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## INSTITUTIONAL INERTIA IN CRISIS MANAGEMENT AND INTEREST REPRESENTATION: THE CASE OF THE EUROPEAN UNION

### SUMMARY

The recent crisis is banking crisis at its roots. An opening observation says that as far as policy response in the EU in the shape of the banking union concerned the multi- governmental negotiations seem to have failed to change common law in relevant respects. The question is posed what reasons for such institutional inertia might be. The premise of the research is looking at lobbying activities of pan-European economic agents at European level, transnational banks included. Thus the paper draws from theoretical perspective offered by political economy. The review of empirical findings adds an observation that at time of introducing the banking union circumstances existed under which lobbying activities might have been intensified. The paper concludes that institutional inertia in the EU-response to the banking crisis can be explained by intensity and power of interest representation as confronted with a rather soft stance of major European institutions involved in decision-making process.

**Keywords:** European banking union; europeanization of lobbying activities; theory of organized interests

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## INTRODUCTION

The emergence of European Monetary Union in the late 1990's saw removing of numerous limits in financial transactions. It helped pan-European banks to grow even bigger. Their expansion in markets of financial assets contributed to recent financial crisis in Europe. The rescue addressed to some indebted governments of member-countries as well as the re-forming of pan-European banking supervision and bankruptcy law came relatively late. Inter alia the concept of banking union was introduced onto the political agenda and presented to the public as a project to stabilize euro area in reaction to the crisis. It contains three projects in fact, namely

1. introducing banking supervision on the European level which is obligatory for the euro area (so called "Single Supervision Mechanism");
2. founding the controlled and systematic bankruptcy and restructuring procedures for banks (so called "Resolution");
3. creation of "Deposit Guarantee Scheme" covering completely the EU area.

A watchful and respected researcher of the banking sector, Andrzej Sławiński made a meaningful observation: "(..) the banking union is being presented like an ultimate firewall against the crisis which it might have been in fact, however, the project such as it is right now petrifies the banking model which is not free from risks that have induced the global banking crisis recently"<sup>1</sup>.

### 1. THE QUESTION AND SHORT DISCUSSION

The question is posed what reasons for such institutional inertia might be. Institutional inertia is meant here after Maciej Miszewski as apparent rigidity of regulatory process due to institutional reasons which results in efficiency deterioration in systemic dimension<sup>2</sup>. What are "institutional reasons" for maintaining potentially dangerous status quo then? Basically, Miszewski points to norms. Both being bound to informal institutions as well as politicians' aversion to replacement of the out-of-date rules make regulations pervasive despite they match the new society no more. This is so called "institu-

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<sup>1</sup> A. Sławiński., *Granice globalizacji: przypadek strefy euro*, IX Kongres Ekonomistów Polskich 2013, <http://www.pte.pl/kongres/referaty> (05.08.2015), p. 13.

<sup>2</sup> M. Miszewski, *Instytucjonalne podłoże dryfu kapitalistycznej gospodarki rynkowej*, IX Kongres Ekonomistów Polskich, <http://www.pte.pl/kongres/referaty> (05.08.2015), p. 1.

tional nostalgia” which drives the system ahead on the rocks. Anna Ząbkowicz presented another interpretation of the inertia starting on the observation regarding the banking union quoted above<sup>3</sup>. She argued that the EU conservatism in this respect can be derived from sticking to the strategic idea of European integration. According to this line of argument, the questioning of the banking model, de-concentration of big banks in particular, would require no simple aversion to change to be overcome. It could mean questioning the very core of competitive strategy of Europe which is creation of single market for transnational economic agents. Such belief has been shared by European leaders and European institutions actually once the integration process had been initiated, and can be regarded a relevant institutional reason of inertia.

These opinions stay in the stream of reasoning which sees politicians and policy-makers in the centre of the processes. The perspective seems to be widely shared both by experts as well as by executives involved in the banking sector. Academic critique regarding the banking union refers either to postulates enumerated above which are banking union in the shape projected by European policy bureaucrats as a matter of fact<sup>4</sup> or, according to Małgorzata Zaleska, to incompleteness of implementation seen as a failure political in nature<sup>5</sup>. Representatives of banking sector presumably share an opinion of Krzysztof Kalicki, the director of Deutsche Bank Polska who regards the banking union to be a political project which imposes even more bureaucracy on banks and is definitely a “non-market solution”<sup>6</sup>.

## 2. THE APPROACH OF THIS RESEARCH

This paper draws from political economy perspective which sees politicians as well as group interests and rent-seeking activities to be relevant factors

<sup>3</sup> A. Ząbkowicz, *Ead stanowiący na poziomie ponadnarodowym: instytucjonalna bez-władność na etapie europejskiej unii bankowej*, [in] P. Pysz, A. Grabska, M. Moszyński (ed.), *Spontaniczne i stanowiące elementy ładu gospodarczego w procesie transformacji — dryf ładu czy jego doskonalenie?*, Polskie Towarzystwo Ekonomiczne w Warszawie, Warszawa 2014.

<sup>4</sup> A. Hryckiewicz, M. Pawłowska, *Czy nowy nadzór spełni swoje zadanie? Zmiany w nadzorze finansowym w Europie oraz ich konsekwencje dla Polski*, “Materiały i Studia”, No. 289/2013.

<sup>5</sup> PulsBiznesu.pl, *Zaleska z NBP: unia bankowa jest projektem niekompletnym*, <http://www.pb.pl/3900814,11892,zaleska-z-nbp-unia-bankowa-jest-projektem-niekompletnym> (05.08.2015).

<sup>6</sup> Wyborcza.pl, *Zaleska: unia bankowa nie uchroni Europy przed kolejnym kryzysem*, [http://wyborcza.pl/1,91446,17108972,Zaleska\\_unia\\_bankowa\\_nie\\_uchroni\\_Europy\\_przed\\_kolejnym.html](http://wyborcza.pl/1,91446,17108972,Zaleska_unia_bankowa_nie_uchroni_Europy_przed_kolejnym.html) (05.08.2015).

of decision making at national level. Are the governments involved in multi-governmental negotiations and European bureaucracy alone responsible for disenchanting regulatory reaction to the crisis in the shape of banking union? Another possible interpretation is attempted which points to consulting procedures and lobbying at European level. The paper deals with the question of interest representation. It shifts the perspective from politicians to collective action and group pressures, as well as from national level to supra-national one. This re-orientation can be regarded a value added to traditional economic-political approach. The following hypothesis is produced regarding the question of rather modest change in common European law in reaction to rather critical developments in the EU just sketched. Lobbying activities of pan-European economic agents at European level are among institutional reasons of the inertia.

The analysis has been structured in three sections. First, the issue of institutional inertia as exemplified by the European banking union is developed. Next, organized interests are presented as they appear in economic theory. Finally, the process of internationalization or contemporary "Europeanization" of lobbying activities is discussed.

### **3. INSTITUTIONAL INERTIA AS EXEMPLIFIED BY EUROPEAN BANKING UNION**

The contemporary crisis, referred to either as international banking or sovereign foreign debt crisis, happened by no accident at the most intensive stage of European integration, namely after establishment of European Monetary Union. The consensus on EMU allowed pan-European universal banking institutions to grow even bigger. Introduction of common European currency was twinned with establishment of European Central Bank which became a major international institution. The EBC is formally independent from governments of member-countries in its monetary policies as well as in terms of sovereign debt financing. However, it operates as lender of last resort to bankers operating in the euro zone and has replaced in this function national central banks, at least as far as big transnational banking institutions concerned. By these banks the EBC can be regarded as a provider of specific "insurance" who is much less subject to national jurisdictions than central bankers normally are. Such institutional change helped pan-European bankers to grasp new opportunities of doing business which emerged in the 1990's and at the turn of milleniums.

At that time in result of initiative of the European Commission constraints in acquisitions and mergers in the banking sector were removed. Such liberalization increased propensity to invest in shares of other banks and to increase corporate value and size. Turnover and value of financial transactions rose dramatically also due to liberalization introduced outside the Union, mainly by Basle Committee and by the US Congress<sup>7</sup>. In effect, last decades saw pan-European banks growing extremely, with size of many overcoming GDP of numerous European economies. In effect, their size if related to GDP of the European Union as a whole is comparable with size of American banks if related to GDP of the United States<sup>8</sup>.

Since 2008 the most prominent transnational banks of American as well as of European origin can be seen in distress which was to much extent induced by themselves<sup>9</sup>. Their expansion in markets of financial assets was accompanied in particular with dynamic development of derivatives and fuelled bubble economy. In some full-fledged market economies price asset bubbles were followed by break down in markets confidence which got transformed in the crisis of confidence in international inter-bank transactions. The international banking crisis converted into fiscal crisis and recessions in numerous European countries. Thus the recent international financial crisis is banking crisis at its roots though with reference to Europe many experts in banking sector are prone to put fiscal crisis at the front<sup>10</sup>.

Interventionist policies on European level lead by the European Central Bank was conducted along two tracks. Originally, financial aid became institutionalized in ad-hoc funds being officially addressed to some indebted governments of member-countries, and as a matter of fact constituting a rescue to the biggest creditor banks (i.a. from France and Germany). Later on, reforming pan-European banking supervision appeared on the agenda, along with establishing access to funds in event of bank's bankruptcy.

The latter initiative was presented to the public under the name of banking union not sooner than in 2012. Its implementation is, however, apparent-

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<sup>7</sup> Lobbying the Basle Committee resulted in lower capital requirements for trading (Basle II) which meant among others lower cost of transactions of speculative nature. At turn of the centuries the separation of investment banking from commercial banking in the US was finally cancelled (the Glass-Steagall Act) that opened new opportunities to American banks to invest deposits in financial markets and to get bigger in race with European banks.

<sup>8</sup> T. Chmielewski, A. Sławiński, *Ochronka dla wielkich banków*, „Rzeczpospolita”, 18.07.2012.

<sup>9</sup> A. Sławiński., *op. cit.*

<sup>10</sup> For instance, Aneta Hryckiewicz and Małgorzata Pawłowska label the recent financial turbulence as “indebtedness crisis in the euro area induced by grave fiscal crisis in Euro-countries which effect to some extent from the crisis in the banking sector”.

ly incomplete. Banking union means practically and foremost that the EBC took over under its direct supervision more than one hundred banking institutions which hold ca 80 per cent of the sector's assets in the euro area<sup>11</sup>. Thus so called Systemically Important Financial Institutions became subject to Single Supervision Mechanism. Second, the basic question concerning the Resolution remains open. How big funds supporting the controlled and systematic bankruptcy and restructuring procedures should be is still to be debated<sup>12</sup>. Third, there is no consensus with regard to common Deposit Guarantee Scheme and as far as now the project seems to become abandoned, according to Małgorzata Zaleska from Monetary Policy Council<sup>13</sup>.

Then, the major achievement was shifting supervision over the biggest European banks seated in Euro-countries as well as over their subsidiaries seated abroad from national central banks up to the EU-level. This will possibly eliminate problems which national central banks had had in the face of transnational banking institutions. While the latter operate over borders in the single European market, the competence of the former is territorially bounded. On the other hand, such re-configuration seems both to leave space and to open new opportunities for rent-seeking activities of banks.

The literature on new supervisory competences of the EBC points to following aspects of the reform. First, the supervision of the EBC or the Single Supervision Mechanism does not cover foreign branches of banks (subsidiaries only). This exemption may have considerable consequences. Suffice to realize that the supervision from the European level does not see in effect branches of pan-European banks operating for instance in the City of London. In general, such resolution opens new space for regulations arbitrage<sup>14</sup>.

Second, integration of supervisory power in the EBC makes the target of both political and sector's pressures much more clear<sup>15</sup>. One can argue, that putting the transnational European banks face to face with the European Central Bank alone instead of numerous national central bankers may result paradoxically in more effective lobbying. Thus, moral hazard needs not to be necessarily constrained.

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<sup>11</sup> M. Zaleska, *Unia bankowa*, Difin, Warszawa 2013, p. 16.

<sup>12</sup> A. Hryckiewicz, M. Pawłowska, *op. cit.*

<sup>13</sup> PulsBiznesu.pl, *op. cit.*

<sup>14</sup> A. Hryckiewicz, M. Pawłowska, *op. cit.*

<sup>15</sup> C.A.E. Goodhart, D. Schoenmaker, *Institutional Separation between Supervisory and Monetary Agencies*, [in:] C.A.E. Goodhart (ed.), *The Central Bank and the Financial System*, MIT Press, Cambridge, Massachusetts 1999; M. Quityn, M.W. Taylor, *Should Financial Sector Regulators Be Independent?*, Speech on March 8, 2004, International Monetary Fund, Washington 2004.

Third, since supervision authority over local banks remained in member-countries conflicts of interests between national supervisors and the EBC can emerge. The latter in the sake of the euro area stabilization would rather bail out the Systemically Important Financial Institutions. National central bankers would be ready to save even those banks which being not SIFI seem to be relevant for stability of national banking sector and of national economy<sup>16</sup>. This configuration leaves considerable space for playing games by banks.

Apart of the issues just discussed, two major questions remain unresolved. The first one is about funds in event of bank's bankruptcy. According to SRM architecture accepted in 2013 such funds remain each country's responsibility (countries from outside euro zone included). Having been created from banks' contributions they would be consolidated into European fund not sooner than post 2026. Even then they will be small in relation to the assets of potential beneficiaries of aid. The second major question how to make pan-European banks shrink is still unresolved. Meanwhile, their size remains practically unaffected by new regulations, according to Małgorzata Zaleska<sup>17</sup>. Basically, the rules which made them grow remain untouched. There is no political will to divide them into smaller corporations neither to impose split between the commercial and investment banking<sup>18</sup>. This seems to be a major failure of European banking union.

In sum multi-governmental negotiations on European level seem to have failed to change the common law in relevant respects. As far as now, there is no visible retreat from regulations in the EU which have helped pan-European banks to get too big to fail. Thus, there is visible institutional inertia in the case concerned.

#### 4. ORGANIZED INTERESTS IN ECONOMIC THEORY

The premise of this research on institutional reasons of the inertia is looking at lobbying activities of economic agents on European level, pan-European banks included. In order to make the nature and aims of the process more understandable, we rely on theoretical perspective offered by political economy which introduces organized interests and rent-seeking activities into analysis. With the case of banking union put on agenda the topic are regulations and competence division, whereas the question is about processes that make

<sup>16</sup> A. Hryckiewicz, M. Pawłowska, *op. cit.*

<sup>17</sup> PulsBiznesu.pl, *op. cit.*

<sup>18</sup> A. Sławiński., *op. cit.*; T. Chmielewski, A. Sławiński, *op. cit.*

change of rules slow and/or insufficient. This is field of political economy (the political economy of regulation, constitutional economics, etc.) that deals with political decision-making procedures relevant for economic activities. A compact definition which is ascribed to James Buchanan says: political decision making is about how the society chooses the rules for making the rules under which the system operates. Let's draw from this body of theory then before analysis of processes on European level is undertaken again.

There is a basic consensus in economic profession that the foundations of wealth are created in the market. Coordination via price mechanism as well as individual interest and behavior explain how economy operates, according to the mainstream of economic theories. On political-economic grounds economic operations and performance result from individual interest-driven competitive activities. Political economy argues, however, that to much extent they result also from collective action and propensity to make coalitions in polity<sup>19</sup>. Actually, since American institutionalist thinking of the early 20th century an observation is exploited that individuals are prone for collective organized action once it promises benefits and outcomes easier than individual efforts do<sup>20</sup>. Organizations can be created in accordance with group interests which may be of local or industry-specific nature<sup>21</sup>. The notion of organized interests is far from being precise<sup>22</sup>. Here they are defined as community of interests or views which uses its representatives to address public body (legislature, government, supranational institution) with their own postulates or arguments in aim to change or conserve rules of the game<sup>23</sup>.

Originally, the main concern of thinking on special interests was the monopolistic bias (cartelization, syndicalism) perceived as a barrier to free competition. It was preserved in economic textbooks in the parts discussing monopoly power and bargaining power. For the topic of this section it is important that effective monopolistic position can be achieved equally thanks to inter-

<sup>19</sup> Polity can be defined as political and legal structures, i.a. system of power, political parties, constitutional rules and other legal norms, which constitute a framework for politicians, bureaucrats, voters, membership and other interest groups to make decisions.

<sup>20</sup> B. Klimczak, *Wybrane problemy i zastosowania ekonomii instytucjonalnej*, Wydawnictwo Akademii Ekonomicznej im. Oskara Langego we Wrocławiu, Wrocław 2006, pp. 78–92.

<sup>21</sup> B. Fiedor, *Norwa Ekonomia Instytucjonalna jako podstawa teoretycznej refleksji nad procesem transformacji gospodarki centralnie sterowanej do rynkowej*, <http://www.wiedzainfo.pl> (05.08.2013).

<sup>22</sup> M. Cini (ed.), *Unia Europejska. Organizacja i funkcjonowanie*, Polskie Wydawnictwo Ekonomiczne, Warszawa 2007, p. 275.

<sup>23</sup> It is worth adding that apart of the state an associations can address other players in the economic/political market; coordination between different agents within the same organization can be also at stake. Addressing "opinia publiczna" is of increasing importance. Sometimes "interests" refer to individual firms active in political market as well.



nal growth of a firm and pricing practices as well as via acquisitions, mergers and associations with other firms. A&M result in peculiar associations based on ownership which is corporation. Other associations may be agreement-based, like cartels and strategic alliances. Thus organization and governance appear to constitute an alternative. From this position monopoly power appears as an outcome of coordination within governance structures and is a feature of multi-enterprise organization rather than of a single firm.

Forms of collective action and coordination just mentioned may result in winning the dominant position. Increased bargaining power of such organizations makes them capable to rely more on negotiation in polity and less on price mechanism. Then, attempts follow to persuade the state to create a legal monopoly for benefit of interested agents. Group interests in business and finance normally associate in organizations of even broader membership. A contrasting case of coordination within governance structures are trade unions who control the supply of labor. Acting as a counter-monopoly they could use their bargaining power both to confront firm-owners and the state.

Thus, economic activities are seen not that much as competitive relations between buyers and sellers which constrain the exertion of power but rather as subject to concentrated power on one or on both sides. An essential contribution to economic theory in this vein was made by Walter Eucken and Friedrich A. von Hayek on the one hand, and by John R. Commons and John K. Galbraith on the other hand<sup>24</sup>. A self-generating phenomenon of collective action either spoiled competition, according to the former pair of the authors, or resulted in systemic balance held in check by the countervailing powers, according to the latter. However, both perspectives share the view that confrontation between the labor and the capital owners would never produce socially desirable solutions without engaging the third party to ensure the agreements were respected by both sides – that is the state.

In the second half of 20th century theories were developed that approached public sphere from different perspectives, focusing on democracy, bureaucracy, etc., and which were founded on belief that group interests are relevant actors in politics and in economy as well<sup>25</sup>. This contemporary liber-

<sup>24</sup> W. Eucken, *Podstawy polityki gospodarczej (Grundsätze der Wirtschaftspolitik)*, Wydawnictwo Poznańskie, Poznań 2005; J.R. Commons, *Legal Foundations of Capitalism*, MT: Literary Licencing LLC, Whitefish 2012; J.K. Galbraith, *American Capitalism. The Concept of Countervailing Power*, Transaction Publishers. New Brunswick, NJ 1993.

<sup>25</sup> Compare: D. Milczarek-Andrzejewska, P. Tłaczała, *Analiza grup interesu*, [in:] J. Wilkin (ed.), *Teoria wyboru publicznego. Główne nurty i zastosowania*, Wydawnictwo Naukowe Scholar, Warszawa 2012; S. Sztaba, *Aktywne poszukiwanie renty. Teoria, przykłady historyczne, przejawy w polskiej gospodarce lat dziewięćdziesiątych*, Szkoła Główna Handlowa, Warszawa 2002.

al political economy is sometimes presented as “new political economy”, “law & economy”, “public choice”, “economic theories of politics”. It deals with choice of constitutional rules as well as of operational rules that govern social and economic activities. It regards a calculus of costs and benefits of respective agreements and pacts, as a subtitle of one of the outstanding items in this stream of thought “Calculus of consent” suggests<sup>26</sup>. The point is that the calculus regards rather action and re-action in the polity instead of activities in the private sector. It refers to non-productive activities aimed either at preservation of rules or at their change. As a matter of fact this is a bargaining process, and its outcomes match interests of those with bargaining power, according to Douglas C. North<sup>27</sup>. Transaction costs of coordination within state structures are at stake. They are, for instance, costs of participation in business associations or costs of cartel-like agreements, or direct costs of corrupting which are compared with rents expected.

The rents referred to by political economy are different from monopoly rent. Contemporary theories of group interests point to incomes which can be gained exclusively via political that is non-price mechanism. Groups or individuals seek political rents exerting influence, normally in accordance with law, on politicians, bureaucrats and judges in aim to make them to introduce rules and legislation from which the lobbying actors would gain. Group interests are shared, for instance, by importers and financiers or can be represented by trade unions. Pressure can be exerted by doing lobbying but also by going on strike. In general, protectionist measures or entry barriers for competitors or public aid for lobbying parties are at stake<sup>28</sup>. In result of rent-seeking activities the state representatives within polity are to be convinced as far as establishing a legal monopoly for the sake of the economic actors engaged in the process.

Political economy points to modes of coordination different than mainstream economics does. This is collective action in various organizational configurations. This body of economic theories offers insight into process of mediation and negotiation aimed at consent on rules of the game. Formal rules that is those legitimized by the state are the object of lobbying done by var-

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<sup>26</sup> J.M. Buchanan, G. Tullock, *The Calculus of Consent. Logical Foundations of Constitutional Democracy*, The University of Michigan Press, Michigan 1997.

<sup>27</sup> D. Milczarek-Andrzejewska, P. Tłaczała, *op. cit.*, p. 217.

<sup>28</sup> Compare: S. Sztaba, *op. cit.*; J. Wilkin, *Pogoń za rentą za pomocą mechanizmów politycznych*, [in:] J. Wilkin (ed.), *Teoria wyboru publicznego. Główne nurty i zastosowania*, Wydawnictwo Naukowe Scholar, Warszawa 2012; J.S. Hellman et al., *Measuring Governance, Corruption and State Capture*, “Policy Research Working Paper”, Vol. 1999.

ious group interests since the shape of rules and timing of their introduction results in very material gains and losses.

## 5. CONTEMPORARY "EUROPEANIZATION" OF LOBBING ACTIVITIES<sup>29</sup>

Both, economic theories as well as classical research in the political science used to refer to interactions between interest groups and national state. Meanwhile the emergence of the European Union has opened a unique space for both internationalization and redefinition of group interests. Within the European Union there is fertile environment for interest groups, consensus says<sup>30</sup>. The developing European structures offer new access points for organized interests. Private actors need to define their interests and find their roles in the dynamic environment.

The increasing regulatory functions of the European Union in the process of market making are of great interest for many industrial and financial groups who seek access to decision-making procedures. The EU is the closest realization of the idea of internal European market, brought up since the Treaty of Rome. Unsurprisingly, the Single Market project as well as the treaties on Economic and Monetary Union enjoyed support of business, with large transnational firms particularly involved. Especially, following the 1986 Single European Act, the EU began attracting lobbyists in substantially large numbers. Since that time economic interests are eager more than ever to seek access particularly to the European Commission who is the central actor in economic policies. It is reported that "approximately 0.5–1 mln actors, (i.e. industry groups, regional and local authorities, media, small and medium enterprises, trade union associations, NGOs, universities, research centres) are regularly in touch with the European institutions"<sup>31</sup>. With respect to the theme of internationalization of group interests within the structures of the European Union in scholarly dispute a notion of "Europeanization" has

<sup>29</sup> This section draws from: A. Ząbkowicz, *Kontrowersje wokół reprezentacji interesów w świetle teorii ekonomii i w kontekście rozwoju Unii Europejskiej*, [in:] S. Rudolf (ed.), *Polska w Unii Europejskiej i globalnej gospodarce*, IX Kongres Ekonomistów Polskich, Warszawa 2014.

<sup>30</sup> R. Eising, *Interest groups in EU policy-making*, "Living Reviews in European Governance", Vol. 3/2008, p. 10, 15.

<sup>31</sup> W. Lehmann, *Soft law or no law? The European Parliament's new role in the management of organized interest*, 10<sup>th</sup> EUSA Meeting, Montreal 2007, <http://aei.pitt.edu/7948/1/lehmann%2Dw%2D08d.pdf> (05.08.2015), p. 11.

been introduced which can be most simply explained as thinking in supranational European terms on a broad range of issues<sup>32</sup>.

It is rather interesting that the European institutions are widely seen as more accessible than many national administrations and governments<sup>33</sup>. The rationale for such friendly and open stance toward group interest activities can be briefly put as follows. The fundamental relationship between interests and European institutions is presented as exchanging “expert knowledge for influence”<sup>34</sup>. Private interests offer expertise and specific information which may be useful in formulation of legislation, in order to influence the decision making<sup>35</sup>. On the other side, European Commission and the Council welcome this exchange to make their decisions legitimized and to have their democratic image improved. It is sometimes stressed that interest representations can gain access to the European institutions provided they are demanded by the targeted EU institution<sup>36</sup>. As one of the prominent scholars found “(...) there is broad agreement that the EU institutions form not merely an arena in which to pursue private interests. Rather they pursue their own policy preferences and structure the representation of interest groups, granting financial support to them, involving them in policy implementation, and setting standards for appropriate political behaviour”<sup>37</sup>.

However, in the process of this peculiar exchange a temptation for rent seeking is not to be excluded, and conditions of access are far from being precise. Rules of access, instead of binding legislation, appear in form of communications, guidelines, interpretative notes, etc. Interest groups are encouraged for self-regulation that is to put together their own codes of conduct. In short, regulations concerning lobbyists are soft. As far as now, there is no official register of interests lobbying the Commission. Registering of lobbyists is voluntary. In the past some efforts have been made to put Commission’s consultations into a bit more formal frames. These attempts, however, repeatedly met calls from industry, trade and banking interests for soft-law instru-

<sup>32</sup> M. Cini, *op. cit.*, pp. 464–466.

<sup>33</sup> W. Lehmann, *op. cit.*, p. 11.

<sup>34</sup> K. Charrad, *Lobbying the European Union*, Nachwuchsgruppe Europäische Zivilgesellschaft, Westfälische Wilhelms-Universität, Münster 2007, p. 14.

<sup>35</sup> Economic theory of regulation points to corrupting the regulators in exchange for legal protection. Then an “offer” on the supply side can contain attractive goods and relatively low costs of their acquiring for decision-makers (S. Sztaba, *op. cit.*, pp. 14–15). The differentiation between lobbying and corruption depends on whether given activities comply with law, and is vague.

<sup>36</sup> K. Charrad, *op. cit.*, p. 9.

<sup>37</sup> R. Eising, *Clientelism, Committees, Pluralism and Protests in the European Union: Matching Patterns?*, “West European Politics”, Vol. 31, No. 6/2008, p. 1179.

ments and self regulation, and are explained by private interests' a priori preference for the absence of regulation<sup>38</sup>.

While the interest groups' lobbying activities intensify, paradoxically enough, there is no theory of interest representation on international level. Since the very beginning of the integration process national as well as sector interests have played role, which was reflected by a "classical" debate between neofunctionalism and so called intergovernmental approach. Neofunctionalists, who believed group interests to constitute driving forces of European integration, being in the lead in the 1950's, withdrew and since the 1970's research focused mostly on interactions within or between the member states while interest groups were reduced to the role of partners to their national governments with no great say in policy decision making. More recently, the debate turned to how "additional" European tier operates and what is its impact on national patterns of interest intermediation and its effects on national policy<sup>39</sup>. The states still remain important players, however the focus of research re-shifted to non-public actors, and to their impact on European decision-making process<sup>40</sup>. Manuals on European integration normally present older and more recent debates<sup>41</sup>, nevertheless research on interest groups in European integration does not possess sound theoretical foundations. Assessments share the feature of being overly inductivist and we do not really know how interest groups and governments interact in EU decision-making<sup>42</sup>.

However, at the current stage of Europeanisation of economic interests the attitude dominating in researchers' community seems to be far more optimistic than it normally used to be. The vocabulary reflects this change. The word "lobbying" used to have negative connotations. In popular belief, it "confers an unfair advantage on those that can afford to carry it out" and therefore runs counter democracy and is destructive to fair competition in the economic market<sup>43</sup>. Recently, negative connotations of "lobbying" and "group interests" have been rubbed out by neutral (or rather positive) "interest

<sup>38</sup> W. Lehman, *op. cit.*, p. 20.

<sup>39</sup> P.A. Hall, *Institutions and the Evolution of European Democracy*, [in:] J. Hayward, A. Menon (ed.), *Governing Europe*, Oxford University Press, Oxford, New York 2003, p. 18.

<sup>40</sup> K. Charrad, *op. cit.*, p. 2.

<sup>41</sup> M.Cini, *op. cit.*; N. Nugent, *Unia Europejska*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2012.

<sup>42</sup> Schneider G., Finke D., Baltz K., *With a little help from the state: interest intermediation in the domestic pre-negotiations of EU legislation*, "Journal of European Public Policy", Vol. 14, No. 3/2007, pp. 444-445.

<sup>43</sup> K.Charrad, *op. cit.*, pp. 2-3, 5.

representation”<sup>44</sup>. In some cases, it is being argued, lobbying can mean desirable information flows and positive institutional change. Consensus says that interest representations have been employed by the European Commission and the Council of Ministers *inter alia* to improve legitimization of their decision making as well as their image in terms of democracy. Involvement of interest representations in policy- and law-making under the integration process is widely accepted and their influence is perceived basically as beneficial to decision making. The problem of vulnerability of decision-makers to non-productive activities of group interests tends to be neutralized by a belief that European institutions “pursue their own policy preferences in alliances with groups that are supportive of their case”<sup>45</sup>. Large literatures document arguments for the EC to be open to consultation and expertise provided by organized interests.

Anyhow, scholars find also that some organized interests, business interests in particular, are endowed with considerable economic power. Their lobbying activities induce both information and funds flows, according to Austen-Smith<sup>46</sup>. Is then the environment under the EU-law more prone for rent seeking than George Stigler, Alan Posner, Anne Krueger et al. could ever imagine? Are supranational European institutions capable to constrain special relations between some group interests and member states which seem destructive to fair competition? Or do they rather replace the member states to some extent as an object of lobbying activities, which have been shifted from national to supranational level, with the question of vulnerability becoming “europeanized”?

The review of empirical findings concerning “Europeanization” of interest representation helps to realize some points relevant to the topic. First, in consequence of European integration competence is gradually being shifted from member-governments to the EU-institutions, with European Commission and European Central Bank at the lead. The banking union in its recent shape is a good exemplification of this trend with supervisory authority over pan-European banks having been shifted from national central banks basically to the EBC. The more decision making is made on European level the more become the EU- institutions a target of lobbying activities in the sake of transnational interests.

Second, surprisingly enough intensification of lobbying activities generally does not face any hardening attitudes of the major EU-institutions. Their

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<sup>44</sup> *Ibidem*, p. 3.

<sup>45</sup> R. Eising, *Interest groups...*, *op. cit.*, p. 9.

<sup>46</sup> D. Milczarek-Andrzejewska, P. Tłaczała, *op. cit.*

stance is rather soft and permissive, possibly due to lack of democratic legitimization of most of them. Lobbying seems to have been finally deprived of bad connotations. Some authors argue that lobbying should be redefined if the perspective of reduction of democratic deficit in the EU, perspective of efficient EU-decision making and perspective of citizens' welfare is taken under consideration. In the early XX century influence of narrow interests on policy making was perceived as market-destructive and detrimental to individual freedom. Next, after the WWII this negative evaluation was gradually replaced by pragmatic putting interest representation on national levels into legal frameworks of corporatist systems and professional lobbying companies. Along with the European-integration process those channels became internationalized, and nowadays a general attitude of the EU institutions toward interest representation seems to be inviting.

On the other hand, environment around the EC, the ECB and the European Parliament is a ground of activism of organized interests as well as individual actors of extraordinary economic power. Pan-European banks lobbying the EBC constitute the example. However, the environment, fertile for interest groups as it is, seems not to be transparent at all. The less transparent rules of this game are the more promising the game is in terms of rent seeking either of interests protection. The banking union in its recent shape may provide a chance for both.

## CONCLUSIONS

The literature on contemporary "Europeanization" of lobbying activities just reviewed inspires a response to questions posed in this paper concerning institutional inertia as observed on example of European banking union. First of all, observation can be made that at time of proceeding with the banking union there were circumstances making specific lobbying activities intensify. It can be suggested that lobbying major European institutions, the EBC in particular, done on behalf of transnational banks was extremely intensive. Lets indicate now the circumstances which support such opinion. To set off, this is the time when international banking is in crisis. Transnational banks in distress are likely more than ever to approach directly or with help of lobbyists the institutions with responsibility for stabilizing the European single market. Secondly, in result of banking-union major accomplishment one of those institutions, namely the EBC, was endowed with new competence. Since supervisory authority was shifted there the major pan-European banks are especially motivated to intensify lobbying on the EU-level. Thirdly, low transparency

of rules governing lobbying activities seem to be another pro-active factor. Namely, such environment can be perceived as the one promising additional opportunities of gaining rents and/or winning protection and can make actors, banks included, to undertake game with supervisors, foremost with the EBC.

Thus, after having shifted the focus onto organized interests active on the EU level we can see the circumstances which must have had stimulated lobbying activities of banks seated in euro area with regard to major European institutions at the very time when the banking union was debated and introduced. This finding adds to the observation quoted at the opening of the paper which meant that this political project has failed to reduce risks that had induced the global banking crisis. To put Sławiński's observation in other words, the case of the banking union revealed an institutional inertia. Putting both observations together make lobbying activities of powerful banks on the EU-level a probable institutional reason of the inertia of the banking-union project. In result, the major question how to make pan-European banks shrink remains unresolved which means that they can continue to make profits in the institutional environment that has allowed them to grow. On the other hand, the major change that is shifting supervision over the biggest European banks and their subsidiaries to the EBC possibly leaves space and opens new opportunities for rent-seeking activities for reasons enumerated above.

The case of banking union exemplifies rather low EU determination in responding to recent crisis which is banking crisis at its roots. Having put together all considerations listed above it can be supposed that institutional inertia in the EU response to the crisis can be explained by intensity and power of interest representation as confronted with a rather soft stance of major European institutions involved in decision-making process. Proceedings concerning the banking union seem to be an inspiring example in this respect.

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