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1. Lobbying and public affairs

1.1. Lobbying as a part of public affairs

- 1 Public affairs in general shapes the external relations of an organisation with its political and public environment. In the political context public affairs for companies means the representation and communication of company interests directly by lobbying of decision makers and indirectly through opinion formers and the media.
- 2 Lobbying and public relations both are parts of public affairs. Public relations, however, in general plans and manages the communication processes for organisations, persons or products with their stakeholders in public. public relations can be differentiate between internal and external communication. External communication is related to media work, investor relations, issues management, image communication, crisis communication, event management and sponsoring. Internal communication implements any communication with the employees and the corporate organisation by for example employee magazines or intranet.
- 3 Lobbying in contrast exerts influence on decision making processes of politics and the public body by means of information and communication. The parties involved are companies, associations, organisations and agencies (e.g. consultants, lawyers, political advisors). A lobbyist concentrates usually on two main activities: developing and maintaining networks for obtaining and passing on information on the one hand and staying in an ongoing dialogue with decision makers on the other hand. Additionally it is his duty to translate political aims into economy respectively to his company.

1.2. Company lobbying

- 4 Company lobbying is the company-specific representation of interests to politics and the political public as well as the shaping of policy with the aim of securing and changing the parameters set by politicians for the company's business activity by supporting the political decision making process. Different features need to be given to be capable of acting adequately: The lobbyist has to be assigned to Executive Board level. He should have a company office as permanent presence at the seat of the government and possess representation status. As a matter of course he must be involved in the political community and needs an understanding of politics. However, the basic requirement is a proper understanding of and the ability to communicate the key issues of the company.
- 5 Different aspects clearly distinguish company lobbying from association lobbying: while company lobbying works company-related and project-related, association lobbying works sector-related and subject-related. A company tracks individual interests, an association general interests. A company starts subject-related alliances with other companies, in an association competing companies may be integrated. Associations communicate by means of public relations and campaigns whereas lobbyists usually do not pursue their aims in public. Last but not least large administration structures of associations with deeply structured organisations on country and EU level stand in contrast to companies' mostly small office organisations at the seat of the government. Both, company and association lobbying represent the «premier league» of lobbying. In both cases a lasting and resilient relationship with politics exists. They have a common motto: «marching separately, hitting together». A problem in this context, which raises up again and again, is the asymmetry in self-assertion between the market power of «large» and «small» interests.
- 6 Company lobbying can be similarly clearly be differentiated from agency lobbying: The company lobbyist represents the company in direct appearance and is as such recognisable and a permanent partner. The agency lobbyist in contrast represents an agency or law firm as an intermediary on basis of a time-limited assignment, accordingly the clients sometimes are not immediately recognisable. In contrast to company lobbying the agency lobbyist can act for several clients at the same time and can often fall back on supra-regional structures. For the client the strength of agency lobbying is that it provides the possibility to select the most suitable agency in a specific issue for a certain political contact partner. This strength is at the same time a weakness in that this specification of lobbying only takes place for the particular situation. The political side does not have a permanent contact partner.

1.3. External and internal lobbying

- 7 The core of a lobbyist's external activity is to develop, maintain and constantly optimise an information and communication network of persons and institutions in the political field. He has to permanently obtain and disseminate knowledge about internal working and decision making structures of political institutions. And it is his duty to make contact with the right persons and institutions at the right decision making level in order to obtain good information at the right time and to channel it into the decision making process. Hierarchy-free communication, reciprocal provision of information

and mutual trust are next to reliability and the ongoing obligation to collect and contribute the main features of external lobbying activities.

- 8 At the same time the lobbyist fulfills duties as internal service unit. He ensures continuous information procurement and subject monitoring of company-relevant issues and he creates an early-warning system for political changes in parameters. Based on this he convinces the company's decision makers of the significance and importance of the information and of the need for communication. Thus the lobbyist supports the company's operational units in achieving their business aims. The important features of internal lobbying are speed and reliability as well as value and quality of information and stability of the information flow. But the lobbyist always is confronted with the problem of measuring his activities as the result in daily business seldom can be numbered directly.

1.4. Information and communication structures

- 9 Information is provided or received in a personal network of organisations and key persons. To build up this network institutional information sources or information collection points along with the corresponding persons at decision making or working level need to be sorted out. A company's information network on national as on EU level for instance includes organisations such as the chancellors office, ministries, state representations, parliamentary groups, parties, embassies, EU bodies and last but not least relevant media. Among the key persons in the ministry are for example the minister and government secretary, the head of division and his referees, the head of ministerial office, the personal assistant as well as the secretary. To name another example, relevant contact persons in parliamentary groups may be members of parliament, party coordinators, spokespersons or research staff of the members of parliament and the parliamentary groups.
- 10 Optimal communication succeeds best through memberships in organisations and bodies which provide interfaces and through participation in or organisation of own events. Events among which a lobbyist has to choose the relevant ones are hearings of the German Parliament, political or literary salons, parliamentary evenings organised by companies and associations or events organised by foundations or associations. Cultural events, summer parties arranged by state representations, golf, tennis or skat tournaments in parliamentary circles and ambassador meetings organised by the Foreign Office continue the list of meeting points.

2. Lobbying and democracy – the german case

2.1. The function of lobbying in a democracy

- 11 Interest representation is a key part of political decision making processes and thus a constitutive element of German democracy. The appropriate antinomy from government-political unity and social-political variety requires the communication of interests and positions in a society in order to ensure the ability of the democracy to function. The power of arguments and principles of order based on freedom can remedy this antinomy.

- 12 Interest representation can be understood as a barter deal in which the lobbyist gives information while the politician is taking interest into account as a return service. In this process the political partners have a control function. They do not simply take over arguments of one lobbyist, they rather gather information on all sides before they decide. Every political decision has positive effects on some and negative effects on other people.
- 13 Nevertheless the public perception of lobbying is marked by prejudices and accusations. Most common prejudices are the corruptibility of politicians and parties, the superiority of associations while lobbyists are called «string-pullers in the dark». However, unemotionally regarded, power and influence are exaggerated and mystified. In public the accusations against lobbying range from intransparency, corruption or combination of interest to patronage. Lobbyists are suspected to use dinner invitations, texts for speeches and even money for bribery. To minimise these prejudices and accusations repeated calls for rules and laws for more transparency and control are to be heard by lobbyists, politics and public. Yet, some approaches of self-regulation and legal framework exist or respectively are in progress. The EU plays a leading role in the actual discussion.

2.2. Legal framework

- 14 Lobbying moves in legally prescribed structures and procedures. Different limits are set by the German law. The Basic Law defines the right of free expression, the right to form associations and the right to approach representatives of the people. The law on political parties determines strict rules laid down for party financing by means of donations.
- 15 Corruption in the form of bribery and corruptibility are being prohibited by criminal law.
- 16 Constitutional law fixes that lobbying as a preconstitutional component of the process of political opinion forming and democratic decision making is to be measured according to the value decisions of the Constitution. As a pluralistic factor of influence lobbying is therefore a necessary counterweight to the power of party government. Finally the rules of procedure for the federal ministries require that the relevant associations are included in a consultation process before a bill is entered into the parliamentary procedure. Lobbyists, for instance, have to be involved in hearings of the parliamentary committees.

2.3. Rules of conduct for members of the german parliament

- 17 The rules of conduct for politicians are written down in the parliamentary rules of procedure, the «Law on the Legal Relationships of Members of Parliament». It implies that, in order to avoid conflicts of interest, elected representatives should be financed for their parliamentary activity in principle from the federal budget. This is guaranteed by extensive obligations to inform the President of the Bundestag about professional activities, ancillary activities, memberships of committees, honorary posts, donations received, gifts of money and other gifts. The law was tightened after several ancillary activity scandals in 2005. The new regulation demands that additional income is being

published in lump-sum amounts (€ 1,000-3,500 to 7,000 and over € 7,000 per month) in the Bundestag Register and on the Internet.

- 18 In the USA the rules are even stricter. The income from ancillary activities is limited to 15% of the official remuneration. Besides all private transactions, including family, have to be disclosed.

2.4. Rules of conduct for civil servants

- 19 According to the Civil Servant Laws, civil servants are not allowed to accept gifts, rewards and invitations. The Freedom of Information Act gives citizens in principle free access to all information accessible in public administrations and makes corruption this way redundant.
- 20 Meanwhile exist Freedom of Information laws in over 50 countries. Germany lagged behind with its introduction in January 2006, only passing an act of compromise character through wide-ranging exceptions. However, a cultural change has taken place in the administration through turning away from official secrecy.
- 21 On EU level a transparency initiative green paper including the control of lobbying activities was published in May 2006. Consultation procedures followed. The result will be a voluntary entry in a file disclosing clients and financing.

2.5. Rules of conduct for associations and company lobbyists

- 22 Umbrella organisations issue recommendations and guidance on combating corruption.
- 23 The Federation of German Industry (BDI) for example, as German umbrella organisation of industry, publishes a «Recommendation on Combating Corruption» and the International Chamber of Commerce (ICC) «Rules of Conduct for Combating Corruption in Business Transactions». The obligation to be entered in the «Lobby List» of the President of the German Bundestag as a requirement to get invited to hearings of the committees can be regarded as a kind of official legitimation of lobbyists. Comfortable side-effect is that lobbyists receive by registering for the Lobby List an identity card which permits entrance to the parliament building.
- 24 Company lobbyists usually refer to codes of conduct for employees and executives which aim at increasing social acceptance and credibility by creating transparency. For example
- 25 the Dax 30 company TUI AG has edited «Guidelines for staff of the TUI Group in dealings with business partners, employees, shareholders and the public» that include among other things the subject of donations. Donation-like payments for a service are prohibited because they would represent an infringement of the law on transparency.

2.6. Rules of conduct for consultants

- 26 Professional codes for political consultants contain the commonly expressed will for self-control of a profession. They merely enjoy «soft law status» but do have no legal relevance.

- 27 The rules of conduct of the political consultants associations are a quality signal by way of publication and affirmation, but suffer from the weakness of lacking any sanction such as withdrawal of license or registration.
- 28 The German Society for Public Relations (DPRG) for instance has issued rules on fostering contacts in the political arena with the core provisions transparency and honesty. The Public Affairs Working Party as subgroup of the DPRG reexamines current rules and defines new ones.
- 29 Another example is the German Society for Political Consultancy (Degepol) that drew up a code of conduct on the basis of the codes issued by the Society of European Affairs Professionals (SEAP), the American Association of Political Consultants (AAPC) and the British Association of Professional Political Consultants (APPC). The principles are truthfulness, discretion, respect, clear separation of consultancy activity from own political offices as well as the abdication of financial incentives, discrimination and damage to the profession.
- 30 In this context the USA represent a role model with its transparency regulation: Clients and fees have to be disclosed if income from lobbying activity exceeds 20 percent.

2.7. Further control instances

- 31 The control through critical journalism takes a key role in the communication of political processes. A negative side effect from the persons concerned's point of view is that critical journalism tends to heighten the impact of scandals. In addition a kind of counter-lobbying through non-governmental organisations (NGOs) takes place. These represent self-elected interests for example of future generations or minorities and stand up for instance for human rights and nature protection. In part they build an important corrective mechanism to classic business community lobbying, but often they lack of democratic legitimation. Civil control of lobbying can be regarded as a third control instance. Outrider are once again the USA with numerous organisations which work as watchdogs for more transparency. In Germany this task in part is taken over by NGOs but also special initiatives such as Lobby-Control, a classic civil watchdog organisation, established in 2006, that aims to illuminate political and business-community power structures.

2.8. Suggestions for improving transparency

- 32 Suggestions for improving transparency are based on the theory that the key conditions for lobbying which is acceptable in a democracy are its transparency and comprehensibility for the public. Different requirements are postulated by different groups: While some claim annual or yearly reports of all lobbyists, consultants and associations on their aims, activities and financial expenditure, others demand that roles should be strictly separated or at least dependencies between the business community and politics hadS to be made transparent. For reason of incompatibility period of time should have to pass after leaving a political office and taking up a post in business. Furthermore rules for ministerial bureaucracy in dealing with lobbyists should be developed to guarantee transparency of working relations. Concertedly to be heard is the demand of a code of conduct on EU level.

3. International lobbying for TUI AG

3.1. Key aspects of lobbying work in a services group

- 33 To start with a quick overview over TUI AG¹¹ in numbers: The group has a yearly turnover of € 20.9 billion at a number of employees of 54,000. Two thirds of the turnover are generated in tourism, the rest in shipping. In tourism TUI AG serves the full value chain: from retail and tour operating over airlines and destination services to hotels all segments are covered. TUI AG with its subsidiary companies is economically active in more than 70 countries, providing services in tourism and logistics. It therefore needs worldwide market-economic conditions. Thus TUI AG conducts strategic lobbying in Berlin, Brussels, Paris and Geneva with the aim of securing and extending the parameters for services set by the Federal Republic of Germany, the European Union (EU) and the World Trade Organisation (WTO) for the business activity of companies.
- 34 Through systematic and targeted information and communications work in German, European and international associations and committees or in bilateral contact with important non-European countries (China, India, Russia) the process of liberalisation on the international services markets is supported. Focal points of the international long-term lobbying work of TUI's company lobbyist in consultation with the Executive Board Chairman of TUI AG, Dr. Michael Frenzel (member of the Executive Committee of the BDI and the ICC Germany), are the liberalisation of the services market for tourism in China, the provision of support for the GATS 2000 negotiations and the support of the Doha Development Agenda (DDA).

3.2. International trade in services

- 35 In the EU more than half of present total economic production and activity derives from commercial, non-governmental services. Services are playing an increasing role in world trade. But in 2005 they accounted for only around 19 percent of world trade (world exports in goods amounted to \$ 10,278.9 bn, world exports in services to \$ 2,411.1 bn). The reason is, that, unlike the production of and trading in goods, the provision of services is in most of the world's countries subject to intensive government regulation, in which national interests dominate. Government services monopolies are protected from competition and restrictions exist in respect of land acquisition, entering the country and employment. Hence it is not surprising that the liberalisation of the services markets has in addition to the liberalisation of agricultural and commodities markets become a global issue in the present Doha Round.

3.3. The world trade organisation

- 36 The World Trade Organisation (WTO) is an international organisation located in Geneva, Switzerland, which deals with the regulation of trade and economic relations. The WTO was founded on 15 April 1994 in Marrakesch, Morokko, and came into force in 1 January 1995. It is the umbrella organisation of the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS) and of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) contracts as well as for the Dispute Settlement Unit (DSU). The WTO's aim is the reduction of

trade barriers and the liberalisation of international trade with the continuative ambition of international free trade. The core of these efforts build the WTO contracts, which have been elaborated and signed by the most important trading nations. Politico-economically the WTO follows a liberal trade policy supporting deregulation and privatisation.

- 37 The WTO today counts 151 members, among those the USA, Japan, China and the members of the EU.

3.4. The general agreement on trade in services

- 38 The GATT rules came into existence by the first round of World Trade Conferences in 1947 and deal only with goods. During the process of Globalisation it became obvious that a larger framework not only for goods but for services also is necessary. This was the starting point for the so called Uruguay Round, which was finished in 1994 and where the GATS came into force in order to integrate international trade on services in the multilateral process of liberalising world trade. GATS distinguishes between four different modes by which services are provided: crossborder supply (Mode 1), consumption abroad (Mode 2), commercial presence (Mode 3) and presence of natural persons (Mode 4). The GATS rules apply to all governmental measures which influence the trade in services and in the widest possible sense, i.e. laws, regulations, administrative rules and administrative practice at all levels of government regulation. The GATS obligations have to be examined automatically every five years. At present the GATS 2000 process is taking place in Geneva.

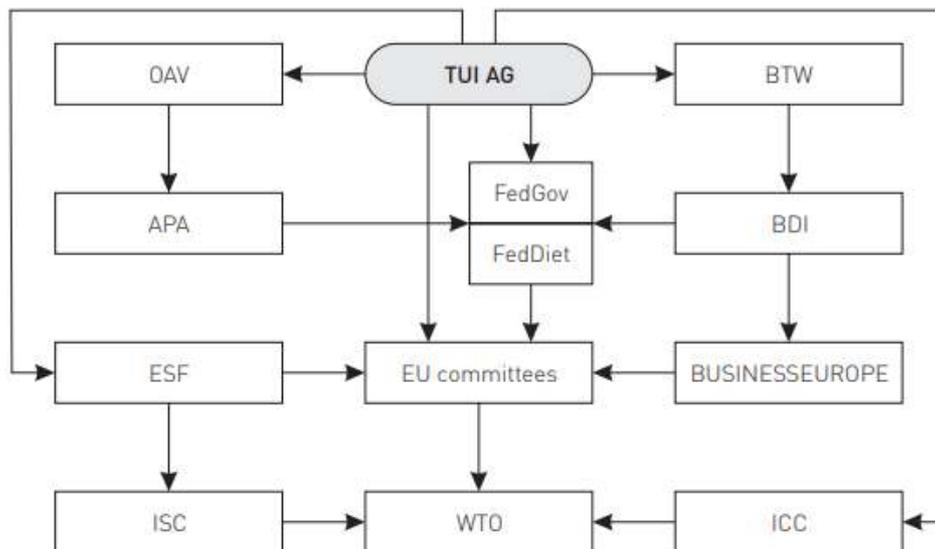
3.5. Multinational political decision making structures

- 39 Opinions have to go a long way from national interests via the EU until they get to the highest multinational body to influence decisions. The very first opinion forming takes place in the German Parliament and the federal ministries like the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Justice or the Ministry for Economic Cooperation and Development. The coordination of the different interests is incumbent upon the Federal Government while the Ministry of Economics has the overall control.
- 40 On EU level, the 133 Committee, named from Article 133 of the Treaty of Amsterdam, is one of the powers behind and decision making centre for the European commercial policy. Together with the commission of permanent representation of the member states and with the GD (General Direction) Trade it is responsible for the technical preparation of the issues. The EU Board of Ministers assigns the mandates and the European Commission conducts negotiations. Chief negotiator is the head of the GD Trade.
- 41 On the third and highest level the WTO committee debates the topic, while the General Council prepares the contents for the ministerial conferences. Then the Minister Conference as the ultimate body makes the decisions.

3.6. TUI'S memberships

- 42 In order to be internationally capable of acting a number of memberships build the ground on which strategic lobbying for TUI becomes effective.* On national level TUI AG, represented by the company lobbyist, is member of the Federation of German Industry (BDI) in Berlin. There, TUI belongs to the Export Committee, the EU Breakfast Round, the USA Working Party and the Working Party on International Services which the lobbyist heads as chairman. Due to its own activities in the country TUI AG is moreover member of the Country Committee China of the East Asian Foundation (OAV) in Hamburg.
- 43 On EU level TUI AG belongs to the Policy Committee of the European Services Forum (ESF) in Brussels and to the Commission on International Trade and Investment Policy of the International Chamber of Commerce (ICC) in Paris. According to its importance TUI AG is associated to three subgroups of BUSINESSEUROPE, the confederation of the industrial and employers associations of Europe in Brussels: the International Relations Committee, the WTO Working Group and to the Sub-Working Group WTO Services which is headed by the lobbyist as chairman.
- 44 On global level TUI AG attends the International Services Coalition (ISC) in Washington, a voluntary global umbrella association of international service panels.

Worldwide association networks and alliances



OAV - East Asian Foundation, Hamburg; **APA** – Asian Pacific Board, Berlin; **ESF** – European Services Forum, Brüssel; **ISC** – International Services Coalition, Washington; **FEDGOV** – Federal Government, Berlin; **FEDDIET** – Federal Diet, Berlin; **WTO** – World Trade Organisation, Genf; **BTW** – Federation of German Tourism, Berlin; **BDI** – Federation of German Industry, Berlin; **BUSINESSEUROPE** – Confederation of European Business, Brüssel; **ICC** – International Chamber of Commerce, Paris

3.7. Case study: liberalisation of the tourism market in china

- 45 The People's Republic of China was not member of the WTO until 2001. For TUI AG therefore the People's Republic of China was a closed market until then as only Mode 1 – crossborder supply – applied. From 1998 until 2002 entry negotiations between the

People's Republic of China and the EU took place, in which TUI AG demanded all the freedoms in Modes 1 - 4 through lobbying work in the BDI, ESF, ICC and BUSINESSEUROPE and by lobbying of the federal government and the EU. The effort was remunerated: the demands became part of the EU position and of the 133 Committee. In the end the People's Republic of China accepted. And the 11 december 2001 China became member of the WTO. Since then Modes 1 - 4 apply. Under these circumstances TUI China Travel Co. Ltd. of which TUI AG keeps 74.9 percent could be established in November 2003 as an unrestricted TUI incoming service with own employees. But transition periods and restrictions for regional activity and a TUI outgoing service persist. Hence further lobbying through BDI, OAV and BUSINESSEUROPE is necessary to reach complete domestic status for TUI China Travel Co. Ltd.

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NOTES

1. Figures from the year 2006

ABSTRACTS

Interest representation is a constitutive element of German democracy and as such a key part of the political decision making process. But the public opinion on lobbying is marked by prejudices and accusations in particular of intransparency, patronage and corruption. Consequently repeated calls for rules and laws for more transparency and control are to be heard from different sides. It is obvious that key conditions for lobbying, which is acceptable in a democracy, must be transparency and comprehensibility for the public. Yet, some approaches of self-regulation and legal framework exist or respectively are in progress.

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