

## Lobbying regulation framework in Poland

### Summary

Poland became one of the first countries in Europe to regulate lobbying activities with the introduction of its Lobbying Act, which entered into force on 7 March 2006. It aims to increase the transparency of lobbying in three ways: 1) an obligation for the government and ministries to publish their legislative agendas; 2) the creation of a lobby register; 3) requiring all public authorities participating in the law-making process to declare their lobby contacts.

The Lobbying Act introduced the concept of 'professional lobbying', defined as a paid action performed on behalf of third parties aimed at influencing a public authority in the legislative process. It also set up a register for those who carry out such activities. There is a fee required upon registration, and in the event of lobbying by an unregistered entity, the minister responsible for administrative affairs can issue a fine.

Apart from the lobby register set up under the Lobbying Act, the two parliamentary chambers keep their own registers of lobbyists accessing their premises.

However, as these three registers lack any relevant information on where and how lobbyists seek to gain influence, and have gathered only around 400 entries over 10 years, they have been criticised for not providing reliable information on the lobbying landscape in Poland.

### Background

With the adoption in July 2005 of the [Act on Lobbying in the Legislative Process](#) (the Lobbying Act) by its Parliament, Poland became one of the first countries in Europe to regulate lobbying activities. The law entered into force on 7 March 2006 and, along with three subordinate normative acts providing for its implementation,<sup>1</sup> established a comprehensive legal framework of statutory character, with the object of tackling 'uncontrolled lobbying'.

A number of events triggered legislative action, as in the second half of the 1990s, numerous corruption scandals, often involving high-ranking politicians, stimulated debate on the need to regulate lobbying in Poland. In its 1999 [report](#) on the scale of corruption in Poland, the World Bank deemed buying an act of Polish domestic law feasible, assessing the price at US\$3 million. This, combined with a general distrust of the political class, prompted the parliament to introduce lobbying regulation aimed at improving the condition of Poland's fledgling democracy, especially with the country's EU accession being high on the agenda at the time.<sup>2</sup>

The Lobbying Act was finally signed into law in 2005 after a lengthy political process.<sup>3</sup> Shortly after its implementation, the framework proved to contain substantial shortcomings, which have not yet been remedied, despite amendments to law between 2009 and 2015.

## The Lobbying Act

The Lobbying Act's 24 articles (grouped into six chapters) focus on: the definition of lobbying, government's legislative planning, a register for professional lobbyists, supervision of professional lobbying, the sanctions mechanism, and transitional provisions.

The definition of lobbying makes a distinction between:

- 1) lobbying activities in a general sense, described as any action carried out by licit means, aimed at influencing a public authority in the legislative process, and
- 2) professional lobbying activities, the only separate category of lobbying activities, specified as any lobbying activity, performed on behalf of third parties to promote the interests of those parties in the legislative process and therefore remunerated. 'Professional lobbying' can include contracted services by an entrepreneur or individual.

The Lobbying Act creates three fundamental requirements – first, for the government and ministries to publish their legislative agendas; second, creation of a lobby register; and third, that all public authorities participating in the law-making process declare their lobby contacts.

Firstly, the Lobbying Act creates an obligation on the government (Council of Ministers) as well as individual ministries to keep the public informed of their upcoming legislative planning. They comply through publishing a legislative planning programme [online](#). This subsequently serves as a point of reference for the public at large and stakeholders wishing to declare their interest in particular legislative works. Submitting such a declaration is in fact a condition for their participation in any public hearing on a particular legislative project, organised by the responsible body.

Secondly, the Lobbying Act creates the concept of a 'lobbying register' as a tool to be managed by the minister responsible for administrative affairs. Registration is obligatory for lobbyists carrying out professional activities (see definition above). The lobbying register, a publicly accessible document (PDF format), is updated on a case-by-case basis and enrolment is subject to a fee of up to PLN 100 (approximately €25).

### *Parliament*

While the government's 'lobbying register' is the only one created through the Lobbying Act, the Parliament runs registers for both of its chambers independently. Parliaments' registers function according to the chambers' internal rules of procedure; and are essentially used for the purpose of granting professional lobbyists access to their premises (conditional upon registration).

Thirdly, under the provisions of the Lobbying Act, all public authorities are required to publish lobbying targeted at them, indicating the result desired by the lobbyist. In the event of lobbying by an unregistered entity, the body concerned must notify the minister responsible for administrative affairs in writing, for possible sanctions. Additionally, each public authority produces and publishes an annual report listing all lobbying aimed at their institution in that period (see, for example, [Ministry of Finance's report for 2015](#)).

Professional lobbyists found to be carrying out lobbying activities unregistered may be fined between PLN 3 000 to PLN 50 000 (up to €12 000) by the minister responsible for administrative affairs.

## Practical aspects and application

Since the adoption of the Lobbying Act, discussion of possible flaws and areas for improvement has centred on the following areas.

### Definition of lobbying

The definition of lobbying is quite narrow when it comes to professional lobbying, but broad in terms of general lobbying activities, which potentially covers any form of participation in the legislative process, including, for instance, citizens' rights of access to public bodies or documents. Professional lobbying focuses only on persons performing lobbying activities for third parties under (paid) contract, i.e. consultancies, but it does not cover in-house lobbyists. Critics claim that this narrow regulation is not effective in curbing corruption.<sup>4</sup>

### Lobbying registers

Under the lobbying regulation framework there are currently three lobbying registers in place: [one for the government](#) (based on the lobbying act), [one for the lower chamber of the Parliament \(Sejm\)](#), and [one covering its higher chamber \(Senat\)](#). For the government register, the information individual lobbyists are required to provide is limited to personal data. This does not provide the public with knowledge about their specific activities or the desired result of their lobbying activities. The parliamentary registers – set up separately, not covered by the act – require information about entities represented as well as specific interests.

In spite of these relatively undemanding requirements, take-up has been quite limited. Current numbers of entries in the registers for the upper and lower houses are 36 each. As for the government's register of professional lobbyists, there were 394 entries in December 2016. It is questionable whether these figures reflect the real scale of lobbying taking place in Poland. Due to the exclusive definition of professional lobbying, the government's register fails to cover other types of lobbyists and their activities.

### Scrutiny and reporting

Other than the afore-mentioned registers, there are further reporting responsibilities imposed on public authorities involved in the legislation process. Namely, the obligation on the body concerned to publish information concerning professional lobbying. This includes immediate reports on any lobbying, annual reports by each authority summarising all the professional lobbying, and information about lobbying by unregistered entities. In reality, most reports tend to claim that ministries have not been subject to professional lobbying. For instance, only 2 out of the 10 reports of the [Ministry of National Defence](#) record any lobby contacts. This suggests that, due to the current definition of professional lobbying, it is likely that a fair share of lobbying goes unreported.

For example, in 2015 only 26 interactions with lobbyists were reported in total, with several ministries apparently not being approached even once. Overall, no interactions with unregistered professional lobbyists had been reported up to the end of 2015 and therefore no sanctions imposed.<sup>5</sup>

### Weak incentives for lobbyists

The Lobbying Act is supposed to encourage lobbyists to carry out their activities in a more transparent way, yet the scheme hardly seems to achieve this. Firstly, publication of the government's legislative plans, although useful for those who plan to lobby, does not constitute any new obligation or tangible right for the general public. This information must always be available upon request, according to the access to public documents legislation.<sup>6</sup>

Furthermore, the lobbying rules of the Sejm and Senate only enable professional lobbyists to enter the premises of the chambers (conditional upon wearing special red passes), but at the

same time forbid them to attend subcommittee meetings.<sup>7</sup> In this respect it must be noted that anybody wishing to participate in these sessions may ask the chair for an invitation.<sup>8</sup>

## Outlook

Despite the Lobbying Act's four amendments since it entered into force, none of the above-mentioned problems seem to have been tackled.<sup>9</sup> Currently, the register for professional lobbyists, together with public authorities' annual reports and declarations on individual lobbying attempts continue to be the most tangible instruments established by law. However, as these registers lack any relevant information on where and how lobbyists seek to gain influence, and have gathered only around 400 entries over 10 years, they cannot be treated as a reliable source of information on the lobbying landscape in Poland.<sup>10</sup>

There is currently no plan to overhaul the legal framework and address some of the shortcomings of the Lobbying Act and there seems to be little public debate on the issue. Regardless of the significantly bigger scale of lobbying activities conducted in the Brussels setting ([EU Transparency Register](#)), the take up of the Polish Lobbying Act seems to have been slow by comparison. Born out of a need to address corruption, it appears to serve its initial purpose. However, as lobbying evolves and changes, the schemes set up to regulate it may need to be adapted. In light of the recent [Proposal for a new Interinstitutional Agreement on a Mandatory Transparency Register](#), brought forward by the European Commission as a next step in the evolution of lobbying regulation at EU level, it seems reasonable to assume that EU Member States, including Poland, will monitor the negotiations and compare, where relevant, with their national lobbying regulations.

<sup>1</sup> [Ordinance of the Council of Ministers](#) of 24 January 2006 on declaration of interest in legislative works (<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20060340236>), Ordinance of the Council of Ministers of 7 February 2006 on the public hearings concerning ordinance legislative proposals (<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20060300207>) and Ordinance of the Minister of Interior and Administrative Affairs of 20 February 2006 on the register of entities performing professional lobbying activities (<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20060340240>).

<sup>2</sup> Jasiecki, K., [Regulating lobbying in Poland: Background, scope and expectations](#), Council of Europe, 2006, p. 6.

<sup>3</sup> Jasiecki, K., [Regulating...](#), pp. 2-4.

<sup>4</sup> [Lobbying in Poland 'escapes scrutiny', says EU scholar](#), EurActiv, 2011.

<sup>5</sup> Kwiatkowski, B., [Lobbying – a risk or an opportunity? Lobbying regulation in the Polish, Slovak, and Czech perspective](#), Frank Bold, 2016, p. 37.

<sup>6</sup> Makowski, G., [Regulation of lobbying in Poland](#), Institute for European Policy, 2011, p. 13.

<sup>7</sup> Subcommittees are ad-hoc organs created by permanent parliamentary committees (committee meetings in turn lobbyists are entitled to attend, including the right to speak) and made up of their members for the purpose of carrying out an in-depth analysis of a particular legislative project. They are very often the most influential instance of the law-making process due to the highly technical and detailed character of their engagement.

<sup>8</sup> Makowski, G., [Regulation...](#), p. 14.

<sup>9</sup> Minor modifications regarding harmonising the procedure of publishing lobbying reports by public authorities or modifying the procedure for submitting declarations of interest in legislative works.

<sup>10</sup> Kwiatkowski, B., [Lobbying...](#), Frank Bold, 2016, p. 21.

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