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**LOBBYING IN THE EUROPEAN UNION – WOULD THE TTIP
INCREASE THE DEMOCRATIC DEFICIT IN THE EUROPEAN
UNION?**

Bachelor's thesis

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I declare I have written the research paper independently. All works and major viewpoints of the other authors, data from other sources of literature and elsewhere used for writing this paper have been referenced.

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TABLE OF CONTENTS

ABSTRACT	5
LIST OF ABBREVIATIONS	6
INTRODUCTION	7
1. GENERAL DEFINITIONS	10
1.1. Definition of Lobbying	10
1.2. Methods of lobbying	11
1.3. Interest groups in Brussels	12
1.4. Democratic deficit in the European Union	13
1.5. Preliminary conclusion	15
2. LOBBYING THE EUROPEAN UNION	16
2.1. Development of lobbying in the EU	16
2.1.1. Single European Act in 1986	16
2.2. Lobbying the institutions of the European Union	18
2.2.1. European Commission	18
2.2.1.1. Why is the European Commission so magnetic for lobbyists?	19
2.2.1.2. How to lobby the Commission?	20
2.2.1.3. Corporate secrecy in the Commission	20
2.2.2. The European Parliament	21
2.2.2.1. Powers of the European Parliament	21
2.2.2.2. How to lobby the European Parliament	22
2.2.3. The Council of the European Union	23
2.2.3.1. From the underestimated legislator into important target of lobbyists	23
3. EU LOBBYING AND THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP	25
3.1. Political background	25
3.2. Who lobbies the TTIP?	25
3.3. Democratic deficit and the Transatlantic Trade and Investment Partnership	27
3.3.1. The Transatlantic Trade and Investment Partnership against democracy	27
3.4. Pros and cons of the Transatlantic Trade and Investment Partnership	28
3.4.1. Economic growth	28
3.4.2. Investor-State Dispute Settlement	29
3.4.3. International economical hegemony for the West?	30
3.4.4. A threat to public services?	30
4. CURRENT AND POSSIBLE FUTURE SOLUTIONS	31
4.1. More transparent lobbying in the European Union	31
4.2. The Transatlantic Trade and Investment Partnership – what happens?	32

5. KEY FINDINGS	34
CONCLUSION	36
REFERENCES	38

ABSTRACT

The purpose of this research is to find out if ratification of the Transatlantic Trade and Investment Partnership agreement would increase democratic deficit of the European Union. Lobbying will function as the analytical tool throughout the paper supported by data available on lobbying on the European Union. The first chapter defines lobbying as a term, its methods and how it is organized in the European Union. It is also necessary to examine how lobbying is present in the decision making institutions of the EU which are considered the source of democratic deficit. The final chapter will analyze how the TTIP lobbied by powerful corporations would affect the political field of the EU and undermine democratic principles and values.

Keywords: European Union, lobbying, TTIP, democracy, democratic deficit

LIST OF ABBREVIATIONS

CAP – Common Agricultural Policy

CEO – Corporate Europe Observatory

CETA – Comprehensive Trade and Economic Agreement

COPA - Committee of Professional Agricultural Organizations

CoR – Committee of Regions

COREPER – Committee of Permanent Representatives

DG – Directorate General

EC – European Commission (or sometimes European Council, in this paper Commission)

EP – European Parliament

EU – European Union

ISDS – Investor-State Dispute Settlement

MEP – Member of the European Parliament

NGO – Non-governmental organization

OECD – Organization for Economic Co-operation and Development

QMV – Qualified Majority Voting

SAK - The Central Organization of Finnish Trade Unions

SEA – Single European Act

SG – Secretariat General

TEU – Treaty on European Union

TR – Transparency Register

TTIP – Transatlantic Trade and Investment Partnership

UNICE - Union of Industrial and Employers’ Confederations of Europe

US – United States

INTRODUCTION

European integration has shifted more and more decision-making power from national governments to supranational institutions of the European Union. Along that, Brussels has become the world's second most important place to practice lobbying after Washington D.C. The first organizations to seek representation in the European Union were big industry players in the 50s after trade and competition policy areas moved to Brussels. By 1986 European Union had achieved a single market under the Single European Act. Currently the European Commission is negotiation on a bilateral free trade agreement with the United States called the Transatlantic Trade and Investment Partnership (TTIP).

Delegation of powers over to supranational institutions has created debate and opposition over the legitimacy of the decision-making process of the European Union since the integration. Opponents of the European integration and many scholars such as Hix and Follesdal (2006) argue, that the European Union suffers from a democratic deficit mainly because of lack of polity contestation over political leadership and policies, which is an essential part of even the thinnest democracies. Majone and Moravcsik (1996, 2000, 2002) claim that the EU does not suffer from a democratic deficit, instead it is a problem of 'credibility crisis' and 'question of standards' (Majone 1998).

There are estimated 15,000-30,000 lobby groups currently active in Brussels. It is an estimated number because there is no mandatory register for lobby organizations. In the second chapter I will discuss how the decision-making process works in different European Union institutions in practice. The Council of European Union or just the Council and the European Parliament are the only democratically elected institutions. However we will see that the Commission is the most lobbied EU institution and the most approachable institution although its work is done mainly behind closed doors like in the case of the TTIP negotiations.

Before, the TTIP was negotiated in secrecy but the current situation is that the negotiation mandate is partly public, even though it is still continuously negotiated behind

closed doors. That is why TTIP currently is under a lot pressure from civil groups and other actors looking for more transparency. In addition to trade, it contains mechanisms such as the ISDS that could undermine democratic principles. In chapter 3, I will analyze how TTIP regulations could possibly influence democracy and to what extent. Most of the data on TTIP and its content is gathered from various seminars and debates I have participated in. Antti Kuusisto, an adviser for International Affairs at The Central Organization of Finnish Trade Unions was mostly the spokesperson for TTIP. Professor Martti Koskenniemi of International Law in University of Helsinki and politician and activist Thomas Wallgren, who is also of a member of board in Corporate Europe Observatory, offered a more critical approach to TTIP. The data will be supported by my individual analysis.

The first chapter aims to find what lobbying in democratic systems and more precisely in the European Union is. I will define lobbying as a term and examine how it is perceived in democratic systems. In order to know how lobbying works in the European Union, we must also take a look into methods of lobbying to support the following chapters that will answer my research question “Would TTIP agreement increase the democratic deficit in the European Union?” The chapter will also characterize lobby groups active in Brussels and how they are distinguished at the European level.

In order to know what kind of effect lobbying has on the democratic deficit in the European Union it is necessary find out how it affects the decision-making process. To do so, the second chapter will go through the most important European Union institutions and their decision-making processes. First, the chapter takes a quick look on the history of lobbying in the European Union and the most important treaties that have amended the legislative, executive decision-making process. Then I will examine how they are formed and managed in order to find out their democratic legitimacy. Especially the functions of the European Commission are given emphasis because of the TTIP agreement. The chapter will find out why each institution attracts lobbyists and which methods lobbyists use to influence to decision-makers.

The third part of the paper will answer my research question - 'will ratification of TTIP agreement increase the democratic deficit of the European Union'. The aim as well is to show why lobbying, democratic deficit and TTIP are so closely related. First I take a look at the political background of the agreement. Then I will examine who lobby for the TTIP. The information is mainly based on data gathered by the Corporate Europe Observatory from

2012 to 2014 under the Regulation EC 1049/2001 on right of access to documents in the EU treaties. The argument of democratic deficit will support my analysis throughout the chapter and we will see which parts of the agreement could increase the deficit and how. I will include argued positive outcomes of the agreement in order to achieve more depth in the evaluation. Before concluding the paper I will summarize my key findings and offer possible future solutions for improving the democratic deficit and also the future of the TTIP.

1. GENERAL DEFINITIONS

1.1. Definition of Lobbying

Political scientists have very different views on the perspectives on lobbying. Many scholars emphasize the importance of lobbying in policy-making process (Richardson 2006, Bouwen 2001) and the exchange theory, which results in exchange of ideas, information and expertise between lobbyists and officials (Coen 2007, Bouwen 2001). In general lobbying is the practice of individuals and organizations trying to influence opinions of rule-makers. The word originates from the word ‘lobby’ where members of parliaments used to gather before and after debates. However, there is no consensus on what the term actually means (OECD 2012) and the word ‘lobbying’ is rarely used twice to mean the same thing by those researching the topic (Baumgartner, Leech 1998).

A lobbyist or interest representative does not seek to be elected, but to influence policy (Hauser, 2011). Pluralist governmental systems require balanced participation and thus lobbying can provide technical information that legislators need and do not otherwise have access to. Therefore Jaatinen (2003) considers lobbying an essential part of democratic system. According to Council of Europe, pluralism of interests is an important element of democracy, however unregulated it can undermine democratic principles and good governance. Lobbying can target local, regional, national or transnational level decision-making and more precisely, different branches of government: judicial, legislative, executive (OECD, 2012) and also the fourth power, media. Some even critically call lobbying the fifth power (Leif, Speth, 2006).

Lobbying is often criticised because of better accessibility of certain interest groups into the decision-making process. Some groups, such as corporate groups, have comparative advantage in terms of organizational capacity and financial resources (Coen 2007) than for

example human rights or environmental groups and thus they have much better access to political resources.

Lobbyists' resources are not necessarily financial means but several other factors play an important role: information, legitimacy, representation, knowledge and expertise (Zibold 2013). Coen (1997) calls this 'elite pluralism', a system where only certain strategically valuable actors have access to policy forums and decision-making. The European Commission (2011) sees lobbying as a 'legitimate part of the democratic system, regardless of whether it is carried out by citizens, companies, or firms working on the behalf of third parties, lawyers, or public affairs professionals'.

1.2. Methods of lobbying

The methods of lobbying are divided into direct and indirect lobbying. Direct lobbying is the more traditional view of lobbying mainly concentrating on the higher levels of decision-making process by personal communication (Milbrath 1963), unlike indirect lobbying that targets many different levels and phases of decision-making process including third party communication (Köppel 1998, Jaatinen 2003). Third party communication means that it can be done via umbrella organizations or platforms such as WTO. Milbrath also puts emphasis on the fact that all lobbying includes systematic communication, although it does not necessarily mean persuasive communication according to Berry (1997). Direct ways of lobbying go straight from lobbyists to the targets that can be a person, committee, platform or even wider audience and offer a wide range of informal and formal approaches (van Schendelen 2010) like indirect lobbying.

Traditionally only direct and informal communication is considered lobbying (Milbrath 1963), but modern political scientists, for example van Schendelen (2010), emphasize that using various channels is necessary for effective lobbying. Van Schendelen points out that the most successful lobby groups choose the most effective lobbying option (direct, indirect, formal, informal) in accordance to the 'arena situation'. However, he claims that every lobby group primarily chooses indirect and informal way of lobbying if such is available as they offer less visibility and thus, less also external visibility.

1.3. Interest groups in Brussels

According to report by Council of Europe on lobbying in 2009 and article by Corporate Europe Observatory in 2011, it is estimated that there are between 15,000 and 30,000 interest groups active in Brussels out of which more than 2,600 have permanent offices there and perform lobbying activities within the EU institutions. There are many types of groups with very different objectives, for example corporate lobbyists, environmental lobbyists, contract lobbyists and not-for-profit lobbyists (OECD 2012). However, some organizations active in Brussels, like think-tanks or law firms, do not consider themselves as 'lobby organizations' (Zibold 2013).

Zibold offers three ways to distinguish lobbying organizations in Brussels - their organizational form, the nature of their interests and whether they are seeking profit or not. The joint EP-Commission Transparency Register (2011) distinguishes the organizational form in six following ways: (1.) law firms, professional consultancies and self-employed consultants (2.) In-house lobbyists and trade/professional associations including trade unions and companies (3.) NGOs (4.) Think-tanks, research and academic institutions (5.) organisations representing churches and religious communities and (6.) organisations representing local, regional and municipal authorities, other public or mixed entities, etc.

Nature of interest is divided into two groups, sectional groups and cause groups. According to Zibold, sectional groups represent interests of particular sectors and their members, for example agricultural sector and farmers. Cause groups do not necessarily lobby for the profit of their members, but they rather have a common cause, such as issues concerning the environment or health. Therefore cause groups do not generally have restricted membership. Finally Zibold distinguishes lobbying organizations by their interest in making profit. In general, there are two ways of lobbying, negative and positive. Profit-influenced lobbying is mainly positive lobbying as it seeks to influence policymakers toward acting for favourable regulations or directives but it can also be negative lobbying when efforts are made to block or derail unfavourable legislation, which can cause financial loss (Hauser, 2011).

According to survey "*Effective Lobbying in Europe – The View of Policy-Makers*", conducted in 2013 by Burson-Marseller, 66% of the participants associate lobbying with trade

associations followed by public affairs agencies (58%) and professional organisations (57%). Journalists (14%) and citizens (15%) were considered the least matching with the description of lobbying. The respondents included members of national parliaments, Members of the European Parliament and senior officials from national governments and EU institutions. Statistically, business and professional organisations represent 76% of EU interest groups (Greenwood, 2003). According to LobbyFacts (2014), US corporations spend the most on EU lobbying.

1.4. Democratic deficit in the European Union

Democratic deficit within the European Union is a concept that is based on the argument that the European Union and its institutions lack of democratic legitimacy because of its complex nature of decision-making process and inaccessibility for ordinary citizens (Teló 1995). Institutionally the term refers to the fact that directly elected European Union institutions have far less power than the other institutions of the EU. The democratic deficit has been a subject of political debate since the 70s. Efforts to increase democratic legitimacy have been made in various treaties such as the Maastricht, Amsterdam and the Nice Treaty by for example extending the co-decision procedure of the Parliament and the Council of Ministers.

Scholars such as Giandomenico Majone and Andrew Moravcsik argue, that EU does not suffer from democratic deficit. Majone (1994, 1996) describes EU as a ‘regulatory state’, in which “regulation is about addressing market failures” and should not be democratic in the classical meaning of the term (Hix, Follesdal 2006). In his view, the EU rather suffers from credibility crisis (Majone 2000) and thinks that the solution is more transparent decision-making, ‘*ex post*’ review by courts and ombudsmen, greater professionalism and technical expertise, rules that protect the rights of minority interests, and better scrutiny by private actors, the media, and parliamentarians at both the EU and national levels’ (Hix, Follesdal, 2006).

Hix and Follesdal (2006) argue that the European Union suffers from democratic deficit mainly because of lack of democratic polity contestation over political leadership and policies, which is considered an essential element of democratic systems. As there is ongoing

debate on the existence of democratic deficit and no consensus on the meaning of the term, Follesdal and Hix (2006) offer a 'standardized' version to define the phenomenon of democratic deficit.

First the importance of European integration is emphasized. The delegation of policy-making power over to supranational executive bodies is commonly the most argued issue in the debate over democratic deficit. At national level, executive bodies are accountable to national parliaments that have the power to dismiss the government and in turn, the parliaments are accountable to the voters. However, at the EU level policy-making is dominated by executive actors namely the Commission and the Council. The problem is that actions of the executives are beyond the control of national parliaments and thus governments can ignore their parliaments at the European Union level.

In turn the second point argues that the powers of the European Parliament are too weak in relation to the Council and Commission. Increase in the powers of the European Parliament has been suggested by many academics (Williams 1991, Lodge 1994) in order to reduce the democratic deficit (Hix, Follesdal 2006). Efforts have been made throughout the development of EU and dramatic changes have indeed been made in the reformed EU treaties. The EP has equal decision-making power with the Council under the co-decision procedure. Still Follesdal and Hix emphasize that most legislation is passed under the consultation procedure in which the EP has only limited power to delay. Although the Parliament has the right to veto on the formation of the Commission, the governments still set the agenda. I will take a more detailed look into EU decision-making process in the following chapters, but in short, 'in no sense elected is the EU executive elected by the European Parliament'.

The third point takes into account one important feature of democracy – elections. The Members of European Parliament and national governments are elected by EU citizens. There are no 'European elections' that would directly set the agenda for EU policy-making, instead the elections only have an indirect influence. The fourth point claims that even if the powers of the European Parliament were increased so that they would have direct affect influence on EU agenda, the decision-making process is still too different from the processes of domestic democratic institutions. Therefore EU citizens cannot understand the process and thus have lack of interest to vote. The fifth and final point of Hix and Follesdal is concluded by the previous arguments is that the EU decision-making process allows the EU to adopt policies that are not supported by the majority of EU citizens.

1.5. Preliminary conclusion

In conclusion, there is no general term for lobbying, but it seeks to influence policy-making process in a negative or positive way. Lobbying takes place in various levels of decision-making and governmental branches and is seen as an important part of democratic system as it provides balanced participation and represents good governance and democratic principles. However, majority of lobbyists that participate in decision-making process have significant comparative advantage towards other lobbying organisations. These organisations are mainly financially resourceful business groups and thus lobbying is criticized for elite pluralism. The methods of lobbying are direct, indirect, formal and informal lobbying. In Brussels, the centre of EU institutions, there is over 15,000 lobbyists trying to influence EU decision-making most of which are working for business or professional organizations. Lobby groups are generally distinguished by their organizational form, nature of interest and by their intentions of making profit.

There ongoing debate on the democratic deficit of the EU. Some even argue that there is no democratic deficit (Majone 1994, 1996) and describe EU as a regulatory state, which does not need to be democratic in the classical meaning of democracy and is rather a tool for addressing market failures. However Hix and Follesdal (2006) claim that there is a democratic deficit in the European Union and offer a standardized version for the term. In conclusion, there is a democratic deficit in the European Union mainly because citizens and directly elected MEPs have no power in influencing EU policy agenda and the executives are beyond parliamentary national supervision. Thus the EU can adopt supranational policies that are not supported by the majority of EU citizens.

2. LOBBYING THE EUROPEAN UNION

2.1. Development of lobbying in the EU

The centre of institutions of the European Union has become the second most important place to practice lobbying in the world after the U.S capital Washington D.C (Marziali 2006). Lobbying history of the European Union dates back to late 1950s, when European organizations started to enter the European stage. The first were the representatives of employers, industry and commerce and farmers such as: UNICE in 1958 (Union of Industrial and Employers' Confederations of Europe), CEEP (Centre of Enterprises with Public Participation and of Enterprises of General Economical Interest) in 1961, Eurochambres (Association of European Chambers of Commerce and Industry) in 1958 and COPA (Committee of Professional Agricultural Organizations) in 1958 (Karr 2007).

However, European Union (then known as European Community) did not have centralized political power in its early stage and thus lobbying was mainly focused on the governments of the Member States, trade associations and other channels to influence national representatives (van Schendelen 2006) and therefore national route was the most common route of lobbying the EU. The members of the predecessor of the European Parliament, Common Assembly, were appointed by national governments. In 1979, the Members of European Parliament were directly elected for the first time. Since then, the European Parliament participated actively in forming the European Union and has been delegated more decision-making power.

2.1.1. Single European Act in 1986

What really started the lobbying boom in Brussels was the Single European Act (SEA) signed in 1986. The main objective and goal of SEA was to create an internal (single) market

and to reform decision-making process in such way that it would be possible to achieve market liberalization. Previous legislation process required unanimity of the Council and thus decision-making process required institutional changes.

According to the official website of the European Union, most notable changes were made at the 'level of the decision-making procedure within the Council, the Commission's powers, the European Parliament's powers and the extension of the Communities' responsibilities '. These factors started to shift lobbying activity from national level to European level and businesses started to get more and more involved in each level of decision-making, including national and regional governments and EU institutions (Directorate-General Internal Policies 2007). Coen (2007) called this 'Europeanization of lobbying'.

The reason behind Europeanization of lobbying was that important policy areas such as health and safety, employment, environmental standards and competition law gradually began functioning at the European level, because member states began delegating their regulatory power to European Union (Coen 2007, Mazey and Richardson 2006). The SEA 1992 plan to transfer from Common Market into single market succeeded and was signed in January 1993. By then all interest groups, professional lobbyists and consultants headed towards Brussels (Abromeit 1998, Mazey et al. 1993) and it was estimated that there were over 2000 active lobby groups (European Commission 1992).

Another important factor that SEA introduced on lobbying was Qualified Majority Voting (QMV) in decision-making process of larger range of policy areas that previously required unanimity of the Council and thus national governments lost their veto-power. Also TEU in 1992 was an important event in the development of lobbying in the EU as it introduced the Committee of Regions and the principle of subsidiary and thus many regional and local authorities moved to Brussels to directly represent their interests (Marzialli 2006). Late 1980s and the beginning of 1990s was the most significant time for EU lobbying as the EU institutions become more powerful. Previously lobbying was mainly concentrated on national governments. Especially along SEA more power was delegated to the European Parliament in order to reduce democratic deficit but at the same time it opened more channels for lobbyists.

2.2. Lobbying the institutions of the European Union

The EU has a very unique institutional set-up and machinery that can implement binding legislation to every member state. Therefore Brussels, home to the main EU institutions (except Court of Justice which is in Luxembourg) became the centre of interest groups influencing European affairs. The main legislative institutions are the European Commission, the Council of European Union (Council of Ministers) and the European Parliament. Thus, they are very attractive targets for lobbyists.

In order to influence the EU decision-making procedure, interest representatives must first choose between the lobbying routes the multilateral EU decision-making system has to offer. Traditionally there are two available routes for lobbying the EU, national route and the so called 'Brussels' route for EU institutions. As mentioned in chapter one, there are direct and indirect ways of lobbying. The EU route is considered more accessible and direct way for lobbying and national as the indirect route (Greenwood 2007). European institutions have less publicity with citizens and associations (Lehmann 2007) and interest representation is mainly informal.

2.2.1. European Commission

The Commission consists of the College of Commissioners and Services of the Commission. The Services are divided into Directorates Generals (DGs) and it has over 24,000 permanent civil service personnel. Bache (2006) calls the Commission the bureaucracy of the EU and compares the DGs to national civil service departments. "They fulfill many of the same functions: policy development, preparation of legislation, distribution of revenues, monitoring of legislative implementation, and provision of advice and support to the political executive" (Hix 2005).

The College of the Commissioners consists of Commissioners (one per each Member State) and their cabinets. The cabinets monitor the DGs and are the eyes and ears of the Commissioners. Draft proposals that have been prepared in Services have to go through the College of Commissioners for final approval (Bache 2006).

2.2.1.1. Why is the European Commission so magnetic for lobbyists?

The European Commission is the largest institution of the European Union and the legislative agenda-setter with the right to initiate and draft legislative proposals (Pollack 2003). As such the European Commission is generally considered as the most important EU institution for lobbying (Coen 2007, van Schendelen, Bouwen 2001, Greenwood 2003).

In order to understand why the Commission is so attractive for interest groups, Bouwen (2006) examines the responsibilities of the Commission in three sections:

- (1) The legislative role of the Commission;
- (2) The executive role of the Commission and;
- (3) The role of a guardian in legislative framework.

As legislative procedure begins from the Commission, it is heavily dependant on external sources on technical and political information (van Schendelen 2003). That is also why the Commission is the place for various conferences, workshops and forums (Broscheid, Coen 2003). The most important factor for lobbyist is correct timing (Kapanen 2014), to be in the right place at the right time and thus lobbyists and interest groups target the easily approachable Commission and also because the EC is so dependable on external information, it has not been eager to limit lobbying that targets it (Greenwood 2003).

The Commission is the executive power of the European Union and manages, supervises and implements EU policies (Nugent, 2006). Perhaps the most important policy that the EC has power to implement, is competition policy (McGowan, Wilks 1995). The Commission also manages EU finances and the budget, which the Council and the EP approve by the co-decision procedure. Famously the biggest budgetary expenditure is Common Agricultural Policy (CAP), which was 41% of the EU expenditure in 2012 (DG Agriculture and Rural Development 2014) but the EC also funds lobbying and thus the Commission's financial power attracts interest groups.

The role of the Commission as the guardian of legislative framework attracts lobbyists as well. Whenever individuals, organizations or businesses feel their rights being damaged by the alleged illegal actions of another party may and do lobby the European Commission to bring such suits' (Bouwen 2009). While it was previously seen too risky to take legal action

against the Commission, it is nowadays a normal procedure for companies to defend their interests' in accordance to binding EU legislation (Coen, Richardson 2009). For now, it is not possible for companies to take legal action towards national governments. However, this might change if the proposed TTIP agreement is ratified.

2.2.1.2. How to lobby the Commission?

The Commission can be lobbied directly in a formal or informal way. As previously mentioned, the Commission is the most appealing target for lobbyist. But how to lobby such big machinery as the Commission? All the preparatory work is done on the lower levels of Commission officials who are more easily accessible than higher level officials (Bouwen 2009) and therefore, lobbyists can offer their expertise from the beginning of the policy-making process informally for example by invitation to opera, or in a formal way such as holding a conference or presenting a position paper.

According to Corporate Europe Observatory (2007) in fact only the adaption and implementation phases of the Commission take place in the working groups, committees and council groups consisting of government representatives that are set up by other EU institutions and member states. Their working functions are more managerial (Coen, 2009) and therefore they should be approached in terms of negative, blocking lobbying rather than positive lobbying that should be done in early phases of preparatory work.

The drafting phase happens in expert groups consisting of thousands of national and private experts. There are two types of expert groups, formal and informal. Formal groups are established by the Commission itself and informal by DGs with the agreement of SG. According to the Commission's report on expert groups, most of the groups are informal. Thus it is relatively easy for lobbyists to approach the Commission and offer their expertise on issues they are aiming to influence already in the earliest phase of the decision-making process.

2.2.1.3. Corporate secrecy in the Commission

According to recent report from Corporate Europe Observatory (4/2015), before TTIP trade negotiations corporate lobby groups have taken measures to form "trade secrets" into

intellectual property in order to make trade secret theft illegal. The report is based on documents exchanged between the DG Internal Markets and corporate lobby groups. The findings also point out that DG Internal Markets and lobby groups have lobbied inside the Commission other DGs, the Council and also the European Parliament.

The purpose of the draft legislation was to keep TTIP negotiations in secrecy and prevent possible leaks because 'reference was often made to the upcoming TTIP negotiations to justify the action, as comparable legal action was being drafted in the US, and direct lobbying of TTIP negotiators to get trade secrets protected as IP under TTIP was undertaken'. The report shows how much influence corporate lobby groups have in the European Union institutions, especially in the Commission in the form of expert groups.

2.2.2. The European Parliament

Lobbying on the European Parliament (EP) has increased proportionally along the growth of its powers as previously discussed. The EP passes and debates the EU laws together with the Council, performs as a watchdog over other EU institutions especially over the Commission and supervises and adopts the budget. The parliament consists of 751 directly elected Members of European Parliament (MEPs) that are elected every five years and are organized into groups by their political affinity.

2.2.2.1. Powers of the European Parliament

'With the extension of its legislative powers over the past 20 years, the European Parliament has become an equally important addressee of companies, trade associations, public affairs consultants, and citizens' action groups' (Lehmann, 2009). Many believe that the co-decision procedure gives the EP maximum influence over legislation (Bache, 2006). In co-decision procedure, which is now called the ordinary legislative procedure, the EP and the Council discuss legislative proposals of the Commission in reading sessions. If the Council and the EP cannot agree after two readings, a Conciliation Committee is formed until an agreement is reached. After that, the EP and the Council have to agree in the third reading to pass the legislative proposal. This means that the EP has equal legislative power with the Council and within each treaty the policy area obliged to co-decision procedure has increased.

After the Treaty of Nice, only a few policy areas such as agriculture are beyond the co-decision procedure.

2.2.2.2. How to lobby the European Parliament

In terms of lobbying the Parliament, it is important to know how the legislative procedure works in practice. MEPs, the main targets of lobbying in the EP, are relatively easy targets individually because in general they lack unity and group discipline. Strong group discipline, also known as party discipline, is common in national parliaments, however 90% of MEPs still vote accordingly to their group interest rather than their own (Raunio, 1998).

Lehmann (2009) summarizes four access points for influencing policies via the EP:

- (1) Appointment of the rapporteur
- (2) Committee work and negotiations
- (3) Later negotiations, in particular the Conciliation Committee
- (4) Plenary readings and voting

Appointment of the rapporteur is a crucial stage for lobbying the EP. The rapporteur writes a report on certain issue adopted by his or her committee proposing resolutions or amendments to be voted in the plenary session. It is the most appreciated task that MEPs can be elected to during their five-year term in the Parliament. For preparing the report, the rapporteur receives help from the committee but also from external sources. Thus lobbyists can influence negotiations by lobbying the MEP and his/her office responsible of making the report or by taking part in the discussions if external expertise is required.

According to Lehmann it is important to understand the phases of committee work in terms of lobbying because then lobbyists know the correct time to act. Negotiations take place in various phases of committee work such as early exchanges of views, preparation of working documents, draft reports and hearing of opinions from other committees. Of course, the earlier lobbying begins the better.

During later negotiations interactions with the Council and the Member States become important if the Conciliation Committee is formed. It means, that the Council and the Parliament have not reached an agreement and with the help of the Commission a mutually

accepted text must be formed. If the proposal is not adopted by the Council (by QMV), by the Parliament (by absolute majority) or by neither of them, the measure will fail. Thus for later negotiations, interest groups that profit from negative lobbying should act. It is rare to regain the position that was lost during the negotiations in the leading committee (Lehmann, 2009).

Finally comes the most difficult lobbying phase - votes and readings. It is the final stage of the EP decision-making and also the hardest stage to influence. Political groups strictly control the votes by taking 'common position' in the plenary although no MEP is forced to vote accordingly. Therefore interest groups must act quickly when lobbying opportunities arise.

2.2.3. The Council of the European Union

The Council of the European Union, previously called and still sometimes referred to as the Council of Ministers (CoM), consists of national ministers of each member state. Most importantly, as previously discussed, it passes EU laws together with the Parliament. The Council calls upon ministers of certain policy areas for discussion, for example agricultural ministers discuss matters concerning agriculture and fisheries. Thus the Council is not a single legal entity but meets in different configurations.

2.2.3.1. From the underestimated legislator into important target of lobbyists

Along the Treaty of Lisbon, which was ratified in 2007, qualified majority voting became the major rule in voting for all aspects of trade issues. However, unanimity remained for cultural, audiovisual, social, educational and health services (Article 207 of the Lisbon Treaty). The unanimity rule grants Member States the power to veto from mandates that violate their national public services in the sphere. When it comes to the preparation and decision-making process of the Council, most of the process does not in fact happen among the ministers, but in working groups, the Committee of Permanent Representatives (COREPER) and technical groups. In 1997, Hayes-Renshaw and Wallace estimated that over 85% of Council decisions are made at the level of COREPER or at the lower levels. Bache explains this by the expectation that 'negotiations in COREPER and technical committees are more likely to be

oriented to problem solving than to bargaining', because they meet more frequently and less political and more concerned with technical issues than ministers.

COREPER consists of ambassadors of the member states and in short their main task is to co-ordinate the work of the committees and to look over the reports that go to the ministers. The ambassadors are direct representatives of member states, however their role is considered very two-fold as they develop close relationship with their colleagues. Thus, every COREPER member wants their country's interests to prevail, but they are ready to make concessions in matters that are not primary for their country and more important to the others (Hayes Renshaw et al. 1986). This is called the 'EU bargaining' and is explained for example by the game theory. As the Permanent Representatives are in a continuous process of bargaining with the same partners, 'in the language of game theory, they are involved in iterated games (i.e. the same game is repeated several times with the same participants)' (Bache, 2006), which is not that obvious for the ministers as they are occupied with many other concerns and primarily represent their national interests.

The members of the technical groups, which in turn assist COREPER, are also national representatives. Technical groups are the problem-solving element of the Council and thus, the members put more value on technical expertise than political aspects and nationality (Beyers and Dierickx, 1998). Hayes-Renshaw compares the Council and its hierarchical structure to an iceberg, as its tip is only visible and the rest is hidden beneath the surface.

3. EU LOBBYING AND THE TRANSANTLANTIC TRADE AND INVESTMENT PARTNERSHIP

3.1. Political background

The Transatlantic Trade and Investment Agreement also known as the TTIP is a bilateral trade agreement negotiated between the European Union and the US affecting mostly regulatory trade barriers to boost market growth mainly for big businesses. The agreement also includes ISDS-mechanism, an external arrangement for monitoring possible conflicts in compliance to the agreement. It is the most opposed part of the agreement because ISDS would allow investors to sue Member States if they consider that their policies are causing loss in profits and the arbitrators can be practicing advocates outside the public justice system. That is also considered the most undemocratic feature of the agreement besides the fact that the agreement has mostly been negotiated in secrecy in the Commission.

Trade liberalization and reduction of trade regulations has been very useful for economic growth in the European Union and SEA succeeded in boosting economies for Member States. However, trade barriers between EU and the US are already low (EC) and thus TTIP is not necessarily needed for economical boost.

3.2. Who lobbies the TTIP?

As the TTIP would boost market growth for big businesses, lobbying activity is highly present during the TTIP negotiations. Corporate Europe Observatory has conducted many statistics and articles on TTIP lobbyists. Under the Regulation EC 1049/2001 on right of access to documents in the EU treaties via the asktheeu.org platform, which is an online

platform for requesting documents directly from EU institutions, the CEO has obtained data on the external participants of preparatory work on TTIP. Reply must be received within 15 working days in accordance to the Regulation. According to CEO's report in 2014 on "Who lobbies most the TTIP", in the early stages of TTIP preparations in 2012 and 2013, the European Commission's DG Trade was lobbied by 298 stakeholders and 269 of them were from the private sector. In addition of 560 consultations, debates and behind closed doors meetings, 520 were with business lobbyists and 93 of them were of US origin. According to the report, the five lobby groups with most encounters during early preparations with the Commission were BusinessEurope, ACEA, Eucolait, US Chamber of Commerce and American Chamber of Commerce. These groups represent multinational corporations such as Coca Cola, Nestle, Apple and BMW.

The report also shows how lobbying demands of powerful lobby groups actually meet realization. BusinessEurope and U.S Chamber of Commerce, lobby groups that represent corporate interests have been actively involved in the TTIP negotiations responding to the consultation requests of the Commission. In the documents obtained by CEO, in 2012 these two groups proposed an act on 'regulatory co-operation', allowing business lobbyists to "co-write legislation". The report further shows how the Commission continued working with these lobby groups and eventually in 2014, documents on EU negotiation position for regulatory cooperation leaked.

The percentage of environmental organizations, consumer groups and trade unions was only 4%, 26 of 560 meetings and none of the top 25 stakeholders during preparatory phase of TTIP were NGOs or trade unions. The situation did not change in 2013 and 2014, and according to research conducted by Friends of the Earth Europe (2014), only 19 meetings with external stakeholders were held with public interest groups out of 154 meetings in DG Trade. However, 113 meetings were held with multinational corporations and their lobby groups. According to CEO (2014), most of the businesses participating in the preparatory phase of TTIP were headquartered in the US, Germany and the UK. In contrast, none of the businesses DG Trade encountered were businesses from poorer EU countries.

Finally, the problem of transparency emerges. More than 30% of private lobby groups taking part of the preparatory work of the DG Trade on TTIP are not registered in the Transparency Register (CEO 2014). General Motors for example, can be found on the list of the meetings with stakeholders in 2012-2013 provided by the Commission's DG Trade at the

request of CEO, but not in the EU Transparency Register. Also, the CEO's requests for documents on TTIP lobbyists were continuously delayed as seen in the correspondence between Oliver Hoedeman and DG Trade (Asktheeu.org 2013-2014). The request was sent on 14th of April and despite the Regulation, Hoedeman received the list of stakeholders on 18th of July 2013.

3.3. Democratic deficit and the Transatlantic Trade and Investment Partnership

As we saw in previous chapter, the decision-making processes in the European Union institutions are already suffering from democratic deficit because they are so accessible to informal external actors and most preparatory work is done by expert groups that have not been elected democratically. Many proposed features of the TTIP undermine democratic principles and not only it would shift European Union towards even more supranational organization, which is the one of the cores of democratic deficit in EU, it would delegate more power to external actors, namely powerful multinational corporations.

3.3.1. The Transatlantic Trade and Investment Partnership against democracy

The negotiation mandate of TTIP was classified until the Council published it in later 2014. The secret mandate, drafted in Commission with the help of expert groups, will however once again be invisible if TTIP is ratified, because the decision-making process does not only start from the Commission, but also ends there as it holds executive and regulatory power in trade aspects. It means that the aftermath of the treaty would happen again with the help of expert groups and the implementation of the ratified treaty into practice can be ambiguous.

In April 2015 Corporate Europe Observatory published a report about a leaked TTIP proposal that forms a plan on 'regulatory cooperation', which according to civil society groups is 'affront to parliamentary democracy'. The author of the report Lora Verheecke explains that the proposal would 'force laws drafted by democratically-elected politicians through an extensive screening process' and 'laws will be evaluated on whether or not they

are compatible with the economic interests of major companies. Responsibility for this screening will lie with the 'Regulatory cooperation body, a permanent, undemocratic, and unaccountable conclave of European and American technocrats'. In other words external actors as in multinational companies in this case too, would gain much more political power. Not only would this affect future drafting phases of laws, but it will also affect current laws such as environmental or public health care laws: "1. When a regulatory exchange on a planned or existing regulatory act at central level is requested under Article 9 paragraph 3, or Article 11 paragraph 2, it shall start promptly. 2. With regard to planned regulatory acts at central level, regulatory exchanges may take place at any stage of their preparation 14. Exchanges may continue until the adoption of the regulatory act".

3.4. Pros and cons of the Transatlantic Trade and Investment Partnership

3.4.1. Economic growth

Antti Kuusisto (2015), adviser for International Affairs at The Central Organization of Finnish Trade Unions (SAK) summarizes well the most commonly argued pro-TTIP points. His first point was that if EU ratifies the TTIP it will give EU and the US the power to regulate the whole world economy as the biggest market area and gives them a hegemonial position as the "high standard economy". Also, TTIP would make EU-US market area a considerable competitor for China and Asia. Second and the most commonly used point that was previously mentioned, is that if EU ratifies TTIP it will boost economic growth of both areas. Abolition of tariffs ensures economic growth and thus would boost economies and salaries. Industries would have more competition and higher productiveness and EU citizens would have higher purchasing power. The assumption is that the profits go from the corporations to the society and eventually to the individual. However, it is possible that only a small elite would profit from the agreement, as it is very hard to predict the economic outcomes.

3.4.2. Investor-State Dispute Settlement

Kuusisto, a representative for trade unions claims the effects of the treaty have been largely exaggerated. Kuusisto adds that deregulation many are afraid of is very unlikely. By deregulation he refers mainly to ISDS and its measures against government policies if they threaten their profits. If a government lost a case against a company, it could lead to abolishment of i.e. environmental policy and sanctions paid from budgetary funds. For example, Ecuador accused an American multinational energy corporation Chevron Corporation for polluting Amazon area and demanded compensations of 9 billion dollars. As an outcome Ecuador was found guilty of fraud and racketeering against Chevron by International Arbitration Tribunal and U.S Federal Court (Chevron Official Website, 2015). Chevron also used high profile representatives such as Bill Clinton's former Chief of Staff Mack MacLarty to lobby Obama Administration to end the allegations against Chevron (Reuters, 2009). However Kuusisto and many other TTIP supporters do not consider ISDS as a threat because "it can be amended", but as amendments are drafted in Commission DGs and working groups using external expertise behind closed doors, business lobbyists can still have major influence.

Martti Koskenniemi (Public Debate on TTIP, 2015), professor of International of Law in University of Helsinki argues why ISDS should not be included. The EU and US already have most developed legal systems in the world, why should investors and external actors get involved? In addition to EU institutions, it would grant lobbyists even more routes to decision making processes and deepen the democratic deficit of European Union. Removing the ISDS from TTIP has been suggested by e.g. by European Council for Foreign relations, Atlantic Council and Cato Institute. In 2014 the European Commission also held a public consultation on ISDS resulting in 88% negative votes out of 150,000 European citizens (Euractiv, 2015). Later the former Trade Commissioner Karel the Gucht announced in 2014 that "They should realise there will be no TTIP without an ISDS" (Reuters, 2014).

The Investor State Dispute Settlement would also increase the power of multilateral companies interests in EU decision-making process (Koskenniemi, 2015). Like in the Ecuador-Chevron case, it would allow multinational companies and their lobbyists to persuade Member States to regulate policies towards their favour, if not, they can sue them. The litigation costs can reach to billions of dollars and they are taken from budgetary funds,

which threatens e.g. debt rescheduling. Therefore it highly undermines democratic principles if TTIP is ratified without the consensus of European citizens.

3.4.3. International economical hegemony for the West?

First of all EU is already the most attractive investment area in the world (2012, ICRG). TTIP has been called the “economic-NATO” by Hillary Clinton (Ignatius, 2012), because of economical competition with Asia, especially China. Assumingly, China would take over ruling the international markets. Basically this means that a bad TTIP-agreement would still be better than worse trade agreement with China. Wallgren (2015) explains that EU should not reduce its social norms in working life, consumer protection nor democracy because of economical and political threat of China. Vice versa, EU can positively influence global development by evolving social, economical and ecological policies in its own politics and also trade relations. Thus, it is wrong to assume that we need to undermine our democratic principles for high standard economy. It is also a big question of values when it comes to the TTIP agreement and could be described as imperialist thinking.

3.4.4. A threat to public services?

Another feared threat that TTIP would bring along is the privatization of public services. In Nordic countries especially the public sector is very strong and health services are universal. In Finland, one fifth of employed workforce is employed by local government sector, which includes e.g. health care, education and social services (Local Government Employers statistics, 2004). Public services and welfare were an important part in the negotiation mandate of Lisbon Treaty. The Commission had no legal access to public services before the Lisbon Treaty, which increased European Union supranational power in trade of cultural/audiovisual, educational and social/health services (Orsini, 2014). Thus many TTIP supporters like Kuusisto claim, that there is no risk that TTIP could jeopardize public health services.

4. CURRENT AND POSSIBLE FUTURE SOLUTIONS

4.1. More transparent lobbying in the European Union

As discussed in previous chapters, lobbying on European Union institutions is very difficult to monitor as it is mainly informal. Corporate Europe Observatory, a non-profit research group was the first group that was established in Brussels to monitor corporate lobbying during the negotiations of the first free market trade agreements. With the initiative of CEO and former Administrative Affairs and Anti-Fraud Commissioner Estonian Siim Kallas, Transparency Register was the first legal measure to be taken against lobbying groups to impose stricter control over lobbying.

According to the official website, the Register has the following key features:

- A public website where organisations representing particular interests at EU level register and up-to-date information about those interests
- A Code of Conduct governing relations of interest representatives with the EU institutions
- Alerts and complaints mechanism to enable anyone to trigger an administrative inquiry into information contained in the Register or suspected breaches of the Code by registered organisations or individuals
- Guidelines for registrants and a helpdesk

Greenwood (2007) referred to transparency as the core of democratic mechanism. Currently registration to the Transparency Register is not mandatory and thus it is not powerful enough to monitor all lobbying taking place inside the European Union institutions. The Transparency Register involves the registration of ‘all organisations and self-employed individuals engaged in activities carried out with the objective of directly or indirectly

influencing the formulation or implementation of policy and decision-making processes of the EU institutions' (JTRS, 2012b). This measure particularly focuses on indirect lobbying activities. For accreditation pass to European Parliament it is compulsory to accede to the TR before requesting access to EP (TR official website). However entry to the Commission is not monitored as entries are primarily requested by the EC itself for consultation matters.

Still Greenwood and Dreger (2013) suggest, that the Transparency Register and its functions, which can be used for gathering information and monitoring activities of lobbying groups, can merge into more effective transparency on lobbying as they 'estimate that around three-quarters of business-related organisations active in engaging EU political institutions are in the Register and around 60 per cent of NGOs with a European interest are in the Register' already. Although estimated two thirds of corporate lobby groups are not registered, it has succeeded to assess and understand lobbying presence in the European Union and thus can work as a vanguard for future management for EU lobbying and transparency.

4.2. The Transatlantic Trade and Investment Partnership – what happens?

The next step for TTIP negotiations is that in June the European Parliament will vote on the basic principles of the TTIP. The results will be non-binding but they will have effect on further negotiations. As TTIP has gained more visibility after declassification of negotiation mandate and documents, the public has taken more and more measures to stop TTIP. The citizens' initiative "Stop TTIP and CETA" has already gained over 1,750,000 votes out of two million. The resistance towards the agreement has grown so visible that it is extremely unlikely that it will be ratified in its current form. If the initiative gains two million signatures it will be processed and eventually voted on in the European Parliament.

What if the negotiations still continue as they are even though it has gained enormous resistance? Thomas Wallgren from Corporate Europe Observatory (TTIP seminar, 2015) speaks of post constitutionalism that refers to dystopia-like global justice system where constitutions are under the influence of thousands of trade policy regulations and argues, that TTIP agreement would push EU Member States furthermore towards undemocratical decision-making process. Wallgren however points out that for example Finland can use its veto power in the Council under the Article SEUT 207.4b that concerns public health

services. Even though it is claimed that at the moment the negotiations would not include public services, but if regulatory cooperation is included, Finland's public health services can be vulnerable to lawsuits from outside businesses. Also the European Parliament could block the ratification together with the Council under the QMV procedure.

5. KEY FINDINGS

The effect of lobbying on the democratic deficit in the European Union is very two-fold, as it offers expertise decision-makers otherwise would not have access to. On the other hand, lobbying also undermines democratic values because of its informal method of approach. The most effective method of lobbying is informal and direct way of lobbying for its personal approach towards decision-makers. However not all lobbying groups have the assets or possibility to influence over other lobbying groups, which have more resources. Along with the SEA and free trade agreements lobbying groups started to shift towards Brussels. In fact all institutions of European Union are easily approachable for lobbyists, most of all the Commission that relies on external sources for drafting legislation. The problem is however that it has no transparency, which would be the key to improve the democratic deficit of the EU.

Ratification of TTIP in its current form would deepen the democratic deficit in the European Union. The negotiation process has been happening behind closed doors together with corporate lobby groups and the involvement of democratically elected decision-makers in drafting phase is scarce before it reaches the Council and the European Parliament. In addition, the DG Trade TTIP documents are not available to the public and requests upon lobby documents are continuously delayed. The agreement is rather a contract designated for European elite – it would shift global power to trade policies and merge more power to lobbyists, technocrats, multinational corporations and international arbitration tribunals. In addition to financial power, multinational corporations would gain political and legal power and could scrutinize every new policy and regulation for their profits and thus endanger for example environmental, food market and social policies that should be separated from undemocratic, profit-seeking actors. However, there are emergency brakes such as the veto-power for Member States under the Lisbon Treaty and also the citizens' initiative. The whole debate on the profits and losses of the agreement certainly is a question driven by values, do we want to create an economic-NATO to claim global, economical hegemony over Asia and especially China, or do we want to develop our political ambitions in other urgent ways, such

as environmental protection. Therefore an agreement that has power over regulating various policy areas should be negotiated openly.

CONCLUSION

Lobbying is a wide term but in general it refers to activities trying to influence decision-makers and is seen as a democratic part of political systems. Unregulated, it can undermine good governance and democratic principles. Lobbyists target local, regional, national or transitional decision-making bodies and use their resources such as financial means, information, legitimacy, representation or expertise to get better access. Methods of lobbying are divided into direct, indirect, formal and informal lobbying out of which direct and informal methods are traditionally considered most effective. Brussels is the host for estimated 15,000-30,000 different lobby groups, which perform lobbying activities within the EU. They are distinguished by their organizational form and nature of interest. Majority of the lobbying groups represent trade and industry organizations.

In the early stages of European Union lobbying mainly concentrated on national representatives but with European integration, especially after SEA and delegation of power over to EU institutions, lobbying activities shifted to Brussels. Important policy areas such as health and safety, employment and competition law began functioning at the European level. For the 'Brussels lobby route' the European Commission is the most appealing target because of its role as the legislative trendsetter. The Commission is an easy target for lobbyists as working and drafting groups rely heavily on external expertise. The lobbying process starts usually very early and is executed mainly in a direct formal or informal method and the Commission is often criticized of its secretive and non-transparent functions. Together with the Council the European Parliament has the power to block proposals so it is a most favorable route for lobbyists who are acting too late or also want to block legislation.

The secretive negotiation process of TTIP gained a lot of attention not only because it has been negotiated behind closed doors but also because it would grant multinational corporations political and legal power with costly and unpredictable mechanisms like the ISDS and 'regulatory cooperation' that are managed by arbitrators outside the democratic political system. The supporters of the TTIP primarily, and perhaps only emphasize the

economical prospects the agreement would create by abolition of trade barriers and opening markets with the US - economic growth and a competitor for China. However the agreement undermines democratic principles and values if large companies can overrule governments of the Member States. The European Union already suffers from democratic deficit because of lack of transparency and citizens' lack of power in influencing EU policy agenda. Ratification of TTIP would take the democratic deficit to a whole new level.

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