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Two Problems with Lobbying Regulations in EEA Countries

Vit Šimral*

Abstract

This paper addresses the question of the major challenges for the regulation of lobbying in the European Economic Area countries. It attempts to disentangle this complex question by focusing, step by step, on three specific issues. First, the problem of the definition of lobbying, or the lack of one, is considered. The paper argues that even though European countries started to regulate lobbying already two decades ago, they have still not managed to arrive at a useful definition of the field and activity of lobbying itself, which considerably hinders their pro-transparency regulatory efforts. Second, the paper looks at other anti-corruption legislation in Europe and its links with lobbying rules. The evidence is inconclusive as to whether the level of corruption is significantly affected by the presence or lack of lobbying regulation. Finally, the paper shows that there is a noticeable weakness in the existing lobbying regulations in European countries in terms of enforcement. Without strengthening the enforcement mechanisms of lobbying laws, there will be no significant shift towards a better-regulated and more transparent lobbying environment in Europe.

Key words: lobbying, corruption, regulations, European Economic Area, post-communism

The development of lobbying regulations in Europe

TIn the last two decades, lobbying has become a universally acknowledged political activity in Europe both at the European and national levels (see, e.g. Coen & Richardson, 2009; Laboutková & Žák, 2010; Kluver, 2013). Even though the profession itself continues to carry a mark of 'shadiness', lobbyists are now an accepted part of liberal democratic political systems. The acknowledgement of lobbying as a legitimate professional field derives mainly from its real-world usefulness. Lobbyists have value both for people outside of governing bodies, as they voice the people's concerns to the government, as well as for elected representatives, for whom they supply expert information and knowledge. However, if lobbyists are to be perceived as a truly legitimate part of the government process, they also need to be regulated, as other parts of democratic government are. Lobbying needs to be transparent, first, in order not to enlarge the space for corruption of public officials (Warren & Cordis, 2011), second, not to erode public confidence in the system, and third, to keep the playing field level and fair for all. This is particularly true in post-communist East Central Europe, where the further development towards fully-fledged liberal democracy is even today uncertain (e.g. Szelényi & Csillag, 2015; Wiatr, 2017).

The question then arises of how the transparency of lobbying may be achieved. The present paper addresses the question of the problems facing the regulation of lobbying in the European Economic Area countries and argues that the two major problems are, first, the lack of a definition of lobbying, and second, the weak enforcement of lobbying rules.

In the first section, the paper notes that even though European countries started to regulate lobbying already two decades ago, they have still not managed to arrive at a useful definition of the field and activity of lobbying itself, which considerably hinders their pro-transparency regulatory efforts.

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In the second section, the paper looks at other anti-corruption legislation in Europe and its links to lobbying rules and shows that the evidence is inconclusive as to whether the level of corruption is significantly affected by the presence or lack of lobbying regulation.

Finally, the paper argues that there is a noticeable weakness in the existing lobbying regulations in European countries in terms of enforcement. Without strengthening the mechanisms for enforcing lobbying laws, there will be no significant shift towards a better-regulated and more transparent lobbying environment in Europe.

The problem of definition

In the 2010s, lobbying regulations have effectively arrived at the forefront of anti-corruption efforts in many European countries, supported by the efforts of the international community. At the global level, the OECD published its '10 Principles for Transparency and Integrity in Lobbying' in 2013, drawing on the experiences of the USA, Australia, and Canada, but also France, Germany, Hungary, Poland and Slovenia (OECD, 2013).

The European Parliament started the debate on regulating lobbying at the EU level in 1991, when the Committee on the Rules of Procedure, the Verification of Credentials and Immunities drew up a proposal for a Code of Conduct for Members and the establishment of a lobbying register – coming into force in 1996. Since then, MEPs have to provide a detailed statement of their professional activities and others financial interests and, in the exercise of his mandate. In 1992, the European Commission presented an Open and Structured Dialogue between the Commission and Interest Groups, in which it officially characterised its relationship with interest groups for the first time and divided them into two categories: non-profit making organizations and profit making organizations. A voluntary directory of interest groups has also been established. In 2001, the system was upgraded and renamed CONECCS (Consultation, the European Commission and Civil Society) to serve as a platform for providing information in both directions – from civil society organizations to the Commission and vice versa. In 2005, Siim Kallas, the Commissioner for Administrative Affairs, presented a draft of the European Transparency Initiative (ETI) project to further improve the transparency and predictability of the Commission's work and decision-making process. It proposed establishing a new voluntary register (renamed the Register of Interest Representatives), a common code of conduct binding on all lobbyists, and a system of monitoring and sanctions (EC, 2006). The voluntary registration of lobbyists at the European Commission was adopted in June 2008; the European Parliament acceded to the register in 2011, when the Joint Transparency Register was established. Even though the Parliament at that time pushed for the register to be mandatory, at the Commission's insistence, it remained purely voluntary (Crepaz & Chair, 2014, p. 78). Lobbying regulations have also been discussed at the level of the Council of Europe: in 2014, the European Committee on Legal Co-operation (CDCJ) carried out a feasibility study concerning the legal regulation of lobbying activities and drafted a recommendation to the CoE's member states on common standards of lobbying regulations (Committee on Legal Co-operation [CDCJ], 2017).

The first of the major reasons why lobbying has been so far only minimally regulated at any level, national or supra-national, is the problem with its definition. For instance, according to the draft recommendation written by the CDCJ (2016),

> "[l]obbying" means promoting specific interests by communication with a public official as part of a structured and organized action aimed at influencing public decision-making. (p. 4)

However, this definition is lacking in several respects: first, 'communication' encompasses a virtually infinite spectrum of means how information may be transmitted: orally, in writing, by some means of electronic communication, officially, unofficially, with a clear purpose or just in passing, etc. Moreover, communication may be done indirectly, via a third person or even a chain

of persons. Similarly, the expression 'structured and organized action' does not help in determining what lobbying is and is not. Does it have to be 'organized' on paper, or just informally? Does 'structured' mean long-term, or can a one-off action be structured as well?

The Green Paper on the European Transparency Initiative, published by the European Commission on 3 May 2006, defined lobbying for EU purposes as (European Commission, 2006)

> all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions. (p. 5)

Again, this is a very broad definition of the concept, stepping even beyond the boundaries of the term 'communication' and choosing the expression 'all activities' instead. This means that lobbying at the EU level is not formally restricted only to communication with a public official; it also includes activities, which indirectly influence policy formulation and decision-making. The Green Paper specifically mentions one such activity, "mass campaigns for or against a given cause" (Commission, 2006, p. 6), which, presumably, is turned towards the public as well as towards officials. In other words, in this wide conceptualisation, the term 'lobbying' covers not only interactions where the lobbyist serves as a transmitter of wishes from a certain interest group to a decision-maker but also where the lobbyist uses other people, including the public at large, as the transmitter of her or his wishes.

The question then arises why the two bodies, the European Committee on Legal Co-operation and the European Commission, chose different ways to define lobbying. The answer to that most probably lies in the difference between the composition, the working format and the goals of the two bodies. The European Commission is a (formally) independent, supra-national body that sets up standards to serve its own interests. The CDCJ, on the other hand, is an intergovernmental body, whose main role is to draw up standards commonly accepted by the 47 Member States of the Council of Europe. While the Commission is thus, at least in theory, working in an environment free of pressure from the EU Member States, the CDCJ is composed of representatives of the CoE Member States. Unlike the Commission, it therefore always works in accordance with the wishes of all stakeholders involved and always needs to arrive at a politically accepted consensus. In the domain of lobbying regulation, but not only there, it means arriving at the lowest common denominator allowing to set at least some shared standards for transparency in lobbying. This is indeed an incredibly difficult thing to achieve: European countries have today very different approaches to the regulation of lobbying.

Lobbying regulations in European countries

Table 1 shows what the existing framework of laws related to transparent lobbying looks like in the countries of the European Economic Area (EEA) and Norway. The variables found in the table are operationalised in the simplest way: if the national legal regulations are labelled as 'laws on lobbying', 'codes of conduct', etc., they are also coded as such. More sophisticated attempts at operationalisation were not made in the present text since it was deemed unnecessary for the purpose of the work.

Table 1: Legal regulations on lobbying in 32 EEA member states (2019)

Country	Post-Comm	Law on Lobbying	Lobbyists Codes of Conduct	Register of Lobbyists	Year of Introduction	CPI 2012	CPI 2018	CPI 12-18 change
Austria	0	1	1	1	2012	69	76	7
Belgium	0	0	0	0	NA	75	75	0
Bulgaria	1	0	0	0	NA	41	42	1
Croatia	1	0	0.5	0.5	2008	46	48	2
Cyprus	0	0	0	0	NA	66	59	-7
Czech Republic	1	0	0.5	0	2012	49	59	10
Denmark	0	0	0	0	NA	90	88	-2
Estonia	1	0	0	0	NA	64	73	9
Finland	0	0	0.5	0	2012	90	85	-5
France	0	1	1	1	2009/17	71	72	1
Germany	0	0	0	1	1951	79	80	1
Greece	0	0	0	0	NA	36	45	9
Hungary	1	0	0	0	(2005-10)	55	46	-9
Iceland	0	0	0	0	NA	82	76	-6
Ireland	0	1	1	1	2015	69	73	4
Italy	0	0	0.5	0.5	2012	42	52	10
Latvia	1	0	0.5	0	2012	49	58	9
Liechtenstein	0	0	0	0	NA			
Lithuania	1	1	1	1	2001	54	59	5
Luxembourg	0	0	0	0	NA	80	81	1
Malta	0	0	0	0	NA	57	54	-3
Netherlands	0	0	0	1	2012	84	82	-2
Norway	0	0	0	0	NA	85	84	-1
Poland	1	1	0	1	2005	58	60	2
Portugal	0	0	0	0	NA	63	64	1
Romania	1	0	0.5	0	2011	44	47	3
Slovakia	1	0	0	0	NA	46	50	4
Slovenia	1	1	1	1	2010	61	60	-1
Spain	0	0	0.5	0	2011	65	58	-7
Sweden	0	0	0.5	0	2005	88	85	-3
Switzerland	0	0	0	0	NA	86	85	-1
UK	0	1	0	1	2014	74	80	6
Total & Average	**11**	**7**	**5**	**9**		**64.9**	**66.0**	**1.1**
Post-Comm only		3	2	3		51.5	54.7	3.2

Source: Compiled by the Author from IDEA, GRECO and national sources.

As of August 2019, 9 out of the 32 countries specifically regulate lobbying usually in the form of a mandatory register of lobbyists (Germany, Netherlands, Poland, United Kingdom); in some cases supplemented by a lobbyist code of conduct (Austria, France Ireland, Lithuania, Slovenia). That the remaining 23 countries do not have a mandatory register does not, however, mean that they do not regulate it at all. Eight other countries have a voluntary code of conduct for lobbyists set up by professional associations (Croatia, Czech Republic, Finland, Italy, Latvia, Romania, Spain, and Sweden), two even have voluntary registers (Croatia, Italy).

Germany was the very first country that had any rules that directly affect interest representation. Any contact with the representatives of interest groups is regulated by two annexes of the Rules of Procedure of the Bundestag: the first annex introduces the Code of Conduct for MPS, who are obliged to provide information on donations, lecture income, membership in supervisory boards, et cetera. The most important obligation is that each member of the Bundestag has to disclose income from activities related to the matters being discussed in parliamentary committees, including specification of the relationship interests and subject matter (Rules of Procedure of the Bundestag, 2019, Anlage 1, p. 95–107). The second annex of the Rules of Procedure paid particular attention to the role of specific associations in the political process, which can be involved in the formulation and implementation of national and local policies (Rules of Procedure of the Bundestag, 2019, Anlage 2, p. 108; Kalniņš, 2005, p. 51). All associations willing to defend or express their views in the Bundestag or in the Federal Government must register and provide basic information to the president of the chamber in a publicly accessible register. As a reward for registration, entry to the Bundestag building is granted, but it does not promise any other privileges such as an automatic invitation to parliamentary committees.

In ***Lithuania***, the lobbying law (2000, last amended 2017) is enforced by the Chief Official Ethics Commission. The law defines lobbying activities in a broad way as "all actions taken by a natural or legal person for or without compensation in an attempt to exert influence to have, in the interests of the client of lobbying activities, legal acts modified or repealed, or new legal acts adopted or rejected". However, only professional lobbyists, who are contracted by a third person to influence decision-making, are required to register in the official list of lobbyists.

The lobbying law in ***Poland*** (2005) came into force in March 2006. It establishes a registry of professional lobbyists or exclusively paid contractors. Polish law makes a difference between 'lobbying activities' and 'professional lobbying activities'. A "professional lobbying activity" is "gainful lobbying activity conducted on behalf of third parties in order to arrive at the interests of such third parties being taken into account in the law-making process". Only professionals are regulated by the Polish law and are required to register.

In 2009, ***France*** regulated the contact between members of the National Assembly and lobbyists. Lobbyists are defined as persons or legal entities whose "main or regular activity of is influencing public decision-making." Having a main activity of lobbying means dedicating more than half of the working time to an activity, which consists in conducting interventions with public officials, or meeting these officials at least 10 times within a year in order to influence their decisions. A public register of lobbyists was created as well as a professional Code of Conduct. Only lobbyists who registered and signed the Code receive one-day passports of entrance to the Bourbon Palace. The Senate adopted a similar regulation in 2010. The list of lobbyists was published on the webpages of both chambers. The new system was fully implemented in 2018 by statutory regulation (2016), and is applied to professional lobbyists (with at least 10 contacts per year, spending at least 50 per cent of their time in lobbying activities).

Lobbying in ***Slovenia*** has been regulated since 2011 by the Integrity and Prevention of Corruption Act (2010). In Slovene law, lobbying means any non-public contact of a lobbyist with lobbied persons that aims to influence the content or procedure concerning the adoption of legislation. The scope of the law is strict and covers all persons trying to influence decision-makers in the public sector, with the exception of public institutes and state- and municipally-owned companies and excluding actions directly relating to the systemic issues of strengthening the rule of law,

democracy and the protection of human rights and fundamental freedoms. Apart from lobbying, the Corruption Prevention Commission as a supervisory body also monitors and enforces rules on whistle-blowing, disclosure of officials' financial assets, conflicts of interest and other anti-corruption measures.

The ***Netherlands*** adopted rules for the regulation of lobbyists in 2012 only for the lower house of parliament and introduced a register of lobbyists. The motivation for introducing it was to "enhance transparency in the House of Representatives" and according to the Group of States Against Corruption (GRECO) "was introduced to curb practices of some lobbyists, who were abusing their formerly free right of access to the House of Representatives" (GRECO, 2013, p. 15). All lobbyists who spend at least 80 per cent (!) of their time (compared with e.g. 20 per cent in USA) lobbying in the House of Representatives must register for a publicly accessible database. As a benefit, they receive a pass to access the lower house. Three types of lobbyists must register: staff of public affairs and public relations offices; representatives of public organizations/trade organizations; and representatives of municipalities and provinces.

Since 2012, a particular regulation was set up in ***Italy***, but it has a very narrow scope. Some regions (Abruzzo, partly Tuscany) established a register of lobbyists (but without providing any definition of lobbyist and/or lobbying). A lobbying registry was established by a decree at the Ministry of Agriculture, Food and Forestry, and was accompanied with a permanent procedure of consultation.

In ***Austria***, lobbying is defined as any organized and structural contact with public office holders aimed at influencing decision-making in the interest of a principal (Lobbying law, 2012). As in France, amongst subjects completely exempt from the law are also all religious and territorial interest groups, and law firms.

The Regulation of Lobbying Act (2015) in ***Ireland*** defines a lobbyist as anyone who communicates on a relevant issue with a designated public official. There is an obligation to register for both professional lobbyists and in-house lobbyists; a specific feature in Ireland is that under the term lobbyist is included anyone who communicates on the development or zoning of land (RLA, 2015). A lobbyist register is maintained by the Standards in Public Office Commission, which is also responsible for updating the list of designated public officials.

The adoption of lobbying rules in EEA countries

The French and the Estonian cases are telling in terms of what constitutes a transparent lobbying mechanism. While France adopted voluntary registers of lobbyists for the National Assembly and the Senate in 2009 (compulsory since 2017), together with a non-binding code of lobbyist conduct, the level of transparency on the French lobbying scene is not significantly, if at all, higher than in Estonia. Estonia does not have a specific lobbying law or regulation similar to the French system but in recent years, it introduced several anti-corruption measures that indirectly also lead to a more transparent lobbying scene. The regulatory framework is comprised of laws and sub-law legislation such as the Anti-Corruption Act, the Civil Service Act, the Political Parties Act, the Public Information Act, or the Good Practice for Preparing Legislation and Technical Rules. All these regulations viewed together form a rather robust system of transparency, which helps to explain why Estonia scored on par with France in Transparency International's last ranking of transparent lobbying in Europe (Transparency International, 2015, p. 27).

Table 2: Transparency International 2015 analysis

	Post-Communist	Lobbying	Lobbyists Codes of Conduct	Register of Lobbyists	Year of Introduction	Access to information	Registration and disclosure by lobbyists	Oversight of register and transparency rules	Pro-active public sector transparency mechanisms including legislative footprint	Overall score
Slovenia	1	1	1	1	2010	67	60	56	50	58
Ireland	0	1	1	1	2015	67	64	50	13	48
Lithuania	1	1	1	1	2001	50	50	56	38	48
UK	0	1	0	1	2014	67	33	25	13	34
Austria	0	1	1	1	2012	50	57	19	13	34
Poland	1	1	0	1	2005	50	27	13	25	29
Latvia	1	0	0.5	0	2012	50	13	0	50	28
Netherlands	0	0	0	1	2012	67	10	0	25	25
Estonia	1	0	0	0	NA	50	0	13	33	24
France	0	1	1	0.5	2009	33	30	10	21	24
Slovakia	1	0	0	0	NA	83	0	0	0	21
Czechia	1	0	0.5	0	2012	75	0	0	0	19
Bulgaria	1	0	0	0	NA	50	0	0	0	13
Denmark	0	0	0	1	1951	50	0	0	0	13
Portugal	0	0	0	0	NA	33	0	0	17	13
Italy	0	0	0	0	2012	33	10	0	0	11
Spain	0	0	0.5	0	2011	33	7	0	0	10
Hungary	1	0	0	0	(2005-10)	33	0	0	0	8
Cyprus	0	0	0	0	NA	17	0	0	13	7
Total	**9**	**7**	**5**	**8**		**50**	**19**	**12.7**	**16.4**	**25**
Post-Comm		**3**	**2**	**3**		**56**	**16.7**	**15.3**	**21.8**	**27.6**

Source: Compiled by the Author from Transparency International 2015.

Table 2 shows the results of Transparency International's (TI) analysis from 2015 (variables 'Access to information' to 'Overall score'). The analysis was carried out only once, in 2015, and it does not cover all countries in the previous table, but in selected cases that were analysed there is a high correlation between having specific lobbying laws and achieving high scores in the ranking (Table 3).

Table 3: Lobbying regulations in 2015 and TI analysis on lobbying (2015)

		Registration and disclosure by lobbyists	Oversight of register and transparency rules	Pro-active public sector transparency mechanisms including legislative footprint	Overall score
Law on Lobbying	Pearson Cor.	0.9	0.8	0.57	0.8
	N	19	19	19	19
Lobbyists Codes of Conduct	Pearson Cor.	0.78	0.68	0.56	0.68
	N	19	19	19	19
Register of Lobbyists	Pearson Cor.	0.74	0.63	0.46	0.67
	N	19	19	19	19
Post-Communist Countries only					
Law on Lobbying	Pearson Cor.	0.91	0.86	0.65	0.83
	N	9	9	9	9
Lobbyists Codes of Conduct	Pearson Cor.	0.8	0.84	0.75	0.87
	N	9	9	9	9
Register of Lobbyists	Pearson Cor.	0.91	0.86	0.65	0.83
	N	9	9	9	9

Note: All correlations significant at the 0.05 level. Variable 'Access to information' not significant.
Source: Transparency International, calculated by the Author.

Two results shown in the correlational analysis are worth noting: first, having any lobbying regulations clearly favours lobbying transparency. With no regulation, countries score very low in the ranking. On the other hand, having such a regulation does not automatically lead to very high scores. This is evidenced by the cases of France and Poland. In terms of qualitative comparative analysis, hard legal regulations for lobbying indeed seem to be a necessary but insufficient condition for achieving transparency of the lobbying mechanism.

Second, the correlation of variables in post-communist countries is slightly higher than in the EEA-wide aggregate. This is to some degree affected by the low number of countries in the population, but it also points to a deeper division in the region. While three countries, Lithuania, Poland, and Slovenia, decided to progress in the lobbying regulation agenda, the remaining six are lagging behind and have yet to adopt any effective rules that would shift their scores up in the TI ranking.

However, adopting formal regulations does not directly translate into a more transparent lobbying field. For instance, Poland has been discussing formal regulations of lobbying since the 1990s, when Polish officials were several times implicated in lobbying scandals (see e.g. Sutch et al., 1999, p. 7). By 2005, working groups in the Polish government as well as independent experts from NGOs developed four different drafts of formal lobbying regulations. In the end, a rather unambitious variant was chosen and passed as the Act on Lobbying Activity in the Legislative Process (Journal of Law 169/2005, item 1414). The final form of the Act was quite a disappointment to the NGO sector and has been since its adoption the target of much criticism (see e.g. Makowski & Zbieranek, 2007). Besides the obligation to register, the Act does not set any other requirements or obligations for lobbyists, its definitions are seen as vague, blurred and impractical, and it covers too many issues, many of them not directly connected to lobbying (e.g. public hearings); these unrelated issues were even expanded by four subsequent amendments to the Act, which, however, did not improve on the overall quality of the legal regulation (Kwiatkowski et al., 2016, p. 11-14).

In Poland, lobbying is "any legal action designed to influence the legislative or regulatory actions of a Public Authority" (Lobbying Act, 2005, Art 2, Sentence 1). This very broad definition, resembling the EU approach more than the restricted definition preferred by the Council of Europe, allows for the regulation of basically any activity with a direct or indirect impact on the legislative process. However, already in the second and third sentences of the same article, it transpires that the Act is aimed purely at the regulation of professional lobbying, which is "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" (Lobbying Act, 2005, Art 2, Sentence 1). The broad definition used for lobbying loses its potential advantage when the Act establishes that professional lobbyists are "a firm (hereinafter referred to as the Professional Lobbying Firm) or by an individual not registered as such (hereinafter referred to as the Professional Lobbyist) pursuant to a civil contract" (Lobbying Act, 2005, Art 2, Sentence 3).

It is therefore quite unsurprising that the practice of transparent lobbying in Poland severely lags behind what the lawmakers may have envisioned. The level of transparency is theoretically higher than in other countries ranked lower by Transparency International, including the Czech Republic and Slovakia. However, as, for example, Kwiatkowski et al. (2016) demonstrate, the realities of the three countries are largely similar, with no effective progress towards real transparency of lobbying in any of these countries.

Lobbying rules and corruption levels

The Polish example suggests that not even adopting a specific law on lobbying will immediately lead to an improvement in the level of transparency in regard to lobbying. Before drafting such a law, important questions need to be answered: first, how broad is the scope of regulated activities and who is regulated by the law? Second, what role does the law fulfil in the entire structure of the anti-corruption regulation in the country? And third, how is the law enforced and what are the incentives for compliance?

The first question is addressed in the previous paragraphs by looking at the challenge of defining lobbying. The second question may be answered when the current situation in Poland is compared to Latvia. Latvia, one of the countries with no obligatory rules for lobbying, is ranked virtually at the same level as Poland in TI's 2015 analysis. Latvia's relatively high scores are caused by other anti-corruption laws, not specifically aimed at lobbying. Latvia features strong provisions for open public access to information, there are some, even if far from ideal, rules for the legislative footprint of draft bills, and the country also established a well-regarded anti-corruption body, the Corruption Prevention and Combating Bureau of Latvia (KNAB). KNAB has been involved in the national discussion on the transparency of lobbying since 2008, which is closely related to the bureau's activities as stipulated in the existing anti-corruption legislation (e.g. Law on Prevention of Conflict of Interest in Activities of Public Officials, Law on Financing of Political Organizations, Law on Prevention of Squandering of the Financial Resources and Property of the State and Local Governments, Law on Freedom of Information, etc.). Therefore, the activity of KNAB, which enforces and supervises compliance with the country's system of anti-corruption laws, indirectly increases the transparency of the lobbying scene in Latvia.

Having a body specialising in anti-corruption does not directly translate into low levels of corruption throughout the political system. A second correlational analysis shows that the presence of lobbying laws in a country is often accompanied by advanced rules in the areas of political finance, financial disclosure or conflict of information, as assessed by Hertie's School of Governance's European Public Accountability Mechanisms index (Table 4). Curiously enough, this correlation holds true only if the entire dataset of 32 countries is viewed together; for the 9 post-communist countries, the numbers are not statistically significant. This is most probably caused, firstly, by the low number of countries in the population, but also by differences in adopting various anti-corruption laws in individual post-communist countries. Some post-communist countries simply focus on other measures that they believe have priority in the anti-corruption fight than formal lobbying rules.

Table 4: Lobbying regulations, EuroPAM and Corruption Perception Index (2018)

		Political Financing	Financial Disclosure	Conflict of Interest	Freedom of Information	Public Procurement	CPI 2012	CPI 2018	CPI 12-18 change
Law on Lobbying	Pearson Cor.	**0.37**	0.24	**0.37**	0.03	-0.17	0	0.10	0.25
	Sig. (2-tailed)	**0.038****	0.183	**0.035****	0.864	0.347	0.993	0.64	0.205
	N	**32**	32	**32**	32	32	31	31	31
Lobbyists Codes of Conduct	Pearson Cor.	**0.32**	0.33	**0.54**	0.15	0.05	-0.14	-0.08	0.18
	Sig. (2-tailed)	**0.077***	0.061*	**0.001****	0.419	0.775	0.465	0.65	0.333
	N	**32**	32	**32**	32	32	31	31	31
Register of Lobbyists	Pearson Cor.	**0.29**	0.11	**0.35**	0.01	-0.28	0.05	0.15	0.22
	Sig. (2-tailed)	**0.113**	0.531	**0.05****	0.975	0.127	0.773	0.415	0.191
	N	**32**	32	**32**	32	32	31	31	31
Post-Communist Countries only									
Law on Lobbying	Pearson Cor.	0.25	-0.01	0.13	-0.22	-0.23	**0.53**	0.41	-0.1
	Sig. (2-tailed)	0.456	0.976	0.701	0.525	0.497	**0.095***	0.208	0.78
	N	11	11	11	11	11	**11**	11	11
Lobbyists Codes of Conduct	Pearson Cor.	0.13	0.44	0.42	0.11	-0.12	0.1	0.23	0.25
	Sig. (2-tailed)	0.705	0.18	0.196	0.743	0.72	0.777	0.502	0.5
	N	11	11	11	11	11	11	11	11
Register of Lobbyists	Pearson Cor.	0.28	-0.09	0.24	-0.11	-0.18	0.46	0.34	-0.1
	Sig. (2-tailed)	0.406	0.794	0.47	0.75	0.598	0.158	0.301	0.775
	N	11	11	11	11	11	11	11	11

Source: EuroPAM, Transparency International, calculated by the Author.

The lack of statistical correlation does not mean that formal lobbying regulation may be entirely ineffective in curbing corrupt practices in a political system. Most of the recent adoptions of lobbying laws have taken place in post-communist countries; that is, in a region with lower scores on the CPI and other corruption rankings than in Western European democracies. If only post-communist cases are selected, there is a statistical correlation between CPI in 2012 and the presence of a lobbying law. Indeed, countries with formal lobbying laws fare also in the CPI 2018 ranking slightly better than those with no lobbying laws: Slovenia 60, Poland 60, Lithuania 59 (all with lobbying laws), versus Czech Republic 59, Latvia 58, Slovakia 50, Croatia 48, Romania 47, Hungary 46, and Bulgaria 42 (without lobbying laws). These scores are quite probably significantly influenced by endogeneity due to a loop of causality between the willingness to adopt formal lobbying legislation and the level of corruption in the system, but it is still a fact worth noting. The endogeneity is exemplified in the case of the Czech Republic. The Czech government in 2018 and 2019 prepared a draft bill on lobbying that is planned to come into force in 2021 (Otto, 2019). A similar relationship, on the other hand, is not found in Western Europe, where none of the Scandinavian countries, traditionally regarded as the region of Europe with the lowest levels of

corruption in politics, have so far adopted any formal legal regulation on lobbying. Scandinavia is a very specific case in other sub-fields of global anti-corruption efforts, resisting to formally regulate public officials' conflicts of interest, assets control and others (see Table 1).

However, to follow the Scandinavian way would be most probably very detrimental to other countries, especially in the post-communist region; there are cultural and historical factors to consider. New democracies in Central and Eastern Europe lack the deep-rooted feeling of community and care for the public good that are to be found in Western and Northern Europe; formal regulations of high quality should speed up the process of making the politico-economic system fairer for all citizens.

The problem of enforcement

Contrasting the Latvian and Polish cases indicated that countries that take different approaches towards the problem of transparent lobbying may still arrive at very similar outcomes. The question then arises whether this outcome is desired; whether it cannot be improved upon and how. When European cases are considered in more detail, the evidence suggests that this is, primarily, a question of enforcement; or the lack thereof. Since actors of the lobbying regulations are not pushed towards compliance, they have no desire to do so. There are no incentives for them to follow the rules and there are only few sanctions that might force them. In fact, only seven EU Member States have so far adopted some sanctions, all of them relatively weak and of arguable real-world effect.

In ***Austria***, the Ministry of Justice enforces sanctions under the lobbying law (Art 13 of LobbyG BGBl 2012/64). The direct administrative sanctions issued by the Ministry are comprised of a) fines for lobbying without being registered, which range from 20,000 euros for one offence up to 60,000 euros for repeat offences, b) fines for non-compliance with the rules for registered lobbyists, which range from 10,000 euros for one offence up to 20,000 euros for repeat offences (Article 13, paragraph 2), c) deletion from the register of lobbyists in cases of a serious breach of conduct or non-compliance (Article 14, paragraph 1). The deletion carries with it a ban on re-registering for three years (Article 14, paragraph 2). Monetary penalties for non-compliance may also be applied to principals, on whose behalf individual lobbyists work. The law also anticipates the possibility of an action before the civil court, even if the requirements for such an action are not specified.

In ***France***, the 2016 law, known as Sapin II (Loi n° 2016-1691 du 9 décembre 2016, amending Loi n° 2013-907 du 11 octobre 2013), provides an entire plethora of anti-corruption rules, including rules that cover lobbying. The High Authority for Public Authority will be the body enforcing sanctions, which also include a fine up to 15,000 euros or a year of imprisonment (Article 25) for failure to comply with lobbying rules.

In January 2017, the enforcement and investigative provisions of the Regulation of Lobbying Act 2015 came into force in ***Ireland***. Every professional (i.e. contracted) lobbyist who failed to register or to submit a quarterly return of activities by 21 January 2017 is liable to pay an automatic fixed penalty notice of 200 euros (Article 21) to the enforcing authority, the Standards in Public Office Commission. More serious violations of the Lobbying Act carry the possibility of a summary conviction to a class C fine (2,500 euros maximum) or imprisonment for up to two years (Article 20).

In ***Lithuania***, the only penalty established by the lobbying law (No. VIII-1749, last amended by Law No. XI-2331of 6 November 2012), enforced by the Chief Official Ethics Commission, is being struck off the register of lobbyists for one year (Article 9) for minor misconduct and five years in cases of a more serious breach of the law (Article 10). The law specifically mentions that illegal lobbying activities may also be subject to proceedings before the civil court (Art 15).

The ***Polish*** lobbying law (Dz. U. 2005 nr 169, poz. 1414) establishes a registry of professional lobbyists; that is, exclusively paid contractors. If a person conducts paid-for lobbying activities without

registration, they shall be fined a sum from 3,000 to 50,000 PLN[1] by the Ministry of the Interior and Administration (Article 19). Moreover, if a crime is committed while performing lobbying activities, the offender may be banned from future professional lobbying (Article 13; Article 41 of the Polish Criminal Code).

Lobbying in ***Slovenia*** has been regulated since 2011 by the Integrity and Prevention of Corruption Act (45/10). The Act establishes the main body of oversight and enforcement as the Commission for the Prevention of Corruption of the Republic of Slovenia (Article 5). Apart from lobbying, the Commission also monitors and enforces rules on whistle-blowing, disclosure of officials' financial assets, conflicts of interest and other anti-corruption measures. The Commission has the power to impose a) a lobbying ban for 3 to 24 months for minor offences under the Act (Articles 73 and 74), and b) a fine of up to 4,000 euros on physical persons or 100,000 euros on legal persons for more serious breaches of the law (Articles 77 - 79).

The United Kingdom has formally regulated lobbying since 2014 by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act. The scope of the regulation is rather narrow, since it covers only professional lobbyists (Article 2). The enforcing authority is the Registrar of Consultant Lobbyists (Article 3), who keeps a register of consultant lobbyists, monitors compliance with lobbying rules, and sanctions offenders. The only sanction available to the Registrar is a civil penalty in the form of a fine of up to 7,500 pounds sterling (Article 16). In addition to this civil penalty, offenders are liable on summary conviction or on conviction on indictment, to a fine not exceeding the statutory maximum (Article 12).

Table 5 summarises all sanctions that individual countries use to enforce their lobbying laws on lobbyists. The sanctions may roughly be classified into three types: a lobbying ban, usually limited to a specified period, a fine, or imprisonment. Given the small set of individual countries that adopted these measures, there is no clear trend that might be considered as general or common to all countries; sanctions vary considerably from one state to another. Still, countries nowadays seem to prefer less strict sanctions, mostly in the form of monetary penalties, with imprisonment present in the lobbying laws of France and Ireland only.

Table 5: Rules enforcing lobbying laws (August 2019)

	Lobbying law	Lobbyists' Codes of Conduct	Register of Lobbyists	Year Introduction	Lobbying ban	Fine	Prison
AT	1	1	1	2012	1	1	
FR	1	1	1	2017		1	1
IR	1	1	1	2015	1	1	1
LT	1	1	1	2001	1		
PL	1	0	1	2006	1	1	
SL	1	1	1	2010	1	1	
UK	1		1	2014		1	

Source: compiled by the author

While it is not difficult to compile a simple classification of what sanctions are formally adopted in individual countries, it is virtually impossible to find out whether these sanctions are being applied in practice. In Europe, most countries do not collect statistical data on the application of lobbying sanctions. Only in Slovenia does the Commission for the Prevention of Corruption report them in their annual report. The 2017 report shows that sixteen registered lobbyists who have not submitted their 2017 activities report were sanctioned by being given an official warning (Komisija

1 Approx. 660 to 11,000 EUR in 2019

za Preprečevanje korupcije, 2018). Moreover, the situation is further complicated by one crucial difference in sanctions: some countries prefer to enforce rules on lobbyists, some on the lobbied public officials. Table 5 summarises enforcements aimed at lobbyists. In this area, Germany significantly lags behind all other countries. On the other hand, Germany has been praised for its detailed regulations included in the Criminal Code, which cover the acceptance of benefits (bribery) on the part of public officials (Speth, 2014). Such regulations limit lobbying indirectly and may indeed lead to a lower level of corruption and a more transparent political scene than regulations aimed at lobbyists themselves.

Concluding remarks

In summary, the data shows that former communist countries in the EEA area are slightly ahead of countries who did not belong to the communist bloc. Furthermore, post-communist countries have already adopted formal lobbying regulations and these regulations are, in general, more comprehensive. The post-communist countries that have adopted these regulations have also, to some degree, fared better in TI's Corruption Perception Index; the causality is, as usual, unclear. The most probable scenario is that countries more interested in fighting corruption, adopt lobbying regulations as one part of their ongoing effort to curb corruption. The data and juxtaposition of individual cases, nevertheless, proves that just adopting some regulations will not influence the overall level of corruption in any country. The devil is in the detail and in the overall effectiveness of an anti-corruption firewall built into the national legislative framework.

The present paper argues that the current lobbying environment in European countries suffers from a severe deficiency in effectiveness and pro-transparency potential. The cause of this deficiency may be found in two connected but theoretically distinguishable problems: first, there is the problem with defining lobbying and lobbyists. The definitions currently adopted in laws do not sufficiently capture the real world of lobbying, which harms the transparency and general usefulness of lobbying regulations. Second, a crucial part of the effectiveness of any rule on lobbying is the mechanism of enforcement. Unless the actors are compelled by strict formal means to comply with the rule, the rule has a very low impact on the activities of the lobbyists and thus may not be in fact worth embracing.

Some conclusions, nevertheless, about the future of development of lobbying regulations may also be drawn. There is a clear push towards more transparency and stricter limits put on both politicians and lobbyists by supra- and international organizations. That being said, after almost fifteen years of efforts by the EU, only a third of EU Member States feature comprehensive regulatory systems for lobbying. Most countries progress via a piecemeal approach and evidently do not consider lobbying regulations a priority on their agenda. The cases of France, Poland, or Estonia, moreover, show that true progress in the agenda is not made by simply adopting a lobbying law but by a careful consideration of all aspects of national pro-transparency regulations and attempts to fill gaps and remedy weaknesses. Most importantly, new regulations should be accompanied by effective monitoring and sanctioning mechanisms and supervisory bodies with sufficient powers to enforce these regulations. The question of what the core of these regulations should precisely be and how the supervisory bodies should be shaped remains open for further research.

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