

# The development and regulation of lobbying in the new member states of the European Union

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- *This paper focuses on lobbying as a political activity and the emergence of lobbying regulation in 10 new member states of the European Union (EU). The analysis begins with general observations about lobbying in post-communist states and on the development of lobbying in three of the larger new member states: Hungary, Poland and the Czech Republic. Key to how lobbying will continue to develop in the future in these 10 countries is how it will be regulated and controlled. Therefore, the paper examines this in some detail. The analysis concludes with some recommendations on the role that could be played by professional bodies, which represent lobbyists in gaining more acceptance for interest groups in these new member states.*

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## **Introduction**

The European Union (EU) came into existence in 1992 as the successor to the European Community (EC) which was first established with six members as the European Economic Community (EEC) in 1957. The EU has almost doubled in recent years from 15 to 27. In 2004, 10 nations joined (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia), followed by Bulgaria and Romania in 2007. Given their shared communist past and location in central/eastern Europe, this paper examines 10 of the 12 new member states (excluding Cyprus and Malta). While the state dominated in commu-

nist regimes, there was nonetheless some space in which interest groups could operate (Skilling, 1966, 1983; Skilling and Griffiths, 1971). However, the transition from communism to democracy both permitted and necessitated a substantial increase in the number of interest groups and in the extent of their interaction with government, and this trend was intensified by preparations by these states to join the EU (Cox and Mason, 2000; Sopóci, 2001; Lissowska, 2004; Mansfeldova and Rakusanova, 2006; Vidačák, 2006). In the last decade, much academic work in the area of European studies has focused on the planned accession of these nations to the EU and on how their accession would affect both the individual countries and the EU as a whole. So, for instance, there is a considerable literature dealing with governance issues such as the integration of accession countries into EU structures, the democratic development of the

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new member states, the implementation of EU legislation by the new states and so on. Less thoroughly researched are the ways in which lobbying and interest groups have developed in the new member states. Despite the work referred to above, Olson (2004) notes that, '*after 15 years of post-Communist transformation, no comprehensive bibliography or review of group formation or activity is available*'.

To provide a context for understanding the present lobbying scene in the new member states, it is useful to first review a number of general trends across these 10 countries. With these insights in mind, we then move to explain how lobby regulations can help to enhance the acceptance—the legitimacy—of lobbying and how organizations of professional lobbyists might also contribute to the role of lobbying and interest group activity and thus aid in consolidating democracy in Eastern Europe.

### ***Lobbying in the EU's new member states: some general trends***

It may be that initial expectations of how vibrant civil society would become in the immediate dismantling of communism were unrealistically high. Certainly, in the early 1990s civil society in post-communist nations remained relatively weak, both in terms of popular participation in interest groups and associations and of the limited formal capacity for groups to influence public policy. This was primarily because of the legacy of communism discouraged independent civic activity and the resulting lack of organizational skills and motivation persisted into the post-communist phase (Howard, 2003; Pérez-Solórzano Borrágán, 2006). That position is gradually changing, as more interest groups are created and become better established and as they come to exercise a greater input into policy making (Devaux, 2006). For instance, a study of senior civil servants in 11 former communist countries suggested that in the five of those nations which have now joined the EU—Estonia, Lithuania, Latvia, Hungary and Poland—relations between government and interest

groups had become quite common by the time of accession. Asked whether '*civil servants in your ministry have close working relationships with major interest organizations*', the proportion of respondents who claimed this was true most of the time ranged from 24% in Estonia to 67.6% in Hungary, while the proportion stating that such relationships did not exist ranged from 2.9% in Hungary to 35.4% in Latvia. For both Lithuania and Hungary, over 95% of respondents agreed that these relationships existed most of the time or on important issues. That fell to 83% and 80% for Poland and Estonia, respectively, while only 65% of Latvian officials agreed with the proposition (Cummings and Nørgaard, 2003: Table 5).

The authors suggest that the reasons for this pattern of reasonably common interaction between government and interests are similar to those which would be advanced by civil servants in longer established democracies: '*functional need for additional information and perspectives and better prospects for implementation if concerned interests are involved in the policy stage; political need to "appease social unrests" (Polish respondent) and communicate policies to the public*' (Cummings and Nørgaard, 2003). The means by which organized interests are involved in policy formulation varies dramatically though, as the same study reveals—for instance, 89.3% of Hungarian respondents noted the existence of permanent institutional fora through which groups could be consulted while only 6.7% of Polish officials did so. Conversely, 53.3% of Polish officials suggested that interest groups would be consulted through informal fora, but only 3.6% of the Hungarian civil servants (Cummings and Nørgaard, 2003: Table 7). In Slovenia, organized interests are still privileged to the extent that the National Council (the lower house of the Parliament) includes 40 representatives who are directly elected by a range of major interest groups as a means of ensuring that legislative consideration is given to the interests of the '*working world*' (Wiszoaty, 2006). These regional and structural variations point to a need for further research in the area, to establish both the reasons

behind them and the consequences of such different forms of interaction.

Similarly, more work is needed on the precise types of lobbying techniques which are employed by various interest organizations in the EU's new member states. At what levels do lobbying contacts tend to take place, and through which means? For instance, both political parties and parliaments have assumed a very central role in the new member states, perhaps to a greater extent than in more established executive-driven democracies (Wiesenthal, 1996). So it is probable that interest groups place a relatively high emphasis on building relationships with party leaderships in parliament (Fink-Hafner, 1998; Kalniņš, 2005; Krašovec and Fink-Hafner, 2005), but that hypothesis needs to be tested more thoroughly than has been the case to date. McMenamin and Schoenman (2007) assert that, '*Surprisingly, the political party remains a relatively understudied actor in business-government relations*' in general and more particularly that the relationship between parties and firms is not well enough understood. Their own case study of Poland indicates a significant relationship between self-reported lobbying success by a company and the nature and extent of that firm's interaction with political parties.

One obvious issue, which cannot be ignored, is that many of these countries had—and in some cases, have not yet entirely eradicated—a culture in which corruption thrived, both under communism and in the years immediately following its collapse (Holmes, 2003). A survey in 1999 of almost 4000 firms in 25 countries undergoing transitions suggested that lobbying and corruption '*are clearly related phenomena*' but that this is an inverse relationship—the more corrupt a nation is the less likely individual firms are to engage in lobbying (Campos and Giovannoni, 2007). Of the 25 countries investigated, 10 of them—Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia—are new EU member states. In most nations, between 20% and 40% of the firms surveyed were members of a trade association or lobby group, although some had

participation levels lower than this (Lithuania, Romania, Slovakia) or significantly higher (Latvia at 50%, Slovenia with 67% and Hungary on 77%). That study also reported on the 2000 findings of a corruption index conducted by The Freedom House, which indicated that while the average corruption score for 25 transition nations was quite high at 5 on a 1–7 scale, the only 10 nations whose score was lower were the 10 which have since become EU member states. We should remember, though, that while these 10 nations are relatively uncorrupt as compared to 15 other transition economies, they are still relatively corrupt compared to the other EU member states.

It has been argued that clientelism (relationships between people of unequal status who form mutual and personal bonds, such as a patron offering assistance to lower-ranking clients in return for something of value) applies to varying degrees in '*every country of Central Eastern Europe*', precisely because in periods of transition the political and economic spheres are necessarily intertwined as economic decisions take on an increasingly political nature (Gadowska, 2006). Some of these patrons can be described as 'fixers', 'middlemen', or worse; some of them will describe themselves, or be perceived by the public, as lobbyists. According to one researcher, '*measures aimed at reducing corruption... have failed to address what is sometimes referred to as a "culture of informality", carried over from communism and strengthened during transition*' (Grødeland, 2006). That study found that 'fixers', which it described as 'contacts' meaning someone who knows public officials and is willing to try to influence them, are commonly used, particularly in the realm of public procurement contracts, in the Czech Republic, Slovenia, Bulgaria and Romania. The same is true of Slovakia (Sopóci, 2001; Štofanič and Stano, 2003) and Latvia (Kalniņš, 2005).

One of the particular consequences of the emergence of democracy in Eastern and Central Europe was that business associations, which had generally not been permitted under communism, began to be established (Fish,

1991; Duvanova, 2005, 2007). The political and lobbying effectiveness of such groups in systems transitioning from communism has been contested in the literature. For instance, Hellman *et al.* (2000) employed a survey conducted in 22 nations to argue that business interest groups have frequently been successful at 'capturing' the state because of the inherent weight of their economic (and thus, political) power, while others such as Frye (2002) prefer to conceptualize the state-business relationship in terms of a more mutually beneficial exchange theory in which political leaders (and thus, the political system) are advantaged through their dealings with business. These positions reflect an on-going academic debate as to whether lobbying hinders economic and political transition (due to the over-weening influence of a few well-resourced organizations; see Solanko, 2003); or assists it (by encouraging freer markets and more porous political regimes; see Sullivan *et al.*, 2006).

In many cases, bureaucracy, poor economic information and inefficiency, combined with an entrenched dependence in the initial transition from communism on the major heavy-industry state-owned monopolies produced a situation whereby small and medium businesses found it difficult to advance their interests (Pérez-Solórzano Borragán, 2006). For instance, Romania in the late 1990s has been described as:

*A leading example of the perils of special-interest politics in a coalition government... The Romanian government continues to develop legislation that favors established interests which can circumvent the democratic process at the expense of small and medium entrepreneurs who struggle to have their voices heard in policy development circles (Anton, 1998).*

This in turn, over a period of time, provided the basis for the development of business associations through which small and medium private businesses could combine to promote their legislative and regulatory interests. Many business associations in the new member states now commonly conduct lobbying and

advocacy efforts which would be quite familiar to observers of interest groups in more established democracies. Sullivan *et al.* (2006), for example, point to the increased use in Romania and Hungary of advocacy coalitions by associations, grassroots lobbying campaigns organized by business associations, and associations undertaking 'Lobby Days' at which their members meet elected politicians to personally lobby them. A cautionary note must be injected, however: while some associations and other interest groups are relatively well developed by now, many are not. It is undeniable that lobbying is neither as accepted nor understood in the new EU member states to the same extent as in the older member states. Many interest groups in these 10 member states are only beginning the process of learning how to lobby effectively and professionally. In 2001, for instance, the government of Slovenia noted that while there were some 16 000 civil society organizations operating in the country, they tended to be '*dispersed, incoherent and uncooperative... most of them have too poorly developed structures and too insufficient skills to be able to influence either governmental policy or EU policy-making*' (cited in Pérez-Solórzano Borragán, 2006).

Surveys of individual companies carried out annually between 2001 and 2004 revealed at least some increase in awareness of the importance of lobbying in all 10 of the nations. In 2001, 58% of firms questioned had never engaged in lobbying at the national level, and 79% had never lobbied in Brussels. The proportion of firms which regarded national lobbying as important rose over the period in the Czech Republic (61-84%), Hungary (77-92%), Lithuania (77-91%), Poland (68-80%), Romania (83-91%), Slovakia (33-86%) and Slovenia (67-83%); but remained fairly stable in Bulgaria (93-95%), Estonia (67-72%) and Latvia (80-81%). Between 2001 and 2004, the proportion of firms which regarded lobbying in Brussels as important also rose in the Czech Republic (51-77%), Hungary (69-83%), Latvia (60-71%), Lithuania (64-88%), Poland (52-78%), Romania (78-88%), Slovakia



(40–68%) and Slovenia (56–77%); though this figure fell in Bulgaria (91–87%) and in Estonia (74–39%) (Eurochambres, 2001, 2004). Also noteworthy is that in no country was Brussels lobbying consistently considered a higher priority than national lobbying—it has been argued that this *'is in many cases accounted for by the lack of experiences with the European environment...[and] often low awareness among CE interest groups of the impact of European regulations on their interests'* (Sevella, 2006).

### **Lobbying in Hungary, Poland and the Czech Republic**

#### **Hungary**

As in many of the new member states, Hungary witnessed a substantial growth in the number of civil society associations during the 1980s. This led to the establishment of an Interest Reconciliation Council (IRC) in 1988 to co-ordinate the state's dealings with the major outside interests; and a 1989 law explicitly permitting freedom of association. However, as was also the case in other of the new member states, the vast majority of such groups were concerned with sport, culture or other recreations rather than with political or economic matters. While political representation became a more significant role for increasing numbers of associations during the 1990s, they still faced particular hurdles. For instance, trade unions with vivid negative memories of the communist regime were wary of forming overly-close links with any one political party and consequently ran the risk of isolating themselves from the new political process. By the end of the 1990s, though, Szabo (1998) was noting a changed emphasis *'from ideology to policy orientation'* on the part of civil rights groups as they became more conversant in the skills and expertise needed to influence the development of public policy.

Surveys conducted in 1994 and 1998 indicated that by then most unions and employers' groups regarded themselves both as being either active or very active in efforts to

influence government policy and as having enjoyed some success in their lobbying efforts. Perhaps as a result of having seen the benefits of working together through the IRC, the proportion of groups which reported that they regularly entered into lobbying coalitions with others when they shared a particular policy objective rose from 1994 to 1998. By 1998 this lobbying tactic was being used by 63.6% of trade unions, 64.3% of business groups and 63.9% of 'other' groups. The surveys' authors concluded that:

*majorities in all categories were able to report ways in which they had been successful in influencing the government to make changes in the details of particular measures...they had also established formal procedures for contacting and debating with government and these were both used and found to be effective by interest groups* (Cox and Vass, 2000).

More recently, a survey undertaken by the Hungarian National Assembly of interest groups indicated that 63% of respondents had engaged in lobbying of the Parliament while 94% lobbied outside the Parliament, mainly directing their efforts to government ministries (Hungarian National Assembly, 2005). Vass (2005) suggests that not only is lobbying as an activity flourishing now in Hungary but that the lobbying industry is developing significantly with the opening of a number of local and international agencies. There are certainly signs of growing professionalization. For instance, the Business School at Central European University in Budapest now offers an 'Advanced State Accredited' programme in Professional Lobbying which requires 192 classroom hours on topics such as 'interests, structure of interests, interest-representation', 'law and ethics in lobbying', 'competence of the lobbyists' and 'communication training' (CEU, 2007). One newspaper report (Zegnál, 2005) suggested that, *'Those involved in the profession believe that, in spite of the predominantly negative impression of lobbying in Hungary, demand for*

*expert, professional lobbyists will continue to grow*'.

### **Poland**

Lobbying is perhaps better developed in Poland than in many of the other new member states. It is, though, a highly diverse and fragmented industry. Some lobbying is undertaken by public relations agencies: the Polish Public Relations Consultants Association indicates that PR firms frequently cite one of their specialisms as *'contacting politicians and convincing them to introduce changes, legal regulations, promote certain ideas'* (PPRCA, 2005). One Polish lobbyist has warned that the playing field there is far from even. While monopoly state industries, farmers and trade unions enjoy substantial weight in the new regime as they did under communism, *'those interests that are disorganized, weak or dispersed, such as foreign investors, private entrepreneurs, or consumers, remain disadvantaged in the decision-making process, whether in parliament or in the administration'* (Matraszek, 2005).

One feature of lobbying in Poland in the immediate wake of the transition to democracy was the appearance of the 'fixer'. This role is common in most of the new EU member states but possibly more prevalent in Poland. The 'fixers', often coming from prominent positions in the old system, sold themselves as being able to resolve issues for clients, though often through corrupt means. Inevitably, some 'fixers' became embroiled in public scandals and this *'peddling of illicit influence by so-called middlemen'* (Matraszek, 2005) unquestionably tarnished the general perceptions of lobbyists. Both academics and practitioners have pointed to the unfavourable way in which lobbying is framed in media reports in Poland (Szwykowska, 2003; Jasiński, 2006). In one case, in 2002, Lew Rywin (a politically connected film producer), offered to ensure the amendment of proposed legislation affecting the communication industry in return for a bribe of \$17.5 million. Another lobbyist, Marek Dochnal, was arrested on corruption charges

in 2004; he later alleged that a former Prime Minister had accepted a \$3 million bribe relating to the privatization of the steel industry (Najfeld, 2007). A parliamentary commission of inquiry was established in yet another case involving Orlen, an energy company, and in the course of its investigations scrutinized the nature of the lobbying industry in Poland; one commentator summarized its conclusions thus:

*As it turns out, it is a 'wild' lobby, based on the exploitation of personal connections of an informal character, consisting in reaching decision makers through connections and relationships and winning them for the realization of one's own interests by offering different kinds of 'encouragements'* (Gadowska, 2006).

However, recent years have seen the emergence of a still small, perhaps two dozen firms, but significant commercial lobbying sector in which firms provide professional services. According to one lobbyist, business leaders have started to understand the need for professional lobbying; although policymakers continue to lag behind in that process of accepting the idea of lobbying and its potential value to them (Szwykowska, 2003).

The Association of Professional Lobbyists in Poland was formed in 2003 to represent the views and interests of the industry, and it created a voluntary code of self-regulation for lobbyists. However, it has been described by one academic, who advised the parliamentary committee responsible for drafting lobbying regulation legislation as, *'a passive organization, functioning outside media and public opinion perception. (The Association has had only a few members, limited resources and problems with a negative image in the media)'* (Jasiński, 2006).

### **The Czech Republic**

That lobbying here continues to labour under the weight of public suspicion and mistrust may be inferred from the assertion that *'few*

people in the Czech Republic are familiar with how the word lobbying is written [in Czech it is 'lobbing'], and how, for example, it differs from the word "lobbing" (in Czech: *lobing*) in tennis' (Donath-Burson-Marsteller, 2005). When lobbying does receive widespread attention in the Czech Republic, it is generally as a result of media interest in a scandal. For instance, in March 2007 it was announced that the former head of the prime minister's office, Zdenek Dolezel, would face trial on corruption charges, arising from allegations that in 2005 he had solicited a \$200 000 bribe from a chemical industry lobbyist. When the incident was revealed, the director of Transparency International in the Czech Republic said that, '*Nobody knows who these lobbyists are. They are the strangest people in Parliament*' (Prague Daily Monitor, 2007; also see Reynolds, 2005). Czech lobbying and politics are very tightly intertwined, with some highly prominent examples of what is termed in the United States the 'revolving door', moving from the lobbying business to government or visa versa and back again. Alexandr Vondra, who founded the Prague office of a Washington-based lobbying firm, Dutko Worldwide, left that role in September 2006 when he was appointed as the minister of foreign affairs. And, moving in the opposite direction, Pavel Telička, the former chief negotiator for the Czech accession to the EU and then its first member of the European Commission, established a consulting and lobbying firm in Prague in 2005.

A survey of Czech politicians in 2005 undertaken by the local branch of a global PR and lobbying agency revealed that:

- most respondents believe both that the public is not sufficiently well informed about the '*methods and utility of lobbying*' and that the public '*expects its politicians to reject lobbying*';
- in contrast, the politicians questioned tended to view lobbying as potentially ethical and as '*an important part of modern political systems*';

- only 52% agreed that '*lobbyists should be registered in a publicly accessible registry*' with the remaining 48% split equally between those who disagreed and those who expressed no view;
- even fewer (44%) supported the idea that people who regularly seek to meet with politicians should be identified visibly by a parliamentary pass or ID card, while 38% disagreed with this;
- out of a total of 362 respondents, only 44 (12%) assessed lobbying very positively (that is, rated the need for lobbyists as 8 or above on a scale of 1–10). These 44 tended to say that lobbyists are well-informed about issues and can provide detailed information, and that the existence of lobbyists helps to ensure that a range of opinions are heard;
- however, over 300 politicians (or 84%) rated the need for lobbyists as lower than 8 on a 1–10 scale. This group argued that '*the information they provide is biased, distorted and is not objective*' (26%), '*lobbyists are overwhelmingly concerned with their own benefit and with the benefit of the group they represent*' rather than with the public interest (25%), and that '*lobbyists are untrustworthy and unethical*' (8%); and
- while 5% of respondents regard lobbying as being very important to the work of the institution in which they serve, and 37% said it was somewhat important, 46% believe lobbying to be somewhat unimportant and 12% said that lobbying was very unimportant in their institution (Donath-Burson-Marsteller, 2005).

### ***The regulation of lobbying: (i) at the EU level***

The regulation of lobbying in these 10 new member states must be considered on two levels: the implementation of legislation or non-statutory codes of conduct at a national level; and compliance with EU standards.

The current EU-level approach was launched on 3 May 2006 when Commissioner Siim Kallas published a Green Paper on the European Transparency Initiative (ETI).

While the ETI began by acknowledging that lobbying—defined as ‘*all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions*’—is a legitimate and useful element of a democratic structure, it also voiced concerns over the exercising of ‘*undue influence*’ and of a lack of transparency (European Commission, 2006). Kallas proposed the introduction of a voluntary registration system whereby lobbyists would provide ‘*information on who they represent, what their mission is and how they are funded*’, and would agree to adhere to a ‘*common code of conduct, applicable to all lobbyists, monitored by a special umbrella organization*’. In return, registered lobbyists would receive alerts from the EU institutions on consultations taking place around their areas of concern (European Commission, 2006). Thus, the Commission signalled its preference for the lobbying industry to operate a more rigorous form of self-regulation than is currently the case. However the Commission noted that in some member states consideration is being given to the introduction of compulsory codes of conduct and warned that such a system could be established at EU level if self-regulation was deemed not to have worked effectively.

During the consultation period on these proposals, responses were received from 165 organizations and individuals; all can be accessed through the ETI website at [http://ec.europa.eu/transparency/eti/index\\_en.htm](http://ec.europa.eu/transparency/eti/index_en.htm). The Lithuanian government generally welcomed the approach outlined by the Green Paper, arguing that self-regulation by lobbyists was appropriate; but went on to question whether access to information about new consultations was a sufficient incentive for lobbyists to register given that this is public information in any event (Lithuanian Government, 2006). The Slovenian government similarly supported the proposals in principle (Slovenian Government, 2006).

An opposing view was put forward by ALTER-EU, the Alliance for Lobbying Transparency and Ethics Regulation, which asserted

that the ETI was insufficiently forceful. It called for compulsory lobbying regulation:

*We note that the Green Paper fails to refer to recently enacted lobbying laws in Poland, Lithuania and Hungary. Each of these lobbying laws (despite some concern around potential unequal treatment of NGOs in the Hungarian law) includes forms of mandatory lobbying disclosure. In this context, it is surprising that the European Commission has not considered this an option for EU lobbyists. We would urge that the case for a mandatory register of lobbyists is reconsidered in the follow-up to the Green Paper (ALTER-EU, 2006).*

A clear overview of the main points of debate and contention among NGOs, academics and lobbyists over the European Transparency Initiative can be found in Spencer and McGrath (2006).

In the event, however, Commissioner Kallas chose to ignore ALTER-EU’s advice, and on 21 March 2007 published a follow-up document which set out the next steps to be taken by the Commission. That report noted that several of the responses submitted to the Green Paper took exception to the use of the word ‘lobbying’ on the grounds that it is a negative and pejorative label. While the report did not accept that this is the case, it nevertheless stated the Commission’s decision to establish, in the Spring of 2008, not a ‘Register of Lobbyists’ but rather a ‘Register of Interest Representatives’. It will be a voluntary register, but lobbyists and interest groups will have to be included on it if any response they make to a Commission consultation exercise is to be considered as a formal ‘*submission*’ as opposed to an ‘*individual contribution*’. Those commercial lobbying consultancies which register will have to provide details of their financial ‘*turnover linked to lobbying EU institutions, as well as the relative weight of the clients in this turnover*’. In-house lobbyists and trade associations will be asked to supply ‘*an estimate of the cost associated with the direct lobbying of EU institutions*’; and NGOs



and think-tanks will need to declare *'the overall budget and breakdown per main sources of funding (amounts and sources of public funding, donations, membership fees etc.)'* (European Commission, 2007). In addition, the Commission will be drafting a code of conduct for lobbyists during 2007, which will essentially update its existing minimum requirements as laid down in 1992. All those lobbyists and interest groups that subscribe to the Register of Interest Representatives will be obliged to adhere to this code, and serious breaches of the code could lead to lobbyists being struck off the register. The new system will be reviewed in the Spring of 2009, at which time the Commission will again consider whether a compulsory registration and disclosure scheme is needed.

Such is the immediate situation in terms of the supranational or EU-level regulation of lobbying. The scene of national regulation in the 10 new member states being examined in this paper is very much more of a mixed picture, with a patchwork of various and varying approaches. In several cases, statutory regulation has been introduced as a direct result of particular scandals in which lobbyists were found to be exercising undue or corrupt influence on public officials. Other nations operate voluntary schemes, while yet others exercise no control over lobbying at a national level. The position in each of the 10 states is reviewed below.

***The regulation of lobbying:  
(ii) its status in the 10 new  
EU member states***

**Bulgaria**

Lobbying in Bulgaria is unregulated. The Bulgarian Business Leaders Forum is campaigning for reform. On 28 February 2005 it urged the government to *'provide mechanisms for limiting corruption-breeding conditions on legislative level by passing the Act on Lobbyism'* (BBLF, 2005).

**The Czech Republic**

While the Czech Republic operates no statutory regulation of lobbying in itself, the OECD has noted that here a voluntary code of ethics applying to members of both Chambers of the Parliament was introduced in 2005 which *'includes guidance on how to maintain relations with interest groups, and under what conditions and where a deputy could communicate with lobbyists'* (OECD, 2006b). Substantial research into possible reform is currently being undertaken at Charles University by Jan Růžička, who has said that:

*Creating a lobbying registry is the best option. But many are skeptical such a law would pass. Failing this, we at least need an ethical code. A third option is to pass a law requiring amendments to laws to be suggested by groups rather than single deputies. As it stands individuals can make last-minute changes to bills, which means lobbyists can change laws through one person (cited in Reynolds, 2005).*

**Estonia**

There is no mechanism for the regulation of lobbying specifically in Estonia at present, and relatively little public debate on the issue.

**Hungary**

Since 1994, the Hungarian National Assembly has maintained a register of national interest groups and social organizations (known as the 'lobby list'), which currently numbers 652 groups. Registration is voluntary, and requires organizations to provide only very basic information about their purpose and staff. In return those groups which register are facilitated by the National Assembly in terms of information provision and invitations to attend meetings of parliamentary committees. The

government presented a draft bill on lobbying to the National Assembly in October 2005, which was passed in April 2006. Act XLIV of 2006 on Lobby Activities came into force on 1 September 2006. It *'is to be applied to activities which are based on a mandate, executed for a consideration (i.e. business-like) and aim at influencing the contents of decisions of public authorities'* (Szecskay, 2006). The Act itself was not specific, but rather authorized the government to make detailed rules, which it did in Decree 176/2006. A bulletin on the law by a European law firm indicated that:

- *'the Act defines lobbying as activities carried out by an agent on the basis of a contract for services for consideration in order to influence the decisions of the parliament, the government, local governments, or any of their bodies or officers'*;
- lobbyists must be registered in the registry held by the Central Office of Justice;
- elected politicians, civil servants and *'political parties and their members'* are *'not allowed to lobby, participate in lobby organisations or accept any benefit from lobbyists or from lobby organisations'*;
- when engaging in lobbying activities, lobbyists *'are required to show their lobbying certificate'* as proof of their registration;
- lobbyists *'may not represent opposing or competing interests'*;
- lobbyists must submit quarterly reports on their lobbying activity—*'the person on whose behalf it is lobbying; the authorities' decisions in respect of which it is lobbying; the means it uses for lobbying; whom it is lobbying and how many times the lobbied person was contacted'*—as must each public authority which is lobbied. The information provided by the lobbyist *'must correspond to the information submitted by the public authority'*; and
- the Central Office of Justice will remove from the registry any lobbyist who has *'carried out its lobbying activity in a manner infringing its obligations under the Act'* (Nagy, 2007).

## Latvia

No direct regulation of lobbying currently applies in Latvia. However, the Law on Prevention of Conflict of Interest in Activities of Public Officials, passed on 25 April 2002 (Latvian Saeima, 2002), sets out very clear restrictions on the obtaining of income (Section 9), commercial activities (Section 10), influencing the preparation of legislation (Section 12), accepting gifts (Section 13), accepting donations (Section 14), receiving supplementary payments for performing official functions (Section 16) and so on. Interestingly and unusually for such laws, the Act also states that public officials are permitted to combine their official work with employment in *'public, political or religious organisations'* (Section 7). Thus, in theory at least, it is open to public officials *'to accept positions and receive remuneration from such organizations that are engaged in lobbying'* (Kalniņš, 2005).

A Code of Ethics applying to members of the Saeima was adopted on 2 March 2006. While it does not explicitly mention lobbyists, it does state (Latvian Saeima, 2006) that a Member of Parliament *'does not use his/her influence to illegally achieve favourable decision by a public administrative institution'* (clause 11), and *'refrains from using for personal benefit or the benefit of persons associated with him/her confidential information acquired by virtue of his/her office'* (clause 12).

The Corruption Prevention and Combating Bureau (KNAB) is currently chairing a working group on regulating lobbying activities in Latvia, which also includes representatives of the Saeima, State Chancellery, Ministry of Justice and Providus (a public policy think-tank), and which is expected to eventually make recommendations designed to increase the transparency of lobbying practices; for a detailed study of possible reforms in Latvia, see Kalniņš (2005).

## Lithuania

Lithuania was the first of the new member states to introduce legislation on the regulation

of lobbying. A Law on Lobbying Activities was passed in June 2000 and came into force on 1 January 2001, and then amended in May of that year (Lithuanian Government, 2001). One commentator observes that, *'There is no doubt that its creators were strongly influenced by the American regulations; this is detectable in many instances'* (Wisowaty, 2006). In Article 2, Section 1, it defines lobbying activities as *'lobbyists' activities subject to compensation in an attempt to influence the amendment, supplementing of legal acts or declaring them invalid, the passage or defeat of new legal acts'*. Thus, the Act focuses exclusively on legislative lobbying, and entirely ignores lobbying directed at the executive or judicial branches of government. While a lobbyist is said to be any person or organization *'who enjoys the right to engage in lobbying activities'* (Article 2, Section 2), it appears that the law is intended to cover only that lobbying which is undertaken for remuneration on behalf of a third party—essentially, commercial consultancy. As Kalniņš (2005) puts it: *'it seems that the aim of Lithuanian legislator was not to regulate representing of interests or lobbying in general, but only one type of business activities, namely providing of lobbying services'*. The Act requires (Article 3, Section 1) that former legislators and officials must wait at least one year after leaving office before becoming a lobbyist, thus regulating the so-called 'revolving door'. Among other things, lobbyists are entitled to *'participate in preparation of drafts of legal acts'*, to *'explain to the public, convince state and municipal institutions or agencies that it is expedient to adopt or defeat a certain legal act'*, to *'make reports to the mass media and to participate in public events'*, to *'collect material and information about legislation and submit it to clients of lobbying activities'*, and to *'organize and finance meetings of legislators with representatives of clients of lobbying activities'* (Article 4).

However, all lobbying activities are declared illegal (Article 5) if they are undertaken by anyone who is not listed in the Register of Lobbyists held by the Chief Institutional Ethics

Commission, which is empowered (Article 9) to suspend or terminate a lobbyist's inclusion in the register. Lobbying is also illegal if *'because of such activities the activities of a state politician, public servant would become dependent on the actions of a lobbyist or a client of lobbying activities'*, or if *'state politicians, public servants are deliberately misled or deceived'*, or if *'at the same time a lobbyist represents clients of lobbying activities who have opposite interests'* (Article 5). Each registered lobbyist is obliged by Article 10 to submit an annual report on lobbying activities, including *'the title of a legal act or a draft of a legal act upon which it has been lobbied'*, and providing details of the lobbyist's income and expenses.

While unique among new EU member states at the time of its introduction, it is unclear how effective the act is in practice. In particular, it is unclear as to precisely how rigorously it is complied with and enforced. One professional lobbyist in Lithuania pointed out in March 2004 that only seven out of an estimated 200–300 lobbyists had registered (cited in Kalniņš, 2005).

### Poland

According to Jasiński (2006), public debate around the need for a lobbying law began in 1995; but it took seven more years for a parliamentary commission to be established in the House of Deputies to consider the issue. Lobbying has a particularly poor reputation in Poland. One survey (cited by OECD, 2006a) in 2004 indicated that 35% of citizens and even 19% of parliamentarians believed that bribery could be successful in effecting a change in the law. The OECD (2006b) has stated that, *'As a consequent reaction [to particular scandals and abuses], initiatives were launched to clarify conditions for lobbying and to provide an adequate legal framework for example in Hungary and Poland'*, although it went on to suggest that as the debate on this legislation in Poland evolved over time *'the original aim of the bill to prevent influence peddling shifted to improve transparency in law making'*. A



good summary of the changes introduced as the original draft bill was considered can be found in OECD (2006a).

An Act on Legislative and Regulatory Lobbying was passed in Poland in July 2005 and came into force in March 2006; an unofficial translation is contained in OECD (2006c). The Act defines lobbying as '*any legal action designed to influence the legislative or regulatory actions of a Public Authority*' and professional lobbying as '*any paid activity carried out for or on behalf of a third party with a view to ensuring that their interests are fully reflected in legislation or regulation proposed or pending*' (Article 2). Every six months, the Council of Ministers must publish a list of legislation at a draft stage, at which point lobbyists can notify the relevant authority of their interest in any of the proposals (Article 7) and are entitled to participate in parliamentary or public hearings on that matter (Articles 8 and 9). Article 7 has been described by one commentator as '*unique among lobbying statutes. . . [It] extends help to the lobbyists. . . so as to enable the lobbyists to prepare for the legislative process at the government level in particular, which is usually the least accessible*' (Wiszwaty, 2006).

The Act also established a Register of Professional Lobbyists and Lobbying Firms, and requires that, '*professional lobbying may be carried out subject to being entered in the Register*' (Article 12). Article 15 obliges registered lobbyists to provide any public authority being lobbied with '*a written statement naming the entity for or on behalf of which the lobbying activity involved is being carried out*'. Unusually, annual reporting requirements are the responsibility not of the lobbyists but of public authorities which first must '*lay down detailed procedures to be followed. . . in their contacts with professional lobbyists/lobbying firms. . . including the procedure for documenting such contacts*' (Article 16), and then issue a report each year detailing all '*cases in which lobbying was being undertaken [directed at the public authority]. . . a list of professional lobbyists/lobbying firms involved. . . a*

*description of the forms in which lobbying was being conducted. . . [and] a description of the influence exerted by the successful professional lobbyist/lobbying firm on the legislative or regulatory decision-making process(es) involved*' (Article 18).

The Polish Act has been criticized on a number of grounds. For Jasiiecki (2006) it is '*repressive for professional lobbyists (persons, firms, companies) but not repressive for another lobbyist formally non-professional, like business associates or NGOs*', and the provision for public hearings on legislative proposals has not yet operated regularly or consistently. Szwykowska (2003) asserts that the reporting requirements imposed on public authorities were '*ridiculously heavy. . . meeting these obligations. . . would lead to a situation, where officials must put their basic jobs on hold and devote all their time to drawing up reports*'. It was reported in May 2006 that '*only several companies have registered as lobbying groups. . . The rest of Polish lobbyists still operate illegally*' (Puls Biznesu, 2006). By February 2007 it was reported that, '*one year since the law on lobbying came to power, unofficial lobbying is flowering in the Sejm, while the list of official lobbyists flounders with only 11 names*' (Warsaw Business Journal, 2007).

### Romania

Lobbying is unregulated in Romania, though it has been the subject of much debate in recent years. Two relevant laws have been passed: the Access to Public Information Law (L544/2000) and the Law on Transparency in Policy-Making (L52/2003). These are intended to encourage participation in the policy process at local and national levels by civil society organizations. This so-called 'sunlight' legislation has not proven very effective, though in part at least this is a result not of government obstruction but rather of structural limitations in the organization and expertise of interest groups (Advocacy Academy, undated).



Petre Naidan, a social democrat MP, introduced a draft bill on the regulation of interest groups in June 2000 and again in March 2001. However, the proposal was not debated until February 2004 when it was swiftly rejected. A clear summary of the issues which arose during parliamentary, executive and public consideration of lobbying regulation in Romania can be found in Coman (2006). In 2004, the University of the West, Timisoara, launched a Masters degree in Public Policy and Advocacy, in partnership with the Advocacy Academy, a professional association representing Romanian lobbyists.

### Slovakia

In 2005, a draft bill on lobbying was drafted by the Anti-Corruption Department of the Slovakian Ministry of Justice; originally it was called a 'law on the participation of the public in the legislative process'. The chief of the Anti-Corruption Department was quoted in 2003 as saying that the draft legislation being prepared then considered lobbying '*only in terms of its influence on decision-making in the process of drafting laws, which means we only understand it as commenting on proposals*' (cited in Štofanič and Stano, 2003). The Bill would have obliged '*professional lobbyists to register and obtain trade permission for their lobbying activity. Lobbying can also be undertaken without payment. In this case lobbying does not require trade permission, but may be subject to reporting if it is performed by legal entity or businessman*' (OECD, 2006b). A draft version of the bill (Slovakian Government, 2005) defined lobbying as '*the provision of services on the basis of a trade license whose subject is either a lobbying contact or an activity with the purpose of helping to realize a lobbying contact, especially the organization and coordination of lobbying contacts*' (Article 2, Clause 2), with a lobbying contact being any written or verbal communication '*with the aim of influencing the decision making of public authorities or the process preceding this decision making, and achiev-*

*ing the drafting, submitting or amending a norm or document*' (Article 2, Clause 3). Article 6, Clause 1 stated that, '*Lobbying contact is prohibited if it interferes or might interfere in the independence and impartiality of the decision making of public authorities in the process of issuing individual legal acts*', and Article 6, Clause 2 required that a lobbyist must not '*promise or provide the lobbied person or his related person a gift or any other kind of benefit*'.

Had that bill been enacted, lobbying of both central and local government would be covered, with the Office of the National Council compiling a register of those lobbyists who seek to influence central government, and the office of regional self-governments maintaining a register of lobbyists who work at the local level. Each quarter, registered lobbyists would have had to register details of all lobbying contacts made (including the name of the official lobbied and of the public authority in which he or she worked, the date and form of the lobbying contact, the '*document or norm to which the lobbying contact was related*', and the amount or kind of any gift or benefit provided by the lobbyist (Article 7, Clause 2). On an annual basis, each registered lobbyist would also have had to declare both '*the sum of incomes gained for the performing of lobbying and the sum of expenses incurred for lobbying, structured according to the type of incomes and expenses*' and '*list of clients, if the client approves of the publishing of his name*' (Article 7, Clause 3).

In return for registering, lobbyists would have been given physical access to the National Council building. The bill was to come into force on 1 January 2006, but it has not yet been passed into law. The comments made on the draft Bill by the American Chamber of Commerce in the Slovak Republic are available publicly (AmCham Slovakia, 2005).

### Slovenia

To date lobbying in Slovenia is unregulated.

***Conclusion: some recommendations on the role of lobbyists' professional organizations***

Lobbying is still in its infancy in these 10 new EU member states, but developing continually as NGOs, unions, and business increasingly come to recognize the value of participation in policy making and either develop the skills to exercise influence or hire commercial consultancies. Moreover, these new member states should not be viewed as backward: they have simply begun the process of opening up government to external influence more recently than the more developed democracies. In fact, in some ways, these nations are moving along the development curve in respect to lobbying at a faster rate than was the case in older democracies as lobbying developed more formally in these political systems. While the practice of lobbying is less well developed and accepted in the 10 new EU member states than in older Western democracies, in one respect the regulation of lobbying there is further advanced.

*At present, among the 15 countries of the 'old' European Union, only Italy and Ireland have proposed statutory regulation of lobbying. Neither country has thus far succeeded in turning those proposals into actual legislation. At the same time, however, two new Member States—Lithuania and Poland—can boast lobbying laws in force (Wiszowaty, 2006) [since then Hungary also has passed lobbying legislation].*

As lobbying activity continues to increase in these 10 nations, each will experience ongoing debate about the need for new, or the effectiveness of existing, mechanisms by which to regulate lobbying. That being the case, I conclude by offering several recommendations to lobbyists in these countries:

- Recognize that lobbying everywhere is rightly subject to some degree of transpar-

- ency and disclosure. It is a general truth in all political systems that lobbying tends to be regarded by the public—and to a lesser extent, by many policy makers—with ignorance, suspicion and often outright hostility;
- The single most effective way in which lobbyists can address this situation is by banding together in professional associations which are capable of representing the whole industry. While such groups do exist in some of the 10 new member states—for instance, the First Hungarian Lobby Association and the Association of International Lobbyists in Hungary, the Association of Professional Lobbyists in Poland, the Advocacy Academy in Romania and the effort by EUlobby.Net to create a pan-European body for lobbyists—these groups, and others yet to be formed, can and must do much more.
  - The most important immediate priorities for lobbyists' professional groups in the 10 member states should be to generate as large as possible a membership base across all sectors of the industry; building internal structures for both advocacy on behalf of the lobbying industry collectively and the provision of member services; creating a body of knowledge about interest representation generally and in each particular country; ensuring a productive dialogue with relevant academics in order that practitioners can receive ongoing education and training; representation of the industry's views on the most appropriate means by which to regulate lobbying in each country; and promoting as actively as possible the idea that lobbying has a legitimate and value role to play in democratic political systems (McGrath, 2005).

***Biographical notes***

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