

EVALUATION OF TRANSPARENT LOBBYING IN VISEGRAD GROUP COUNTRIES

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Abstract

The aim of the article is to evaluate transparency in decision making process which might be influence by lobbying activities, in four European countries known as Visegrad group – the Czech Republic, Hungary, Poland and Slovakia. Because only one of them has implemented law on regulation of lobbying, the wider and more complex approach that was recently developed by authors', is used. The innovative method based on four categories of indicators divided into 16 groups of measures with the effort to cover the entire decision-making process. The result of the analysis shows important conclusion: the rules on lobbying are only one part of a transparent lobbying process; a statutory regulation in place does not automatically mean effectively solving problems with transparency (Poland case). However, countries without (or with) legal regulation often take measures for more transparent decision-making in general. Some of these measures are also indirectly linked to transparent lobbying.

Keywords

Lobbying, Rules, Transparency, Evaluation, Visegrad Group

I. Introduction

In the last three decades, the pressure to regulate lobbying activities in order to make them more transparent or to improve existing regulations has grown steadily. Holman and Luneburg (2012, p. 75) find that early European lobbyist regulations have focused primarily on providing business interests with access to lawmakers, and not on transparency – that is, the argument of strengthening the emerging economies prevailed over regaining public confidence in the government. This trend began to change in favour of transparency after several major corruption scandals in the past, such as the Rywin affair in Poland, Money for Question in EP or UK Parliament, where a misuse of public power for private interests played role. That led to the weakening of public confidence in political representation. Even lobbyists realized that the best way to address the problem with their image is by operating in the broad daylight of public transparency (Holman and Luneburg 2012, p. 76).

One of the most complex and most elaborated way of the evaluation of the legislation connected with lobbying focuses on hard rules - legal regulation on lobbyists, which was created by the Center for Public Integrity in USA (CPI 2003, updated 2014). Chari et al. (2010, 2019) dealt mostly with rules for lobbyists with only a limited extent to the targets of lobbying although in their last work already appears wider context of open government (2019). Almost no studies address the quality lobbying environment in the broader scope of the mean of decision making that seems to be a limiting factor in order to address the transparency in lobbying and interest representation.

The recent TI study on lobbying (2015) is the only exception that highlights a noteworthy message: although some countries have lobbying/lobbyist regulation, they can score worse than those that do not have any specific standalone regulation on lobbying in place. The reason for

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such results is both the inefficiency of lobbying rules, their loopholes, weak enforcement, et cetera and the implementation of other “more effective” measures that can shed light on the decision-making process in general.

The cultural-civilization barriers faced by lobbying in post-communist countries are conditioned by specific political culture and lack of experience with democratic politics. The countries of Central and Eastern Europe as well as other post-communist countries, had faced a number of problems in the public space, such as insufficient professionalization of the apparatus and activists, problems related to the search for suitable topics and their selection, financing of activities, defining their relationship to politics, political process and the ability towards agenda-setting. Only four of them – Lithuania, Macedonia, Poland and Slovenia – have a statutory regulation of lobbying and Hungary experienced a short period of lobbying regulation in 2006-2010.

This submitted paper focuses on four Visegrad group countries from the East Central European region – the Czech Republic, Poland, Slovakia and Hungary – and evaluates transparency in lobbying at the level of specific measures according to the catalogue of transparent lobbying, created and proposed for discussion by the authors.

Materials and methods

For the evaluation, the authors' catalogue of transparency in lobbying, where the transparency in lobbying is conceptualized in broader environment as an alternative to current forms of evaluating transparency in lobbying, is used (Laboutková, Vymětal 2018). The catalogue containing four main categories – lobbyists, targets of lobbying, sunshine principles and monitoring and sanctioning. The data was collected from four countries – the Czech Republic, Hungary, Poland and Slovakia.

The questionnaire includes 158 indicators divided into 16 groups. Majority of the indicators have to be evaluated at three-point scale:

- “YES” is used if the measure exists; if it is somehow regulated, please indicate the document and provide some information on it (see below);
- “NO” if there is no such measure in place; “n.a.” is used for “not applicable” and/or “not available” or the indicator cannot be expressed in specific value use;
- “Partly” in the case the measure does not fully meet the question.

The questionnaire has 106 answers that offers only one of the three options above. In 14 cases if the answer was positive, a detailed data was asked (e.g. what type of sanctions are used for breaching the rules). And 38 questions asked for specific documents (i.e. those regulating law-making process at the level of legislative branch), numbers (number of lobbyists), time periods (time limit for lobbyists disclosure) and/or choosing all relevant types of answers proposed from the list (types of sanctions for breaching the lobbying regulation).

II. Evaluation of Transparent Lobbying in V4 countries according to the Catalogue

Among the V4 countries, only one – Poland – has a statutory regulation of lobbyists. However, Hungary also experienced a legal regulation of lobbying between 2006 and 2010, they law was abolished and replaced by two decrees not directly focusing on lobbying and on lobbyists. Czech Republic and Slovakia have drafted bill for regulating lobbying several times in the past but no bill passed the law-making process.

The best scoring country and the country with most “yes” answers in V4 countries is Poland – the reason is simple: it has legal regulation specifically addressed to the lobbying and lobbyists. On the other hand, although the rest of countries do not have any rules on

lobbying in place, the gap is not very significant (Slovakia 64 “yes”, Czech Republic 59, Hungary 54). Only for Poland (58 per cent) more than half of questions were replied positively; that contrasts with more than 50 per cent questions replied as “no”, “not available” and/or “not applicable” in Slovakia (53 per cent) and Hungary (63 per cent).

A more detailed information can be found if the data are read individually for the four categories: measures applied to the lobbyists, targets of lobbying, sunshine rules, and monitoring and sanctioning measures. The summary of results is summarised in Table 1.

Table 1 Evaluation of transparency in lobbying in V4 countries in the main categories of the catalogue

Category	Number of indicators	Czech Republic			Hungary			Poland			Slovakia		
		Yes	No/ N.a.	partly	yes	No/ N.a.	partly	Yes	No/ N.a.	partly	yes	No/ N.a.	partly
Lobbyists	31	5	25	1	1	28	2	12	17	2	1	29	1
Targets of lobbying	38	13	19	6	14	24	0	24	10	4	12	23	3
Sunshine principles	69	35	18	16	35	31	3	45	18	6	47	16	6
Monitoring and sanctioning	20	6	14	0	4	16	0	11	9	0	1	29	1

Note: Dark fill means more than 50 per cent of indicators

Source: authors own calculation

Several conclusions may be drawn from the data. As shown in Table 1, the first conclusion is, there is a pattern of similarity for all scores within the four categories in selected countries, especially those with no adopted rules – except for the sunshine principles, all countries have more “no” answers than positive ones. In the case of countries with some adopted rules on lobbying, the prevailing answer is to the positive within each category, even if irregularities exist.

The second conclusion is already highlighted above – countries with legal regulation of lobbying are ahead with more positive replies particularly in the first category concerned with lobbyists. On the other hand, the expectation is countries with any statutory rules will score far better than those without it – in this respect the score for Poland is surprisingly low.

The third, the category of measures applied on targets of lobbying presents an interesting picture. Countries that have only indirect regulations in place, their scoring is influenced by international recommendations and principles and adopted general rules for public administration public office holders rather than a specific regulation adopted for lobbying. For that reason, all countries score well, with more than 50 per cent of positive answers, in the category of sunshine rules.

The fourth, the category of monitoring and sanctioning follows the above mentioned – Poland scores better than countries without lobbying rules.

The Table 2 below decompose the categories of transparent lobbying at the level of logical groups of indicators for V4 countries.

Evaluation of Transparent Lobbying in Visegrad Group Countries

Table 2 Evaluation of transparent lobbying criteria

Category	Data / information	Number of indicators	Czech Republic			Hungary			Poland			Slovakia		
			Yes	No / N.a.	Partly	Yes	No / N.a.	Partly	Yes	No / N.a.	Partly	Yes	No / N.a.	Partly
Lobbyists	Register	14	2	12	0	0	14	0	7	5	2	0	14	0
	Codes of Conduct	8	3	4	1	1	5	2	0	8	0	1	6	1
	Disclosure of activities	9	0	9	0	0	9	0	5	4	0	0	9	0
Targets of lobbying	Codes of Conduct	14	7	4	3	6	8	0	8	4	2	7	6	1
	Revolving doors	7	0	7	0	0	7	0	3	3	1	1	5	1
	Conflict of interests	5	3	0	2	4	1	0	5	0	0	1	3	1
	Disclosures of politicians / senior public employees	12	3	8	1	4	8	0	8	3	1	3	9	0
Sunshine principles	Rules on legislative process	17	13	2	2	13	3	1	14	2	1	13	3	1
	Rules on decision-making	6	2	1	3	3	2	1	2	4	0	2	2	2
	Rules on consultations	10	2	3	5	6	3	1	8	2	0	8	2	0
	Legislative footprint	6	0	6	0	2	4	0	3	0	3	0	5	1
	Open Government Data	12	7	2	3	1	11	0	7	3	2	8	2	2
	Political parties funding	8	5	3	0	3	5	0	3	5	0	6	2	0
	Freedom of information	10	6	1	3	7	3	0	8	2	0	10	0	0
Monitoring and sanctioning	Oversight	7	3	4	0	1	6	0	4	3	0	1	5	1
	Sanctions	13	3	10	0	3	10	0	7	6	0	3	10	0
Total		158	59	76	23	54	99	5	92	54	12	64	83	11

Source: created by authors.

III. Evaluation of indicators in the category “Lobbyists”

The “Lobbyists” category includes three measures: Register, Codes of Conduct and Disclosure of activities. In general, in this category, countries that introduced statutory regulation of lobbying score much higher than those without it.

The **register** of lobbyists is definitely one of the widely used tool in the category, which is shown in many countries of the world regulating lobbying, as in the case of Poland but as written above, there are significant limits of the rules – in the publicly accessible register, only professional lobbyists can be found. The register is publicly available and searchable, even if filtering is not always the standard. The data on clients are not publicly available and mostly are a part of lobbyists disclosure. On the other hand, the Czech Republic has no regulation and only few voluntary mechanisms, such as voluntary registers in associations of “lobbyists”.

The second measure – the **lobbyists’ codes of conduct** – is not a regularly adopted and legally enforced tool. It exists to a certain extent in the Czech Republic, but the codes are voluntary and with low level of enforcement. These associations do not publish any information about the activities of their members in annual reports, nor investigate and monitor lobbyists’ behavior. In fact, these associations consider themselves mainly public relations organizations, not lobbying groups per se. There is no such code of conduct in Slovakia, Hungary, or even in Poland.

The third measure is **lobbyists’ disclosure of activities**. Disclosure is compulsory logically only in Poland. The rules are not very stringent – lobbyists do not report donations, they are not required to have their own personal web pages, and they do not have open calendars. Lobbyists are obliged to annually provide information on clients, place, time, persons and institutions contacted. Data on spending are not required at all.

IV. Evaluation of indicators in the category “Targets of lobbying”

The category “Targets of lobbying” involves measures primarily laid on politicians and public office holders that are significant in terms of transparency of lobbying and decision making. Regulations in all countries suffer from one common weakness: there is no publicly accessible database or a list of people or even positions in the public administration affected by these regulations.

The first measure is a soft regulatory tool – **code of behavior or code of ethics** – that regulates politicians’ behavior. In the analyzed group of countries, there is no significant difference in the countries’ scores. The list of who is actually a legitimate target of lobbying is narrower and more specific in countries with adopted lobbying regulation. V4 countries, with the exemption of Hungary, usually apply bans on paid representation of the interests of third parties for members of parliament, members of government and civil service. With the exception of the Polish parliament, there are no codes of behavior in parliament and in government. In the Czech Republic and in Slovakia, there is no definition of targets of lobbying.

A code of ethics for members of parliament exists only in Poland, as stated above. In other V4 countries, except for Hungary, there is a strict ban on paid interest representation; a ban on promoting specific interests of third parties, other than citizens, exists only in the Czech Republic and Slovakia and partially in Poland. In the same countries, members of parliament are obliged to declare their conflicting position in the matter before voting.

In all countries, there is a code of ethics for civil servants, even if only a weak one in the case of Slovakia. The codes state that civil servants are banned from paid representation of interest in all countries; a ban on unpaid third party’s representation is only partially defined in the

Czech Republic. There are no declarations of conflict of interest for civil servants in the Czech Republic, Poland, or Slovakia.

The measure of revolving doors and a cooling-off period is another provision adopted usually within the lobbying regulation. Two countries – Poland and Slovakia – introduced cooling-off periods for members of government; a similar provision is used in Poland for civil servants.

A more general set of measures that is linked to lobbying indirectly is **conflict of interest regulation**. The scope of rules is much broader, but some have a direct relationship with the regulation of lobbying, particularly regarding gifts and hospitalities from third persons.

Another closely related measure is disclosure of politicians and civil servants. The range of disclosures varies from disclosure of income, assets, property, financial instruments, but also liabilities. If there is a rule in place, it is most often mandatory for members of parliaments, and only infrequently at the level of government or public administration. Only in Poland is this rule extended to some degree also to members of government and public administration – they have to disclose specifically contacts with lobbyists. A full disclosure of lobbying contacts by civil servants is currently partially adopted in the Czech Republic and Poland.

V. Evaluation of indicators in the category “Sunshine principles”

The third category “Sunshine principles” is very extensive and covers many issues related to decision making that have an indirect effect on transparency of lobbying. These measures are not general but rather focused on particular forms and levels of the decision-making process at the authorities’ level. Since countries developed rules in this field as an integral part of how the state and its bodies operate, it is no surprise that, compared to other categories in the catalogue, all analyzed countries scored relatively well and all have at least 50 per cent of indicators, respectively tools, rules and provision in place.

The first set of measures deals with **rules on legislative process**, a cornerstone of operation of all democratic parliaments. The results are very similar across countries – the majority of tools are adopted everywhere. An exception is the missing process of corruption impact assessment, which is in place only in the legislation of the Czech Republic. Regulations in Hungary and Slovakia is also missing an explicit definition on the time period between the second and third reading during the legislative process.

The second set of measures are **rules on decision making** at the governmental level. Here again the differences among countries are not significant and some measures, such as records from governmental meetings and the possibility to follow all phases of decision making online, are insufficiently implemented across all countries. Not surprisingly, all countries have documents regulating the decision-making process at the governmental level. Governments and ministries do not publish their positions to individual bills and proposals, nor they publish records from governmental and ministerial meetings, with the exception of Hungary. Partially only in the Czech Republic, the public can track the governmental decision-making process online. Ex-post data on the whole decision-making process of government are available also in Slovakia. Comments of ministries and external subjects are not available to the public before the final vote on a bill decision in Poland and are only partially accessible in Hungary.

Closely related to the previous set is the measure on **rules on consultations** initiated and organized by the state bodies, government especially. Important differences exist in this area across individual countries. In this respect, best scoring countries are Poland and Slovakia. Czech Republic came out last compared to other countries – many tools in the Czech legislations are implemented only partially or are simply missing. The main issue across V4 is the lack of data published on participants and records from consultation. Data on consultations are published on governmental websites and there are almost no limits on the subjects’

participation; the form of consultation may vary from written notes to the organised meeting and presentations and oral comments, to personal meetings. There are lists of participants available in all countries but these are not publicly available or they are incomplete, like in the Czech Republic and Hungary. The same situation on public availability is with records on consultations. There is no fixed period set for consultations and for the process itself in the Czech Republic and in Hungary. The worst scores across all countries are in the last two indicators, which ask whether public officials are obliged to keep a list of meetings conducted as a part of public consultations and to publish a list of meetings with lobbyists and interest groups representatives. There is no such obligation in force in any V4 country.

A **legislative footprint** and similar tools are missing completely in the Czech Republic and in Slovakia. Poland score the best, but the implementation is partial only: there is a mandatory requirement to publish a list of subjects participating legislative process before the final vote in the parliament and committee hearings are regulated. Some rules on publication of the list of participants in committees exist also in Hungary and in Slovakia. At the governmental level, rules on legislative footprint are missing in all V4 countries. Some interest groups participating in the legislative process are reported and published in Poland only.

The fifth measure that is a part of the set of sunshine principles is **open government data**. This is a general but key pro-transparency tool that can be used for publishing information in general. Hungary in this area scores far worse than the rest of the countries – open data measures are not implemented at all, which is contrasting with other countries. Many tools were introduced fully, but still there are some missing or are implemented only partially. Except Hungary, there is a regulation on publishing government and legislative data in open format, and there is also a catalogue of open government data. The data are accessible to the public by remote access without the need for registration but not all data, particularly in the Czech Republic and Poland, are published under an open license. The published data are available in various formats but not always in machine-readable way. In no V4 country users can comment on data directly in the open-data catalogue. The most negative issue with this set of measures in all countries is a significant delay in updating the data.

The sixth set of measures deals with **political parties funding**. Often, the funding of political parties serves as a direct financial link between lobbyists and politicians. In this issue, the Czech Republic is scoring the best; some provisions, however, are found in all countries. Only Slovakia has a ban on donations to political parties from all entities receiving public money or public contracts in place. Most countries set up limits on the sum of donations to parties, except for Poland. In the Czech Republic, Poland, and Slovakia, all donors to political parties must be identified and reported.

The seventh set of measures involves rules on **freedom of information**. Slovakia scores the best, since it has positive answers for all indicators, Hungary and Poland follow. The usual mechanism adopted is that an unspecified pool of subjects may ask for information but some information, such as trade secrets, personal data, or security data, will not be disclosed. There are rules setting deadlines for the provision of information and also proactive measures, when public authorities publish some data automatically, without the need for a direct request. There are some weaknesses in the rules too: in Hungary and Slovakia, information is not provided if it would represent a significant financial or administrative burden for the authority.

VI. Evaluation of indicators in the category “Monitoring and sanctioning”

The last category, “Monitoring and sanctioning”, includes broad range of measures and many of them are not necessarily connected with breaching rules on lobbying; they are rather linked to the decision-making process per se. In the measure **monitoring**, Poland scores the best, even if it still shows a space for improvement. Czech Republic find itself somewhere in the middle, while the worst situation in monitoring mechanisms is in Hungary and Slovakia. Poland, the only country with statutory regulation of lobbying also an oversight (Ministry of Interior and Administration) over lobbyists and their activities and can investigate them; unfortunately, there are no annual reports about “the state of lobbying” and a list of lobbyists under investigation even in the countries with the lobbying law. When it comes to other monitoring bodies, the countries score higher: only Hungary and Slovakia have not set up a body overseeing conflict of interest. In the Czech Republic, there is an internal body in association for public affairs agencies) members’ behaviour. And finally, all V4 countries have a body for oversight over political parties financing.

The **sanctioning** measures are the last evaluated set of indicators. And here again, Poland with statutory lobbying regulations scores much better than the rest, although there is still a space for improvement. Poland in the case of breaching lobbying regulations administrative sanctions can be enforced. These are mostly financial, but there is also the option to be withdrawn from the register and temporarily banned from lobbying. Only in Poland, criminal proceedings can be also started for a false testimony. Financial sanctions are applied only on lobbyists but also their targets, primarily for missing or incomplete data in their mandatory disclosures connected with lobbying. Regarding sunshine principles, there are no sanctions for breaching the rules of consultation process in any country. Disciplinary sanctions for breaching the legislative process by MPs are introduced can be found only in the Czech Republic and in Poland. Regarding freedom information, the Czech Republic is the only country with no sanctions for authorities violating freedom of information regulations. In the area of political parties funding, various types of sanctions are in place in all V4 countries.

VII. Conclusion

Comparing the CPI index and data from the Catalogue of transparent lobbying, many important differences were written here-above. The CPI index in the version of 2014, focuses on legal regulation of lobbying and includes also a revolving door issue. It is narrow focused compared to the catalogue that focuses rather on lobbying as a part of the decision-making process, therefore it takes into an account more rules and regulations, counts with both sides of the lobbying contact (lobbyists as well as targets of lobbying) and the basic environment where those processes take place. For that reason, also three time more indicators that in the case of CPI was employed in evaluation. That is why countries without any legal regulation on lobbying activities can partly shed a light at least on the decision-making process, and indirectly also on the lobbying activities since they introduce any measures that provide particular transparency. However, there is a strong reluctance to legal regulation of lobbying in many countries, the indirect form of rules aimed specifically on public officials and politicians, can be a way how to – at least to some extent – establish a transparent environment for decision making and interest representation.

If we summaries he results of the analyses here above, some conclusions can be drawn. The first, although rules on lobbying is mostly understood as rules for lobbyists only, this particular understanding is not reflecting the lobbying issue in its broader and real meaning. Since Poland adopted a stand-alone legal regulation, it is regulating professional lobbyists only and there are still significant gaps. The legal regulation can be a good idea but its realization can be far from the ideal/best practice and international recommendations.

The second, Catalogue's effort is to evaluate a transparency of lobbying environment rather than strictness of lobbying rules and/or transparency of real practices. Its aim – however it was driven by the intention of lobbying and interest representation – is to evaluate the institutional setting and measures introduced in order to support of transparency of the environment and where the decisions are taken where the lobbying is only one part activities. From this perspective, three countries without any specific rules on lobbying still promote same limited space in the respect of transparent lobbying through sunshine principles, as rules on legislative process, rules on decision-making process, rules on consultations, rules on legislative footprint, rules on open data, political parties' funding regulation, and freedom of information regulation. This group of measures seems to be one way for addressing basic rules that can affect and potentially form the lobbying activities and subjects' behaviour also if any specific measures promoting transparency during the contacts of representatives of decision-making sphere and the sphere of influence-makers. Of course, those measures cannot be a substitute for any specific regulation of lobbying activities, but in some cases and some countries it can be a way how to do anything and how to start from a different perspective. Those rules can be formative both directly and indirectly, and in fact they can have a significant partial impact on how the decisions are taken, how effective the lobbying and interest representation is done, and how the transparency or non-transparency respectively, is promoted. In other words, those measures create a fundament for "better" environment compatible with good governance principles eliminating space for corruption and buying decisions through campaign financing and party funding by lobbyists. This kind of better environment contributes to democratization process. If the fundament is unused or wasted that is a question for deeper country's analysis.

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