

NATIONAL SCHOOL OF POLITICAL AND ADMINISTRATIVE STUDIES

DOCTORAL SCHOOL - POLITICAL SCIENCE FIELD

*The lobby between the political decision and the technicality in
the harmonization of the European directives in a Member State
of the European Union*

Scientific coordinator: Prof. Univ. Dr. Iordan Gh. Bărbulescu

THE SUMMARY OF THE DOCTORAL DISERTATION

PDH Student: Adriana Liuba Ahciarliu Kyriakidis

BUCHAREST, 2018

CONTENT

| | |
|---|-----------|
| CHAPTER 1 - INTRODUCTORY, GENERAL AND PRACTICAL CONSIDERATIONS ABOUT LOBBYING | 4 |
| 1.1. Methods of Research and Analysis | 6 |
| CHAPTER 2 – LOBBY WITHIN THE LINES OF TFUE | 7 |
| 2.1 The Legislative Communautaire framework and the Assumed Harmonizing Obligations by Member States | 7 |
| 2.2 Lobby as a Decision Making Process Within the Legislative Harmonizing Process in European Union | 10 |
| CHAPTER 3 – THE THEORETICAL AND LEGISLATIVE FRAMEWORK FOR LOBBYING | 12 |
| 3.1 Lobby and Transparency Registry in European Union | 12 |
| 3.2 Lobby as practice of the public policies in European Union..... | 13 |
| 3.3 The Definition and Regulation of Lobbying in Romania | 15 |
| 3.4 Theoretical Considerations in the Field of Political Science. Institutionalism and Rational Choice in Lobbying. Delimitation of the Advocacy Compared to Lobby in Institutional Theory | 16 |
| 3.5 The Actor in Politics. The Rational Actor in Lobby | 20 |
| 3.6 The Cost – Criterion of Transparency in Defining Lobby | 20 |
| 3.7 Risk and Cost in Lobbying | 21 |
| 3.8 Categories of Actors on the Lobby Scene..... | 22 |
| CHAPTER 4 - LOBBY FOR LOBBY. COMPARATIVE RESEARCH OF THE ROMANIAN LEGISLATIVE FRAMEWORK WITH IMPACT ON LOBBYING ACTIVITY..... | 23 |

| | | |
|---|--|-----------|
| 4.1 | Lobbying Regulation Process Dynamics in Romania | 24 |
| 4.2 | Lobby versus Influence and Corruption Trafficking. Comparative Analyses of Legislative Texts | 25 |
| CHAPTER 5 - PRACTICAL RESEARCH ON THE PERCEPTION AND OPPORTUNITY OF THE LOBBY REGULATION IN ROMANIA | | |
| 27 | | |
| 5.1 | Questionnaire on the Perception of the Opportunity of Lobbying and its Role in the Process of Legislative Harmonization. (see questionnaire in Appendix) . Criteria and Analysis Hypothesis | 27 |
| 5.2 | The Structure of the Questionnaire – see Apendix | 29 |
| 5.3 | Statistical Result | 29 |
| CHAPTER 6 – CASE STUDY – INFLUENCE IN THE DECISION TO HARMONIZE DIRECTIVE 2008/48/EC BY COLLECTIVE LOBBY ACTION..... | | |
| 31 | | |
| CHAPTER 7 – CASE STUDY. LOBBY AS INSTRUMENT IN THE HARMONIZATION OF DIRECTIVE 2006/112/EC – VAT APPLICABLE TO FINANCIAL LEASING CONTRACTS..... | | |
| 34 | | |
| 7.1 | Infringement Procedure..... | 36 |
| 7.2 | Administrative Guarantees Offered by E.U. During the Infringement Procedure | 37 |
| 7.3 | Conclusions For a Theoretical Frame of Lobby Practice Within the Procedure CHAP 2011/01232..... | 37 |
| CHAPTER 8 – CONCLUSIONS & SUGESTIONS FOR PRACTICAL USE OF THE THEORY | | |
| 38 | | |
| 8.1 | Confirmation or Infirmination of Research Hypotheses Through Questionnaire & Interview & the Hypothesis of Fitting into the Theoretical Paradigm of Political Sciences..... | 38 |

THE SUMMARY OF THE DOCTORAL DISERTATION

| | | |
|------------|---|-----------|
| 8.2 | Conclusions and Practical Suggestions for a Possible Regulation and Implementation in Romania..... | 39 |
| 8.3 | Proposal for amending the legislative project of lobby law..... | 40 |
| | BIBLIOGRAPHY | 41 |

CHAPTER 1 - INTRODUCTORY, GENERAL AND PRACTICAL CONSIDERATIONS ABOUT LOBBYING

The purpose of this chapter is to present the essence of the theoretical definition of lobbying and to identify its role at the social and institutional level in the general context of recognizing the opportunity to regulate this type of activity at national and European level. The chapter briefly describes the method of classical research used - that of the questionnaire, corroborated with the method of case studies stemming from the personal practice of the undersigned, over 14 years of active practice in the field of lobbying.

Although the pragmatic aim of this paper is to analyze the opportunity to regulate lobbying activity in Romania, it becomes subsidiary to the main purpose of this paper, namely to identify the theoretical paradigm in which lobby can be found as a political decision-making tool.

Starting from the general definition found in Wikipedia that lobbying is "*a tool of legitimate influence of political decisions, through professional communication activities, involving legislative expertise, discursive techniques and strategic skills*"^{vi} (<https://en.wikipedia.org/wiki/Lobbying>), the analysis highlights that the procedure, term and practice of lobbying is less accepted in the countries of the European Union and even by the European Union but generally accepted in the U. S.A.

Unity in diversity that characterizes the spirit of the European Union is also found in the legislative regulation of lobbying at Member States level. There is no directive or regulation of any kind at European Union level that refers to the term lobbying. However, the Treaty of Lisbon, by reforming the role of the European citizen, European citizenship, de facto induces its role as an active player in the decision-making process, whether individually or in various associative forms.ⁱⁱ(see art. 10 al TFUE).

In addition, it is important to remember the value of the principle of the right to petition that the Charter of Fundamental Rights of the European Union imparts to participatory democracy. (Charter of Fundamental Rights of the European Union 2010)

Perhaps the question arises - where the role of lobbying and lobbying is in all the security of the institutional framework that the Treaty establishes for the European citizen to truly be the beneficiary of a genuine democracy. The answer is a simple one: the lobbyist is a

THE SUMMARY OF THE DOCTORAL DISERTATION

necessary complement to the institutions of the state or the Union, it is the synapse between the citizen, NGO, S.A., S.R.L. and the state institutions or European institutions. At European level, lobby can be a tool to analyze and support new theories of European integration by intervening in the decision-making process based on "*the feeling of belonging to the same community of values, the existence of suprastate institutions, the flow of transnational communications and economic interdependencies.*"ⁱⁱⁱ (Iordan Gheorghe Bărbulescu 2015)

Voltaire said in a famous quote: "Those who can convince you to believe in absurdities have the science to convince you to commit atrocities." I believe that starting from this quote, we can describe the moral aspect of lobbying. The lobbyist is the one who accepts or not a warrant based on contractual provisions. Here the role of lobbyist morality must intervene. It has the professional obligation to analyze all the implications of the project not only for the purpose of its client but also for possible collateral or invisible "victims".

Another equally important aspect in lobbying is ethical. In the absence of formal recognition, in the absence of regulation for the purpose of imposing and establishing good practice in the field, the only applicable solution is self regulation and moral and ethical moral ethics as an individual and / or as an entity, a legal person.

Thus, in the text of the Explanatory Memorandum supporting the promotion of the legislative initiative of the lobbying law, there is a clear and direct reference to the fact that, due to the lack of clear regulation of the lobbying activity, civil society - and not only - has acted to influence the political decision " *through the process of influence trafficking* " (Expunere de motive/Reason PLX 581)^{iv} without making an obvious distinction between the influence of traffic and the lobbying action that such a perception destroys before it is born.

It is motivated, however, that such transparency in the process of influencing the political decision by recording in a Transparency Register the lobbying activity of the parties involved, the beneficiaries, the providers and the costs involved is necessary to eliminate confusion with the influence of trafficking.

Freedom to provide services at the transatlantic and European level can create a not negligible dose of unfair competition in terms of the economic reality of the service provided by the fact that only those companies registered in the states that have regulated lobbying admit that they can deplore the lobby service in full transparency. Under this umbrella of cross-border regulatory differences, it is clear that large lobbying projects always have at least two major

players at the two ends of the synapse: one in the private, usually multinational, and the other in the political decision-making - Parliament , the Government while the interests of the lobby and the mandate of the lobbyist can transcend the national interest.

1.1.Methods of Research and Analysis

The context both generally and specifically taken into account for the purposes of this study is the status of Romania as a member of the European Union, the taken steps and the assumed obligations by Romania on this path.

The source of information is the text of the Treaty on the Functioning of the European Union, other regulations, decisions and directives of the European institutions, the Romanian legislation as a result of the harmonization process as well as files in the personal archives related to the initiation of the infringement procedure against the Romanian Government for legislative texts that have not been correctly harmonized with similar European provisions.

The thesis attempts to demonstrate a confirmation of the role of lobbying in the post-accession legislative harmonization procedure. For this purpose, questionnaires were generated and, on the basis of questionnaires addressed to the opinion of the decision-makers chosen in the comparative analysis with the business environment organized at the associative level in employers' associations, professional associations.

I added as a method the interview for question no. 13 of the questionnaire, free discussions with decision-makers and civil society based on the same questionnaire dedicated to the purpose of this paper.

Questionnaires circulated to respondents aim to identify the respondents' perception of the following criteria that can define the lobbying activity and its role in the process of legislative harmonization at European level:

- The general definition of the lobby
- The role it can play in political decision-making
- The way of doing lobby activity
- What are the actors of a lobbying process?

THE SUMMARY OF THE DOCTORAL DISERTATION

- What are the risks and benefits that the lobbying process can bring to the parties involved
- What are the expected effects and how they can be identified and quantified
- How we define the professional morality and ethics of lobbyists
- What is the opportunity to regulate and monitor lobbying versus self-regulatory alternatives
- What is the role of the lobbyist in the decision-making process and the decision-making level at which it is going to succeed
- What is the foreseeable and unpredictable impact of a lobbying process for all stakeholders but also at the social level
- Can the lobby play a prudent role in the process of harmonizing legislation at European level?

The key term of the strict analysis for the files in the personal archive used as a source of documentation is defined by the "slippages" that Romania has enrolled in the process of harmonizing the *acquis communautaire*. In this context, the permissiveness of art. 258 TFEU to initiate infringement proceedings against a Member State in delay from the point of view of the assumed obligations is the basis of the two case studies to be presented as a research method.

CHAPTER 2 – LOBBY WITHIN THE LINES OF TFEU

This chapter is devoted to the identification and subsequent analysis of the text of the European Union's Treaty on the Functioning of the European Union allowing for recognition of the permissiveness of lobbying in support of the principles of participatory democracy. Once this framework has been identified, the analysis proposes an attempt at framing not only the text of the Treaty but also the identity of a European paradigm.

2.1 The Legislative Communautaire framework and the Assumed Harmonizing Obligations by Member States

The failure of the constitutional trend and still maintaining the will of federalization has created a framework for a successful approach to federalizing Europe through the Treaty of Lisbon that unlocks the constitutional crisis and produces considerable gains by recognizing the European Union as a legal personality with kit of values and objectives well designed that

must be assumed by the signatories. Strengthening the principle of subsidiarity, establishing clearly the provisions on the democratic functioning of the Union, delimiting competences and introducing control procedures, legal obligation to respect the provisions of the Charter of Fundamental Rights of the Union have opened unexpected opportunities to apply the active involvement of the citizen in the Union's decision-making process. Decision-making procedures at Council level are simplified from unanimity to simple majority, and for the legislative, parliamentary level, the ordinary procedure is called - parity agreement between the Council and the European Parliament. This new framework provides for the possibility of introducing actions at the level of the Court of Justice in the case of clear evidence of non-compliance by the law of a Member State or by incorrect application of the provisions and principles of the Treaty.

The Treaty strengthens above all the political dimension of the Union, focusing on preserving, respecting and enforcing the values of participatory democracy. It brings institutional reform into the communitization of the third pillar on police and judicial cooperation in criminal matters, but also in the field of CFSP and ESDP. The focusing on the idea of a social Europe has brought about a lack of full harmonization between Member States of monetary, banking - financial and administrative policies.

The treaty thus proceeded with different speeds in terms of economic convergence on the one hand and the development of a European social model, but also added instruments in the sense of constitutionality of the role of social interlocutors through the provisions of art. 152 of the TFEU by the obligation to maintain an institutional framework allowing the permanent dialogue of civil society representatives with decision-makers, subject to the maintenance of their autonomy. It recalls the role of the Tripartite Summit as a tool that can contribute to building social dialogue.

The chapter continues with a comparative analysis of administrative capacity in support of citizens on a classic example - registration of vehicles - in Romania and Germany. An example of administrative organization is presented which proves to every citizen that the Union still has no capacity to function in administrative convergence. In this context, the European Commission's official message is also presented by the relevant Directorate motivating this lack of convergence by the lack of a unanimous consensus of all Member States on the adoption of a standard procedure for the registration of vehicles at the level of the

European Union car related taxes. ^v (Proposal for a Council Directive on pasanger car related taxes. COM/2005/0261)

The chapter continues the analysis by achieving the purpose of Title VII of TFEU governing the Community framework for legislative harmonization with regard to competition and tax rules. This chapter analyzes the clear definitions of healthy competition in the Community internal market. The analysis is made in the context of moving from the theory of the text of the Treaty to the practice of the Member States in the field of taxes and duties in order to observe its conformity or lack thereof with the spirit and text of the Treaty. Some taxes are being reviewed with focus on those that turn the state into an active actor in the competitive environment. There is analyzed the impact that different approaches to these taxes can imply through different business decisions, especially at the level of large multinational corporations. Thus, where the State is recognized as an active economic actor, the provisions of the TFEU governing competition are more permissive by allowing the preservation of monopoly status for areas of strategic interest (Article 106 TFEU). But the way in which the domain of strategic interest is defined remains at the subjective latitude of the state's representatives and institutions.

It is highlighted that the Treaty focuses on the social model and chooses to consider that the principles of free competition underlying the market economy are only an instrument in the construction of the social model and not an purpose in itself.

These articles with reference to the taxes and duties remaining in the national local decision may be presented as a template as those which create room for the application of the sanctions articles which the TFEU provides for those Member States that understand to apply independently and in their own perception the Treaty. Here comes the active citizen and the lobbyist who, in defense of the rights stipulated in the Treaty, and in the evidence of violation of these rights by a member state can resort to the provisions of art. 105 and art. 258.

Applying these articles as sanctioning and controlling legislative harmonization at European level is justified by the very procedure of initiating acts of the European Parliament and other European institutions with a role in the decision-making process. Title 1 of TFEU unquestionably describes the way in which Member States have the chance and duty to be active in the initiation and legislative decision process by subsidiarity, attribution principle and proportionality.

If we return to the classical and generally accepted definition of lobbying as a "*tool of legitimate influence on political decisions*" through high-level professional communication techniques and with the support of legislative expertise on a case-by-case basis duplicated by strategic and rhetorical skills, I hereby state that art. Article 152 TFEU legitimizes the role of lobbying by recognizing and promoting the role of the social partners in the Union's decision-making process. The lobby is a process dedicated to "*influencing*" the decision-making process in support and inclusion of the opinion it represents. The participation of the social partners in a "*consultative*" committee at the level of the decision-making process, legitimized by the provisions of the TFEU, is already a step in the legitimate recognition of lobbying among the TFUE.

2.2 Lobby as a Decision Making Process Within the Legislative Harmonizing Process in European Union

The purpose of this title is to open the motivation of case studies that will be the subject of a distinct chapter of this paper. We analyze here the way in which the obligations assumed by the signing of the Accession Treaty, succinctly compressed in the provisions of art. 52 and 53 of the Act concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union, state that the date of accession is the time T ZERO from which these two new Member States have the obligation to fully respect the directives and decisions of the Treaty have already been addressed to all Member States on an equal footing. However, one exception is mentioned, ie those decisions "which come into force in accordance with art. 254 (1) and (2) of the EC Treaty".

It is important to focus on a very tough term and with the same tough consequences of this Article 52 of the Accession Act: (Accession Treaty) "*(...) it is considered that Bulgaria and Romania have been notified (...)*". Under Article 258 of the TFEU, this notification is equivalent to the reasoned opinion sent by the Commission and in practice establishes the Commission's right to apply at any time the administrative or judicial penalty (referral to the Court of Justice of the European Union) non-compliance, with the exception of the three safeguard clauses (economic, internal market, justice and home affairs) applicable during the first 3 years from the date of Romania's accession.

Speaking of the theoretical concepts of the political sciences that fund the European Union, Professor Iordan Gheorghe Bărbulescu notes a "*lack of unity regarding the concept of European integration*"^{vi} (Iordan Gheorghe Barbulescu, 2015) and precisely in this context we

can confirm, analyzing the steps and procedure followed by Romania to and for accession, that the process of integration at the level of the European Union is one "*through which the member states of the European Union understand to gradually transfer from national to supranational level a series of competences related to the national sovereignty , accepting to exercise them jointly.* " (Jordan Gheorghe Bărbulescu, 2009)^{vii}

The E.C. Reports in this sense, both pre and post accession, prove today their fairness, objectivity and visionary spirit. The legitimate lobby among the TFEU, the social dialogue and the strengthening of the civil society construction as a mandatory social partner in the decision-making and legislative process are causes delayed in this process for Romania by the date of accession. The process of initiation and legislative decision is criticized in both the pre-accession and post-accession reports in order to maintain an outdated administrative structure. The decision-making process, both during the pre-accession and post-accession period, is criticized as a unilateral one of the Executive that undermines the democratic principles that imply the involvement of the National Parliament in the legislative process. Another area criticized in the EC reports was that of social inclusion. Romania has taken a step forward in this context by assuming its own mechanism to monitor the correct and in due time implementation of the social protection and social inclusion strategy. Prof. Jordan Gheorghe Barbulescu briefly describes this mechanism as follows:

"The Open Method of Coordination (OMC) is a process by which EU member states agree to coordinate their policies through a mutual learning process and structured exchange of information."^{viii}.(Bărbulescu, Jordan Gheorghe 2009)

Another equally important aspect is the current level of involvement and representation of civil society at the decision-making level of the European Union. Employers' organizations and trade unions, professional associations in Romania are mostly affiliated with European federations and have representation either direct or indirect in the consultative process at the European Parliament and European Commission level.

This state of affairs is already evident in the Transparency Register of U.E ^{ix}.. (ec.europa.eu) where some of these organizations are registered as consultancy firms, lawyers, public relations, all interested in everything being recognized as an active actor in legitimating the decision-making process at the level of the European institutions, in other words, to be recognized as assets in the European lobby.

**CHAPTER 3 – THE THEORETICAL AND LEGISLATIVE
FRAMEWORK FOR LOBBYING**

This chapter attempts an inventory of commonly accepted definitions for the term lobbying. Starting from these definitions is the way in which lobbying is practiced within the European Union but also the way in which it is perceived in Romania as a member state of the European Union.

The purpose of the analysis is to observe, through the comparison method, the similarities and differences between lobby, advocacy, public relations and political science. The comparative analysis of the definitions through the spectrum of lobbying, advocacy and political power suggests the possibility of framing this activity in the sphere of public policies.

The intention of identifying the paradigm of lobbying, lobbying itself, is designed to bring about the level of maturity and professionalisation of lobbying in Europe through the establishment of the Transparency Register in Romania by establishing the Registry of Relations Public Relations and other states by legislating lobbying. The inclusion of lobbying under the principles and practices recognized in a Code of Conduct - both at the level of the European Union and at our country level - makes lobbying an influence action of the decision-making power and recognizes the lobby as an actor on the political stage within the decision process.

The framing of the lobbyist within the definition of the rational actor, the comparative analysis of the categories of actors - the anomic, associative and non-associative groups, the groups of interests organized or not and their presentation in relation to the generally accepted definitions of the lobby - is a method of trying to overlap this action, procedures for accessing power with public policies.

3.1 Lobby and Transparency Registry in European Union

One of the purposes of this paper is to identify the most appropriate definition for the term lobby and - equally - to find best practices in the field that support the proposal of a regulatory framework as appropriate as possible to the current reality of the political scene from Romania.

It is not a secret that the term itself is perceived with different negative connotations, especially in Europe, while in the USA and Canada it is kept at its original level

of lobbying. There is a tendency to define the term lobby by negation, eg. - lobby is not influence traffic. Starting from the DEX general definition, I would like to argue that the association of the term "influencing" with the term "legitimate" is less accepted in the European Union but generally accepted in the U.S. The European model almost neglects the legitimate right to influence the decision-making process through lobbying, while American democracy accepts direct access of the professional lobbyist to the decision-making process against the guarantees of a well-negotiated commercial contract.

Consequently, *"Lobbying activity in Europe is either legitimate - and then it is practiced as a stakeholder group of interest or as lobbyist activity in the few European states that recognize the lobby, using and accepting the original term - or it's a make up activity under the title of public relations"*^x (Adriana Ahciarliu, 2017). Where the term 'public relations' is used, there is a risk of it being classified as illegal or at least unrecognized in those EU Member States. who stubbornly refuses to recognize the lobby.

The Transparency Register initiative was launched at European level in 2006, followed in 2011 by the unification of the European Commission's register with that of the European Parliament under a single one. In 2014 a high degree of transparency and new rules of communication from the Union to the citizen are established. On this occasion, Vice-President of the European Commission, Frans Timmermans, through the press release .”(EU Press releases database)^{xi} highlighted the fact that lobbying can be defined as trusting tool through the transparency of the procedure established at European level and therefore can serve European public policies, thus eliminating their association with terms such as deception or trafficking of influence.

Lionel Zetter, one of the most acclaimed European lobbyists (UK), is a supporter of the term lobbying, claiming that, de facto, industry has to claim its term for practice in the field: *"Alternative terms such as public affairs and government relations are currently more popular. I feel, however, that the industry needs to reclaim the title."*(Lionel Zetter, 2014)^{xii}

3.2 Lobby as practice of the public policies in European Union

Starting from the definition accepted at European level for lobbying, it is obviously easy to follow where it acts at the level of the European institutions. The European Commission may be the most justified one to be the most desirable target for interest groups registered in

the Transparency Register. Equally important is the institution of the College of 28 Commissioners, which works with the application of the principle of collegiality and the simple majority, practice that lobbyists can use in the decision-making process following the logic of electoral mathematics both at the level of the European Commissioners and at the level of the European Parliament.

Beyond the direct approach to the decision-making process per se it is also important the technical evaluation of the subject that interests lobbying. Thus, lobbying becomes an important instrument in the decision-making mathematics both at the level of the European institutions and at the level of the Member States of the Union. The Treaty of Lisbon, by reforming the role of the European citizen, European citizenship, de facto induces the lobbyist's role as an active player in the decision-making process, whether individually or in various associative forms. (Article 10 TFEU).

However, there are other views that argue that excessive bureaucracy, the institutional construction of the European Union - not very easy to understand - as well as the over-regulation applied in many areas of interest are not an incentive for an easy and transparent public relations activity , as requested by the EC and EP Registry.

In order to identify the paradigm of lobbying that can fit it the closest to the social reality, the chapter presents several definitions that are later analyzed comparatively. Thus, according to IER (Tănăsescu & all 2015) ^{xiii} lobby at EU level can not be defined by a single approach. It can be seen that lobbying can be framed in a European model where the lobbyist can be either a private entity active in the procedure for its clients against a cost or a multiple interest group. The study compares to the US lobby model where the approach is a transparent one in the area of contractual relationship representation through individuals engaged to promote the priorities of a stakeholder group in relation to public authorities.

The study thus presents a series of conclusions that highlight the term "transparency" both at the decision-making level - decisional transparency and at the level of the parties' relationship in lobbying - influencing decision-making processes. It is interesting to note in the conclusion of the study the cumulation of terms used as assigned to the lobbying activity and its results:

- Influencing decision-making processes
- Distorting democracy

- Decisional transparency
- Public authorities

3.3 The Definition and Regulation of Lobbying in Romania

It is interesting to analyze that in Romania the term and the lobbying action are suspected of being confused with the criminal action of the influence of trafficking, precisely because the current legislation has an individual character limited to certain well-defined law subjects. The analysis of the same study even dares to characterize this definition by limiting itself as one serving individual and private interests "*which, by its influence on the legislator, causes it to adopt an act contrary to the constitutional principles*" (Tănăsescu & all 2015) conclude the authors the same IER study.

However, we can not ignore the fact that the decisional transparency - the legal framework of the Law on Social Dialogue published only in 2011, almost 5 years after Romania's accession to the European Union - has a much shorter history than the postdecembrist era dominated by the lack of transparency and legislative framework. As we have seen through the practice set up at the level of the European Union, transparency has managed to shy into the Romanian decision-making process, without, however, being able to recognize de jure the need for legislative regulation of lobbying. It is to be remembered that the establishment of the Public Relations Register is de facto functional in the same paradigm of the definition that the European Union supports.

Yet, the Romanian scene already has, in its short history of this field of activity, several legislative projects dedicated to the regulation of the lobby, none of which have been achieved. It should be noted that a clear motivation is found under the expression "entering into the legality of the business environment with the purpose to influence the decision-making, without these steps to be assimilated to the traffic of influence", as shown in the explanatory motives of the draft laws. Opinion of the National Integrity Agency (ANI) in the official response Nr. 12385 / 12.12.2013 transmitted to the Minister for Relations with Parliament for the PLX739 / 2011 project, is unsustainable. The document clearly highlights the shortcomings in the definition needed for such an activity, the need for a clear text to delimit the lobby of trafficking in influence and refers to the fact that there is no regulatory obligation under the *acquis communautaire* and that, in the the European Union chose not to define lobbying by the

text of a Directive or a Regulation of the European Parliament.
([Http://85.122.3.119/senat.proiect.asp?cod=13367&pos=0](http://85.122.3.119/senat.proiect.asp?cod=13367&pos=0)).

3.4 Theoretical Considerations in the Field of Political Science. Institutionalism and Rational Choice in Lobbying. Delimitation of the Advocacy Compared to Lobby in Institutional Theory

Here is again an inventory of the terms that define lobbying and which are found in the sphere of political science, without any doubt: social relations, interest groups, power.

If the authors of the IER study - cited in the previous chapter - recognize the lobby as having a close connection with the more or less transparent decision-making process, the definitions of the term "*politics*", both broadly and narrowly, are in the same sphere of interest as those mentioned within the European Institute in Romania (EIR) study, without analyzing the necessity of transparency of the decision-making process but analyzing in detail the paradigm, actors and methods that build the concept of politics.

Speaking about politics in terms of distribution of human resources, the author refers to Laswell's simple statement: „*Policy looks at who, what it gets, when and how*” (Laswell H.1950)^{xiv} .

In the same context, the IER study analyzing the lobby from the perspective of terminology and concepts suggests that "*Lobby can mean anything* "" (Tănăsescu & all, 2015.)^{xv} while the relationship between one definition and another should take into account simple variables like who the actor is, when and how he acts and what the purpose of using and framing his action under the umbrella of the lobby is.

Let's take as a hypothesis what the EIR study states, namely that lobbying can mean anything, but serving the thesis described above that defines politics, namely that "*politics looks at who, what it gets, when and how*".

I revert to the two described concepts at the beginning of this chapter - the European and North American concepts - that overlap the de facto definition and perception of lobbying over the policy definition. However, I notice only one difference between the two definitions,

concepts. The difference refers to the motivation of lobbying as opposed to that of politics. If politics recognizes both the sense of power and the dimension of social life, only lobbying describes the access to the decision-making process, motivated by the cost aspect. Therefore, lobbying takes place for "*customer for a fee*".

However, that difference in the definitions that revolves around the term "*cost*" remains open. In this respect, the transparency required by the Code of Conduct of the Transparency Register of the European Commission and the European Parliament is admirable and welcomed. Nevertheless, I see a double standard in the fact that only acces to decision-makers through lobbying are cost-based, while other actors - individual and / or collective - are exempt from this transparency effort.

It may, however, be useful to observe another motivation that the National Integrity Agency expresses when deciding not to support the legalization of lobbying in Romania. Analyzing the criterion of cost, contract and going to the way of financing the parties through the law, both in Romania and in all the states of the European Union, in the same document quoted above INA (Integrity National Authority) points out the major difference compared to the United States where the financing process of the political parties is well-regulated by the well-defined lobbying procedure that attracts private sources for this purpose, unlike the European model of political party financing only from the public budget (document INA Nr. 12385/2012) ^{xvi}.

By further developing the analysis of participatory democracy and especially in the context of the rapid and explosive technological development of the 20th century in the field of communication, the authors of the study already mentioned that the rapid development of lobbying activities in various forms such as public affairs, advocacy, is motivated by the need that various heterogeneous groups have manifested in order to access "*mechanisms for expressing the interests they represent*" (Tănăsescu & all, 2015) ^{xvii}

I turn to the question: what is the paradigm of the lobby? Adrian Miroiu, speaking about the Kuhnian concept of paradigm, confirms Pârnu's opinion that "*The central concept of the Kuhnian theory of science, which allows the distinction between research types and their norms, is the concept of paradigm (...). Secondly, the paradigm designates a lot of standard applications of a theory (...).*" (Pârnu, 1981)^{xviii}

THE SUMMARY OF THE DOCTORAL DISERTATION

I have previously highlighted an inventory of the terms that the lobby, included in the communications science community by the authors of the EIR quoted study, intersects as methods, tools and actors involved.

If we take that list and analyze it from the point of view of the paradigm, we will try to find out the field of discipline, the effective method of analysis to identify the most appropriate professional research and the actual conceptual framework of the lobby.

In the "*Fundamentals of Politics*", Adrian Miroiu distinguishes the research of political science according to the type of practical approach and reviews three main categories: institutional studies, behavioral analysis, and rational choice theory. In the following, I will try to analyze the lobbying action through these three categories of political science.

From the perspective of institutional studies, we can address the rules and procedures that govern formal social organization in the sense of their impact on social decision-making. The lobby is undoubtedly an act that engages in the decision-making process and induces social impact, regardless of the purpose and outcome of the action. For this hypothesis to be truly supported, it is necessary to identify the rules and procedures as well as the framework that can govern the involvement of lobbying at the level of the European institutions.

Thus, the European Union receives legal personality and "*the political character of the Union is also enhanced by the explanation of its principles of functioning: representative democracy and participatory democracy*" (Bărbulescu, Gheorghe Iordan 2010)^{xix}. For having a tool for monitoring both representative and participatory democracy, the Union receives, through the Treaty of Lisbon, both instruments and limits on competences. Thus, competences are set up to monitor the implementation of common policies. At the core of these competencies, I believe that the institutional framework for the functioning of lobbying with the aim of legislative harmonization at the level of the EU Member States can be found. Ex-ante and ex-post political control can be sources of intervention in which lobbying intervenes in the decision-making process where the principles of subsidiarity and proportionality are positively respected. I revert thus to the possibility of "*ex-post*" judicial control that in practice is the so-called "*infringement*" procedure. In the context of political pluralism, the action itself initiated by a lobbying group or lobby groups puts into practice the institutional rules and procedures of the Union, thus integrating into institutionalist studies.

THE SUMMARY OF THE DOCTORAL DISERTATION

The demarcation between lobbying and advocacy limits the lobby to only the influence of the legislative decision-making process and describes the advocacy activity as a complex one "*of influencing certain behaviors within the society, including the behavior of authorities expressing by law*"^{xx} (Valts Kalnins, 2011)

If we take into account the novelty introduced in the institutional procedure at Union level through the legislative initiative of a group of one million citizens, the ability to influence 1 million citizens to transform them into an actor exercising power over another by dominant preferences - here is the relationship causality that generates the exercise of power, influences behavior at the social level but also at the level of the representatives of the authorities. It is therefore a cumulation of the two terminologies - lobbying and advocacy - which together build the concept of causality and integrate into behavioral neo-institutionalism.

In the example of intervention at the level of the institutional procedure of the infringement, of the action at the level of the European Court of Justice, it is obvious the involvement of the rational actor, the rational choice - both the instrumental and value one. In antithesis with the ones outlined above in the context of lobbying in institutional and neo-institutionalist studies, the authors of the EIR study cite Rinus van Schendelen who identifies methods, already established practices of lobbying with the European institutions, thus recalling the term advocacy along with coercion, argumentation and addiction.

An OECD study brings with it two definitions - not contradictory - of lobbying. Thus, a first definition refers to "*the action to influence the decision of the others*", meaning the influence at any level, whether individual, commercial or governmental. This is the broadly definition of the term lobby while the narrow lobbying definition acknowledged by the OECD goes into the perception of acting to influence the decision at the political level through the action of individuals, groups of people representing various interests. Going forward with the comparative analysis, I can not help but notice the similarities between lobbying and politics: while politics is a social resource allocation, lobbying comes with the supply of social resources to which it adds human and professional resources. Both lobbying and politics prove to be a real, tangible dimension of social life.

3.5 The Actor in Politics. The Rational Actor in Lobby

This subchapter is an in-depth analysis of the comparative analysis of the individual and collective actor in lobby, advocacy and politics. The actor / actors are the ones who define the choice and the way in which they make choices defines and delimits the type of choice, rationality or irrationality of the choice. The rational is precisely the application of the technique itself to influence the decision in order to achieve the goal. Therefore, the actor in lobbying is rational and his actions are judged according to the way he acts sand behaves.

A. Miroiu describes two intellectual traditions in this sense: "instrumental rationality and value rationality" (A.Miroiu 2006) ^{xxi}. The differences and similarities between these two categories relate to how, the technique, the know-how by which the actor / actors are making the effort to achieve their purpose. Interference with the actor's subjectivity also induces a major difference, giving the value of instrumental rationality by the fact that the purposes of the action are generated by the actor's / actors' wishes and tastes.

The chapter continues the practical analysis through examples from various social environments and associative interests to support the conclusion that the actor in lobbying acts rationally morally not from conformity to an Ethical Code but because morality imposes the imperative of action. If this definite imperative can not be proven, then we are talking about a violation of the Professional Code of Ethics and framing in other categories of law, even criminal.

A significant example is lobbying in the decision-making process on legislative initiatives to support consumer protection through the Consumer Credit Directive through an overlap of lobbying and political decisions supported by the same category of individual and collective actor at the same time.

3.6 The Cost – Criterion of Transparency in Defining Lobby

With a universally and clearly defined self-regulatory system, with a special regulatory system in some European Union countries and within the kuhnian definition of the paradigm, lobbying seems to already fit into a universal paradigm - that of political science. But it is good to remember that within the definition of lobbying, it is undoubtedly mentioned

that lobbying takes place against a cost. Cost and morale are two antagonistic terms? Can they work together?

Is it costing something immoral? Why is the "cost " factor in the European model accentuated when the phrase "*on a contractual basis*" is used in the North American? What's the difference? The perception of a loyalty service on a contractual basis already establishes an area of business governed by commercial laws that recognize a transparent contractual relationship framework. The actors of this relationship are some well-identified and identifiable.

The perception of lobbying on the European model as an amalgam defined by uncertainty and by negation (multiple groups and not exclusively private entities) that act "*against cost*" is one that induces a lot of risk image & reputation and does not support the building of trust in lobbying.

In the context of regulating the EU Transparency Register, the lobbying law in some countries where lobbying is well represented, in the context of the Treaty of Lisbon that recognizes participatory democracy, I believe that these perceptions and definitions are overtaken by the reality of the political and economic scene. I insist that these approaches create the perception of customery action precisely because they define the purpose as "*the client's private interest*".

3.7 Risk and Cost in Lobbying

The European model definition automatically induces the cost of a hard to estimate risk by using the susceptibility within the term of lobbying. Also, framing this term under the broad framework of the noun phenomenon - lobbying is a susceptible phenomenon - offers a direct invitation to what the logic of a risk analysis includes the cost of the following risk categories:

- Image risk
- Legislative risk
- The risk of trust, image and reputation
- Market risk, associated with the field of activity in which lobbying takes place.

- The risk associated with the commercial concentration on that domain, the risk that comes with the cost of assuming the ratio between supply and demand by the dependence on a single specialized market.

The chapter continues with a particular emphasis on those indicators that underlie reputational risk analysis in the context of assessing the dynamics of trust in certain categories of actors who can be considered as directly or indirectly involved in lobbying. It presents the results of the 2018 Edelman Trust Indicator Report (Edelman 2018) which considers four major categories of institutions in the analysis:

- Government
- Mass media
- Business environment
- Non-governmental organizations

In the sense of the report, success in the reconstruction of confidence was supported by the following policy mix: labor investment, consumer protection, quality of life, healthy competitive environment, investment in research and innovation.

In view of the multitude of risks with which lobbying intersects, the lobbyist has every right to exercise his profession in full transparency of the object of activity, with all the rights to receive a remuneration covering both the costs of carrying out his activity and the taxable profits consequently. In the context of what has been described above, the prohibition of successful commission by law (see Annex 1) becomes an intent in the susceptible area of abusive overregulation.

3.8 Categories of Actors on the Lobby Scene

The same EIR study identifies several categories of participants in the lobbying action without including them as actor, player. A first category is that of anomic groups. A second category is that of associative and non-associative groups, and the third is of institutional interest groups.

Analyzing in relation to the ethics and morals of lobbying, the involvement of anomic groups is purely spontaneous and generated by instrumental rationalism, trying to influence the decision at the level of power in the sense of restoring the normal status quo at

the social level - spontaneous help and support groups in the event of floods, earthquakes, accidents, etc. The criteria "*private interest, client, against cost*" are not found in this model of lobbying action defined by the action of the actor called the anomic group.

The role of non-associative groups is identical to that of anomic groups. But they are shaped around an identity of tradition, culture, religion, cultural preferences, etc. They are constituted as an individual actor who can participate in social dialogue and thus influence political decision, power, but without the "*service against cost*" dimension.

Associative groups associate on professional and representative interests - professional associations, employers, trade unions and are well recognized and regulated as a social partner through the Social Dialogue Law. They can be recognized as an individual actor in themselves who actively participate in decision-making theory. However, the "*service against cost*" criterion is not obvious in this case as long as the group is constituted on associative voluntary basis and acts to influence the political decision.

Institutional groups are already at the neo level of institutionalism, have a clear set of annual and electoral budgets, and these institutional groups can in no way be "*accused*" of providing services "*at a cost*" but are recognized as actors of the lobbying action by the literature.

CHAPTER 4 - LOBBY FOR LOBBY. COMPARATIVE RESEARCH OF THE ROMANIAN LEGISLATIVE FRAMEWORK WITH IMPACT ON LOBBYING ACTIVITY

This chapter presents the political situation and the evolution of the lobbying process aimed to support a lobbying law in Romania. It describes the evolution and dynamics of this process as well as the results of direct research through the questionnaire method.

A comparative analysis of the legislative framing of the influence of trafficking is made with the texts proposed by the parliamentary initiators for the text of the lobbying law and conclusions are drawn regarding the relationship between these two texts with a comparative analysis of the term "influence" in the two areas of legislation as well as the way in which a law that produces effects - the Criminal Code - induces definitions by negative comparison in the draft law that proposes the special regulation of the activity and the lobbying profession.

Attention is drawn to this analysis and the determination of the framing of the good provided by lobbying from the point of view of political science within the framework of defining collective action and its logic.

The chapter proposes solutions for the modification of the project of law under social dialogue procedure at the time of the analysis as well as possible solutions for the implementation of this law once it is adopted or not adopted. The purpose of the analyses is to offer the value of lobbying activity as a beneficial tool in the decision making process, in the process of legislative construction both at national level and in the direct relationship with the European institutions. In the context of the financial crisis in 2010 as well as the pressure of the timetable for the implementation of a long list of directives, especially in the field of taxation and consumer protection, with the European Union monitoring spectrum, the analysis highlights the decision of the power at that time in Bucharest to resort to a model of State intervention by issuing emergency ordinances, especially in the field of taxation and consumer protection.

4.1 Lobbying Regulation Process Dynamics in Romania

The subchapter describes the dynamics of the legislative process, with its ups and downs, which incite the clear message of the need to recognize the term "*lobby*" motivated by the fact that the term lobbying was and is used in all political media, the press, civil society "*in the sense of Influencing political decision through influence trafficking* „(see project sheet) ^{xxii}. Thus, the parliamentary initiator supports the opportunity of such a legislative initiative by the fact that it would allow the recognition of lobbying as a professionally organized one, thus responding to a constitutional necessity of "professional" representation of citizens' interests as de facto alignment with the French doctrine ideology according to which the general interest, citizenship, is a primordial one.

The delimitation between criminal and civil, commercial perception must be a self-explanatory conclusion that emits from the text of a law and in no way a definition by negation like - "*lobby is not trafficking of influence*".

The legislative procedure followed the natural, democratic, parliamentary course. The announced goal was not well received either by the large parliamentary majority or by the business community. The announced positive incentive of this law to improve the transparency and accountability of decision-making and the direct involvement of civil society in the process

of influencing the decision can not be fully described in the proposed law. In taking over the European Union model, the project proposes registration of the lobbyists in the Lobby Register, which will be kept by the Trade Registry of the Bucharest Court. However, the harmonization of the text with the practice of the European Union is deficient in this respect. Also, the definition of the professional lobby creates an unfair competition area, basing in fact on a quantity factor. Beyond the ambiguities in the corroboration of the stated principles, the project is not harmonized with the provisions of art. 227 and 304 of the Criminal Code regarding the disclosure of professional secrecy and secret of service (Law 286/2009)^{xxiii}.

During the parliamentary procedure the draft law is rejected at the level of the Senate of Romania as well as in the point of view of the Romanian Government (see project fiche) ^{xxiv} which criticizes the project and chooses to leave to the Parliament the final decision. The legislative process for this project remained with respect for the postponement and referral vote for the Reporting Committee of the Chamber of Deputies, but the postponement is still valid, in 2018. In the spring of this year, the initiative was resumed under the Social Dialogue under the format processed and negotiated over time with the relevant associations.

4.2 Lobby versus Influence and Corruption Trafficking. Comparative Analyses of Legislative Texts

The questionable image of lobbying and its assimilation of corruption is not a Romanian invention. Amy Handlin in his book "Dirty Deals? The Encyclopedia of Lobbying, Political Influence and Corruption" talks about restrictions imposed on lobbyists in the United States since 1876 because of suspicions of corruption and trafficking in their activities.

In Romania, at 2015, a site dedicated to the monitoring of corruption acts shows the following statistical data: "total convictions 112, total years with execution 403, total years with suspension 78, longest file 3882 days, shortest file 225 days, the greater the 22-year sentence, the most common offense - the traffic of influence. " (see site maricorupți.ro)^{xxv}.

Trafficking in influence is defined in Art. 292 of the New Criminal Code, under the heading "*Corruption Offenses*", as follows: "*Promise, offering or giving money or other benefits, directly or indirectly, to a person who has an influence or gives the impression that has influence on a civil servant, to cause him to perform or not to perform, to urge or to delay*

THE SUMMARY OF THE DOCTORAL DISERTATION

the accomplishment of an act falling within his duties or to perform an act contrary to these duties shall be punished by imprisonment from 2 to 7 years and the prohibition of exercising certain rights.” (Law 286/2009) ^{xxvi} The influence of power in the draft law for lobbying is not described by assimilation with the provisions of art. 292 of the New Penal Code, but if we return to the collective action, positive and negative selective incentives, to the sanction and reward of a collective action of influencing power under a lobbying agreement, then we are talking about an almost complete overlapping of the two texts. The only indicator that can erase the sign of equality between these two definitions is the Civil Code, the principle of good faith, applied to all dimensions of the lobbying process.

| Criminal Law – trafic of influence | Civil Law – legal method | PL581/2010 |
|--|-------------------------------|--|
| "Influence on a civil servant with the aim of delaying, hurrying, fulfilling or canceling a decision of the power" | „The principle of good faith” | "All actions performed by legal means to influence the activity of legislative or executive power" |

The establishment of the RUTI by the Government of Romania is a recognition of the necessity - but not of the obligation - to harmonize this practice with that applied at the level of the European Commission and the European Parliament, but also of lobbying itself.

This year's (2018) text of the bill revised and proposed by the decision-makers this adds to the latest project in terms of a parliamentary procedure and developments and seeks to improve those points criticized in the Government's Point of View with reference to PL581 / 2010. Detailed comments on the articles of this new text under public debate (June 2018) can be found in the Appendix to this paper.

We could therefore conclude that if legislative trends regulating lobbying will become reality, lobbyists will be suppliers of public goods and not private in the collective action they perform through mandate representation. There is no doubt that, irrespective of the legislative text to be adopted, lobbying is recognized as an act of influencing power within the rationale and logic of collective action where players are well-defined and organized actors. Consequently, lobbying is an activity that is included in the political sciences.

CHAPTER 5 - PRACTICAL RESEARCH ON THE PERCEPTION AND OPPORTUNITY OF THE LOBBY REGULATION IN ROMANIA

This chapter is dedicated to presenting the research methods used as well as to analyzing the results of this research. It presents itself in a first technical analysis that underpins the construction of the questionnaire used as well as the target audience of this questionnaire. A quantitative and qualitative analysis of the obtained results is made. It is then followed by two case studies which I present both from the point of view of the conjuncture on which the choice of topics is based and from the point of view of lobbying practice as a real proof of access to the legislative decision process procedure as well as in the process of harmonization of some Romanian legislation with the relevant Community Directives. This describes the classical infringement procedure in the two case studies as well as the role of lobbyists in generating and conducting this procedure.

5.1 Questionnaire on the Perception of the Opportunity of Lobbying and its Role in the Process of Legislative Harmonization. (see questionnaire in Appendix) ^{xxvii}. Criteria and Analysis Hypothesis

The approach in this case is practical, more qualitative than quantitative, aimed to provide a complementary analysis with the result suggested by the case studies presented in this paper. Starting from two criteria that I consider essential and real publicly expressed, namely: the lack of a legal framework regulating the lobbying activity in Romania and the declared overlapping of the lobbying activity with the influence of trafficking, the research aims at framing within a theory of an activity that already practically exists. Therefore, practice in this case has the role of precedence and the research will aim at "drawing" the theory that can verify the practice. Practice in this field is an empirical one in Romania. For the situation in which the theory we are going to expose as a result of this research only has a role to interpret the already obvious empirical results, we can recognize from the point of view of temporality the posteriority and the evidence of the fact that between theoretical and empirical there is always a determination of reciprocity .

In addition to the actual criteria mentioned above, we built the questionnaire considering the following assumptions:

THE SUMMARY OF THE DOCTORAL DISERTATION

- clear intentions to support lobbying can be outlined by both categories of stakeholders - representatives of the power on the one hand and representatives of interest groups on the other hand
- there is no proper understanding of the role and outcomes, the benefits that lobbying can produce at the public and social level
- there is no awareness of the risks and the impact that the lack of regulation can have on both the social level and on the stakeholders
- there is no clarity about the lobbyist job responsibilities
- there is no clarity about the categories of actors that can be recognized as lobbyists
- seems to be a majority of opinion by which lobbying is de facto trafficking of influence and should be forbidden by law.

These assumptions prove their credibility by being consistent with documents and opinions expressed publicly and not in contradiction with the dynamics of reality in the field of lobbying regulation as well as in the field of monitoring and importance offered in the public space of influence trafficking by overlapping with the activity of lobby.

I note that the number of hypotheses enunciated is large enough for Karl Popper's theory, according to which "*The number of hypotheses possible for a theory is infinite, so confirmation of a hypothesis does not confirm the theory*" (Sorin Dan Sandor, 1981)^{xxviii}. In this context, we applied the classical test mode of the null hypothesis, creating relationships between the variables between the two questions - risks versus benefits, predictable impact vs. unpredictable impact. The questionnaire, in its entirety, can be found in the Appendix chapter.

Starting from the first question that initiates the differentiation of the lobby from the influence traffic, a positive direction is built in the questionnaire towards the other questions that are meant to highlight the purpose, role, methodology, benefits, morality, impact and size in the geographical space of the impact of the lobby.

From a theoretical point of view, we know that the role of a quantitative research is oriented towards verifying a theory. In this case, the results of this questionnaire, although quantitative in the sense of the analyzed sample, will complement the qualitative research in this paper, as presented in all the other chapters of the paper, with the purpose to pursue a comprehensive description of the lobbying activity. The methodological model is considered in the analysis of the results, trying to present the results in the already presented context - of

the desire to theoretically frame the lobbying activity and to determine the necessity of legislative regulation or not, by analyzing the causes and the effects according to the way they prove validity and considers the context of the criteria already declared as safe and real. I think that in the case of the subject and the purpose of this study, the qualitative aspect is superior to the quantitative one, as it can make a more incisive contribution to the emergence of a possible theory.

An internal validation of the results is made by considering an important criterion the credibility of the observed effects on the respondents to the questionnaire while the external validation is built by attempting to generate results on both groups of respondents.

In this context, it is recalled that a total of 80 interviewed were considered in the questionnaire, 50 in the decision-making environment - members of the Parliament and / or the Romanian Government and 30 in the associative business level. In relation to the total number of MPs - 466, the sample represents the representative rate of 10%. In the employers' and associative area, the active participation in the questionnaire is 40%.

The answers are multiple to all questions and can be complementary to one another. This rule in the question-making logic applies to all responses except for the one referring to the recognition of lobbying in the category of influence traffic, a question which in point a. and point f. is mutually dependent variables and thus creates the nullity of the hypothesis.

5.2 The Structure of the Questionnaire – see Apendix

5.3 Statistical Result

The consolidated result of this questionnaire applies the statistical and comparative method with reference to the two categories of respondents - the decision makers and the business environment organized and represented at associative level. The conclusions, in short, are as follows:

- There is an obvious majority that does not perceive the lobby as trafficking of influence, which gives the lobby its role to intervene in the decision-making process at any level, and proclaims transparency as a factor induced by lobbying in the decision-making process, thus serving to combat the corruption.

THE SUMMARY OF THE DOCTORAL DISERTATION

- There is a significant majority that recognizes the need to regulate lobbying and proclaims the need to define the lobbying profession, indicating the categories of activities that can be found on the active stage of the lobby today.
- Most respondents recognize the role of lobby as a benefit in legislative construction and as a factor generating added image and confidence.
- The results indicate an acknowledgment of the role that lobbying can play mainly in promoting good practice in the field it promotes, as well as in amending legislation. It is, therefore, a recognition without doubts of the role of the lobby and its actors in influencing the political decision.
- It is worth noting the lack of understanding of the citizen's role in participatory democracy both at the level of the decision makers and at the level of the business environment.
- In direct correlation with the lack of recognition of the role of the citizen in the collective action of the lobby comes the non-recognition of the role of European values in participatory democracy. Surprisingly, this role is considered as null by decision-makers.
- To be observed the almost similar view of the two categories of participants on the notion of country love, that is, a disregard of the role of this criterion in the morality of the lobbyist. In antithesis, professional conscience, transparency, code of good practice are criteria that characterize the moral and ethics of this area, according to respondents to the questionnaire.
- Most of the respondents say that the decision-making level available to the lobbyist is the one needed to access the process itself without mentioning access limits.
- There are differences in the perception of the foreseeable and unpredictable impact of the lobbying activity in the analysis of the responses of the respondents of the two categories - decision makers and the business environment.
- Most of the respondents, in both categories of respondents, recognize the significant role of lobbying for the purpose of representative and participatory democracy through the intervention of collective lobbying and the Romanian parliamentarian in the legislative process at the level of the European Parliament and the European Commission. In addition, a large number of

respondents who recognize this role have commented on how this role can be exercised. We enumerate the following views:

- At the early stage of the European Parliament's procedure, the interests that may be positively or negatively affected by Romania by participating in the adoption and subsequent implementation of a European Directive and / or Regulation can be identified.
- Due time measures can be identified to mitigate the possible negative impact of these regulations as well as stakeholders in the field.
- Eliminates the chance of repeating the same mistakes by transferring expertise.
- Provides clarifications in order to clearly delimit the activity of the criminal field of corruption.

Some interviewed have completed the terms that characterize by enumerating the morality and professional ethics of the lobby with features of integrity and responsibility, while others added to the list of lobbyists the public institutions. Those who made these additions are from the business environment, indicating a transfer of expertise from the policy area of integrity, transparency in corporate governance to the field of lobbying, a field that it perceived as a commercial one but with a possible impact at national level , European and obviously in terms of private society and the social dimension.

CHAPTER 6 – CASE STUDY – INFLUENCE IN THE DECISION TO HARMONIZE DIRECTIVE 2008/48/EC BY COLLECTIVE LOBBY ACTION

This subchapter aims to describe a lobbying process which methodologically supported the initiation of the infringement procedure and subsequently the steps of the decision-making process with the aim of harmonizing in Romania a European Directive with major social impact - Consumer Credit Directive. I considered it important to first present the political context of this process, both at local and European level.

The context is presented in close correlation with the purpose and spirit of the Directive, the imposing by harmonization, the application of the principle of subsidiarity and proportionality within the rules for the protection of the consumer of financial services in relation with the private provider. I hereby present the theoretical framework focusing on the actors involved in the infringement process, the purpose of each category of actors and the

outcome of lobbying. The study proposes a highlight of the lobbying procedure as a collective action found in the political sciences in the area of applicability of institutionalism and pluralism. The local political context was a populist one generated by this issue, especially under the umbrella of the European Commission's initiation of the infringement procedure, as a result of the political decisions of the majority social democratic government.

The chapter analyzes the process and the result of harmonization of the Directive by the Emergency Ordinance in Romania in 2010 and highlights the consequences of incomplete, incomplete harmonization as well as the intervention of the lobbyist initiating the infringement action against the Romanian Government by activating art. 258 TFEU in order to harmonize correctly the text of the Directive.

It analyzes the actors involved in the procedure and details the infringement procedure and the guarantees it brings.

It analyzes the theoretical framework of this case as a living exercise within the theory of collective action, meaning by collective action "*the central theme of political science*" (Miroiu A., 2006)^{xxix} by considering the plurist perspective, as it is describe by Schmitt cited by Adrian Miroiu – „*A system of representation of interests in which the constituent units are organized in an unspecified number of multiple, voluntary categories (...) which have not received a special license from the State (...) and which do not exercise the monopoly of representation in the respective categories* " (Miroiu A., 2006)^{xxx}

It analyzes the lobby technique, the actors and the adopted lobbying procedure, the context described as collective action in influencing consumer credit in defining the public good and the private property as well as the effect of the State intervention as an active actor with the other actors: executive and parliamentary, the political autonomous institution of the National Bank of Romania, the press, the employers' and professional organizations.

The equation of collective action with State intervention as an actor can not be justified in this case because the common and public good is lacking. Adrian Miroiu defines the public goods in antithesis with the private ones as being "*characterized both by non-exclusivity and by unevenness:*" (Miroiu A., 2006)^{xxxi} Unlike private goods, public goods can also be collective.

The study analyzes in this collective action the incentives that each category of actor presents and the rules they use. We first notice transparent actors with a clear, identifiable

role. I mentioned the state, the financial system, the consumer. We have identified the goods and characterized them in their evolution according to the evolution of power and its decision.

Thus, when harmonizing the Directive, collective good is the consumer protection. The positive stimulus generated by the State actor and the European Union generates collective support action at the consumer level, without them having posed the need for this incentive. Thus, the organizational framework of the consumer appears in an associative form, recognized in the social dialogue. The reward of this incentive is easy to understand: legal protection through state intervention against possible abusive practices. The stimulus for the private actor - the banking financial industry organized in professional associations and employers' organizations - is one that I would call mutual trust. There is a lobbying process that eliminates intentions to escalate protection to the populist area and succeeds. Implementation is expected with the result of the incentives on both sides.

In subsequent cases of legislative drafts presented in the study (amendments to Ordinance 13/2011, the Payment Dues Act), in which the contractually engaging in authority - not for the purpose of protecting the consumer but for the purpose of limiting the source of income of the private asset provider - the credit, the incentive created is a reward for the consumer - cheaper credit - and a punishment for the supplier - lowering revenues, increasing costs. Reward can be translated simply by the partial transformation of the private good into the public good and the safety passed on to the consumer by establishing control over the credit price. This is the reward expected by the consumer from the perspective of the actor's intervention called State. Obviously, the State, with the power it represents, is rewarded with more confidence from the consumer who will vote the same majority at the next election. In the normal market evolution, however, it is expected that the reward of collective action will be a mathematical one depending on the relationship between the benefit and cost related to the production of the good. As long as the cost of production is only hired by the private actor and the benefit is partly transferred by reward to the qualities of a public good, it is likely that the private actor, as a provider, reconsiders its participation and makes decisions that transform the expected reward consumer in sanction. The simplest sanction could be the lack of provision of the good to that category of consumer who participated in the collective action and the reorientation of the asset, in another form, to other markets or other categories of actors.

The chapter focuses further on the categories of actors and the divergences created by the excessive consumer's protection framework. For we can not ignore the fact that any

collective action involving the notion of consumer, meaning a citizen with the right to vote, also implies a political reward or a political sanction.

It is worth noticing here that there is an obvious parallelism between the collective action area organized both on the scene of the goods supplier and on the consumer scene. The area less represented as bargaining power both in the supplier's field and in the realm of the good's beneficiary – the consumer, is equally perishable, so it is the one that directly feels the sanction. From this we can conclude that lobbying is the one that has the capacity to intervene to cover lack of representation, lack of human resource, know how & organization in a collective action area in which the actors are already oriented and determined to enter into play for a well-defined and planned purpose.

The process of harmonizing the Directive and subsequently the local legislative process to improve the legislative framework for imposing the subject matter of the Directive was a classic example of collective action in which actors, who can be defined without any doubt as lobbyists, have played an essential role. Not just individual actors but corporatism has played the classic role of lobbyists in the collective action scene where one of the most valued social values has become a negotiation term - consumer protection.

I would like to emphasize that the entire process of legislative harmonization of the Directive in the Romanian legislation has been influenced, in all details and in all procedural steps, by the intervention of interest groups organized for this purpose, without being licensed by the state, and who acted under the already defined, in previous chapters, as lobbyists. In this context, lobbying can be considered as part of the political sciences in the field of rational choice and pluralism, an instrument of the exercise of power that complements the goal left by institutional links and fits as an extremely useful synapse between civil society and state institutions, within the democratic framework of the exercise of power.

CHAPTER 7 – CASE STUDY. LOBBY AS INSTRUMENT IN THE HARMONIZATION OF DIRECTIVE 2006/112/EC – VAT APPLICABLE TO FINANCIAL LEASING CONTRACTS

This case study aims to present the practical methodology and actors involved in a lobbying process that aims to harmonize, under the pressure of initiating the infringement

procedure, the text of the VAT Directive in Romania. Here is the technical detail of the study, niche detail, precisely to support what I said in the theoretical chapter, namely, that lobby adds to the collective process the human resource and the know-how needed to implement a rational collective action and is not just a connection tool with decision makers.

The chapter presents the history of the local legal framework analyzed for the treatment of VAT on financial leasing contracts appropriate to correctly explain and in detail the political decisions that forced the industry, represented by a lobbyist actor - a professional NGO - to approach the correct law harmonization procedure by activating the article 258 TFEU as a last resort solution, after the obvious failure of the local law negotiations.

The comparative analysis of the national and Community legal frameworks wants a succinct presentation of the comparative legal framework supporting the case which was the subject of a lobby file with the initiation of the infringement procedure against the Romanian Government in order to harmonize the VAT legislation (CHAP 2011/1232)^{xxxii} ..

The chapter devotes space to the description of the construction of the technical dossier of the petition towards initiating the infringement procedure in the sense of the obligation to comply with the requirements of an infringement file that was submitted to the European Commission, to the Directorate General (DGTAXUD). It is useful to mention that such a dossier should include the following categories of information:

- I. documents to generate the European Commission's confidence that the petitioner has made every effort at local level to correct, through amicable negotiation with local authorities, the legislation that is the subject of the petition in harmony with the community.
- II. Comparative legislative analysis of the text of the law subject of the petition with the Directive.
- III. In support of the comparative legislative analysis, the dossier should cover the way in which the Romanian legislation takes over the spirit, principles and letter of the Directive where there is acknowledged an obligation of legislative harmonization assumed by Romania through the Agreement on accession to the European Union.
- IV. Conclusions to the technical dossier - It is desirable for the technical dossier to draw conclusions on the comparative analysis supporting the complaint / petition under Article 258 TFEU.
- V. Application for implementing the provisions of art. 258 TFEU

The chapter continues with the presentation of the main actors of this case study and of the macroeconomic context justifying the legislative initiative under consideration and other similar initiatives with undesirable impact on the industry as well as on the Romanian Government by activating the infringement procedure.

The theoretical framework of civil society intervention at European level in the form of NGOs is a subchapter that guides the analysis to the application of "*integrative theories*" by activating art. 258 TFEU and through lobbyists registered in the EU Transparency Register, with full respect for the principle of subsidiarity.

7.1 Infringement Procedure

The procedure is supported by the premise that each member of the European Union is directly responsible for the implementation according to the assumed schedule of the internal legislative system. The European Commission is the guardian of this correct implementation, respecting the principles of Community legislation and the timetable agreed.

The first phase of the procedure is the admission of the complaint. Throughout the infringement period, the following procedures may be developed:

- Researching the case itself
- The opening of the infringement procedure takes place de facto when the Commission decides to enter into direct contact with the authority of the Member State against whom the petition has been filed.
 - Based on the response received from or in the absence of the Member State concerned, the Commission may decide to send a reasoned opinion to that Member State clearly stating why it considers – that the Member State is in breach of the legislation concerned within the petition.
 - The purpose of the direct dialogue with the State authority is to determine at the Commission level whether the infringement is indeed justified and, if so, it is trying to solve the problem identified as a fault of the State concerned under amicably steps.

- If, however, the State chooses not to comply with the conditions communicated by the Commission, the European Commission Directorate General opens the infringement procedure and makes use of its institutional right to address the European Court of Justice.

7.2 Administrative Guarantees Offered by E.U. During the Infringement Procedure

Under the procedure described above, there are the following administrative safeguards for the benefit of the citizen or legal person making the complaint by administrative means:

- a) after registration by the Commission, the complaint shall be assigned a reference number which shall in effect open the door to the next procedures.
- b) where the Commission services make representations to the authorities of the Member State to which the complaint was made, the Commission will observe the choice of the complainant as regards the disclosure of the it's identity.
- c) the Commission endeavors to take a substantive decision (either to open proceedings or to close the case) within twelve months of filing the complaint.
- d) the Commission services will inform the person concerned about the course of any infringement procedure from its opening until the final decision on administrative or follow-up closure at the level of the European Court of Justice.

All of these steps above are what is found under the federal normative framework. According to Professor Iordan Bărbulescu's analysis, "*federalism must also be viewed from a normative point of view and here we are considering the distribution of competences between the global level and the constituent parts, but also their participation in the formation of the common will (...) and the powers of the central organs that gather the particular wills and transform them into common will.*" (Bărbulescu Gheorghe Iordan, 2015) ^{xxxiii}

7.3 Conclusions For a Theoretical Frame of Lobby Practice Within the Procedure CHAP 2011/01232

The steps taken by the professional association in the lobbying process of an infringement procedure are found from the point of view of the modality practiced in the area of comparative law interfering with the theory and the art of negotiation, with the principles of

communication and the model of European integration of federalism and institutionalism . The outcome of the assessment concluded the need to address the following methodology, which takes into account a gradual stepping up of the procedure to be followed according to the outcome of each step, each defined within a well-timed calendar:

- Testing a correction in direct dialogue with the Romanian authority
- Submitting a complaint based on Art. 258 TFEU addressed to the European Commission / Directorate
- Initiation of judicial proceedings at the European Court of Justice level

Considering lobbying as a social agent in Thibault's sense quoted by Prof. Iordan Gh. Barbulescu, we can analyze the possibility of lobbying in Alexander Wendt's definition of constructivism. (Bărbulescu Gheorghe Jordan, 2015) ^{xxxiv} In this context, the author describes the impact of this model of integration on any type of state organization or groups of people or interest groups as a construction solution through open, transparent dialogue to new forms of integration.

CHAPTER 8 – CONCLUSIONS & SUGESTIONS FOR PRACTICAL USE OF THE THEORY

8.1 Confirmation or Infirmation of Research Hypotheses Through Questionnaire & Interview & the Hypothesis of Fitting into the Theoretical Paradigm of Political Sciences

Below the framework of practice, this exercise and this test of construction in the field of research of political sciences has highlighted the confirmation, with the same real criteria and working hypotheses, of the research methods already presented in the previous chapters. The conclusions with regard to the hypothesis of fitting into the theoretical paradigm of lobbying are important, indicating that during the process of accessing the decision-making process, lobbying can take place by calling upon several categories of political science theories. The identification of collective actors and their goals makes lobbying a reality within the framework of pluralism and institutionalism. Depending on the level of access to power, lobbying is equally within the limits of federalism and constructivism, and it can bring legislative changes to harmonize, at E.U. level, as well as to penalize Member States that are in breach of E.U.

Being a flexible tool to access power, the lobby uses science techniques that intersect with public relations, mediation, negotiation, advocacy. The use of these techniques only confirms the complexity of a lobbying action and the need to recognize it at official level.

The history of the practice and regulatory framework of lobbying at European and international level is, in itself, a recognition of the impact that lobbying has, not only in accessing, but also in influencing the political decision. The most beautiful part in this reality is that lobby and lobbyists succeed in influencing the political decision without the attributes of an elected dignitary, the value of an electoral exercise.

It is precisely because there is acknowledged the current preception that some overlap lobbying with crimiminal acts, a clear delimitation is required by self-regulation and self-definition, at least. Only a harmonization of lobbying at Community - EU level can provide a chance for a truly transparent decision-making process, with respect for the principles of participatory democracy enshrined in the Treaty on the Functioning of the European Union.

8.2 Conclusions and Practical Suggestions for a Possible Regulation and Implementation in Romania

In the evidence of hypothesis verification, the following practical conclusions can be drawn for a possible legislative construction to regulate lobbying and the notion of good practice:

- Risk awareness can be clear motivation that can outline a sustained proposal for a lobbying law defining lobbying activity in an area of interest that does not intersect with defining patterns by negation - *is the influence of trafficking* - nor by the use of generic terms (eg, phenomenon, susceptible) that leave room for interpretation abuses and / or the practice of lobbying through bad faith.
- Lobbying activity should be defined by regulation as a profession publicly assumed by mandatory registration and in full transparency in the Single Register of Integrity Transparency - RUTI.
- In the context of the legislator's intention to define revenue categories of lobbying, it may be useful for a chapter of the code of conduct to be devoted to a standard model of lobbying contract. This would provide the necessary transparency to eliminate the suspicion generated by the current definition of lobbying at European level.

- The idea of specializing lobbyists according to certain criteria may be a model of good practice but also a different assumption of the different rigor depending on the level of access to the decision-making process.
 - ✓ Thus, a definition of the internal lobby of a public institution can be clearly defined with a job description that generates a code of conduct in total interdependence with the employing institution.
 - ✓ In this context, they complement the list of the notion of external lobby, the one working in the mandate for its client.
- Self-regulation at the level of good practice does not exclude the adoption of the text of the lobbying law.
- In the context of a political scene with a dynamics specific to the electoral and post-electoral cycles, the autonomous institutions from a political point of view that do not have the right of legislative initiative by their status, could consider the internal lobbying position in their own organigram.
- As a result of collective activity of lobbying and lobbyists, internally and / or externally, its activity must meet the majority expectations expressed by the preventive action in the legislative field, by the expectations expressed regarding the application of the principle "lessons to learn" best practices and avoiding mistakes already practiced by other states.

8.3 Proposal for amending the legislative project of lobby law

Because the draft lobby law is already under public debate, as a practice model in practice, I present at the end of the thesis proposals for the amendment of the project aimed at promoting the aspects presented in this thesis, aspects dedicated to defining the lobbying activity and promoting best practice in the field. This is a suggestion of a text for the statement of reasons supporting this draft law followed by the proposal for the amendment of the draft, in its entirety, article with article, as well as with the motivation and the remark related to each proposal for amendment of the current project in debate (June 2018) in the classical working form, table, in the chapter APPENDICES.

BIBLIOGRAPHY

BIBLIOGRAPHIC REFERENCE BOOKS OF THE SUMMARY

-
- ⁱ <https://en.wikipedia.org/wiki/Lobbying>
- ⁱⁱ Tratatul privind funcționarea Uniunii Europene, articol 10, Jurnalul Oficial al Uniunii Europene, 26.06.2012
- ⁱⁱⁱ Bărbulescu Iordan Gheorghe, Noua Europă-. Identitate și model european, Editura Polirom 2015
- ^{iv} Consulta fisa PL581/2010 cdep.ro
- ^v European Parliament legislative resolution on the proposal for a Council directive on passenger car related taxes (COM(2005)0261 - C6-0272/2005 - 2005/0130(CNS)) pag.85, Official Journal 305 E , 14/12/2006 P. 0085 - 0091
- ^{vi} Bărbulescu Iordan Gheorghe, Noua Europă. Identitate și model European, Editura Polirom 2015
- ^{vii} Bărbulescu Iordan Gheorghe, Răpan D., Dicționar explicative trilingv al Uniunii Europene, Iași, Polirom 2009
- ^{viii} Bărbulescu Iordan Gheorghe, Dicționarul explicativ trilingv al Uniunii Europene., Editura Polirom 2009
- ^{ix} ec.europa.eu/transparencyregister/public/consultation/search
- ^x <https://legalmagazin.ro/tag/adriana-ahciarliu/> Despre lobby și calitatea procesului legislativ
- ^{xi} http://europa.eu/rapid/press-release_MEX-14-1962_en.htm
- ^{xii} Zetter Lionel, Lobbying. The Art of Political Persuasion. Publisher: Harriman House; 3 edition (October 23, 2014)
- ^{xiii} Tănăsescu & all p. 120, Lobby in Romania versus Lobby in U.E., Institutul European din Romania, Bucuresti 2015)
- ^{xiv} Laswell, H.(1950) Politics Who gets what, when, how? P. Smith, NY, citat de Adrian Miroiu, pg. 15, Fundamentele Politicii vol. 1, Preferinte si alegeri colective, Editura Polirom 2006
- ^{xv} Idem xxv
- ^{xvi} Idem xxvii
- ^{xvii} Idem xxv
- ^{xviii} Pârvu, I. (1981), Teoria științifică, Editura științifică și enciclopedică, București
- ^{xix} Bărbulescu, Gheorghe Iordan, Studii de strategie si politici – SPOS 2010, Studiul nr.1, Tratatul de la Lisabona. Implicatii asupra institutiilor si politicilor romanesti, Bucuresti, 2010, pg.28,29
- ^{xx} Kalnins Valts, Transparency in Lobbying. Comparative Review of existing and Emerging Regulatory REGimes. Policy Assoc. For Open Society, 2011 pg. 8
- ^{xxi} Adrian Miroiu, Fundamentele Politicii vol. 1, Preferinte si alegeri colective, Editura Polirom 2006
- ^{xxii} Consulta Fisa PL581/2010, www.cdep.ro

^{xxiii} Noul Cod Penal actualizat – Legea 286/2009 art. 304 clasifică divulgarea fără drept a unor informații secrete de serviciu sau care nu sunt destinate publicității ca fiind infracțiune de serviciu. Idem art. 227 în cazul secretului profesional

^{xxiv} Consulta Fisa PL581/2010 www.cdep.ro

^{xxv} www.maricorupti.ro

^{xxvi} Noul Cod Penal actualizat 2018 – Legea 286/2009

^{xxvii} Vezi Anexa 2

^{xxviii} Karl R. Popper Logica cercetarii, Editura Stiintifică și Enciclopedică, 1981 citat de Sorin Dan Sandor în Metode și tehnici de cercetare în științele sociale, pg. 18

^{xxix} Adrian Miroiu , Fundamentele politice, vol 2, pg.117

^{xxx} Adrian Miroiu , Fundamentele politice, vol 2, pg.117

^{xxxi} Adrian Miroiu , Fundamentele politice, vol 2, pg.117

^{xxxii} ANEXA 3 , sursă arhiva personală – dosar de infringement TVA CHAP(2011)
1232

^{xxxiii} Bărbulescu Iordan Gheorghe – Noua Europa – Identitate si Model European, capitolul Teorii si modele de integrare, Editura Polirom 2015

^{xxxiv} Bărbulescu Iordan Gheorghe – Noua Europa – Identitate si Model European, capitolul Teorii si modele de integrare, paginile 66-117^{xxxiv} despre Wndt A. “Anarchy is What States make of it: the Social Construction of Power Politics”, International Organizations vol. 46, nr. 2, 1992