



Strasbourg, 31 May 2011

**Study No. 590/2010**

**CDL-DEM(2011)002**

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPORT ON**

**THE LEGAL FRAMEWORK FOR THE REGULATION OF  
LOBBYING IN THE COUNCIL OF EUROPE MEMBER STATES**

by

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## **I. Executive Summary**

Focussing on developments in Council of Europe (CoE) member states and non-member states, as well as the European Union (EU) level of governance, this paper outlines existing regulations with regard to the activities of external institutional actors aimed at influencing political decision-making. It examines political systems that have established legal frameworks to regulate extra-institutional actors by paying particular attention to the European Parliament (EP), the European Commission, Germany, Lithuania, Poland and Hungary. The paper then analyzes the comparative robustness of lobbying legislation using a 1-100 point scale. This is then used as a basis to categorize three different types of regulatory environments: namely, high, medium and low. The evidence presented in this report shows that legislation within CoE states is found mostly within the 'medium' and 'low' regulatory environments. Medium regulation is seen in Lithuania as well as the recently abandoned Hungarian legal frameworks. And low regulation is found in Poland, Germany, France, the EP and the 2008 voluntary registry of the European Commission. A main lesson from this study is that, having the highest number of systems with regulation when compared to other regions in the world, Europe is rich with countries that have established legal frameworks to regulate lobbying activity and this is likely to become an even more significant phenomenon over time.

## **II. Introduction, Defining Key Terms, and Identifying CoE Member States have an Existing Legal Frameworks Regarding Lobbying Regulation**

This paper examines how extra-institutional actors, which we will also refer to throughout the paper as lobby groups or interest groups, are formally regulated throughout Europe and the impact this has had in terms of promoting transparency.

By examining this legal framework from a cross-comparative perspective, this paper will serve as a basis to better understand formal rules in place throughout Europe.

In terms of existing studies, some scholars, including ourselves, have focused on lobbying regulation in the US, Canada, the European Union (EU) and Germany (Baumgartner and Leech, 2001; Chari *et al.*, 2007; Dyck, 2004; Greenwood, 2007; Ronit and Schneider, 1998; Rush, 1998; Stark, 1992; Wolpe and Levine, 1996; and Zeller, 1958). Our more recent work (Chari *et al.*, 2010) also focuses on developments in Central and Eastern Europe.

However, recent changes, including those in Hungary as discussed later, mean that the legal framework is a constantly changing one. As such, the picture offered in this paper represents an up to date account of existing laws as of April 2011.

### **A. What is meant by the term 'lobbying'?**

Before considering the existing legal frameworks, it is necessary to define what is meant by the term 'lobbying.' Lobbying activity can be regarded as the act of individuals or groups, each with varying and specific interest, attempting to influence decisions taken at the political level.

It is agreed in the literature that such lobby/interest groups/extra-institutional actors may include, but are not necessarily limited to, those with economic interests (such as corporations), professional interests (such as trade unions or representatives of a professional society) and civil society interests (such as environmental and human rights groups). Such groups may directly, or indirectly through consultants they have hired, seek to have public policy outputs reflect their preferences.

Influencing political decisions may take place by way of many means, including direct communications with both politicians and civil servants, offering presentations to state officials, giving draft reports to public officials wherein specific details of policy itself are drafted, and even having simple telephone conversations with governmental personnel.

## **B. What is meant by the term regulation of lobbyists?**

The concept of 'regulation of lobbyists' refers to the idea that political systems have established 'rules' which lobby groups must follow when trying to influence government officials and the nature of public policy outputs. The idea of 'must follow' is a significant one for the purposes of the study: it is not simply a matter of voluntarily complying with suggestions made by the political system, as presently seen in the case of the European Commission which we will discuss later.

The regulations establish a *legal framework* and represent a set of codified, formal rules that are passed by parliament and written in law that must be respected and which is enforced. The latter point suggests that the risk that lobbyists run in not complying with the rules results in penalization, whether that is a fine or, potentially, a jail sentence.

Examples of such rules that lobbyists may have to follow include:

- registering with the state before contact can be made with any public official,
- clearly indicating which ministry/public actors the lobbyist intends to influence, providing the state with individual or employer spending disclosures,
- having a publicly available list with lobbyists details available for citizens to scrutinize, and
- ensuring that former legislators cannot immediately jump into the world of lobbying once they have left public office (referred to as a 'cooling off' period).

The theoretical justification for having this information is based on ensuring transparency and accountability in the political system, two key concepts which are worth defining in some detail.

Taking from Broz (2002:861), *transparency* refers to the ease with which the public can monitor not only the government with respect to its activity, but also examine which private interests are attempting to influence the state when public policy is formulated. This encapsulates the motives of all policy making actors and the clearness of policy objectives (Geraats, 2002: 540). Heretier (1999) and Scharpf (1999) show that transparency not only increases policy actors' responses to public demands, but also helps prevent misconduct.

*Accountability* refers to taking responsibility for actions that are taken (Moncrieffe, 1998: 389; Scott, 2000: 40). At the political level, actors who are accountable for their actions include politicians, who must seek re-election on a regular basis. Increasingly, other actors such as civil servants and regulators are also under the spotlight. Gutmann and Thompson (1996: 95) argue that exposing the details of decision-making helps 'purify' politics, a concept which was espoused in the 1800s by theorists such as Bentham (1999). Risse (2000: 32) suggests that not only political, but also economic elites are increasingly having to justify their actions to citizens.

Lobbying regulations are thus justified in order to render government officials more accountable and promote the transparency of lobbyists' actions (Thomas and Hrebenar, 1996: 12-16). Largerlof and Frisell (2004: 16) contend that lobbyist registration in and of itself helps promote transparency. Moreover, 'by imposing an obligation on lobbyists to disclose the identity of those on whose behalf action is being taken, a government is making laws that take account of the public interest' (Garziano, 2001: 99). In Thomas' (2004: 287) words, such rules 'constrain the actions of lobbyists and public officials alike, even if they do not ultimately affect which groups are powerful and which ones are not' (Thomas, 2004: 287).

### C. Council of Europe Member States and Non-Member States with Legal Frameworks

Which states have established legal frameworks with regard to the regulation of lobbyists? Table 1 considers the countries that have established legal frameworks throughout the world, including all of the member states in the Council of Europe, non-member states in the Council of Europe, Australia and Taiwan.

**Table 1: Regulations in Place in the Council of Europe Member States, Non-Member States, the Political System of the EU, Australia and Taiwan**

Country	Rules Governing Lobbyists as of 2011
Albania	No statutory rules
Andorra	No statutory rules
Armenia	No statutory rules
Australia	As of 1 July 2008 there are national rules in place and a register. Originally formulated and implemented in the 1980s, lobbying rules were then abandoned in 1996. Each Australian state also has its own state lobbying rules.
Austria	No statutory rules
Azerbaijan	No statutory rules
Belgium	No statutory rules
Bulgaria	No statutory rules
Bosnia and Herzegovina	No statutory rules
Canada	Federal Level: Rules and Register since the Lobbyists Registration Act of 1989, amended in 1995, 2003 and 2008. Provincial Level: Lobbying regulations exist in Ontario, Quebec, British Columbia, Nova Scotia, Newfoundland and Alberta. New Brunswick has been considering the introduction of lobbying regulations since 2009.
Croatia	No statutory rules
Cyprus	No statutory rules
Czech Republic	No statutory rules, although the issue is presently being discussed.
Denmark	No statutory rules
Estonia	No statutory rules
EU: European Parliament	Regulated by Rule 9(2) of the Rules of Procedure, 1996.
EU: Commission	Before 2008, 'self-regulation' was the model adopted by the Commission. However, as of 23 June, 2008, the Commission opened a <i>voluntary</i> register of interest representations.
EU:	No statutory rules

Council	
Finland	No statutory rules
France	Rules established in 2009
Georgia	Rules established in 1998
Germany	Regulation and registration through rules of procedure of the Bundestag in 1951; later amended in 1975 and 1980.
Greece	No statutory rules
Holy See	No statutory rules
Hungary	Regulation of Lobbying Activity introduced in 2006, but repealed in 2011.
Iceland	No statutory rules
Ireland	No statutory rules, although presently discussing the issue
Israel	Rules established in 2008
Italy	No statutory rules at national level. Nevertheless, regional schemes have been introduced in the Consiglio regionale della Toscana in 2002 and Regione Molise in 2004.
Japan	No statutory rules
Latvia	No statutory rules
Liechtenstein	No Statutory rules
Lithuania	Regulation since 2001.
Luxembourg	No statutory rules
Malta	No statutory rules
Mexico	No statutory rules
Moldova	No statutory rules
Monaco	No statutory rules
Montenegro	No statutory rules
Netherlands	No statutory rules
Norway	No statutory rules
Poland	Regulations since 2005.
Portugal	No statutory rules
Romania	No statutory rules
Russia	No statutory rules
San Marino	No statutory rules
Serbia	No statutory rules
Slovakia	No statutory rules
Slovenia	Rules established in June 2010.
Spain	No statutory rules
Sweden	No statutory rules
Switzerland	No statutory rules
"The former Yugoslav Republic of Macedonia"	No statutory rules
Taiwan	Lobbying Act passed on 8/8/2007, came into force on 8/8/2008.
Turkey	No statutory rules
Ukraine	No statutory rules, although a lobbying bill has recently been introduced in 2010.
United Kingdom	No statutory rules in either the House of Commons or the House of Lords, although presently discussing the issue
United States	Federal Level: The Lobbying Act 1946, amended in 1995 and 2007. State Level: All states have lobbying regulations.

Sources: Authors' research January-April 2011; Chari et al. (2010); Chari et al., (2007); Malone (2004); McGrath, 2008, 9.

A first observation from Table 1 is that there are several democracies that have lobbying regulations, a majority of which are in Europe.

Secondly, from a global perspective, the systems throughout the world that established such regulations in the 1900s are the US (since 1946), Germany (since 1951), Canada (since 1989) and the EP (since 1996; the European Commission has a voluntary registry at present). Georgia also established regulations in 1998. The US also sees regulations in all of its 50 states, while Canada has regulation in six of its 10 provinces. The other jurisdictions that have lobbying laws enacted them in the first decade of the 2000s.

Thirdly, from a European perspective, the political systems in Europe (and institutions in the case of the EU) with lobbying rules include the EP, the European Commission, Germany, Lithuania, Poland, France and recently (in June 2010) Slovenia. Hungary established rules in 2006, but has recently struck down this legislation as discussed later. The Ukraine is in the process of having introduced such legislation. We understand that the Czech Republic, Ireland and the UK are considering pursuing lobbying laws.

The rest of the paper is thus devoted to examining in-depth the details of the regulations in several political systems/institutions, namely, the EP, the European Commission, Germany, Lithuania, and Poland in order to better understand the main points of existing legal frameworks in the Council of Europe member states. It also pays attention to the 'U-Turn' recently made by Hungary. Thereafter, we will consider how one can: compare and contrast the types of regulations across the globe as well as theoretically classify different types of regulatory systems and how European legal frameworks can be situated.

### **III. The Legal Framework in Europe**

#### **A. The Political System of the EU**

##### **a) History of European Parliament Legislation**

The rationale behind the idea of having a registry of lobbyists was based on perceptions of less than transparent practises having occurred in the EP throughout the 1980s and 1990s. As the EP itself stated, there were 'charges that some MEPs' assistants could have been paid by interest groups and that some MEPs even could have acted as interest representatives themselves...' (European Parliament, 2003: 36). As a consequence, in the early 1990s calls were made towards establishing 'minimalist standards' in order to clean up the situation, something that was spearheaded by Marc Galle, who was the Chairman of the Committee for Rules and Procedure (European Parliament, 2003: 36). However, little progress was made at the time given the upcoming EP election in 1994 and given the EP's inability to clearly agree to key terms such as what was meant by 'lobbying and lobbyist'.

Nevertheless, there was a renewed impetus following the elections: led by Glyn Ford, there was a proposal that 'the College of Quaestors should issue permanent passes to persons who wished to enter Parliament frequently with a view to supplying information to members within the framework of their parliamentary mandate' (European Parliament, 2003: 37).

As Bouwen (2003: 8) explains, with regard to this College which the EP elects: 'the five quaestors of the college have an important internal function within the Parliament as they are responsible for administrative and financial matters directly concerning the members'. And with the final acceptance of Ford's recommendations in 1996, the College was doubly

politically responsible for the implementation of the rules of 'lobbying in parliament' and 'transparency and Member's Financial Interests' (Rules of Procedure Annex I and IX)... (t)hese rules are the cornerstone of the Parliament's policy to regulate the interaction of members of Parliament and private interests (Bouwen, 2003: 8).

We thus turn to a more detailed discussion of what this policy does (and does not) entail.

b) How does the EP define the term 'lobbyist'?

The EP offers the following definition for lobbyists: 'Lobbyists can be private, public or non-governmental bodies. They can provide parliament with knowledge and specific expertise in numerous economic, social, environmental and scientific areas.'<sup>1</sup> One may argue that the EP definition portrays lobbying activity as an utterly 'altruistic,' if not 'good-hearted,' act: the importance of lobbyists lies in what they can give to the institution, in terms of knowledge and expertise. In other words, there is no explicit mention in this EP definition of interest groups 'attempting to influence' institutions in order to attain outcomes that are in their interest. Considering that, to date, there are around 4500 institutions accredited to lobby in the EP, one would have thought that an 'attempt to influence' was clearly part of their mandate.<sup>2</sup> Nor is there an exhaustive attempt to define 'public office holder' as seen in the Canadian legislation, for example. The above definition seems broad, if not vague, as it does not clearly define *who* can be the object of a lobbying strategy (i.e. it may involve not only MEPs, but also their staff as well as civil servants)

c) The Door Pass System

According to the EP's rules, passes for a maximum of one year are granted to those who lobby the EP, where lobbying is defined as 'supplying information to MEPs' (not, as above, an explicit attempt to influence) with a frequency of more than 5 days per year. These passes allow for access to the Parliament, and state the lobbyist's name and the organisation for which they work. In other words, anyone wishing physically to enter the Parliament building has to have a pass, and this pass requires registration: email, phone conversations, and meetings off-site are all allowed without registering. The merits of this, as some lobbyists and even some politicians feel, is that the minimalist regulation in place allows room for an element of informal lobbying outside of the EP institutional structure.

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<sup>1</sup> Taken from:

<http://www.europarl.europa.eu/parliament/expert/staticDisplay.do?id=65&language=en&redirection>

<sup>2</sup> Data taken from [http://www.europarl.europa.eu/news/public/focus\\_page/008-25231-168-06-25-901-20080331FCS25217-16-06-2008-2008/default\\_p001c001\\_en.htm](http://www.europarl.europa.eu/news/public/focus_page/008-25231-168-06-25-901-20080331FCS25217-16-06-2008-2008/default_p001c001_en.htm)

A downside, however, is that because physically entering the building is only regulated, several of the lobbyists actually active in the EP are not registered, as stated in interviews with two Commission officials responsible for monitoring the Commission's new voluntary registry discussed in more detail later in the paper.<sup>3</sup>

Secondly, a subsequent register of all who lobby is available to the public on the EP website. It is significant to note, however, that while names of lobbyists are available to the public, other information stated on the registration form, such as the 'nature of the lobbyists work,' the interests for which the lobbyist is acting, and which MEPs may have served as references for the lobbyists, is not available to the public (European Commission, 2006: 7).

Third, in order to get a pass, a lobbyist must respect the code for conduct and sign the register. With regard to the code of conduct, these are mostly either minimalist codes (such as stating the interests they represent, Article 3.1.b), or broad definitional concepts in which it would be difficult to penalise anyone (such as refraining from action designed to obtain information 'dishonestly', Article 3.1.c), or actions that would be virtually impossible to trace (such as not to circulate for a profit to third parties copies of documents obtained from Parliament, Article 3.1.e).<sup>4</sup>

- d) What Information does the Lobbyist have to give when Registering with the EP?

The regulations state that when registering a lobbyist must provide in writing general information surrounding the lobbyist's activities, including

- o the name of the lobbying organisation, the general interests (in terms of policies) of the organisation,
- o the name of the lobbyist and his/her position, home address of lobbyist (plus a copy of his/her passport) and how long they seek to lobby the EP.

Comparing the information needed to lobby the EP to that required to lobby the different jurisdictions such as Canada and the United States, one can see that *less* information is required. For example, the lobbyist does not have to state: the name of each committee, department or other institution lobbied; the subject matters including the specific legislative proposal, bill or resolution, regulation, or program; whether or not there are contingency fees involved; and communication techniques used when lobbying. Nor does the lobbyist have to state whether or not he/she is a former public office holder, and nor are there any specific regulations surrounding 'cooling off periods' for former EP officials that may seek lobbying activity. Nor are there rules on complete individual spending disclosure (i.e. a lobbyist is not required to file a spending report) or on employer spending disclosure (i.e. an employer of a lobbyist is not required to file a spending report).

Taken together, one may argue that while rules stating an individual must register do exist, relatively fewer details have to be given when compared to the US and Canada.

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<sup>3</sup> Interviews with Commission officials held in Brussels, October 2008.

<sup>4</sup> Please see the following for a full list of the codes of conduct: <http://www.europarl.europa.eu/omk/sipade3?L=EN&OBJID=3091&HNAV=Y&MODE=SIP&NAV=X&LSTDOC=N>

- e) What are the Potential Penalties that EP Lobbyists Face – The Lack of an Effective Gatekeeper.

As stated in the Rules of Procedure 9(1), Annex 1, Article 2,

If after the appropriate request a Member does not fulfil his obligation to submit a declaration pursuant to (a) and (b), the President shall remind him once again to submit the declaration within two months. If the declaration has not been submitted within the time limit, the name of the Member together with an indication of the infringement shall be published in the minutes of the first day of each part-session after expiry of the time limit. If the Member continues to refuse to submit the declaration after the infringement has been published the President shall take action in accordance with Rule 124 to suspend the Member concerned.<sup>5</sup>

Despite this, authors such as Bouwen have suggested that 'it would be wrong, however, to conclude on the basis of the Rules of Procedure that the quaestors act as effective gatekeepers of the EP' (Bouwen, 2003: 8). This is also reflecting in comments that were made by different officials we interviewed: the enforcement of lobbying legislation is limited and sanctions to date have been insignificant.

- f) The European Commission's Voluntary Register

2,500 lobbyists have offices in the European capital, spending an approximate 60-95 million Euros in their efforts to influence the Commission:<sup>6</sup> the Commission is *the* hot bed of EU lobbying activity, particularly given its prominent role in the policy process. Yet, the European Commission does not run a compulsory register of organisations that deal with it. This lies in contrast to the EP that, as above, has an accreditation system whereby passes are needed in order to lobby. This does not mean, however, that little debate has taken place with regard to whether or not a registry should be adopted at the Commission level. In fact, much debate has ensued since the 1990s and, as seen in the below discussion, the Commission has recently set up a voluntary – not mandatory - registry in June 2008.

As early as 1992, the Commission (1992) stressed the need for an 'open and structured dialogue with special interest groups' and some 10 years later under the Prodi Commission, its (2001) 'White Paper' stressed the need for open and transparency in government. As Michalowitz (2006: 14) argues:

With the White Paper, the European Commission has taken steps towards rendering its decision-making structures more open and predictable than before. As regards measures for increasing civil society involvement in decision making, the Commission envisaged in this document to grant a larger role to actors to whom it accepted as representatives of important civil society actors – churches, unions, (and) employers' organisations.

The idea was to define more clearly who should be consulted and who should not, and to make consulted actors accountable themselves.

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<sup>5</sup> Taken from <http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//TEXT+RULES-EP+20040501+ANN-01+DOC+XML+V0//EN&HNAV=Y>

<sup>6</sup> <http://www.corpwatch.org/article.php?id=14119>

In response to the White Paper, CONECCS (Consultation, the European Commission and Civil Society) was subsequently developed. CONECCS is a 'voluntary database' where civil society organisation (including, for example, trade unions, business associations and NGOs) could sign up in order to provide 'better information about (the Commission's) consultative process.'<sup>7</sup> Nevertheless, and even in the Commission's (2006: 7) own words, CONECCS remained somewhat toothless:

CONECCS is used as an information source for Commission departments and the general public. However, there is no requirement or incentive for a civil society organisation to register. Equally, there is no disincentive against failing to register.

Approximately less than 7 per cent of all lobbyists (i.e. less than 1,000 lobbyists of the over 15,000 estimated) signed up to the voluntary registration system (Smyth, 2006).

The debate on whether or not to have a registry recently opened up again under the leadership of Anti-Fraud Commissioner Siim Kallas who started a consultation process on the theme by pursuing two related initiatives. First, in November 2005 the Commission approved the so-called 'Transparency Initiative', which has a broad goal to foster the idea that 'European leaders, businesses, civil society and citizens... are making policies in an open and inclusive way...'<sup>8</sup> Secondly, 'a Green Paper was published in May 2006 to launch a debate with all the stakeholders on how to improve transparency on the Community Funds, consultation with civil society and the role of the lobbies and NGOs in the European institutions' decision-making process.'<sup>9</sup>

In the Green Paper, the Commission considered that a credible system for greater transparency in the EU would consist of a voluntary registration system and tighter self-regulation by lobbyists themselves in terms of their conduct. Voluntary registration was considered better than a mandatory one because it was felt that the latter 'would take a long time to come into force and which could include many loopholes' (although he did not fully specify exactly what the loopholes were; Smyth, 2006). More critical observers of the Commission's Green Paper, such as Erik Wesselius of Corporate Europe Observatory, nevertheless stated that 'you need some good incentives to encourage lobbyists to sign up for a voluntary system, but the Commission's proposals are very weak and unconvincing on this' (as quoted in Smyth, 2006). Other critics noted that not only has Kallas ignored the pros of mandatory registration as seen in cases such as Canada and the US, but also that he has seemingly back-tracked on his own proposals of summer 2005 when it was reported that 'Kallas said he would "certainly" go ahead with plans for a central register of Brussels lobbyists.'<sup>10</sup>

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<sup>7</sup> Please see [http://ec.europa.eu/comm/civil\\_society/coneccs/index\\_en.htm](http://ec.europa.eu/comm/civil_society/coneccs/index_en.htm)

<sup>8</sup> As taken from [http://ec.europa.eu/commission\\_barroso/kallas/transparency\\_en.htm#3](http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm#3)

<sup>9</sup> As taken from [http://ec.europa.eu/commission\\_barroso/kallas/transparency\\_en.htm#3](http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm#3). We are grateful to Eoin Corrigan of the Irish Department of the Environment for providing us with a copy of the Green Paper shortly after it was released.

<sup>10</sup> Please see the Euroactive article where quotes from Mr. Kallas on July 19 are made: <http://www.euractiv.com/en/pa/kallas-press-registry-brussels-lobbyists/article-142799>. To be fair to the Commissioner, the article does go on to state that 'Kallas remained careful about his intentions, saying he would prefer to see self-regulation by the profession rather than forcing a compulsory system of registration defended by NGOs....' And that he was also 'keeping all the possibilities open.'

On 21 March 2007 the Commission later approved the idea of a *voluntary* public register for all interest representatives working to influence decisions taken in EU institutions.<sup>11</sup> This voluntary public register, took effect from June, 2008. Although there are rules on what information registrants would have to supply, one must stress that the this register is completely *voluntary*, something which lies in contrast to developments in the EP, as well as those in other countries studied in this paper where registration is mandatory.

In other words, lobby groups can attempt to influence the Commission at any time and any place, whether or not they are on the registry. Those on the voluntary public register are also expected to comply with the voluntary codes of conduct.<sup>12</sup>

Why is the Commission's 2008 registry voluntary and not mandatory? In its press release on the new registry, the Commission somewhat naively states:

The Commission is ready to trust the profession. The register offers lobbyists legitimacy and recognition as a profession. With self-declaration, the registrant takes responsibility for supplying correct information, and the Commission believes this trust should first be tested, before considering the possibility of more binding regulation.<sup>13</sup>

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<sup>11</sup>See:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/367&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>12</sup> With regard to the voluntary code on those lobbying that the Commission adopted for those who registered, many of these points suffer from same ambiguities seen, for example, in the code of conduct in the province of Quebec as discussed earlier (especially points 2-7 below). For the sake of readers' interest, it is worth mentioning them in any case. According to the Commission, those lobbying shall always

1. Identify themselves by name and by the entity(ies) they work for or represent;
2. not misrepresent themselves as to the effect of registration to mislead third parties and/or EU staff;
3. declare the interests, and where applicable the clients or the members, which they represent;
4. ensure that, to the best of their knowledge, information which they provide is unbiased, complete, up-to-date and not misleading;
5. not obtain or try to obtain information, or any decision, dishonestly;
6. not induce EU staff to contravene rules and standards of behaviour applicable to them;
7. if employing former EU staff, respect their obligation to abide by the rules and confidentiality requirements which apply to them.

See:

<https://webgate.ec.europa.eu/transparency/reg/in/infos/codeofconduct.do;REGINSID=10YLLCdTvqTZgh9wWB2mLVvSCNqhhPNScbfkCvBBGhTGt1Td0nbV!1914171189>

The 'penalty', if found guilty of breaking these rules after a Commission investigation is that the lobbyist may face temporary suspension or exclusion from the Register. Yet, not being on the Commission register does not mean one cannot lobby the Commission. As such, it is hard to see how this can be considered a meaningful penalty. See: [http://ec.europa.eu/transparency/docs/323\\_en.pdf](http://ec.europa.eu/transparency/docs/323_en.pdf), Section 3 of the report.

<sup>13</sup><http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/428&format=HTML&aged=0&language=EN&guiLanguage=en>

The Commission also suggests that a mandatory registry would need legislation, which would seemingly result in a much narrower definition of interest representation. It also repeats the idea of loopholes as it did in its Green Paper of 2006, again without fully defining what it means. It states:

The Commission wants the register to cover a broad assortment of stakeholders. A mandatory register would require legislation, and with legislation a much narrower definition of 'interest representative' would apply. This would create loopholes, and make the playing field uneven. Given the length of legislative procedures, it would also mean no tangible results during this Commission's term of office. In any event, after one year of operation, the Commission will evaluate the register, in particular regarding participation. If it proves to be unsatisfactory, compulsory registration and reporting will be considered.<sup>14</sup>

With the latter in mind, after the year trial period of the voluntary registry, the Commission intended to revisit the issue regarding whether or not there will be a mandatory registry. Yet, it finally decided to maintain the voluntary nature of the registry.

What is required when registering with the Commission? There are three main categories of lobbyists: professional consultancies and law firms; corporate 'in house' lobbyists and trade associations; and NGOs and think-tanks.

All registrants must disclose:

- name of the company,
- who is the head of the organization,
- contact details in Brussels,
- goals and remit of the organization,
- fields of interest of the organization, and
- information on the organization's memberships.
- total revenues relating to lobbying EU institutions (for professional consultancies and law firms),
- an estimate of costs associated with direct EU lobbying (in-house lobbyists), or
- the organization's overall budget and their main sources of funding (NGOs and think-tanks).

Although there is no direct pay-off in signing up for the voluntary register, the Commission states that in return for registering, 'lobbyists will receive alerts from the EU executive giving details of upcoming public consultations on policy areas of interest to them.'<sup>15</sup>

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<sup>14</sup><http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/428&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>15</sup> <http://www.euractiv.com/en/pa/commission-launches-lobbyists-register/article-173591>

How effective has the voluntary registry been to date? Several observers have criticized the Commission's efforts, or perhaps better said, lack thereof. Earlier in 2008, the EP was already openly stating that it wished to have a mandatory register for all lobbyists that attempt to influence all institutions in the EU,<sup>16</sup> similar to a type of one stop-shop for lobbying registration outlined by organizations such as the European Centre for Public Affairs.<sup>17</sup> MEP Monica Frassoci, the co-president of the Greens/EFA Group, went further by saying that:

The Commission's voluntary lobbyists register falls well short of Parliament's position on 8 May (2008), which called for mandatory participation. The European Transparency Initiative is increasingly being exposed as a very pale imitation of the US' far-reaching Lobbying Disclosure Act... (She describes the register as) a Commission PR exercise that offers semblance but not substance of greater democratic scrutiny... It is an insult to the European Parliament and damaging to European citizens' trust in EU institutions and processes.<sup>18</sup>

By March 2011, there were over 3,700 registered lobbyists, which seems a small fraction of the thousands that lobby the Commission on a daily basis.<sup>19</sup> It is also a number that pales in comparison to the 4,500 individuals and organizations that are found in the EP registry.

## **B. Germany**

### *Bundestag Legislation*

Within the EU the German Bundestag was the first parliament that has adopted specific formal rules on registration of lobbyists. Yet as Ronit and Schneider point out, in German politics, 'lobbying has always been and still is considered a foreign word with strong connotations of secretive policy processes where illegitimate influence is sought' (Ronit and Schneider, 1998: 559). Relations between government and different kinds of private actors (business, churches, trade unions) are never really referred to as lobbying. Each year a public list is drawn up of all groups wishing to express or defend their views to parliament.

Interest groups are required to provide the following information in order to register:

- their name and seat,
- composition of the board of management and directors,
- sphere of interest,
- number of members,
- names of their representatives and the address of their office.

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<sup>16</sup>[http://www.europarl.europa.eu/news/public/focus\\_page/008-26498-168-06-25-901-20080414FCS26495-16-06-2008-2008/default\\_p001c004\\_en.htm](http://www.europarl.europa.eu/news/public/focus_page/008-26498-168-06-25-901-20080414FCS26495-16-06-2008-2008/default_p001c004_en.htm)

<sup>17</sup> <http://www.publicaffairs.ac/inindex.php?in=main.htm>

<sup>18</sup><http://www.euractiv.com/en/pa/commission-launches-lobbyists-register/article-173591>

<sup>19</sup> <https://webgate.ec.europa.eu/transparency/regrin/consultation/statistics.do>

There is no requirement to provide any financial information. The register is drawn up every year and is published in the Federal Gazette (*Bundesgesetzblatt*).<sup>20</sup> Those wishing to lobby at either the Bundestag or the Federal Government (or both) must register on this public list. The procedure is overseen by the President of the Bundestag. The register is published annually and a registered association has access to buildings and may participate in the preparation of federal legislation.

In addition, various types of less formal procedures exist to involve interest groups in the preparation of federal or regional legislation. This is a point made by EU Commissioner Siim Kallas in an address to the “Zukunftskolloquium Politikberatung” in Berlin in October 2007 where he stated:

For decades, it seemed lobbying in Germany was shaped by your corporatist traditions and that lobbying in Bonn was an affair involving a limited number of the major industry associations. The move of the Federal government to Berlin seems to have heralded a change in that culture. I understand that companies wishing to defend their interests now lobby directly or use professional consultancies. (Kallas, 2007)

In principle, lobbyists cannot be heard by parliamentary committees or be issued with a pass admitting them to parliamentary buildings unless they are on the register. However, the Bundestag can also invite organisations that are not on the register to present information on an ad hoc basis. This in essence means that not being on the register is no real barrier to being in contact with parliamentary committees or members of the Bundestag. The Bundestag makes quite clear that consulting with interest groups and professional associations is very important when it comes to drafting legislation. Article 77, paragraph (1) of the Basic Law of the Federal Republic of Germany provides for legislative bills to be adopted by the Bundestag.<sup>21</sup> The Bundestag is of the view that many people should participate in the substantive elaboration of bills, but responsibility for enacting the bills must be assumed by those elected for this purpose. Once a bill is drafted by the civil service, the head of the division of the civil service with which the bill relates to will invite organizations and groups which will be affected by the draft law to attend discussions for an exchange of views and information material. In essence this means that representatives of interest groups will often learn that a bill is being prepared sooner than the Members themselves. In that context this also means that interest groups can influence the bill even at a very early stage. Ultimately such groups are involved before they meet members of the Bundestag, for instance at committee hearings, where they express their views and place their expertise at the Bundestag's disposal.<sup>22</sup> Ministers can receive delegations according to article 10 of the General Rules of Procedure of the Federal Government. According to Ronit and Schneider it is at this stage, ‘when agendas are set, investigations are undertaken and laws drafted, that intense lobbying exists’ (Ronit and Schneider, 1998: 562).

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<sup>20</sup> The Federal Gazette is available at <http://frei.bundesgesetzblatt.de/>

<sup>21</sup> The Basic Law of the Federal Republic of Germany is in essence the constitution governing the country. It was amended by the Unification Treaty of 31 August 1990 and Federal Statute of 23 September 1990. It can be accessed in its English versions at <http://www.constitution.org/cons/germany.txt> and at <http://www.iuscomp.org/gla/statutes/GG.htm>.

<sup>22</sup> See the homepage of the German Bundestag at [http://www.bundestag.de/htdocs\\_e/legislat/04intgroup.html](http://www.bundestag.de/htdocs_e/legislat/04intgroup.html) for information on the input of interest groups in the framing of legislation.

Article 23 of the Basic Law emphasises that the ministries should only cooperate with national federations, i.e. organisations that represent interests across the Länder and are thus compatible with the federal ministries. Reference is also made to the hierarchical level of organisations: consultation should be with peak associations primarily. The trade unions and business organisations are the prime example of this. As it currently stands these interests are organised in the following way. In Germany there are only 16 major trade unions, all belonging to the German Federation of Trade Unions (DGB). There are a number of smaller unions. In 1990 trade union membership stood at 13.7 million, but had decreased to 8.5 million in 2005. The combined membership of the DGB has also been decreasing substantially since the early 1990s and in 2005 stood at 6.77 million members, constituting about 80 per cent of all unionised employees.<sup>23</sup>

Within the business community there are three different peak organisations in Germany, but crucially these do not compete against each other. The Federation of German Industries (BDI) concentrates on the political representation of business; the Confederation of German Employers' Associations (BDA) deals with social policy and collective bargaining and the Association of German Chambers of Industry and Commerce (DIHT) deals with trade and commerce (Gallagher, *et al.*, 2006: 447-8).

The key point, though, is that all three organisations co-ordinate their activities and often function as a single entity. Such association patterns may be one of the reasons why a large part of the interest group landscape in Germany has been organised around peak associations. Such peak organisation influence in the policy process dates back to 1967 when in response to the recession of 1966-67, the Economy Minister, Karl Schiller, moved towards a type of macroeconomic consensual planning by bringing together employers, trade unions, the Länder and the municipalities to manage the economy with the government in a form of concerted action (Pulzer, 1995: 132). While this particular form of planning only lasted into the early 1970s, the principle of trade unions and employers being central players in the economic policy process remains.

For the Bundestag involving interest groups in the decision making process is important as it brings specific expertise to the process, balances interests and wins the support of those affected by a legislative proposal without Parliament simply endorsing the opinion of one group or another. Yet the *Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee*, Annex 2, state quite clearly that entry on the list shall not entitle an association to obtain a hearing or a pass. These rules require that representatives of trade and industry shall only be issued with a pass provided the following information is furnished: 'name and seat of the association; composition of the board of management and the board of directors; sphere of interest of the association; names of the associations' representatives; and address of its office at the seat of the Bundestag and of the Federal Government'.<sup>24</sup>

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<sup>23</sup> See <http://www.eurofound.europa.eu/eiro/2006/04/articles/de0604039i.htm>.

<sup>24</sup> Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee, Annex 2, p.50 available at [http://www.bundestag.de/htdocs\\_e/parliament/function/legal/rules.pdf](http://www.bundestag.de/htdocs_e/parliament/function/legal/rules.pdf)

In light of this process whereby groups who represent certain sections of society more often than not get to examine potential legislation before members of the Bundestag, the registration of lobbyists is seen as making sure that the system is open and transparent. However, the rules are somewhat contradictory. On the one hand groups who register have no entitlement to be heard, while on the other, groups who have not registered simply have to be invited by the Bundestag in order to get a hearing. Moreover the Register only shows trade and professional organisations so various individual corporations who might lobby for instance do not have to register. In that context it is difficult to estimate the amount of active professional lobbyists engaged in lobbying in Germany. Kallas (2007) reckons there are some 5,000 but it is difficult to be accurate about the precise figure because of the way the system operates.

It should be noted that here is no legislation regulating lobbying in Germany either at Länder level or Bundesrat level which is made up of members from the various Länder.

### C. Lithuania

Lobbying activity is regulated in Lithuania through the Law on Lobbying Activity (LLA), passed in late June 2000 and which came into force in 2001, only to be slightly amended in 2003.<sup>25</sup> Thus, when compared to its eastern European neighbours, Lithuania has had more experience in relation to regulating lobbying. Yet, as McGrath (2008: 25) explains, 'the Act focuses exclusively on legislative lobbying, and entirely ignores lobbying directed at the executive branches of government'. Moreover, despite the fact that lobbying has been regulated for the best part of a decade, very few Lithuanian lobbyists have seen the need to register.<sup>26</sup> The reason that representatives of interest groups do not want to register is because the word "lobbying" is associated with negative connotations, such as corruption, and bribery.<sup>27</sup> That said, and although not related to lobbying practices, the state has witnessed its share of corruption scandals. For example, on 6 April 2004 the Seimas removed President Ronaldas Paksas from office on three counts of violating the constitution.<sup>28</sup> A year later, Foreign Minister Antanas Valionis was accused of being a former officer in the KGB,<sup>29</sup> while two years later Finance Minister Zigmantas Balcytis resigned over speculation surrounding his son's mishandling of EU funds.<sup>30</sup> With this in mind, it may well be that lobbying rules can help add transparency and accountability in the political process which are lacking in transparency at times.

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<sup>25</sup> Law on Lobbying Activity, <http://www.oecd.org/dataoecd/18/15/38944200.pdf>, p. 27.

<sup>26</sup> <http://www.freedomhouse.org/template.cfm?page=47&nit=371&year=2005>

<sup>27</sup> See the Chief Official Ethics Commission (COEC) of the Republic of Lithuania, Presentation to the OECD Symposium on Lobbying: Enhancing Transparency and Accountability', Presented June 2007, page 6. For similar comments, see also Valts Kalniņš, 2005. *Parliamentary Lobbying, Between Civil Rights and Corruption*, Nordik Publishing House, p. 55.

<sup>28</sup> The New York Times, 7 April, 2004, p. 5.

<sup>29</sup> The Independent, 8 January, 2005, p. 32.

<sup>30</sup> Baltic News Service 27 March, 2007; The Baltic Times, 28 March, 2007, <http://www.baltictimes.com/news/articles/17586/>

Under the current legislation, lobbying refers to any activity, by individuals, or other legal entities, whether paid or not, that is undertaken in order to influence the legislative process.<sup>31</sup> 'Thus, lobbying regulations can be applied to any publicly aired opinions on legislation or policy research.'<sup>32</sup> This makes the law very broad in its application, and as a result, somewhat vague as there is no differentiation between professional lobbying and the advocacy activities of interest groups.

Specifically, the law stipulates that:

- "Lobbyist" means a natural or legal person recorded in the Register of Lobbyists in the manner prescribed by the law (Chapter 1, Article 2, Section 3, LLA).
- Lobbying activities means actions taken by a person for, or without, compensation, in an attempt to exert influence and have legal acts amended, supplemented or repelled, or to have new legal acts adopted or rejected, in the interests of the client of lobbying activities (Chapter 1, Article 2, Section 2, LLA).
- However, the way lobbying is defined in the legislation it is only concerned with the legislative branch of government (Chapter 1, Article 2, Section 3, LLA).
- The definition does not cover the lobbying that a person or organization does in its own interests (in-house lobbyists).<sup>33</sup>
- In taking its lead from US legislation, the Lithuania legislation demands for there to be a cooling off period after a politician leaves office. Former politicians must wait for one year to elapse before becoming lobbyists, and registering with the Register of Lobbyists (Chapter 1, Article 3, LLA).
- Once registered, lobbyists have certain rights including the right to participate in the drafting of legislation, and the submission of proposals and explanations regarding the drafting of legal acts (Chapter 1, Article 4, LLA).
- However, there are a range of conditions under which the activities of lobbyists may be considered illegal, including lobbying while not being registered as a lobbyist, and deliberately misleading politicians (Chapter 1, Article 6, LLA).
- This legislation is enforced by the Chief Official Ethics Commission (COEC) (Kalninš, 2005: 47).
- In the middle of May every year, the COEC must send an annual report on lobbying activity to the Seimas.<sup>34</sup>

A lobbyist cannot pursue political activity unless he/she is registered first. When registering, which can be done on-line, the lobbyists must state:

- His/her name (without an accompanying picture, however).
- The name of their client.
- The bill they are lobbying on.
- The names of each employer.

<sup>31</sup> Chapter 1, Article 2, Section 3, Law on Lobbying Activities 2000, <http://www.oecd.org/dataoecd/18/15/38944200.pdf>, p. 27

<sup>32</sup> <http://www.freedomhouse.org/template.cfm?nit=371&page=47&year=2005>

<sup>33</sup> Chief Official Ethics Commission (COEC) of the Republic of Lithuania, Presentation to the OECD Symposium on Lobbying: Enhancing Transparency and Accountability', Presented June 2007, page 4

<sup>34</sup> Chapter 3, Article 13, Law on Lobbying Activities 2000, <http://www.oecd.org/dataoecd/18/15/38944200.pdf>, p. 34.

The lobbyists must also:

- Register on an annual basis, provided they continue to act as lobbyists.
- Notify any changes of information within 6-10 days.
- Provide individual spending reports and notify the register of salary received for providing lobbying services.

The lobbyist registrar, the COEC, is made up of 5 members, supported by 14 civil servants.<sup>35</sup> It operates under the provisions of the Lithuanian Constitution and the Law on the Adjustment of Public and Private Interests in the Public Service (Klemencic, 2006: 10). The law states that 'holders of public office should make decisions solely in terms of the public interest, securing the impartiality of the decisions being taken and preventing the emergence and spread of corruption in the public service.'<sup>36</sup> In relation to lobbying activities, the COEC registers lobbyists, inspects reports on lobbying, conducts investigations, and has the right to obtain any information deemed necessary, although, to date, no lobbyist has incurred any penalty.<sup>37</sup> Its goals are to provide transparency into the activities of the civil service, prevent infringement of ethical standards, and build trust in the institutions of the state.<sup>38</sup>

The COEC, nevertheless, remains critical of the different types of activities that are not considering lobbying under Lithuanian legislation. One such activity includes lobbying of in-house corporates and non-profit organizations that seek to influence policies: such groups are except from registering. As the COEC states, experience shows that most of lobbying (in Lithuania) is done by non profit organizations', including the Lithuanian Builders Association, the Lithuanian Real Estate Development Association and the Association of Lithuanian Trade Enterprises.<sup>39</sup> Further, under the legislation experts or specialists do not have to register when invited to participate in policy deliberation. The COEC laments that 'experience shows that lobbyists often influence decision makers to include them in workgroups as experts or specialists so they don't have to register as lobbyists.'<sup>40</sup> In addition to these problems, McGrath notes that as of March 2004, 'only one in seven out of an estimated 200-300 lobbyists had actually registered' (McGrath, 2008: 25). According to our latest figures, around 25 lobbyists are registered as of March 2011.

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<sup>35</sup> Chief Official Ethics Commission (COEC) of the Republic of Lithuania, Presentation to the OECD Symposium on Lobbying: Enhancing Transparency and Accountability', Presented June 2007, page 2

<sup>36</sup> *Institutional Arrangements to Combat Corruption: A Comparative Study*, 2005, United Nations Development Study. [http://regionalcentrebangkok.undp.or.th/practices/governance/documents/Corruption\\_Comparative\\_Study-200512.pdf](http://regionalcentrebangkok.undp.or.th/practices/governance/documents/Corruption_Comparative_Study-200512.pdf)

<sup>37</sup> Chapter 1, Article 9, Law on Lobbying Activities 2000 <http://www.oecd.org/dataoecd/18/15/38944200.pdf>, p. 30.

<sup>38</sup> All the details as to the COEC's duties, obligations, and its registrar of lobbyists, can be viewed at <http://www.vtek.lt/>

<sup>39</sup> Chief Official Ethics Commission (COEC) of the Republic of Lithuania, Presentation to the OECD Symposium on Lobbying: Enhancing Transparency and Accountability', Presented June 2007, page 8

<sup>40</sup> Chief Official Ethics Commission (COEC) of the Republic of Lithuania, Presentation to the OECD Symposium on Lobbying: Enhancing Transparency and Accountability', Presented June 2007, page 9

## D. Poland

On 7 July 2005, the Sejm passed the Act on Legislative and Regulatory Lobbying (ALRL), which came into force in March 2006.<sup>41</sup> Its passing through the legislative process since its introduction as a bill by Prime Minister Leszek Miller in 2003 shows how it evolved from a focus on 'sanction,' to a focus on greater policy making transparency (Galkowski, 2008: 131). The final bill thus sought to regulate the activity of lobbying at both the central and sub-national levels of governance and established rules for the maintenance of a lobbyist register. The act specifically sets out that:

- Lobbying means any legal action designed to influence the legislative or regulatory action of a Public Authority (Article 2).
- Professional lobbying means any paid activity carried out for or on behalf of a third party with a view to ensuring that their interests are fully reflected in legislation or regulation proposed or pending (Article 2).
- Professional lobbying can be carried out by a firm or by an individual – a professional lobbyist (Article 2).
- The Minister of Internal Affairs and Administration is tasked with maintaining the lobbyists register. This contains such information as lobbyists names and address, and can be examined through an online database (Article 10).
- Every February an annual report is to be published by the register outlining the level of lobbying activity conducted in the previous twelve months (Article 18).
- Fines of up to €16,000 can be made against those who lobby professionally, but have not formally registered. However, this need not be a once off penalty, and can be applied multiple times for repeated breaches of the rules. (Article 19).

In order to make the lawmaking process more transparent, and to allow interested parties to prepare to take part in the process, Article 7 requires that every six months the Council of Ministers must prepare a summary of information on draft legislation, the authority with responsibility for that legislation, the individual drafting the legislation, and the address of the Public Information Bulletin that will publish the proposed legislation which will be going through the Parliament. Such a requirement is not required for the sub-national level, however (Galkowski, 2008: 133). Articles 8 and 9 also stipulate that where a legislative proposal has been tabled before the Sejm, public hearings may be conducted.<sup>42</sup> Those parties that have declared their interest in the legislation before the parliament are entitled to participate in these hearings.

The following information is required by the lobbyist when registering, which can be done electronically and whose details can be found by free public access to the web (Galkowski, 2008: 143):

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<sup>41</sup>Article 1, Polish Act of Legislative and Regulatory Lobbying [http://www.oilis.oecd.org/oilis/2006doc.nsf/ENGDATCORPLOOK/NT00000D96/\\$FILE/JT00200198.PDF](http://www.oilis.oecd.org/oilis/2006doc.nsf/ENGDATCORPLOOK/NT00000D96/$FILE/JT00200198.PDF), p. 2.

<sup>42</sup>Article 8.1, Polish Act of Legislative and Regulatory Lobbying [http://www.oilis.oecd.org/oilis/2006doc.nsf/ENGDATCORPLOOK/NT00000D96/\\$FILE/JT00200198.PDF](http://www.oilis.oecd.org/oilis/2006doc.nsf/ENGDATCORPLOOK/NT00000D96/$FILE/JT00200198.PDF), p.4

- Name, company name, and address of the professional lobbyist, or the first name, last name and address of a physical person who is not an professional lobbyists (although the lobbyist's photo is not required).
- Subject matter/bill to be addressed by the lobbyist.
- A list of each employer.
- Whether or not the work is compensated or not.

Despite the rules, it is significant to note that the experience thus far is that the regulations seem to be ignored (Jasiecki, 2006: 1). According to the regulators, which are institutionally located in the Ministry of the Interior and Administration, by December 2006 only 75 lobbyists were actually registered (Galkowski, 2008: 144). The Warsaw Business Journal takes an even dimmer view by suggesting that by February 2007, 'unofficial lobbying is flowering in the Sejm.'<sup>43</sup> Perhaps one reason why so few lobbyists have registered is given the limited scope of the Act (Galkowski, 2008: 139). An obvious criticism, like Lithuania, relates to the Act's limitation in scope whereby private interests lobbying main institutions, such as the Office of the President, do not have to register. Moreover, the register is not handled by an independent authority. Nevertheless, in the view of some observers, a positive aspect to the Act is that it will 'support a professional approach to lobbying activities... all the activities based on personal connections and 'peculiar' arrangements between the world of politics and business ought to be eliminated' (Galkowski, 2008: 142).

## E. Hungary

Hungary represents a significant case of a state which pursued lobbying laws, but which has recently abandoned them in 2011. We consider the nature of the 2006 law and evaluate why it abandoned it and what rules have been established in its absence.

### a) The 2006 Law

In April 2006 the Hungarian Parliament passed the Act XLIX on Lobbying Activities, which came into force in September that year.<sup>44</sup> The legislation, based upon the US Lobbying Disclosure Act of 1995,<sup>45</sup> aims to regulate longstanding issues associated with the impact of interest group activities on public governance.<sup>46</sup> The objective is to provide transparency as to how decisions are made in the policy-making arena, and to make public the activities of lobbyists and their interactions with Hungarian policy makers, thereby increasing people's trust in government. In this regard the legislation is no different in its general objectives than most other acts regulating lobbying. However, it is in the examination of the particulars of the legislation that comparative differences begin to appear. For one, the act is fairly narrow in its application, focusing only on the activities of contract, or professional, lobbyists, who aim to influence the executive, parliament and local government (Section 1 and 5). That is, the legislation does not deal with the activities of trade unions or non-profit advocacy groups.

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<sup>43</sup> Warsaw Business Journal, 2007., Lobbying Goes Under the Table (February 1)

<sup>44</sup> The Act can be found on <http://www.oecd.org/dataoecd/18/15/38944200.pdf>. See also [http://www.eulobby-hungary.hu/hungarian\\_lobby\\_regulation\\_\\_\\_legislation/eng](http://www.eulobby-hungary.hu/hungarian_lobby_regulation___legislation/eng)

<sup>45</sup> <http://www.freshfields.com/publications/pdfs/2006/15472.pdf>

<sup>46</sup> <http://law.bepress.com/cgi/viewcontent.cgi?article=5171&context=expresso>

This has proven contentious, as some regard this type of legislation as not going far enough, as it only deals with attempts to influence legislative action for financial remuneration

Based on analysis of the legislation, one sees that:

- The aim of the act is to publicize the activities of lobbyists and to define rules governing relations between lobbyists and decision makers (Section 1).
- When a lobbyist registers, he/she must (Sections 7-8):
  - Verify that they do not have a criminal record and, certainly dissimilar to other jurisdictions studied in this book, have a higher education degree.
  - State their name and date of birth (with a photo).
  - State the subject matter of the bill to be addressed.
  - Identify the name of each employer.
- After registering lobbyists will receive a numbered license. This shall contain all of their pertinent personal details, in addition to a photograph. This license will give lobbyists open access to the bodies that are lobbied (Section 14).
- The act does not affect the rights of citizens to individually make contact with various governmental bodies (Section 1).
- A register of lobbyists is established in the Central Office of Justice, easily accessible by the general public (Section 12).
- Registered lobbyists must submit quarterly reports to the registrar. These must contain details such as the executive decision they attempted to influence, the objectives behind this, means by which they lobbied, and names of officers lobbied (Section 30).
- The failure of a lobbyist to comply with the law will result in their possible removal from the register (Section 16). The Central Office of Justice is charged with maintaining the lobbyist register, and also imposing penalties for breaches of the regulations.
- These penalties can involve removal from the register between 1 and 3 years as well as financial sanctions up to the equivalent of €40,000 (Section 17), where the registrar has the right to publish the names of lobbyists breaking the rules (Section 20).
- Lobbyists are prohibited from using insider information, lobbying with a conflict of interest, and from engaging in unethical or illegal behaviour (Section 21).
- They are also not permitted to give any gifts to public officials, if those gifts exceed 10 per cent of the prevailing minimum wage (Section 24).

Other rules state that lobbyists are entitled to make a formal request to express their views in person to an executive decision making body (Section 25), provided a close relative is not a member of the same body (Section 22). The executive decision making body 'shall' record a brief summary of what was said in the meeting (Section 26). Lobbyists are also permitted to take MPs to trade conferences and other meetings that relate to the issue upon which they are lobbying; however, they may not reimburse the MPs for the costs of such attendance (Section 27). They are also entitled to send MPs various documentation relating to the issue they are lobbying on (Section 28). It is noteworthy that, unlike many jurisdictions observed in the book, there is no prohibition on former MPs or ministers, taking up lobbying duties immediately upon leaving office. This absence of a revolving door provision with a cooling off period is a significant oversight, especially if we consider that the Hungarian legislation is derived from previous American legislation.

How effective has the legislation been in terms of spurring lobbyists to register? Adam Foldes, from the Hungarian Civil Liberties Union, pointed out that less than half of all Hungarian lobbyists actually registered.<sup>47</sup> Lékó (2007: 6) suggests that one reason for this is that both lobbyists and politicians are not interested in revealing their relations, including keeping records of meetings.

b) The Recent 'U-Turn' in Hungary

Why did Hungary abandon its lobbying law in January 2011? This is a recent development that is still being investigated by the research team. By all accounts, as stated in interviews with the authors in March 2011, the law was abandoned because it was not effective, with several lobbyists not registering. However, it is unclear why the new recently elected FIDESZ government did not make the law more robust so that it would work (such as giving the regulator more power to enforce the rules), rather than abandon the laws altogether. Nevertheless, in its place the government has claimed that it has sought to increase transparency by, for example, way of internet consultations on draft bills. Yet, it has also introduced rules which one may argue go against the concept of transparency: for example, the new rules state that a ministry can make direct contact with interest groups who can then act as 'semi-legislators' when drafting specific bills. Once this consultation is made, details regarding with whom the government has consulted are then posted on the internet.

#### **IV. Measuring the Strength of Lobbying Legislation: The CPI Index**

The above helps us understand the legal frameworks established in various European states. It is also useful from a comparative perspective to see how the different types of systems can be theoretically classified.

To achieve this, one method of analysis has been pursued by the Centre for Public Integrity (CPI) in the US. The objective of their analysis is to measure the effectiveness of lobbying legislation in terms of its transparency and accountability. The detailed and rigorous process of analysis, that guides the CPI towards this objective, is referred to as the 'Hired Guns' method, which results in what we refer to as 'CPI Scores.'

The CPI writes that

'Hired Guns' is an analysis of lobby disclosure laws... The Center for Public Integrity created a ranking system that assigns a score to each state (with lobbying legislation) based on a survey containing a series of questions regarding state lobby disclosure. The questions addressed eight key areas of disclosure for state lobbyists and the organizations that put them to work:

- Definition of Lobbyist
- Individual Registration
- Individual Spending Disclosure
- Employer Spending Disclosure
- Electronic Filing
- Public Access (to a registry of lobbyists)

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<sup>47</sup> See <http://www.spectrezine.org/europe/chatterjee.htm>

- Enforcement
- Revolving Door Provisions (with a particular focus on 'cooling off periods')<sup>48</sup>

There are a total of 48 questions for all of the eight sections. Based on analysis of the legislation in place, each question is assigned a numerical (i.e. point) value according to the answer that is given.<sup>49</sup> In short, the more points that are given, the stronger is the legislation in terms of promoting concepts such as full disclosure, public access, and transparency. The maximum score a jurisdiction could attain is 100 points and the minimum score is 1 point (a score of zero would obviously be given to a state where there is no lobbying legislation in place). According to the CPI, if a jurisdiction attains a score of 60 points or more it is deemed to 'pass', based on the American grading system used in many public schools. Regardless of the somewhat arbitrary rule of what constitutes a 'passing grade' or not, as a general rule one can argue that the lower the CPI score, the less robust is the lobbying regulation system in place.

The fact that the CPI's framework was designed for examining lobbying regulations in the US should not render it inapplicable to other jurisdictions. As the framework is capable of taking account of the widely varying standards of lobbying regulation across all 50 American states, and at the federal level, it is also capable of taking account of lobbying regulations in other political systems. The use of the CPI method of analysis is justified not only because it offers a framework for comparative analysis, but also because it offers a rigorous examination based on 48 questions across eight different sections which are paramount in order to understand the nature of the lobbying regulations in place. In other words, the CPI checklist for evaluating the degree of stringency in registration requirements is useful because it gives a relatively objective point of reference so that various systems can be compared.

## V. The CPI Results

Table 2 summarises our findings, illustrating the CPI scores for each of the jurisdictions in descending order (including state and provincial jurisdictions in Canada).<sup>50</sup> Even though the European Commission's scheme of 2008 is voluntary, the CPI score is nevertheless calculated in order to measure its comparative robustness.

For illustrative purposes, and in order to understand how the different pieces of legislation may have changed when important amendments were made, we also calculated the US federal Acts in 1995 and 2007 as well as the Canadian federal Acts in 1989, 2003 and 2008. The results for France are to be considered tentative at this stage as the team is finalizing its scores for this country. The team is also working on scores for the recent law in Slovenia, Israeli legislation as well as the Ukrainian bill.

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<sup>48</sup> <http://www.publicintegrity.org/hiredguns/default.aspx?act=methodology>

<sup>49</sup> For discussion of the range of point values that can be assigned for each question please see <http://www.publicintegrity.org/hiredguns/default.aspx?act=methodology>

<sup>50</sup> CPI scores for the US are taken from the CPI website, except the 2007 federal legislation which was calculated by the research team. All other CPI scores from Canada, Europe, Australia and Asia are calculated by the research team using the CPI method of analysis. It is important to note that in the case of Polish, Hungarian, Lithuanian and Taiwanese legislation, the English language versions of the lobbying legislation were the ones analyzed in order to make the CPI scores.

**Table 2: CPI Scores (Scale: 1-100).**

<b>Jurisdiction</b>	<b>Score</b>	<b>Jurisdiction</b>	<b>Score</b>
Washington	87	Idaho	53
Kentucky	79	Nevada	53
Connecticut	75	Alabama	52
South Carolina	75	West Virginia	52
New York	74	CAN Fed (2008)	50
Massachusetts	73	Pennsylvania	50
Wisconsin	73	Newfoundland	48
California	71	Iowa	47
Utah	70	Oklahoma	47
Maryland	68	North Dakota	46
Ohio	67	Hungary	45
Indiana	66	CAN Fed (2003)	45
Texas	66	Illinois	45
New Jersey	65	Tennessee	45
Mississippi	65	Lithuania	44
Alaska	64	British Columbia	44
Virginia	64	Ontario	43
Kansas	63	South Dakota	42
Georgia	63	Quebec	40
Minnesota	62	Alberta	39
US Federal 2007	62	Taiwan	38
Missouri	61	Western Australia	38
Michigan	61	New Hampshire	36
Nebraska	61	US Federal (1995)	36
Arizona	61	Nova Scotia	36
Colorado	60	New South Wales	36
Maine	59	Tasmania	36
North Carolina	58	Victoria	36
New Mexico	58	South Australia	35
Rhode Island	58	Queensland	35
Montana	56	Wyoming	34
Delaware	56	Australia (Fed)	33
Arkansas	56	CAN Fed (1989)	32

<b>Louisiana</b>	<b>55</b>	<b>Poland</b>	<b>27</b>
<b>Florida</b>	<b>55</b>	<b>EU Commission</b>	<b>24</b>
<b>Oregon</b>	<b>55</b>	<b>France</b>	<b>20</b>
<b>Vermont</b>	<b>54</b>	<b>Germany</b>	<b>17</b>
<b>Hawaii</b>	<b>54</b>	<b>EU Parliament</b>	<b>15</b>

Source: Authors' research and CPI research.

At least three observations can be made based on Table 2.

- Those countries that developed legislation in Central and Eastern Europe (except Poland) hover within the same (40s) score range.
- The lowest scoring jurisdictions/institutions are Germany, France, the European Parliament, the Commission and Poland.
- Over 50 per cent of US observations have scores of 60 points or more. While the American federal legislation of 1995 had a score below most states, it leaped ahead of many with its 2007 legislation, something which may be related to the Abramhoff case.

## **VI. Three Different Types of Regulatory Systems**

We now consider developing a theoretical classification system of the different types of lobbying regulatory environments. It is useful to note from the outset that theoretically classifying different systems is common in natural and social sciences in order to gain a comparative view of dynamics at play. For example, natural scientists studying chemistry rely on a periodic table in order to better understand common traits in certain elements say, for example, all carbon related elements have 4 electrons in their valence shell; oxygen related elements, 2 valence electrons; and so forth. Social scientists such as Esping-Anderson have used classification schemes in order to better understand, for example, different categories of welfare systems in the western world (Esping-Anderson, 1990). Clearly, classification schemes will inevitably be debated and challenged: ideal types of systems, as discussed by authors such as Max Weber, are conceptualised based on characteristics and elements of a given phenomenon, but they are not necessarily meant to correspond to all of the characteristics of any one particular case. Nevertheless, developing a classification scheme serves as a basis for helping us understand common trends as well as differences, even if the resultant conceptual apparatus does open up some debate.

Based on both the qualitative work analyzing lobbying laws in the different political systems that established lobbying rules and the quantitative work done based on the CPI, one can argue that there are three broad types of categories of lobbying regulatory systems: lowly regulated systems, medium regulated systems, and highly regulated systems. CoE member states fit clearly within the low and medium regulated systems.

### **A. Lowly regulated systems**

When turning to the first system – the lowly regulated one – we see that this corresponds to states that attained CPI scores between 1 and 29, and it particularly includes *Germany*, *the EP*, *the EU Commission's 2008 voluntary initiative*, *France* and *Poland*. Such a system has the following characteristics:

- Rules on individual registration exist, but little details have to be given (such as in the case of the EP where lobbyists do not have to state which subject matter/bill/institution they are lobbying).
- In addition to legislative lobbyists, the definition of lobbyist does not recognize executive branch lobbyists.
- There are no rules on individual spending disclosure (i.e. a lobbyist is not required to file a spending report) or on employer spending disclosure (i.e. an employer of a lobbyist is not required to file a spending report).
- There is a weak system for on-line registration and registration includes having to do some form of 'paperwork'.<sup>51</sup>
- Lobbyists lists are available to the public, but not all details are necessarily collected/given (such as spending reports by lobbyists).
- There is little enforcement capabilities.
- No Cooling-Off period is mentioned in the legislation, which means that legislators/members of the executive can register as lobbyists immediately on leaving office.

## B. Medium Regulated Systems

Medium regulated systems correspond to those jurisdictions that attained a CPI score between 30 and 59 and include *Lithuania*, *Hungary* (2006 legislation), all observations in *Canada*, several *US* ones, *Australia* and *Taiwan*. The characteristics of this system include:

- Rules on individual registration exist and are relatively more tight than with lowly regulated systems (i.e. the lobbyist must generally state the subject matter/bill/governmental institution to be lobbied).
- In addition to legislative lobbyists, the definition of lobbyist does recognize executive branch lobbyists.<sup>52</sup>
- Some, although not complete, regulations exist surrounding individual spending disclosures (such as gifts are prohibited and all political contributions must be reported; but, there are clearly loopholes in this regard such as free 'consultancy' given by lobbyists to political parties).<sup>53</sup>
- There are no regulations for employer spending reports (i.e. an employer of a lobbyist is not required to file a spending report).
- There is a system for on-line registration (in some cases, such as Ontario, this is very efficient and effective, requiring low resources to use/update).
- Public access to a lobbying register is available and updated at very frequent intervals, although spending disclosures are not in public domain.
- In theory, a state agency can conduct mandatory reviews/audits, although it is infrequent that the agency will prosecute violations of regulations given lack of resources and information (for instance there is only one case on file in Canada, in Quebec in March 2006).
- There is a cooling off period before legislators, having left office, can register as lobbyists.<sup>54</sup>

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<sup>51</sup> The exception to this is Poland and the European Commission's 2008 voluntary initiative.

<sup>52</sup> The exception to this is Hungary, where the legislation does not recognize executive branch lobbyists

<sup>53</sup> The exception to this is the Australian federal legislation of 2008 where there are no individual spending disclosures.

<sup>54</sup> Hungary is the exception here as it has no cooling off period mentioned in the legislation.

### C. Highly Regulated Systems

The third category is highly regulated systems and this includes those jurisdictions that attained a CPI score of over 60, with the highest being obtained by Washington State at 87. The jurisdictions found in this category correspond *exclusively to more than 50 per cent of the American observations*. Characteristics of this type of system include:

- Rules on Individual Registration exist and are the tightest of all the systems (for example, not only is subject matter/institution required when registering, but also the lobbyists must state the name of all employees, notify almost immediately any changes in the registration, and must provide a picture).
- Similar to medium regulated systems, the definition of lobbyist does recognize executive branch lobbyists.
- Tight individual spending disclosures are required, in stark contrast to both lowly and medium regulated systems. These include:
  - a lobbyist must file a spending report,
  - his/her salary must be reported,
  - all spending must be accounted for and itemised,
  - all people on whom money was spent must be identified,
  - spending on household members of public officials must be reported, and
  - all campaign spending must be accounted for.
- Employer spending disclosure is also tight - unlike other 'lowly regulated' or 'medium regulated' systems, an employer of a lobbyist is required to file a spending report and all salaries must be reported.
- System for on-line registration exists.
- Public access to lobbying registry is available and updated at very frequent intervals, including spending disclosures, which are public (the latter of which is not found in the other two systems).
- State agencies can and do conduct mandatory reviews/audits, and there is a statutory penalty for late and incomplete filing of a lobbying registration form.
- There is a cooling off period before legislators, having left office, can register as lobbyists.

Table 3 summarises the main elements of each of the different regulatory environments.

**Table 3: The Different Regulatory Systems**

	<b>Lowly Regulated Systems</b>	<b>Medium Regulated Systems</b>	<b>Highly Regulated Systems</b>
<b>Registration regulations</b>	Rules on individual registration, but few details required	Rules on individual registration, more details required	Rules on individual registration are extremely rigorous
<b>Targets of Lobbyists Defined</b>	Only members of the legislature and staff	Members of the legislature and staff; executive and staff; agency heads and public	Members of the legislature and staff; executive and staff; agency heads and public

		servants/officers	servants/officers
<b>Spending disclosure</b>	No rules on individual spending disclosure, or employer spending disclosure	Some regulations on individual spending disclosure; none on employer spending disclosure	Tight regulations on individual spending disclosure, and employer spending disclosure
<b>Electronic filing</b>	Weak on-line registration and paperwork required	Robust system for on-line registration, no paperwork necessary	Robust system for on-line registration, no paperwork necessary
<b>Public access</b>	List of lobbyists available, but not detailed, or updated frequently	List of lobbyists available, detailed, and updated frequently	List of lobbyists and their spending disclosures available, detailed, and updated frequently
<b>Enforcement</b>	Little enforcement capabilities invested in state agency	In theory state agency possesses enforcement capabilities, though infrequently used	State agency can, and does, conduct mandatory reviews /audits
<b>Revolving door provision</b>	No cooling off period before former legislators can register as lobbyists	There is a cooling off period before former legislators can register as lobbyists	There is a cooling off period before former legislators can register as lobbyists

Source: Authors' research and Griffith, 2008: 8.

## VII. Conclusions

This paper started with an examination of political systems that have established legal frameworks to regulate extra-institutional actors. It paid particular attention to developments in the Council of Europe states as well as the EU level of governance. It then analyzed the comparative robustness of lobbying legislation based on the Center for Public Integrity's method of analysis. This was used as a foundation to categorize three different regulatory environments: high, medium and low.

Legislation within CoE states was found mostly within the 'medium' and 'low' regulatory environments. Medium regulation is seen in Lithuania as well as the recently abandoned Hungarian legal frameworks. And low regulation was found in Poland, Germany, France, the EP and the 2008 voluntary registry of the European Commission.

One main point to be taken from the study is that Europe is rich with countries that have established legal frameworks to regulate lobbying activity. In fact, other CoE members - such as the Ukraine, Czech Republic, Ireland, and the UK - have either written bills, or are presently examining enacting such frameworks.

This will mean that the regulation of lobbying, which helps promote transparency and accountability in politics, will become an even more significant phenomenon that will gain salience over time.

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