

Part 1

Lobbying – its function and legitimisation

The word “lobbying” frequently sparks negative associations in the media and the minds of the general public – suggestions of one-sided representation of business interests to others” disadvantage; accusations of secret backroom power or even of corruption and nepotism. This applies in particular to the much-used term “lobbyism”. Yet is this a true reflection of the political, business and social reality? Or is professional lobbying not perhaps a legitimate form of democratic politics, “like the motor in the democratic machine”?²⁾

The term “lobbying” is derived from *lobby*, which comes from Middle Latin *lobia* (covered walk or cloister). There are two different theories on the word’s current meaning of (political) representation of interests. The first is based on the historic fact that the lobby of the British parliament was where “lobbyists” sought Members’ support for their causes prior to votes or parliamentary debates.³⁾ The second theory is that the term derives from US President *Ulysses S. Grant’s* (in office from 1869–1877) habit of relaxing in the lobby of Willard Hotel in Washington, D.C., where a growing number of lobbyists then gathered seeking informal discussions with him in which to present their cases.⁴⁾ The history of lobbying, however, goes back much further. “Although the word lobbying is only 150 years old, the activity it describes has always existed throughout the world.”⁵⁾

The term would now appear to have become a fashionable buzzword. Its root, *lobby*, in particular is used in countless compound phrases⁶⁾ – car lobby, pharmaceutical lobby, nuclear lobby and bank lobby being just some of many examples. Yet despite this, and the frequent use of the term, there is still no simple, clear and generally accepted definition of lobbying, or representation of interests, a commonly used synonym.⁷⁾ The result – as the list above indicates – is a degree of terminological confusion. Lobbying, governmental relations and public affairs are sometimes used synonymously, even by academics and professionals,⁸⁾ whilst in the media even the (relatively simple) distinction between lobbying and public

relations often appears to be not entirely clear. A not unnatural consequence is that the public frequently remains in the dark about the democratic legitimacy, the purpose and the function of lobbying from the perspective both of individual companies and of politics and society as a whole.

This raises three issues which are explored in Part 1:

- A distinction must first be drawn between a number of different concepts before a useful working definition for this book can be established. What is meant by the terms lobbying or representation of interests and governmental relations? How does their scope differ from that of public relations and public affairs (see Section A below)?
- A key point is then whether lobbying is justified from a political and societal perspective. What political/democratic legitimisation is there for lobbying (see Section B below)?
- Finally, the focus shifts to the business point of view: what are the main objectives and functions of lobbying from a company perspective (see Section C below)?

A. Lobbying: concepts and definitions

The first task is therefore to establish a useful working definition for the purposes of this book, which first requires a distinction to be drawn between a number of different concepts. What is meant by the terms lobbying or representation of interests and governmental relations? How does their scope differ from that of public relations and public affairs?

I. From investor relations to governmental relations: lobbying as part of corporate communications

Terms such as public relations, public affairs, lobbying and governmental relations all come under corporate communications (see Figure 1.1). Corporate communications is defined as the management of communication processes between an enterprise and the outside world.⁹⁾ Corporate communications contributes to company value creation by – to put it simply – creating and communicating images of the business.¹⁰⁾ This allows harmonisation of the company's own visions (mission statement) with external perceptions of the business (image), which in turn improves the company's profile and thus contributes to value creation.¹¹⁾

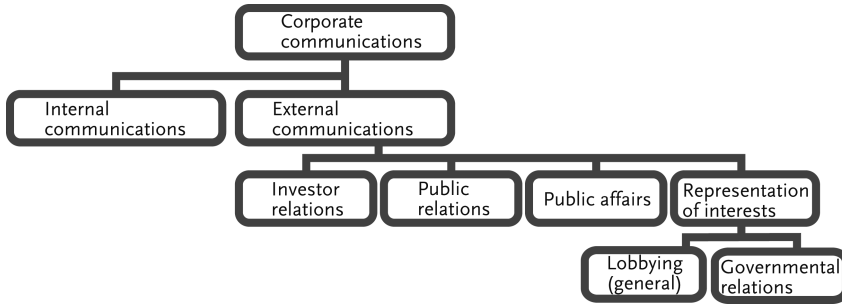


Figure 1.1: Representation of interests as part of corporate communications.

External corporate communications consists first and foremost of public relations (PR). PR is aimed primarily at the company’s external environment, in other words consumers, horizontal competitors and other companies, and its main channel is the (mass) media. Content is usually designed to have a “scatter gun” effect and often draws on aspects of classic advertising. One example of PR is mass multi-channel company campaigns which use advertisements in the print media, on the Internet and in company information material, and press conferences and public appearances by company representatives. New brands and product ranges, shifts in strategy, restructuring and changes in the company image are often communicated in this way.

A special form of external communications is the company’s contact with its investors, so-called investor relations. Striving for good investor relations, in other words ensuring strong capital market communication, has long been accepted as vital to businesses. Actively seeking dialogue with investors and implementing trust-building measures is particularly important in times of crisis – such as the global financial and economic crisis which began in 2007. Amid general insecurity and fears for the future, stock markets react more and more nervously each time there is a lack of clear information. Professional capital market communication functions as an extremely useful guide in this situation and secures company value. Unlike other branches of corporate communications, investor relations is subject to extremely strict regulations – for example when a company is listed on the stock exchange (disclosure requirements, etc.).¹²⁾

Public affairs (PA), on the other hand, can be classified as a branch of PR which targets the political sphere and a limited section of the public. PA has, in other words, a smaller target group than PR: communication is aimed mainly at administrative authorities and politicians and indeed also at non-governmental organisations (e.g. consumer associations, envi-

ronmental protection agencies and patient groups), rather than at the general public. At the heart of PA is the strategic management of information between politics and businesses on the one hand and society on the other.¹³⁾ The main objective of PA is to develop and maintain constructive relations with politicians in order to gain an insight into and influence over the political arena. The tools and resources used are frequently similar to those employed in PR. Some examples of PA are the organisation of events with political and business representatives on issues affecting a company, and compiling information material for specific groups in politics and society.

Lobbying, or representation of interests, is directed solely at politicians and administrative authorities and thus has an even smaller target group, although it is sometimes unclear where PA stops and lobbying begins. The purpose of lobbying is to gain a definite and, as it were, almost measurable influence on specific political decisions. Content is more sensitive than in PA and demands confidentiality and discretion – key aspects of representing corporate interests. Successful implementation requires detailed advance planning and a thorough knowledge of the political arena. PR and PA resources and tools are generally unsuitable as a “scatter gun” effect is to be avoided; however, some PR and PA approaches can be a useful supplement to the lobbying process.

A special form of lobbying is so-called governmental relations. This area differs from the more general concept of lobbying in terms of time-scale, target group and content or objectives. Whilst lobbying can be aimed at individual decisions in the short-term, for example subsidy rulings (budget lobbying) or the award of a specific permit, governmental relations are a longer-term, more structural approach designed to influence legislative activity at State institutions. Governmental relations frequently begin before the actual legislative decision and may in some cases contribute to the entire decision-making process. That area of governmental relations aimed at the legislature can also be termed “legislative lobbying”.¹⁴⁾ Communication in governmental relations is, furthermore, addressed specifically and exclusively at political decision-makers and opinion leaders (especially those in government) and at the executive; the target groups are party officials and the legislature and members of the executive.

Improving a company’s public reputation is almost irrelevant in governmental relations, unlike in classic PR. Governmental relations differ in content from the more general concept of lobbying in their targeted focus on the legislative and executive business of state institutions. Exam-

ples include discreet and targeted contact, and direct communication with decision-makers identified or with the levels of the legislative and executive hierarchy involved; this is often done in person in confidential meetings.

It is therefore clear that there are, overall, significant differences between the various corporate communications concepts. If a company is to create an effective and efficient communication strategy, it must be aware of these differences, both in terminology and in the applications and limitations of the individual forms of communication available.

II. Lobbying as the communication of individual interests in the political system

The above discussion of the individual corporate communications concepts indicates that each has a different focus in terms of both content and target group (see Figure 1.2).

PR is aimed at reaching as broad an audience as possible. The goal of governmental relations, on the other hand, is the targeted, pinpoint communication of information to just a few individuals. The two areas also differ in the nature of the information they convey: in PR it tends to be general, whilst in governmental relations it is aimed at experts and can therefore go into much greater depth. Content in governmental relations

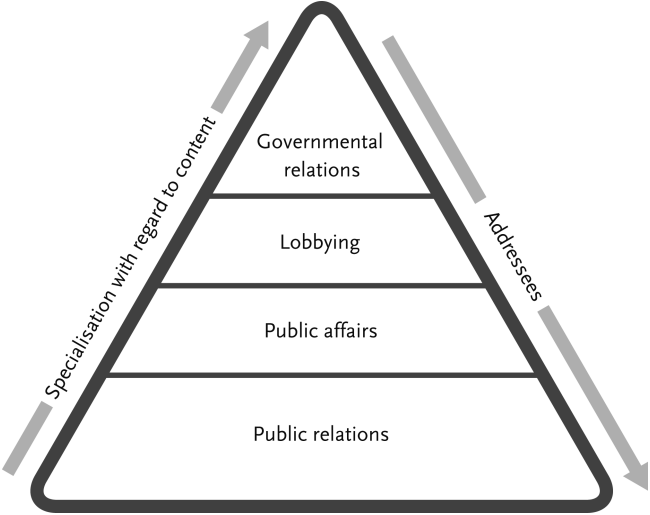


Figure 1.2: Definition of terms.

may also be far more sensitive, containing as it can trade secrets or other data not for public disclosure. It goes without saying that all communication in such a context must be discreet and confidential.

There is no generally accepted definition of lobbying. Lösche describes the term as follows: lobbying is “influencing representatives, primarily in state institutions, from a municipal to a national or European level [...] in order to shape legislation or its implementation and application in one’s own, individual interests”.¹⁵⁾ *Van Schendelen*, on the other hand, understands lobbying as “unorthodox actions of interest groups intended to bring desired outcomes from government”,¹⁶⁾ whilst the European Commission defines the term as “all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions”.¹⁷⁾ An older but oft-quoted definition was first coined by *Milbraith*, one of the pioneers of the academic study of lobbying in the USA. “[L]obbying is stimulation and transmission of a communication, by someone other than a citizen acting on his own behalf, directed to a governmental decision-maker with the hope of influencing his decision.”¹⁸⁾ All these definitions together are aspects of *communication, interest and politics*. These three areas also form the essence of lobbying: lobbying is for social actors ultimately the procurement, selection and evaluation of information from the field of politics, and for politics direct or indirect, player-oriented work to influence the legislative and executive decision-making process. This interest-based interrelationship illustrates the “intermediary” nature of lobbying, which subsumes communications, interest and politics (see Figure 1.3).¹⁹⁾

Interest is a key constituent of politics, for interests are not only the basic driving force behind the actions of social actors, they are also the “very stuff of politics”.²⁰⁾ The players involved look to gain political benefits in the struggle of interests by expressing and successfully establishing their own. Politics is therefore always shaped by interests, and the battle between competing interests is a natural foundation of democratic politics. This aspect is highlighted by the European Union in its Green Paper on the European Transparency Initiative: “Lobbying is a legitimate part of

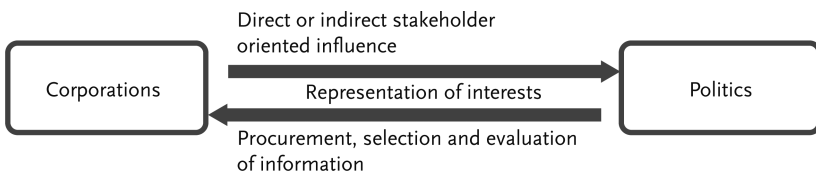


Figure 1.3: Lobbying as an intermediary system.

the democratic system, regardless of whether it is carried out by individual citizens or companies, civil society organisations and other interest groups or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers).²¹⁾

Thus, there is little objective justification for the negative connotation of the term “lobbying”. “Modern societies and democratic systems of government are inconceivable without the aggregation, representation and establishment of interests.”²²⁾ This view is borne out historically by the origin of the term “lobbying” in the old-established democracies of the UK and the United States as outlined above.²³⁾

Interests represented are by the nature of the issue always individual. They emphatically do not stem from “general” interests: this is a point frequently advanced by critics of lobbying, which closer analysis, however, reveals to be without firm foundation. No-one could seriously claim to be the sole voice of the general public as a whole. With the exception of extremely broad objectives (such as retaining jobs or protecting the environment), there is in this sense no such thing as a “general” interest. Whether a measure is good or bad is always a question of individual perspective. Even the broad categories above are rarely unproblematic – which interest is to be given priority upon the closure of a factory that is harming the environment: the staff of 5000 who are to lose their jobs or the environment, which ultimately means the thousands of people who live in the area? Seen in this light, lobbying can logically only be the (justified) representation of individual interests.

What is more, the much-criticised lack of transparency in lobbying is in fact a function of the sensitivity of the information involved and has nothing to do with conspiratorial secrecy. It is necessary in order to keep inside company information confidential and strategically avoid premature public disclosure. The latter is a familiar problem for all those with experience in the political sphere. Plans which are disclosed at too early a stage risk being “debated to death” and ultimately falling through, or – at best – being toned down significantly. Yet the lowest common denominator represents neither the democratic best-case scenario nor a particularly efficient result. The democratic legitimacy of lobbying is discussed in more detail in the following chapter.

As the focus here is on lobbying by businesses, the working definition of lobbying or its synonym representation of interests is as follows: firstly, the procurement, selection and evaluation of information which could give the company represented a competitive advantage or prevent it being put at a competitive disadvantage, and secondly, direct or indirect influ-

ence exercised by a company on legislative and/or executive decision-makers through the communication of information with the aim of gaining competitive advantages or avoiding competitive disadvantages.

Lobbying should be seen as a dynamic, constantly evolving process which allows for the lack of continuity in the political and administrative sector.²⁴⁾ Figure 1.3 illustrates the model of lobbying as an intermediary system.

B. The democratic legitimisation for lobbying

As it is now clear what is to be understood by lobbying, the following pages examine in more detail its justification in the political and social sphere. How does one respond to the question lobbyists are often posed of the political or democratic legitimacy of their activities?

It can hardly be denied that lobbying “enjoys”, as indicated above, an extremely bad reputation amongst the public at large in continental Europe. The term “lobbyist” is seen by many as an insult, and lobbying is often considered an illegitimate or distasteful activity.²⁵⁾ Reports in the media are usually negative in connotation, with headlines on lobbying such as “Insinuating power” [*“Machtvolle Einflüsterer”*],²⁶⁾ “Welcome to lobby land” [*“Im Lobbyland”*]²⁷⁾ and “The lobby republic” [*“Die Lobby-Republik”*].²⁸⁾ Titles of books on the subject also send a clear message, for example “Buying and selling the State: how corporate lobbyists in German ministries write their own laws” [*“Der gekaufte Staat. Wie Konzernvertreter in deutschen Ministerien sich ihre Gesetze selbst schreiben”*],²⁹⁾ “Lobbyists: who really governs us?” [*“Die Lobbyisten: Wer regiert uns wirklich?”*]³⁰⁾ or “Puppet masters: managers, ministers and the media. How Germany is governed” [*“Die Strippenzieher: Manager, Minister, Medien – wie Deutschland regiert wird”*].³¹⁾

Lobbyists have even been termed the “fifth power”.³²⁾ Critics’ main objections are a lack of transparency in lobbying, implied links between lobbying and corruption and that lobbying lacks legitimacy or indeed even that it poses a threat to democracy. Lobbying appears undemocratic in their eyes because it bypasses the established “one man, one vote” principle with (one-sided) representation of interests. The underlying fear is that politics become client politics; that a small minority gains benefits at the expense of the vast majority. An equally common criticism is the lack of transparency in lobbying. The claim is that the reasoning behind political decisions is unclear to the public as only the politicians make public appearances, not the lobbyists.

Another common perception is that lobbying is linked to corruption, the main accusation being that lobbyists buy political advantages. The affair and trial of the so-called “arms lobbyist” *Karl-Heinz Schreiber*³³⁾ and the scandal involving the then EU Commissioner *Edith Cresson* are two prominent examples; similar cases include the “Abramoff affair” in the USA and the appointment of the former EU-Commissioner *Martin Bangemann* by the Spanish company Telefónica in the late 1990s. Corruption allegations in particular portray lobbying as “immoral”³⁴⁾ or even “shadow politics”.³⁵⁾

Such allegations are by no means new. *Jean-Jaques Rousseau* wrote in his classic “The Social Contract” that “[n]othing is more dangerous than the influence of private interests on public affairs, and the abuse of law by the government is a lesser evil than the corruption of the legislator inevitably resulting from the pursuit of private interests”.³⁶⁾ There has been recurring criticism ever since, criticism which continues today. Sociologist *Max Weber* also wrote warning against all forms of “clique” and “league”.³⁷⁾ In his famous lecture “Politics as a vocation” [*Politik als Beruf*], he also highlighted the risk of a rise in the power of “interest groups” in multi-party democracy.³⁸⁾ *Theodor Eschenburg* alleged in the 1950s that there was a “hegemony of associations” [*Herrschaft der Verbände*],³⁹⁾ while the economist *Mancur Olson* referred to the negative influence of interest groups on states’ ability to undergo institutional change.⁴⁰⁾ Just recently, the former President of the German Federal Constitutional Court [*Bundesverfassungsgericht*], *Hans-Jürgen Papier*, stated in an interview that “in general, lobbying poses a latent threat to the democratic constitutional state”.⁴¹⁾ In the same interview, and even more clearly in other statements,⁴²⁾ he then however significantly qualified this criticism. “Asserting both individual and not least business interests, uniting such interests under the umbrella of strong associations and presenting them to the state administration and members of the German Bundestag – in other words organised representation of interests – is of course an integral aspect of our parliamentary democracy. (...) There is certainly no justification for a general and indiscriminate demonization of lobbyists, regardless of whether they act for business associations, unions, individual major businesses, non-governmental organisations, the Church or other groups in society.”⁴³⁾

Each year sees the presentation of the “Worst EU Lobbying Award” in Brussels to civil servants, politicians and businesses. The prize publicly denounces what its jury considers particularly controversial lobbying activities with the aim of reducing their effect. This “scandalisation” of the is-

sue contributes to the “lobbying myth”, a myth constantly being strengthened by implications in media reports and which is sometimes reduced to a simplistic black and white scenario.⁴⁴⁾ Lobbying is, moreover, an issue which can be easily used to serve and apparently confirm existing prejudices and resentment along the lines of “policy is made by business, not by the voters”; it should however be noted here that such allegations are unfounded – were the situation that simple, there would be no need for lobbying.

The “lobbying myth” is therefore, like most myths and legends, far removed from the reality. No question that there are regularly cases which cross or at least touch ethical and legal boundaries – one need only consider the examples referred to above. The criticisms should therefore be taken seriously. Lobbying can without doubt exceed reasonable and legitimate influence, especially when it reaches or passes the bounds of what is legal. Yet such exceptions merely prove the rule that lobbying is usually structured, professional and legally unassailable.

In (political) science as in politics in practice, the issue of lobbying is generally considered in an extremely pragmatic light. Lobbying critics must indeed themselves respond to critical queries. Who, for example, should decide how much lobbying is too much? Who should decide what constitutes the public good? Both these questions are ultimately normative and the answers are anything but simple, as will be shown. The following sections are aimed at creating a better understanding of the democratic legitimisation for lobbying.

I. Politics and interests

Anyone seeking to grasp the necessity and democratic legitimacy of lobbying must first gain a basic understanding not just of the interests behind the individual players, but also, and more importantly, of the procedures and players in politics in practice. The ability to understand and anticipate politics and political developments in turn requires an intimate, detailed and direct knowledge of real political affairs beyond official statements and media reports. In other words, one must accept “the logic of politics”. In view of the diversity of political reality, however, mere knowledge of formal aspects and an awareness solely of information communicated officially or by the media is not enough. Such communications also often present only a limited and in some cases distorted view of politics. This must first be clear if one is to understand the “whys and wherefores” of lobbying.

1. Politics: a debate between interests aimed at consensus solutions

“Politics is the art of the possible” runs a famous *bon mot* attributed to *Otto von Bismarck*. Politics is an omnipresent, everyday reality: political affairs feature on the front pages of the newspapers, fill the television news and provide the subject matter for talk shows. Nearly every “responsible citizen” has his or her concept of politics. But what does the term actually cover – “What is politics?”⁴⁵⁾

The word “politics” dates back to Greek Antiquity. *Tà politikà* “describes all public affairs relating to the polis and affecting and binding all citizens (=polítes) and *politiké téchne* the art of managing and administering public tasks in the interests of the community of citizens/the common good of the polis”.⁴⁶⁾ Every human society needs, in some form or another, rules which govern life and with which all its members must comply. There is no set definition of the scope and nature of such rules: they are in principle variable and are defined by political action,⁴⁷⁾ which “creates the rules governing life which together are to be binding upon society as a whole”.⁴⁸⁾ The medium of political action is power, and the classic definition of power by sociologist *Max Weber* is “the probability that one actor in a social relationship will be in a position to carry out his will despite resistance, regardless of the basis on which this probability rests”.⁴⁹⁾ To be able to use what is initially unofficial power, a sustainable method is needed to assert it: authority.

Authority [*Herrschaft*] is defined by *Max Weber* as “the chance of commands being obeyed by a specifiable group of people”.⁵⁰⁾ Authority is however not *per se* a given but rather established and shaped in a specific way by human actions. Authority can therefore exist in many different forms and degrees. An authority must have legitimacy if its commands are to be obeyed. Legitimacy may come from “tradition”, “charismatic” or “rational-legal” belief, or “legislation accepted as legal”.⁵¹⁾ In this last case, such legality may be “accepted as legitimate” if it is based on an “agreement of the interested parties” or on “imposing [...] and complying”.⁵²⁾ In modern, democratically organised political systems, the authority of the elected government is legitimised by various agreements on a contractualist basis and is – at least by the vast majority of citizens – more or less accepted. The constitution is the most important legitimising instrument: it regulates the relations between rulers and the ruled and thus constitutes the official authority or sovereign power [*Staatsgewalt*].⁵³⁾ In a democracy, the constitution is chosen by the people and thus forms the highest law, limiting the power of the official authority over those it governs.⁵⁴⁾ The people are sovereign and elect their own government to exercise sovereign

power for a limited period of time. The so-called separation of powers also applies, which means the judiciary, legislature and government (executive) are in principle separate.⁵⁵⁾ Characteristic of a democracy is also the institution of the *Rechtsstaat*, a German term literally meaning “legal state”, in which the official authority and its bodies are bound by an objective legal system. The modern state therefore has a monopoly not only on the use of force – both within the state and in its external relations – but also on law.⁵⁶⁾

Temporary delegation to the government of the exercise of sovereign power legitimises political authority in a state’s political system in two ways, namely with input legitimacy and output legitimacy.⁵⁷⁾ Input legitimacy is gained by “basing the demands of authority as closely as possible on the preferences of a community’s members”.⁵⁸⁾ Output legitimacy requires that “the exercise of authority effectively promote the interests of the citizens”.⁵⁹⁾ In other words, “input legitimacy is based on the merit and acceptance in practice of the quality of the process in which political will is determined and decisions made. Output legitimacy, on the other hand, depends on the merit and acceptance in practice of the products and results of such a process.”⁶⁰⁾ Input legitimacy in particular in the sense of “compliance on the part of those ruled” is considered in the field as the defining normative legitimisation criterion; output legitimisation is based solely on the benefits of decisions for the ruled – decisions which need not necessarily be taken by democratically elected “rulers”.⁶¹⁾ The schematic diagram in Figure 1.4 shows the link between input or output and the political system in which it is found.

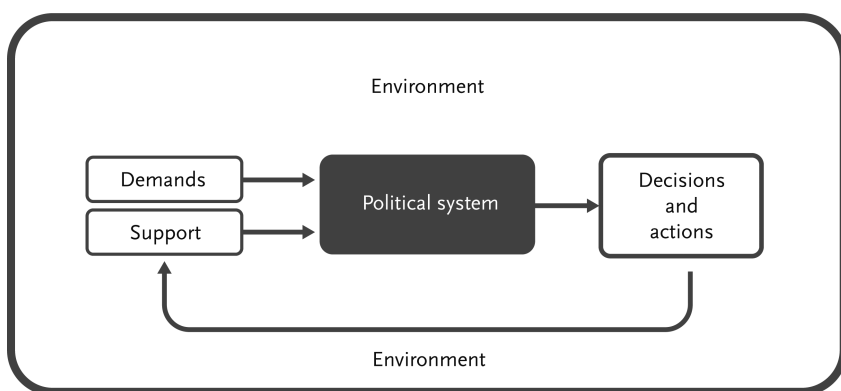


Figure 1.4: The political system.

Weber's categories of power and authority are, however, too limited to allow a modern definition of the term *politics*. Historic events and developments over the course of the 20th century have led to changes in the "notion of the political"⁶²⁾ in academic debate.⁶³⁾ Further defining characteristics emerged in the wake of Weber's definitions in the search for a useful, pertinent way in which to describe politics. These characteristics are *conflict*, *interest* and *consensus*⁶⁴⁾ and are essential to understanding the interface of politics and lobbying. As a rule, an immense number of (often contradictory) opinions and expectations of public affairs coexist in modern democratic communities – in theory as many as there are individuals in that community. This plurality of coexisting interests frequently leads to conflicts, which should ideally be resolved through consensus in the interests of the common good. Politics can therefore be seen as the "public conflict between interests shaped by power and the need for consensus".⁶⁵⁾

Conflict is thus a central feature of politics. Without conflicts, there would be no need for politics. There would also be very little development in society and none at all in politics. Conflicts are for this reason as important to politics as their resolution with as great as possible a consensus, a consensus which ideally defuses the underlying tensions borne of interests. Interests are in turn the basic driving force behind the actions of social actors and thus the "very stuff of politics".⁶⁶⁾ By successfully establishing their interests, the actors involved hope to gain political benefits. Interests, conflicts and consensus together are – as outlined above – the constituent elements of politics. Although *consensus* alone tends now to be the only aspect with positive connotations, its prerequisites *interest* and *conflict* must also be accepted as normal and quite simply necessary. Party political argument in particular is often perceived by the public as unproductive or even inappropriate; yet without conflict, consensus is categorically impossible.⁶⁷⁾

Argument, negotiation, agreement and compromise are constants which shape politics, especially in a democratic context. Unlike in other fields of action in society, especially business, the process naturally produces problems and inefficiency which can make democratic politics appear ineffective.⁶⁸⁾ Yet this is exactly what gives democratic politics its unique character: the debate between differing opinions with the aim of finding a political solution based on consensus. This is also the light in which to understand Winston Churchill's famous words, "Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has

been said that democracy is the worst form of government except all those other forms that have been tried from time to time”.⁶⁹⁾

2. The inner logic of political processes and the role of process in politics

Political processes have their own unique character which, as outlined above, clearly distinguishes them from other fields of action in society such as business. Political processes follow their own logic, which does not always meet general and apparently rationalist expectations.

It should first be noted that “politics” in general has multiple dimensions. To allow a clear analytical approach, political science differentiates between three aspects of politics as a general term: *polity*, *policy* and *politics* in the stricter sense of the word (see Figure 1.5).⁷⁰⁾ These three dimensions do not statically coexist; depending on the specific circumstances they may vary in form and scope. The logic of politics comes from the coexistence and combination of and interplay between these three elements.⁷¹⁾ What exactly does each of these three terms mean?

Polity is the formal aspect of the field.⁷²⁾ It is the institutional system forming the framework for political action and covers “the concrete normative, structural elements of politics set out in the constitution”.⁷³⁾ Both written rules such as the constitution and the laws governing the voting system, the structure of the state etc. and unwritten rules form the framework for the political sphere. The most important unwritten rules in the broader sense include the political culture of a community.

Policy is defined as the content or material dimension of politics.⁷⁴⁾ It covers the objectives and roles through which political solutions are to be found to specific problems, for example in the fields of security, the envi-

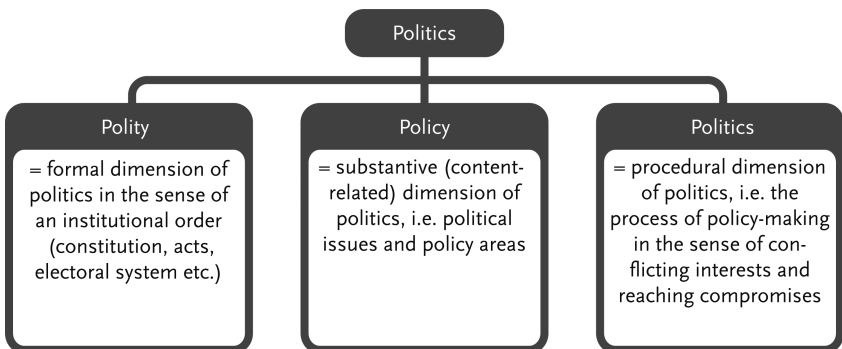


Figure 1.5: Politics as a multi-dimensional process.⁷⁵⁾

ronment or finance.⁷⁶⁾ Policy tends to be formed as part of a government's political agenda. The outcome is known in political science as "policy output" and is the "visible" result of political action – even if it in some cases resembles symbolic politics.⁷⁷⁾ Policy issues are, as a rule, dealt with by the relevant ministries in the political system; the instruments, the procedure, the resources used etc. and the objective success of the individual measures are the key aspects of policy in analytical terms and often form the basis for external policy advice.

Politics in the stricter sense of the word is the "procedural aspect of politics in general".⁷⁸⁾ Politics even in its narrower sense is the more or less conflict-ridden process in which both diverging and common interests and political views of varying provenance, initially in opposition, are over time consolidated and developed through negotiation to reach a concrete political goal. Such negotiations often involve political trade-offs and the outcome generally bears the marks of a compromise. Forms of politics in practice in this sense include parliamentary debate, coalition talks and election campaigns.

One aspect of politics essential to lobbying comes into play in this process and is worth a brief mention here: it is almost more important for a lobbyist to have an exact understanding of the rules of the political decision-making process in question than to have the better arguments. Contrary to a view widely held by the general public, politics in a democracy is not a process in which the best argument (for example, in terms of welfare economics) ultimately wins through. Political decisions are in fact the outcome of a sometimes complex process shaped on the one hand by formal requirements such as legislative procedures, rules of procedure and accountability, and on the other by informal rules. Majorities, political opportunities and (not least) personal sensitivities, interests and "vanities" play a not insignificant role in the latter. Anyone failing to realise that forgets that politics is created by people and does not emerge or exist in a vacuum.

3. Formal and informal political players

Describing politics as a public conflict of interests has implications for the actions of players who formulate and advocate the opposing interests. "Just as interests cannot appear in a political process without players, all players in the political process are always advocates of interests even if this is not evident at first glance".⁷⁹⁾ Political players initially appear to be clearly and immediately identifiable: politicians are the focus of media reporting, at least when they hold high offices. Officially, this reading is

true; that politics is created by politicians, whether they be Commissioners, high-ranking party officials, leaders of parliamentary groups, ministers or leaders of the Opposition.

The political reality is in fact far more complicated. Officials and Members are far from alone in their political work; many more actors are engaged in political activities in the background than actually appear in the spotlight. The political system interacts with its environment and – contrary to popular belief – is not cut off from the outside world. Indeed it is not possible that it could be, if one bears in mind the above definition of politics.⁸⁰⁾ Politicians are the representatives of the “official” side of politics. They frequently hold posts with a legal or even constitutional status through which they exercise the powers they have been delegated. Yet the political reality is that power is not really exercised by politicians only. This is a function not of a more restrictive definition of legitimacy but rather of everyday political practice: their overwhelming number of commitments, the sheer quantity of information and not least the considerable complexity of that information mean politicians require assistance. No politician can examine everything presented to him or her,⁸¹⁾ not even that which directly interests them. Politicians rely on the support of their staff to deal with their workload, and it is therefore clear that the staff will have a certain influence on political procedures. This is a product of their job: they write speeches and press releases, manage appointments and process incoming and outgoing mail. Even among politicians themselves, there are posts behind the scenes and these background players have a significant influence on political decision-making processes. This is illustrated in two examples below, one at a European and one at a national level.

a) The office manager

The post of office manager is a common one on the political scene.⁸²⁾ An office manager is a close and loyal associate of his or her superior. Typically, the office manager manages the staff of a Commissioner, high-ranking EU official, minister, permanent secretary or member of parliament and is therefore a prime example of a player acting behind the scenes. Duties commonly involve dealing with mail, managing appointments and coordinating work within the office. Most importantly, they are responsible for making a preliminary selection of incoming information and presenting the main points to their superior.⁸³⁾ Office managers also prepare information as the basis for decisions and indeed also voice their own opinions and priorities. An office manager therefore evidently has considerable power: he or she is if nothing else the person who deci-

des what information is to be presented to the actual politician and whether or not someone is granted an appointment. He or she can in some cases completely “steer” their superior through the latter’s working day and often offers advice on important political matters.⁸⁴⁾ An office manager has without doubt a certain influence on the politician he or she serves and thus also on politics in general – and therefore has more power than the position in the organisational hierarchy would suggest.⁸⁵⁾

b) Chief Whips and parliamentary managers

One Member State example of an influential player is that of the German *Parlamentarischer Geschäftsführer* (parliamentary manager). Each parliamentary group in the German Bundestag (lower house) has a parliamentary manager who is also a member of parliament.⁸⁶⁾ Despite their position as members of parliament, these figures, or at least their position, are often unknown to the public, yet little would happen in parliament without them. “Parliamentary managers, are the machinators, engineers, motors of power. They decide on opportunities within the parliamentary group; on speaking time, resources, offices, agendas, motions, etc. (...) Almost unnoticed, they are always in the background pulling the strings.”⁸⁷⁾ They ensure the party takes a coordinated stand and strive for unanimity in parliamentary votes.⁸⁸⁾ Parliamentary managers are therefore among the most influential of all politicians, not least because they act as close and trusted advisors to the leader of the parliamentary group. They help the latter define issues and approaches and keep the leader informed of opinions and actions within the group. The position of a parliamentary manager is therefore one of considerable influence in the parliamentary group, yet it has no legal basis in the rules of procedure of the German Bundestag – much less in the *Grundgesetz*, Germany’s Basic Law, or in the *Abgeordnetengesetz* (Act on the Legal Status of Members of the German Bundestag). It comes purely and simply from the rules of procedure of the individual parliamentary groups.

Such a function is also to be found in other parliaments, the British equivalent being the whip.⁸⁹⁾ Whips are influential organisers working behind the scenes whose main role is to coordinate voting behaviour; they also organise their parties’ input in parliamentary work.

There is no directly comparable position in the European Parliament. The nearest equivalent would be the quaestors in the Bureau who are responsible for MEP administration and budget issues.

There are of course other powerful functions in politics as well as the posts outlined above of whose influence there is little awareness, for ex-

ample that of the faction officer (*Fraktionsreferenten*) – an advisor to a parliamentary group in the German Bundestag.⁹⁰⁾ Examples at an EU level would be the cabinets of the Commissioners and rapporteurs in the European Parliament.⁹¹⁾

Yet politicians and their staff are not the only players in politics, they merely embody its individual aspect. Collectively, the parties and institutions of the political system are obviously players in the political sphere, but they are not the only ones: citizens' initiatives, associations, unions etc. are also political actors.⁹²⁾ Also not to be underestimated are the media, often termed the "fourth power" after the legislature, executive and judiciary. The communication of political information in the mass media is now of immense significance.⁹³⁾ As can be seen from this – far from exhaustive – list, political players are frequently so-called collective actors who are to a certain degree organised, to an extent representatives of aggregate interests and, most importantly, have a definite objective or objectives.⁹⁴⁾

It is therefore clear that politics does not exclusively follow the predefined path of *polity*. Politics in general is in reality far more complex than the three-dimensional model above could illustrate (see Figure 1.5). Much occurs in the wings above and beyond official agreements, and political processes do not progress steadily and uniformly in terms of either time-scale and content. A proverbial "Kitchen Cabinet" is as unlikely to appear in an official organogram as the actual power structures. Individual party members moreover often also present unofficial suggestions and concepts which have not yet come to the attention of the parties' leadership bodies. Politics has an extremely broad informal dimension alongside its formal textbook aspect. What is more, close analysis reveals that there is in point of fact no *single* coherent political system as the model in Figure 1.5 assumes. This is evident not least from the various different descriptions political science has formulated for democracy at a national level. These vary depending on analytical perspective; examples of terms employed include "negotiated competitive democracy", "party democracy", "coalition democracy" and "media democracy".⁹⁵⁾

II. Lobbying as the aggregation of interests

The question "Why lobbying?" can now be answered more easily against the political background addressed above. It should be noted that lobbying has, especially over the last few years, increasingly drawn aca-

demic interest.⁹⁶⁾ The main focus is on approaches and questions in democratic theory: lobbying ensures the formation and diversity of opinion and thus the plurality of opinions and views in political discourse.⁹⁷⁾ It is a truism to say a democracy needs diversity of opinion if it is not to be robbed of its procedural foundations, and society's articulation of its interests is vital to this diversity.

Many experts see the process of opinion-forming and the public discussion in particular at an EU level as insufficient,⁹⁸⁾ a concern which is closely linked to the Europeanisation of politics in EU Member States. The interconnection of municipal, regional, national and European political levels known in the field as a multilevel governance also poses a challenge for democratic institutions. If one accepts the scientific findings on the subject, lobbying has in particular the following necessary and positive aspects:

- the aggregation and communication of interests;
- the realisation of political participation;
- political advice for business actors;
- the satisfaction of companies' business needs in communication with politics.

Without interests, there would be no politics. The aggregation and communication of interests is thus essential to democracy: the articulation of interests from society offers the political system important information which it would be unlikely to procure itself without external input. Another, closely related aspect is that of political participation, for politics should after all be based on the interests of and indeed involve those it affects.⁹⁹⁾ "Government for the people by the people" demands on the one hand that the interests of social players be appreciated; on the other, the people in a democracy must have more opportunities to participate in politics than those offered by periodic elections. Such opportunities include citizens' initiatives and referenda, and indeed also efforts to actively contribute to politics through lobbying. Political decisions can often have a wide range of complex implications and the advantages and disadvantages of political action must therefore be assessed as carefully and accurately as possible. Seen in this light, lobbying is also a form of political consultancy,¹⁰⁰⁾ and as no political body always has all the necessary knowledge, it allows politics to draw on the external expertise required. Politics needs feedback – even if not explicitly requested – from those affected by political decisions if it is to avoid possible undesirable consequences.¹⁰¹⁾ Many political projects are, moreover, now highly com-

plicated in terms of both the subject matter and the possible interactions and effects: projects in areas such as genetic engineering would be almost impossible without external expert contributions. One example of political consultancy is the institution of the parliamentary hearing in which representatives of society and business are questioned by members of parliament and can express their expert opinions in the development of legislative projects. A similar process is the Commission's consultation of representatives of civil society on specific issues, for example on the white paper "Democratic European Governance".¹⁰²⁾ This approach in some respects also prevents the majority dictating to the minority, otherwise a source of potential conflict. This is why one member of the German Bundestag believes that "lobbying is an important part of parliamentarianism. It provides information and contributes to decisions in the parliamentary legislative process".¹⁰³⁾ Society equally needs a way to obtain information from the political sphere. Lobbying as defined above operates in two directions (see Figure 1.3). It offers companies the chance to procure that information from politics which is an important and necessary basis for their own business decisions.

III. Lobbying: forming a common basis of communication between politics and business

Interdependencies between politics and business are typical of modern, open social structures. Business does not exist outside the boundaries of society – although this is sometimes the impression when economic developments such as price wars and the resulting pressure on wages are seen as an external factor rather than as something triggered by people (i.e. consumers). Business is part of society and "politics for the people" is inconceivable without "politics with business". In the same way, business relies on attractive economic conditions and has a vested interest in the abolition of unnecessary regulation. "Business without politics" is thus also out of the question.

Such interdependence renders the regular, complementary exchange of views and perspectives necessary, yet business representatives and economists regularly criticise politics' or politicians' competency in business affairs.¹⁰⁴⁾ Politicians' lack of expertise produces political results far from ideal in business terms; political aims and beliefs are not based on realistic working assumptions – that is the tenor of criticism.

This view is both right and wrong. Communication between business and politics is often clearly at cross purposes; politics, too, often loudly ex-

presses a lack of sympathy for demands from business circles. It is also true that political processes and decisions do not follow purely cost-benefit calculations: they are the products of compromises which can only be understood in the context of the political process (see above). Many political results are from an economic perspective only “second-best solutions”, often shaped by the principle of basic consensus – a far cry from the ideal of economic efficiency criteria. Yet these precise characteristics are the main constituent of politics. As detailed in the section on political processes and the logic behind them,¹⁰⁵⁾ democratic politics is formed of these very categories. The criticism of insufficient political competency in business matters is from this perspective therefore unfounded. Business representatives employ wholly unsuitable terms and concepts for their assessment of political actions; terms which cannot or can only incompletely describe the work of politics.

The main reason for the climate of mutual incomprehension which often exists between politics and business is the difference in the perceptions and basic assumptions of the two groups of actors. In business, profit maximisation and (cost) efficiency are standard focuses, whilst in politics these categories have little significance – power and governance are instead the central concepts as discussed above. Divergent conceptual bases are one expression of the functional distinctions which define modern society. A feature of a modern society based on the division of labour is thus permanent differentiation between a number of different subsystems within society such as the political system, the economic system, the legal system, etc. The theoretical basis for these structures comes from sociologist *Niklas Luhmann*, who carried out in-depth research into the creation and form of these function systems as part of his systems theory.¹⁰⁶⁾ To put the matter in extremely condensed and simplified terms, each of *Luhmann's* subsystems has its own concentrated, individual existence. The structure of each is self-referential and autopoietic, in other words each communicates for itself only and is constantly creating and consolidating itself.¹⁰⁷⁾

Communication with other subsystems, the “environment”, is not impossible; however, external information is received only partially and selectively in line with the functional scope of the subsystem. In simplified terms, this means that the subsystems cannot engage in mutual, complementary communication but are separated by inarticulateness and incomprehension.

That is the perspective of macro-sociological theory. Everyday experience makes this theoretical conclusion appear empirically saturated in the

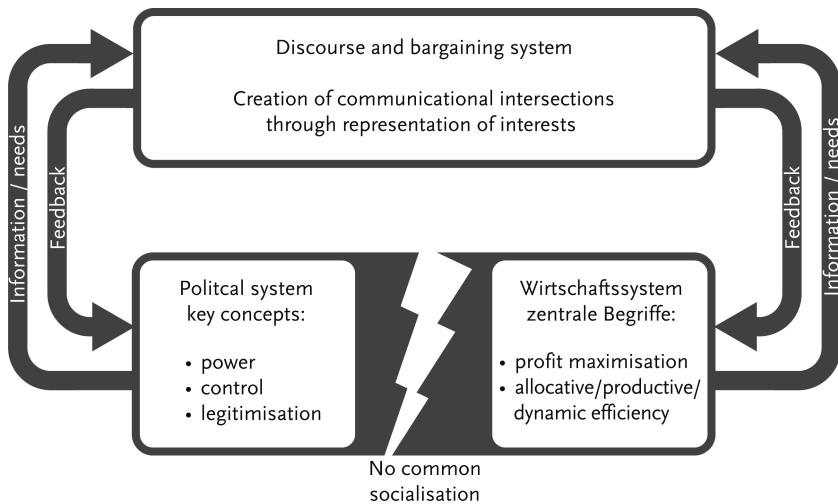


Figure 1.6: Representation of interests as a system of negotiation to create communication intersections.

light of *Luhmann's* systems theory. Yet it is nevertheless clearly problematic in the actual circumstances in a pluralist, democratic system of government as incomplete communication would constantly lead to major errors and undesirable developments with negative consequences for society. Forming a common basis of communication between politics and business is therefore all the more important.

Professional, structured and targeted lobbying can make an integrative and necessary contribution to this process by creating, structuring and supporting ways to overcome system boundaries through mutually comprehensible communication between politics and business. Figure 1.6 illustrates lobbying as a system for discussion and negotiation: that which direct communication cannot achieve, as the political and business elite lack common socialisation, is to be guaranteed by lobbying through intermediary structures. Ideally, this should ensure that politics and business cooperate to reach the best possible and sustainable decisions which benefit all those involved. Politics and business present their needs and expectations and exchange information, and on this basis then reach the necessary decisions. An exchange desirable in both political and societal terms could also take place before a matter enters the political arena and not as part of any specific lobbying process. Such a voluntary commitment would in turn be one way to reduce the actual or supposed conflicts (of interest) between business and politics.

C. The function of lobbying for businesses

The sections above addressed the political and overall societal view of representation of interests; the perspective discussed below is that of those represented. What is the role of lobbying for individual businesses; what are the main objectives and functions of lobbying from a business perspective?

Communication was described in the section defining and distinguishing the term lobbying as a contribution to a company’s value creation.¹⁰⁸⁾ As detailed, lobbying does not focus on improving the public reputation of a business – that is the domain of PR and PA. Lobbying, and in particular governmental relations, is aimed first and foremost at one specific result, namely obtaining competitive advantages or preventing competitive disadvantages (see Figure 1.7). The paragraphs below examine the purpose and effect of governmental relations and suggest how this area might be integrated into corporate management.

Every company is not just a player on the economic markets. It also and more importantly interacts with society and politics.¹⁰⁹⁾ Companies are a fundamental part of the social order and the choice and scope of action open to them are consequently not solely dependent on customer, market or sector but also defined by the “contextual environment”, which produces normative restrictions such as “legislative, regulatory and political decisions, for example laws and regulations”;¹¹⁰⁾ see Figure 1.8. Decisions from a company’s contextual environment can have a direct or indirect effect on the economic conditions in which it operates and must

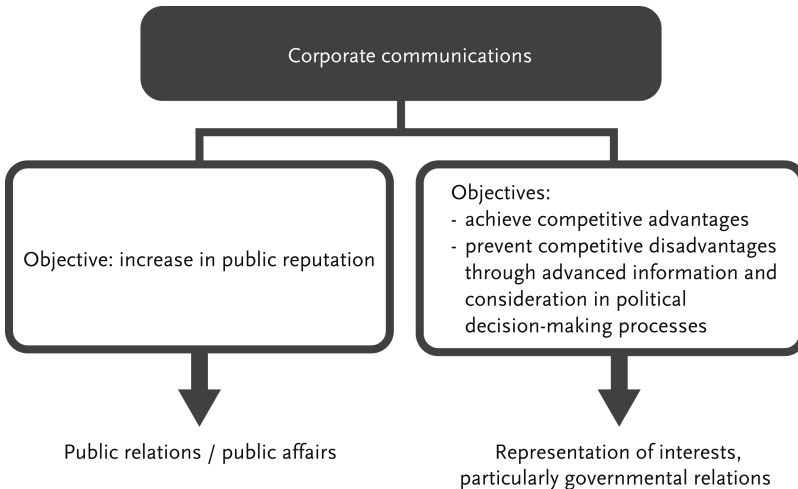


Figure 1.7: Corporate communications objectives.

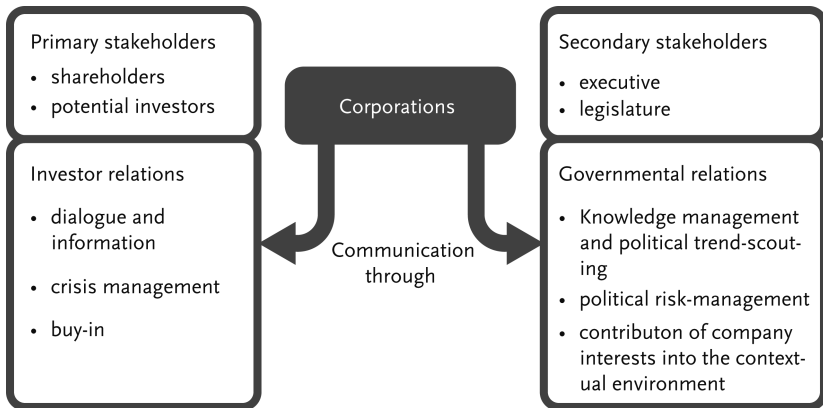


Figure 1.8: Governmental relations: communication with a company's contextual environment.

therefore be considered in business decisions. Contextual environment decisions include employment standards, official regulations and environmental requirements. That is why, “[in] a globalised world in which businesses are faced with and must respond to an increasingly rapid succession of new economic, social and cultural movements and trends, (...) active involvement in shaping this environment is essential”.¹¹¹⁾

Actors in the contextual environment can be seen as the secondary stakeholders in a company, the primary stakeholders being first and foremost the shareholders and potential investors. Whilst relations with primary stakeholders are managed through investor relations, a channel of communication with secondary stakeholders is also required.¹¹²⁾ This is the role of political representation of interests in the form of governmental relations. Representation of interests, like investor relations, thus has a strategic management function for “analysing, interpreting and helping to shape the political environment with the company’s objectives in view”.¹¹³⁾ Practical functions include both monitoring the political arena and analysing political and social developments, and representing the company’s interests in the political field.

A measure of the importance of lobbying in business practice is the extent to which the political framework affects a company’s business activities. The political framework in general is one of the most important context factors for a company, but there are certain sector-specific and segment-specific differences. Effective lobbying is above all vital to companies operating in highly regulated sectors (e.g. energy, telecommunications, logistics and transport): precise knowledge of relevant political procedures – of the “how, when and why” of key decision-making processes

from the company's perspective – and the correct identification of the major decision-makers almost inevitably gives a company advantages over competitors which largely leave their supply of political information to chance (a common approach). Lobbying has consequently increasingly become a “modern management discipline”.¹¹⁴⁾ The expertise required should, moreover, also have considerable influence on a company's strategic information management.¹¹⁵⁾

In turn, the products or services a company generates often directly affect or at least influence society.¹¹⁶⁾ From this interaction comes the “business obligation to actively contribute to the political, legal, regulatory and administrative framework in one's own interests to avoid damage to the company”.¹¹⁷⁾

If one sees the interests of a company as a resource, then the function of lobbying is primarily a strategic one.¹¹⁸⁾ Lobbying can also be defined from a business perspective as “political risk management” aimed at ensuring a company can “quickly and efficiently meet the ever more rapidly changing challenges and demands of customers, an informed public and the legislature”.¹¹⁹⁾ The most important aspect is a clear awareness of how things stand at the earliest possible stage. “Political risk management therefore means picking up on and defining relevant issues beforehand, and having various possible courses of action ready”.¹²⁰⁾ Stopping or changing the fundamental course of a political process already underway and headed in a certain direction is, as a rule, difficult. The ultimate goal is to obtain information advantages from the contextual environment – the process is similar to market research to analyse customer preferences, or to competitor monitoring and sounding out the situation in the sector. Carefully monitoring the political arena is, however, not in itself enough to safeguard the interests of the company; these interests must also be actively and strategically presented in the contextual environment. In many cases only the latter guarantees successful lobbying. It must naturally be done in a fair and honest manner in strict adherence to the standards for professional lobbying given above, in particular the legal framework, and to the company's own compliance guidelines (which usually go considerably further than statutory requirements). Governmental relations must from a functional perspective therefore be integrated into the top management of the company. As lobbying, as defined above, is aimed at achieving competitive advantages or preventing competitive disadvantages, it must be part of the highest level of management in the company organisational structure. Only thus can optimal use be made of lobbying's value creation potential.¹²¹⁾

D. Part 1 Executive summary

Part 1 addresses the function of and legitimisation for lobbying on the basis of three questions:

- What is meant by the terms lobbying or representation of interests and governmental relations and how does their scope differ from that of public relations and public affairs?
- What political/social legitimisation is there for lobbying?
- What are the main objectives and functions of lobbying from a business perspective?

The main findings can be summarised as follows:

- (1) The term lobbying or its synonym representation of interests can be defined:
 - firstly, as the procurement, selection and evaluation of information which could give the company represented a competitive advantage or prevent it being put at a competitive disadvantage;
 - secondly, as direct or indirect influence exercised by a company on legislative and/or executive decision-makers through the communication of information with the aim of gaining competitive advantages or avoiding competitive disadvantages.
- (2) To understand lobbying correctly, the concept must first be distinguished from that of public relations and public affairs. Public relations concerns how the company is presented to the broad (media) public and therefore corporate image; it has a broader target group than public affairs. Public affairs is the strategic management of information between politics, companies and society: a “limited public”. The clear focus is on content (analyses; planning and staging events; etc.) rather than support throughout a political process. The latter is the domain of lobbying, the main purpose of which is to gain a measurable influence on specific decisions in the legislature and executive.
- (3) Governmental relations has become established as a special form of lobbying. Governmental relations differs in content through its targeted focus on the legislative and executive activities of state institutions (the narrower term “legislative lobbying” is sometimes used), and in timescale through its structural (i.e. long-term) approach: whilst lobbying can be aimed at individual decisions in the short-term, governmental relations generally begins sooner and follows the entire decision-making process or long-term develop-

ments in the relevant field, in some cases for a period of several years.

- (4) The term “lobbying” frequently sparks negative associations in the media and the minds of the general public. The academic, expert view is less sweeping; it largely recognises that modern societies and democratic systems of government are inconceivable without the aggregation, representation and (organised) establishment of interests. True, the positions represented are *per definitionem* individual interests (what interest is not?); however, without them there would be no pluralism of opinions and views in political (democratic) discourse. Politics does not exist in a vacuum but in mutually dependent relation to its environment. Interests are the basic driving force behind players’ actions and are thus part of the “very stuff of politics”. Democratic politics is always shaped by confrontation, negotiation, agreement and compromise; by the debate between differing opinions with the aim of finding a political, consensus solution.
- (5) The triad of interests, conflicts and consensus therefore together constitute politics. Political decisions are made in complex processes and procedures governed by formal and informal rules often unclear to the public (the logic of process in politics). There are thus numerous positive aspects to lobbying, for example the aggregation and communication of interests, political involvement, advice on political matters for business players and the satisfaction of companies’ needs in communication with politics. Lobbying is therefore not only necessary but also democratically legitimate.
- (6) Good lobbying can help create a common basis for communication, an area of overlap between politics and business. Political and economic decision-makers are two, generally discrete, groups of actors. In the absence of common socialisation and as a result of differing perceptions and basic assumptions, communication and mutual understanding between the two groups is often difficult. Lobbying can provide intermediary structures for the effective exchange of information and mutual involvement in major decisions. In the best case scenario, this ensures that politics and business work together to make the best possible, sustainable decisions which are ultimately for the public good.
- (7) Lobbying in general and governmental relations in particular is, alongside investor relations and public relations, a strategic form of corporate communications. Unlike the role of investor relations,

which is a form (in many cases required under law) of capital market communication, and of public relations, a corporate image tool, the importance of governmental relations as a lever for targeted participation in decision-making processes is only gradually being grasped by many companies.

- (8) Lobbying is an important part of corporate contextual environment management: a precise and ongoing analysis of a company's political environment is an essential basis for long-term strategic company decisions and targeted communication with legislative and executive decision-makers can make implementing such decisions significantly easier. Ultimately, lobbying can help every company dependent upon statutory or administrative decisions, not only those in highly regulated sectors, to obtain competitive advantages or avoid competitive disadvantages.