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LOBBYING ACT AND THE LAW-MAKING PROCESS*

On 7 July 2005, at the 107th sitting of the Fourth Term Sejm of the Republic of Poland, the Act on Lobbying Activity in the Law-Making Process was adopted,¹ and on 6 September 2005 it was pronounced in the Journal of Laws of the Republic of Poland (Dziennik Ustaw Rzeczypospolitej Polskiej) no. 169, item 1414. In accordance with its Article 24, the Act came into force six months after it had been pronounced, i.e. on 7 March 2006.

Proclamation of a statute governing lobbying activity is of no precedent in Poland. Despite ample lobbying traditions, dating back at least to the Nobles' Commonwealth, lobbying activity itself had never been subjected to legal regulations. Several reasons account for it. One is the still unsatisfactory knowledge of the lobbying phenomenon both in Poland and the European science, as well as a certain distance with which lobbying itself has been approached in all of the continental Europe.² The fact that its Central-Eastern part had been subjugated to the rule of socialist system for almost half a century is of additional gravity, as the system *ex definitione* opposes free, lobbyist articulation of group interests. It is therefore all the more interesting, that all the European lobbying acts have been passed in our part of the continent.

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¹ Item 35 of the Orders of the Day: Committee Report on the bill on lobbying activity — 3rd reading. Voting no. 28 on adopting the bill on lobbying activity as a whole as proposed by the Special Committee, as amended; 4th term Sejm, sitting no. 107, 7 July 2005, 9:50 a.m.

² The concern about “mediating bodies” as rudiments of traditional elites’ resistance against revolutionary movements dates back to the times of the French Revolution, or even earlier in theoretical works of the Enlightenment thinkers; S. Ehrlich, *Władza i interesy. Studium struktury politycznej kapitalizmu* [Power and interests. A study of capitalism’s political structure], Warszawa 1967, p. 19, 21, 23.

Actions and discussions aimed at subjecting the lobbying activity in Poland to a legal regulation were commenced long before the draft of the act currently in force was submitted; one must note, however, that it was the second draft of the lobbying statute.³ The second attempt at regulating this subject matter ended successfully, in a sense that the act was passed and entered into force. Against chronologically earlier, Georgian⁴ and Lithuanian⁵ acts, and later Hungarian act,⁶ Polish statute is one of merely four lobbying acts passed and currently binding on the European continent (one of five, if an Italian act binding on the territory of Tuscany⁷ is also taken into consideration). On a global scale, except for about 60 American and Canadian — both federal and state (provincial) — acts, lobbying regulations in the rank of a statute have only been passed in the Philippines⁸ and Peru.⁹ Such modest statistics do not comprise consecutive drafts of lobbying statutes or regulations submitted every year in various parts of the democratic world.

The purpose of the following article is to present origins of the Polish act on lobbying activity vis-à-vis the long history of the lobbying phenomenon, and primarily, to conduct a critical analysis of the first Polish lobbying act. Despite its unquestionably pioneering nature — not only in Polish history, but also on a European and perhaps even a global scale — its critical evaluation significantly decreases its rank. Inevitably, the following work must be limited to signalling specific issues; it centres around the most essential chronological facts and the most important of numerous reproaches concerning both the form and the contents of the act.

There has been observed an increased interest in the phenomenon of lobbying in both parts of Europe. A popular notion connecting this phenomenon with the American system — or more broadly, with the Anglo-Saxon legal and systemic circle — requires a considerable correction due to expanding research results. The origins of many centuries of lobbying history are now frequently thought to be found not in the lobbies of the American Congress of the 18th century or the Willard Hotel in Washington during the presidency of Ulysses S. Grant¹⁰ and Abraham Lincoln,¹¹ but at the forum of Athenian *Ekklesia*, where the interests of demagogues and rhetors — the first European lobbyists *par excellence* — collided. In return for

³ Deputies' bill on transparency of decision-making procedures, groups of interests and public access to information was submitted to the 3rd term Sejm on 25 July 2000; print no. 2153.

⁴ Law of Georgia on Lobbyist Activity, statute no. 1591 of 20 September 1998.

⁵ Lietuvos Respublikos Lobistines Veiklos, 2000 m. Birželio, 27 d. Nr. VIII-1749.

⁶ Statute no. 49 on lobbying activity of 25 February 2006 (2006. évi XLIX. Törvény allobbítványáról).

⁷ Leggi Regionali no. 5 del 18 I 2002 (Boll. Nr 2 del 28 I 2002, parte Prima, sezione I, Norme per la trasparenza dell'attività politica e amministrativa del Consiglio regionale della Toscana).

⁸ An Act to regulate lobbying in the Congress of the Philippines and in the Commission on Appointments, Republic Act no. 1827, 22 June 1957.

⁹ Ley que regula la gestión de intereses en la administración pública, no. 28024 (Diario Oficial El Peruano, 7 December 2003).

¹⁰ T. Walat, "Sztuka naciskania [The art of exerting influence]", *Wprost*, 17 January 2004.

¹¹ R. Radzimińska, "Lobbing czyli demokracja. Rozmowa z T. Grayem [Lobbing, i.e. democracy. An interview with T. Gray]", *Nowe Życie Gospodarcze* 35 (1998).

a proper fee, spokespersons of ancient interests undertook to represent any influential principal.¹²

There is also a Polish chapter in the lobbying history. Apart from aspects deemed universal in all of Europe, such as activities conducted by the Christian clergy and the Catholic Church, medieval craftsmen's guilds, merchant guilds, the *hansas* and universities, there are also features typical for Polish history. A mention must be made of "*ablegates*," i.e. permanent parliamentary representatives acting at the instruction of cities of no political representation, upon a royal privilege,¹³ and "*residents*," i.e. representatives of the cities devoid of their own "*ablegates*."¹⁴ Jewish communes also had their lobbyists. Specialized "*sztadlani*," recruited from among respected Jews, educated lawyers and diplomats, participated in the debates held at all sorts of provincial *sejmiks* and general *sejms*, attending to Jewish interests, frequently resorting to what today would be called corruption. Their remuneration was paid out of a special tax;¹⁵ they were appointed for a specific period of time.

An interesting example of Polish lobbying practices from later period was the activity of rev. Jerzy Czarotorski's "team," appointed at the time of the November Uprising, whose means of exerting influence, even compared to contemporary ones, are to be considered modern and professional; the team "affected" members of the Parliament and British Government in order to gain support and benevolence for the Polish cause.¹⁶ In

¹² M. H. Hansen, *Demokracja ateńska w czasach Demostenesa* [Athenian democracy at the times of Demosthenes], Warszawa 1999, p. 152–154; A. Chodurski, *Grupy interesu w ujęciu historycznym* [Groups of interests from a historical perspective], in: Z. Machelski, L. Rubisz (eds.), *Grupy interesu. Teorie i działanie* [Groups of interest. Theories and operation], Toruń 2003, p. 110–111; R. Turasiewicz, *Demostenes i jego czasy* [Demosthenes and his times], in: *Demostenes. Wybór mów* [Demosthenes. Collection of speeches], Wrocław 1991, p. xiv–xv.

¹³ Only five cities enjoyed that privilege: Krakow, Vilnius, Lvov, Kamieniec Podolski and Lublin; cf. F. Jaworski, *Nobilitacja miasta Lwowa* [Nobilitation of the city of Lvov], Lvov 1909, p. 13–18. Due to systemic differences, the position of cities in Royal Prussia was better than those in other parts of the Commonwealth. There existed a general assembly of states, commonly referred to as the Prussian Sejm, composed of the gentry and townspeople chambers. The latter was composed of the delegates from over 30 cities. Representatives of the three large cities, Gdańsk, Toruń and Elbląg, were appointed for Landesrat — Prussian National Council. Prussia's system differed from that of the Commonwealth i.a. due to its high — frequently the highest — position of the cities; cf. J. Bardach, *Sejm dawnej Rzeczypospolitej* [The Sejm in the old Commonwealth], in: *Dzieje Sejmu Polskiego* [History of the Polish Sejm], Warszawa 1997, p. 22.

¹⁴ An example are residents of the city of Toruń, so-called secretaries (cf. S. Russocki, "Grupy interesu w społeczeństwie feudalnym [Groups of interests in feudal society]", *Kwartalnik Historyczny* 4 (1993), vol. 20, p. 909 et seq.). Other cities also had their residents to strengthen the decreasing efficiency of their "ablegates" via dispatching additional, permanent residents; such was the case of i.a. Krakow (cf. J. J. Reder, "Posłowie miasta Lublina na Sejmy dawnej Rzeczypospolitej [Deputies of the city of Lublin for the Sejms of the old Commonwealth]", *Czasopismo Prawno-Historyczne* 6 (1954), p. 261, 273) or Lublin (S. Russocki, op. cit., p. 908).

¹⁵ W. Kriegseisen, *Sejmiki Rzeczypospolitej Szlacheckiej w XVII i XVIII wieku* [Sejmiks of the Nobles' Commonwealth in the 17th and 18th century], Warszawa 1991, p. 110–116; S. Russocki, op. cit., p. 910–911; M. Borucki, *Sejmy i sejmiki szlacheckie* [Gentry's sejms and sejmiks], Warszawa 1972, p. 133–139.

¹⁶ Apart from representative lobbyists with well-known names, who contacted members of the British Parliament and Government directly, "the team" also hired numerous assistants, who prepared speeches, press articles, manifestos, analysis, compilations or expert opinions. Rev. Czarotorski's lobbying team was among influential groups of interests in the British Parliament until the end of 1850s. Cf. K. Marchlewicz,

the interwar years, lobbying activity in Poland, similarly to that conducted in Western European countries, was primarily the instrument of industrial and commercial communities¹⁷ (in the form of various associations, but also singular actions) and local governments.¹⁸ Exceptional social and political activity of landed gentry — including strict lobbying or para-lobbying activity¹⁹ — shall also be recognised as Poland-specific feature, resulting from agricultural nature and historical traditions of the state.

In the period of the People's Republic of Poland lobbying activity declined. This was due not only to the lack of favourable conditions, sham democratic institutions and liquidation or degradation of groups responsible for commissioning lobbying activity (private entrepreneurs, local and professional government, landowners), but also to intentional actions aimed at eliminating this form of expressing interests for the benefit of the corporation model (in its socialist form, naturally), i.e. the exact opposite of lobbying.

Nearly half of the century of socialist system rule resulted in consolidating the corporative forms of expressing interests. For that reason the systemic transformation in the 1990s — despite a gradual restoration of real, as opposed to sham, democratic institutions and mechanisms — did not suffice for the natural reconstruction of traditional lobbying mechanisms. First and foremost, the aforementioned groups of fundamental importance for the origin and development of lobbying had to be reconstructed, virtually anew.²⁰ This proceeded in the existence of strong groups of interests, such as trade unions, whose position was the consequence of their leading position in the corporative system — the position which was additionally strengthened due to their decisive role in bringing down the socialist system.

Such specific initial situation for the establishment of systemic structures of the Third Republic of Poland had its far-reaching consequences. The factors favouring further development of corporationism in expressing interests (already market-orient-

“Propolski lobbying w Izbach Gmin i Lordów w latach trzydziestych i czterdziestych XIX wieku [Lobbying in favour of Poland in the House of Commons and the House of Lords in 1830s and 1840s]”, *Przegląd Historyczny* 1 (2005), vol. 96.

¹⁷ With a leading famous “Lewiatan,” i.e. Central Association of Polish Industry, Mining, Commerce and Finances established by A. Wierzbicki — an influential organisation of Polish business, which in time gained the rank of an official representation of the private capital community. The association also conducted its activity abroad. It represented Polish interests in the International Labour Organisation. Z. Landau, J. Tomaszewski, *Gospodarka Drugiej Rzeczypospolitej [Economy in the Second Republic of Poland]*, Warszawa 1991, p. 15–16; J. Bulikowska, “Nowy Lewiatan [The new Lewiatan]”, *Wprost* 1016 (2002).

¹⁸ E.g. the activity of influential Union of Polish Cities (Związek Miast Polskich), which, in its prosperity, associated over 80% of Polish cities inhabited by over 90% of townspeople; cf. R. Szwed, *Związek Miast Polskich 1917–1939, 1990–1994 [Union of Polish Cities 1917–1939, 1990–1994]*, Poznań 1995.

¹⁹ Cf. R. Rudnicki, *Ziemiaństwo polskie w XX wieku [Polish landed gentry in the 20th century]*, Warszawa 1996, p. 65, 94–95, 98–99; B. Gałka, *Ziemiaństwo w parlamencie II Rzeczypospolitej [Landed gentry in the Parliament of the Second Republic of Poland]*, Toruń 1999, p. 23, 39–40, 42–44, 121; W. Mich, *Ideologia polskiego ziemiaństwa 1918–1939 [Ideology of the Polish landed gentry 1918–1939]*, Lublin 2000, p. 272–273, 277 et seq.

²⁰ K. Jasiński, *Organizacje biznesu jako nowi aktorzy sceny politycznej [Business organisations as new actors of the political scene]*, in: J. Gładys-Jakóbk (ed.), *Kształtowanie się środowiska biznesu jako grupy interesów w Polsce [Development of the business community as a group of interests in Poland]*, Warszawa 2002, p. 89–90.

ed and conforming to democratic principles) proved decisive for the adoption of this system under new circumstances. Only the implemented economic reforms aimed at establishing a market economy in Poland, in place of the command economy, led to the gradual increase in the significance of the groups of entrepreneurs and employers and to the weakening of trade unions and the groups close to the public domain (national companies, companies owned by the State Treasury, state agencies), although this was not a primary goal of the reforms. Thus ensued a situation which one might qualify as a marvel, all the more so because until then it was considered impossible by some scientists.²¹ In a country characterised by corporative roots and dominance of corporative institutions, there occurred a secondary emergence and development of lobbying mechanisms, which did not dislodge, but began to co-exist with corporative phenomena. It is interesting that the trade unions also resorted to lobbying methods.

The science of law has long been focused on a curious transformation process of corporationism, from its socialist form into a democratic and market-oriented one. In the beginning the possibility of conducting lobbying activity in Poland has been rejected as a whole, because it was considered a phenomenon typical for the American system. It is therefore no surprise that the first postulates to submit lobbying to legal regulations were generally rejected. The denial to statutorily regulate lobbying was reasoned by pointing to existing regulations, allegedly governing that sphere (sufficiently, yet partially); as such were considered the acts pertaining to craft, commercial chambers, trade unions and employers' organisations. Passing an additional, detailed statute was therefore argued to be purposeless, as lobbying activity could be conducted as of provisions already in force.²²

The attitude towards the notion of providing lobbying activity with a legal regulation in the form of a separate statute transformed as a result of press reports on corruption scandals and close connections between the worlds of business and politics, regarded as a threat to the functioning of state and its institutions. Negative consequences of the lack of state supervision over lobbying activity, which had already managed to independently develop in Poland and, remaining in the shadow of corporationalism, became obvious, and the postulates to urgently regulate it were included among prime topics of ongoing systemic and political discussions. Negative connotations of lobbying have influenced its perception and the course of works on its legal regulation. Largely because of its presentation in the media, public opinion began to

²¹ J. Hausner, *Modele systemów reprezentacji interesów w społeczeństwach postsocjalistycznych [Models of the systems of interest representation in post-socialist societies]*, in: *Studia nad systemem reprezentacji interesów [A study on the system of interest representation]*, vol. 3, Kraków 1994, p. 320–322.

²² W. Wołpiuk stated directly: "...since we come to the conclusion that some sphere of lobbying activity is realised on the basis and within the boundaries of existent regulations, there is thereby no need to introduce additional regulations..." W. Wołpiuk, *Lobbying a demokratyczne formy wpływu na stanowienie prawa [Lobbying and the democratic forms on influence on law-making]*, in: ed. J. Wawrzyniak, *Tryb ustawodawczy a jakość prawa [Legislative procedure and the quality of law]*, Warszawa 2005, p. 242. Cf. also B. Banaszak, *Prawo konstytucyjne [Constitutional Law]*, Warszawa 1999, p. 238; W. Wołpiuk, "Lobbying. Próba ustalenia treści pojęcia i funkcji publicznoprawnych [Lobbying. An attempt at defining the contents of the term and its legal and public functions]", *Przegląd Sejmowy* 4 (2004), p. 26–27.

identify lobbying with corruption; consequently, authors of consecutive draft lobbying statutes thought of them primarily as of methods of eliminating one of the sources of corruption.²³ It was too early to take into consideration another aim of legal regulation of lobbying: enabling the development of lobbying practices as a form of free articulation of interests, a source of professional knowledge and expert opinion provided free of charge to the organs of state power, as well as an essential — as of the newest standards — element of the democratic system.

In the Third Republic of Poland the first statute deemed to have been passed with a thorough involvement of professional lobbyists was the Act on Games. The works on the draft were commenced in 1992, but lobbying activities were not disclosed before the publication of the World Bank report on corruption in Poland, prepared at the order of the Council of Ministers in 2002; it included the famous information on “a price for an act,”²⁴ which provoked a surge of reactions, articles and a heated debate at the Sejm. Ultimately, the affair ended with unofficial suspicions and initiated a national dispute on corruption in Poland, as well as bore the necessity to regulate lobbying activity.²⁵ At the time, however, no draft statute was submitted.

A much more important step on the way to passing a lobbying act was what became called the “gelatine scandal,” whose onset dates to 1993.²⁶ Although it had in fact nothing to do with lobbying and resulted in further association of this phenomenon with corruption, it did bear a significant result in the form of the first draft statute on lobbying activity.²⁷ Since then counteracting corruption has become a popular phrase used by politicians, and the need to legally regulate lobbying activity has been spoken of univocally even by political adversaries.²⁸

²³ It must be added that especially at the initial stages the line between corruption and lobbying is frequently thin and difficult to establish; J. Górski, “Korupcji cienie i blaski [Light and dark shades of corruption]”, *Rzeczpospolita*, 3 October 1998.

²⁴ The report stated i.a. that impeding the passing of a statute had cost the commissioners of lobbying around half a million dollars; “Polska przesiąknięta korupcją” [Poland soaked in corruption], *Rzeczpospolita*, 22 March 2000. Eight years later similar activities cost the lobbyists sixfold, which had caused an understandable shock in the world of politics, media and public opinion.

²⁵ M. Majewski, “Bank z misiami. Ustawa o hazardzie była pierwszą, profesjonalnie lobowaną ustawą Trzeciej Rzeczypospolitej [Teddy-bear bank. The lobbying act was the first, professionally lobbied statute in the Third Republic of Poland]”, *Rzeczpospolita*, 23 May 2000. A postulate to statutorily regulate lobbying activity was also included in the World Bank Report: “Polska przesiąknięta korupcją...”; B. Sierszuła, D. Walewska, “Pochwały i ostrzeżenia dla Polski. Jak walczyć z korupcją w okresie zmian w gospodarce [Praise and warning for Poland. How to combat corruption in the period of economic transitions]”, *Rzeczpospolita*, 26 September 2000.

²⁶ R. Kamiński, “Zaproszenie do korupcji [An invitation to corruption]”, *Wprost*, 3 December 2000. More on that matter: ed. J. Kurski’s from “Gazeta Wyborcza” editorial office on the history of the “gelatin scandal,” <http://www.halat.pl/article.php?korupcja&korupcja&fs=korupcja.html>.

²⁷ Decision on preparation of the draft lobbying act was taken at the session of the Freedom Union (UW) Parliamentary Club on 3 March 1998; B. Waszkielewicz, “Wątpliwości wokół gospodarki. UW chce wyciągnięcia wniosków z afery żelatynowej [Doubts surrounding the economy; Freedom Union demands drawing conclusions from the gelatin scandal]”, *Rzeczpospolita*, 4 March 1998.

²⁸ Upon heated negotiations during the Solidarity Electoral Action (AWS) and the Freedom Union (UW) coalition crisis, the notion of lobbying regulation was one of the issues on which agreement was immediately reached. In the “Protocol on differences” of 31 May 2000, it was stated that “the common ap-

On 25 July 2000 Deputies' bill on transparency of decision-making procedures, groups of interest and public access to information (print no. 2153)²⁹ was submitted by the Deputies of the Freedom Union (Unia Wolności, UW) Parliamentary Club. On 28 August it was referred for the first reading at the plenary sitting of the Sejm.³⁰ The bill contained 26 articles organised into 8 chapters: "General Provisions," "The Principles of Procedure Transparency," "Access to Information," "Consulting Draft Legal Acts," "Granting Particular Entitlements," "Information on Persons Performing Public Functions," "Accountability for a Breach of Provisions of the Act," "Adjusting, Transitional, and Final Provisions." Although the bill is commonly considered the first attempt at legal regulation of lobbying activity in the history of Poland, its contents hardly justify such an opinion. At most it may be regarded as a contribution to the lobbying regulation.³¹ Despite a broad media and political discussion on the bill, the interest it evoked proved delusive, as evidenced by its further fate: works on the bill came to a halt after it had been referred to a committee, between the first and second reading in the Sejm. Upon termination of the Sejm of the Third Term, the act was not passed.³²

proach of AWS and UW shall be adopted on lobbying regulation;" B. Wawrzewska, "Ratowanie koalicji. Pierwsze nieoficjalne negocjacje [Rescuing coalition. First unofficial negotiations]", *Rzeczpospolita*, 1 June 2000.

²⁹ Print no. 2153, 3rd term Sejm, Warszawa, 29 July 2000.

³⁰ The first reading of the bill was held together with the reading of a bill on the access to public information (print no. 2094), submitted by the Deputies from AWS Parliamentary Club. The works upon both bills were conducted by a Special Committee.

³¹ Lobbying activity is mentioned in merely two out of 26 articles: 4 and 6.

³² The draft might have been considered „doomed.” Its justification proves that the authors had no precise opinion on the matter the statute was to refer to. It read that the bill was “on the one hand an attempt at realisation of Article 61 of the Constitution of the Republic of Poland” (i.e. citizens' right to obtain information on the activities of organs of public authority as well as persons discharging public functions), and on the other — “an attempt at establishing legal framework for activities of groups of interest, exercising influence on the decisions of the organs of power and administration, and especially for transparency of those activities [lobbying] and their effects” — print no. 2153, 3rd term Sejm, Warszawa, 20 July 2000, p. 13. Although Article 1 of the bill formulates similar goals, it does not mention lobbying *per se*. The word “lobbying” with reference to the goals of the regulation appears exclusively in the justification. Among the aims pointed in the justification there appears solely a phrase: *consulting the drafts of legal acts with significant [emphasis added] groups of interest*” (print no. 2153, op. cit., p. 15), in other words, the matter of the bill once more misses the matter of lobbying and its legal regulation. Numerous surprising statements were included in the justification, such as the claim that the notion of lobbying is “well-known and commonly used,” therefore for the purpose of the regulation it seemed purposeful to abandon defining forms of lobbying activity and the person of a lobbyist, because “an attempt at strictly defining [the lobbying activity] threatens the creation of a legal gap.” The next sentence leaves no doubt: “the aim of introducing the definition of lobbying activity into the statute is primarily determining the framework for informing the public opinion on the fact of lobbying in particular matters and on the identity of a lobbyist” (print no. 2153, op. cit., p. 15). This was to simplify defining the groups of interests lobbying for certain solutions. Hence the bill was not aimed at regulating lobbying activity; instead it subsidiarily uses that institution to provide a more detailed regulation of an issue secondary to lobbying, i.e. citizens' right to access to public information. The definition of lobbying activity included in the bill serves exclusively to differentiate lobbyists from other persons seeking access to decision-making process, and consequently, to inform the society merely about manifestations of lobbying activity. The regulation of the lobbying phenomenon itself (understood as control, regimentation, registration and reporting) is not in the least the aim of the bill. Despite commonly reported urgent need to submit lobbying to strict control and regi-

A breakthrough in the years-long discussion on the legal regulation of lobbying activity were the events of the years 2001–2003, accompanying the works on the Government bill amending the Broadcasting Act, commonly known as the Rywin's scandal disclosed by the media, and a result of hearings before the first Sejm Investigative Committee appointed as of the provisions of the Constitution of 1997.³³ At the turn of 2002, public opinion witnessed a large-extent lobbying campaign with regard to the act on biofuels. Those were the first such well-known issues, which revealed the back scenes of the legislative process and lobbying.³⁴ The voice of the advocates of legal regulation of lobbying activity was strengthened.³⁵

Already in September of 2002 there appeared information on the works on the lobbying act draft undertaken by the Ministry of the Interior and Administration.³⁶ The ministerial draft foresaw solutions based on American regulations: expanded legal definition of lobbying activity; registration of lobbying companies by the Ministry and regular reports of lobbyists on undertaken activities, including naming the employer and specifying the remuneration; disclosing information on lobbyists' proposals taken into consideration by

mentation, the bill did not foresee any duties on the part of persons conducting lobbying activity. A critical opinion of the government on the bill pointed to the lack of differentiation of professional lobbyists, whose activities shall be regulated "with particular precision," similarly to the registration-report duty effective in the US, the lack of forms of disclosing the amount of financial means engaged in lobbying, the lack of provisions protecting the State Treasury with reference to lobbying activity carried for the benefit of foreign subjects, and finally, incoherence of the bill with other legal regulations, both those already in force, and those still being prepared as drafts. The opinion of the government concludes that "the legal system requires a separate statute regulating issues connected with lobbying activity in detail" (Government stand on the Deputies' bill on the transparency of decision procedures, groups of interests and public access to information, print no. 2153-x of 14 December 2000, p. 2). The government pinpoints not including in the bill the essential elements of a standard lobbying regulation. Similar opinions were voiced upon the first reading of the bill. Imposing on organs of power and public administration the obligations pertaining to informing in advance on the draft legal acts being prepared means that the drafts may be perceived as "enabling the lobbying," but by no means as regulating it. The bill was referred to the Special Committee (Special Committee to consider the bills referring to the citizens' right to access to information and to transparency of the decision-making procedures and groups of interests), whose works until the end of the term were dominated by the bill on the access to public information (print no. 2094). The act was passed on 6 September 2001 (Journal of Laws of the Republic of Poland (Dz. U.) no. 112, item 1198), and the Special Committee did not consider the second, lobbying bill until the end of the term.

³³ Resolutions of the Sejm of 10 January 2003: 1. on appointing the Investigative Committee to examine accusations of corruption incidents during the works on amending the Broadcasting Act disclosed by the media; 2. on appointing its personal composition. Cf. resolution of the Sejm of the Republic of Poland of 24 September 2004 concerning the report of the Investigative Committee to examine accusations of corruption incidents during the works on amending the Broadcasting Act disclosed by the media; Polish Monitor (Monitor Polski) 42 (2004), item 711.

³⁴ Cf. especially M. Majewski, P. Reszka, "Wojna o biopaliwa czyli lobbing po polsku [War on biofuels or lobbying the Polish way]", *Rzeczpospolita*, 18 December 2002; D. Kołakowska, "Kupowanie ustawy [Buying a statute]", *Rzeczpospolita*, 9 July 2003; "Nieprzyzwoita ustawa [Indecent statute]", *Rzeczpospolita*, 11 July 2003; M. Basiewicz, P. Snarski, "Lobbisci — władza zza kulis [Lobbyists — power from behind the scenes]", *Przegląd* 15 (2003).

³⁵ K. Gottesman, "Prawo o lobbingu potrzebne od zaraz [Lobbying act needed immediately]", *Rzeczpospolita*, 18 February 2002; B. Wildstein, "Kłopoty z ustawą [Trouble with the statute]", *Rzeczpospolita*, 10 January 2003.

³⁶ "Lobbing kontrolowany [Lobbying under control]", *Rzeczpospolita*, 26 September 2002.

the authorities; pecuniary penalties for undertaking activities without registering, delay in submitting the report or including falsehood therein.³⁷

In January 2003, when the ministerial draft was still at the stage of preliminary consultations, there appeared an alternative proposal of amending the Standing Orders of the Sejm, introduced by the Polish Peasants Party (Polskie Stronnictwo Ludowe, PSL) Parliamentary Club.³⁸ The proposal to amend the Standing Orders (instead of passing a separate lobbying act) became a popular postulate of politicians in reaction to increasingly alarming reports about the legislation process.

The assumptions for the Polish lobbying act were adopted by the Council of Ministers at the session on 11 March 2003.³⁹ On 8 October a draft statute on lobbying activity was adopted and subsequently submitted for broad consultations.⁴⁰ The government included the lobbying regulation in the draft strategy on combating corruption in Poland under the name “Safe Poland,” which had its effect on both the contents and form of the draft, as well as its common perception.⁴¹ The bill was submitted to the Sejm on 28 October 2003.⁴² It featured certain similarities to the Deputies’ bill submitted at the previous term of the Sejm. Naturally, one must take into account a minute comparative scale, as the previous bill only made a mention on lobbying, while the 2003 bill referred mostly to lobbying activity, which is the most important, although not the only difference. The bill was composed of 24 articles organised into 5 chapters: “General Provisions,” “Principles of Conducting Lobbying Activity and Forms of Affecting Organs of Public Authority by Subjects Conducting This Activity,” “Forms of Supervising Lobbying Activity and Obligations of Organs of Public Authority Pertaining Thereto,” “Sanctions for a Breach of Provisions of the Act,” “Amending Provisions in Force, Transitory and Final Provisions.”

³⁷ M. D. Zdort, „Lobbying czy korupcja. Wstępny projekt ustawy o lobbingu przygotowany w MSWiA [Lobbying or corruption. Preliminary draft on lobbying activity prepared by the Ministry of the Interior and Administration]”, *Rzeczpospolita*, 10 January 2003.

³⁸ M. D. Zdort, “Projekt zmiany regulaminu Sejmu autorstwa PSL [Polish Peasants’ Party’s draft amendments to the Standing Orders of the Sejm]”, *Rzeczpospolita*, 10 January 2003. Polish Peasants’ Party’s draft suggested in its justification i.a. indicating economic subjects which will benefit or bear the financial consequences of the planned legal solutions, revealing the authors of a draft, the cases of affecting the author in order to introduce particular provisions into the draft, prohibiting representatives interested in particular solutions to participate in committee and subcommittee sittings, prohibiting persons dependent on a subject whom the draft directly concerns to be appointed as experts. The second suggestion was to disclose the names of authors of draft acts and draft amendments and experts working on a draft in parliamentary publications; “Ludowcy przeciwko majstrowaniu [Members of Polish Peasants’ Party against manipulation]”, *Rzeczpospolita*, 3 August 2003.

³⁹ S. Szpakowska, „Jawność przeciw korupcji [Transparency against corruption]”, *Rzeczpospolita*, 12 March 2003.

⁴⁰ Communication after the sitting of the Council of Minister, Press Centre of the Chancellery of the Prime Minister, Warsaw, 8 October 2003. It is worth noting, that already then occurred a disproportion, advantageous for the lobbyists, in defining the obligations of lobbyists and addressees of lobbying activity. The act did not refer to diplomats working in Poland or international organisations experts acting as experts of the organs of public authority in Poland. In cases of those groups of subjects, lobbying activity is understood as “acting in the interest of one’s own country.” This fact was not taken into consideration during the works on the draft in the Special Committee.

⁴¹ I. Kubicz, *Polskie spojrzenie na lobbing [Polish approach to lobbying]*, <http://www.epr.pl> (2005).

⁴² Government bill on lobbying activity, 4th term Sejm, print no. 2188.

As the authors of the bill declared in the draft justification, the aim of the draft statute was not only to disclose lobbying activity (similarly to the 2000 draft), but primarily, to achieve means of supervising it.⁴³

The first reading held at the sitting of the Sejm on 10 December 2003 revealed a few unknown facts connected with the works on the draft. A representative of the sponsor of a motion (T. Matusiak, Under-Secretary of State in the Ministry of the Interior and Administration) reported on the modifications applied to the initial draft of the Council of Ministers as a result of conducted consultations. Among others, the idea of obliging lobbyists to regularly submit reports on their activities had been abandoned, and only an obligation of submitting reports by addressees of lobbying activities remained. Thus, the regulation was deprived of the main instrument of supervising lobbyists and one of the basis for reporting, present in all advanced lobbying regulations around the world.⁴⁴ Paradoxically therefore, the draft lobbying regulation became an object of effective lobbying activities of commercial communities, even prior to its submission to the Sejm.⁴⁵ Liquidation of obligatory submittal of reports by lobbyists was only one of many elements of the bill that deserve a negative evaluation.⁴⁶

⁴³ "...The bill assumes that the lobbying activity — as a social phenomenon — does exist in public life and any attempt at eliminating it, e.g. *via* establishing a prohibition of conducting such activity — shall not be effective. In democratic countries of established legal and political culture, lobbying is a positive phenomenon, an instrument of articulating postulates addressed to organs of public authority, at the same time enabling the initiation of a public debate on a particular topic. Only a hidden lobbying activity, conducted in the privacy of offices, may be considered a threat, as it may lead to corruption. Legal regulation of lobbying shall therefore concentrate on establishing mechanisms ensuring transparency, and consequently, supervision over the lobbying activity..."; print no. 2188, p. 14.

⁴⁴ Stenographic report, 4th term Sejm, 63rd sitting, 1st day (9 December 2003), item 2. First reading of the Government bill on lobbying activity, print no. 2188.

⁴⁵ The postulates later submitted by commercial communities, during the legislative works in the Sejm, were also aimed at eliminating (Business Centre Club) or outright excluding (Polish Confederation of Private Employers) the regulation of activities conducted by lobbyists for the benefit of regulating the activity of the addressees of lobbying activities (Bulletin no. 2130/IV of 27 April 2004, 3rd sitting). The announcements of both organisations contained opinions on the rightfulness of self-regulation of the lobbyist community, instead of a legal regulation. However, critical opinion on certain provisions of the draft must be differentiated from the critical opinion on the legal regulation itself. In this matter, groups participating in a public discussion were generally univocal: there is a need for the statute, nevertheless its proper content must be tended to; K. Kokocińska, *Oddziaływanie na rozstrzygnięcia organów władzy publicznej i formy kontroli działalności lobbingowej — podstawowe rozwiązania projektu ustawy o działalności lobbingowej [Affecting decisions of organs of public authority and the forms of control over the lobbying activity — basic solutions of the bill on lobbying activity]*, in: P. Wiliński (ed.), "Prawo wobec wyzwań współczesności [Law and contemporary challenges]", vol. 2, *Prace Wydziału Prawa i Administracji UAM w Poznaniu*, vol. 15, p. 358. Cf. also: B. Waszkielewicz, "Ser z dziurami dla lobbistów. Wywiad z prof. Jadwigą Staniszkis [Swiss cheese for lobbyists. An interview with professor Jadwiga Staniszkis]", *Newsweek* 45/46 (2004); G. Rippel, "O lobbingu czyli promocji interesów [On lobbying, i.e. on promoting interests]", *Prace Naukowe Akademii Ekonomicznej we Wrocławiu* 1008 (2003), p. 443; a report on a meeting with Z. Wrona, head of the Legal Department of the Ministry of the Interior and Administration, in Business Centre Club, 18 February 2004; http://www.bcc.org.pl/dzialalnosc_goscie_szczegoly.php?objectID=97322.

⁴⁶ T. Matusiak also informs that the provision of Article 16 para. 2 of the act, stating that not fulfilling the duty of report by aforementioned state officials may lead to their dismissal, "must be treated rather symbolically, as appointment for the office and dismissal therefrom usually takes place, in Polish conditions, on the basis of a personal decision of an organ (...). Moreover, this provision may not refer to elected organs

During the debate on the assumptions of the bill various remarks were voiced, primarily critical.⁴⁷ A motion to reject the bill in the first reading was also submitted, although it was eventually renounced and a decision was made to refer the bill to a special committee.⁴⁸

Meantime Marshal of the Sejm, Marek Borowski, undertook the initiative and at the press conference on 8 December 2003 he presented “Recommendations Concerning the Legislative Process”⁴⁹ — an announcement of amendments to the Standing Orders of the Sejm. According to the Marshal, realisation of Recommendations would result in improving quality of the legislative process in the Sejm, increasing its transparency and civilising the lobbying itself. The science of law approved of Recommendations.⁵⁰ However, they were unjustly perceived as a part of a lobbying regulation, which consolidated the notion that transparency of decision-making procedures is essential for the supervision of lobbying.

The pace of works on the lobbying act accelerated due to the announcement of the head of the Internal Security Agency, who, on 12 November, presented the Council of Ministers with a disclosed information on “Activities contrary to the interest of the

and officials, i.e. Deputies, Senators and other similar functions or offices.” Thus the creation of a “symbolic” norm was intentional, and its disposition — without simultaneous amendments in related acts — is virtually impossible to fulfil. This also proves an intentional creation of fictitious lobbying regulations.

⁴⁷ Attention was drawn to the chaotic, incoherent form of the bill and leaving it open for discretionary decision-making by particular organs. Criticism also referred to numerous, yet selective subject exclusions, which greatly impair supervision of lobbyists, and outright questions the meaning of the whole regulation which may not comprise most of lobbying activities. Civic Platform (Platforma Obywatelska, PO) Deputy, G. Dolniak, pointed that it shall suffice to found a trade union or an association in order to practice lobbying with virtually no control. Reproaches forwarded by Deputy L. Dorn concerned imbalance between the detailed duties imposed on office-holders and state officials on the one side, and virtual lack of obligations on the part of lobbyists, on the other. Meeting the demands of an act shall require office-holders to acquire detailed information on their interlocutors and to daily prepare memorandums, also on their Internet correspondence and telephone conversations. Thus the public offices will be threatened with activity obstruction (stenographic report, 4th term Sejm, 63rd sitting, 1st day (9 December 2003), statements no. 52, 53).

⁴⁸ 4th term Sejm, 63rd sitting, 2nd day. Item 2 of the Orders of the Day: First reading of a bill on lobbying activity, voting no. 9, 10 December 2003.

⁴⁹ P. Śmiłowicz, “Stop lobbistom i innym roślinom [Stop the lobbyists and other plants]”, *Rzeczpospolita*, 9 December 2003; “Zalecenia dotyczące procesu legislacji. Konferencje Marszałka Sejmu [Recommendations on the legislative process. Conferences of the Marshal of the Sejm]”, *Kronika Sejmowa* 73 (2003), 4th term, p. 29–30. Recommendations foresaw i.a. the obligation to submit each amendment in writing, especially in the subcommittees, they indicated a quorum at the subcommittee sitting (1/3 of members), appointing the committee rapporteur at the beginning of committee’s work, thus enabling the supervision of pressure groups during the legislative works. The Recommendations also indicated principles of participation in committee and subcommittee sittings of experts, journalists, guests. Only representative organisations were to take part in subcommittee sittings. Parliamentary club advisors, theretofore anonymous, were to be officially presented before the presidium of a committee. The Marshal also commissioned delimiting, in the rooms of committee sittings, sectors for individual categories of permanent participants of the works on the bill. Each of them was obliged to sign an attendance list, separate for each group; “An information of the Marshal of the Sejm M. Borowski to chairmen of Sejm committees of 6 December 2003”, *Przegląd Sejmowy* 6 (2005), p. 238–240.

⁵⁰ “By nie powtarzać ‘innych roślin’” [So as to avoid repeating “other plants”], *Rzeczpospolita*, 9 September 2003; S. Gebethner, “Ustawy powinny być pisane w jednym ośrodku [The statutes ought to be written in a single centre]”, *Rzeczpospolita*, 9 September 2003.

state with connection to sale by tender and contracts concluded by government institutions.”⁵¹ By the end of 2003 “game machine scandal” was revealed. The press reported on unclear connections between the worlds of politics and business and on amendments — of unknown origin — to the act on games and mutual wagering. There even appeared an argument on lobbyist influences threatening the state security.⁵² On 5 April 2004 yet another scandal was exposed, the so-called Orlen scandal referring to the detainment on 7 February 2002 by the Office for State Protection (Urząd Ochrony Państwa, UOP) of Andrzej Modrzejewski, the head of Polish Petroleum Concern Orlen. In order to explain the circumstances of the case, on 28 May 2004 the Sejm appointed the second investigative committee in its history.⁵³ Upon the works of the Committee, further details of the inner workings of lobbying were disclosed.⁵⁴

Altogether 24 sessions of the Special Committee to consider the Government bill on lobbying activity were held, 23 of which — between the first and second reading in the Sejm (between 29 January 2004 and 14 June 2005). During the works many interesting remarks and postulates were submitted. Those most significant are worth mentioning.

At the initial stage of the works, the bill evoked criticism, mainly among the experts, who concordantly emphasised its low legislative level.⁵⁵ At the fifth Commit-

⁵¹ A. Marszałek, “Wilcze prawo rynku, rozmowa z A. Barcikowskim, szefem ABW [Voracious market law, an interview with A. Barcikowski, head of Internal Security Agency]”, *Rzeczpospolita*, 3 November 2003; I. Mirecka, T. Sygut, “Przychodzi lobbista do dziennikarza [A lobbyist visits a journalist]”, *Przegląd* 49 (2003); A. Barcikowski, “Lobbing jest ponadpartyjny [Lobbying is supra-party]”, *Przegląd* 50 (2003); *Lobbing za zamkniętymi drzwiami [Lobbying behind closed doors]*, serwis informacyjny TVP [TVP information service], <http://tvp.pl/119,2003112670271.strona>; *Barcikowski ostrzega przed lobbingiem [Barcikowski warns against lobbying]*, informacja PAP [PAP information], 26 November 2003.

⁵² W. Markiewicz, “Wieloręczni bandyci [Multihanded bandits]”, *Polityka* 50 (2003); J. Paradowska, “Kto w co gra [Who plays what]”, *Polityka* 49 (2003).

⁵³ The first committee sitting was held on 6 July 2004.

⁵⁴ Among others, it was confirmed that Polish lobbying practice is based on personal and business contacts of former politicians, who find employment in lobbying companies and exploit those contacts in the sphere of politics; Report of 12 March 2005 on the 55th sitting of the Investigative Committee for examining the accusation of anomalies in Ministry of Treasury’s supervision of State Treasury representatives in Polish Petroleum Concern Orlen Joint Stock Company (PKN Orlen SA) and the accusation of exploiting special services (former Office for State Protection) in order to exert illegal influence on the organs of judicial power for the purpose of achieving decisions serving to exert pressure on the members of the management board of PKN Orlen SA.

⁵⁵ Criticism concerned an overly broad scope of regulation and a simultaneous broad subject exclusion, which will prove the future act to be fictitious and impossible to be fully applied in practice (an example is found in the opinion formed outside the course of the legislative works for the group of librarians; it follows from it that until the librarian organisations act within their statutory goals, they are not subject to the provisions of the lobbying act, which is only one of many evidences of inefficiency and fictitiousness of the lobbying act as submitted by the government, as it does not comprise many aspects and examples of the lobbying activities; cf. K. Niemirowicz-Szczytt, “Projekt ustawy o działalności lobbingowej — praktyczne możliwości zastosowania projektowanej ustawy przez organizacje bibliotekarzy [Lobbying act — practical possibilities of applying the draft act by librarian organisations]”, *Biuletyn EBIB*, electronic document no. 2, February 2004. Reproaches forwarded by experts referred also to incoherency between the draft and the law in force, especially anti-corruption regulations, which the lobbying act shall be consistent with. It was also pointed that the scope of the regulation must be limited with reference both to the group of addressees of lob-

tee sitting Piotr Winczorek made a suggestion — often cited and used afterwards — that the bill in the form formulated by the Committee was merely the first stage of the lobbying regulation process. Experiences acquired during the implementation of the statute could be used in future stages of thereby introduced stage regulation of lobbying activity in Poland.⁵⁶ A representative of the government opposed limiting the scope of the bill.⁵⁷ Committee works, which lasted over one year, were brought to a standstill.

A breakthrough in the Committee work occurred at its tenth sitting, when Deputy T. Szczypiński presented seven postulates to introduce significant changes into the bill.⁵⁸ Some of them were adopted and thus a new course of the works and, most importantly, of the bill itself was indicated. Upon further works subsequent, numerous suggestions of corrections were voiced. A typical tendency started establishing: while the government representatives made attempts to defend the provisions of the bill — which frequently caused conflicts — Deputies began to slowly depart from the subject matter of lobbying in favour of regulating transparency of the legislative process, or broadly: of the law-making process, with all the consequences thereof.⁵⁹

bying activities, and lobbyists themselves. It would seem justified to limit the norms of lobbying activities to commercial lobbyists. Excessive and burdensome report obligations imposed on office-holders who are to make a note of any contact with a lobbyist, require posing a few questions before the legislator: how is such knowledge to be used? Who is to control such reports and in what purpose? Cf. K. Jasiński, *Opinia do rządowego projektu ustawy o działalności lobbingsowej (druk 2188)* [*Opinion on the Government bill on lobbying activity (print no. 2188)*], BSiE Kancelarii Sejmu [Bureau of Research of the Chancellery of the Sejm], commissioned opinion no. I2527_03-1 of 12 December 2003, Committee Bulletin no. 2873/IV of 2 March 2004 (2nd sitting); similar opinion in the period after the act had been passed: W. Wołpiuk, *Ustawa o lobbingu i perspektywy jej realizacji* [*The lobbying act and the perspectives for its realisation*], in: *Władza ustawodawcza w państwie członkowskim Unii Europejskiej* [*The legislative power in a European Union Member State*], Polish-Czech scientific conference, Warsaw, 12–13 December 2005, p. 10.

⁵⁶ This remark primarily pertained to excluding organs of territorial government from the regime of the act and their possible inclusion after the act had been verified in practice at the level of central organs; Bulletin no. 3479/IV of 28 July 2004, 5th sitting.

⁵⁷ Bulletin no. 3915/IV of 25 November 2004, 9th sitting.

⁵⁸ He proposed not to continue a detailed discussion on the content of individual provisions, but to delineate a new scope of the regulation. The proposals included: narrowing the scope of the act to proclaiming the law, announcing the quarter schedules for the legislative works by the government and the President of the Republic, establishing a public register of persons interested in the works presented in the schedules and attached to particular draft, establishing an institution of a public hearing, register of assistants, employees of Deputies' and Senators' offices and political cabinets, a public register of non-party parliamentary teams, announced together with its personal composition and goals, an open register of journalists accredited by the Sejm. The registers would not include the information on acquired income.

⁵⁹ The climax was presentation of an opinion, shared by most members of the Committee, by A. Lipiński, stating that from the beginning of the works on the draft in the Sejm, it was not a goal of Deputies to either regulate lobbying or define it. In view of such an astonishing opinion, there were voiced questions on the expediency of further proceeding with the government draft. A proposal was delivered to submit a motion to reject the government bill or to withdraw the bill by the government and submit a new, Deputies' bill on the transparency of decision-making procedures. It was also proposed to pass two acts: a narrow regulation, dealing strictly with lobbying, and another, broader, which would ensure thorough transparency of the law-making processes. In the end it was decided to proceed with the government bill and prepare proposals of amendments which the Government would be willing to accept; Bulletin no. 4446/IV of 19 April 2005, 17th sitting.

As the end of the Sejm's term was approaching, the works on the bill were intensified.⁶⁰ Dissent was caused i.a. by the issue of subjective exclusion of persons performing legal professions (attorneys at law and legal counselors)⁶¹ and inclusion of penal provisions.⁶² Affecting the organs of the local government and local organs was excluded from the scope of the bill, thus signalling the resumption of the subject matter in the future.⁶³ After a lengthy discussion the bill received a new title: "The Act on Lobbying Activity in the Law-Making Process."⁶⁴ It was also proposed to introduce into the bill the procedure of a "public hearing,"⁶⁵ absent in the government draft.

On 1 July 2005 second reading of the government bill was held.⁶⁶ During the debate on the bill mostly positive opinions were voiced. Twenty six amendments were proposed, mainly of formal and corrective character. At the last, 24th sitting, the Committee approved of all the proposed amendments.⁶⁷ Committee report of 5 July 2005 (print no. 4138A) was presented at the 107th sitting of the Sejm of the Fourth Term and on 7 July 2005 the Act on Lobbying Activity in the Law-Making Process was passed

⁶⁰ At the 20th Committee sitting, the chairman presented a note from the Marshal of the Sejm, in which a suggestion was made to intensify the works due to the upcoming end of the fourth term and to "analyse the pending legislative process and denote the bills, which might result in referring the report to the second reading; Bulletin no. 4578/IV of 18 May 2005, 20th sitting.

⁶¹ 19th and 20th sittings. About this issue: J. M. Karolczak, *Opinia prawna* dot. art. 8 projektu ustawy o jawności prac legislacyjnych i zawodowej działalności lobbingsowej (druk nr 2188) [Legal opinion on Article 8 of the bill on transparency of legislative works and professional lobbying activity], Bureau of Research of the Chancellery of the Sejm, opinion no. I-1151-05 of 17 May 2005.

⁶² The primary goal was to determine, whether in case of a breach of provisions of the act, e.g. conducting lobbying activity without registration or committing a crime by an employee of a lobbying company, further sentenced with a legally valid court decision, the sanction in the form of elimination from the register for the period of three years is imposed on the natural person or the company as a legal person; Bulletin no. 4606/IV of 19 May 2005, 21st sitting.

⁶³ This question was the subject matter of two legal opinions: P. Radziejewicz, *Opinia prawna na temat sposobu zredagowania art. 1 projektu ustawy o działalności lobbingsowej (w wersji z dnia 16 listopada 2004 r.), w celu zawężenia zakresu podmiotowego ustawy* [Legal opinion on the manner of editing Article 1 of the bill on lobbying activity (the draft of 16 November 2004) in order to narrow the objective scope of the bill]; opinion no. I2531-04 of 23 November 2004; P. Radziejewicz, *Opinia prawna w sprawie uzupełnienia projektu ustawy o działalności lobbingsowej (druk nr 2188) o przepisy dotyczące prowadzenia lobbingu w procesie stanowienia prawa miejscowego (wersja projektu ustawy o działalności lobbingsowej po pracach w komisji w trakcie pierwszego czytania)* [Legal opinion on supplementing the bill on lobbying activity (print no. 2188) with provisions related to conducting lobbying activity in the process of law-making referring to local law (bill on lobbying activity, the version after the Committee works in the first reading)], opinion no. I1277-05 of 31 May 2005. In the latter, the author pointed to the necessity to consult those provisions of the bill, which will cause the change in legal position of local governments (will impose new obligations) in accordance with the legal regulation on consulting local government organisations constituting the government party in the Government and Local Government Joint Committee.

⁶⁴ Bulletin no. 4606/IV of 19 May 2005, 21st sitting.

⁶⁵ Prior to passing the act and appropriate regulations, on 9 February 2005 Minister of Health, M. Baliński, organised the first public hearing at the seat of the ministry; PAP, *Public Hearing at the Ministry of Health*.

⁶⁶ There was presented the report of the Special Committee along with a uniform bill with Committee amendments; print no. 2188, 4138, 4138-e (the erratum referred to not including in the print no. 4138 the fact that a proposal was submitted to increase the upper pecuniary penalty for conducting lobbying activity with no registering to the sum of 50 000 PLN).

⁶⁷ Bulletin no. 4856/IV of 5 July 2005, 24th sitting.

with 399 votes in favour, none against and 4 withheld. The Senate did not resolve upon any amendments.⁶⁸ On 15 August 2005 the act was signed by the President of the Republic; it was proclaimed in the Journal of Laws of the Republic of Poland of 6 September 2005, no. 169, item 1414.

On the same day three executive regulations to the act went into force,⁶⁹ as well as the resolution of 24 February 2006 amending the Standing Orders of the Sejm,⁷⁰ i.a. the provision of Article 1 item 2, which foresaw supplementing it with chapter 1a (Articles 70a–70i) titled “Public Hearing.”

The Act on Lobbying Activity in the Law-Making Process contains 24 Articles organised into 6 chapters: “General Provisions” (Articles 1–2), “Principles of Transparency of Lobbying Activity in the Law-Making Process” (Articles 3–9), “Register of Subjects Performing Professional Lobbying Activity and Principles of Conducting Professional Lobbying Activity” (Articles 10–15), “Supervision of Professional Lobbying Activity” (Articles 16–18), “Sanctions for a Breach of Provisions of the Act” (Articles 19–20) and “Changes in the Provisions in Force, Transitory and Final Provisions” (Articles 21–24).

As of Article 1 (and the notion assumed at the legislative works), the Act defines “the principles of transparency of lobbying activity in the law-making process, the principles of conducting professional lobbying activity, forms of supervising professional lobbying activity, as well as principles of keeping a register of subjects conducting professional lobbying activity.” The legislator renounced specifying the goals of the act (which is a universal feature of the acts of this kind), such as: regulating lobbying activity, supervising lobbyists, ensuring the exercise of citizen rights (right to petition, freedom of speech). Right at the beginning a distinction is made between “lobbying activity” and “professional lobbying activity;” the latter is only a particular form of conducting lobbying activity, whose general definition is included in Article 2 para. 1 of the Act.

The mentioned limitation of regulating lobbyists’ influence to their participation in the law-making process differentiates the Polish act from acts in force in most other countries, where a distinction is made between lobbying activity conducted for the purpose of affecting the law-making and other than law-making activities conducted by the executive branch and even the judicature. Polish definition contains two general qualifications: “law-making process” (as opposed to just legislation) and “organ of public authority” (as opposed to specifically indicated organ or organs), which may

⁶⁸ Minority motion signed by Senators M. Szyszkowska and S. Izdebski, to reject the bill as a whole, did not find support of the Senate; print no. 1025-Z of 19 July 2005, Senate of the Republic of Poland, 5th term.

⁶⁹ Resolution of the Council of Ministers of 24 January 2006 on reporting interest in the works on the drafts of normative acts, Journal of Laws no. 34, item 236; Resolution of the Council of Ministers of 7 February 2006 on public hearing concerning the draft resolutions, Journal of Laws no. 30, item 207; resolution of the Ministry of the Interior and Administration of 20 February 2006 on the register of subjects conducting professional lobbying activity, Journal of Laws no. 34, item 240.

⁷⁰ Polish Monitor 2006, no. 15, item 194.

lead to the application of an extensive interpretation (most likely against the intentions of the legislator) of the act's scope.

Such broad definition requires specific indications of organs (e.g. the Council of Ministers, Prime Minister, ministers — Article 4) and types of legal acts (statutes and regulations — Article 5), included in the further part of the act, to be treated as merely an exemplary list and not an enumerative one. Naturally, this refers solely to the addressees of lobbying activities, not the addressees of obligations or entitlements specified in the act (such as organisation of public hearing or publication of the schedule of legislative works). Hence such definition of “law” extends onto any legal act: universal and internal, local and national, international and supranational, provided it is created by an organ of public authority. Similarly, “law-making” is a term of a broad scope, especially in view of the newest proposals of the science of law.⁷¹

The term “organ of public authority” may refer to both principal and central organs of state, as well as organs of government administration in the field and organs of local government within the range of performing public tasks by those entities.⁷² Another interpretation of the term “organ of public authority” clearly distinguishes between an organ of authority of local government and government administration and the organs of public authority.⁷³ Yet another definition of the term was contained in the Act of 30 June 2005 on public finance.⁷⁴ Hence the definition of the term “organ of

⁷¹ An argument claiming that constitutional courts, including Polish Constitutional Tribunal, create the law, may serve as an example; cf. A. Sulikowski, “Tworzenie prawa przez sądy konstytucyjne i jego demokratyczność [Creation of law by constitutional courts and its democratic nature]”, *Państwo i Prawo* (8) 2005. Since organs of judicial powers are regarded as organs of public authority, attempts at exerting influence on the decisions of the Constitutional Tribunal shall also be regarded as a prerequisite of lobbying activity.

⁷² Such understanding of the term “organ of public authority” is found in the detailed legislation, e.g. the Act of 29 August 2003 on the State of War, Competences of the Commander-in-Chief of the Armed Forces and the Principles of His Subordination to the Constitutional Organs of the Republic of Poland (Journal of Laws 2002, no. 156, item 1301, as amended), whose Articles 9–14 of Chapter 2 titled “Principles of functioning of the organs of public authority” are the execution of provisions included in Article 228 para. 3 of the Constitution of the Republic of Poland (“The principles of activity by organs of public authority as well as the degree to which the freedoms and rights of persons and citizens may be subject to limitation for the duration of a period requiring introduction of extraordinary measures”). Among the organs listed in the aforementioned provisions there are i.a. the President (Article 10), Council of Ministers (Article 11), Minister of National Defence (Article 12), voivod (Article 12) and organs of commune, district or voivodship government (Article 14). Such approach seems to confirm Article 15 para. 1 of the Constitution of the Republic of Poland (“The territorial system of the Republic of Poland shall ensure the decentralisation of public power”) and Article 16 para. 16 sentence 1 of the Constitution: “Local government shall participate in the exercise of public power,” which equates organs of local government exercising public power with “organs of public authority.”

⁷³ This follows from i.a. the interpretation of Article 4a para. 1 subpara 5. of the Act on the universal duty to defend the Republic of Poland (Journal of Laws 2004, no. 241, item 2416, consolidated text as amended), which states that the President of the Republic of Poland, who keeps guard over the sovereignty and security of the State and integrity and indivisibility of its territory, may particularly “address all the organs of public authority, government administration and local government administration.”

⁷⁴ Journal of Laws 2005, no. 249, item 2104, as amended; Article 4 para. 1 states that the public finance sector is composed of “organs of public authority, including the organs of government administration, organs of state supervision and law protection, courts and tribunals; communes, districts and the voivodship government, further referred to as ‘units of the local government’, and their associations.” In this case the organs of local government are excluded from the semantic scope of the term “organs of public authority,” while the organs of government administration are included.

public authority” may be broad or narrow. Due to the lack of a conclusive specification or any subjective exclusions (common in lobbying acts in other countries), the term must be understood possibly broadly. Fulfilling intentions of authors of the draft and Deputies, who — during the legislative works — intended to limit the scope of jurisdiction of the act both subjectively (the law-making process, and not other aspects of the political decision-making process), and objectively (organs of state, but not the local organs, i.e. organs of local government or organs of government administration), is therefore especially prone to failure and deserves a negative evaluation.

Another controversial element of the act is defining lobbying activity as „any activity conducted with lawfully admitted methods.” Non-specific indication “any activity” is merely seemingly limited with the phrase “lawfully admitted”, as the legislator does not present a catalogue of methods for conducting lobbying activity, which could be considered as such. Restrictive interpretation of the definition is therefore erroneous.⁷⁵ Thus a literal meaning remains, which is quite extensive, and solely in case of professional lobbying activity is subject to certain legal regimentation connected with residual obligations and entitlements foreseen for the subject conducting this kind of activity. In addition, Polish legislator used the phrase “activity aimed at exerting influence” [emphasis added]. Thereby, not the exertion of influence is meant — efficient or inefficient (i.e. a complete action) — but the intention to exert influence (incomplete action). At the same time, although the verb “intend” contains an element of a wilful intention, the scope of thus defined lobbying activity is still very broad and encompasses any preparations to exert influence, e.g. *via* contacting an organ of public authority, and includes preparation of opinions, analysis, speeches, articles, conceptual work, meetings with decision-makers, as well as organising such meetings and various other activities, regardless of their ultimate effect and of the fact, whether influence exerted is of minor importance for the whole incident or is its main goal or result. Consequently, the catalogue is virtually unlimited and encompasses literally any form of activity, which may lead to exerting influence on the law-making process. In order to illustrate the scale of controversies surrounding the new class of entities, theretofore not only not recognised as lobbyists but excluded from lobbying regulations regime around the world, a few examples may be evoked. Subjects conducting lobbying will include i.a. all the subjects, which present their opinions in the law-making process (e.g. on the basis of Article 34 para. 3 of the Standing Orders of the Sejm), particularly those, whose opinions the Sejm is statutorily obliged to seek.⁷⁶ Since the

⁷⁵ Cf. M. Zubik, *Ustawa o działalności lobbingsowej w procesie stanowienia prawa. Uwagi na tle sytuacji organizacji pozarządowych* [Lobbying act in the law-making process. Remarks against the situation of non-governmental organisations], materials for the seminar titled “Lobbying and jurisdictional activity of non-governmental organisations in the light of new legal regulations” organised by Trust for Civil Society in Central and Eastern Europe and Stefan Batory Foundation on 10 January 2006, p. 6.

⁷⁶ In 2002 the list of subjects with which the consultation is obligatory as of statutory provisions comprised as many as 70 positions; cf. M. Zubik, *Wykaz podmiotów, do których należy kierować projekty ustaw w trybie art. 31 ust. 3 Regulaminu Sejmu w celu konsultacji* [List of subjects, to which the bills must be referred for consultation as of Article 31 para. 3 of the Standing Orders of the Sejm], Bureau of Research of the Chancellery of the Sejm, information no. 896, July 2002. Assumptions and draft legal acts referring to

legislator does not take into account the motivation or goal of a subject exerting influence (or intending to exert it) over the law-making process, the goal may be profit⁷⁷ and general interest, providing the legal act with a better editorial form, acting in one's own interest, realising statutory goals of associations, or any other motive or goal. Thereby the group of lobbyists is extended to include e.g. journalists, scientists, instructors in high schools, teachers, priests, members of associations, etc.

Ambiguity of terms included in the definition evokes numerous, serious interpretational problems. It is a fact, that within the sphere pertaining lobbying activity in its broad sense (Article 2 para. 1 of the Act), those problems are mostly theoretical (since including a certain activity in the category of lobbying or excluding it from it does not result in any particular obligations or entitlements on the part of a lobbyist or his addressee). Nevertheless, theoretical controversies affect both the practice of applying lobbying provisions and systemic issues. The new classification of a certain part of social activity connected with law-making in the form of lobbying is related to the problem of social and economic system. First and foremost, a distinction between lobbyist and corporational elements of the functioning of the state and society was blurred, especially with reference to the decision-making process. There occurs an appropriation into the lobbying sphere of a significant number of phenomena commonly perceived as elements of corporationism, e.g. permanent consultation procedures, where participation of trade unions or employers' organisations and economic governments is a reflection of an intentional anti-lobbyist activity on the part of the state. A different perception of lobbying in Poland is not a subsequent stage in evolution of the lobbying concept, but a side effect on applying indistinct classification and definition criteria, which resulted in blurring the semantic boundaries and confusing the terms.

It illustrates the problem well, that — according to the definition provided in Article 2 para. 1 — persons conducting lobbying activity will include any Deputy, Senator and member of the Council of Ministers, who upon their participation in the law-making process (which is an obligation of each of the mentioned subjects) will in any way pursue affecting this process. Consequences of such legislative negligence shall be particularly severe in the sphere of general perception of the institutions of a democratic state, which Poland admittedly is. In the light of the act, such fundamental elements of it, as the principle of freedom of speech, right to petition or right to coalition, whose boisterous origin is well known and emphasises their special value and

tasks performed trade unions are to be consulted with trade unions (Article 19 of the Act of 23 May 1991 on Trade Unions, Journal of Laws 2002, no. 79, item 854, consolidated text as amended); analogous are the entitlements of employers' organisations (Article 16 of the Act of 23 May 1991 on Employers' Organisations, Journal of Laws no. 55, item 235, as amended). A special kind of lobbying activity is also the activity of a Trilateral Committee for Social and Economic Matters in the process of adopting the Budget Act (cf. Article 3 of the Act on the Trilateral Committee for Social and Economic Matters and on voivodship social dialogue committees, Journal of Laws 2001, no. 100, item 1080, as amended).

⁷⁷ Which — as of Polish norms — is an exclusive prerequisite of professional lobbying activity, as opposed to most legal regulations around the world where it is regarded as a *sine qua non* prerequisite of any lobbying activity.

rank, seem merely a variation or a form of lobbying activity. Such broad perception of lobbying activity deserves a negative evaluation.⁷⁸

In case of professional lobbying activity, the existence of unclear provisions, open for extensive interpretation, is not merely of theoretical significance, but becomes a negative element in view of the security of the conduct of legal affairs and the principle of reliability and specificity of law.

The provisions pertaining to “professional lobbying activity” define it as a profit-making lobbying activity conducted by an entrepreneur or a natural person not being an entrepreneur on the basis of a civil law transaction for the interests of third parties to be considered in the law-making process (Article 2 paras. 2 and 3). Regardless of the fact that the act does not indicate the meaning of “entrepreneur,”⁷⁹ above all it does not consider as lobbyists the employees hired on the basis of an employment contract, which significantly differs the act from regulations adopted in other countries, particularly the U.S. and Canada, where those lobbyists were provided a separate classification. For example, the Polish act does not regard as a professional lobbyist a member of an association who acts upon remuneration but in the interest of the association, i.e. not in the interest of the third parties, but in his own, as in case of German Chamber of Industry and Commerce (DIHK), whose status is that of an employers’ association.⁸⁰ Meanwhile the British Chambers of Commerce, conducting a similar activity as DIHK, is a civil law partnership, therefore its contacts with organs of public authority will be subject to the rule of the act.

As of the specific wording of the provisions, it is difficult to state whether or not the activity similar to lobbying activity conducted by a person — who is a member of an association, acts upon its order and in its statutory goal, at the same time combining own interest with obvious interests of third parties (members of the association) — fulfils prerequisites of lobbying. No doubts arise, however, with regard to activity of e.g. a natural person — employed on a basis of a civil law contract by a trade union or a political party, and conducting activities aimed at taking into account the interests of this association (its members) or a party in the law-making process; such activity shall fulfil prerequisites of lobbying activity with all entitlements and obligations resulting therefrom. Should, however, that person conduct the same activity on the basis of an employment contract, classifying him as a lobbyist shall not be certain. In the praxis of implementation of the act another controversial issue arose. The act does not prohibit a person registered as a professional lobbyist to simultaneously act at a com-

⁷⁸ This was one of the main reasons for criticism on the part of experts already at the stage of Special Committee work; cf. Bulletin no. 2873/IV of 2 March 2004, 2nd sitting; Bulletin no. 3346/IV of 30 June 2004, 4th sitting.

⁷⁹ It seems justified to invoke the Act of 2 July 2004 on the Freedom of Business Activity, Journal of Laws 2004, no. 173, item 1807, as amended. The act defined entrepreneur as a “natural person, legal person or organisation unit of no legal personality, whom a separate act vests with legal capacity, conducting a business activity in its own name (Article 4 para. 1), and also “a partner of a civil law partnership as regards the business activity conducted by him” (Article 4 para. 2).

⁸⁰ K. Sobczak, “Lobbying źle uregulowany [Badly regulated lobbying]”, *Rzeczpospolita*, 29 March 2006.

mission or in the interest of another person as a non-lobbyist. Thus a person, who — as a lobbyist — has no right to attend the sittings of Sejm subcommittees (Article 154 para. 2d of the Standing Orders of the Sejm), may acquire the right of participation at the invitation of the subcommittee's chairman (Article 154 para. 3 of the Standing Orders of the Sejm).

Commentaries feature questions pertaining to other conceivable situations, e.g. will a person who acted upon no commission but was remunerated afterwards be considered a lobbyist?⁸¹ The group of subjects which will exert influence on the law-making process — excluding professional lobbyists — is extensive, thus the threat of inconsistency with the act whose provisions are easy to bypass, becomes real.

Chapter 2 of the Act on principles of transparency in Lobbying Activity in the Law-Making Process begins its detailed part. It is the lengthiest chapter, comprising the institution of a public hearing, introduced into the bill at the stage of Special Committee work on the draft and absent in the Government draft; it also establishes the obligation and specifies the method of preparation and public disclosure of the legislative works schedule by the Council of Ministers, the Prime Minister and ministers. The title of the chapter is misleading, as it does not set the general principles of transparency in conducting lobbying activity.

Naturally, “public hearing” establishes a broad area for conducting lobbying activity⁸² and fulfils its statutory prerequisites, nevertheless around the world this institution is considered a mechanism enabling the exercise of a citizen right to petition. Exploitation of a hearing for lobbying purposes is commonly regarded as a misuse (appropriation), against the intentions of its creators, against the essence of lobbying activity (remunerated activity in the interest of third parties) and against the essence of the right to petition (exercised free of charge, in own or general, public interest). The Polish act, however, identifies hearing with lobbying, thus illustrating a negative overlapping of dissimilar terms. It is curious that the act does not limit the right to participate in a public hearing exclusively to lobbyists, or at least professional lobbyists. As of Article 7 the interest in the works on a draft statute may be put forward by “anyone,” which proves the lack of consequence or and perhaps logic in the light of placing norms pertaining to “public hearing” in a chapter distinctly dealing with lobbying activity. This will most certainly prove conducive for bypassing provisions of the act, since the persons conducting lobbying activity upon remuneration (professional lobbyist) are subject to specific obligations (registration, fees) and exercising the main (almost single) entitlement vested by the act — the right to participate in a public hearing — is practically available to “anyone.”

⁸¹ M. Zubik, *Ustawa o działalności lobbingsowej...*

⁸² A public hearing is at the same time the only statutorily regulated form (method) of conducting lobbying activity in Poland, although it is not classified as such in the act. A hearing is to provide lobbyists with possibility and a forum for expressing their views, opinions and motion, access to the authorities, as well as a valuable, free of charge information on the current law-making plans on the part of the government.

Including in this chapter the principles for creating and disclosing the schedule for government legislative works causes difficulties.⁸³ Obligatory disclosure of legislative plans will certainly facilitate conducting activities by lobbyists, yet it does not reveal those activities. It is worth noting, that the obligation to publish the legislation plans, which are an important source of information for subjects potentially interested in participating in a hearing, refers solely to draft statutes and draft resolutions of the Council of Ministers (ministers, the Prime Minister), and not to draft statutes submitted by the President, Deputies, the Senate or draft resolutions of the National Broadcasting Council.

The analysis of regulation of the institution of a public hearing allows the conclusion on its low legislative level and fictitious nature. It shall suffice to note that the organisation of a hearing is merely optional (Article 8 para. 1 and Article 9 para. 1 leave no doubt, as they state that it “may be conducted”) and depends on a decision of a particular organ. In addition, the Committee resolution on holding a public hearing is passed exclusively upon a written request of a Deputy (Article 70a para. 3 of the Standing Orders of the Sejm). Admissible reasons for recalling a commissioned public hearing are as ambiguous as “reasons of space availability, technical reasons, the number of participants” (Article 9 para. 4 of the act). Furthermore, according to the Standing Orders of the Sejm, there is a possibility to reduce the number of entities participating in a public hearing (Article 70d para. 1 of the Standing Orders of the Sejm).⁸⁴ The hearing may also be adjourned by the chairman (Article 70d). A modest compensation for persons who could not take part in a hearing is the right to submit to the minutes the text which has not been heard by the committee (Article 70i). The legislative practice in Poland, the great number of submitted draft statutes and the pace of the works allow the conclusion that the procedure of a “public hearing” shall not be of greater significance.⁸⁵

In view of the above remarks the institution of a “public hearing” must be viewed as defective and it is therefore justified to anticipate its rare use — the rarer, the greater the significance and controversies around a particular draft. Such apprehension is well-founded in view of the incidents in the first months of applying the act and notorious controversies surrounding the cancellation of a commissioned public hearing regarding amendments to the local government election ordinance.⁸⁶

⁸³ The only justification may be the connection between the published plans of legislative works and public hearings. Subjects interested in participating in a hearing may gain knowledge on the planned legislative works, which at the stage of their realisation may present an opportunity to hold a public hearing.

⁸⁴ The provision contains a limitation stating that such restriction must be introduced on the basis of a justified criterion and applied indiscriminately to all subjects.

⁸⁵ Such an opinion finds its confirmation among practitioners, i.a. A. Gnys, head specialist in the Department of Common Courts of the Ministry of Justice in his article “Każdy ma prawo do zgłaszania uwag [Anybody has the right to submit their remarks]”, *Gazeta Prawna*, 22 March 2006.

⁸⁶ Already the first public hearing (excluding the one organised by minister M. Balicki before entry into force of the lobbying act in the previous term of the Sejm) regarding the Government bill on the National Education Institute (print no. 650), evoked controversies. It lasted half of the announced time, hence only 66 of 140 listed participants were heard (M. Kula, “Trwa kłótnia o wychowanie [Ongoing argument over edu-

The institution of a public hearing introduced into the Polish legal order has another constitutional aspect regarding the relationship between a (statutorily regulated) public hearing and the citizens' right to petition (expressed in the constitution). Until now the constitutional delegation of Article 63 to regulate the right to petition in detail has not been realised. It is therefore grounded to forward an argument that Chapter 2 of the lobbying act — to the extent in which it regulates the institution of a public hearing — realises the aforementioned constitutional delegations and thus fulfils the gap in the Polish legal system. If it is so, the question of consistency of the statutory regulation with the constitution appears momentous. Those doubts of constitutional nature were partly recognised upon the works on the bill and were a subject of one expert opinion,⁸⁷ whose author concludes that a situation is possible, where a citizen performs an action which fulfils prerequisites of lobbying activity as of the act and as such requires compliance with additional formal obligations under the sanctions, while in view of Article 63 of the Constitution the action will be merely the realisation of the right to petition and submit motions to organs of public power.⁸⁸

Thus an interesting problem arises, known from American debates, of the consistency of lobbying regulation with freedom of speech and the right to petition. Indubitably, the matter of lobbying is related to issues connected with the right to petition. However, they are not identical. Statutory regulation of the institution of the right to petition is a priority resulting from the constitution; this fact seems to have been forgotten by the authors of the Polish lobbying act.

The legislator therefore still faces a task of great significance and difficulty. It amounts to, firstly, statutorily regulating the detailed principles of the exercise of the right to petition; secondly, regulating the principles of conducting lobbying activity; thirdly, all the more importantly, distinctly distinguishing between those two institutions *via* demarking boundaries between exercising the right to petition and conducting lobbying activity. It is an issue of secondary importance, whether those matters

cation]”, *Rzeczpospolita*, 23 August 2006). A genuine political storm broke out in the Sejm, when a public hearing on amending the local government election ordinance was organised. The Sejm Committee on Local Government and Regional Policy decided on holding the hearing. It was to be held on 11 September 2006. The Deputies representing parties of the ruling coalition did not agree for the hearing to be held, arguing it would prolong the Sejm works on amending the ordinance and rule out the possibility of applying the amended provisions in the local government elections to be held in autumn. The composition of the Sejm committee was changed so as to ensure the majority of Deputies from coalition clubs. Next, the Committee, without participation of the opposition, which boycotted the voting, passed the decision on cancelling the public hearing. Then the opposition Deputies (Civic Platform — PO, Democratic Left Alliance — SLD, Polish Peasants' Party — PSL) announced they would organise an “alternative” public hearing. Certainly the organised meeting (5 September) did not have the form of a public hearing *de iure*, just a similar nature; G. Praczyk, “Fortelem przeciwko blokowaniu list [A trick against blocking the lists]”, *Rzeczpospolita*, 18 August 2006; “Pawlak odwołany, wysłuchania nie będzie [Pawlak dismissed, no hearing to be held]”, *Rzeczpospolita*, 24 August 2006; A. Majda, „Lokalni politycy: nie blokujcie nas [Local politicians: Don't block us]”, *Rzeczpospolita*, 6 September 2006.

⁸⁷ Cf. P. Radzewicz, *Opinia prawna na temat projektu ustawy o działalności lobbingsowej [Legal opinion on the bill on lobbying activity]*, print no. 2188 I-2527-03 of 5 December 2003.

⁸⁸ Ibidem, p. 56.

shall be regulated in a single statute or two separate acts referring to each of those institutions.⁸⁹

It is unquestionable that the lack of statutory norms referring to the exercise of the right to petition will threaten any form of control or limiting of lobbying with the accusation of non-conformity to the constitution. Any regulation of the right to petition not accompanied by restrictively detailed principles of conducting lobbying activity shall lead to dominating the right to petition by lobbyists. The Polish act, with its broad definition of lobbying activity, leads to classifying activities tantamount to exercising the right to petition as lobbying. From the point of view of systemic principles, the act thus contains a dangerous, confusion of terms.

Chapter 3 of the act, in accordance with its title, contains provisions regulating the “Register of entities conducting professional lobbying activity and the principles of conducting professional lobbying activity.” It is justified to state that as of the Polish lobbying regulation the binding principle is the absence of an obligation to register entities conducting lobbying activity. An exception in the form of obligatory registration pertains solely to professional lobbyists. It is important that a non-professional lobbyist not only needs not register, but outright cannot do it. If he does not exploit forms or methods that the act places at his disposal (public hearing) and does not conduct professional activity (e.g. activities conducted on the basis of an employment contract are not considered as such), he has no obligation to disclose the fact that he is a lobbyist and to conduct his activities openly.

The legal construction of the lobbyist register is (except for limitations formerly mentioned) quite typical vis-à-vis the regulations in other countries. The register is maintained by the minister in charge of public administration in the form of an electronic database and rendered accessible (excluding addresses of natural persons) in the Bulletin of Public Information (BIP); the register is public (Article 10) and the registration requires a fee.⁹⁰

Notice must be taken of the fact that neither the act nor the executive regulation envisages sanctions for not disclosing in the specified period the change in the data concerning the entity conducting professional lobbying activity.⁹¹ Most lobbying acts expressly require periodical updating of the data under penalty in the form of deletion

⁸⁹ Perhaps a proper clue is to be found in Article 63 which contains a statement: “Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interest of another person — w i t h h i s c o n s e n t [emphasis added].” In the definition of lobbying activity there ought to be a properly emphasised action in the interest of a third party or entity, but upon remuneration (in return for specific benefit) in order to acquire it. The element of concordance, as a *sine qua non* prerequisite of exercising the right to petition, was pointed by B. Banaszak, “Petycja w projekcie nowej konstytucji [Petition in the draft of the new constitution]”, *Rzeczpospolita*, 18 November 1996.

⁹⁰ In the amount of 100 PLN (Article 11 para. 10 subpara. 4 and Article 8 of the regulation of the Ministry of the Interior and Administration). Deletion from the registry is free of charge (Article 6 para. 3 of the regulation); so is the motion to update the data (Article 5 of the regulation).

⁹¹ Such situation is neither foreseen by the hypothesis of a sanction in Article 19 of the act, which envisages a fine only for conducting lobbying activity with no enlistment in the registry, and not in the situation when an entry is out of date.

from the registry or even temporary suspension of the right to register. As the enrolment in the registry is termless, one may anticipate the data contained therein to be partly out of date. This is another, significant defect of the act.

The registration takes place at the moment of introducing the data into the register, not later however, than within seven days from application.⁹² Equating the date of the registration itself with the date of introducing the data into the register may cause serious difficulties on the part of a professional lobbyist, e.g. in cases he is interested in participating in the works on an urgent bill which was not included in the schedule of the legislative works.⁹³ The lack of registration precludes conducting lobbying activity, and the lack of a registration certificate prevents him even from a contact with an organ of public authority or an employee of an office serving it.⁹⁴ Such actual elimination of a possibility to conduct professional lobbying activity may serve as encouragement for a “preventive” registration, well in advance, i.e. registration of persons who are not lobbyists but are planning to be in an indefinite future. Another consequence will be a serious obstruction of the pace of lobbying, whereas speed and a non-formal form are the essential factors. Ultimately, on the one hand, one may expect the lobbyist registry to contain non-lobbyists, and on the other — to exclude those lobbyists, who will abandon registering so as to avoid complications.

Unfortunately, there are multiple other negative examples of how general and rudimentary or vague the regulation of professional lobbyists activity is.⁹⁵

⁹² Unless there occurred formal defects not eliminated in time or the motion to make an entry is obviously groundless (Article 4 of the regulation of the Ministry of the Interior and Administration).

⁹³ This is probable, as the legislative schedule is prepared at least once every six months. If, for instance, because of an urgent need to pass amendments due to the decision of the Constitutional Tribunal on non-conformity to the Constitution of certain provisions of an act to be amended, there occurs the submission of an urgent draft statute, the only chance of undertaking knowledge of undergoing works on the draft by a lobbyist and expressing his interest pertaining thereto shall be the publication of such draft in the “Bulletin of Public Information” (Article 6 of the act). An official notification of interest requires a professional lobbyist to submit a certificate on the enlistment in the lobbyist register (Article 7 para. 5 subpara. 1 of the act), undoubtedly in a specific time, which may constitute an additional prolongation of the 9 days foreseen for introducing the entry in the register. As of Article 70a para. 6 of the Standing Orders of the Sejm, in respect of urgent bills the organisation of a public hearing shall be made accessible at least 3 days prior to the day of the public hearing. If a lobbyist had not registered earlier, this may result in a virtual loss of a chance to participate in a public hearing held with respect to such bill or compulsion to participate in it not as a professional lobbyist, which will deprive him of the right to remuneration from the lobbying commissioner; another result may be compulsion to act with the breach of law.

⁹⁴ A professional lobbyist is obliged to submit a proper certificate on enlistment in the registry to the organ addressed (Article 15).

⁹⁵ E.g. Article 14 para. 1, the only provision of the act referring to the rights of a professional lobbyist, which states that a (professional) lobbyist may *also* [emphasis added] conduct his activity in the seat of an office serving an organ of public authority. “Also” means that activity conducted outside that seat is admissible as well. It is not specified, however, where a lobbyist may conduct his activity except for the seat of an office. Article 14 para. 2 included only an enigmatic statement, criticised already at the stage of legislative works in a special committee, that the head of the office provides professional lobbyists enlisted in the register, with the access to the office the head supervises, “in order to enable a proper representation of interests of subject, for the benefit of which the activity is conducted.” Indubitably this issue ought to be referred to a detailed specification in an executive regulation, analogically to a similar reference to the Standing Orders of the Sejm and the Rules and Regulations of the Senate in case of conducting lobbying activity

Executory provisions also raise controversies. A good illustration is specifying in the Standing Orders of the Sejm of one of the rights of a lobbyist, which is the right to participate in sittings of the committee at which bills are considered.⁹⁶ Although this participation is based on general principles, it is subject to a serious limitation in the form of prohibition of participation in sittings of subcommittees (Article 154 para. 2d of the Standing Orders of the Sejm). It is commonly known, that the works conducted within subcommittees are often of essential importance for the form of a draft statute at this stage of legislative works. Assuming that — in view of the prohibition expressed in the Standing Orders of the Sejm — a lobbyist shall abandon affecting the Deputies in subcommittees is, at the last, unjustified. Such formulation of a prohibition will rather promote evading the law *via* participation in sittings of subcommittees of non-professional lobbyists or affecting members of subcommittees outside of the sittings. It therefore seems reasonable to enable lobbyists to participate in subcommittee sittings, whilst maintaining the general requirements (registration, disclosing interests one strives for).

Chapter 4 of the act deals with professional oversight of lobbying activity. The oversight was based on the obligation to regularly submit reports on activity of professional lobbyists and persons conducting lobbying activity with no prior registration.

Reporting obligation — which in case of most lobbying acts around the world is vested mainly, and not infrequently solely, in lobbyists, and sometimes additionally refers to subjects hiring a lobbyist (lobbying commissioner) — is not at all vested in a lobbyist by the Polish act,⁹⁷ since as a whole it was imposed on organs of public authority, which — according to Article 16 — are obliged to immediately disclose information on activities undertaken by professional lobbyists along with an indication of a solution expected by lobbyists, in the Bulletin of Public Information.

at the premises of parliament. An interpretative indication may be Article 14 para. 3, from which it follows that professional lobbying activity may also be conducted at the premises of the Sejm and the Senate. It is not clear, however, that the Sejm and the Senate, and also the seat of an office, exhausts admissible places of conducting lobbying activity. Since almost “any” activity may be considered lobbying, and therefore conducted in any place, it must be assumed that it follows from the interpretation of the definition of lobbying activity that the Sejm, the Senate and the seat of a proper office are only exemplary places of conducting such activity. At the same time the Polish act contains no provisions, which would prohibit conducting lobbying activity in certain places. American acts, especially state acts, prohibit access of a lobbyist into the hall of plenary sittings of parliament with the aim of conducting lobbying activity. It must therefore be assumed that a lobbyist may conduct lobbying activity virtually “anywhere,” where the law does not prohibit to conduct it. Cf. also J. Mordwiłko, “W sprawie zrealizowania przez nowelę z dnia 11 stycznia 2006 r. do Regulaminu Sejmu art. 14 ust. 3 ustawy o lobbingu [On realising by the amendment of 11 January 2006 to the Standing Orders of the Sejm of Article 14 para. 3 of the Lobbying Act]”, Bureau of Research of the Chancellery of the Sejm, *Zeszyty Prawnicze* 1 (2006). This is just one of numerous examples of imprecise definitions and a low legislative level of the act.

⁹⁶ I.e. with the exclusion of an investigative committee, which does not deal with bills and is not vested with the right of a legislative initiative (Article 136e of the Standing Orders of the Sejm).

⁹⁷ This deficiency must be regarded as one of the greatest flaws of the act and the reason underlying difficulty with considering it a lobbying regulation, since no obligations are imposed on lobbyists except for the registration, which is virtually of no consequences, disclosing personal data of natural persons engaged in lobbying activity or the names of companies conducting such activity, whilst the data may be significantly outdated.

The Act does not at all deal with the method of informing of or documenting undertaken lobbyist contacts. Moreover, it does not contain information on the legally advisable methods of conduct of officials towards professional lobbyists. Those matters were referred to be specified by heads of offices serving organs of public authority (Article 15 para. 2). Such stipulations are therefore of internal and merit-based nature. The most serious accusation refers to the degree of discernment, which the legislator demands from the organ producing information. It seems impossible to ascertain, whether or not an official is at all able to meet the requirement imposed onto him, e.g. to obtain substantial information on a matter as abstract as the real affect of a person's actions onto the decision-making process of another person or persons (Article 18 of the Act). A norm expressed in that article is almost impossible to fulfil, even if a person takes a maximum possible effort, since his perception, regardless of his abilities, is naturally limited.⁹⁸

As a consequence, amidst the surge of information, the aim of the regulation (control) may be lost; moreover, one may expect the work of numerous offices to be paralysed (Deputy J. Wojciechowski called this a “lobbyist obstruction”) or the act to be commonly neglected⁹⁹ and the meetings with lobbyists held unofficially, so as not to cause the occurrence of the reporting obligation.

It was rightly apprehended that officials would abstain from any contacts with lobbyists. The provision which obliges the head of the office to provide a professional lobbyists with access to the office the head supervises (Article 14 para. 2) did not cause officials to refuse such access to persons, who did not fulfil the requirements of “a person conducting professional lobbying activity in the law-making process.” Moreover, it brought about the above mentioned “registration just in case” also by individuals, who were not professional lobbyists, but for whom obtaining the status of a lobbyists was an effective — if not only — method of acquiring access to particular offices and gaining specific information. The praxis of the first weeks after the act went into force already provides numerous illustrations thereof.¹⁰⁰

⁹⁸ By the virtue of the provision of Article 17, an official (organ of public authority) is also imposed with the obligation to report on the facts of conducting a professional lobbying activity by an entity not listed in the register, which is another example of imposing obligations impossible to fulfil, if it is assumed that an official is a human being, whose perception and acute thinking abilities are limited. It must be therefore reminded, that at the stage of the committee works, detailed reporting obligations imposed on organs of public authority and local government included in the bill were substantially limited.

⁹⁹ The four years of the binding force of the act proved its inefficiency. Most reports prepared by the ministries, as well as the Sejm and the Senate, on lobbying activities undertaken by them present a rather insignificant activity of persons conducting lobbying: “[they] did not speak, present the desired solutions in writing, support or oppose statutes considered at the committee sittings;” more on the topic: M. M. Wiszowaty, “Ustawa z 7 VII 2005 o działalności lobbingsowej w procesie stanowienia prawa, w trzecią rocznicę uchwalenia: analiza *de lege lata* i propozycje *de lege ferenda* [The Act of 7 July 2005 on lobbying activity in the law-making process, on the third anniversary of its passing: *de lege lata* analysis and *de lege ferenda* proposals]”, in: *Acta Pomerania. Zeszyty Naukowe PWSH “Pomerania” w Chojnicach*, Chojnice 2008.

¹⁰⁰ M. Wojtuch, “Luki w przepisach o lobbingu [Gaps in lobbying provisions]”, *Gazeta Prawna*, 13 April 2006; G. J. Leśniak, “Urzednicy naduzywaja niejasnych przepisow o lobbingu [Officials abuse imprecise lobbying provisions]”, *Rzeczpospolita*, 16 May 2006.

Indubitably, it is necessary to urgently introduce the reporting obligation of professional lobbyists (and lobbying commissioners) into the act. There must also be introduced a distinction between actions undertaken by a lobbyist within his lobbying activity. Otherwise, there may occur a situation — practically, it does occur now — in which any conduct of a subject enlisted in the lobbyist register will be considered a lobbying activity. Reporting obligations on the part of organs of public authority shall be regarded as supplementary, verifying information submitted in the reports prepared by lobbyists.¹⁰¹

Chapter 5 of the act contains sanctions for a breach of its provisions. Explicitly appealing to solutions adopted in all lobbying regulations around the world, it establishes a pecuniary penalty. An entity conducting lobbying activity with no enlistment in the register is subject to pecuniary penalty in the amount between 3 000 and 50 000 PLN. It is to be assumed that other violations of law, e.g. including falsehood in the registration application, are subject to sanctions under general principles as of the Penal Code or the Act on the Acts Prohibited under Punishment Act. Analogically, infringements on the part of officials are subject to disciplinary or penal accountability. The lack of detailed provisions of the act and its limitation to indicating pecuniary penalties with reference to a single type of breach is another flaw of the act, especially in view of its original assumptions and goals, among which eliminating pathology from lobbying activity was voiced. As has been mentioned, despite imposing on lobbyists an obligation to notify of the changes in the data disclosed in the register and even determining the deadline for the fulfilment of this obligation (7 days), no sanctions are foreseen for non-compliance. Furthermore, the Polish legislator renounced additional sanctions, present in other lobbying acts, for committing crimes upon conducting lobbying activity, in the form of imprisonment and deletion from the register of professional lobbyists.¹⁰²

It follows from the provision of Article 19 para. 4 of the act that a pecuniary penalty (up to 50 000 PLN) may be inflicted numerous times, should a lobbyist conduct his activity illegally, and despite being penalised, continue his activity with no enlistment in the register; such solution must be positively evaluated.¹⁰³ On the other hand, one shall negatively evaluate the notion to inflict penalties on the basis of an administrative decision, a conceivable appeal to which shall be considered solely on the basis of the criterion of legality, but not equity. Among commentaries on the contents of the act a question was raised on the conformity of such regulation to Article 77 of the Constitution.¹⁰⁴

¹⁰¹ In some foreign acts this takes the form of posterior verification, i.e. an organ verifying lobbyists' reports notifies those organs of authority, which were listed by a lobbyist in a report. An organ is furthermore obliged to notify of a lobbyist contact it had encountered, in case a lobbyist disregarded it in his report.

¹⁰² Another of the listed sanctions was included in the government draft. Apart from deletion from the register, it was proposed to establish the period of 3 years, during which the punished lobbyist would have the right to renew his registration.

¹⁰³ An apparently severe (considerable) pecuniary penalty must be regarded against enormous sums engaged in financing of lobbying activity.

¹⁰⁴ M. Zubik, *Głos w dyskusji podczas Seminarium "Lobbying i działalność rzecznicza organizacji pozarządowych w świetle nowych regulacji prawnych [A voice in the discussion at the seminar titled 'Lobbying and interceding activity of non-governmental organisations in light of new legal regulations']*, Institute of Public Affairs, Warsaw, 10 January 2006 (shorthand, p. 5).

In the last, sixth chapter of the act titled “Amending the Provisions in Force, Transitory and Final Provisions,” in Articles 21 and 22 there were realised some of the postulates submitted during the works of the Special Committee. They were aimed at the realisation of the principle of transparency of the legislative process.¹⁰⁵ Their relation to the matter of lobbying activity is by all means debatable.

The first comments past the passing of the act, besides a positive reaction to the fact of that a lobbying regulation was finally passed, since it has long been awaited and regarded as necessary, and was worked on by the Committee for almost two years and finally passed at the very last moment before the end of the term, included a crushing criticism of its particular provisions. This is best illustrated by the phrase used by one of the committee’s experts, K. Jasiecki: “a mountain delivered a mouse.”¹⁰⁶ Years of unsuccessful attempts, consultations, amendments and debates were to bring the desired effect in the form of the third lobbying act passed in Europe. The outcome was not quite such; numerous reasons accounted for it. Among the causes for failure of the authors of the regulation, a few are to be considered.

Firstly, erroneous assumptions of the regulation shall be pointed, as the act was based on the realisation of the postulate to combat corruption and ensure transparency of public life, in this case — of the decision-making and further law-making process.¹⁰⁷ The draft of the act presently in force was indubitably imprinted by the bill submitted by the Freedom Union Parliamentary Club in the Sejm of the third term; the bill identified the issue of access to information with the issues of lobbying activity. An important role was also played by the media, which equated lobbying activity with corruption. Despite criticism and many warnings, such equation proved permanent. Even if bestowing lobbying activity with a trait of transparency deserves a positive evaluation, the realisation of this idea must be assessed negatively, in view of e.g. numerous flaws of the regulation of public hearing. Introducing this institution into the Polish legal and structural system in its present shape shall result in its marginalisation and, in effect, its failure. A belief that in order to ensure transparency of lobbying activity it is sufficient to express this fact *via* a provision in a statute, with no detailed mechanism of disclosure and — what is even more important — strict control, is at the least naïve, and unfortunately quite typical for subsequent, sham institutions intro-

¹⁰⁵ Amendments introduced into the Act of 9 May 1996 on the Exercise of the Mandate of a Deputy or Senator (Journal of Laws 2003, no. 221, item 2199, consolidated text as amended) and to the Act of 8 August 1996 on the Council of Ministers (Journal of Laws 2003, no. 24, item 199, consolidated text as amended) envisage new reporting obligations imposed on the chairmen of Deputy and Senator clubs and groupings, Deputies, Senators and Ministers. They refer to disclosing personal data (first and last name), the place of employment throughout the three years before applying, the source of income and business activity conducted at that time by the workers of clubs, groupings, political cabinets of ministers and social workers.

¹⁰⁶ K. Jasiecki, “Lobbing po polsku [Lobbying, the Polish way]”, *Biuletyn Dialogu Społecznego* 9 (2005).

¹⁰⁷ Lobbyists themselves refused to regard the act as a lobbying regulation and used various names for it, e.g. the act on transparency in law-making process; M. Chmielewski, “Smak porażki obudzi firmy! Rozmowa z M. Matraszkiem, Prezesem CEC Government Relations [A taste of failure will wake the companies! An interview with M. Matraszek, President of CEC Government Relations]”, *Gazeta Finansowa*, 12 January 2005.

duced into the Polish legal system. A conviction that lobbyists shall stampede in using the institution of a public hearing to realise their own goals is absurd in view of the fact, that a public hearing assumes a public presentation of opinions and views, which in a sense opposed the core of lobbying based on direct and backstairs contact with political decision-makers. A public hearing may at most be an element supplementing lobbying strategies, with the dominance of direct and indirect contacts with a politician or official with no participation of third parties. In addition, this institution was “taken away” from the citizens, for whom (and not for lobbyists) it was established.

Secondly, the will apparent in the contents of the act, to “repair” and modify — while realising popular slogans of combating corruption, ensuring transparency of decision-making processes and improving the quality of created law — as many as possible of erroneous elements of the functioning of the state; elements only loosely — if at all — concerning the problems of lobbying control.¹⁰⁸ The symbol of this phenomenon, except for incoherence of the act, is the multitude of its subject matter. In addition, numerous issues strictly concerning the lobbying, were altogether excluded.

Thirdly, a completely ineffective notion to base oversight of professional lobbying activity exclusively on oversight of addressees of lobbying, and not lobbyists themselves (and their commissioners).

Fourthly, an erroneous concept to authoritatively provide the lobbying act with the form of a “tentative” regulation.¹⁰⁹ As a matter of fact the Polish act has nothing in common with elsewhere interesting notion of sunset or experimental legislation¹¹⁰ — first of all, it does not indicate the term of its binding force which is an instrument of exerting pressure onto the legislator. Hence, the phrase “tentative regulation” was used only to appease conceivable fears as to legitimacy of passing an act of poor quality. Thus, as stated by Marek Zubik, not so much passing, but „forcing” an act out of the Sejm right before the end of the term was possible.¹¹¹

¹⁰⁸ It is not about obvious dependencies between the quality of created law and the level of regulation of legislative procedures on the one hand, and the quality and effectiveness of lobbying oversight on the other. Those dependencies are a result of coherence of a legal system and recognising them does not justify confusing and the lack of precise specification of terms and scopes of institutions.

¹⁰⁹ P. Winczorek warns, that such an authoritative assumption of regulating lobbying in stages is risky, due to the plague of haste law-making, which then results in its constant amending; ultimately, he justifies the decision with a statement, that he does not expect “to find anyone able to immediately prepare the draft concerning such an imprecise matter as lobbying in Poland” — a rather weak argument; P. Winczorek, “O lobbingu bez pośpiechu [On lobbying with no haste]”, *Rzeczpospolita*, 3 August 2004.

¹¹⁰ Even in its cradle, the USA, sunset legislation is a form utilised very rarely, primarily because of the accusations of non-conformity to the constitution (violation of the principle of certainty of law and constitutional guarantees of the rights of an individual.) One must remember that such an act includes specific formal requirements, which were not preserved in case of the Polish act. The most important of those is the self-derogative nature of a temporary act, i.e. specified term of the loss of its binding force, which compels the legislator to gather, in specific time, information on consequences of introducing a particular regulation and to make the decision on the necessary amendments under the threat of its self-derogation; cf. H. Kindermann, “Ustawy okresowe [Temporary acts]”, *Biuletyn Rady Legislacyjnej* 6 (1986), in: S. Wronkowska, “Ekspert a proces tworzenia prawa [Expert and the law-making process]”, *Państwo i Prawo* 9 (2000), p. 9. It is important that an example of sunset legislation is the Russian act of 1996, whose Article 14 para. 3 contains a three-year-long period of the binding force of the act.

¹¹¹ M. Zubik, *Głos w dyskusji...*, p. 6.

Another important reason, apparent throughout the works on the act and underlying all other reasons, is a total lack of a concept for a lobbying regulation in Poland. Presumably this is the reason why the Council of Ministers abandoned consecutive provisions of the act so easily and why it was supplied with far-reaching changes. Especially appalling in that respect are the successes of the group of interests, which lead to deleting from the bill of all the provisions disadvantageous for them. Thus only the need to pass a lobbying regulation was fulfilled, but not the need to really regulate or supervise lobbying activity. Unfortunately, this way the act became yet another example of a popular trend to create specific counter-institutions, which are to play the role of a remedy for erroneous functioning of proper institutions, instead of eliminating the flaw. This is how subsequent, sham institutions of law are created.¹¹²

A particularly negative phenomenon is the lack of anchoring the Polish act in the existent system of law, ensuring its compatibility with other regulations. It is the feature of presently highly esteemed model of lobbying regulation, and not the choice between the three competitive strategies:¹¹³ an act on lobbying supervision, anti-corruption provisions or community self-regulation in the form of ethical codes, but their conjunction. The Polish act not only lacks the “anchoring,” but it also collides with other provisions, and what is even worse, numerous accusations of non-conformity arise, elaborated upon in the part dealing with the relation between lobbying and the right to petition. An accidental combination of American and European solutions with the elements not related to lobbying resulted in recognising the act as “trash legislation.”

The legislator ought to urgently substantially modify the lobbying act.¹¹⁴ The best solution, especially vis-à-vis numerous flaws of the regulation in force, would be passing a new legal act and annulling the act in force. As has been mentioned, the lobbying regulation shall not be limited to a single act, but foresee proper amendments to legal acts in force. This way a whole “package” of acts and regulations of lower rank referring to lobbying would be created. This task will not be easy, especially due to the necessity to impose obligations on the community which supports the world of politics financially and has its multiple connections, including those of private nature, with it. The act presently in force in Poland will not, most certainly, have any positive effect on the shape of Polish lobbying activity. Its passing and binding force in its present form evoke an illusory conviction: while one may claim

¹¹² This mechanism is partially described by W. Wołpiuk, op. cit., p. 242.

¹¹³ K. Jasiński, “Lobbying w USA, Europie Zachodniej i Polsce. Podobieństwa i różnice [Lobbying in the U.S., Western Europe and Poland. Similarities and differences],” *Studia Europejskie* 4 (2002), p. 128–129.

¹¹⁴ On 1 April 2009 the first amendment to the Lobbying Act went into force (The Act of 23 January 2009 amending the Act on the Council of Ministers and some related acts, Journal of Laws no. 42, item 337). It was only of marginal character, as it was a result of modifications in the Act on the Council of Ministers and the Act on Departments of Government Administration, introducing the institution of “assumptions for the draft statutes and resolutions.” Obligations imposed by the Lobbying Act on organs of public authority were expanded in the scope of informing of the draft legal acts being prepared (Article 3 para. 2, Article 4 and Article 7 paras. 2 and 6 were amended.) All the accusations pertaining to the Act and the postulates of necessary modifications retain their topicality.

that the threats resulting from the lack of control of lobbying activity by state are eliminated, such supervision is in fact non-existent. Poland urgently needs a good lobbying act. Its lack not only threatens affecting the decision-making process and the common good by influential, organised particular interests, but also disables the existence of various conveniences and benefits resulting from a harmonic functioning of lobbying — an indispensable element of a modern democratic state.