Enforcing Lobbying Rules

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Key Words
Lobbying; Corruption; Regulations; European Union; Comparative Analysis

JEL Classification: D27

Abstract
The present paper evaluates the existing lobbying laws found in the countries of the EU. It describes them and highlights their strengths and weaknesses. The main part of the paper is dedicated to the formulation of five basic principles, on which an effective lobbying law should be based. These principles are supported by findings in previous literature and in the real-world experience of European and non-European countries. The paper argues that if these principles are followed in future laws that are to regulate lobbying in the EU and elsewhere, the effectiveness of these laws will be greatly enhanced.

Introduction
Lobbying, i.e., an activity through which a person “seeks to influence (a legislator) on an issue” (OED), has recently come under the scrutiny of both scholars and policy-makers. In the USA, lobbying has been formally regulated already since 1938, through the Foreign Agents Registration Act (FARA), later enhanced by the 1946 Federal Regulation of Lobbying Act; in other countries, regulations are being adopted only in the course of the last three decades. The adoption of these regulations is accompanied by a renewed interest in the subject; researchers can finally compare the long-standing US lobbying regulation with the new measures discussed and adopted elsewhere.

Between 1989 and 2017, Australia, Canada, and twelve European countries adopted laws which deal specifically with lobbying. These laws significantly vary in several aspects: the goals they want to achieve, the scope of the activities they regulate, the scope of regulated actors, or the duties they put on these actors. The final form of these laws is always the result of a political compromise and thus, also the effectiveness of the rules vary.

Even if in the process of law-making, highly effective rules on lobbying are agreed upon by legislators and adopted, the process of ensuring that lobbying turns into a transparent activity, beneficial for the state and the public, is not over. Lobbying rules have no value unless they are actively enforced by authorities and regulated subjects comply with them.

The present paper focuses on the issue of enforcement of lobbying rules and attempts to answer a specific question: whether we can already find common standards or principles on which effective enforcement of lobbying rules may be based in any given country.
Lobbying Regulations in Europe

Lobbying laws have recently truly become a fashion in the world of anti-corruption and pro-transparency policies. After the adoption of the US Federal Regulation of Lobbying in 1946, there was a hiatus of four decades, before other developed democracies also started to consider adopting similar law in their own legal frameworks. In 1989, Canada followed the suite of his southern neighbor and adopted the Lobbyists Registration Act. Between 1983 and 1996, Australia attempted to run a voluntary register of lobbyists at the federal level, which, however, proved ineffective and was abolished.

In Europe, the first regulation that indirectly regulated some lobbying activities appeared in 1951 in Germany. Interest groups, formally ‘associations’, were invited to official hearings, or rather sector-based committees, in the Bundestag (Rule 73, Rules of Procedure of the Bundestag). First laws specifically aimed at lobbying were adopted in the post-communist countries of Georgia and Lithuania in 1998 and 2001, respectively. In the speed of adoption of lobbying laws, individual European countries were in fact beaten by the European Parliament, who already in 1996 introduced a regulation of lobbyists into their Rules of Procedure (Rule 9(2)). At the national level in Europe, the trend to adopt separate lobbying laws started only after 2000; eleven more countries would between 2001 and 2017 join Georgia and Lithuania in adopting such laws (Table 1).

Table 1: Lobbying Regulations in Europe (January 2017)

<table>
<thead>
<tr>
<th>Country</th>
<th>Lobbying regulation</th>
<th>Conduct of Lobbyists</th>
<th>Codes of Conduct</th>
<th>Register of Lobbyists</th>
<th>Year of Introduction</th>
<th>Conflict of Interests</th>
<th>Declaration of Assets</th>
<th>Political Party Financing</th>
<th>Self-Regulating Lobbyists</th>
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As I show elsewhere (Simral 2017), the adoption of lobbying laws in these European countries has so far had no significant statistical effect on the level of overall corruption. Quite understandably: laws regulating lobbying are only one of many tools of the anti-corruption policy agenda and by themselves are not expected to clear a political system of corruption. Moreover, the exact form of such laws varies and its ineffective parts diminish the effectiveness of the entire legal norm. This applies particularly to the parts that regulate the enforcement of compliance with lobbying laws.

On closer inspection, there are significant differences between sanctions adopted in individual countries that regulate lobbying. Here is a short overview of these sanctions:

**Austria**

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 for one offence up to €60,000 for reiteration, b) fines for non-compliance with the rules for registered lobbyists, which range from €10,000 for one offence up to €20,000 for reiteration (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 itself a ban on re-registering for three years (Article 14, paragraph 2). Monetary penalties for non-compliance may be also 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.

All these sanctions may be applied to all subjects regulated by the law, with the exemption of social partners (the Austrian Chamber of Commerce (WKÖ), the Austrian Chamber of Employees (AK), the Federal Union (ÖGB), and the federal peak-association of the agricultural sector). Amongst subjects completely exempt from the law are also all religious and territorial interest groups, and law firms.

**France**

From 1 July 2017, a new law on lobbying will regulate lobbying in France. It replaces the previous imperfect rules, which were centred around the National Assembly’s and the Senate’s voluntary registers of lobbyists. The new 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 or a year of imprisonment (Article 25) for failure to comply with lobbying rules.

Like in Austria, specific organizations (labor unions and religious organizations) are also exempt from the scope of this law.

**Ireland**

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 quarterly return of activities by 21 January 2017 is liable to pay an automatic fixed penalty notice of €200 (Article 21) to the enforcing authority, the Standards in Public Office Commission. More serious violations of the Lobbying Act carry with themselves the possibility of summary conviction to a class C fine (€2,500 maximum) or imprisonment for up to two years (Article 20).

**Lithuania**

In Lithuania, the lobbying law (No. VIII-1749, last amended by Law No. XI-2331of 6 November 2012) 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” (Article 2).

The only penalty established by the law is striking 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 be also subject to proceedings before the civil court (Art 15).

**Poland**

The Polish lobbying law (Dz. U. 2005 nr 169, poz. 1414) came into force on March 2016. It establishes a registry of professional lobbyists, i.e., 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 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).

**Slovenia**

Lobbying in Slovenia is regulated since 2011 by the Integrity and Prevention of Corruption Act (45/10). The scope of the law is comparatively relatively and covers all persons who are trying 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 (Article 56a).
The Corruption Act establishes the main body of oversight and enforcement, the Commission for the Prevention of Corruption of the Republic of Slovenia (Article 5). Apart from lobbying, the Corruption also monitors and enforces rules on whistle-blowing, disclosure of officials’ financial assets, conflict of interests 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 on physical persons or 100,000 on legal persons for more serious breaches of the law (Articles 77 – 79).

**United Kingdom**

The United Kingdom formally regulates 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 Registrat is a civil penalty in the form of a fine up to £7,500 (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 2 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, and imprisonment. Given the small set of individual countries which 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 2: Rules Enforcing Lobbying Laws (January 2017)**

<table>
<thead>
<tr>
<th>Country</th>
<th>Lobbying law</th>
<th>Lobbyists’ Codes of Conduct</th>
<th>Register of Lobbyists</th>
<th>Year Introduction</th>
<th>Lobbying ban</th>
<th>Fine</th>
<th>Prison</th>
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Source: Compiled by 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 the USA, the Government Accountability Office annually, since 2007, publishes a report on lobbyists’ compliance with the law. Included in the report is also a section on the enforcement of the law, with statistics on offences and charges. In 2016, the GAO reported in total four civil law cases brought against
companies which ignored their legal duties on a chronic basis; there was no case of a criminal prosecution (GAO 2016). In Europe, most countries do not collect statistical data on the application of lobbying sanctions. Only in Slovenia, the Commission for the Prevention of Corruption reports them in their annual report. The 2015 report shows that fourteen registered lobbyists who have not submitted their 2014 activities report were sanctioned by being given an official warning (Komisija za Preprečevanje korupcije 2015).

Moreover, the situation is even more complicated by one crucial difference in sanctions: some countries prefer to enforce rules on lobbyists, some on lobbied public officials. Table 2 summarises enforcement for lobbyists. In this area, Germany significantly lacks 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 science than regulations aimed at lobbyists themselves (Table 3).

Table 3: Lobbying Laws Enforcement (January 2017) and Corruption Perceptions Index

<table>
<thead>
<tr>
<th>Country</th>
<th>Law</th>
<th>Lobbying</th>
<th>Codes of Conduct</th>
<th>Register of Lobbyists</th>
<th>Year Introduction</th>
<th>Lobbying Fine</th>
<th>Prison</th>
<th>CPI 2016</th>
<th>CPI pre-lobbying law</th>
<th>Increase in CPI</th>
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Source: Compiled by author, Transparency International.

Even if the practice of lobbying and its regulation in Europe cannot yet provide an answer to the question what measures can effectively enforce lobbying, it is still possible to look for it elsewhere: in the practice of lobbying in the US, with its longer tradition of lobbying regulation, and in theoretical models.

**Lobbying in the US: Practice and Theory**

The United States have a long tradition of lobbying regulation. Already in the 1850s, the House of Representatives in Washington felt the need to protect itself from the influx of lobbyists pushing forward the agendas of various interest groups (Schlozman and Tierney 1986, 318). However, all attempts to pass a lobbying law at the federal level were unsuccessful and it was only in 1938, when the first, partial regulation was adopted as the Foreign Agents Registration Act. The first general lobbying law came after the World War II under the title “Legislative Reorganisation Act of 1946”.

At the state level, the attempts at regulation followed a similar, gradual path of progress that culminated in the 1940s. In 1953, the legislatures of 29 US states and the territory of Alaska featured a mandatory lobbyists’ register (Zeller 1954, 217). After the Watergate
scandal, also the remaining states chose to adopt these registers and other lobbying regulations and in 1988, Arkansas was the last US state to adopt a state lobbying law (Blair 1988). At the local level, many large US cities (Baltimore, Chicago, New York, Los Angeles) or counties (Orange, Hillsborough) choose to regulate lobbying also at their municipal/county representative bodies.

Together with the practice of lobbying regulations came also academic assessments of their impact. These assessments, focusing predominantly on the state level, reflect the complexity of the entire phenomenon; it is impossible to isolate the effects that lobbying regulations have on the political system, its fairness or its transparency. Therefore, it is very difficult to measure these effects. Academicians do not agree on the most fundamental things: whether the stringency of regulation has a positive (Hamm, Weber and Anderson 1994), or a negative (Brinig, Holcombe and Schwartzstein 1993) impact on the number of registered lobbyists. Whether regulations have an impact on the diversity of represented interest groups (Ainsworth 1993), or not (Gray and Lowery 1996). Or whether lobbying regulations are in fact just exercises in “symbolic politics”, a theater for the public with no significant impact onto the reality of politics (Lowery and Gray 1997; Thomas 1998).

The academic debate on lobbying in the US, despite its shortcomings, still managed to establish a firm base of research, on which current works, going beyond the US political area, are being built. The most widely used tool in the research into US lobbying has been the rational choice theory and its off-shots. That is not surprising: the personal relations and “games” that politicians play vis-à-vis representatives of interest groups invite the use of rational-choice, agent-focused models.

The questions to which the rational choice theory may help to provide answers are numerous: Ainsworth’s model (1993) shows that lobbying regulations, on the one hand, reduce information asymmetry amongst the agents, and, on the other hand, restrict participation by constructing barriers to entry. Bennedsen and Feldmann (2006) in their model conclude that interest groups providing more information to decision-makers are more influential; however, this advantage is completely lost once an interest group may provide a financial contribution to the campaign instead. In the European setting, Bernhagen and Bräuninger (2005) show that also reputation of both policy-makers and lobbyists affects the game: agents may prefer financial or policy loss over a loss of their reputation or credibility. In Lagerlöf and Frisell’s model (2004), however, reputation may actually distort information symmetry, since less accurate information, if provided by agents with higher credibility based on previous experience, may actually been preferred by decision-makers over more accurate information from less credible sources.

Some of the rational-choice models also touch upon the issue of transparent lobbying and its regulation: Lagerlöf and Frisell (2004) also conclude that transparency may, paradoxically, lead to a lower level of truth-telling and less complete information. Šebo and Meričková (2009), contrarily, formulate a model where transparency equalizes the playing field and makes the political scene more competitive for all interest groups.

Most of the works arguing for more transparency and more regulation of lobbying do not, nevertheless, come from the rational choice school. Naurin (2005) considers transparency’s value as a part of the deliberative democratic theory: it has a civilizing,
anti-market effect on the behaviour of political actors. Warren and Cordis (2001) foster this theory with empirical data: their findings suggest indeed suggest that disclosure in lobbying lowers corruption. For legal scholars, such as Johnson (2006), lobbying regulations strengthen the democratic rule by levelling the playing field. In experimental laboratory setting, Agranov and Tergiman (2014) found that transparent decision-making leads to fairer and less particularistic decision-making. It is worth to juxtapose this experiment with the one conducted by Potters and van Winden (2000), who found that professional lobbyists behave more rationally, or self-interest-seeking, than non-professionals (students).

**Common Principles of Lobbying Regulations’ Enforcement**
Based on the findings of the above-mentioned works, some common principles of lobbying regulations’ enforcement may already be tentatively proposed.

First, the significance of enforcement of lobbying regulations is established by both empirical as well theoretical methods. Some countries, for instance, Poland, may feature extensive lobbying regulations, which are completely ineffective thanks to a lack of enforcement (Kwiatkowski 2016). Works catalogizing types of lobbying regulations (e.g., Chari, Murphy and Hogan 2007; Laboutková and Vymětal 2017) treat enforcement as one part of these regulations; that is certainly the case, with the caveat, that if this part proves to be ineffective, the entire regulation has no use in practice. The enforcement mechanism should be thus seen as the keystone of the regulation; not a part to be treated as the last.

Second, this keystone must be thought out in terms of its impact on the subjects of the regulation: lobbyists and public officials. Plus, the interests of a third benefactor, the public, need to be considered. Rational choice studies use the concept of equilibrium, a fundamental balance, on which regulations should be based. The interests of lobbyists, decision-makers, and the public need to be balanced out; otherwise, there will be a constant pressure in the system, a pull to modify an artificially imposed state of disequilibrium. Especially in newly democratized countries, where the equilibrium had previously been non-existent, anti-corruption rules must include both duties and benefits for actors. Without the carrot, enforcement will be only formal, but have no impact in practice (Di Gregorio 2015).

Third, the equilibrium among actors may be only achieved under informational symmetry. Lobbying is primarily about communication and about transferring information from one party to another. It is a competition of pieces of information. One piece is subsequently preferred over other pieces and serves as the basis for a political decision. An accessible and inexpensive tool for achieving informational symmetry is transparency. Symmetry is achieved if all actors in the system, lobbyists, decision-makers, and the public alike, have the same level of access to information. Thus, in addition to increasing the quality of shared information (e.g., Austen-Smith and Wright 1992; Dewatripont and Tirole 1999), informational symmetry also leads to an increase in the quality of public oversight.

Fourth, the enforcement mechanism should consider the different characteristics of the regulated subjects. Informational symmetry and equilibrium is in practice threatened by the difference among actors in at least two significant factors: credibility and material
resources. Actors during the lobbying process gain or lose reputation and money. The enforcement of compliance with lobbying rules should reflect that: for some actors, financial sanctions may be preferable to losing access to lobbied individuals due to credibility loss. This may be juxtaposed with the regular practice of lobbying, when higher financial costs contrarywise lead to an increase in the credibility of some lobbyists (Karabay 2009).

Fifth, in addition to the static characteristics of the actors, their mutual relationships are affected by the dynamics of their interactions. Lobbying has its time dimension (Wirl 1994; Bernhagen and Bräuninger 2005). The costs of lobbying vary depending on the stage that a decision-making process is in. Similarly, the effectivity of sanctions varies depending on the time they are being issued. Losing access to a public official is costlier for a lobbyist just before an important decision. A late penalty may have the same effect as no penalty at all.

If these five principles are reflected in the core of an enforcement mechanism in a lobbying law, the enforcement should be in practice effective. There must be a balance of interests of regulated subjects and a long-term symmetry in their mutual relationships. If the process of lobbying slips onto an uneven surface at some point, where the advantage is given to one party or the other, the regulation should remedy the situation and re-establish the basal equilibrium. Both theory found in the existing literature as well as real-world empirical data point to it.

**Concluding Remarks**

Laws and sub-law regulations have no real value, unless they are effectively enforced. In the case of lobbying laws in Europe, data indicate that the level of enforcement is insufficiently low.

What is the crucial cause behind this lack of effectiveness is impossible to answer exactly: there is not enough empirical data to evaluate yet. However, the laws also seem to be built on false principles and wrong assumptions. They fail to recognize the core logic of the lobbying process, the need to balance out the interests of all parties, and the dynamics of the parties’ relationships.

The present work aims to formulate five simple principles on which an effective lobbying regulation may be based. It does not formulate a rigid mathematical formula, or a less formal rational-choice model. To create such a model is the next step in this research agenda, that should come in hand with the evaluation of further empirical data.
Bibliography


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