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Polish Lobbying Law – towards transparency

by

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Summary

In the text Julius Galkowski presents information on the subject Polish law of the regulative lobbying activities. The new Act on Legislative and Regulatory Lobbying was passed by the Parliament in July 2005 and came into force on 7 March 2006. The Act promotes transparency principally in the law-making process; this is a key step to improving transparency in the entire public administration and all legislation.

The Act gives the definition of lobbying activities. “Lobbying activities” consist of actions conducted by legally admissible methods that seek to influence public authorities in the law-making process. Lobbying activities aim to ensure that the arguments and interests of social and professional groups are taken into account in the decisions of public officials. Lobbying may also be practiced by organisations and associations with the objective of protecting and promoting the interests of their members.

The Act introduces the notion of “professional lobbying activity,” that is, lobbying on behalf of other persons in exchange for money.

New regulations introduce the row of new legal regulations targeting the enlargement transparency in the creation of the law. These elements are:

- Register of professional lobbyists;
- Legislative work programme;
- Public hearing;
- Information on personnel supporting law-making.

The new law was criticised by several experts, author gives examples of the critical views on the Polish Lobbying Law.

At the end author gives a study case. An example of the improper cooperation with the lobbyists – activities against the new Lobbying Law.

Biography

Juliusz Galkowski works as Chancellor (the highest range of the civil servant) of the Minister of the Interior and Administration of Poland in the Unit for the Coordination of the Anticorruption Strategy. This unit is responsible for the monitoring of the anticorruption activities in polish administration. One of the activities is monitoring lobbying activities in polish administration. Every year the Ministry of Interior and Administration is preparing report about the lobbying activities in polish administration. Juliusz Gałkowski was working as a Project leader and as an expert in several international anticorruption projects provided by the Polish, German, Netherland and British administration. He was also working as an expert of the OECD mission in Ukraine. Juliusz Gałkowski works also in the Institute of Organization and Management in Industry “ORGMASZ” as a head of the work group researching the public administration activities.

LOBBYING LAW IN POLAND

The new Act on Legislative and Regulatory Lobbying was passed by the Parliament in July 2005 and came into force on 7 March 2006. The Act promotes transparency principally in the law-making process; this is a key step to improving transparency in the entire public administration and all legislation.

THE SOCIO-POLITICAL CONTEXT

The social and political context of Poland's transition process is particular; and the Polish people have perceived lobbying very negatively. Research consistently demonstrated that all too often lobbying in Poland has consisted of networks of informal connections, through which private interests, on the basis of "reciprocity of mutual services", penetrate the contacts between business groups and the political elites. "Access to the relevant decision maker" is considered "key capital". And when economic circumstances have worsened and opportunities based on market potential have slid, then such "access to key decision makers" only increases in significance.

Contacts with such public officials may be "earned" in various ways. Indeed, relationships between the worlds of business and politics in Poland are often based on unethical practices; the most effective method of "arranging" the settlement of issues consists of kickbacks.

Research confirms inappropriate lobbying practices

Research commissioned by the National Chamber of Commerce (KIG) in 1998 revealed that local councillors believed that one out of three politicians "accommodated" the interests of a particular firm and conducted "business prospecting" on its behalf, as part of his or her official public activity. That same study showed that Members of Parliament believed the number to be almost one out of four politicians. In a report on corruption in 1999, the World Bankⁱ described the "pathological" forms of lobbying in the *Polish Parliament* (Lower House of Parliament), as including the practice of providing financial benefits in return for the "favours" of blocking or modifying the provisions to be included in laws.

According to research by the Philosophy and Sociology Institute at the Polish Academy of Sciencesⁱⁱ (IFiS PAN) dating from 2000, as many as 28% of MPs surveyed in their third term of office in the Polish Parliament, pointed at corrupt and "corruption-provoking" methods as the most frequently used methods of exerting influence upon the Members of Parliament. These methods included:

- Trading in influence (i.e. proposals of seats on supervisory boards of business companies).
- Bribery or bribery attempts.
- Illegal donations.
- Funding of expensive "gifts" (such as, cars for "testing").
- Personal benefits (providing "attractive services", sponsoring "attractive excursions" or "study travels").
- Promises of financing of electoral campaigns and cash contributions to party funds.

Research conducted in 2004 by the *Stefan Batory Foundation* showed that as many as 35% of all Poles and 19% of Polish parliamentarians believed that bribery may effectively lead to the repeal of a legislative

Act or a change in the law. In the same year, the Public Opinion Polling Centre (CBOS) conducted a similar survey, the results of which showed that 69% of the Polish people thought that cash could be successfully used to have an impact on the drafting of legislation.ⁱⁱⁱ

Very few people working in co-operation with Parliament in the legislative process would admit that they actually practise the profession of lobbying. Law offices, consulting firms and public relations agencies frequently act as “covert” lobbyists. At Parliamentary committee meetings, people from these firms appear in the roles of “experts” or “advisers”, surprisingly enough acting in the capacity of experts on behalf of political parties or deputies, rather than as representatives of third-party stakeholders. As a consequence of this untransparent practice, the law-making process may suffer from the dubious impact of particular vested interests.

“Rywin’s affair” spurs proposed lobbying legislation

The “Rywin’s affair”^{iv}, which uncovered a number of irregularities in the law-making process, led to the drafting of a proposal for a legislative Act on Lobbying. The case revealed that there was no public disclosure required, nor any kind of social control over the process of drafting of legal regulations. The details of the affair indicated clearly that in the course of developing a law, the influences of various private circles were more important than the public interest. Moreover, it turned out that such influences could result in high-value “commissions”, sometimes millions of dollars.

The “Rywin’s affair” and the ensuing inquiries of the Parliamentary Investigation Committee demonstrated to the political class and to society at large that it was essential to regulate the “lobbying business” through the law. This became more pressing as a series of other corruption affairs involving politicians and public servants in charge of developing laws, on the one hand, and professional lobbyists, on the other, saw the light of day. Such cases unveiled repeated incidences of voluntary assistants of MPs and high ranking officials in the public administration acting in practice as lobbyists and promoting the interests of their clients.

It was under such circumstances that the Government of Prime Minister Leszek Miller submitted a draft law on lobbying. However, the same Government later offered its own resignation under the pressure of allegations of corruption and involvement in dubious business dealings.

Redefining the draft law on lobbying: The Parliamentary process

Over a period of nearly two years, the draft law on lobbying evolved from a focus on “sanction” to a focus on greater transparency through public disclosure. On 28 October 2003, the Polish Parliament received the Government’s draft law on lobbying activities. On 12 November 2003, during the Polish Parliament session, a motion to dismiss the Bill on lobbying was rejected by a clear majority of votes; the Bill was submitted to an Extraordinary Committee. After several Committee meetings, in which expert opinions were reviewed and numerous amendments were brought, the Extraordinary Committee^v sent the Bill back to the Polish Parliament and recommended its adoption. On 7 July 2005, the Polish Parliament passed the bill with 399 votes in favour, four abstentions and no votes against the new law. The upper chamber of Parliament adopted the text as proposed by the Polish Parliament. On 15 August 2005, the President of the Republic of Poland signed the final Act on lobbying activity in the legislative process, referred to hereafter to as the “Act on Lobbying”.^{vi}

The Extraordinary Committee’s work

The Extraordinary Committee started its work in January 2004, and a new bill was elaborated based on the ideas of the Government’s draft law. As mentioned earlier, the original draft law submitted by the

Government was very restrictive, and was geared “to seek out and punish misbehaviour” (as one of the experts defined it).

Business associations had a number of concerns about the draft law. Amongst their statutory objectives is lobbying on behalf of their members. Members’ contributions serve as a sort of “fee” for such activities. The business community strongly demanded that the draft law should specify *expressis verbis* that the Chambers of Commerce and Industry are bodies whose rights cannot be infringed upon by the law. These business associations also requested that the same arrangement apply to all non-governmental organisations. The basis for such claims was that the draft law on lobbying ruled out the possibility of lobbying activities being conducted by political parties, and therefore, by analogy, the Chambers of Commerce and Industry (as organisations of entrepreneurs) should also be excluded.

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

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

- For the purposes of the Act, lobbying means any legal action designed to influence the legislative or regulatory actions of a Public Authority.
- For the purposes of the Act, professional lobbying means 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.
- Professional lobbying can be carried out by 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 law contract.

Efforts of the Business Centre Club and MPs of the Law and Justice Party

Such changes were the result of the efforts of the Business Centre Club (BCC) and other employers’ organisations, and also the convictions of a number of deputies active on the Extraordinary Committee, as well as their political parties. These changes – considered by several experts to be definitely positive – gave rise, however, to a number of critical comments, which are presented in Section 5 of this chapter.

A number of prominent MPs from the Law and Justice Party (PiS), who later formed a coalition government, had strongly opposed the draft law submitted by the Government,^{vii}. Subsequently, their representatives who took part in the work of the Extraordinary Committee had a major impact on amendments that produced an evolution in the approach of the Bill. Finally, in 2005, the Law and Justice Party unanimously supported the adoption of the Act on Lobbying in the law-making process.

Representatives of the Business Centre Club actively took part in the work of the Extraordinary Committee. The BCC was one of a select few organisations involved in representing employers’ organisations and the business community. The BCC issued an opinion that pointed out a number of deficiencies in the initial draft law. While the BCC recognised the need for legal regulation of lobbying activities and to improve transparency, it found the bill excessively restrictive, allowing for arbitrary decisions by public officials. The BCC criticised the bill for being “policing oriented” as well as on the determination of which firm or persons were to be regarded as conducting lobbying activities. The

Parliamentary Extraordinary Committee on the bill accommodated the criticisms and comments made by the BCC.

KEY ELEMENTS OF THE ACT

The Act describes the principles of conducting lobbying activities. “Lobbying activities” consist of actions conducted by legally admissible methods that seek to influence public authorities in the law-making process. Lobbying activities aim to ensure that the arguments and interests of social and professional groups are taken into account in the decisions of public officials. Lobbying may also be practiced by organisations and associations with the objective of protecting and promoting the interests of their members.

Professional lobbying activities

The Act also introduces the notion of “professional lobbying activity,” that is, lobbying on behalf of other persons in exchange for money. As construed in the law, professional lobbying activities consist of gainful lobbying activities conducted on behalf of third parties for pursuing their interests in the law-making process. Professional lobbying activity may be exercised on the basis of a civil law contract by an entrepreneur or by a physical person who is not an entrepreneur.

Register of professional lobbyists

Entities conducting such activities must communicate details about themselves to the relevant publicly-accessible Register. The Minister of the Interior and Administration is required to keep such a Register of legal entities professionally conducting lobbying activities.

Sanctions

An entity which performs professional lobbying activities without entering them in the Register shall be subject to a fine ranging from Euro 1 000 to Euro 17 000. Such a sanction is to be imposed by way of an administrative decision by the Minister of the Interior and Administration. Determining factors for the level of the monetary penalty are the degree of influence of the lobbyist on the decision of a public authority, as well as the scope and nature of professional lobbying activities undertaken by the entity. It is possible to impose the monetary fine repeatedly, if the professional lobbying activities were continued without due entry in the Register.

Legislative work programme

At least once every six months, the Government shall prepare and publish on the web site of the Public Information Bulletin (BIP - *Biuletyn Informacji Publicznej*) the programme of legislative work concerning draft laws. This legislative work programme will also indicate any end to the work on a given draft law, along with the reason for such a halt. Similar programmes of legislative work should be prepared and published on draft ordinances. These plans are to be drawn up by the Council of Ministers, the Chairman of the Council of Ministers, and by the individual ministers. Draft laws and ordinances should be disclosed in the BIP once they have been transmitted for co-ordinating consultations with the members of the Council of Ministers.

Public hearing

After publication, anyone shall be able to submit “notification of interest” (on an official form) in the work on the draft laws or ordinance to the body responsible for the preparation of such a draft. Such notification shall also be published in the BIP. Subsequently, the notifying party shall be able to present an opinion concerning the specific draft during the “public hearing”.

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

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

Information on personnel supporting law-making

Important provisions of the new Act include requirements to furnish information on assistants and voluntary assistants of parliamentarians and ministers, employees of political cabinets of ministers and staff of the parliamentary caucuses. Indeed, amendments have been introduced to the following Acts: the Act of 9 May 1996 on the performance of the mandate of deputy and senator; and the Act of 8 August 1996 on the Council of Ministers. Leaders of the parliamentary caucuses, deputies and senators, as well as ministers, are now required to publicly disclose the following information on their collaborators, mentioned above:

- First, middle and last names.
- Date of birth.
- Places of employment over the three-year period preceding the date on which the person became an employee of the office of a parliamentary caucus or political group, or a voluntary collaborator.
- Sources of income over the three-year period preceding the date on which the person became an employee of the office of a parliamentary caucus or political group, or its voluntary collaborator.
- Information concerning the business activities undertaken during the three-year period preceding the date on which the person became an employee of the office of a parliamentary caucus or political group, or its voluntary collaborator.

NEW ACT ON LOBBYING: CRITICAL VIEWS AND CHALLENGES

The Act on Lobbying in the law-making process adopted by the *Polish Parliament* provoked doubts and criticism amongst the Polish public. But reactions were often contradictory. The

principal and most serious criticism related to the **limited scope of the Act**. Namely, it established a subjective list of legislative institutions, which are obliged to be open to lobbyists; but for unknown reasons the list did not include the Office of the President of the Republic of Poland. Another criticism with regards to the Act concerns the **insufficient control measures** applicable to lobbying activities. Control is handled by officials of the same institutions where lobbying activities take place. According to the critics, such a solution can lead to “excessive discretion”, lacks uniformity of control criteria, and represents a serious risk of exposure to conflict of interest.

The Association of Professional Lobbyists in Poland criticised the Act, saying it was drafted too rapidly, and that some of its provisions reflect outright wishful thinking (e.g. the enigmatic provision stating that the heads of public offices are obliged to assure appropriate conditions for the conduct of lobbying activities).

Provisions concerning the public hearings organised by the ministries also seem rather “unfortunate”. Article 9 Paragraph 4 states that if “... due to constraints of the available rooms, in particular owing to the number of persons wishing to participate in a public hearing, it is not feasible to organise a public hearing concerning a draft regulation, the entity entitled to its organisation may: (...) cancel the public hearing, disclosing the reasons behind such cancellation in the Public Information Bulletin (BIP)”. This provision might provide opportunities for irregularities, owing to the fact that it enables the ministries to avoid a public hearing.

The Polish Confederation of Private Employers “*Lewiatan*” (Leviathan), which groups a number of major business enterprises in the country, stated that the regulation adopted by the *Polish Parliament* does not resolve the problem of corrupt lobbying, as it does not grant active lobbyists such rights as to motivate them to leave the “shadow economy”. According to the authors of the statement, only **balanced duties and rights** on the part of entities performing professional lobbying activities, extending beyond the scope of the rights to which each and every citizen is entitled to by virtue of the law, can contribute to the elimination of the “grey zone” in the environment of lobbyists.

Indeed, the newly introduced regulation ought to eliminate the phenomenon of pathological lobbying, connected with corruption, and the use of informal connections at the interface between politics and business. The newly created regulation should motivate representatives advocating particular interests to conduct their activities in an open manner in compliance with the law, by means of vesting them with rights and privileges obtained in connection with the undertaking of lobbying activities in a way compliant with the new regulations.

Entities conducting lobbying activities, as defined in the various provisions of the law, should by virtue of the law have guaranteed access to information of interest to them, contact with public officials, the right to participate in consultative conferences, sub-committees and committees of the *Polish Parliament* and Senate, as well as the right to attend plenary sessions of Parliament. Such privileges ought to balance, if not outweigh, the duties imposed upon the entities conducting lobbying activities and should extend beyond the rights granted to any other entity by virtue of the law.

Need for lobbyists' self-regulation

The Constitution of Poland and the rights stemming from the provisions of the Act on Access to Public Information already provide every Polish citizen with broadly defined rights concerning freedom of information. Only by granting entities performing lobbying activities with relatively wide ranging and distinct privileges will the “grey zone” of activities be weakened, and the “economic viability” of conducting lobbying activities in an open and official manner improved. Provisions going in this direction ought to be reinforced by **self-regulation of professional practitioners** of lobbying activities. Lobbyists, out of their own self-interest and motivated by the need to gain esteem for their activities and the confidence of the wider public, should be interested in purging existing pathologies and negative connotations associated with “lobbying”. The Act adopted by the *Polish Parliament* does not meet the assumptions noted above. The only clearly specified right granted to entities conducting professional lobbying activities consists of the entitlement to participate in public hearings, which may not necessarily be organised by the body responsible for the specific draft law.

Social partners should be recognised

The Act completely disregards the issue of **social partners**, whose legitimate entitlement to take part in the law-making process is undisputable and deeply rooted in the Polish system of developing laws. Those bodies, by virtue of the law, participate in the process of consultation on provisions of the law, expressing their opinions and taking actions intended to achieve specific results. Thus, they conduct lobbying activities, but the rights associated with this stem from other regulations. These social partners have demonstrated over the years strong and positive contributions to the process of consulting on laws now enacted. It is not without justified reason that they are regarded as an important and inalienable element of social reality, vital for the proper functioning of the democratic state. Social partners, due to their own mode of conduct of activities should be recognised as entities conducting lobbying without remuneration, and therefore the same Act should reinforce their rights (although in the sphere of duties their social position and motivation should not be considered the same as those entities professionally practicing lobbying).

Non-governmental organisations

Representatives of non-governmental organisations (NGOs) pointed out a number of problems connected with the threats to which their activities were exposed by the Act on Lobbying. According to some experts, the distinction between professional and non-professional lobbying activity only theoretically resolved the problem of NGOs, which would not wish to be treated in the same way as commercial lobbyists. NGOs which would like to occasionally lobby in favour of specific legal provisions have not been made subject to any additional registration, control or other requirements stemming from the Act, nor are they covered by the provisions requiring the heads of public offices to facilitate lobbying activities. Theoretically, therefore, NGOs not acting in the capacity of professional lobbyists do not enjoy the right to conduct lobbying activities on the premises of public offices and cannot count on their assistance.

In addition to the fact that the definition of lobbying is considered imperfect (it very generally defines lobbying as any kind of “activities leading to exertion of influence upon the bodies of public authority in the course of the law-making process”), it might suddenly turn out that the

“soft advocacy of interests,” for example, on the occasion of the work on the Act on Activities for the Public Benefit and Voluntary Activities, might now be included in the scope of professional lobbying activities and might require the hiring of professional lobbyists by non-governmental organisations. There were signs that representatives of non-government organisations were unwelcome at some of the Parliamentary committee meetings and by certain deputies. There were reasons for concern that the Act on Lobbying in the law-making process might provide a pretext for the limitation of the already rather insignificant role of NGOs in the law-making process. Therefore, according to some independent experts, it is hard to determine with any certainty, whether the Act on Lobbying in the law-making process will in the future obstruct or assist these organisations in their dialogue with public institutions.

Insufficient time between the Act’s adoption and entry into force

The first challenge for implementation of the Act on Lobbying in the law-making process was the short interval between its approval and its entry into force. The question was to what extent the Polish public administration could manage to prepare on time all the appropriate procedures and ordinances necessary for the implementation of the tasks imposed upon it by the Act.

Role of social and business organisations needs clarification

The role of social and business organisations in the context of lobbying activities needs to be defined clearly. The public administration, as well as circles of entrepreneurs, and non-governmental organisations need to each play a part in this clarification. The role of the media in public communications cannot be overestimated in this regard. There is no doubt that lobbying should be absolutely open and transparent, and it should also be subject to social control.

Identification badges for increased transparency

Some experts pointed out that in spite of the existence of a public Register of lobbying firms that in instances of lobbying there may be no clear indication if someone is indeed a lobbyist. It might be necessary to apply the same rules as those already existing in other countries or the European Parliament, for example, the requirement to wear appropriate identification badges.

Ensuring more open and transparent lobbying activities

In spite of a number of critical remarks against the Act on Lobbying in the law-making process, there is no question as to its substantial value and significance for combating corruption and enhancing transparency of activities of public administration. At the present stage, the primary aim is to ensure the efficient functioning of the public administration on the basis of the adopted Act. Ensuring implementation and assessment of its functioning is much more important than any further amendment of existing legal regulations.

Finally, a very positive aspect of the Act merits being underlined: it will support a professional approach to lobbying activities – without creating a closed group and at the same time definitely strengthening the professional community of lobbyists. Thanks to this Act, all the activities based on personal connections and “peculiar” arrangements between the worlds of politics and business ought to be eliminated.

As the “Lobbying Act” strictly aimed at the preparation of laws, many experts noticed that the new Act made no mention of the public administration and consider that a mistake. The answer to this seems quite simple. However, for a balanced view the following should be taken into consideration:

- First, the “Lobbying Act” was a response tailored to public outcry following the corruption affairs described in the first part of this chapter.
- Second, the primary aim of the new Act was to make the law-making process more transparent. It does not regulate lobbying activities in other areas. Those areas are regulated by other Acts, such as the Public Procurement Law, the Anti-Corruption Law, the Criminal Code, etc. The Extraordinary Committee took the view that it was better to make improvements in a specific area rather than to try to improve everything simultaneously.

REGISTER OF ENTITIES CONDUCTING PROFESSIONAL LOBBYING ACTIVITY

A critical element of the implementation of the new Act was the development of the Register by the Ministry of the Interior and Administration. The Register is regulated by the Act on Lobbying and the Regulation on the Register of entities conducting professional lobbying activity, hereinafter referred to as the “Regulation”. The objective of the Register is to promote transparency of professional lobbying activities and the entities carrying them out.

The Register is public, and the information contained – with the exception of addresses of physical persons -- is available on the Internet site of the Public Information Bulletin of the Ministry of the Interior and Administration at www.mswia.gov.pl. Those entities conducting professional lobbying activities are required to register through an official form. The application can also be submitted in paper form using a computer printout or an official registration form. The following data must be included in the application:

- Company name, corporate seat and address of the entrepreneur conducting professional lobbying activity or the first name, last name and address of a physical person who is not an entrepreneur conducting professional lobbying activity.
- In cases where the entrepreneurs are conducting professional lobbying activities, the number in the Register of Entrepreneurs of the National Court Register or the number in the Register of Economic Activity.
- Current extract from the Register of Entrepreneurs of the National Court Register or current certificate of entry into the Register of Economic Activity – in case of entrepreneurs conducting professional lobbying activity.
- Proof of payment of PLN 100 for entry into the Register, or its certified copy containing data indicated on the application should be additionally added to the application.

- Certified copies of identification papers in the case of non-entrepreneurs who are conducting professional lobbying activity under a civil law agreement.
- If applicable, power of attorney is needed in order to submit the application form or other documents constituting a basis for representation of the entity entered into the Register.

The application must be signed by the applicant or their representative seven days after the application was submitted, unless the application has formal deficiencies or is unfounded. The Register communicates the following data:

- Serial number entry.
- Date of entry into the Register and dates of any further modifications.
- Company of the entrepreneur conducting the professional lobbying activity or the first name and last name of a physical person who is not an entrepreneur conducting such activity.
- Corporate seat and address of the entrepreneur or address of the physical person.
- National Court Register number in the Register of Entrepreneurs or, in the case of entrepreneurs conducting professional lobbying activity, the number in the Register of Economic Activity.
- Date and grounds for removal from the Register.
- File reference number.
- Comments.

Separate files are kept for every registered entity entered into the Register. Up to 1 December 2006, 75 entities conducting professional lobbying activities had been registered. In case of formal deficiencies on the application, the authority keeping the Register requests the applying entity to remove them. Failure to remove the formal deficiencies within seven days results in an administrative decision refusing entry into the Register. Refusal shall also be issued if the application is obviously groundless. Up to 1 December 2006, formal deficiencies were found in 45 applications, and the applying entities were requested to remove them. Moreover, six administrative decisions refusing entry into the Register were issued, because of:

- No obligation to enter into the Register: In four cases, non-profit organisations not conducting economic activity were refused from registration.
- Formal deficiencies in the application of entry to the Register. In two cases, the applications were not adequately filled out.

In case of changes in the data entered, the entities submitting applications to the Register are obliged to report these changes within seven days of their occurrence. In the second half of 2006, only one entry update was performed in the Register.

Upon request of entities submitting applications to the Register, the authority administering the Register issues a certificate of entry into the Register, which remains valid for three months from the day it was issued. Up to 1 December 2006, all 75 entities registered requested certificates of entry into the Register.

The entity application is also a necessary condition for removing this entity from the Register. Removal from the Register in the form of an administrative decision is also issued by virtue of a final and binding decision prohibiting professional lobbying activity conducted by the entrepreneur or a physical person. An entity can be removed from the Register pursuant to:

- Cessation of professional lobbying activity.
- Binding final decision of the court prohibiting the execution of professional lobbying activity.

As at 1 December 2006, no entity had been removed from the Register.

In case of professional lobbying activity (as defined by the Act) conducted by an entity not entered in the Register, the competent public authority is obliged to immediately inform the Minister of the Interior and Administration. The Act also anticipates penal and administrative sanctions for lobbying by unregistered entities. The administrative decision of the Minister of Interior and Administration can impose a fine of up to PLN 50,000. As at 15 June 2008, no fine for unregistered professional lobbying had been imposed.

IMPLEMENTING THE ACT

The Extraordinary Committee developed the main duties that the public administration would need to undertake in relation to the implementation of the Act in order to ensure full transparency of legislative activities. The administration fulfilled the following:

- Firstly, the Council of Ministers and the particular ministers needed to prepare the governing principles related to the drafting and public disclosure of the programmes of legislative work. Such programmes must be prepared at least once every six months and be disclosed publicly in compliance with the requirements of the Act on Access to Public Information. Any changes occurring within the domain of public information must be disclosed within 24 hours in the electronic Public Information Bulletin (BIP). As a consequence of these requirements, the Chairman of the Council of Ministers and ministers had to prepare decrees imposing such duties upon the ministries and specifying the modes of procedure, as well as naming the competent organs in charge of execution of such duties. It was deemed helpful if the same format of public disclosure of legislative programmes were applied at all public bodies.
- Secondly, internal orders to regulate the mode of co-operation with lobbyists on the premises of public administration had to be implemented, in line with Article 14 of the Act that allows the performance of lobbying activities on the premises of public administration and requires the heads of public offices to grant access to rooms and appropriate representation of interest groups.

- Polish Parliament had to introduce appropriate changes in order to specify their rules on the performance of lobbying activities on their premises. The progress of legislative work undertaken in both chambers of Parliament is publicly disclosed and accessible on their respective web sites.
- A key task for the Minister of the Interior and Administration was the creation of the Register of firms conducting lobbying activities, with rules and procedures, document formats for the Register, and the model certificate that confirms the registration of lobbying firms on the Register.
- The heads of particular ministries and public authorities were also required to prepare and approve the procedures on the publication of information disclosed by public offices on lobbying activities within the scope of their competencies.

Before the Act entered into force, a number of additional aspects remained to be regulated by the public administration, for example developing rules to determine whether particular actions are indeed regarded as lobbying activities, so as to avoid uncertainty amongst both public officials and those conducting lobbying activities. The Act required the Minister of the Interior and Administration to issue an ordinance on the registration form for submissions to the Registry, while the Council of Ministers had to issue an ordinance specifying the procedure for the notification of interest in the work on a draft law or ordinance, including a format of the notification form.

It was also necessary to develop procedures for public disclosure of information provided by the entrepreneur. Any person conducting lobbying activities is obliged to inform the public authorities in a written statement that indicates the entities and clients on behalf of which he or she is conducting lobbying activities. The Presidium of the Parliament had to amend the Parliament's rules of procedure, so as to regulate the whole procedure of work on bills, starting from the time of receipt of a proposal and ending with the actual adoption of the final legislative act.

The rules of procedure of the *Sejm* and the implementation of executive provisions of the public administration also had to specify the mode of conduct by chairpersons of parliamentary committees and heads of public offices as they preside over public hearings on legislative acts and other legal acts. (The Act on Lobbying only mentioned the institution of public hearing without specifying the way in which it should be conducted and documented.)

ANNEX: STUDY CASE – IMPROPER COOPERATION WITH THE PHARMACEUTICAL LOBBYISTS

A high level clerk in the Ministry of Health is accused of irregularity in his dealings with lobbyists. The problem is linked with the list of medicines reimbursed from the state budget. As in most states in the world, in Poland some of the medicines bought in drug-stores are refinanced by the state budget. It is easy to assume that for the producers of medicines the location of products on such a list is very lucrative. For this reason lobbyists representing many pharmaceutical firms try to convince decision-makers to add their products to this list.

For this reason, the relations of representatives of the Ministry of Health with lobbyists came under definite internal regulations. I want to underline that the lobbying act orders the introduction of such regulations in each Ministry. Rules accepted in the Ministry of Health were clearly articulated.

Contact with lobbyists outside the office and apart from the duty of preparing written information about such meetings was prohibited. I want to underline that the accused person broke both of these rules. In my private opinion we did not deal with the corruption, as the high clerk acknowledged that such regulations did not apply to him.

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- i. World Bank, *Anti-Corruption in Transition. A Tribute to the Policy Debate*, 2000.
 - ii. http://www.ce.uw.edu.pl/wydawnictwo/Kwart_2002_4/Jasiecki.pdf
 - iii. <http://www.batory.org.pl/english/corrupt/bar.htm>
 - iv. The Rywin's affair is the most well-known corruption affair in Poland that initiated an inquiry by the Special Parliamentary Commission. It is named after the businessman Lew Rywin, who offered his help to change the "Media Law" in return for a large bribe. He said that he stood on behalf of "the group of people who are ruling". After the "Rywin's affair," corruption was ranked as the fourth biggest "national problem" of Poland.
 - v. The Extraordinary Committee is a special body of the Polish Parliament. Usually ordinary committees work on all drafts, but if the Bill is complicated or needs more attention, the *Polish Parliament* can establish an Extraordinary Committee with a single purpose to work only on this specific Bill.
 - vi. Journal of Laws No. 169, item 1414.
 - vii. In 2003 the Parliamentary caucus of this party voted in favour of dismissing the draft law.