



Between Anti-corruption and Access to the Legislative Process: A Glimpse into Lobbying Regulation in East Central Europe

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Abstract: Lobbying is usually associated with corrupt activities, but its regulation is viewed as an especially important tool for eradicating corruption. Nevertheless, countries seem to find it hard to grapple with the matter of regulating lobbying, demonstrated by the fact that such regulation is predominantly lacking worldwide. The paper presents a brief incursion into the field of lobbying regulation in several countries of East Central Europe: the Czech Republic, Hungary, Poland, Romania, Slovakia, and Slovenia. It delves into some of the specifics of each country's regulation in this respect or the lack thereof, trying to make sense of the reasons why countries seem to struggle with this regulatory challenge. As a topic that has been marked as important by the European Commission in its Rule of Law Reports, the paper looks into the ways this issue has been approached by the aforementioned countries in the light of their membership of the European Union and the public opinion of their citizens.

Keywords: lobby, public affairs, regulation, East Central Europe

1. Introductory Remarks

Widely recognized for the bad press it usually gets, happening whether it is regulated or not, it holds different names, but encompassing mostly the same activities, *lobbying*—as it is more widely known—appears as inherent to democratic states, as it is an activity through which influence is sought over law making and government.¹ There are two main approaches to lobbying. One considers lobbying a distortion of the democratic will by special interest groups, seeking to impose their interests using their money and power. The other views lobbying

¹ Lobbying has also been defined as ‘the act of individuals or groups, each with varying and specific interests, attempting to influence decisions taken at the political level’ (Chari et. al. 2019: 4).

as a democratic right, a right to petitioning, adding expertise and improving the law-making process.² Proponents of lobbying argue that a government cannot rely solely on the expertise of its own members, that it must also tap into the know-how offered by the private sector, and in such cases listen to a variety of actors on the part of industry, labour organizations, academia, NGOs, etc.

It is without a doubt that *public affairs* has become a significant industry in a Europe united in a number of international organizations, most important of which is the European Union (EU). The development of the lobbying industry is seemingly a natural process. The opening up of legislative decision making to the advocacy of business and NGO interests – among others – with regard to the moulding of regulation is an innate part of democratic states. The political decision-making process is fragile; it is definitely open to manipulation, which is why many believe that lobbying must be regulated in order to ensure transparency and accountability. However, confidentiality is also a basic trait of political influence, which is why lobbying regulation worldwide seems to be lacking, and it is mostly present in some Western states. Regulating this activity is still in the works in younger democracies such as the ex-communist states of East-Central Europe, but there are exceptions to this, as well as some particularities in the regulatory endeavours. State-owned enterprises and trade unions, which mostly have their roots in the communist era, have maintained their influence to a certain degree and often still lobby successfully in these countries. This has left other organizations in need of regulation to enhance their own chances of lobbying successfully. Regulated or unregulated, lobbying still goes on in one form or another, with more or less transparency, with wider or narrower possibility for public scrutiny in the involvement of lobbyists in the regulatory process, ensuring more or less possibility for public participation.

The purpose of this paper is to briefly analyse the situation of lobbying regulation – both soft and hard laws – in six EU Member States (MS) that have transitioned three decades ago from one-party communist regimes to pluralist democratic and market economy systems. The paper consists in a descriptive look at the situation of lobbying in the Czech Republic, Hungary, Poland, Romania, Slovakia, and Slovenia as concerns their regulation and the assessment of such regulation (or lack thereof) in the European Commission's Rule of Law Reports (RLR).

The analysed states have much in common regarding their economic and political development over the past half century. Professional lobbying was mostly brought into these states by multinational corporations from the West and was not something that was sought after by local businesses, which mostly relied on the knowledge of local political players and of the specifics of *the game*. It must be noted, however, that anti-corruption legislation, which some of these

2 Bitonti 2017. 17. The author goes on to present five other conceptions of *public interest*; however, presenting these exceeds the scope of the present paper.

countries enacted at the request of western partners, is also a factor that hinders a proper regulation of lobbying, as such regulation could possibly interfere with the criminal regulation of some acts of corruption such as influence peddling.³ While with corrupt activities results are sought by evading the law, lobbying means just the opposite: achieving results while respecting the law. However, if the lawmaker does not regulate a healthy delimitation between the illegal and the legal, how will public affairs professionals be able to do it?

The word itself – *lobbying* – receives bad press at many times, so using this word by political actors seeking regulation leaves them open to attacks. Creating appropriate regulation in this field is also difficult when a strong and stable governing majority is lacking, because attempts at regulation might draw unwanted attention. It might also be against the interest of a governing majority to regulate lobbying, which is why this issue seems to be taken up mostly by civil society organizations and political parties when they are in opposition.

Norms regarding lobbying in general are part of a number of measures and regulations usually implemented in order to ensure transparency and open government; such are, for example, conflict of interest rules, rules on revolving doors (a problem very much related to lobbying, as many lobbyists – or at least the most efficient ones – seem to come from the public sphere), campaign or political financing, and other transparency rules. This paper will only address some questions concerning the regulation of lobbying in a stricter sense. It will first look into some of the international instruments through which the enactment of lobbying regulation has been encouraged, followed by a brief incursion into the matter of regulation versus public opinion. This is followed by a brief analysis of the above-mentioned states' regulatory solutions (or the lack thereof). The paper ends with the author's concluding remarks.

2. The Push towards Regulation

International organizations such as the Organization for Economic Cooperation and Development (OECD),⁴ the Council of Europe (CoE),⁵ and the EU have also

3 This is the case of Romania, where proper legislation is yet to be adopted, even though several legislative proposals have been put forward in the past couple of decades and there has also been private action (attempts at self-regulation by the industry); see *infra*, note 40.

4 The OECD Recommendation on Principles for Transparency and Integrity in Lobbying (2010) presents recommendations for regulating lobbying activities; there is also a series of publications on this topic – see *Lobbyists, Governments and Public Trust*, which has three volumes, the latest of which (2014) is titled *Implementing the OECD Principles for Transparency and Integrity in Lobbying*. A new Report on the implementation of the OECD Recommendations was prepared in 2021, ensuring an up-to-date picture of the situation of lobbying in a number of OECD member states.

5 Venice Commission Report on the Role of Extra-institutional Actors in the Democratic System

been looking into lobbying regulation more intensely in the past decade, with the EU putting a bit of pressure on some of its MS to better regulate lobbying, making this issue part of its RLR.

As one of the most powerful economic blocs, one of the biggest markets for consumers, and, most importantly, one of the leaders in international regulation for the environment, industry, and trade, the regulation of lobbying also appears as an important duty at the EU level. However, the regulation is also split at the EU level, different institutions having had different rules and regulations for lobbying. Thus, while EU Member States show a variety of solutions for lobbying (mostly voluntary rules or non-regulation), the EU has just recently gotten to the point where the Commission, the European Parliament (EP), and the European Council have finally agreed on a unitary system with a mandatory Transparency Register, through an inter-institutional agreement signed in May 2021.⁶ Although it is not a topic of legal harmonization, in the reverse logic of *none is better than some*, EU MS with some regulations are experiencing heavy criticism in the RLR as opposed to no criticism towards MS with only self-regulatory, voluntary initiatives regarding lobbying.

Centred in the triangle of Brussels, Berlin, and Paris, the capitals of the two most populous nations of the 27 EU MS, it is also here that the tone is set regarding the environmental, health, and trade regulations ultimately enacted EU-wide. The Crossroads of Europe, as it is called, with the most important EU institutions having their seat there, Brussels evidently sees a high concentration of lobbying power. In the exclusive and shared competences granted to the EU by its MS, the Union has also allowed businesses and other organizations to exert their influence on the direction of its regulatory activity. This resulted in much of the lobbying activity in the EU being concentrated in Brussels and less so in MS, the focus of lobbyists understandably shifting evermore towards Brussels as national legislation becomes *Europeanized*.

From a business perspective, in order to gain a competitive edge, to work out an advantage in the global marketplace, companies must be able to exert pressure on governments.⁷ As many of the issues faced by decision-makers have become increasingly sophisticated, lobby groups have popped up as intermediaries for private interests and as tailors of policy changes in the consideration of their clients. Thus, lobbying organizations (positively or negatively) influence politicians by providing them with information akin to their interests. Obviously, lobbying is not only done by business and industry but also by civil society organizations and academia. Indeed, in a well-working system, advice should be

(Lobbying) of 2013.

6 The text of the agreement: <https://data.consilium.europa.eu/doc/document/ST-5655-2021-INIT/en/pdf>.

7 Bitonti–Harris 2017. 9.

sought from all sides. The EU expects the concurrence of the different interests in front of MS's regulatory institutions to take place in a legal framework that is able to provide transparency and accountability. As lobbying activities have become more pervasive, it has been noted that there have been major steps towards its professionalization, with more attention paid to ethical principles and professional standards. Such steps are also meant to avoid confusion between lobbying on the one hand and corruption and influence peddling on the other, which still constitute a problem in most EU MS.⁸ It is also one of the main purposes of regulating lobbying to delimit these activities, keep them in the sphere of the legal system, and avoid the appearance of corruption, while another purpose of regulation would be to reveal excessive influence.

According to Bitonti, there are four main values lobbying regulation should encompass for a more trustworthy and qualitatively better decision-making process: accountability (decision makers justify their actions in a way that makes them accountable to the public), transparency (access to information concerning decision makers and public institutions), openness (communication with stakeholders), and fairness (in enforcing openness and participation).⁹ Not all states have considered the legal regulation of lobbying as an element strictly necessary for the professionalization of this activity. In some cases, self-regulation and ethical standards self-imposed by influential industry actors have also brought benefits to the system. However, voluntary regulation and voluntary transparency registers do not seem sufficient, especially in states where lobbying is mostly done through personal ties, without a professional lobbying industry having been given the chance to develop. In EU MS where the natural development of democracy and market economy have been interrupted after the Second World War by the communist regimes imposed by the Soviet Union, the reinstatement of a market economy system and of a democratic, multi-party system has at many times been a race to meet Western expectations, a race for promises of Western integration, foreign direct investment, and the accompanying development. Much of what is today called lobbying has also come through these channels with the purpose of opening up the markets as quickly as possible. Improving the regulatory situation of lobbying is just a small piece of the ensemble of expectations set by the EU towards all Member States. The EU has considered lobbying an important element of the rule of law, reason for which its current situation has been analysed in the Rule of Law Reports of 2020 and 2021.

Although there is definitely a push on the part of international institutions and organizations towards states to regulate lobbying, providing them with proposals, publishing evaluations, and even harsh criticism regarding their attempts, most states have yet to take steps in this respect. Attempts at regulating

⁸ Bitonti–Harris 2017. 10.

⁹ Id. 26–27.

this activity have seen mixed results. Although it has been called the world's second oldest profession,¹⁰ most countries where regulation can be found have only adopted such regulation in the last two decades.¹¹ Due to the fact that the word *lobbying* has received a bad reputation, it might also be the case that it is harder for politicians to *sell* the fact that regulation might be beneficial. Also, it should not be excluded that it would be in the interest neither of politicians nor of business and industry to have their dealings out in public – which might explain the global *shortage* in lobby regulation.

3. Lobbying in the Eyes of the Public

As all of the analysed countries' citizens have experienced to a larger or lesser extent an unhealthy intertwining of business and politics, massive corruption scandals and privatization serving private – rather than public – interests, lobbying is perceived as something negative in most countries. It is mostly viewed as something that is definitely not there to *serve the interests of the people*. This paper will just briefly consider the matter of public perception, and only with the purpose of ascertaining its importance as a possible factor in the existence or non-existence of lobbying regulation.

In the Czech Republic, it has been noted that lobbying is perceived as something illegal, and not only the public but also the political class associates lobbying with corruption and criminal offences.¹² It is also a field that received media attention mainly due to scandals.¹³ The situation is similar in Slovakia, where the negative public perception of lobbying is also fuelled by the media and politicians, resulting in such activities mostly being linked – in the eyes of the public – to corruption and bribery.¹⁴ In Poland, lobbying has a bad reputation after the massive corruption scandal that has widely become known as the *Rywin affair*.¹⁵ Following this case, corruption in the public sphere had become a major subject of public debate. Because the persons associated with this case were labelled *lobbyists* in the media, politicians had turned to using the term as a

10 A quote attributed to Bill Press.

11 See the timeline of lobbying regulation put together by the OECD: <https://www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm>.

12 Soukenik et al. 2017. 107. The Czech public perception on lobbying has also been sampled recently, and Czechs think that lobbying has a strong impact on the wording of laws, but they see it mainly as a tool for 'godfathers'. (Lobbying má podle poloviny Čechů výrazný vliv na podobu zákonů, vnímají ho ale hlavně jako nástroj pro kmotry.). <https://www.rekonstrukcestatu.cz/archivse-novinek/lobbying-ma-podle-poloviny-cechu-vyrazny-vliv-na-podobu-zakonu-vnimaji-ho-ale-hlavne-jako-nastroj-pro-kmotry>.

13 McGrath 2008. 21.

14 Zoltvany 2017. 295.

15 McGrath 2008. 20.

political weapon against their opponents, which in turn negatively influenced the development of the lobbying profession as an institution.¹⁶ The media also contributed to this by portraying lobbying activity as corruption, a view still maintained by the public opinion.¹⁷ A negative image of lobbying seems to prevail in Slovenia as well,¹⁸ where it is mostly associated with activities of corruption.¹⁹ In Romania, lobbying is perceived as a controversial subject due to the association of this activity with the crime of influence peddling.²⁰ However, polling has shown that only about 16% of the Romanian public perceives it as having negative connotations.²¹

Although public perception of lobbying is mostly a negative one in the countries of East Central Europe, it does not appear to have major effects on its regulation. Poland seems to have the most severe case of public aversion vis-à-vis lobbying; nevertheless, it has regulated lobbying a few years after the *Rywin affair*. Negative perception seems to have had some effect in the Czech Republic and Slovakia, which do not have any regulation in this field. Public perception is also negative in Slovenia; however, this country seems to have one of the most advanced regulations in this field in the analysed region. On the other hand, Romania, where the negative perception of lobbying appears as minimal, has only voluntary rules that were put together by non-governmental organizations and businesses in an attempt to self-regulate. To this regulation, a registry developed by the Government was added more recently. Lobbying has had a bad reputation in Hungary as well.²² Nevertheless, there is now a second law regulating this field, adopted in 2013, after the first law (of 2006) was deemed a failure and was subsequently abrogated.

The above brief exposition shows that there is no rule that public perception precludes or encourages the regulation of lobbying. The reasons for regulation, or the lack of it, go beyond public perception. The interest in regulating lobbying lay elsewhere than in the interests tied to political prestige in the public eye. Furthermore, based on the cases of Poland and Slovenia, it could be argued that regulation may be the best way to change the public perception of this industry, improve its workings, and thus make it more acceptable.

The issues around regulation abound, which is why a country-by-country analysis of the regulatory situation of lobbying will be presented in the following section, with the purpose of shortly describing the types of regulation found in the analysed countries, the solutions they have reached, as well as some of the challenges faced in their endeavours to regulate lobbying more appropriately.

16 Michalek 2017. 266.

17 Chari et al. 2019. 87.

18 Fink-Hafner 2017. 302; Chari et al. 2019. 147.

19 Fink-Hafner 2017. 306.

20 Florea-Dima 2017. 281.

21 Id. 284.

22 As also noted in McGrath 2008. 19.

4. Diverse Regulatory Solutions

Most countries seem to have difficulties regulating lobbying, which also becomes apparent from the analysis of such regulation worldwide – which is mostly missing. The main purpose of regulation would be to boost transparency in the regulatory process in general in order to open up to the public an activity – lobbying – that is definitely happening whether regulated or not. At this time, it seems that drafting suitable regulations appears as a difficult task. Most do not have regulations, which means that there are no mandatory rules applying to lobbyists in most countries in the world.

In most of the analysed countries, there has been much debate around regulation, and legislative proposals have been put forward; however, taking the step of adopting regulation has proven to be difficult in some cases. As no regulation is perfect, it could be argued that some regulation is better than no regulation at all. Progress is often bogged down in debates on some of the details in these regulations, as is for example the case in the Czech Republic, where the definition of the term *lobbyist* has been debated for a while now.²³ Regulators in other countries seem to be more worried about the overlapping with other regulations meant to curb corrupt activities.

Despite the similitudes in these countries' development, the regulatory solutions they have chosen are very much different, as will be shown.

4.1. The Czech Republic

In the past two decades, there have been a number of attempts at regulating lobbying; however, none of these have come to fruition,²⁴ so currently there is no state regulation with regard to the interaction between lobbyists and members of parliament, members of government, or other public officials. There is, however, a group formed by six public affairs agencies that established the Association of Public Affairs Agencies (or APAA), which has adopted a shared code of conduct and actively contributes as an advisor in the process of preparation of the lobbying regulation.²⁵

The 2020 Rule of Law Report on Czechia²⁶ had already noted that there was a draft bill pending adoption, a situation also noted in the 2021 Report.²⁷ The

23 2020 Report. 9.

24 Soukenik et al. 2017. 108.

25 Id. 107. The agencies are: CEC Government Relations, Eurooffice Praha–Brusel, Fleishman-Hillard, Grayling Czech Republic, Merit Government Relations, and PAN Solutions.

26 2020 Rule of Law Report, Country Chapter on the rule of law situation in Czechia, Document no. SWD(2020) 302 final. 9.

27 2021 Rule of Law Report, Country Chapter on the rule of law situation in Czechia, Document no. SWD(2021) 705 final. 9.

draft bill contains regulation for the establishment of a publicly accessible register of lobbyists and lobbied persons. After registration, the lobbyists have the obligation to submit a quarterly report shortly detailing their contacts, the matters discussed, with details on specific aspects pertaining to who lobbied which legislative proposal (the so-called 'lobbying footprint').²⁸ The draft bill also regulates the authority that has the obligation of maintaining the register: the Office for the Supervision of Political Parties and Political Movements (*Úřad pro dohled nad hospodařením politických stran a politických hnutí*).

Sanctions for failing to report – as per the draft regulation – consist in fines ranging from approximately EUR 2,000 to 4,000. This is such a low amount that for some firms, which would want to keep their lobbying activities hidden from the public eye, it could definitely be acceptable to pay this simply as a cost of handling their interests in a confidential manner. This fine would in no case represent a deterrent, especially as lobbying is mostly done by big businesses, for which this would remain a *cost of doing business*, a cost of protecting company reputation when it comes to their position on sensitive matters.

According to the Input from the Czech Republic on the Rule of Law Report of 2021, debates are under way in the lower chamber of parliament, so regulation might soon see the light of day in this country as well.

4.2. Hungary

The first legislative regulation on lobbying adopted in Hungary dates back to February 2006;²⁹ however, recognizing that this law did not work, it was repealed by a law that entered into force in 2011 (the Law),³⁰ which was complemented by Government Decree no. 50 of 2013 (the Decree).

As the title of the 2011 Law shows, this is an act that regulates all types of public participation in the preparation of legislation, containing provisions regarding a general public consultation and another process dubbed *direct consultation*. The general public consultation is done through a website where legislative proposals are published and the general public can send in their comments and suggestions. These comments and suggestions must be taken into consideration by the minister responsible for the legislative proposal, who will also have to publish a summary of these submissions. There is also a process according to which comments and suggestions can be sent in *after* the entry into force of legislation, which deal with its implementation and matters concerning its application.

28 2020 Report on Czechia. 9. 2021 Report on Czechia. 9. The draft bill can be accessed here: <https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=565&CT1=0>.

29 Law no. XLIX of 2006 concerning lobbying activities – 2006. évi XLIX. törvény a lobbitevékenységről.

30 By-law no. CXXXI of 2010 on social participation in the preparation of legislation – 2010. évi CXXXI. törvény a jogszabályok előkészítésében való társadalmi részvételről.

In the process of direct consultation, the minister responsible for the legislative proposal may establish strategic partnerships with organizations willing to engage in mutual cooperation. This possibility is open to organizations that prove wide societal interest or to those that can perform scientific research regarding the topics addressed by the legislative proposal in question. The *strategic partners* – as they are called in the law – can be NGOs, religious organizations, professional and scientific organizations, or even *advocacy organizations*, among others. Advocacy organizations (in Hungarian: *érdekképviseleti szervezetek*) also include lobbyists. For the purposes of the strategic partnership, an agreement is signed between the minister and the organization, which will contain the aims of the collaboration, the subjects they will collaborate on, and the duration of the agreement, among other details. These agreements are then published on the website of the minister, followed by summaries of all in-person meetings, which should especially contain the opinions of the strategic partner. The minister also has the possibility to engage in consultations with persons other than strategic partners, the law leaving it open for all people to participate in the legislative process.

The regulation in Hungary only contains obligations for public officials. The Law provides that public officials shall make reports³¹ regarding their meetings with lobbyists, while the Decree provides that meetings between public officials and lobbyists can only take place after the superior of the public official has received notice of the planned meeting. This notice must contain the essential details regarding the meeting, such as the name of the organization requesting the meeting, the aim of the meeting, its time and place. The superior may deny permission for the meeting or may require that a third party attend it as well. The Law also adds a special obligation for public officials to inform their superiors in writing in case during the meeting they obtain information that purports to endanger the integrity of the organization they are a part of. There is also an obligation for public officials to report to their superiors on meetings with lobbyists on a yearly basis.

These rules apply mainly to government officials; there are no such rules that are applicable to members of parliament. Also, there is no public registry for lobby organizations.³² The law places all burdens regarding lobbying activities on the government officials who sought out the meeting or accepted the invitation.

It must be observed that the Hungarian legislation provides a wider framework for public participation in the regulatory process, of which lobbying organizations and the rules pertaining to their activities represent only a small piece. This has

31 Thus, the criticism contained in the 2021 Rule of Law Report on Hungary is not accurate. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, Document no. SWD(2021) 714 final. 13.

32 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, Document no. SWD(2020) 316 final. 11–12.

been the case from the get-go, when in 2001 a legislative proposal for a *lobbying act* (*lobbitörvény*) was put forward; it then received a different name: the law on advocacy in the process of law making (*a jogalkotás során történő érdekérvényesítés*).

4.3. Poland

Lobbying regulation in Poland is one of the oldest in Europe,³³ having been adopted in 2005.³⁴ The Act on Lobbying Activity in the Process of Lawmaking (the Lobbying Act) establishes the principles of transparency regarding lobbying activities in the legislative process, the rules related to professional lobbying activities, the supervision of these activities, the rules related to keeping the register of activities related to lobbying, and the sanctions for violating the legal provisions.

According to the Lobbying Act, lobbying activities performed by professional lobbyists are legal activities aiming to influence public authorities in the law-making process. A special form has to be filled out in order for stakeholders to be able to submit their proposals. The Ministry of the Interior and Administration keeps the registry, where all professional lobbyists who interact with the government can be found. For lobbying activities aimed at Members of Parliament, the two chambers of the Parliament (Sejm and Senate) have their own obligations (and rules) of supervision, while lobbying activities aimed at the Government and its staff have their own register, which is established in accordance with the Lobbying Act.

Regarding the moment when lobbying is made possible, the regulation provides that as soon as a draft bill is made public, interested parties must submit the above-mentioned form to the relevant authority (which handles the draft bill in question), which will then be published in the Public Information Bulletin (*Biuletynie Informacji Publicznej*). The form must include information regarding the entities showing interest in working on a particular draft bill, their names and addresses (or registered offices), the interests which they represent, the intentions of their work (information regarding the aim of their lobbying efforts), and also whether or not they are remunerated for their work. The law provides that in case the persons showing interest in a draft bill are professionals registered for lobbying activities, they must also present a certificate proving that they are on the registry mentioned above. The certificate in question is valid for a period of three months from the date of issuance.

Lobbyists have the obligation to submit a request for entry in the public register, also indicating the entities they represent and lobby for. Other than that, lobbyists

33 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland, Document no. SWD(2021) 722 final. 18. See also timeline provided by the OECD, *supra* note 11.

34 Law of 7 July 2005 on Lobbying Activity in the Process of Lawmaking – *Ustawa z dnia 7 lipca 2005 r. o działalności lobbingowej w procesie stanowienia prawa*. <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20051691414/U/D20051414Lj.pdf>

do not have disclosure obligations under this Act, but those that are lobbied do. Public officials contacted by lobbyists must prepare a detailed report regarding their contacts with lobbying professionals, which must also contain information on the influence these professionals had on the regulatory process. This has reportedly resulted in state officials seeking to avoid contact with professional lobbyists in order to avoid these extra tasks.³⁵ Critics have noted that the registry and the forms which are meant to ensure transparency are not put to use (with only one such participation having been noted for the year 2020), and neither has there been any evidence of sanctions ever been applied.³⁶

Some have also opined that this law *discriminates* against professional lobbyists in their access to the lawmakers, which has resulted in more lobbying being done by non-profit organizations and other types of organisms that are not covered by these provisions of the law.³⁷ Such avoidance, however, makes for a risky activity, as the sanctions prescribed by the Lobbying Act also target professional lobbying activities pursued by persons who are not registered in accordance with the law. Persons or organizations pursuing such activities without adhering to the rules on transparency mentioned above risk a penalty of between approximately EUR 700 and 11,000. It must be also noted in this case that the maximum amount does not seem like a large sum, so it might not be such an efficient deterrent. There is currently no official code of conduct that could represent another deterrent factor for lobbyists (there used to be one that was proposed by the Polish Association of Professional Lobbyists – *Stowarzyszenie Profesjonalnych Lobbystów w Polsce* –; however, this association does not seem to be active currently).

It is also noteworthy that the Polish regulation is reduced strictly to law-making activities, which means that all other interactions between lobbyists and lawmakers or other public officials (i.e. which do not concern law making specifically) fall outside the scope of the law, which, according to critics, leaves an opportunity for clandestine influencing activities.³⁸ This criticism, however, seems to put forward expectations which can simply be deemed as unrealistic. On the one hand, it begs the question: should public officials avoid all persons due to the risk of clandestine influencing activities? On the other hand, requiring public officials to report any and all meetings where discussions take place that *might* be deemed as influencing them would be a most unrealistic expectation. Such regulation would make holding office excessively burdensome and would put public officials in a difficult position regarding their obligations to respect the rules concerning lobbying disclosures. As the existing law is regarded as highly

35 Michalek 2017. 268.

36 2021 Report on Poland. 18–19.

37 Michalek 2017. 265.

38 2020 Rule of Law Report, Country Chapter on the rule of law situation in Poland, Document no. SWD(2020) 320 final. 12–13.

burdensome by public officials, this effectively renders the law inapplicable and stymies public affairs activities.

In the input submitted by Poland for the 2021 EU RLR, it is noted that in 2020 only one interest representative participated in one single parliamentary committee session, while a total of 508 entities are registered in the lobby registry of the Sejm.³⁹

It seems that with all efforts made by Poland in this field, lobbying regulation appears cumbersome for lobbyists and especially for public officials, wherefore these actors seem to prefer the risks that avoiding this law implies.

4.4. Romania

Despite the avid anti-corruption wave that has been dominating political discourse for more than two decades now, a modern regulation to clarify the position occupied by lobbying activities seems to be evading lawmakers. In Romania, there is no specific regulation on lobbying; thus, persons pursuing lobbying activities do not have to register, and neither do public officials have any sort of obligation to report on their contacts with lobbyists. Draft laws proposed so far have been criticized for being conducive to the decriminalization of influence peddling.⁴⁰ Although it may appear as a valid criticism, the proper regulation of lobbying is usually aimed at just that: the delimitation of illegal and illegitimate activities from legitimate public affairs activities.

While there is no legislation on lobbying in Romania, there is, however, a voluntary transparency registry⁴¹ that was set up by the Romanian Lobbying Registry Association,⁴² a non-governmental organization established in 2010 with the purpose of enhancing transparency in political lobbying. However, this registry has not seen much activity; there are still only a handful of members, and the websites related to this Association have not been updated recently. The transparency registry has been created mirroring the Joint Registry of the European Commission. While registration is voluntary, the Association has made it mandatory for its own members to register. Registered entities also adhere to a code of conduct put together by the Association, which lays down some of the principles members must respect in their lobbying and advocacy activities, such as integrity, transparency, and professionalism. The Association only has about twelve members, and the number of its members has not changed in years.

39 Input from Poland for the 2021 EU Rule of Law Report. 23.

40 Florea-Dima 2017. 288.

41 See website: <http://www.registruldetransparenta.ro/>.

42 See website: <http://registruldelobby.ro/en/>.

Additionally, in 2016, the government set up the so-called Unique Interest Groups Transparency Register⁴³ (*Registrul Unic al Transparenței Intereselor*) in a project initiated by the Ministry for Public Consultation and Civic Dialogue. The Register is an initiative based on voluntary commitment on both the government's side and that of business and civil society, expert groups, religious organizations, trade unions, chambers of commerce, etc., called *specialized groups*. The Register holds information on meetings that have taken place, the persons who attended such meetings, and also a short description of the discussions that have taken place. While it is not widely used, there are signs that some public officials take the initiative seriously and do interact with this voluntary system. There are a few hundred so-called *specialized groups* that have signed up and are part of this system.

Despite the lack of mandatory legal provisions related to lobbying activities, the occupation of *lobbying specialist* has officially been made part of the Romanian Classification of Occupations (code no. 243220)⁴⁴ since it was first introduced in 2011.⁴⁵

The Rule of Law Reports on Romania only shortly mention that there is no legislation on lobbying and it is recommended that legislation is adopted, while also noting as a positive factor the existence of a self-regulatory, non-mandatory initiative, which established a transparency register – as also noted above.⁴⁶

It is possible that the transition from a voluntary system to a mandatory one will be much leaner and easier for lobbying groups and interested persons, as well as for public officials, who have taken part and have gained experience in this voluntary system.

4.5. Slovakia

Slovakia presents a similar situation to that of Czechia. There have been attempts at regulating lobbying since 2002; however, none succeeded, so there is now no regulation of lobbying in the country.⁴⁷ There is legislation in place establishing that some law-making and business activities shall be public either through the

43 A short description can be found here: <http://ruti.gov.ro/wp-content/uploads/2016/10/English-description-of-the-Romanian-Unique-Group-Interests-Transparency-Register.pdf>.

44 The classification can be consulted here: https://mmuncii.ro/j33/images/Documente/Munca/COR/20201026_ISCO08_COR_lista_alfabetica_ocupatii.pdf.

45 Order (of the Minister of Labour) no. 1832/856/2011 concerning the approval of the Classification of occupations in Romania, published in the *Official Gazette of Romania* no. 300 on 8 August 2011.

46 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, Document no. SWD(2020) 322 final. 13. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, Document no. SWD(2021) 724 final. 16.

47 Zoltvany 2017. 296.

business registry or through the publication of contracts and other information regarded as being of interest to the public. However, these will not be analysed in this paper, as the current research only focuses on lobbying regulation in a stricter sense. There is no official definition of the term, and the profession itself is not regulated in the Slovak system.⁴⁸

According to both the 2020 and 2021 Rule of Law Reports on Slovakia,⁴⁹ the government promised to regulate lobbying; however, there has been no progress in the matter. An opinion has been launched stating that the lack of regulation is a consequence of a lack of *need* for regulation, which stems from the fact that there is no lobbying going on in the country.⁵⁰ As noted above, there has been a shift in lobbying efforts, which now centres around Brussels, so such an opinion – although it may seem a bit radical – definitely has some relevance.

4.6. Slovenia

As opposed to the other analysed countries, we see that Slovenia presents a completely different political system, in which the lower house – called the National Assembly –, which does the legislative work, is joined by an upper house – called the National Council –, where representatives of business and industry also have their place.⁵¹ This obviously greatly influences law making in the process of regulation of different economic sectors.

In the early 1990s, there have been attempts at establishing lobbying as a professional activity associated with public relations activities. However, the most important step forward was the establishment of the Slovenian Association of Lobbying, with its members signing an *Ethical Code*.⁵²

Following this private initiative, a law has been put in place – the so-called Integrity and Prevention of Corruption Act⁵³ –, which requires persons who wish to involve themselves in lobbying activities to register, with the exception of individuals, informal groups, or interest groups acting to promote the rule of law, democracy, and the protection of human rights and fundamental freedoms.⁵⁴ The regulation on lobbying in Slovenia only allows for natural persons and interest groups to engage in lobbying activities, and it requires such persons to register themselves in the registry of lobbyists of the Commission for the Prevention of

48 Ibid.

49 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, Document no. SWD(2020) 324 final. 8. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, Document no. SWD(2021) 727 final. 13–14.

50 Coming out of the pen of at least one scholar, see: Zoltvany 2017. 297

51 Fink-Hafner 2017. 300.

52 Id. 305–306.

53 Law on integrity and prevention of corruption no. 69/2011 – *Zakon o integriteti in preprečevanju korupcije*. Uradni list 69/2011.

54 Fink-Hafner 2017. 304–305.

Corruption of the Republic of Slovenia (*Komisija za preprečevanje korupcije Republike Slovenije*). When registering, these persons and interest groups must disclose details regarding the entities they represent and lobby for.⁵⁵ This regulation also contains a revolving door provision, according to which former political officials may only exercise the lobbying profession once a period of two years has elapsed since the end of their mandate.⁵⁶

Public officials are not allowed to meet with persons aiming to engage in lobbying activities unless such persons are registered in the lobbying registry. In addition to registering, lobbyists are also required to publish a report on their activities on a yearly basis. It is important to note that the Slovenian law sets a difference in the treatment of professional lobbyists and in-house lobbyists, where only the former have an obligation to sign up on the registry.

Regarding lobbying, the Commission for the Prevention of Corruption collects data on its website,⁵⁷ which is updated quite often, with entries made on a daily basis, containing information on the lobbyists, the lobbied, the subject lobbied on, and the purpose of lobbying. This activity is also due to the obligation to report contained in the law, according to which all contacts must be reported in 72 hours after they have taken place.

Violations of the rules on lobbying may involve prohibition from lobbying in specific cases for a determined amount of time, which cannot exceed two years, as well as fines of between 400 and 100,000 euros. As compared to other fines shown in this paper, this seems to be a bit more daring, threatening more serious consequences for violations of the law.

It is noteworthy that Slovenian regulation also covers public officials at a local level, not only at the level of the central government. Public officials must report contacts both to their employer and the Commission, the latter having the data published on its webpage, the *Erar*. In addition, lobbyists also have an obligation of disclosure according to the law.

The Slovenian law has also been criticized for not being implemented and applied properly, leaving all of the above looking good on paper but having limited effects on the lobbying industry, where the large majority of lobbyists have been reported to be unregistered.⁵⁸ Despite this fact, Slovenia has received nothing but positive feedback in the RLR of 2020 and 2021.⁵⁹

55 A contact list can be consulted here: <https://www.kpk-rs.si/delo-komisije/instituti/lobiranje/register-lobistov/>.

56 Fink-Hafner 2017. 304–305.

57 The lobby registry can be consulted here: <https://erar.si/lobiranje/>.

58 Chari et al. 2019. 148.

59 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, Document no. SWD(2020) 323 final. 9. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, Document no. SWD(2021) 726 final. 13.

5. Takeaways

The professionalization of lobbying may be viewed as one of the most important achievements of any lobbying regulation. The legal separation of lobbying from activities associated with corruption, such as influence peddling, can also build trust in this activity on the part of citizens. As an activity that seems to bind itself to democratic systems, it holds the potential of greatly influencing law-making and regulatory activity. For this reason, regulation should be enacted in order to ensure that the excessive representation of private interests in law making is revealed, and efforts can be made to counter it if the public finds it excessive or as jeopardizing public interest.

Regulation is also in the interest of lobbying firms, as it contributes to pushing out informal lobbying, or at least to reduce lobbying done in the grey zone. The transparency of the activities of professional lobbying firms may thus benefit their business. Also, clients can check on the activities their hired firm engaged in from a more neutral source. This might also be the reason why we have seen lobbying firms set up self-regulatory instruments, public registries, codes of ethics, or why they put forward legislative proposals and push for more detailed regulation (as seen in the case of Romania and Czechia).

Building trust by ensuring transparency and accountability is just as important a purpose for lobbying regulation as offering access to the law-making process to a wider range of opinions by establishing the appropriate channels to this end. With proper access by interested parties, lobbying regulation can genuinely improve the quality of the adopted laws.

The arguments endorsing the need for regulation mostly revolve around the need for transparency in decision making and the accountability of decision makers, as well as that of lobbyists. The EU RLR considers lobbying regulation as something that improves the rule of law and also as an important tool in the fight against corruption. However, there are also many other tools that can provide for transparency and accountability, or even improve anti-corruption efforts outside of the narrow field of lobbying. Inadvertently, regulating lobbying also creates paths for avoiding the regulation itself, in the sense that there will still be lobbying done in a clandestine way if the parties involved do not want to report meetings that have taken place. This is demonstrated by the fact that the above-analysed lobbying regulations are mostly ignored or not applied as expected. It is also true that the parties involved in public affairs dealings can always report acts of corruption regardless of the existence of a lobbying register.

Lobbying in the EU is mostly concentrated in Brussels, which seems appropriate, as some estimate that almost 80% of legislation affecting our daily lives and that of industry is initiated there and then transposed into MS's legal

systems.⁶⁰ This means that appropriate lobbying regulation is mostly needed at the EU level, and the EU should be the one to set an example for its MS, as Brussels is the second capital of lobbying after Washington D.C. However, we see that progress has been slow also at an EU level, and it was just recently that regulation turned into mandatory rules not only at the Commission but also at the Parliament and the Council. Setting an example would be welcome, especially in view of the fact that in the RLR of the Commission a progression can be seen in the expectations set towards the MS analysed in this brief research. The progression goes as follows: when there is no regulation, the Commission recommends that regulation be implemented, and where regulation can be found, criticism abounds about either the limited scope of application or the sufficiency of the sanctions or the level of transparency it ensures. In all cases where regulation exists, it is recommended that such regulation be extended, improved, and amended. When improvements never seem to be enough, and criticism does not cease, the nudging of governments can backfire, and other suggestions would also lose their edge. For now, most of the criticism regarding lobby regulation seems to revolve around the suitability of regulation in curbing corruption and excessive influence, instead of concentrating on how such regulation ensures proper public participation in law making.

A key point in the regulation of lobbying is the willingness and actual need of the people to engage more often in political discussions and be more active in the shaping of their countries' laws. Leading an active political life outside the election periods is as important to a healthy democracy as elections themselves. It is also true that the disillusionment felt by many in this region after the regime change around 1989 has discouraged active participation.

Despite the many similarities between the analysed countries – all in the same *neighbourhood* and with similar recent history –, there are also many differences. Differences in the way the democratic transition was carried out, differences in the way political pluralism and civil society grew, and differences in the degree of transparency of political decision making. Which is why it is not a surprising fact that all six countries have different approaches to lobbying regulation. Each country has it differently: Slovakia has no rules, Czechia has industry self-regulation and a law under preparation, Romania has industry self-regulation and a voluntary registration system put together by the Government, Poland regulates lobbying with burdensome mandatory rules that have resulted in widespread avoidance of the law, Hungary has looser but still mandatory regulation, with most obligations burdening public officials, while Slovenia has strict mandatory regulation imposing obligations on both public officials and lobbyists. The diversity must be noted in this regard as well: Slovenia has chosen to regulate

60 In this sense, see Research Paper 10/62. 2010. How Much Legislation Comes from Europe? <https://researchbriefings.files.parliament.uk/documents/RP10-62/RP10-62.pdf>.

lobbying as part of a broader package in an anti-corruption legislative act, while Hungary has chosen to regulate lobbying as part of a law concerning public participation in law making. The direction from which the two states approach the regulation of lobbying is relevant as to the primary goal they pursue.

There are a number of Western democracies that have no regulation on lobbying (such as Belgium or Luxembourg), states with voluntary registers (such as Germany), and states with mandatory lobbying registers (such as France). So, as varied as the regulatory situation presents itself in East-Central Europe, the same can be said about Western Europe as well. It took the United States and Germany more than half a century to get their lobbying legislation to where it is now. One could argue that these are models that could be copied; however, it is a more sensible approach that each country develops their own legislation suitable for their own systems.

Many conclusions can be drawn from this intriguing mix of regulatory solutions, of which the most important is that no matter the apparent or genuine similitudes between countries, regulation, its application, and its effects will always differ. It is evident that lobbying as a regulated activity will see some evolution in the coming years. What seems to be similar is that there is avoidance of compliance on both the part of lobbyists and that of public officials when the regulation becomes too burdensome. When too much regulation becomes counterproductive, it becomes evident that the state must rebalance regulation to make it more suitable to the specific institutional and cultural environment. In this region, the better path would be one of regulation that prioritizes public participation in law making as a way for rebuilding democracy.

References

- BITONTI, A. 2017. The Role of Lobbying in Modern Democracy: A Theoretical Framework. In: Bitonti, A.–Harris, P. (eds.), *Lobbying in Europe: Public Affairs and the Lobbying Industry in 28 EU Countries*. London.
- BITONTI, A.–HARRIS, P. 2017. An Introduction to Lobbying and Public Affairs in Europe. In: Bitonti, A.–Harris, P. (eds.), *Lobbying in Europe: Public Affairs and the Lobbying Industry in 28 EU Countries*. London.
- CHARI, R.–HOGAN, J.–MURPHY, G.–CREPAZ, M. 2019. *Regulating Lobbying: A Global Comparison*. Second Edition. Manchester.
- FINK-HAFNER, D. 2017. Slovenia. In: Bitonti, A.–Harris, P. (eds.), *Lobbying in Europe: Public Affairs and the Lobbying Industry in 28 EU Countries*. London.
- FLOREA, L.–DIMA, B. 2017. Romania. In: Bitonti, A.–Harris, P. (eds.), *Lobbying in Europe: Public Affairs and the Lobbying Industry in 28 EU Countries*. London.

- MCGRATH, C. 2008. The Development and Regulation of Lobbying in the New Member States of the European Union. *Journal of Public Affairs* 8.
- MICHALEK, W. 2017. Poland. In: Bitonti, A.–Harris, P. (eds.), *Lobbying in Europe: Public Affairs and the Lobbying Industry in 28 EU Countries*. London.
- SOUKENIK, S.–GREGOR, M.–MATUSKOVA, A. 2017. Czech Republic. In: Bitonti, A.–Harris, P. (eds.), *Lobbying in Europe: Public Affairs and the Lobbying Industry in 28 EU Countries*. London.
- ZOLTVANY, P. 2017. Slovakia. In: Bitonti, A.–Harris, P. (eds.), *Lobbying in Europe: Public Affairs and the Lobbying Industry in 28 EU Countries*. London.

- 2020 Rule of Law Report, Country Chapter on the rule of law situation in Czechia, Document no. SWD(2020) 302 final.
- 2021 Rule of Law Report, Country Chapter on the rule of law situation in Czechia, Document no. SWD(2021) 705 final.
- 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, Document no. SWD(2020) 316 final.
- 2021 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, Document no. SWD(2021) 714 final.
- 2020 Rule of Law Report, Country Chapter on the rule of law situation in Poland, Document no. SWD(2020) 320 final.
- 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland, Document no. SWD(2021) 722 final.
- INPUT from Poland for the 2021 EU Rule of Law Report.
- 2020 Rule of Law Report, Country Chapter on the rule of law situation in Romania, Document no. SWD(2020) 322 final.
- 2021 Rule of Law Report, Country Chapter on the rule of law situation in Romania, Document no. SWD(2021) 724 final.
- 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, Document no. SWD(2020) 324 final.
- 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, Document no. SWD(2021) 727 final.
- 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, Document no. SWD(2020) 323 final.
- 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, Document no. SWD(2021) 726 final.

CLASSIFICATION of Occupations in Romania:

https://mmuncii.ro/j33/images/Documente/Munca/COR/20201026_ISCO08_COR_lista_alfabetica_ocupatii.pdf.

CONTACT LIST of Lobbyists in Slovenia: <https://www.kpk-rs.si/delo-komisije/instituti/lobiranje/register-lobistov/>.

- DRAFT BILL on Lobbying, Czech Republic: <https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=565&CT1=0>.
- DESCRIPTION of the Romanian Unique Interests Groups Transparency Register: <http://ruti.gov.ro/wp-content/uploads/2016/10/English-description-of-the-Romanian-Unique-Group-Interests-Transparency-Register.pdf>.
- IMPLEMENTING the OECD Principles for Transparency and Integrity in Lobbying. 2014.
- INTERINSTITUTIONAL Agreement between the European Parliament, the Council of the European Union, and the European Commission on a Mandatory Transparency Register. 2021. Brussels. <https://data.consilium.europa.eu/doc/document/ST-5655-2021-INIT/en/pdf>.
- LAW NO. XLIX of 2006 concerning Lobbying Activities – 2006. évi XLIX. törvény a lobbitevékenységről.
- LAW NO. CXXXI of 2010 on Social Participation in the Preparation of Legislation – 2010. évi CXXXI. törvény a jogszabályok előkészítésében való társadalmi részvételről.
- LAW OF 7 July 2005 on Lobbying Activity in the Process of Lawmaking – *Ustawa z dnia 7 lipca 2005 r. o działalności lobbingskiej w procesie stanowienia prawa.*
- LOBBING má podle poloviny Čechů výrazný vliv na podobu zákonů, vnímají ho ale hlavně jako nástroj pro kmotry. 2021. <https://www.rekonstrukcestatu.cz/archiv-novinek/lobbing-ma-podle-poloviny-cechu-vyrazny-vliv-na-podobu-zakonu-vnimaji-ho-ale-hlavne-jako-nastroj-pro-kmotry>.
- LOBBY REGISTER, Slovenia: <https://erar.si/lobiranje/>.
- OECD Recommendation on Principles for Transparency and Integrity in Lobbying. 2010.
- OECD Timeline of Lobbying Regulations. <https://www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm>.
- ORDER (of the Minister of Labour) no. 1832/856/2011 concerning the Approval of the Classification of Occupations in Romania. Published in the *Official Gazette of Romania* no. 300 on 8 August 2011.
- REGISTRUL DE LOBBY: <http://registruldelobby.ro/en/>.
- REGISTRUL DE TRANSPARENȚĂ: <http://www.registruldetransparenta.ro/>.
- VENICE Commission Report on the Role of Extra-institutional Actors in the Democratic System (Lobbying). 2013.
- ZAKON o integriteti in preprečevanju korupcije. *Uradni list* 69/2011.
- *** How Much Legislation Comes from Europe? *Research Paper* 10/62. 2010. <https://researchbriefings.files.parliament.uk/documents/RP10-62/RP10-62.pdf>.