

LOBBYING IN THE EU: LEGAL AND INSTITUTIONAL ASPECTS

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ABSTRACT

LOBBYING IN THE EU: LEGAL AND INSTITUTIONAL ANALYSIS

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This thesis attempts to account for the primary dynamics behind lobbying in the EU. It offers institutional and legal aspects of lobbying in the EU and EU Member States. In this regard, it suggests that there is no unified legislation system of lobbying among EU institutions and each Member States have different regulations at the national level. Therefore, this thesis explores the Treaty on European Union and The Treaty on The Functioning of European Union as the primary sources. Since lobbying has its roots in the USA, the regulation system of lobbying in the USA has been given to illustrate the first example of lobbying in the world. This thesis suggests that lobbying in the EU will be apt to various transitions in the future.

Key Words: lobbying, EU, regulation, institutions.

ÖZ

AB' DE LOBİCİLİK: HUKUKİ VE KURUMSAL ÇERÇEVESİ

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Yüksek Lisans, Avrupa Çalışmaları

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Bu tez, AB'deki lobiciliği hukuki ve kurumsal çerçeveden incelemektedir. Bu bağlamda, Avrupa Parlamentosunun lobicilik tanımını esas alarak, AB kurumlarının ve AB üye ülkelerinin lobiciliği düzenlemedeki farklılıklarını ortaya koymayı amaçlamıştır. Lobiciliğin düzenlenmesi hususundaki kaynaklara bakılırken, AB Anlaşması ve AB'nin İşleyişi Hakkındaki Anlaşma esas alınmıştır. Araştırma sonucunda, üye ülkelerin lobiciliği düzenlemede farklılıklar gösterdiği ortaya çıkmıştır. Bu düzenlemelerdeki, başvurunun zorunlu tutulup tutulmaması, yasada lobicilik kavramına yer verilip verilmediği göz önüne alınmıştır. AB'deki lobicilik tarihinin farklı dönemler geçirdiği ve bu dönemlerin 1950'li yıllarda başladığı görülmüştür. Tezin ana amacı AB ve AB üye ülkelerinin lobicilik düzenlerini incelemek ise de lobiciliğin ABD'de ortaya çıkması dolayısıyla, ABD'deki lobicilik düzenlemelerine de yer verilmiştir. AB lobiciliğinin iki aşamalı olarak, ulusal ve uluslararası bağlamda incelendiği ve şeffaflık kavramlarının bu incelemelerde öne çıkan bir değer olduğu görülmüştür. Sonuç olarak, AB'de ve AB üye ülkelerinde lobiciliğin, gelecekte gelişim ve değişim göstereceği ön görülebilir.

Anahtar Kelimeler: Lobicilik, Avrupa Birliği

To My Precious Mother and Father

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LIST OF ABBREVIATIONS

EU	European Union
USA	United States of America
TFEU	Treaty on Functioning of European Union
TEU	Treaty on European Union
EP	European Parliament

CHAPTER 1

INTRODUCTION

Lobbying has become a highly discussed issue considering its negative connotation and association with corruption. To change this negative perspective, different words have been used instead of lobbying such as interest representations or legal representations. Even there are different usages for the word of lobbying; they indicate the same purpose which is influencing the decision-making actors and decision-making process. As it is seen, lobbying as a notion encompasses a great range of area. Considering the fact that lobbying is a very new notion to European agenda, the regulation of lobbying in Europe is apt to irregular regulations. This thesis aims to categorize the regulation of lobbying in the EU in two sections which are national and European level. It is seen that while some EU Member States regularize the lobbying at the national level, some EU Member States do not regularize lobbying at the national level. This might be related to the fact that lobbying is a quite new area to EU Member States and a unified approach does not exist among Member States. For the EU Member States who regulate lobbying at the national level, it is seen that there are some differences on their approach to regulations. While some EU Member States prefers to regulate lobbying in mandatory terms, some EU Member States prefers to regulate lobbying in soft terms. The research question of this thesis is ‘To what extent EU and EU Member States’ approaches alter in regard of regulation of lobbying?’ Along with this research question, the legal and institutional approach will be used to express lobbying in the EU.

Since this thesis aims to give a legal and institutional analysis of lobbying in the EU, the chapters are mostly oriented around the European Institutions and EU Member States. Nevertheless, the fact that the history of lobbying started in USA, a general grasp of lobbying in the USA and the regulations of lobbying has been given to illustrate the roots of lobbying. Before going through the regulations part of the thesis, the definition and root of the word of lobbying should be given in order to clarify what is meant by lobbying. According to Michary, lobbying as a term stems from the English word lobby. It is estimated that the first usage of lobbying has been emerged in the period of US president Ulysses S. Grant who had lived in a hotel when the White House had burst into fire. At that point, some groups have gathered in this hotel to pressure their demands and interests. This has been widely accepted story of the emergence of usage of lobbying as a word.¹

In order to understand the official attitude of European Institutions toward the definition of lobbying, the definition of European Parliament will be taken as the primary source for the definition of lobbying. The European Parliament defines lobbying as “concerted effort to influence policy formulation and decision-making, with a view to obtaining some designated result from government authorities and elected representatives.”² It is seen that lobbying as a word can be interchangeably used in European Institutions. For example, Transparency Register which is found by European Parliament and Commission prefers to use the definition which is “organizations and self-employed individuals engaged in EU policy-making and policy implementation.”³ It is seen that lobbying has a variable definitions and connotations. Although lobbying has been regarded with bad reputation at some point, there are some arguments that built a relation between lobbying

¹ S Michary, “Lobbying in Europe: Hidden Influence, Priveledged Access”, 2015,p.9

² EU Trasparency Register, Briefing. 2014.

³ Ibid,16.

and democratic values. According to the European Parliament working paper in 2003, it is suggested that since EU is sui generis legal order which stems its power from Member States, EU sustains its democratic tradition. In line with this democratic tradition, lobbying has been seen an exceptional part of democratic values.⁴

Lobbying can be conducted for different means. Fisman categorizes these means as political, economic and legal. He suggests that economic perspective based on the assumption that lobbying may be used as a strategic tool for the improvement of the private economic interests of a company, person or industry. Legal perspective built on the assumption that lobbying can influence legal or administrative acts or procedures. Political perspective has been presented an assumption that lobbying can promote the definite interests of groups in society and help to recoup democratic deficit in indirect democracies.⁵ As it is seen, lobbying has a great range of areas from political to economic. That's why; the regulation of lobbying in EU should be based on a mandatory approach. At least, the institutional approach of EU should be based on unified regulations. Secondly, the regulations of lobbying at the national level should be concerned. Since lobbying is broad concept that encompasses from sustainable development to child labor, it protects its own place in European agenda. This thesis aims to provide a legal and institutional analysis of lobbying in the EU, because of the fact that lobbying can be an important topic considering its future power.

Along with the introduction part, a brief grasp of lobbying has been given by specifically stating the definition of European Parliament. In addition to that, the root of the word of lobbying was given to understand the history of lobbying which is given in the next chapters. The introduction part suggests

⁴ European Parliament, "Lobbying in the European Union: Current Rules and Practices."2003.p.1.

⁵ Fisman, Raymond. "Estimating The Value of Political Connections." American Economic Review 91.44 (2001):1095-1102.

that the variable categorizations of lobbying have been made which are political, economic and legal. These categorizations show that lobbying can be related to great range of topics. Since the extent of the topics related to lobbying is wide, it is seen that the regulations should be made to close the gap.

The second chapter, The Basic Concepts of Lobbying, presents the history of modern lobbying in the EU. It is seen that history of modern lobbying can be categorized in three parts which can be named as the National Route, Brussels Lobbying Explosion and the 21st century European level lobbying. The lobbying players has been another important part of this chapter. By stating lobbying players, it is seen that lobbying players can be named as the NGOs, legal firms, public relations firms, trade associations, and think- tanks. In this section, lobbying fundamentals which are named as the corporate, institutional, and political lobbying has been presented.

With the third chapter, the legal framework of lobbying has been given by stating the related articles of Treaty on European Union and Treaty on the Functioning of European Union. It is seen that there are different kind of categorizations when it comes to regulation of lobbying. While some countries are in the groups of highly regulated counties, some countries are in the groups of lowly regulated countries. It is suggested that highly regulated systems are more favorable for EU Member States comparing the lowly regulated system. The highly regulated systems allow more open and transparent regulation system which openly presents the name of lobbyists, lobbying institutions and salaries.

With the fourth chapter, the European institutional aspect of lobbying has been given. The European Parliament, The European Commission and The Council of European Union has been analyzed with regard to regulation of lobbying in these institutions. It is seen that mostly the European Parliament has been at the center of lobbyists' interest because of its given structure.

With the fifth chapter, the EU Member States' regulation of lobbying at the national level has been analyzed. In this chapter, EU Member States are categorized in a way that the countries who have mandatory regulations on lobbying, the countries who have soft regulations of lobbying and lastly the countries that have no regulation on lobbying. Since the history of lobbying started in the USA, the regulation of lobbying in the EU has been given to illustrate the first example of lobbying in the world. Transparency has been given as the one of the great concerns of lobbying in the EU. In addition to that, Transparency Agency has been given as an example of the transparent lobbying efforts in the EU.

With the final chapter, the findings are discussed and the future estimations of regulation of lobbying in the EU has been given. Lastly, the main aim of this thesis has been given.

CHAPTER 2

BASIC CONCEPTS OF LOBBYING

In this chapter, the history of modern lobbying in the EU which was started in 1957 has been given in addition to lobbying actors and fundamentals.

2.1 History of Modern Lobbying in the EU

To classify the historical development of lobbying in the EU is important in terms of understanding the recent developments and possible future scenerios. According to Jason Means, lobbying in the EU can be classified in three terms. These terms are the National Route, Brussels Lobbying Explosion and EU Lobbying in the 21st century. The first term which was called the National Route started with the 1957 Treaty. The second term of lobbying in the EU started in 1987 with the Single European Act. The third term which is also considered as the ongoing term called the EU lobbying in the 21st century.⁶

It can be expected that stated terms have different qualities that made possible this distinction. Considering with the developments in the world history, lobbying in the EU has changed and evolved along with these developments. For example, by the time that the nationalistic views are dominant in the world history, the structure of lobbying in the EU has been shaped according to these moves. Means suggests that the first term of lobbying in the EU based on influencing the national representatives by European lobbyists. This term has been based on the national agendas and interest. The second term which was named as Brussels Lobbying Explosion evolved around the 1957 Treaty and changed the nationalistic- based approach. The third term was based on the Single European Act which was also considered as the basis of the reasons in

⁶ Means, Jason."Lobbying in the European Parliament.Identifying Changing Trends Post Treaty of Lisbon."2016.p.682.

the increase of supranational institutions in the lobbying in the EU. This might be because of the fact that the obligatory factors which were put in the Single European Act and the functions of supranational institutions enhanced. The recent understanding of lobbying in the EU based on the commercial interests rather than the past two terms' interests. It is seen that companies are highly involved with the lobbying activities in the EU. ⁷

Since lobbying has been associated with corruption and bad reputation, the myths are too many to express. Putting these myths openly is important because of the fact that they shape our understanding. Coen and Richardson categorize these myths in eight sections. The first myth about EU lobbying is Brussels lobbying groups. It is suggested that Brussels presents a big bureaucracy and the number of EU civil servants are quite excessive. The second myth is about the centralist union which suggests that Brussels is administered top-down. The third widespread EU lobbying myth is about the corporate lobbying activities. This myth suggests that the top-big companies, trade unions and officials together execute the EU. The fourth myth is about formal power which offers that people who have formal titles in EU are the ones that have ability to influence the lobbying. One of the most highly-controversial myth is that the elitist groups run the lobbying activities in the EU. The sixth myth suggests that national governments control the process of EU lobbying and have the dominance over EU lobbying. The democracy deficit is the seventh myth that is highly widespread. This myth presents the idea of the people and parliaments are politically insignificant and inefficient to meet the expected democratic systems. The eight myth suggests that the Berlin-Paris axis is still in its hey-day and has power to control the lobbying activities.⁸

⁷ Ibid

⁸ D Coen, J Richardson. "Lobbying the European Union: Institutions, Actors, and Issues." Oxford University Press. 2009

As it is seen the myths cannot be solely attributed to political concerns but also involves the commercial- based concerns. It is also seen that myths are quite high in number and this may be the result of the absence of the well-defined and regulated system of lobbying in the EU. If the lobbying system in the EU based on more open and transparent structure, these myths could be less in number.

2.2 Lobbying Players

Even the history of lobbying in the EU only dates back to 1950s; the lobbying players are quite diverse. In order to understand the lobbying in EU, it is important to understand the lobbying players. Since each term of lobbying in the EU has different qualities, the actors are apt to different categorizations.

Lobbying players can be classified as Law Firms, Public Affairs Consultancy, Non- Governmental Organizations, Trade Associations and Think tanks. As the first lobbying player, law firms have mainly focused on legislative monitoring and consulting that are affiliated with their customers' definitive needs. It has been assessed that there are about 260 law companies and public affairs firms working in Brussels. Most of these companies have been specialized in European Union law. They have been composed of %14 of lobbying in Brussels. One of the interesting facilities of law firms that are engaged with lobbying activities in Brussels is that they have an early warning system for possible upcoming political and legislative tendencies. Major firms have also been the customers of these law firms. ⁹The law firms along with the public affairs consultancies may differ in terms of building greater networks thanks to their financial capabilities comparing the other lobbying players such as think-tanks.

⁹ S. Mulcahy. "Lobbying in Europe: Hidden Influence, Privileged Access" Transparency Agency. 2013.

Public Affairs Consultancies are other important lobbying players. They have strong links with the worlds of business, civil society and policymakers. Their lobbying activities are generally based on affecting the development and implementation of European Public Policy. Their services are mostly about providing advice and supporting clients in governmental relationship. More specifically, they present the best possible way to interact with public institutions, being up-to-date with news and contemporary politics. These public affairs companies have acted as an intermediary entity. Public affairs companies have taken a mandate in which they act on behalf of their clients. When clients such as companies, trade unions and countries have decided to interact with the institutions, they prefer to act by themselves or external firms which are public affairs companies.¹⁰ The nature of interaction, the potential of clients and the previous experiences of the clients with government entities are vital to measure the decision-making process of companies with the aim of protecting and promoting of clients' interests. As it is seen, the public affairs consultancies have intermediary roles in lobbying in the EU. In addition to that, their sphere of influence is worthy of attention. Since the service they offer the clients are broad, it can be inferred that they have experts in different area. Comparing the law firms as lobbying players, the public affairs consultancies may be preferable for the clients from private companies that aims to create a certain image in EU institutions and consumers.

Consultancy firms have broad services which also include making deep political analysis which are the main tool of the services. There are several types of customers of these consultancy firms. According to Dür and Bievre, the clients of these firms are variable. For instance, larger companies have tended to work with these public relations firms to ensure their relations with institutions. This support which is taken by the large companies has been mainly around the memorandum and paperwork. Moreover, the small companies which may need a broader services comparing larger firms. It is

¹⁰ Ibid

mainly because their inexperience and lack of financial resources. When it comes to the regional and local authorities who are in need of lobbying for their interests, they are basically inclined to use existing available grants and other funding streams. On the other hand, corporations and trade associations might count on the public affairs consultancies for representation and influencing policies. Consultancy agencies have based their strategy on conducting research, paperwork, forecasting and assessing the current political developments. These strategies may help to improve the development of new businesses, check of legal conditions, administrative decision process which are related to strategic corporate issue. Accumulation of good contacts and specific data is used in a way of providing quick and trustworthy services to customers. These contacts and data resulted as a competitive advantage and serve as a reference point of companies. Good contacts and media resources are important assets for these firms. Lobbyists have key contacts with customers, politicians, staff in local and regional communities and regulatory entities. In order to sustain the network and connections, lobbyist have participated periodical meetings, selected committee meetings and banquet conferences. The ethical standards are highly important for the continuity of the works of lobbyists.¹¹

Since there is already a high prejudice on lobbyists in terms of being unreliable, the ethical standards have gained even more importance. While obtaining information and influencing policymakers in the process of decision-making, lobbyists should act in honest way to increase their reliability. They must abstain from selling the confidential information and being in any conflict of interest.

In terms of building civil dialogue, many Non-Governmental Organizations (NGOs) and European Institutions have been in cooperation. Considering the fact that NGOs are value-oriented organizations which concerns mostly the

¹¹ A Dür, D De Bievre. "Inclusion Without Influence? NGOs in Europe Trade Policy" Journal of Public Policy. 2007

associated value, it is not expected that they care about lobbying activities. These value-oriented approach of NGOs may be called as advocacy rather than calling lobbying. While advocacy can be defined as promoting some definite values and rights, lobbying can be related with public awareness and mobilization. NGOs mostly concern about advancing international law, adapting national jurisdiction to international law, including public interests to political agenda. The agenda of NGOs are mostly about labor conditions, the environment, human rights, accountability, international regulations, and transparency. Although the main objective of NGOs is not about lobbying, some NGOs such as World Wild Life Fund use lobbying as a tool to influence and initiate decision-making process. Many NGOs who are acted in European level inclined to gather in umbrella-type networks. Through the channel of collecting and transferring information between national and EU levels, European NGOs perform their missions at the political level. These NGOs also attract the people who have expertise in European affairs. As Brussels has been named as the main attraction city coming after Washington D.C, NGOs such as Greenpeace, Amnesty International, Oxfam have opened their offices in Brussels.¹²

Trade Associations are organizations that gather companies from particular industry aiming to achieve a cumulative interest. Trade associations are financed through their member companies and acted in a way to present their interests. These trade associations can act on behalf of educating society and can have a broad variety. There are also national associations that are closely related with their governments and aims to maintain interests of companies and governments.¹³

¹² JP Doh, TR Guay. "Corporate Social Responsibility, Public Policy, and NGOs Activism in Europe and the United States: An Institutional- Stakeholder Perspective" Journal of Management Studies.2006.p 27

¹³ B Bolonya, "Europe Inc. Regional and Global Restructuring and the Rise of Corporate Power." 2000.p-53

Interacting with governmental issues has required different approaches and evaluated as being more complex comparing other sections. Pharmaceutical and restaurant associations can be examples for trade associations. Since these associations deal with a wide range issues, they are not specialized in a particular section. Firms which are member of trade associations may prefer to lobby by themselves or through these associations. If firms are categorized as small and large, it can be seen that small firms have some disadvantages when their interests contradict with the larger firms. On the other hand, they also enjoy smaller costs. Think tanks are other important lobbying players which are particularly specialized in making public policy solutions. While interacting with politicians and member of European Institutions, they also give advice and analysis on related issues. One of the main differences of think tanks, they mostly care about the public issues rather than commercial interest. According to research conducted by 'Notre Europe', think tanks have been associated with these duties which are defined as "promoting better elaborations of policies through the diffusion of best practices, making citizens more informed and engaged in political issues, supporting policy makers by getting them in touch with academics and supplying a platform or forum to facilitate, for instance, a debate with expert." ¹⁴

As it is seen, think tanks are mostly engaged in public affairs rather than commercial interests. Since they rely on external funding, it is quite important who they are funded by. Think tanks have been known to be funded by those entities which are state funding, private sector, research contracts. By stating state funding, an individual ministry, a government research fund can be stated. Private sectors are usually large multinational companies while research contracts based on projects from national and foreign governments.

Lobbying players are variable and they have different functioning systems. Since each term of lobbying in the EU have brought different systems, new

¹⁴ C Mahoney, M J Becstrand. " Following the Money: European Union Funding Civil Society Organizations. JCMS, 2011.p.28

lobbying players can join in the future such as in the example of the evolving system of lobbying from the 1950s to today. Recent lobbying structure encompasses more corporate actors in lobbying in the EU comparing the nationalistic concerns of lobbying in the 1950s.

2.3 Lobbying Fundamentals

Making a distinction between advocacy and lobbying is quite important for lobbying studies. While lobbying has the elements of advocacy, advocacy is more about promotion of definite values by raising awareness among public. To give an example for the conduction of advocacy, media coverage of citizen activities, public events can be named as the prolongation of advocacy. It is also important to point out that advocacy in EU has different characteristics comparing the advocacy in the US. Since advocacy in EU requires a multi-level European approach, this makes the advocacy arguments even more complex. In the US, it is seen that advocacy is mostly defined by the promotion of values. This presents a quite broad meaning. On the other hand, lobbying in the US is defined by Federal Tax Law and associated with the aim of influencing a particular legislation.¹⁵ From this perspective, lobbying may present a more sophisticated political entity.

There are different types of lobbying which can be categorized as corporate, institutional, and political lobbying. Corporate lobbying based on the lobbying activities which target to protect the interests of commercial sector. More specifically, corporate lobbying can be conducted through unions, companies, syndicates and labor unions. This type of lobbying is quite common and directed with rulemaking and rule-enforcement. Second type of lobbying is the institutional lobbying which mostly works for the interests of public entities. Regions, federal units, municipalities are inclined to use institutional lobbying activities to influence the EU or central government. The clients of institutional lobbying are mostly interested in infrastructural projects or subsidy

¹⁵ Geddes, Andrew. "Lobbying for migrant inclusion in the European Union: new opportunities for transnational advocacy?." *Journal of European public policy* 7.4 (2000): 632-649.

distribution. The third type of lobbying is international political groups which aim to influence other countries in order to meet their national political goals.¹⁶The IMF, UN, the World Bank can be examples for international political lobbying. The third type of lobbying can be named as the most elite and complex lobbying type. Before going through the reflection of lobbying to legal systems of US and EU, the difference between the definition of interest representation and lobbying should be raised. While defining interest groups mainly encompasses that “Association of individual or organizations, usually formally organized, that attempts to influence public policy.”¹⁷

Salisbury defined lobbying as “The professional promotion and protection of a specific partisan interest aimed at influencing decision making in the legislative or and executive branch.”¹⁸ As seen, there is but a slight difference of meaning. For the sake of the rest of thesis lobbying and interest group representation will be used interchangeably. Since influencing may refer a broad concept which has negative connotations at some point, it should be done in a fully transparent manner. From the perspective of European tradition, lobbying in judiciary seems unimaginable, whereas in the US system, lobbying appears in the judiciary system by supporting parties financially. Other important issue regarding the lobbying fundamentals is that lobbyists cannot be responsible if the result of lobbying does not meet with client expectations. Lobbyists are expected to take all necessary steps for the interest of clients and also take these steps carefully while protecting the clients’ reputation.

There are different ways of conducting lobbying which can be categorized as direct and indirect lobbying. Direct ways can be named as personal visit, letter,

¹⁶ P Bouwen. “Exchanging Access Goods for Access. A Comparative Study of Business Lobbying in the European Union Institutions.” *European Journal of Political Research*, 2004, p.37

¹⁷ RH Salisbury. “Interest Representation: The Dominance of Institutions” *American Political Science Review*, 1984. P.7

¹⁸ Ibid

phone, email, invitation for pleasure, committee membership, hearing participation, presentation of position, formal visit, contact, delegation, formal request, petition, folder or brochure, mass media participation, political advertisement, press conference, manifestation, demonstration, hate-site, boycott, blockade, strike, litigation, court procedure. Indirect ways can be named as subnational association, subnational government, cross sectoral Euro FED, Foreign(non-EU) network, ad-hoc coalition, affiliated interest groups, science: scientists, studies, seminars, working visits, trips, tours, well-known personalities, mid-level civil servants, caretakers, and friends inside, brokers and consultants, cyber lobbying, political parties, mass media mobilization, polls and under cover-action. ¹⁹

¹⁹ J Nicoll Victor - American Politics Research, 2007 - journals.sagepub.com

CHAPTER 3

PRIMARY SOURCES OF LOBBYING IN THE EU

The EU has been established through the adoption and ratification of treaties. They implement the basic principles on which European law is founded. Treaties deployed a broad scheme and built main legal concepts of EU Law system. Treaty on European Union and Treaty on the Functioning of European Union can be named as the primary legislation sources that built the EU Law. In EU Law, there is also secondary legislation that encompasses directions, regulations, and decisions. Considering the hierarchy of EU law for EU member states, it is seen that regulations and decisions are binding when the membership begins. When it comes to the directives, it is seen that a certain amount of time has been given to countries to adjust their system with EU. The Commission has taken the primary responsibility for the application of EU law.²⁰

Chari classifies the Lobbying legislation in three ways which are highly regulated, medium regulated and lowly regulated. This classification is important in terms of assessing countries' lobbying regulations and the extent of their openness to the possible regulations. As stated below, the highly regulated systems seem not suitable for EU and EU member states considering current regulations. The lowly regulated system presents the most basic way of lobbying regulation which only requires only the basic information of lobbyists. The financial information has lacked in the requirements. The other important absence in the lowly-regulated systems is the little enforcement that they face regarding their lobbying activities. Medium regulated systems are more developed systems comparing the lowly regulated systems. Even its

²⁰ https://ec.europa.eu/info/law/law-making-process/applying-eu-law_en

relative advancement, medium regulated systems do not still put regulations on filing spending disclosures. On the other hand, dispensing gifts and political contributions are reported. Particularly, the fact that political contributions are reported might be seen as an important step to meet transparency efforts. Highly regulated systems present the most developed structure on regulation of lobbying. These systems have provided the open and transparent information regarding the spending reports, salary reports, the accounting and itemization of all spending. Highly regulated systems have arranged the public access in the most advanced way and might help to build trust among public.²¹

In this chapter, the primary sources of lobbying in the EU are discussed through the treaties. To have a broader aspect of the primary sources of lobbying in EU, and articles of 11 and 15 of Treaty on European Union (TEU), articles of 79, 298, 336, 352 of Treaty on Functioning Europe (TFEU) will be analyzed.

3.1 Articles and Agreements

Since Treaty on European Union has been seen as one of the primary sources of EU law, Article 11 and 15 have been given to illustrate transparency of lobbying in EU. Transparency has been one of the key topics that are highly used in the debates of lobbying in EU and EU member states.

Article 11 of Treaty on European Union indicates that the Institutions in the EU should provide its citizens and representatives open and transparent conditions to express their views. Since the transparency is a great concern for lobbying in the EU, Article 11 of TEU is important to meet with these concerns.

Article 11 of Treaty on European Union states that:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity

²¹ R Chari. "Regulating lobbying activities in the EU, USA, Canada and Germany." P.8

to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing Treaties. The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 21 of the Treaty on the Functioning of the European Union²²

Transparency has been seen as an important aspect of newly-starting process of legislation of European lobbying. Article 11 and 15 of TEU and enclose rules on transparency but these articles do not suggest a legislative ability. They are mostly about the general rules. Therefore, it might be useful to examine article thes Article 15 of TEU

1. In order to promote good governance and ensure the participation of civil society, the institutions, bodies, offices and agencies of the Union shall conduct their work as openly as possible.

2. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.

3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the

²² TEU,11

principles and the conditions to be defined in accordance with this paragraph²³

Among the mentioned articles, TFEU 298 has been mostly discussed in terms of its future and possible adjustments. TFEU 298 point outs that the necessity of open, transparent and efficient European Administration. This article is related to concerns that come out from the lack of transparency in the conduction of lobbying in the EU. Article 298 of TFEU refers that:

1. In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.

2. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end.²⁴

Article of 298 authorized the European Parliament and Council to build, using the regular legislative procedure, securing that EU institutions perform their missions. As stated in article 298, the mentioned article 336 is given below.

The article 336 states the importance of acting by the means of regulations in accordance with the ordinary legislative procedure with open and transparent European administration.

The European Parliament and the Council shall, acting by means of regulations in accordance with the ordinary legislative procedure on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of Officials of the European Union and the Conditions of Employment of other servants of the Union.²⁵

²³ TEU,15

²⁴ TFEU,298

²⁵ TFEU,336

Since lobbying has not been mentioned in clear terms in articles of TFEU, article 352 is important to give a legal basis of lobbying in the EU. Article 352 of TFEU suggests that any action is needed to be taken to realize EU's main objectives, and there is no defined legal basis in the Treaties, the convenient measures can be supported by using an exclusive legislative procedure. That's why; article 352 of TFEU should be mentioned.

1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article. 3. Measures based on this Article shall not entail harmonization of Member States' laws or regulations in cases where the Treaties exclude such harmonization. 4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union. ²⁶

At this point, article 79 point out the delicate manner that is presented to interest representatives. Article 79 presents a prohibition the deputies from belonging to any association or group which defends interests. Therefore, this article can be seen as an obstacle for lobbying activities.

²⁶ TFEU,352

Article 79 of the rules of procedure forbids deputies from pleading and from using their position or status or allowing it to be used for any purpose other than the performance of their duties as deputy, with disciplinary sanctions for non-compliance. They are also prohibited from belonging to any association or group which defends private, local or professional interests or from making any commitments to such groups regarding their parliamentary activities, if such membership or commitments involve accepting mandatory instructions.²⁷

Article 8 and 9 of the European Code of Good Administrative Behavior are vital to put lobbying on the grounds of fair legislations. While Article 8 suggests that the officials should be abstained from any financial interests which are provided by the outside sources, Article 9 suggests that officials should decide on relevant factors and exclude the irrelevant factors.

Article 8 states that:

1. The official shall be impartial and independent. The official shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

2. The conduct of the official shall never be guided by personal, family or national interest or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.²⁸

When taking decisions, the official shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.²⁹

At this point, the implied powers doctrine should be raised to complete the basis for legal framework of lobbying. Built on the implied powers doctrine,

²⁷ TFEU,79

²⁸ European Code of Good Administrative Behavior,8.

²⁹ European Code of Good Administrative Behavior,9.

the EU's competency could be offered to contain all endeavors addressing EU organs and institutions employed in administrative as well as legislative functions. The doctrine of implied powers has been related both external relations and internal legislations. There are narrow and broad approaches for implied powers. While the narrow approach bases on additional competence, broad approach calls for a specific aim which implied the competence to enact measures to attain that goal.

3.2 Treaty of Lisbon

Treaty of Lisbon has been signed by European Union's head of state and government on December, 13 2007 but entered into force on December 1, 2009. The main objectives of the Treaty of Lisbon can be described as giving EU a new primary legal framework, developing democracy and taking quicker actions by 27 member states (at that time). One of the most controversial elements of the Treaty of Lisbon is that the Qualified Majority Voting (QMV) within the Council. With the QMV, it is aimed to bring efficiency in European law making. Lisbon proposes double majority which calls for the support of %55 member countries. Before the treaty of Lisbon, the Treaty of Nice calls for %74 of weighted votes. By 74% weighted vote, the Council is able to make the legislation process more quickly.³⁰It is assumed that double majority voting may shift the focus of lobbying toward member states with more citizens. By extending power of the Parliament, subjects such as immigration, trade policy, police cooperation and agriculture are more in the exercise of parliament's power. Lisbon also enables Parliament in terms of eradicating the distinction between compulsory and non-compulsory expenditure. All of those resulted in a way of making equal Parliament to the Council of Ministers in terms of deciding EU expenditure. This may the initial steps to see more lobbying activities in EU.

³⁰ Hauser, Henry. "European Union Lobbying Post- Lisbon: An Economic Analysis" p.681

Stated articles of treaties have shown that the lack of binding legislation on conduction of lobbying. Until a binding regulation is adopted, separate EU organs can amend its own regulations while building relations with lobbyists.

CHAPTER 4

INSTITUTIONAL ASPECTS OF LOBBYING IN THE EU

Since the nature of lobbying urges to influence and change the behavior of the decision making process, it might be useful to classify the channels of influence. To know how and where to lobby at EU level is essential to grasp the main lobbying activities in the EU. This chapter will be based on the European Institutions and how lobbying activities are conducted in these institutions.

Lobbying different EU structures is an important point in order to understand the current lobbying activities in the EU. The European Commission, European Parliament, the European Court of Justice, other institutions such as the European Economic and Social Committee and the European standardization committees need attention since they are the main places that lobbying activities are conducted. Among the stated European institutions, the European Commission has a special importance in terms of the conduction of lobbying activities.

Recalling lobbying in the EU can be classified in two ways which are national route and EU representation through Brussels route. The possible contradiction of two different interests can be rather complicated concerning the debates of early European Integration process. The extent of national route can be defined as “The use of national route for interest representation at the European level is conditioned both by the role of the national level at different stages in the European policy progress, and by the extent to which it provides a convenient and familiar point of access for interests.”³¹ The conduction of national route has been mostly shaped by the policy networks and dependency relationships.

³¹ Greenwood, Justin. “Interest Representation in the European Union”. p.4

On the other hand, the Brussels route has been more complex considering its highly different lobbying actors. The Brussels route has been well-organized, net worked. The supranational institutions, the role of the Commission in starting policy and the different positions of EU level group have been the part of the Brussels route. The two different routes can be stemmed from the specific nature of European Union. Having two different highly complex routes of influence might also be one of the reason that EU's current dissatisfaction with lobbying.³²

4.1 The European Commission

The importance of European Commission based on its ability of policing European legislation, and role in representing in world trade negotiations. Therefore, the European Commission is an important start for lobbyists. One of the main concerns about the conduction of lobbying in the European Commission is that the lack of transparency. To understand the stance of European Commission on transparent conduction of lobbying, it is vital to point out that lobbyists can be seen as the consultants. This may result in vague definitions of lobbying and lobbyists. At this point, the 2001 White Paper on Governance is significant to mention in terms of relating its mission with lobbying in the EU. In this paper, it is stated that:

The consultation plan is part of a wider impact assessment which encompasses legislative proposals, which makes transparent the basis of evidence used to arrive at the proposal, minimum standards of consultation apply, embracing the information in consultation documents, and measures to ensure that relevant parties have an opportunity to express their opinion, frequently, the consultation is placed on an open web portal inviting responses from anyone inclined to do so, and individual responses made to consultations are often published, and the final legislative proposal from the Commission contains a statement identifying the consultation procedures undertaken, together with a presentation of what the

³² Ibid, 5

responses advised and the Commission's own responses advised and the Commission's own responses to these, identifying why a particular course of recommended action was taken or rejected.³³

As stated above, these measures have basically taken to protect the civil rights and oppose the notions such as elite networks. It is suggested that if the power lessens, institutions are more open to influence of lobbying groups. Since the consultation and specialized knowledge have been one of the greatest assets of interest groups, interest groups use this advantage to sustain their relations with Commission.

To understand the importance of European Commission for lobbyists, it is significant to understand the structure of the Commission. The European Commission represents the general interest of the European Union. The Commission consists of one Commissioner per country. In order to become a Commissioner in the Commission, one must be independent from the nominated state. Members who are appointed by the European Council stay in charge for five years. In addition to be appointed, they also should be ratified by the European Parliament. The selection process of the Commissioners is highly competitive and can be subjected to lobbying activities. Since the Commission proposes should be approved by European Parliament and the Council of Europe, it is also pledged to implement policy decisions of legislative bodies, supervises European Union programs and funds. The commission has been the most important institution for lobbyists. Since the decisions are made with absolute majority of member's vote and the process is long and complex, the lobbyist's actions are continuous to influence the Commission. The Commission has right to start the legislation process and prepare the draft of law proposals. At this point, the lack of expertise knowledge presents a stage to interact with lobbyists. These lobbyists who are specialized in a particular subject are called 'elite pluralism' or 'Representation

³³ European Commission, White Paper on Governance. 2001

d'elite. Consultative Committees and Expert Committees of the Commission are excluded from this.³⁴ Apart from the lobbyists who are in the elite pluralism group, lobbyists use the personal connection, mass media. To control the excessive flow of lobbyists, transparency has been shown as the key point to prevent the abuse of official documents.³⁵ In order to sustain an order with lobbyists, the Commission has put two staged mechanisms. The first one is called Transparency Register which is established in 2011. Transparency Register's aims based on the providing information on lobbyists' objectives, their funding's and interest area. Integrity rules are other important mechanism that regulates the conductions of lobbyists. These rules are expressed in the Code of good practice. Since the Commission is ruled by unelected bureaucrats, it mostly depends on external stakeholders which are consisted of by lobbyist as well.

Comitology was introduced in the early 1960s as part of the Common Agricultural Policy (CAP), which presented a complex arrangement dispute. The notion of comitology points out the system that the Commission ratifies implementing measures depends on the power delegated by the Council and the European Parliament. These comitology committees constituted of experts' displaying the EU member states.³⁶ The Comitology committees have been directed by the Commission that decides what subject is discussed and dealt with. The biggest problem with this comitology system is that the lack of transparency.

4.2 The European Parliament

The European Parliament has been directly elected by its citizens every five years. The Parliamentary Commission, the Directorates Generals, political

³⁴ Poulin M, "The Lobbyists Registration Act: an attempt to control the new breed of lobbyists or a missed opportunity." 1991. P.26

³⁵ Ibid

³⁶ Hardacre A, " The European Parliament and Comitology: PRAC in Practice." 2009.p. 33

groups and delegation of the parties are based in Brussels. Each member states separately decides its own procedure for the election of MPs. Along with the Council, the European Parliament has the legislative, budgetary, and democratic control of power. The Parliament has the power of assessing the annual budget of European Union. The Maastricht Treaty and the Treaty of Lisbon can be named as the turning point for the increased significance of the Parliament. This basically causes a sharp expansion in the interest of lobbying groups. Members of European Parliament mostly interact with individuals through private hearings, letters. National and European institutions are the ones who are in a continuous contact with the members of the parliament. While the Commission seeks expert knowledge for the bill drafts, the Parliament seeks to find out the specific interests of member states through national and supranational associations.³⁷

The European Parliament is another channel of influence for European lobbyists. Contrary to lobbying the Commission, lobbying in the European Parliament has differently structured. There are various key actors in the European Parliament which each of them are different assets for lobbyists.

Recalling the previous statement, party affiliation and national-based inclinations are two factors that differentiate lobbying in the European Parliament from the Commission. Two different concerns of parliamentarians might bring about less transparent way of lobbying because the related personal interests. Even the power of Commission is potent over the Parliament; the parliament can have some influence in the co-decision process. To more effectively state the structure of the Parliament which is more vulnerable to influence, it might be useful to point out that the Parliament still protects its place and should increase its strengths toward influence.

Additionally, European Parliament has the ability to reject legislation that the Council favors. With increased power of European Parliament, the lobbyists

³⁷ Michalowitz, Irina. "EU Lobbying" p.66

increased their efforts. Intergroup are fundamental part of lobbying in the European Parliament. These groups can be consisted of different political groups. The main objective of intergroup are exchanging opinions on various subjects and promoting contacts with the Members of the European parliament and civil society. Although these meetings are informal, they are subject to internal rules which are adjusted by the Conference of Presidents on December, 16 1999 ad then updated on February 14, 2008. Chairs of intergroup are subjected to declare any financial support from external resources. One of the critics that European Parliament has mostly faced is about receiving gifts. In order to influence the MEPs, lobbyists have used the tools such as gifts. These gifts have been extended from free meals to travel. Since allocating resources for the gifts require a certain financial budget, not all lobbyist actors are able to use the gifts as an influencing tool. Mostly the business groups are able to do this since the non-governmental organizations are mostly bound the external resources. Though European Parliament has no rules for gifts, the European Commission has certain rules which curb the limit of gifts to 150 Euros. On the other hand, US Congress has strictly restrained the sit-down meals, sports and entertainment tickets. Only accepted gifts are called finger food, and those gatherings are open to public. Free travel is also restricted by US Congress. Only one-day trip tickets are allowed for the purpose of making speech. These trips are subjected to allowance of ethics committee.³⁸

4.3 The Council of European Union

The Council of European Union which is also known as the Council of European Ministers has been formed with the representatives of member states at the ministerial level. Along with the European Parliament, the Council has the power of the legislative and budgetary function, providing economic policies for member countries, defining and implementing the Common Foreign and Security Policy and also the arrangement of measures in the field of police and judicial cooperation.

³⁸ C Crombez. "Information, Lobbying and the Legislative Process in the EU", 2002.

The Council has been considered as the least accessible by lobbyists comparing other institutions. Only few well-known stakeholders are contacted. The most constructive way of influencing the Council is to have contact with the representatives of the member states.

CHAPTER 5

LOBBYING IN THE EU MEMBER STATES AND THE US

5.1 Legislation Approaches of EU Member States

To understand the lobbying in EU member countries better, different categorizations will be made. Firstly, the registration is classified into three ways which are mandatory, voluntary, and not regulated. Secondly, legislation is analyzed in three different ways as well which are legislation, soft legislation and not regulated. Lastly, the code of conduct for lobbyists is categorized in three ways which are legislation, self-legislation, and not regulated. Among these categorizations, self-regulation is highly widespread. Therefore, it requires analyzing more deeply. The self-regulating EU lobbying has been presented in different ways. It is seen that its main aims are based on taking official's self-interests, watching other groups, and waiting for output anticipation. It has variable control systems which can be named as internal and external controls and feedback anticipation from EU institutions. These feedbacks are also taken from official interferences, protest groups and reputation management.

Regarding these categorizations which are made by European Parliament in December, 2016, the EU member states' situation will be analyzed. Since lobbying is a new concept for EU member states, it is seen that only six member states has regulated lobbying. These six member states can be named as France, Ireland, Lithuania, Austria, Poland, and Slovenia. In addition to have regulation on lobbying, these six member states have mandatory

registration of lobbyists. It is seen that the most recent law on regulation of lobbying has been adopted in France on 8 November 2016.³⁹

Although some member countries do not have direct regulation of lobbying, there are some countries that have ethical codes of public relations and consultancy agencies. It is also seen that there are some EU member states which neither have neither legislation nor code of conduct or register of lobbyists. These countries can be named as Belgium, Bulgaria, Denmark, Estonia, Greece, Cyprus, Luxembourg, Hungary, Malta, Portugal, Slovakia and Sweden. In order to understand the different approaches of member states to lobbying, the detailed examination of different countries will be given by considering the fact that their approaches toward legislation, code of conduct for lobbyists and register. Before passing the detailed examination of EU member states, it should be said that the member countries do not have a unified approach when it comes to regulation of lobbying.⁴⁰

Although most of the EU countries have not regulated lobbying at the national level, there are some countries that seem to take more moderate approach towards regulation of lobbying at the national level. Poland, Hungary, Lithuania can be named for regulating lobbying through binding regulations. Additionally, Macedonia and Montenegro have regulated lobbying in the Balkans. There are some countries that regulated lobbying through general laws as seen in the public integrity and prevention of conflict of interest. Slovenia, Germany can be named for these countries. On the other hand, there are some countries who still discuss the regulation of lobbying. Croatia, Serbia, the UK, Denmark can be named for these countries.

At the EU level which is also considered as an institutional level, lobbying has been regulated through soft, non-binding legal stance. In 2011, The

³⁹ Malone, Margaret. "Regulation of Lobbyists in Developed Countries." 2012.p. 17

⁴⁰ Schendelen, Rinus Van. More Machiavelli in Brussels: The Art of Lobbying the EU. Amsterdam: Amsterdam Univ. Pr., 2010. P.45

Transparency Register has been founded by the Commission and the Parliament to meet the concerns of regulating lobbying in the EU. However, it is important to point out that registration to Transparency Register is not mandatory.⁴¹

Europeanization is a broad term which analyzes how European Union institutions affect the national stance of member countries. The lobbying activities and Europeanization process are mostly associated with each other. The question of how Europeanization as a tool of lobbying has an impact on national stance of member countries is important to point out to analyze the current situation of lobbying in EU member states.⁴²

Lobbying in the new member states can be considered in different category when it is compared with the mentioned member states. The clientelism is seen when the lobbying literature in the Central Eastern Europe is reviewed. The clientelism has been defined as “the relationship between people of unequal status who form mutual and personal bonds, such as a patron offering assistance to lower ranking clients in return for something value”.⁴³ The patrons can be named as fixers, middlemen or lobbyists. Since the Central Eastern European states are considered in the transition period, the notion of clientelism should be assessed while considering lobbying activities in Central Eastern Europe. For examples countries such as Czech Republic, Slovenia, Bulgaria and Romania are subjected to the influence of lobbyists. Only Lithuania and Poland are blustered lobbying laws in force. Since lobbying has been connoted with negative meaning in the public eye, it is suggested that lobbyists should create associations in these countries. For instance, the First Hungarian Lobby Associations and the Association of International Lobbyists

⁴¹ Beyers, Jan. “Interest Group Politics in Europe.”.2010.p.78

⁴² Kerremans, Bart. Critical Resource Dependencies and the Europeanization of Domestic Groups. *Journal of European Public Policy*, p.465.

⁴³ Mcgrath, Conor. “The Development and Regulation pf Lobbying in the New Member States.” P. 34

in Hungary, the Association of professional Lobbyists in Poland has been created by the efforts of EU lobbying. By having larger lobbyist associations, the access of lobbying can be even larger.⁴⁴

In the below, there are the classification of EU Member States according to the regulation of lobbying. These classifications have been based on the sources of Machiavelli in Brussels and the European Parliament Working Paper. In detail, the regulation of lobbying can be regarded in three areas which are the register of lobbyist, legislation on lobbying, code of conduct for lobbyists. These are the countries that have no regulated lobbying systems. The categorizations have been made thank to European Parliament Infographic Paper on Lobbying and the book of Rinus Van Schelenden's More Machiavelli in Brussels.^{45 46}

5.1.1 Czech Republic

There is no legislation or register regarding lobbying. The code of conduct for lobbyist is stated as a self-regulation.

5.1.2 Italy

The notion of lobbying and interest groups are not known in the Italian law and are not regulated. Nevertheless, in the Ninth Legislature (1983-1987), four bills are presented on regulating professional public affairs. This process was discontinued.

5.1.3 Luxembourg

The notion of lobbying and interest groups are not known in Luxembourg law. However, the Chamber of Deputies has the right to listen to these interest groups.

⁴⁴ Ibid

⁴⁵ Schendelen, Rinus Van. More Machiavelli in Brussels: The Art of Lobbying the EU. Amsterdam: Amsterdam Univ. Pr., 2010. P.45

⁴⁶http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS_ATA%282016%29595830_EN.pdf

5.1.4 Netherlands

There are no specific rules and code of conducts which are specific to interest groups. The Public Relations Division of the Second Chamber grant an access cart which has an expiration time to two years at maximum. This cart enables interest representatives to access the Second Chamber to contact with the members of parliament directly.

5.1.5 Portugal

The notion of lobbying and interest groups are not known in the Portuguese law and are not regulated. Interest representatives are up to the general rules governing access to, circulation and presence in Assembly buildings.

5.1.6 Spain

The notion of lobbying and interest groups are not known in the current Spanish law and not regulated. The code of conduct for lobbyist has been provided as self-regulation. In addition to Spain, it is important to point out that Catalonia has a Registro de lobbies de la Generalitat de Cataluña.

5.1.7 Sweden

There are no rules concerning lobbying activities in Swedish law. Private Members' bills on the registration of lobbyists in the Parliament have been refused by Parliament. Since Swedish society can be considered traditionally open and transparent, the approaches toward lobbying are inclined to prejudices. Although there are different opinions on the possible effect of lobbying, there are no formal proposals present.

5.1.8 Croatia

There is no regulation regarding of lobbying activities. The code of conduct has been made through self-regulation. The register is voluntary.

5.1.9 Latvia

It is seen that no legislation or register regarding lobbying in Latvia. The code of conduct has been made through self-regulation.

5.1.10 Romania

There is no legislation of lobbying in Romania. The code of conduct has been stated as self-regulation. The register is voluntary. The Government introduced a public register of meetings with interest representatives in September 2016.

5.1.11 Finland

There are no legislation and register regarding lobbying activities in Finland. The code of conduct has been named as self-regulation.

5.1.12 Bulgaria

There is no regulation or code of conduct regarding lobbying. Four draft resolutions have been made but none of them have taken necessary support.

5.1.13 Hungary

Legislation of lobbying in Hungary is subjected to several debates. In January 2011, the Lobbying Act 1 has passed but in March 2011, it was abandoned. The stated reasons are about the inadequate number of registered lobbyists. Nevertheless, there is no current regulation or code of conduct regarding lobbying.

5.1.14 United Kingdom

Legislation has been made in transparency of lobbying, non-party campaigning and Trade Union Administration Act in 2014. There is no conduct regarding lobbying. The register is mandatory only for public affairs consultancies.

The EU member states that are stated below are the ones that have no notion of lobbying and interest groups in their national law system.e.g: Greece, Belgium,

Croatia, Cyprus, Denmark, Malta, Estonia. In the below, these are the countries that have regulated lobbying system in their legal system at the national level.

5.1.15 Austria

It is seen that registration of lobbyists is mandatory. The code of conduct for lobbyists is provided by the law. Legislation has been made through the Lobbying and Special Interest Group Transparency Law in 2013.

5.1.16 Germany

Among the member countries, Germany has been regularized lobbying activities in a more coordinated way. Registration of representative of pressure groups is regulated with the Annex 2 of the rules of procedure of German Bundestag. In Annex 2, the specific personal information of representative of pressure groups and their particular interests have been recorded. More clearly, it is stated in the Annex 2 of the rules of procedure of German Bundestag:

According to Annex 2 of the rules of procedure of the German Bundestag, each year a public list is drawn up of all groups wishing to express or defend their interests before the Bundestag or the Federal Government. Representatives of pressure groups must be entered on the register before they can be heard by parliamentary committees or be issued with a pass admitting them to parliament buildings.

5.1.17 Ireland

In 1999 and 2000, a Registration of Lobbyists Bill was handed out but rejected. In 2015, the legislation of lobbying has been made through Registration of Lobbying Act. The code of conduct for lobbyists has been provided by law. The register is also presented as mandatory.

5.1.18 France

The legislation of lobbying has been made through the Loi Sapin II, in 2016. Until a new law comes into force (in July 2017 at the latest), National Assembly Rules of Procedure regulate the issue and the register of lobbyists is voluntary. With the law came into force in 2017, the code of conduct for lobbyists has been provided by law. The register for lobbyists is mandatory.

5.1.19 Lithuania

The legislation of lobbying has been made by Lobbying Act, 2001. The register is mandatory for lobbyists. The code of conduct is provided by law.

5.1.20 Poland

The legislation has been made through the Act Legislative and Regulatory Lobbying in 2006. The code of conduct has been named as the self-regulation. The registration is mandatory for lobbyists.

5.1.21 Slovenia

The legislation has been made through the Integrity and Prevention of Corruption Act, 2010. The code of conduct is provided by act. The register is mandatory for lobbyists.

Interaction of interest groups in EU institutions is continuous through the necessity of the process of decision-making. These interactions between interest representations and EU institutions should be based on open and transparent structure. Transparency Register has been launched on 23 June 2011 to regularize the access to European Parliament. The register has been found to answer those questions which are “What interest is being represented at EU level, which represents those interests, and on whose behalf, with what

budgets?” With the registration, individuals can access to the Parliament for 12 months.⁴⁷

The register has been subjected to code of conduct which governs relations of interest representatives with the EU institutions. Since register has been found by the Parliament and the Commission, it is managed by the Joint Transparency Register Secretariat. In order to understand the structure of the Transparency Register, its code of the conduct should be pointed out. The Code of Conduct in Annex 3 of the 2014 Interinstitutional Agreement on the Transparency Register has set the rules for all the registration and brought out the principles that interest representatives are subjected to in EU institutions.⁴⁸ The code of conduct rules out the relation between interest representatives and EU institutions such as: identifying interest representatives, conducting their activity in an honest manner, not selling the information they have taken from EU institutions.

As seen in the Code of Conduct in Annex 3 of the 2014 Interinstitutional Agreement on the Transparency Register, from interest representatives' identification knowledge, to ensuring the compliance to rights and responsibilities of former Members of the European Parliament and the European Commission, not selling documents receiving from EU institutions are drawn up.

⁴⁷ Luneburg, “Lobbying and Transparency: A comparative analysis of regulatory reform.” Interest Groups & Advocacy, 2012. P.2

⁴⁸ Naurin, Daniel. Deliberation behind closed doors: Transparency and lobbying in the European Union. ECPR press, 2007.



Table 1: Type of Registered Organizations ⁴⁹

It is seen from chart that the non-governmental organizations, platforms and network have consisted of 26.2% of the type of registered organizations. In the second row, trade and business associations are seen. Other following types on the chart are named as the trade unions and professional associations and professional consultancies. The 2.3 % of the organizations have spent more than 1.000.000 Euros. When it comes to types of interest they present, European has been seen on the top with the successions of national, regional, global.

⁴⁹ 2018. Type of Registered Organizations.
<http://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180108STO91215/transparency-register-who-is-lobbying-the-eu-infographic>

5.2 Lobbying in the US

Lobbying has a long tradition in the US. It is also considered as an indispensable part of its political system. Lobbying in the US has been founded the potent basis as seen in the right to petition of the First Amendment to the US Constitution. In the first amendment. More interestingly, lobbyists do not have to only speak for the domestic partisan interests. They can also represent foreign clients. Representing the foreign clients might sound interesting but considering the fact that US is one of the important global stakeholder, it might sound logical. It is important to point out that US hosts several international organizations. These organizations are also targets of lobbying groups. The UN and World Bank Group can be examples for the target organizations.

Lobbying as word is reminiscent of political connotations. Contrary to this general idea, even industries such as golf and barbecue may conduct lobbying activities. According to a news on lejournalinternational.fr, "In France and many other countries, the time changed to daylight saving time on the 25th October. In the USA, the same time change occurred 4 weeks later. The difference is due to two instances of lobbying by the barbecue and golf industries."⁵⁰ As seen from the stated news, lobbying has a broad subject that encompasses not only the political interestsbut also different industries' interests.

The history of lobbying in the US has dated back to 18th century. It is suggested that James Madison, one of the founding fathers of United States, has published an essay called Federalist No. 10 on November 22, 1787. In this essay, the confirmation of the future Constitution has been stated and adverted that management of factions, such as groups of individuals who have a shared purpose in various interests: social, economic or intellectual. Madison has presented two claims which are putting restrictions on activities that aim to

⁵⁰ Nogris, Thomas, and Thomas Bourvic. "Lobbying: The Political Influence in USA." *Le Journal International - Archives*. Accessed April 23, 2018. https://www.lejournalinternational.fr/Lobbying-the-political-influence-in-USA_a3505.html

influence politics or giving permission to private interests to influence the politics. Madison has justified the second option by stating that pursuing interest is an act stemmed from the human nature. This justification has been associated with the values of federalism and democracy and allowing citizens to express themselves freely. In the US, there are also some ideas stated that lobbying harms democracy and related values. For instance, former president of the US Obama has declared that “lobbyists and special interests brought the government into a game that only they can win” and that he wished to take over and keep the control over the government that lobby organizations “think they have” in his candidacy speech in 2008. Nevertheless, the following years of 2008 have not proved any change regarding the situation of lobbying and lobbying groups have preserved their sits next to President. The Bipartisan Campaign Reform Act was proposed in 2002 to adjust the advertising investment during electoral campaign. By this act, only a declared amount of hard money contribution is favored.⁵¹

⁵¹ Ibid

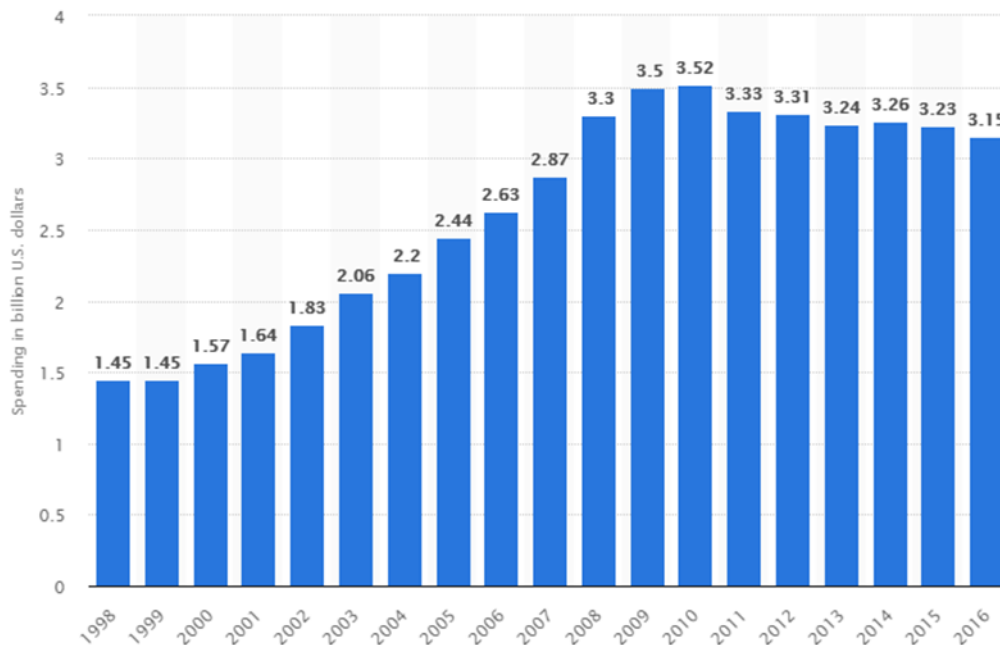


Table 2: Total Lobbying Spending in the United States from 1998 to 2016 ⁵²

In the chart, it is seen that 2009 and 2010 have been the years that total lobbying spending is at maximum point. For the years 1998-2008, lobbying spending is at the low scales. For the terms between 2010- 2016, it is seen that spending have been allocated more orderly but also protected on the level of 3.00 billion US dollars. The obvious increase at the years of 2009-2010 might be related the previous argument which is when the power rests, interest’s groups impacts increase.

⁵² 2018. Total Lobbying Spending in the US from 1998 – 2016.
<https://www.statista.com/statistics/257337/total-lobbying-spending-in-the-us/>

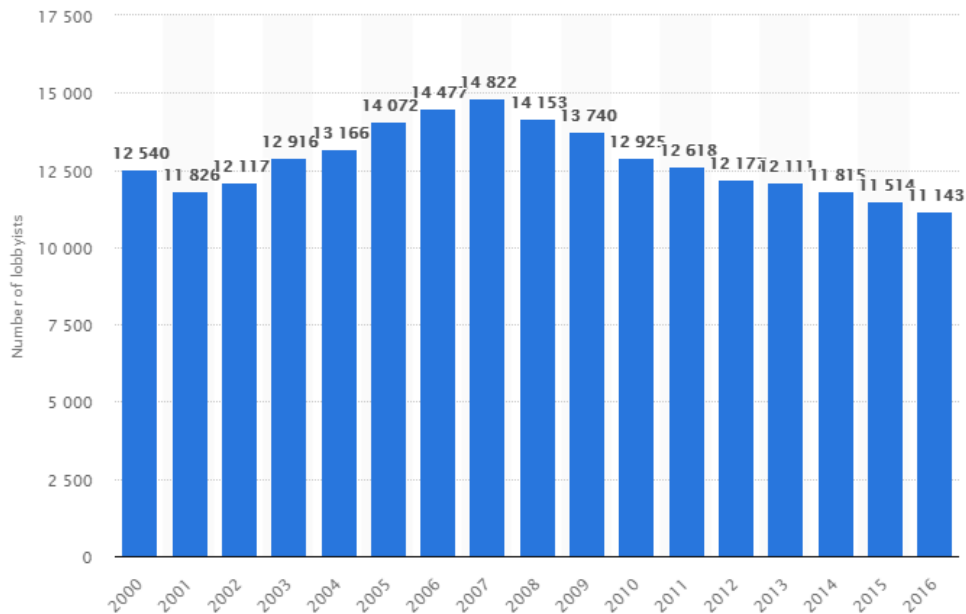


Table 3: Number of Registered Active Lobbyists in the United States from 2000 to 2016.⁵³

The number of registered lobbyists might be seen as an indication of transparency. It is seen that the years of 2006-2008 have been the years that the registered active lobbyists are at the maximum point. The years of 2008-2016 presents an obvious reduction of the number of registered active lobbyists.

⁵³ <https://www.statista.com/statistics/257340/number-of-lobbyists-in-the-us/>

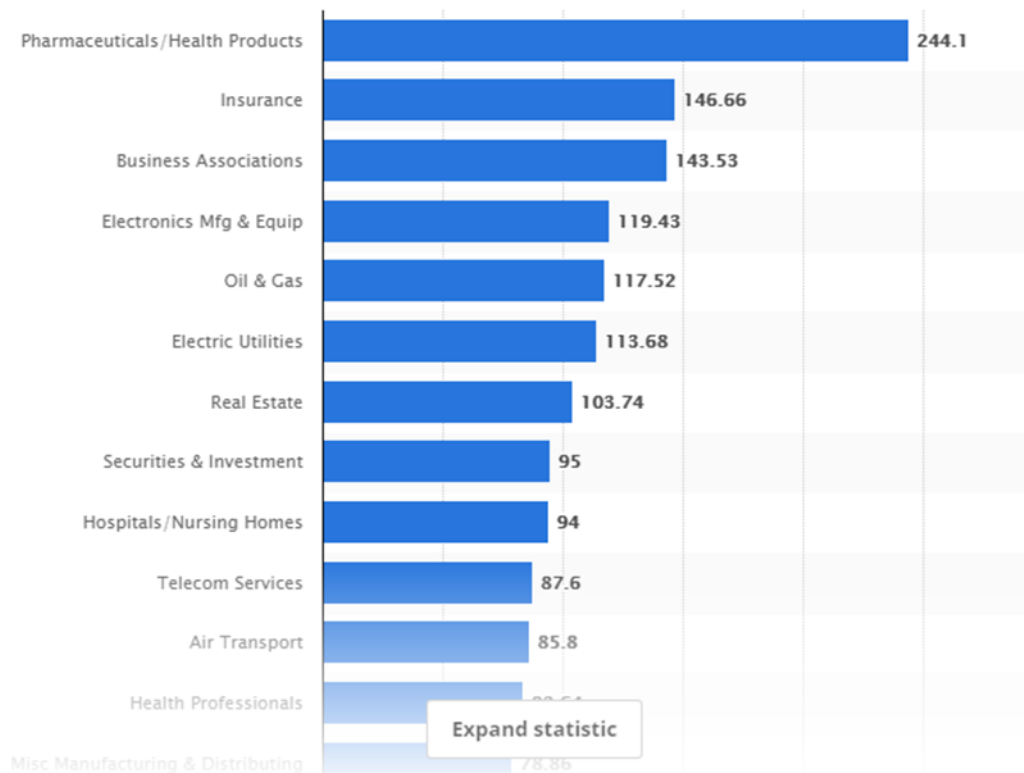


Table 4: Top Lobbying Industries in the United States in 2016⁵⁴

It is seen from the chart that pharmaceuticals and health products presents the highest total lobbying spending. The insurance, business associations, electronics, oil and gas can be named as the other lobbying industries that have the highest lobbying spending.

⁵⁴ 2018. Top lobbying industries in the United States in 2016, by total lobbying spending. <https://www.statista.com/statistics/257340/number-of-lobbyists-in-the-us/>

Lobbying Firm	Total
Akin, Gump et al	\$39,020,000
Brownstein, Hyatt et al	\$28,735,000
Squire Patton Boggs	\$24,105,000
BGR Group	\$23,620,000
Holland & Knight	\$22,100,000
Cornerstone Government Affairs	\$19,280,000
Podesta Group	\$18,410,000
Capitol Counsel	\$18,210,000
Covington & Burling	\$17,843,000
K&L Gates	\$17,660,000
Van Scoyoc Assoc	\$17,015,000
Williams & Jensen	\$16,650,000
Ernst & Young	\$15,160,000
Capitol Tax Partners	\$14,430,000
Mehlman, Castagnetti et al	\$14,220,000
Peck Madigan Jones	\$13,860,000
Cassidy & Assoc	\$13,740,000
Fierce Government Relations	\$13,190,000
American Continental Group	\$12,550,000
Crossroads Strategies	\$11,670,000

Table 5: Lobbying Firms⁵⁵

In the US, lobbying has been conducted through lobbying firms. The spending of lobbying firms can be seen in the chart which also present high number of

⁵⁵ 2018. Ranking of the top lobbying firms in the United States in 2016, by expenses. <https://www.statista.com/statistics/257372/top-lobbying-firms-in-the-us-by-expenses/>

budget allocations. For example, on the top of the list, Akin, Gump et al's expenditure is stated as \$ 39.020.000.

There are a few differences when comparing lobbying systems in EU and the US. The first difference is the historical traditions. The American settlement has been stable while EU's enlargement is still on the process. The notion of nationalism is another difference. Although the US has been composed of many nations, the notion of nationalism is still noticeable. On the other hand, EU has been consisting of 28 different countries, and most countries have been devoted their own nation and national values. The system of federalism and the relation of member states with EU can have some common points. Even both systems are completely same, they have some common qualities in term of multi- governance system.

Lobbying in the US is regulated by the Honest Leadership and Open Government Act (HLOGA). Before this act, LDA from 1995 was introduced to encompass the issues such as limitation of gifts and other profits provided to Members, and reporting that was conducted in semiannual terms. The Honest Leadership and Open Government Act present electronic databases which public can access. Subjected to law in the US, lobbyist should register if they are suitable for these categories: "Natural persons-lobbyists, who have received at least \$ 2.500 for a period of three months. Consultancies-lobbyists have received at least \$ 10.000 for a period of three months." ⁵⁶

Since lobbying in the US has a long tradition comparing the lobbying in the EU, American companies are highly motivated in their lobbying interests in EU. For example, companies such as Monsanto and DuPont can be named for their successful effort in lobbying in the EU.

⁵⁶ Baumgartner, FR. " EU Lobbying: A view from the US." Journal of European Public Policy, 2007.p.45

Thus companies including Monsanto and DuPont have installed specialist lobbying teams on single issues like Superfund reform. Comparisons of issue networks in Washington and Brussels are complicated by the existence in the United States of a politicized bureaucratic administration and political campaign contributions (Wright 1996). Associations such as the American Petroleum Institute and large companies have Political Action Committees (PACs), whose purpose is to raise and distribute campaign funds for political office. ⁵⁷

As seen in the previous paragraph, the American lobbyists have taken actions in order to meet their interests in EU countries. Companies such as Monsanto and DuPont have allocated an important amount of budget to their lobbying activities. At this point, it is important to mention the activities of AmCham (The American Chamber of Commerce to European Union) in the EU. AmCham has supported the Transparency Register in EU. The organization structure of AmCham has separated into several groups such as competition, trade, social affairs, and environment. To hire the high EU official is one of the strategy that AmCham use while its Europeanization of the American business. European lobbyists have learned a lot from AmCham. European organizations started to reshape their structure in terms of merging direct firm membership and committees. American firms have presented leadership roles in reshaping the European Chemical Industry Council (CEFIC), and the European Federation of Pharmaceuticals (EFPIA). ⁵⁸

⁵⁷ The Corporate Europe Observatory Guide to the Murky World of Lobbying. 2016.p.53

⁵⁸ Rasmussen, Maja. "Lobbying the European Parliament: A necessary Evil." p.5

CHAPTER 6

CONCLUSION

The starting point of this study is to find out the EU's and EU member states' approaches toward legislation of lobbying. It is found out that there is no unified approach of EU member states at the national level. When it comes to legislation of lobbying at the EU level, it is seen that there is no mandatory regulations regarding the legislation of lobbying but there are some attempts to regularize such as putting voluntary legislation, establishing Transparency Register. It is also seen that lobbyists are likely to use the European Commission, European Parliament as an influence tool more frequently comparing other EU institutions. It can be seen that lobbying in the EU has some visibility but this visibility is not enough to force with legislation system.

In conclusion, lobbying has been an integral part of EU agenda. To counter with negative connotations, the transparency issue should be taken seriously and be based on mandatory registration. Even the articles of 298 and 336,352 of Treaty on Functioning Europe (TFEU), articles of 11 and 15 of Treaty on European Union (TEU), Treaty of Lisbon, have referred to lobbying, the legal basis in the EU should be built on mandatory basis. The disintegration of lobbying to the EU system may continue the current debates. Contrarily, the integration of lobbying may bring more transparency and trust to the EU and its institutions. Lastly, it is seen that all EU member states have variable regulation of lobbying at the national level. While some member countries are more open to regulation of lobbying on a mandatory basis, some member countries still positioned on the opposite side of regulating lobbying. It is seen that not solely for the legal perspective but also economic and political perspective, lobbying in the EU is apt to forthcoming developments.

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APPENDICES

A.TURKISH SUMMARY/ TÜRKÇE ÖZET

AB'DE LOBİCİLİK: HUKUKİ VE KURUMSAL ANALİZİ

Lobicilik, çoğunlukla olumsuz çağrışımlarla eşleştirilen tartışmalı bir kavramdır. Bu olumsuz çağrışımları değiştirebilmek için çıkar grupları gibi farklı kavramlarla da adlandırılmıştır. Farklı adlandırılma şekilleri olsa da lobicilik anlam bakımından karar verme sürecini ve oluşumlarını etkileme aracıdır. Avrupa Birliğinde lobicilik çoğunlukla şeffaflık kavramıyla literatürde yerini almıştır. Bu tezin araştırma sorusu “Avrupa Birliğinde ve Avrupa Birliği üye ülkelerinde yapılan lobicilik düzenlemeleri hangi kapsamda değişkenlik göstermektedir?” dir. Lobicilik faaliyetinde bulunan kişi ve kurumlar, düşünce kuruluşlarıyla, hukuk ve danışmanlık firmaları, sivil toplum örgütleri çatısında faaliyet gösterebilir.

Lobicilik, terim olarak Latince olan ‘Lobby’ kelimesinden gelir. Günümüz anlamında kullanılması ise Amerikan Başkanı Ulysses S.Grant’ın dönemine kadar uzanır. Grant’ın bir dönem otel lobisinde belirli çıkar gruplarını kabul ettiği, bu kavramında günümüz kullanımıyla bu zamandan geldiğini görüyoruz. Lobicilik grupları, lobi yapma haklarını Avrupa Birliğinin demokratik değerlerinden aldıklarını vurgular. Lobicilik ekonomik, hukuki ve siyasi alanlarda farklı alanlarda değerlendirilebilir. Ekonomik anlamda lobicilik, özel şirketlerin veya şahısların çıkarlarını geliştirmek ve sürdürebilmek için stratejik bir araç olarak görülebilir. Hukuki anlamda, hukuk ve yönetim prosedürlerini etkileme anlamında, siyasi olarak ise farklı grupların siyasi çıkarlarını öne çıkarmak amacıyla kullanılmıştır. Avrupa Birliğinde lobicilik, insani yardım,

sosyal yardım, çocuk işçiliği, yol güvenliği, kamu sağlığı, küresel rekabet gibi geniş kapsamlı alanlarda kullanılmıştır.

Avrupa Birliğinde lobiciliğin tarihi 3 bölümde incelenebilir. Bunlar; Ulusal Yön (1957-1987), Brüksel Lobiciliği (1987-1999) ve 21. yy Avrupa Birliği Lobiciliğidir. 1957 Antlaşması Avrupa Birliğinde lobiciliğin ilk başladığı dönem olarak kabul edilir. 1987 Avrupa Tek Senedi, Avrupa Birliğinde lobiciliğin çok katmanlı olarak değerlendirilebilecek farklı bir dönemini açmıştır. Bu dönem, aynı zamanda milli kaynaklı lobicilikten AB seviyesi lobiciliğe geçişi sağlamıştır. Lobicilikteki bu hareketlenme sağlık, güvenlik, rekabet hukuku, tüketici korunması, endüstri politikaları gibi farklı alanlarda Avrupa Komisyonunda ve Parlamentosunda yaşanan boşlukları ortaya çıkarmıştır. 21. Yy başlarında başlayan Avrupa Birliği Lobiciliği dönemi ticari kaygılarla çevrelenen yeni bir lobicilik dönemini başlatmıştır. Bütün bu dönemler, lobicilik aktiviteleri hakkında farklı kaygılar ortaya çıkarmıştır. Elit grupların yönetimde olduğu, bürokrasinin ağır ve oturmuş olduğu, Brüksel'in yukarıdan aşağı yönetildiği gibi eleştiriler ortaya çıkmıştır. Lobicilik aktörlerinden hukuk firmaları, Brüksel'de yapılan lobiciliğin %14'ünü oluşturur. Bu firmaların çoğu AB hukukunda özelleşmiştir. Halkla ilişkiler firmaları, sivil toplum, iş ve siyaset dünyasıyla ilişki içerisindedir ve AB'de lobiciliğin önemli bir kısmını oluştururlar. Bu noktada, uluslararası büyük firmaların, lobicilik aktivitelerinde, halkla ilişkiler firmalarını tercih ettiği, küçük ölçekli firmaların ise hukuk firmalarıyla çalıştığı gözlenmiştir.

Fikir savunuculuğu ve lobicilik arasındaki fark AB lobiciliğinde yerini almıştır. Bu fark AB'de yeni yeni tartışmalarda yerini bulurken, Amerika Birleşik Devletlerinde uzun süredir olduğu gözlemlenmiştir. AB'de fikir savunuculuğu medya ve halkla ilişkiler aktiviteleriyle ilerler. Amerika Birleşik Devletlerinde, fikir savunuculuğu belirli değerlerin teşvik edilmesi şeklinde tanımlanırken, lobicilik ABD Federal Vergi Hukukunda yasal süreci belirli çıkar grupları için yasal süreci etkileme olarak yerini bulmuştur.

Lobicilik şirketler tarafından, siyasiler tarafından ve kuruluşlar tarafından yapılabilir. Şirketler tarafından yapılan lobicilik, şirketin ticari işlemlerini korumak için yapılabilir ve sendikalar tarafından da desteklenebilir. Siyasiler tarafından yapılan lobicilik, diğer ülkelerin kararlarını etkilemek amacıyla da yapılabilir. IMF, Dünya Bankası uluslararası politik lobiciliğe örnek gösterilebilir. Bu gruptaki lobicilik etki alanı ve yapılandırılması en zor olan lobicilik türü olarak da düşünülebilir. Kuruluşlar tarafından lobicilik grubuna, bölge ve federal bölge, belediyeler tarafından yapılan lobicilik faaliyetleri örnek gösterilebilir.

Lobicilik doğrudan veya dolaylı olarak yapılabilir. Doğrudan lobicilik türüne, yüz yüze görüşme, mektup, telefon, email, davet talebi, komite üyelikleri, basın konferansları dahil edilebilir. Dolaylı lobicilik türünde ise uluslar üstü birlikler göze çarpmaktadır. Avrupa Birliğinde lobicilik konusunda ise dogmalar farklı milli unsurlara göre değişkenlik göstermektedir. Fransızların merkezi planlamada, Hollandalıların uzlaşma, İngilizlerin hukuk konularında dogmalara yatkınlıkları gözlemlenmiştir. Ulusal ajandaları takip etmek, ulusal yönetimlerle iletişim halinde olmak ve bunları uluslararası düzeyde takip etmek Avrupa Birliği lobiciliğinde önemli hususlardır.

Avrupa Birliği kurucu antlaşmaları AB hukukunun önemli bir parçası olduğundan, lobiciliğin AB'de temellerini kurması bakımından önemli bir yere sahiptir. Lizbon Antlaşması, Avrupa Tek Senedi, Roma Antlaşması, Amsterdam Antlaşması, Nice Antlaşması bu antlaşmalara örnek verilebilir fakat özellikle Avrupa Birliği Anlaşması ve Avrupa Birliğinin İşleyişi Hakkında Anlaşma, bu anlaşmaların ana kemiğini oluşturur denebilir. Lobicilik kapsamında, Avrupa Birliği Anlaşmasınının 11. Maddesi, açık ve şeffaf bir ortamda üyelerin ve vatandaşların görüşlerini ifade etmesini ele alır. 15. Madde ise sivil toplumun, AB kuruluşlarının katılımının iyi yönetimi sağlama konusundaki önemine işaret eder. Avrupa Birliğinin İşleyişi Hakkında

Anlaşması 298. Maddesi ise şeffaflık kavramına dikkat çeker. Kuruluşların ve kişilerin aksiyonlarında açık, şeffaf ve bağımsız AB kuruluşlarının desteğini almasını ifade eder. Avrupa Birliğinin İşleyişi Hakkında Anlaşmanın 336 ve 352. Maddeleri AB’de lobiciliğin yasal zeminin oluşturmak açısından önemli ifadeleri yer verir.

Lobiciliğin yasal düzenlenmesinde, yüksek, orta ve düşük düzeyde düzenleme yapılan ülkeler görülmüştür. Düşük düzeyde görülen yasal düzenlemeye, Avrupa Parlamentosu örnek gösterilebilir. Bu grup düzenlemelerde, kişisel başvuru olmasına karşın, lobicilik faaliyetlerini gösteren finansal bilgiler açık değildir. Lobicilik hakkında yapılan düzenlemeler kısıtlıdır. Genel ve ayrıntısız bir düzenleme görülür. Orta düzeydeki düzenlemeler, düşük düzeyli düzenlemelere nazaran çok daha gelişmiş ve düzenlenmiştir. Bu grubun en önemli eksisi, lobicilik faaliyetlerinde yapılan harcamaların ve finansal raporların açık bir şekilde gösterilmemesidir. Diğer taraftan, hediyeler ve siyasi katkılar rapor edilir. Şeffaflık kavramının lobicilik alanında yer alması için önemli bir adımdır. Danışmanların konumu ve durumu, orta düzeyli lobicilik düzenlemelerinde ayrı bir tartılma konusudur. Yüksek düzeyli lobicilik yasal düzenlemelerinde ise şeffaflık kuramı açıkça görülür. Kişisel başvurularda, başvuru konularının ayrıntısı açık ve net belirtilmelidir. Finansal raporlar ise içerisinde maaşların, harcamaların açıkça belirtildiği şekilde hazırlanmalı, kişilerin isimleri açıkça belirlenmelidir. Tüm bu bilgiler, halka açık şekilde düzenlenmelidir. Bütün bunların uygulanmaması halinde, yaptırımlar uygulanmaktadır.

Avrupa Birliğinde lobicilik, üye ülkeleri ve AB kuruluşları kapsamında incelendiğinde farklı sonuçlar doğurmaktadır. Üye ülkeler arasında lobiciliğin yasal düzenlenmesi kapsamında bir birlik olmadığı tespit edilmiştir. Örneğin Almanya’nın lobiciliğin yasal düzenlenmesi, diğer AB üye ülkelerine nazaran çok daha geniş kapsamlı bir yaklaşımda bulunduğu görülmüştür. AB kuruluşlarında ve üye ülkelerinde, lobiciliğe ortak bir düzenleme ve yaklaşımda bulunulmadığı gözlenmiştir. AB ‘de lobicilik yaklaşımları hem

AB kuruluşları üzerinden hem de AB üye ülkeler kapsamında incelenmelidir. Bu bağlamda, Avrupa Komisyonu AB kuruluşlarında lobicilik faaliyetlerinde önemli bir yer teşkil etmektedir. Lobicilik gruplarının Avrupa Komisyonu üzerindeki etkileme çalışmaları danışmanlıklar ve özel bilgi gerektiren konulara hakim gruplar tarafından gerçekleştirilmektedir. Avrupa Komisyonunun diğer AB kurumlarındaki önemli pozisyonu nedeniyle, lobi gruplarının ilk hedefi haline gelmiştir. Komisyonun hukuki düzenlemelerdeki pozisyonu, Komisyonu önemli kılan diğer bir etken olarak tanımlanabilir. Avrupa Parlamentosundaki lobicilik yaklaşımlarına bakıldığında ise parti grupları ve ulusal çıkar gruplarının etkileri gözlemlenebilir. Son yıllarda Avrupa Parlamentosunun artan yetki alanı Avrupa Parlamentosunu lobi grupları için daha ilgi çekici hale getirmiştir. Örneğin, Avrupa Parlamentosunda, parlamenterlerin hediye alımları hakkında bir düzenleme yokken, Avrupa Komisyonunda bu, şartlara bağlanmıştır. Avrupa Komisyonu hediye limitini 150 Euro olarak belirlemiştir. Diğer taraftan, Amerikan Kongresi lobi gruplarınca teklif edilen, yemek, spor ve eğlence biletlerini yasaklamıştır ve diğer hediyelerin şeffaflık ilkesi çerçevesinde halka açık şekilde gösterilmiştir. Avrupa Konseyi lobi gruplarınca, Avrupa Komisyonu ve Parlamentosu kadar ilgi çekmese de literatürde yerini almıştır. 1960'larda oluşturulan Komitoloji sistemi ise AB'de lobiciliğin diğer önemli bir başvuru noktası olmuştur fakat şeffaflık prensibi konusunda eleştiri konusu olmuştur. Avrupa Birliğindeki lobicilik, Amerika Birleşik Devletlerindeki lobicilik faaliyetleriyle karşılaştırıldığında çok daha ilkel bir tutumda yer alır. ABD'de lobicilik, 1995'te yapılan Lobicilik Antlaşmasıyla, zorunlu başvuruya tabii tutulmuştur. 2007'de yapılan Dürüst Liderlik ve Şeffaf Yönetim Anlaşmasıyla güvenceye alınmıştır.

Avrupa Birliğinde üye ülkelerin lobicilik regülasyonları çeşitlilik göstermektedir. Avusturya'da lobicilik için başvuru zorunludur ve kanuna tabiidir. Bu düzenleme, 2013 yılında Lobicilik ve Özel Çıkar Grupları Şeffaflık Yasasıyla oluşturulmuştur. Çek Cumhuriyeti lobicilik başvurusu hakkında bir

düzenleme getirmemiştir ve yasal bir düzenleme yapmamıştır. Almanya, üye ülkeler arasında en gelişmiş lobicilik düzenlemesine sahiptir. Lobi gruplarının kayıtlı başvurusu düzenlenmiştir. Bu başvuruda, lobicilik gruplarının kişisel bilgilerinden, lobicilik alanlarına kadar farklı düzenlemelerde bulunulmuştur. Fakat bu düzenlemenin en büyük tartışma noktası, bu düzenlemenin yasal bir yaptırım göstermemesidir. İrlanda'da 1999 ve 2000 yıllarında, Lobicilik Başvuru tasarısı önerisinde bulunmuş fakat reddedilmiştir. 2015 yılında bu tasarı geçmiştir. Bu şekilde, lobicilik için yasal düzenleme gerçekleşmiştir. Lobicilik başvurusu da zorunlu hale getirilmiştir. İtalya'da ise, lobicilik ve çıkar grupları İtalyan Yasalarında yerini almamıştır. 1983-1987 yılları arasında, lobicilik hakkında dört tasarı öne sürülse de kabul edilmemiştir. Lüksemburg'da da lobicilik ve çıkar grupları kavramları yasada yer almamaktadır fakat bu grupları heyetler tarafından dinlenilmekte ve görüş alımında bulunmaktadır. Hollanda'da lobi gruplarına özgü bir düzenleme bulunmamaktadır. Lobicilik başvuru zorunlu tutulmasa da Parlamente'ye erişim için başvuru zorunludur. Portekiz'de lobicilik ve lobi grupları kavramları Portekiz yasalarında yer almamaktadır. Çıkar grupları Portekiz genel yasalarına tabiidir. İspanya'da lobicilik ve lobi gruplarıyla alakalı yasal bir düzenleme bulunmamaktadır. Katalanya bölgesinde lobicilik başvurusu için merkez kurulmuştur. İsveç'te lobicilikle ilgili yasal bir düzenleme bulunmamaktadır. Özel Üyeler Tasarısı, Parlamenterler tarafından kabul edilmemiştir. Birleşik Krallık, bugüne kadar lobicilik hakkında pek çok tasarımı geri çevirmiştir. Lobicilik çoğu zaman üyelerin çıkarlarıyla alakalı bulunmuştur. Buna rağmen, 1194'te kurulan Nolan Komitesi, Birleşik Krallık'taki lobicilik tartışmalarının merkezindedir. Fransa'da lobicilik 2016 yılında tasarısı sunulan ve 2017'de kabul edilen Loi Sapin aracılığıyla yürürlüğe girmiştir. Loi Sapin ile birlikte lobi gruplarının başvuruları zorunlu hale gelmiştir. Hırvatistan'da ise lobicilikle alakalı, yasal bir düzenleme bulunmamaktadır. Başvuru gönüllülük esasına tabiidir. İtalya'da ise ulusal seviyede lobicilik konusunda yasal bir düzenleme bulunmamaktadır. Litvanya'da ise 2001'de yapılan Lobicilik Anlaşması ile yasal düzenlemeye gidilmiştir. Başvuru, lobi grupları için

zorunlu tutulmuştur. Polonya’da yasal düzenleme 2006’da yapılmıştır. Lobiciler için başvuru zorunludur. Romanya’da ise yasal düzenleme yapılmamıştır. Başvuru zorunlu değildir. Romanya Hükümeti, 2016 yılında, lobi gruplarıyla halka açık bir başvuru sistemi düzenlemiştir. Slovenya, 2010 yılında lobiciliğe yasal bir düzenleme getirmiş, lobi grupları için Başvuruyu zorunlu hale getirmiştir. Bulgaristan’da lobicilikle alakalı yasal bir düzenleme bulunmamaktadır. Bugüne kadar, konuyla alakalı dört tasarı sunulsa da hiçbiri kabul edilmemiştir. Macaristan’da ise lobiciliğin düzenlenmesi uzun tartışmalara sahne olmuştur. Ocak, 2011’de, sunuların lobicilik tasarısı, Mart 2011’de geçmiştir. Lobi gruplarının kayıtlı başvuruda bulunmama konusu en çok tartışılan noktalardan biri olmuştur. Yunanistan, Belçika, Hırvatistan, Güney Kıbrıs, Danimarka, Malta ve Estonya ise lobicilik üzerine düzenlemede bulunmamış, AB üye ülkeleridir. Sonuç olarak, AB üye ülkelerinde, lobicilik alanında farklı yaklaşımlarda buldukları gözlemlenmiştir. Polonya, Macaristan ve Litvanya gibi ülkeler, lobicilik alanında bağlayıcı düzenlemelerde bulunurken, Balkanlarda Makedonya ve Montenegro gibi ülkelerde lobicilik hakkında düzenlemelerde bulunmuştur. Hırvatistan, Sırbistan, Birleşik Krallık gibi ülkelerin lobiciliği hala tartışma düzeyinde tuttukları gözlenmiştir.

Diğer önemli bir husus ise, Avrupalılaştırma tartışmalarının AB lobiciliği konusuna etkisidir. AB’de lobiciliğin, Avrupalılaştırma etkileriyle orantılı gittiği gözlemlenmiştir. Bu tartışmaya ek olarak, yeni AB üyelerinin etki gruplarına açık olması da diğer bir tartışma konusudur. Bu ülkelere, Çek Cumhuriyeti, Slovenya, Bulgaristan, Romanya örnek gösterilebilir.

Amerika Birleşik Devletlerinde lobicilik, 18.yy’da başlayan uzun bir gelenektir. ABD’ de lobiciliğin ulusal konularla alakalı olduğu kadar, yabancı grupların çıkarları için de yapıldığı gözlemlenmiştir. Bu anlayış, AB’de görülen anlayıştan çok daha farklıdır. ABD’nin Birleşmiş Milletler ve Dünya Bankası gibi uluslararası organizasyonları ev sahipliği yapması da lobiciliğin farklı bir düzlemde değerlendirilmesine yol açmıştır. Örneğin,

lejournalinternational.fr'ın haberine göre saat deęişimleri bile lobi gruplarının ilgi alanında bulunabilir. 25 Ekim 2017 tarihli habere göre, Fransa ve dięer pek çok ülke gün ışığı tasarrufu için düzenlemeye geęmişken, ABD'de golf ve barbekü endüstri lobilerinin etkileriyle bu 4 hafta ertelenmiştir. ABD'de 1787'de başlayan lobicilik kavramının düzenlemelerde görülmesi, ABD'ye lobiciliğin çıkış ülkesi unvanı verse de bütün ABD başkanlarının lobi grupları hakkında olumlu düşüncelere sahip olduğu söylenemez. Örneğin önceki ABD başkanı Barack Obama lobi gruplarının sadece kendi çıkarlarına hizmet ettiğini ve sadece kendi kazanabilecekleri bir oyun kurduklarını belirtmişti. ABD'de lobicilik alanında yapılan harcamaların 2000'li yıllarda gözle görülür bir şekilde arttığı gözlemlenebilir. Dięer bir önemli nokta ise 2007-2016 yılları arasında kayıtlı lobi temsilcilerinin sayılarındaki azalmadır. 2016 yılı verilerine göre, sağlık ve eczane grubu, akabinde sigorta, elektronik, petrol, gaz ve emlakçılık endüstrileri de ABD'de en çok lobi yapan gruplar. ABD'de lobicilik büyük çoğunlukla, lobicilik şirketleri tarafından yapılmaktadır. En önemli lobicilik şirketlerinden bazıları ise, AKin, Gump, Brownstein, Hyatt et al, Squire Patton Boggs, BGR Group, Holland&Knight, Cornerstone Government Affairs ve Podesta Group. AB'de lobicilik yapan Amerikan firmaları, AB lobiciliğinde önemli bir yere sahiptir. Bu firmalara özellikle tütün ve petrol şirketleri örnek gösterilebilir.

ABD ve AB lobiciliğinin benzerlikleri ve farklılıkları anlamak, lobiciliğin AB'deki oluşum sürecini anlamak açısından önemli bir noktadır. AB'deki lobiciliğin ilk aşamalarında olduğu göz önüne alındığında, yasal düzenleme anlamında geri olmasına rağmen, anlaşmalar, pazarlık yöntemlerinin ABD'yle benzerlik gösterdiği gözlemlenebilir.

Şeffaflık prensibi, AB lobiciliği için önemli bir kavramdır. Daha önce de belirtildiği üzere, Avrupa Parlamentosu, lobi gruplarının önemli bir hedefidir. Avrupa Parlamentosunu lobi gruplarının erişimlerini düzenlemek amacıyla Şeffaflık Başvurusu 23 Haziran 2011 yılında kurulmuştur. Bu başvurunun amacı, Avrupa Birliği seviyesinde hangi çıkarların temsil edildiği, kimler

tarafından temsil edildiği, kimin adına temsil edildiği ve hangi bütçelerle temsil edildiği gibi konularla ilgilidir. Bu başvuru, 2014 yılında hem Parlamentonun hem de Komisyonun ortak çalışmasıyla düzenlemiştir. Şeffaflık Başvurusu, kişilere ve kurumlara Parlamento ve Komisyona 12 aylık erişim sağlamaktadır. 2018 verilerine göre, 11.327 organizasyonun başvurusu alınmıştır. Bu organizasyonlarda çalışan kişi sayısı, 82.096'dır.

Bu tezin başlangıç noktası, Avrupa Birliği ve Avrupa Birliği üye ülkelerin lobiciliğin hukuk sistemlerindeki düzenlemelerini ve bu konuya olan yaklaşımlarını incelemektir. Sonuç olarak, ne AB 'de ne de AB üye ülkelerinde, lobiciliğin düzenlenmesi konusunda ortak bir yaklaşıma varılmadığı gözlemlendi. Özellikle Avrupa Birliği seviyesindeki düzenlemelerde, lobi grupları için zorunlu bir başvuru sistemi olmadığı gözlemlendi fakat aynı zamanda Şeffaflık Başvurusu açılarak gönüllü düzenlemenin önü açıldı. Avrupa Birliği seviyesindeki lobicilik faaliyetlerinde, özellikle Avrupa Komisyonuna ve Parlamentosuna öncelik verildiği, lobi gruplarının bu iki AB kuruluşunda faaliyetlerini yoğunlaştırdıkları görüldü. Bütün bunların bir yansıma olarak, lobiciliğin AB kurumlarınca fark edildiği ve bu görünürlüğü hukuk sistemi içerisinde zorunlu olmayan düzenlemeler içerisinde tutulduğu görüldü.

Lobicilik kelime olarak, halk arasında negatif çağrışımlarda bulunduğundan, AB kurumlarınca lobicilik daha çok, çıkar grupları ve temsilcileri şeklinde adlandırılmıştır. Bu noktada, lobiciliğin tanımı önem taşımaktadır. Bu tez için, Avrupa Parlamentosunun ve Şeffaflık Başvuru ajansının tanımları dikkate alınmıştır. Lobiciliğin Amerika'da ortaya çıkan tarihi verilmiştir. Eski Amerikan Başkanı, Ulysses S. Grant'ın çıkar gruplarıyla, otel lobisinde görüşmesi bu grupların adının lobi grupları şeklinde bilinmesine yol açmıştır. Yaklaşık iki yüz yıl sonrasında ise Avrupa Birliğinde lobicilik faaliyetleri başlamıştır. Bu faaliyetler, üç döneme ayrılmıştır. Günümüz AB lobiciliğine gelene kadar, Ulusal ve Brüksel Lobi dönemleri görülmektedir. AB kimliğinin yıllara göre oluşumu, AB lobiciliğindeki yaklaşımları da etkilemiştir. AB'deki

lobiciliğin ilk fazı olan Ulusal Lobicilik anlayışları 1957’de başlamış ve üye ülkelerin çıkarlarını öne alan bir yaklaşım ortaya koymuştur. Avrupa Birliğinin kendine özgü uluslar üstü yapısı ve bu yapının sıkça demokratik değerlerle eşleştirilmesi, lobicilik ve AB’de demokratikleşme tartışmalarını da gündeme getirmiştir.

Lobiciliğin, AB’nin hukuki karar süreçlerini etkilemesi olarak gören bir grup argümanın da olması bu tezdeki önemli noktalardan biridir. Bir diğer önemli nokta ise lobiciliğin AB hukukundaki zemini nasıl hazırlayacağıdır. Bu zemini tartışırken özellikle AB kurucu anlaşmaları dikkate alınmalıdır. Bu bağlamda, Avrupa Birliği Antlaşması ve Avrupa Birliği Kurucu Antlaşması önem taşımaktadır. Özellikle Avrupa Birliği Antlaşması 11. Ve 15. Maddeler ve Avrupa Birliği Kurucu Antlaşması 298, 336, 352. Maddeler lobiciliğin zeminin kurmak anlamında önem taşımaktadır. Fakat belirtilmelidir ki bu maddelerde lobiciliğe doğrudan bir atıf yapılmamaktadır. Bu maddeler ancak gelebilecek olan düzenlemeler için alt yapı oluşturabilir. Karşılaştırmalı olarak bakıldığında bakıldığında ABD’de lobiciliğe direkt olarak atıfta bulunan düzenlemeler görülür. Amerikan Ticaret Odasının, Avrupa Birliği lobiciliğinde aktif olduğu gözlemlenmiştir. Özellikle, petrol, elektrik ve internet odaklı endüstrilerin AB’de lobicilik yapan şirketlerin başında yer aldığı gözlemlenmiştir.

Sonuç olarak, lobicilik AB’de güncelinde olan bir konudur. Lobicilik faaliyetlerinin AB’de 1950’lerde görünürlük kazanması, ABD örneği göz önüne alınca, daha ilkel bir yaklaşım sunabilir. AB üye ülkelerinde ve vatandaşlarında, lobicilik kavramını yabancı bir kavram olarak nitelendirme söz konusu olabilir. Yukarıda örnek gösterildiği üzere bazı AB üyeleri, lobi gruplarının başvurularını zorunlu tutmuş ve bu konuda gerekli yasal düzenlemeyi yapmıştır. Diğer taraftan ise bazı AB üye ülkelerinde bu düzenleme tasarıları birkaç defa geri çevrilmiştir. Lobicilik konusunda, ortak bir uluslar üstü yaklaşım yakalayamamak, AB’de lobicilik konusunda görülen en önemli eksikliklerden biridir. Diğer taraftan Şeffaflık Enstitüsü gibi

kurumların kurulması bu noktada atılan önemli bir adım olsa da başvurunun zorunlu tutulması büyük bir eksiklik. Öngörülebiyecek bir sistem, AB’de lobicilik faaliyetlerinin ve lobi gruplarının kayıtlı bir şekilde, adlarının, adına çalıştıkları kurumların ve kişilerin, aldıkları ücretlerin, verdikleri hediyelerin, lobi yapma amaçlarının açık ve net bir şekilde ibraz edilmesidir. Bu şekilde, lobi gruplarının faaliyetleri daha gözlemlenebilir olacaktır. ABD’deki lobicilik faaliyetleri, dünyada bir ilk olmasından kaynaklı örnek gösterilmiştir fakat bu noktada ABD’nin federal yapılu bir devlet olması ve AB’nin uluslar üstü bir kuruluş olması da karşılaştırma yapılırken göz önüne alınmalıdır. Sistem farklılıklarından dolayı, iki lobicilik çeşidinin de benzerlik göstermesi beklenmemekte, lobi gruplarının faaliyetleri benzerlik gösterebilir. AB’de lobicilik düzenlemeleri hakkında ortak bir fikir birliğine varılması hali hazırda farklı yaklaşımda bulunan üyeler sebebiyle pek mümkün görülmemektedir. AB’de gelecekte oluşturulacak sistemde şu noktalar göz önüne alınabilir. AB’nin kurucu üyeleri arasındaki yaklaşımlar, AB’ye yeni üye olan ülkelerin yaklaşımları, AB’nin bölgesel bir kategoride incelenmesi (örneğin Balkandaki üyelerin yaklaşımları gibi) ve son olarak bütün bu yaklaşımların ekonomik, politik ve hukuki unsurlarla desteklenmesidir. Diğer önemli bir nokta ise AB kurumlarındaki lobicilik konusunda birlikteliklerinin sağlanmasıdır. Şeffaflık Başvuru Merkezinde yapılan Avrupa Komisyonu ve Avrupa Parlamentosu ortak çalışması diğer AB kuruluşlarına da yansımalıdır. Şu anki düzlemde, özellikle Avrupa Parlamentosunda yapılan lobicilik faaliyetlerine öncelik verilmelidir. Avrupa Parlamentosunun kendine has yapısından kaynaklı, lobicilik düzenlemeleri ve uygulamaları konusunda çözüm önerileri gereklidir. AB’ye yeni üye olan devletlerin de AB demokratik değerlerine özgü, lobicilik yaklaşımlarında bulunup patronaj bir prosedürde bu konuyu ele almamaları gerekir.

Lobicilik önümüzdeki senelerde daha da yükselen bir trend olmaya devam edebilir. Devletlerin bunu göz önüne alarak, hem kendi ülkelerinde hem de uluslararası kuruluşlarda bu anlayışı çözümlenmeye çalışmaları ve bu

alıřmaların halka aık bir Őekilde oluřmasının nn amaları beklenebilir. Gnmzn bir geređi olarak lobicilik alıřmalarının yasal dzenlemelerde yerini alması, lobiciliđin olumsuz ađrıřım yapan hallerini de aza indirip, daha Őeffaf ve aık hale gelmesinin nn aacaktır. Lobicilik hem i hem de dıř politikada yerini alırken dıř politikada, ABD rneđinde olduđu gibi bir dıř politika aracı olarak kullanabilir. Yukarıda sayılan lobicilik aktrlerinin hukuk firmalarından, halkla iliřkiler firmalarına kadar olan eřitlilik gz nne alındıđında ok ynl bir yaklařımla izlenmesi ařıkardır. Lobiciliđin karar alma mekanizmalarını etkileme amacı da tařıdıđı dřnlrse, AB karar mekanizmalarına ne derecede llebildiđi de ancak daha Őeffaf mekanizmaların ve daha sıkı kayıt yntemlerinin yerleřmesiyle mmkn olacaktır. Diđer bir nokta ise, Brksel'in AB'deki lobiciliđin merkezi olması hakkındaki tartıřmalarla alakalı. AB'nin nemli kuruluřlarını bnyede barındırmasıyla nemli bir merkez olan Brksel, AB'nin geniřleme srecinde ne lde AB'deki lobiciliđin merkezi olarak kalabilir ve AB'de lobicilik bařka Őehirlerde de nem kazanır mı sorularına yanıtın yakın gelecekte gndeme gelmesi beklenmektedir. AB geniřleme sreciyle pararel olarak, lobicilik alıřkanlıklarının geliřip evrilmesi sz konusu olabilir. Bu bađlamda, yeni dzenlemelerin de bunları gz nne alarak yapılması akılcı olabilir. Lobicilik ok yakın gelecekte de belki farklı adlandırmalarla karřımıza ıkabilir fakat yz yıllardır sregelen gc devam ettirme ve srdrme anlayıřının bir yansıma olarak lobicilik nemini srdrmeye devam edecektir. Lobiciliđin byk Őirketler ve gl lkelerin kullanım alanından ıkıp, orta gteki lke ve Őirketlerde de kullanılabilmesi gelecek iin nemli bir varsayımdır. Bu anlayıř, dnyadaki sregelen g dengelerinin de deđiřmesi adına nem teřkil eden bir geliřme olacaktır.

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