Investigating Lobbying Laws: Austria

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Abstract:
In 2012 Austria passed its first lobbying regulation. The minister of justice represented the main promoter of the legislation. The government's promotion of the lobbying law was the result of the government's need to re-establish its credibility after a salient corruption scandal. However, as the bill went through the approval of the Justice Committee and the Lower House, the final law introduced rules which treat groups differently. In particular, more strict rules are in place for lobbying consultancies and corporate actors, while less strict rules affect professional and public groups. Social partners are subjected to almost no requirements. This creates variations in what I define as the robustness of the legislation, meaning that higher levels of transparency and accountability are guaranteed when it comes to lobbying consultancies and corporate actors, while lower levels for professional and public groups and social partners. The aim of this work is to explain this variation in the robustness. The results of the case study of the Austrian legislation suggests that the differences in the robustness can be explained by the presence of salient lobbying scandals, which encourage the government to introduce stricter rules for consultancies and corporate actors. Conversely, links between interest groups and political parties and corporatist traditions explain the introduction of less strict rules for other interest groups, in particular for social partners.

Introduction

As regulations are aimed at promoting greater transparency and accountability, regulatory systems on lobbying activity are defined as “systems of rules which lobby groups must follow when trying to influence government officials and public policy outputs” (Chari, Hogan & Murphy 2010: 4). Typically, such rules involve registering in a public register held by an independent agency before contact can be made with public officials. Registration involves the disclosure of information regarding the lobbying activity, such as the purpose, the targets of the activity and the spending involved. In some cases, these rules establish sanctions for misbehaviour or non-compliance with the registering rules. These vary from ban from exercising lobbying activity, to a fine or even imprisonment. Some regulations also involve conflict of interest provisions. Such
rules are called revolving-door provisions which prevent politicians and former civil servants from engaging in lobbying before a specified number of years after the termination of their mandate. Depending on these rules lobbying regulations can promote different levels of transparency and accountability. In literature such degrees of transparency and accountability in lobbying rules have been defined as the robustness of lobbying regulations. The issue of what determines the levels of robustness is not fully addressed in the literature. In particular, the debate aimed at identifying the causes of such differences in the robustness is absent. This work is aimed at introducing this debate in the interest-group literature by providing the first theoretical framework and the first empirical evidence in this field of research. This is done by conducting a case study on the newly introduced regulation in Austria. According to the provisions of the Austrian regulation, lobbyists have different requirements depending on the nature of interest they are representing. In fact, professional lobbyists, in-house lobbyists working for firms, professional associations, public groups and social partners are subjected to different provisions. Disclosure requirements, rules and sanctions are harsher for the firsts (in descending order) and laxer for last. Consequently, the level of robustness is, for example, higher for professional lobbyists and in-house lobbyists, and lower for professional associations, public groups and social partners. The aim of this work is to investigate the factors which explain the difference of robustness in regulating lobbying according to the nature of the represented interest.

The standard literature has approached lobbying legislations by focusing on the construction of theoretical classifications of lobbying regulation. The main contribution of this literature represents the construction of measurements and categories for the different levels of transparency and accountability the regulations guarantee (Opheim 1991; Newmark 2005; Chari et al. 2010; Holeman and Luneberg 2012). Opheim (1991) and Newmark (2005) focus on the lobbying laws adopted in the US. The authors find considerable variation in their strictness at the state level. Holeman and Lunebreg (2013) analyse the differences in the lobbying laws comparing the North American traditions with the European model of lobbying regulation. A further contribution is provided by the work of Chari et al. (2010), which identifies variation in the strictness of lobbying laws across different political systems in contemporary democracies. Such differences emerge, for example, when rules are compared on different dimensions of the legislation. By applying a methodology developed by the Centre of Public Integrity (CPI) the authors suggest that regulation can be characterised by different levels of

1 See: http://www.publicintegrity.org/hiredguns/default.aspx?act=methology
strictness, which they define as robustness\(^2\). According to the robustness level, lobbying laws can be categorised into *low*, *medium* and *high* regulation (Chari et al. 2010: Ch. 4). By looking at the Austrian lobbying regulation this study works upon this body of literature and aims at extending it by providing the first theoretical development and first empirical evidence of what determines the different levels of robustness.

The paper is structured as following: The first section models the theory building on the existing literature. Here, the dependent variable *robustness of the lobbying law* is presented and the explanatory factors determining its level are discussed. The explanatory factors are linked to the theories on the system of interest representation, media salience and partisanship. The second section discusses the research design framing the analysis. The final section presents the empirical analysis and the findings. The conclusions summarise the results and set the basis for future investigations in this field of research.

### I. Theory

The literature identifies different types of groups according to the represented interest and the relationship with officeholders. Chari and Kritzinger distinguish between economic, professional and public groups. This is a common typology which allows one to distinguish groups according to the nature of interest they represent. Economic groups are, for example, corporate groups and firms. Professional groups are associations which represent a professional category, such as lawyers or medical doctors. Typical examples of public groups are environmental groups or associations promoting human-rights. Another common typology distinguishes between *insider* and *outsider* groups (Richardson and Jordan 1979; Grant 1978, 2000; Broscheid and Coen 2003). This typology is based on the type of contacts groups enjoy with the government. Insiders are those groups which, thanks to efficient lobbying strategies, enjoy privileged access to policy-making. Conversely, outsiders are either unable or unwilling to participate. This approach has encouraged scholars to focus on lobbyists and their strategies in order to classify interest groups. A common typology (often used by scholars and by regulatory agencies which monitor lobbying\(^3\)) combines the previous

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2. The robustness of a lobbying law is defined as the capacity of the regulation to increase transparency and accountability in terms of its disclosure strength and efficiency

3. An example is the Joint Transparency Register Secretariat of the EU.
approaches on the nature of the represented interest and the lobbying strategy. This approach distinguishes between: corporate groups, which are economic actors representing private interests of a firm or a group of firms. Typically, these actors employ so-called in-house lobbyists, whose job is to influence policy-making representing the firm's interests; lobbying consultancies, which are agencies or individuals with specialist knowledge which are hired though lobbying contracts; professional associations, which are peak-level associations representing professional categories; public groups, which are no-profit groups, such as NGOs; and social partners (trade unions and business peak association), which are a subcategory of professional associations, which in some political systems enjoy a privileged position⁴.

The Austrian Lobbying Law and its Robustness: Dependent Variable

The latter typology has been used by the Austrian government in the lobbying law as definition of interest groups. In July 2012 Austria passed its first piece of legislation aimed at regulating the relationship between interest groups and public officeholders. The Austrian legislation of 2012 established a mandatory register and a formal set of rules including registration requirements, some spending disclosure requirements and sanctions for non-compliance.

According to the eight dimensions identified by Chari et al. (2010) the Austrian regulation presents the following characteristics:

The definition of lobbyist: Article 4 of the law introduces a set of definition aimed at clarifying the concept of lobbying activity by establishing the boundaries of the application of the legislation. The legislation affects lobbying consultancies (Lobbying Agenturen), corporate groups (Unternehmenslobbyisten), professional groups (Kammern) and public groups (Verbände). All interest representatives hired by these actors are subjected to the established rules when trying to influence public officeholders. Given these categories of actors, lobbying is defined as “any organized and structured contact with public officeholders aimed at influencing decision-making in the interest of a principal (Article 4, paragraph 1; 2012)⁵”. The legislation covers both, legislative and executive body, also including bureaucratic staff and public

⁴ Common examples of such systems are Sweden, Norway, Austria and Denmark. These are commonly called corporatist systems.

officeholders of subnational governments. Despite the extended coverage of the rules, the law presents a wide range of exceptions. In fact, religious and territorial interest groups, and law firms are exempted. Social partners⁶ are subjected to a limited set of registration requirements, which involve limited registration requirements and the exemption from the provisions on sanctions and role-accumulation (Article 2, paragraph 2-4)⁷.

**Procedures of individual registration:** The regulation establishes different registration requirements according to the nature of the interest group. Section A (divided in A1 and A2) is dedicated to lobbying consultancies. Section B to in-house lobbyists of firms, while section C and D respectively to professional associations and public interest groups. Social partners are subjected to special provisions. In Section A lobbying consultancies and consultants have to register before establishing the contacts with public officeholders by providing the following details about the lobbying firm: name, business number, address, website and begin of the business year. A brief description of the activities and the mission of the company are also requested. In addition, the lobbying firm has to adopt an internal code of conduct, declare the volume of sales of the previous business year, disclose the number of lobbying contracts accepted and provide the name and the date of birth of the lobbyists. In Section A2 lobbying consultancies have to disclose their lobbying contracts by declaring the name, the business number, the address, the website and begin of the business year of the principal/client. The subject matter of the lobbying contract has to be declared. Section A2 is not public, and that the Minister of Justice has exclusive access to the information. Third parties are allowed to gain access to this data previous permission by the principal and the consultant. Section B requires in-house lobbyists of firms to register before establishing contacts with public officeholders by providing the following details: The name of the company, business number, address, website and begin of the business year, a brief description of the activities and the mission of the company, the name and the date of birth of the lobbyists. Firms have also to disclose costs related to lobbying activity during the previous business year if these exceed the amount of 100,000€. Firms have to adopt an internal code of conduct for in-house lobbyists. Section C and D requires professional associations and public interest associations to register before

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⁶ The Austrian Chamber of Commerce (WKÖ), the Austrian Chamber of Employees (AK), the Federal Union (ÖGB), and the federal peak-association of the agricultural sector represent the social partners.

⁷ Ibid 6
establishing the contacts with public officeholders by providing the following details: The name, the address and the website of the organization, the number of active interest representatives and the estimated costs related to interest representation activities. Contrarily to lobbying consultancies and in-house lobbyists of firms, professional associations and public interest associations do not have to provide any sort of personal information. The registration requirements are limited to the provision of general and contact information of the association. This represents a major difference in terms of transparency, since lobbying consultancies and firms have to disclose a superior amount of information.

*Individual and employer spending disclosure:* The regulation does not involve the regular submission of spending reports. Lobbying consultancies have to state the annual volume of sales related to lobbying under section A1 and firms have state if the costs related to lobbying exceeds 100,000€ under section B.

*Electronic filing and public access to the register:* The Austrian Ministry for Justice, which represents the enforcing authority, provides interest groups and lobbyists with online registration. The access to the register is public for section A1, B, C and D. Section A2 containing information on the lobbying contract between principals and consultancies is searchable only by the Ministry of Justice. The access to this section is extended to other parties previous authorization of the registrants. This exemption is legitimized by the legislator through the need to protect privacy and the economic interests of the clients, which may face potential economic losses from the spread of information. This provision reduces the scope of the transparency initiative. First, it gives to principals and lobbying consultancies strategic advantages over competing interests, since none of the available information regards the nature of the represented interests. Secondly, the responsibility over monitoring on suspect lobbying contacts burdens on the sole Ministry of Justice.

*Mechanisms of Enforcement:* The Enforcing Authority is represented by the Ministry of Justice, which has the power to impose sanctions. Who performs lobbying without being registered incurs in monetary penalties of €20,000 or €60,000 for reiteration. The sanctions for non-compliance with the rules are €10,000 or €20,000 for reiteration. These apply also to principals, which are co-responsible for guaranteeing the correct maintenance of the registered information. The Minister of Justice has, in addition, the

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8 Register searchable here http://www.lobbyreg.justiz.gv.at/edikte/ir/iredi18.nsf/suche!OpenForm&subf=e
power to delete registrants from the register in cases of non-compliance or misbehaviour. The dismissal precludes lobbyists from registering for three years. It has to be underlined that special provisions exempt social partners from the enforcement of sanctions. This particular provision drastically reduces the scope of the legislation in terms of accountability when it comes to activities pursued by social partners.

Revolving-door provisions: The legislators have decided to keep revolving-door issues unregulated. However, the legislation does deal with role-accumulation. Article 8 states the incompatibility between the status of public officeholder and professional lobbyist. The choice of the legislator has been driven by the cash-for-law and the Telekom affair\(^9\), which underline the conflict of interests between the two roles. The scope of the revolving-door provision is however limited. Given the exemptions provided by the law, this article only involves a limited category of lobbyists. It does not apply to in-house lobbyists, and interest representatives of professional associations, public groups and social partners. Role-accumulation of MP and interest representative of business associations or trade unions is very common in Austria. Extending this provision to social partners could have been affecting many members of Parliament.

In sum, the Austrian legislation represents a regulation which focuses on lobbying consultancies and firms, providing less disclosure requirements for professional and public groups, and almost no requirements for social partners. The different sections A, B, C and D have evidenced the presence of a variation of strictness of the legislation between interest-group types in terms of the amount of information that has to be submitted. This is even more evident if the social partners are considered. I quantify this variation by measuring the robustness of the regulation for each section separately. The robustness of the regulation (namely the degree of transparency and accountability that the provisions guarantee) is measured by applying a textual coding to the legislation following the method suggested by Chari et al. (2010: Ch. 4). Based on such methodology, the authors develop the CPI index, which is constructed by applying a point score on 48 questions on the dimensions discussed above (for example, the definition of lobbyists, registration details, spending disclosures, electronic filing, and cooling-off periods). The index results in a point scale ranging from 1 (minimum robustness) to 100 (maximum robustness). In other words, the closer the lobbying law is to 100, the more robust is the legislation. This procedure has been done for section A, B,

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9 The scandals hit Austrian politics in 2011. These involved MEP Ernst Strasser caught in accepting bribes in exchange of promoting legislation in the European Parliament (Cash for law), and a small network of politicians and lobbyists exchanging dubious funds and contracts around the business of the partially state-owned company Telekom Austria (Telekom Affair).
C and D plus for the provisions on social partners. As Table 1 shows, the Austrian lobbying law is characterised by a variation of robustness depending on the type of interest group.

Table 1 – CPI score for the Austrian regulation

<table>
<thead>
<tr>
<th>Section</th>
<th>CPI score</th>
<th>Classification by Chari et al.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section A - Lobbying Consultancies</td>
<td>32</td>
<td>medium-regulated</td>
</tr>
<tr>
<td>Section B - In-house Corporate Lobbyists</td>
<td>30</td>
<td>medium-regulated</td>
</tr>
<tr>
<td>Section C - Professional Associations</td>
<td>29</td>
<td>low-regulated</td>
</tr>
<tr>
<td>Section D – Public Groups</td>
<td>29</td>
<td>low-regulated</td>
</tr>
<tr>
<td>Social Partners</td>
<td>17</td>
<td>low-regulated</td>
</tr>
</tbody>
</table>

Source: CPI score is calculated coding the legislation. To see the methodology see: See: http://www.publicintegrity.org/hiredguns/default.aspx?act=methology

According to the theoretical classification by Chari et al. (2010), the legislation is medium-regulated in Section A and B on lobbying consultancies and corporate actors; and low-regulated in Section C (professional associations) and D (public groups) including the provisions on social partners. In particular, the gap of robustness in terms of CPI score between Sections C and D and the provisions on social partners is particularly big (12 points), meaning that the provisions on social partners guarantee systematically lower levels of transparency and accountability compared to the other sections. Similar examples can be found in the US and the Canadian regulation. In the US, lower monetary thresholds to registration apply to consultancies. Similarly, in Canada consultancies need to register as soon as a contract with a client has been signed, while in-house lobbyists need to register if they dedicate a “significant part” of their work to lobbying (Holman and Luneberg 2012: 8). Even more extreme are the regulations in Lithuania (introduced in 2001) and the Uk (introduced in 2014), which only regulate business activities and lobbying by consultancies. Jasiecki (2006) argues that the Polish regulation (introduced in 2005) is repressive for professional lobbyists and firms but not repressive for non-professionals, like business associates or NGOs.

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10 A lobbying firm need not register for a client if its income for lobbying on behalf of that client amounts to US$3000 or less during a 3-month period; in-house lobbyists must expend more than $11 500 during a 3-month period in order to incur a registration obligation. (Holman and Luneberg 2012: 8).
On the same issue, Lumi (2014) argues that the Hungarian, Polish and Lithuanian legislation is aimed at regulating contract lobbyists more than other interest groups.

What explains this variation in the level of robustness? Building on the existing literature on interest group and lobbying regulation, I present the theory which models the robustness of lobbying laws. Here, the possible explanatory variables determining its level are discussed. Those include, the presence of salient lobbying scandals, partisanship and the systems of interest representation (on the corporatism-pluralism dimension).

**Salient Lobbying Scandals and the Robustness of the Lobbying Law:**
As rules aimed at fighting political corruption, many authors have argued that a straightforward reason justifying the emergence of lobbying laws is related to highly visible scandals. “A critical, watchful press, which results in scandals being reported quickly and with lots of visibility might represent a fundamental cause of the emergence of lobbying regulations” (Chari et al. 2010: 212). A more general argument by Rose-Ackerman states that “corruption scandals fueled by an independent press have spurred reform in many political systems (Rose-Ackerman 1999: 209). Holeman and Luneberg (2012: 3) argue that “scandal has often been the moving force behind reform efforts, as occurred in the United States in the late 1980s and during the first decade of the twenty-first century.” More specifically on the Austrian regulation:

Austria has also adopted a strong form of lobbying regulation, known as the ‘Lobbying and Advocacy Transparency Act – LobbyG’, though the law is not scheduled for implementation until 2012. The ‘cash-for-law’ scandal that has prompted substantive lobbying and ethics reforms in Brussels, also directly and personally embarrassed Austria. Ernst Strasser, former Austrian Secretary of Interior and an Austrian MEP, was one of the MEPs caught on video accepting a bribe in exchange for introducing legislation in the EP. He resigned within hours of the video being published. More importantly, the scandal also prompted Austria to impose tough new regulations on its own domestic lobbyists. (Holman and Luneberg 2012: 20)

Despite their contribution in linking lobbying scandals to lobbying regulations, the authors ignore the issue of the levels of robustness. They define the Austrian law as a form of strong regulation, neglecting that this is the case only for lobbying consultancies and firms.\footnote{The legislation is medium-regulated according to the CPI index calculation.} I argue that the scandals in Austria have influenced the legislator encouraging the introduction of stricter rules for such actors and less strict for
professional associations, public groups and social partners. What is the causal mechanism behind this argument?

Consultancies are generally perceived as “pure lobbyists” in the sense that their job is solely aimed at the lobbying activity (Kollmannová and Matuškov 2014). Amongst the public, the activity of professional lobbyists working for consultancies is often perceived as illegal or corrupt.12 “Where does lobbying end and bribery begin?” comments a politician interviewed by Donath-Burson-Marsteller (2005: 1) in a study on public affairs in the Czech Republic. Even in Austria, “the term lobbying has had a very negative image in Austria and is thus not used very much” (Köppl and Wippersberg 2014: 34). Similarly, corporate firms lobbying on their own behalf have a history of bad reputation in the news (Mazzoni 2012).13 This is because the concept of lobbying has negative connotations and the same attitude has been found in media sources, such as news reports (Mazzoni 2012). For example, this has become a problem of reputation for consultancies, which with the aim of avoiding the word lobbyist it has become industry practice to call the function public affairs (Kollmannová and Matuškov 2014; Köppl and Wippersberg 2014). Consequently, when media report about lobbying scandals, regulation enters the government’s agenda and stricter rules are considered for those actors which are perceived as “bad” lobbyists. Following the literature which studies the impact of media on the government’s agenda (Manheim 1986, Bull & Newell 2003, Kiousis 2004), when a lobbying scandal hits the political system, political actors are expected to be responsive and implement strict rules in order to fight unclean lobbying. Such mechanism is expected to apply to the Austrian case. After the scandals Cash-for-law and Telekom Affaire the regulation of lobbying became salient on the government's agenda, and, in particular, the activity of those actors which are perceived as close to corrupt behaviour needed control.

Partisanship and the Robustness of the Lobbying Law:

The support for regulation of interest representation can be considered as a partisan issue from policy-makers and media. Partisanship has been often identified as an

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12 Sometimes lobbyists are recognised as “fixers”, namely actors coming from prominent public potions in the old system, which now sell their services being able to resolve issues for clients, though often through corrupt means (McGrath 2008: 20).

13 Mazzoni (2012) investigates the newspaper reports containing the keyword Lobby in Italy. His findings suggest that the majority of stories report about in-house lobbyists representing corporations. The articles often refer to these actors as casta (Italian for caste or clique)
intervening variable in many studies on anti-corruption, transparency and accountability policies (Rose-Ackerman 2005; Bull & Newell 2003). In addition, the interest group literature has often raised concerns on the links between interest groups and political parties as a mean of reducing participatory democracy (Greenwood 2003; Coen 2007). From the merging of this literature, the following theoretical argument can be derived.

Austria is a parliamentary system characterized by the frequent emergence of grand coalition governments supported by an oversized majority (Lijphart and Crepaz 1991; Müller and Strøm 2003). Political scientists often refer to it as a typical consensus democracy (Lijphart 1999). The influence of the variable partisanship on the robustness of the regulation is therefore more complicated to assess than in majoritarian systems, since winner-take-all outcomes are absent and formal and informal negotiations between government and opposition are frequent. This work assesses the importance of links between Austrian political parties and interest groups in determining the shape of the lobbying regulation. “The political system in Austria produces political consultants primarily by recruiting among its own elites. Thus, campaign and public affairs consultants are usually former politicians, doing their work along party lines” (Köppl and Wippersberg 2014:34). It is therefore reasonable to believe that these links have affected the introduction of the lobbying law. In particular, when demands for regulation arise, either driven by public institutions or by the media's activity, interest groups seek the support of policy-makers that are capable of changing the status quo, in order to maintain their favourite asset of representation.

Economic groups which are believed to have closer ties with right and centre-right parties (in particular parties with pro-business leanings) are expected to seek the support of those parties in order to protect their interests. With regards to elite pluralism, Coen argues that “economic groups have a comparative advantage in terms of organizational capacity, financial resources, expertise and information” (Coen 2007: 335). Their advantageous position and their links to right and centre-rightist parties should therefore allow them to lobby in favour less strict rules for themselves when the regulation is promoted by such political parties. Conversely, left and centre-left parties are expected to introduce more robust rules for economic groups, to which relations are absent or less important.

The links between interest groups and political parties in Austria involve not only economic groups. An interesting feature involves the relationships between parties and
social partners (Müller 1997; Köppl and Wippersberg 2014). This relationship is defined as corporatism, to which I now turn the discussion.

_Corporatism and the Robustness of the Lobbying Law:_

Different authors argue, interest group regulation has its roots in political systems characterised by pluralism. Greenwood and Thomas (1998) argue that “lobby regulation may belong to a pluralist world, where the structure and formal incorporation of economic interests in politics which is characteristic of corporatism is alien” (Greenwood, Thomas 1998: 498). Regulating lobbying “is not seen as essential to the political system so long it is dominated by corporatism. However, when the structure is challenged by pluralist streams (e.g. a spread of political power and an increase in the number of players) there is insecurity in government, which leads to such demands” (Rechtman 1998: 581).

Corporatism is defined as a set of “institutional arrangements whereby important political-economic decisions are reached via negotiation between or in consultation with peak-level representation of employers and employees” (Kenworthy 2003: 11). A more classical definition by Schmitter (1974 and 1981) defines it as a system based on the hierarchical order of interest groups, where labour and industrial organizations assume a privileged position in the participation to the policy-making process.

By contrary, pluralist systems are characterized by a multitude of potential groups, which are capable to emerge and organise spontaneously if their interests are threatened. The result is that the stage where interest groups operate is never characterised by the predominance of certain groups (Dahl 1961).

Corporatist systems are perceived to be incompatible with systems which regulate interest representation. This is because some aspects which characterize corporatism are hypothesized to discourage the government to mobilize in favour of strict rules on the intermediation of interest. Similarly, when lobbying regulations are introduced, representatives of capital and labour will lobby in favour of less strict rules for themselves. The characteristics of corporatism which favour this outcome are the presence of stable relationships based on trust between corporatist actors and government, the privileged position of capital and labour representatives in the system of interest intermediation and the intertwining between those interest groups and politics (in terms of positions in
government or key positions in political parties). In order to defend their status of privileged interest group, social partners will mobilize in favour of less robust rules and lobby on the bill which introduces the regulation. More precisely, social partners are likely to oppose (or lobby for an exemption from) strict registration requirements which make lobbying more onerous, they might oppose the inclusion of its main discussion partner, the government, in the scope of the regulation. They might also lobby against the introduction of revolving-door provisions such as cooling-off periods and oppose strict sanctions for non-compliance with lobbying codes of conducts given their high frequency of contacts with public officials and a higher probability of misbehaving. As Greenwood suggests, “regulation may be problematic when it seeks to change long-standing practices which have for some time been regarded by the parties concerned as normal and acceptable patterns of exchange.” (Greenwood, 1998: 493). And in such circumstances “organised interests present a significant obstacle to passage of more stringent restrictions behaviours that build influence with legislators” (Ozymy 2013: 6).

The Austrian system of interest representation has been identified in literature as a typical example of corporatist system (Crepaz and Lijphart 1991; Golden, Lang and Wallerstein 1995; Kenworthy 2003; Siaroff 1999). The Austrian corporatist tradition dates back to the period after World War II, where the leading parties, the ÖVP and the SPÖ embraced the ideology of a coordinated market economy driven by the consensus between capital and labour under the mediator role of the state. The Austrian Chamber of Commerce (WKÖ), the Austrian Chamber of Employees (AK), the Federal Union (ÖGB), and the federal peak-association of the agricultural sector represent the main actors of this system of interest representation. Formally these are politically independent actors. However, they present links to the main political parties. The Christian Democratic Party is formed by six factions (Bund), whereby three of these are based on the traditional capital-labour cleavages. Similarly, the Austrian Social-Democratic Party presents a labour oriented party sub-organization. These party sub-organizations underline an intertwinement between capital-labour interests and party structures. Political carrier is solely driven by the party factions (Müller, 1997).

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14 The Farmers' Confederation (Der Bauernbund), the Austrian Workers' Federation (Der Österreichische ArbeitnehmerInnen – und Arbeiterbund) and the Employers’ Federation (Wirtschaftsbund)

15 The Social Democratic Trade Unionists (Fraktion sozialdemokratischer GewerkschafterInnen und Gewerkschafter)

16 Recent examples of the centrality of factions in Austrian politics are: regarding the Legislation from 2008 to 2013 the Austrian Workers' Federation (ÖVP) had 22 representatives in Parliament and five in Government. The Employers' Federation (ÖVP) had 32 representatives in Parliament. In addition, if the
political representation of trade unions' and employer associations' members is possible through the legal compatibility of public office and interest representative of social partner. As Köppl and Wippersberg argue:

Throughout decades, all of those institutions became a plentiful reservoir for staffers in parliament as well as in the federal ministers’ cabinets. Not only Members of Parliament were – and are – either elected representatives or high-ranking employees from one of the social partnership’s institutions but also several members of the federal government came directly from the social partnerships’ leadership offices. Furthermore, both big parties relied heavily on the policy making and interest mediation powers of the social partnership in almost all policy areas.

(Köppl and Wippersberg 2014: 33)

As the authors argue, this has been particularly the case in the legislature from 2008 to 2013 which passed the lobbying law (Köppl and Wippersberg 2014: 33).

II. Method

Tracing the processes of the introduction of lobbying regulation represents the best way to gain insights into the causal chains that link the independent variables to the different levels of robustness of the regulation. Process-tracing is considered a qualitative research method, which implies careful and fine-grained description of a case and the process under investigation. It produces a within-case analysis based on the observation of recurring empirical regularities and it allows to contribute in discrete leverage to causal inference in cross-case analysis. Following Collier (2011: 824), process-tracing is “an analytic tool for drawing descriptive and causal inference from diagnostic pieces of evidence”, which are often part of “a temporal sequence of events or phenomena”. This temporal sequence is represented by the stages which lead to the introduction of the regulation. Each causal-process observation is independent and non-comparable, although it provides information about “context, process and mechanism” (Mahoney 2010: 124). This method particularly suits research on interest groups. The choice of using the process-tracing method in this analysis is inspired by the literature on power and interest groups. As Dür (2008) argues, this method of process-tracing is:

two main parties form the Government, it is common practice that the Minister of Social Policy is a representative of the SPO’s Trade-Unionists’ Faction or of the ÖVP’s Farmer-Unionists’ Faction (Müller, 1997). Regarding the Left, the SPÖ also has a fixed number of positions on the party’s candidates list for representatives of the peak-trade union ÖGB (Müller, 1997).
The introduction of lobbying laws, as any other legislative act, passes through a set of formulation and approval steps. Since lobbying laws shape the mechanisms of interest intermediation, interest groups are expected to exert pressure during each of the steps. This method allows to determine the influence of interest groups in shaping the lobbying regulation by considering agency. In particular, it is possible to consider separately which actors demand, promote or shape the legislation. In a nutshell, it allows us to evaluate how the different agents involved in the process interact with the variations in the independent variables. However, researchers need to pay particular attention to institutional factors which might affect the process of the introduction of the lobbying law. These are considered in the next paragraph.

Austria is a federal semi-presidential republic, characterized by a bi-cephalic executive formed by the Prime Minister (Head of the Government) and the Federal President (Head of the State). However, the relevant executive power resides in the Government led by the Prime Minister, which coordinates its work as primus inter pares. The Government is only responsible to the Lower House, the Nationalrat, and can be dismissed by a vote of no confidence. Besides the government-parliament relationships, the centrality of the Nationalrat vis-à-vis the Bundesrat involves the legislative power. In fact, the role of the Bundesrat in the policy-making process is normally limited to issues related to the federal structure of the administration. In ordinary legislative procedure the Bundesrat might exercise a veto power on the decisions of the Nationalrat. This power can, however, be exercised within a limited amount of time and can be easily overruled by a second deliberation by the Nationalrat (Müller, 1997). The hot-bed of the Austrian policy-making resides therefore in the Government, as main initiator of policy, and the Lower House, as main legislative actor (Fischer, 1997). Typically, during the policy-initiation stage the Government seeks to gain the support of interests groups, in particular of social partners (Müller, 1997; Fischer, 1997). The informality of these contacts underlines the importance of consensus-building. After this phase, the legislative proposal reaches the Lower House. The Austrian legislative process is led by the system of Committees. The proposal is passed on to the responsible
Committee (Ausschuss), which is supported in its work by the responsible ministers and ministerial staff. The participation of interest groups to the policy-making is common also in this phase, even though through formal procedures, such as hearings and participation to expert commissions. The Committees proportionally represent the legislative majority in the Nationalrat. The latter performs the final deliberation which often requires a two-thirds majority (Müller and Strøm, 2003), as in the case of the approval of the lobbying regulation. This is because the ordinary legislation also affected the lower levels of government, such as the regions and municipalities. The frequent necessity to pass legislation with a qualified majority often led to the formation of oversized legislative majorities and grand coalition governments. From 1945 to 2013, 18 out of 27 governments were formed by a coalition which involved the two major parties, The Social Democratic Party (SPÖ) and the Christian Democratic Party (ÖVP) (1945-1966, 1987-1997 and 2008-2013), which were detaining more than two-thirds of the seats in the Parliament (Müller and Strom, 2003). The electoral ascent of Haider’s rightist FPÖ during the 1990s undermined the ability of SPÖ and ÖVP to form oversized majorities. Depending on the policy issue, this forced the two main parties to gather support from one of the opposition parties. Regarding the lobbying legislation, the SPÖ-ÖVP government sought the support of the Greens in the first place, which denied their support to the proposal after the exam in the Justice Committee. This forced the grand coalition to find in the FPÖ a new ally in order to pass the legislation.

III. The Austrian Regulation: Tracing the Process

The analysis is performed by using evidence emerging from the official documents of the floor debates (in the Nationalrat and in the Bundesrat) and from official statements on the introduction of the piece of legislation submitted by interest groups. In addition, four interviews with key actors have been performed. These involve Andreas Kovar (lobbyist and head of PA Kovar & Partners), Hubert Sickinger (Expert in anti-corruption policy and member of Transparency International Austria), Albert Steinhauser (representative of the opposition party Greens in the Justice Committee) and Min. Beatrix Karl (Minister of Justice and initiator of the legislation). The process which led to the introduction of the bill passed through several stages during the period of June 2011 to the definitive approval in July 2012. These policy-making stages are
represented in Figure 1. The institutional actors are divided into *permanent units*, which represent formal political institutions, and *temporary units*, which are informal ad hoc institutions incorporated in the policy-making process with the aim of providing consensus, knowledge and expertise. In June 2011 the Minister of Justice Beatrix Karl first presented the bill and aim of the legislation. From June to August 2011 interested actors were allowed to present opinions by using Submissions. The discussion followed in the Justice Committee in October 2011. A further hearing with experts was organized by the Justice Committee in January 2012. The discussion and the approval of the policy paper in the *Nationalrat* and in the *Bundesrat* arrived in June 2012. During most of these stages actors have been active in order to promote a legislation reflecting their favourite outcome.

Figure 1 – Institutional features of the policy-making in the case of the Austrian lobbying legislation

*Initiative by the Ministry of Justice*: Debates about how to regulate lobbying have been present in the period from 2006 to 2010, as a consequence of the European Transparency Initiative which promoted lobbying legislations in the EU. However,

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17 Andreas Kovar interviewed in Vienna 12/05/2014. As head of the most important lobbying consultancy in Austria and representative of the trade organisation of lobbyists ALPAC, he took part in the policy-making process in the role of expert.
incentives to regulate lobbying where low and the debate was pushed off the agenda never reaching the bill stage.

Thinks had to change after the eruption of the Cash-for-law scandal involving Ernst Strasser. A non-public draft bill was prepared by the junior-minister of justice Georg Krakow (Kabinettchef). The bill contained provisions on registration of lobbying consultancies, and cooling-off periods for lobbyists. However, in 2011 the Government experienced a reshuffle which affected the ministry of justice. The newly settled Minister of Justice Beatrix Karl (ÖVP) presented the different draft bill of the lobbying law. The initiative was accompanied by two further measures regarding the fight against corruption, namely a new anti-corruption legislation and a regulation on private party financing. The three measures represent together the Transparency Paket (Transparency Measures), highly promoted by the governmental coalition after the corruption scandals cash-for-law and Telekom Affair. This represented the first presented bill in Austrian history aimed at regulating lobbying activity.

The initiative of the government to introduce lobbying rules was initially characterised by a high degree of independence of the Minister of Justice, followed by a phase of intense negotiation. The government delegated the work on the party financing system and the reform of the penal code to the Parliament, leaving the responsibility to draft the lobbying legislation to the Ministry of Justice. This probably left the Minister with a high degree of independence in its design, helped by the fact that the Austrian Department of Justice is characterised by a low number of ministerial staff under the supervision of the minister. As such, the Minister considered different provisions for different interest-group categories. In fact, the draft legislation contained different rules depending on the nature of the represented interests. While lobbying consultancies and in-house lobbyists of firms had stronger registration requirements, professional and public groups had weaker requirements. The draft legislation, however, did not introduce any special provision for social partners yet, but rather on professional groups in general.

The promotion of this piece of legislation was aimed at restoring the credibility of the government after the corruption scandals. However, traditional interest representation

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18 Interviews with Adreas Kovar (Lobbyists of Kovar & Partners), Prof. Hubert Sickinger (Expert in Anti-corruption policies at the UniWien), Albert Steinhauser (Representatives of the Green Party in the Justice Committee), Beatrix Karl (Minister of Justice). May 2014, Vienna.

19 Ibid
linked to political parties did not have to be hampered by too strict rules. Minister Beatrix Karl presented the Transparency Measures to the public by giving several interviews to national newspapers. In one of the interviews, the Minister of Justice clarified the aim of the lobbying legislation. “Lobbying should not be perceived as bad. The legislation should aim at promoting transparency in lobbying and interest representation”, further, “in order to prevent such cases [refers to the Strasser affair] from happening again”.

*Submissions:* From June to August 2011 interest groups submitted 74 opinion reports on the draft bill to the ministry of justice. In particular, consultancies submitted 4 reports; corporate groups 14, professional groups submitted 20 reports, public groups 10 and social partners 7. Noteworthy are the submissions of the peak-level trade union (ÖGB), which has monopoly of representation, the largest employer association (WKÖ) and the Austrian Chamber of Employees (AK), as the Minister Beatrix Karl stated these groups were heavily involved in lobbying during this negotiation stage. In their reports, the peak-level organizations express opposition to their inclusion in the category of lobbyists and request exemptions. “Particularistic lobbying has to be distinguished from a system of social partnership”. Given the particular position of social partners in the system of intermediation the ÖGB furthermore also opposes their recognition as ordinary interest organization and argues that “the consequent constrains and sanctions undermine the basic rights of unions”. On the basis of the absence of special provisions which guarantee the particular position of social partners, the ÖGB expresses a negative opinion on their inclusion in the scope of the regulation. Similarly the WKÖ, in its 42 pages report, underlines its central role in the representation of industrial interests at the peak level and declines therefore its inclusion as lobbyist in

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20 “Karl: Lobbyingregister als Meilenstein”, *Die Presse* 22/06/2011
21 Also other groups such as territorial, religious and universities submitted opinion reports.
22 Interview with ABeatrich Karl (Minister of Justice). 20/05/2014, Vienna.
23 Submission of ÖGB 2011 page 2
24 Submission of ÖGB 2011 page 3
25 Submission of WKÖ 2011 page 3
the regulation. As Prof. Sickinger argued, being treated as lobbyists represents a “cultural shock” for Austrian social partners.

**Justice Committee:** The debate on *if* and *how* to treat groups differently continued in the Justice Committee, which in concomitance with the discussions, established an expert hearing commission on the draft legislation formed by experts, professional lobbyists, five MPs representing their party and interested members of the government. From this hearing I extract the following evidence in support of the intervention of the presented independent variables:

Andreas Kovar of Kovar & Partners-lobbying consultancy declares the differentiation of treatment as a discrimination against lobbying consultancies without particular implications on the fight against corruption. This argument suggests that the reason for more robust rules for lobbying consultancies is related to the need to fight corruption, since all the lobbyists involved in the scandals were professional lobbyists. If this is the case, then the high salience of corruption scandals has indeed led to more robust rules, at least for lobbying consultancies.

The members of the government have been encouraged to actively participate in the discussions of the Justice Committee. Besides the Minister of Justice Karl, the Minister for Social Policy Hundstorfer (SPÖ), The Finance Minister Fekter (ÖVP), the Minister of Economy Mitterlehner (ÖVP) and the Secretary of the State Ostermayer (SPÖ) demonstrated participation in the sessions of the Committee. The focus of this coordination between cabinet members has been on whether professional groups should be exempted from the scope of the legislation. Particular attention has been given to social partners. The role of partisanship and corporatism is evident when it comes to identify the links between political parties and social partners. Rudolf Hundstorfer (SPÖ) resigned from the Presidency of the Peak-Union ÖGB in 2008 to become Minister of Social Policy. As already suggested, it is common practice that the Minister of Social Policy is a representative of the SPÖ’s Trade-Unionists’ Faction or of the ÖVP’s Farmer-Unionists’ Faction (Müller, 1997). Finance Minister Maria Fekter was

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26 Submission of WKÖ 2011 page 40

27 Interview with Prof. Hubert Sickinger, Expert in Anti-corruption policies at the UniWien and member of Transparency International Austria. 13/05/2014, Vienna.


29 “Korruption: Regierung arbeitet am Sauberkeitspaket”, *Die Presse* 29/03/2012
member of the Head-Committee of the Employers Federation of the ÖVP, which detains the majority in the Head-Committee of the Peak Business Association WKÖ. Similarly, Economy Minister Reinhold Mitterlehner was deputy of the Secretary General of the WKÖ from 2000 to 2008. The career background of the Austrian core executive underlines once again the importance of party-interest group link in decision making.

**Discussion in the Lower House:** The initial draft presented by the Minister of Justice already contained a differentiation between four sections for lobbying consultancies, firms, public groups and professional associations. The most noteworthy changes in the draft bill in the proposed by the bill concerned social partners and law firms. The amendment to article 1, paragraph 2, presented by the SPÖ in the *Nationalrat* established special provisions for social partners which involved only minimal registration requirements (Art. 9 and 12). As a consequence, representatives of social partners were not recognized as lobbyists in the legislation and were exempted from the codes of conduct and sanctions for misbehaviour which apply to lobbyists.

The debate on the introduction of special provisions for social partners evidences the importance of Austrian corporatist traditions when it comes to interest representation. The identification of trade unions and employer associations as lobbyists in the regulation would have undermined this special system of intermediation in two ways: First, the codes of conduct and the procedures on establishing contacts with public officeholders are incompatible with the models of involvement of social partners in tripartite meetings, the negotiation of social pacts or the collective bargaining at the central level with the involvement of the government. Secondly, social partnership would have been incompatible with Art. 8 which introduces the prohibition of role-accumulation between the position of public officeholder and lobbyist. It is therefore not surprising that social partners and organizations involved in collective bargaining have been explicitly excluded from the category of lobbyist. This is particularly evident in the floor debates.

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30 Ibíd 1

31 Both, the SPÖ and the ÖVP are formed by internal sub-organizations which are closely linked to the peak organizations and their affiliates. The fact that, for example in the ÖVP 54 Members of Parliament out of 79 are members either of the labour (ÖAAB) or the industrial faction (Wirtschaftsbund) of the party suggests the importance of this mechanism.
The Minister of Justice Beatrix Karl (ÖVP) intervened in the floor by arguing that the discussed policy paper reached the equilibrium between the private lobbying-industry and the social partners in the trade-off between transparency and the guarantee of interests. Furthermore, SPÖ’s speech-man of the Justice Committee Johann Maier intervened by emphasizing the difference between lobbying and interest representation of capital and labour interests. “The lobbying law establishes clear rules for lobbying professionals. The contents on the activities of public and professional interest organizations are already available on the webpages of the Chambers of Employees (AK)” suggesting that regulating their activity would be unnecessary. According to the MP, no further rules are therefore needed. These positions have been heavily contested by the MP of the Greens and the Alliance for the Future of Austria (BZÖ). BZÖ’s speech-man Josef Bucher claims that social partners have been voluntarily exempted from the lobbying regulation and that this already represents evidence of a successful lobbying activity by trade unions and employer associations.

A different amendment to article 1, paragraph 4, exempts law firms and lawyers and from the rules of the legislation, drastically reducing the scope of the provisions on contract lobbyists. Evidence from the interviews suggests that the rightist FPÖ negotiated this provision with the legislative majority in exchange of their support. The links between the FPÖ and the professional category of the lawyers have been particularly important in this negotiation. In fact, the grand coalition of SPÖ and ÖVP had to hunt for support within the opposition in order to reach the requested majority of two-thirds.

Approval by the Lower and the Upper House: The Lobbying Gesetz was approved by the Nationalrat in June 2012 by a majority of two-thirds formed by ÖVP, SPÖ and FPÖ, while Greens and BZÖ voted against. The approval by the FPÖ has been achieved thanks to the inclusion of the exemption for lawyers and law firms. The endorsement of the Bundesrat to the lobbying regulation followed within a very short time period after

32 Nationalrat Protokoll 163th 2011 page 48
33 Nationalrat Protokoll 163th; 2011 page 76
34 Nationalrat Protokoll 163th; 2011 page 33
35 Ibid 18
36 Ibid 18
the approval of the *Nationalrat*. The absence of relevant debates in the *Bundesrat* can be associated with the lack of need to form a majority by the SPÖ and the ÖVP. The two coalition parties already detained the requested two-thirds majority in the *Bundesrat* to pass the legislation. The Austrian *Bundesrat* detains a weak veto power on ordinary legislation over the decisions of the lower house. This power has to be exercised within eight weeks’ time. It is common practice to involve the *Bundesrat* only in issues which regard federal and local issues (Müller, 1997). It is not surprising that the participation of the *Bundesrat* in the introduction of the lobbying law has been marginal and limited to a simple approval.

**Conclusions**

Lumi recently stated (2014: 51) that it is hard to argue why professional and public groups' attempts to influence policy-making should not be disclosed to the public. In the Austrian legislation the legislator has decided to ask for more transparency from contract lobbyists and firms, while less is required from professional and public interest groups.

Through the study of the policy initiative, the floor debates, the submissions and other mechanisms of consultation, this work has considered the relevance of factors such as lobbying scandals, links between interest groups and political parties, and corporatism in determining the level of robustness of the Austrian lobbying law. Important results for the analysis of lobbying in political science assess the ability of powerful interest groups to shape the legislation in their favour and adapt it to the system of interest intermediation. In this situation, I focused on how interest groups lobbied the legislation affecting its level of robustness in its different parts. The analysis showed how social partners successfully lobbied the legislation for less robust rules for themselves. This result has been supported by the role of corporatism and intertwinements between political parties and interest representatives. Consequently, the policy paper aimed at promoting transparency and accountability in interests' representation resulted into a legislation characterized by more limited scope. On the contrary, other groups, such as lobbying consultancies and firms were not able to gain the same treatments. This is due to a lack of political representation, which is focused on social partnership’s actors.
Rules and requirements for lobbying consultancies and in-house lobbyists remain more strict compared to the rules affecting professional associations and NGOs. The process which led to stricter rules for the formers includes the importance of the lobbying scandals of 2011 involving politicians and lobbyists, in particular contract lobbyists.

These results have two consequences on the future development of the literature on lobbying. First, scholars who investigate the effect of lobbying rules on the lobbying environment have to consider the regulation as the outcome of interest-group participation. The analysis has suggested that legislations can be bent and adopted to the needs to the more powerful groups. In the case of Austria, this resulted in different levels of robustness of the legislation, depending on the nature of the represented interests. Second, the reasons justifying interest-groups' participation and the governments' decisions on how to regulate lobbying can be linked to different aspects such as the relevance of lobbying scandals, and the effects of partisanship and corporatism. As such, similar investigations can be performed in newly regulated systems such as the Uk or Australia which decided to introduce lobbying rules only affecting lobbying consultancies.
References


