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Regulating lobbying in Poland: Background, scope and expectations

Background

The Polish Parliament (Sejm), on July 2005 enacted Act on Lobbying in the legislative process. The Act was received as a part of very hot debate about low standards of Polish democracy and political institutions. **For the first time in Polish history the Parliament regulated lobbying activities.** At the same time high percentage of Poles has negative connotation with the term “lobbying”. According to the public opinion surveys, majority of Poles see lobbying and interest group politics as synonym of the corruption, illegal campaign financing, favouritism, and under-the-table campaign contributions. There are some reasons.

Rules and regulations (where they exist) **are often ignored in Poland.** Informal networks of friends and family contacts are dominating. Decision making tends to be secretive, no transparency like in Scandinavian countries. Official meeting is often less important than what happens before and after. There are legacy of communist dictatorship and anti-institutional political culture of society. Without the effectively functioning mechanism of rules and sanctions informal networks often transform to the forms of political corruption, bribery, nepotism, clientelism etc.²

Furthermore, **common reliance and confidence domestic institutions in Poland is the lowest in the European Union** countries. According to the results from Eurobarometer survey carried out in spring 2006, in Poland trust in political parties (9%) is the lowest in the whole EU. The level of trust in government (22%), the parliament (13%) and the justice

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² K. Jasiński, M. Mołęda-Zdziech, U. Kurczewska, *Lobbying* [Lobbying], Cracow 2006, p. 199-212.

system (29%) is very low. The majority of Poles (58%) is not satisfied with the way democracy works in Poland.³ Many citizens show symptoms of political apathy, disaffection and alienation.⁴ Lobbying and groups of interest are a part of domestic institutions and has had the same problems with “deficit of trust”.

Moreover, **“lobbyist” and “lobbying” has a very negative image in Polish media.** Most journalist are presenting them selectively: mainly in context of bribery scandals and political corruptions. (“Yesterdays a famous lobbyist was arrested”). They are rarely speaking about systemic determinants of political group of interest, as inefficient government and weak civil society or positive aspect of lobbying – like anticorruption activity of NGOs and media, human rights organisations etc.

Poland is a parliamentary democracy, characterized by rather **large and unstable governments** which, for all of the post-communism period, have been formed by minimum two party coalitions. Often the country has been run by minority government. Due to a **fragmented party system**, at least six, and more, national parties are represented in the Parliament. Poland has developed forms of party government (as Italian *partitocrazia*), which is characterized by **dominance of political parties from the various sectors of political system, of society and even of the economy**, where large public sector is still dominating, especially big states companies (public media, railways, post, aviation, energetic industry, coal mining industry).

There are party practices of appropriating and parcelling out all top decision-making and managerial positions in the administration sector at all levels and in the public and semi-

³ European Commission, Eurobarometer 65, Public Opinion in the European Union, *Poland*, Spring 2006, p. 3. Macro-structural determinants of variations in legitimacy related to economic development, political system, degree of corruption and social structure by data comes from of European Social Survey discussed H. Domański, *Legitymizacja systemu politycznego w dwudziestu jeden krajach*, “Studia Socjologiczne” 2/2005, [Legitimization of Political System in Twenty One Countries], p. 5-39.

⁴ Poland show a very low turnout at parliamentary elections: in 2001 – 46,3%; 2005 – 40,1%, at European elections 2004 - 20,9%.

public sectors of industry. It is a new version of old communist practice of the so-called “nomenclatura system”. Contemporary Poland has had “**multi-nomenclatures system**”, two or more party parcelling top ministerial positions, often competing for prerogatives and responsibilities.⁵

After collapse of communism, Poland changed simultaneously political and economical systems, and also the interest-group system. In local context there are completely new important players in the lobbying game, as an individual business persons, private companies, business associations, media and NGOs or international organisations, multinationals etc. The consequences of this systemic changes are envisaged by **serious problems with adaptations to the new situation rules and institutions**. There is a **national issue of corruption** which was an indirect product of the systemic changes. On the other hand, corruption was nurtured and planned by politicians at the heart of power, as political party patronage, especially at the public administration and the state-owned companies.

As a consequence, there have been many bribery and corruption scandals involving the top governmental and parliamentary politicians which were connected with public procurement, privatisations and the legislative process. In Poland since the end of 90s. there can be observed **three main strategies for better regulation** of the political system and interest group politics against corruption: 1) regulation of behaviour of persons who hold a public function, officials, civil servants, MPs and their staff; 2) special juridical regulation, like the act on lobbying in the legislative process and 3) self-regulation, guidelines for professional conduct or ethics rules of lobbyist associations and practitioners.

Most of them are common in EU countries – like laws and ethics regulations of behaviour of officials and their staff from the government, parliament etc. (avoid conflict of interest, access to documents, consultations with NGO) or professional self-regulation, as a code of

⁵ According A. Agh equivalent of Italia *partitocrazia* in post-communist countries of Central Europe is term *partyist* which means big influence of political parties in economy, corruption, and social apathy and weak legitimization of new system. A. Agh, *The Politics of Central Europe*, London 1998, p. 11-13.

The Association of Accredited Lobbyist to the European Parliament. Another point is the result of impact of American tradition within this issue: special legislatives such as Federal Regulation of Lobbying Act (1946) and new Lobbying Disclosure Act (1995). All this strategies are prevailing in Poland. However, application of those regulations in practice is far from expectations.

Scope

In Poland there are many regulations which are indirectly regulating the lobbying activities, as the constitutional principle of the right of people to petition, the right of the free speech and press, the right of civic association, protest and opposition, or the right of the access to public information. Like many EU countries, Poland has had many consultative procedures and institutions for lobbying activities, like tripartite committee for socio-economic issues or different governmental and sectoral bodies, councils, comities etc. **The Act on lobbying is only one part of regulations in this sphere of public activity.**⁶

The Act determines the rules of open lobbying in the legislative process, rules of performance of professional lobbying activities, the forms of professional lobbying supervision, the rules of keeping a register of entities pursuing professional lobbying activities and sanctions for violations of the provisions of this act. Within the meaning of the Act, **“lobbying activities” or “lobbying” shall include any activities pursued by any legally permissible means**, aimed at exercising influence over bodies of public authority in the legislative process, only at central, governmental and parliamentary level. **“Professional lobbying”** shall include lobbying activities pursued for a fee on behalf of third parties, so that

⁶ *Ustawa o działalności lobbingsowej w procesie stanowienia prawa* [Act on lobbying in the legislative process], passed on 7 July 2005, in: *Dziennik Ustaw* [Law Journal] 2005 no 169, item 1414. The public debates and different initiatives for a lobbying law started in Poland at 1995. In the House of Deputies in 2002-2005 worked special parliamentary commission for preparation the act on lobbying. Regulations of lobbying activities by law recommended Poland many domestic experts and also experts from EU and The World Bank. See, UE Accession Monitoring Program 2002, *Corruption and Anti-corruption Policy in Poland*, www.eumap.org, p. 400-404.

the interests of such parties can be accounted for in the legislative process. Professional lobbying may be pursued by a business entity or by an individual entity, under a civil-law contract.

According to the Act, the Council of Ministers shall prepare, at least once every 6 months, a program of **the Council's legislative** works related to **draft bills**. The program shall include, in particular: concise information about the cause and need for introduction of the solutions to be included in the draft bill; indication of the essence of the solutions to be included in the draft bill; indication of the body responsible for development of the draft bill; name and position or function of the person responsible for preparation of the draft bill; a Web page address of the official IT bulletin – the Public Information Bulletin, which shall **publish the public documents**. Any documents related to works on the draft shall also be published in the Public Information Bulletin. Anyone may notify such person's interest in the works on a draft bill or decree. The Act also specifies the body responsible for development of a draft bill or decree and details of further work.

The Act introduces the new institution in the Polish law – **public hearing** related to such draft held on the basis of the rules of the Parliament. The Council of Ministers determines the manner of carrying out public hearings related to draft decrees and the manner of documenting their progress. Act created register of professional lobbying and rules of lobbying, especially access for lobbyists to public authority bodies. Each year information about activities undertaken by such bodies in the preceding year shall be prepared by entities exercising professional lobbying. Act establishes an obligation to transfer information from parliamentary clubs about their staff to speakers of two chambers of parliament, Sejm and Senat. The same duty has been assigned to ministers to prime minister. Act also establishes sanctions for violations of the provisions, penalties for professional lobbying activities without being entered into a register.

The Act on lobbying was a part of more broad approach to the better regulation of the political system and interest group politics. In last years in Poland in this subject the most dynamic changes were the regulations of behaviour concerning any person who performs a function within the public sector and administers or participates in decision-making concerning public assets. Since 1997 a number of legislative and other measures have been introduced, as bribery legislation in the Polish Penal Code, provisions to prevent abuse of conflict of interest, restrictions on ancillary activities, asset declarations, register of benefits, regulations of the social dialogue and industrial disputes, access to public information, reinforcement of internal control mechanism and audit in public administration or legislative framework of political party finance.

Part from this changes were the **indirect impact of the EU accession process**, as EU Regular Report “anti-corruption policy” recommendations. For example, the enforcement of the new public administration system, institutional building and harmonisation of law with UE standards. Another, like the extensive amendments to the Public Procurement Act in 2001, were passed in order to make procurement legislation fully **compatible with the EU directives**.

Many important measures have been reinforced by **Sejm which improved transparency of legislative process** by open access to the parliamentary documents, drafts of bills, opinions, notations, bulletins etc., and to another information about the legislative process via Website. Internal procedure of the legislative process is more restricted and transparent. For example – commission sessions are recorded on tape recorder, all amendments of legislations draft shall include the write form and all statements from commission shall include names of deputies which were their proponents.

This stream has been also envisaged in the governmental administration - Civil Service Act and another procedure and regulations, as rules concerning access to public

information, the recruitment, internal control and audit mechanism or asset monitoring. The Head of the Civil Service has been appointed for five years by the Prime Minister on the advice of the Civil Service. The Head was responsible for monitoring adherence to civil service principle and other activities, including organisation of competitive recruitment and examinations for senior positions.

Polish lobbyists, as compared with this stream of changes, are yet in the early phase of self-organisation and professionalisation. In 2003 certain firms and agencies established The Association of Professional Lobbyist in Poland (Stowarzyszenie Profesjonalnych Lobbystów w Polsce, SPLP). The Association developed a code of professional ethics. In practice, SPLP is a passive organization, functioning outside media and public opinion perception. (The Association has had only few members, limited resources and problems with a negative image in media).

Generally speaking, **most formal regulations in Poland are compatible with European standards and EU directives. Still, implementation of these regulations in practice remains unsatisfactory.** In the last years, corruption has become a serious political issue. Widespread character of scandals and their level involving top officials and business person indicate that many provisions and regulations have been ineffective, and generally not applied in practice. In many cases **the law has not been enforced and violations are common practice** (as the Act on Limiting Conduct of Economic Activities by Public Officials, monitoring of asset declaration, register of benefits, party finance etc.). **Transparency, internal control mechanism and audit in public administration are weak.** In practice **ethics guidelines concerning professional conduct are seldom and poorly working.** The part of the new bills are poorly drafted.

For example, the Act on lobbying in the legislative process leads to **uneven status of lobbyist**, different access to the decision makers, and the register and supervision of their

activity. The Act is repressive for professional lobbyist (persons, firms, companies) but not repressive for another lobbyist formally non-professional, like business associates or NGOs. Within the meaning of the Act **professional lobbyist has many duties**: shall keep register in the form of data based on recorded IT data, the entry into the register is made for a fee, and lobbyist shall keep information and many documents connected with their activity to the government administration. Managers of offices servicing public authority bodies shall check out the lobbyist in the register and shall prepare written information of activities undertaken towards such bodies in by entities exercising professional lobbying.

In practice **new procedure of public hearing is poorly working**. According to Act on lobbying there is no obligation for government and parliament to organize of public hearing procedure.⁷ At the time official register of lobbying in ministry of public administration include about sixty lobbyist – no one is famous and very important player in this game.⁸

Expectations

Further evolution of lobbying regulations in Poland, like another regulation in public sphere too, **is not clear** owing to three major reasons: 1) controversy toward model of Polish democracy; 2) political instability and 3) quality and composition of the new government. In the last years the most hot political issue in Poland is the crisis of effectiveness of government, low standard of democracy and corruption.

This issue was the main reasons for failure of Leszek Miller government and Democratic Left Alliance (Sojusz Lewicy Demokratycznej, SLD) which lead Poland to 2004 accession in EU. The prevalence of corruption has been a favorable condition for growing support for the most radical and populist parties. In autumn 2005 **parliamentary and presidential elections**

⁷ In 2006 was only one case of this procedure: discussion in Sejm about draft of new Polish Penal Code by project Ministry of Justice.

⁸ Some members of special commission for preparation the act on lobbying in the House of Deputies mentioned, that the act on lobbying shall rewrite in maybe over two years of practice experience.

was won by the right wing conservative party **Law and Justice** (Prawo i Sprawiedliwość, PiS). Lech Kaczyński has been elected for the president of Poland. Prime minister and leader of the winning party (PiS) in the parliament is his twin brother - Jarosław Kaczyński. Their priority is to press ahead with the **“moral regeneration”** of Poland, which implies sharp criticism of both its communist history and the injustice of the past sixteen years. **The new government has began questioning the accomplishment of Poland’s democracy from 1989 to 2005.** The leaders of PiS are trying to modify Polish political and constitutional system **towards more centralised, semi-presidential state**, with strong executive branch, so called “the Fourth Republic” (IV Rzeczpospolita), as the Fife Republic in France.

Currently, national **politics in Poland is unstable and in turmoil.** The new government is formed by coalition between PiS and two small radical, extremist parties: a leftist agrarian populist party Self-Defence (Samoobrona) and the right wing, anti-UE, nationalist and traditionalistic catholic League of Polish Families (Liga Rodzin Polskich, LPR) which deliberately conflates homosexuality with paedophilia, declares reinstatement of death penalty and far-right curriculum to schools (as to eliminate of Darwinian Theory). **No personal stability in government.** In less than a year, there were the two prime ministers, two minister of foreign affairs and four ministers of finance.

The continued economic growth needs more reform, which depends on better government. The different priorities of coalitions parties result in a fact that **no serious efforts to implement vital economic reforms have been undertaken**, such as the budget reforms, taxation reforms and reforms aimed at enhancing entrepreneurship through alleviating the problems that business faces in their operations.

The chances that the biggest party (PiS) will create a stable coalition government are rather low. There is instability in the lower house of Parliament, many personal conflicts in the government and **weak parliamentary majority.** The governmental coalition comprising

three parties and their political background in parliament has four parties in the House of Deputies. The early parliamentary elections is possible at any time. **There is no political consensus** about institutional form of democracy in Poland. **No dialog** between the government and opposition in parliament has been undertaken.

Kaczyński brothers has ruled over for one year in series of **shaky coalitions**, and many governmentally and parliamentary crises. The new governmental leaders have a **very controversial style and political language**. For example, deputy defence minister officially declared (without any evidence), that most of the ministers of foreign affairs since 1989 were the soviet spies.⁹ This kind of accusations take place almost every day under Law and Justice government. **In the government there are many amateurish and inexperienced politicians**, especially in foreign affairs, social policy and economic management in state owned companies. Moral and professional quality of the new governmental coalition is low. Some parties, like Self-Defence, consist of many politicians with judgment and criminal past, without serious expert and institutional basis.

Main political parties, especially Law and Justice and the opposition liberal-conservative party Civic Platform (Platforma Obywatelska, PO) are in permanent **confrontation**. A new left wing grouping - United Poland Alliance (Porozumienie Wspólna Polska, PWP) comprise the four political parties,¹⁰ lacks in a charismatic leader (it comprises elderly politicians or not trustworthy), and lacks in internal integration and serious program. The government is in **conflict with private media** because there are critical for the new political leadership as anti-liberal and populist.¹¹ The government has just created a single financial regulator to weaken

⁹ Law and Justice politicians often criticized leaders of opposition parties, media and academic expert in old-style communist propaganda language, that always tried to blame “certain forces” for any misfortunes suffered by the government.

¹⁰ The United Poland Alliance including: the Democratic Left Alliance (Sojusz Lewicy Demokratycznej, SLD), Social-democracy Poland (Socjaldemokracja Rzeczypospolitej Polskiej, SdPI), the Democratic Party (Partia Demokratyczna, PD) and the Labour Union (Unia Pracy, UP).

¹¹ Media often criticized chaotic organisation, poor staff and inexperience have led to a series of gaffes, as an conflict of the president Lech Kaczyński chancellery with a minor German daily after their satirical article.

the central bank. Outsiders have leapt to defend their independence, including the European Central Bank. Leaders of PiS also **criticized the Constitutional Tribunal**, because the Tribunal declared activities of the parliamentary investigating commission concerning privatization of the banking sector to be illegal, including the economic reforms undertaken by Leszek Balcerowicz under various governments.¹² **The government has been very concerned about reforms in the intelligence services, defence and criminal justice.** Much energy has gone to spies – “old” and “new”. The government has been ineffective in reforming the state bureaucracy and in using UE money for big infrastructure project.

In practise the politics of the government are **counterproductive** towards the lobbying activities. It remains a paradox that “moral regeneration” politics of Law and Justice are open towards the most populist and radical parties and “suspicious” politicians. Inexperienced politicians from extremist parties depreciate standards of public management and administration. **Public institution are again being politicised.** A good indicator of this tendency is **abolition of The Head of the Civil Service**, civil service autonomy and meritocracy, especially abolition of organisation of competitive recruitment and examinations for senior positions. Now all central government administration units are under direct control of prime minister chancellery according to principles of *partitocrazia*.

In addition to this, there is an unlimited **patronage appointment** to state agencies and the state companies. The same problem appears in the prosecution system (no separation between positions of Minister of Justice and Prosecutor General), Prosecutor General is used for PR political campaign, no legitimate detentions of “non-convenient” people etc.).¹³

¹² Fortunately now Poland’s economy is booming and public finances are buoyant. Growth this year will be over 5%; inflation is the lowest in the EU; unemployment is coming down to 15% (but in some regions unemployment is more than 30%; according to the Eurostat six of the polish regions are the poorest regions of EU). More people, especially young people, vote with their feet; they feel poorly treated at home, ill paid, and frustrated. They are looking for better opportunities abroad. According only the British Office of Migration estimates that since Poland’s EU accession in 2004, around 700.000 Poles have migrated to the British Isles.

¹³ For example, former treasure minister Emil Wąsacz was arrested by officers of the intelligence service. The judicature verdict was, that no formal reasons for this action. See: K. Wójcik, *Zatrzymanie Wąsacza bezzasadne*, [Wąsacz arrested was no legitimate], „Rzeczpospolita”, 28-29 October 2006, p. 3

The government established a new institution – the **Central Anticorruption Office** (Centralne Biuro Antykorupcyjne, CBA). But the new Office **has not enough independence** in order to clarify and coordinate anti-corruption policy. It is uncommon that anticorruption intelligence service stays under prime minister's control. Experts suggest creating an independent anti-corruption body like the Supreme Audit Chamber (Najwyższa Izba Kontroli, NIK) under control of parliament. Nevertheless, leaders of Law and Justice accept first of all such institutions that function under their personal or governmental control. This rules and principles are far from standards of better regulation policy, ethics of politics and transparency of public administration.