"Phantom regulation" or 13 years of the Polish law on lobbying and what did (not) result from it

Marcin Michał Wiszowaty

La legge polacca del 2005 sul lobbying *era il secondo atto di questo tipo nell'Unione europea. La storia della regolamentazione legale del lobbismo in Polonia è un esempio istruttivo per gli altri Paesi che prendono in considerazione la regolamentazione del lobbismo o che desiderano migliorare la propria regolamentazione. L'esempio polacco insegna in entrambi i casi ... come non farlo. Sin dall'inizio si sapeva che questa storia semplicemente non poteva finire bene. La sceneggiatura conteneva tutte le caratteristiche di un buon* thriller *con elementi di una commedia. Primo, un grande scandalo politico in un contesto di corruzione, con la partecipazione di un famoso regista e capo di un importante giornale. In risposta, un ambizioso progetto politico tipico dei Paesi dell'Europa centrale: fare ciò che non è riuscito nell'Europa occidentale, adottando un atto sul* lobbying *che soddisfi gli* standard *statunitensi. Poi, la decisione sorprendente di sottoporre il progetto ai ... lobbisti e, di conseguenza, rimuovere molte importanti disposizioni da esso. Infine, un apporto ornamentale da parte di numerose istituzioni estranee al* lobbying. *Il risultato è un atto molto eclettico – ma al tempo stesso completamente inefficace – sul lobbismo. Questo articolo approfondisce tre questioni principali: l'attuale regolamentazione polacca del lobbismo, in chiave critica; la pratica del lobbismo in Polonia, cioè come svolgere attività di lobbismo senza essere soggetti alla legge sul lobbismo (con esempi specifici selezionati); l'ultimo capitolo della storia del lobbismo in Polonia, ovvero il provvedimento del 2017 sulla trasparenza pubblica "Legge e giustizia", bloccato da una massiccia resistenza di gruppi di interesse. In conclusione, vengono formulate le raccomandazioni di base per i miglioramenti necessari alla regolazione dell'attività di* lobbying *in Polonia, in modo che essa cessi di essere un esempio di "regolazione fantasma".*

1. *Introduction*

On 7 July, thirteen years passed since the adoption of the first Polish *lobbying* measure.

The Polish *Act on Lobbying in the Legislative Process* of 2005 was the third law of this kind in Europe (following Georgia and Lithuania) and the second in the European Union. The practice of the legal regulation on *lobbying* in Poland is an instructive example for other countries – those who consider regulating the matter as well as those who aim to improve their currently binding measures. Unfortunately, the Polish solution teaches both groups; first and foremost, it shows how not to deal with the issue. It was known from the very beginning that this story could not finish with a happy ending. The scenario contained all features of a good thriller with elements of comedy: firstly, big scandals at the interface between politics and business with corruption in the background, then – as a reaction – an ambitious political proposal, typical for Central European countries: to do what has never been achieved by anyone in Western Europe – adopt a *lobbying* act that meets American standards. Furthermore, a surprising decision of the legislators to submit the proposal for consultation by… lobbyists and consequently – resigning from many of significant provisions included therein. Finally, in order to save the situation – the decision to add a few non-*lobbying*-related institutions to the bill. The effect is a very eclectic, but at the same time fully ineffective Lobbying Act.

The present article touches upon three main issues. First of all, it is a critical analysis on the Polish *lobbying* regulating almost 15 years after its adoption. Second of all, it presents a *lobbying* practice in Poland in the circumstances of the legally binding and ineffective Act, thus answers the question how to practice *lobbying* in Poland without being subject to the Act regime. Third off all, it describes the newest chapter of the story concerning the *lobbying* measures in Poland, i.e. the governmental draft of the Act of 2017 on *Openness in Public Life*. The current "Law and Justice" government aimed at replacing a few acts, including the Lobbying Act, by a very extensive statute. As a result of a strong objection expressed by numerous industry environments as well as non-governmental organizations – the work on the proposal was abandoned. It can be said that it was another time when lobbyists blocked changes in the *lobbying* measure.

In order to examine Polish manifestations of *lobbying* activities, we can refer to a few sources of information. Pursuant to Art. 16 of the Lobbying Act, public authorities are obliged to immediately provide information in the online Public Information Bulletin on actions undertaken against them by entities who carry out "professional *lobbying* activities" in the meaning of the Act, along with an indication of the manner of settlement expected to be performed by these entities. Furthermore, by virtue of Art. 18 of the Lobbying Act, heads of offices servicing public authorities shall publish online summary statements of the above-mentioned activities. The scale of realization of these responsibilities differs depending on a specific authority. The observation of the current activities of public authorities is a valuable source of information, which provides us with a picture of the effectiveness of *lobbying* regulations. An important, even though less reliable source of information are press reports on various *lobbying* manifestations detected by the media. All of these sources of information will be included in this paper and will be further used to make concluding remarks.

2. *Genesis and provisions of the Act on Lobbying in the Legislative Process of 2005. A critical analysis*

It is believed that there have been two situations which had the greatest impact on the initiation of work over the Polish legal regulation of *lobbying*.

Firstly, it should be referred to the so-called "gelatin affair", the beginnings of which fall on 1993. At the end of December 1997, the government introduced a total ban on the import of gelatin. Officially, it was decided on the prohibition for the sake of public health as a response to the cases of the so-called mad cow disease. Nevertheless, it soon turned out that the import ban gave huge profits to the monopolist on the Polish market, Kazimierz Grabek. As a result of journalistic investigations, it became clear that the entrepreneur was having an influence on the decision-making process using various *lobbying* techniques. Despite that only contributions to the electoral funds of influential politicians were suggested and K. Grabek has never been accused of corruption, the public opinion and the media began to perpetuate a negative image of *lobbying* that started to be identified with corrup-

tion[1]. From now on, the fight against corruption has been used by politicians as one of the leading slogans, whereas one of the most frequently proposed tools in this fight was a legal regulation of *lobbying* activities. Even political opponents spoke with one voice about the need to pass such a regulation.

In 2000, on the request of the Council of Ministers, the main theses of the World Bank report on corruption in Poland were revealed, containing the famous information about the "price for the Polish act"[2]. The report stated (referring to the practices accompanying the works on the *Bill on Games of Chance*, which began in 1992) that while in the early 1990s, blocking the adoption of the act in Poland costed the clients of *lobbying* about half a million dollars, then eight years later, a six times higher sum on similar activities. The theses of the report aroused an understandable shock in the world of politics, media and public opinion. The reaction was a real avalanche of articles in the press and a stormy debate in the Sejm. Even though it ultimately ended with unofficial suspicions, the report had initiated a nationwide debate on corruption in Poland and the need to regulate *lobbying*[3].

A turning point in the discussion lasting for years over the legal regulation of *lobbying* were only the events of 2001-2003 accompanying the work on the government draft amendment to the *Act on Radio and Television*, commonly known as the so-called "Rywin's Scandal" (*Afera Rywina*), which were disclosed by the media and as a result of interrogations before the first parliamentary investigation commission established under the provisions of the Constitution of 1997[4]. The works on

---

(1) *Największe afery korupcyjne III RP: jak zdetronizowano króla żelatyny*, Forsal.pl, 25.5.2013, http://forsal.pl/artykuly/706682, najwieksze-afery-korupcyjne-iii-rp-jak-zdetronizowano-krola-zelatyny.html; R. Kamiński, *Zaproszenie do korupcji* in *Wprost*, 3.12.2000.

(2) *Polska przesiąknięta korupcją,* in *Rzeczpospolita*, 22.3.2000.

(3) M. Majewski *Bank z misiami. Ustawa o hazardzie była pierwszą, profesjonalnie lobbowaną ustawą Trzeciej Rzeczypospolitej*, in *Rzeczpospolita,* 23.5.2000. B. Sierszuła, D. Walewska *Pochwały i ostrzeżenia dla Polski. Jak walczyć z korupcją w okresie zmian w gospodarce* in *Rzeczpospolita*, 26.9.2000.

(4) Resolutions of the Sejm of 10.1.2003: (1) *w sprawie powołania Komisji Śledczej do zbadania ujawnionych w mediach zarzutów dotyczących przypadków korupcji podczas prac nad nowelizacją ustawy o radiofonii i telewizji*, (2) *w sprawie wyboru jej składu osobowego*. See al-

the new bill prepared by the Ministry of the Interior and Administration of the Republic of Poland (MSWiA) lasted until at least September 2002[5]. The Draft Lobbying Act that soon became a subject to broad consultation as a significant element of governmental strategy to fight corruption titled "Secure Poland" was introduced in Sejm on 28 October 2003[6]. Following many stormy debates on the forum of the extraordinary Sejm commission that had been convened specially for the sake of the work on the Draft Lobbying Act[7], on 7 July 2005 the *Act on Lobbying in the Legislative Process* was enacted. The statute entered into force after 6 months from the day of publication, i.e. 7 March 2006.

On the same day, the three regulations implementing the Act[8] as well as the resolution adapting the Sejm Rules to the new measures[9] entered into force.

The *Act on Lobbying in the Legislative Process* consists of 24 articles grouped into 6 chapters: General provisions (Art. 1-2); Rules on the transparency of *lobbying* in the legislative process (Art. 3-9); Registry of entities carrying out professional *lobbying* activities and rules on the performance of professional *lobbying* activities (Art. 10-15); Control over professional *lobbying* activities (Art. 16-18); Sanctions for violation of the Act (Art. 19-20) and Amendments to the existing regulations, transitional and final provisions (Art. 21-24).

---

so Resolution of the Sejm of 24.9.2004: *w sprawie sprawozdania Komisji Śledczej do zbadania ujawnionych w mediach zarzutów dotyczących przypadków korupcji podczas prac nad nowelizacją ustawy o radiofonii i telewizji* (in *Monitor Polski*, 2004, n. 41, pos. 711).

(5) *Lobbing kontrolowany* in *Rzeczpospolita*, 26.9.2002.

(6) *Rządowy projekt ustawy o działalności lobbingowej* (Sejm paper n. 2188, 4th term of office)

(7) See more in: M.M. Wiszowaty, *Lobbying Act and the Law-Making Process* in *The Sejm Review (Przegląd Sejmowy) IV Special Edition*, 2010, pp. 151-182.

(8) Ordinance of the Council of Ministers of 24.1.2006: *w sprawie zgłaszania zainteresowania pracami nad projektami aktów normatywnych* (in *Dziennik Ustaw*, 2006, n. 34, pos. 236), Ordinance of CM of 7.2.2006: *w sprawie wysłuchania publicznego dotyczącego projektów rozporządzeń* (DU, 2006, n.30, pos.207) Ordinance of Minister of Inner Affairs and Administration of 20.2.2006: *w sprawie rejestru podmiotów wykonujących zawodową działalność lobbingową* (in *Dziennik Ustaw* 2006, n. 34, pos. 240).

(9) in *Monitor Polski*, 2006, n. 15, pos.194.

Weaknesses of the Act have been numerously described in the Polish literature[10] but having in mind an Italian reader, the most significant of them are worth pointing out.

The very title of the Act already indicates that the scope of *lobbying* has been narrowed exclusively to the law-making process. This differentiates the Polish statute from many international ones, in which a distinction is made between *lobbying* aimed at influencing the law-making but also the activity of the executive other than the law-making (such as concessions, tax reliefs and individual decisions) as well as that of the judiciary[11]. On the other hand, in the Polish definition of *lobbying* (*lobbying* activity is described as "any action carried out by licit means, intended to exert influence on a public authority in the legislati-

---

(10) See also (in English): M. Jabłoński, K. Koźmiński, *10 years of the Polish Act on Lobbying Activity - 10 Years of Disappointments*, in *Studia Iuridica*, 68, 2016, pp. 105-123; J. Paśnik, *On the impact of lobbyists on the law-making process*, in *Przegląd Prawa Publicznego*, 7-8, 2016, pp. 66-81.

(11) The primary, genetic linking of *lobbying* to the parliamentary forum is rare today. For example, the restriction of *lobbying* only to the activity in the parliament appears in the regulation of several US states: Idaho, Nebraska, Nevada, New Hampshire, New York, North Carolina, Oregon, South Dakota and Wyoming. The extension of the scope of regulated *lobbying* practices to other authorities takes three different forms. In the first case, the executive authority is also addressed to the executive, but only in the area of legislation, such as the governor's veto or approval of the law (Maine, New Mexico) or, more broadly, in the field of law-making belonging to the executive competence (Arizona, Colorado, Georgia, North Dakota, West Virginia, Wisconsin). In the second case, the extension concerns *lobbying* in various areas of executive activity, up to the widest regulation of *lobbying*, including law-making and administrative decisions, permits, public procurement, loans and guarantees, grants, as well as setting rates, parameters and guidelines, less frequently - nomination of officials. The third and widest form includes *lobbying* authorities alongside the executive branch, also the judiciary, but in a clearly limited scope excluding juridical issues (one should distinguish between quasi-judicial proceedings, which are generally not covered by the prohibition of *lobbying*). Against this background, the Florida State Act stands out, which regulates the *lobbying* activities directed towards the federal state organs and conducted in the interest and on behalf of the state (M.M. Wiszowaty, *Regulacja prawna lobbingu na* świecie*: historia, elementy, stan obecny*, Warszawa, Wydawnictwo Sejmowe, 2008, pp. 190-191). Also in European regulations, despite the parliamentary genesis of *lobbying* institutions, there are few examples of limiting *lobbying* only to activities within the parliament. Such exclusive parliamentary *lobbying* laws can be found in Lithuania (outside Europe - the Philippines). However, the slightly broader scope of the group of *lobbying* addressees present in the Georgian law is limited. As long as Georgian law permits *lobbying* of the MPs, the president, and the municipal authorities, it is only within the scope of their powers and law-making activities. The latest *lobbying* laws adopted in Macedonia (2008), Slovenia (2011), Austria (2012), United Kingdom (2014), Montenegro (2014) and Ireland (2015) regulate *lobbying* activities, which are aimed both at legislative and executive power.

ve process"), two general terms have been used: "the law-making process" (and not e.g. "the legislation") and "the public authorities" (and not specifically designated authorities), which in practice led to numerous doubts of interpretative nature. Although some commentators believed that in the absence of explicit clarification and the absence of any subject exclusions, the notion "public authority" should be understood as widely as possible, in practice a narrow interpretation was being applied, mainly due to the addressees of the Lobbying Act, thereby excluding for many years from the circle of recipients of the *lobbying* regulations, for example, self-government authorities and (to this day) the President of the Republic of Poland[12].

The list of defects of the Polish statutory definition of *lobbying* is much longer. The act imposes certain obligations only on persons participating in the "professional *lobbying* activities". Those are defined as paid *lobbying* activities, conducted on behalf of third parties, in order to take account to their interests in the law-making process, performed by an entrepreneur or a natural person who is not an entrepreneur, but only on the basis of a civil contract (Art. 2.2 and Art. 2.3). This means that pursuant to the Polish Act, a professional lobbyist, shall be a person hired based on a civil contract by an association, an undertaking, a trade union, or a political party who carries out activities aimed at taking into account the interests of this entity in the law-making process. It is enough, however, that the same person performs an identical activity based on a contract of employment (even as a part-time job), to recognize that she is not a professional lobbyist and thus not subject to the Lobbying Act. Of course, a group of entities who influence the law-making process but do not belong to the group of professional lobbyists within the meaning of the Act is very long and numerically far beyond the group of professional lobbyists. This is the main manifestation and reason for the superficiality of the Polish *lobbying* regulations.

The Act also establishes the «Registry of entities carrying out professional *lobbying* activities» and (in accordance with a declaration expressed

---

(12) M.M. Wiszowaty, *Lobbying Prezydenta. Regulacja prawna działalności lobbingowej w odniesieniu do Prezydenta RP. Teoria i praktyka,* in *Białostockie Studia Prawnicze*, 20/B, 2016, p. 188.

in the title of Chapter III) it refers to «rules on the performance of professional *lobbying* activities».

A legal construction of the lobbyists' registry is rather typical against the background of regulations of other countries. The registry is kept by the Minister competent for Public Administration in the form of an electronic database and published (except address data of natural persons) in the online Public Information Bulletin (*Biuletyn Informacji Publicznej*, BIP). The registry is open (Art. 10) and the entry is subject to a fee.[13] What is interesting (and simultaneously deserving criticism) – a registration cannot be done electronically, via the Internet.

It is worth mentioning that neither the Act nor the implementing regulation provides for sanctions for failing to disclose the data changes of an entity operating professional *lobbying* activities within the prescribed period. They also do not require a regular renewal of registration or notification of the activity cessation[14]. Because, according to the Polish Act, a lobbyist's entry is made for an undefined period of time, it can be assumed that a part of the information included in the registry is and will always be obsolete.

The lack of registration disables to carry out professional activities, whereas the lack of a certificate of entry, disables a professional lobbyist to maintain legal contact with a public authority[15]. This may bring about significant obstacles for a professional lobbyist, e.g. in case he would be interested in participating in the work on a bill in the urgent procedure. This may encourage to register in advance, "just in case", thus to reporting to the registry of a person who is not a lobbyist yet but plans to be one in an undefined future. On the one hand, the lobbyists' registry will encompass persons who do not (any longer or yet) carry out *lobbying*

---

(13) 100 PLN. No fee is charged for deleting and updating data.

(14) The obligation to renew the lobbyist's registration often can be found in US (state and federal) *lobbying* regulations, but rarely in European ones. For example: Macedonia's *lobbying* regulation (today: North Macedonia) of 2008 requires annual renewal of the registration by a lobbyist (Article 11 (2)) and also obliges a lobbyist to report any changes to his or her registered data within five working days. The British *lobbying* regulation of 2014 requires the lobbyist to update the data contained in the register on a quarterly basis.

(15) A professional lobbyist is obliged to provide the body to which he / she is requesting with an appropriate certificate of entry in the register (Art 15).

activities, and on the other hand – it will not include those lobbyists who resigned from the registration in order to avoid complications.
Unfortunately, there are much more negative examples of defects of the professional lobbyists' regulation.
Art. 14.1, the only provision of the Act referring to rights of a professional lobbyist, states that such a person may lobby "also" at the office that services a public authority. Since "also" in the office, then also outside of it. However, it is not specified where a lobbyist can carry out his activities.
Art. 14.2 of the Act includes an enigmatic provision, criticized during the legislative work, pursuant to which a head of department shall ensure that professional lobbyists who entered into the registry, have access to the office administered by that person «in order to enable proper representation of the interests of entities for which this activity is carried out». Not only does it follow from the Act that a Polish lobbyist can carry out *lobbying* activities practically "everywhere"[16], but it is also visible that authorities are to assist him in the implementation of his *lobbying* activities.
The source of controversy are also the executive provisions. A good illustration is included in the Sejm Rules, granting a lobbyist with a right to participate in meetings of the Sejm commissions, during which bills are considered, but at the same time, a ban on participation in works of the sub-commissions (Art. 153.2 of the Sejm Rules). Meanwhile, it is a well-known fact that works in the sub-commissions are often of key importance to the content of laws. The assumption that lobbyists will resign from influencing the deputies in the sub-commissions in the face of the prohibition contained in the Regulation is at least naive. Such a ban will rather encourage to circumvent the law by participating in meetings of the sub-commissions or to influence members of the sub-commissions outside of their meetings.

---

(16) In US regulations quite often there is a ban on the presence of a lobbyist in the parliament, especially in the plenary sessions chamber, during sessions (in Alabama, Indiana, Kentucky, Oklahoma, Dakota, West Virginia). The ban, of course, does not apply to cases when a lobbyist has received an invitation or a summons from the parliament. On the other hand, in Nevada, a lobbyist can operate only in the premises of the parliament.

The Act also provides for forms of control over professional *lobbying* activities. This control has been based on an obligation to regularly report on the activities of professional lobbyists and persons carrying out *lobbying* activities without the prior registration.

In the majority of world *lobbying* acts the reporting obligation rests primarily and often exclusively on lobbyists, sometimes additionally involving an entity hiring a lobbyist (a *lobbying* client)[17]. The reporting obligation provided for by the Polish law does not rest on lobbyists at all, because it has been entirely imposed on public authorities. Pursuant to Art. 16 of the Act, these authorities are obliged to immediately publish information on activities undertaken by professional lobbyists against them, along with an indication of the way of taking decision expected by the lobbyists, in the Public Information Bulletin. This lack should be considered as one of the biggest drawbacks of the Polish Lobbying Act and the reason why it is difficult to define it as a "regulation of *lobbying*", since it does not impose on lobbyists any duties except the one-time registration that is limited to revealing personal details of the individuals involved in carrying out *lobbying* activities or the names of undertakings operating such activities.

The Act is silent on how to inform or document the *lobbying* contacts that have been made. There is also a lack of information on the procedures to be performed by authorities against professional lobbyists. It was decided to leave those matters to be specified by heads of offices servicing public authorities (Art. 16.2). Therefore, those regulations are of internal and discretional character. The most important objection regards the level of insight that the legislator requires from a body preparing the information. To give an example, the Act requires that an authority indicate a real impact of *lobbying* activities undertaken by a spe-

(17) In the *lobbying* regulations of some countries, such as Canada (at the federal and provincial level) or United Kingdom, *lobbying* reports have not been distinguished as a different form of recording data on the lobbyist. Both institutions (registration and disclosure) have been combined in such a way that a lobbyist is required to update the data about him(her)self reported to the registry for data on his/her *lobbying* activity. The obligation to submit reports by *lobbying* recipients can be found mainly in US regulations at the state level (eg in: Connecticut, Massachusetts, Michigan, or Washington). These reports are collected to verify the content of reports submitted by lobbyists and possibly their clients (M.M. Wiszowaty, *Regulacja prawna lobbingu na* świecie, cit., p. 232).

cific professional lobbyist on the decision-making process (Art. 18 of the Act). This requirement is almost impossible to meet. Furthermore, Art. 17 directly obliges authorities to report all cases of carrying out professional *lobbying* activities by an entity that has not entered into the registry, which is another example of imposing unattainable obligations.
In the period of working on the Act, concerns were raised that the obligations imposed on authorities in this way, may result in either disorganization of work of the offices or general application of the Act but with unofficial meetings of lobbyists, so as not to create the reporting obligation. Other concerns are related to the risk of situations where officials will avoid all contacts with lobbyists, especially in the case of heads of offices, or in which any behavior of an entity registered in the lobbyist registry will be considered - just in case - as *lobbying*. Many of these fears have been confirmed in later practice.
Part of this article should be devoted to the sanctions laid down in the Act aiming to ensure implementation of its provisions. Only one type of penalties has been created – a financial penalty imposed exclusively for operating "professional *lobbying* activities" without the prior registration[18]. An entity that carries out *lobbying* activities without an entry into the register is subject to a monetary penalty in the amount of PLN 3.000 to PLN 50.000 (approx. EUR 700 to EUR 12.000). Other violations of the law, such as providing false information in the registration form or misleading the authorities, are subject to sanctions by way of general rules stipulated by the criminal code or other statutes. Analogically, breaches of law by officials are subject to disciplinary or criminal liability. The Act does not provide for detailed provisions; it limits itself to indicating sanctions exclusively to one type of violation, which is its clear defect.

---

(18) The penalties provided for by US *lobbying* laws are divided into three main types: a) fine, b) imprisonment and c) temporary ban on *lobbying*. In non-US regulations, a very popular sanction is a fine (often the only sanction provided for by the law on *lobbying*), as well as a penalty of a temporary or even permanent ban on *lobbying*. The latter in many American states has been found to be in conflict with the Constitution, especially the right of petition. In non-US *lobbying* regulations, sanctions for breaching its provisions in the form of imprisonment are very rare.

3. *Practice of the Act*

On 11 May 2006, so 2 months after the Act entry into force, there were 47 entities in the lobbyists' registry, including 31 legal persons and 16 natural persons. At this time, a list of persons involved in professional *lobbying* activities in the Sejm counted only 8 persons. The very same 8 persons were on the Senate list of professional lobbyists.

In October 2018, there were 441 entities in the registry of entities carrying out professional *lobbying* activities, among which 31 have been erased on own request on the ground of resignation from pursuing activities (Art. 11.9 of the Act)[19]. This makes the overall number of 410 professional lobbyists. The entities carrying out *lobbying* and being registered by the Minister of the Interior and Administration of the Republic of Poland are dominated by legal persons. At the same time, the list of persons carrying out professional *lobbying* activities within the Sejm was as high as 23 persons[20]. In an analogical registry conducted by the Senat, there were 22 persons[21].

The dynamics of the entries in the main lobbyists' registry administered by the Minister is presented on the graphs below:

Besides statistical values, the registry cannot be a basis of an in-depth analysis, since it contains only the name of an entity operating *lobbying* activities together with address data.

The information included in the data provided for by Art. 16 and Art. 18 of the Lobbying Act is much more interesting. All public authorities are obliged to immediately provide access to information in the BIP on activities directed against them by entities carrying out professional *lobbying* activities, along with an indication of the result that these entities strive for, and the actual impact that the lobbyists' activities had on the legislation. Once a year a summary statement of such *lobbying* acti-

---

(19) *Rejestr podmiotów wykonujących zawodową działalność lobbingową*, https://bip.mswia.gov.pl/download/4/34846/rejestr-lobbingowy.pdf (Valid for 3.10.2018).

(20) *Wykaz osób wykonujących zawodową działalność lobbingową na terenie Sejmu* http://www.sejm.gov.pl/Sejm8.nsf/lobbing_osoby.xsp.

(21) *Wykaz osób wykonujących zawodową działalność lobbingową na terenie Senatu* https://www.senat.gov.pl/lobbing/wykaz-osob-wykonujacych-zawodowa-dzialalnosc-lobbingowa-na-tere/.

vities is to be published. With regards to this, heads of offices servicing public authorities are obliged to define a detailed way of conduct of the subordinate employees with lobbyists as well as with unregistered entities performing activities from the scope of professional *lobbying*. As follows from those regulations, generally only three basic forms of such *lobbying* activities were indicated: a) a written request for undertaking a specific legislative initiative; b) a proposal for a meeting to discuss a certain matter regulated by law or requiring such regulation; c) a notification of interest in the work on a draft normative act.

This way of regulating the matter of *lobbying* reports brings about certain complications. As follows from the annual reports – their authors generally limit themselves to listing three abovementioned forms of *lobbying* activities. Secondly, the reports encompass specific forms of conduct regardless of those being carried out by professional lobbyists or other entities – in the interest of a third person or their own, which means that the reports cannot be considered as actual and full reflection of *lobbying* activities. Finally, as already mentioned, there is a simple way to circumvent provisions of the Act and the obligation to register as a lobbyist, which is why the data indicated in the reports cannot be considered as reliable.

For the needs of this paper, I prepared an analysis of the abovementioned annual reports published on the website of the Public Information Bulletin for selected ministries and state authorities of the current and the former Sejm tenure (thus for years 2012-2017):

Even a cursory reading of the presented data already leads to a few remarks. It is visible that professional lobbyists more often address their activities to a few selected ministries, while omitting the others. From the day of entry into force of the Act, the Chancellery of the President of Poland has been severely not abiding by its obligation to publish summaries imposed by the Lobbying Act. At this point, it is worth signalizing that since approx. 2015 the *lobbying* reports have been also published by self-government authorities. These are still sporadic cases and the great majority of the summaries reports that no *lobbying* activities have been carried out in a given year. Nevertheless, this is still a huge step forward as compared to the practice of the past years, when self-government authorities also held that they were not bound by the Act

and thus neither published the reports nor regulated the principles of detailed conduct with professional lobbyists at the office.

A detailed analysis of the content of the *lobbying* reports, the explanation of which goes beyond the volume of this article brings a new conclusion: the content and the level of detail of the reports are very different. The reports which state that there have been no *lobbying* activities undertaken prevail. Among those indicating an activity of professional lobbyists addressed to specific authorities, laconic lists of such contacts can be found as well as more detailed explanations containing a list of individual types of lobbyist activities with an indication of their personal data, explanation of submitted proposals and information about their inclusion or reasons for non-inclusion. What is interesting, the reports of a few ministries also include activities of lobbyists other than "professional", contrary to the provisions of the Act. What is even more interesting – it follows from the reports that demands of such "non-professional" lobbyist have been included a few times and the proposals were consequently amended[22]. On the one hand, this is a valuable supplement to the information on the practice of Polish *lobbying*, on the other - the key evidence of superficiality of the Polish *lobbying* regulation.

Does the information contained in the *lobbying* reports published under Art. 16 and Art. 18 of the Lobbying Act present a clear picture of *lobbying* activities in Poland? It is worth to underline that some entities delay publication of the obligatory annual reports (the Act does not provide for sanctions for inactivity of an authority) and the current information is published by very few entities. In order to answer the above-raised question in a detailed manner, it is worth to refer to press publications, obviously treating them merely as a supplement to this discussion.

In 2007, "Dziennik" published an article illustrating behind-the-scenes *lobbying* activities in Poland. The author, using the knowledge obtai-

---

(22) See i.a.: *Informacja o działaniach podejmowanych wobec Ministra Środowiska przez podmioty wykonujące zawodową działalność lobbingową w 2015 r. https://bip.mos.gov.pl/fileadmin/user_upload/bip/dzialalnosc_lobbingowa/Dzialalnosc_lobbingowa_w_2016_r_-_informacja_na_strone_www.pdf.*

ned from a professional lobbyist, described typical *lobbying* practices. It follows from the article that a lobbyist, first and foremost, erases the traces of own activity. He tries to reach influential authorities via private and unofficial contacts, establish friendly relations with families of a politician or an authority. Not rarely does a lobbyist act on the verge of the law[23]. In the article published in 2015, thus on the 10th anniversary of adopting the Lobbying Act, Witold Michałek, an expert in legislation and *lobbying* of influential industry organization "Business Centre Club" stated that because the Act imposes additional bureaucratic duties on authorities, thereby augmenting their workload, and also because *lobbying* in Poland is still negatively identified with attempts of dirty tricks, they avoid meetings with lobbyists. Decision-makers (deputies to Parliament, ministers) in turn, avoid those contacts in order not to be accused of favoring any of the sides. Michałek stated that in these situations, lobbyists contact with politicians beyond control of the Lobbying Act. Zbigniew Maciąg from "Lewiatan", one of the biggest organization of entrepreneurs in Poland, held that the majority of activities conducted by the organization is not based on the provisions regulating *lobbying* activities, which is why the lobbyists who do work for that organization are not included in the professional lobbyists' registry at all[24]. All of those facts make that in the Polish practice, lobbyists carry out their activities in forms different from those provided for by statutes – as lawyers who as a part of providing complex legal services, represent their clients before public authorities, experts invited on the sessions of the parliamentary commissions and sub-commissions, representatives or social and labor organizations, as well as spokespersons of the so-called public interest. Practicing the legal profession especially enables to rely on professional privileges, e.g. in the scope of concealing part of the information for the sake of a client's interest or attorney-client privilege. It also happens that different forms of activity are combined, so a person registers as a professional lobbyist in order to avoid potential

---

(23) P. Nisztor, *Lobbystów recepta na leki,* in *Dziennik*, 22.11.2007, p. 4.

(24) M. Kwiatkowska, B. Mayer, *Lobbing w Polsce umarł. Oficjalnie*, in *Dziennik Gazeta Prawna* (*DGP)* 12.5.2015, http://prawo.gazetaprawna.pl/artykuly/870616,lobbing-w-polsce-umarl-oficjalnie.html?r=27275, access: 18.10.2018.

sanctions for operating *lobbying* activities without the registration and later execute that activity in a more convenient form[25].

The newest media information concerning the *lobbying* practice in Poland confirm all of the previous phenomena and conclusions. In the current parliamentary term of office, in which, for the first time since 1989, one party obtained a majority sufficient to form its own government, has the majority of seats in the Sejm and the Senate, and additionally its candidate won the presidential elections, an additional reason for the reduction of lobbyists' activity came into being. As stated by one of the lobbyists: «the majority of the deputies is guided by party discipline and is reluctant to listen to substantive arguments. Participation by lobbyists in the meetings of the parliamentary commissions has lost its sense, because nobody wants to talk to them». A new phenomenon, noticeable only during the current term of office, is a decrease in number of registering and registered lobbyists, decrease in number of the commissions' meetings, in which lobbyists participate or registered lobbyists took the floor. A new phenomenon are cases where registered lobbyists do not collect their ID cards allowing them to enter premises of the Parliament[26].

4. *Attempts to change the law. Draft Act on Transparency of Public Life of 2017*

Politicians have long been aware of the shortcomings of the Polish *lobbying* regulation and the necessity of its rapid and extensive amendment.

In January 2007, the information popped up that the Ministry of the Interior and Administration is working on tightening the Lobbying Act. In July 2008, another survey prepared by the Chancellery of the Prime Minister was carried out within the ministries concerning that

---

(25) M.M. Wiszowaty, *Podmiotowy i przedmiotowy zakres zawodowej działalności lobbingowej*, in K. Grajewski, A. Szmyt, M.M. Wiszowaty (eds.), *W kręgu zagadnień parlamentarnych. Wybrane problemy praktyki w świetle opinii konstytucyjnoprawnych,* Gdańsk, Gdańsk University Press, 2016, p. 103.

(26) W. Ferfecki, *W Sejmie już nie ma lobbystów*, in *Rzeczpospolita* 22.2.2018, https://www.rp.pl/Polityka/302219907-W-Sejmie-juz-nie-ma-lobbystow.html, access: 18.10.2018.

Lobbying Act – assessment of its validity and real impact on *lobbying* activities. In 2011, the media reported on the development of goals of the new *lobbying* regulation, which included *inter alia* the obligation to submit annual reports by lobbyists and control over them by the Central Anticorruption Bureau[27]. However, the activities of that time did not go beyond the stage of assumptions and no proposal of either an amendment or of a new *lobbying* act was submitted to the Sejm. In 2013, it was informed about another bill amending the Lobbying Act, now prepared in the Ministry of Administration and Digitization. Once again - without the final result in the form of a ready-made proposal[28].

In 2012, the Council of Europe's agenda "Group of States against Corruption" (GRECO) assessed the Polish regulations in the field of preventing corruption in relation to parliamentarians, judges and prosecutors. Among others, the following were criticized: the lack of reporting duties of deputies and senators regarding their contacts with lobbyists, the lack of regulation of the so-called *revolving door* (in other words, there are no prohibitions and transitional periods in situations when parliamentarians move to a private sector, including *lobbying*) as well as the failure to take account to a potential conflict of interests between a deputy contacting with a lobbyist in the provisions on parliamentary ethics, the requirement of training and sanctions for the described violation of ethical standards. If the report had regarded a lobbyist, the list of accusations against the regulation would have been much longer[29]. Despite formulating specific recommendations and setting new deadlines, an attempt in the Senat in the form of a bill (soon withdrawn by the ini-

---

(27) E. Ivanowa, *Lobbing pod kontrolą CBA,* in *DGP*, 12.4.2011, http://prawo.gazetaprawna.pl/artykuly/504268,lobbing-pod-kontrola-cba.html, access: 18.10.2018.

(28) E. Ivanowa, *Polski lobbing to przede wszystkim sfera kontaktów nieformalnych*, in *DGP*, 14.2.2013, http://prawo.gazetaprawna.pl/artykuly/681532,polski-lobbing-to-przede-wszystkim-sfera-kontaktow-nieformalnych.html, access: 18.10.2018.

(29) *Czwarta Runda Oceny: Zapobieganie korupcji wśród parlamentarzystów, sędziów i prokuratorów. Raport z oceny: Polska. Przyjęty przez GRECO na 57. posiedzeniu plenarnym* (Strasburg, 15-19.10.2012) p. 8-27, 64.

tiators[30]) and convening a special sub-commission in the Sejm[31], those have not yet been implemented by the Polish authorities[32].
In 2014, the long-awaited Act on Petitions was adopted[33]. On the one hand, this has led to the long-awaited implementation of the constitutional norm contained in Art. 63 *in fine* ("procedures for considering petitions … shall be specified by statute") and enriching the mechanisms of citizens' participation in the democratic decision-making process. On the other hand, it turned out that petitions may be submitted not only in the interest of the public or that of a petitioner but also in the interest of third party. In this way lobbyists can qualify their activities as the implementation of the civic right to petition[34]. This is certainly not a favorable situation, either for the transparency of *lobbying* in Poland, or for the scope of its control by state organs and requires an appropriate adjustment of the Lobbying Act.
In October 2017, on the website of the Government Legislation Center (legisacja.rcl.gov.pl), a draft Act on Openness in Public Life was disclosed. On 25th of October 2017, an invitation to submit comments to the proposal was published, signed by minister Mariusz Kamiński, the Special Forces Coordinator, who sponsored the proposal. In a letter addressed to 38 entities - including representatives of the selected interest groups and non-governmental organizations, a short deadline was set on 3 November for submitting comments to the draft; it was also offi-

(30) Senat paper n. 629, 7.5.2014, 8th term of office, http://www.senat.gov.pl/download/gfx/senat/pl/senatdruki/5697/druk/629.pdf.

(31) B. Kwiatkowski, *Co wiemy o lobbingu w Polsce cz. 3, czyli niejawny lobbing w Sejmie i Senacie*, 31.3.2016, https://jawnylobbing.org/niejawny-lobbing-w-sejmie-i-senacie/, access: 18.10.2018.

(32) *Czwarta Runda Oceny: Zapobieganie korupcji wśród parlamentarzystów, sędziów i prokuratorów. Raport zgodności: Polska. Przyjęty przez GRECO podczas 66. posiedzenia plenarnego* (Strasburg, 8-12.12.2014) pp. 1-5, 16-17.

(33) Ustawa z 11.7.2014 o petycjach (in *Dziennik Ustaw*, 2018, p. 870).

(34) M.M.Wiszowaty, *L'articolazione degli interessi nell'ambito del processo politico decisionale. I gruppi di interesse (le lobbies), l'audizione pubblica, le petizioni, i think tank (i gruppi di esperti o di riflessione) e le fondazioni politiche*, in *Toruńskie Studia Polsko-Włoskie. Studi polacco-italiani di Toruń*, XII, 2016, pp. 256-258.

cially notified about the meeting summarizing the consultation process, to take place on 6 November 2017.

In an extensive proposal containing as many as 132 articles and 54 pages of the content, the *lobbying* regulations were included only in Art. 25-37, contained in 3 chapters as well as in a part of Art. 2 referring to definitions of legal *lobbying*, professional *lobbying*, a professional lobbyist and an involved entity (a non-professional lobbyist) and in Art. 130 repealing the Lobbying Act of 2005.

Despite the very short time for submitting (and elaborating) comments, the proposal met with a broad reaction of the consulted entities. At the summary meeting at the Chancellery of the Prime Minister in Warsaw, over 100 representatives of these entities arrived, who throughout the day were presenting their (mostly) critical remarks about the draft.

The analysis of the original version of the proposal in its part concerning the legal regulation of *lobbying* leads to the conclusion reinforced by the statement of the draft authors themselves that the content of the existing 2005 Lobbying Act had been repeated, with a few supplements and modifications of varying degrees of importance.

There are a few innovative solutions deserving a positive remark. Firstly – it has been clearly stated that local government authorities are encompassed by the *lobbying* regulation. Secondly, an attempt was made to extend the scope of the Lobbying Act beyond the "legislative process". Thirdly, it was proposed to establish a mandatory and regular reporting duty to be conducted by a professional lobbyist, who would be obliged to inform about forms of carrying out *lobbying* as well as about own clients. Particularly these provisions could have constituted a milestone on the way to an optimal regulation of *lobbying* in Poland, if not for the fundamental errors of the proposal, which had destroyed its potentially positive effect. Fourthly, it has been proposed to introduce an obligatory registration of activities of non-professional lobbyists and disclose their clients.

Among the most significant shortcomings of the proposal concerning its part on *lobbying* are the following. First of all, the old definition of professional *lobbying* activities was left in force as being carried out only on the basis of a civil contract. Second off all, the obligations were imposed on the non-professional lobbyists (under a name of "an in-

volved entity") significantly exceeding those imposed on professional lobbyists. To give an example – whereas a professional lobbyist must only indicate a client, the interest of whom he represents, then an involved entity must present a list of all his income for the past two years along with the so-called "financing entities". Third of all – the reporting duties have not been extended either to the deputies and senators, who are the most frequent addressees of *lobbying* activities. They do not have to disclose either the fact of meeting with lobbyists or an information about the course and results of such meetings. Despite experts had repeatedly called for, the Act also does not provide for an obligation to disclose the so-called "legislative footprint", i.e. an indication of the names of persons responsible for the content of provisions (and possibly - amendments) in a given bill (or other official document, the content of which was influenced by lobbyists). Fourth of all, a very stripped-down system of sanctions to secure implementation of the Act has been maintained, with an addition of one controversial sanction. For delivering incomplete data on the sources of own financing, a criminal sanction would be imposed on "involved entities" This provision, similarly to the requirement to fully disclose the sources of financing, has been considered as a deliberate freezing measure aimed at non-governmental organizations (acting mostly as "involved entities"). Furthermore, among the other shortcomings of the proposed *lobbying* regulation, one can indicate a 10-fold increase in the registration fee. The initiators of the proposal justified the most drastic provisions of the new regulation by the will to encourage, or even compel "involved entities" to register and carry out activities in the form of professional *lobbying*. It may be also concluded from the authors' explanations that the increase in the registration fee results from the need to limit the free access of everyone to the decision-making process, in order to prevent its unnecessary slowing down or even paralysis. As a side note, a poor linguistic quality of the project can be mentioned[35].

(35) See more at: *Stanowisko stowarzyszenia Klub Jagielloński w sprawie projektu ustawy o jawności życia publicznego*, https://legislacja.rcl.gov.pl/docs//2/12304351/12465407/12465410/dokument315061.pdf, 3.11.2017, pp. 6-19; *Uwagi do projektu ustawy o jawności życia publicznego w zakresie regulacji lobbingu*, Fundacja Frank Bold, https://legislacja.rcl.gov.pl/docs//2/12304351/12465407/12465410/dokument315038.pdf 5.11.2017. Access: 18.10.2018.

In the following months, the consultations were renewed, during which the changes proposed by the social and trade sides were applied. The quality of the proposal has been improved, but not all of shortcomings have been liquidated, and above all, the fundamental assumption of the currently binding *lobbying* regulation (copied with it to the new project) has not been changed.

The regulation is not intended to improve the quality of the decision-making process within the state by the use of reliable substantive knowledge provided for free by professional lobbyists; it only aims to embrace selected participants of this process, coming from the outside of public authorities, by fragmental control.

After a few months, further work on the draft *Act on Transparency of Public Life* was discontinued and suspended for an indefinite period of time, explaining the decision by the need for additional legislative work in connection with numerous comments reported by, among others, social organizations and several ministries[36]. Poland is still waiting for a legal regulation of *lobbying* activities. Meanwhile, the facade act remains in force.

5. *Conclusions*

What changes are necessary for the Polish regulation of *lobbying* to approach the optimal form?

1. First and foremost, a correct definition of *lobbying* activities should be developed – its addressees, contractors as well as principals who would be subjected to a thorough observation and constant control. It is impossible to control a phenomenon that has not been clearly defined. The notion of a lobbyist should be extended so as to include persons carrying out their activities on the basis of various forms of employment, in order to ensure that any external influence on the law-making process could be and is recorded and disclosed.

2. In order for *lobbying* control to be effective, access to buildings of public authorities' offices, including the Parliament and ministries,

---

(36) M. Zarzycki, *Jak ustawa o jawności życia publicznego upłynie na obowiązki przedsiębiorców*, „DGP", 26.8.2018, http://prawo.gazetaprawna.pl/artykuly/1229939,ustawa-o-jawnosci-zycia-publicznego-czy-bedzie.html.

should be sealed. All of lobbyists' visits at offices, meetings with ministers, deputies and senators should be recorded and disclosed.
3. The scope of regulation (the state control) of *lobbying* should be extended beyond the process of enacting statutes and governmental resolutions, thus the cases of influencing the activities of the President of the Republic and other state authorities, as well as beyond the legislative and law-making activities. The regulation should embrace *lobbying* concerning decisions of the executive and public administration, permits, grants, concessions, as well as the influence on appointing or nominating persons for public office.
4. Strict control should be applied to *lobbying* addressed to local government authorities. Moreover, control should be used with regards to *lobbying* addressed to judicial organs. Lobbying can also be targeted at the judicial authorities[37].
5. Effectiveness of the *lobbying* regulation is strictly dependent on the existence of a reporting obligation by lobbyists themselves (apart from the obligatory reports submitted by entities to whom *lobbying* is addressed, which should be left in force and separate reports submitted also by entities contracting *lobbying*). The reports should be as specific as possible and their frequency as large as possible.
6. The Lobbying Act should regulate two very important issues, i.e. the practice of influencing professional politicians and officials via their family members and the problem of the so-called "revolving door". In the first case, the US regulations provide for detailed *ad hoc* reports that take into account the expenses of the lobbyist incurred for the closest relatives and in-laws of a politician or an official[38]. The second example is dominated by the solution consisting in establishing periods of forced cooling-off period for a politician who ends an active career before the start of *lobbying* activities.
7. A problem that is difficult but at the same time demanding solution is creating and optimizing the system of verification and analysis of data

---

(37) See: M.M. Wiszowaty, *A Wolf in Sheep's Clothing. On strategic litigation and amicus curiae as the forms of lobbying activity* in A. Machnikowska (ed.) *The Legitimation of Judicial Power*, Gdańsk, Gdańsk University Press, 2017, pp. 139-168.

(38) See, for example, *lobbying* regulations of Massachusetts, Michigan or South Carolina.

provided in *lobbying* reports. The aim is to avoid situations where the only effect of obligatory *lobbying* reports is to collect a huge amount of information for the collection itself.

The experience of countries that for many years have been working on improvement of legal *lobbying* regulation proves that this process takes time and must be carried out in stages. The first and most important stage, namely the adoption of the Lobbying Act, has already been achieved in Poland. Interestingly, during the work on the Polish law, a proposal appeared to give it a form of "trial", "transitional" regulation (such as American "sunset regulations") and to review and assess its quality and effectiveness after a specified period of time in order to make the necessary changes. After almost 15 years since it entered into force, we already have sufficient knowledge about the practice of its application in order to draw and implement at least the most fundamental and urgent changes in the Polish *lobbying* regulations, based on it as well as on similar experiences of foreign countries. It should be remembered that an optimal *lobbying* regulation has several goals. Among them are not only an elimination of negative manifestations of unregulated *lobbying* or pathological phenomena related to an external impact on the decision-making process within the state, but also a notification and utilization of undoubted benefits and advantages of open and state-controlled *lobbying*. These benefits include, among others, access of decision-makers to the priceless and free of charge source of professional knowledge at the highest level, which is an important component of *lobbying* analyzes financed by wealthy clients. Savings of a state that does not bear the costs of expertise, simulations and essential tests, e.g. while creating technical standards in the field of advanced technologies - are huge. Moreover, an open discussion based on substantive arguments, instead of behind-the-scenes machinations or various strength forms, has an educational function, promoting a public, peaceful debate.

An unsuccessful attempt to modify the currently binding Act through fragmentary changes proved that an optimal solution, especially in the face of so many shortcomings of the current Act, would be the adoption of a completely new legal act. The *lobbying* regulation should not be limited only to one statute, but also provide for appropriate changes within existing legal acts. The success of this venture depends not only

on whether we can develop a proposal that meets the highest standards of legislative technique and comply with the latest achievement in the field of legal *lobbying*, but also whether there will be a right political will that is absolutely necessary to impose obligations, on the one hand, on politicians, and on the other, on representatives of influential environments that financially support the world of the politics and that are connected with it by numerous ties.