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Regulating Lobbying in the Czech Republic and Visegrad Four

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Abstract

Political lobbying has come to the fore in public discourse in the Czech Republic in recent years. Current public perception of lobbying is negative however. The word is often used as a synonym for corruption, bribery and other unfair political practices or influences. This is primarily the result of its legal non-recognition. Until clear rules of interaction between elected representatives and lobbyists representing their constituents are established, the country's political and economic system will face serious problems. These are a lack of trust, confidence and potentially legitimacy. Politicians are split on the issue. Some refuse to acknowledge or discuss the practice, whilst others recognize it exists but refuse to consider attempts to regulate it. Three policy options exist which would give lobbying a firmer legal framework within which to operate. A codex framework is the most likely to be adopted but there are doubts over the effectiveness of such a move. Partial amendments may be the easiest course of action, but are arguably the least ambitious choice. The third option is that of passing of a law on lobbying. This is the most ambitious policy and is likely to face much opposition. Lobbyists and lobbying need to be clearly defined. There needs to be a communication strategy on lobbying regulation aimed at the general public. They need to be convinced that lobbying can be a mutually beneficial proposition for politicians, lobbyists and the general public themselves.

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The views contained inside remain solely those of the author who may be contacted at ruzicka@policy.hu. For a fuller account of this policy research project, please visit <http://www.policy.hu/ruzicka/>

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Executive Summary

This policy study identifies lobbying as an important public issue in the Czech Republic. First, it provides a brief introduction to the topic and shows its importance for Czech politics and society. It then recounts how lobbying entered into public discourse and looks at the most prevalent connotations that go with the term. The next section describes the views of politicians and those who could be called lobbyists with regard to both the activity as well as its possible regulation. The key section 4 identifies available policy options when seeking to give the activity a firmer legal framework. The policy options examined here are a regulation of lobbying through law, ethical codes, and/or via partial amendments made to existing statutes; and each option is outlined in a broader context – looking at what it would entail, its advantages and disadvantages, as well as the chances of its success. The following section will formulate four general policy recommendations; and these are followed by suggestions for their implementation. Finally, the study considers communication strategy with regard to the issue of lobbying regulation.

1 The Issue

Lobbying has significant implications for public policy-making in the Czech Republic. Lobbyists, often under the label of governmental relations firms and/or public relations firms, aim their activities both at members of the Parliament (legislative lobbying) as well as politicians and political appointees within the executive branch of the government (executive lobbying). However, lobbying also influences regional and local representatives and, increasingly, decision-making within political parties too. Finally, with accession to the European Union, lobbying firms are devoting more and more of their activities to influencing (mostly) Czech representatives within Union structures.

In the Czech Republic, as is the case in other Central European countries, the general understanding of what lobbying actually is tends to be broad and very imprecise.¹ Often, the word lobbying is being used as a synonym for corruption, bribery and other unfair political practices or influences – and this is true for politicians, media and sometimes even analysts. The mixture of legal,

¹ Gajdoš, Marek, (2004), 'Lobbying v Evropské Unii' In: Bednář, Luděk, (ed.), *Lobbyismus versus Korupce*. Praha: ISE, 41-60.

semi-legal and illegal activities under one label undermines not only the possible advantages that lobbying might have for public policy-making (i.e. a means of conveying preferences made by legitimate interest groups to lawmakers and policy-makers; and being a means of infusing a policy debate with previously unknown, important facts, information and/or arguments) – it also connects with people's general trust in democratic politics and democratic governance (because it is seen as serving narrow, special interests and hence being corrupt and unjust). And this could have fatal implications for the future development of the entire political, social and economic system of the country.

Amid recent political and economic scandals surrounding lobbying and lobbyists it has become obvious that unless clear rules of interaction between elected representatives and lobbyists representing their constituents are established, the country's political and economic system will face serious problems: of a lack of trust, confidence and, potentially, legitimacy. Without these crucial elements a liberal democratic system of government will remain unstable – and, in the long run, be an untenable ideal. These possibly corrosive effects, especially in a recently democratized country such as the Czech Republic, make the issue of lobbying extremely important for the future of the country and its citizens.

2 The Scope of the Issue

For a long time, lobbying had not been recognized as a problematic issue for the Czech Republic. This is despite the fact that activities which are nowadays conventionally (and without apparently clear meaning) described as lobbying have been around since at least the end of Communist rule, in 1989. As a result of the lack of recognition of the issue, there is little or no general understanding of how lobbying works and who a lobbyist actually is. A survey from March 2005 shows that politicians see the lack of information and awareness about lobbyists' activities among the general public as the most problematic aspect of the issue.² This lack of awareness and the ensuing suspicions - coupled with a history of corruption, non-transparent policy-making and a structural environment with the (generally) weak accountability of elected representatives - have

² Donath-Burson-Marsteller and Factum Invenio (zpracoval Jiří Šebek), (2005), *Průvodce účinným lobbováním v ČR* [A Guide to successful lobbying in the Czech Republic]. Prague, 3.

been on the Czech political scene since the beginning of the liberal-democratic regime change in 1990.³

Lobbying fully entered public discourse in 2004, amidst an alleged attempted bribery scandal involving a Member of Parliament backing the government and the leader of the main opposition party (known as the so-called Kořistka affair, which has since then been largely forgotten). The MP alleged that he had been offered a bribe of 10 million CZK and an ambassadorship in exchange for casting a vote of no-confidence that would lead to the government's downfall during a governmental crisis of the early summer of 2004. It was a well-known lobbyist, Jan Večerek, who allegedly made the offer on behalf of the oppositional Civic Democratic Party (ODS). A chief aide to the party chairman was allegedly also present at the meeting.

For an understanding (or lack of it) of lobbying in the Czech Republic, this was the defining moment. Public officials in the above-mentioned survey had overwhelmingly agreed with the following assertions that "society perceives lobbyists as something undesirable" and that "the public expects from its politicians that they will reject lobbying attempts."⁴ And it was a defining moment because, up until that point, the notion of lobbying had been practically absent in public discourse. With the affair, all of a sudden lobbying appeared on a par with bribery and corruption. But whereas the latter two are clearly defined in laws, and are recognized as illegal, there was not and still is not any formal recognition of lobbying activities. Lobbying provided a label that could be used in public to subsume various forms and ways in which public policy was being influenced. In a way, it reflected persons' inability/unwillingness to conduct a more careful analysis of interactions between public officials and private interests. In consequence, the extent to which lobbying is seen as a form of shorthand for various illicit activities, and as being justified, is now open to question.⁵ Nonetheless, the fact remains that public perceptions of lobbying are largely negative - and it

3 On the 2005 CPI Index of Transparency International the Czech Republic ranks joint 47-50. There have been no or only small signs of improvement, and the situation is being described as bad or stagnating. See <http://www.transparency.cz/index.php?id=2793>. A public opinion poll in December 2005 asked about people's perception of an improvement/worsening of the situation in various areas of public life. Exactly 70 percent of respondents perceived corruption as "tending to worsen" or "definitely worsening". This was highest as regards amounts for any category. See CVVM Press release, (2006), 'Hodnocení vývoje v uplynulém roce' [Judging developments in the past year]. January 9.

4 Donath-Burson-Marsteller and Factum Invenio (zpracoval Jiří Šebek), (2005), *Průvodce účinným lobbváním v ČR* [A Guide to successful lobbying in the Czech Republic]. Prague, 3.

5 See two volumes on lobbying and corruption published by the Institut pro politickou a ekonomickou kulturu (IPEK) in Prague. Bednář, Luděk, (ed.), (2004), *Lobbyismus versus Korupce*. Praha: ISE. Bednář, Luděk, (ed.), (2005), *Lobbyismus versus Korupce II*. Praha: ISE.

is unlikely that this will change any time soon, because actors labeled as lobbyists have played prominent roles in a handful of additional political 'affairs' since the summer of 2004. This 'baggage' of negative connotations has profound implications not only for the future of the democratic governance of the country but also for any and all politicians who become connected with the issue. Last, but not least, such a negative perception has significant implications for the possibility of lobbying's regulation (see below).

The negative connotations and stereotypes in relation to lobbying and lobbyists were reinforced in September 2005 when the so-called Unipetrol scandal broke. In a rather unclear case of privatization of the largest Czech oil-processing company, Unipetrol, the Chief of Staff of the Prime Minister allegedly asked a Polish lobbyist working on behalf of one of the Czech private bidders for a bribe of 5 million CZK. Again, the merits of the case are secondary with regard to the present study (N.B. in January 2006, a Parliamentary Investigative Commission voted on party lines that there was no wrong-doing in this process of privatization).⁶ What is important is that the image of lobbying as a deeply problematic activity was, here, further reinforced. In the most general sense, public perceptions of lobbying go hand in hand with the illicit role played by money in politics.

The third dimension that accounts for lobbying's overly negative perception is the direct result of its legal (non-)recognition. Since the Czech Republic's legal system does not actually recognize anything such as lobbying, the practice legally recognized in some other countries (e.g. USA or Canada) as lobbying has to be conducted *as some other activity* for all formal purposes (such as invoicing, payments, taxation, etc.); and the activities most often used to "hide" lobbying are public relations (PR) campaigns or consultancy. PR's purpose of creating favorable images and perceptions - often through cunning deceit and/or various strategies of 'spinning' the facts - only adds to lobbying's already tarnished image.

Finally, from a philosophical point of view, lobbying is inherently problematic. Even if lobbying were a legally recognized activity that could be understood as being free of corruption and bribery, there is an inherent problem with lobbying, namely the unfairness that preferential access to politicians and officials arguably involves. In other words, those who can "purchase" their way to law-makers and policy-makers are likely to be listened to more, and public decisions

⁶ For an English coverage of the scandal and its connections to lobbying see 'Secretive lobbyists still wield influence', (2005). *The Prague Post*, September 8.

are going to favour their interests more often than those of other citizens and groups. This is a stamp that cannot be removed from the issue, and it can only be remedied via publicly available information concerning the interests that are likely to be able to secure their voice in both law- and policy-making. If this is not the case, the probable results are both inferior outcomes from the law-making process and public policy coupled with a perceived lack of legitimacy - as well as for that of the political system at large.

To sum up here, the notion of lobbying entered public discourse in the Czech Republic only in the last three years. Because this entry was a result of various scandals involving personalities labeled as lobbyists, lobbying is perceived among the public as being something overtly negative and bad, often not only from a moral perspective but also from a criminal point of view. Moreover, there is the inherent problem of unequal access to the public arena. As suggested above, all of this has serious implications for the handling of the issue in the political domain. The views of politicians and lobbyists are the subject of the next section – while a more detailed discussion is to be found in the Policy Research Study prepared by the author.

3 Actors' Views

This section introduces views on the issue by politicians and lobbyists, i.e. as the two groups constituting the process of lobbying. There are obviously other stakeholders in the issue though - such as non-governmental organizations, policy advocates, scholars and researchers, journalists and the general public; and their views are reflected in so far as they help us to comprehend the issue and see more clearly the possibilities for its more formal regulation within the country's legal framework.

3.1 *Politicians*

Based on interviews conducted by the author as well as public declarations by relevant actors regarding lobbying, politicians can be put into three groups with regard to their views of lobbying. The first group refuses to acknowledge or discuss the fact that there is anything such as lobbying – and, therefore, that there is any need to deal with it at all. Given the issue's presence in public discourse and the reputation that it has built up in the last two years, though, this group is diminishing (or at least when politicians are approached directly

regarding the issue). In the face of the public scandals and growing awareness that decisions and policies are being influenced behind the scenes, a politician claiming that the issue of lobbying does not exist would appear to be rather simple-minded. It is, however, telling that the survey of public officials' views on lobbying conducted in January/February 2005 by the polling company Factum Invenio on behalf of public relations/lobbying firm Donath-Burston-Marsteller - and which was sent to 1669 potential respondents in both houses of Parliament, Czech Members of the European Parliament, members of the national government, and regional and local representatives - got only 362 responses, i.e. slightly over 21 percent.⁷

A second group does recognize that lobbying exists, and understands it as a practice that belongs to the political process. And owing to the negative connotations that lobbying has, these politicians think that it should be made more transparent. The most prominent representative of this group is the Speaker of the House of Deputies, Lubomír Zaorálek (Czech Social-Democratic Party, CSSD). When asked directly by the author about how to deal with lobbying and about its possible regulation in the Czech Republic, Zaorálek answered that he views lobbying as a legitimate practice and that it needs some rules of the trade. Zaorálek has been a champion of regulation through an ethical codex of the member of the House of Deputies (see next section for a more detailed discussion) ever since the Kořistka affair, and he introduced a draft of his ethical codex in November 2005.⁸ Several other codexes have been introduced either by single politicians or within smaller non-parliamentary parties.

The third group is made up of politicians who are aware of lobbying and dislike the practice intensely. These politicians refuse to consider any attempts to regulate lobbying, not because they would deny its existence but because they do not want to give it legal recognition (i.e. as being a normal way of doing business). In interviews they were not able to formulate a clear line as to what is to be done about lobbying. One of the most outspoken members of the Senate, Jaroslav Kubera (Civic Democratic Party), maintains that the less the state is involved in economic and social matters, the role of lobbyists will be reduced.

While this 'libertarian' approach could curb some of the areas in which lobbyists are active, it is highly unlikely, in general, to provide a solution to the issue. There is always going to be state involvement in the economy - and it is

7 Donath-Burston-Marsteller and Factum Invenio (zpracoval Jiří Šebek), (2005), *Průvodce účinným lobbováním v ČR* [A Guide to successful lobbying in the Czech Republic]. Prague, vi.

8 Etický kodex poslance Parlamentu České republiky [Ethical codex of the member of the Parliament of the Czech Republic].

the central activity of the state to lay down the rules and enforce them. Yet as long as there *are* rules and public decisions, there will be attempts to influence them.

3.2 Lobbyists

Lobbyists' opinions could be divided into two groups. The first one (and in the view of many observers, the larger of the two) comprises those who do not think that there should be any regulation of lobbying. Lobbying is a legitimate practice, or in the words of Michal Donath, "a legitimate communications discipline."⁹ Some claim to perceive a collective action problem with regard to regulation, asking why should they declare themselves to be lobbyists and lose some of their influence because they will, as a result, have to "come out"/make themselves known - while there will be others who will not register and thus take away their clients. These opinions reveal a lot about the nature of lobbying in the Czech Republic. Its negative reputation might become more than deserved if formal registration and greater transparency becomes perceived as harmful to lobbyists' activities.

The other group is, at least in theory, open to entertaining the idea of some legal regulation, such as registration. However, they do make it clear that they want something in return for their consent.¹⁰ Most often, lobbyists mentioned some special privileges, such as a better access to the Parliament, better or easier access to documents, etc. At least one lobbyist said (in a personal discussion with the author) that regulation would be a good idea because it would practically close up the field and protect present lobbyists, or make them even stronger.

Both points need special attention in any consideration of possible policy recommendations. Firstly, if lobbyists were to indeed have special privileges, the state would be, in practice, giving them a guarantee of that which they are selling, namely access to public officials. Secondly, the state would be adopting rules that are favorable to lobbyists, thus automatically giving privileges to a specific group of citizens.

In the past year, there has also been a talk about lobbyists' *self*-regulation. Lobbyists and lobbying firms would most likely set up a professional organiza-

9 Donath-Burson-Marsteller and Factum Invenio (zpracoval Jiří Šebek), (2005), *Průvodce účinným lobbováním v ČR* [A Guide to successful lobbying in the Czech Republic]. Prague, iv.

10 The President of the House of Deputies, Lubomir Zaoralek, entertained the same idea when discussing his own Ethical Codex.

tion, thus “come out” in this way. The professional organization would create its own codex for lobbying and lobbyists, and would oversee that its members behaved accordingly. Under this scenario, lobbyists would at least make themselves public, though there would be no formal, state-sanctioned regulative mechanisms. And several lobbyists have declared this to be “the realistic maximum” of what can be achieved within the Czech environment at the moment.

4 Policy Options

The present policy study considers three regulative options regarding lobbying. The first option comes via a law on lobbying; a second possibility is through various forms of self-regulatory mechanism, both on the side of public officials and lobbyists. Finally, a third way to deal with lobbying is by proposing partial amendments to rules of procedure in the House of Deputies and the Senate.

4.1 Legal regulation of lobbying

Inspired largely by the model of lobbying regulation in the United States, this would represent the most ambitious way of providing a regulative framework for lobbying in the Czech Republic. The objective of such a law would be to create a body of information, most likely through a register of lobbyists with the House of Deputies or the Senate, and which would include a list of lobbyists and their clients, a list of politicians and public servants being lobbied, issues on which lobbying is/was being conducted, etc. This sum of information would be publicly available - and could be used by rival political parties and groupings, media, non-governmental organizations, the scholarly community, and/or other members of the interested public. In this way, it is to be expected that public policy would be more transparent, and both lawmakers and members of the executive could be made more easily accountable.

When expressed by the author, the idea met up with explicit and strong skepticism from many, both in governmental and non-governmental circles, with regard to the feasibility of such a model. A typical line of argument was that the current, unclear situation benefits both public officials as well as lobbyists - and there is little interest in changing it or establishing clear(er), more open rules of the game.

In the light of the above-mentioned opinion poll, this pessimism seems to be well justified. While up to 89 percent of respondents held the belief that, in

their dealings with public officials, lobbyists should always make it clear *whose* interests they are representing - and values were roughly the same for such areas as ethical behavior (88 percent), respecting the directives of career service statutes (85 percent) or for rules pertaining to the transparency of financial interests of public officials (82 percent) - only 52 percent were of the opinion that lobbyists should be registered in a publicly available register.¹¹ Others were either against (24 percent) or did not know (24 percent). Public officials also showed little support for the idea that those persons who enter public institutions with the aim of providing public officials with information should be clearly distinguished by a card. Only 44 percent of respondents were in favor of such a measure, while 38 percent were against, and 18 percent had no opinion.

Clearly, more of an explanation regarding the idea of registration or other forms of legal regulation is needed. The fact that public officials expressed a disproportionately high *lack* of opinion regarding two possible regulatory measures rather than any outright opposition shows that these options *could* be communicated to them. Moreover, the example of Slovakia shows that a legal norm regulating lobbying with the express goal of a lobbyists' register *can* be introduced into a Central European country. In July 2005, a Bill on lobbying reached the Slovak Parliament; it was approved on the first reading and sent to the committees, where it has, however, stalled – and the recent fall of the government and the extra-ordinary elections scheduled for June 2006 mean that this bill will most probably be abandoned. While possible resistance by politicians as well as lobbyists might be the cause of why the bill did not proceed, it is equally (if not more) likely that the bill fell victim to obstruction tactics coming from the opposition, who were trying to precipitate a new general election and overwhelming paralysis for the entire political scene in Slovakia.

Thus, the possibility of introducing and passing a law on lobbying in the Czech Republic should in no way be discarded as “unrealistic”. To be sure, the process would be difficult, and (a) strong sponsor(s) would be required to adopt the bill - but it would not be impossible. The need for such a bill is also implicit in any attempts to regulate lobbying via an ethical codex (see next subsection for details). Additionally, several of my sources in Slovakia confirmed that it was indeed lobbyists themselves who welcomed a “normalization” of their activities because, by legalization, lobbying can be distinguished from corruption, and it

11 Donath-Burson-Marsteller and Factum Invenio (zpracoval Jiří Šebek), (2005), *Průvodce účinným lobbváním v ČR* [A Guide to successful lobbying in the Czech Republic]. Prague, 5.

would thereby lose some of the negative connotations (that it is the same as bribing, corrupting, etc.) that are typically imagined in connection with it.

The drafters of the Slovak law acknowledged that they had worked with the US Lobbying Disclosure Act of 1995. They expressed skepticism as to whether the law might have any meaningful impact because it is much milder in its requirements than its US 'inspiration'. The bill's major weakness is that, unlike in the United States, the Slovak law would make the reporting of clients (i.e. on whose behalf the lobbying is being done) *voluntary*. And there is a major worry that very few - if any - lobbyists will do this, and hence the goal of improved transparency of public policy will not be met. In practical terms, this will mean that observers may learn about *who* is doing the lobbying, though not *for whom* or *why*. There is also no obligation to report the amount of money that a lobbyist is being paid by a client. Lobbyists are required to report the total sum they have been paid during one entire year, precluding a more detailed knowledge of financial flows. Finally, any breach of the law will be punished by a money fine only.

If the Czech Republic's politicians opt for a law regulating lobbying, what should it look like? The law will need to include the following:

- A definition of lobbying and a lobbyist
- Registration requirements for lobbyists, their administration and publications
- A list of public officials who may be lobbied
- Responsibilities of public officials if being contacted by a lobbyist
- The rules of engagement of public officials with lobbying firms once they leave public office

These five areas provide broad focus points and specifics, and have been investigated in the research study completed by the author. It should be clear from the Slovak case, for example, that the mere requirement to register as a lobbyist is not sufficient unless it is accompanied by the duty to report on whose behalf a lobbyist is working.

4.2 *Ethical codex*

Regulation via an ethical codex focuses on public office holders rather than on the lobbyists themselves. It is based on the idea of the personal integrity of those falling under the prescriptions of a codex and on the assumption that they can be held accountable for their actions at the ballot box. At the moment, there are two ethical codex proposals. One is an ethical codex for members of the

House of Deputies presented by the social democratic President of the House of Deputies, Lubomír Zaorálek;¹² the other is an ethical codex from a politician introduced by communist senator Vlastimil Balín (Communist Party).¹³ The latter does not mention lobbying, so attention is only being given to the former.

The two-page ethical codex for members of the House of Deputies was introduced on November 1, 2005. It represents the culmination of activities by the House President Zaorálek (which were set into motion by the Kořistka affair in summer of 2004). To a large extent, the codex is inspired by similar documents in the European Union, Great Britain and the United States. It formulates several norms of proper conduct as well as prescriptions concerning public access to information related to the exercise of one's mandate, the employment of relatives, or gift receiving. Regarding lobbying, article 5 states that

On the grounds of the House of Deputies, the Member of the Parliament of the Czech Republic is bound to meet only with representatives of those lobbying and other interest groups who have previously registered themselves according to the internal rules of the House.¹⁴

Signing the codex will be voluntary, though the Social Democratic Party has already made it known that all of *its* candidates for the House of Deputies in 2006 elections will be required to sign the codex. The draft of the codex does not specify *how* lobbyists will be registered or what the subject of registration would be; this is to be determined by a future internal directive of the House of Deputies.

Immediately after Zaorálek unveiled his draft of the ethical codex, opposition politicians rebuffed the initiative. They claimed that Zaorálek, personally, was not credible enough a politician to propose such an initiative. A few days before, Zaorálek was accused in the media of misusing a military helicopter for personal travel to his home district and of illegally employing an assistant. None of the accusations proved convincing, and they were only short-lived. However, a lobbyist asked by the author about the idea of the ethical codex about two weeks after its introduction provided an answer very similar to that of the opposition politicians', saying that he "wouldn't mind a possible regulation through a codex, but the person that proposed it is not trustworthy."¹⁵

¹² The full text of the codex was published, for example, by a leading daily *Dnes* on November 1, 2005.

¹³ The text of the codex can be accessed at www.balin.cz/literatura.php (October 10, 2005.)

¹⁴ The Codex of the Member of the House of Deputies, Article 5.

¹⁵ This was a peculiar line of argument both for the opposition as well as the lobbyist. It did not engage any of the ideas within the codex.

The proposal elicited little public debate. Zaorálek backtracked on the draft, announcing further consultations with other political parties, and at the time of writing this study, the codex, as it was presented, is practically a dead-letter document. Besides the political reactions, there were merely rather low-profile commentaries in the newspapers. However, some substance could still be derived from the political exchange; there was a criticism and, subsequently, an agreement that any ethical codex should apply not just to lawmakers but also to a broader spectrum of public officials. A senior member of the oppositional Civic Democratic Party, Petr Nečas, while denouncing Zaorálek, said that it might be a better idea to deal with some of the issues included in the codex through legal action. Finally, and specifically with regard to lobbying, several participants in the debate noted that since there is no legally recognized definition of lobbying, it is not clear *who* should have the obligation to register with the House under Article 5 of the codex.

While those skeptical about the legal regulation of lobbying in the Czech Republic view the codex framework as much more likely to be adopted than any specific law (not least because it will concern only politicians, and not lobbyists), there are some grounds for caution as to exactly how much such a codex would serve as an effective means of formalizing lobbying contacts, thereby putting them under public scrutiny. First, the tradition and practice of investigative journalism that would uncover ethical lapses of politicians is and remains weak in the Czech Republic. Second, the necessary condition that a particular politician can be held accountable at the ballot box (and voted out of the office) is absent owing to the proportional election system for the Czech House of Deputies. Third, political parties have shown little resolve when it comes to forcing their members to behave ethically – or in pacifying/punishing them if they do not. Especially for these reasons, the codex cannot be and is not viewed as a panacea. Rather, its proponents understand it as a sort of defined benchmark against which the behavior and activities of public officials might be contrasted and scrutinized.

So some reasons do exist for supporting the document if it is to cover contacts between public officials and lobbyists. Firstly, in its present form it foresees some registration procedure for lobbyists - which will have to be further developed. Although it is likely that any procedure will resemble more the Slovak bill than the US or Canadian law, this is by no means a foregone conclusion. Secondly, the codex creates and reinforces a discursive structure connecting lobbying and ethical issues. Thirdly, it provides at least something for those trying

to hold politicians accountable. Fourthly, the existence of an ethical codex does not undermine other modes of legally regulating lobbying. In fact, as witnessed in the debate about Zaorálek's ethical codex, it makes the need for a law dealing with lobbying more obvious.

4.3 Partial amendments

Unlike a law on lobbying or an ethical codex, which both represent a more or less comprehensive approach to lobbying regulations, partial amendments aim at minor steps that would lead to greater transparency of relations between public officials and lobbyists. Undoubtedly, this is the least ambitious of the three possibilities, yet it might tackle some of the most problematic areas involving public officials and lobbyists. The approach offers a range of various smaller goals, which are derived from the processes via which lobbyists actually influence public decision-making. As a result of greater transparency and accountability, public trust in law- and policy-making could be increased. At the same time, it might be easier to ensure the passage and implementation of some partial amendments in comparison with a law on lobbying or a codex. The incremental approach connects up with significant hopes, especially in non-governmental circles. A possible drawback is that time and again there would have to be a new round of activism and advocacy surrounding these smaller measures, thereby making the option arguably quite demanding in terms of time and resources.

Suggestions proposed by those I interviewed range from changes to the rules of the proceedings of the House of Deputies and the Senate (especially when introducing amendments to bills that are being passed), making publicly available the list of participants in public hearings and sittings of the House and Senate committees, and the public availability of minutes of meetings of members of legislation and executive. The range of options here is wide - and the list of possibilities could be expanded based on the experiences of other countries. Here is a brief consideration of the three options mentioned above.

One of the most notorious ways in which lobbyists influence the legislative process is to have individual lawmakers introduce amendments to bills that clear the first reading in the House of Deputies. The same applies also to the Senate, though to a lesser degree, as any legislation or its amendments passed there have to be subsequently approved of by the House of Deputies. Thus, individual lawmakers are able to "smuggle in" amendments that did not have

to go through the House Committees. It is not unusual that these amendments have little or nothing to do with the actual bill to which they are attached. While the practice cannot be abolished, since it is the role of lawmakers to make the laws, the rules of procedure concerning amendments *could* be changed so that an amendment would, for example, have to be proposed by a group of several lawmakers or by a party faction.

Much of the work of the Parliament is done in its Committees. Their sittings are open to the public unless otherwise decided, and it is not unusual that lobbyists visit them. There is a number of stories circulating around the Parliament that during Committee debates on particular bills there were so many lobbyists attending that they could not fit into the room, prompting a Committee chairman to threaten to close the meeting to the public. With the consent of the Committee, its chairman can even allow other persons (i.e. non-members) to speak during the sitting. All visitors are required to sign in when entering the sitting. So a step that could give the general public a better idea of the environment surrounding the passage of laws would be the public availability of the lists of visitors at Committee sittings – and since lists of those present are compiled *anyway*, this would only mean posting them up on the Committees' websites.

The idea that MPs and Senators, but also other public officials, keep a publicly available diary of the minutes of meetings and the visitors that they receive has also got some attention. Again, this would make the inputs that go into public decision-making more transparent. The contentious issue has been whether to keep track of *all* meetings or just meetings taking part within the Parliament and its offices - with the latter opening a potentially large loophole. The requirement would again depend on the integrity of public officials. Some of the officials and lobbyists that the author talked to about this were rather skeptical about the measure, arguing that this would mean a greater, and also unnecessary, burden for public officials, while hardly improving public policy at all. Whether such skepticism is warranted is questionable. There is no doubt that public officials *do* have meetings with representatives of various interest groups, and reporting these meetings would not require too much work from their staff. With regard to MPs and Senators, results could be posted on a monthly basis on the Parliament's websites. The situation is more complicated vis-à-vis other public officials, both in terms of reporting procedure as well as the scope of those obliged to report. And this step would seem to be better suited to dealing with legislative lobbying rather than executive lobbying.

5 Policy Recommendations

The previous section outlined possible policy options regarding the regulation of lobbying in the Czech Republic. There are specific policy recommendations for each policy option discussed above, although a handful of general recommendations can be made, too.

5.1 Recommendation 1: Lobbying and lobbyists should be clearly defined

In spite of the skepticism of political advocates of transparent and accountable policy-making as well as actors from the NGO sector about the prospects of introducing anything resembling at least Slovakia's bill on lobbying, the need for a legal definition of lobbying is becoming ever more obvious. This does not have to be necessarily done via a law, though a legal definition would be preferable. Since the Ethical Codex of a lawmaker does foresee some registration requirement (as yet undetermined in its form and content) it could then provide its own definition. Such a definition could eventually become widely accepted and form a basis for a future definition within the law on lobbying, provided that such a law is passed.

5.2 Recommendation 2: The range of public officials who can be lobbied needs to be defined

Lobbyists attempt to influence a much broader spectrum of public officials than just lawmakers. Two lobbyists for a large transnational technology and communications company said that, rather than engaging themselves in legislative lobbying, they spend most of their time trying to ensure that public tenders announced by ministries and other parts of the executive are fair in their conditions. On the other hand, several politicians currently at the national level noted that they first made contacts with lobbyists when working at a local and/or regional level. These contacts were a product of representatives' efforts to secure various state and EU subsidies for their regions and/or municipalities. A law on lobbying would thus be better suited to covering the broader range of public officials compared to an ethical codex.

5.3 Recommendation 3: Lobbyists should not get special privileges

Several lobbyists expressed the idea that they would accept the registration requirement (without further specification with regard to what would be reported by them) if they were granted some privileges upon registering - such as easier access to public buildings, the availability of draft documents, etc. Yet even if hypothetical registration requirements proved to be more stringent than in the Slovak bill, lobbyists should not have any rights that are not possessed by all other citizens. Precisely because it is possible to recognize lobbying as legitimate practice - where lobbyists sell their contacts and knowledge of public decision- and policy-making - the state should *not* grant them any special benefits for their activities. Thus, a law on lobbying or any other form of regulation should not establish any special privileges.

5.4 Recommendation 4: Guidelines for lobbied public officials should be established

Lobbyists approach many public officials, i.e. persons other than lawmakers. Even if there is no law, a set of clear guidelines for public officials contacted by a lobbyist should be established. Such guidelines should make it clear that disclosure or provision of information that would be advantageous to lobbyists, accepting gifts from them, helping them secure specific objectives, etc. is prohibited. One foreseeable problem with this recommendation is the lack of definition of who a lobbyist actually *is*. In the absence of such a definition, though, these guidelines could be worked out so that they are more generalized, covering a wider range of meetings. To begin with, the Parliament could delineate guidelines for lawmakers as a part of, or alongside, its ethical codex.

6 Policy Implementation

The decisions to be made between various policy options will to a large degree dictate the way(s) of their implementation. A law on lobbying would require more precise implementation measures as regards the registration and control of information provided by lobbyists. There does not seem to be a need for a special agency to deal with such things. Rather, lobbyists could file their registration papers, as in the United States or Canada, with the office of the Chancellor of the House and Senate. This could apply to both legislative as

well as executive lobbying. Registration should be made simple and provided registration information will need to be publicly available. Since the number of lobbyists and lobbying firms is in the low-hundreds at most, this would not seem to present an excessive burden on the respective offices.

No law on lobbying will be passed before the general elections scheduled for June 2006. The already existing, even if disputed, ethical codex remains at the moment the best option for providing at least some framework as regards legislative lobbying. As noted, it does foresee some sort of registration procedure. Thus, even though the codex is (and is likely remain) a voluntary document, eventually a registration procedure will have to be established by the legislature if the codex is to have any meaning at all. The critical questions are the scope of registration requirements (i.e. does one merely declare himself/herself a lobbyist, or will additional information regarding issues, clients, etc. be also disclosed), the public availability of information gathered and, last but not least, compliance - as it will have to be the lawmakers themselves who will have to make sure that they meet only with *registered* lobbyists. On the other hand, there could be a positive spillover too, as information about lobbyists would also be available to those lawmakers who do not sign on to the codex as well as to journalists and the general public.

As for the partial amendments, some of them could be applied almost immediately, and with little or no difficulty. Lists of visitors to Committee meetings are drawn up anyway, and there seems to be no reason why they should not be made public as part of or an appendix to regular reports from such Committee meetings (which are already publicly available on the Committees' websites). Public availability of the minutes of meetings could be made part of the ethical codex, too. Changing the rules by which amendments to bills are introduced would be the most difficult thing to achieve, as this would entail a change in the current law regulating the rules of proceedings in Parliament.

7 Communication Analysis

Parts 1 and 2 of this policy study have shown that lobbying carries an overtly negative connotation in public discourse within the Czech Republic – and this would seem to call for the following:

1) The issue of regulation has to be advanced so that it is not dismissed as a form of advocacy of “special interests” or “criminal” lobbying. One way to do this could be by spurring greater public debate that could discuss both the pros and cons of lobbying and lobbyists. While the decision on what to do with lobbying will ultimately have to be political, the issue will provide enough ground for such a debate.

At the same time, there is a strong general feeling against any state regulation. Thus, the issue is a double-edged sword, where the proponents of any legal framework will have to contend that a framework can serve to benefit public policy-making whilst not creating additional costs for both the state and lobbyists.

2) There needs to be the devising of a strategy to convince the public that something can indeed be done about the issue of lobbying. The example of other countries where laws on lobbying have been passed shows us that this does not happen unless there is a strong feeling that something *needs* to be done. Such a realization usually comes amidst or after scandals involving lobbyists.

In the Czech Republic, lobbying has become a part of public discourse as a result of numerous scandals. Public opinion polls continually indicate that corruption, favoritism and the roles played by special interests are perceived as being the most troublesome public issues. Again, politicians will have to set the laws and rules to deal with such problems. The role of non-governmental advocates and initiatives is to help suggest ways of moving ahead, showing that there are tools to cope with issues such as lobbying.

Lobbying will remain a part of public policy-making – and there are inherent problems connected with preferential access being given to specific interests. However, the regulation of lobbying can be framed as a mutually beneficial proposition for all sides - politicians, lobbyists and the general public.