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DEVELOPING A LEGAL FRAMEWORK FOR LOBBYING: THE POLISH EXPERIENCE

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This paper supports discussions in Session III by outlining the recent Polish experience of developing a legal framework for lobbying.

For further information, please contact János Bertók, Tel: +33 1 45 24 92 57,
E-mail: janos.bertok@oecd.org

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DEVELOPING A LEGAL FRAMEWORK FOR LOBBYING: THE POLISH EXPERIENCE

Mr. Juliusz Galkowski[1]

1. Background

It should be clearly stated that Polish people perceive lobbying very negatively. Research has demonstrated that all too often lobbying in Poland consists of networks of informal connections, through which private interests, on the basis of "reciprocity of mutual services", penetrate the contacts between business and the political elites. Key capital consists of "access" to the relevant decision maker. The importance of such a person increases along with the deterioration of the economic situation, when opportunities to multiply the available capital based on market potential shrink and it thus becomes important to be able to count on someone whom one "knows", especially someone holding office in the organs of public administration, whereas such contacts "may be earned" in various ways. A reflection of the role of such relationships consists of the general belief that the relationships between business and politics in Poland are based on unethical principles and that the most effective method of "arranging" the settlement of issues consists of kickbacks. What shape may be assumed by lobbying in a country, where, based on research commissioned by the National Chamber of Commerce (KIG) in 1998, according to local councillors – one out of three, and according to Members of Parliament – almost one out of four politicians accommodated in his official public activity the interests of a selected firm and conducted "business prospecting" on its behalf? In a report on corruption in 1999 the World Bank[2] described the pathological forms of lobbying in the Sejm (Lower House of Parliament), including the practice of providing financial benefits in return for the "favours" of blocking or modifying the provisions to be included in the laws. According to research by IFiS PAN (Philosophy & Sociology Institute at the Polish Academy of Sciences[3] dating from 2000, in the 3rd Term of Office of Sejm III, as many as 28% of MPs surveyed pointed at corrupt and corruption provoking methods as being the most frequently used methods of exerting influence upon the parliamentarians: trading in influence capacities (i.e. proposals of seats on supervisory boards of business companies), bribery or bribery attempts, illegal donations, funding of expensive "gifts" (motor cars for "testing"), personal benefits (providing "attractive services"), sponsoring attractive excursions ("study travels") and promises of financing of electoral campaigns and cash contributions to party funds.

According to research conducted in 2004 by the Stefan Batory Foundation, as many as 35% of all Poles and 19% of Polish parliamentarians believe that bribery may cause the repeal of a legislative Act or a change in the law. In the same year the Public Opinion Polling Centre (CBOS) conducted a similar survey, according to which 69% of the Polish people believed that cash could be effectively used to have an impact the development[4].

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1. This paper was prepared by Mr. Juliusz Galkowski, Anti-corruption Strategy Co-ordination Group, Public Administration Department, Ministry of Interior and Administration, Poland.

2. World Bank, Anti-corruption in Transition. A Tribute to the Policy Debate, 2000

3. http://www.ce.uw.edu.pl/wydawnictwo/Kwart_2002_4/Jasiecki.pdf

4. http://www.batory.org.pl/english/corrupt/bar.htm

It should also be pointed out that few persons working in co-operation with the parliament in the course of the process of development of the law admit to practising the lobbyist's profession. Law offices, consulting firms and PR agencies frequently act as covert lobbyists. At parliamentary committee meetings they appear in the roles of experts or advisers, surprisingly enough acting in the capacity of experts on behalf of political parties or of particular deputies, rather than as representatives of any third party stakeholders. As a consequence of this the distribution of forces is not fully transparent, whereas the law-making process suffers from the dubious impact of particular vested interests.

One of the most important events, which undoubtedly contributed to the initiation of drafting a proposal for a legislative Act on Lobbying, consisted of the so-called "Rywin's affair"[5], as it pointed at a number of irregularities in the law-making processes. Above all, there is no public disclosure or any social control over the course of drafting of legal regulations. The famous addition of the words "or periodicals" to the government draft, without the knowledge of the Council of Ministers, or the offer of a bribe put forward by Mr Lew Rywin to the owners of the publishing company "Agora", indicated clearly that in the course of the process of creation of the law the influences of various circles were more important than public benefit. Moreover, it turned out that such influences could be taken advantage of in order to collect high value commissions (sometimes of the order of millions of dollars) from the parties concerned.

The unveiling of the so-called "Rywin's affair" and the subsequent inquiries of the parliamentary investigation committee have demonstrated not only to the political class, but also to society at large, that it was necessary to legally regulate the lobbying business. All the more so, as gradually the public came to be informed about successive new corruption affairs involving politicians and public servants at the organs responsible for developing the law as well as professional lobbyists. Moreover, it was revealed that such cases occurred in which voluntary assistants of MPs and high ranking officials in the public administration acted in practice as lobbyists, and looked after the interests of their clients.

Under such circumstances the Government under the leadership of Prime Minister Leszek Miller submitted a draft law on lobbying. This fact is very telling, as the same government later offered its own resignation under the pressure of prevailing allegations of corruption and involvement in dubious business dealings on its part.

2. The process of drafting of the law

On 28 October 2003 the Sejm received the Government's draft law on lobbying activities. On 12 November 2003, during the session of the Sejm a motion to dismiss the Bill was rejected by a clear majority of votes and the respective proposal was submitted to an Extraordinary Committee. After holding a number of committee meetings and reviewing expert opinions, as well as introducing numerous amendments, the Extraordinary Committee[6] sent the Bill to the Sejm again and recommended its adoption. On 7 July 2005 the Sejm passed the bill by 399 votes in favour, with 4 abstentions and no votes whatsoever against the new law. The upper chamber of Parliament adopted the bill as proposed by the Sejm without introducing any amendments. On 15 August 2005 the President of the Republic of Poland signed the final legislative act.

5. The Rywin's affair is the most well-known corruption affair in Poland that initiated an inquiry by the Special Parliamentary Commision. It is named after the businessman Lew Rywin, who offered his help with changing the "Media Law" in return of the large bribe. He said that he stands on behalf of "the group of people who are ruling". After the "Rywin's affair" corruption became the fourth "national problem" of Poland.

6. The Extraordinary Committee is a special body of the Polish Parliament. Usually ordinary committees work on all drafts, but if the Bill is complicated or needs more attention the Sejm can establish an Extraordinary Committee with a single purpose to work only on this one specific Bill.

The work of the Extraordinary Committee took a very long time because the Sejm decided to overrule the Government's draft law and to prepare a completely new bill. The Extraordinary Committee started its work in January 2004 and elaborated a new bill based on the ideas of the Government's draft law. From this point of view the preparation of the new bill took a relatively short time.

It has been pointed out many times that the original draft law submitted by the Government had been very restrictive and – as one of the experts put it – was geared "to seek out and punish misbehaviour".

A number of doubts formulated with regards to the draft law came from business associations. One of the statutory goals of such organisations consists of lobbying on behalf of their members, at the same time it should be noted that the contributions collected from their members serve as a sort of "fee" for such activities. Therefore, the business circles strongly demanded that the Law should specify *expressis verbis* that the chambers of commerce are bodies, the rights of which are not infringed upon by the law. At the same time they requested that it should be clearly laid down that the above statement applied to all non-government social organisations. The basis for such claims consisted in the fact that the lobbying law ruled out the possibility of lobbying activities being conducted by political parties – by analogy, the chambers of commerce (as organisations of entrepreneurs) should also have been excluded.

In essence, the original draft law specified what groups and organisations were not subject to its requirements. It specifically listed representatives of diplomatic missions, political parties, trade unions, as well as associations of employers.

As a result of the work of the Extraordinary Committee, the listing of exclusions was abandoned and was replaced instead by a positive statement contained in Article 2 of the adopted Act:

"Article 2

1. As construed in this Act, lobbying stall consist of any activity conducted by legally allowed means, which leads towards the exertion of influence upon the organs of public authorities in the lawmaking process.

2. As construed in this Act, professional lobbying activity stall be regarded as consisting of gainful lobbying activity conducted on behalf of third parties in order that the interests of such third parties be taken into account in the law-making process.

3. Professional lobbying activity may be performed by an entrepreneur or by a physical person not being an entrepreneur on the basis of a civil law contract."

Such change was a consequence of endeavours on the part of not only such organisations as the Business Centre Club or other employers' organisations, but also because of the convictions of a number of deputies active on the Committee, as well as of the political groups represented by them. This change – considered by several experts to be definitely a positive one – gave rise to a number of critical comments, however, which shall be presented in Section 5 of this paper.

It should also be noted that a number of prominent MPs from Law and Justice Party (PiS), that currently form a coalition government, was definitely opposed to the bill as submitted by the Government[7], and subsequently, through the inclusion of its representative in the work of the Extraordinary Committee, it exerted a major impact upon the introduction of amendments. Finally, in 2005, the Law and Justice Party unanimously supported the adoption of the amended bill.

7. In 2003 the parliamentary caucus of that party voted in favour of dismissing that bill.

It should be pointed out that in the course of the work on the bill a number of critical comments submitted by PiS representatives were taken into account and the adopted document decisively shifted the gist of the statutory regulations to accommodate the obligations of representatives of public administration in the form of changes of bye-laws and implementing provisions regulating the operation of public offices. And although this did not belong to the scope of tasks of just that one party, undoubtedly the introduced amendments resulted in a change of attitude toward that bill on the part of the PiS, as it finally voted in favour of adoption of the Act on Lobbying.

Representatives of the Business Centre Club (BCC) were of major significance in the activities of the Extraordinary Committee, as that organisation belonged to those select few, which did take part in the work of that Extraordinary Committee as a representation of employers' organisations and business circles. At the initial stage of the work on the bill the BCC issued an opinion concerning the proposed law, in which it pointed at a number of deficient solutions, as seen by that organisation. In its statement the BCC noted the recognition of the need for legal regulation of lobbying activities and the necessity to improve transparency, but it found the bill to be excessively restrictive and introduced opportunities for arbitrary decisions being taken by public officials. This criticism applied especially to the question of deciding which firm or person was to be regarded as conducting lobbying activities or not. It was also pointed out that the bill was too "policing oriented".

It should therefore be stressed that a number of changes introduced in the course of the work of the Parliamentary Extraordinary Committee on the bill clearly accommodated the stipulations raised by the BCC.

Another disputed issue connected with the contents of the law on lobbying consisted of the problem of inclusion or exclusion of local self-government authorities from the scope of the Act. In the course of the work on the bill some voices were raised claiming that lobbying existed also in the case of decision making at the local level and that territorial self-governments should not be excluded from the scope of regulation covered by it. On the other hand, it was pointed out that local law as such was of a different nature than the legislation adopted at the central level. Nevertheless, it was noted that transparency of decision making at the local level should not in any case be diminished. This was finally stated in Article 2 of the Act, where it was laid down *expressis verbis* that lobbying activities consists of "any actions conducted by legally allowed methods, leading to the exertion of influence upon the organs of public authority in the process of lawmaking".

For the above reasons the newly adopted law on lobbying ultimately did not include that territorial self-governments disclose to the public the programmes of their legislative work (as is the case with the Council of Ministers or other central authorities). Nevertheless, the territorial self-government was also not excluded from the sphere of lobbying activities. During the work of the Committee, the respective expert studies noted the obvious fact that the concept of public authority comprises also the territorial self-government, so it is ascertained that the provisions referring to public authorities are also applicable to that level of administration. This concerns also Article 14, which refers to the right to conduct activities on the premises of public bodies, Articles 15, 16 and 17 dealing with the co-operation between the lobbyist and the organs of public authority. In addition, also Article 18, which requires representatives of public authority to give information about lobbying activities conducted with respect to such bodies, covers by its scope the territorial self-government.

The provisions concerning so-called "public hearing" should also be interpreted in the same sense. As the units of territorial self-government are not required, according to the Act, to disclose their legislative plans to the general public (Articles 3-8), it should unequivocally follow from the above that the institution of the "public hearing", described in Articles 8 and 9, does not apply to local authorities.

Recapitulating the description of the essential changes proposed by the Extraordinary Committee and eventually finally adopted by the Sejm and Senate, it should be indicated that the principal orientation was shifted from being restrictive to stressing the transparency of legislative proceedings. Access to legislative work was granted to persons and firms interested in influencing their course, but on the other hand it was required to inform the public opinion of any attempt at influencing such activities. The Government's draft law was directed to control the bodies undertaking lobbying activities, including not only business companies but also political parties, business organisations and NGOs. The general change in approach supported by MPs and experts shifted the emphasis from the bodies undertaking lobbying activities to increased transparency and accountability in the public administration.

Although no restrictions were imposed with respect to access to lobbying activities, it was required that every person or firm should publicly disclose information on such operations, whom it represents and which emerging regulations lie within the scope of its interest. These changes should definitely support the overt disclosure of lobbying activities and prevent anyone from taking advantage of informal relations for the purposes of its conduct. Sanctions imposed upon persons conducting unregistered lobbying activities should also restrain the use of informal influences.

3. Contents of the Act

The Act describes the principles of conducting lobbying activities. According to its text, lobbying ("lobbying activities") consists of actions conducted by legally admissible methods, seeking to exert influence upon the organs of public authority in the course of the law-making process. It is applied in order to ensure that the arguments and interests of determined social or professional groups shall be taken into account in the verdicts that it adopts.

The Act also introduces the notion of "professional lobbying activity**".** This implies lobbying on behalf of other persons in exchange for money. As construed in the Law, professional lobbying operations consist of gainful lobbying activities conducted on behalf of third parties with the purpose of the interests of such persons being taken into account in the process of enacting the Law. Professional lobbying activity may be exercised by an entrepreneur or by a physical person not being an entrepreneur on the basis of a civil law contract.

Entities conducting such activities must only notify their data to the appropriate publicly accessible register. The Minister of the Interior and Administration is indeed required to keep such a register of entities professionally conducting lobbying activities, in the form of a data base recorded on media used in information technology as construed in the respective provisions of the Act on the implementation of information technology for the purpose of the operation of those entities that perform public tasks.

Lobbying may also be practiced by organisations and associations, the objective of which consists of the protection and propagation of the interests of their members.

Professional lobbying without any entry in the register is to be exposed to the sanction of a fine. An entity, which performs activities included within the scope of professional lobbying activities without any entry in the register, shall be subject to punishment by a fine ranging from PLN 3,000 to PLN 50,000[8]. Such punishment is to be imposed by way of an administrative decision by the Minister of the Interior and Administration. When determining the value of the monetary penalty the degree of the influence of the lobbyist upon a determined decision of an organ of public authority concerning the making of the law is to be established, as well as the scope and nature of the activities undertaken by such an entity within the scope of professional lobbying activities. The monetary fine shall be possible to be imposed many times

8. 1€ is approximately 4 PLN (a fine ranges from €750 to €12,500).

over, if the activities pertaining to the scope of professional lobbying activities were continued without due entry in the register.

At least once every six months the Government shall prepare a programme of legislative work concerning draft laws, which shall be published on the Web site of Public Information Bulletin. In that programme also any fact of resignation from work on a given draft law stall be taken into account, together with the indication of the causes behind such resignation.

Similar programmes of legislative work concern draft ordinances. These are to be prepared by the Council of Ministers, the Chairman of the Council of Ministers, and by the individual Ministers.

Draft laws and ordinances stall be disclosed in the Public Information Bulletin (BIP - *Biuletyn Informacji Publicznej*) once they have been transmitted for co-ordinating consultations with the members of the Council of Ministers. Similarly, all documents concerning the work on any such draft shall also be published.

After publication anyone shall be able to submit the "notification of interest" (on an official form) in the work on the draft laws or ordinance to the body responsible for the preparation of such a draft. Such a notification shall also be published in the BIP.

Subsequently, the notifying party shall be able to present its opinion concerning the specific draft (the institution of so called "public hearing").

The body responsible for preparing a draft ordinance shall be able to conduct the public hearing concerning such a draft. Information concerning the timing of the public hearing concerning a draft ordinance shall be made available in the BIP at least 7 days prior to the date of the respective public hearing. Any party, which had submitted its interest in the work on the draft ordinance at least 3 days before the date of the public hearing shall be entitled to participate in such a public hearing.

A public hearing concerning a bill already introduced to the Sejm shall be able to be conducted in accordance with the principles specified in the procedural rules of Parliament. In such a case, a party that had submitted its notification of interest in the work on the bill shall be able to participate in the public hearing concerning such a draft in accordance with the principles specified in the procedural rules of the Sejm.

Important provisions introduced by the discussed Act consist of the adoption of the requirement to give information about assistants and voluntary assistants of parliamentarians and ministers, employees of political cabinets of ministers and staff of the parliamentary caucuses. Indeed, amendments are being introduced to the following legislative Acts: the Act of 9 May 1996, concerning the performance of the mandate of deputy and senator; the Act of 8 August 1996 on the Council of Ministers. Leaders of the parliamentary caucuses, deputies and senators, as well as minister, are now required to publicly disclose the following information concerning their above indicated collaborators:

1. Family and Christian name (names);

2. Date of birth;

3. Places of employment over a period of three years preceding the date on which the respective person became an employee of the office of a parliamentary caucus or political group, or a voluntary collaborator;

4. Sources of income over the three year period preceding the date on which the respective person became an employee of the office of a parliamentary caucus or political group, or its voluntary collaborator;

5. Information concerning the performed business activities over the three year period preceding the date on which the respective person became an employee of the office of a parliamentary caucus or political group, or its voluntary collaborator.

4. Further steps required of the Government Administration by the Act

It should be noted that in the course of the work of the Extraordinary Committee the main burden of the duties imposed by the Act in order to ensure full transparency of legislative activities was imposed upon the public administration.

It is necessary to draw attention here to a number of tasks that must be fulfilled by the organs of the administration. The first one consists of the preparation by the Council of Ministers and by particular ministers of the principles governing the drafting and public disclosure of the programmes of legislative work. Such programmes should be prepared at least once every six months and be publicly disclosed in compliance with the requirements of the Act on Access to Public Information. It should be noted here that in accordance with the provisions of that Act any changes occurring within the domain of public information should be disclosed within 24 hours in the electronic Public Information Bulletin (BIP). There is no doubt that as a consequence of these requirements the Chairman of the Council of Ministers and the particular ministers must prepare decrees imposing such duties upon the ministries and specifying the respective modes of procedure, as well as naming the competent organs in charge of execution of such duties. It would undoubtedly be helpful, if the same format of public disclosure of legislative programmes were applied at all public bodies.

Another necessity consists of the application of internal orders to regulate the mode of co-operation with lobbyists on the premises of the buildings of the public administration, as Article 14 of the Act allows for the performance of lobbying activities on the premises of the public administration and requires the heads of public offices to grant access to the rooms and appropriate representation of interests of their clients.

Also the Sejm and Senate have been obliged to introduce appropriate changes in order to specify the rules governing the performance of lobbying activities on their premises. It should be noted that currently the course of legislative work of both chambers of Parliament is publicly disclosed and accessible on the Web sites of both institutions.

Another obligation imposed upon the public administration – affecting in this case the Minister of the Interior and Administration – consists of the organisation of the working of the register of firms conducting lobbying activities, together with the respective rules and procedures, as well as formats of the documents connected with the operation of this register. It is also necessary to prepare and publish the model of a certificate confirming the entry to the register of lobbying firms.

It should also be noted that it is necessary to prepare and approve the procedures connected with the publication of information disclosed by public offices on lobbying activities conducted within the scope of their competencies.

The obligations formulated above require the heads of particular ministries and offices to prepare appropriate orders regulating the above tasks.

At the same time, it should be noted that a number of activities, required of the entities conducting business operations, need to be regulated by competent representatives of the public administration. It is necessary to develop rules determining whether particular actions are indeed regarded as lobbying activities, so as not to allow any uncertainty regarding both public officials and those conducting lobbying activities. At the same time, for the needs of the register of lobbying firms it is necessary to prepare a model registration form used for submissions to that register. The Act requires the Minister of the Interior and Administration to issue the respective ordinance, in which he stall specify all the rules and procedures attached to this matter.

The Council of Ministers must also issue an ordinance specifying the procedure for the notification of interest in the work on a draft law or ordinance, including a format of the notification form.

Moreover, any person conducting lobbying activities is obliged to inform the organs of public authority in a written statement containing the indication of the entities, on behalf of which it conducts such activities. It is necessary to develop procedures for the public disclosure of such information provided by the entrepreneur.

The Presidium of the Sejm will have to focus, above all, on the prompt amendment of the rules of procedure of the Sejm, so as to regulate the whole procedure of work on bills accordingly, starting from the time of receipt of a proposal and ending with the actual adoption of the final legislative Act.

In the rules of procedure of the Sejm and in the implementing executive provisions of the public administration one should also additionally specify the mode of conduct by chair persons of the parliamentary committees and heads of public offices as they preside over the public hearings in the course of the work on legislative Acts and other legal Acts. The Act only mentions the institution, but it does not determine the way in which the respective work should be documented in this regard.

It should be noted that all the above requirements should be implemented by 7 March 2006, date of entry into force of the Act.

It is also necessary to define the mechanisms of evaluation pointing at the effectiveness of operation of the Act and the mechanisms making it effective. The author shares the opinion that government should take three steps to evaluate “the lobbying law”:

1. The first step is to consult – after one year of existence of the law – public opinion on the bad and good practices. This could support and improve not only the law, but also the implementing decrees regulating the administration activity.

2. The second step is to review lobbying activities and criminal events related to the new law and actual lobbying practices. Every year it should be analysed and the results presented to the Minister of the Interior and Public Administration.

3. The third step is to consult the representatives of the local self-governments on the problem of lobbying at the local level and to prepare a report on this problem.

Those activities (one regular and two one-off) would be very helpful to determine how the new act functions and what improvements should be undertaken.

5. Critical opinions about the new Act

The Act on Lobbying adopted by the Sejm provoked major doubts from the very outset and it should be stressed that criticism came from various sources, whereas its manifestations were often contradictory.

The first and most serious criticism consists of the statement that the Act establishes a subjective catalogue of legislative institutions, which are obliged, as it were, to be open to lobbyists, but for unknown reasons the range of such institutions does not include the President of the Republic of Poland. Another criticism with regards to the Act concerns the control measures applicable to lobbying activities. Control should be handled by officials of the same institutions, which are at the same time subject to lobbying activities. According to the critics, such a solution risks leading to excessive discretion and lack uniformity of control criteria, and also a serious risk of exposure to conflicts of interests emerges from it. For similar reasons the Act was criticised by the Association of Professional Lobbyists in Poland. That organisation has pointed out that the Act was drafted at a hurry, the reasons for which are difficult to understand, whereas some of its provisions reflect outright wishful thinking (e.g. the enigmatic provision stating that the heads of public offices are obliged to assure appropriate conditions for the conduct of lobbying activities). Provisions concerning the public hearings organised by the ministries also seem rather unfortunate. Article 9 Paragraph 4 states that if "... due to constraints of the available rooms, in particular owing to the number of persons wishing to participate in a public hearing, it is not feasible to organise a public hearing concerning a draft regulation, the entity entitled to its organisation may: (...) cancel the public hearing, disclosing the reasons behind such cancellation in the Public Information Bulletin (BIP)". This provision might provide opportunities for irregularities, owing to the fact that it enables the ministries to evade the institution of the public hearing.

According to the opinion of the Polish Confederation of Private Employers "Lewiatan" (Leviathan), grouping a number of major business enterprises in the country, the regulation adopted by the Sejm does not resolve the problem of corrupt lobbying, as it does not contain any regulations granting the active lobbyists such rights as to motivate them to leave the "shadow economy". According to the authors of the respective statements of that organisation, only balanced duties and rights on the part of entities performing professional lobbying activities, extending beyond the scope of the rights to which each and every citizen is entitled to by virtue of the law, can cause the disappearance of the grey zone in the environment of lobbyists. The purpose of the newly introduced regulation ought to consist of elimination from political life of the phenomenon of pathological lobbying, connected with corruption, with the use of informal connections at the interface between politics and business. The newly created regulation should therefore motivate representatives advocating particular interests to conduct their activities in an open manner in compliance with the law, by means of vesting them with rights and privileges obtained in connection with the undertaking of lobbying activities in a way compliant with the respective regulations. Entities conducting lobbying activities as defined in the respective provisions of the law, should by virtue of the law have guaranteed access to information of interest to them, also through contact with public official, the right to participate in consultative conferences, sub-committees and committees of the Sejm and Senate, as well as to attend plenary sessions of Parliament. Such privileges ought to balance, if not overweigh, the duties imposed upon the entities conducting lobbying activities and should extend beyond the rights granted to any other entity by virtue of the law.

In the light of the provisions of the Constitution in force in Poland, in the light also of the rights stemming from the provisions of the Act on Access to Public Information, every citizen of the Republic of Poland has rather broadly defined rights in this regard. In connection with the above, only the granting to entities performing lobbying activities of relatively wide ranking and distinct privileges will cause the weakening of the grey zone of activities existing in this sphere and the "economic viability" of conducting lobbying activities in an open and official manner. Provisions going in the above described direction ought to be reinforced by self-regulation of the professional practitioners of lobbying activities, who, in their own self-interest motivated by the need to gain the confidence of addressees of their activities and of public opinion, should be interested in purging itself of pathologies and pejorative connotations associated with the notion of "lobbying". The Act adopted by the Sejm does not meet the assumptions noted above. The only clearly specified right granted to the entities conducting professional lobbying activities, according to the Act in question, consists of the entitlement to participate in the public hearing, which may but need not

necessarily be organised by the body responsible for the fate of the given draft law. According to the judgement of the author, this is definitely not enough.

The Act completely disregards the issue of social partners, whose legitimate entitlement to take action in the course of the law-making process is undisputable and is deeply vested in our system of creation of the law. Those bodies, by virtue of the law, participate in the process of consultation of the developed provisions of the law, expressing by the same token their opinions in this regard and taking actions intended to lead to the achievement of an intended result. Therefore, they conduct lobbying activities, but the rights associated with their performance stem in their case from other regulations, whereas the years during which they have been performing such activities have demonstrated that these entities have strongly and positively contributed to the process of consulting the enacted laws. It is not without justified reasons that they are regarded as an important and inalienable element of social reality, vital for the proper functioning of the democratic state. It is indeed owing to the above considerations that the social partners, due to their own mode of conduct of activities, based on the Act regulating lobbying activities, should be recognised as entities conducting such very activities and therefore the same Act should reinforce their rights, although in the sphere of duties their position should not be levelled with the positioning of the entities professionally practicing lobbying. After all, the role and thereby also the social position of entities acting without remuneration is different, when confined to the scope of statutory rights of promoting the interests of the totality of entities associated within their bounds, from the role of an entity acting in return for remuneration as commissioned individually by an entity interested in obtaining a specific legal solution. Even if the intended effects of the activities of both of such groups may be concurrent (achievement of an intended result), the goals and motives motivating both groups are quite different.

Also, representatives of non-government organisations have pointed to a number of problems connected with the threats to which their activities were exposed by the Act on Lobbying. According to some experts, the distinction between professional and non-professional lobbying activity was only theoretically resolving the problem of those organisations, which would not wish to be treated in this case in the same way as commercial lobbyists. It should be noted that although the organisations, which would like to occasionally lobby in favour of determined legal solutions, have not been made subject to any additional registration, control or other requirements stemming from the Act, they are also not covered by the provisions requiring the heads of public offices to facilitate lobbying activities. Theoretically, therefore, organisations not acting in the capacity of professional lobbyists also do not enjoy the rights to conduct lobbying activities on the premises of public offices and cannot count on their assistance. If we add to this the fact that the very definition of lobbying is imperfect (as it mentions very generally any kind of “activities leasing to exertion of influence upon the bodies of public authority in the course of the law-making process”), it might suddenly turn out that the soft advocacy of interests, such as took place, for example, on the occasion of the work on the Act on Activities for the Public Benefit and Voluntary Activities, will now be included in the scope of professional lobbying activities and might require, for example, the hiring by non-government organisations of some professional lobbyist. Already now we receive signals that representatives of non-government organisations are unwelcome at some of the Parliamentary Committees and by certain deputies. There are reasons for concern that the Act on Lobbying in the process of creation of the law might provide a pretext for the limitation of the already rather insignificant role of non-government organisations in this process. Therefore, according to some independent experts, one cannot determine with any certainty, whether the Act on Lobbying will in the future obstruct or assist these organisations in their dialogue with public institutions.

6. Remaining challenges

The basic threat facing the implementation of the Act on Lobbying in the law-making process is the short interval between its approval and its entry into force. One should raise the question whether the Polish public administration will manage to prepare on time all the appropriate procedures and ordinances

necessary for the implementation of the tasks imposed upon it by the said Act. The time of entry into force of this Act requires the respective actions to be taken promptly.

The role of social and business organisations in the context of lobbying activities is still not defined clearly. Nevertheless, the task of resolving such doubts should be assigned not only to the public administration, but also to the circles of entrepreneurs conducting such activities and to non-government social organisations. Also the role of the media of public communications cannot be overestimated in this regard. There is no doubt that lobbying should be absolutely open and transparent, but it should also be subject to social control.

Some experts point out that in spite of the existence of a public register of lobbying firms, in the course of actual lobbying activities, there will often be no clear indication for all persons involved that one is dealing with a lobbyist. It might be necessary to apply the same rules of behaviour as those existing already in some other countries, for example such as the requirement to wear appropriate identification badges.

7. Positive aspects of the new Act on Lobbying

In spite of a number of critical remarks addressed at the Act on Lobbying in the law-making process, one should underline its substantial value and significance for combating corruption and assuring transparency of activities of public administration. A number of critical comments addressed at the draft law were taken into account in the course of the work of the Extraordinary Committee and the present regulations are clearly oriented to assure open and transparent conduct. At the present stage, the efficient operation of the public administration on the basis of the recently adopted Act is much more important than any further amendment of legal regulations.

Yet one more very positive aspect of the Act merits to be underlined: it will result in the enhancement of the professional approach to lobbying activities – without creating a closed corporation on the one hand, and at the same time definitely strengthening the professional community of lobbyists. Thanks to this Act, all the activities based on personal connections and peculiar arrangements between the worlds of politics and business ought to be eliminated. The cause enhancing this process will consist not only of the increased transparency of the legislative processes, but also of the competition between lobbying firms, which will certainly fight off any unfair competition.

In the "Lobbying Law" aimed at strictly focusing on the problem of the preparation of laws, many experts notice that the law makes no mention of the public administration, and consider it a mistake. The answer to this seems quite simple. However, for a balanced view the following should be taken into consideration:

- First, the "Lobbying Law" was a response specific to the affairs described in the first part of this paper.
- Second, the aim of the new law is to make the law-making process transparent. It does not regulate the lobbying activities in other areas. Those areas are regulated by the other Acts, such as the Public Procurement Law[9], the Anti-corruption Law[10], the Criminal Code[11], etc. The Extraordinary Committee took the view that it is better to make improvements in a specific area rather than to try to improve everything.

9. http://isip.sejm.gov.pl/prawo/index.html
10. http://www.abc.com.pl/serwis/du/1997/0679.htm
11. http://www.mswia.gov.pl/index.php?dzial=57&id=1793