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Lobbying – a risk or an opportunity?

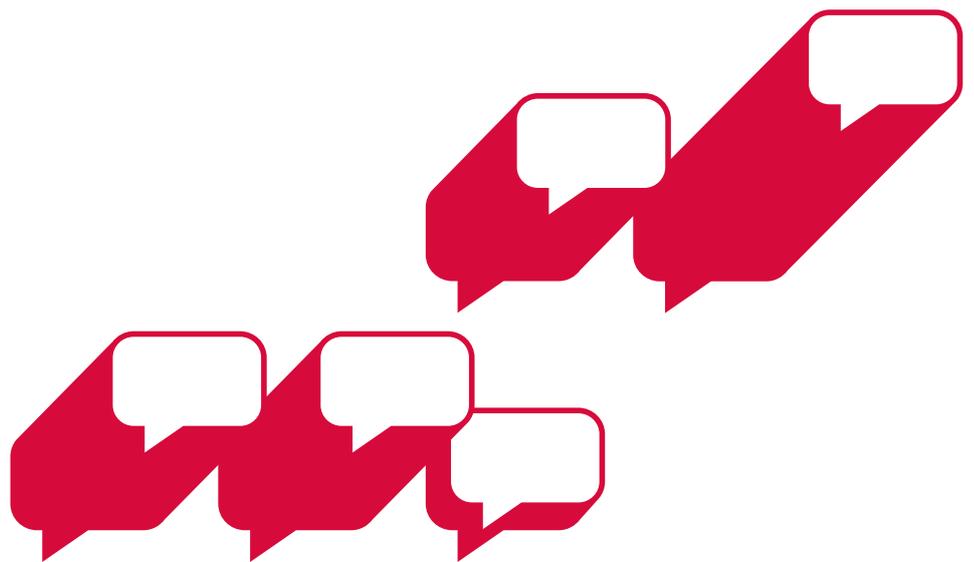
Lobbying regulation
in the Polish, Slovak,
and Czech perspective

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Introduction

“Lobbying is a legitimate and valuable activity. It is a crucial part of a healthy democracy. The words ‘lobbying’ and ‘lobbyist’ can have negative connotations, implying deals done behind closed doors. The reality is that the more voices that inform the Government and the Parliament’s thinking [...], the more informed we are to legislate, to develop new policy and to scrutinise. For this reason, and on the basis that the Parliament is founded on principles of openness and accessibility, lobbying should be actively encouraged.”¹

Lobbying as such—i.e. seeking and exercising influence over decision-making and how policies are created and implemented—is, of course, not intrinsically negative. In fact, it is often referred to as an important and integral part of well-functioning democracies—an activity that may provide much-needed diversity of perspectives and expertise, and thus contribute to better policy-making and higher-quality legislation. In theory, at least. In practice, lobbying requires time, connections, and money, which means that those with more time, more connections, and more money will inevitably be the ones whose voice is more likely to be heard.

The main question therefore becomes: How can we make sure that a variety of voices is heard, including the voices of those with fewer resources at their disposal? Or rather: **How can we make sure that we as citizens know, at minimum, which voices have been heard and listened to in the decision-making process?**

The present publication contributes to the ongoing discussion on how best to tackle undue influence in decision- and policy-making. It focuses on the situation in three post-communist countries—Poland, Slovakia, and the Czech Republic—in which lobbying is more often than not associated with corruption and the abuse of power, rather than with healthy democracy. It is published at a time when Poland is experiencing political turmoil that many call a crisis of Polish democracy, and when the citizens’ trust in government and public institutions across Europe is at a low point. According to Transparency International’s latest Global Corruption Barometer (2013), 54% of people think that their government is seriously influenced—or entirely captured—by a few self-interested groups, rather than being run for the benefit of the public.

The text presents and compares the current lobbying regulation and practice within the three countries, identifying their weak spots and proposing recommendations based on OECD standards and principles, as well as international good practice². Out of the three countries, only Poland has an effective lobbying act³; for the Czech Republic and Slovakia, the proposed draft lobbying acts are used for comparison. EU lobbying regulation and the EU’s Transparency Register⁴, which, despite its deficiencies, should be treated as lobbying regulation *sui generis*, are used as a benchmark against which to assess the three nations’ lobbying legislation.

The text is structured as follows: In Chapter 1, possible definitions of lobbying and their implications for lobbying regulation are introduced, along with the arguments as to why the regulation and transparency of lobbying deserve not only academic but also practical—and political—attention. Some background on the public perception of lobbying, the current lobbying legislation, and past attempts at its regulation in Poland, Slovakia, and the Czech Republic is

¹ The Scottish Parliament, Standards, Procedures and Public Appointments Committee. *1st Report, 2015 (Session 4), Proposal for a register of lobbying activity*, p. 5.

² One of the best examples is the Canadian Lobbying Act, R.S.C., 1985, c. 44 (4th Supp.), accompanied by the Registry of Lobbyists. Canadian lobbying regulation is often recognized by experts as one of the best and most comprehensive regulations of its kind in the world and it is thus often used as a reference point, even in official governmental documents as in Poland.

³ *Ustawa z dnia 7 lipca 2005 r. o działalności lobbingsowej w procesie stanowienia prawa*, Dz. U. 2005 nr 169, poz. 1414 [Lobbying in the Law Making Process Act, July 7, 2005, Dz. U. 2005, vol. 169, item 1414], as amended.

⁴ The EU Transparency Register is based on *The Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation* (OJ L 277, 19.9.2014); hereinafter referred to as IIA 2014.

provided in Chapter 2. Chapter 3 constitutes the bulk of the text. It compares the regulations in the three countries and in the EU, and explores the key questions that any effective lobbying regulation must address:

- the definition of lobbying
- the definition of lobbyists
- the register of lobbyists
- the privileges and obligations for lobbyists and lobbied authorities
- anti-revolving-door regulation
- legislative-footprint regulation
- sanctions

Chapter 4 concludes the text with a list of recommendations. Although these are general suggestions for any lobbying regulation, they can, we assert, successfully be applied in all three countries in question—that is, both when introducing lobbying regulation in the Czech Republic and Slovakia, and when reforming the current legislation and practice in Poland.

CHAPTER 1

What Is Lobbying? Why Does Lobbying Regulation Matter?

The definition of lobbying that has been present in the public debate in many countries for decades, or even centuries⁵, is problematic. The word “lobbying” itself may be derived from “the practice of frequenting the lobby of a house of legislature to influence its members into supporting a cause”⁶ and explained for instance as “conducting activities aimed at influencing public officials and especially members of a legislative body on legislation” or “attempting to influence or sway (as a public official) toward a desired action”⁷.

While the linguistic definitions of lobbying seem to be similar in different languages, the legal definitions can be very different.

In **Poland**, lobbying⁸ is legally defined as “any legal action designed to influence public authorities in the lawmaking process”⁹, and professional lobbying—which is the only regulated form of lobbying in Poland—as “paid activities carried out for or on behalf of a third party with a view to ensuring that their interests are reflected in the law-making process”.

In the 2009 draft of the **Czech** lobbying act and in the last two **Slovak** draft bills from 2013 and 2014, lobbying is defined as any “lobbying contact” or any facilitation of such contact; where “lobbying contact” is described as any communication that aims to influence decisions made by public office-holders—including the processes that precede decision-making (i.e. preparing, presenting, negotiating, passing, and amending decisions).

In the **EU**, on the other hand, lobbying¹⁰ is understood as “all activities¹¹, [...], carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of where they are undertaken and of the channel or medium of communication used, for example via outsourcing, media, contracts with professional intermediaries, think tanks, platforms, forums, campaigns and grassroots initiatives¹².”

The above examples show that lobbying regulation is addressed differently in different legal systems—from the broad definitions constructed in the EU to the narrower ones such as the professional-lobbying definition in Poland.

⁵ Jasmontaite, Lina. *The Current Lobbying Regulation in the European Union and Its Future Development*. Tilburg: Tilburg University, n.d.; Wiszowaty, Marcin Michał. *Regulacja prawna lobbingu na świecie*. Warszawa: Wydawnictwo Sejmowe, 2008, pp. 55–73.

⁶ “lobby, n., and v.” *The Oxford English Dictionary*. 2nd ed. revised 2006. Oxford University Press. E-book.

⁷ “lobby, v.” *Merriam-Webster’s Dictionary of Law*. 2011. Merriam-Webster. E-book.

⁸ Please note that the Polish *Act on Lobbying Activity in the Lawmaking Process* uses the term “lobbying activity” rather than “lobbying”.

⁹ See Art. 2 *Ustawa z dnia 7 lipca 2005 r. o działalności lobbingowej w procesie stanowienia prawa* [the Act on Lobbying Activities in the Lawmaking Process], Dz. U.2005, vol. 169 item 1414, as amended; hereinafter referred to as the Polish Lobbying Act.

¹⁰ Please note that IIA 2014 does not include a direct definition of lobbying, but rather defines which activities are covered by the Transparency Register.

¹¹ With the exception of some legal and other professional advice, activities of social partners as participants in the social dialogue, and activities in response to direct and individual requests from EU institutions or Members of the European Parliament (see IIA 2014).

¹² Paragraph 7, IIA 2014.

In general, however, it is important to construct the definition of lobbying as broadly as possible, in order to eliminate possible loopholes¹³ and to guarantee citizens' ability to oversee lobbying—primarily by exercising their right to information. The importance of this has recently been confirmed by the situation in the United Kingdom, where the newly introduced register of lobbyists has excessively limited lobbyists' obligation to register¹⁴, making the lobbying law completely ineffective.

Therefore, we believe that a proper legal definition of lobbying should at minimum cover any direct or indirect “communication, oral or written, with a public official to influence legislation, policy or administrative decisions”¹⁵, irrespective of remuneration received or whether the lobbyist is acting on behalf of themselves or of third parties. As stated above, we see lobbying as an important institution of democracy, which is by no means inseparably linked with corruption¹⁶. On the contrary, preventing corruption should in fact be one of the functions of lobbying¹⁷. Any illegal activities should therefore of course be ruled out from its definition and fought against via e.g. criminal law.

A key part of any successful legal definition of lobbying is the description of exclusions, i.e. of activities that cannot be termed lobbying, is thus a key part of any successful legal definition of lobbying¹⁸. It should be clear and immune to broad interpretation¹⁹. Examples of such exclusions include, for example, any communication that is already on the public record (e.g. public hearings and consultations), citizens' exercising of their constitutional rights²⁰ (e.g. the right to petition or the right to be a party in a court or administrative case), and communication between local and national governments or different governmental agencies (e.g. ministries, central offices)—which, however, should still be transparent and available to the public on the basis of general laws (primarily a nation's Freedom of Information Act).

¹³ One example of such a loophole in Poland is the possibility for potential professional lobbyists and their clients to create associations, foundations, or other similar NGOs that are not obliged to register as professional lobbyists unless they are acting on behalf of third parties, and then perform lobbying activities within such bodies in order to circumvent the Polish Lobbying Act.

¹⁴ According to Art. 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (2014), only lobbyists who are VAT-registered and “are going to make communications personally to a UK government minister, Permanent Secretary or equivalent, relating to the functions, policy or legislation of the British government on behalf of a paying client, or have received payment to do so at a later date” are obliged to register (see also the website of the Office of the Registrar of Consultant Lobbyists: <https://www.gov.uk/guidance/joining-the-register-of-consultant-lobbyists>). As a result, it is believed that the register only covers about 10 percent of the persons lobbying in the UK (see Dinan, Will. *UK: new register fails all key disclosure tests*, <http://alter-eu.org/lobby-transparency-across-the-eu>).

¹⁵ *Lobbyists, government and public trust: Promoting integrity by self-regulation*. OECD, 2009, p. 18. See also European Commission. *Green Paper of the European Transparency Initiative*, COM (2006) 194 final, http://ec.europa.eu/transparency/eti/docs/gp_en.pdf. A similar definition was proposed by Transparency International, which describes lobbying as “any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making, and carried out by or on behalf of a client or any organised group”. See *EU Legislative Footprint. What's the real influence of lobbying?* Transparency International, 2015, p. 5.

¹⁶ In many countries, including Poland, the Czech Republic, and Slovakia, lobbying has negative connotations and is improperly identified in the public mind as a form of corruption. See e.g. Kuczma, Paweł. *Funkcje lobbingu*, Państwo i Prawo, 2012/8, p. 61; Gołębiowski, Piotr. *Lobbing to nic złego. Rozmowa z Arkadiuszem Protasem*, Marketing Polityczny, 2006, <http://www.marketingpolityczny.org/lobbing-to-nic-zlego-arkadiusz-protas-w-rozmowie-z-mp/>; Benio, Marek, Kwiatkowski, Bartosz. *O lobbingu, jego złej prasie i nieocenionych pożytkach dla dobrego rządzenia*, Zarządzanie Publiczne, 2014/2, pp. 106–110; Špok, Radomir, Weiss, Tomáš, and Kříž, Jan. *Regulation of Lobbying in the Czech Republic. History, Debate and Perspective*, EUROPEUM Institute for European Policy, Prague, October 2011, p. 1.

¹⁷ The functions of lobbying include: mediation between an interest group and the state authorities; informing; law-making; professionalization of law-making work; balancing of influences; prevention of corruption; serving as an alternative representative. A broader discussion of lobbying's functions is found in Kuczma, Paweł. *Funkcje lobbingu*, Państwo i Prawo, 2012/8, pp. 61–75.

¹⁸ Such activities may be called “pathological lobbying” as, for example, in Sweden; they must be clearly distinguished from the positive phenomenon of “healthy” lobbying. See Parnes, J. *Lobbing patologiczny*, http://wiadomosci.polska.pl/specdlapolski/article,Lobbing_patologiczny,id,396511.htm.

For more details on the distinction between lobbying and corruption, see also Supernat: “Lobbing w procesach decyzyjnych organów władzy publicznej w świetle standardów międzynarodowych,” in: *Jakość administracji publicznej. Międzynarodowa konferencja naukowa*; Cedzyna k. Kielc, 24–26 September 2004, ed. Łukasiewicz, Rzeszów 2004, p. 432; Kuczma, Paweł. *Zjawisko lobbingu w polskim porządku prawnym*, “Rejent” no. 5/2008, pp. 65–66; Protas, jw.; Paclawski. *Nowy zawód dla prawnika. Lobbyista. Zawód i powołanie*, “Edukacja Prawnicza” no. 9/2003, pp. 2–3.

¹⁹ *Lobbyists, government and public trust: Promoting integrity by self-regulation*. OECD, 2009.

²⁰ See *Standards, Procedures and Public Appointments Committee. 1st Report, 2015 (Session 4). Proposal for a register of lobbying activity*, The Scottish Parliament, 2015, recommendation 6, pp. 1–2.

Why Is Lobbying Regulation and Transparency Important?

“Lobbying is a global multi-billion dollar business that employs a considerable number of individuals.”²¹

In countries with no (effective) lobbying regulation—including the Czech Republic and Slovakia—it is impossible to assess the scale of lobbying, and therefore the influence it may have on policy- and decision-making. However, data from the countries where lobbying regulation does exist suggests that lobbying is indeed influential not only in theory, but also in practice.

There are more than 9,500 lobbyists voluntarily registered in the EU Transparency Register²²—including more than 140 from Poland²³, 70 from the Czech Republic, and 30 from Slovakia²⁴. To compare, the Canadian federal lobbyist register contains around 8,500 entries²⁵, while in the United States the number exceeds 11,000²⁶. In Poland, the number of registered professional lobbyists is only 367²⁷.

Table 1: Number of Registered Lobbyists in Selected Countries²⁸

| Poland | EU | Canada | USA |
|--------|-------|--------|--------|
| 367 | 9,515 | 8,425 | 11,504 |

Despite the official registered-lobbyist counts, it is important to realize that many unregistered entities are also active; it is estimated that as many as 15,000–30,000 people are performing lobbying activities in relation to EU institutions and officials²⁹.

However, lobbying is not only about the number of people engaged in it, but also—and perhaps primarily—about the money lobbyists use to sway authorities to their viewpoints. In the United States alone, federal lobbying spending was a record-breaking USD 3.5 billion in 2010; in 2014, it was USD 3.24 billion.³⁰ It is impossible to show similar figures for Poland and, for example, Canada, as lobbying regulations in these countries do not require the registration of lobbying expenses. It is equally impossible to give exact figures for the EU, as the voluntary EU Transparency Register contains many errors in this area, which remain uncorrected both by the registered entities themselves, and by the European

²¹ *Transparency and integrity in lobbying*. OECD, 2013, p. 1.

²² See the EU’s Transparency Register website: <http://ec.europa.eu/transparencyregister/public/homePage.do>.

²³ Interestingly, less than 10% of the Polish lobbyists registered in the EC’s Transparency Register are also registered as professional lobbyists in Poland.

²⁴ These numbers, however, might be underestimated, because many “national” lobbyists register their headquarters in Belgium, leading to overrepresentation of Belgium-based lobbyists (almost 2000) and underrepresentation of other countries.

²⁵ Including consultant lobbyists and in-house lobbyists. See *Annual report 14/15*, Office of the Commissioner of Lobbying of Canada, 2015, p. 4.

²⁶ See the lobbying database at <http://www.opensecrets.org/lobby/> prepared by the Center for Responsive Politics, using data from the Senate Office of Public Records.

²⁷ See *Rejestr Podmiotów Wykonujących Zawodową Działalność Lobbyingową* [The Register of Entities Performing Professional Lobbying Activities] published on March 29th, 2016: <http://bip.mswia.gov.pl/download/4/26753/rejestrlobbyingowy.pdf>. The disproportion of the number of registered professional lobbyists and the probable scale of lobbying performed outside the regulated area was the subject of concern expressed by GRECO in their *Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation report. Poland*, 2012, pp. 12–14.

²⁸ As the number of lobbyists in every register changes very often, the given data is approximate.

²⁹ See *Lobby Planet. Brussels – the EU quarter*, Corporate Europe Observatory, 2011, p. 7.

³⁰ See *Transparency and integrity in lobbying*. OECD, 2013, p. 1 and the lobbying database at <http://www.opensecrets.org/lobby/>.

Commission (which supervises the Register)³¹. The second problem with estimating exact lobbying expenses in the EU results from the fact that the Transparency Register allows registered entities to state only intervals of spent money, instead of exact sums (e.g. less than € 10,000; between € 10,000 and € 24,999; between € 25,000 and € 49,999; etc.). Taking into account the above-mentioned caveats concerning the Transparency Register, it might be estimated that lobbyists' expenses in the European Union are at least in the hundreds of million of euros.

Table 2: Declared Lobbying Expenditures in the EU by Lobbyists Based in CZK, POL, SVK

| Czech Republic | Poland | Slovakia |
|-----------------------------|-----------------------------|-------------------------|
| ~ € 2,500,000 – € 3,700,000 | ~ € 7,400,000 – € 9,000,000 | ~ € 120,000 – € 180,000 |

Because of the scale of lobbying, it is desirable that the general public—as well as public office holders themselves—be able to access information on who is engaged in lobbying, about what topics, for how much, with whom, and on whose behalf.³² In addition to the various advantages, however, there are also several disadvantages and risks to any lobbying regulation. These include *inter alia*³³:

1. advantages:

- a) strengthened public control over the legislative process;
- b) more transparent politics;
- c) a higher-quality legislative process;
- d) stronger trust in politicians, NGOs, entrepreneurs, and in democracy overall;
- e) the reduction of corruption and clientelism;

2. disadvantages—or risks/difficulties in adopting effective regulation:

- a) the difficulty of defining lobbying and lobbyists in a clear, robust, unambiguous way;
- b) the risk of onerous obligations imposed on lobbyists and lobbied entities;
- c) the risk of privileging lobbyists in their rights compared to regular citizens;
- d) the risk of ineffective sanctions that cannot prevent activity by unregistered lobbyists.

The main aim of good lobbying regulation is thus to ensure that lobbying is subject to oversight, regimentation, registration, reporting, and information requirements³⁴. In the next chapter, the public perception of lobbying and the current state of lobbying regulation and practice in Poland Slovakia, and the Czech Republic are discussed in more detail.

³¹ At least until July 2015, two Polish registered entities provided information about their entire annual budgets instead of entering their lobbying costs in the Register (in the field “Estimate of the annual costs related to activities covered by the register”: Instytut Metali Niezależnych declared € 26,900,000 spent on lobbying, and Telewizja Polska S.A. entered the enormous amount of € 337,300,000, which was then the highest declared amount; both of them later corrected their entries. The same problem applies for other countries. For example in Slovakia, at least until July 2015, the state company Letove prevadzkové služby Slovenskej republiky declared € 64,452,124 spent on lobbying. See also e.g. *List of biggest NGO spenders on EU lobbying reveals register's absurd data*, <http://lobbyfacts.eu/news/12-11-2015/list-biggest-ngo-spenders-eu-lobbying-reveals-register%E2%80%99s-absurd-data>.

³² See, for example, the Preamble to the Canadian Lobbying Act.

³³ See for example Špok, Radomír, Weiss, Tomáš and Kříž, Jan. *Regulation of Lobbying in the Czech Republic. History, Debate and Perspective*. Prague: EUROPEUM Institute for European Policy, 2011, p. 7.

³⁴ Wiszowaty, Marcin Michał. “Lobbying Act and the Law-making Process.” In: *The Sejm Review, Fourth special edition*, 2010, p. 157.

CHAPTER 2

Background on Lobbying Regulation and Public Opinion on Lobbying in Poland, Slovakia, and the Czech Republic

Poland

In Poland, the idea of lobbying regulation—due to the nation’s history and the long dominance of the socialist model—is as new as lobbying itself, having appeared only in the 1990s.³⁵ The first major public discussion of regulating lobbying began in 2000, prompted by the World Bank’s *Corruption in Poland* report³⁶ and two lobbying scandals³⁷. It was followed by the nation’s first draft for a lobbying act—which was, however, not adopted.³⁸

By 2005, four more lobbying regulation drafts had been presented³⁹. Each of them was constructed in a different manner, proposed a variety of possible solutions, and had varying aims—from a merely informative function to a very strong monitoring function. The most interesting of them, directed at monitoring the lobbying phenomenon, was presented by the Ministry of Internal Affairs in 2002 and was based on the American model (and in fact Canadian too) for lobbying regulation. It included a broad definition of lobbying, a registration obligation for lobbyists, and a duty to submit regular reports containing information about the mandatary and the amount of remuneration received. It also contained legislative-footprint regulation (information about lobbyist proposals accepted during

³⁵ See Wiszowaty, Marcin Michał. “Lobbying Act and the Law-making Process.” In: *The Sejm Review, Fourth special edition*, 2010, pp. 154–155. For more details on the history of Polish lobbying regulation, see also Wiszowaty, Marcin Michał: *Działalność lobbingsowa w procesie stanowienia prawa. Ustawa z dnia 7 lipca 2005 r. z komentarzem*. Warszawa: Wydawnictwo Sejmowe, 2010, pp. 7–89.

³⁶ Sutch, Helen, Wojciechowicz, Jacek, Dybula, Michał. *Corruption in Poland: review of priority areas and proposals for action*, Washington, DC: World Bank, 1999.

³⁷ The first of these was in connection with the Law on Casinos from 1992, which was described in the World Bank’s report along with the exact sum of money spent by lobbyists to block amendments to the law: “In 1992 the price of blocking amendments to the Law on Casinos was reported as \$500,000; more recently, it was the equivalent of approximately \$3 million [interview with parliamentarian]” (Sutch, Helen, Wojciechowicz, Jacek, Dybula, Michał. *Corruption in Poland: review of priority areas and proposals for action*, Washington, DC: World Bank, 1999, p. 7.). In the second scandal, the “gelatine affair,” lobbying activities carried out by a gelatine manufacturer were described by the media as “grabbing,” due to his grabbing, i.e. cornering, the market thanks to his connections with politicians in successive governments (see Wiszowaty, Marcin Michał. *Działalność lobbingsowa w procesie stanowienia prawa. Ustawa z dnia 7 lipca 2005 r. z komentarzem*. Warszawa: Wydawnictwo Sejmowe, 2010, pp. 8–10; Kurski, Jarosław. “Król żelatyny,” *Gazeta Wyborcza*, 8 May 2009).

³⁸ The draft was entitled the *Transparency of Decision-making Procedures and Interest groups and Public Access to Public Information Act* and was sent to the Sejm (the lower chamber of the Polish Parliament) on July 25th, 2000 as print number 2153 by MPs from the Freedom Union party. Lobbying activity was defined within it as “every action that is aimed at—according to the law—influencing the authorities and public administration, targeted at convincing to a certain aim—one’s own or one expressed by a group of interests”.

³⁹ The first of them was prepared by the Ministry of Internal Affairs in 2002, the second was written by MPs of the Polish Peasants’ Party as an amendment to the Sejm’s statute, the third was crafted in 2003 by professor Andrzej Rzepliński from the Helsinki Foundation for Human Rights as a result of a conference held by the Institute of Public Affairs, and the fourth—which was, after a complete reworking, finally adopted in 2005—was presented in October 2003. See Wiszowaty, Marcin Michał. *Działalność...*, 2010, pp. 29, 31, 44.

the legislative process) and financial sanctions to be imposed when a lobbyist acts without registration, does not send a report in time, or provides untrue information⁴⁰.

During the legislative process in 2003, it was repeatedly stated that the Polish lobbying act would be one of the first in the world and the first in Europe—which, as it happened, was far from the truth⁴¹. The act that was finally adopted in 2005 was even praised as “a point of reference and comparison” for countries without lobbying regulation. But in reality, after the law’s protracted legislative process, during which both individual parts of the bill and the whole framework for regulating lobbying were completely transformed, the final version of the regulation adopted had nothing in common with any model that deserves to be referenced anywhere. To mention just a few problems with the final result of the act’s legislative process: it covered a menagerie of topics not directly connected with lobbying (public hearings and the program for executive legislative work), lacked any obligations on lobbyists besides the obligation to register, and contained blurred definitions of who should register, what a lobbying activity is (the act includes neither a list of acceptable lobbying activities, nor a list of exemptions), who may be lobbied (which led to a still-ongoing dispute concerning which authorities are covered by the act and which—if any—are not), etc. Because of these shortcomings, the act has seen never-ending criticism ever since it first came into force.⁴²

The various changes made to the act since its adoption have not eliminated the issues described by its critics⁴³. Although there have been two major legislative initiatives to introduce a new lobbying act, no new act has been adopted. The first initiative was prepared by the Government Plenipotentiary for Elaborating the Prevention of Irregularities in the Public Institutions Program⁴⁴ and was entitled *Proposals of Assumptions for the Lobbying Act*⁴⁵. This document had two versions⁴⁶, which were both strongly criticized, even by other members of the cabinet and ministries⁴⁷. The participants at the public consultations expressed the strongest doubts concerning the fact that the act also covered the right to petition, imposing many obligations on lobbied bodies (including an obligation to publish information on every meeting with a lobbyist), that it gave preference to professional lobbyists over non-professional ones (which was eventually changed in the second version of the Assumptions), that it used overly broad definitions making it difficult to understand its basic concepts, the principle of a written form (which might have led to limitations on citizens’ free access to authorities), and the transfer of supervision over lobbying activities and the professional lobbyists’ register from the Ministry of Administration to the Central Anti-Corruption Bureau, which was seen by many of the participants and professional lobbyists as a stigmatization of lobbying activities⁴⁸, and was therefore heavily criticized⁴⁹. Despite these controversial issues, the Assumptions included one large positive: anti-revolving-door regulation that contained a ban on performing lobbying activities by former top officials (including for example cabinet members, the Ombudsman, and the President of the National Polish Bank; and excluding MPs), applicable for three years after the end of the term of office. (The Assumptions also outlined a ban in the opposite direction, i.e. former professional lobbyists, if becoming high officials, could not make any decisions in cases in which they had been active as lobbyists.) Furthermore, modelled on the Canadian example,

⁴⁰ Wiszowaty, Marcin Michał. *Działalność lobbingsowa w procesie stanowienia prawa. Ustawa z dnia 7 lipca 2005 r. z komentarzem*. Warszawa: Wydawnictwo Sejmowe, 2010, p. 29.

⁴¹ At that point, a lobbying act had been adopted not only by the US and Canada, but also e.g. by Latvia, Georgia, the Philippines, and Peru (Wiszowaty, Marcin Michał. *Działalność...*, 2010, p. 51).

⁴² See for example Makowski, Grzegorz, Zbieranek, Jarosław. *Lobbying w Polsce – żywy problem, martwe prawo*, Analizy i Opinie nr 79, Instytut Spraw Publicznych, December 2007.

⁴³ Although four amendments were introduced between 2009 and 2015, they were not directly connected with lobbying issues, nor did they change the most important regulations. The fourth amendment will come into force on May 19th, 2016.

⁴⁴ Pełnomocnik Rządu do Spraw Opracowania Programu Zapobiegania Nieprawidłowościom w Instytucjach Publicznych

⁴⁵ Its name implies its nature: it was not a final draft of the new act, but merely elaborated assumptions that could have been used to prepare such a draft.

⁴⁶ The first version was prepared in May of 2010, and—after processing of the criticism it received during public consultation—the second version was presented in March of 2011. See *Projekt założeń projektu ustawy o lobbingu [Proposals of Assumptions of the Lobbying Act]*, p. 40: <http://legislacja.rcl.gov.pl/docs//1/4600/4601/4602/dokument1362.pdf>.

⁴⁷ Opinions sent during the public consultations are available on the Governmental Legislation Center website: <http://legislacja.rcl.gov.pl/projekt/4600/katalog/4601#4601>.

⁴⁸ During the interview conducted on April 23rd, 2015 by the author of this analysis, MEP Julia Pitera—the former Government Plenipotentiary for the Elaborating of Prevention of Irregularities in Public Institutions Program—stated that transferring supervision of the lobbyist register to the Central Anti-corruption Bureau (CAB) had in reality nothing to do with stigmatization of lobbying; rather, its main aim was to accelerate any eventual anti-corruption proceedings, by eliminating the time needed for cooperation between the CAB and the Ministry of Administration.

⁴⁹ See Kuczma, Paweł (ed.). *Ustawa o działalności lobbingsowej w procesie stanowienia prawa. Komentarz*, Toruń: TNOiK, 2013, p. 140.

the Assumptions suggested adding the following information to the professional lobbyists' register: the scope of lobbying activity, information on offices held that are covered by the anti-revolving-door regulation, and information on public funds received by a professional lobbyist. Despite the fact that the Assumptions still have "open" status in the Governmental Legislation Center—which means they are theoretically still being processed—nothing has been done regarding this matter since December 29th, 2011⁵⁰; none of the proposals in the Assumptions have been adopted by the Sejm.

The second legislative initiative, entitled *Draft Act on Transparency and Lobbying in the Lawmaking Process*, was presented to the Sejm's Speaker by the group of MPs on May 18th, 2012⁵¹ and then—after a critical opinion presented by the Sejm's Bureau of Research—withdrawn from the legislative process on February 6th, 2013. Despite the fact that the draft had the same weaknesses as the act adopted in 2005 (especially those connected with mixing lobbying regulation, public hearings, and authorities' programs), it contained several important ideas that are worth mentioning: full transparency for legislative processes (including processes initiated in the Parliament), including the online publication of relevant data and documents (art. 6–8), legislative-footprint regulation (art. 9), opening up parliamentary sub-committees to lobbyists (art. 12), and the creation of a register of contacts between MPs and lobbyists (art. 26). The last of these ideas, i.e. on the register of contacts, preceded the GRECO's Fourth Evaluation Round report in which they recommend that "interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process, be made more transparent, including with regard to parliamentary sub-committee meetings⁵²." However, none of these ideas have been legislatively implemented to this day. Consequently, the Polish lobbying regulation is criticized both by domestic experts and internationally—in 2015, it received only 29 points out of 100 in the assessment of lobbying regulation systems in Europe prepared by Transparency International.

Polish public discussion of lobbying and its regulation has been largely dominated by the view that lobbying is a form of corruption—or even equivalent to it⁵³. On the other hand, during parliamentary work on the first lobbying-act draft in 2000, opinions such as this one were voiced: "lobbying is the realization of the natural right of citizens to submit their opinion, to inform the legislative authority—or the authority that makes any decisions—about their opinion on a specific topic⁵⁴." Similarly in 2011, before presenting the above-mentioned new lobbying act draft of 2012, a few MPs stated during a press conference that "lobbying is something positive" and that "in democratic systems where lobbying is regulated, it is nothing bad⁵⁵." Despite this, public opinion in Poland still strongly links lobbying with corruption. The word "lobbying" in expressions such as "unfair lobbying" is used to denote corruption or a conflict of interest—not only by the media, but even in the Governmental Anti-corruption Program for 2014–2019⁵⁶ and in public opinion surveys⁵⁷. In 2013, 57% of surveyed citizens answered—after being informed that lobbying is legal and regulated in Poland—that it is a negative phenomenon that encourages corruption and abuse. Meanwhile 47% said that lobbyists have a strong impact on the nation's legislative process⁵⁸. In a survey published in 2016, this opinion was upheld—56% of surveyed citizens stated that lobbying is an illegal method for influencing politicians,

⁵⁰ See the website of the Governmental Legislation Center: <http://legislacja.rcl.gov.pl/projekt/4600/katalog/6108#6108>.

⁵¹ The draft can be accessed at the Sejm's website: [http://orka.sejm.gov.pl/Druki7ka.nsf/Projekty/7-020-233-2012/\\$file/7-020-233-2012.pdf](http://orka.sejm.gov.pl/Druki7ka.nsf/Projekty/7-020-233-2012/$file/7-020-233-2012.pdf).

⁵² See *Corruption prevention in respect of members of parliament, judges and prosecutors*. Evaluation report. Poland, Fourth evaluation round, GRECO, 2012, pp. 13–14.

⁵³ See for example Makowski, Grzegorz, Zbieranek, Jarosław. *Lobbying w Polsce – żywy problem, martwe prawo*, Analizy i Opinie nr 79, Instytut Spraw h, December 2007, p. 2.

⁵⁴ However, in this statement, made by an MP presenting the draft during the Sejm's session on September 13th, 2000, the mixing of the two notions—lobbying and the right to petition—is visible. See Wiszowaty, Marcin Michał. *Działalność...*, 2010, p. 21.

⁵⁵ See *PiS chce ustawy lobbingowej*, 14th April 2011, <http://wiadomosci.onet.pl/kraj/pis-chce-ustawy-lobbingowej/p9jfm>.

⁵⁶ See *Uchwała nr 37 Rady Ministrów z dnia 1 kwietnia 2014 r. w sprawie Rządowego Programu Przeciwdziałania Korupcji na lata 2014–2019*, M.P. 2014 poz. 299, p. 17.

⁵⁷ See *Opinia publiczna o korupcji i lobbingu w Polsce. Komunikat z badań*, BS/63/2010, Centrum Badań Opinii Publicznej, Warszawa, 2010, pp. 4, 10.

⁵⁸ Interestingly, 54% had never heard of lobbying, and 65% did not know that any lobbying regulation exists in Poland. See *Konflikty interesów i lobbing – dylematy polityków. Komunikat z badań*, BS/122/2013, Centrum Badań Opinii Publicznej, Warszawa, 2013, pp. 4–5. A completely different point of view is presented in a survey performed in 2013 among the 600 Members of the European Parliament (MEPs) and EU officials, wherein 89% of them stated that "ethical and transparent lobbying helps policy development"; see Burson-Marsteller. *A Guide to Effective Lobbying in Europe – The View of Policy Makers*, 2013, p. 6.

using e.g. corruption⁵⁹. A negative attitude towards lobbying was also visible during the parliamentary elections in 2015⁶⁰, and there is no indication that this may change in the near future.

Slovakia

The beginnings of the public discussion on lobbying regulation in Slovakia are similar to those in Poland, and are even likewise connected with a specific anti-corruption campaign. Following the elections in late 1998, the new coalition government of the Slovak Republic recognized the harmful effects of corruption and placed anti-corruption efforts high on the official agenda. A key milestone was reached in late 1999, when the first draft of the National Program for the Fight against Corruption was prepared. This action plan sets out 1,684 concrete tasks for all public administration bodies; it was updated and approved on May 24th, 2011. The paper was the basis for drafting the Strategic Plan for Fighting Corruption in the Slovak Republic⁶¹, which includes an unofficial definition of the term lobbying: “likewise, frequently connected with corruption is also the term ‘lobbying,’ which means the legal pursuit of the interests of a certain group within the decision-making process, wherein it is difficult to define the dividing line with corruption, since it depends on the circumstances of each particular case.”

Since 2000, Slovakia has made several attempts to establish rules on lobbying, but none of them have been successful: “Despite these previous attempts, lobbying is not regulated. There is no specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists.⁶²” Yet, one of the key recommendations from GRECO’s Fourth Evaluation Round connected with the prevention of corruption with respect to parliamentarians is that “the transparency of the legislative process be further improved by introducing appropriate standards and providing guidance to members of Parliament on dealing with lobbyists and those third parties whose intent is to sway public policy on behalf of partial interests⁶³.”

From 2000 to 2009, the cabinets of Prime Ministers Mikuláš Dzurinda and Robert Fico submitted a total of four legislative proposals addressing the issue of lobbying. Two of those proposals (in 2000 and 2005) even had the ambition of introducing a mandatory register of lobbyists, as well as an obligation for representatives of interest groups to regularly report on lobbyists’ activities. The other two proposals (in 2002 and 2009) had “only” the ambition of institutionalizing public access to the legislative process at all levels.

The first attempted lobbying legislation was drafted in 2000; it was submitted by the Christian Democratic Movement. According to the information available, this proposal defined three groups of lobbyists. The first would be professionals working for a client on request, registered in the Chancellery of the National Council of the Slovak Republic. The second were to be in-house lobbyists, who would be required to register in the Chancellery only if they had more than five meetings with one or more MPs within one month. The third group were “civic lobbyists”—private persons or members of non-profit organizations—who would be required to register if they met one or more MPs more than ten times in one month. All the categories were obliged to submit quarterly reports to the Chancellery of the National Council of the Slovak Republic, as well as to the parliamentary Committee on Incompatibility of Functions. The reports were to include a list of meetings with MPs and the budget spent on lobbying activities. Similarly, twice a year every MP would submit a report focused on meetings with registered lobbyists. The proposal, however, did not make it through the legislative process, due to a lack of political will.

The second attempt to regulate lobbying was made in 2002 by the special working group of the Action Plan for Fighting Corruption, which prepared a bill on public participation in the legislative process, which the media often

⁵⁹ See *Polacy o partycypacji w procesie stanowienia prawa i wpływie grup interesów na ten proces. Komunikat z badań*, 26/2016, Centrum Badania Opinii Publicznej, Warszawa, 2016, p. 16.

⁶⁰ See for example the political program prepared by the Prawo i Sprawiedliwość [Law and Justice] party, where lobbying is mentioned seven times, always with negative connotations: <http://pis.org.pl/document/archive/download/128>.

⁶¹ Strategic Plan on Fighting Corruption in the Slovak Republic, http://www.vlada.gov.sk/data/files/2340_8518.pdf.

⁶² See the EU Anti-corruption Report, Slovakia’s national chapter: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_slovakia_chapter_en.pdf.

⁶³ *Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report, Slovak Republic*. GRECO, 2014. [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4\(2013\)2_Slovakia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2013)2_Slovakia_EN.pdf).

referred to as the “act on minor lobbying⁶⁴.” The proposal was prepared shortly before elections and was therefore subject to the legislature’s discontinuation rule.

After these elections, there was a noticeable tendency towards stronger formal rules regulating lobbying. On March 15th of 2005, the Minister of Justice announced the initiation of public consultations on a draft lobbying act—the main aim of which was to regulate lobbying as a business activity in the Slovak Republic, thereby ensuring the transparency and accountability of public officials and firmly establishing the areas in which lobbying is and is not permissible. This draft included *inter alia* a definition of lobbying as any activity that concerns a lobbying contact or facilitation of a lobbying contact, and especially the organizing and coordination of contacts; a lobbyist as a person focused on lobbying activities on the basis of a license from the Trade Register; and the central register of lobbyists as a dataset of information about individual lobbyists kept by the Chancellery of the National Council of the Slovak Republic. Other articles contained both lobbyists’ obligations and the obligations and prohibitions that would apply to public officials who are exposed to lobbying. The draft also stipulated the sanctions for breaking the law, with penalties ranging from approx. € 166 to € 16,666.

The draft was presented to the public, submitted to an inter- and intra-ministerial consultation process that saw the participation of 24 entities from among both non-profits and businesses, and finally approved by the cabinet on June 15th, 2005. The draft then successfully passed the first reading in the National Council, but was dismissed during the second reading.

Other unsuccessful attempts to regulate lobbying were made in 2009, 2013, 2014,⁶⁵ and 2015⁶⁶. Despite these efforts, Slovakia has no laws regulating lobbying to this day. Experts note that the only current legislation at least partially regulating even a very specific group of lobbyists is Act No. 103/2007 Coll., on Tripartite Consultations at the National Level and on Amending and Supplementing Certain Acts (the Tripartite Act—the “three parties” standing behind the word “tripartite” are labor, business, and government). This act regulates *inter alia* tripartite consultations at the national level between the State, employers, and employees, all of whom, through their representatives, mutually bargain and negotiate on principal issues in the fields of economic, employment, and social-welfare development so as to reach agreement on these issues. The Act offers the employee-representative group, as well as to employers, privileged access to discussions on proposed legal measures. It therefore allows affiliated organizations to lobby, but does not introduce any obligations.

Meanwhile, Act No. 312/2001 Coll., on Civil Service and on amendments to certain other acts, previously partially regulated lobbying in its Art. 55, which included an obligation for civil servants assigned to civil-service employment posts of exceptional significance to keep a record of certain kinds of their meetings⁶⁷, to publish a list of meetings outside the Civil Service Office, and to inform the Service Office about any income or profit-bearing activity performed outside of civil service. In 2009, a new Civil Service Act was adopted that abolished this regulation.

Despite the complete absence of lobbying regulation, Slovakia scored 21 points out of 100 possible in the latest Transparency International report⁶⁸.

⁶⁴ “Recently, the public has been critical toward the preparation and final form of acts and other generally binding regulations approved in the Slovak Republic. One of the reasons may be the existence of legislation that allows only certain groups of subjects (the Tripartite and professional chambers) to intervene in the process for emergent legislation [while other groups are denied such an opportunity]. The draft of the act on public participation in the legislative process is designed to give the public and non-corporate interest groups an equal chance. This draft legislation would also make it possible to influence legislation while specific acts are being prepared and provide for a public-comment mechanism”; see *Správa o pripravovaných návrhoch zákonov, pripravovaných legislatívnych zámeroch zákonov a ďalších opatreniach zameraných na boj proti korupcii, ktorých prijatie vyplýva z Programového vyhlásenia vlády Slovenskej republiky*, http://hsr.rokovania.sk/data/att/49600_subor.rtf.

⁶⁵ The definitions for lobbying and lobbyists contained in the 2014 draft are used in the next chapter of this paper.

⁶⁶ This draft repeated proposals from the previous projects and was rejected after the first reading in September 2015.

⁶⁷ It included meetings: a) in the Service Office with persons who are not employees of the Service Office; b) outside the Service Office with persons who are participating in proceedings before the Service Office or whose interests otherwise directly influence the actions of a civil servant assigned to a civil-service employment post of exceptional significance; c) outside the Service Office with persons who are statutory bodies, employees, owners, or representatives of legal entities that are participants in proceedings before the Service Office or whose interests otherwise directly influence the actions of a civil servant assigned to a civil-service employment post of exceptional significance.

⁶⁸ *Lobbying in Europe. Hidden Influence, Privileged Access*. Transparency International, 2015, p. 27.

The Czech Republic

The history of attempts to regulate lobbying in the Czech Republic began once again similarly as in Poland—with a corruption scandal, “Kořistka,” which occurred in 2004⁶⁹. To this date, lobbying in the Czech Republic is still largely equated with corruption and bribery. As a result of the scandal, the first draft of a very “soft” lobbying regulation was prepared, in the form of The Parliamentarian’s Ethical Code. It would have provided a possibility for any MP to officially declare that he would only meet with lobbyists registered in Parliament. However, with the code being voluntary, the only sanction for an MP for breaching the Code would have been a public apology at a plenary session of the Chamber of Deputies. There were no obligations and sanctions imposed on lobbyists, but those who decided to register would have had guaranteed access to the premises of Parliament. The draft legislation was rejected by Parliament in November 2005 due to its ineffectiveness⁷⁰.

A second attempt to regulate lobbying was made in 2009 and was inspired by the Slovak draft from 2005. Here, lobbying was defined as any activity that concerns a lobbying contact and/or assistance to a lobbying contact, with “lobbying contact” meaning communication (including one-way) aiming to influence the decision-making process of public bodies and to achieve an effect on documents and laws⁷¹. A lobbyist, defined as any professional lobbying on behalf of a third party as a business activity, would have an obligation to register in a mandatory registry run by the Ministry of Interior, and to report once per quarter on their lobbying contacts during this period⁷². A similar obligation—to submit a quarterly report on lobbying meetings and to publish their diaries—would be imposed on persons lobbied. On the other hand, lobbyists would receive a few privileges, including the possibility of participating in meetings in the Parliament (e.g. committees) and having the same access to the Parliament’s premises as journalists. The draft contained also a catalogue of financial sanctions, which ranged from CZK 5,000 to CZK 100,000. After heavy criticism by the cabinet⁷³, the draft was rejected by Parliament during the first reading.

In 2010, a third chance to regulate lobbying arrived, as a new lobbying act draft was prepared, and it reflected the government remarks from 2009. The changes included expanding the enumeration of lobbied authorities (adding regional governors, members of regional councils, mayors, and secretaries of municipalities), modifying the definition of “lobbyist” to include the condition of at least three lobbying meetings per quarter, changing the competent authority for supervising MPs (from the Ministry of Interior to the Immunity and Mandate Committee of the respective chamber of Parliament), expanding lobbyists’ privileges, and changing the enumeration of sanctions (a financial sanction of up to CZK 1 million and a ban on conducting lobbying activities of up to 5 years). The draft again met with the cabinet’s criticism⁷⁴ but was nevertheless adopted by the lower chamber of the Parliament. In the end, however, the act was not adopted, due to a Senate veto and the discontinuation rule, which applied to the draft after the elections in June 2010⁷⁵.

After this third failure to regulate lobbying, a public debate on this issue was organized in 2011. The following points were discussed during this debate⁷⁶:

1. Mandatory regulation seems to be more effective than voluntary;

⁶⁹ For a timeline and a description of the case in media, see: <http://zpravy.idnes.cz/kauza-koristka-01b-/domaci.aspx?y=domaci/koristka.htm>.

⁷⁰ Špok, Radomír, Weiss, Tomáš and Kříž, Jan. *Regulation of Lobbying in the Czech Republic. History, Debate and Perspective*. Prague: EUROPEUM Institute for European Policy, 2011; Dvořáková, Daniela. “Lobbying in the European Union and the Czech Republic” In: *Acta Universitatis Agriculturae Et Silviculturae Mendelianae Brunensis*, Volume LXI, Number 7, 2013.

⁷¹ The draft included a list of exclusions, e.g. media and advisory groups exercising their right to petition or right of complaint.

⁷² These reports were to contain names of lobbied persons, date, and place, as well as the topic of communication and (once a year) overall revenues and expenditures related to lobbying activities (Špok et al., 2011, p. 2).

⁷³ The government’s arguments were as follows: 1) the breaching of the division between legislative and executive power, i.e. Members of Parliament cannot report to and be controlled by the Ministry of Interior; 2) the inconsistency of the persons to be regulated—e.g. the definition of lobbied persons does not correspond to the benefits of lobbyists (access to meetings of regions and municipalities); 3) the high administrative burden for both lobbyists and lobbied persons (Ibid, p. 3).

⁷⁴ This time the government stated *inter alia* that: 1) lobbying should be defined as an activity whose goal is to influence a decision-making process and fulfill a client’s interest; 2) there is a lack of monitoring mechanisms, a lack of a definition of which lobbying activities are allowed and which behavior is forbidden; 3) the draft does not distinguish between a lobbyist and a citizen who, under the Constitution, has the right to meet with and influence his deputy of Parliament or senator; 4) there is an inconsistency in lobbied persons on the regional and local levels” (Ibid, p. 4).

⁷⁵ Ibid.

⁷⁶ Ibid.

2. A clear definition of lobbying and lobbyists should be prepared (one of the proposals stated that a lobbyist is a “person communicating with a public power holder with the aim of influencing the elaboration, presentation, approval, change, or amendment of a law, bill, policy, program, public procurement, etc.,” and lobbying is “communication led by a lobbyist on behalf of his client or employer” or “communication between a lobbyist and a public power holder whose aim is to influence the decision of a public power holder”; the aim of such definitions was to differentiate between lobbying activities and “normal” communication between authorities and citizens based on e.g. freedom of information or the right to petition;
3. Lobbyists’ possible obligations should include: register with an authority; report on the time and way in which lobbying activity was conducted, the topic of lobbying, and the names of lobbied persons; submit a financial report;
4. To maintain balance, privileges for lobbyists should also be guaranteed: accessing all documents for any relevant legislative proposal, delivering a speech at a Parliament committee meeting (on the invitation of a committee member), freely entering the premises of Parliament, publishing a statement in the legislative statement;
5. The enumeration of lobbied authorities should include also local-level entities.

After the intensive legislative work in the previous years, the Czech government obligated the Ministry of the Interior in the *Strategy of the Czech Government in the Fight Against Corruption for the Years 2011 and 2012* to prepare “[an analysis that] reveals what type of lobbying regulation will be most suitable for the Czech Republic. Its aim will be to clarify issues relating to the transparency of the relationship between politicians and civil servants on the one hand, and those involved in lobbying on the other hand; to define lobbying, lobbying contacts, and compulsory registration of lobbyists (the register of lobbyists will be accessible on the internet, and penalties for non-compliance will be defined by law, as well as the mechanism for their implementation)⁷⁷.” Following this, the Czech government prepared a fourth draft for a lobbying regulation in 2012.⁷⁸

The draft was submitted in two realistic variants, differing, among other things, in their choice of competent supervisory authority. It was designed to regulate lobbying activities, privileges, and obligations related to them, and to establish the scope of the supervisory authority and other public bodies. The draft provided two variants for the definition of lobbying: the narrow one was only related to the legislative process itself, while the broad one also included other decision-making activities. In both variants, lobbying was defined as an activity aimed at influencing decision-makers within their competence, or as assistance for the realization of a lobbying contact—primarily organizing and coordinating such contacts. Lobbying contacts were defined as any oral, written, electronic, or other communication between a lobbyist (as registered in the lobbyist registry) and lobbied authorities. In the broad variant, there was an extensive list of exemptions from the definition of a lobbying contact, so as to distinguish such contacts from other activities by public bodies, such as communication between a public body and its employees. A lobbyist was defined as a person who regularly performs lobbying (at least four lobbying contacts per quarter or at least five lobbying contacts within a year) and as such, a lobbyist had a duty to register in the registry of lobbyists. The list of lobbied authorities was similar to that in the previous proposals; however, one version excluded regional governors, members of regional councils, mayors, and secretaries of municipalities. The list of sanctions remained similar to the third draft from 2010, including fines of up to CZK 1 million and up to a 5-year ban on lobbying activities. The supervisory body was to have been either the parliamentary commissioner for the supervision of lobbying, elected by the Chamber of Deputies, or an independent Office for Public Supervision of the Financing of Political Parties.

The draft was eventually withdrawn by the cabinet before it had even been submitted to Parliament. Currently, neither the current government’s Policy Statement nor the Outline for Combating Corruption in 2015–2017 contains a new proposal for lobbying regulation. However, at the end of 2015, a new Committee on the Regulation of Lobbying was set up (with representatives from the Ministry of the Interior, the Ministry of Justice, NGOs, and academia); its aim is to prepare a new bill proposal in 2016.

The Czech Republic thus remains without any effective lobbying regulation. In the latest report by Transparency International, it received 19 points out of a possible 100.

⁷⁷ See the *Strategy of the Czech Government in the Fight Against Corruption*, available at: http://www.mpsv.cz/files/clanky/11842/Strategie_vlady_v_boji_proti_korupci_na_obdobi_let_2011_a_2012_-_puvodni_zneni.pdf.

⁷⁸ The draft of the regulation is available here: <https://apps.odok.cz/kpl-detail?pid=RACK8YBC8V24>.

CHAPTER 3

A Comparative Analysis of Lobbying Regulations

In its 10 Principles for Transparency and Integrity in Lobbying, the OECD⁷⁹ states: “countries should clearly define the terms ‘lobbying’ and ‘lobbyist’ when they consider or develop rules and guidelines on lobbying.” Additionally, “countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities” and “enable stakeholders—including civil society organisations, businesses, the media and the general public—to scrutinise lobbying activities.” Lobbyists, meanwhile, “should comply with standards of professionalism and transparency, as they share responsibility for fostering a culture of transparency and integrity in lobbying.” Moreover, one very important goal for good lobbying regulation—from the OECD’s point of view—is to avoid conflicts of interest between lobbyists and lobbied officials.

In this chapter, we will focus on several key factors that—in our opinion and based on our analysis of lobbying regulations in different countries—affect lobbying’s transparency and its supervision and scrutiny by civil society, and minimize conflicts of interest by limiting the flow of people between lobbyist roles and official roles:

1. the definition of lobbying;
2. the definition of a lobbyist;
3. a register of lobbyists based on open data standards;
4. the privileges and obligations for lobbyists and lobbied authorities;
5. anti-revolving-door regulation;
6. legislative-footprint regulation;
7. sanctions.

In this chapter, we provide a description and a comparison of selected factors in the Polish and EU lobbying regulation, additionally referencing the Czech and Slovak draft legislation described previously. The main aim of the comparison is to identify the strong and weak points of these regulations, which can then be used to build recommendations for better lobbying regulation.

⁷⁹ *Transparency and integrity in lobbying*. OECD, 2013.

1. The Definition of Lobbying

Table 3: The Definition of Lobbying⁸⁰

| | |
|------------|--|
| POL | <ol style="list-style-type: none"> 1. Any legal action designed to influence public authorities in the lawmaking process 2. Professional lobbying—paid lobbying activities conducted on behalf of third parties in order that these parties' interests are taken into account in the lawmaking process |
| CZE | <ol style="list-style-type: none"> 1. No binding regulation 2. Lobbying is any activity whose subject is a “lobbying contact,” or any aid in making such a contact (especially the coordinating or other organizing of such contacts). 3. A “lobbying contact” is defined as: communication with the aim of influencing the preparation, negotiation, and passing of a legal regulation (the regulation’s draft), or the preparation, negotiation, and approval of plans, strategies, and drafts that fall within the ambit of public authorities 4. A list of exclusions, e.g.: access to information, the right to petition, the right to be a party in court |
| SVK | <ol style="list-style-type: none"> 1. No binding regulation 2. Lobbying is any activity that concerns a lobbying contact or the facilitation of a lobbying contact, and especially the organizing and coordination of contacts 3. A lobbying contact is communication, including one-way communication, aiming to influence the decisions of public authorities or the process that precedes decision-making, in order to achieve the development, presentation, negotiation, approval, or amendment of a draft regulation or document, or to achieve a certain outcome in the decision-making process 4. A list of exclusions, e.g.: access to information, the right to petition, the right to be a party in court |
| EU | <ol style="list-style-type: none"> 1. All activities, [...], carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of where they are undertaken and of the channel or medium of communication used, for example via outsourcing, media, contracts with professional intermediaries, think tanks, platforms, forums, campaigns and grassroots initiatives. 2. A list of exclusions, e.g. the right to be a party in a legal or administrative case, social dialogue based in the treaties concerning social dialogue |

The definition of lobbying is one of the most important parts of any lobbying regulation. It determines the shape of lobbying oversight and the difference between lobbying activities and the “normal” exercising of citizens’ rights—especially their rights to information and to petition.

Upon examining the three legal systems in Poland, Slovakia, and the Czech Republic, there are clearly differences in the way lobbying is defined—from a very broad and general definition with no exclusions, as in Poland, to a much more specific one, with an enumeration of exemplary lobbying activities as well as a number of exclusions that are not considered lobbying, as in the Czech and Slovak drafts.

It must be said that in general, constructing a definition that is too broad and covers almost all—or even all—activities that might be performed by citizens in relation to authorities is not an ideal solution, as it then interferes with citizens’ basic rights and leads to many interpretation problems and doubts as to whether a particular activity is lobbying or not.

For example, Poland’s very broad definition for lobbying, which contains no exclusions, has been criticized ever since it came into force. Since there are no additional regulations connected with non-professional lobbying, the definition has no strong practical meaning. On the other hand—due to the lack of any exclusions within the legal definition of lobbying—there was in the past an interpretative and legislative problem with the relation between the right to petition and professional lobbying. During legislative work on the Petitions Act, there was a suggestion to deprive professional lobbyists of their right to petition in any legislative process within which they performed lobbying activities on behalf of third parties⁸¹. Because of the broadness of the lobbying definition, there is a considerable

⁸⁰ In this table and in the rest of the chapter, we refer to the Polish Lobbying Act, the Czech draft from 2009, the Slovak draft from 2013, and this EU legislation: *The Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation* (OJ L 277, 19.9.2014, hereinafter IIA 2011).

⁸¹ See Art. 5 of the Petitions Act draft.

overlap between lobbying activities and the right to petition. The right to petition is, however, guaranteed by the Polish Constitution and as such should be preserved. There are at least three ways to address the issue:

1. Clearly distinguish the right to petition from lobbying activities, as was proposed in the Czech and Slovak drafts;
2. Allow professional lobbyists to submit a petition if they submit it in their own interest or the public interest⁸²;
3. Allow professional lobbyists to submit a petition as one tool in lobbying—such a petition should be then published like any other lobbying document⁸³ but the lobbied authority would have the obligation to respond to it within 3 months (Art. 10 of the Petitions Act)⁸⁴.

To conclude, the legal definition of lobbying should be as clear as possible, as evidenced for example by the confusion surrounding the right to petition for professional lobbyists in Poland. To achieve this, an enumeration of exclusions and exemplary lobbying activities might be useful in helping citizens, lobbyists, and lobbied authorities to distinguish lobbying from other ways of expressing opinions.

2. The Definition of a Lobbyist

Table 4: The Definition of a Lobbyist

| | |
|------------|---|
| POL | A person performing professional or non-professional lobbying activities ⁸⁵ |
| CZE | <ol style="list-style-type: none"> 1. No binding regulation 2. A person who lobbies regularly, i.e. makes more than three lobbying contacts quarterly or at least five lobbying contacts annually |
| SVK | <ol style="list-style-type: none"> 1. No binding regulation 2. A person practicing lobbying based on their authorization to conduct trade⁸⁶ 3. Includes in-house lobbyists |
| EU | All organizations and self-employed individuals, irrespective of their legal status, engaged in activities falling within the scope of the Transparency Register ⁸⁷ |

The definition of a lobbyist—which complements the definition of lobbying discussed above—is the second fundamental part of any lobbying regulation. It is molded differently in different legal systems and covers different types of entities.

In general, an overly narrow definition of lobbyists may make a lobbying regulation practically useless and ineffective. Meanwhile, if a definition is too broad, it may cover too many entities and thus paralyze the relation between citizens and authorities by introducing too much bureaucracy and limiting citizens’ basic rights.

⁸² See Kubuj, Katarzyna. *Opinia prawna na temat senackiego projektu ustawy o petycjach (druk nr 4261)*, Biuro Analiz Sejmowych, 2011, pp. 9–10; Radzewicz, Piotr. *O projekcie ustawy o działalności lobbingsowej*, Zeszyty Prawnicze Biura Studiów i Ekspertyz Kancelarii Sejmu, 1(1) I-III 2004.

⁸³ Every petition, regardless of its author, should be published online by the authority which is its addressee (Art. 8 of the Petitions Act).

⁸⁴ See also *Opinia Instytutu Spraw Publicznych dotycząca projektu ustawy o petycjach (druk 1036)*, Instytut Spraw Publicznych, 2011, p. 3.

⁸⁵ See Art. 2 of the Polish Lobbying Act.

⁸⁶ Art. 2, section 5 of the draft from 2014. Art. 2, section 5 of the 2013 draft: “A lobbyist is a person who consistently performs lobbying. A person consistently performs lobbying if they had more than one lobbying contact within a year. Lobbyists communicate with the holder of public authority in any matter of affecting the preparation, negotiation and approval of acts and other documents prepared by public authorities.”

⁸⁷ See point 8 of the IIA 2014.

The Polish example fits in the first category—because it has a very broad definition of lobbying activities and, at the same time, a very narrow definition of professional lobbyists⁸⁸, only a very small portion of lobbying is covered by this lobbying regulation. “In-house lobbyists” as they are defined in this regulation (note that this term is used in other countries for both for-profit and non-profit lobbyists), for example, are completely exempt from the scope of the regulation. This leads to a situation where only 367 entities are registered in the Polish government register of lobbyists, while only 17 persons actually performing professional lobbying activities are registered in the Sejm⁸⁹ and in the Senate⁹⁰. And yet in reality, many other parties—including companies, state-owned enterprises, and NGOs—actually do perform activities very similar to lobbying as defined in the Act. Due to its narrow definition of lobbyists, however, most lobbyists are not subject to any independent or public oversight. The problem becomes even more apparent when we compare the entities registered in the Polish and the EU registers, where many Polish NGOs and companies, including state-owned enterprises, are registered as EU lobbyists, and yet it is impossible to find any information about their lobbying activities in the Polish register.

This situation further creates a loophole in which lobbyists may be employed as in-house lobbyists or may found their own NGO, thus bypassing the obligation to register their activities.

Another potential problem lies in defining someone as a lobbyist based on the number of lobbying activities (contacts) they perform during a given period of time, as was proposed in the Czech Republic and Slovakia. Each lobbied issue is different, and some require more contacts and activities than others. Also, while some lobbyists might only lobby for one particularly issue, others are engaged in a variety of topics. Therefore, is a low number of contacts a sufficient reason for not disclosing information about a lobbyist who might have a significant impact on the legislative process? As the EU’s example shows, the number of contacts itself is not always the best indicator of the power lobbyists might have. According to the latest Transparency International report, even though the lobbyists who spend the highest amounts in Brussels typically have the longest lists of meetings with the highest European Commission officials there are some noteworthy exceptions to the rule—ExxonMobil (lobbying budget: € 4,750,000; meetings since December 2014: 9), Dow (€ 3,750,000; 6), Siemens (€ 3,230,169; 6), Huawei (€ 3,000,000; 9), TOTAL (€ 2,500,000; 5), Bayer (€ 2,460,000; 7), and BASF (€ 2,300,000; 3)⁹¹.

There is no justification for excluding any specific groups of subjects that are trying to affect a legislative process from the definition of lobbyists⁹². In other words, the law should treat as lobbyists not only persons who receive compensation for their activities carried out on behalf of other persons (professional lobbyists in Poland; consultant lobbyists in other countries), but also in-house lobbyists, including people working in a variety of types of organizations such as public-affairs consultancies, law firms, trade associations⁹³, state-owned companies, think-tanks, foundations, and other NGOs. As mentioned above, lawyers (especially solicitors) should not try to circumvent lobbying regulation by referring to professional secrecy⁹⁴. Lobbying activities are not the primary activities that should be performed by lawyers, whose professional secrecy was established in order to fulfill different aims than

⁸⁸ As described above, there is no additional regulation for non-professional lobbying in the Polish Lobbying Act, and so there is no point in analyzing the definition of non-professional lobbyists and its implications within the Polish legal system.

⁸⁹ See the Sejm’s official list of registered lobbyists, http://www.sejm.gov.pl/Sejm8.nsf/lobbying_osoby.xsp, last accessed on March 29th, 2016.

⁹⁰ See the Senate’s official list of registered lobbyists, <http://www.senat.gov.pl/lobbying/wykaz-osob-wykonujacych-zawodowa-dzialalnosc-lobbyingowa-na-tere/>, last accessed on March 29th, 2016.

⁹¹ The budget information is based on the figures provided in the Transparency Register. The numbers of meetings are estimates by Transparency International, using information published by EU officials on their respective websites. Obviously, this does not rule out the possibility of the companies conducting other meetings and lobbying contacts with EU officials that were not disclosed in the Register. For more details on lobby meetings at the EU level, see *7,000 and counting. Lobby meetings of the European Commission*, Transparency International, EU Office, Brussels, December 1st, 2015, pp. 6–7.

⁹² It should be emphasized that there are many persons, such as officials, journalists, and experts invited by authorities to assess the quality and legality of proposed laws, etc., who *per se* should not be recognized as lobbyists. See the enumeration of subjective exclusions within the definition of lobbyists described in Wiszowaty, Marcin Michał. *Regulacja prawna lobbingu na świecie*. Warszawa: Wydawnictwo Sejmowe, 2008, p. 196.

⁹³ See European Commission. *Green Paper... 2006*.

⁹⁴ See *New and Improved? Why the EU Lobby register still fails to deliver*, ALTER-EU, 2015, p. 7; Kuczma, Paweł (ed.). *Ustawa...*, 2013, pp. 24–25; for the opposite opinion see the statement of Brussels bar associations (“the deontology that is applicable to our members forbids them from making public the name of their clients and this due to the application of professional secrecy”) cited in Stevens, Jo. *Lobbying, lawyers and professional secrecy. Too close for comfort?*, Brussels, Orde van Vlaamse Balies, 2010, p. 6.

that of hiding, for example, a mandatary's personal details⁹⁵. Furthermore, a broad enumeration of bodies to be considered lobbyists helps to prevent lobbying from stigmatization, legitimizing it as a legal activity that is useful for an effective and transparent legislative process.

A good example of lobbyist classification may be seen in Canada, where lobbyists are divided into two main groups: consultant lobbyists (who work for different clients on a contractual basis; the equivalent of Poland's professional lobbyists), and in-house lobbyists (people permanently employed by a certain entity, for whom performing lobbying activities is their main or secondary obligation as an employee). The latter category is further divided into corporate (working for a for-profit organization such as a company) and organizational (working for a non-profit) lobbyists⁹⁶. Such a classification makes it possible to supervise lobbying more effectively, as more entities have an obligation to register, while other obligations are specially adjusted to the category to which they belong (e.g. connected with the reporting or disclosure of financial data⁹⁷).

During the Polish election campaign in September 2015, several Polish NGOs and experts prepared and distributed an extensive questionnaire to the candidates for both chambers of the Polish Parliament⁹⁸. Among the hundreds of questions that the candidates were asked, a few were connected with the nation's lobbying regulations, including a question about broadening the enumeration of registered lobbyists. Their answers to these questions—summarized in the table below—provide some hope for a change in Poland.

Table 5: Polish Candidates, MPs, and Senators on the Definition of Lobbyists

| Question: What changes in the law would you support to make lobbying more transparent? | "Yes" among candidates | "Yes" among elected MPs and Senators |
|--|------------------------|--------------------------------------|
| Expanding the obligation to register in the lobbying register to include all entities carrying out lobbying activities (this obligation currently covers professional lobbyists only). | 453/836 ⁹⁹ | 27/79 |

3. The Register of Lobbyists

Table 6: The Register of Lobbyists

| | |
|------------|--|
| POL | <ol style="list-style-type: none"> 1. Mandatory 2. Supervisor: Minister of Administration 3. Data collected¹⁰⁰: <ol style="list-style-type: none"> a) Registration number; b) Dates of registration and of later changes; c) Lobbyist's name or the name of his/her company; d) Lobbyist's address; e) ID number in the National Court Register or the register of business activities; f) Date of deletion from the register, if any; g) Ministry identification number (i.e. case/application number assigned by the Ministry); h) Remarks. |
|------------|--|

⁹⁵ This is particularly obvious in the cases of Poland, Slovakia, and the Czech Republic, where lobbying appeared long after establishing the definition of lawyers' secrecy. See Stevens, Jo. *Lobbying, lawyers and professional secrecy. Too close for comfort?*, Brussels, Orde van Vlaamse Balies, 2010, p. 12.

⁹⁶ See Wiszowaty, 2008, pp. 182–183 and Arts. 5–7 of the Canadian Lobbying Act.

⁹⁷ Such a situation exists within the EU's Transparency Register, where different categories of lobbyists are obliged to disclose different sets of financial data. See part C of the Annex II to the IIA 2014.

⁹⁸ See <http://mamprawowiedziec.pl/strona/parl2015-o-kwestionariuszu>.

⁹⁹ The number of candidates who answered at least one question in the questionnaire.

¹⁰⁰ See *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 30 czerwca 2011 r. w sprawie rejestru podmiotów wykonujących zawodową działalność lobbingsową*, Dz.U. 2011 Nr 136, poz. 803, par. 2.

| | |
|--------------------------|---|
| CZE | <ol style="list-style-type: none"> 1. No binding regulation 2. Mandatory 3. Maintained by a supervisory body (not further specified in the draft) 4. Data collected: <ol style="list-style-type: none"> a) ID number of lobbyist; b) Name and surname of lobbyist or name of his/her company; c) Address of lobbyist or headquarters of his/her company; d) Names, surnames, and addresses of statutory representatives (for legal persons); e) Legal form of lobbyist if he/she is an entrepreneur; f) Names and surnames of employees or other persons who may enter into a lobbying contact on behalf of the lobbyist; g) Membership in an organization of lobbyists if such a membership exists; h) Information on possible sanctions imposed in connection with lobbying; i) Lobbyist's financial or annual report. |
| SVK¹⁰¹ | <ol style="list-style-type: none"> 1. No binding regulation 2. Mandatory 3. Supervisor: Ministry of Interior of the Slovak Republic (2013 draft), the Chancellery of the National Council or of the Self-governing Region (2014 draft) 4. Data collected (2013 draft): <ol style="list-style-type: none"> a) Name, surname, and permanent residence (for natural persons), or business name, seat, legal form and ID number (for legal persons), including the name, surname, and permanent address of the statutory body; b) List of lobbying contacts; c) Information on penalties. Data collected (2014 draft): <ol style="list-style-type: none"> a) Business name and headquarters, ID number, legal form and information about the statutory body (name, surname, permanent residence); b) Identification of employee (name, surname) who lobbies on behalf of the legal person. |
| EU | <ol style="list-style-type: none"> 1. Voluntary 2. Supervisor: European Commission 3. Data collected¹⁰²: <ol style="list-style-type: none"> a) General and basic information, including <i>inter alia</i> name and contact information, number of persons involved in lobbying and the amount of time spent by each person on such activities, goals/remit, fields of interest, activities, countries in which operations are carried out, affiliations to networks, other general information falling within the scope of the register; b) Specific information, including activities covered by the register, links with EU institutions and financial information: an estimate of the annual costs related to activities covered by the register, the amount and source of funding received from EU institutions in the most recent financial year closed, the turnover attributable to the activities covered by the register, a list of all clients on behalf of whom activities are carried out (only applicable to professional consultancies, law firms, self-employed consultants), the total budget of the organisation, and a breakdown of the main amounts and sources of funding (only applicable to NGOs and similar organizations). |

During the process of changing the perception of lobbying from that of something harmful to that of a legal activity, the register of lobbyists became one of the most important elements in the lobbying regulation. Such a register usually includes at least the lobbyist's name and address, the issues on which they lobby, and the name of their client¹⁰³.

A completely different type of register, however, was adopted in Poland. The Polish register of lobbyists is regulated by the Polish Lobbying Act (Chapter 3, Arts. 10–15) and is supervised by the Ministry of Administration. The data collected is divided into eight fields: three of them contain only contact information about the lobbyist (name, address, and the ID number in the National Court Register or the register of business activities); the other five contain formal information connected with the registration (the registration number, the dates of registration and of later changes, the date of any deletion from the register, the ID number assigned by the Ministry, and remarks¹⁰⁴). It is impossible to find any additional data in the register, including fields of interest, the number of persons engaged

¹⁰¹ Please note that in the 2013 and 2014 drafts, the term “list” instead of “register” was used—yet the drafts repeatedly mention an obligation for lobbyists “to register” in these lists.

¹⁰² See Annex II, *Information to be provided by registrants*, IIA 2014.

¹⁰³ Wiszowaty, Marcin Michał. *Regulacja...*, 2008, pp. 203–204.

¹⁰⁴ It is worth noticing that this field has never once been completed in the history of the register.

in lobbying activities, clients' names¹⁰⁵, financial information, etc. Meanwhile, the register is not linked in any way with the lobbying information published by lobbied authorities on their websites. As a result, the Polish register has a very low informational value, and its significance for lobbying transparency is thus generally very limited¹⁰⁶. In practice, it can only be used to check who is registered as a professional lobbyist; it is, however, impossible to find out in which area any registered entity is lobbying, on whose behalf, for how much, and precisely what activities have been performed. For some parts of this additional data (especially areas of interest and clients' names), in order to obtain it, one must visit a dozen more websites used by various ministries and other authorities, and manually check whether a specific lobbyist performed any lobbying activities with them¹⁰⁷.

In this respect, the two additional Polish registers run by the two chambers of Parliament¹⁰⁸ are undoubtedly more useful. In these registers, one can find information on lobbyists' employers and clients, as well as the areas in which they lobby¹⁰⁹. However, there is no tool to examine whether those lobbyists are performing lobbying activities on behalf of other clients, or in different areas than stated in the register¹¹⁰. Furthermore—as it may be seen in the Sejm's register—some lobbyists describe their clients using only general descriptions¹¹¹ instead of clients' names, or perform lobbying activities on behalf of their own lobbying organizations or other professional lobbyists, not revealing their real clients' names¹¹². Similarly in the Senate's register, there is often no information about lobbyists' clients or, for example, their registration number in the Ministry's register¹¹³. This inevitably puts into question the effectiveness of the supervision over the data provided by lobbyists—and the quality of these registers in general.

All three mentioned Polish registers are available online with data in a machine-readable format. However, their automatic reuse is hard or even impossible—the data in the Ministry's register is published in closed formats (doc and pdf), while the Senate's and Sejm's registers are each part of the respective chambers' websites. Also, links to individual entries in the parliamentary registers are identical, i.e. there are no unique URLs for individual lobbyists, which hinders further use of the data.

Nevertheless, the strongest objection to the Ministry's register must be raised in connection with the number of registered lobbyists. As mentioned above, the register contains only 367 entries—which in comparison with the numbers of registered lobbyists in the EU, Canada, or the USA seems to be suspiciously low. At the same time, nearly none of these registered lobbyists seem to be active; according to GRECO's report from 2012, there were only 20 active lobbyists; more recently, despite the fact that over 30 professional lobbyists were registered in the

¹⁰⁵ A professional lobbyist, aware of the criminal liability for false testimony, is obliged to tell the lobbied authority on behalf of whom he/she lobbies (see Art. 15 and 7 par. 5a of the Polish Lobbying Act). This information is, however, not disclosed in the Ministry's register. While it should be published in the parliamentary registers (see below), the quality of this information is nevertheless questionable—as examples of irregularities visible on the Sejm's website suggest: http://www.sejm.gov.pl/Sejm8.nsf/lobbing_osoby.xsp#lobbystaTop.

¹⁰⁶ See e.g. Wiszowaty, Marcin Michał. *Działalność...*, 2010, p. 168.

¹⁰⁷ Also note that none of these websites publish lobbying information in an open data format. Because of this and other deficiencies of the Polish register, the attempts to include more relevant information about lobbyists and lobbying in the prospective Czech and Slovak registers (in the latest drafts) are welcomed.

¹⁰⁸ The Lower (Sejm) and Upper (Senate) Chamber of the Parliament run their own registers of natural persons with access, as professional lobbyists, to the Parliament's premises. However, in order to register in the Parliament, lobbyists must also be part of the register run by the Ministry of Administration—as a professional lobbyist (a natural person) or as an employee of a professional lobbyist (a legal person). See art. 14 par. 3 of the Polish Lobbying Act, art. 201b of the Sejm's Statute and art. 37b of the Senate's Statute.

¹⁰⁹ See *Warunki uzyskania okresowej karty wstępu przez osobę wykonującą zawodową działalność lobbingsową lub osobę uprawnioną do reprezentowania podmiotu wykonującego zawodową działalność lobbingsową*, [http://orka.sejm.gov.pl/media.nsf/files/MKOK-9VTAU7/\\$File/lobbing_instrukcja.pdf](http://orka.sejm.gov.pl/media.nsf/files/MKOK-9VTAU7/$File/lobbing_instrukcja.pdf).

¹¹⁰ According to the interview conducted by the author with representatives of the Senate's Professional Lobbying Team on May 8th, 2015.

¹¹¹ E.g. "Waste Management" in the entry of the lobbyist Eugeniusz Karczewski: http://www.sejm.gov.pl/Sejm8.nsf/lobbing_osoby.xsp#lobbystaTop, last accessed on December 4th, 2015.

¹¹² According to the "Conditions for obtaining a periodic access card by a person engaged in professional lobbying activities or a person authorized to represent an entity engaged in professional lobbying activities," it is not permitted for professional lobbyists to act in their own behalf. Despite this, some lobbyists who are registered in the Ministry's register as natural persons act in the Parliament on behalf of their own lobbying organizations or on behalf of other professional lobbyists, not revealing at the same time who is their real client. See the Tomasz Obara, Konrad Rycerz and Marcin Pielużek entries in the Sejm's register: http://www.sejm.gov.pl/Sejm8.nsf/lobbing_osoby.xsp#lobbystaTop and the website of their lobbying organization Grupa Lobbingsowa Grass Roots Lobbying, <http://grassrootslobbying.eu/>, last accessed on December 4th, 2015.

¹¹³ See e.g. Jęrzey Sadowski (<http://www.senat.gov.pl/lobbing/wykaz-osob-wykonujacych-zawodowa-dzialalnosc-lobbingowa-na-tere/jedrzej-sadowski/>) or Oktawia Budnik (<http://www.senat.gov.pl/lobbing/wykaz-osob-wykonujacych-zawodowa-dzialalnosc-lobbingowa-na-tere/oktawia-budnik/>). Both lobbyists are registered as professional lobbyists in the Ministry's register, under the numbers 00215 and 00189.

Parliament's registers, the actual number was most likely even lower and did not exceed 15¹¹⁴. Relying also on the information from informal contacts with Members of the Parliament¹¹⁵, the thesis that most lobbying in Poland is performed inside the shadows and outside the registers seems sadly plausible.

Due to these problems, the biggest advantage of the Polish register—i.e. the fact that it is mandatory for every professional lobbyist and thus performing professional lobbying activities without registration is forbidden¹¹⁶—remains strictly hypothetical; in practice it has in fact never actually come into play.

The EU Transparency Register lies at the other extreme. As Table 6 above shows, most of the data missing in the Polish regulation is included, at least in theory, in the Transparency Register. However, the EU register is widely criticised for not being mandatory and having numerous problems because of this¹¹⁷. For example: active lobbyists (including major corporate lobbyists) that are clearly missing in from the register¹¹⁸, undisclosed clients, under-reported lobbying expenditures, outdated financial data, unexplained acronyms listed as clients, and a strikingly incorrect lobbyist count¹¹⁹. Hopefully, most of these problems would be eliminated if an obligation to register were imposed on all Brussels lobbyists¹²⁰.

One very strong facet of the Transparency Register, on the other hand, is the format in which the data is published and accessible. Not only is it machine-readable, but it also makes it easy for the data to be reused.¹²¹ In addition, the EU register is also an interesting source for information about lobbying performed by national lobbyists. This can be particularly useful in the case of countries with no (effective) lobbying regulation. For example, over 130 lobbyists from Poland¹²², 70 from the Czech Republic, and 30 from Slovakia are registered in the Transparency Register¹²³.

To conclude, any register of lobbyists should be not only mandatory as in Poland and inclusive of all the data collected in the EU register, but also—wherever possible—a part of a larger online lobbying platform where all information about registered lobbyists is aggregated, including data about their activities, their meetings with officials and documents sent to them, their financials, their clients, etc. Only such a comprehensive approach to disclosure of lobbyists' activities guarantees a minimum standard of lobbying transparency is reached.

¹¹⁴ According to the interview conducted by the author with representatives of the Senate's Professional Lobbying Team on May 8th, 2015.

¹¹⁵ See *Corruption prevention...*, GRECO, 2012, p. 12.

¹¹⁶ See art. 12 and 19 of the Polish Lobbying Act.

¹¹⁷ There is a chance that the situation in the EU will improve in the coming years. The *Transparency, accountability and integrity in the EU institutions* draft report (2015/2041[INI]), prepared by MEP Sven Giegold, mentions that the EU lobby register should be made as mandatory as possible. The European Commission has also started a Public Consultation on a Proposal for a Mandatory Transparency Register; the Consultation will end on June 1st, 2016 (see http://ec.europa.eu/transparency/civil_society/public_consultation_en.htm).

¹¹⁸ The situation improved slightly after the December 2014 change that reserved access to top officials in the European Commission for registered lobbyists only. Despite that, many of the problems remain. See *7,000 and counting...*, Transparency International, 2015, p. 17 and *How "new and improved" is the EU's lobby register? 27 May 2015*, ALTER-EU, 2015, http://alter-eu.org/sites/default/files/documents/Updated%20new%20and%20improved%20report%2027.5.2015_1.pdf.

¹¹⁹ See *New and Improved?...*, ALTER-EU, 2015, pp. 6–10. The situation improved after April 27th 2015, when the process of updating the Transparency Register to comply with new disclosure requirements was complete; however, it is still far from perfect. See *How "new and improved"...*, ALTER-EU, 2015.

¹²⁰ The present expectation that "all organisations and self-employed individuals, irrespective of their legal status, engaged in activities, whether on-going or under preparation, covered by the register are expected to register" (see IIA 2014 point 8) have failed. See *New and Improved? Why the EU Lobby register still fails to deliver*, ALTER-EU, 2015, pp. 6–7.

¹²¹ See <http://lobbyfacts.eu>.

¹²² Less than 10% of the Polish lobbyists registered in the EU Transparency Register are also registered in the Ministry's register of lobbyists as professional lobbyists in Poland. This further confirms the deficiency of the Polish regulation.

¹²³ These numbers might be underestimated as many "national" lobbyists register their headquarters in Belgium, which then leads to overrepresentation of Belgium-based lobbyists (almost 2000) and underrepresentation of other countries.

4. Privileges and Obligations for Lobbyists and Lobbied Authorities

Table 7: Privileges and Obligations for Lobbyists and Lobbied Authorities

| | | |
|------------|---|---|
| POL | Lobbyists | |
| | <p>Obligations¹²⁴:</p> <ol style="list-style-type: none"> 1. Registration; 2. Payment for registration; 3. Informing a lobbied authority about the client's name; 4. Informing the Parliament's chambers about the area of interest; 5. No reporting obligation. | <p>Privileges¹²⁵:</p> <ol style="list-style-type: none"> 1. Easier access to authorities; 2. Access to the Parliament's facilities; 3. Taking part in parliamentary committees' proceedings (not sub-committees¹²⁶); 4. The right to take part in consultations; 5. The right to take part in public hearings. |
| | Authorities | |
| | <p>Obligations¹²⁷:</p> <ol style="list-style-type: none"> 1. Maintaining the register; 2. Annual reporting; 3. Publication, without delay, of information about lobbying activities; 4. Preparation of a binding internal procedure for contacts with professional lobbyists; 5. Informing about professional lobbying activities by an unregistered entity; 6. Providing professional lobbyists with access to their office premises. | |
| CZE | No binding regulation | |
| | Lobbyists | |
| | <p>Obligations:</p> <ol style="list-style-type: none"> 1. Registration; 2. Informing the supervisory body about any changes to the information in the register within 14 days; 3. Informing the lobbied authority that he/she is being lobbied and who is the lobbyist's client; 4. Never giving, promising, or conveying any benefit to the lobbied authority; 5. Submitting a financial report containing data on lobbying expenses and client payments. | <p>Privileges:</p> <ol style="list-style-type: none"> 1. The right to access specific documents related to the legislative process; the extent is to be determined by the particular public authority's official. |
| | <p>Obligations:</p> <ol style="list-style-type: none"> 1. Refraining from lobbying; 2. Avoiding any relationship with the lobbyist such as an employment contract or other arrangement upon which the lobbied authority would have to act on behalf of the lobbyist or work for the lobbyist. | <p>Privileges:</p> <ol style="list-style-type: none"> 1. The right to refuse being lobbied by a lobbyist. |
| SVK | No binding regulation | |

¹²⁴ See art. 11, 12, 15 of the Polish Lobbying Act, art. 201b of the Sejm's Statute and art. 37b of the Senate's Statute.

¹²⁵ See art. 7, 8, 14 of the Polish Lobbying Act, art. 201b of the Sejm's Statute and art. 37b of the Senate's Statute.

¹²⁶ See art. 201b par. 2d of the Sejm's Statute.

¹²⁷ See arts. 14, 16–18 of the Polish Lobbying Act.

Lobbyists

“Obligations”¹²⁸:

1. Registration;
2. Disclosing all the data required by the Transparency Register.

Privileges¹²⁹:

1. Only registered lobbyists have the possibility of meeting with the EC’s highest officials¹³⁰;
2. A badge and access to the European Parliament’s premises;
3. The right to observe parliamentary committees hearings;
4. Access to the parliamentary library;
5. Access to selected confidential documents.

Authorities

Obligations:

1. For top EC officials: to never meet with unregistered lobbyists;
2. On-line publication of the list of meetings between the highest EC officials and registered lobbyists.

One of the reasons why the Polish Lobbying Act is described as a “dead” piece of legislation¹³¹ is the practical lack of obligations and privileges for professional lobbyists—none of the points mentioned in Table 7 above have significant influence on the quality or transparency of lobbying in Poland. The few obligations imposed on lobbyists are frequently ignored, while the list of privileges includes benefits accessible to every citizen and not reserved specifically for professional lobbyists.

Unlike other similar regulations, the Polish Lobbying Act does not impose any reporting obligation on lobbyists, which is another reason for the regulation being ineffective in practice¹³². In fact, the only obligation that professional lobbyists in Poland have is to register in the Ministry’s register of lobbyists and to pay a fee for this (approx. 25 EUR). Theoretically, professional lobbyists are also obliged to inform a lobbied authority about the client’s name and—in the case of performing lobbying activities in the Parliament—about areas of interest. In practice, however, this obligation is often not fulfilled (the required data is not disclosed), or is bypassed (a lobbying organization of which the lobbyist is a member is declared as the client). The supervision in this area is only theoretical, as the data published by the Sejm and Senate proves (see the previous section on registers of lobbyists).

The Polish regulation thus clearly does not meet the minimum standards for lobbying regulation—*registration and disclosure*¹³³. The Slovak and Czech drafts, on the other hand, contain the obligation for lobbyists to report their activities quarterly; they thus hold the promise of being more effective in controlling lobbying and better suited to international standards¹³⁴.

Balancing out the lack of obligations, the Polish Lobbying Act also gives registered lobbyists almost no privileges. Such an approach is typical for American regulations, where almost the only privilege for a registered lobbyist is the possibility of performing lobbying activities¹³⁵. In other countries, there is a tendency to enumerate privileges to compensate professional lobbyists for the many registering and reporting obligations imposed on them. This should, at the same time, encourage them to register¹³⁶. The absence of such an enumeration in Poland might be the reason why, as mentioned above, most lobbying is probably performed outside the regulated area—there are simply no

¹²⁸ The EU Transparency Register is not mandatory; the obligations imposed on lobbyists are therefore not enforceable.

¹²⁹ See Wiszowaty, Marcin Michał. *Regulacja...*, 2008, pp. 231–232 and *7,000 and counting...*, Transparency International, 2015, p. 17.

¹³⁰ Commissioners and their Cabinets and Directors-General.

¹³¹ See *Czekając na otwarte rządy. Raport otwarcia Koalicji na rzecz Otwartego Rządu*, Fundacja Batorego, Warszawa, 2013, p. 91.

¹³² For example Makowski, Grzegorz. *Czy możliwy jest Przejrzysty lobbying? Raport o potrzebie lepszych regulacji i dobrych praktyk działalności lobbingsowej*. Fundacja im. Stefana Batorego, 2015, p. 4.

¹³³ Wiszowaty, Marcin Michał. *Regulacja...*, 2008, pp. 174, 219.

¹³⁴ In Europe, the broadest reporting requirements were adopted in Lithuania and Slovenia. See *Lobbying in Europe. Hidden Influence, Privileged Access*. Transparency International, 2015, p. 32.

¹³⁵ Wiszowaty, Marcin Michał. *Regulacja...*, 2008, p. 229.

¹³⁶ Wiszowaty, Marcin Michał. *Działalność...*, 2010, pp. 188–189.

sufficiently strong incentives for lobbyists to register¹³⁷. The Polish quasi-privileges, e.g. to participate in public hearings (which are organized very rarely), consultations (which are obligatory only for governmental projects, which often results in submitting legislative proposals as parliamentary projects), and committee proceedings, are not exclusive for professional lobbyists; they are—under some circumstances—open to every citizen. Consequently, the situation might be improved by introducing some real privileges for professional lobbyists, such as a special round of consultations¹³⁸, a ban for MPs and officials to meet with unregistered lobbyists, or access to parliamentary sub-committees' proceedings—which in fact, being more specialized, are usually more important for the legislative process than the committees. At present, lobbyists in Poland theoretically have no access to these proceedings, but in reality they are often invited to them by MPs as guests and experts, which is illegal and also completely out of control¹³⁹.

Professional lobbyists should have—according to the lobbying act—easier access to lobbied authorities' premises. However, in practice, this rule merely means the possibility for a professional lobbyist to obtain a special lobbying badge permitting them to the Parliament's facilities. However, since getting access to the Parliament is possible in other ways (e.g. by receiving an invitation from an MP), this privilege too is not enough of an incentive for some lobbyists to register. The "privilege" of receiving the lobbying badge might be also considered an obligation instead for professional lobbyists, as it must be presented in a visible place during a visit in the Parliament¹⁴⁰.

As there is no reporting obligation imposed on lobbyists in Poland, this obligation was completely shifted to lobbied authorities, which are obliged to:

1. publish online, without delay, information about lobbying activities;
2. publish online, once a year, a report about all lobbying activities;
3. inform about professional lobbying activities performed by unregistered entities¹⁴¹.

The first of these obligations should be fulfilled via more or less immediate publication of information about any professional lobbying contact with a lobbied authority, including the aim of the lobbying. The second obligation is met by publishing, once a year (by the end of February), a report containing all the professional-lobbying information collected by the lobbied authority, including information about the lobbying topics, professional lobbyists who performed the lobbying activities, description of the forms of lobbying activities and whether they were conducted in favour of a particular regulation or against it, and description of the influence the lobbying had on the final regulation's shape. (If there were no activities conducted by professional lobbyists towards a particular authority, that information should also be published.) Fulfillment of these obligations in practice is very poor, particularly among local authorities¹⁴². With a few exceptions¹⁴³, these authorities avoid publishing any kind of lobbying information on their websites. The situation in the central administration, however, is not much better. The main problems with fulfilment of these obligations are the following:

1. Some authorities do not publish anything at all, and others, meanwhile, publish only certain specific documents;

¹³⁷ Granting certain privileges to lobbyists may change their attitudes towards a regulation. Meanwhile, a lobbying regulation without privileges needs an enumeration of severe sanctions (as is done in the USA)—and one can then question whether it is justifiable to incorporate e.g. criminal law into such a regulation.

¹³⁸ This might be controversial, since everybody should have equal access to the authorities and decision-making process.

¹³⁹ Makowski, Grzegorz. *Czy możliwy jest Przejrzysty lobbying? Raport o potrzebie lepszych regulacji i dobrych praktyk działalności lobbingsowej*. Fundacja im. Stefana Batorego, 2015, p. 14.

¹⁴⁰ Wiszowaty, Marcin Michał. *Regulacja...*, 2008, p. 226.

¹⁴¹ See articles 16–18 of the Polish Lobbying Act.

¹⁴² During the legislative process that ended with the adoption of the Polish Lobbying Act, there were some controversies around covering local authorities with a lobbying regulation (see Wiszowaty, Marcin Michał. *Działalność...*, 2010, p. 102). In the end, no provisions excluding local authorities from the scope of the act were adopted (except where local authorities do not take part in the lawmaking process); therefore, there is no justification to rule them out of the regulation (for the opposite opinion, see Makowski, 2015, pp. 4, 23). In fact, such an exclusion would be harmful as—according to the surveys—local authorities are twice as likely to be lobbied as the central government and the Parliament. In this respect, the ideas presented in the Czech and Slovak drafts of the lobbying acts to cover local authorities within their lobbying regulation should be assessed positively (see Kuczma, Paweł. *Ustawa...*, 2013, p. 34).

¹⁴³ See e.g. the Mazovian Voivodship website: <https://www.mazovia.pl/urzed-marszalkowski/obbing/>.

2. Despite the fact that these obligations have been in force since 2006, some authorities did not publish any data at all until as late as 2013;
3. Some authorities publish not only information provided by professional lobbyists, but also that provided by non-professional lobbyists; since there is no legal basis for doing so, this behavior is currently illegal and breaches these non-professional lobbyists' right to protection of personal data¹⁴⁴;
4. There is no unified format for how and where the authorities should publish the data¹⁴⁵—as a result, finding relevant information is often complicated and time-consuming;
5. The lack of open data standards and the publishing of the information in a jumble of different formats, e.g. pdf, doc, jpg, html (as a part of a website), and very often even as scanned documents;
6. There is no central database for all the data about professional-lobbyist contacts with authorities; the data published in the Ministry's register of lobbyists is not (technically) linked to the information published by the authorities, and this often results in inaccurate and fragmented data on professional lobbying.

To illustrate the deficiencies of the Polish lobbyist register, the following table shows the numbers of lobbying contacts made by professional lobbyists with central authorities in recent years. For a country as large as Poland, the annual numbers appear suspiciously low, which further supports the previously mentioned thesis that lobbying in Poland is mostly performed outside of regulations.

Table 8: Number of Reported Lobbyist Contacts in Poland¹⁴⁶

| Authority | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|------------------------------|------|------|------|------|------|------|------|------|
| Sejm | 0 | 0 | 0 | 0 | 4 | 2 | 4 | 4 |
| Senate | 0 | 0 | 0 | 5 | 0 | 7 | 2 | 3 |
| Ministry of Justice | 1 | - | 4 | 3 | 21 | 17 | 4 | - |
| Ministry of Industry | 0 | 1 | 0 | 1 | 10 | 5 | 5 | |
| Ministry of Development | | | | | | | | 1 |
| Ministry of Treasury | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Ministry of Internal Affairs | - | - | - | 0 | 1 | 2 | 0 | 1 |
| Ministry of Digitization | - | - | - | 0 | 2 | 6 | 0 | - |
| Ministry of Defence | 0 | 0 | 0 | 0 | 0 | 0 | 0 | - |
| Ministry of Health | - | - | - | - | - | 1 | 2 | - |
| Ministry of Sports | - | 0 | 1 | 1 | 0 | - | 0 | 0 |
| Ministry of Environment | 1 | 0 | 0 | 2 | 2 | 0 | 2 | 2 |
| Ministry of Education | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 |
| Ministry of Science | - | - | - | - | 0 | 1 | 0 | 0 |
| Ministry of Culture | - | - | 0 | 0 | 0 | 0 | 1 | 0 |
| Ministry of Agriculture | - | - | - | - | 1 | - | 0 | 0 |

¹⁴⁴ Nevertheless, it should be examined whether imposing upon the lobbied authorities an obligation to disclose information about activities performed by non-professional lobbyists is, or is not, a good solution. See art. 16 par. 1 and art. 18 of the Polish Lobbying Act.

¹⁴⁵ See art. 16 par. 2 of the Polish Lobbying Act.

¹⁴⁶ The data in the table was collected by the author using the authorities' annual reports published on their websites. Where there is no figure provided in the table, this means that the authority did not publish any data in the corresponding year. In the case of 2015, this may also be due to the fact that the authority has not yet published the information. Blank fields indicate that the ministry did not exist in a given year.

| | | | | | | | | |
|------------------------------|----------|----------|----------|-----------|-----------|-----------|-----------|-----------|
| Ministry of Foreign Affairs | - | - | - | - | - | - | - | - |
| Ministry of Finance | - | - | - | - | 15 | 13 | 23 | 15 |
| Ministry of Infrastructure | - | - | - | - | - | 0 | 0 | - |
| Ministry of Labour | - | - | - | - | - | - | - | 0 |
| Ministry of Maritime Economy | | | | | | | | - |
| All | 2 | 1 | 6 | 13 | 57 | 56 | 41 | 26 |

In the previously mentioned Polish questionnaire distributed to candidates during the election campaign in September 2015¹⁴⁷, four questions were asked regarding the obligations and privileges of Polish professional lobbyists, as well as lobbied authorities. The following table provides an overview of candidates' answers:

Table 9: Polish Candidates, MPs, and Senators on Privileges and Obligations for Lobbyists and Lobbied Authorities

| Question: What changes to the law would you support to make lobbying more transparent? | “Yes” among candidates | “Yes” among elected MPs and Senators |
|--|-------------------------------|---|
| Imposing an obligation on lobbyists to publish information about their lobbying activities. | 375/836 | 11/79 |
| Imposing an obligation on lobbyists to disclose financial information about their spending on lobbying activities. | 362/836 | 18/79 |
| Creating a central database containing all information published by public authorities about lobbying actions taken towards them by lobbyists. | 413/836 | 25/79 |
| Imposing an obligation on MPs to provide information on lobbying actions taken towards them by lobbyists. | 444/836 | 24/79 |

The number of positive responses to the ideas of introducing reporting obligations for lobbyists, imposing on MPs an obligation to publish information about their lobbying contacts, and creation of a single central lobbying database that would aggregate all the lobbying data that is currently scattered around dozens of governmental websites shows that there is a chance, albeit small, to change the present lobbying regulation in Poland and improve its transparency and integrity. It must be underlined that the questions were answered by only 79 elected MPs (out of 560), so it is impossible to make any conclusions based on this. However, there is certainly room for discussion and, at the same time, a need to seek more supporters within Parliament for improving lobbying regulation. Importantly, there is already an existing group of Polish politicians providing examples of good practice, publishing information about their meetings of all varieties, including lobbying meetings. The best example of such behavior is the MEP Danuta Huebner, who not only publishes her calendar on her official website, but also uploads detailed information about meetings conducted, which is done almost immediately after these meetings¹⁴⁸. Such positive examples of lobbying and legislative-process transparency should be utilized when creating new lobbying regulation standards. The need for improvement in this area is also mentioned by international organizations; for example, GRECO recommends in its 4th Evaluation Round Report that “interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process, be made more transparent, including with regard to parliamentary

¹⁴⁷ See <http://mamprawowiedziec.pl/strona/parl2015-o-kwestionariuszu>.

¹⁴⁸ Information about the author's meeting with MEP Danuta Huebner on April 20th, 2015 was published on her website within a few hours after the meeting had taken place. See this MEP's official website: <http://danuta-huebner.pl/spotkanie-p-bartoszem-kwiatkowskim/>.

sub-committee meetings¹⁴⁹.” However, no changes have been adopted in this area to this day¹⁵⁰, and GRECO in its compliance report gave the Polish Parliament more time to implement its recommendations, inviting the Head of Delegation of Poland to submit additional information regarding implementation by June 30th, 2016.

The situation with lobbyists’ and authorities’ obligations and privileges in the EU is quite different, as there is no obligation for lobbyists to register. Although the EU’s Transparency Register includes an appeal for lobbyists to register, until December 2014 there were no strong benefits for lobbyists who registered (see privileges 2–5 in Table 7), and so many of them did not enter the Transparency Register. This situation changed last year, when the European Commission decided to introduce a ban on meetings between its top officials and unregistered lobbyists¹⁵¹. This was further strengthened by Commissioner Frans Timmermans: he publicly stated that the officials would refuse to meet not only with unregistered lobbyists, but also with those lobbyists who had entered false data in the Transparency Register¹⁵². These actions have led to an increase in registration numbers and improved quality for the data in the register, confirming that certain privileges may convince lobbyists to behave in a more transparent way.

To conclude, there is no effective lobbying regulation without at least reporting obligations imposed on lobbyists (including information about their activities, lobbying expenditures, and sources of funding). It is also desirable that some reporting obligations be fulfilled by authorities, as this increases the credibility of the published data¹⁵³. On the other hand, any lobbying regulation can be paralyzed by lobbyists who prefer to bypass its provisions and perform their activities in the shadows. Therefore, obligations should be balanced with attractive privileges that encourage lobbyists to register and behave transparently. Any regulation should be further accompanied by an online system containing all the lobbying information reported by lobbyists and lobbied authorities, created over the course of their contacts. Such a system should be based on open data standards (and especially machine-readable formats suitable for reuse), as only this guarantees sufficient information on lobbying activities and enables further scrutiny.

A model for such a system might be found on the website of Canada’s Commissioner of Lobbying¹⁵⁴, which collects all possible lobbying data: legal acts with interpretation bulletins and advisory opinions, the lobbyists’ code of conduct, the Registry of Lobbyists with tutorials and activity reports, statistics, Commissioner’s reports, annual reports on the Commissioner’s Office’s activities, accountability reports, information about anti-revolving-door regulation, the barred door for lobbyists convicted of an offense and how it applies, completed access-to-information requests, and other publications. All the data is stored in user-friendly, machine-readable and open formats, which significantly improves its accessibility and reusability.

¹⁴⁹ See *Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation report. Poland, Fourth evaluation round*, GRECO, 2012, pp. 13–14.

¹⁵⁰ There were some proposals to amend art. 14 of the Polish Lobbying Act to ensure that “the rules of performing professional lobbying activities in the Sejm and Senate and towards deputies and senators shall be determined by the Rules of Procedure of the Sejm and the Senate.” However, because of the discontinuation rule that came into force after the elections in October 2015 this work ceased. At the same time, the Senate has worked on improving its statute, but this work has been suspended until the mentioned legislative work is complete (see *Corruption prevention in respect of members of parliament, judges and prosecutors. Compliance report. Poland, Fourth evaluation round*, GRECO, 2015, p. 3). In the meantime, a special Sejm sub-committee for the adoption of GRECO’s 4th Evaluation Round Report recommendations was established. As the author has learned (letter from the Sejm’s Office, October 9th, 2015, BKSP-141-26926/15), the sub-committee had three hearings, but was terminated in October 2015 due to the parliamentary elections. No activities connected with GRECO’s report had been initiated in the new Parliament by the end of 2015.

¹⁵¹ See 7,000..., Transparency International, 2015, p. 18, *EU Legislative Footprint...*, Transparency International, 2015, p. 8, European Commission Decisions of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals, C(2014) 9051 final, and between Director-Generals of the Commission and organisations or self-employed individuals C(2014) 9048 final.

¹⁵² See <http://www.alter-eu.org/alter-eus-new-campaign-launched-with-transparency-debate-at-the-parliament> and <http://www.alter-eu.org/media-coverage/2015/04/24>.

¹⁵³ A good example of such a both-sides reporting obligation was introduced in the Slovenian lobbying act, which “requires public officials to file a report on each meeting with a lobbyist and an annual summary of activities from professional lobbyists. The officials who are lobbied are required to log the date, place, and subject matter of the lobbying contact; the lobbyist’s name and who they represented; any documents submitted; and an indication of whether the lobbyist identified themselves in accordance with the Act” (See *Lobbying in Europe...*, Transparency International 2015, p. 35).

¹⁵⁴ See <http://ocl-cal.gc.ca/eic/site/012.nsf/eng/home>.

5. Anti-revolving-door Regulation

Table 10: Anti-revolving-door Regulation

| | |
|------------|--|
| POL | Former officials ¹⁵⁵ who have taken part in a decision-making process regarding particular entrepreneurs cannot be employed or perform any other activities for these entrepreneurs within one year after leaving their post ¹⁵⁶ . |
| CZE | <ol style="list-style-type: none"> 1. No binding regulation 2. According to the fourth draft, a lobbied person cannot perform lobbying for a period of two years from the date of leaving their post. |
| SVK | No binding regulation |
| EU | <p>EC:</p> <ol style="list-style-type: none"> 1. Whenever former Commissioners intend to engage in an occupation during the 18 months after they have ceased to hold office, whether this is at the end of their office or upon resignation, they shall inform the Commission in good time, as far as possible with minimum four weeks' notice. 2. During the 18 months after ceasing to hold office, former Commissioners shall not lobby nor advocate with members of the Commission and their staff for her/his business, client or employer on matters for which they have been responsible within their portfolio as Member of the Commission during their mandate¹⁵⁷. 3. Declaration of interests¹⁵⁸ <p>EP</p> <ol style="list-style-type: none"> 1. Former Members of the European Parliament who engage in professional lobbying or representational activities directly linked to the European Union decision-making process may not, throughout the period in which they engage in those activities, benefit from the facilities granted to former Members under the rules laid down by the Bureau to that effect¹⁵⁹. |

If lobbying may be simply defined as interaction with policy-makers with the goal of influencing them¹⁶⁰, then the single most valuable tool that any lobbyist has is their contacts with and links to politicians and decision-makers. Such “connections to powerful, serving politicians are key determinants of the revenue that lobbyists generate”; or in other words, lobbyists “‘cash in on their connections,’ since connections to people in power are an asset with a value independent of lobbyists’ other attributes, such as experience, human capital, or general knowledge of how government operates.” This is very clearly visible in the example of the US Senate, where “lobbyists connected to US Senators suffer an average 24% drop in generated revenue when their previous employer leaves the Senate. [...] Measured in terms of median revenue per ex-staffer turned lobbyist, this estimate indicates that the exit of a Senator leads to approximately a \$182,000 per year fall in revenues for each affiliated lobbyist¹⁶¹.”

¹⁵⁵ The president, prime minister, constitutionally established ministers, and employees of central and local government who hold managerial posts. See arts. 1, 2, and 7 of *ustawa z dnia 21 sierpnia 1997 r.o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne* [the Limitation of Economic Activity by Persons Performing Public Functions Act August 21, 1997] (consolidated text Dz. U. 2006, vol. 216, item 1584, as amended), and Makowski, 2015, p. 28.

¹⁵⁶ See art. 7 *ustawa z dnia 21 sierpnia 1997 r.o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne* [the Limitation of Economic Activity by Persons Performing Public Functions Act August 21, 1997] (consolidated text Dz. U. 2006, vol. 216, item 1584, as amended).

¹⁵⁷ Code of Conduct for Commissioners, point 1.2.

¹⁵⁸ “The attached [to the Code of Conduct for Commissioners] form includes all information that Members of the Commission are required to declare under the Code of Conduct [including previous activities over the last 10 years and outside activities]. It must be completed and made available before the hearing of the Commissioner-designate by the European Parliament and revised during his or her term of office if the information changes, and at least every year. Each Commissioner is responsible for her/his declaration. These declarations shall be scrutinized under the authority of the President and with due regard for each Member’s areas of responsibility. They shall be made public”. See the Code of Conduct for commissioners, point 1.5 and annex 1.

¹⁵⁹ Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest, art. 6.

¹⁶⁰ See *EU Insider in Brussels. A chat with a lobbyist, part 1*, September 8th, 2013, <https://insideeuropeblog.wordpress.com/2013/09/08/insider-in-brussels-a-convo-with-a-lobbyist-part-1/>.

¹⁶¹ See Blanes i Vidal, Jordi, Draca, Mirko, Fons-Rosen, Christian. *Revolving Door Lobbyists*, May 2011, p. 3.

Accordingly: who has the widest networks of such contacts and links? Former politicians and officials. This then leads to a potential conflict of interest in the situation where a politician decides to go through the revolving door¹⁶²—to change his/her role and become a lobbyist. (A similar problem of course also arises in the opposite direction—when an entrepreneur or a lobbyist decides to become a politician or official.) The easiest way to minimize the negative aspects connected with this potential conflict of interest is the introduction of cooling-off periods for people who want to cross this “barricade.” These periods should be long enough to weaken or even break the ties that these people created during their last occupation.

The Polish anti-revolving-door regulation has an extremely narrow scope. Not only does it concern only a small group of the highest officials (excluding parliamentarians), but its scope is further limited to the situation where a former official took part in a decision-making process regarding specific entrepreneurs; there are no limits or cooling-off periods for lobbyists who wish to start a political or governmental career. There is also no regulation in a situation where a former official decides to work for an entity other than an entrepreneur (e.g. an NGO) and, most importantly, there are no further limitations if he/she was not personally involved in the decision-making process connected with the specific entrepreneur. In practice, this means that nothing stands in the way of, for example, a former minister of energy who decides to start working for a lobbying organization concerning the usage of fossil fuels—unless he/she had previously taken part in the decision-making process concerning specifically this organization or its clients.

Although there is no research showing the scale of revolving-door activity in Poland¹⁶³, public opinion is strongly against the performing of lobbying activities by former officials: 47% to 55% of Polish citizens surveyed declared that it is “completely impermissible” for a former official to perform lobbying activities on behalf of a private company¹⁶⁴. Perhaps the most interesting result in the poll was that almost one half of the surveyed citizens (47%) were in favor of anti-revolving-door rules for former MPs and senators—there is currently no anti-revolving-door regulation for these officials in Poland (as opposed to, for example, Ireland and Canada).

Another problematic aspect of the Polish regulation is the short cooling-off period, which only lasts one year. Already in 2004, GRECO stated that “a longer lapse of time should be established¹⁶⁵”; however, nothing has changed since then. In other countries, this period has various lengths—one year (in Lithuania and Peru), two years (Ireland), three years (Columbia), up to as long as five years (Argentina and Canada)¹⁶⁶. Regulations on cooling-off periods often include exemptions from the prohibition on performing lobbying activities—e.g. in Canada such an exemption may be granted by the Commissioner of Lobbying if the exemption would not be contrary to the purposes of the Canadian Lobbying Act¹⁶⁷.

If a cooling-off period is to be effective, it should be related to typical terms of office in a given country; it should be at least as long as one term. Regulation with this design increases the probability of weakening contacts and connections between former and present officials (which are the greatest, and sometimes the only, asset of any lobbyist), and reduces the potential negative impact of a conflict of interest. In this respect, the Czech and Slovak proposals to introduce several-year-long cooling-off periods certainly aim in the right direction; however, the proposed periods should still be longer than in the current drafts.

An interesting problem centers around potential cooling-off periods for lobbyists who wish to enter politics or hold a governmental position. As there is a basic right for every citizen to vote and to be elected, it is open to question whether transparency of lobbying and elimination of potential conflicts of interest are a sufficient reason

¹⁶² “The term ‘revolving door’ refers to the easy passage of staff from public sector positions to jobs in the private sector, and vice versa. The major concern about the revolving door phenomenon is the potential for conflicts of interest if ex-officials abuse the know-how, contacts or status acquired through their public sector jobs to provide their new employers or clients with invaluable insights, undue influence and privileged access”. See *Block the revolving door: why we need to stop EU officials becoming lobbyists*, ALTER-EU, 2011, p. 5.

¹⁶³ Makowski, 2015, pp. 28–29.

¹⁶⁴ Answers differed slightly depending on the former official's position: the president – 55%, the prime minister – 55%, a minister – 53%, a Member of Parliament – 47%. The survey did not cover the position of a Member of the European Parliament. See *Konflikty interesów i lobbging – dylematy polityków. Komunikat z badań*, BS/122/2013, Centrum Badań Opinii Publicznej, Warszawa, 2013, p. 3.

¹⁶⁵ See *Second evaluation round. Evaluation report on Poland*, GRECO, 2004, p. 15.

¹⁶⁶ See Wiszowaty, Marcin Michał. *Regulacja...*, 2008, p. 200, and Subsection 10.11(1) of the Canadian Lobbying Act.

¹⁶⁷ Between November 5th, 2008 and December 3rd, 2015, 22 exemptions were granted. See <http://ocl-cal.gc.ca/eic/site/012.nsf/eng/00306.html>.

for introducing limitations on lobbyists¹⁶⁸. Consequently, any such regulation should be introduced very carefully, taking into account the constitutional issues of a given country.

Most of the above criticism also applies to the situation in the EU, where anti-revolving-door regulation is similarly insufficient¹⁶⁹. It is particularly visible in the case of MEPs, who very often—and very quickly after ending their term of office—establish cooperation with lobbying agencies or commence their own lobbying activity, which may lead to a conflict of interest¹⁷⁰.

6. Legislative-footprint Regulation

Table 11: Legislative-footprint Regulation

| | |
|------------|--|
| POL | <p>In the governmental stage of a legislative process:</p> <ul style="list-style-type: none"> – Anyone can express interest in that legislative process by sending an application in which he/she indicates an area of interest and proposed legal solution—this application is published online¹⁷¹; – After public consultations, a report is published online, including a list of entities that took part in the consultations, their opinions, and responses to them¹⁷². – Additionally, the report should include a list of professional lobbyists who indicated their interest in a legislative process, or the information that no professional lobbyists expressed such interest. <p>In the parliamentary stage of a legislative process:</p> <ul style="list-style-type: none"> – In the annual report about professional lobbyists' activities in Parliament, their impact on the legislative process is described—including information on documents they prepared and their speeches during committees' hearings; – There is no obligation for public consultation concerning bills prepared by parliamentarians; |
| CZE | <ol style="list-style-type: none"> 1. No binding regulation 2. Under the fourth draft, the explanatory report for a bill must contain a list of persons who were involved in the bill's preparatory process (with the exception of its sponsors), including names, surnames, and the name of the company for which they work. 3. The same information must be attached to any proposal to amend an existing act. |
| SVK | No binding regulation |
| EU | <p>A rapporteur may (on a voluntary basis) use a “legislative footprint,” i.e. an indicative list, attached to a Parliamentary report, of registered interest representatives who were consulted and had significant input during the preparation of the report; nevertheless, it is equally important for the Commission to attach such “legislative footprints” to its own legislative initiatives¹⁷³.</p> <p>Data about high-level European Commission officials' meetings with lobbyists is recorded and published.</p> |

Effective scrutiny of lobbyists' activities and their impact is impossible without access to publicly available information on lobbyists and the results of their activities, i.e. proposals by them that were accepted by the authorities during a particular legislative process. As a result, any lobbying regulation is incomplete and ineffective without the

¹⁶⁸ See Špok, Radomir et al., *Regulation...*, 2011, p. 5.

¹⁶⁹ See *Block the revolving door: why we need to stop EU officials becoming lobbyists*, ALTER-EU, 2011, pp. 5–14.

¹⁷⁰ Two former Polish MEPs have become lobbyists in past years. The first of them, MEP Michał Kamiński, was hired as a partner in an international consulting company after losing re-election (see <http://corporateeurope.org/revolvingdoorwatch/cases/micha-kami-ski>). In the second case, former MEP Małgorzata Handzlik decided not to run in the elections after a scandal following her having founded a consulting company operating in Brussels (see <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=444977614820-10>).

¹⁷¹ See art. 7 of the Polish Lobbying Act and par. 52 of the Resolution No. 190 of the Council of Ministers of October 29th, 2013—Rules of Procedure of the Council of Ministers (Polish Monitor of 2013, item 979).

¹⁷² See par. 51 of the Resolution No. 190 of the Council of Ministers of October 29th, 2013— Rules of Procedure of the Council of Ministers (Polish Monitor of 2013, item 979).

¹⁷³ See European Parliament resolution of May 8th 2008 on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions (2007/2115(INI) and *EU Legislative Footprint...*, Transparency International, 2015, p. 8.

introduction of a legislative footprint, which may be defined as “a comprehensive public record of lobbyists’ influence on a piece of legislation”¹⁷⁴. Such a record should contain information on all documents related to the drafting of specific acts, including meetings between authorities and lobbyists, and documents (e.g. opinions, proposals, drafts, expertise, and statements) prepared by the latter. In addition, any draft act should be accompanied by information concerning provisions that were written in cooperation with lobbyists or influenced by lobbyists.

Looking more closely at the situation in Poland, the Polish legislative process always has its parliamentary stage, and often also a governmental stage, where legislation is prepared by the government. Distinguishing between these two stages is very important, as they have different levels of transparency, and therefore their legislative footprints are different as well.

Surprisingly perhaps, it is the governmental stage of the legislative process that is characterized by greater transparency. Not only should all documents created during this stage be published on the Governmental Legislative Process website¹⁷⁵, but a public consultation is also required. Therefore, all the documents and opinions sent in during a consultation by lobbyists (both professional and non-professional) are made public and commented on by the authority that prepared the draft. Information about the impact any lobbying activity had on the final shape of the draft is also provided.

During the parliamentary stage of the legislative process (which either follows the governmental stage or is the first stage, when the draft is prepared by parliamentarians) there is no obligation to conduct a public consultation. This is frequently misused by the government¹⁷⁶. This stage is thus less transparent; the only information that is made public—except for protocols and recordings from hearings¹⁷⁷—is information about professional lobbyists’ activities directed towards the chambers of Parliament (e.g. documents presented by professional lobbyists, their speeches during committee hearings, a description of the impact they had on the shape of the draft). There is no obligation for parliamentarians to publish any information about their contacts with lobbyists or documents they have received from them—the regulation only applies to Parliament as a whole and its subunits (chambers, committees, etc.), not to individual MPs or senators.

The biggest problems with the legislative-footprint regulation in Poland are related to the fact that there is not one shared place where all information can be found; the Sejm, Senate, and Governmental Legislative Process websites are independent and also not connected in any way with the register of lobbyists. As a result, there is no easy way to determine whether particular lobbyists lobbied concerning several different drafts of a bill—the only way to do this is to manually search through the databases located on the individual websites. The best solution to improve the situation would be to create one central system where the history of every draft can be examined, including the whole legislative process, with all of its stages. This system should also enable checks of individual lobbyists’ activities.

The same applies for the situation in the European Union, as there is no one central place where all collected lobbying data connected with a specific legislative process may be accessed and analyzed. Furthermore, legislative footprint regulation is limited strictly to a specific group of officials who take part in the policy-making process, and in many situations it is strictly voluntary¹⁷⁸.

¹⁷⁴ *EU Legislative footprint...*, Transparency International, 2015, p. 4.

¹⁷⁵ See <https://legislacja.rcl.gov.pl/>.

¹⁷⁶ It is not uncommon for a draft that is prepared by the government to then be presented as a parliamentary project simply in order to bypass the obligation to conduct public consultations. This practice was criticized in December 2015 by a group of NGOs that are members of Open Government Coalition (see <http://otwartyrzad.org.pl/oswiadczenie-koalicyi-ws-konsultacji-spolecznych-projektow-ustaw-przygotowywanych-przez-rzad/>).

¹⁷⁷ All committee hearings are recorded, and protocols from them are published. Although sub-committees’ hearings are often recorded (this depends on technical capacities), there are no written protocols, which in practice means that it is much harder to obtain information about sub-committee proceeding than about committee proceedings.

¹⁷⁸ See *EU Legislative footprint...*, Transparency International, 2015, pp. 9–11.

7. Sanctions

Table 12: Sanctions

| | |
|------------|--|
| POL | Any person performing professional lobbying without registration may be punished with a financial penalty in the amount of 3,000–50,000 PLN ¹⁷⁹ A ban on performing professional lobbying activity under criminal law ¹⁸⁰ |
| CZE | 1. No binding regulation; 2. The fourth draft, both lobbyist and lobbied authorities can be fined for administrative offenses (a breach of their legal obligations, such as the duty to register when performing professional lobbying, etc.). |
| SVK | 1. No binding regulation; 2. 2013: Any breach of the act is penalized with a maximum fine of up to € 33,194 or a ban on conducting any lobbying activities for a period of up to five years. The general regulation on offenses shall apply to offenses under this act. Any breach of the act shall be handled by the relevant ministry (Article 7, Sections 3 and 4); 3. 2014: Any breach of the act by a registered lobbyist shall be governed under the Trade Licensing Act No. 455/1991 Coll. Infractions of the act are penalized with a fine, from € 500 in less serious cases up to a maximum of € 50,000. In the most serious cases of breaches of the conditions or obligations, the Trade Licensing Office may terminate a lobbyist's trade authorization. |
| EU | A “sanction” for not registering in the voluntary register: limited possibilities for arranging meetings with the highest EC officials |

As international experience shows, the sanctions for disobeying lobbying provisions may well be one of the most important parts of any effective lobbying regulation. This is especially visible in the USA, where legislators decided that instead of giving lobbyists any privileges after registration, they would “encourage” them to obey the rules by introducing severe criminal and civil sanctions¹⁸¹. While this solution has generally been rejected outside the USA, this does not mean that giving lobbyists certain privileges can guarantee that they will obey the law. This is especially true for registering in the register of lobbyists, as the experience with the Polish and EU registers confirms.

However, as experience has shown, any legal system structured solely around sanctions is far from perfect; therefore, a balance between the systems of privileges and of sanctions should exist within any lobbying regulation. On the one hand, privileges encourage lobbyists to register by giving them additional opportunities to perform lobbying activities and by minimizing the inconveniences surrounding registering and reporting obligations; on the other hand, effective and inevitable sanctions deter lobbyists from taking the risk of acting outside the law.

As is always the case when a repressive regulation is introduced, however, sanctions should be suited to the nature of an infringement, and not only to its severity but also, and especially, to its type. In times of penal populism¹⁸², it is important to avoid the temptation to regulate everything under criminal law, as this branch of law should only be used as a final resort against the most serious breaches of law.

In general, the enumeration of sanctions that may be used against lobbyists who have violated lobbying regulations—especially for not registering or for avoiding reporting—should be broad and should have its foundation first and foremost in administrative delicts. Possible sanctions include fines (in the case of minor infringements, e.g. failure to comply with a reporting deadline) and suspension of lobbying rights and a ban on registration and on performing lobbying activities, or deletion from the register and a ban on performing lobbying activities (for serious cases, e.g. failure to register). Based on the American and Canadian regulations and experience, suspensions of rights and bans on performing lobbying activities seem to be more effective than financial sanctions, as contacts

¹⁷⁹ See art. 19 of the Polish Lobbying Act.

¹⁸⁰ This sanction is generally not an independent penalty, and it is possible for it to be adjudicated as an additional consequence of committing a crime while performing lobbying activities. Such a ban—on performing certain activities—may be adjudicated against any other profession as well. See art. 13 of the Polish Lobbying Act, art. 41 of the Polish criminal code, art. 9 of the liability of collective entities act.

¹⁸¹ See Wiszowaty, Marcin Michał. *Regulacja...*, 2008, p. 229.

¹⁸² See Pratt, John. *Penal populism*, Routledge, 2007.

and meetings with stakeholders are any lobbyist's most valuable asset. The recently introduced EU regulation under which only registered lobbyists may make appointments with top EC officials is based on the same assumption.

To conclude, no system of sanctions can be effective without these sanctions' inevitability. As mentioned above, there is good reason to believe that a large number of Polish "professional" lobbyists perform their activities while unregistered. Yet, between 2005 and 2015, not a single sanction for such actions was imposed¹⁸³. The preventive function of the sanction mechanism is clearly ineffective.

In addition, suitable sanctions should also be introduced for authorities who engage in contacts with lobbyists and as such are obligated to report information about these lobbyists' activities directed towards them, but do not do so. As the Polish example shows, such reporting obligations are often ignored by even the highest officials. (For example, there are several Polish ministries that do not always fulfill the obligation to publish information on lobbying activities; the most extreme case is the Ministry of Foreign Affairs, which has not yet published any information throughout all the time that the Polish lobbying regulation has been in force.) Such situations may be addressed using general disciplinary or criminal sanctions for negligence by officials, or by introducing special repercussions for disobeying lobbying-related reporting obligations.

¹⁸³ See Spurek, Sylwia. *Działalność lobbująca w procesie stanowienia prawa. Komentarz*, LEX/el., 2015, comment on the 19th article of the Polish Lobbying Act, thesis 8 and the answer from January 12th, 2016 by the Polish Ministry of Internal Affairs and Administration to Bartosz Kwiatkowski's enquiry about public information, DAP-WAR-0234-3-1/2016/MPI.

CHAPTER 4

Recommendations

Having explored the regulatory frameworks and practice in Poland, Slovakia, and the Czech Republic, we will now summarize the main points and offer a list of recommendations that can be used in all three countries. As stated above, lobbying transparency is not just about preventing corruption and irregularities in the legislative process; it is also about every citizen's human right to information. With this in mind, and following the structure of the previous chapter, we propose recommendations in the following six areas:

- defining lobbying and lobbyists
- a register and obligations for lobbyists
- privileges for lobbyists
- legislative-footprint regulation
- anti-revolving-door regulation
- sanctions

As stated previously, lobbying is a legitimate and largely beneficial activity and is a crucial part of a healthy democracy. Its main aim is—or should be—to provide relevant information to authorities in order to improve the legislative process, while also safeguarding citizens' access to information about lobbyists' activities and their contacts with authorities. Therefore, although lobbying regulation in itself is not a remedy for corruption¹⁸⁴—or even for undue influence and abuse of power in politics—it can be seen as complementary to anti-corruption strategies.

Last but not least, any effective lobbying regulation must find a balance between citizens' rights (e.g. freedom of speech, access to information, the right to petition) and transparency for lobbying. On the one hand, there is the risk of over-regulating lobbying, which can make it difficult for citizens to exercise their basic rights; but on the other hand, introducing lobbying regulation that is too “weak” is likely to be ineffective and may not achieve any real transparency.

The Definitions of Lobbying and Lobbyists

1. According to the OECD, any definition of lobbying and lobbyists should be clear and **“should not allow space for misreading, misunderstanding or misinterpretation and should be robust and unambiguous to the greatest extent”**¹⁸⁵.
 - a) **Lobbying**, to put it as simply as possible, may be defined as interaction with policy makers with the goal of influencing them; therefore, the legal definition of lobbying should cover as many activities as possible. As every legal system is different, every country should construct their own definition of lobbying fitted to their conditions and national context.¹⁸⁶ At the very least, however, it should include any **direct or indirect “communication, oral or written, with a public official to influence legislation, policy or administrative decisions”**¹⁸⁷.

¹⁸⁴ Špok, Radomír et al., 2011, p. 10.

¹⁸⁵ *Transparency and integrity in lobbying*. OECD, 2013, p. 25.

¹⁸⁶ See Cocirta, Alexandru. *Regulating Lobbying: Lessons to be Learned*, Institute of Public Affairs, 2007, p. 17.

¹⁸⁷ *Lobbyists, government and public trust: Promoting integrity by self-regulation*. OECD, 2009, p. 18. See also European Commission. *Green Paper of the European Transparency Initiative*, COM (2006) 194 final, http://ec.europa.eu/transparency/eti/docs/gp_en.pdf.

- b) One important part of any successful definition of lobbying under the law is a proper description of **exclusions for activities that cannot be treated as lobbying**. The list of such exclusions should be clear and cannot be subject to broad interpretation¹⁸⁸; it may include, for example: communication that is already on the public record (e.g. public hearings and consultations), citizens exercising their constitutional rights (e.g. the right to petition, to information, freedom of speech, or to be a party in a court or administrative case), or communication between local and national governments or between different governmental agencies (e.g. ministries, central offices). As a general rule, these activities should remain transparent and available to the public—typically on the basis of the Freedom of Information Act.
- c) The definition of lobbying should also define the “policy makers” or “public officials” who might be the **addressees of lobbying activities**. This definition should cover not only EU officials¹⁸⁹, representatives of the national government, and central authorities that can take part in the policy making process (e.g. the Public Procurement Office or the Supreme Audit Office), but also Members of Parliament¹⁹⁰ and representatives of local governments and offices that may affect the shape of local policies¹⁹¹.
2. **Lobbyists** should be defined as **persons carrying out lobbying activities**, i.e. people who communicate with public officials to influence the legislative process. In our opinion, **there is no justification for excluding any particular groups of subjects from the definition of lobbyists**. This means that the law should treat as lobbyists not only persons who receive compensation for their activities carried out on behalf of other persons (professional lobbyists in Poland or consultant lobbyists in other countries), but also in-house lobbyists, including people working in a variety of organizations such as public affairs consultancies, law firms, trade associations, state-owned companies, think tanks, foundations, and NGOs. Breaking the mental connection between lobbying and corruption, such a broad enumeration of bodies that might be considered lobbyists helps to prevent the stigmatization of lobbying, legitimizing it as a legal activity that is useful for an effective and transparent legislative process.

Any **exemptions** from the definition of lobbying must be also adapted to the definition of lobbyist—therefore, citizens performing their basic rights, with no financial interest in a matter, should not be considered lobbyists¹⁹². On the other hand, anyone receiving remuneration in any form shall be considered as an unregistered lobbyist and bear all the consequences of such act.

Register of Lobbyists

As the examples of Poland¹⁹³ and the EU¹⁹⁴ show, lobbying regulation cannot work properly without an effective register of lobbyists, which must meet several requirements:

3. The register should be **mandatory** for every lobbyist covered by the definition. It also must not be possible to arrange a lobbying contact with a public official or perform any other lobbying activity without registration. In certain situations where the legislative process is dynamic, the law may provide a possibility to register after the lobbying activity has taken place. In such extraordinary situations, registration should be performed without delay: e.g. within 3 days after the lobbying activity.

¹⁸⁸ *Lobbyists, government and public trust: Promoting integrity by self-regulation*. OECD, 2009, p. 25.

¹⁸⁹ Permanent Representation of Member States to the European Union.

¹⁹⁰ See *Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors*. Evaluation report. Poland, Fourth Evaluation Round, GRECO, 2012, pp. 13–14.

¹⁹¹ See See Makowski, Grzegorz. *Czy możliwy...*, 2015, p. 23; Wiszowaty, Marcin Michał. *Działalność...*, 2010, p. 99; Kuczma, Paweł (ed.), *Ustawa...*, 2013, pp. 33–34.

¹⁹² See *Full Lobby Transparency Now! Frequently Asked Questions*, ALTER-EU, 2015, p. 6.

¹⁹³ See *Corruption prevention in respect of members of parliament, judges and prosecutors*. Evaluation report. Poland, Fourth evaluation round, GRECO, 2012, pp. 12–13.

¹⁹⁴ See *New and Improved?...*, ALTER-EU, 2015, pp. 6–7; *Rescue the Register! How to make EU Lobby Transparency Credible and Reliable*, ALTER-EU, 2013, pp. 9–10.

4. The register should be **centralized, accessible online, public, and shared** by all lobbied authorities, i.e. all data should be collected in one place in a standardized, machine-readable format. Such practice prevents inconsistencies between different public bodies that publish lobbying information on their own websites (as is currently the case in Poland) and guarantees citizens the broadest, easiest possible access to information.
5. The register should contain not only basic lobbyist information such as each lobbyist's name, type (e.g. professional, in-house, non-professional), address, and registration number; but also the names of all people involved in lobbying activities (which is very important for public officials, who have to be able to identify lobbyists), the topics of lobbying, the names of mandataries/clients¹⁹⁵, an estimated value or ideally the exact income received from clients for lobbying¹⁹⁶ activities, and a disclosure of funding sources. Most importantly, it should include full information about lobbying contacts and activities, including dates, names of people involved, minutes, and electronic copies of documents used during the contacts (especially opinions, reports, analyses and other written positions presented to public officials).
 - a) The scope of the information to be included in the register depends on each registered lobbyist's type—more data should have to be published by professional lobbyists than by non-professionals (e.g. NGOs). This particularly concerns clients' names and the estimated value for lobbying activities¹⁹⁷.
 - b) Professional secrecy—and especially lawyers' secrecy—should not cover information whose disclosure in the register is mandatory. This means that in case of doubts, lobbying regulation should be treated as *lex specialis* to secrecy regulations.
 - c) New clients should be declared in the register no later than one month after the start of their contracts.
 - d) New employees engaged in lobbying activities should be declared without unnecessary delay; these employees must not perform any lobbying activities until their names are disclosed in the register¹⁹⁸.
 - e) **The legal obligation to disclose information about lobbying contacts should be imposed on both lobbied public officials and lobbyists¹⁹⁹.** The information should be published in the register without undue delay after the lobbying contact; the exact time available for registering the lobbying contact should be set by law and adapted to a nation's legal system.
 - f) The obligation to disclose information about lobbying contacts that is imposed on lobbied public officials should be accompanied by a standardized procedure regulating where and how lobbying information should be disclosed. In Poland²⁰⁰, such internal regulations are currently created by the heads of lobbied authorities, leading to many differences and inconsistencies, particularly on the local level²⁰¹.

Privileges for Registered Lobbyists

Experience in the EU overall²⁰² as well as Poland specifically²⁰³ suggests that regulation of lobbying without privileges for registered lobbyists is ineffective. The following measures are therefore recommended:

6. Reserving access to public officials—and especially government and parliament—to registered lobbyists only. This means that **public officials should be banned from meeting with unregistered lobbyists.**

¹⁹⁵ Compare the Canadian Registry of Lobbyists.

¹⁹⁶ Compare the EU Transparency Register.

¹⁹⁷ Unless lobbying activities performed by non-professional lobbyists are funded by donors.

¹⁹⁸ This rule is only applicable in the situation where a registered lobbyist is not a natural person.

¹⁹⁹ This is important for estimating the total quantity of lobbying contacts and lobbying activity. Compare with the description of the present situation for Poland, where such an obligation is imposed only on lobbied authorities, who very often ignore it.

²⁰⁰ See art. 16 par. 2 of the Polish Lobbying Act.

²⁰¹ See Kuczma, Paweł. *Lobbowanie za lobbiniem*, Rzeczpospolita, Prawo co dnia, 2013.

²⁰² Compare the described situation with the number of registered entities in the EU's Transparency Register before and after the introduction of the privilege for registered lobbyists to meet with the EC's highest officials.

²⁰³ See *Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors. Evaluation Report. Poland, Fourth Evaluation Round*, GRECO, 2012, pp. 11–14; Kuczma, Paweł. *Ustawa lobbingsowa czyli kolejny bubel prawny*, <http://www.kancelaria-kuczma.pl/ustawa-lobbingsowa-czyli-kolejny-bubel-prawny>.

7. Considering the creation of a special platform for communication between policy-makers and lobbyists, so as to further encourage the latter to register (e.g. public hearings for lobbyists during the governmental stage of the legislative process).
8. Meanwhile, establishing privileges for lobbyists must not lead to a limiting of the rights of ordinary citizens—especially the right to information.

Legislative-footprint Regulation

Data from the lobbying register that is collected during communication with lobbyists should be used to offer public information about a law's legislative process, i.e. which drafts and regulations were prepared in cooperation with lobbyists, what impact lobbyists had on its drafts and its final shape, who these lobbyists are, and on whose behalf they work. This means that there is also a need to introduce legally binding legislative-footprint regulation, which would be closely connected with the lobbying regulation, and would guarantee central online access to all documents that lobbyists create and send to the authorities (including those that ultimately are not used in the process of drafting new regulations).

Anti-revolving-door Regulation

Lobbying regulation should further be complemented with anti-revolving-door regulation, which will minimize the risk of interpenetration between policy-making and lobbying.

9. As lobbying is very often all about connections between lobbyists and active policy-makers, there is a strong need for the introduction of a **ban on registering as a lobbyist and performing lobbying activities in the first five years after leaving public office**. Furthermore, this ban be connected with effective prevention of potential conflicts of interest; not only—as in Poland—after situations where such a conflict occurs in practice²⁰⁴. Five years, which is longer than most terms of office, should be enough of a cooling-off period to reduce the negative impact of any potential conflict of interest²⁰⁵.
10. The register of lobbyists should further include information on any former public offices a lobbyist has held: “This is to enable public scrutiny of the revolving door, whereby public officials become private sector lobbyists, and vice versa, creating a high risk of conflicts of interest”²⁰⁶.

Sanctions

Even the best lobbying regulation with the most attractive privileges for registered lobbyists cannot have guaranteed effectiveness without a system of sufficiently deterrent sanctions.

11. Lobbyists
 - a) Where possible, the sanctions for not complying with the regulation's obligations should be based on administrative delicts, with criminal law being treated as the *ultima ratio*.

²⁰⁴ See art. 7 *ustawa z dnia 21 sierpnia 1997 r. o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne* [the Limitation of Economic Activity by Persons Performing Public Functions Act, August 21, 1997] (consolidated text Dz. U. 2006, vol. 216, item 1584, as amended).

²⁰⁵ A five-year prohibition is used by the Canadian Lobbying Act, in its subsection 10.11 (1); it might serve as a good reference and should generally work in every country. Nonetheless, the ban period should be suited to the length of the term of office in a given country, so as to minimize the significance of lobbyists' future contacts. In practice, this means that when a parliament's term of office lasts four years, then a four-year prohibition should generally be enough.

²⁰⁶ *Rescue the Register! How to make EU lobby transparency credible and reliable*. ALTER-EU, 2013, p. 26.

- b) There should be an obligation to register as a lobbyist if one wants to perform lobbying activities; therefore, a ban should be placed on performing lobbying activities without registration as a lobbyist.
- c) There should be an obligation imposed on lobbyists to update the register after every lobbying activity or after every change to the data contained in the register.

12. Public officials

- a) There should be an obligation to add to the register information on lobbying activities undertaken towards public officials.
- b) Public officials should be banned from meeting or contacting unregistered lobbyists, and obliged to report whenever someone attempts to set up such a meeting/contact.

13. Three levels of **sanctions for lobbyists**, depending on the seriousness of the offense:

- a) A fine, with its amount being determined by the funds received from a mandatary/client or—if funds are not disclosed—on yearly gross income;
- b) Suspension of lobbying rights;
- c) A ban on registering and performing lobbying activities, or deletion from the register.

14. Two levels of **sanctions for public officials**:

- a) A fine;
- b) Termination, used only as a final resort in the most serious cases—primarily when failure to fulfill obligations is connected with commission of a crime.

15. If the use of the sanctions outlined above does not suffice within a particular legal system, then other penal measures should be implemented, including special lobbying crimes, as well as a ban on performing lobbying activities.

