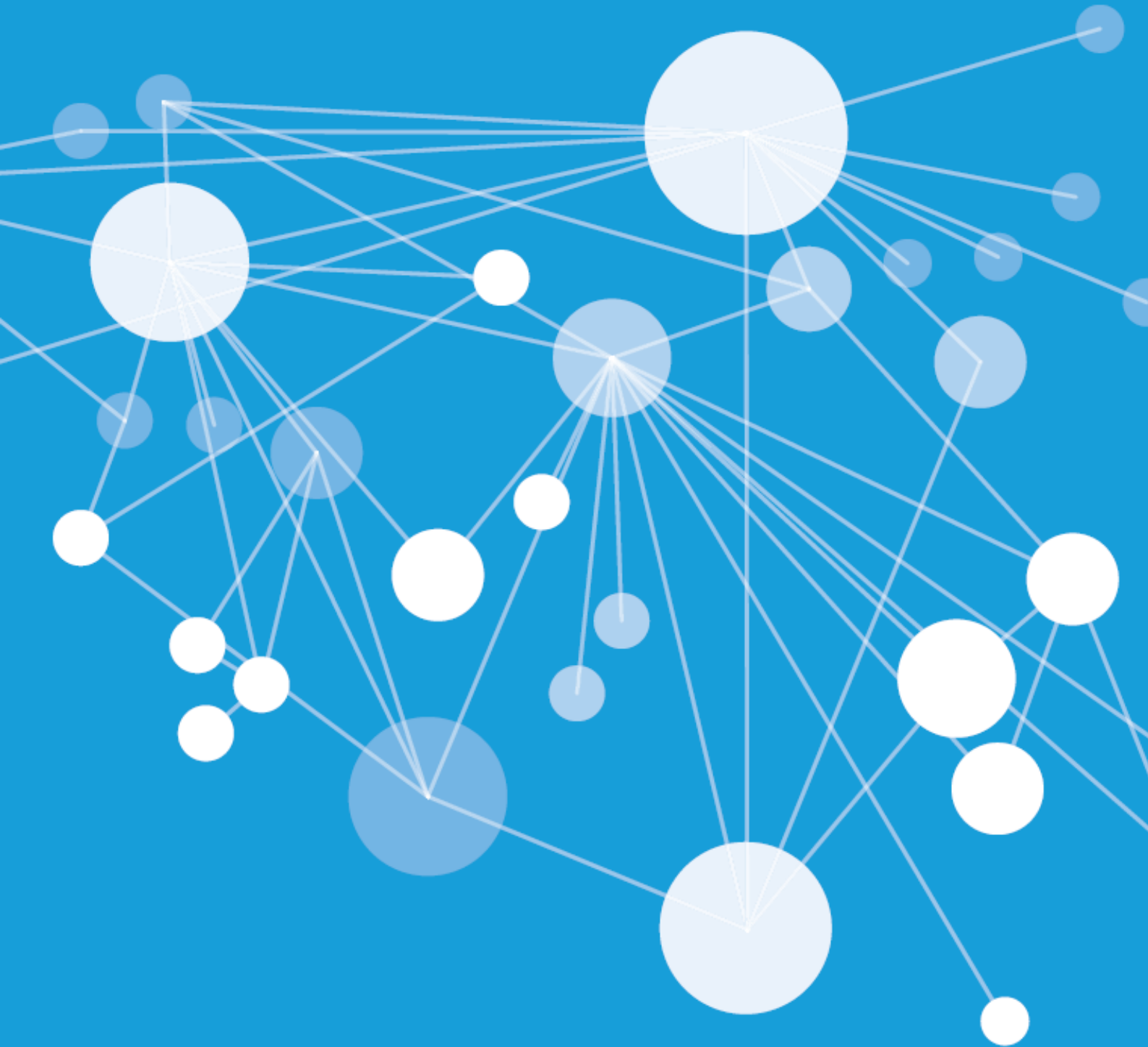




**TRANSPARENCY  
INTERNATIONAL**  
Deutschland e.V.

**Die Koalition gegen Korruption.**



**LOBBYING IN GERMANY**

Transparency International is a non-profit-making, non-partisan movement of like-minded people from around the world who are committed to the global fight against corruption. Transparency International was founded in 1993 in Berlin and operates internationally. The International Secretariat of Transparency International sustains the global work of the organisation. It supports and coordinates the work of the national chapters which currently operate independently in over 100 countries.

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## I. SUMMARY AND RECOMMENDATIONS

*“Very serious issues have arisen about the disproportionate influence of corporate lobbying [...]. Companies whose turnover dwarfs the national income of entire countries command a level of financial firepower that is impossible for any other voice to match in the competition for political visibility and persuasion.”<sup>1</sup>*

For a long time, lobbying only existed in the form of traditional representation of interests in Germany’s federal political system. It was generally implemented through an established structure of associations and through the direct influence of a few major companies. In recent years, however, there have been numerous changes in lobbying practices, which have resulted in the term acquiring negative connotations.<sup>2</sup> In particular, there have been changes in standards and moral assessments as well as in public awareness of the “new form” of lobbying, i.e. unfair representation of interests or the unequal influence of interests.

On a social theory level, pluralism is the theoretical formulation of the basic idea of democratic equality.<sup>3</sup> In terms of social interests, this theory states that a liberal society enables all interests to establish themselves and contribute to the political process. Germany’s political and legal system strives to satisfy this claim, but in many ways, it remains a pretence.<sup>4</sup>

There needs to be a clear definition of what lobbying is and who is classified as a lobbyist. This is certainly not a scholarly exercise – instead it engages with the basic structures of the political system. And this involves questions of power. However, political regulation can only begin once people understand lobbying in terms of what constitutes unfair representation of interests.

Lobbying is not the same as corruption. Rather, it is about questions of transparency<sup>5</sup>, that is, what information is made public and accessible, and whether it’s possible to discern the influence of strong versus weak interests. The lack of legal regulation of lobbying is a complex deficiency in the German political system, and measures relating to the regulation and transparency of lobbying need to apply for both the policymakers (the party being influenced) and the influencer (the lobbyist).<sup>6</sup>

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<sup>1</sup> Dieter Zinnbauer, “Corrupting the Rules of the Game. From Legitimate Lobbying to Capturing Regulations and Policies”, in: Transparency International, *Global Corruption Report 2009. Corruption and the Private Sector*, Cambridge 2009, p. 32-39, p. 33.

<sup>2</sup> Rudolf Speth, *Das Bezugssystem Politik – Lobby – Öffentlichkeit*, in: *Aus Politik und Zeitgeschichte (APuZ), Lobbying und Politikberatung*, Book 19/2010, p. 9-14.

<sup>3</sup> Ernst Fraenkel, *Deutschland und die westlichen Demokratien*, Frankfurt 1991.

<sup>4</sup> Ulrich Willems/Thomas von Winter, *Die politische Repräsentation schwacher Interessen: Anmerkungen zum Stand und zu den Perspektiven der Forschung*, in: Dies., *Politische Repräsentation schwacher Interessen*, Opladen 2000, p. 9 – 36.

<sup>5</sup> Cf. Hans-Jörg Schmedes/Heiko Kretschmer, “Interessen, Transparenz, Vertrauen – und die Legitimität von Politik. Zur Notwendigkeit eines Regelungsrahmens für das Miteinander von Politik, Verwaltung, Wirtschaft und Zivilgesellschaft”, in: Julia von Blumenthal/Thomas von Winter (ed.), *Interessengruppen und Parlamente*, Wiesbaden 2014, p. 311-333.

<sup>6</sup> Transparency International Deutschland e.V./Lobbycontrol e.V., *Regulierung und Transparenz von Einflussnahme und Lobbyismus*, March 2013; Transparency International Deutschland e.V.,

# RECOMMENDATIONS

## 1. Introduction of a mandatory lobbyist register

...together with a code of conduct and sanctioning options by an officer for transparency and lobby control.

## 2. Officer for transparency and lobby control

...to manage and supervise the lobbyist register, and monitor the legislative footprint (recommendation 6).

## 3. Transparency of the ancillary income earned by members of the Bundestag

...with mandatory publication in Euros and cents.

## 4. Further development of behavioural rules

...by introducing a limit of 150 Euros for third-party monetary allowances, and a ban on accepting direct donations.

## 5. Transparency in party donations and sponsoring

...and equal treatment of party donations and sponsoring.

## 6. Legislative footprint in government drafts

...documenting which external expertise was involved with preparing the draft bill and at which stages.

## 7. Better regulation of external contributions

...by guaranteeing fair access to all social interests and publishing them in an annual report.

## 8. Transparency when forming advisory committees

... by using an interests register which discloses financial interests, as well as primary and secondary employment for up to the last five years.

## 9. Grace periods when stepping down from office

... legal grace periods of three years for administration officials and parliamentary state secretaries if their previous work relates to a role they intend to take up after stepping down from office.

## 10. Collective claims for civil society organisations in the event of unauthorised exercise of influence

...verification; the right to sue may be based on breaches of the principle of non-discrimination, public view and balance when preparing binding political decisions.

## II. INTRODUCTION AND METHOD

The constant exchanging of information between associations,<sup>7</sup> companies and interests groups on the one hand, and policymakers, parliament and administration on the other, is part of our political system, and is not negative in itself. However, this only applies insofar as the exchange is sufficiently open and transparent. If it takes place in the dark – which is often the case in Germany – this does not comply with democratic requirements.<sup>8</sup>

Political decision-making largely takes place in informal networks outside the formal legislative process. Viewed individually, sending a position paper to an MP or talking to a ministry official during an event are permitted ways of exercising influence. But collectively, they can result in such a close-meshed network that the acceptable scope of influence is exceeded.

This report is part of a project run by Transparency International, which aims to describe existing lobbying regulations and practices in 19 European countries and to provide recommendations for decision-makers and lobbyists. In order to ensure the analysis can be conducted coherently in multiple countries, the International Secretariat of Transparency International has developed a methodology primarily based on qualitative research, but which also includes quantitative elements (see Appendix A2). The European Commission financially supports this “Lifting the Lid on Lobbying: Taking Secrecy out of Politics in Europe” project, which runs from November 2013 to October 2015.

Lobbying comes from the term *lobby*, i.e. the parliament entrance hall. It is said that the lobby of Britain’s House of Commons and America’s Congress was where representatives of interest groups tried to impact on the officials’ decisions.

The definition of lobbying used in this report is comprehensive, as this study is primarily a position paper:

*Lobbying is any form of direct or indirect communication with officials, political decision-makers or representatives, aiming to influence political decisions. This communication is performed directly or on behalf of organised groups.*

Based on this definition, lobbyists are not only professional stakeholders, but can also be representatives of private business, public affairs agencies, representatives

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<sup>7</sup> “Associations” in this report particularly means trade associations made up of businesses. See for example Eva Haacke, *Wirtschaftsverbände als klassische Lobbyisten. Auf neuen Pfaden*, in: Thomas Leif/Rudolph Speth (ed.), *Die fünfte Gewalt. Lobbyismus in Deutschland*, Bonn 2006, p. 164-187.

<sup>8</sup> Studies have shown that the influence of lobbyists is perceived as a problem right across Europe, and generates mistrust amongst the population. Transparency International “Money, Power and Politics. Corruption Risks in Europe”, Berlin 2012, <http://www.transparency.org/enis>; Transparency International, *Global Corruption Report 2013*, <http://www.transparency.org/gcb2013/report>; Eurobarometer, February 2014, *Special Report on Corruption*: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm)

of civil society organisations, companies, associations, professional organisations, trade unions, think tanks<sup>9</sup>, law firms, communities of faith, or scientists.<sup>10</sup>

The term representation of interests is often used in Germany. While this concept shares many similarities with lobbying, there are also fundamental differences between the two.

The appearance of the term lobbying is closely associated with changes in the system for representing interests, with professionalised forms of political communication, modified access options for the political system, and a reevaluation of close, selective interests. Lobbying as a professionalised form of communicating interests is already being used by resource-rich interest groups.<sup>11</sup>

However, all social interests (and interest groups) seek to influence the political process. Germany, like many other countries, has seen the emergence of forms and procedures which channel/shape this influence. The main deficiencies exist in terms of transparency requirements for a democratic system. Social developments and changes in the political culture and system have highlighted the risks resulting from lobbying by various groups,<sup>12</sup> enabling a formal and political definition of lobbying to be established: The formal definition is neutrally aimed at the representation of interests fundamental to the democratic process, while the political definition describes illegal representative of interests, often equated with lobbying.<sup>13</sup>

The social-science literature on the political system,<sup>14</sup> on association and interest group research, and research on the government system, particularly ministerial bureaucracy, as well as parliamentary research, literature on participation, legislation, legislative outsourcing,<sup>15</sup> media society<sup>16</sup> and issues of self-regulation,<sup>17</sup> serves as an

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<sup>9</sup> Rudolf Speth, *Advokatorische Think Tanks und die Politisierung des Marktplatzes der Ideen*, Berlin 2006 (Friedrich Ebert Stiftung, betriff: Bürgergesellschaft 24). Ders., *Stiftungen und Think Tanks*, in: Dagmar Simon/Andreas Knie/Stefan Hornbostel (ed.), *Handbuch Wissenschaftspolitik*, Wiesbaden 2010, p. 390-405.

<sup>10</sup> This definition is similar to that of lobby control presented at the hearing in the Brandenburg parliament (Landtag) on 2 November 2011. A threshold value is important for lobby control in order to ensure that "citizens, small businesses or organisations can continue to have their say at a political level without any administrative expenses". <https://www.lobbycontrol.de/wp-content/uploads/Stellungnahme-LobbyControl-Anh%C3%B6rung-Landtag-BB1.pdf>.

<sup>11</sup> Jan Siedentopp, *Public Affairs-Management von Großunternehmen. Markt- versus Nichtmarktstrategien*, Münster 2010. But the resource-rich stakeholders aren't just companies. The term resource also includes political access and media presence. See also: Ulrich Willems/Thomas von Winter (ed.), *Politische Repräsentation schwacher Interessen*, Opladen 2000.

<sup>12</sup> This negative definition is primarily used in media reporting. See also: Ines Pohl (ed.), *Schluss mit Lobbyismus! 50 einfache Fragen, auf die es nur eine Antwort gibt*, Frankfurt 2012.

<sup>13</sup> Christian Humborg, *Transparente Interessenvertretung*, in: *Neue Soziale Bewegung*, Book 1, March 2009, p. 82-90, p. 82/83.

<sup>14</sup> Wolfgang Rudzio, *Das politische System der Bundesrepublik Deutschland*, 8th edition, Wiesbaden 2011.

<sup>15</sup> Michael Kloepper (ed.), *Gesetzgebungsoutsourcing. Gesetzgebung durch Rechtsanwälte?*, Baden-Baden 2011.

<sup>16</sup> Otfried Jarren/Patrick Donges, *Politische Kommunikation in der Mediengesellschaft. Eine Einführung*, 2nd revised edition, Wiesbaden 2006.

<sup>17</sup> Thomas Leif/Rudolf Speth (ed.), *Die stille Macht. Lobbyismus in Deutschland*. Wiesbaden 2003. Dies. (ed.), *die fünfte Gewalt. Lobbyismus in Deutschland*, Wiesbaden 2006.



important information basis for this report. The report is also based on Anglo-Saxon publications and on the results of lobbying research at the EU-level.<sup>18</sup>

Media reporting is another important source here.<sup>19</sup> Investigative journalists have provided valuable information on the topic of lobbying in the daily press and various TV shows.<sup>20</sup> Because, in addition to the essential data on structures and institutional factors, specific cases of lobbying also help concrete facts to be assessed and presented.

In accordance with the Transparency International methodology, firstly the national context of lobbying practices in Germany will be outlined, and then we will examine the issue of regulating lobbying. Case studies in the text are used to underline the need for regulatory action in this area.

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<sup>18</sup> Irina Michalowitz, EU Lobbying – Principals, Agents and Targets. Strategic Interest Intermediation in EU Policy Making, Münster 2004. Justin Greenwood, Interest Representation in the European Union, Houndsmills 2003.

<sup>19</sup> The topic of lobbying is regularly reported on in reputable national newspapers (Süddeutsche Zeitung, Frankfurter Allgemeine, Die Zeit), news journals (Spiegel, Stern, Focus) and various TV magazines (such as monitor, kontraste). These media also scandalise cases of wrongful influence.

<sup>20</sup> The publications by netzwerk recherche provide reliable information on the income of investigative journalists: [www.netzwerkrecherche.de](http://www.netzwerkrecherche.de)

## III. NATIONAL CONTEXT

### III.1. HISTORICAL DIMENSION

The interest groups in Germany and their relationships with the arena of political decisions are known as the interest representation system. Lobbying is a key element of what interest groups do.<sup>21</sup> This system is part of the political system in which decisions are made and implemented at the various levels (federal, state, municipal).

This interest representation system has developed since the establishment of the German nation state in 1871.<sup>22</sup> The founding of the federal republic in 1949 saw the resumption of traditions which had been halted by the two World Wars. The employer and industrial associations (Bundesvereinigung der Deutschen Arbeitgeberverbände, BDA, Bundesverband der Deutschen Industrie, BDI)<sup>23</sup> and trade unions were re-established, and trade and professional associations were either launched for the first time or recreated.

“Until the 1970s, lobbying in Germany was institutionally focused on associations as representatives of interests. The parliament and government were their target groups, and the flow of information was unilaterally geared towards them. In the 1980s, it became increasingly clear that the growing complexity of the matters governed or due to be governed by laws had made parliamentarians and officials dependent on the association lobbyists’ information and assessments. The unilateral flow of information became a barter relationship, in which lobbyists exchanged information and political support in return for opportunities to influence political decisions. The 1990s saw another change; the focus on associations was expanded to include the companies’ own systemic efforts to represent their interests directly to the policymakers. There were essentially two crucial reasons for this change. On the one hand, operating via association committees often proved to be tedious and trying. [...] On the other, very few major companies of macroeconomic importance emerged on many of the markets. Apart from associations and businesses, the lobbyists also started to include temporary ad-hoc alliances and contract lobbyists (e.g. law firms and public affairs agencies), which coincided with the parliament’s and government’s relocation to Berlin.”<sup>24</sup> Also worth noting is the increase in civil society organisations seeking to be heard in the political process.<sup>25</sup>

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<sup>21</sup> Martin Sebaldt/Alexander Straßner, *Verbände in der Bundesrepublik Deutschland*, Wiesbaden 2004.

<sup>22</sup> Ralf Kleinfeld, *Die historische Entwicklung der Interessenverbände in Deutschland*, in: Thomas von Winter/Ulrich Willems (ed.), *Interessenverbände in Deutschland*, Wiesbaden 2007, p. 51-83.

<sup>23</sup> Rudolf Speth, *Arbeitgeber- und Wirtschaftsverbände in Politik und Gesellschaft*, in: Wolfgang Schroeder/Bernhard Weißels (ed.), *Handbuch Arbeitgeber- und Wirtschaftsverbände*, Wiesbaden 2010, p. 260-279.

<sup>24</sup> Christian Humborg, *Spielregeln des Lobbying. Wo beginnt die Korruption?*, in: Rubin Ritter/David Feldmann (ed.), *Lobbying zwischen Eigeninteressen und Verantwortung*, Baden-Baden 2005, p. 115-131, p. 116/117.

<sup>25</sup> The increase in civil society organisations can be seen in the German Bundestag’s so-called lobby list: <http://www.bundestag.de/dokumente/lobbyliste/>. See also: Martin Sebaldt, *Organisierter*

The Europeanisation of politics and society in the 1980s and particularly the 1990s also changed the representation of interests in this respect; more and more interest groups are present in Brussels.<sup>26</sup> One consequence of this change is the fact that the style of interest representation has altered, and that the term lobbying is being used more often.<sup>27</sup>

### III.2. THE SOCIAL DIMENSION OF INTEREST GROUPS

Germany is often described as a society of associations.<sup>28</sup> This characterisation applies to both the early federal republic and to present-day society. The society of associations also includes the approximately 600,000 clubs, which are more geared around sociability.<sup>29</sup> However, the association is no longer the main and sole way of organising interests; many other forms of interest representation and lobbying have also emerged.

German society is characterised by all major groups being able to assert their interests in an organised fashion, although consideration must also be given to the fact that there are clear differences between strong and weak interests. Strong interests include, for example, economic interests. Weak interests, such as patients, the unemployed and low-income earners, do not have the resources to develop a strong representation of interests. They often lack access to the political system. This means that the strengths of the interest groups and the resources for successful lobbying are distributed in a highly unequal manner,<sup>30</sup> even if further interest groups are established in addition to companies, associations and trade unions.

One important difference between associations on the one hand and, for example, businesses, think tanks and individual interests on the other hand is highlighted by the interest representation function. Policymakers want associations because they can (a) pool interests, (b) assert/articulate interests and (c) convey and implement political decisions. The other form of representing interests, e.g. through individual companies, primarily involves articulating/asserting interests. Resource-rich groups are advantaged here, because they have more opportunities to utilise services on the political communication market (e.g. by using professional PR agencies).

The interest groups, and therefore the lobbying, are often classified into the different social areas (economics, work conditions, social affairs, leisure and recreation, churches, politics, and culture), and clear trends become apparent: The importance of economics, which also includes businesses increasingly acting as independent

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Pluralismus. Kräftefeld, Selbstverständnis und politische Arbeit deutscher Interessengruppen, Opladen 1997.

<sup>26</sup> Rainer Eising, Nationale Verbände und soziale Bewegungen in Europa, in: Thomas von Winter/Ulrich Willems (ed.), Interessenverbände in Deutschland., Wiesbaden 2007, p. 513-539.

<sup>27</sup> Justin Greenwood, Interest Representation in the European Union, Houndmills 2003.

<sup>28</sup> Martin Sebaldt/Alexander Straßner, Verbände in der Bundesrepublik Deutschland. Eine Einführung, Wiesbaden 2004.

<sup>29</sup> Mareike Alsche/Dietmar Dathe/Eckhard Priller/Rudolf Speth, Bericht zur Lage und zu den Perspektiven des bürgerschaftlichen Engagements. ed. by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Berlin 2009, p. 69.

<sup>30</sup> Annette Zimmer/Bernhard Weißels (ed.), Verbände und Demokratie in Deutschland, Opladen 2001.

lobbyists, is lessening compared to the other areas. There is a growing number of interest groups in the areas of social affairs (which include issues such as refugees, asylum and social inequality), culture, recreation and sport, plus a rise in local and regional interest groups promoting their cause through civic initiatives.<sup>31</sup>

### III.3. GOVERNMENT SYSTEM

The structure of the government system is a key prerequisite for the comprehensive and appropriate lobbying evaluation. Germany's political system is characterised by the federal structure, and, in many aspects, by a corporatist form of policymaking, meaning it is the counter concept to the pluralist Westminster model.<sup>32</sup>

The main elements of the German government system are:

**A multi-party system:** A party system with two large and several small parties has been established. The parties are a way for lobbyists to influence political decisions, as they represent specific interests, and offer political alternatives.<sup>33</sup> A key element of the multi-party system is the personalised majority vote system. Only half the parliament is made up of direct candidates; the other half uses party lists.<sup>34</sup>

**Federal structure:** The bicameral system – Bundestag (Parliament) and Bundesrat (Federal Council) – requires both chambers' consent for many political decisions (approx. 60 percent), making it possible for lobbying to position interests through the state level, i.e. through the Bundesrat in the political process. The states also have their own spheres of competence in legislation (schools, universities, civil service law), making lobbying of importance at this level as well. In addition to this is the expertise of an administrative level between the states and municipalities. This district level is particularly responsible for social policy, and is therefore also a target for lobbying.<sup>35</sup>

**Decentralised structure:** The political system is characterised by the division of power which prevailed after 1945 as a result of the National Socialists' abuse of power. Political power is not only distributed between the federal and state level; there is also the Federal Constitutional Court as a veto player, and other supreme courts (Federal Labour Court, Federal Social Court, Federal Administrative Court, Finance Court of Appeal). Additional power-distributing effects are produced by the federal and state courts of audit, the authority for monetary policy which is now held by the European Central Bank etc. While this has created more possibilities for interest groups overall, it also involves greater expense and less opportunities,

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<sup>31</sup> Annette Zimmer/Rudolf Speth, *Verbändeforschung*, in: Viktoria Kaina/Andrea Römmele (ed.), *Politische Soziologie. Ein Studienbuch*, Wiesbaden 2008, p. 267-309.

<sup>32</sup> Peter J. Katzenstein, *Policy and Politics in West Germany. The Growth of a Semisovereign State*, Philadelphia 1987.

<sup>33</sup> Thomas Saalfeld, *Parteien und Wahlen*. Baden-Baden 2007.

<sup>34</sup> Wolfgang Rudzio, *Das politische System des Bundesrepublik Deutschland*, 8th updated edition, Wiesbaden 2011, p. 227.

<sup>35</sup> Ebd., p. 317-348. Jörg Bogumil/Lars Holtkamp, *Kommunalpolitik und Kommunalverwaltung. Eine policyorientierte Einführung*, Wiesbaden 2006.

because the individual dynamics of the stakeholders and political arena need to be taken into account.<sup>36</sup>

**Corporatism:** The theoretical concept of corporatism<sup>37</sup> as the opposite of a pluralist system is used to describe the peculiarity of Germany's political system.<sup>38</sup> The corporatist structure is characterised by the fact that important decisions are delegated (e.g. collective bargaining). Depending on the political sphere, stakeholders displaying varying degrees of dominance may emerge at the associations' end. These are often employer associations and trade unions, as seen in labour market and social policy. In health policy, it is, for example, panel physician associations, hospital operators and health funds which make the important decisions. One trademark of all corporatist forms of policymaking is the outsourcing of decisions in arenas where interest groups are represented. These groups then do not need to seek lobbyist access to said arenas, and instead participate in political decisions from the outset.<sup>39</sup>

**Democracy of negotiation:** Another characteristic of Germany's political system is the democracy of negotiation.<sup>40</sup> It involves forms of the joint decision trap, in which political decisions are made when several political levels agree to them. Overall, the various access ways and possible points of contact associated with this structure make it very susceptible to non-transparent influencing of policies by lobbyists. Weak stakeholders only present at one level have fewer opportunities to assert themselves than stakeholders who can act on different levels simultaneously.

### III.4. POLITICAL CULTURE

The political culture is crucial for evaluating lobbying in Germany.<sup>41</sup> Political culture can be understood as meaning the interplay of two levels: the level of individual attitudes and values, and the collective interpretations and symbolic normative structures. Political culture has become deregulated in the former of these two levels over the last 40 years.<sup>42</sup> Values associated with democratic self-determination are rated higher. In the last 15 years, the media in particular has propagated an interpretation (second level) in which lobbying appears as a risk to democracy, and is

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<sup>36</sup> Wolfgang Rudzio, *Das politische System der Bundesrepublik Deutschland*, Ch. 9 and 10. Frank Decker, *Regieren im „Parteienbundesstaat“*. Zur Architektur der Deutschen Politik, Wiesbaden 2011.

<sup>37</sup> Roland Czada, *Konjunkturen des Korporatismus*. Zur Geschichte eines Paradigmenwechsels in der Verbändeforschung, in: Wolfgang Streeck (ed.), *Staat und Verbände*, Politische Vierteljahresschrift, special edition 25, Opladen 1994: Westdeutscher Verlag, p. 37-63.

<sup>38</sup> Martin Höpner, *Ist Politik gegen Verbände möglich? 25 Jahre Mancur Olsons "The Rise and Decline of Nations"*, in: *Leviathan* 35, 2007, book 3, p. 310-347. See also: Martin Höpner, *Wer beherrscht die Unternehmen? Shareholder Value, Managerherrschaft und Mitbestimmung in Deutschland*, Frankfurt/New York 2003, p. 19.

<sup>39</sup> Wolfgang Streeck, *Korporatismus in Deutschland*. Zwischen Nationalstaat und Europäischer Union, Frankfurt 1999.

<sup>40</sup> Gerhard Lehmruch, *Parteienwettbewerb im Bundesstaat*. 3rd edition, Wiesbaden 2000: VS Verlag.

<sup>41</sup> Roland Sturm, *Politische Kultur*, in: Ludger Helms/Uwe Jun (ed.), *Politische Theorie und Regierungslehre*, Frankfurt 2004, p. 302-323.

<sup>42</sup> Oscar W. Gabriel, *Politische Kultur*, in: Viktoria Kaina/Andrea Römmele (ed.), *Politische Soziologie*. Ein Studienbuch, Wiesbaden 2009, p. 17-51.

viewed as an illegal exercising of influence. The term is now widely established with this negative connotation amongst the general public and political decision-makers.<sup>43</sup> This use of the term lobbying, so critical to democracy, revolves around the notion that lobbying distorts the political process and gives no chance to participatory elements of democracy. The demand for “lobbyists to get out of the Bundestag!”, which can be so often heard and read about, is based on a negative understanding of the term.<sup>44</sup> In contrast, we nowadays see a constant call for (equal) participation in the form of “round table discussions” etc. when it comes to stakeholder involvement. Different interests are systematically invited, and, contrary to the prevailing negative opinion, lobbying is given positive connotations. Non-economic interest groups are able to have greater presence in the political sphere through professionalisation, mediatisation and social change. This is also promoted by the fact that the state provides such groups with access options, and offers organisational assistance. This was the case for the environmental policy, which helped create modern environmental associations in the 1970s, as society required stakeholders for the sphere of environmental policy.<sup>45</sup>

### III.5. SCOPE AND INTENSITY OF LOBBYING

It is difficult to precisely define the scope and intensity of lobbying in Germany, as no reliable figures are available. One difficulty lies in the fact that there is still no clarification as to who can be called a lobbyist. This is the challenge faced by future legal regulations regarding the registration, transparency and codes of conduct for lobbyists.

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<sup>43</sup> Rudolf Speth, *Wie viel Lobbying verträgt die Demokratie?*, in: Rubin Ritter/David Feldmann (ed.), *Lobbying zwischen Eigeninteresse und Verantwortung*, Baden-Baden 2005, p. 39-54.

<sup>44</sup> In contrast: Iris Wehrmann, *Lobbying in Deutschland. Begriff und Trends*, in: Ralf Kleinfeld/Annette Zimmer/Ulrich Willems (ed.), *Lobbying. Strukturen, Akteure, Strategien*, Wiesbaden 2007, p. 36-64.

<sup>45</sup> Jochen Roose, *Unterstützungslogik und Informationslogik. Zu zwei Formen der Interessenvertretung im Umweltbereich*, in: Britta Rehder/Thomas von Winter/Ulrich Willems (ed.), *Interessenpolitik in Politikfeldern. Vergleichende Befunde der Policy- und Verbändeforschung*, Wiesbaden 2009, p. 109-131. Michael Böcher/Annette Elisabeth Töller, *Umweltpolitik in Deutschland. Eine politikfeldanalytische Einführung*, Wiesbaden 2012.

The following estimates can be assumed:<sup>46</sup>

- Approx. 4,000 nationwide associations with 3 to 120 staff<sup>47</sup>
- Approx. 120 company offices in Berlin, with an average of 4 staff
- Approx. 90 public affairs agencies with a total of some 1000 staff
- Approx. 50 think tanks based in Berlin
- Approx. 20 law firms which also engage in lobbying
- Approx. 200 scientists on advisory boards or as experts
- Approx. 30 business consultancies
- Approx. 30 scientific institutions and universities
- Approx. 25 foundations advising policymakers
- Approx. 300 individual lobbyists/political advisors

There is no reliable information on the financial expenses/sales turnover earned through lobbying.

The number of persons targeted is also an important factor: members of the German Bundestag, parliamentary group staff, party staff, ministry staff, state office staff, members of the commissions run by the ministries and subordinate authorities.

Lobbying continues to be dominated by the work of the associations, which make up approximately 80 percent of lobbyists.<sup>48</sup> One form of “volitional lobbyist influence” is the hearing regularly organised by the ministries and Bundestag committees as part of legislative processes. This hearing, which occurs relatively late in the political process, is supplemented with personal discussions held directly at the officials’ or staff members’ offices at the ministries. In addition to these are numerous events cultivating informal contact. Estimates assume that a lobbyist can regularly cultivate approximately 80 contacts in the political sphere.<sup>49</sup> There are also research results

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<sup>46</sup> The estimates are based on personal experience/research in various projects over the last few years. The assessments also include figures from the “politik & kommunikation” magazine, one of the industry’s supervisory bodies. Rudolf Speth, *Advokatorische Think Tanks und die Politisierung des Marktplatzes der Ideen*, Berlin 2006 (Friedrich Ebert Stiftung, betriff: Bürgergesellschaft 24). Martin Sebaldt/Alexander Straßner, *Verbände in der Bundesrepublik Deutschland*, Wiesbaden 2004. Birger P. Priddat/Rudolf Speth, *Das neue Lobbying von Unternehmen*. Public Affairs, Düsseldorf 2007. Svenja Falk/Dieter Rehfeld/Andrea Römmele/Martin Thunert (ed.), *Handbuch Politikberatung*, Wiesbaden 2006. Günter Bentele/Romy Fröhlich/Peter Szyszka (ed.), *Handbuch der Public Relations*, Wiesbaden 2005.

<sup>47</sup> 2,180 organisations are currently (27/6/2014) registered in the German Bundestag’s association list. Not all are active lobbyists, and even at large associations (e.g. BDI and BDA) with over 100 staff and, for example, at the DIHK, not all employees can be counted as lobbyists. Nevertheless, it is not just the managing directors, but rather also executive board members, divisional managers/committee managers etc. who represent interests.

<sup>48</sup> This estimate is based on the number of associations and their staff in proportion to the other stakeholders (think tanks, law firms, public affairs agencies, etc.), which are generally smaller with fewer resources. They have very few people involved with lobbying.

<sup>49</sup> The information is based on background talks with lobbyists, and lobbyist presentations during my courses at the Freie Universität Berlin. Bernhard Weßels, *Abgeordnetenbefragung 2003. Kurzfassung und Dokumentation der Ergebnisse*, Berlin 2005, <http://www.wzb.eu/sites/default/files/zkd/dsl/ber-fin1-all1.pdf>, p. 9.

on the average number of association contacts maintained by members of the German Bundestag.<sup>50</sup>

The most important political fields for lobbying continue to be those in which the state has heavy regulatory involvement: energy policy, industrial policy, health, financial markets and banks, transport and defence. For areas in which the state is itself a customer (e.g. defence), procurement involves lobbying.

### III.6. SELF-REGULATION

Self-regulation of lobbying has not been extensively developed in Germany. There is no generally binding code of conduct for all lobbyists in Germany. The deficiencies in self-regulation tie in with a lack of organisations created by and for lobbyists. Germany only has two organisations which fit the bill: the Deutsche Gesellschaft für Politikberatung e.V. (degepol) and the Deutscher Rat für Public Relations (DRPR). However, this does not affect the association landscape. According to degepol, its members are active “in the fields of public affairs, campaign consultancy and policy advice in various European countries. They work in agencies, companies, organisations, parties or independently.”<sup>51</sup> Public Relations (PR) is strategically controlled communication and information. Its aim is not to enlighten, but rather to serve the interests of the initiator.

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<sup>50</sup> Bernhard Weißels, Abgeordnetenbefragung 2003. Kurzfassung und Dokumentation der Ergebnisse (<http://www.wzb.eu/sites/default/files/zkd/dsl/ber-fin1-all1.pdf>; retrieved on 4 July 2014). Weißels notes a decreasing contact rate between officials and association representatives: „Contacts for the two large economic organisations BDA and BDI jointly lead the way (respectively 22 and 28 percent of officials have contact with these organisation at least once a month), followed by the trade unions, with which a total of 44 percent of officials have contact at least once a month. Then come professional associations and church organisations [...]. Compared to 1996, contact with trade unions in particular has noticeably dropped, while contact with the professional and environmental associations has also decreased slightly.” However, Weißels also states that almost all officials have contact with citizens once a week.

<sup>51</sup> Website of the Deutschen Gesellschaft für Politikberatung e.V.: <http://degepol.de/>.



## BOX 1: SELF-REGULATION AT THE DEUTSCHE GESELLSCHAFT FÜR POLITIKBERATUNG (GERMAN ASSOCIATION OF POLITICAL CONSULTANTS)

degepol was founded in Berlin on 25 May 2002 as an association of political advisors. According to its own understanding, degepol has further developed into a “significant contact in its industry, and a leading association of political advisors in Germany. This is evidenced by our key role in developing quality standards, and increasing presence in discussions on transparency in political consultancy”.<sup>1</sup>

degepol has more than 140 individual and approx. 20 corporate members.

degepol has formulated a brief, binding code of conduct for its members, which defines integrity as “compliance with democratic rules and respect for basic democratic order”.<sup>2</sup> The code of conduct includes rules on truth, discretion, respect and the separation of professional work and political posts. Corruption and anti-discrimination are addressed by further rules.

degepol joined the Deutscher Rat für Public Relations (DRPR)<sup>3</sup> in order to apply the code of conduct. Its executive board has also employed an ethics officer. Procedures at degepol are structured in such a way that the DRPR is notified in the event the code is breached. If the DRPR issues a verdict, degepol once again becomes active. If the DRPR complains about certain conduct, degepol has the following options: private reprimands in the form of a conversation with the member (1), public reprimands in the form of a press release (2) and exclusion from degepol (3). The latter is also performed publicly.

As the DRPR plays a crucial role for the effectiveness of degepol's code its practices shall be examined more closely. The DRPR is supported by four organisations: Deutsche Public Relations Gesellschaft (DPRG), Gesellschaft Public Relations Agenturen (GPRÄ), Bundesverband deutscher Pressesprecher (BdP) and Deutsche Gesellschaft für Politikberatung (degepol). It bears responsibility for general public communication, and makes decisions on cases of misconduct submitted to it. This is based on the communication industry's codes of conduct, as well as seven advisory guidelines establishing the behavioural standards of the communication industry (dealings with journalists; media co-operations; handling guarantees; cultivating contacts in the political sphere/lobbying; ad-hoc publicity; PR in digital media and networks; subliminal advertising). Since 2012, the DRPR has also had a communications code. The DRPR guidelines on cultivating contacts in the political sphere, which have been in effect since 2004, are of particular importance to establishing lobbying rules. These guidelines call for “consistent transparency”, which includes disclosing clients to target audiences in politics as well as the public sphere, and the honesty obligation. Public openness is an important reference for evaluating the actions of lobbyists and public affairs stakeholders under these guidelines. Although there is a professional duty of non-disclosure, lobbyists' actions must, in principle, be suitable for public exposure.

The scope of these guidelines is particularly significant, because they also apply to non-members of the DRPR's supporting organisations. The scope therefore includes “all organisations operating in the political sphere”, and relates to PR specialists, lobbyists, political advisors and lawyers. Staff of agencies, consultancy offices and associations are thus governed by these guidelines. Boards of appeal are set up to examine the complaints; they study the respective case, listen to the affected parties, and reach a verdict (reprimand, warning, acquittal), which is justified and announced publicly.

Since numerous complaints are now sent to the board, the DRPR has established three complaints committees: (1) Economics and finance, (2) Politics and (3) Businesses and the market. “The focus [of the Politics complaints committee] is geared around communicative processes such as political campaigns, political press work (digital and print), scientific consultancy, or public campaigning and contact cultivation in the political sphere”.<sup>4</sup>

There have been 79 verdicts issued over the last ten years – between 2004 and 2013. The yearly average was just under eight institutional verdicts, most of which were PR-related.<sup>5</sup> The Politics complaints committee issued five acquittals, six warnings and eight reprimands during this time frame. There was also one expulsion. The eight reprimands and the expulsion related to

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- On 17 November 2010, a reprimand was issued against Dr Astrid Nelke for PR concealment. She was accused of having failed to refer to her work for a company in talk-show appearances and newspaper articles.
- On 20 November 2009, there was a reprimand against the Verband der Deutschen Biokraftstoffindustrie e.V. (VDB), EPPA GmbH, Berlinpolis e.V. and Berlinpolis GmbH for PR concealment.

- On 7 September 2009, Allendorf Media AG/GmbH's PR concealment was reprimanded. This was justified as follows in the DRPR annual report: "The participating agencies Berlinpolis GmbH and Allendorf Media, as well as the Berlinpolis think tank, composed articles in blogs and internet forums etc. in their respective clients' interests. They also sent reader letters to relevant media, initiated authored articles, and posted opinions and videos on seemingly neutral but agency-operated Internet portals. Media placements of public figures were also performed as image enhancement tactics, with these figures speaking positively about issues such as train travel. All these communication measures were carried out deliberately, without mentioning the client. This conduct thus breaches numerous industry codes".<sup>6</sup>
- On 24 August 2009, Berlinpolis was reprimanded for PR concealment. The Berlinpolis think tank had posted articles in blogs and internet forums without citing the client.
- On 27 June 2009, Deutsche Bahn AG was reprimanded for PR concealment. The company had commissioned an undercover communication campaign.
- On 26 March 2009, the Deutsche Angestelltenkrankenkasse (DAK) was reprimanded because a staff member sent to the Federal Health Ministry circulated confidential documents.
- On 26 March 2009, the Federal Ministry of Finance (BMF) and the Bundesverband Investment und Asset Management e.V. (BVI) were reprimanded because a staff member of the association "collaborated on the law on investment modernisation and the taxation of investment assets".
- On 26 March 2009, the conduct of BASF AG and the Federal Ministry for Economic Affairs and Labour (BMWA) was reprimanded in relation to "temporary employees".
- On 10 December 2007, Jan Burdinski was <sup>W</sup>reprimanded for concealed communication as part of the "Coalition for patient information". Burdinski was then expelled from degepol. Today, he runs the Adam Opel AG group office in Berlin.
- In total, approximately 21 of the 79 verdicts have a concrete link to lobbying. It is, however, clear that many cases are in the communication field. There are very few, if any, cases which can be classified as "hard", legislation-focused lobbying. The temporary employees issue is the exception here. This ties in with the fact that there are still no clear rules for evaluating the influence interest groups have over political decisions.

There is also one more aspect to consider: The DRPR and complaints committees are not authorised to examine a case more intensively. They lack federal government permission to extensively clarify facts. This limits the DRPR's scope, giving the reprimands and exhortations an appellative character.

#### Sources:

1 Website of the Deutsche Gesellschaft für Politikberatung: <http://www.degepol.de/>.

2 Deutsche Gesellschaft für Politikberatung, Code of Conduct: <http://www.degepol.de/grundlagendokumente/verhaltenskodex/>.

3 Website of the Deutscher Rat für Public Relations: [www.drpr-online.de](http://www.drpr-online.de).

4 Website of the Deutscher Rat für Public Relations: [www.drpr-online.de/drpr/beschwerdeausschusse/politik/](http://www.drpr-online.de/drpr/beschwerdeausschusse/politik/).

5 The board decisions from previous years can be found online on the website of the Deutscher Rat für Public Relations: <http://drpr-online.de/spruchpraxis/>.

6 Deutscher Rat für Public Relations, 2008/2009 annual report, <http://drpr-online.de/dokumentation/jahresberichte/jahresbericht-20082009/>, p. 9.

### III.7. LEGAL FRAMEWORK

One key element of corporatism is the involvement of associations in the political process. § 47 of the Federal Ministries' Joint Rules of Procedure (GGO) forms the legal basis and expression of this involvement. Its paragraph 3 states: Paragraphs 1 and 2 [agreement with participating federal ministries and the Federal Chancellery] apply accordingly for prompt involvement of umbrella organisations and expert groups existing at a federal level. Unless special regulations have been established, time, scope and selection are at the discretion of the responsible federal ministry. Involvement as per paragraph 1 takes precedence over involvement as set forth in this paragraph and the information in § 48 Paragraph 1." Paragraph 1 governs confidentiality and agreements with other ministries in cases when a draft bill needs to be discussed with said ministries. Paragraph 5 governs the invitation of associations, leading municipal associations, and umbrella associations to verbal hearings run by the Bundestag committees. It is common legislative practice for the associations to receive the draft bills beforehand, asking for their comments.

The so-called association list of the German Bundestag is another element when it comes to regulating interest groups.<sup>52</sup> This list has existed since 1973, and the latest version (May 2014) contains 2,178 associations with national goals. The list is managed by the president of the German Bundestag, updated several times a year, and has been accessible online/electronically since 2012. Entries are voluntary, and very little information is required: Association name and address (telephone number, email addresses, executive board and management, interests, member numbers, number of affiliated organisations, lobbyists and address in Berlin). The budgets of the individual organisations and the objectives of the lobbying work are not recorded. The political sphere includes another dimension of regulation aimed not at lobby groups, but rather at politics itself – at parties, officials and politicians. Restrictions are created by the Political Parties Act and its rules on party financing<sup>53</sup> through donations. Individual companies and lobby organisations take advantage of the act's loopholes to give parties donations without this being made public (see Box 2). For example, donations of less than 50,000 Euros are publicised late, and donations under 10,000 Euros are not publicised at all. Parties must immediately advise the Bundestag president of any donations over 50,000 Euros, which are then published in writing on the German Bundestag's website. Donations over 10,000 Euros are published in the parties' statements of accounts, but only appear eighteen months after the end of the year in which the donation was received. Parliamentary law (Parliamentarians' Act) governs the transparency of parliamentarians' secondary employment.<sup>54</sup> Appendix 1 of the German Bundestag's Rules of Procedure

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<sup>52</sup> German Bundestag, Public list of associations registered at the Bundestag, and their representatives: <http://www.bundestag.de/dokumente/lobbyliste/>.

<sup>53</sup> See also: Karl-Heinz Nassmacher, Parteienfinanzierung in Deutschland, in: Oskar Gabriel (ed.), Parteidemokratie in Deutschland, 2nd updated & extended edition, Opladen 2002.

<sup>54</sup> The Otto Brenner Foundation presented a study on the secondary employment of Bundestag officials: [https://www.otto-brenner-shop.de/uploads/tx\\_mplightshop/2014\\_04\\_22\\_AP13\\_Nebenverdiener\\_web.pdf](https://www.otto-brenner-shop.de/uploads/tx_mplightshop/2014_04_22_AP13_Nebenverdiener_web.pdf)

establishes what information the parliamentarians need to provide if they earn ancillary income, while the Information Freedom Act (IFG) has enabled citizens to access information on public administrations since 2006 (see also Chapter IV.1.).

Criminal law and civil service law are also important when regulating lobbying. Criminal law particularly relates to the acceptance of benefits by a public official, bribery and corruption, which are governed by paragraphs 108e (corruption by officials) and paragraphs 331 to 335 (acceptance of benefits by public officials, bribery, granting of undue advantages, corruption) in the Criminal Code.

Tying in closely with this, civil service law governs the conduct of officials. Officials are prohibited from accepting gifts and benefits. This also includes trips, invitations and entertainment, and particularly applies to dealings with lobbyists. The individual ministries now also have extensive anti-corruption rules which must particularly be enforced when awarding contracts.<sup>55</sup>

### III.8. WATCHDOG GROUPS (CIVIL SOCIETY, MEDIA)

Civil society groups and the media, particularly investigative journalists, are a key factor in monitoring and controlling lobbying in Germany. The primary aims of both these forms of lobbying control are to create transparency, bring action for accountability, uphold democratic rules, expose corruption and misconduct, and scandalise the unfair influencing of political decisions. Freedom of opinion, press and information are guaranteed in the German constitution. The media and press are areas of politics for which the states are responsible, which is why press law is also a state matter.<sup>56</sup>

Media monitoring and controlling of lobbying is particularly performed through political journalism. There are around 10,000 political journalists, and around 300 politically focused newspapers (daily and weekly press) and magazines (Spiegel, Stern, Focus, Wirtschaftswoche, Manager-Magazin, etc.). But very few of these journalists work investigatively. Netzwerk Recherche, the association of investigative journalists, has about 640 members (2014).<sup>57</sup> This network aims to expose and scandalise unfair lobbying by improving research conditions.<sup>58</sup> In addition to print

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<sup>55</sup> § 97 of the Act Against Restraints of Competition (GWB) governs the material principles of awarding contracts. Since 11/8/2004, the Federal Minister of the Interior has enacted directives on corruption prevention in the federal administration. They also include details regulations for subordinate authorities on corruption prevention:

[http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED\\_Verwaltung/Korruption\\_Sponsorin g/Richtlinie\\_zur\\_Korruptionspraevention\\_in\\_der\\_Bundesverwaltung.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Korruption_Sponsorin g/Richtlinie_zur_Korruptionspraevention_in_der_Bundesverwaltung.pdf?__blob=publicationFile). See also the texts on combating corruption issued by the Federal Ministry of the Interior:

[http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/BMI\\_Korruptiospraevention2006.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/BMI_Korruptiospraevention2006.pdf).

<sup>56</sup> Martin Löffler, *Presserecht. Kommentar zu den deutschen Landespressegesetzen mit systematischen Darstellungen zum pressebezogenen Standesrecht, Anzeigenrecht, Werbe- und Wettbewerbsrecht, Vertriebsrecht, Urheber- und Verlagsrecht, Arbeitsrecht, Titelschutz, Jugendmedienschutz und Steuerrecht*, 5th revised and extended edition, Munich 2006. Transparency International Deutschland e.V., *Nationaler Integritätsbericht Deutschland*, 2012, p. 129-142.

<sup>57</sup> Netzwerk Recherche e.V.: <http://www.netzwerkrecherche.de>.

<sup>58</sup> Netzwerk Recherche e.V.: <http://netzwerkrecherche.org/ueber-uns/ziele/>.

media, it is primarily the political magazine shows on publicly broadcast television which have frequently addressed the issue of lobbying.

Journalists' investigative work ties in with the activities of civil-law watchdog groups, which have set themselves the task of intensively monitoring lobbying, presenting cases of corruption, unfair lobbying, and abuse of economic and media power to the public, and mobilising the media. They are Lobbycontrol, [abgeordnetenwatch.de](http://abgeordnetenwatch.de), Transparency International Deutschland and [campact](http://campact.org). These groups are driven by the mission to create transparency, and therefore improve the quality of democracy. Their work is based on specialised knowledge, contacts, and political and media expertise.

Lobbycontrol was founded in 2006.<sup>59</sup> Its aim is to expose lobbyists' influencing strategies, and make these transparent. The organisation's mission is an educational one, which it pursues with studies and PR, supplying the media with information on the legal breaches caused by lobby groups. Lobbycontrol considers itself an educational initiative seeking to promote democracy and public welfare, and use political and social reforms to give citizens more opportunities to have their say.

[Abgeordnetenwatch.de](http://Abgeordnetenwatch.de) is a new format of enlightening civil society on the relationship between interest groups and officials, using the Internet. The portal has existed at a federal level since December 2006. As its name states, it focuses on monitoring the behaviour of officials in parliament, and therefore a sub-area of civil-society lobby control. [Abgeordnetenwatch.de](http://Abgeordnetenwatch.de) is a politically neutral information and dialogue platform on which users can receive information on the officials (profession, photo, contact address and areas of specialisation), as well as their voting behaviour and ancillary activities. Since 2009, there has also been information on the candidates in Bundestag (federal parliament) and Landestag (state parliament) elections, particularly in terms of their political stances.<sup>60</sup>

Transparency International is known as a civil-society organisation geared around combating corruption. For many years, it has also devoted itself to the issue of lobbying, and has also developed a buzzword for this – responsible advocacy. However, criticism of lobbying has always been a latent focus, since corruption also has a political dimension. Specialising in bribery among officials, corruption in awarding contracts, and the ancillary activities of officials, Transparency tries to establish a link between corruption and lobbying. It has therefore expanded its sphere of action somewhat, and now also monitors the exercising of influence over political decision-makers. What is clear here is that Transparency pushes for greater transparency in relationships between lobbyists and political decision-makers. However, there is a fine line between legal and illegal exercising of influence. The text “Regulierung und Transparenz von Einflussnahme und Lobbyismus”

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<sup>59</sup> LobbyControl – Initiative für Transparenz und Demokratie e.V.: <http://www.lobbycontrol.de>.

<sup>60</sup> [Parlamentwatch e.V.: http://www.abgeordnetenwatch.de/](http://www.abgeordnetenwatch.de/).

(“Regulation and transparency of influencing and lobbying”) summarises Transparency’s key requirements.<sup>61</sup>

Campact is an organisation which does not essentially criticise or control lobbying in civil society. It is a novel initiative which organises campaigns, and can also quickly arrange supporters and protests for this purpose. The campaigns and protests it can systematically organise with its network of 720,000 contacts are mostly aimed at powerful economic and financial interests. The environmental policy is an important field. Campact’s partner organisations are the Deutsche Umwelthilfe (DUH), Bund Umwelt und Naturschutz (BUND), Attac, Oxfam, Mehr Demokratie and Transparency, and they provide expertise for the campaigns and protests.<sup>62</sup>

Campact can be included in a series of civil-society organisations focused on forming a “countervailing power” and therefore also monitoring powerful interest groups. They initiate protests, thereby contributing to democratic participation. For example, these protests seek to act against the interests of “green” genetic engineering, against the operators of nuclear power plants, and against powerful interest groups in climate policy. Overall, Campact strives to strengthen citizens’ rights of participation, and demands that officials’ ancillary income be disclosed.

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<sup>61</sup> Transparency International Deutschland e.V.: <http://www.transparency.de>. Transparency International Deutschland e.V./Lobbycontrol e.V., Regulierung und Transparenz von Einflussnahme und Lobbyismus, March 2013.

<sup>62</sup> Campact e.V. - Kampagnen für eine lebendige Demokratie: <https://www.campact.de/campact/ueber-campact/campact-im-ueberblick/>.

## BOX 2: THE INFLUENCE OF THE GAMING INDUSTRY ON POLITICS

Anyone walking through Germany's cities will notice that there are many casinos. In fact, there are around 8,000 gambling halls containing some 165,000 gaming machines. And the restaurant industry has a further 70,000. This wasn't always the case. The boom in casinos and the gaming industry first really started with the federal government's liberalisation of the gaming ordinance in 2006,<sup>1</sup> and particularly benefited the Gauselmann AG corporate group, Germany's largest manufacturer of gaming machines, which runs the Merkur gambling halls. The company earned a sales turnover of 1.205 billion Euros in 2012, and has almost 8,000 staff. It also operates in other European countries, and runs betting agencies and sports betting sales points.<sup>2</sup>

The Gauselmann AG corporate group, with Paul Gauselmann as the CEO of the family business, is expanding in a controversial industry, making it highly dependent on political decisions. For this reason, it has invested a lot in cultivating its image and PR. "I actually told my top dogs, who earn a lot, that our business depends on political laws. Which is why I expect them to also contribute something. There's nothing wrong in that," said the CEO in an interview.<sup>3</sup>

The amounts were always less than 10,000 Euros, meaning they never appeared in the parties' statements of account as individual donations with the donor's name. The aim of the donations was to "get the gaming ordinance off the ground" after the 2005 Bundestag election. An internal comment also added: "we need understanding from the various parties. Us helping politicians pay for their election campaigns helps us here".<sup>5</sup>

Gauselmann's business benefits from the policymakers' favour. The State Treaty on Gaming, which has been in effect since 1 July 2012, does not take into account the commercially run gaming machines. And this is precisely the field in which Gauselmann's company operates. Gauselmann is also present on the European sports betting market with Cashpoint. Cashpoint has been granted a licence for the state of Schleswig-Holstein, and is also increasingly active in online sports betting. Without political backing, organised through aggressive lobbying, party donations and sponsoring, the expansion strategies would be impossible.

From a purely legal perspective, it could not be proven that decisions had been influenced through monetary payments, because the donations were made by the staff.<sup>6</sup> Although the Bielefeld public prosecution service did search the company's office, it could find no proof that Gauselmann had paid the staff's donations to the parties.

Gauselmann also has other ways of exercising influence over the parties: sponsoring the parties and holdings in companies belonging to a party (the FDP). His close ties with the FDP pay off here. According to research conducted by Lobbycontrol, Gauselmann temporarily held shares in the company "ProLogo Gesellschaft für Veranstaltungsorganisation mbH". This company was majority-owned by the FDP, and it was responsible for sponsoring FDP party events. Gauselmann also had shares in altmann-druck GmbH, which similarly belonged to the FDP. This company was then completely transferred to Gauselmann's ownership, whereby Lobbycontrol criticised that too much had been paid for the company, thereby meeting the criteria for sponsoring/concealed party donations.<sup>7</sup>

ARD magazine Monitor exposed the links between Gauselmann and the FDP.<sup>8</sup> Weekly newspaper "Die Zeit" also reported on the case on 9 September 2012.<sup>9</sup> Constitutional law professors Martin Morlock and Ulrich Battis support suspicions that this is a case of concealed party donations.<sup>10</sup> It is now up to the Bundestag administration to check this, as it must examine the parties' statements of account, and therefore the legitimacy of the donations made to the parties.

And there are further dimensions to the relationship between the Gauselmann company and politics. CEO Paul Gauselmann has been the chairperson of the Verband der Deutschen Automatenindustrie e. V. (VDAl) since 1981. This association, along with three others in the gaming machine industry, is based at the "Haus der Automatenwirtschaft" in Berlin. Many of the associations' activities are initiated and co-ordinated through Automaten-Wirtschaftsverbände GmbH: Skat tournaments for politicians, entertainment services at party conferences, advertisements in party publications, and sponsoring of party events.<sup>11</sup>

Having close ties with politics is necessary and profitable for this industry. This is proven by various legislations, which suggest that the influence exercised by Gauselmann and the gaming machine industry was successful. The gaming ordinance was amended after the 2005 Bundestag election.<sup>12</sup> The maximum number of gaming machines per gambling hall was increased, and the minimum game duration per game reduced. Since then, the sales earned by casino operators and the gaming machine industry have increased.<sup>13</sup> According to a taz report dated 5/3/2011, the sales, entertainment and trade tax amount rose from 250 million Euros in 2005 to 1.25 billion Euros in 2008.<sup>14</sup> One important aspect of lobbying is the prevention of acts which interest groups believe to be disadvantageous. For example, the VDAI advocates clear rules when it comes to operating casinos and gaming machines. Conversely, this means that there are sufficient legal rules, and that the gaming laws, particularly in relation to gaming machines, do not need to be tightened. The association's website provides a series of argument guidelines here, which apply if politicians make efforts to work on tighter legal rules.<sup>15</sup>

Sources:

<sup>1</sup> The gaming ordinance was liberalised in 2006, after which the number of gaming machines increased by a third. See also: Hannoversche Allgemeine from 5 November 2013: <http://www.haz.de/Nachrichten/Politik/Deutschland-Welt/Staedtetag-fordert-Verbot-von-Gluecksspielautomaten-in-Kneipen-und-Spielotheken>.

<sup>2</sup> Gauselmann AG, Die Zukunft gestalten. Kurzportrait der Gauselmann Gruppe, Espelkamp 2013, [http://www.gauselmann.de/iogau/download/Webseiten/Homepage/Content/01%20%C3%9Cber%20Uns/10%20Kurzportr%C3%A4t/GAUSEL\\_KurzPortrait\\_020813\\_schreibgeschuetzt.pdf](http://www.gauselmann.de/iogau/download/Webseiten/Homepage/Content/01%20%C3%9Cber%20Uns/10%20Kurzportr%C3%A4t/GAUSEL_KurzPortrait_020813_schreibgeschuetzt.pdf), p. 21.

Website of Gauselmann AG, Gauselmann Group figures 2012/2013, <http://www.gauselmann.de/gag/Navigate.do?path=/Webseiten/Homepage/Content/01%20%C3%9Cber%20Uns/07%20Zahlen%20und%20Fakten>.

<sup>3</sup> Jakob Schland, "Die Parteien rufen bei uns an und wollen Geld", Berliner Zeitung, 1/6/2012, <http://www.berliner-zeitung.de/wirtschaft/spielothek-merkur-gruender--die-parteien-rufen-an-und-wollen-geld-10808230,16177806.html>.

<sup>4</sup> H. Leyendecker/K. Ott/N. Richter, Dubiose Parteispenden aus Glücksspielkonzern, Süddeutsche Zeitung, 4/5/2011, <http://www.sueddeutsche.de/politik/abgeordnete-erhielten-schecks-dubiose-parteispenden-aus-gluecksspielkonzern-1.1061744>.

<sup>5</sup> Lobbypedia, Gauselmann Group, [https://lobbypedia.de/wiki/Gauselmann\\_Gruppe](https://lobbypedia.de/wiki/Gauselmann_Gruppe).

<sup>6</sup> Hans Leyendecker/Klaus Ott/Nicolas Richter, Dubiose Parteispenden aus Glücksspielkonzern, Süddeutsche Zeitung, 4/5/2011, <http://www.sueddeutsche.de/politik/abgeordnete-erhielten-schecks-dubiose-parteispenden-aus-gluecksspielkonzern-1.1061744>. Dies., Gauselmanns Landschaftspflege, 18/2/2011, <http://www.sueddeutsche.de/politik/parteispenden-gauselmanns-landschaftspflege-1.1062187>

<sup>7</sup> Gauselmann comments on the allegations in a press release: [http://www.gauselmann.de/gag/Detail.do?path=%2FWebseiten%2FHomepage%2FContent%2F04+Presse%2F03+Pressearchive%2FPressemitteilungen+2012%2F09+September%2FGauselmann+zu+Parteispenden\\_de.+Wir+haben+nichts+zu+verbergen!](http://www.gauselmann.de/gag/Detail.do?path=%2FWebseiten%2FHomepage%2FContent%2F04+Presse%2F03+Pressearchive%2FPressemitteilungen+2012%2F09+September%2FGauselmann+zu+Parteispenden_de.+Wir+haben+nichts+zu+verbergen!)

<sup>8</sup> Lobbypedia, Gauselmann Group, [https://lobbypedia.de/wiki/Gauselmann\\_Gruppe](https://lobbypedia.de/wiki/Gauselmann_Gruppe).

<sup>9</sup> Kai Müller, FDP soll verdeckte Millionenspende erhalten haben, Zeit Online, 9/9/2012, <http://www.zeit.de/politik/deutschland/2012-09/fdp-pateispende-gauselmann> (retrieved: 14 August 2014)

<sup>10</sup> <http://www.presseportal.de/pm/6694/2321794/ard-magazin-monitor-verdacht-auf-verdeckte-parteispende-ueber-fdp-unternehmen>.

<sup>11</sup> See: <http://www.zeit.de/politik/deutschland/2012-09/fdp-pateispende-gauselmann> and the Automatenwirtschaftsverbände GmbH website: <http://www.awi-info.de/>.

<sup>12</sup> Ordinance on gaming machines and other games providing opportunities for profit, <http://www.gesetze-im-internet.de/bundesrecht/spielv/gesamt.pdf>.

<sup>13</sup> See also the position paper by the Junge Union in Bavaria: [http://www.ju-bayern.de/downloads/innen/spielhallen\\_beschlossen.pdf](http://www.ju-bayern.de/downloads/innen/spielhallen_beschlossen.pdf) and the report by the Stuttgarter Zeitung dated 14/5/2012: <http://www.stuttgarter-zeitung.de/inhalt.land-arbeitet-an-neuem-gluecksspielgesetz-spielhallen-wachsen-gebremst.3e4691ec-f2fb-4262-b756-50aae1093438.html>

<sup>14</sup> Waltraud Schwab, Die Automaten sind stärker, taz.de, 5/3/2011, <http://www.taz.de/1/archiv/digitaz/artikel/?ressort=hi&dig=2011%2F03%2F05%2Fa0060&cHash=1eca2d556581e46f07375207ff1c8bc5>.

<sup>15</sup> Website of the Verband der Deutschen Automatenindustrie e.V.: <http://www.vdai.de>



## IV. REGULATING LOBBYING

### IV.1. TRANSPARENCY

Transparency and information on the content and results of the political process at all levels are key quality criteria for democratic political systems. The aim of transparency is to maximise the public sphere (information, discussion, argumentation, evaluation, justification), and repress, as much as possible, governing parties' missions to protect official secrets (an arcane area of politics.<sup>63</sup> While every political culture distinguishes between these two spheres differently, democracy requires a certain degree of disclosure. The more developed democracies are, the stronger and more extensive their public spheres, and the smaller their arcane areas.<sup>64</sup>

Germany has a distinct tradition of extensive official secrets, manifested in the fact that administrative activities take place out of public view.<sup>65</sup> Even the political process itself is often not disclosed. There are numerous rules here, ranging from block-out periods for archived material (30 years for deeds from ministries and other government centres) to the arrangement of private meetings for committees, cabinets, caucuses and commissions.

The principle of non-transparency also applies to associations, interest groups and, to a limited extent, parties. Lobbying is thus a form of political communication which often takes place in the non-public sphere.

In contrast to this is the principle of transparency, which takes effect through the constitutional principle and requirement of democracy. A key element of transparency is the freedom of speech, which includes a right to information.<sup>66</sup> Exceptions from the principle of transparency (secret services, defence, HR matters etc.) do not need to be specially justified.

Germany has a functioning system of transparency, and access to extensive, relevant political information is ensured. This access and transparency is essentially organised by the media system. Further access to information is enabled by the sciences (publication and analysis of data collection; own surveys; surveys on behalf of political institutions). There are also graded duties of publicity for parties (statements of account, party financing), stock corporations (annual report, notifications to the financial supervisory authorities) and political institutions such as parliaments, governments, ministries and authorities. Information must therefore also be made accessible "ex officio".

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<sup>63</sup> Friedhelm Neidhardt, Öffentlichkeit, öffentliche Meinung, soziale Bewegungen, in: Kölner Zeitschrift für Soziologie und Sozialpsychologie, special edition 34, Opladen 1994, p. 7-41.

<sup>64</sup> Leo Kißler, Qualifizierung der Demokratie durch politische Öffentlichkeit: Organisationen und Verfahren, in: Dirk Berg-Schlösser/Hans-Joachim Giegel (ed.), Perspektiven der Demokratie, Frankfurt 1999, p. 134-176.

<sup>65</sup> Arno Scherzberg, Die Öffentlichkeit der Verwaltung, Baden-Baden 2000.

<sup>66</sup> Klaus Grimmer, Demokratie und Grundrechte. Elemente zu einer Theorie des Grundgesetzes, Berlin 1980, p. 272.

## Freedom of information

The 2006 Freedom of Information Act (act relating to the regulation of access to federal government information) governs entitlement to receive information on completed processes from the federal authorities. Access is granted upon request. There are numerous exceptions (personal data, HR files, trade secrets for contracts with companies). Previously, information had only been available to parties directly involved in the process. Eleven freedom of information acts have now been introduced at a state level, i.e. this access to information is not established in all states. No act exists in Baden-Württemberg, Bavaria, Hesse, Lower Saxony or Saxony.

The effect of the various freedom of information acts is still limited: Information is only provided upon request, which often involves charges. These requests can also be rejected (3280 requests were lodged at a federal level in 2011; 1557 in 2010).<sup>67</sup> According to a decision by the Federal Administrative Court on 3 November 2011, federal ministries are also obliged to provide documents on a legislative process, upon request.<sup>68</sup>

Germany's first transparency act was passed in Hamburg by the City Parliament in June 2012. It reverses the mandatory actions between the administration and citizens: information must be actively published and provided electronically by the administration. This applies, for example, to public services contracts and all surveys and studies commissioned by the administration. For Transparency, which actively participated in initiative, the Hamburg act is the benchmark for future laws on transparency and freedom of information

In general, however, a culture of transparency is yet to be developed. Access to information continues to be restricted, the information relates to completed events, and needs to be processed and analysed. From a democratic perspective, this is of limited value in terms of providing information on lobbying, as knowledge can, at best, only be gained in retrospect.

## Monitoring and controlling lobbying

Information on lobbying is highly selective and random. There are several reasons for this. Firstly, it is not clear who comes under this term. Plus, the only systematic, ongoing monitoring of lobbying is performed by the media, and therefore by (investigative) journalists, and must be viewed selectively, both in terms of time and content. This ties in with the limited number of political journalists, and the thematic focus on political fields and processes.<sup>69</sup> Journalistic monitoring of stakeholders is generally concentrated on a handful of journalists who, as long-time observers of

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<sup>67</sup> Tätigkeitsbericht des Bundesbeauftragten für Datenschutz und Informationsfreiheit, Peter Schaar vom 24.04.2014, [http://www.bfdi.bund.de/IFG/Oeffentlichkeitsarbeit/Pressemitteilungen/2012/3TB\\_IFG.html?nn=411766](http://www.bfdi.bund.de/IFG/Oeffentlichkeitsarbeit/Pressemitteilungen/2012/3TB_IFG.html?nn=411766) und

[http://www.bfdi.bund.de/SharedDocs/Publikationen/Taetigkeitsberichte/TB\\_IFG/3TB10\\_11.pdf;jsessionid=E83A73558836513E81E6CB3F42C22BB6.1\\_cid134?\\_\\_blob=publicationFile](http://www.bfdi.bund.de/SharedDocs/Publikationen/Taetigkeitsberichte/TB_IFG/3TB10_11.pdf;jsessionid=E83A73558836513E81E6CB3F42C22BB6.1_cid134?__blob=publicationFile).

<sup>68</sup> BVerwG 7 C 4.11, <http://www.bverwg.de/entscheidungen/pdf/031111U7C4.11.0.pdf>.

<sup>69</sup> Siegfried Weischenberg/Maja Malik/Armin Scholl, Die Souffleure der Mediengesellschaft. Report über Journalisten in Deutschland, Konstanz 2006.

specific political fields, are familiar with people and topics. The economic pressure in the media industry means there is less time for research, and more frequent changes in responsibility.<sup>70</sup> Added to this is the pressure for scoops, which gears newsworthiness around the latest stories. This then tends to follow the tangent of using information to scandalise rather than that of systematic, ongoing monitoring.<sup>71</sup> However, there are also journalists whose capital lies in their good relations with the interest groups being monitored, and who are not interested in greater transparency.<sup>72</sup>

In general, it must be noted that neither politics (association lists) nor the media (systematic monitoring) or civil-society stakeholders (data collection) are able to provide the public with systematic, reliable and ongoing information on the lobbying stakeholders.

A systematic scheme for evaluating lobbying activities would also have to enable precise attribution of the influence exercised by lobbyists over political decisions (or even non-decisions).

### Possible legal instruments

Although Germany has the aforementioned association list managed by the German Bundestag, which nationwide associations/interest groups can join,<sup>73</sup> this list is of limited value when it comes to regulating lobbying activities, and can, at best, therefore only be the starting point for further regulation. It does not contain any codes of conduct, and the voluntary registration does not involve any specific requirements. The committees of the German Bundestag are similarly not bound to this list when extending invitations to hearings. It does, however, provide more information. The list's appendix contains another list of nationally active interest organisations, broken down by political field. For example, the Sport, Solar Energy and Energy sections feature all the interest groups who have registered and are classified under these fields.

As the German Bundestag's list of associations and other lobbyist registers have so far not contributed much to the regulation of lobbying, calls for a mandatory lobby register are becoming increasingly vocal. The top priority of such a register would be to create transparency. The demand for a mandatory register cites the experiences gained with the EU Commission's voluntary register.<sup>74</sup> The latter has existed since June 2008, and, at the time of last revision (5 June 2014), the new transparency

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<sup>70</sup> Ottfried Jarren/Patrick Donges, Politische Kommunikation in der Mediengesellschaft. Ein Einführung, 2nd updated. edl., Wiesbaden 2006, ch. 7.

<sup>71</sup> Steffen Burkhardt, Medienskandale. Zur moralischen Sprengkraft öffentlicher Diskurse. Cologne 2006: Herber von Halem. Hans-Martin Kepplinger, Die Mechanismen der Skandalisierung. Zu Gutenberg, Kachelmann, Sarrazin & Co. Warum einige öffentlich untergehen – und andere nicht, Munich 2012.

<sup>72</sup> Ulrich Sarcinelli, Politische Kommunikation in Deutschland. Zur Politikvermittlung im demokratischen System, 2nd revised and extended edition. Wiesbaden 2009, p. 118ff.

<sup>73</sup> German Bundestag, Public list of associations registered with the Bundestag, and their representatives: <http://www.bundestag.de/dokumente/lobbyliste/>

<sup>74</sup> EU Transparency Register: [http://europa.eu/transparency-register/index\\_de.htm](http://europa.eu/transparency-register/index_de.htm)

register contained 6,632 lobby organisations. This is nowhere near the total number of organisations engaging in lobbying at an EU level.

In order to achieve the aim of comprehensive listings, a hearing on mandatory registration was held in the German Bundestag's Committee of Internal Affairs on 15 June 2009. The Deutsche Gesellschaft für Politikberatung (degepol) composed a framework paper on mandatory registration,<sup>75</sup> stating the minimum requirements associated with mandatory registration: This obligation must apply to all persons and organisations representing interests to policymakers, and who contact officials and ministerial employees. It should also particularly apply to lawyers invoking the duty of non-disclosure associated with the Federal Lawyers' Professional Code. This means that, in addition to advisors and agencies, lawyers, law firms, churches and civil-society organisations also need to register. However, mandatory registration must include compulsory information open to the public. The framework paper calls for clients to be named and a code of conduct to be recognised. The compulsory information includes general structural details, staff numbers, subcontractors, and of course information on the financing of interest representation. This, along with the mandatory registration for lawyers, is the most controversial subject.<sup>76</sup> The framework paper proposes a threshold value of 10,000 Euros per quarter, or more than 10 percent of a staff member's working hours. Above this threshold, funds must be stated in stages (level 1: up to 100,000 Euros, level 2: 100,000 to 300,000 Euros; level 3: 300,000 Euros to 500,000 Euros; level 4: over 500,000 Euros). It is also important for the funds' origins to be disclosed here.

Register breaches should be sanctioned by the Bundestag administration managing the register. The framework paper also provides more specific suggestions in this respect: One form of sanction is to prohibit access to officials. Even more important is the regulation of lobbyist access to ministerial administrations. A lobby register would therefore not only have to be managed by the German Bundestag, but also by the federal government, as both institutions are strictly separate as a result of political division of power.

Kolbe, Hönigsberger and Osterberg have made a proposal for accrediting lobbyists:<sup>77</sup> only those who are accredited, and therefore accept the behavioural requirements, gain access to the officials. Important information would be disclosed at the time of accreditation.

Another instrument which could tie in with a lobby list is known as the legislative footprint, which involves documenting, in a draft bill's grounds, how the bill came about, i.e. which items were for or against it in the individual paragraphs. This would

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<sup>75</sup> Deutsche Gesellschaft für Politikberatung e.V., Eckpunktepapier der de'ge'pol – Deutsche Gesellschaft für Politikberatung zu einem Register für Interessenvertreter in Deutschland, [http://www.degepol.de/transparenz/das\\_eckpunktepapier\\_der\\_degepol\\_zu\\_einem\\_register\\_fuer\\_interessenvertreter\\_in\\_deutschland.pdf](http://www.degepol.de/transparenz/das_eckpunktepapier_der_degepol_zu_einem_register_fuer_interessenvertreter_in_deutschland.pdf) (retrieved on 4. Juli 2014).

<sup>76</sup> pr-journal.de, Registrierung von Interessenvertretern und Offenlegung der Finanzquellen?, [http://www.pr-journal.de/images/stories/downloads/seiten\\_aus\\_verbaendereport\\_2006-07.pdf](http://www.pr-journal.de/images/stories/downloads/seiten_aus_verbaendereport_2006-07.pdf).

<sup>77</sup> Andreas Kolbe/Herbert Hönigsberger/Sven Osterberg, Marktordnung für Lobbyisten. Wie Politik den Lobbyeinfluss regulieren kann, Frankfurt 2011, [http://www.otto-brenner-shop.de/uploads/tx\\_mplightshop/AH\\_70\\_Lobby\\_End.pdf](http://www.otto-brenner-shop.de/uploads/tx_mplightshop/AH_70_Lobby_End.pdf)

mean disclosure of who contributed to which acts, particularly in the ministries. This requirement should be included in the Joint Rules of Procedure (GGO).

The influence of interests on the draft bill should be discussed in the first reading of the bill.

## IV.2. INTEGRITY MEASURES

Germany does not have a robust ethical set of rules for lobbyists or lobbying. In particular, there is a lack of comprehensive, binding, transparent, punishable (behavioural) rules which apply to everyone. There are, however, codes of ethics, conduct and compliance for various groups and areas. Ministers, officials and parliamentarians each have their own integrity measures.

One possible option for development could be to further expand behavioural rules for individual groups and areas, because conduct requirements differ so greatly, and existing rule systems are so strong, that there is little possibility of standardisation.

There is a series of behavioural regulations for political decision-makers, who are often the targets of lobbying activities.

Particular integrity measures, established in the Parliamentarians' Act and the German Criminal Code (§ 108e), apply to members of the German Bundestag. The Parliamentarians' Act and German Bundestag's Rules of Procedure are binding for parliamentarians. Section 10 (§ 44a, b) of the former governs parliamentary independence, establishing, for example, that no money or monetary benefits may be accepted by interest groups for representing and asserting interests. It also states that ancillary income must be disclosed and published. The following parliamentary information is published in accordance with the German Bundestag's Rules of Procedure: Profession, paid employment in addition to the mandate, roles at companies, public corporations, clubs, associations or foundations, agreements on future work, holdings in partnerships and corporations, donations, and other allowances for political work.

A 10-stage regulation is chosen when it comes to mandatory publication of parliamentary income totalling more than 1,000 Euros a month or 10,000 Euros a year: Level 1: income over 1,000 Euros; level 2: income up to 7,000 Euros, level 3: income up to 15,000 Euros, level 4: income up to 30,000 Euros, level 5: income up to 50,000 Euros, level 6: income up to 75,000 Euros, level 7: income up to 100,000 Euros, level 8: income up to 150,000 Euros, level 9: income up to 250,000 Euros, level 10: income over 250,000 Euros.<sup>78</sup> However, the parliamentarians only stated the levels, not the exact amount of their ancillary earnings.

As various stakeholders do not believe there is a comprehensive, binding code of conduct for parliamentarians, proposals have been made: Bundestag members Marco Bülow (SPD) and Gerhard Schick (Die Grünen) proposed a code of conduct with much higher transparency and ethics standards for parliamentarians. For

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<sup>78</sup> German Bundestag, Rules of Conduct for Members of the German Bundestag. Collection of texts, [https://www.bundestag.de/blueprint/servlet/blob/194754/bc08b4bfbc8a9852b65b6be0b6b99b67/web\\_verhaltensregeln\\_2013-data.pdf](https://www.bundestag.de/blueprint/servlet/blob/194754/bc08b4bfbc8a9852b65b6be0b6b99b67/web_verhaltensregeln_2013-data.pdf).

example, parliamentarians would have to disclose the exact amount of their ancillary income, and any meetings with lobbyists.<sup>79</sup>

Another important issue is that of ministers and parliamentary state secretaries moving to areas relating to their previous work. It has often been observed that retired politicians tend to become lobbyists. There have so far not been any rules for ministers or parliamentary state secretaries in this respect, but there are numerous proposals, so-called cooling-off periods, to avoid the risk of ministers and parliamentary state secretaries making decisions for which they are remunerated “later on”, and favouring interest groups as a result of this move.<sup>80</sup>

A 5-year cooling-off period applies to ministerial administration officials (another major group of stakeholders in the political process) in the form of an approval proviso. Apart from this, there are no explicit behavioural rules for dealings with lobbyists, which is particularly astonishing because ministerial bureaucracy is the main target of lobbyists in the early stages of the political process. There are, however, regulations on corruption prevention.

For tenured staff at ministries, the chancellery and in parliamentary groups, both the civil service law and Criminal Code apply, whereas only the latter applies to others. Civil service law governs public-law service and fiduciary relationships, as well as official secrecy.<sup>81</sup> The duty of non-disclosure for civil servants includes information that they obtain as part of their work and merely incidentally. It must not be passed onto third parties.<sup>82</sup>

If pursuing political goals, ministerial officials must formulate bills, draft up implementation rules, communicate with the interest groups, and contact lobbyists. They collect information, and participate in specialist events, because political control in terms of a consensually accepted regulation is virtually impossible without knowledge of the various positions.

A series of association and interest group representatives have worked at the ministries in recent years. In January 2007, the German Federal Court of Audit published “Eckpunkte für den wirtschaftlichen Einsatz externer Berater” (“Key parameters for profitable use of external advisors”), as it had constantly noted that even “the key tasks of a responsible administration” were being awarded to external advisors. This practice enables establishments such as law firms to illegally exercise influence/crucially influence the content of acts and laws.

The involvement of external “delegated” persons in the federal administration was also heavily criticised. It was reported that external parties had participated in legislative procedures and administrative decisions which affected their employer’s

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<sup>79</sup> Lobbycontrol.de, Code of conduct for members of the German Bundestag. Discussion draft 15/3/2013, <https://www.lobbycontrol.de/wp-content/uploads/MdB-verhaltenskodex.pdf>

<sup>80</sup> Lobbycontrol formulated an overview of politicians who retired from politics and then moved to interest groups. But they are all ministers, state secretaries, heads of department and parliamentarians. It’s hard to determine an exact population number. Lobbypedia, Seitenwechsler im Überblick, [https://www.lobbypedia.de/wiki/Seitenwechsler\\_im\\_%C3%9Cberblick](https://www.lobbypedia.de/wiki/Seitenwechsler_im_%C3%9Cberblick).

<sup>81</sup> German Federal Civil Servants’ Act (BBG), § 4.

<sup>82</sup> German Civil Servants’ Status Act (BeamtStG), § 37 and BBG § 67.

interests. In a report to the German Bundestag's budget committee in 2008, the German Federal Court of Audit recommended changing the current practice, upon which the "General Administrative Regulation on employing staff outside the public service (external persons) in the federal administration" was enacted (17/7/2008). The half-yearly reports on applying and implementing the General Administrative Regulation are not published.<sup>83</sup>

## Companies and associations

Integrity and behavioural rules also apply to associations and companies. Many associations have now established guidelines for integrity, compliance and ethical conduct,<sup>84</sup> while over the last decade, companies introduced and implemented a culture of compliance and ethical business management which impacts on association memberships, and therefore places pressure on the associations.

The entire strategy can be illustrated using the example of the Gesamtverband der Versicherungswirtschaft (GDV). The GDV developed compliance guidelines in 2012, detailing "association work of integrity[...], i.e. legally correct[...], geared around ethical principles[...]".<sup>85</sup> According to the association, the public and their trust has become a key point of reference for its work and guidelines.<sup>86</sup>

These compliance guidelines govern the conduct of association members in their dealings with the media and policymakers, and therefore lobbying. The press department is the sole entity responsible for presenting the association in the media. Staff cannot accept or give gifts – which is important for lobbying; only small "socially appropriate" gifts are permitted.<sup>87</sup> Gifts to, and advisor contracts with, public office-holders are generally prohibited. Similarly, no invitations to entertainment events may be extended.

In the guidelines, the association commits to entering the European Parliament's transparency register. This includes an obligation to following the basic rules of the code of conduct for lobbyists in its relationships with the EU bodies, their members, public servants and civilian employees.

The guidelines expressly prohibit association members from engaging in active or passive bribery. Sponsoring is allowed, insofar as it has been approved by the head management.

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<sup>83</sup> Transparency International Deutschland e.V., Nationaler Integritätsbericht Deutschland, 2012, p. 43. With regards to the so-called legislative outsourcing, see for example Michael Kloepfer, "Regierungsinitiativen ohne Ministerialverwaltung", in: Transparency International Deutschland e.V./dbb beamtenbund und tarifunion, Dankt der Staat ab? Wo bleibt das Primat der Politik. Unabhängigkeit und demokratische Legitimität im 21. Jahrhundert, Berlin 2011, p. 47-58.

<sup>84</sup> Gesamtverband der Deutschen Versicherungswirtschaft e.V.: <http://www.gdv.de/tag/compliance/>

<sup>85</sup> Gesamtverband der Deutschen Versicherungswirtschaft e.V.: <http://www.gdv.de/tag/compliance/>

<sup>86</sup> As stated on the first page of the association's compliance guidelines. However, presenting the association's concerns is always associated with strategic targets. One example of this is the awarding of the GDV's teacher prize: <http://www.nachdenkenseiten.de/wp-print.php?p=3002>

<sup>87</sup> The compliance guidelines state: Gifts to public office-holders are not permitted. 25 Euros is set as the threshold, and gifts up to this value must be advised to the head management: [http://www.gdv.de/wp-content/uploads/2012/02/GDV\\_Compliance\\_Leitfaden\\_25012012nn.pdf](http://www.gdv.de/wp-content/uploads/2012/02/GDV_Compliance_Leitfaden_25012012nn.pdf)

The fact that a compliance centre has been set up by the GDV illustrates the trend that the upholding of rules is being monitored, and that any necessary help is provided in the event of conflicts. The guidelines even mention sanctions which apply if the guidelines are breached. However, reports on compliance with these rules, as well as any possible sanctions, remain an internal association matter. Conflicts and sanctions are thus not made public.

Many associations and companies have now introduced these guidelines and compliance mechanisms, meaning they are also part of companies' CSR strategies. On the one hand, they serve the purpose of internal regulation, and on the other, as a way of externally presenting the company as one committed to upholding ethical rules.<sup>88</sup>

But there is still a lack of overarching structures enabling lobbying to be monitored and sanctioned outside the individual organisations. There are two ways of achieving this: legal regulation by policymakers and self-regulation methods at the level of the associations. Initial approaches to self-regulating lobbying in Germany have been established by the Deutsche Gesellschaft für Politikberatung, degepol. (see *Box 1*)

Companies' attitudes towards lobbying can also be demonstrated by their commitment to the UN Global Compact. In August 2014, 270 companies, including 24 of the 30 DAX-listed companies, committed to Principle 10 of the Compact, which states that: Businesses should work against corruption in all its forms, including extortion and bribery.<sup>89</sup>

### IV.3. ACCESS OPTIONS AND CHANNELS FOR INTERESTS

When it comes to options for articulating interests in the political sphere and process, this relates directly to the opportunities interest groups have for promoting their causes. Distinguishing between strong and weak interests is an important differentiation tool, which can illustrate that not all interests have the same opportunities to be expressed.<sup>90</sup> These two groups are distinguished based on the following criteria: Economic and producer interests are more easily asserted because they have an organisational capacity, resources, strength and therefore more powers of prevention.<sup>91</sup> In addition to resources (member contributions, organisation with

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<sup>88</sup> Compliance rules are important for the company and association culture. But they are not enough, because lobbying takes place in the political sphere, and the audience targeted by lobbying must also abide by behavioural rules. In addition to this remains the problem of sanctioning and monitoring.

<sup>89</sup> Deutsches Global Compact Netzwerk: <http://www.globalcompact.de/>. Transparency International Deutschland e.V. has also complained that the sustainability reports compiled by German companies in terms of anti-corruption do not keep their promises. Transparency International Deutschland e.V., Nachhaltigkeitsberichte deutscher Großunternehmen. Untersuchung der Übereinstimmung mit den GRI-Richtlinien im Bereich Antikorruption, Berlin 2012.

<sup>90</sup> Ulrich Willems/Thomas von Winter, Die politische Repräsentation schwacher Interessen: Anmerkungen zum Stand und zu den Perspektiven der Forschung, in: Dies., Politische Repräsentation schwacher Interessen, Opladen 2000, p. 9-36.

<sup>91</sup> Claus Offe, Politische Herrschaft und Klassenstrukturen. Zur Analyse spätkapitalistischer Gesellschaftssysteme, in: Gisela Kress/Dieter Senghaas (ed.), Politikwissenschaft. Eine Einführung in ihre Probleme, Frankfurt 1969, p. 135-165. Thomas von Winter, "Schwache Interessen". Zum kollektiven Handeln randständiger Gruppen, in: Leviathan 1997, Book 3, p. 593-566.



staff, connections to the political system (contacts with the parties, ministries, parliamentarians, connections with science and the media)), the influence of interests thereby primarily also depends on the degree of involvement in the political system. Interest groups which have been incorporated and familiarised with the regulation tasks by policymakers have more options of exercising influence over political regulation through lobbying.

The political system development also highlighted characteristic connections between interest groups and political institutions. For example, there had long been particular proximity and staff interrelations between the farmers' association and the Ministry of Agriculture.<sup>92</sup> A similar scenario was observed between the Labour Ministry and the trade unions, and between the Ministry for Social Affairs and welfare associations.<sup>93</sup> The Ministry for Economic Affairs continues to maintain close contact with the trade associations. In some cases, it displays a liberal basic understanding for the trade associations.<sup>94</sup>

Access is also granted by parties whose political importance is determined through democratic elections. Parties have a high-ranking status, and simultaneously also play a pooling role, in the interest representation system. They alone are responsible for developing policy concepts, and take up political positions through elections. This means they, too, are the targets of interest groups, as is constantly evidenced in federal coalition negotiations, because the coalition agreement establishes the political agenda of the legislation period. Political agendas are drafted up by parties, and often implemented as laws.

Interests are partially also reconciled by virtue of special rights of action for associations, as well as other instruments, such as Stiftung Warentest, the antithesis of non-public interests.<sup>95</sup> Associations' rights of action so far include consumer protection and nature conservation, as these protected resources have not been able to develop sufficient resistance or effectively protect themselves any other way. Collective claims have not yet been established as instruments for other civil-society organisations.

While the political process is therefore formally open to everyone equally, the actual setup displays uneven resources and influence options, as well as clear preference for certain groups.

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<sup>92</sup> Klaus von Beyme mentions "association duchies". See: Klaus von Beyme, *Geschichte der politischen Theorie in Deutschland*, Wiesbaden 2009, p. 396.

<sup>93</sup> The relationships have changed in recent years. See: Christian Neusser, *Pluralisierte Partnerschaften. Über den Wandel der Parteien-Gewerkschafts-Beziehungen*, Berlin 2013: edition sigma.

<sup>94</sup> Achim Lang, *Die Evolution sektoraler Wirtschaftsverbände. Informations- und Kommunikationsverbände in Deutschland, Großbritannien und Spanien*, Wiesbaden: VS Verlag, p. 222.

<sup>95</sup> For the collective claim, see the "Verbraucherschutz: Recht harmlos? Verbandsklage auf dem Prüfstand" conference documentation from the association's consumer office dated 8 May 2006 in Berlin: [http://www.vzbv.de/mediapics/verbandsklage\\_gesamtdokumentation\\_reden\\_05\\_2006.pdf](http://www.vzbv.de/mediapics/verbandsklage_gesamtdokumentation_reden_05_2006.pdf).

### BOX 3: THE CAR INDUSTRY AND REGULATION OF THE ORDINANCE ON THE LABELLING OF CAR ENERGY CONSUMPTION

As of 1 December 2011, all cars sold in Germany must bear the new energy efficiency label, which replaces the European label previously stipulated for passenger vehicles, and, importantly, now also includes a colour scale, the likes of which has already been used for refrigerators and washing machines. Cars are classified under efficiency categories A+ to G, based on both CO<sub>2</sub> emissions, as well as the weight of the respective vehicle. The label design is established in the German ordinance on the labelling of car energy consumption (Pkw-EnVKV).

This legal ordinance, which serves as the basis for the energy efficiency label found on every new car for sale, was largely drafted up by the Verband der Automobilindustrie (VDA), as claimed by the Deutsche Umwelthilfe (DUH).<sup>1</sup> In 2010, the DUH, an environmental and consumer protection organisation, demanded to view documents in accordance with the environmental information act. This was preceded by the joint amendment by the Federal Ministry for Economic Affairs (BMWi) and the Federal Environment Ministry (BMU) regarding the Pkw-EnVKV on 3 May 2010. The ministries refused to grant access to the documents, which were only disclosed by virtue of a decision by the European Court of Justice in June 2013.<sup>2</sup>

They are now available, prompting the DUH to make the following assessment: “As evidenced by the documentation, the German car industry not only exercised influence over the form of the legal ordinance; it also largely initiated it (to avert the threat of a stricter EU directive) and composed its content.”<sup>3</sup>

The car energy label came under fire as early as 2011, after the ordinance had taken effect. The Bund für Umwelt und Naturschutz Deutschland (BUND) criticised the fact that a vehicle’s weight influenced its efficiency category, stating that a better efficiency category could be achieved with heavier weights. At the time, the BUND proposed only basing the classification on consumption and CO<sub>2</sub> emissions. If the vehicle weight were then included, as stipulated in the ordinance, heavier vehicles could suddenly end up being more efficient than small ones. It was alleged this was a case of clear preferential treatment of SUVs and heavy vehicles, which are particularly produced by German manufacturers. The BUND and other environmental organisations were demanding a revision of the Pkw-EnVKV as early as 2011.

On 19 February 2010, Matthias Wissmann, President of the VDA, wrote a letter to Rainer Bomba, State Secretary at the Federal Ministry for Transport, Construction and Urban Development. Enclosed with the letter was a detailed outline of the German car industry’s position on energy labelling. This 7-page position paper is now accessible through the file inspection facility.<sup>4</sup> In the letter to State Secretary Bomba, Wissmann encouraged “comprehensible coloured tags”, and assured that an agreement with the BMWi had already been reached regarding “a concrete proposal”, and that it was now just a question of convincing the BMU. The joint proposal by the automobile association and BMWi is enclosed with the letter (“German ordinance on the labelling of car energy consumption – the German car industry’s position, January 2010”). It was suggested that this sort of labelling could also serve as a “role model and benchmark for Europe”, but that quick action was needed, as the time frame would finish “if the EU Commission officially started working on a European-wide solution”; the threat of a stricter EU regulation was to be avoided.

The position paper proposes forming segments so that small vehicles are not automatically given preference. The aim for customers should be to identify the most economical car in the respective segment, because “everyone understands that a large car consumes more than a small one, even those wanting to buy a large vehicle.” Efficiency categories are to be formed, incorporating the vehicle’s weight as a key parameter.

The letter and appendix indicate that car classification by energy efficiency has essentially been influenced by the German car industry. In any case, this is how the DUH interprets the process in light of the documents published. Jürgen Resch, managing director of the DUH, complained that “the car lobby not only composed the main features of the legal ordinance for the BMWi, but also organised the interdepartmental co-ordination between the ministries”.<sup>5</sup> The published documents also show that the associations and companies had already been involved in the legislative process a draft co-ordinated interdepartmentally had been published. This clearly contravenes the provisions of the Ministries’ Joint Rules of Procedure (GGO).

Further documents confirm that, on 20 April 2010, Ulrich Hackenberg, a Daimler executive, and Thomas Weber, VW executive, wrote a letter to Federal Environmental Minister Röttgen (CDU), expressing their wish to change the ordinance so that Daimler and VW vehicles could also be classified under efficiency category A+.

Another key aspect of the entire matter was the systematic refusal to grant the DUH access to view the documents, even after the European Court of Justice had made a decision in the DUH's interests in summer 2013. The documents were not provided until after the 2013 Bundestag election. The federal government obviously did not want to make them publicly available before the vote, because they clearly show that the car industry association, and not the ministry, formulated the draft bill/outline.

In view of this, the donations made by the car industry to the parties are also of critical importance. And the provision of transport services at party conferences and events can be classified as party sponsoring, which is still unregulated.<sup>6</sup>

Sources:

<sup>1</sup> [http://www.duh.de/pressemitteilung.html?&tx\\_ttnews\[tt\\_news\]=3175](http://www.duh.de/pressemitteilung.html?&tx_ttnews[tt_news]=3175)

<sup>2</sup> [http://www.duh.de/pressemitteilung.html?&tx\\_ttnews\[tt\\_news\]=3157](http://www.duh.de/pressemitteilung.html?&tx_ttnews[tt_news]=3157); see also the report in Tagesspiegel dated 6/8/2013: <http://www.tagesspiegel.de/wirtschaft/autolobby-eu-gericht-erlaubt-blick-hinter-die-kulissen/8603784.html>

<sup>3</sup> [http://duh.de/pressemitteilung.html?&tx\\_ttnews\[tt\\_news\]=3202](http://duh.de/pressemitteilung.html?&tx_ttnews[tt_news]=3202)

<sup>4</sup> [www.duh.de/uploads/media/DUH\\_BMWi\\_Akteneinsicht1.pdf](http://www.duh.de/uploads/media/DUH_BMWi_Akteneinsicht1.pdf)

<sup>5</sup> DUH press release dated 28 October 2013; [http://duh.de/pressemitteilung.html?&tx\\_ttnews\[tt\\_news\]=3202](http://duh.de/pressemitteilung.html?&tx_ttnews[tt_news]=3202)

<sup>6</sup> see Appendix, A1 and

<http://www.bundestag.de/bundestag/parteienfinanzierung/fundstellen50000/2012/index.html>

## Expert groups

Politics needs expertise, which can mostly be obtained internally (ministries, subordinate scientific authorities, investigation commissions, the German Bundestag's Scientific Service, departmental research facilities). But external expertise is also important. In 2007, the German Federal Court of Audit listed the positive aspects of external participation in new and complex subjects, albeit primarily referring to the administration's often incorrect controlling and usage of advisors. One of the ways expertise is contributed is through expert groups. The federal government has formulated an overview of its and the Bundestag's advisory boards.<sup>96</sup> These expert groups fulfil various purposes (e.g. a decision-making board, a regular scientific advisory board, or a consensus committee).

These expert groups are generally appointed and formed non-transparently by the ministries,<sup>97</sup> which is a flaw, because the expert groups provide political advice, and, according to Ulrich Battis, any form of advice is also a means of influence.<sup>98</sup> The relationship between experts and the interest groups and companies is ambiguous and, in many cases, controversial.

The expert groups often consist of scientists, some of whom also maintain relations with interest groups because they are on advisory boards there, or have taken on research assignments for companies or associations. This can only be proven in detail by thoroughly examining the expert groups and the experts' relationships with interest groups.

The expert groups' work also lacks of transparency. Not all expert reports or advisory documents are published or can be assessed in terms of their origins. The advisory process and results are generally not public either.

There is therefore a lack of publicly accessible information on committee members, and information helping to prevent conflicts of interest between members. Coupled with this are issues of the respective legal basis for establishment and the specifications for balanced membership, as well as the rules on initiating recommendations.

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<sup>96</sup> See, for example, the Fifth Federal Government Board Report on the German Federal Board Act, 16/12/2010, <http://dipbt.bundestag.de/doc/btd/17/043/1704308.pdf>.

<sup>97</sup> Advisory board members are generally appointed by the ministry, at the advisory board's suggestion. This type of membership is governed in the by-laws of the Scientific Advisory Board at the German Federal Ministry for Economic Affairs and Energy. See: <http://www.bmwi.de/DE/Ministerium/beiraete,did=10130.html>

<sup>98</sup> Ulrich Battis, *Verfahrensrechtliche Lösungen beim Gesetzesoutsourcing*, in: Michael Klöpfer (ed.), *Gesetzgebungsoutsourcing. Gesetzgebung durch Rechtsanwälte?*, Baden-Baden 2011: Nomos, p. 126.

#### BOX 4: LOBBYING AND THE GREY FINANCIAL MARKET

In Germany, financial investments can be made on the so-called “grey capital market”, which sits between the “white capital market” for monitored financial products approved by the German Federal Financial Supervisory Authority (Bafin), and the “black capital market”, where clearly illegal products are sold. The services offered by the “grey capital market” are very diverse, ranging from the purchase of prematurely terminated life insurance, to the issuing of profit participation certificates, to the sale of funds (e.g. closed property funds; ship and film funds). What all products have in common are promises of high returns, which frequently fail due to the snowball-system format. According to data from the German Investor Protection Association (DASB), the damages caused to investors by dubious providers total several billion Euros a year.<sup>1</sup>

In 2003, the passing of the “Act on investment modernisation and the taxation of investment assets” (Investment Modernisation Act) introduced special funds with additional risks – so-called hedge funds. Authorisation and regulation are also to be governed by the act,<sup>2</sup> whose preliminary remarks are as follows:

*It is also in the investor's interests to introduce a “special fund with additional risks”, so-called hedge funds, as this new, regulated product monitored by the federal agency allows investors to add hedge-fund shares to their portfolio mix. This intention by legislators has been welcomed by experts, as it improves the competitive situation in Frankfurt's financial community in the area of alternative financial products, and also serves to protect investors. On the other hand, the legal layout stipulated in the draft takes into account the intention to only release hedge funds from the Grey Capital Market under certain conditions, and apply them to the Investment Act and Investment Taxation Act – treating them the same as customary special funds from a fiscal perspective. Other alternative forms of investment, such as private equity and venture capital, are not regulated; other solutions must be sought here. (p. 66)*

At the same time, however, it emphasises the following:

*However, the considerable risk associated with investing in hedge-fund shares means an express warning is required in order to advise potential private investors that they may lose up to 100 percent of the assets contributed. The legal regulation is better for consumers, as they can now invest in hedge-funds offered by monitored providers, and no longer have to rely on unmonitored products such as hedge-fund certificates, which are inferior in terms of transparency, investment strategy information, and substantive control from investor protection perspectives. (p. 68)*

According to Wolfgang Hetzer, however, the red and green coalition government has not conducted any serious impact assessment, “even though the increased attractiveness for Germany as a financial centre involved even greater risks for consumer protection, fraud protection, and the protection of legal interests intended by the anti-money-laundering regulations.”<sup>3</sup>

The problem here is that a staff member from the Bundesverband Investment und Asset Management e.V. (BVI) had been sent to the Federal Ministry of Finance (BMF), and contributed to the act. In 2009, the German Public Relations Council issued a public reprimand against the BVI and BMF, based on the following grounds:

*The Council considers it proven that, in contributing to an act directly concerning her association, the relevant staff member provided more than just professional expertise on the assessment of regulations. The BVI admits to this, while the ministry simply discounts participation in “sensitive hedge-fund issues”, which the BVI, according to its own information, does not stand for either.*

*The Council deemed the BVI's statement that the transparency requirement had not been breached as fictional. Given the situation described, the claim appears naive at best. Both parties also failed to protect staff against conflicts resulting from concurrent interests.*

*These concurrent interests were similarly not made transparent: When the first internal draft bill was presented, it was no longer clear whether the relevant passages had been formulated by the BMF's own staff or by delegated staff, i.e. whether it was a text guided by interests. This*

*meant that even the subsequent hearing in the legislative process for participating parties was influenced non-transparently.*

*As the competent authority, the BMF would have had to prevent the delegated staff member from working on a draft bill concerning the BVI. Under the guidelines of the Federal Ministry of the Interior, such involvement would no longer be permitted today. But even at that time, it was prohibited under the relevant transparency requirements of the applicable code. The Council thus unanimously reprimands the BMF's conduct.*

*The staff member was also delegated by the BVI without a written agreement being established between the association and the ministry, and without any behavioural guidelines for delegated staff. Furthermore, the BVI has so far not addressed the conflicts of interest resulting from delegation, nor conducted a targeted interview with the staff member in retrospect.*

*The Council does not share the BVI's belief that there had been no misconduct, but rather only errors in subsequent communication, causing it to fall victim to unreliable journalism. Although, in this case, the BVI did not take any initiative or perform supervisory tasks, it clearly did not enact any differing rules, either. They were instead proud of the offer to contribute to the act, and seized the opportunity. The majority of the Council also condemns this conduct.<sup>4</sup>*

Sources:

<sup>1</sup> Handelsblatt.com, Welchen Schaden Betrüger anrichten,

<http://www.handelsblatt.com/finanzen/boerse-maerkte/anlagestrategie/grauer-kapitalmarkt-welchen-schaden-betrueger-anrichten/3525674.html>

<sup>2</sup> BT printed papers 15/1553 federal government draft bill, draft of an act on investment modernisation and the taxation of investment assets (Investment Modernisation Act),

<http://dipbt.bundestag.de/doc/btd/15/015/1501553.pdf>

<sup>3</sup> Wolfgang Hetzer, Finanzmafia. Wieso Banker und Banditen ohne Strafe davonkommen, Fran 2nd edition, Frankfurt2011, p. 93.

<sup>4</sup> Board of Appeal II – Document on temporary agents: BVI+BMF, 02/2009, <http://drpr-online.de/02-2009-beschwerdekammer-ii-akte-leihbeamte-bvi-bmf/>

## Appendix:

### A1: DONATIONS MADE BY THE AUTOMOTIVE INDUSTRY AND AFFILIATED PERSONS TO THE PARTIES 2012-2014

PARTY	DONATION IN EURO	DONOR	RECEIVED PRINTED PAPERS
CDU	150,000	Daimler AG 70546 Stuttgart	16/5/2012 PP <a href="#">17/9893</a>
SPD	150,000	Daimler AG 70546 Stuttgart	18/5/2012 PP <a href="#">17/9893</a>
CDU	57,048.34	Bayerische Motoren Werke AG Petuelring 130 80788 Munich	7/3/2012 PP <a href="#">17/9021</a>
FDP	59,024.04	Bayerische Motoren Werke AG Petuelring 130 80788 Munich	5/3/2012 PP <a href="#">17/9021</a>
CSU	141,500.44	Bayerische Motoren Werke AG Petuelring 130 80788 Munich	5/3/2012 PP <a href="#">17/9021</a>
SPD	109,472.88	Bayerische Motoren Werke AG Petuelring 130 80788 Munich	5/3/2012 PP <a href="#">17/9021</a>
FDP	70,000	Ms Susanne Klatten, Günther Quandt-Haus Seedammweg 55 61352 Bad Homburg	23/10/2013 PP <a href="#">18/42</a>
FDP	70,000	Ms Johanna Quandt, Günther Quandt-Haus Seedammweg 55 61352 Bad Homburg	23/10/2013 PP <a href="#">18/42</a>
FDP	70,000	Mr Stefan Quandt, Günther Quandt-Haus Seedammweg 55 61352 Bad Homburg	23/10/2013 PP <a href="#">18/42</a>
CDU	230,000	Ms Susanne Klatten Seedammweg 55 61352 Bad Homburg	10/10/2013 PP <a href="#">17/14829</a>
CDU	230,000	Ms Johanna Quandt Seedammweg 55 61352 Bad Homburg	10/10/2013 PP <a href="#">17/14829</a>
CDU	230,000	Mr Stefan Quandt Seedammweg 55 61352 Bad Homburg	10/10/2013 PP <a href="#">17/14829</a>
CDU	100,000	Daimler AG 70546 Stuttgart	30/4/2013 PP <a href="#">17/13669</a>

SPD	100,000	Daimler AG 70546 Stuttgart	26/4/2013 PP <a href="#">17/13669</a>
CSU	143,817.65	Bayerische Motoren Werke AG Petuelring 130 80809 Munich	5/3/2013 PP <a href="#">17/13010</a>
SPD	107,376.06	Bayerische Motoren Werke AG Petuelring 130 80809 Munich	4/3/2013 PP <a href="#">17/13010</a>
FDP	69,081.24	Bayerische Motoren Werke AG Petuelring 130 80809 Munich	19/2/2013 PP <a href="#">17/13010</a>
CSU	143,371.27	Bayerische Motoren Werke AG Petuelring 130 80788 Munich	26/2/2014 PP <a href="#">18/1406</a>
CDU	100,000	Daimler AG, 70546 Stuttgart	23/4/2014 PP <a href="#">18/1406</a>
SPD	100,000	Daimler AG, 70546 Stuttgart	24/4/2014 PP <a href="#">18/1406</a>



## A2: RESULTS OF THE QUANTITATIVE ASSESSMENT

### LOBBYING IN GERMANY

“Lifting the Lid on Lobbying: Taking Secrecy out of Politics in Europe”

How well is Germany insulated against unfair and opaque lobbying? How strong are mechanisms to ensure transparency, integrity and equal access to public decision-makers?

### OVERALL SCORE: 23 %

For this project a quantitative analysis was conducted, which is based on a questionnaire guided by the categories listed on the next page. A 3-point scale (“0”, “1”, “2”) was used for the evaluation. In a limited number of cases, where no logical intermediary position exists, only a minimum value of “0” and a maximum value of “2” are offered. The score “0” indicates a negative evaluation, the score “2” indicates a very positive evaluation. The results in per cent are shown on the next page. The 65 individual questions can be found here:

[http://www.transparency.de/fileadmin/pdfs/Themen/Politik/Lobbying\\_in\\_Deutschland\\_Fragebogen.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Politik/Lobbying_in_Deutschland_Fragebogen.pdf)

## TRANSPARENCY

SUB-CATEGORY	VALUE
Access to Information	50 %
Registration and Disclosure by Lobbyists	0 %
Oversight of Register and Sanctions	0 %
Legislative Footprint	0 %
<b>Total</b>	<b>13%</b>

## INTEGRITY

SUB-CATEGORY	VALUE
Post-employment and pre-employment restrictions	17 %
Code of Conduct for Public Sector employees	42 %
Code of Conduct for Lobbyists	0 %
<b>Total</b>	<b>25%</b>

## EQUALITY OF ACCESS

SUB-CATEGORY	VALUE
Consultation and Public Participation in	50 %
Advisory/Expert Group Composition	10 %
<b>Total</b>	<b>30%</b>



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