

Lobbying in participatory democracy

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By Bernd Hüttemann

One year after the Brexit decision, the remaining member states of the European Union and its institutions have moved closer together. The consolidation of influence and participation in EU legislative process, which had begun in recent years, has not been directly affected by it. The Community institutions of the European Commission and European Parliament continue to seek rules which will shape the handling of interest groups more efficiently and transparently. Binding the Council of the European Union and the member states in the existing and tightened lobbying rules was to remain an unfulfilled wish this year. Meanwhile, the previously unsuccessful European Citizens' Initiative (ECI) has experienced a small degree of momentum.

Lobbying

The term lobbying is being used with increasingly neutrality. Along with the transparency register, which de facto attributes lobbying activity to a wide number of interest groups, without naming them as such, organisations such as Transparency International have contributed to the term lobbying being very broadly defined and placed in an overall democratic context. The Council Legal Service itself consistently mentions lobbying. On the other hand, church and social groups and those describing themselves as civil society continue to resist what in their opinion is a discredited term. Other non-business-related groups prefer to call themselves 'civil society' rather than lobbyists. It is recognised that elected representatives and regional authorities are made exempt from the rules governing lobbying.

At the same time, the lobbying successes of even those groups which are not business-oriented are being scientifically evaluated. Consumer protection and environmental lobbying is undoubtedly being assigned great influence. An indication of this could be the Transatlantic Trade and Investment Partnership TTIP, which failed despite the interests of business and national and European institutions. Meanwhile, a new term is being coined in the Brussels context: "citizen lobbyist".

Better regulation

The Commission continued its ambitious programme for "Better Regulation" with the Regulatory Fitness and Performance (REFIT) programme. By 2017 the Commission did indeed initiate fewer acts of law. There is

criticism, however, that between 2014 and 2016 there was merely a reduction of 41 from the previous hundred and not the envisaged 60-70. The advisory groups of the government representatives or the stakeholders have organised themselves in corporatist ways. The REFIT Platform meets every four to six weeks, separately and in joint meetings. In autumn 2016 the first results were presented. The group of stakeholders, which with some exceptions is a balanced composition of representative associations, agreed by a majority only to submit recommendations on new legislative initiatives. Initial criticism of the workload and the cooperation between the groups has receded. On the contrary, the example of the environment lobby shows that the REFIT Platform is being used to secure particular lobbying successes. On the part of the Commission, more transparency in committee “comitology” procedures is increasingly being addressed.

The Juncker Commission demands more transparency in the decisions of national representatives on the committees, and is thus aiming for a politicisation to make the decisions between Brussels and the capital cities comprehensible for the public and interest groups. In February 2017, the Commission suggested a regulation that will probably appeal mainly to the Parliament and non-business-related lobbying groups, but not to the member states.

Participatory democracy

After Brexit, the EU-27 emphasised in “The Rome declaration” not only the promotion of a “democratic, effective and transparent decision-making process” but also the principle of social dialogue through the “social partnership”. General forms of “participatory democracy” in the sense of Art. 11 of the Treaty on European Union (TEU) found no resonance. In 2016 the Commission

conducted over 89 consultation processes. The Directorates-General still do not follow a uniform system.

Since the introduction of the ECI only three further initiatives have been successful. Nine initiatives are trying to reach the quorum, two of which are concluded but waiting for recognition by the Commission. In May 2017, the European Court of Justice (ECJ) criticised the restrictive policies that have for years been a focus of complaint from Parliament and civil-society stakeholders. This was in response to the rejection by the Commission in 2014 of the ECI “Stop TTIP”. In its ruling on the ECI, the ECJ expressly conceded that the proposals constituted “an expression of the effective participation of citizens of the European Union in the democratic life thereof” and referred to the democratic principles of the TEU. The judgement also received wide public attention because it was closely associated with the broad social and political opposition to TTIP, but it had no actual impact. Even before the ruling, the Commission had announced after a lengthy delay that it was going to reform the EBI.

Transparency and Code of Conduct

The transparency register is further establishing itself. By June 2017 the register had grown by 1,800 entries to 11,285 entries (growth in previous year: 900).

Although in consideration since 2015, the initiative report of the European Parliament on “Transparency, accountability and integrity in the EU institutions” (“Giegold report”) has still not been approved by plenary session. In mid-June, the Committee did, however, agree to press for a compulsory register. It is likely that the Giegold report will now be approved in September. The Commission itself had previously warned of a compulsory register in September 2016. In March 2017 the Parliament named Sylvie Guillaume and

Danuta Hübner as Chief Negotiators for the interinstitutional negotiations on the transparency register. The Commission consultation on the transparency register ended in May 2017.

The move to the investment bank Goldman Sachs by the former Commission President, José Manuel Barroso, had already caused a great deal of media attention the previous year. The Commission reacted unusually sharply to the move, although according to its own rules there were no grounds for objection, and withdrew his political privileges. Furthermore, in November Commission President Juncker announced the extension of the grace period for Commissioners from 18 months to two years and for the Commission President to three years. The Juncker Commission no longer receives an overall poor rating from lobby-critical groups. At the same time, the Parliament is planning less strict rules in the matter of the Code of Conduct for parliamentarians and staff. Former members are not subject to any corresponding requirements. According to Transparency International, after the last legislation period 51 of one hundred members moved to one of the organisations listed in the transparency register. However, the majority of the listed groups do not pursue any economic interests.

The demand that the “informal trilogue” between the Council, Parliament and Commission should become the exception again has not fallen on fertile ground. After the European Ombudsman concluded her inquiry, accompanied by harsh criticism in terms of transparency in particular, there has been no significant change. Conversely, the Europeanisation of national transparency rules continues to grow. While the German government was to some extent following the Brussels model, the new French government enacted far-reaching resolutions.

At EU-level, the Commission and Parliament are moving into a higher gear with respect to the EU states and the Council. The Permanent Representations are also becoming involved in the transparency debate and are meant to be included in the interinstitutional agreement as belonging to a compulsory registry. Only four of the 28 Representations have any rules at all for dealing with lobbyists. The Ombudsman began an inquiry into transparency in legislative work in the Council. At the same time, a general assessment is being undertaken of the political process in the EU-multilevel-system. Citizens, stakeholders, politicians and the media are increasingly being placed in one overall context.

Outlook

Brexit will also become “unchartered territory” in the sphere of lobbying. The “reverse accession negotiations” are likely to find a great deal of lobbying interest across the EU as well as nationally. The controversy around TTIP, meanwhile, has sensitised the responsible Commission and forced a focus on transparency in communication from the outset. The Commission therefore referred in March 2017 to “stakeholder outreach” through the “Task Force Article 50” (TF50).

Following the German parliamentary election in September 2017, the reform discussions on eurozone governance should raise questions about democracy, influence and participation. It remains to be seen whether the ECI really can be reformed following the ECJ judgement, so that it can also develop a public impact. A strengthening of the corporatist participation of social partners and representative associations has become more likely following Brexit. We can expect an exciting debate in the course of the interinstitutional agreement between the Commission, Parliament and Council. If the Council were indeed ready to embrace extensive transparency rules, this would in

fact entail very significant changes to democratic EU governance.

Further reading

Alberto Alemanno: Lobbying for Change. Find Your Voice to Create a Better Society, London 2017.

Justin Greenwood: Interest Representation in the European Union, Basingstoke 2017.

About the author

Bernd Hüttemann, born on December 8th 1970 in Paderborn, is the Secretary General of the European Movement Germany and the Vice-President of the European Movement International (EMI).

He studied Political Science, History and European Law at the University of Bonn. After his graduation, he first worked as a PR-consultant and for the Robert Bosch Stiftung, then as a research fellow at the Institute for European Politics. Between 2000 and 2003 he carried out EU integration programmes of the German Federal Government for the Slovak and Croatian governments in Bratislava and Zagreb. He began his political career at the Young European Federalists (YEF). Among others, he was head of office in Bonn and Brussels. Later, Bernd Hüttemann was honorary Secretary General of the "Europa- Union Deutschland" (German UEF). Since 2003 he is the Secretary General of the European Movement Germany. His work focuses on the development of a pluralistic and democratic Europe, representation of interests at the European level, political communication and the coordination of European politics in Germany.

Bernd Hüttemann was elected as one of the top 160 German future managers aged younger than 40 by the business magazine Capital in 2010. In 2011 he became a teaching fellow at the University of Passau (Chair of European Studies) and in 2015 at Berlin School of Economics and Law (HWR). Bernd Hüttemann is the Vice-President of the European Movement International. Since 2016 Bernd Hüttemann has been an adviser for the Episcopalian work group of Europe at the German Bishops' Conference. He gives regular interviews and statements in German and international media (such as Deutschlandfunk, BBC, Guardian, l'Observateur and publishes scientific articles on European politics, lobbying and civil society.

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