http://www.mpifg.de/pu/mpifg_dp/dp99-1.pdf. [Accessed: 02-Apr-2015]
[84] L. Drutman, *The business of America is lobbying: how corporations became politicized and politics became more corporate*. New York, NY: Oxford University Press, 2015.
[85] M. Huysseune and M. T. Jans, "Brussels as the capital of a Europe of the regions? Regional offices as European policy actors," Brussels Studies 16, Feb. 2008 [Online]. Available: http://www.brusselsstudies.be/medias/publications/EN_57_BruS16EN.pdf. [Accessed: 18-May-2015]
[86] European Parliament, "Around the European Parliament in numbers," 25-Jun-2009. [Online]. Available: http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20090619STO57318. [Accessed: 07-May-2015]
[87] F. Hayes-Renshaw and H. Wallace, *The Council of Ministers*, 2nd ed. Houndmills [England] ; New York: Palgrave Macmillan, 2006.
[88] F. M. Häge, "Who Decides in the Council of the European Union?," *JCMS J. Common Mark. Stud.*, vol. 46, no. 3, pp. 533–558, Jun. 2008.
[89] A. E. Juncos and K. Pomorska, "Invisible and unaccountable? National Representatives and Council Officials in EU foreign policy," *J. Eur. Public Policy*, vol. 18, no. 8, pp. 1096–1114, Dec. 2011.
[90] H.-P. Martin, "1.427 Lobby-Interventionen in nur zwei Jahren," 04-Apr-2013. [Online]. Available: http://www.hpmartin.net/content/1427-lobby-interventionen-nur-zwei-jahren. [Accessed: 21-Jan-2015]
[91] G. Graham, "The White Paper FAQ (Frequently Asked Questions)," 11-Jul-2014. [Online]. Available: http://www.thatwhitepaperguy.com/white-paper-faq-frequently-asked-questions/. [Accessed: 11-May-2015]
[92] R. Coghlan, "EU Legislation: How do I lobby effectively," *European Law Monitor CIC*. [Online]. Available: http://www.europeanlawmonitor.org/how-do-i/eu-legislation-how-do-i-lobby-effectively.html. [Accessed: 22-Jan-2015]
[93] European Commission, "Communication from the President to the Commission - Framework for Commission expert groups: Horizontal rules and public register," Brussels, C(2010) 7649 final, Nov. 2010 [Online]. Available: http://ec.europa.eu/transparency/regexpert/PDF/C_2010_EN.pdf. [Accessed: 30-Jun-2015]
[94] European Commission, "Register of Expert Groups and Other Similar Entities," Nov-2015. [Online]. Available: http://ec.europa.eu/transparency/regexpert/index.cfm. [Accessed: 23-Nov-2015]
[95] M. Gentzkow, E. Glaeser, and C. Goldin, "The Rise of the Fourth Estate: How Newspapers Became Informative and Why It Mattered," National Bureau of Economic Research, Cambridge, MA, w10791, Sep. 2004 [Online]. Available: http://www.nber.org/papers/w10791.pdf. [Accessed: 20-Apr-2015]
[96] M. Bissinger, Ed., *Die vierte Gewalt: vom Verschwinden des investigativen Journalismus*. Freiburg: Herder, 2014.

[97] LobbyControl, "Lobbyismus höhlt die Demokratie aus: Zehn Thesen." [Online]. Available: https://www.lobbycontrol.de/lobbyismus-hoehlt-die-demokratie-aus-zehn-thesen/. [Accessed: 21-Jan-2015]
[98] European Parliament, "European Parliament rejects ACTA," *European Parliament*, 04-Jul-2012. [Online]. Available: http://www.europarl.europa.eu/news/en/news-room/content/20120703IPR48247. [Accessed: 23-Feb-2015]
[99] Court of Justice of the European Union, "Judgment in Joined Cases C - 293/12 and C - 594/12," Luxembourg, Apr. 2014 [Online]. Available: http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140054en.pdf. [Accessed: 20-May-2015]
[100] High Court of Ireland, "Case C-293/12," 11-Jun-2012. [Online]. Available: http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2012.258.01.0011.01.ENG. [Accessed: 20-May-2015]
[101] Verfassungsgerichtshof (Austria), "Case C-594/12," 19-Dec-2012. [Online]. Available: http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2013.079.01.0007.01.ENG. [Accessed: 20-May-2015]
[102] A. Doyle, "MEPs 'scaremongered to vote no,'" *BBC News*, 22-Nov-2005. [Online]. Available: http://news.bbc.co.uk/2/hi/programmes/file_on_4/4459586.stm. [Accessed: 03-Feb-2015]
[103] Philadelphia Convention, *The Constitution of the United States of America*. 1787 [Online]. Available: http://www.gpo.gov/fdsys/pkg/GPO-CONAN-REV-2014/pdf/GPO-CONAN-REV-2014-6.pdf. [Accessed: 20-May-2015]
[104] O. Ziegler, *EU regulatory decision making and the role of the United States: transatlantic regulatory cooperation as a gateway for U.S. economic interests?*. Wiesbaden: Springer VS, 2013.
[105] J. P. Mayer, Ed., *Democracy in America*, vol. 1, part 2, chapter 4. 1969, Originally published in 1835–1840.
[106] K. Gallagher, "Astroturfing: 21st Century False Advertising." ASA Institute for Risk & Innovation, 2014 [Online]. Available: http://www.anniesearle.com/web-services/Documents/ResearchNotes/ASAResearchNote_2014-12_Gallagher_Astroturfing.pdf. [Accessed: 22-May-2015]
[107] "Astroturfing," *Taegan Goddard's Political Dictionary*. 2015 [Online]. Available: http://politicaldictionary.com/words/astroturf/. [Accessed: 22-May-2015]
[108] R. Tigner, "Online Astroturfing and the European Union's Unfair Commercial Practices Directive," Université Libre De Bruxelles, Brussels, 2009 [Online]. Available: http://www.udec.site.ulb.ac.be/fileadmin/fichiers/Ronan_Tigner_-_Online_astroturfing.pdf. [Accessed: 22-May-2015]
[109] United States of America, *Amendments to the The Constitution of the United States of America*. 1789 [Online]. Available: http://www.gpo.gov/fdsys/pkg/GPO-CONAN-REV-2014/pdf/GPO-CONAN-REV-2014-7.pdf. [Accessed: 31-May-2015]
[110] R. Choma, "The 2012 Election: Our Price Tag (Finally) for the Whole Ball of Wax," *OpenSecrets Blog*, 13-Mar-2013. [Online]. Available: https://www.opensecrets.org/news/2013/03/the-2012-election-our-price-tag-fin/. [Accessed: 21-May-2015]
[111] T. Murse, "What Is a Super PAC?," *About.com News & Issues*, 16-Dec-2014. [Online]. Available: http://uspolitics.about.com/od/firstamendment/a/What-Is-A-Super-Pac.htm. [Accessed: 21-May-2015]

[112] K. Gill, "What Is A Political Action Committee (PAC)?," *About.com News & Issues*, 26-Jun-2014. [Online]. Available: http://uspolitics.about.com/od/finance/a/what_is_a_PAC.htm. [Accessed: 21-May-2015]
[113] Harvard Law Review, "Working Together for an Independent Expenditure: Candidate Assistance with Super PAC Fundraising," vol. 128, no. 5, pp. 1478–1499, Mar. 2015.
[114] "democracy," *The Free Dictionary*. [Online]. Available: http://www.thefreedictionary.com/democracy. [Accessed: 05-Jun-2015]
[115] S. Kallas, "The need for a European transparency initiative," Nottingham, 03-Mar-2005 [Online]. Available: http://europa.eu/rapid/press-release_SPEECH-05-130_en.htm. [Accessed: 03-Feb-2015]
[116] A. Buncombe, "Sepp Blatter is being investigated by FBI, claims report," *The Independent*, 03-Jun-2015. [Online]. Available: http://www.independent.co.uk/news/world/americas/fifa-corruption-probe-sepp-blatter-is-being-investigated-by-fbi-claims-report-10293216.html. [Accessed: 05-Jun-2015]
[117] D. Aitkenhead, "Julian Assange: the fugitive," *The Guardian*, 07-Dec-2012. [Online]. Available: http://www.theguardian.com/media/2012/dec/07/julian-assange-fugitive-interview. [Accessed: 05-Jun-2015]
[118] B. Hüttemann, "Europäisches Regieren und deutsche Interessen," *EU-in-BRIEF: aktuell, informativ, meinungsstark*, no. 11–1, 31-Jan-2011 [Online]. Available: http://www.netzwerk-ebd.de/wp-content/uploads/2014/08/EBD-PUB-EU-in-BRIEF-1_2011.pdf. [Accessed: 20-Dec-2014]
[119] European Ombudsman, "Annual Report 2014," 26-May-2015. [Online]. Available: http://www.ombudsman.europa.eu/de/activities/annualreport.faces/en/59959/html.bookmark. [Accessed: 30-Jun-2015]
[120] European Union, "Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999," *Official Journal of the European Union*, vol. 56, no. L 248, pp. 1–22, 18-Sep-2013.
[121] European Communities, "1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC(1999) 802)," *Official Journal of the European Communities*, vol. 42, no. L 136, pp. 20–22, 31-May-1999.
[122] European Union, "The OLAF report 2014," Publications Office of the European Union, Luxembourg, 2015 [Online]. Available: http://ec.europa.eu/anti_fraud/documents/reports-olaf/2014/olaf_report_2014_en.pdf. [Accessed: 22-Jun-2015]
[123] European Union, "Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community," May 2014 [Online]. Available: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01962R0031-20140501&qid=1433781226685. [Accessed: 08-Jun-2015]
[124] European Union, "Interinstitutional agreement on better law-making," *Official Journal of the European Union*, vol. 46, no. C 321, pp. 1–5, 31-Dec-2003.
[125] European Commission, "Better Regulation Agenda: Enhancing transparency and scrutiny for better EU law-making," IP/15/4988, May 2015 [Online]. Available: http://europa.eu/rapid/press-release_IP-15-4988_en.htm. [Accessed: 10-Jun-2015]

[126] European Communities, "Charter of Fundamental Rights of the European Union," *Official Journal of the European Communities*, vol. 43, no. C 364, pp. 1–22, 18-Dec-2000.
[127] European Communities, "Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents," *Official Journal of the European Communities*, vol. 44, no. L 145, pp. 43–48, 31-May-2001.
[128] European Communities, "European governance - A white paper," *Official Journal of the European Communities*, vol. 44, no. C 287, pp. 1–29, 12-Oct-2001.
[129] D. Curtin and A. J. Meijer, "Does transparency strengthen legitimacy?," *Inf. Polity*, vol. 11, no. 2, pp. 109–122, Apr. 2006.
[130] European Commission, "The Court declares that Mrs Edith Cresson acted in breach of her obligations as a European commissioner," CJE/06/56, Jul. 2006 [Online]. Available: http://europa.eu/rapid/press-release_CJE-06-56_en.htm?locale=en. [Accessed: 15-Jun-2015]
[131] European Commission, "Communication from the Commission - Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission," Brussels, COM/2002/0704 final, Dec. 2002 [Online]. Available: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434132983668&uri=CELEX:52002DC0704. [Accessed: 12-Jun-2015]
[132] European Commission, "Code of Good Administrative Behaviour," Sep. 2000 [Online]. Available: http://ec.europa.eu/transparency/code/_docs/code_en.pdf. [Accessed: 10-Jul-2015]
[133] European Commission, "Communication from the Commission - Follow-up to the Green Paper 'European Transparency Initiative," Brussels, COM/2007/0127 final, Mar. 2007 [Online]. Available: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52007DC0127. [Accessed: 16-Jun-2015]
[134] European Commission, "Communication from the Commission - European Transparency Initiative A framework for relations with interest representatives (Register and Code of Conduct)," Brussels, COM(2008) 323 final, May 2008 [Online]. Available: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52008DC0323. [Accessed: 16-Jun-2015]
[135] European Union, "Agreement between the European Parliament and the European Commission on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation," *Official Journal of the European Union*, vol. 54, no. L 191, pp. 29–38, 22-Jul-2011.
[136] European Commission, "Communication from the Commission - The Working Methods of the European Commission 2014 - 2019," Brussels, C(2014) 9004, Nov. 2014 [Online]. Available: http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-9004-EN-F1-1.Pdf. [Accessed: 18-May-2015]
[137] European Commission, "Commission and Parliament Implement New Rules on Transparency Register," IP/15/3740, Jan. 2015 [Online]. Available: http://europa.eu/rapid/press-release_IP-15-3740_en.htm. [Accessed: 19-Jun-2015]
[138] European Commission, "Communication from the Commission - Commission Work Programme 2015 - A New Start," Strasbourg, COM(2014) 910 final, Dec. 2014 [Online]. Available: http://ec.europa.eu/atwork/pdf/cwp_2015_en.pdf. [Accessed: 26-Feb-2015]
[139] European Commission, "Communication from the Commission - Commission Work Programme 2016 - No time for business as usual," Strasbourg, COM(2015) 610 final,

Oct. 2015 [Online]. Available: http://ec.europa.eu/atwork/pdf/cwp_2016_en.pdf. [Accessed: 10-Nov-2015]

[140] R. Tansey and V. Cann, "New and Imporved? - Why the EU Lobby register still fails to deliver," Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), Jan. 2015 [Online]. Available: http://alter-eu.org/sites/default/files/documents/Why%20EU%20Lobby%20Register%20still%20fails%20to%20deliver%20-%20print%20version.pdf. [Accessed: 28-Feb-2015]

[141] Secretaries General of the European Parliament and the European Commission, "Annual Report on the operations of the Transparency Register 2013," 2013 [Online]. Available: ec.europa.eu/transparencyregister/public/openFile.do?fileName=ar_2013.pdf. [Accessed: 28-Jun-2015]

[142] Secretaries General of the European Parliament and the European Commission, "Annual Report on the operations of the Transparency Register 2014," 2014 [Online]. Available: ec.europa.eu/transparencyregister/public/openFile.do?fileName=ar_2014_en.pdf. [Accessed: 28-Jun-2015]

[143] European Commission, "Code of conduct for Commissioners," Brussels, C(2011) 2904 final, Apr. 2011 [Online]. Available: http://ec.europa.eu/transparency/regdoc/rep/3/2011/EN/3-2011-2904-EN-F1-1.Pdf. [Accessed: 19-Jun-2015]

[144] European Commission, "Communication from Vice-President Šefčovič to the Commission on Guidelines on Gifts and Hospitality for the staff members," Brussels, SEC(2012) 167 final, Mar. 2012 [Online]. Available: http://ec.europa.eu/transparency/docs/sec_2012_0167_f_en_communication_to_commission_en.pdf. [Accessed: 19-Jun-2015]

[145] European Union, "Commission Decision of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals," *Official Journal of the European Union*, vol. 55, no. L 343, pp. 22–24, 28-Nov-2014.

[146] Bureau of the European Parliament, "Implementing Measures to the Code of Conduct," Bureau Decision, Apr. 2013 [Online]. Available: http://www.europarl.europa.eu/pdf/meps/926701_1_EN_IM_DEF.pdf. [Accessed: 24-Jun-2015]

[147] Bureau of the European Parliament, "Guide to the Obligations of Officials and Other Servants of the European Parliament - Code of Conduct," Bureau Decision, Jul. 2008 [Online]. Available: http://www.europarl.europa.eu/RegData/PDF/406411_EN.pdf. [Accessed: 26-Jun-2015]

[148] European Communities, "Minutes of the sitting of Wednesday, 17 July 1996," *Official Journal of the European Communities*, vol. 39, no. C 261, pp. 48–119, 09-Sep-1996.

[149] Council of the European Union, "2004/338/EC,Euratom: Council Decision of 22 March 2004 adopting the Council's Rules of Procedure," *Official Journal of the European Communities*, vol. 47, no. L 106, pp. 22–45, 15-Apr-2004.

[150] M. Perera, L. Hancisse, A. McMenamin, and R. Patz, "The European Union Integrity System," Transparency International EU Office, 2014 [Online]. Available: http://www.transparencyinternational.eu/wp-content/uploads/2014/04/EU_Integrity_System_Report.pdf. [Accessed: 27-Feb-2015]

[151] Organisation for Economic Co-Operation and Development (OECD), "Recommendation of the Council on Principles for Transparency and Integrity in Lobbying," Public Governance Committee, C(2010)16, Feb. 2010 [Online]. Available: http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=256&InstrumentPID=%20250. [Accessed: 01-Aug-2015]

[152] European Parliament, "European Parliament resolution of 8 May 2008 on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions," European Parliament, Brussels, P6_TA(2008)0197, May 2008 [Online]. Available: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0197&language=EN&ring=A6-2008-0105. [Accessed: 01-Aug-2015]

[153] European Ombudsman, "Disclosure, by the European Parliament, Council of the EU and European Commission, of documents relating to trilogues and transparency of trilogues in general," OI/8/2015/JAS, May 2015 [Online]. Available: http://www.ombudsman.europa.eu/en/cases/caseopened.faces/en/59816/html.bookmark. [Accessed: 01-Aug-2015]

[154] J. M. Simpson, "Google Spends Record $16.83 Million On 2014 Lobbying, Topping 15 Tech And Communications Companies; Facebook, Amazon, Apple Also Post Records," *Consumer Watchdog*, 21-Jan-2015. [Online]. Available: http://www.consumerwatchdog.org/newsrelease/google-spends-record-1683-million-2014-lobbying-topping-15-tech-and-communications-compa. [Accessed: 02-Mar-2015]

[155] V. Cann, "Volkswagen in top 10 list of biggest companies lobbying EU," *LobbyFacts.eu*, 29-Oct-2015. [Online]. Available: http://www.lobbyfacts.eu/news/29-10-2015/volkswagen-top-10-list-biggest-companies-lobbying-eu. [Accessed: 05-Nov-2015]

[156] P. Sabido and Corporate Europe Observatory, "A Year of Broken Promises - Big business still put in charge of EU Expert Groups, despite commitment to reform," ALTER-EU, AK EUROPA and ÖGB Europabüro, Nov. 2013 [Online]. Available: https://www.lobbycontrol.de/wp-content/uploads/131107-Studie-Broken-Promises.pdf. [Accessed: 26-Feb-2015]

[157] European Ombudsman, "Opinion of the European Commission in the European Ombudsman's own-initiative inquiry OI/6/2014/NF concerning the composition of Commission expert groups," OI/6/2014/NF, May 2014 [Online]. Available: http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/60019/html.bookmark. [Accessed: 01-Aug-2015]

[158] European Parliament, "General budget of the European Union for the financial year 2015 - all sections," Strasbourg, P8_TA-PROV(2014)0036, Oct. 2014 [Online]. Available: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2014-0036&language=EN. [Accessed: 29-Jul-2015]

[159] European Parliament, "Draft budget of the European Union for the financial year 2015 - Draft Ammendment," 2015 [Online]. Available: http://corporateeurope.org/sites/default/files/budget_reserve_expert_groups.pdf. [Accessed: 01-Aug-2015]

[160] Transparency International, "EU Integrity Watch - Commission meetings," 03-Jul-2015. [Online]. Available: http://www.integritywatch.eu./ec.html. [Accessed: 01-Aug-2015]

[161] M. Laczynski, "US-Firmen dominieren das Lobbying-Business in Brüssel," *Die Presse*, 24-Jun-2015 [Online]. Available: http://diepresse.com/home/politik/eu/4762334/USFirmen-dominieren-das-LobbyingBusiness-in-Brussel?_vl_backlink=/home/politik/index.do. [Accessed: 01-Aug-2015]

[162] European Ombudsman, "Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2013/TN concerning the European Commission," Strasbourg, OI/9/2013/TN, Mar. 2015 [Online]. Available: http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark. [Accessed: 16-Sep-2015]

[163] C. Holman and W. Luneburg, "Lobbying and transparency: A comparative analysis of regulatory reform," *Interest Groups Advocacy*, vol. 1, no. 1, pp. 75–104, May 2012.
[164] European Parliament, "European Parliament decision of 15 April 2014 on the modification of the interinstitutional agreement on the Transparency Register," Strasbourg, P7_TA(2014)0376, Apr. 2014 [Online]. Available: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0376. [Accessed: 01-Aug-2015]
[165] European Ombudsman, "Ombudsman: 'Real progress for TTIP transparency,'" 25-Nov-2014. [Online]. Available: http://www.ombudsman.europa.eu/en/press/release.faces/en/58376/html.bookmark. [Accessed: 01-Aug-2015]
[166] The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), "Over 100 NGOs urge EU Commission to make the lobby register legally binding," *ALTER-EU*, 11-May-2015. [Online]. Available: http://alter-eu.org/press-releases/2015/05/11/113-ngos-demand-legally-binding-lobby-register. [Accessed: 01-Aug-2015]
[167] Corporate Europe Observatory (CEO), The Austrian Federal Chamber of Labour (Arbeiterkammer), and The Austrian Trade Union Federation (ÖGB), "The fire power of the financial lobby," Report, Apr. 2014 [Online]. Available: http://corporateeurope.org/sites/default/files/attachments/financial_lobby_report.pdf. [Accessed: 21-Jan-2015]
[168] H. Kretschmer and H.-J. Schmedes, "Enhancing transparency in EU lobbying?," Friedrich-Ebert-Stiftung, Internationale Politik und Gesellschaft 1/2010, 2010 [Online]. Available: http://library.fes.de/pdf-files/ipg/ipg-2010-1/08_kretschmerschmedes_us.pdf. [Accessed: 02-Mar-2015]
[169] "Rechtsanwaltskanzleien – die unterschätzten Lobbyisten," *LobbyControl*, 23-Jun-2015. [Online]. Available: https://www.lobbycontrol.de/2015/06/rechtsanwaltskanzleien-die-unterschaetzten-lobbyisten/. [Accessed: 01-Aug-2015]
[170] The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), "Two steps forward, one step back for EU lobby transparency," *ALTER-EU*, 27-May-2015. [Online]. Available: http://alter-eu.org/two-steps-forward-one-step-back-for-eu-lobby-transparency. [Accessed: 01-Aug-2015]
[171] K. Davis and R. L. Blomstrom, *Business and society: environment and responsibility*, 3rd ed. New York: McGraw-Hill, 1975.
[172] N. Katzemich, "EU-Lobbyregister: Beschwerde gegen Goldman Sachs vertrödelt," *LobbyControl*, 17-Apr-2015. [Online]. Available: https://www.lobbycontrol.de/2015/04/eu-lobbyregister-beschwerde-gegen-goldman-sachs-vertroedelt/. [Accessed: 01-Aug-2015]
[173] V. Cann, "List of biggest NGO spenders on EU lobbying reveals register's absurd data," *LobbyFacts.eu*, 12-Nov-2015. [Online]. Available: http://lobbyfacts.eu/news/12-11-2015/list-biggest-ngo-spenders-eu-lobbying-reveals-register%E2%80%99s-absurd-data. [Accessed: 15-Nov-2015]
[174] Transparency International, "EU Integrity Watch - MEP incomes," 11-Mar-2015. [Online]. Available: http://www.integritywatch.eu/ep.html. [Accessed: 01-Aug-2015]
[175] F. De Masi, "Abgeordneter ist man nicht nebenbei," *Neues Deutschland*, 20-Nov-2014 [Online]. Available: http://www.neues-deutschland.de/artikel/952824.abgeordneter-ist-man-nicht-nebenbei.html. [Accessed: 26-Feb-2015]
[176] R. Tansey, P. de Clerck, O. Hoedeman, and N. Katzemich, "Whose representatives? MEPs on the industry payroll," A report by Friends of the Earth Europe, Corporate Europe Observatory and LobbyControl, Jun. 2015 [Online]. Available:

http://corporateeurope.org/sites/default/files/foee_ceo_lc_-_1506_-_whose_representatives_-meps_on_the_industry_payrollfinal.pdf. [Accessed: 01-Aug-2015]

[177] Corporate Europe Observatory, "RevolvingDoorWatch." [Online]. Available: http://corporateeurope.org/revolvingdoorwatch. [Accessed: 29-Nov-2015]

[178] European Ombudsman, "Draft recommendation of the European Ombudsman in the inquiry based on complaints 2077/2012/TN and 1853/2013/TN against the European Commission," 2077/2012/TN and 1853/2013/TN, Sep. 2014 [Online]. Available: http://www.ombudsman.europa.eu/en/cases/draftrecommendation.faces/en/56216/html.bookmark. [Accessed: 16-Sep-2015]

[179] United States of America, "The 15 percent limitation on outside earned income.," Legal Information Institute, 5 CFR 2636.304 [Online]. Available: https://www.law.cornell.edu/cfr/text/5/2636.304. [Accessed: 16-Sep-2015]

[180] United States of America, "An Act to provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes (Lobbying Disclosure Act)," *Public Laws*, vol. 104, no. 65, pp. 691–706, 19-Dec-1995.

[181] United States of America, "An Act to provide greater transparency in the legislative process (Honest Leadership and Open Government Act)," *Public Laws*, vol. 110, no. 81, pp. 735–776, 14-Sep-2007.

[182] T. von von Winter and J. von von Blumenthal, Eds., *Interessengruppen und Parlamente*. Wiesbaden: Springer VS, 2014.

[183] P. Flannery, "Lobbying regulation in the EU: A comparison with the USA & Canada," Trinity College Dublin, Ireland & Europe XX, 2010 [Online]. Available: http://www.spr.tcdlife.ie/seperatearticles/xxarticles/ireeuropelobbying.pdf. [Accessed: 20-Jul-2015]

[184] C. McGrath, Ed., *Interest groups and lobbying in the United States and comparative perspectives: essays in ethics, institutional pluralism, regulation, and management*. Lewiston, N.Y: Edwin Mellen Press, 2009.

[185] European Commission, "Commission proposes a comprehensive reform of the data protection rules," *DG Justice*, 25-Jan-2012. [Online]. Available: http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm. [Accessed: 21-Aug-2015]

[186] Cisco, "Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update 2014–2019 White Paper," 03-Feb-2015. [Online]. Available: http://cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.html. [Accessed: 01-Aug-2015]

[187] B. Van Alsenoy, V. Verdoodt, R. Heyman, J. Ausloos, E. Wauters, and G. Acar, "From social media service to advertising network: A critical analysis of Facebook's Revised Policies and Terms," Interdisciplinary Centre for Law and ICT/Centre for Intellectual Property Rights (ICRI/CIR) of KU Leuven the department of Studies on Media, Information and Telecommunication (SMIT) of the Vrije Universiteit Brussel (VUB) and the department of Computer Security and Industrial Cryptography (COSIC) of KU Leuven, Belgium, Mar. 2015 [Online]. Available: http://www.law.kuleuven.be/citip/en/news/item/facebooks-revised-policies-and-terms-v1-2.pdf. [Accessed: 01-Sep-2015]

[188] mbö/AFP, "Max Schrems: Berufungsgericht erklärt Zivilklage gegen Facebook für zulässig," *Spiegel Online*, 21-Oct-2015 [Online]. Available: http://www.spiegel.de/netzwelt/netzpolitik/max-schrems-gegen-facebook-zivilklage-zulaessig-a-1058959.html. [Accessed: 01-Nov-2015]

[189] TNS Opinion & Social (at the request of the European Commission, Directorate-General for Justice and Consumers), "Data Protection," co-ordinated by Directorate-

General for Communication, Special Eurobarometer 431, Jun. 2015 [Online]. Available: http://ec.europa.eu/public_opinion/archives/ebs/ebs_431_en.pdf. [Accessed: 16-Jul-2015]

[190] European Commission, "Proposal for a Directive of the Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data," Brussels, COM/2012/010 final, 2012/0010 (COD), Jan. 2012 [Online]. Available: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0010:FIN:EN:PDF. [Accessed: 01-Dec-2015]

[191] J. P. Albrecht, "EU-Datenschutzgrundverordnung: Stand der Dinge – 10 wichtige Punkte," Jun. 2015 [Online]. Available: https://www.janalbrecht.eu/fileadmin/material/Dokumente/Datenschutzreform_Stand_der_Dinge_10_Punkte_110615.pdf. [Accessed: 20-Jul-2015]

[192] European Commission, "Digital Single Market: Bringing down barriers to unlock online opportunities," 2015. [Online]. Available: http://ec.europa.eu/priorities/digital-single-market/index_en.htm. [Accessed: 01-Nov-2015]

[193] V. Jourova, "Remarks by Commissioner Jourova at the Global Law Summit London," European Commission, 23-Feb-2015 [Online]. Available: http://ec.europa.eu/commission/content/remarks-commissioner-jourova-global-law-summit-london-panel-discussion-digital-magna-carta_en. [Accessed: 01-Aug-2015]

[194] TNS Opinion & Social (at the request of the Directorate-General Information Society and Media (INFSO), Directorate-General Justice (JUST) and the Directorate-General JRC), "Attitudes on Data Protection and Electronic Identity in the European Union," co-ordinated by Directorate-General Communication, Special Eurobarometer 359, Jun. 2011 [Online]. Available: http://ec.europa.eu/public_opinion/archives/ebs/ebs_359_en.pdf. [Accessed: 02-Aug-2015]

[195] C. Schulzki-Haddouti, "Wenn die Taschenlampe am Handy zur Spionage-App wird," *Futurezone*, 24-Jun-2015. [Online]. Available: http://futurezone.at/netzpolitik/wenn-die-taschenlampe-am-handy-zur-spionage-app-wird/138.003.303. [Accessed: 29-Jun-2015]

[196] Court of Justice of the European Union, "Judgment in Case C - 362/14 Maximillian Schrems v Data Protection Commissioner," Luxembourg, Oct. 2015 [Online]. Available: http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117en.pdf. [Accessed: 10-Oct-2015]

[197] J. P. Albrecht, "Datenschutz ist digitaler Umweltschutz: Für eine Reform des europäischen Datenschutzrechts," 07-Dec-2012. [Online]. Available: https://www.janalbrecht.eu/themen/datenschutz-und-netzpolitik/datenschutz-ist-digitaler-umweltschutz-fuer-eine-reform-des-europaeischen-datenschutzrechts.html. [Accessed: 01-Aug-2015]

[198] apa/dpa, "EU-Datenschutzreform steht, Österreich stimmt dagegen," *Futurezone*, 15-Jun-2015. [Online]. Available: http://futurezone.at/netzpolitik/eu-datenschutzreform-steht-oesterreich-stimmt-dagegen/136.195.665. [Accessed: 01-Aug-2015]

[199] LIBE Committee, "Data protection reform: lead MEPs optimistic about reaching a deal by year's-end," *European Parliament*, 30-Nov-2015. [Online]. Available: http://www.europarl.europa.eu/news/en/news-room/content/20151127IPR05117. [Accessed: 30-Nov-2015]

[200] European Commission, "Consultation on the Commission's comprehensive approach on personal data protection in the European Union," 07-Jun-2011. [Online]. Available:

http://ec.europa.eu/justice/news/consulting_public/news_consulting_0006_en.htm. [Accessed: 03-Aug-2015]

[201] European Commission, "Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)," Brussels, COM(2012) 11 final, Jan. 2012 [Online]. Available: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2012:0011:FIN. [Accessed: 01-Aug-2015]

[202] European Commission, "Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - A comprehensive approach on personal data protection in the European Union," Brussels, COM/2010/0609 final, Nov. 2010 [Online]. Available: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52010DC0609. [Accessed: 02-Aug-2015]

[203] European Commission, "Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)," Brussels, Version 56, Nov. 2011 [Online]. Available: http://statewatch.org/news/2011/dec/eu-com-draft-dp-reg-inter-service-consultation.pdf. [Accessed: 01-Aug-2015]

[204] LobbyPlag, "LobbyPlag: Browse Laws," 2014. [Online]. Available: http://browse.lobbyplag.eu/. [Accessed: 03-Aug-2015]

[205] US Commerce Department, "Informal Comment on the Draft General Data Protection Regulation and Drraft Directive on Data Protection in Law Enforcement Investigations," Jan. 2012 [Online]. Available: https://edri.org/files/US_lobbying16012012_0000.pdf. [Accessed: 02-Aug-2015]

[206] United States of America, "Definitions," Legal Information Institute, 15 U.S. Code § 6501, Oct. 1998 [Online]. Available: https://www.law.cornell.edu/uscode/text/15/6501. [Accessed: 03-Aug-2015]

[207] F. Guarascio, "US lobbying waters down EU data protection reform," *EurActiv*, 21-Feb-2012. [Online]. Available: http://www.euractiv.com/specialreport-data-protection/us-lobbying-waters-eu-data-prote-news-510991. [Accessed: 03-Aug-2015]

[208] T. Rudl, "Lobbyisten in Brüssel: Leichtes Spiel mit Günther Oettinger," *netzpolitik.org*, 25-Jun-2015. [Online]. Available: https://netzpolitik.org/2015/lobbyisten-in-bruessel-leichtes-spiel-mit-guenther-oettinger/. [Accessed: 03-Jul-2015]

[209] A. Biselli, "Leak zeigt: Handelsabkommen TiSA könnte nationale Datenschutzbestimmungen aushebeln," *netzpolitik.org*, 17-Dec-2014. [Online]. Available: https://netzpolitik.org/2014/leak-zeigt-handelsabkommen-tisa-koennte-nationale-datenschutzbestimmungen-aushebeln/. [Accessed: 03-Aug-2015]

[210] J. P. Albrecht, "Datenschutz ist nicht verhandelbar," *Heinrich-Böll-Stiftung*, 21-May-2014. [Online]. Available: https://www.boell.de/de/2014/05/07/datenschutz-ist-nicht-verhandelbar. [Accessed: 03-Jul-2015]

[211] European Parliament, "European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP)," P8_TA-PROV(2015)0252, Jul. 2015 [Online]. Available: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0252+0+DOC+PDF+V0//EN. [Accessed: 04-Aug-2015]

[212] Corporate Europe Observatory, "Crowdsourced lobby exposé shows Internet giants have footprints on our data privacy laws," 18-Feb-2013. [Online]. Available: http://corporateeurope.org/lobbycracy/2013/02/crowdsourced-lobby-expos-shows-internet-giants-have-footprints-our-data-privacy. [Accessed: 04-Aug-2015]

[213] ParlTrack, "2012/0011(COD): Personal data protection: processing and free movement of data (General Data Protection Regulation)." [Online]. Available: http://parltrack.euwiki.org/dossier/2012/0011(COD). [Accessed: 04-Aug-2015]

[214] European Centre for International Political Economy, "The economic importance of getting Data Protection right: Protecting Privacy, Transmitting Data, Moving Commerce," U.S. Chamber of Commerce, Brussels, Mar. 2013 [Online]. Available: https://www.uschamber.com/sites/default/files/documents/files/020508_EconomicImportance_Final_Revised_lr.pdf. [Accessed: 05-Aug-2015]

[215] Corporate Europe Observatory, "Complaint forces European Privacy Association to confirm Facebook, Google, Microsoft and Yahoo are corporate backers," 18-Jun-2013. [Online]. Available: http://corporateeurope.org/lobbycracy/2013/06/complaint-forces-european-privacy-association-confirm-facebook-google-microsoft. [Accessed: 04-Jun-2015]

[216] bj/mp, "Weidenholzer/Leichtfried: Beim Datenschutz auf Seiten der Konsumentinnen und Konsumenten stehen!," *APA-OTS*, 14-Feb-2013. [Online]. Available: http://www.ots.at/presseaussendung/OTS_20130214_OTS0135/weidenholzerleichtfried-beim-datenschutz-auf-seiten-der-konsumentinnen-und-konsumenten-stehen. [Accessed: 04-Aug-2015]

[217] U. Ebbinghaus, "Interview mit Jan Philipp Albrecht Europa steht vor der großen Daten-Pleite," *Frankfurter Allgemeine Zeitung*, 12-Mar-2014 [Online]. Available: http://www.faz.net/aktuell/feuilleton/debatten/die-digital-debatte/europas-it-projekt/interview-mit-jan-philipp-albrecht-das-wichtigste-ueber-die-datenschutzreform-der-eu-12841473-p7.html?printPagedArticle=true#pageIndex_7. [Accessed: 07-Sep-2015]

[218] Amazon, "Amazon EU Sarl: Proposed amendments to MEP Gallo's opinion on data protection," Lobbyplag, 2013 [Online]. Available: https://github.com/lobbyplag/lobbyplag-data/raw/master/raw/lobby-documents/AMAZON-amendments.pdf. [Accessed: 08-Jul-2015]

[219] European Parliament, "European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)," Strasbourg, P7_TA(2014)0212, Mar. 2014 [Online]. Available: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0212&language=EN&ring=A7-2013-0402. [Accessed: 07-Sep-2015]

[220] M. Holland, "Viviane Reding: Wir sind doch keine US-Kolonie," *heise online*, 31-Mar-2014. [Online]. Available: http://www.heise.de/newsticker/meldung/Viviane-Reding-Wir-sind-doch-keine-US-Kolonie-2158743.html. [Accessed: 07-Sep-2015]

[221] LobbyPlag, "LobbyPlag: Governments Rating," 2015. [Online]. Available: http://lobbyplag.eu/governments. [Accessed: 07-Sep-2015]

[222] OpenDataCity, "Lobbymail," 2015. [Online]. Available: https://apps.opendatacity.de/lobbymail/inbox. [Accessed: 08-Sep-2015]

[223] LobbyPlag, "LobbyPlag: You pass the laws – we have the footprints," 2014. [Online]. Available: http://www.lobbyplag.eu/. [Accessed: 08-Sep-2015]

[224] B. Bergemann, "Besorgte Reaktionen auf Leaks zur EU-Datenschutzreform," *netzpolitik.org*, 09-Mar-2015. [Online]. Available: https://netzpolitik.org/2015/besorgte-reaktionen-auf-leaks-zur-eu-datenschutzreform/. [Accessed: 08-Sep-2015]

[225] ARD, "Lobbyschlacht in Brüssel: Wie Deutschland die Datenschutzreform der EU schwächt," *BR Mediathek*, 19-May-2015. [Online]. Available: http://www.br.de/mediathek/video/sendungen/report-muenchen/report-datenmschutz-lobbyschlacht-tracking-100.html. [Accessed: 08-Jul-2015]

[226] E. Möchel, "Datenschutzverordnung passiert EU-Parlament," *fm4.ORF.at*, 12-Mar-2014. [Online]. Available: http://fm4.orf.at/stories/1734934/. [Accessed: 08-Apr-2015]

[227] Presidency, "Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)," Council of the European Union, Brussels, 9565/15, Jun. 2015 [Online]. Available: http://data.consilium.europa.eu/doc/document/ST-9565-2015-INIT/en/pdf. [Accessed: 20-Jun-2015]

[228] Europe versus Facebook, "Comparison of lobby papers to IMCO opinion," 2014 [Online]. Available: http://www.europe-v-facebook.org/IMCO_pub_en_ON.pdf. [Accessed: 02-Jul-2015]

[229] Bits of Freedom, "A Loophole in Data Processing," Dec. 2012 [Online]. Available: https://www.bof.nl/live/wp-content/uploads/20121211_onderzoek_legitimate-interests-def.pdf. [Accessed: 03-Aug-2015]

[230] DPA, "Merkel appelliert: Anschluss halten an Digitalisierung," *Futurezone*, 12-Sep-2015. [Online]. Available: http://futurezone.at/netzpolitik/merkel-appelliert-anschluss-halten-an-digitalisierung/152.285.791. [Accessed: 08-Oct-2015]

[231] European Communities, "Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data," *Official Journal of the European Communities*, vol. 38, no. L 281, pp. 31–50, 23-Nov-1995.

[232] Council of the European Union, "Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)," Working Party on Data Protecti on and Exchange of Information, 8004/13, Mar. 2013 [Online]. Available: http://lobbyplag.eu/governments/assets/pdf/CD-8004_13.pdf#page=57. [Accessed: 03-Aug-2015]

[233] La Quadrature du Net, "Is the Council Selling Our Personal Data to Private Companies?," 24-Jun-2015. [Online]. Available: http://www.laquadrature.net/en/is-the-council-selling-our-personal-data-to-private-companies. [Accessed: 08-Jul-2015]

[234] Presidency, "Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) [first reading]," Brussels, 15321/15, Dec. 2016 [Online]. Available: http://data.consilium.europa.eu/doc/document/ST-15321-2015-INIT/en/pdf. [Accessed: 20-Dec-2015]

[235] European Union, "Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)," *Official Journal of the European Union*, vol. 59, no. L 119, pp. 1–88, 04-May-2016.

[236] PricewaterhouseCoopers LLP, "10 Minutes on data privacy: Build customer trust through data privacy," Feb. 2014 [Online]. Available: http://www.pwc.com/us/en/10minutes/assets/pwc-data-privacy.pdf. [Accessed: 10-Feb-2015]

[237] Committee on International Trade of the European Parliament, "Draft Report containing the European Parliament's recommendations to the Commission on the negotiations for the Trade in Services Agreement (TiSA)," 2015/2233(INI), Sep. 2015 [Online]. Available: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-

//EP//NONSGML+COMPARL+PE-567.814+01+DOC+PDF+V0//EN&language=EN. [Accessed: 30-Sep-2015]

[238] S. H. Beer and A. S. King, Eds., *The New American political system*. Washington: American Enterprise Institute for Public Policy Research, 1978.

[239] M. C. Harrell and M. A. Bradley, "Data Collection Methods Semi-Structured Interviews and Focus Groups." National Defense Research Institute, 2009 [Online]. Available: http://www.rand.org/content/dam/rand/pubs/technical_reports/2009/RAND_TR718.pdf. [Accessed: 07-Mar-2015]

[240] T. Dresing and T. Pehl, *Praxisbuch Transkription: Regelsysteme, Software und praktische Anleitungen für qualitative ForscherInnen*, 5. Aufl. Marburg: Eigenverl, 2013.

# E. Expert Interviews

In the course of this master thesis six interviews were conducted in July 2014 and in the period of February to March 2015. Because of their highly specialized character, interviews serve as the primary qualitative data collection methodology.

The main purpose of the interviews was to get a deeper understanding of internal processes as well as insider knowledge from persons directly involved in the adoption of the General Data Protection Regulation or closely connected to it.

The interview partners had been chosen in consequence of a broad research of relevant people who work on the adoption of the General Data Protection Regulation or have undisputed know-how regarding this legislative act. In this process it was tried to find relevant persons of each European institution, which is part of the ordinary legislative procedure. Furthermore, it was tried to find some independent experts that have an overview about the whole decision-making procedure. After a pool of 12 persons was requested per email or in personal, finally, two politicians at the European level (one from the European Commission and one from the European Parliament), two politicians at the national level (both from Austria) and two independent experts at the European level were interviewed. This final group of interviewees provided a wide spectrum of views. However, due to the rather small sample size, all statements should be viewed with respect to the restrictions and in the appropriate context.

All of the interviews were held in the form of a semi-structured interview as defined by Harrell and Bradley. According to them, semi-structured interviews follow a guide of standardized questions with discretion about the order in which they are asked and the possibility to ask further questions to clarify certain aspects.[737]

Hence, the interviewees have been informed prior or the interview about the approximately duration and a catalogue of standardized questions, which was provided in both English and German and can be found on the next page. The same ten questions stated in this catalogue were used in every interview, but depending on the situation several additional questions were asked to clarify points.

On average every interview took about 30 minutes. Three of those were conducted in Vienna, one in Brussels and two via telephone. Moreover, five interviews were held in German and one in English. Further information about the language, the form of communication, the location and the duration are indicated individually at the beginning of every transcript.

With the approval of the interviewees all interviews had been digitally recorded to facilitate the transcription process that was based on a simple transcript system as suggested by Dresing and Pehl.[738] Due to the fact that the interviews contain sensitive information it was agreed to anonymize the identities of the interviewees in the transcripts.

[737] See [239], p. 27.
[738] See [240], p. 20ff.

## Questionnaire

**General Data Protection Regulation/Datenschutz-Grundverordnung**

1a. Which institutions, organizations or bodies of the European Union are/were the main targets regarding the General Data Protection Regulation?

1b. Welche Institutionen, Einrichtungen und Agenturen der EU werden/wurden von Lobbyisten im Bezug auf die Datenschutz-Grundverordnung am meisten aufgesucht/benutzt?

2a. Which paragraphs of the General Data Protection Regulation are/were lobbied the most in a strengthening as well as in a weakening way and who is/was lobbying (organizations, associations, nations, individuals, etc.)?

2b. Welche Bereiche (Paragraphen, Abschnitte) der Datenschutz-Grundverordnung werden/wurden am stärksten von wem lobbyiert (Organisationen, Verbände, Nationen, Einzelpersonen, etc.)? Sowohl um zu verstärken als auch um abzuschwächen.

3a. How is/was the General Data Protection Regulation lobbied? What are/were the methods of lobbyists in that context trying to influence the regulation in a strengthening or in a weakening way?

3b. Wie wird/wurde die Datenschutz-Grundverordnung lobbyiert? Welche Methoden wurden verwendet um die Verordnung zu verstärken oder abzuschwächen?

4a. How has the General Data Protection Regulation changed since it was unveiled in January 2012 (strengthened as well as weakened) or what are the main differences between the versions of the Commission, the Parliament and the Council (as far as it is available)?

4b. Wie hat sich die Datenschutz-Grundverordnung seit ihrer Veröffentlichung im Januar 2012 verändert (verstärkt bzw. abgeschwächt) bzw. wo sind die Hauptunterschiede der Versionen von Kommission, Parlament und Rat (soweit bereits vorhanden)?

5a. Are there comparable Regulations, Guidelines or something else which are lobbied with the same or even higher effort and scope as the General Data Protection Regulation?

5b. Gibt es vergleichbare Fälle (Richtlinien, Verordnungen, etc.) betreffend dem Lobbyingumfang und –aufwand zur Datenschutz-Grundverordnung?

**Lobbying in General/Lobbying Allgemein:**

6a. How has lobbying developed in the last years (In general as well as since the General Data Protection Regulation was unveiled in 2012)?

6b. Wie hat sich der Lobbyismus in den letzten Jahren entwickelt (Sowohl allgemein als auch seit dem Bekanntwerden, dass eine neue EU-weite Datenschutz-Grundverordnung geplant ist)?

7a. Should there be a stronger counteraction or regulation of lobbying? If yes, how should it be?

7b. Sollte man dem Lobbyismus verstärkt entgegenwirken bzw. regeln? Wenn ja, wie sollte es sein?

8a. What are the main differences between the EU and the USA regarding lobbying?

8b. Was sind die Hauptunterschiede zwischen der EU und der USA bezüglich Lobbying?

9a. How would you define “lobbying” in your own words?

9b. Wie würden Sie selbst den Begriff „Lobbying“ definieren?

10a. How would you describe yourself respectively your organization in the context of Lobbying of the General Data Protection Regulation?

10b. Wie würden Sie sich selbst bzw. Ihre Organisation im Bereich Lobbying der Datenschutz-Grundverordnung beschreiben?

## Interview A

| | |
|---|---|
| **Interview Partner** | Independent Expert in the domain of data protection |
| **Date and Time** | 17.07.2014, 11:30-12:00 |
| **Language** | German |
| **Communication** | Personnel |
| **Interview Location** | Vienna (Austria) |
| **Duration** | 33 min. |

**A:** Lukas Schildberger
**B:** Interview Partner
---

**A:** Hallo, recht herzlichen Dank, dass du dir für mich Zeit genommen hast. Ich hätte einige Fragen über Datenschutz und über Lobbying im Allgemeinen, die mich interessieren würden. Ich weiß nicht inwieweit du davon Ahnung hast?

**B:** Hallo. Naja, ich habe das eher als Beobachter gesehen und dann haben wir uns auch entsprechend selbst beteiligt, aber vergleichsweise offen und direkt. (...) Was für mich das Spannende bei Datenschutz und Lobbying war, dass es technisch so kompliziert ist. Da hast du einfach gesehen, dass da Leute sitzen, die wirklich keine Ahnung haben wie das funktioniert und die werden dann von allen Seiten niederbombardiert mit Argumenten wie „das ist technisch nicht möglich", „das ist nicht umsetzbar", „das Internet geht kaputt und bricht auseinander". Die waren herzhaft empfänglich für jede Art von Hilfe. Das war sozusagen ein bisschen die Härte dabei. Ich weiß nicht ob du auf das hinaus willst?

**A:** Ja, in diese Richtung. Ich werde einfach mal mit den Fragen beginnen. (...) **Welche Institutionen, Einrichtungen und Agenturen der EU werden von Lobbyisten im Bezug auf die Datenschutz-Grundverordnung am meisten aufgesucht?**

**B:** Alle. Das war von dem her sehr lustig, da die DG Justice, die dafür von der Kommission zuständig ist, ziemlich gemauert hat. Sie haben zwar gesagt „jaja ihr könnt uns gerne was schicken", aber sie haben darauf praktisch nicht weiter reagiert, weil Reding anscheinend das Kommando rausgegeben hat: „Wenn sinnvolle Kritik kommt ja, aber ernsthaft diskutieren wir mit den Leuten nicht darüber." Ich weiß nicht ob das der Wortlaut war, aber faktisch war das wie man es gemacht hat. Dann wurde probiert, dass man über die anderen DGs schießt, also dass man über den Wirtschaftskommissar auf die DG Justice hin schießt. Nachdem sich die Justiz selbst einmal von dem ganzen Lobbying abgeschottet hat, probierte man bei allen anderen die Türen einzurennen, damit die intern in der Kommission die Türen einrennen. (...) Was massiv ist, ist glaube ich, das Lobbying in den Mitgliedsstaaten, über den Rat. Das ist das größte Problem vom Lobbying, weil der Rat einfach intransparent ist und man keine Ahnung hat wer, wie, was wo sagt. Da muss man dann Leute kennen, die einem eigentlich nicht vorhandene und nicht da seiende Paper schicken und so weiter und sofort. Das kriegst du dann teilweise nur über Informationsfreiheitsgesetze, wie zum Beispiel vom Innenministerium in Deutschland. Denen haben wir gesagt, dass sie

uns alles schicken sollen was sie auch getan haben. Ich glaube wir haben dann 2800 Seiten an Lobbypapieren bekommen, die alleine dort gelandet sind. Das ist von den großen US-Konzernen bis zu der Bäckervereinigung. Was man gemerkt hat ist, dass die auch viel abgeschrieben haben. (...) Das Parlament selbst sowieso auch. Das wird immer stärker, weil das Parlament auch immer relevanter wird. Da ist es glaube ich noch sehr unprofessionell, weil sie zum Beispiel Lobbypapiere einfach im Massenverteiler an alle schicken, die in diesem Ausschuss sitzen. Nachdem Lobbyplag aufgetaucht ist, haben sie dann gezielt ihre einzelnen Abgeordneten angeschrieben, die sowieso schon auf ihrer Seite bezüglich Abänderungsanträge waren. Es hat dann auch Lobbying-Papiere gegeben wo dann darunter gestanden ist „nicht zum direkten Kopieren gemeint". Also ähnlich wie beim Suppenpackerl, wo Serviervorschlag darauf steht. Die haben auf alles was sich bewegt geschossen. Die EU-Kommission selber – die haben sie glaube ich vorher auch schon stark lobbyiert, bevor überhaupt das erste Mal der Entwurf herausgekommen ist – und die EU-Beamten haben sich teilweise dadurch gewehrt, dass sie Zwischenentwürfe geleakt haben oder Dinge, die bei Ihnen eingelangt sind, geleakt haben. Auf netzpolitik.org sind dann auf einmal Dokumente aufgetaucht, die eigentlich, Non-Papers der US-Regierung waren, wo sie den Europäern sagen, dass sie gefälligst kein solches Gesetz zu erlassen haben. Aber es ist ein Non-Paper, da steht oben nichts drauf. (...) Also auf jeden Fall ist eine starke Lobbytruppe aus den USA gekommen. Da ist es ganz stark über die US-Handelskammer aber auch über die US-Regierung gegangen. Und dann hast du dieses ganze Astroturfing gehabt, wo sich irgendwelche NGOs gegründet haben, die sozusagen nur im Interesse der Privatsphäre arbeiten und in Wirklichkeit von irgendwelchen Industrievertretern gezahlt worden sind. Die Zusammenfassung, zumindest von den Parlamentsabgeordneten, war „so einen Lobbyboost, wie diesen, haben wir noch nie irgendwo erlebt". Das hat sich dann auch bei den Amendements niedergeschlagen, mit über 3100 Abänderungsanträge für Datenschutz, was gerade zu dem Zeitpunkt vor Snowden nicht wirklich der heißeste Stoff war. Es war schon relativ heftig.

**A:** Das kann ich mir vorstellen. (...) Dann zur nächsten Frage. **Welche Bereiche der Verordnung sind am meisten betroffen? Kann man da auch sagen von wem? Also, eher von Organisationen, von Nationen oder von Verbänden oder eigentlich Quer durch die Bank?**

**B:** Man hat wirklich probiert auf alle Ecken hinzuschießen wo es nur irgendwie geht. Witziger Weise ist auf die Sachen bei denen ich als Unternehmen mehr Panik hätte, wie Dokumentationspflichten, interner Datenschutzbeauftragter, usw., was also eher Administration ist und somit am Ende die eigentlichen Kosten ausmacht, relativ wenig hingeschoßen worden, sondern eher auf die Grundsachen, wie „was sind überhaupt Daten". (...) Das wollte man so eng definieren, dass sogar Datenschützer sagten es gibt fast keine Daten mehr, die darunterfallen. Oder man versuchte die Regeln so aufzuweichen, dass sie am Ende nicht mehr wirklich exekutierbar sind. Da ist versucht worden unglaublich viele Ausnahmen einzubauen, sodass es einfach ein Grundprinzip gibt und danach 50,000 verschiedene Ausnahmen für verschiedene Gruppen und Leute und Fälle. Das wäre dann in der Praxis ein Problem, da du dann zum Beispiel zu Facebook sagst „ich habe das Recht" und die

sagen dir dann „ja, aber wir haben da 10 Ausnahmen". Dann beweise einmal, dass diese 10 Ausnahmen nicht gelten. Das wäre völlig brutal.

**A: Weißt du welche Paragraphen oder Bereiche, wie zum Beispiel der Klassiker „Das Recht auf Vergessen", hauptsächlich lobbyiert wurden?**

**B:** Das „Recht auf Vergessen", war eher das große Ding in der öffentlichen Debatte, gar nicht so bei den juristischen Sachen. Unter dem Strich steht bei diesem „Recht auf Vergessen" nur das drinnen was schon in den Paragraphen vorher drinnen steht. Das Ganze nur noch schön zusammengefasst mit einem, sagen wir mal, zeitungsgängigen Titel darüber. Von dem her ist es auch beschossen worden. Ich hatte nur das Gefühl gehabt, dass das die Kommission als „Opferpuppe" rein gegeben hat. So nach dem Motto „Hier habt ihr das Böse, haut alle mal fröhlich hin und lasst uns den anderen Rest in Ruhe entscheiden." Das war so ein bisschen mein Eindruck. Aber es gibt Dinge wo ich sage, da wurde relativ wenig geschossen. Das waren vor allem die ganzen Sachen wo es darum gegangen ist, wie die Datenschutzbehörden kooperieren und diese ganzen Geschichten. Das sind ja eher interne Sachen. Auf den Punkt hinsichtlich der nationalen Datenschutzbehörde wurde allerding schon hingeschoßen. Es ist ganz oft gekommen, dass man sich die aussuchen will – wo man also sein Headquarter hat – und, dass diese Behörde dann alleine zuständig sein soll. Das war ihnen ganz wichtig. Dann hätte sich ganz Europa zufälligerweise ausgesucht, dass sie in Irland oder Großbritannien sitzen. Die haben natürlich alle Panik, dass die Deutschen bei jedem zweiten Ding mitentscheiden wollen. Im Großen und Ganzen ist bei diesen administrativen Sachen aber viel weniger gekommen. Da müsste man eine Art Heat-Map machen und schauen, wie viele Abänderungsanträge es zu welchem Punkt gegeben hat.

**A:** Ja, das habe ich eventuell vor. **Gibt es Bereiche die positiv lobbyiert wurden, weil sie in der Verordnung zu schlecht oder zu minder waren?**

**B:** Nicht wirklich. Im Prinzip hast du Industrielobbying. Natürlich hast du dann noch EDRi und irgendwelche Verbraucherverbände, die auch etwas dazusagen, aber die sind von den aufkommenden Eingaben sowas von banal vernachlässigbar. Die haben natürlich gesagt hier und dort könnte man noch irgendetwas machen, wobei die auch immer ein bisschen bemüht waren zu sagen hier und dort kann man auch ein bisschen weniger Datenschutz machen, damit sie nicht als „Extremisten" rüberkommen. Der Vorschlag war bereits ziemlich „Datenschutzgängig". Es gibt, wie ich finde, nicht unbedingt das Bedürfnis da wahnsinnig reinzuschießen.

**A:** Okay. **Die nächste Frage wurde eigentlich schon Großteils erwähnt, nämlich wie das Lobbying im Bezug auf die Datenschutz-Grundverordnung ausschaut? (...) Wie sind die Strategien und Methoden?**

**B:** Ich meine sie haben im Prinzip diese Verbände, die alle hin tingeln und defacto wieder die gleichen Firmen sind. Dann war auch zu sehen, dass, ich glaube, Amazon und Ebay fast überall die gleichen Abänderungsanträge vorgeschlagen haben. Das heißt, die haben sich gegenseitig koordiniert. Die probieren die gleiche Message aus mindestens 10 Mündern entgegen zuschießen. Dann haben

sie Meetings wo sie sich mit den Abgeordneten treffen. Dann gibt es diese ganzen Konferenzen und Frühstücksempfänge bei irgendjemandem und was weiß ich was sonst noch alles. Ganz toll und beliebt in Brüssel sind die sogenannten „Facebookmädels". Die sitzen bei jedem Hearing drinnen und sagen dann so Sachen wie „Ich bin jung und schön und wir Jungen brauchen das alles nicht." Die haben inhaltlich überhaupt keine Ahnung. (...) Dann probiert man es auf allen möglichen Ebenen. Zum Beispiel hat sich Facebook Erika Mann geschnappt. Das ist eine ehemalige SPD-Abgeordnete, die bei den Roten in Ungnaden gefallen ist und die tingelt jetzt da durch Brüssel. Es sind dann auch einfach irgendwelche NGOs, irgendwelche Verbände aus dem Boden gesprossen, die Gas gegeben haben. Auf einmal haben diese ganzen Unternehmen auch ein Brüsseler Büro gehabt und haben dort Gas gegeben. Man probiert es auf allen Ebenen mit einer Mischung aus „ihr versteht das alles nicht" und „ihr macht irgendetwas kaputt" und ähnlichem und das auf möglichst 10 Kanälen gleichzeitig. (...) Gerade in diesen Dingen ist es leicht den Leuten vorzuwerfen, dass sie unrealistisch sind, dass das, was sie vorschlagen nicht machbar ist. Obwohl das eben ein typischer Fall ist, der eigentlich zu vergessen ist, weil gesagt wird, dass es technisch nicht machbar ist. Dabei steht in den Paragraphen ausdrücklich drinnen „soweit möglich". Wenn du es weiterleiten kannst und wenn du weißt wo die Daten hin sind, dann musst du sagen, dass sie gelöscht werden müssen. Wenn du es nicht weißt kannst du es eh nicht machen. Es ist aber permanent gekommen „Geht nicht!". Ich habe einmal mit einem österreichischen Lobbyisten geredet, weil der uns auf einer Podiumsdiskussion den gleichen Unsinn wie alle anderen erzählt hat. Ich fragte ihn, wie er mit seinen Argumenten daher kommt, weil das was er sagt schlichtweg falsch ist. Es war objektiv falsch. Bei anderen Sachen kann man verschiedene Meinungen haben und das verschieden sehen, aber das was er gesagt hat war einfach objektiv falsch. Er hat geantwortet, dass er sich das selbst nie so genau angeschaut hat. Er hatte das nur von anderen Lobbyisten so gehört. Das ist das Problem, dass beim Lobbyismus ganz stark ist. Sie haben immer den Anspruch „wir sind die Experten die euch jetzt was erzählen, weil wir haben das Know-How." Dann redest du mit dem am Gang und da erzählt er dir, dass er vor 2 Wochen noch für eine Pharmafirma lobbyiert hat. Die kriegen irgendwelche Briefs und erzählen irgendeinen Unsinn und haben selber null Ahnung bzw. sich damit null auseinandergesetzt, stellen sich aber hin und sagen „wir sind jetzt die Experten und erzählen der Politik wie das wirklich gemacht gehört." Ich meine, es gibt natürlich auch Leute, die sich auskennen, gar kein Thema, aber im Großen und Ganzen ist die Erklärung für Lobbyismus zu einem großen Teil, dass man sich die Expertise reinholt, die diese Unternehmen haben. Dann siehst du dir die Leute an und denkst dir „Du hast von dem keine Ahnung. Du hast einfach nur einen Brief bekommen, wo drinnen gestanden ist, dass wir da aus Prinzip dagegen sind und saugst da jetzt irgendwelche Gründe aus deinen Fingern heraus." Die sind ja persönlich alle ganz nett und wenn du mit denen nachher quatschst sagen sie dir auch „was weiß ich was da drinnen steht". Das hat mich eigentlich ein bisschen fasziniert, dass die wirklich diesen Anspruch haben die ultimative Weisheit gegessen zu haben, auf die die Politik so wahnsinnig dringend angewiesen ist. (...) Mich haben einfach ein paar Abgeordnete angerufen und gesagt „komm einmal und erzähle

uns wie du das siehst." Einfach um jemanden Unabhängigen zu holen. Das hat mich ziemlich fasziniert, dass selbst einige von den Abgeordneten die das federführend gemacht haben, sich nicht einfach einen externen Experten in ihr Büro reingesetzt haben. Ich meine, die haben im Monat €20.000 für Mitarbeiter zu verbraten und es ist nicht so schwierig sich 2 oder 3 Datenschutzexperten in sein Büro reinzusetzen. Anstatt dessen setzten sie sich zu hunderten Hearings und ähnlichem wo irgendwelche Experten irgendetwas erzählen. (...) Also ich bin nur von Rot und Grün eingeladen worden. Bei diesen Hearings sitzen dann auch nur die Leute die Rot-Grüne Meinungen unterstützen. Und bei den Konservativen ist es auch nicht anders. Das heißt, dass ganze Hearingsystem ist nicht unabhängig im Sinne von man holt sich da jetzt 10 verschiedene Meinungen und lässt sich da mal in eine Richtung massieren. Unter dem Strich holen sie sich die, die ihre eigene politische Meinung wieder weiterverstärken. Diese ganze Mär von wegen das die Entscheidungen alle besser werden mit Lobbyismus möchte ich so nicht bestätigen.

**A: Gibt es da eigentlich Unterschiede von den amerikanischen und den europäischen Vorgehensweisen oder sind die vernachlässigbar?**

**B:** Die USA sind viel aggressiver und das war eben in diesem Fall das Problem. In Brüssel haben sie gesagt so eine Art von Lobbying haben sie bisher nicht gesehen. Und die US-Firmen gehen wirklich ran mit einem Ansatz „ihr habt gefälligst dieses Gesetz nicht zu machen, weil wir sagen euch das jetzt." Ich glaube da haben sie sich ziemlich ins Fleisch geschnitten, zumindest teilweise. Gerade bei den EU-Abgeordneten, die ja doch irgendwie Ideallisten sind. (...) Das ist einfach oft sehr substanzlos gewesen und nicht irgendwie in einer Art und Weise, wo man sagt „Gut das ist sozusagen Verständnis", sondern nur dagegen, fundamentale Opposition. Was man auch stark gesehen hat bei den US-Lobbyisten ist, dass sie ihr eigenes System mit dem von Europa vermischt haben. Da ist zum Beispiel standardmäßig gekommen „Freedom of Expression". Diese Meinungsfreiheit ist halt in den USA ganz anders definiert und verstanden als bei uns. Wir haben es zwar auch, aber es ist genauso wie du in den USA unter Privatsphäre etwas ganz anderes verstehst als bei uns. Wir haben es zwar beide, aber es sind Welten dazwischen. Die haben zum Beispiel standardmäßig gemeint, es ist eine Freedom of Expression, dass ein Unternehmen über jeden Menschen sammeln und sagen darf was es will. Gerade in die Richtung Kreditauskunft erteilen heißt es dann, das ist Meinungsfreiheitäußerung, dass ich sagen kann, dass der keinen Kredit mehr hat. Das ist grundrechtlich geschützt und viel wichtiger als das Grundrecht auf Privatsphäre. Solche Sachen findest du dann in solchen Drafts, wo du dir denkst „Geht's noch?". Was mich echt verwundert hat ist die Qualität. Also das war wirklich nicht mehr Ernst in irgendeiner Art und Weise und eben sehr subtil. Dieses Astroturfing war auch irgendwie neu. Das haben irgendwelche Subfirmen probiert zu machen. Und eben dieses sehr subtile und nicht straight-forward einfach zu sagen „Das ist unser Problem und das hätten wir gerne geändert, weil …", sondern eher ein Herumreden. Aber da müsstest du eher noch mit jemanden aus Brüssel reden.

**A:** Ja, das habe ich vor. **Wie hat sich das Papier seit 2012, also seitdem die Frau Reding das Ganze publik gemacht hat verändert?**

**B:** Ja das wissen wir ja bis jetzt nicht.

**A:** Ja, natürlich, aber das Parlament hat ja etwas weitergegeben.

**B:** Ja, das Parlamentspapier war deutlich besser, meiner Meinung nach. Ich meine, das Grundproblem ist, dass das Dokument einfach zu lang ist. Diese 100 Seiten liest kein Mensch.

**A:** Was ist deine eigene Meinung wie sich das Ganze bis jetzt entwickelt hat?

**B:** In meiner eigenen Meinung, hätte man das Ausgangsdokument besser machen können. Nicht unbedingt inhaltlich, sondern einfach nur strukturell. Man hätte es so schreiben sollen, dass es normale Menschen auch noch lesen können. Es sind oft einfache Wiederholungen drinnen, wo du zum Beispiel sagen kannst: „Informationspflichten sind das was im Paragraph vorne steht Nummer 1, 2, 3, 4, 5, aber 6, 7, 8 nicht." Dann brauchst du nicht wieder die ganze Seite vollschreiben mit genau dem gleichen Käse, der auf der Seite davor steht. Für die Unternehmen ist es auch das Gleiche. Wenn sie im internen Dokument genau das Gleiche haben müssen wie auf ihren Informationspflichtendokumenten, dann ist es ein bisschen leichter, als wenn sie 2 verschiedene Paragraphen haben, bei denen in der Essenz am Ende genau das gleiche drinnen steht. Das nur als Beispiel. (...) Beim Parlament hat es am Anfang wirklich nicht wahnsinnig gut ausgesehen, dann war aber die ganze Snowden-Geschichte. (...) Jan-Phillip Albrecht hat das eigentlich recht gut gemacht und hat probiert, irgendetwas Mehrheitsfähiges zusammenzustellen, was bei 3100 Änderungsanträgen faktisch nicht möglich ist. (...) Am Ende ist viel von diesen Abänderungsanträgen reiner Papierkram gewesen. (...) Ein ehemaliger Abgeordneter hat Abänderungsanträge einfach nur eingebracht, damit er seine Quote an Abänderungsanträgen verbessert. Er hat dabei so Sachen geschrieben wie „Unterschriften sind keine biometrischen Daten" – gut dass man das auch festgestellt hat. Da geht es anscheinend darum, dass die heimische Zeitung eine Statistik erhebt, wie aktiv sie im Parlament sind und darum machen Abgeordnete solche Abänderungen, damit sie sagen können sie haben eine Abänderung gemacht. Es verdünnt sich dann schon sehr stark, weil viele relativ gleich sind. Ich meine, was das Parlament am Ende zusammengemacht hat war eigentlich recht okay. Ich glaube, dass sie in 2 bis 3 Punkten ein bisschen schwächer geworden sind, aber im Großen und Ganzen sind sie eher stärker geworden beziehungsweise haben sie es irgendwie verbessert und nicht entartet. Die große Frage ist halt was jetzt im Rat herauskommt. Und dann ist die große Frage, was ist die Gesamtmelange aus den 3.

**A:** Das wird sich weisen.

**B:** Wer sehr verwunderlich war, war Deutschland im Rat. Weil die Deutschen ja eigentlich immer die Musterdatenschutzschüler waren. Da gibt es einen Herrn im Innenministerium, der dafür zuständig ist, und aus irgendwelchen Gründen will der einfach nicht. (...) Ich glaube dem Minister selber ist es auch egal. Ich hab mit dem ehemaligen Innenminister ein 1,5 Stunden langes Interview mit der Zeit gehabt und dem war es einfach egal. Er hat keine Ahnung

gehabt um was es da geht. Und es war ihm einfach vollkommen egal was da passiert, solange er seine Vorratsdatenspeicherung weiterhaben kann. Es war irgendwie das einzige das für ihn irgendwie relevant war. (...) Das war das. Auf jeden Fall war da die Frage warum Deutschland so hantiert. Mir ist da berichtet worden, dass die in jede Verhandlungsrunde mit 10 neuen Problemen kommen und mit keinem einzigen Lösungsvorschlag und dann war es leider nicht umsetzbar, weil .. tja. Es ist auch eine Verhandlungsstrategie, dass man einfach Endlosprobleme sucht bis man keine Lösungen findet.

**A:** Das ist ja wie es ausschaut ein Plan vom Rat, wie man in den letzten Jahren gemerkt hat.

**B:** Genau. Die haben sicher 100 Leute die daran arbeiten, da kann man in 1,5 Jahren durchaus auf eine Version kommen.

**A:** Das auf alle Fälle. **Wie würdest du selbst Lobbying beschreiben? Also den Begriff definieren?**

**B:** Ich glaube Lobbying ist wirklich das aggressive „Dinge-verändern" in seinem eigenen Interesse.

**A:** Also nicht wie Interessensvermittlung, sondern wirklich das aggressive Verhalten?

**B:** Das ist für mich was anderes. Wenn du sagst du hast Interessensvertretung, die transparent ist, die ordentlich ist, die nachvollziehbar ist und alle diese Sachen, wo du weist wer schreit, für was er schreit und halbwegs nachvollziehbar ist warum etwas rausgekommen ist, dann ist das für mich okay und Interessensvertretung. In einer Demokratie sollte auch jeder seine Meinung sagen können und die auch irgendwie dort platzieren können wo die Entscheidung gefällt wird. Das Grundproblem das wir haben ist, dass die Balance in Brüssel in keiner Art und Weise gegeben ist. (...) Es würde ja auch nichts dagegen sprechen, dass diese Abänderungsanträge alle auf eine Website kommen. Oder wenn es eine zentrale Stelle gibt, wo Abänderungsanträge eingeschickt werden und dann veröffentlicht werden. Wenn du ein Problem damit hast, dann schicke halt nichts hin. Es wäre zum Beispiel auch spannend, das hat eine Abgeordnete des Parlaments gesagt, dass du bei den Abänderungsanträgen, wo es unten immer eine Box mit Justification gibt, erklärst, warum du das abänderst. Die meisten lassen es leer. Sie hatte, glaube ich, tonnenweise bei Bits of Freedom abgeschrieben. Das ist eine niederländische Datenschutz-NGO und praktisch alle ihre Abänderungsanträge sind von denen, oder war es doch von EDRi, das weiß ich nicht mehr so genau. Auf jeden Fall von einem von den beiden. Sie hat gesagt, sie hat gar kein Problem, sie schreibt einfach zukünftig in Justification „Hab ich von dem und dem" rein, weil ich habe null Problem, dass alle wissen, dass ich als Abgeordnete Pro-Datenschutz bin und da eine Datenschutz-NGO ist, die einen guten Vorschlag gemacht hat. Ich schaue mir dann mal an, wie die Konservativen „hab ich von Ebay und Amazon" reinschreiben und wie sie das dann erklären. Das Problem ist halt wirklich das Transparenzdrama hinter dem ganzen Lobbying.

**A:** Das wäre hier eine Frage. **Wie kann man deiner Ansicht nach Lobbying entgegenwirken? Wie könnte man es regeln? Es gibt ja dieses Transparenzregister. Das ist ja ein kleiner Schritt, oder?**

**B:** Ja, da wo ja auch keiner eingetragen sein muss und ist. (...) Es ist einfach ein reiner Wahnsinn was da in Brüssel abläuft. Das ist einfach eine Legitimitätsfrage. Also wenn die Leute wirklich das Gefühl haben, okay das machen sich Industrielle untereinander aus und dann gibt es irgendwelche Idioten, die das abstimmen, dann habe ich ein ernstes Demokratieproblem. Da werden sie sich irgendetwas überlegen müssen. (...) Am Ende ist es ja nichts Neues. Sie wissen wer was schreit, wann und warum und wer das übernommen hat. Der Rest ist dann Demokratie, weil wenn die Leute wiedergewählt werden wollen, dann werden sie es sich überlegen ob sie das machen oder auch nicht. Aber das fehlt eben derzeit und ich glaube das war dann der Schock, als auf einmal diese Wahnsinnigen mit Lobbyplag das nachvollzogen haben. Inzwischen geht das mit Computer und Co halbwegs leicht zu machen, aber es ist immer noch eine Puzzlearbeit. (...) Es gibt da zum Beispiel auch ParlTrack, die zumindest diese Amendments auslesbar machen und irgendwie elektronisch erfassen. (...) Die haben nicht einmal das Geld um einen Server vernünftig zu zahlen. Wenn du einen Call darauf machst dann dauert das eine halbe Minute bis da langsam irgendetwas zurückkommt. (...) Die haben diese Struktur von den PDFs wieder rückgebaut, sodass das dann elektronisch auslesbare Abänderungsanträge sind. (...) Es gibt das Problem, dass es technisch nicht so leicht nachvollziehbar ist, weil diese Lobbypapers alle anders strukturiert sind und nicht gleich lesbar sind. (...) Louis Michel, der Zweitgereihte von Lobbyplag hat seine ganzen Abänderungsanträge nach der Lobbyplag-Veröffentlichung zurückgenommen. Der ist Belgier und das belgische Fernsehen hat dann um 20:15, zur Primetime, eine Doku darüber gemacht. Die haben ihn damit konfrontiert, dass er am zweitschlechtesten gereiht ist. Der war früher, und das ist das relevante dabei, Außenminister von Belgien und Kommissionsmitglied. Insofern doch recht bekannt in Belgien und nicht irgendein Abgeordneter. Dem ist das dann auf den Kopf geflogen, da der in Belgien allgemein als Grundrechtsfreund bekannt war, ein Liberaler in dem Sinne. Deswegen war das total obskur und ich glaube, er ist nachweislich zu der Zeit wo das eingebracht wurde, nicht in Brüssel gewesen, sondern auf Dienstreisen. Das hat ein Mitarbeiter von seinem Büro in seinem Namen eingebracht, was dann das nächste fragliche war, wenn einfach ein Mitarbeiter 250 Abänderungsanträge einbringen kann und keinem fällt es auf und der Abgeordnete hat es nie unterschrieben und hat nie davon gewusst. Das stellt halt auch ein bisschen in Frage wie das alles funktioniert. Der Mitarbeiter war ein ehemaliges Parlamentsmitglied in Belgien und ist dann noch an dem gleichen Tag von seinem Mitarbeiterposten zurückgetreten. In Brüssel haben dann alle gespottet, dass es spannend ist, dass man schon als Mitarbeiter zurücktreten kann, nicht nur als Abgeordneter. Auf der einen Seite war es super, dass das aufgedeckt wurde, auf der anderen Seite war das Problem, dass das tief an der Glaubwürdigkeit von dem Ganzen kratzt.

**A:** Danke. Noch eine abschließende Frage. **Wie würdest du dich selbst in diesem Zusammenhang beschreiben? Würdest du sagen du bist ein Lobbyist im positiven Sinne?**

**B:** Ja, aber wir haben nur einmal ein kurzes Draft zusammengeschrieben, weil uns ein paar Leute gefragt haben, was bei einem Fall das Problem ist und wo man das im Gesetz anders

machen könnte. Ich glaube, das haben wir auf die Website gestellt. Es war auf jeden Fall nichts spannendes was da drinnen gestanden ist. Sonst war ich noch bei Hearings und Co und bin gefragt worden, wo das Problem ist und wie das funktioniert. Wir wollten und wollen natürlich für etwas Transparenz sorgen und Sachen aufdecken. Es ist noch zu sagen, dass durchaus üblich ist, dass Sachen direkt von der Industrie kopiert werden. Das haben auch alle Abgeordneten gesagt, dass das für sie nicht sonderlich außergewöhnlich ist. Da ist halt wirklich die Frage, warum haben die 20.000 Euro für Mitarbeiter im Monat. Ich habe es in den Büros selbst gesehen, die sitzen da, haben dann irgendwelche Praktikantinnen, die ihre Facebook-Seite stundenlang pflegen, wo sie heiße 300 Likes darauf haben, anstatt, dass sie an Gesetzen arbeiten, was eigentlich der Job wäre und wofür eigentlich das Geld da wäre. Das kommt immer auf den Abgeordneten an. Zum Beispiel Eva Lichtenberger hat ein ganz ordentliches Büro – die Büros sind winzig klein, wenn da 4 Mitarbeiter sind, sitzen die dann auf 2 Tischen geprimed drinnen – und hat einfach 2 Tische, da sitzen 2 ältere, lang gediente Mitarbeiter und machen alles genau am Punkt und suchen sich die Dinge heraus und arbeiten so ordentlich wie man sich das vorstellt. Bei den meisten anderen haben sie 5 oder 6 Leute die irgendwie herum wuseln und tun und machen und wie gesagt sich eher damit beschäftigen welche Emails sie aus Hintertupfing bekommen, als irgendetwas anfragen was die Gesetze angeht an denen sie gerade direkt arbeiten. (...) Ich bin natürlich auf der Pro-Datenschutz Seite. (...) Von dem her war ich dann immer ein bisschen stressfrei.

**A:** Dann sage ich recht herzlichen Dank.

**B:** Ich hoffe das hilft.

**A:** Auf alle Fälle. Es hat mich sehr gefreut.

## Interview B

| | |
|---|---|
| **Interview Partner** | Austrian Politician and Expert in the domain of data protection |
| **Date and Time** | 19.02.2015, 14:00-14:30 |
| **Language** | German |
| **Communication** | Personnel |
| **Interview Location** | Vienna (Austria) |
| **Duration** | 35 min. |

**A:** Lukas Schildberger
**B:** Interview Partner
---

**A:** Guten Tag. Dankeschön, dass Sie sich heute für mich Zeit genommen haben.

**B:** Guten Tag. Gerne.

**A:** Sie haben die Fragen schon gesehen und darum fange ich jetzt einfach mit der Ersten an.

**B:** Ja.

**A: Welche Institutionen, Einrichtungen und Agenturen der EU werden bzw. wurden von Lobbyisten im Bezug auf die Datenschutzgrundverordnung am meisten aufgesucht bzw. benutzt?**

**B:** Ich kann natürlich nur die Einrichtungen angeben, die mir aus den Medien bekannt waren oder bekannt geworden sind bzw. die ich persönlich erfahren habe. Die Lobbyisten haben sich in erster Linie, also 2012 oder gleich von Beginn an, auf die Mitglieder der Kommission, insbesondere auf die Justizkommissarin und die Innenkommissarin gestürzt. Mit dem Hinweis, wenn dieses Regime kommt, dann könnte es zu einem Handelskrieg zwischen Europa und den USA ausarten. Man hat die Mitarbeiterinnen und Mitarbeiter der Kabinette aufgesucht, möglicherweise auch drangsaliert. Gleichzeitig hat man die Vertreter des Parlaments aufgesucht. Später wie bekannt wurde, dass der Grüne Albrecht der Verhandlungsführer ist, hat er den meisten Kontakt mit den amerikanischen Lobbyisten gehabt. Eines darf man nicht vergessen, die Mitglieder des Europäischen Parlaments haben natürlich auch Mitarbeiter, die ebenfalls aufgesucht wurden. Insbesondere gab es hier Einladungen zu Veranstaltungen und zu Diskussionen. Sie haben das später im Handout drinnen. Es wurden Schriftsätze und Expertisen vorgelegt, die Anwaltskanzleien für die amerikanische Administration erarbeitet haben. Wenn wir jetzt von Lobbyisten sprechen dann müssen wir differenzieren zwischen den klassischen Wirtschaftslobbyisten, nämlich den Vertretern der großen IT-Konzerne aus Drittstaaten. Da sollte man nicht vergessen, was jedoch oft vergessen wird, wir reden immer nur über die Silicon Valley Unternehmen aber in Wirklichkeit geht es ebenfalls um die großen Unternehmen in Japan, Südkorea bzw. Kanada. Das geht in der öffentlichen Debatte unter oder ist untergegangen. Der härteste Lobbyismus ist von der amerikanischen Seite gekommen. Das kann man nachlesen. Malmström hat einmal gesagt, sie hat in Brüssel noch nie so einen Ansturm von Lobbyisten erlebt. Das sind die Wirtschaftslobbyisten und dann gibt es natürlich den politischen Lobbyismus, der vom amerikanischen Verfassungs- und

Rechtsverständnis kommt, nachdem sich Ihre Rechte, die sich aus der amerikanischen Verfassung angeblich ergeben, weltweit durchsetzen wollen. Neben diesem klassischem Wirtschaftslobbyismus hat es den Lobbyismus durch die insbesondere amerikanische Administration gegeben und da hat es dann auf der höchsten Ebene zahlreiche Besprechungen und Veranstaltungen gegeben, weil das Konzept der Datenschutzgrundverordnung natürlich den Interessen der großen IT-Konzernen aus den USA einfach wiederspricht. Das hängt natürlich mit dem europäischen Verständnis von Grundrechten zusammen, mit dem Schutz der Privatsphäre, gerade nach dem Lissaboner Vertrag, wo die Grundrechte-Charta Teil des europäischen Primärrechtes geworden ist. Dann sind diese Ebenen-Lobbyisten. Man hat gleichzeitig versucht, bereits in der ersten Phase, nicht nur in Brüssel zu lobbyieren, sondern gleichzeitig auch schon bei einzelnen Mitgliedsstaaten. Insbesondere bei den Mitgliedsstaaten wo sich die Hauptniederlassung in Europa befindet. Facebook zum Beispiel hat sehr viel über Irland gemacht. Das mal soweit zur ersten Frage.

**A:** Mhm. (bejahend) Darf ich da vielleicht eine Zwischenfrage stellen? Haben Sie zufällig eine Ahnung inwieweit es schon bevor die Datenschutzgrundverordnung präsentiert wurde, also vor 2012, Versuche gab? (...)

**B:** Auf offizieller Ebene hat es sicherlich nichts gegeben. Da ist die Kommission auch sehr zurückhaltend gewesen, auch mit Unterlagen. Es ist auch nichts geleakt worden. Also ich glaube nicht, dass die Amerikaner tatsächlich bereits Details bekommen haben, aber es hat ja bereits vorher Meldungen von den Amerikanern in den Medien gegeben über ihre Erwartungen zur europäischen Datenschutzreform. Diese Frage könnte Ihnen glaube ich nur jemand aus Brüssel direkt beantworten.

**A:** Das ist klar, danke. Das gleiche gab es schon bei der Richtlinie 95, da habe ich ein paar Berichte gelesen. Da haben sie auch schon die angesprochenen Probleme gehabt. Gut. Dann zur zweiten Frage. **Welche Bereiche der Datenschutzgrundverordnung wurden am stärksten lobbyiert? Positiv als auch negativ.**

**B:** Ich habe das hier auch zusammengeschrieben [Anm. im übermittelten Handout]. Das Hauptproblem für die Amerikaner ist das sogenannte Marktortprinzip. Jedes Unternehmen aus einem Drittstaat, das in Europa mit oder ohne Niederlassung Leistungen anbietet, hat sich an das europäische Datenschutzrecht zu halten. Das ist das Grundprinzip. Das ist für die Amerikaner scheinbar eines der Hauptprobleme. Aber nicht nur für die Amerikaner, sondern auch für einige europäische Unternehmen. Das sollte man nicht vergessen. Bei den Unterlagen, die Sie von mir bekommen haben, können Sie das nachlesen. Hier [Anm. zeigt in die Unterlagen]: Amerikaner sagen vorgesehene Regelungen verstoßen gegen die Meinungs- und Informationsfreiheit, Recht auf Vergessen wird abgelehnt. Das ist einer der Punkte, der immer wieder von den Amerikanern kommt. Das Nächste sind die Geldstrafen bei Datenschutzverletzungen, wo es unterschiedliche Konzepte gibt. Bis zu 5 Prozent des Bruttoumsatzes bzw. bis zu einem Höchstbetrag kann von der zuständigen Datenschutzbehörde, wobei man jetzt noch nicht weiß, ob das die nationale oder der europäische Datenschutzausschuss ist, als Strafe verhängt werden.

Das ist das Hauptproblem, auch für europäische Unternehmen neben dem Direktmarketing und Profiling. In diesem Zusammenhang auch wann eine Zustimmung oder ob eine ausdrückliche Zustimmung für jede Datenverwendung erteilt werden muss oder nicht. Das sind in etwa die Hauptdiskussionspunkte. Mitdiskutiert wird natürlich Safe Harbour, das habe ich auch beschrieben. Also die Übermittlung von personenbezogenen Daten oder diese transatlantischen Übermittlungen, so müsste man richtig sagen, wobei es eine klare Positionierung des europäischen Parlaments gibt und auch die Kommission schließt Neuverhandlungen nicht mehr aus. Die Amerikaner haben zwar gesagt, wir sind bei Safe Harbour dabei, haben das unterschrieben, aber sie haben sich nicht daran gehalten. Ein weiterer Punkt, der noch in diesem Zusammenhang diskutiert wird, ist das Datenschutzabkommen EU – USA, wobei eine der Hauptfragen darin besteht: „Haben die Europäer für Datenschutzverletzungen in den USA genau dieselben Rechte wie die Amerikaner oder nicht?". Derzeit ist das eben ausgeschlossen. Dann gibt es – ich habe das noch dazugeschrieben – Ex-Politiker oder Unternehmen, die betonen immer wieder „Datenschutz, hat in Zeiten von Big Data" oder wenn wir die Seite der inneren Sicherheit hernehmen „in Zeiten der Terrorismusgefahr einen ganz anderen Stellenwert". Guttenberg hat einmal formuliert „Bestehende Standards für Freiheit, Privatsphäre und Sicherheit wären zu überarbeiten". (...) Das sind aus meiner Sicht die Wichtigsten oder die von denen ich erfahren habe. Es gibt dann natürlich noch viele kleinere Punkte. Datenschutz by Design zum Beispiel wurde auch von den Amerikanern abgelehnt und auch von Teilen der europäischen Industrie, was für mich ein bisschen sonderbar ist.

**A:** Okay, danke. **Wie wurde die Datenschutzgrundverordnung lobbyiert? Mit welchen Methoden?** Da haben Sie jetzt schon einiges darüber gesprochen.

**B:** Naja, das meiste läuft oder ist über Schriftverkehr gelaufen, soweit ich das gehört habe. Über Vorlagen von sogenannten Gutachten.

**A:** White Papers und so weiter?

**B:** Genau. Dann Veranstaltungen mit Diskussionen. Ein dritter Punkt waren Essenseinladungen. Die dürfte es ebenfalls gegeben haben. (...) Dann trifft man sich auch und macht einen Empfang oder sowas. Eines sollte man nicht vergessen, bei den Amerikanern steht immer die Drohung im Raum „sie werden alle rechtlichen Mittel ergreifen um gegen eine bestimmte Regelung vorzugehen". Also der Druck der Amerikaner auf die Kommission war 2013, beginnend 2012, aber hauptsächlich 2013 enorm. Es ist ja bis heute nicht bekannt wie hoch der Personaleinsatz bzw. der finanzielle Einsatz der Amerikaner tatsächlich war. Ich habe Ihnen die Unterlagen dazugegeben. (...) Die EU-Kommission und das Europäische Parlament haben am 27. Jänner 2015 eine neue Version eines EU-Transparenzregisters vorgelegt. Hier wird genau festgelegt was gemeldet werden muss. Das ist total neu. Ich habe das nur gelesen. Die Gesamtunterlage habe ich mir leider noch nicht anschauen können, aber da drinnen steht, dass alle registrierten Organisationen und Einzelpersonen verpflichtet sind die geschätzten Kosten ihrer Lobbyingaktivitäten anzugeben. (...) Das ist ein Papier das gilt für die gesamte Europäische Union.

Erarbeitet hat das die Kommission und das Parlament. (...) Es gibt noch etwas, was die Amerikaner machen. Sie sprechen Einladungen aus um das Datenschutzregime in den USA kennen zu lernen. Da werden insbesondere Personen aus dem Datenschutzumfeld eingeladen. Ich habe selber dreimal eine Einladung gehabt, bin aber nie in die USA gefahren. Das war immer eine Einladung für 10 Tage. Das Angebot war das amerikanische Datenschutzrecht im Rahmen der amerikanischen Verfassung kennenzulernen, wie es funktioniert. Das andere wäre, soweit ich mich noch erinnere, dann eine Sightseeing-Tour gewesen. Das machen die Amerikaner sehr aktiv. Das gehört glaube ich berücksichtigt.

**A:** Ja. **Inwieweit hat sich die Datenschutzgrundverordnung seit 2012 verändert?**

**B:** So darf man die Frage nicht stellen, weil es keine beschlossene Datenschutzverordnung gibt.

**A:** Das stimmt, aber es gibt den Entwurf der Datenschutzgrundverordnung aus dem Jahr 2012.

**B:** Es gibt bereits einen Gegenentwurf. Wir haben dann drei. Sie müssen davon ausgehen, dass es drei Entwürfe gibt. Dann beginnt der Trilog. Der Entwurf der Datenschutzgrundverordnung kam von der Kommission. Dann hat darauf aufbauend das Europäische Parlament mit Abänderungsanträgen im März letzten Jahres einen eigenen Entwurf gebastelt und jetzt kommt der dritte Entwurf. Der kommt von der Ratarbeitsgruppe. Das ist die Position der Mitgliedsstaaten. Wobei wenn es hier zur Abstimmung kommt nicht klar ist, ob Österreich überhaupt zustimmen wird. Ich vermute vielmehr, dass es hier zu einem Mehrheitsbeschluss kommt. Dann haben sie drei Entwürfe, die sich in einigen Punkten sehr unterscheiden. Beispielweise in der Frage des betrieblichen Datenschutzbeauftragten, in der Frage der Sanktionen, in der Frage des Profilings und des Direktmarketings, in der Frage wann wirklich eine Zustimmung vorliegt und so weiter. Es gibt drei verschiedene Positionen. Wenn man dann verhandelt, wird irgendwann einmal die Nacht der langen Messer kommen und dann gibt es einen Beschluss. Heute kann noch niemand sagen wie dieser Entwurf tatsächlich aussehen wird. Niemand kann sagen, ob die Standards der Richtlinie 95/46 tatsächlich noch aufrecht bleiben, weil es gerade bei den Mitgliedsstaaten auch um wirtschaftliche Interessen geht. Also den Engländern, den Polen, den Letten oder auch einigen anderen Staaten glaube ich einfach nicht mehr. Denen geht es nicht um die Wahrung der Grundrechte und den Schutz der Privatsphäre, sondern hier stehen hinter einer derartigen Regelung sehr große wirtschaftliche Interessen.

**A:** (...) Okay. Somit zur fünften Frage. **Gibt es vergleichbare Fälle betreffend des Lobbyingumfangs?**

**B:** Viele. Also auf die Fluggastrechte habe ich bereits hingewiesen [Anm. vor dem Interviewstart]. Total aktuell. Ich komme ja aus einem bestimmten Politikbereich (...) und war natürlich in meiner Vergangenheit auch mit den Lobbyingaktivtäten der Industrie, aber auch generell privater Unternehmen bei relevanten Rechtsakten konfrontiert. (...) Man muss grundsätzlich davon ausgehen, dass überall dort, wo es um eine gemeinsame europäische Regelung geht um einen grenzüberschreitenden oder innergemeinschaftlichen Waren- und Dienstleistungsverkehr zu sichern, dass es hier

Lobbyingaktivitäten gibt. Besonders stark betroffen war der Lebensmittelbereich. Als Beispiel die Lebensmittelbasisverordnung, wo es irrsinnig viel Druck gegeben hat, gerade was die Frage der Sicherheit bei Lebensmitteln durch Kontrollen betrifft oder auch beim Behördenvollzug, sprich wann können Waren beschlagnahmt werden, wann müssen sie außer Verkehr gezogen werden, wann liegt eine Haftung vor und so weiter. Das hat man im generellen Produktgüterbereich gehabt. (...) Auch bei der Produktsicherheitsrichlinie, die schon in die Jahre gekommen ist, kann ich mich noch erinnern wie damals lobbyiert wurde. In den letzten Jahren dann besonders stark im Lebensmittelbereich, insbesondere was die Kennzeichnung betrifft, vor allem die Ursprungskennzeichnung. Die Ursprungskennzeichnung ist zum Beispiel auch ein Problem, welches wir mit den Amerikanern haben. Die Amerikaner wollen keine Differenzierung bei den Produkten haben. Sie sehen das als Handlungshemmnis, wenn beschrieben wird oder angegeben wird, woher ein Produkt stammt. Für die Europäer ist das wichtig um dem Prinzip der Rückverfolgbarkeit nachkommen zu können, wenn es beispielsweise zu einer Lebensmittelvergiftung oder was auch immer kommt. Die Produktsicherheitsrichtlinie wird derzeit gerade diskutiert und überarbeitet und es soll auch die komplette Marktbeobachtung in Europa neustrukturiert werden. Das ist momentan ein laufender Prozess und ich gehe davon aus, dass die Lobbyisten aus der Industrie, aber auch aus dem Gewerbe oder der Landwirtschaft – man darf die Landwirtschaft nicht vergessen – bereits tätig sind. Wir denken beim Begriff Landwirtschaft immer an die kleinstrukturierte Landwirtschaft, wie bei uns in Österreich. In Europa gibt es sonst kaum, von der Schweiz, Liechtenstein und wenigen Gebieten in Deutschland oder auch Frankreich abgesehen, diese kleinstrukturierte Landwirtschaft. Da gibt es die großen Agrarverbände, die zum Beispiel, ich kann mich noch genau erinnern, die Ursprungskennzeichnung bei den verarbeiteten Lebensmittel verhindert haben. Unsere Bauern haben es gefordert, haben gesagt wir sind dafür und dann hat es den Widerspruch auf der europäischen Ebene gegeben. Alois Stöger hatte es als Gesundheitsminister verlangt. Das ist aber dann wieder von der Agrarseite Unterlaufen worden, die dann auf einmal argumentiert hat, das es mit zu hohen Kosten verbunden wäre. Also der Bereich wird immer stark lobbyiert und es gibt noch einen Bereich der immer Gegenstand von Lobbyisten war, das ist der Pflanzenschutzmittelbereich. Da geht es um die Industrie, die damit verbunden ist. (...) Natürlich auch der Chemikalienbereich.

**A:** Nach meinen Recherchen war REACH, also bevor die Datenschutzgrundverordnung war, die am stärksten lobbyierte und jetzt soll der Datenschutz das übertroffen haben.

**B:** Mhm. (bejahend)

**A: Wie hat sich der Lobbyismus in den letzten Jahren entwickelt?**

**B:** Wie er sich entwickelt hat?

**A:** Ja, ist er stärker, aggressiver oder ist er mehr geworden?

**B:** Der Lobbyismus ist in den 10 Jahren nicht nur mehr geworden, sondern er war einfach nicht mehr transparent. Die Frage der Transparenz muss man in diesem Zusammenhang natürlich immer wieder stellen. Insbesondere wenn keine klassischen Lobbyisten kommen, sondern wenn Rechtsanwaltskanzleien eingesetzt werden,

wie es mir mehrfach passiert ist. Ich machte eine Aussage zu einer prägnanten Getränkemarke, am Nachmittag war die Rechtsanwaltskanzlei, die diese Marke vertreten hat, bei mir im Parlament. Ähnliches im Arzneimittelbereich, da hat es sofort nachdem ich meine Position dargelegt habe einen Anruf gegeben und eine Gegenpresse durch die Pharmig. (...) Früher hat es das weniger gegeben. Ich würde sagen erst zu Beginn von Schwarz-Blau 2000 hat man den Lobbyismus wirklich im Parlament gespürt. Ende 2000, ich kann mich noch erinnern, da haben wir bzw. ich eine Aussendung zu Ebay gemacht. Dann war sofort der Generalbevollmächtigte von Europa von Ebay bei mir im Parlament. Im IT-Bereich hat sich das immer mehr zugespitzt. Von Google habe ich X Einladungen bekommen, auch vom Europavertreter. Man muss sagen, es ist stärker und aggressiver geworden, weil sie sofort angerufen haben. Sie waren penetrant. Penetrant deswegen, weil sie immer wieder angerufen haben. Sie müssen sich das vorstellen. Sie erklären jemandem etwas, sagen nein das geht nicht ich bin anderer Meinung, 2 Tage darauf wieder ein Anruf. Man muss aber auch sagen, dass es immer mehr Lobbyingorganisationen gegeben hat. Man hat dann nicht mehr gewusst ob das ein wirklicher Lobbyist ist. Man hat nicht mehr gewusst, welche Interessen er in Wirklichkeit vertritt. Die Transparenz ist enorm gesunken. Daher gibt es jetzt auch auf europäischer Ebene die Debatte nach mehr Transparenz. Aber Ausgangspunkt war ja die Datenschutzgrundverordnung. Wenn ich jetzt nachdenke, zu einem Zeitpunkt wo die Datenschutzgrundverordnung nicht diskutiert worden ist, waren die Silicon Valley Institutionen oder Unternehmen, wenn es eine Aktion von uns im Parlament oder irgendetwas gegeben hat, immer da. Wenn ich zum Beispiel eine Presseaussendung gemacht habe. Google war da klassisch, mit dem Google Auto. Ebay war auch klassisch, da ist es um die allgemeinen Geschäftsbedingungen gegangen. Sie waren sofort da.

**A:** Wobei man sagen muss, dass sie damals noch gar nicht solche Riesen waren, wie sie es jetzt sind.

**B:** Das stimmt, aber ich meine die Branche damit.

**A:** Ja, dann kommen wir wieder zum Transparenzthema. **Wie sollte man dem Lobbying entgegenwirken? Wie könnte man entgegenwirken? Gibt es da überhaupt Möglichkeiten damit man das in den Griff bekommt?**

**B:** Ich glaube, man muss genau differenzieren zwischen Lobbying und Beratungstätigkeit. Da sind wir in einer Grauzone. Wenn eine Rechtsanwaltskanzlei hergeht und Politiker berät und dem Politiker bereits eine Vorlage gibt, die er einbringen soll, ohne gleichzeitig zu sagen das er ein bestimmtes Unternehmen vertritt, dann sind wir bei einem verdeckten Lobbying, einem verdeckten Wirtschaftslobbying. Von mir ist die Antwort darauf, dass wir höchstmögliche Transparenz benötigen. Es ist so ähnlich wie beim Glücksspiel. (...) Lobbying kann man zwar verbieten wie das Glücksspiel, aber das Lobbying wird es immer in irgendeiner Weise verdeckt geben. Daher sollte man mit offenen Karten spielen und Transparenz einfordern, auch entsprechende Kontrollmechanismen schaffen, beispielsweise in Form von Dokumentationsverpflichtungen bis hin dazu, dass man bestimmten Personen bzw. Einrichtungen verbietet beispielsweise das Parlament zu betreten. Da bin ich auf der nationalen Ebene, aber das gilt natürlich auch für das Europäische Parlament. Was habe

ich mir da noch aufgeschrieben? Wenn wir über Lobbyismus aus europäischer Sicht reden dürfen wir die amerikanische Situation, was eh die nächste Frage ist, nicht außer Acht lassen, wo es eine Verquickung zwischen der Tätigkeit der Geheimdienste und der wirtschaftlichen Interessen der USA gibt und damit auch der amerikanischen Unternehmen, in diesem Fall der großen IT-Unternehmen. Von amerikanischer Seite wird das zwar immer wieder bestritten, aber die Unterlagen, die Snowden zur Verfügung gestellt hat, zeigen sehr deutlich das Zusammenspiel. Das heißt, die amerikanischen Unternehmen bekommen von Geheimdiensten Informationen, die sie natürlich für Lobbyingzwecke einsetzen und damit auch Druck ausüben können. (...) Das halte ich in dem Zusammenhang für eines der ganz großen ungelösten Probleme mit den Amerikanern. Ihre nächste Frage war so formuliert: **Was sind die Hauptunterschiede zwischen der EU und der USA bezüglich Lobbying?** Ich meine, es ist einfach ein anderes Rechtsverständnis, eine andere Rechtskultur. Europa baut seit der Aufklärung auf Grundrechte von Menschen gegenüber dem Staat auf und das ist eben verkörpert durch die Europäische Menschenrechtskonvention oder durch die Grundrechtecharta der Europäischen Union. In Amerika gibt es nichts Vergleichbares in diesem Bereich. In Amerika ist die Politik sehr offen, nicht nur für Lobbying, sondern auch für Sponsoring. Das muss man berücksichtigen. Hier gibt es keine klaren Regelungen. Die Republikaner wollen, was ich gelesen habe, die Beschränkungen, die unter Obama eingeführt worden sind weiter zurückdrängen, womit sich jeder in Amerika, der das notwendige Kleingeld hat, oder jedes große Unternehmen aus z.B. der Pharmaindustrie oder Waffenindustrie, Politik kaufen kann. Aus dieser Kultur oder eher aus dieser Unkultur kommt auch das Verständnis der Amerikaner zu Lobbying. Man will mit Geld die eigenen Interessen durchzusetzen, auch in Europa. Es ist eine andere Rechtskultur.

**A:** Ja, das ist klar. Dann noch zum Schluss, **wie würden Sie selbst den Begriff Lobbying definieren?** Sie haben schon gesagt man muss Unterscheiden zwischen Lobbying und Beratung.

**B:** Lobbying liegt aus meiner Sicht dann vor, wenn versucht wird auf Entscheidungsträger Einfluss auszuüben um bestimmte Maßnahmen im rechtlichen Bereich – also Verwaltungsmaßnahmen – zu setzten oder Rechtsakte zu gestalten und das Gemeinwohl dabei außer Acht lässt. Das ist glaube ich ein ganz wesentlicher Punkt. Oder auch wenn ein Lobbyist versucht entweder im Auftrag seines Unternehmens, also als Angestellter, oder eine Rechtsanwaltskanzlei im Auftrag eines Unternehmens Interessen durchzusetzen, die entweder auf der Verwaltungsebene liegen oder in der Frage der Rechtsgestaltung. Entscheidend ist dabei, dass es immer um subjektive Interessen eines Unternehmens geht und das Allgemeinwohl, dem sich ja die westlichen Demokratien verpflichtet haben, außer Acht bleibt. Aber hier beschränkt auf den wirtschaftlichen Lobbyismus nicht auf den politischen Lobbyismus. Da gibt es meistens andere Hintergründe. Wirtschaftliche Interessen von Staaten oder nicht nur wirtschaftliche Interessen auch nationale Interessen, wo dann natürlich auch lobbyiert wird. Aber das ist ein politischer Prozess.

A: Okay. Dann noch eine letzte Frage. **Wie beschreiben Sie sich selbst bzw. Ihre Organisation in diesem Zusammenhang bezüglich der Datenschutzgrundverordnung?**

B: Unsere Organisation hat eine ausführliche Stellungnahme erarbeitet, wo wir unsere Positionen dargelegt haben, nämlich auf Basis unserer Verfassung und diese Unterlage, die übrigens abrufbar ist – die können Sie sich von unserer Seite holen – haben wir der Europäischen Kommission bzw. der zuständigen Generaldirektion übermittelt. Unsere Organisation ist nicht Teil einer Verhandlungsgruppe auf Brüsseler Ebene. Unsere Organisation verfolgt ziemlich genau die Entwicklung auf der europäischen Ebene und wir werden, wenn der Vorschlag der Ratsarbeitsgruppe vorliegt, zu dem Vorschlag der Ratsarbeitsgruppe wieder eine österreichische Position formulieren und diese Position der österreichischen Bundesregierung empfehlen.

A: Okay, danke. Ich bedanke mich bei Ihnen, dass Sie sich Zeit genommen und mir Rede und Antwort gestanden haben.

B: Bitte, gerne, auf Wiedersehen.

A: Auf Wiedersehen

## Interview C

| | |
|---|---|
| **Interview Partner** | Staff member of the European Commission in the domain of data protection |
| **Date and Time** | 05.03.2015, 10:00-10:30 |
| **Language** | German |
| **Communication** | Telephone |
| **Interview Location** | Petzenkirchen (Austria) and Brussels (Belgium) |
| **Duration** | 26 min. |

**A:** Lukas Schildberger
**B:** Interview Partner
---

**A:** Guten Tag. Dankeschön, dass Sie sich heute für mich Zeit genommen haben. Wie Sie bereits aus meinen Emails entnehmen konnten schreibe ich gerade an meiner Masterarbeit über das Lobbying der neuen EU-Datenschutzgrundverordnung. Dabei führe ich Interviews durch, welche von mir selbstverständlich anonymisiert werden. Sofern Sie bereit sind würde ich gleich damit beginnen.

**B:** Guten Tag. Das passt mir alles soweit. Wir können jederzeit anfangen.

**A:** **Welche Institutionen, Einrichtungen und Agenturen der EU werden/wurden von Lobbyisten im Bezug auf die Datenschutzgrundverordnung am meisten aufgesucht? Hier vielleicht kurz noch dazu, nicht unbedingt der EU, es genügt wenn hier die Kommission im Vordergrund steht.**

**B:** Die Antwort ergibt sich schon aus der jeweiligen Funktion der einzelnen EU Institutionen. Die Kommission als diejenige Institution, als das Organ, welches das Vorschlagsrecht hat, steht natürlich an erster Stelle. Das muss man sich jetzt über die Zeit angucken. Wie gesagt, 2009 haben wir angefangen mit Konferenzen zur Zukunft des Datenschutzes. Dann hatten wir zwei öffentliche Anhörungen 2009, 2010 und dann im Januar 2012 haben wir unsere Vorschläge vorgelegt. Bis dahin war natürlich die Kommission der Hauptanlaufpunkt. Das hat sich dann natürlich anschließend auf die anderen beiden Institutionen verlagert, den Rat und eben das Parlament. Das heißt, bis 2012 war der Fokus auf die Kommission, nach 2012 war ein sehr starker Fokus auf das Parlament und regelmäßiger Fokus auf die Mitgliedsstaaten, auf die Hauptstädte. Wobei das natürlich auch schon vorher der Fall war. Das würde ich sagen. So kann man das allgemein sagen.

**A:** Okay. Hierzu vielleicht noch eine kurze Zwischenfrage, da die offizielle Vorlage des Rates heuer in den nächsten Monaten erfolgen soll. Da wird man wahrscheinlich erwarten können, dass die Kommission dann im Zuge des Trilogs wieder mehr im Mittelpunkt steht, oder liege ich da falsch?

**B:** Nein, das ist richtig. Je nach Entwicklung in den anderen Institutionen wird natürlich dann rekursiert auf die Kommission. Wenn es zum Beispiel wie nächste Woche darum geht, dass sich der Rat hoffentlich teilweise auf die Vorschriften zum einzigen Anlaufpunkt oder auf die Grundsätze des Datenschutzes einigen wird. Wenn es da von Lobbyisten andersseitige Ansichten gibt

werden die natürlich auch gleich zur Kommission getragen, sprich dann wird um einen Termin gebeten mit der Kommissarin, um zu sagen „Hier im Rat schlagen die gerade das vor und das mögen wir nicht und deswegen tut bitte etwas."

**A: Okay, Dankeschön. Dann würde ich das mit der ersten Frage so stehen lassen und würde zur zweiten Frage übergehen. Welche Bereiche der Datenschutzgrundverordnung werden und wurden am stärksten beeinflusst bzw. probiert zu beeinflussen? Sowohl im positiven als auch im negativen Sinne, sprich verstärkend und abschwächend?**

**B:** Das lässt sich so nicht beantworten. Warum nicht? Weil, wenn ich mich auf die Grundsätze fokussiere oder anfange eine neue, zum Beispiel engere Definition, der Begriffsbestimmung „Was ist ein personenbezogenes Datum" vorzuschlagen, dann hat das naturgemäß Auswirkungen auf den ganzen Text. (...) Das wurde versucht. Deswegen würde ich sagen, wenn man da an einer Stellschraube dreht, hat das Konsequenzen direkt für den Rest des Textes. Deswegen würde ich auch eher nicht sagen, dass es bestimmte Bereiche gibt, wo lobbyiert wurde. Natürlich gibt es gewisse Schwerpunktbereiche, die regelmäßig auch in der Presse stehen oder gegen die geltend gemacht werden. Aber in der Zusammenschau möchte ich keinen nennen. Man kann einzelne Aspekte nicht von den generellen Aspekten trennen. Wie gesagt, wenn ich nun anfinge einzelne Aspekte aufzuzählen, dann wäre ich ganz schnell bei bestimmt 20, 25 Punkten und dann ist die Übung sinnlos, also eher nicht. (...) Also um es nochmal so zu sagen, jedes Kapitel der Verordnung ist heftig umstritten und heftig lobbyiert worden, weil in jedem Kapitel, sei es nun zu den Grundprinzipien, sei es nun zum Anwendungsbereich, sei es zu den Pflichten für die Verarbeitung, für Verantwortliche oder für den Auftragsdatenverarbeiter, sei es für die Rechte des Einzelnen, sei es zur internationalen Datenvermittlung. In jedem Kapitel gibt es Bestimmungen, die in dem einem oder anderem Wege ganz wichtig sind für den einen oder den anderen und deswegen der Beeinflussung ausgesetzt waren.

**A: Dankeschön. Dann würde ich die nächste Frage nehmen. Wie wird bzw. wurde die Datenschutzgrundverordnung lobbyiert? Welche Methoden wurden verwendet, um die Verordnung zu verstärken oder abzuschwächen? (...)**

**B:** Das kann ich Ihnen nicht beantworten, weil ich die Methoden nicht kenne. Das müssten Sie mir dann schon erklären.

**A:** Ich meine: Wurde versucht privat, also direkt Kontakt aufzunehmen? Wurde versucht durch White Papers oder durch irgendwelchen Benefits, wie Reisen, Einfluss zu bekommen? Und so weiter. Ich denke da an alle Ebenen und Schienen. Ich hoffe Sie bekommen eine Vorstellung.

**B:** Okay, das ist ganz einfach. Wie wird bei uns in der Kommission Lobbying gemacht? Da ist es üblicherweise der Fall, dass Termine mit den Dienststellen vereinbart werden, sprich hier in der Abteilung zum Beispiel mit den Referatsleitern. Dann kommen Personen, haben meistens Positionspapiere dabei, und legen ihre Bedenken dar und diskutieren mit uns. Also persönlicher Kontakt und Kenntnisnahme des Problems unterfüttert mit Positionspapieren. Das wird nicht nur auf Referatsebene gemacht,

sondern das geht dann meistens auch noch eine Stufe höher auf Direktorenebene. Öfter geht es dann noch eine Stufe höher auf Generaldirektorenebene, was dann das höchste ist, was wir hier in einer Generaldirektion haben. Und natürlich gibt es sehr oft Gespräche mit der Kommissarin und dem Kabinett, also dem privatem Stab, wo dann die gleichen Personen – es sind immer die gleichen Personen – mit den gleichen Bedenken kommen und mit den gleichen Positionspapieren. Das ist das, was für uns sichtbar ist. Was für uns noch sichtbar ist, dass dann Veranstaltungen gemacht werden wo wir als Kommissionssprecher eingeladen werden um die Meinung und die Position der Kommission darzustellen und dann wird die Position des jeweiligen Lobbyisten dargestellt. (...) Was gibt es noch? Das sind eigentlich die beiden üblichsten. Also der Direktkontakt mit dem direkten Vorbringen der Argumente oder Veranstaltungen hier in Brüssel, wo dann das diskutiert wird. Eine dritte Möglichkeit ist, die Positionspapiere einfach zu schreiben und zu veröffentlichen und dann in einem Schreiben anzuhängen. Das möglichst alarmistisch: „Die Welt geht unter, weil .. Datenschutz". Und natürlich eines der letzten Mitteln ist dann dieses Schreiben nicht nur an die jeweiligen federführenden Kommissarinnen oder Kommissare zu adressieren, sondern eben generell, also auch an andere Kommissare in der Kommission. Zum Beispiel ist für Datenschutz Frau Jourová zuständig, aber dann gibt es eben auch manchmal Lobbyisten, die beschweren sich dann im Bereich Gesundheit beim Gesundheitskommissar und sagen „Hier, die Kollegen von der Justiz machen was, was problematisch ist". Das sind, so würde ich sagen, die visiblen Sachen die wir sehen. Unabhängig davon ist uns natürlich auch bekannt, dass andere angemacht werden, wie interne Rundschreiben an Mitglieder oder Gründung von Verbänden, von dezidierten Lobbyingverbänden, für dieses eine Thema. Zum Beispiel hat die American Chamber of Commerce zur Begleitung der Datenschutzgrundverordnung eine Task Force von 20 Leuten eingesetzt um die Mitglieder mit Informationen zu versorgen und um die US-Amerikanischen Argumente regelmäßig vorzubringen. Da gibt es natürlich noch viele andere Sachen, die man aber nicht direkt sieht, wie das Lobbying auf nationaler Ebene, das Beeinflussen von nationalen Regierungen und so weiter und sofort. Da sieht man dann eben nur das Ergebnis. Ich spreche jetzt nur von meiner Person als Kommissionsmitarbeiter, was ich sehe.

**A:** Das ist verständlich. Dankeschön, sehr interessant. Gut, die nächste Frage ist wahrscheinlich wieder schwerer zu beantworten, aber ich probiere es trotzdem. **Wo sind die Hauptunterschiede der Versionen von Kommission, Parlament und bald auch Rat? Obwohl das kann man wahrscheinlich noch nicht so ganz sagen.**

**B:** Das wäre schön wenn ich Ihnen das sagen könnte. Das würde nämlich in der Tat voraussetzen, dass ich einen endgültigen Text vor der Nase hätte. Das kann ich nicht. Man kann aber Richtungen erkennen. Wie gesagt, der einzige Text, den es im Moment gibt ist der Text der Kommission bzw. die Texte der Kommission. Wir sprechen jetzt nur zur Grundverordnung, aber natürlich gibt es auch den Vorschlag für eine Polizeirichtlinie. Wir wissen die Position des Parlaments, die kennen wir jetzt durch die erste Lesungsposition vom März 2014. Die ist durchwachsen, aber da kann man doch grundsätzlich sagen, sie unterstützt das Vorhaben der Kommission, will den Datenschutz verstärken obwohl es natürlich

hier und da Sachen gibt womit wir, also die Kommission, auch nicht leben können. Die Grundtendenz ist aber ganz klar, das Parlament ist auf der Seite der Kommission. Beim Rat ist das noch nicht ganz klar was das werden soll. Hier sehen wir, dass es einen großen Konservatismus gibt, es gibt im Zweifel eher ein Bestreben Vorschriften aufzuweichen, sich weniger strikt zu fassen und weniger ins Detail zu gehen. Die Tendenz ist ganz klar, die Bedeutungshoheit der Mitgliedsstaaten zu bewahren, sprich keine Befugnisse für die Kommission, sondern Entscheidungen durch die Mitgliedsstaaten. Die große Auseinandersetzung über wie lassen sich Vorschriften für den öffentlichen Bereich mit einer Verordnung vereinbaren war das große Thema im letzten Dezember, auf das sich dann auch im Rat geeinigt wurde, dass das geht. Das sieht man ganz klar. Wie gesagt, endgültig kann man noch nichts sagen, aber der Rat bewegt sich sicherlich nicht in Richtung Kommission oder Parlament, sondern in die andere Richtung.

**A:** Ja. Das hab ich bisher auch so mitbekommen. Dann zur letzten Frage zu diesem Datenschutzpaket, obwohl es nicht mehr direkt um den Datenschutz geht. **Gibt es vergleichbare Fälle betreffend des Lobbyingumfangs und der Änderungsvorschläge im Vergleich zur Datenschutzgrundverordnung?**

**B:** Mir persönlich und auch aus meiner beruflichen Erfahrung ist mir kein Fall bekannt. Soweit ich weiß, ist der Aufwand, der für den Datenschutz insbesondere von den Unternehmen betrieben wurde, enorm. (...) Insbesondere was dann das Parlament anbelangt. Was wir hier an Sitzungen und Auseinandersetzungen mit Lobbyisten hatten, das hat das wirklich übertroffen, was ich die ganzen Jahre vorher gemacht habe, das ist klar. Ich weiß, dass es bei der Chemikalienregelung, bei REACH, ein ähnliches Vorhaben bei der Kommission gegeben hat, aber da war ich persönlich nicht involviert und deswegen kann ich überhaupt nicht abschätzen inwieweit der Umfang der Lobbyisten dort war. Ich weiß nur, dass es bei uns enorm war.

**A:** Ja, okay. Dankeschön. Dann hätte ich noch ein paar allgemeine Fragen. **Inwieweit hat sich der Lobbyismus in den letzten Jahren entwickelt? Wurde er aggressiver, wurde er weitreichender, professioneller oder anders?**

**B:** (...) Ich würde sagen der Lobbyismus hat sich natürlich professionalisiert. Ich sage Ihnen das, weil ich vor der Kommission im weitesten Sinne selber Lobbyist war. Es wird massiver vorgegangen. Es werden auch ohne zu zucken Unwahrheiten verbreitet, alles ist recht. Jedes Argument, so falsch es auch ist, ist recht um den Alarmlevel hochzuhalten. Man nehme das Beispiel Direktmarketing und Presse und Verleger insbesondere aus dem deutschsprachigen Bereich: Denen erklären wir seit drei Jahren, dass sowohl der Kommissionsvorschlag als auch die anderen Vorschläge der anderen Institutionen legitimer Verbreitung von Presseprodukten nicht im Wege steht. Sie werden aber trotzdem in jedem internen Hausblatt von den Menschen und in jeder Erklärung finden „die Datenschutzgrundverordnung bedroht das Geschäftsmodell der Presse und der Verlage". Das ist nicht zu erklären, wenn man sich den Text durchliest. Das ist nicht zu erklären, wenn man sich öffentliche Äußerungen, zum Beispiel unserer ehemaligen Kommissarin Frau Reding, durchliest. Das ist

allein damit zu erklären, dass gewisse Leute, die Lobbyisten vor Ort nämlich, ihr Dasein beweisen müssen und sich immer wieder ins Spiel bringen wollen. Das ist für mich die einzige Erklärung. Brandbriefe, alarmistische Sachen, Verdrehungen der Tatsachen, damit wird gespielt. Das ist eine Dimension, die mir neu ist.

**A:** Ja, so habe ich das bisher auch gehört. Danke dazu. Dann kommen wir zur Transparenz und zu den Regeln. **Wie könnte man diesem Lobbyismus verstärkt entgegenwirken? Es gibt ja immer wieder neue Ansätze. Da hat sich in den letzten Jahren sehr viel auf EU-Ebene und auch auf Nationalstaaten-Ebene getan, aber inwieweit gehört da noch nachjustiert oder passt das schon ihrer Meinung nach?**

**B:** Können Sie mir die Frage bitte nochmal erklären?

**A:** Sollte man dem Lobbyismus verstärkt entgegenwirken? Es hat sich ja in den letzten Jahren sehr viel getan, sowohl auf europäischer Ebene durch die Transparenzinitiative, das Transparenzregister und so weiter, als auch auf nationaler Ebene. Da wurden auch teilweise Transparenzregister eingeführt und striktere Regeln gemacht, aber inwieweit sollten diese noch verstärkt oder verbessert werden, oder passen die Ihrer Ansicht nach schon so wie sie sind?

**B:** Also Regelung ist immer gut, entgegenwirken weiß ich nicht. Wir sind darauf angewiesen, als Kommission und auch als Institution, dass uns die Meinungen zugetragen werden. Das ist einmal ganz neutral. Je mehr Informationen wir haben desto besser können wir entscheiden. Von daher sehe ich das grundsätzlich neutral, wenn nicht sogar positiv. Was ich nur sehe ist, wie dann tatsächlich die Argumente vorgebracht werden und das ist eben zum einen, dass die Argumente verfälscht werden, umgedreht werden, die Unwahrheit gesagt wird. Das ist natürlich nicht in Ordnung. Auf der anderen Seite werden Techniken verwendet an die man wahrscheinlich auch mit weiteren Transparenzregistern schwer herankommen kann. Vielleicht kann man es versuchen, aber ich bezweifle es. Beispiel: Ich kann als ein und dieselbe Person in mindestens fünf verschiedenen Funktionen auftreten. Ich kann zum Beispiel ein Unternehmenssprecher von einem Unternehmen sein. Dann kann ich einen weiteren Termin als Brüsseler Vertreter eines Unternehmens vereinbaren. Dann kann ich einen Termin vereinbaren für das Hauptquartier des Unternehmens, welches nicht in Brüssel ansässig sein muss. Da hab ich schon für das gleiche Unternehmen zwei Termine. Dann kann ich einen Termin vereinbaren, wo ich meine Argumente vorbringen kann als Unternehmen das Mitglied in einem nationalen Dachverband ist. Dann kann ich einen Termin vereinbaren als Mitglied in einem europäischen Dachverband und da meine Argumente wieder vortragen. Dann kann ich einen Termin vereinbaren als Mitglied eines weltweiten Verbandes. Und ich kann als Unternehmen einen Termin vereinbaren, als Mitglied eines ad-hoc gegründeten Verbandes oder einer Allianz oder einer Interessengruppe. Das heißt, ich habe ein und dasselbe Unternehmen oder ein und dieselbe Person, die beliebig oft, 7-, 8-, öfter-mal Gelegenheit hat ihre Position vorzubringen. Das ist natürlich extrem erfolgreich. Irgendwo bleibt es dann hängen. Ob man da mit weiteren Transparenzvorschriften etwas erreicht weiß ich nicht. Zum Beispiel: Die BITKOM in Deutschland. Die nennt sich ein Interessensverband der deutschen IT-Industrie. Wenn man dann nachsieht wer da drin sitzt dann werden Sie sehen, dass die

Hauptzahl der Unternehmen, die da drin sind, amerikanische Unternehmen sind. Das führt uns wahrscheinlich dann zur nächsten Frage weiter – was sind die Unterschiede.

**A:** Genau. **Was sind die Unterschiede zwischen europäischen und amerikanischen Lobbyisten?** (...) Die gibt es ja schon auf Grund des verschiedenen Aufbaus, der verschiedenen demokratischen, staatlichen Aufbauten der Institutionen, aber in wie weit unterscheiden sich diese im Bezug auf Lobbying?

**B:** Ganz ehrlich, der Unterschied ist einfach. Die Amerikaner und die amerikanischen Unternehmen wissen wie stark und wie wichtig Lobbying ist und sind dementsprechend besser aufgestellt. Sie wissen, wie das in Washington geht. Wenn es wichtig ist, dann wird eben Geld in die Hand genommen und dann wird Lobbying gemacht mit allen Möglichkeiten, die einem zur Verfügung stehen. Fertig. Das ist bei Europäern noch nicht so verbreitet und das ist der Hauptunterschied.

**A:** Danke. Dann die Frage 9. **Wie würden Sie selbst den Begriff Lobbying definieren?**

**B:** Lobbying ist für mich Interessensvertretung. Punkt. (...) Wie kann ich es am besten erreichen, dass die Interessen, die ich vertrete, in einem Gesetzgebungsvorhaben berücksichtigt werden.

**A:** Okay, danke. (...) Dann komme ich schon zum Abschluss. Nochmal eine kurze allgemeine Frage, die natürlich aus Sicht der Kommission zu sehen ist. **Wie würden Sie sich selbst bzw. Ihre Organisation, sprich die Kommission im Bereich Lobbying der Datenschutzgrundverordnung – gut, das passt in diesem Fall jetzt nicht hundertprozentig – wie würden Sie sich selbst in diesem Bereich beschreiben? Eher pro oder eher kontra?**

**B:** Als Opfer und als Akteur. Opfer in dem Sinn, dass wir natürlich den Lobbyisten von außen ausgesetzt sind. Das ist ganz klar. (...) Das kostet sehr viel Zeitaufwand, ist viel Argumentationsaufwand, den man vielleicht mit anderen Sachen besser füllen könnte. Auf der anderen Seite haben wir natürlich auch Interesse daran, dass unsere Kommissionsposition bekannt gemacht wird und deswegen bedienen wir uns selbst auch verschiedener Lobbyingmethoden im weitesten Sinne. Natürlich sprechen wir mit interessierten Parteien, natürlich sprechen wir mit den anderen Institutionen, natürlich sprechen wir mit den Regierungen in den Mitgliedsstaaten und auch in Drittstaaten. Wir haben unsere eigene Kommunikation bezüglich unseres Gesetzgebungsvorschlages und wir versuchen natürlich durch unsere Präsenz in den verschiedenen Foren, Konferenzen und so weiter unsere Standpunkte als Kommission klarzumachen. Wir betreiben also selber, wenn Sie so wollen, Lobbyismus im weitesten Sinne.

A: Dankeschön. Das waren meine Fragen, die ich hatte. Ich fand Ihre Antworten sehr interessant und wünsche Ihnen noch einen schönen Tag.

B: Bitte, gerne. Ihnen ebenfalls noch einen schönen Tag und viel Erfolg.

## Interview D

| | |
|---|---|
| **Interview Partner** | Staff member of the Austrian ministry of interior in the domain of data protection |
| **Date and Time** | 13.03.2015, 10:00-10:30 |
| **Language** | German |
| **Communication** | Personnel |
| **Interview Location** | Vienna (Austria) |
| **Duration** | 22 min. |

**A:** Lukas Schildberger
**B:** Interview Partner
---

**A:** Grüß Gott. Super, dass es mit einem Termin geklappt hat. Recht herzlichen Dank dafür.

**B:** Grüß Gott. Gerne, ich hoffe ich kann Ihnen weiterhelfen und bin schon gespannt auf Ihre Fragen.

**A:** Dann würde ich gleich mit den Fragen anfangen wenn das passt?

**B:** Sehr gerne.

A: Gut, dann fange ich an. **Welche Institutionen, Einrichtungen und Agenturen der EU werden bzw. wurden von Lobbyisten im Bezug auf die Datenschutzgrundverordnung am meisten aufgesucht bzw. benutzt?**

**B:** Das ist alles sehr schwierig zu beantworten, weil ich es natürlich nur aus unserer Sicht sagen kann. (...) Ich glaube höchstpersönlich, dass hauptsächlich das Parlament lobbyiert wird, also die MEPs. Innerstaatlich kann ich Ihnen nur sagen, dass wir nur schriftliche Stellungnahmen entgegennehmen, dass wir keine Treffen mit, keine Ahnung, amerikanischen Unternehmen, oder was auch immer in den Medien herumgeistert, machen. Wir nehmen immer gerne schriftliche Stellungnahmen entgegen und schauen uns durch, was uns da auffällt, weil manchmal gibt es ja auch wertvolle Hinweise. Es ist ja nicht immer schlecht, was dann dort passiert, sondern es hilft eben bei der Problemstellung. Aus meiner persönlichen Sicht glaube ich, dass es hauptsächlich das Parlament betrifft, das lobbyiert wird, weil die auch viel eher politisch Auftreten und dort auch mehr Stellungnahmen geben können. Wir hier auf Beamtenebene sind natürlich darauf angewiesen. Wir geben rein faktische Rückhalte und was später auf politischer Ebene tatsächlich von den Ministern passiert ist natürlich denen überlassen. Da können wir ihnen nur Hintergrundinformationen und Berichte vorschlagen.

**A:** Ich habe in diesem Bezug auch schon mit europäischen Vertretern gesprochen und die sagen, dass die Nationalstaaten für sie alle „Black-Boxes" sind. Sie wissen eigentlich nichts davon was hier passiert, also im Rat und den Nationalstaaten.

**B:** Das glaub ich schon.

**A:** Aus diesem Grund ist es ja auch interessant, was die Nationalstaaten, sprich in Vertretung Sie, dazu sagen können.

**B:** Das ist glaube ich im Allgemeinen völlig unterschiedlich, wie damit umgegangen wird. Bei uns läuft es wirklich nur über schriftliche Stellungnahmen und dergleichen. Wir haben auch einmal ein Gespräch mit der Wirtschaftskammer und der Arbeiterkammer geführt. Wir haben ja die Sonderstellung der Sozialpartnerschaften, die das auch ein bisschen bündeln. Von denen kriegen wir natürlich auch immer vorgefasste, schriftliche Stellungnahmen. Bei uns funktioniert das ein wenig anders als man sich das glaube ich von UK und so weiter vorstellt. Obwohl ich da auch zu wenig Einblick habe, wie es dort in anderen Mitgliedsstaaten abläuft. Ich fürchte ich kann Ihnen da nicht sehr hilfreiche Informationen geben.

**A:** Das passt schon. Mir ist der österreichische Aspekt wichtig. Gut, dann zur Zweiten. **Welche Bereiche, also Paragraphen, Abschnitte Teile, der Datenschutzgrundverordnung wurden am stärksten lobbyiert bzw. wo haben Sie den meisten Input bekommen oder auch Gegenwind? Und von wem?**

**B:** Das hängt ziemlich stark davon ab, wie die jeweilige EU-Präsidentschaft den Fokus legt, weil das dann immer im JI-Rat behandelt wird. (...) Die litauische Präsidentschaft im zweiten Halbjahr 2013 beispielsweise, hat den Fokus rein auf diesen One-Stop-Shop Mechanismus gelegt. Folgedessen waren andere wieder entspannter, die das jetzt nicht so interessiert. Es hängt wirklich davon ab, welchen Fokus auf den JI-Rat gelegt wird. Da werden immer von den Präsidentschaften Themen vorgelegt, so wie jetzt zum Beispiel auch wieder One-Stop-Shop und Kapitel 2 mit den Grundprinzipien, und natürlich kommen da dann mehr Stellungnahmen zu diesen Bereichen herein. Es gibt natürlich Gruppen, die sich dann mehr einbringen, nämlich jene die eben tatsächlich mit Daten arbeiten. (...) Es hängt sehr stark davon ab, welche Themen tatsächlich gerade im JI-Rat behandelt werden. Natürlich gibt es auch Bereiche quer durch. (...) Ein großes Thema, das auch in der Presse immer ein großes Thema war, war natürlich die Strafhöhe, also Betroffenenrechte und so weiter. Dann kommen natürlich auch immer wieder die jüngsten EUGH-Entscheidungen hinein. Das geht dann immer Hand in Hand und gibt an welche Themen gerade aufpoppen. Man kann jetzt kein Thema herausnehmen. Was juristisch sehr interessiert hat, die Lobbyunternehmen glaube ich aber weniger, war zum Beispiel der Anwendungsbereich zwischen Richtlinie und Verordnung bzw. strafrechtliche Daten, was für die Mitgliedsstaaten interessant ist, aber für Lobbyunternehmen dann wieder weniger. Es hängt wirklich rein vom Diskussionsverlauf ab, wo dann gerade der Fokus gestellt wird.

**A:** Okay. Da ist noch ein zweiter Punkt bei der Frage, den habe ich am Anfang nicht ganz vorgelesen. **Von wem wurde das am meisten probiert? Waren es wirklich, wie in der Presse genannt, die großen US-Unternehmen oder auch andere?**

**B:** Das kann ich Ihnen jetzt auch nicht im Detail sagen. Es gibt da nicht ein Unternehmen, das herkommt, sondern es gibt auf europäischer Ebene die unterschiedlichsten Verbände, aber da wissen Sie wahrscheinlich besser Bescheid als ich. Von denen kommen hauptsächlich irgendwelche Vorschläge, die jetzt nicht direkt an uns gerichtet sind, sondern an alle Minister der Mitgliedsstaaten. Das passiert dann zum Beispiel immer im Vorfeld

des JI-Rates. Also hauptsächlich von diesen Verbänden. Es gibt da aus innerstaatlicher Sicht kein Unternehmen. Wir haben am Anfang beispielsweise, also wie der Verordnungsentwurf rauskam, die gesamte Grundverordnung, die die Kommission vorgeschlagen hat, an alle innerstaatlich versendet. Dieser normale Begutachtungsverteiler, wo auch die Gesetzesentwürfe versendet werden. Das kriegt dann Gott und die Welt. Dort kamen dann natürlich auch Rückmeldungen, aber bei uns läuft es eher auf diesen schriftlichen Bereich hinaus und da kann man kein Unternehmen oder andere herauspicken. Bei uns wird auch durch die Wirtschaftskammer viel abgefangen. Ich kann jetzt leider kein Unternehmens-Bashing betreiben.

**A:** Es ist ohnehin eine allgemeine Frage. Von Verbänden, Nationen oder Organisationen?

**B:** Also hauptsächlich von Verbänden.

**A:** Kann es auch sein, dass die Deutschen oder die Briten hier gegeneinander lobbyieren?

**B:** Nein, das sind die normalen Gesetzgebungsprozesse, wo man natürlich immer Staaten hat, mit denen man in gewissen Punkten enger zusammenarbeiten kann und gemeinsame Positionen bildet; in anderen Bereichen wieder nicht. Es gibt nicht eine Gruppe die immer sagt „Das und das", sondern es ist immer im Fluss, je nach Thema.

**A:** Okay, danke. Der dritte Punkt wäre dann **welche Methoden hauptsächlich verwendet wurden?** Sie haben schon erwähnt, dass es hauptsächlich schriftlich ist.

**B:** Schriftlich, ja.

**A:** Aber gibt es da auch etwas anderes? Ich habe schon gehört, dass Reisen oder ähnliches angeboten werden um einen Aspekt kennen zu lernen, also Weiterbildungsreisen oder Veranstaltungen und dergleichen oder Meetings und Einladungen oder, dass auch diverse persönliche Treffen gefordert oder abgehalten werden.

**B:** Es wurden zu Anfang natürlich persönliche Treffen gefordert, auch von unterschiedlichsten Seiten, aber nachdem wir einfach die Ressourcen nicht haben, lösen wir das über rein schriftliche Stellungnahmen und wir werden dann auch immer wieder gebeten, von unterschiedlichen Gremien, über den Stand der Verhandlungen zu berichten. Aber es ist jetzt nicht so, dass man irgendwo eingeladen wird. Es kann sein, dass aus persönlichem Interesse unter Umständen jemand hingeht, aber bei uns läuft es rein schriftlich.

**A:** Gut. Kurz und bündig. **Wie unterscheiden sich Ihrer Ansicht nach die verschiedenen Positionen? (...) Wie hat sich die Verordnung entwickelt von Kommission 2012, Parlament 2014 und hoffentlich bald auch dem Rat, der sein Endprodukt noch abliefern muss? Wo sind hier Ihrerseits die größten Diskrepanzen und Unterschiede? Sowohl positiv als auch negativ natürlich.**

**B:** Der Kommissionsentwurf ist natürlich durch Parlament und Rat in gewissen Bereichen völlig abgeändert. Zum Parlamentsentwurf kann ich Ihnen nicht viel sagen, weil ich mir den immer nur punktuell ansehe, abhängig von den Diskussionen, die wir im Rat immer haben. Im globalen Zusammenhang habe ich mir den nie zur Gänze

durchgelesen, sondern immer nur punktuell wie sich die Positionen von den vorgeschlagenen Ratspositionen unterscheiden. (...) Ein Problem, dass der Rat oder viele Mitgliedsstaaten unter Umständen haben ist, dass es ein Verordnungsentwurf ist, der unmittelbar anwendbar ist und natürlich die nationalen Datenschutzgesetze aushebeln wird. Ich glaube daran gibt es die größten Diskrepanzen, dass jeder von seinem innerstaatlichen Verständnis ausgeht und irgendwie versucht dieses auf die Verordnung überzustülpen, was in manchen Punkten nicht ganz funktioniert. Das ist halt eines der vielen Probleme weswegen die Diskussionen auch so ewig lange dauern. Man darf aber nicht vergessen, dass die alte Datenschutzrichtlinie auch nicht aus dem Boden gestampft wurde. Die hat auch ewig gebraucht bis man sie beschlossen hat. Da sind diffizile Themen vor allem weil auch viele Bereiche mit hineinspielen. Man diskutiert dann über Statistik, man diskutiert über Direktmarketing und über Profiling und das vor allem bei solchen Spezialthemen, wo man sich dann erst wieder Wissen anreichern muss. (...) Ein Thema, das mir gerade einfällt, weil das jetzt gänzlich anders aussieht als es die Kommission vorgeschlagen hat, ist dieses One-Stop-Shop-System, weil dort zum Beispiel auch der juristische Dienst des Rates gesagt hat, dass der Vorschlag der Kommission nicht grundrechtskonform ist. Da muss man sich gänzlich was anderes überlegen. Das unterscheidet sich natürlich auch gänzlich von dem was das Parlament vorgeschlagen hat. Da wird man noch viele Diskussionspunkte haben, weil es auch ein sehr komplexes System ist und der Rat auch noch nicht in allen Punkten fertig ist. Deswegen ist es so punktuell, dass man dazu gar nicht viel sagen kann. (...) One-Stop-Shop ist sicher etwas was sich gänzlich voneinander unterscheidet und ansonsten muss man sich dann punktuell Dinge anschauen, weil zum Beispiel die Betroffenenrechte, das ist glaube ich Kapitel 3, die muss der Rat erst durchdiskutieren. Das ist immer wieder andiskutiert worden. Dort wird man dann sehen, wie die Sicht dann ausschaut – vor allem auch bei den Strafen. Das hat man noch völlig außen vor gelassen. (...) Das sind glaube ich auch die Bereich, die in der Welt draußen am meisten interessieren, aber soweit ist der Rat jetzt noch nicht. Das wird man dann im Juni sehen.

**A:** Die schweren Themen, unter Anführungszeichen?

**B:** Ja, die schweren Themen.

**A:** Gut. Dann geht es weiter mit fünf. Es ist eine allgemeine Frage. Ich weiß nicht in wie weit Sie da Einblick haben? **Gibt es vergleichbare Fälle, Richtlinien und Verordnungen bezüglich des Lobbyingumfangs und -aufwands zu dieser Verordnung?**

**B:** Das kann ich schwer, also nur rein objektiv beantworten, aber ich glaube rein von der Medienberichterstattung und den Aufwänden, der in Blogs und so weiter betrieben wird, glaube ich fast, dass das doch ein recht großes Projekt ist. Vor allem da es ja auch die Zivilgesellschaft und Internetcommunity so interessiert. Deswegen glaube ich, dass man dort viel höhere und größere Aufmerksamkeit hat. Es gibt sicher Pharmabereiche und was auch immer, aber da habe ich keine Ahnung wie das dort läuft. Hier ist es so auffällig, weil es die Zivilgesellschaft und den Internetbereich betrifft. (...) Nachdem ich ja nur im

Datenschutz- und Medienbereich tätig bin, kann ich Ihnen da überhaupt keine Informationen objektiver Art geben.

**A:** Das ist kein Problem. Dann kommen wir jetzt eher zu allgemeinen Fragen. (...) **Wie hat sich ihrer Ansicht nach der Lobbyismus bzw. dessen Einfluss in den letzten Jahren entwickelt?**

**B:** Das ist auch schwer zu beantworten, weil ich das auf EU-Ebene erst seit der Grundverordnung mache.

**A:** Das gibt es ja national genauso oder?

**B:** Ja, aber bei uns funktioniert das durch die Sozialpartnerschaft alles ein wenig anders. (...) Das ist, glaube ich, in Österreich ein Sonderkonstrukt, das man nicht auf andere Staaten überstülpen kann. Das finde ich auch ein durchaus sinnvolles System, dass dort Meinungen gesammelt werden und als gesammeltes Konstrukt übermittelt werden. Man lernt ja auch vieles wenn man durch die Praxis auf Dinge draufkommt. Ob sich das jetzt verbessert oder verschlechtert hätte? Ich meine es ist, glaube ich, durch die Grundverordnung generell intensiviert worden. (...)

**A:** Wurde es auch aggressiver?

**B:** Ja, wahrscheinlich auch aggressiver, aber das kann ich nicht beurteilen. Es ist ja schon alleine durch die Technik mehr möglich. Ich meine, eine Email hat man leichter übermittelt als einen Brief geschrieben. Von dem her glaube ich schon auch aggressiver. Ich kann das jetzt aus österreichischer Sicht aber nicht bestätigen. Das schließt aber nicht aus, dass das andere Mitgliedsstaaten durchaus trifft. Ich glaube auch das Europäische Parlament am ehesten noch.

**A:** Ja, da bin ich mir auch sicher. Dann zu sieben. (...) In Österreich hat sich da schon etwas getan in den letzten Jahren. **Wie könnte man dem Lobbyismus verstärkt entgegenwirken bzw. ihn regeln? Sollte man das überhaupt? Ist es nötig?**

**B:** Da kann ich Ihnen jetzt nur meine persönliche Einschätzung liefern. Ich glaube, dass man den ersten Ansatzpunkt durch die Transparenzdatenbanken schon gesetzt hat. Ob die jetzt tatsächlich funktionieren oder wirken habe ich mir nie im Detail angesehen oder mir irgendwie Gedanken darüber gemacht. Entgegenwirken glaube ich wird wenig Sinn machen, weil man auf die Meinungen von außen angewiesen ist. Es ist halt immer nur die Frage, wie man faktisch damit umgeht. Wenn man dann im Bereich Bestechung oder Übernahme oder was auch immer ist, dann ist das natürlich, ohne Frage, etwas wo man stark entgegenwirken muss. Lobbyismus alleine ist nicht nur negativ besetzt, sondern auch als meinungsbildend oder einfach um Meinungen darzulegen, weil es gibt ja auch Dinge, die man vielleicht auf politischer Ebene nicht weiß oder die man lernen kann. Von dem her sollte man das jetzt nicht rein negativ besetzen. Aber natürlich ist Transparenz ein wichtiger Punkt in dem Zusammenhang.

**A:** Ja das ist auch der Hauptkritikpunkt von Lobbying, dass alles intransparent oder Großteils intransparent ist. Der Bürger stellt sich dann meistens vor, dass man sich im Hinterzimmer trifft und es dann einen Handschlag gibt und dann passt das. Aus diesem Grund natürlich auch diese Frage.

**B:** Die nächste Frage ist halt dann, dass Transparenz zwar schön ist, aber Dinge müssen auch irgendwo eine Kontrolle, also eine Grenze haben. Man kann ja nicht jedes Treffen gleich der Öffentlichkeit bekanntgeben und so weiter. Wir machen das ganz einfach nur mit schriftlichen Stellungnahmen von dem her ist das Problem einfach gelöst. Ich weiß auch nicht, was das Parlament so treibt. Da läuft vielleicht was im Hinterzimmer, aber das sind so die Vorstellungen die man hat. Das weiß man nicht.

**A:** Das ist klar. Es wird wie gesagt öffentlich ganz anders wahrgenommen, wie es in Wirklichkeit ist. Das ist das interessante an dem Ganzen. **Was sind Ihrer Meinung nach die Unterschiede vom Lobbying der EU zur USA?** (...)

**B:** Da kann ich überhaupt nicht wirklich etwas dazu sagen, weil ich das US-System und das Lobbying dort einfach nicht kenne. Es ist in Österreich auch wenig von US-Seite gekommen. Das trifft wahrscheinlich hauptsächlich die Kommission, weil die dort durch Safe Harbour und so weiter der Verhandlungspartner ist. Das nehme ich jetzt einfach an, weiß ich aber nicht. Die USA haben nämlich wenig davon wenn sie zu uns kommen, weil die Kommission durch Safe Harbour der Verhandlungspartner ist und die Mitgliedsstaaten im Hintergrund mit der Kommission verhandeln. Es sind ja mehrstufige Aufbauten. Von dem her glaube ich, kann ich Ihnen sonst wirklich nichts dazu sagen.

**A:** Kein Problem. Gut, dann noch zu zwei letzten Fragen. **Wie würden Sie selbst den Begriff Lobbying definieren?**

**B:** Ich würde ihn jetzt nicht so negativ besetzten, wie er glaube ich draußen rüber kommt, sondern als meinungsbildend oder als Übermittlung von Meinungen, so in diese Richtung. Also, dass man Sachstandsberichte aus der Wirtschaft, aus sonstigen Bereichen und eben auch Meinungen zu gewissen Punkten übermittelt. Die Frage ist halt wie man damit umgeht. Das ist natürlich der nächste Punkt. Das ist was dann Schwierigkeiten bereitet.

**A:** Passt, dann wären wir es eigentlich schon fast. **Wie würden Sie sich selbst bzw. die Position ihrer „Organisation" im Bereich Lobbying der Datenschutzgrundverordnung beschreiben?**

**B:** Ich selbst bin das kleinste Glied. Wie ich schon gesagt habe, wir nehmen als Abteilung immer die Stellungnahmen entgegen. (...) Wir lesen sie und verakten sie. Die allgemeine Positionierung Österreichs zur Grundverordnung richtet sich nach den innerstaatlichen Grundrechten und nach der innerstaatlichen Rechtslage. Unsere absolute Redline ist, dass das innerstaatliche Niveau durch die Grundverordnung nicht gesenkt wird. Das ist das, weswegen wir jetzt auch im JI-Rat mit Kapitel 2 noch größere Probleme haben werden, weil man dort glaubt, dass man das innerstaatliche Schutzniveau senkt. Das ist etwas, da kann noch so viel Lobbying betrieben werden, das nicht unterschritten werden darf. Also das ist die offizielle Linie des Hauses.

**A:** In der Öffentlichkeit kommt Österreich eigentlich sehr positiv herüber und auch als einer der wenigen, die es mehr oder weniger pushen oder zumindest nicht dermaßen abschwächen wollen, wie das manche andere wollen. (...)

**B:** Genau. Unser innerstaatliches Recht ist auch vergleichsweise hoch. Man muss das von unterschiedlichen Hintergründen sehen, da

die Umsetzungen der Richtlinie natürlich anders sind. Bei uns ist es ein sehr hohes Niveau. Das war traditionell schon immer so gewesen. Daher kommen auch Konfliktpunkte heraus. Das ist das Grundproblem einer Verordnung, die wir ja an sich als Rechtsinstrument immer unterstützt haben um eben den Harmonisierungsgrad zu erhöhen, aber da entstehen natürlich auch viele Konfliktpunkte daraus. Wenn es eine Richtlinie ist, dann tut man sich natürlich auch als sonstiger Mitgliedsstaat immer ein wenig leichter.

**A**: Jedoch ist dies bei Daten ein schwieriges Thema, weil die nicht stoppen, wenn sie über die Grenze kommen.

**B**: Deswegen ist die Verordnung ja eine ausgezeichnete Idee und immer unterstützt worden, aber man wird sehen was dann am Ende des Tages übrig bleibt.

A: Das ist wie immer und überall. Dann wäre es das. Recht herzlichen Dank für Ihre Zeit. Ich wünsche Ihnen noch einen schönen Tag. Auf Wiedersehen.

B: Ich hoffe ich konnte Ihnen ein bisschen helfen und wünsche Ihnen auch noch einen schönen Tag. Auf Wiedersehen.

## Interview E

| | |
|---|---|
| **Interview Partner** | Senior Policy Advisor to a Member of the European Parliament |
| **Date and Time** | 16.03.2015, 17:00-17:30 |
| **Language** | German |
| **Communication** | Personnel |
| **Interview Location** | Brussels (Belgium) |
| **Duration** | 24 min. |

**A:** Lukas Schildberger
**B:** Interview Partner
**C:** Intern mainly as Listener
---

**A:** Guten Tag. Danke, dass Sie sich für mich Zeit genommen haben.

**B:** Guten Tag. Gerne.

**A:** Die Fragen hab ich bereits geschickt.

**B:** Ja, die habe ich aber nicht mehr im Kopf.

**A:** Es sind die gleichen die ich jedem stelle und ich weiß, dass sie vielleicht nicht gerade maßgeschneidert sind fürs Parlament. (...) Am meisten interessiert mich der Blickwinkel des Parlaments über das Thema. Okay dann fange ich an. **Welche Institutionen, Einrichtungen und Agenturen der EU werden bzw. wurden von Lobbyisten im Bezug auf die Datenschutzgrundverordnung am meisten aufgesucht?**

**B:** Schwer zu sagen. Ich kenne was im Parlament los war. Ich habe nicht den richtigen Vergleich wie viel in der Kommission los war, gerade im Vorfeld. Ich habe jetzt nicht ganz den Überblick was im Rat in den Verhandlungen läuft, aber zum Parlament haben mir Leute, die hier seit 15 Jahren arbeiten, gesagt, sie haben hier zu keinem Dossier so einen Lobbyansturm erlebt. Einzelergebnisse waren dann auch unsere knapp 4000 Änderungsanträge. (...) Wir hatten allein in den neun Monaten zwischen der Ernennung des Berichterstatter und der Vorlage seines Berichtsentwurfs, dann im Januar 2013, 168 Treffen mit irgendwelchen Interessenvertretern.

**C:** Die Anfragen kommen jetzt auch wieder rein.

**B:** Ja, es war total viel als der Berichtsentwurf gemacht wurde und dann spätester in der Phase der Änderungsanträge bis quasi zum Schluss, als wir dann Verhandlungen hatten. Seit Oktober 2013, seit wir im Parlament auf Ausschussebene durch sind - da war das Ding dann eigentlich fertig - war es deutlich weniger. Jetzt kommen sie seit der Sommerpause wieder. Das heißt, die haben sich angeguckt was wir letzten März im Parlament in erster Lesung angenommen haben, dann war erstmals die Wahl und Sommerpause und seit Herbst geht es wieder los, dass sie wieder Fragen stellen. Aber so krass wie vor zwei Jahren ist es nicht wieder geworden. Ich glaube, die sind jetzt damit beschäftigt erstmals die Hauptstädte zu bequatschen, weil ja jetzt vom Rat die Sachen laufen.

**A:** Ja da geht es wohl gerade richtig ab. Gut, dann die zweite Frage. (...) **Welche Bereiche, sprich Paragraphen, Absätze wurden am**

**meisten heimgesucht und von wem? Kann man dies in etwa sagen? Nicht nur negativ sondern vielleicht auch positiv, sprich um das Ganze vielleicht zu verstärken.**

**B:** Für strengeren Datenschutz gab es glaube ich eine Handvoll von Gruppen, die dafür Lobbyarbeit gemacht haben. Das sind halt EDRi und ein paar EDRi-Mitglieder und die Verbraucherschützer. Für den Spezialbereich Arbeitnehmerdatenschutz vielleicht noch die Gewerkschaften, aber das war es. Alle anderen wollten im Wesentlichen den Datenschutz schwächen. Das muss man echt so sagen. Da würde ich aus der Erinnerung sagen, das hat sich viel auf Artikel 6 „Rechtsgrundlagen der Datenverarbeitung" konzentriert. Da speziell auf 6.1f „Berechtigtes Interesse". Die wollten das noch ausbauen. So ähnlich wie es jetzt im Rat auch herausgekommen ist, dass man auf Basis des berechtigten Interesses des Datenverarbeiters Daten für inkompatible Zwecke verwenden kann und ähnliches. (...) Das war sozusagen die generelle Stoßlinie von eigentlich fast allen. (...) Das waren die IT-Industrie, ganz Silicon Valley, die ganzen Finanzdienstleister aus London und anderswoher, die gesagt haben „wir brauchen das aber, um money-laundering zu bekämpfen" und ähnliches. Aber auch Inkassounternehmen und alle möglichen. Dann gab es noch Versicherungen und ähnliche. Dann gab es die generischen Arbeitgeberverbände, die jetzt nicht ein spezielles Interesse an Datenverarbeitung haben, sondern eher generell weniger Auflagen für Unternehmen wollten. Die haben dann zum Beispiel auch in Kapitel 4 viel Lobbyarbeit gemacht zur Frage „ab wann brauche ich einen betrieblichen Datenschutzbeauftragten" oder die wollten womöglich gar keinen. Auch zu „welche Auflagen habe ich als Datenverarbeiter" und ähnliches. Dann gab es auch zu Kapitel 2, ich glaube Artikel 6, vor allem von Silicon Valley und Co – das ging ganz stark von Yahoo! aus – eine richtige Kampagne zu pseudonymen Daten, wo die immer gesagt haben wenn die Daten pseudonymisiert werden dann ist doch alles super und viel datenschutzfreundlicher, aber dann soll man damit auch alles machen dürfen. Ohne jegliche Beschränkung. Und dann gab es natürlich ein paar Spezialfälle. Das war auch ziemlich intensiv. Die ganze Pharmaindustrie und Gesundheitsindustrie, die haben es teilweise geschafft ernsthafte seriöse Forschungseinrichtungen, wie die Deutsche Forschungsgemeinschaft, auf ihre Seite zu ziehen. Die haben vor allem Artikel 81 und 83 lobbyiert und wollten erlauben, dass man auch mit Gesundheitsdaten im Prinzip unbegrenzt, ohne die Leute vorher nochmals zu fragen, Forschung betreiben kann, was auch immer das dann ist. Zum kleineren Teil interessanter Weise, gab es Lobbying zum Thema Drittstaatentransfers. Safe Harbour und ähnliches. Da kamen zwar auch ein paar, wie die US Chamber of Commerce und sowas, aber das war nicht so viel. Nach Snowden waren die auch alle ganz ruhig.

**A:** Da war es wohl schnell leise. Danke. Dann die dritte Frage. **Wie wurde die Datenschutzgrundverordnung lobbyiert? Welche Methoden wurden verwendet?**

**B:** Standardmethoden. Also ich habe da jetzt nichts Ungewöhnliches erlebt. Da gibt es verschiedene Methoden wie man das hier macht. Eine ist, dass man ein Event organisiert, meistens am Abend draußen irgendwo, zum Beispiel in der Landesvertretung, und dort lädt man dann ein paar Leute auf das Podium ein, gerne auch

meinen Chef oder jemanden aus der Kommission, dazu noch ein paar Wirtschaftsvertreter, je nachdem wer es halt organisiert und finanziert. Ein ähnliches Format sind so etwas kleinere Frühstücksrunden hier am Parlament oder auch irgendwelche Minianhörungen oder ähnliches. Da muss man immer einen Abgeordneten finden, der den Gastgeber macht. Bezahlt und organisiert wird es dann in der Regel von irgendwelchen Lobbyvereinen oder Unternehmen. Diese ganze Eventmaschinerie ist sehr groß in Brüssel. Das läuft hier ständig. Und dann natürlich direkte, persönliche Anfragen um Termine mit meinem Chef. Das war auch sehr viel. Einen großen Teil davon habe ich dann übernommen, weil er einfach überhaupt nicht die Zeit dafür hatte. Das war teilweise ganz witzig, weil ungefähr die Hälfte der Zeit dieser Meetings habe ich dann immer damit verbracht den Leuten zu erklären, dass ihr Business Modell ja gar nicht sterben muss wenn die neue Verordnung kommt, sondern dass sie trotzdem weitermachen können wie bisher und vielleicht mal den Text richtig lesen müssen. (...) Eine große Sorge waren halt immer die betrieblichen Datenschutzbeauftragten, dass das doch alles Stellen sind und Geld kostet. Ich habe dann immer mühsam erklärt, dass das auch ein externer Datenschutzbeauftragter sein kann, der das auf Vertragsbasis zwei Stunden pro Monat oder so macht und einfach sicherstellt, dass die gesetzeskonform operieren. (...) Dann gab es natürlich parallel zu diesen Meetinganfragen auch schriftliche Stellungnahmen. Das ging von ganzen Studien bis hin zu umfangreichen Schreiben, wie Positionspapieren, bis hin zu konkreten Änderungsanträgen, die sie uns sozusagen vorgeschrieben haben. Sowie das halt alles ausgewertet wurde, dann mit Lobbyplag. Ein bisschen geringer, soweit ich das mitbekommen habe, war die Pressearbeit von den Lobbyisten. Die machen das oft nicht so gerne, sondern machen es eher unter dem Radar und reden nicht unbedingt mit den Medien. Die Öffentlichkeitsarbeit und Öffentlichkeitskampagnen haben eben die NGOs gemacht, die für Datenschutz sind. Da gab es natürlich auch die ganzen Kampagnen mit "Hier ruft eure Abgeordneten an" und so weiter. Das war aber nicht so stark, weil das Dossier doch sehr komplex ist und weil du nicht wie bei ACTA oder ähnlichen Themen sagen kannst „Hier sag dem Abgeordnetem er muss mit nein stimmen". Wenn du dann den Leuten irgendwie erklären musst „Hier ruf den Abgeordneten an und erkläre ihm, dass dieser eine Halbsatz in Artikel 6.1f doof ist" dann ist das mühsam.

**A:** Das waren auch Sachen die von anderen angesprochen wurden, nämlich dass die Datenschutzgrundverordnung zu kompliziert geschrieben ist, sodass sie für den Laien unter Anführungszeichen nicht verständlich ist.

**B:** Ja.

**C:** Was ich spannend fand, was du mir erzählt hast, dass Google oft so Veranstaltungen hat wo es gar nicht um ein bestimmtes Thema geht, sondern einfach so ein Kennenlern-Treffen.

**B:** Ja, das stimmt. (...) Was die hier im Google-Büro in Brüssel eine Zeit lang gemacht haben, immer am letzten Donnerstag im Monat um 18:00 Uhr, das hieß „Google @ 6" und war explizit an Assistenten hier im Parlament gerichtet. Das hatte mit deren konkreten Lobbyinteressen meistens nichts zu tun, sondern die haben dann irgendwelche spannende Blogger aus Aserbaidschan eingeladen oder

den Typen der hier für Google Maps die ganzen Metro- und Busfahrpläne von Brüssel reingetan hat und ähnliches. Also echt interessante Sachen. Die haben dann was erzählt und dazu gab es dann Freibier und Häppchen und hinterher konnte man da entspannt rumhängen, noch mehr Bier trinken, mit den Leuten plaudern, Kickern oder Music Hero spielen oder sowas. Sehr niederschwellig also. Natürlich läuft das dann darauf hinaus, dass wenn du das dann ein paarmal gemacht hast alle mit Vornamen kennst und mit denen schon 3 Bier getrunken hast. Wenn sie dann echt einmal was wollen, ist es in der Regel einfacher für sie einen offenen Zugang zu kriegen. So in der Art „Hey, sollen wir mal Mittagessen gehen" oder ähnlich.

**A:** Das ist klar. (...) **Wie hat sich die Datenschutzgrundverordnung seit Ihrer Veröffentlichung verändert?**

**B:** Das kannst du nachlesen. Darüber könnte man jetzt 3 Stunden dozieren.

**A:** Genau. (...) Dann ändere ich sie etwas. Wie ist die Tendenz vom Rat? Kann man da aktuell was sagen?

**B:** Ja, da kann man seit letzter Woche relativ viel sagen. Die haben sich im letzten Sommer auf Kapitel 5 geeinigt. Das ist eigentlich ganz okay und gar nicht so weit weg von dem was wir wollen. Kapitel 4 haben sie im Oktober gemacht. Das war schon mit deutlich weniger Auflagen für die Datenverarbeitung als von der Kommission oder vom Parlament vorgesehen. Bis dahin, dass betriebliche Datenschutzbeauftragte nicht mehr vorgeschrieben sein sollen, sondern es den Mitgliedstaaten überlassen bleibt. Das war schon der Punkt, wo wir gesagt haben, okay kann man machen, ist nicht unbedingt unser Ansatz, ist ein sehr amerikanischer Ansatz, eigentlich so „accountability-mäßig". Du kriegst wenige Auflagen aber wenn dann was schief geht, dann bist du dran. Das heißt, dann braucht es im Gegenzug starke Betroffenenrechte und starke Sanktionen. Da müssen wir jetzt sehen was der Rat dazu liefert. Im Dezember haben sie sich dann auf Kapitel 1 geeinigt. Da ging es vor allem um die Frage betriebliche oder behördliche Datenverarbeitung. Soll es da denn Mitgliedsstaaten erlaubt sein auch strengere Regeln einzuführen oder ist es weiterhin eine Vollharmonisierung, wie wir es schon seit 1995 haben? Das ist dann auch als Vollharmonisierung aufgegangen. Die Mitgliedsstaaten können nur bei behördlicher Datenverarbeitung, wo es ohnehin eine spezialgesetzliche Grundlage braucht das nochmal genauer ausspezifizieren. Jetzt haben sie letzten Freitag Kapitel 2 abgeschlossen. Das hast du wahrscheinlich mitbekommen auch über Lobbyplag und so weiter.

**A:** Genau.

**B:** Das macht uns große Sorgen. Da sind ein paar Sachen einfach ganz schief gegangen. In Kapitel 6 und 7 haben sie sich jetzt auch in der Zusammenarbeit mit den Datenschutzbehörden auf diesen One-Stop-Shop geeinigt. Das heißt, und dass ist relativ nah an dem was wir im Parlament vorgeschlagen haben, die Kommission hat nicht mehr das letzte Wort, sondern es gibt im Zweifelsfall wenn sich nationale Behörden nicht einigen können, eine Möglichkeit für eine verbindliche Zwei-Drittel-Abstimmung des Europäischen Datenschutzausschusses. Ich würde sagen unsere Parlamentsfassung ist ein bisschen schlanker und knapper gefasst. Im Rat ist da

viel herumgebastelt worden, aber das kommt vielleicht davon weil da 28 nationale Delegationen sitzen. Es ist aber inhaltlich nicht so weit weg von dem was wir im Parlament haben. Ich würde sagen, die großen Unterschiede zwischen Rat und Parlament sind Kapitel 4 und vor allem Kapitel 2.

**C:** Da gab es ja auch so eine Minianalyse von EDRi. Die kennst du vielleicht eh?

**B:** Ja genau, die Broken Badly Studie.

**A:** Ja ich kenne die Broken Badly Studie. (...) **Gibt es vergleichbare Fälle, Richtlinien oder Verordnungen, betreffend des Lobbyingumfangs zur Datenschutzgrundverordnung?**

**B:** Wie gesagt von anderen Leuten, die auch schon länger hier arbeiten, deutlich länger als ich, habe ich gehört, dass es so etwas Vergleichbares noch nie gab. Aber ehrlich gesagt, was meine Kollegen im Umweltausschuss oder irgendwie im Bereich Verkehr da sonst so an Lobbying abkriegen, das weiß ich nicht. Das krieg ich nicht mit. Bei uns ist Lobbying eher ungewöhnlich, weil die meisten Dossiers, die wir machen, haben irgendwas mit Migration, Visapolitik, Polizeizusammenarbeit oder so was zu tun. Da gibt es wenig Lobbying. Wie gesagt, alle mit denen ich rede, die schon lange in Brüssel sind, sagen, dass sie es so krass wie bei der Datenschutzverordnung noch nie erlebt haben. Was vielleicht auch ein bisschen nachvollziehbar ist. Das ist auch ein Bereich, der horizontal irgendwie alles trifft, weil jedes kleine Unternehmen verarbeitet zumindest Arbeitnehmerdaten oder auch meistens Kundendaten. Das heißt, da sind alle davon betroffen, weswegen auch alle versucht haben sich darauf zu setzen.

**C:** Das soll halt nicht wieder aufgebohrt werden in 5 Jahren.

**B:** Mhm. (bejahend)

**A:** Ja, hoffentlich nicht. Gut, dann hätte ich noch ein paar allgemeine Fragen. **Wie hat sich das Lobbying bzw. wie hat sich der Lobbyismus in den letzten Jahren entwickelt? Ist er irgendwie aggressiver oder mehr oder professioneller geworden?**

**B:** Mehr. Also soweit ich das beurteilen kann mehr. Immer mehr Verbände und Unternehmen kommen hierher nach Brüssel und machen Büros oder sowas auf. Die haben inzwischen glaube ich auch verstanden, dass es nicht mehr so viel bringt in Berlin und Wien und Madrid herumzuhängen, sondern dass die wichtigen Sachen hier laufen. Bei der Datenschutzverordnung war interessant, dass nicht nur einzelne Unternehmen und klassische Unternehmerverbände, wie Digital Europe, Lobbyarbeit machten, sondern dass für die Datenschutzverordnung gezielt Astroturfing-Verbände gegründet wurden, wie die European Privacy Association oder andere. (...) Da gab es einige davon. Die haben so getan, als wären sie grassroots-mäßig und würden hier ein paar tausend kleine App-Entwickler aus ganz Europa vertreten. Dann haben die Kollegen bei den NGOs ein bisschen nachgeforscht und es kam raus, dass die im Wesentlichen von Google, Microsoft, Yahoo! und Facebook bezahlt werden.

**A:** (...) S**ollte man dem Lobbyismus verstärkt entgegenwirken bzw. stärker regeln? Wenn ja, wie sollte es sein oder passt es wie es ist?**

**B:** Ich finde das Lobbyregister sollte auf jeden Fall verpflichtend sein. Wir haben das auch irgendwann so eingeführt, dass wir nur noch Leute getroffen haben, deren Unternehmen oder Verbände im Lobbyregister stehen. Das war dann interessant wie schnell die dann plötzlich darin standen. Wir machen das seit einer Weile auch auf unserer Website publik. (...) Seit der letzten Wahl, glaube ich, tun wir auch alle Treffen, die mein Chef oder auch ich oder seine anderen Mitarbeiter mit Lobbyisten oder Interessenvertretern haben auf die Website. Das ist noch freiwillig. Ich fände das ganz okay, wenn das verbindlich wäre. Die neue Kommission hat das ja anscheinend auch eingeführt, sodass die Kommissare das jetzt auch verbindlich machen müssen.

**A:** Ein großes Thema sind hierbei auch immer wieder Sanktionen. Sollte man da etwas einführen? (...) Fehlt hier vielleicht noch ein Stückchen oder passt das?

**B:** Spannende Frage. Da kenne ich mich ehrlich gesagt nicht so aus. Gibt es irgendwelche Sanktionen, wenn man im Lobbyregister falsche Angaben macht oder so?

**A:** Meines Wissens kann man da prinzipiell machen was man will, es wird nicht ernsthaft kontrolliert. (...) Ich muss da noch etwas tiefer gehen.

**B:** Das weiß ich jetzt auch nicht genau. Das ist nicht mein Spezialgebiet. Ich krieg es sozusagen nur als Opfer mit.

**C:** Was muss da angegeben werden?

**A:** Wie viel Geld du für Lobbyaufwand von deinem Gesamtbudget ausgibst, den Namen, welche Firma du vertrittst und so weiter.

**B:** Wie viele Mitarbeiter du in Brüssel hast und so weiter.

**C:** Und auch das Lobbybudget?

**A:** Ja, aber ich glaube das ist entweder eine prozentuelle Angabe von deinem Gesamtjahresumsatz oder eine Range von hier bis hier. Wobei die Range, die haben sie zwar jetzt wieder ein bisschen verfeinert, aber doch sehr breit ist.

**B:** Wenn man es zuspitzt wäre natürlich sowas, was Max Schrems und Co da mit Lobbyplag gemacht haben, einfach großartig. Wir haben da auch schon darüber gewitzelt. Es gibt ja immer diese Votinglisten. Hast du vielleicht schon mal davon gehört? Wenn Abstimmungen anstehen bei uns im Ausschuss oder im Plenum.

**A:** Diese A- und B-Punkte, wie es sie auch im Rat ähnlich gibt?

**B:** Nein. Im Parlament ist es noch ein bisschen anders. Im Parlament wird oft wirklich abgestimmt. Also bei 4000 Änderungsanträgen geht das nicht mehr, darum mussten Kompromisse verhandelt werden, aber bei so einem normalen Feld-, Wald- und Wiesendossier, da hast du deine 150 Änderungsanträge. Da gibt es dann ein paar Kompromisse und es bleiben noch 70 Änderungsanträge übrig. Die werden dann einfach einer nach dem anderen abgestimmt. Die Ausschusssekretariate bereiten das immer vor, weil dann immer geguckt werden muss, ob der eine Antrag zu dem Artikel angenommen wurde, denn dann haben sich meistens die anderen automatisch erledigt. Welcher wird zuerst und welcher als zweites abgestimmt? Welcher am weitreichendsten ist wird zuerst abgestimmt. Das machen alles die Ausschusssekretariate und unsere

Fraktionsmitarbeiter tun dann am Ende nur noch für die Fraktion jeweils ihr Plus, Minus oder einen Kreis rein, je nachdem ob sie dafür oder dagegen sind oder sich enthalten wollen. Wir haben dann auch irgendwann mal mit den Ausschusssekretariatsleuten gewitzelt, dass es eigentlich cool wäre, wenn dann noch daneben stehen würde „dieses Ammendment ist gesponsert von Yahoo! oder von Google" oder so.

**A:** Das habe ich schon mal gehört. Das ist eigentlich das gleiche System wie bei Lobbyplag. Mit dem Plus, Minus und die Quelle dazu. Das wäre ja genau das.

**B:** Ja, aber das wird nicht passieren. (...)

**C:** Lobbyplag für alle Gesetzesvorhaben?

**B:** Ja, genau.

**A:** Recht viel weiter ginge es dann mit Transparenz nicht mehr.

**B:** Man könnte auch eine Regel einführen, dass jeder Lobbyverband, der Änderungsanträge einem Abgeordneten zuschickt, diese dann ausweisen muss. Kann man ja machen. Dann muss immer noch der Abgeordnete selber sehen ob er die übernimmt oder umschreibt oder doch nicht übernimmt. Am Ende ist er politisch verantwortlich. Man könnte auch sagen, immer wenn du Änderungsanträge einspeist, müssen diese in einem bestimmten vorgegebenen maschinenlesbaren Format vorliegen und müssen auch noch auf eine Plattform hochgeladen werden. Das hat aber natürlich Grenzen. Wenn du so etwas einführen würdest, würden ganz viele Meetings im geschlossenen Hinterzimmer stattfinden und Leute würden nur noch Papierumschläge überreichen und gar nichts mehr über Mails schicken. Es ist halt immer schwierig. Aber es ist glaube ich einfach ein strukturelles Problem. Das wirst du auch auf absehbare Zeit nicht weg kriegen. Industrievertreter haben einfach tausendmal mehr Geld als die NGOs. (...) Es ist ein strukturelles Ungleichgewicht, weil die armen NGOs, die fürs Gemeinwohl kämpfen und für Verbraucherrechte und ähnliches, die haben einfach sehr wenig Geld und haben es immer sauschwer dagegenzuhalten. Das wirst du noch hören wenn du mit denen redest. Was die mit ihren paar Leuten schon an Dossiers parallel verfolgen müssen und dann jeweils noch dazu versuchen Kampagnen zu machen. Das ist echt knochenhart.

**A:** Ja. Gut, dann noch zwei Abschlussfragen. **Wie würdest du selbst den Begriff Lobbying definieren?**

**B:** Versuch der Einflussnahme auf politische Entscheidungsprozesse von außen.

**A:** Lass ich so stehen.

**B:** Es ist schwierig das dann von Campagning und so abzugrenzen. Lobbying ist sozusagen eher im direkten Kontakt mit den Entscheidungsträgern und nicht über die Öffentlichkeit. Vielleicht ist das der Unterschied.

**A:** Mhm. (bejahend) Die letzte Frage ist prinzipiell in diesem Zusammenhang jetzt hinfällig. **Wie würde man die Organisation in der Sie arbeiten im Bereich Lobbying der Datenschutzgrundverordnung beschreiben? Positiv oder negativ?**

**B:** Opfer. Wir sind halt „on the receiving end" wie man so schön sagt.

**A:** Wobei vielleicht hier noch eine Frage. (...) Das Parlament wird auch irgendwie gegenseitig den Rat oder die Kommission oder intern lobbyieren. Gibt es da vielleicht etwas?

**B:** Nein. Das ist kein Lobbying. Wenn das Parlament mit dem Rat oder mit der Kommission redet, dann sind das das inter-institutionelle Gefüge und Verhandlungen und so was. Das ist kein Lobbying. Das ist unsere Aufgabe als Gesetzgeber.

**A:** Das ist mir klar. Gut, passt. Dann wäre es das. Dankeschön für Ihre interessanten Antworten und den Einblick in die Arbeitsweise des Parlaments.

**B:** Gerne. Auf Wiedersehen.

**A:** Auf Wiedersehen.

## Interview F

| | |
|---|---|
| **Interview Partner** | Executive director of a non-governmental organization in the domain of Data Protection |
| **Date and Time** | 08.04.2015, 17:00-17:30 |
| **Language** | English |
| **Communication** | Online (Skype) |
| **Interview Location** | Vienna (Austria) and Brussels (Belgium) |
| **Duration** | 21 min. |

**A:** Lukas Schildberger
**B:** Interview Partner
---

**A:** Hello. Thank you for your time. As I have already mentioned in my emails I am currently writing on my master thesis and therefore I am doing some interviews with politicians and experts in the domain of data protection. If you are ready I am going to start it right now.

**B:** Hi Lukas. Yes, I am ready. Let's start.

**A:** **Which institutions, organizations or bodies of the European Union are or were the main targets regarding the General Data Protection Regulation?**

**B:** The Commission, the Parliament and the Council were all heavily targeted, at the appropriate times in the decision-making process. All were lobbied to the absolutely maximum extent. The governments in the national capitals were heavily lobbied to influence the discussions. The other bodies have limited influence.

**A:** Okay. So every institution was lobbied hard. (...) Let's talk about the second question. **Which paragraphs of the Data Protection Regulation were lobbied the most? And which organization or which lobbying actors were lobbying?**

**B:** I think pretty much every single word has been lobbied on extensively, right from the beginning of the document to the end. The main lobbyists have been the online advertisers or particular the American online companies, the American Chamber of Commerce and the American government. Further the financial services sector, the health sector and also other sectors have been lobbying.

**A:** Okay, thank you. (...) Then let's go to the third. **How was the Data Protection Regulation lobbied? Which methods were used? Was there also a try to strengthen the regulation or was it just to weaken it**?

**B:** It was basically just the EDRi member network plus the European consumers groups that were trying to improve the Commissions text and everybody else was working to undermine it and to add loopholes and unclear text.

**A:** Okay. Who was lobbying?

**B:** From the groups that I just mentioned, the online companies etc. Or do you need it more precise?

**A:** Yeah, please. What did you hear about public affairs or law firms or also think tanks or something like that?

**B:** There were no significant independent think tanks, but various groups that were paid by industry to act independently, like the European Privacy Association, whose job it was to amplify the industry voice, rather than being actually independent.

**A:** Okay, thank you. There is something left from the first question as I wasn't able to hear you due to our connection problems. I am going to ask you again. How was the lobbying in the national countries, in the capitals? Do you know something about this?

**B:** I have been seen it very close. It was very extensive. The American Chamber of Commerce for example organized a series of I think it was nine meetings across a lot of national capitals in order to get their message across and to bring in their diplomatic stuff in order to give a one-sided view of how the regulation was going to the end of the world if it was adopted.

**A:** And how was the lobbying from the NGOs, so from your side? How did you try to get your voice heard?

**B:** Well, we have even fewer resources in national capitals than we do in Brussels, so in a lot of countries we have no representation at all. In some of the countries we have members that are focused on a small group, so it was even just small on everything and so it was very difficult for us on a national level, because in the 28 member states we don't have the same resources.

**A:** Okay. How was it in Brussels, in the Parliament and in the Commission?

**B:** In the Commission it was quite positive, because the Commission was seeking to produce a good data protection legislation that builds on the existing law. In the Parliament it was quite mixed. In the beginning it was quite badly, but in the final vote we did better than we could have recently hoped that we could have done. Our engagement with the Council and its institute in Brussels is quite difficult, because they are getting their instructions from the national capitals. And the national capitals are being lobbied more effectively than we can do it.

**A:** Yeah, thank you. (...) I'm going to continue with the fourth question. **How has the General Data Protection Regulation changed over the time since it was first unveiled in January 2012? What are the main differences to the version of the Parliament and what are the main differences to the current Council's version? Do you have some insights?**

**B:** Yes. If you look on our website you get all of the details.

**A:** Yes, okay.

**B:** I mean the Council is systematically destroying all of the cornerstones and then stomping on the destroyed bits and burning the bits they have destroyed and jump on to make sure that they are absolutely dead. It's quite an extensive process.

**A:** Yeah, I read that. (...) Germany and also the UK and Poland are strong lobbyist against the General Data Protection as I heard. Am I right here?

**B:** Not Poland, but yes the UK definitely and Germany is particularly destructive, because of the sort of rather duplicity's way that it is handling the file. Because you already have those two big countries leading the charge, a lot of the smaller countries just being quite and watching the destruction happen. And then the countries that are in favor of having a proper legislation, like Luxembourg, Austria, Poland, just don't have the numbers to fight effectively.

**A:** Okay, thank you. **To you know something about other regulations or guidelines of the EU, which are lobbied like the General Data Protection Regulation?**

**B:** In a word, no. I am told that the REACH legislation about chemicals was similar, but I think even REACH was not as exhaustively and extensively lobbied.

**A:** Everybody is saying the same on this question. Let's go to the general part. **How has the lobbying developed in the last years?**

**B:** (...) Well, as a result of this legislation, we now have American-style lobbying here that we never had before. It is a lot more expensive and there is a hard sort of dishonest lobbying, so lobbying through organizations that claim to be independent. The European Privacy Association as an example jumps out. There is a lot of this and a process which I like to call amplification, which didn't exist before. You have the core group of companies that is a post from the American online companies. They lobby on their own behalf. Then they mobilized a lot of trade associations to lobby on their behalf as well. Then they lobbied to the European small business federations to lobby against their own interests and in favor of the position of big businesses and there is even an association of associations lobbying for the Americans as well. (...) Then you often have the so-called independent think tanks and independent academics lobbying as well. So you got one group of businesses that is combining their voices to reproduce their message over and over and over again and that was quite new.

**A:** So it's more, dishonestly and more aggressive?

**B:** There is just more, there is more aggressive and there is more dishonest. One of the lobbying companies behind the European Privacy Association has got the sales pitch they have on their website. This talks about getting the message out through third parties. This is quite new as well.

**A:** Okay. What's with your side, with the side of NGOs?

**B:** We can't do anything that is dishonest, so that differ us of any. (...) Eventually some people in Brussels recognized what was happening and this people are now more suspicious than they were before. (...) Before the Data Protection Regulation if you turned up in a meeting and said "I represent this organization, we care about digital civil rights, this is what we think" the policy-makers assumed that we were who we said we were and assumed that we were representing a civil rights perspective. Now people say: "Oh, is that who you say you are. Where is your funding come from and how much of your funding comes from industry." So everyone is faced with more suspicion. So we are getting the bad site, because of the results of lobbying.

**A:** Oh, that's bad.

**B:** It's not ideal.

**A:** Yeah, that's true. The next question is about transparency. **Should there be a stronger counteraction or regulation of lobbying? If yes how should it be?**

**B:** There should be lot more transparency. I think a lot of the amplification, which is being done, is simply not transparent, especially if you have something like the European Privacy Association. They are funded by industry, organized by a lobbying company that specializes in anonymizing messages for industry. They only join the lobbying register when they were exposed in the press for doing what they are doing and even today or even the last time I logged in, the information in the lobbying register was mathematically and a little difficult to understand as you got the number of members that they have and the amount of money they were paying compared with the total budget of the organizations.

**A:** Yeah, so the transparency register is a good beginning or is there another thing we need?

**B:** I suggest you will have a look on the work of Access Info. They have done a lot more analysis on that than we have. They are running a campaign at the moment.

**A:** Okay. Thank you for that hint. You said it already, but **what are the main differences between the EU and the USA regarding lobbying?**

**B:** Not so much now. I think the only difference is that if ten people turn up in the US lobbying on a particular thing and one person comes from the other side there is not an assumption that it is actually ten against one. (...) The policy-makers haven't quite connected with what's happening.

**A:** Okay. **How would you define lobbying in your own words?**

**B:** Lobbying is an effort of business to alter public policy and particular legislation, generally with the view to protect the short-termed trust of their sector and on their business.

**A:** So, it is only done from business?

**B:** I worked in lobbying before and the difference is the time prospective. In lobbying you worry about what the legislation is going to mean for your business tomorrow. In advocacy of the civil society we look at what is in the general long-term interest of society. That's a crucial difference. Because often business does not even lobby on its own medium or long-term interests, because it is too worried about surviving tomorrow or to worried about the day after tomorrow.

**A:** Okay. There is just the final question missing. **How would you describe yourself respectively your organization in the context of lobbying on the General Data Protection Regulation?**

**B:** Well, we have been trying to constructively work to ensure that the legislation is comprehensive and effective in a way that will ensure trust of European citizens in businesses, particular in the online businesses and ensure protection for citizens fundamental rights, particularly in a year of big data, where the

threats are not generally understood by the broader public or even by some policy-makers.

**A:** Thank you. Then these were my questions. Thank you very much.

**B:** You're welcome. Good luck.

**A:** Thank you. Good bye.

**B:** Good bye.

# F. Code of Conduct related to the joint transparency register

The following code of conduct can be found in ANNEX III of the 'Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation' published in the Official Journal of the European Union vol. 57, no. L 277 from Sep. 2014.[739]

**CODE OF CONDUCT**

The parties hereto consider that all interest representatives interacting with them, whether on a single occasion or more frequently, registered or not, should behave in conformity with this code of conduct.

In their relations with EU institutions and their Members, officials and other staff, interest representatives shall:

(a) always identify themselves by name and, by registration number, if applicable, and by the entity or entities they work for or represent; declare the interests, objectives or aims they promote and, where applicable, specify the clients or members whom they represent;

(b) not obtain or try to obtain information or decisions dishonestly or by use of undue pressure or inappropriate behaviour;

(c) not claim any formal relationship with the European Union or any of its institutions in their dealings with third parties, or misrepresent the effect of registration in such a way as to mislead third parties or officials or other staff of the European Union, or use the logos of EU institutions without express authorisation;

(d) ensure that, to the best of their knowledge, information, which they provide upon registration, and subsequently in the framework of their activities covered by the register, is complete, up-to-date and not misleading; accept that all information provided is subject to review and agree to cooperate with administrative requests for complementary information and updates;

(e) not sell to third parties copies of documents obtained from EU institutions;

(f) in general, respect, and avoid any obstruction to the implementation and application of, all rules, codes and good governance practices established by EU institutions;

(g) not induce Members of the institutions of the European Union, officials or other staff of the European Union, or assistants or trainees of those Members, to contravene the rules and standards of behaviour applicable to them;

(h) if employing former officials or other staff of the European Union, or assistants or trainees of Members of EU institutions, respect the obligation of such employees to abide by the rules and confidentiality requirements which apply to them;

(i) obtain the prior consent of the Member or Members of the European Parliament concerned as regards any contractual relationship with, or employment of, any individual within a Member's designated entourage; (j) observe any rules laid down on the rights and responsibilities of former Members of the European Parliament and the European Commission;

---

[739] See [81].

(k) inform whomever they represent of their obligations towards the EU institutions.

Individuals who have registered with the European Parliament with a view to being issued with a personal, non-transferable pass affording access to the European Parliament's premises shall:

(l) ensure that they wear the access pass visibly at all times in European Parliament premises;

(m) comply strictly with the relevant European Parliament Rules of Procedure;

(n) accept that any decision on a request for access to the European Parliament's premises is the sole prerogative of the Parliament and that registration shall not confer an automatic entitlement to an access pass.

# G. Recommendations of the OECD Council on Principles for Transparency and Integrity in Lobbying

The following 10 Principles for Transparency and Integrity in Lobbying from the Organisation for Economic Co-operation and Development (OECD) were published on 18 February 2010 under the number C(2010)16. They can be found on the website of the OECD.[740]

The principles are grouped to four principles on 'Building an effective and fair framework for openness and access' and two principles on 'Enhancing transparency', 'Fostering a culture of integrity' and 'Mechanisms for effective implementation, compliance and review'.

## I. BUILDING AN EFFECTIVE AND FAIR FRAMEWORK FOR OPENESS AND ACCESS

1. **Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.**

   Public officials should preserve the benefits of the free flow of information and facilitate public engagement. Gaining balanced perspectives on issues leads to informed policy debate and formulation of effective policies. Allowing all stakeholders, from the private sector and the public at large, fair and equitable access to participate in the development of public policies is crucial to protect the integrity of decisions and to safeguard the public interest by counterbalancing vocal vested interests. To foster citizens' trust in public decision making, public officials should promote fair and equitable representation of business and societal interests.

2. **Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts.**

   Countries should weigh all available regulatory and policy options to select an appropriate solution that addresses key concerns such as accessibility and integrity, and takes into account the national context, for example the level of public trust and measures necessary to achieve compliance. Countries should particularly consider constitutional principles and established democratic practices, such as public hearings or institutionalised consultation processes.

   Countries should not directly replicate rules and guidelines from one jurisdiction to another. Instead, they should assess the potential and limitations of various policy and regulatory options and apply the lessons learned in other systems to their own context. Countries should also consider the scale and nature of the lobbying industry within their jurisdictions, for example where supply and demand for professional lobbying is limited, alternative options to mandatory regulation for enhancing transparency, accountability and integrity in public life should be contemplated. Where countries do opt for mandatory regulation, they should consider the administrative burden of compliance to ensure that it does not become an impediment to fair and equitable access to government.

3. **Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.**

[740] See [151].

Effective rules and guidelines for transparency and integrity in lobbying should be an integral part of the wider policy and regulatory framework that sets the standards for good public governance. Countries should take into account how the regulatory and policy framework already in place can support a culture of transparency and integrity in lobbying. This includes stakeholder engagement through public consultation and participation, the right to petition government, freedom of information legislation, rules on political parties and election campaign financing, codes of conduct for public officials and lobbyists, mechanisms for keeping regulatory and supervisory authorities accountable and effective provisions against illicit influencing.

**4. Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying.**

Definitions of 'lobbying' and 'lobbyists' should be robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes. In defining the scope of lobbying activities, it is necessary to balance the diversity of lobbying entities, their capacities and resources, with the measures to enhance transparency. Rules and guidelines should primarily target those who receive compensation for carrying out lobbying activities, such as consultant lobbyists and in-house lobbyists. However, definition of lobbying activities should also be considered more broadly and inclusively to provide a level playing field for interest groups, whether business or not-for-profit entities, which aim to influence public decisions.

Definitions should also clearly specify the type of communications with public officials that are not considered 'lobbying' under the rules and guidelines. These include, for example, communication that is already on public record – such as formal presentations to legislative committees, public hearings and established consultation mechanisms.

## II. ENHANCING TRANSPARENCY

**5. Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.**

Disclosure of lobbying activities should provide sufficient, pertinent information on key aspects of lobbying activities to enable public scrutiny. It should be carefully balanced with considerations of legitimate exemptions, in particular the need to preserve confidential information in the public interest or to protect market-sensitive information when necessary.

Subject to Principles 2 and 3, core disclosure requirements elicit information on in-house and consultant lobbyists, capture the objective of lobbying activity, identify its beneficiaries, in particular the ordering party, and point to those public offices that are its targets. Any supplementary disclosure requirements should take into consideration the legitimate information needs of key players in the public decision-making process. Supplementary disclosure requirements might shed light on where lobbying pressures and funding come from. Voluntary disclosure may involve social responsibility considerations about a business entity's participation in public policy development and lobbying. To adequately serve the public interest, disclosure on lobbying activities and lobbyists should be stored in a publicly available register and should be updated in a timely manner in order to provide accurate information that allows effective analysis by public officials, citizens and businesses.

**6. Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities**

The public has a right to know how public institutions and public officials made their decisions, including, where appropriate, who lobbied on relevant issues. Countries should consider using information and communication technologies, such as the Internet, to make information accessible to the public in a cost-effective manner. A vibrant civil society that includes observers, 'watchdogs', representative citizens groups and independent media is key to ensuring proper scrutiny of lobbying activities. Government should also consider facilitating public scrutiny by indicating who has sought to influence legislative or policy-making processes, for example by disclosing a 'legislative footprint' that indicates the lobbyists consulted in the development of legislative initiatives. Ensuring timely access to such information enables the inclusion of diverse views of society and business to provide balanced information in the development and implementation of public decisions.

## III. FOSTERING A CULTURE OF INTEGRITY

**7. Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.**

Countries should provide principles, rules, standards and procedures that give public officials clear directions on how they are permitted to engage with lobbyists. Public officials should conduct their communication with lobbyists in line with relevant rules, standards and guidelines in a way that bears the closest public scrutiny. In particular, they should cast no doubt on their impartiality to promote the public interest, share only authorised information and not misuse 'confidential information', disclose relevant private interests and avoid conflict of interest. Decision makers should set an example by their personal conduct in their relationship with lobbyists.

Countries should consider establishing restrictions for public officials leaving office in the following situations: to prevent conflict of interest when seeking a new position, to inhibit the misuse of 'confidential information', and to avoid post-public service 'switching sides' in specific processes in which the former officials were substantially involved. It may be necessary to impose a 'cooling-off' period that temporarily restricts former public officials from lobbying their past organisations. Conversely, countries may consider a similar temporary cooling-off period restriction on appointing or hiring a lobbyist to fill a regulatory or an advisory post.

**8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.**

Governments and legislators have the primary responsibility for establishing clear standards of conduct for public officials who are lobbied. However, lobbyists and their clients, as the ordering party, also bear an obligation to ensure that they avoid exercising illicit influence and comply with professional standards in their relations with public officials, with other lobbyists and their clients, and with the public.

To maintain trust in public decision making, in-house and consultant lobbyists should also promote principles of good governance. In particular, they should conduct their contact with public officials with integrity and honesty, provide reliable and accurate information, and avoid conflict of interest in relation to both public officials and the clients they represent, for example by not representing conflicting or competing interests.

## IV. MECHANISMS FOR EFFECTIVE IMPLEMENTATION, COMPLIANCE AND REVIEW

**9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.**

Compliance is a particular challenge when countries address emerging concerns such as transparency in lobbying. Setting clear and enforceable rules and guidelines is necessary, but this alone is insufficient for success. To ensure compliance, and to deter and detect breaches, countries should design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement. Mechanisms should raise awareness of expected rules and standards; enhance skills and understanding of how to apply them; and verify disclosures on lobbying and public complaints. Countries should encourage organisational leadership to foster a culture of integrity and openness in public organisations and mandate formal reporting or audit of implementation and compliance. All key actors – in particular public officials, representatives of the lobbying consultancy industry, civil society and independent 'watchdogs' – should be involved both in establishing rules and standards, and putting them into effect. This helps to create a common understanding of expected standards. All elements of the strategies and mechanisms should reinforce each other; this co-ordination will help to achieve the overall objectives of enhancing transparency and integrity in lobbying.

Comprehensive implementation strategies and mechanisms should carefully balance risks with incentives for both public officials and lobbyists to create a culture of compliance. For example, lobbyists can be provided with convenient electronic registration and report-filing systems, facilitating access to relevant documents and consultations by an automatic alert system, and registration can be made a prerequisite to lobbying. Visible and proportional sanctions should combine innovative approaches, such as public reporting of confirmed breaches, with traditional financial or administrative sanctions, such as debarment, and criminal prosecution as appropriate.

**10. Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience.**

Countries should review – with the participation of representatives of lobbyists and civil society – the implementation and impact of rules and guidelines on lobbying in order to better understand what factors influence compliance. Refining specific rules and guidelines should be complemented by updating implementation strategies and mechanisms. Integrating these processes will help to meet evolving public expectations for transparency and integrity in lobbying. Review of implementation and impact, and public debate on its results are particularly crucial when rules, guidelines and implementation strategies for enhancing transparency and integrity in lobbying are developed incrementally as part of the political and administrative learning process.