

## Key Elements of Transparent Lobbying: Relevance of Wider Approach

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**Abstract.** *Lobbying is a legitimate way of interest representation in democracy. Although the number of countries introducing rules on lobbying activity is increasing, there are many doubts about the efficiency of measures introduced in terms of non-transparent lobbying activities and unfair forms of influence. The paper investigates the main approaches, elements and measures recommended and implemented by countries and international organizations in order to increase the transparency of lobbying practice in the decision-making process and proposes a basic set (catalogue) of key measures. It argues that a complex approach combining lobbying rules and many other supportive and linked measures is needed in order to extend transparent lobbying and decision-making. The article contributes to the discussion on the main theoretical issues and problems that arise in terms of transparent lobbying and proposes a catalogue of basic measures necessary to evaluate the transparency of lobbying in a broader and more detailed way in future research.*

**Keywords:** *lobbying, transparency, rules*

**Raktažodžiai:** *lobizmas, skaidrumas, taisyklės*

## Introduction

In a liberal democracy, everyone can represent his/her/its own interest and can lobby, but lobbying practices sometimes go beyond legitimate forms of the representation of interests, and methods are deceptive. This kind of behavior is usually non-transparent and unfairly influences political processes. The non-transparent and unfair forms of lobbyists' activities increase when they go largely unnoticed by the public. Gerber provides evidence that the influence of interest groups on representatives leads to a deviation in policy outcomes from citizens' preferences (Gerber, 1996, p. 264). Knowing who is attempting to influence institutions and its representatives, why (purpose) and how (technique), should – from the theory of liberal democracy – be in the interest of the public (citizens). A key tool for ensuring a level playing field in the decision-making process fostering democracy and citizen control is transparency.

Nearly nine out of ten respondents across Europe either strongly agree (25 %) or agree (64 %) with the statement “ethical and transparent lobbying helps policy development” (Burson-Marsteller, 2013, p. 6 and 8). Many studies of international organisations (WEF, OECD, EC) and opinion polls (Eurobarometr, Burson-Marsteller) show a very negative perception of lobbying, decision-making and interest groups. The media and the inadequate use of the term lobbying make a big contribution to the negative perception of lobbying activities.

Pressure to regulate lobbying activities or improve existing regulation has increased in the last two decades. This is due to the fact that the amount of funds flowing into the lobbying industry is constantly growing – for example, in the United States, the amount spent on lobbying has more than doubled since the beginning of the millennium (Statista, 2016; Centre for Responsive Politics, 2016), and that the requirement for government accountability and the legitimacy of its decision-making in developed societies is a part of the process of improving the institutional environment.

Even the countries have introduced various types of lobbying regulation, still it is sometimes problematic to identify who and what subjects in fact influence the decision-making process at the level of government, Parliament and self-government bodies.

The number of lobbyists is not sufficient in terms of any statement of quality of lobbying and/or lobbying rules – some countries recognize the lobbying is conducted only by professional consultants, other extended the lobbying landscape by in-house lobbyists as well as. Those two approaches also reflect the potential transparency drawbacks when some lobbyists and real influence-holders are unrecognized and hidden for the public. From that perspective, the rules are the cornerstone in building transparency of lobbying. Newmark (2017) summarized various approaches toward legal lobbying regulation by political scientists over a quarter of a century.

The aim of this article, based on a simple model of “interests - decision-makers - outcome”, is to provide theoretical grounds of the issue and define the elements of transparent environment that leads to a type of Marshall optimum result

(Marshall, 1946). We argue that theoretical grounding is critical not only for exploring relationships among transparent lobbying and stakeholders and/or impact of rules of lobbying to its actors but for exploring wider consequences of transparency of lobbying and institutional quality as well as quality of democracy.

The paper's main question is: Which elements of transparency lead to “fair and ethical” lobbying and the same level of access for all stakeholders to decision-making or seeking government contracts?

To find the answer, the authors combined two approaches – a theoretical explanation from economic and political science, and practical recommendations made in order to regulate lobbying and transparency in lobbying and decision-making.

The basic method used in the article is description, explanation and contextual analyses of the main tools used for lobbying regulation in terms of the principle of transparency, fairness and ethics of lobbying from the process perspective.

### **Theoretical background of lobbying transparency**

The term **transparency** is often adopted and applied by scholars in a variety of different ways and meanings. Historically, scholars have defined transparency at two basic levels – the macro-level of transparency (e.g. national, country, and/or market level) and the micro-level of transparency (e.g. organizational, and/or transactional level) (Schnackenberg, 2009). Forssbaeck and Oxelheim (2015) distinguish between policy transparency; institutional, market and regulatory transparency, and corporate transparency. Some studies define transparency as the timely disclosure of information (Bloomfield, O'Hara, 1999; Madhavan et al. 2005; Pagano, Röell, 1996) while other studies define transparency as the level of clarity in information (Bushman et al., 2004; Jordan et al., 2000). Granados et al. (2006) define transparency as the level of accuracy in information. Churchwell (2003) has defined transparency as the “quality of information that a company provides to various stakeholders”.

To sum up, transparency reflects the level of disclosure, accuracy and clarity of information. **Information** seems to be the cornerstone of many issues, including the issue of “fair lobbying”. The default state is a situation where the agent (lobbyist) has access to information that others do not have (personal, private information), and there is freely available public information. The assumption is that both types of information are relevant for decision-making, but the situation of information asymmetry can appear. The mechanism for the transfer of information and the scope for change in the degree of information asymmetry are essential for a discussion on transparency – full transparency means the absence of asymmetric information.

An informational **asymmetry** frequently exists between representatives (government) and bureaucrats, as well as between representatives and lobbyists or representatives and the public; these situations are defined as a principal-agent relationship. “This asymmetry, that works to the disadvantage of the representatives, emanates from the fact that the interest groups and the bureaucrats usually acquire knowledge

and develop expertise in a certain area to a larger extent than representatives, who handle a wide variety of issues.” (Cohen-Elly, Hammer, 2011, p. 271).

The **availability of information** is usually considered “a key determinant of the efficiency of resource allocation decisions and growth in an economy” (Bushman et al., p. 208). Development of the concept of efficiency is simply divided into two directions. The first is based on the Pareto principle and includes compensation principles. The starting point for the second direction is game theory (see Nash equilibrium).

There are many concepts of efficiency and **optimum**. The Pareto approach is based primarily on the principle of individualism; each individual is able to assess his/her own benefit, which is independent of the other participants. An improvement in this concept means a change that makes somebody better off and nobody worse off. Contrary to Pareto, a net improvement in the sense used by Marshall is a change which brings a positive net value, meaning that the total value to those who benefit is larger than the total lost to those who lose, measured in the same way (1946, p. 124–137). Friedman (1988, p. 1) interprets the Marshall optimum as a situation where a combination of changes and transfers that lead to Pareto optimum is not possible but a change that would cause an increase in net value is possible – a solution, in which there are some losses and some gains, but the sum of profits and losses leads to an overall improvement.

From the political science point of view, the issue of “optimum” is not primarily in the center of analyses of decision-making and/or reaching of consensus. Rather than mathematical or graphical models, the optimum is classified within the **game theory approach** according to the final result – positive (everybody benefits or at least the sum of all individuals’ and groups’ losses and benefits is higher than zero), negative (the sum is a negative number (Isaak, 1997) and/or zero-sum (all benefits of some subjects are balanced by losses of the rest (Riker, 1962) (see Říhová, p. 111–113). Thus, the process of reaching the result is not the central point of those theories and the basic rules of the game and quality of information are implicitly supposed to be implicit features of the models and not analyzed as individual variables for explanation.

Some other classifications and variables influencing the game should be taken into account - from the information point of view, complete and incomplete information needs to be taken into account (Owen, 1995), the number of stakeholders, potential results (symmetric, asymmetric), one-dimensional or multi-dimensional games, the conclusion (final and non-changeable or temporal and changeable) and time (clear end, no end at all) (Müller et al., 2010, p. 37). All this is an integral part of the regular decision-making process that lobbyists shall consider before they start to lobby.

Another important variable influencing transparency is **rules**. Rules definitely influence behavior, strategies and final results as many scholars of new institutional theories have proven. Rules are “humanly devised constraints that structure political, economic and social interactions” (North, 1990, p. 97). Rules can take two forms, the formal one (laws, procedures, directions) and the informal one (norms behavior shaped by culture, habits, etc.). If informal rules that naturally prevent stakeholders

to behave unethically and unprofessionally do not work well in a given society, it is necessary the parameters of transparent behaviour and interactions among them set formally. As example can be provide the difference between Scandinavian countries and the countries of the former Communist bloc. Scandinavian countries as well as most of the countries of Central and Eastern Europe do not formally regulate the lobbying activities, but only Scandinavian countries from this two mentioned groups are among the countries with the lowest level of corruption and limited number of corruption scandals, cases of abuse of power, conflict of interest issues, clientelism etc. However, rules seem to be a key component in how society/activity works, there can be two basic questions raised: first, the question of the transparency of rules itself, and second the process of their creation. Those questions should not be separated very often – the focus is mostly placed on rules and the result, the process part of its formulation, taking and implementation is not at the center of attention of the public and is very often a “black box”.

Finally, in the context of transparency as a **level of disclosure, accuracy and clarity** of information and of the assumption of the two types of information (private and public – see above), it is necessary to stress the importance of open government data (OGD). Open government data is part of a process of open government meaning that the public (stakeholders) should have access to government-held information and be informed of government operations. OECD (2005, p. 29) defines open government as “the transparency of government actions, the accessibility of government services and information, and the responsiveness of government to new ideas, demands and needs”. Providing open government data is a matter of accessibility, format and license. Data must be available (generally online), in forms, and under licenses, allowing for re-use (i.e., non-proprietary formats; open license) (Davies, 2010).

All the theoretical background leads to the general question: What are the determinants (requirements) of transparency of lobbying? In other words, which measures lead to increasing transparency of lobbying? Forssbaeck and Oxhelheim (2015, p. 12) believe that the set of incentives facing the players is one of the crucial determinants of transparency. They argued that if the sender and receiver have near-identical objectives, when it is possible to consider a typical signaling game, “the appropriate amount of voluntary transparency will tend to occur spontaneously as a mechanism to extract the mutual benefits of leveling the information playing field”. The same objective seldom appears in the **principal-agent relationship**, which strongly relates to the asymmetric information problem defined above. Gilardi pointed out that the “agency relationship has very peculiar characteristics that prevent the principal from achieving his goals unless appropriate measures are taken. These characteristics follow from three main assumptions of principal-agent models: assumptions about the behavior of actors, their interests, and the distribution of information among them” (Gilardi, 2001, p. 3–4). The elementary difficulty is the lack of any guarantee that the agent will effectively carry out their work to achieve the interests of the principal.

Asymmetrically distributed information, typically in favour of the agent, causes two main problems for the principal: adverse selection (hidden information) and moral hazard (hidden action) (Gilardi, 2001, p. 4). “**Adverse selection** occurs whenever the principal cannot be sure that he is selecting the agent that has the most appropriate skills or preferences, or provides accurate and complete information, moral hazard whenever the agent’s actions cannot be perfectly monitored by the principal” (Gilardi, 2001, p. 4). It should be considered that the agency relationship takes place in a broader social context and is influenced by external forces, such as competitors, interest groups, public pressure, independent media, regulators or laws that correct the information imbalance, provide or restrict incentives decreasing or increasing the risk of adverse selection and moral gambling (Shapiro, 2005, p. 268).

### **Existing approaches to lobbying transparency**

After defining the basic theoretical concepts and issues that are relevant for thinking about transparency of lobbying, a summary of existing recommendations, documents and discussions about the parameters of lobbying transparency is needed in order to level the playing field for the framework design of fair lobbying, and moreover also in respect of a broader scope of a level playing field of the decision-making process. The standards and measures widely discussed in the literature highlighting “good practice” (pointing to “good practice”) based on the right to information and participation, effective control and supervision and open government (see AIE (2015), AIE et al. (2015), OECD (2010, updated 2013), TI (2015)).

Especially in the case of lobbying, various rules and measures might be introduced (Chari et al. 2010; Kalnins, 2005; Griffith, 2008). This variability is shaped by reasons, which lead to the regulation of lobbying. For the purposes of this article attention is focused on contextual analysis of rules and measures, that mean an introduction of transparency into lobbying practices and thus opening the political process to external actors.

However, to build strong rules that meet the requirement of transparency and efficiency for all subjects in the industry is not easy, but it is possible. Transparent rules support the “fairness” conditions for the profession/activity and can also guarantee to some extent the process aspects of lobbying activity (Laboutková, Vymětal, 2011). Current regulatory approaches do not always go this way – there are various measures introduced to deal somehow (directly or indirectly) with lobbying, but they are poorly linked with each other (isolated measures) and a systemic approach is lacking. The key issue is exact and proper fundamental definitions of the basic terms used in rules, namely, who is the lobbyist, what is lobbying and/or lobbying contact, who is the public office holder/designated officer, and others.

Chari et al. (2010) approach dealt mostly with rules for lobbyists with only a limited extent to the targets of lobbying. They included eight groups of indicators (definition of lobbyists; definition of targets of lobbying; rules on registration; spending dis-

closure; electronic filing of disclosures; public accessibility; enforcement; revolving doors provisions) in their evaluation of strictness of rules on lobbying activities but the issue of transparency of lobbying activities was not analyzed and addressed directly. The original evaluation was introduced in 2006 and used the CPI methodology (CPI 2003, updated 2014), in 2010 it was extended to countries with any legal rules on lobbying (currently authors works on the second round of evaluation).

A different approach is delivered by regional European Transparency International project (2014–2015). From the methodological point of view some interest in targets of lobbying was introduced in order to monitor lobbying activities. The evaluation includes data on transparency, integrity and equality of access.

Both evaluations offer a light on lobbying rules but pay attention in selective way. Other similar evaluations focus on lobbyists side of regulation more excessively, but the targets of lobbying is simply not included (if we omit the revolving doors provisions) and/or partly only. Therefore, a systematic and complex approach on lobbying and its transparency as a part of the decision-making process highlighting the rules for lobbyists, targets of lobbying and broader institutional framework for lobbying activities is missing. Our catalogue of indicators is an effort to fill the gap in this topic.

### **Catalogue of lobbying transparency measures**

For this reason, the authors decided to make a catalogue of currently used measures dealing directly or indirectly with lobbying regulation that support the transparency principle. All measures are grouped in four logical categories; due the limit of the scope of the journal only short version of main categories of the catalogue is presented here.

**The first** group of measures are direct rules applied to lobbyists in term of lobbying activities and their behaviour, both legal and self-regulation. It includes: register of lobbyists; Codes of Ethics / Codes of Behaviour for lobbyists with effective penalties; regular disclosure of lobbyists activities; open calendars of meetings/appointment diaries with all decision-makers.

**The second** group of provisions is the subject of lobbying rules – the targets of lobbying. This category mostly includes: Codes of Ethics/Codes of Behaviour for Members of Parliament, Ministers, employees in the Civil Service; revolving doors provisions; open calendars of meetings/appointment diaries of all decision-makers.

**The third** category is also indirect, but is primarily supposed as a measure with a different goal rather to be linked only with lobbying. Mostly they are classified as sunlight principles of a more general approach toward transparency and/or anti-corruption policies and include: clear and transparent rules for the legislative process; rules on governmental decision-making and decision-making in the public sector; rules on consultations with stakeholders; legislative footprint; measures introduced within Open government data projects; Conflict of Interest regulation; disclosures

made by politicians and senior POH; regulation of financing of political parties; freedom of information act; program of proposed legislative work

**The fourth** category is linked to the monitoring and sanctioning system. Here only general statements can be made – enforcement of the rules should be effective and efficient, and the penalties should force subjects to comply with the rules. The key issue is the monitoring of activities and there are approaches to be selected (and combined) – much information can be published and provided to the public, so public scrutiny of the activities is one source of monitoring. Second, a special independent body can be established that collects all data and publishes only selected information to the public.

## **Conclusion**

It is possible to summarize conclusions into two parts. First group of conclusions highlights the current state and the key missing elements examined issues; it includes: (1) a real reluctance of political representation to enforce statutory regulation; (2) a single regulation by law is not a magic bullet; (3) current assessment of evaluation of transparent lobbying are not complex enough; (4) existing lobbying assessments mostly relate to the strictness of its regulation and are only possible in countries where statutory standards exist; (5) data on transparent lobbying are collected selectively; and (6) the set of measures/indicators focusing on the side of target of lobbyists as well as the transparency of decision-making process in general is missing. Second group of conclusions summarize the authors' main contributions in terms of transparent lobbying: (1) provided a theoretical grounding of the topic; (2) the issue of transparent lobbying has to be understood in a broader concept of governance based on principles of openness, transparency, participation and disclosure; (3) authors created a catalogue of currently used measures dealing directly or indirectly with lobbying regulation that support the transparency principle of decision-making and propose it for an academic discussion.

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## **Pagrindiniai skaidraus lobizmo elementai: platesnio požiūrio svarba**

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Anotacija

Lobizmas yra teisėtas interesų atstovavimo būdas demokratijoje. Nors vis daugiau šalių reglamentuoja lobistinę veiklą, išlieka daug abejonių dėl įtvirtintų neskaidrios lobistinės veiklos priemonių ir nesąžiningos įtakos formų efektyvumo. Straipsnyje nagrinėjami pagrindiniai rekomenduojami bei šalių ir tarptautinių organizacijų įgyvendinti metodai, elementai ir priemonės, siekiant padidinti lobistinės praktikos sprendimo priėmimo procese skaidrumą ir siūlomas bazinis svarbiausių priemonių kompleksas (katalogas). Straipsnyje teigiama, kad reikalingas kompleksinis metodas, apimantis lobizmo reglamentavimą ir daugybę kitų palaikomųjų ir susijusių priemonių, siekiant padidinti lobizmo ir sprendimų priėmimo skaidrumą. Straipsnis suskirstytas į tris dalis. Pirmajame skyriuje aptariamas pasirinktų klausimų ir problemų, reikšmingų ir (arba) susijusių su skaidriu lobizmu, teorinis pagrindas. Antroje dalyje nagrinėjamos įstatymuose įtvirtintos priemonės, įvairūs dokumentai, rekomendacijos ir ataskaitos. Paskutiniame skyriuje siūlomas autoriaus sukurtų bazinių priemonių katalogas, kuris leidžia plačiau ir išsamiau įvertinti lobizmo skaidrumą.

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