

ARTICLES

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LOBBYING IN POLAND: SOME COMMENTS ON CURRENTLY BINDING LEGAL REGULATIONS

ABSTRACT

One of the features of democracy is the constant battle for the protection or implementation of particular interests. This trend is inevitable and, according to many experts, also quite beneficial with regard to the efficiency of the functioning of the political system, as well as its social legitimization. Nevertheless, restrictions apply as there are as many ways of regulation, from a legal point of view, as there are countries in the world. Thus it ought to come as no surprise that lobbying exists in Poland, and in consequence we are observing attempts to establish a framework for it in legal terms. Some questions arise in this respect that require a serious response: what should be considered as lobbying? Is it actually legal in Poland? Does the legal framework allow for its controlling and monitoring? If, and possibly how, should such regulations influence the social reception of lobbying in Poland? These are but a few of the questions that this paper is aiming to provide answers to.

Key words

lobbying, Poland, legal regulations

Looking at lobbying from a historical point of view, it turns out that the phenomenon is not restricted exclusively to modern democracies. It was even known in various forms in ancient political systems, e.g. in Greece. The current understanding of the term “lobbying” is mostly due to its development in the United States as it was there that modern lobbying was born. This country is also regarded as a pioneer in terms of regulating it, and the norms effective there are exemplary to many other countries around the world and to attempts to civilize it.

However, the fact that legal solutions are followed up does not mean that they are going to be identical everywhere and utilized for the same purposes. To confirm this, the fact that lobbying is described in different ways ought to suffice: advocacy of interests (Chile, Peru), promotion of interests (Mexico), promotion of affairs (Argentina), institutional relations (Italy) (Wiszwaty, 2008, p. 30). However, countries with no proper, specific legal norms concerning lobbying are in a majority. In locations where such laws have appeared, a certain regularity may be found: either there are detailed regulations, not leaving any room for doubt in terms of interpretation and strictly imposing certain behaviors (e.g. the US), or a law is passed which is too general and *de facto* only simulates an intent to raise the transparency level of the process of its making and implementation. Poland represents the second category.

This article aims to present a detailed assessment of Polish regulations on lobbying, particularly with regard to its flaws, as well as to evaluate the planned changes. The text adopts mainly legal-institutional analysis and political discourse analysis.

1. Lobbying and the law in Poland

The law with foremost authority is the Constitution of the Republic of Poland, adopted by the National Assembly (both houses of Parliament together) on 2 April 1997 (*Dziennik Ustaw*, 483/1997). It is worth emphasizing that it was approved by the citizens during a national referendum (the so-called “constitutional referendum”), announced by the President of the Republic of Poland, and conducted on 25 May 1997. It was then that Poles decided – with 53.45% of the votes being for “yes”, from a turnout of 42.86% of the population with the right to vote – that they wanted to adopt, in this form and wording, a new constitution, and the Supreme Court decided it was valid under the resolution from 15 July 1997 (*Dziennik Ustaw*, 490/1997). It is worth mentioning at this point that this law is binding in Poland despite the ongoing conflicts of the Polish authorities with the European Commission about the rule of law and the quality of democracy.

For the purpose of realizing the objectives of the article, an interesting measure is to look more closely at the legal norms concerning lobbying (directly or indirectly) as well as stating and realizing particular interests nationally. The first norm in this regard is the one indicated in art. 12 of the constitution, according to which the state guarantees the freedom to establish and the freedom to function of trade unions, social-professional associations for farmers, associations, civil movements, other voluntary federations and foundations. This is developed in art. 17, where a norm is formulated, according to which it is possible to establish, by power of an act, professional self-governing bodies “representing those performing professions of public trust and being in charge of proper activity of these professions within the limits of public interest and for their protection”. Moreover, other types of self-governing bodies may be established, as long as they do not violate the freedom to perform a profession or restrict the freedom of undertaking business activity.

Following this up is art. 57. According to the legal norm stated there, anyone, with no differentiation between citizens or others located on the territory of Poland, is guaranteed, unless the act states otherwise, “the right to organize peaceful gatherings and to participate in them”. One side note at this point, Poles were very eager to demonstrate and protest, even in the times of the Polish People’s Republic, against the regulations of the then current authorities, quite often exposing themselves to repression. Today, Poles also often exercise this right, but the scale of demonstrations is surely different from those dating several decades back.

The norm mentioned above is elaborated further in art. 58, which guarantees everyone the right to associate. Naturally, there are some restrictions, in the sense that a court decides the registration of such a gathering, and may refuse to do so in the case when the purpose and the activity of such an entity is contradictory to art. 13 of the constitution or other laws (e.g. in the case of propagating totalitarian systems). The entities that will succeed in the procedure are subject to supervision from appropriate state institutions. Further on, in art. 59, it is indicated that “freedom of associating in trade unions, social-professional farmer organizations, and employer organizations is guaranteed”, and, among others, these entities have the right to negotiate, make collective bargaining agreements, and go on strike¹.

¹ According to the act, it was indicated that citizens serving in the Polish Armed Forces, the police, national security agencies, etc. do not have the right to strike.

Art. 61 is of major significance, for it states that “a citizen [therefore not every resident of Poland – R.W.] has the right to acquire information regarding the activity of state authorities and those in public posts. This law also includes acquiring information concerning the activity of economic and professional self-governing associations as well as other individuals and organizations which perform public duties and administer municipal property or that of the State Treasury”. Moreover, “[t]he right to acquire information includes access to documents and access to sessions of the state authorities elected by universal election, including the opportunity to record sound or vision”.

The state also guarantees protection of broadly understood private property (art. 21). The foundation for the state economic system is supposed to be a social market economy based on “the freedom of economic activity, private property, as well as solidarity, dialogue and cooperation with social partners” (art. 20). Everyone is equal in the eyes of the law and no one can be discriminated against in the political, social, or economic life of the country (art. 32). Moreover, everyone is bound to observe and respect the freedoms and rights of others (art. 31 sec. 2).

Finally, it is worth pointing out an excerpt from art. 63 of the constitution. Similarly to a number of other democratic countries, a norm was included in this most important of laws, guaranteeing anyone, so not only a citizen, the right to submit petitions, applications, and complaints in the public interest, self-interest or the interest of another person (with their consent) to all state authorities and to social entities performing duties as delegated by those authorities in this regard. Naturally, all this takes place while respecting the media and granting their freedom (art. 14).

This is a key condition because it is unlikely that references and regulations concerning lobbying would appear in a law on a level as high as the constitution. It can, and ought to be done, in the form of parliamentary acts, in order not to compromise the significance of the constitution. Nonetheless, even a very superficial analysis of the articles of the constitution referred to above is enough to draw the conclusion that in the Polish political system all activities protecting particular interests as well as forcing them onto state authorities for the purpose of implementing them in the current legal system are legally allowed – as long as they do not violate the laws included in other acts in this respect.

2. The effect of the legislative process on lobbying activity

What was not included in the constitution, for obvious reasons, was condensed in the entries of the act from 7 July 2005 concerning lobbying activity in

the legislative process (*Dziennik Ustaw*, 248/2017). Interestingly, “Poland was one of the first European countries to pass legislation concerning lobbying and still remains one of the few in the region with its own, specific regulation of this phenomenon” (Batory Foundation, 2015, p. 8). Nevertheless, the first things that are clearly visible and provoke questions are the dates. How is it possible that since the moment of adopting the text of the constitution until the date of passing the act presented here, there was a sort of legal void? Why did it take as long as eight years for the legislature to prepare regulations concerning lobbying activities? It is difficult to find answers to these doubts; nonetheless, the effect was that during these eight years, by one of the rules of Roman law, what was not forbidden was actually allowed.

Another matter is the brevity of the law, with its 24 articles covering seven A4 pages. Such a situation should not be considered wrong or inappropriate at this point in the analysis. Without any attempt to attribute bad intentions to the legislators, one might assume that they only intended to indicate a general framework for lobbying in the political system, while clearly specifying boundaries that cannot be crossed in any way, and this solution would be acceptable if it was consistently used in the whole text. Yet this is not the case, as will be demonstrated by the following arguments. Moreover, only a quantitative comparison of the regulations in the law with those valid in the US, the homeland of modern lobbying, allows a thesis to be advanced that the Polish law is far from perfect in this regard. Some US examples: – Lobbying Disclosure Act of 1995, Lobbying Transparency and Accountability Act of 2005, Lobbying Transparency and Accountability Act of 2006, Special Interest Lobbying and Ethics Accountability Act of 2005, Honest Leadership and Open Government Act of 2006, Ethics and Lobbying Reform Act of 2006 and 527 Reform Act of 2006 – are proof of quantitative and above all qualitative differences in the attitude towards lobbying and its regulation (Oświecimski, 2012).

A further matter that raises some doubts, even before going deeper into the contents of the law, is its exclusive concern with the process of passing new laws. One should add that this is only with regard to the Council of Ministers and the Sejm, excluding other state authorities at various levels, as well as political or administrative decisions. For the definition adopted is: “lobbying is any activity conducted legally, by legally valid methods, aiming to influence state authorities in the legislative process” (art. 2 sec. 1). Indeed, in this case the lobbyist has much room to maneuver, having the ability to utilize various “influence-making” tools. Nonetheless, it is obvious that lobbying is possible not only during the legislative process, but also towards the public institutions implementing

the laws (executive power), as well as interpreting them (judicial power). In this case, the number of options available to the lobbyist is far smaller and the effect on these powers is less certain. However, it would be wrong to think that if there is an act on lobbying activity in the legislative process, then, analogically, laws similar to this one could be passed in Poland for the purpose of drawing up a framework for lobbyists to influence other kinds of power.

Reading Chapter I (“General regulations”, consisting of only 2 articles) of the law proves that it is not a document that would apply to all categories of entities who want to influence the legislative process in Poland. The term “professional lobbying activity”, understood as “profit-making lobbying activity conducted for third party benefit in order to include their interests in the legislative process”, appears much too often. Such a solution allows a conclusion to be drawn that the law *de facto* concerns professional lobbyists, persons/entities for hire, yet it does not concern the huge number of those who act spontaneously and undertake lobbying activities ad hoc (e.g. to obtain a one-time recommendation from a president of an enterprise). This is also confirmed in art. 1, which indicates that the law stipulates the rules for disclosure, rules for implementation, forms of inspection, and the rules for maintaining a register of entities engaged in professional lobbying activity. There is indeed no information about other entities, which raises doubts even in the matter of equality before the law, as well as obligations such entities have.

Moreover, the chapter does not include any other definitions which seem important from the perspective of regulating lobbying. Therefore, in the text there are no explanations of concepts such as “lobbyist”, “contracting party”, “interest group” or “group of influence”, “legislative process”, etc. In consequence, there may be some legal loopholes that will allow later interpretation of applicable law, and taken advantage of by public opinion, the media, or even the common courts.

Chapter 3, concerning the register of entities performing professional lobbying activity and the rules of utilizing such an activity, amounts to five articles. Again, this is an interesting read. There is a comment about a separate register (art. 10 sec. 1), that it is public, and that it is maintained by the Minister responsible for public administration; what may seem peculiar, however, is that it is supposed to have the form of “a database stored on IT data carriers according to the act (...) concerning the computerization of the activity of entities performing public duties” (art. 10 sec. 2). While this register does indeed exist, it is not easy to find and is in the form of a PDF file. In the age of widespread computerization, and in terms of public service, such a solution is archaic, which is evident in

comparison to a similar register maintained by the EU (European Commission, 2018). What is more, it is available on the website of the Bulletin of Public Information and not directly from the Ministry of the Interior and Administration.

The register contains the sequential number of an entry, date of entry to the register, name of company or name and surname of the person performing professional lobbying activity, the address of such an enterprise (not for individuals), number in the National Council of the Judiciary (known as KRS) or the number in the Central Registration and Information on Business (known as CEIDG), the date and grounds for removal from the register, file reference numbers, and other comments. An entry on the register is submitted on a specific form including most of the data mentioned above, proof of payment of a fee of PLN 100 (circa EUR 25) paid for inclusion, and copies of pages from a document confirming identity (in case of individuals). On these grounds, after the registration such an entity/individual receives, although only at the applicant's request (art. 11 sec. 8), a certificate of inclusion in the register, and can therefore officially start performing their activity (art. 12). Such a certificate is valid only for a period of three months. The application form contains a section entitled "Subject of lobbying activity". It might seem that such information is equally important as telephone/address data, if not more so from the perspective of the transparency of the legislative process and legality of lobbying activities. Yet the information is labeled with an asterisk with the following wording: "completed voluntarily". Thus, in other words, the legislator does not want to know what the area of interest of professional lobbyists will be or on whose order they are going to work. The fee for making an entry on the register does not in any way encourage lobbyists to register and choose legal methods for their activity². Therefore, one might assume that the register is merely a "dummy", a quasi-tool, and does not work to control lobbying in Poland. The lack of obligation to submit detailed reports from lobbying activities makes this conviction even stronger.

There is also a possibility of submitting an application for removal from the register³, which is a standard option. However, due to the fact that the register functions in an analogue form, removing an entry does not lead to the removal of the data of a person performing the lobbying activity, only to adding

² As of 28 November 2018 the register contained 447 entries. The number is not excessive, which might lead to the conclusion that many lobbyists conduct their activity through other channels, so the register does not really fulfill its role.

³ An individual entry can also be removed, e.g. due to a court judgment in a criminal case or by way of administrative decision (art. 13).

a specific comment informing about the removal. In this manner, despite submitting the legally required application for removal, the register contains data on 31 persons/entities (as of 28 November 2018) which should not be available to the public anymore. In any case, in this context a question of a general nature ought to be considered, i.e. whether the register in its current form conforms to the latest regulation of the European Parliament and the EU Council concerning the protection of personal information (Regulation, 2016/679).

A certain kind of benefit resulting from registration is the opportunity to perform professional lobbying activity in an administrative office of the state authorities. In this regard there is a requirement for a certificate of entry on the register (mentioned above), as well as a statement indicating the entities for whose benefit the lobbying is performed. It seems that such a document (statement) does not bind the lobbyist to a truthful indication of the entities they are working for. This gives an unnecessary temptation to depart from the truth, the more so bearing in mind the fact that no person and no measures are in place to verify the truthfulness of such statements. As indicated before, such information is not required while registering. The standard expression “under the penalties of perjury for giving false testimony” will make no impression on those who are desperate or looking forward to enormous profits.

Regarding inspection of professional lobbying activity, and therefore also of guaranteeing the transparency of the legislative process, the regulations from chapter 4 of the act remain very general. According to art. 16 sec. 1, state authorities must make available in the Bulletin of Public Information data concerning all the activities professional lobbyists perform with regard to them, and also indicate the result expected⁴. This is understandable and obviously necessary. Moving forward, it turns out that heads of administrative offices, serving under state authorities, individually and to their own extent (this has not been standardized), establish the procedures for their employees with regard to those performing professional lobbying activity, be it those included on the register or

⁴ Although this is no simple task, once a year, heads of administrative offices are obliged to prepare information concerning lobbying activities about state authorities, including a) establishing matters assisted by professional lobbyists, b) indicating names of lobbying entities, c) establishing the forms of activities they undertake and establishing whether they acted “for” or “against” a certain project, d) establishing the influence the lobbyists had on a specific resolution. In this last case serious doubts arise as for how this influence can be measured... Due to a lack of political will administrative offices avoid publishing proper reports as much as they can.

those without an appropriate entry⁵, as well as the manner of documenting such contacts (usually a note with different degrees of detail)

The regulator has established sanctions for those involved in professional lobbying activity who do not have a proper entry on the register, as indicated in chapter 5 of the act (only 2 articles). Firstly, these are financial penalties within the range of PLN 3,000–50,000 (around EUR 750–12,500), as applied on the basis of an administrative decision (not a court judgment) by the Minister responsible for matters of public administration⁶. For an average Polish citizen, even the lowest figure would be overwhelming. However, when a draft of a law or a situation ignoring legal activity can lead to profit counted in millions or perhaps even billions, the temptation to act not necessarily within ethical and legal bounds may prove too strong, and the threat of only having to pay the penalty stated above might not be enough of a deterrent. Secondly, and perhaps most importantly, if the financial sanctions were to no effect first time around, and the professional lobbying activity was continued without requiring registration, the penalty might be issued numerous times. Such a tool is more serious and remains at the disposal of the appropriate minister⁷. However, these possibilities have never been used.

Neither does the state bother to deter bottom-to-top initiatives implemented by the lobbyists themselves, aiming for self-regulation of lobbying by the surrounding environment. In addition, there is no evidence of a will to act on their part. Some initiatives, such as the Association of Professional Lobbyists in Poland, with their Code of Professional Ethics (SPL, 2018), are valuable, yet have absolutely no impact on the quality of lobbying, its transparency, and the way

⁵ However, the legislature has foreseen the latter possibility. The head of an administrative office is thus obliged to inform the minister responsible for matters of public administration about the situation that has arisen in writing.

⁶ According to art. 19 sec. 2 of the act – the severity of the penalty depends on the degree of influence of such an entity on a certain resolution made by the state authority with regard to the legislative process, as well as on the range and character of lobbying activities undertaken by that entity. In other words, one might state that the minister has a certain freedom of decision about the degree of punishment thanks to the stipulated financial range. For it is not possible to measure the influence and the regulator did not literally indicate the scale of financial sanction for a specific range and specific character of the offense.

⁷ An interesting detail arises at this point – the money earned this way is considered as income for the state budget, but its purpose was not mentioned (art. 20 sec. 1).

it is perceived by society. The Association is so far not strong enough to affect the majority of those around, fragmented as they are.

Some further notes concerning professional lobbying activity in Poland should be made at this point, but of a different nature. Up until 2010, there was no such profession as “lobbyist” in the “Classification of Occupations and Specializations for the Labour Market” (*Dziennik Ustaw*, 227/2018) maintained by the Ministry of Family, Labour and Social Policy (or some similar name, within recent years). It was only at this time that the profession “lobbyist” was introduced in the section “Specialists”, subsection “Specialists for economic matters and management” (position 243202). As a reminder, the constitution has been in force since 1997, and the act on professional lobbying activity since 2005. Thus for 13 years it was possible to undertake one’s business and defend it, yet the lobbyist profession was formally non-existent. Moreover, the law from 2005 outlined the legal framework, according to which professional lobbying can be performed, and the regulations of the Department of Labor did not catch up by any means. Interestingly it would also be difficult to find information concerning lobbying activities or such in the Central Registration and Information on Business (Ministerstwo Rozwoju, 2018). The only thing that can be found there is in section M – “Professional, scientific and technical activity”, in chapter 70 “Head Offices activity; consultation concerning management”, there is the so-called subclass 70.21 “Public relations and communication”. As it turns out, this includes “consulting and direct assistance, including lobbying, for economic entities and other units with regard to public relations and communication”. However, it is not possible to find this by entering the term “lobbying”, or its any variation, into the search engine of this platform. The only way to find a certain item is to manually search sections, classes, and subclasses. Such digital solutions ought to be constructed in a rather different manner.

When the law was coming into force in 2006 there were warnings from the media and experts that this law could de facto be useless. The observers were not much mistaken in their judgment (Batory Foundation, 2015, pp. 1–37). These statements are supported by sparse, irregular opinion polls, carried out by various research centers: CBOS and TNS, to name but two. Lack of regular surveys does not allow comparative studies to be made, analyzing changes of opinion over time and drawing conclusions. Nonetheless, certain observations or findings are more than evident. The first such conclusion is that despite passing years, the majority of Polish society perceives lobbying as a negative phenomenon, identical to corruption, i.e. the vulnerability of the authorities to influence by major interest groups, the possibility of “purchasing” laws, and the pursuit of

self-interest (Feliksiak, 2013; Krassowska, 2015; Talarek, 2016). In addition, these opinions are reinforced by a strong message in the media concerning lobbying and revealing it to the society only when something negative happens, as a sort of a sensation.

Secondly, it is rather difficult to claim that the Polish society is active or demonstrating a civil attitude that goes beyond the ordinary. Therefore, NGOs remain relatively weak in comparison to the authorities. Their fragmentation, limited resources and concentration of efforts on other matters mean that they generate no pressure on the authorities to establish solid regulations concerning lobbying. Poland does not have an entity that could focus its attention solely on monitoring the process of establishing, implementing and interpreting the law. This would require submitting reports and analyzing their authenticity by an entity whose activity would influence the transparency of decision-making processes in the country⁸.

3. New lobbying in Poland

It is undisputed that the manner of regulating lobbying in Poland requires change, as is evident considering the above remarks. As the current situation is imperfect, so is the social evaluation resulting from a lack of knowledge of what it actually is⁹, while the image created by the leading media remains very critical (it is easier and better to present a sensation rather than something positive which will not attract attention). In connection, an idea has emerged within government circles in Poland, concerning a new and broader regulation of lobbying, and, seemingly using this opportunity to create a single law on access to public information, disclosure of public interest, and anti-corruption.

The idea is perhaps legitimate, yet the first warning signal in this case should have been the fact that the assumptions behind the new law were established in the personal environment of the minister responsible for coordinating secret

⁸ In the US this activity is performed for instance by the Center for Responsive Politics, <https://www.opensecrets.org/>.

⁹ During a poll performed by CBOS in 2013 on a representative group of respondents, 45% stated that they had never encountered this expression. An even larger group, 65%, were not aware of the fact that there exists a law regulating lobbying in Poland. Paradoxically, as many as 57% of these considered lobbying a negative phenomenon (as abuse, corruption) and only 25% thought it positive (as presenting reasons) (Kowalczyk, 2018).

services. And even though this fact remained almost unnoticed, the project that was revealed to the public caused numerous serious objections (among others from the Legal Council at the Prime Minister) and the agitation of non-governmental organizations. One of the contested factors was that work on the project lasted for 10 months and only six days were allocated for social consultations.

The second matter is that there is no possibility of rationally regulating so many different matters in one legislative project. Anyway, there is no need to do so, as the penal code and the suitable laws concerning lobbying and access to information already exist. Suitable anti-corruption agencies already operate on a legal basis. It would only suffice that these laws are precisely formulated (leaving no room for interpretation), detailed, not overlapping (so that there would be no risk of adopting legal standards that exclude the others), that they should harmonize with each other and that they should be implemented. And finally that they would be stable, not easily adjusted to current specific political needs.

Yet, thirdly, the proposed project in many places duplicates existing laws. For instance, the project of the new act restricts access to public information on aspects concerning privacy in cases when contracts are made by companies of the State Treasury or foundations such as the Polish National Foundation. This is what administrative offices for instance very often cite while refusing reporters access to information. Moreover, the project assumes the possibility of restricting the right to information if it would hinder the functioning of an administrative office [which is not defined anywhere – R.W.]. (...) And at the same time the law would extend this access to administrative procedures (...) e.g. for issuing a driver's license. If the new law would come into force in the form proposed by the government, everyone would have access to personal data from documents included in an application for a driver's license. Therefore citizens would not be guaranteed the secrecy of their personal data (Cieśla, 2017).

Fourthly, the project assumes that if a certain non-government organization (NGO) would declare an interest in the process of establishing a specific law, then according to the proposed regulations it would be obliged to disclose information about all its sources of income for the last two calendar years. Such a requirement may seem controversial, especially in Polish legal culture, even though in many cases it would be possible to fulfil it. On the other hand, if such an entity, or individual for that matter, made even an unintentional mistake, then they would stand trial in the same way as someone giving false testimony. Thus many entities surely would seriously ponder whether it is worth taking such a risk, which might lead to freezing the actions of NGOs. Moreover,

business representatives¹⁰ or professional lobbyists would not be burdened by such an obligation (and risk) and they would not be obliged to submit reports on their activity. It would then be an evident case of violating the rule of equality before the law and equality in terms of access to decision making processes.

Finally, a few remarks to conclude with. Once again a quite peculiar definition of lobbying has been proposed: “lobbying is any activity of entities that are not state authorities or representatives authorized by these authorities, performed using legal methods, not regulated by separate laws, aiming toward influencing state authorities into making resolutions to a specific end” (*Projekt...*, 2018). According to this law, lobbying could be performed solely by entities that are not state authorities or their representatives, so this resolution would automatically exclude regional self-government bodies, for instance¹¹. The part of the definition concerning influencing the authorities in order to achieve certain resolutions requires detailed specification. “For this also means activities very often having nothing to do with lobbying, e.g. media publications, academic publications, or protests in front of the Sejm. This definition therefore allows both formal and informal means of influencing. Finally, it ought to be pointed out that the project does not forbid lobbying by the same person to the benefit of various entities with contradictory interests” (Tumidalski, 2018).

Serious objections were also made against the proposal to limit the transfer of people from each level of the public sector to the private sector – in general, without any differentiation whether such a person would provide lobbying services or be transferred to a quite different sector. Contrastingly, in the case of politicians and high level administrative officers regulating the so-called revolving door is advisable, treating everyone employed in the public sector identically, and for all activities they do perform, or that they could (e.g. publishing a book), seems excessive and unnecessarily rigorous.

The work on the project was discontinued in the spring of 2018 due to the upcoming 2019 parliamentary election, and at present the draft has not been scrutinized yet by the Standing Committee of the Council of Ministers.

¹⁰ One exception here would be the companies in which the State Treasury or a regional self-government body hold at least 20% of shares and their managers (Tokarz, 2018).

¹¹ In EU institutions lobbyists representing regional independent bodies and their representatives as a whole, are one of the major interest groups, as indicated by the scale and resources of the cohesion policy.

Final notes

Lobbying is not a new phenomenon. For decades people have endeavored to look after their own interests by approaching various decision makers. The democratic system, laws, and citizens' rights have made the process even more dynamic. However, it was so effective that it is difficult to imagine an administrative system without advocacy of interests. It has long been evident that lobbying which is civilized, effectively regulated, but nevertheless leaving a lot of freedom to act for interest groups, NGOs, businesses, etc., can be utilized as a free (from the point of view of the state authorities) supply of professional knowledge, expertise, substantive arguments, and even social support for a specific cause. In effect, lawmaking could be made more effective.

Yet in Poland authorities originating from various political fractions seem to miss that fact. Not only has lobbying been functioning for years in a legislative void, but the law that was passed later "sent official lobbying underground. Neither the administration, nor the lobbyists were interested in realizing it. (...) Lobbying should be pulled back onto the surface, but in a civilized manner" (Tumidalski, 2018). A side effect of such a state of events is its negative reception by public opinion which identifies lobbying, mainly due to distorted media communication, with the major flaws of democratic power: corruption and nepotism. It also shows distrust towards the actions of authorities and undermines faith in the democratic order¹². Finally, this discourages individuals from active participation in the public life of the state. New solutions proposed in this regard not only reinforce the social conviction that getting involved is not worth the effort, as the authorities do not have many obligations and everyone else does, bearing the risk of penalties. Therefore, in Poland lobbying so far has been a rather informal, unofficial, grey zone, somewhere between the authorities and business. It is most likely due to the fact that "it is easier to fish in troubled waters" (Ojczyk, 2018).

¹² Two issues provide evidence of the attitude of current authorities towards lobbying: establishing the National Freedom Institute – Center for Civil Society Development, an agency controlled by the government and distributing public funds for NGO activity, and the invitation of Polish energy conglomerates, which are considered major CO₂ polluters in Europe, to the Climate Summit COP24 in Katowice, so that they can improve their image and look after their interests there.

REFERENCES

- Batory Foundation. (2015). Czy możliwy jest przejrzysty lobbying? Raport o potrzebie lepszych regulacji i dobrych praktyk działalności lobbyingowej. Retrieved from http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Lobbing_Raport.pdf
- Cieśla, W. (2017, Nov 13). Ustawa o jawności wg PiS. Lobbyista rosyjskiej firmy paliwowej może mieć więcej swobody niż organizacje pozarządowe. *Newsweek Polska*. Retrieved from <http://www.newsweek.pl/polska/ustawa-o-jawnosci-jakie-zwierza-bledy,artykuly,418869,1.html>
- Constitution of the Republic of Poland of 2 April 1997. (1997). *Dziennik Ustaw* no. 483/1997.
- European Commission. (2018). Transparency Register. Retrieved from <http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en>
- Feliksiak, M. (2013). Opinie o korupcji w Polsce. Komunikat z badań. Retrieved from http://cbos.pl/SPISKOM.POL/2013/K_105_13.PDF
- Klasyfikacja zawodów i specjalności na potrzeby rynku pracy (Classification of Occupations and Specializations for the Labour Market of 7 August 2014), consolidated version. (2018). *Dziennik Ustaw* no. 227/2018.
- Kowalczyk, K. (2013). Konflikty interesów i lobbying – dylematy polityków. Komunikat z badań. Retrieved from https://www.cbos.pl/SPISKOM.POL/2013/K_122_13.PDF
- Krassowska, U. (2015). Korupcja w Polsce. Retrieved from http://www.tnsglobal.pl/archiwumraportow/files/2015/09/K.060_Korupcja-w-Polsce_O08a_15.pdf
- Ministerstwo Rozwoju. (2018). Klasyfikacja kodów PKD (Polska Klasyfikacja Działalności) (Classification codes of Polish Activities Classification). Retrieved from <https://www.biznes.gov.pl/pl/klasyfikacja-pkd>.
- Ojczyk, J. (2018, Feb 17). Lobbying w mętnej wodzie. *Rzeczpospolita*. Retrieved from <http://www.rp.pl/Urzednicy/301179990-Lobbing-w-metnej-wodzie---komentuje-Jolanta-Ojczyk.html>.
- Oświecimski, K. (2012). *Grupy interesu i lobbying w amerykańskim systemie politycznym*. Kraków: Akademia Ignatianum – Wydawnictwo WAM.
- Projekt ustawy o jawności życia publicznego (The project of the act on public interest disclosure). (2018). Retrieved from <https://www.rpo.gov.pl/sites/default/files/ustawa-o-jawnosci-zycia-publicznego-projekt-z%208-stycznia-2018.pdf>
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance). OJ L119, 4.05.2016.
- Stowarzyszenie Profesjonalnych Lobbyistów w Polsce (SPL). (2018). Kodeks Etyki Zawodowej. Retrieved from <http://www.unilob.pl/links/kodeksetyki.htm>

- Talarek, P. (2016). Polacy o partycypacji w procesie stanowienia prawa i wpływie grup interesów na ten proces. Komunikat z badań. Retrieved from https://www.cbos.pl/SPISKOM.POL/2016/K_026_16.PDF
- Tokarz, D. (2018, Jan 30). Jawny bubel uderzy w biznes. *Puls Biznesu*. Retrieved from <https://www.pb.pl/jawny-bubel-uderzy-w-biznes-904398>
- Tumidalski, W. (2018, Jan 16). Rada Legislacyjna chce zmian zapisów o lobbingu. *Rzeczpospolita*. Retrieved from <https://www.rp.pl/Urzednicy/301169931-Rada-Legislacyjna-chce-zmian-zapisow-o-lobbingu.html>
- Uchwała Sądu Najwyższego z 15 lipca 1997 r. w sprawie ważności referendum konstytucyjnego przeprowadzonego 25 maja 1997 r. (1997). *Dziennik Ustaw* no. 490/1997.
- Ustawa z 7 lipca 2005 r. o działalności lobbingowej w procesie stanowienia prawa (The Act on Lobbying Activity in the process of lawmaking), consolidated version. (2017). *Dziennik Ustaw* no. 248/2017.
- Wiszowaty, M. M. (2008). *Regulacja prawna lobbingu na świecie. Historia, elementy, stan obecny*. Warszawa: Wydawnictwo Sejmowe.