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**Association of Secretaries General of Parliaments**

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**to the General Debate on**

**“LOBBYISTS AND INTEREST GROUPS: THE OTHER ASPECT OF THE LEGISLATIVE PROCESS”**

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# General remarks

Lobbying activity in this parliament is an unquestionable fact not only because the origins of lobbying are strictly connected to parliamentary ‘lobbies’, but also because the task of contemporary lobbyists is to secure the interests of a growing number of social groups in the parliament.

Parliamentary administrations have applied the registration method in their attempts to regulate lobbying activity, thus meeting the basic requirement of transparency in parliamentary work. However, this kind of regulation has brought moderate success – at least in Poland. Other kinds of legal regulations are less frequent. Here is why.

**First of all**, lobbying is under stronger pressure from normative systems other than legal norms. As a result, provisions of the law have little regulatory impact on this phenomenon. Effective lobbying depends on binding legal regulations only to a limited extent. However, it is strongly contingent on the legal culture and political practice, as well as on the ethical standards of politicians.

**Secondly**, it is impossible to regulate all aspects of lobbying activity due to the very nature of lobbying; legal regulations have to focus on selected issues. It is difficult to legally describe all forms of exerting influence on the decision-making body. In this case we are dealing with a phenomenon described in the sociology of law as the *limits of law*.

**Thirdly**, the essence of lobbying lies in exerting informal influence on decision-making bodies. It is very difficult and to a large extent pointless to formulate a legal definition of forms of such influence in procedural norms.

**Fourthly**, a major part of the lobbying activity is secret – it is not disclosed to the public, because keeping it confidential is a condition of success. It is complicated to regulate a phenomenon that is not readily perceptible, and by the same token difficult to be socially controlled. The lack of efficient social control over lobbying – both legal and informal – leads to regular negative assessments of the lobbying activity and lobbying mechanisms in the society.

**Fifthly**, the discreet activity of lobbyists breeds suspicions of corruption, and their work is often perceived by the society as favouring corruption. In practice, it is sometimes difficult to draw a line between lobbying activity and corruption, even though differentiating between the two phenomena in legal regulations may seem an easy task for the legislator.

Distinguishing between corruption and lobbying is particularly difficult in societies that have no tradition of respect for the ‘common good’, ‘public interest’ and a precisely defined public sphere, and where political parties do not have clearly defined programmes. The essence of lobbying activity lies is exercising influence on representatives of public institutions (and not on private entities), officials and civil servants – guardians and executors of the public interest. They should have a crystal-clear idea of what values they should respect and defend.

**In the sixth place**, lobbying as an institution may function only in pluralist and democratic societies that allow for a full representation of interests; only such conditions make confrontation between public interest and private, particular (local), business (corporate) and party interests possible.

**In the seventh place**, lobbying activity is visibly more effective in societies undergoing transformation. In such circumstances, results are achieved with substantially lower own costs than in mature democracies. It is possible due to anomie, poor mechanisms of social and state control, the lack of clarity with respect to goals that should be pursued in the public sphere, large-scale privatisation of public goods and, frequently, lack of regulations governing the lobbying process.

Specialist publications most often point out that the most important aspect of lobbying activity is persuasion as well as providing and obtaining information that is supposed to promote given decisions. However, it is not so obvious from the perspective of the lobbyist’s goals. Successful lobbying activity does not consist in solely providing information, but in forcing through a decision advantageous for the mandator in the form of desired content of a legal regulation or a specific political decision. Very often the desired outcome of lobbying activity (what is frequently forgotten) is to prevent a political decision on a given issue or killing a specific bill. The tactics and strategy of lobbying activity is a separate subject and there are books dedicated to these issues. It is also important to decide whether legal regulations on lobbying should pertain only to persons who are professional lobbyists, or they should also apply to operators that only perform tasks assigned to them (executive tasks) in the strategic programme of lobbying agencies (media, public affairs and public relations agencies, advertising agencies, legal firms). Is the legal regulation supposed to cover those interest groups whose representatives do engage in professional lobbying in their activity in the public life spheres that are of interest to those groups, but they do not deploy permanent efforts targeted at desired goals (associations, social foundations, civic movements)?

Polish experience with lobbying is only twenty years old. In 1992, there was no research in this area and typical lobbying activities were perceived as positive developments and a sign of democratisation of social life. The situation has drastically changed in the following years, when conflicts of interest among parliamentarians supporting bills drafted by MPs (at that time MPs were submitting more bills than the government) and defending particular and corporate interests became more apparent. It seems justified to believe that a large number of bills in the 1990s were passed with the active participation of covert lobbyists.

First research on regulating lobbying was prepared not by the academia, but by public offices: Senate Research and Analyses Office and Sejm Bureau of Research, which also commissioned the translation of American and Canadian legislation in this area. In the 1990s, a number of steps were taken in the parliament in order to increase transparency of law-making by amending the Act on Exercising the Mandate of a Deputy and Senator, introducing declarations of financial interests and drafting principles of parliamentary ethics. During its 6th term of office Sejm began to investigate lobbying-related problems. On 27 October 2003, the government submitted a bill on that matter to the Sejm (print no. 2188). Three regulatory proposals dominated the political and academic discussion on lobbying in Poland. The first proposal related to regulating the conduct of high-ranking state officials. The second proposal put forward dedicated legislation on lobbying, while the third called upon self-regulation by the profession. The idea of providing a legal framework for the lobbying activity prevailed. After almost two years of debates in the parliamentary committee, on 7 July 2005 the Polish Sejm passed the Act on legislative and regulatory lobbying (399 MPs in favour, 4 abstentions; there are 460 deputies in the Sejm ). After 6 months’ *vacatio legis* the Act took legal effect in March 2006. As its name indicates, it only regulates lobbying activity in the law-making process and only relates to general provisions of law. This Act does not regulate local law, which is passed by local authorities.

# Act on legislative and regulatory lobbying

The Act regulates the principles of open lobbying activity in the law-making process, principles of exercising professional lobbying activity, mechanisms of supervision over lobbying, rules for keeping a register of professional lobbyists and sanctions for breaching the Act’s provisions.

# Lobbying activity

The Act defines the following notions: lobbying activity and professional lobbying activity. Lobbying activity is any type of legal activity aimed at influencing public authorities in the law-making process. Professional lobbying activity is lobbying activity carried out in order to make profit, for the benefit of third parties, with the aim to make the public authority recognize the interest of the parties in the law-making process. Professional lobbying activity may be carried out by an entrepreneur, or by a natural person who is not an entrepreneur, under a civil-law contract.

Such a definition of lobbying activity excludes professional lobbying by, among others, legal persons that are not entrepreneurs (political parties, non-governmental organisations, employers’ organisations, trade unions) and natural persons who engage in lobbying activity without a civil-law contract or without remuneration.

The Act does not include a legal definition of a lobbyist. Lobbyist is any operator that is involved in lobbying activity and that influences, by legal methods, public authorities in the law-making process.

Professional lobbying activity may be carried out only once the operator is entered into the register of lobbyists. This is the main criterion to assess whether activities of a lobbyist are legal or not. A lobbyist is also obliged to provide the public authority before which he appears with a certificate confirming that he is entered in the register. Lobbyists involved in non-professional lobbying activity (e.g. occasional lobbying) do not have to meet the requirement of being entered in the register.

Professional lobbyists may carry out their lobbying activity in any given place. It results from the interpretation of the lobbying activity definition that the premises of the parliament and public authority offices are among the places where lobbying activity is authorised.

# Register of professional lobbying activity

The register is open and kept in the form of a database stored on digital data carriers and in the Public Information Bulletin published on the authority’s website. The minister responsible for public administration is in charge of keeping the register.

Entries to the register are made on the basis of applications submitted on dedicated forms. Professional lobbyists are obliged to report within 7 days any changes in the data that they present to the register. An entry can be deleted from the register ex officio or upon request of the lobbyist himself. Such information is also included in the database. An entry is deleted ex officio if a court, on the basis of penal law provisions, imposes a ban on performing professional lobbying activity for having committed an offence related to such activity.

An operator which performs activities in the scope of professional lobbying activity and which is not entered in the register is subject to a fine ranging from PLN 3000 to PLN 50 000 (ca. EUR 750 to ca. EUR 12 500).

# Principles of open lobbying activity in the law-making process

The so-called Lobbying Act introduces the institution of legislative planning. It is an obligation imposed on the Council of Ministers to keep a register of legislative work covering: draft assumptions of bills, bills and draft regulations of the Council of Ministers. The register should include all bills, regardless of their material scope – e.g. budget bills, bills on ratification of international agreements or acts regulating relations between Poland and churches or religious associations. The register of legislative work includes, among others, information about causes, the need to introduce and the essence of planned solutions and the body responsible for preparing the draft. The register must be made available in the Public Information Bulletin.

It also includes all documents relating to work on bills listed in the register. Such broad disclosure obligation helps all interested parties to familiarize themselves not only with the content of legislative acts, but also with all accompanying documents (expert opinions, opinions, proposed solutions).

One may report his/her interest in the work on draft assumptions of a bill, bill or draft regulation only when the draft is made available in the Public Information Bulletin. Everyone is authorised to do so, because the Lobbying Act does not introduce any limitations in that respect, except that it should be done on official form. The notification should include, among others, proposed legal solutions and specify the interest that is being protected.

# Public hearing

The so-called Lobbying Act also regulates another form of influencing the law-making process. Public hearing constitutes a formally and legally defined lobbying method. According to the Act, a public hearing can be held with respect to bills or draft regulations.

Bills

Public hearing is governed by the Standing Orders of the Sejm. A public hearing on a bill may be held once the draft bill is introduced to the Sejm. The right to participate in public hearings is granted to entities which declare their interest in the legislative work on the bill not later than 10 days prior to the public hearing. The application is addressed to the Speaker of the Sejm and is published in the Sejm Information System.

Public hearing is not obligatory. The decision on conducting a public hearing lies with the committee to which the bill is referred for consideration. A public hearing requires passing a resolution, which may be adopted upon a written request of any MP.

Public hearing cannot be held in a subcommittee.

The Standing Orders of the Sejm stipulate that due to space restrictions or technical reasons the presidium of the committee may limit the number of parties taking part in a public hearing and that such limitations should be introduced according to a reasonable criterion uniformly applied to all entities, for instance on the first come, first served basis.

The presidium of the committee may also change the public hearing date, and the committee may even cancel it, if due to space or technical restrictions, in particular due to the number of persons willing to participate in the public hearing, it is not possible to organise it. There is no possibility to appeal from the decision on cancelling a public hearing. The notion of the “number of persons willing to participate” in a public hearing is not clearly defined either. In particularly justified cases the chair of the committee may adjourn the meeting at which the public hearing takes place, and decide on the date, time and place where the meeting is to be resumed.

A public hearing takes place during only one meeting of the committee, and the agenda of such meeting cannot include any other points. The list of speakers and the speaking time of the hearing is decided by the chair of the committee. Only one speech is permitted for each party, but the chair of the committee may extend the speaking time. Minutes and a factsheet are drawn up after the committee meeting.

Draft regulations

Executive bodies can also hold public hearings in the law-making process. A procedure similar to the one applied to bills is followed for draft regulations.

A public hearing may be held independently and attended only by the parties interested in the legislative work on the draft regulation, or together with inter-ministerial conference dedicated to the draft regulation.

As a rule the authors of the draft regulation address the arguments presented by the participants of the public hearing on an ongoing basis; however, when analysis or consultation is required the authors may present their position in writing within 14 calendar days.

Minutes are drawn up after the public hearing, which are later published in the Public Information Bulletin on the website of the body responsible for preparing the draft regulation. The public hearing may also be recorded.

# Supervision of professional lobbying activity

The following elements comprise the supervision of professional lobbying activity:

1. public authority bodies have the obligation to immediately publish information in the Public Information Bulletin on any actions towards them and on the outcome expected by lobbyists,
2. orders or internally binding regulations have to stipulate the nature of relations between lobbyists and public authority bodies as well as the manner of documenting such contacts,
3. orders or internally binding regulations have to stipulate the procedures to deal with unregistered operators involved in activities comprising professional lobbying,
4. the public authority body has to immediately inform the Minister of Administration and Digitisation about any professional lobbying activity undertaken without entry in the register,
5. once a year, heads of offices providing services to public bodies prepare a report on actions aimed at such bodies by professional lobbyists.

# Parliamentary rules and regulations

The provisions of parliamentary rules and regulations are complementary to the so‑called Lobbying Act. They stipulate the principles of professional lobbying on the premises of the Sejm and Senate.

# Standing Orders of the Sejm

The principles of open lobbying in the law-making process (apart from the above-mentioned institution of the “public hearing”) are also regulated in Articles 201b–201c of the Standing Orders of the Sejm. Pursuant to the Standing Orders, any professional lobbyist and any person authorised to represent an entity involved in professional lobbying are entitled to enter parliamentary buildings. The document authorising lobbyists to enter parliamentary premises is a temporary entry card issued by the Chancellery of the Sejm based on an application submitted by the lobbyist. The application is filed on an official form and contains data of the operator involved in professional lobbying.

The Standing Orders of the Sejm provide for a possibility to submit proposed legal solutions, expert opinions and legal opinions only to the committee examining the given bill or to the committee competent in terms of remit.

The data contained in the application filed to obtain an entry card as well as all documents filed with the committee are published in the Sejm Information System.

# Rules and Regulations of the Senate

The detailed legal basis of lobbying activity in the Senate is laid down in the Rules and Regulations of the Senate and in the Order of the Marshal of the Senate on the principles of participating in Senate sessions and Senate committee meetings. In the Senate, professional lobbyists may take part in committee meetings devoted to acts or bills and propose expected legislative solutions. Lobbyists interested in taking part in a Senate committee meeting devoted to a public hearing have to notify their participation at least 7 days before the public hearing day. The committee rapporteur presents a report on the activities of operators involved in professional lobbying during the committee work as well as the expected legal solution they wish to achieve and the committee’s position in that respect.

# Statistics

The register of professional lobbying operators contains 310 entries (as at 25 February 2015). By comparison: as at 11 May 2006, there were 47 such operators and as at 7 March 2010 (exactly four years since the Act had entered into force) – 152 such operators. Since March 2006, 16 operators have signed themselves off, but no operator has been signed off based on a binding ruling prohibiting the exercise of professional lobbying.

In 2014, 35 lobbyists were involved in professional lobbying on parliamentary premises.

In 2014, out of the total number of 304 entities entered in the register, 22 operators declared taking actions aimed at the Sejm. In total, 9 professional lobbyists participated in 31 meetings of Sejm committees: Health Committee (21 meetings), Economic Committee (4 meetings), Public Finance Committee (1 meeting), Innovation and New Technologies Committee (1 meeting), Select Committee on Energy Matters and Energy-Producing Raw Materials (1 meeting), National Defence Committee (1 meeting), Environmental Protection, Natural Resources and Forestry Committee (1 meeting) and State Treasury Committee (1 meeting).

In 2014, professional lobbying activity in the Senate was limited to 4 bills. Lobbyists participated in 5 Senate committee meetings: National Economy Committee, Environment Committee, Local Government and State Administration Committee, Health Committee and Agriculture and Rural Development Committee.

# Evaluation of the Polish legal regulations – an attempt

The so-called Lobbying Act introduced two new institutions to the Polish political reality: legislative planning (lists of government legislative work – bills and draft regulations – published in six-month cycles) and public hearing. The latter, however, resembles its U.S. Congress model only by name. For both of the above-mentioned institutions, we have empirical data revealing their superficial nature (the performance of legislative plans has not surpassed 40%, while public hearings have hitherto been called only sporadically).

Registers of lobbyists, lists of bills as well as public hearings are all meant to guarantee the transparency of the law-making process in Poland. From this standpoint, Polish statutory provisions should be undoubtedly assessed as positive. At the same time, annual reports on actions aimed at the Polish Sejm and Senate by operators involved in professional lobbying reveal an extremely low level of interest in registration (e.g. in 2008, there was no professional lobbying in any matter discussed by the Senate; in the same year, 17 operators were involved in lobbying activities in the Sejm).