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**IN WHOSE INTEREST?**  
LOBBYING IN THE CZECH REPUBLIC



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# EXECUTIVE SUMMARY AND RECOMMENDATIONS

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This report “In Whose Interest?” provides a detailed look at the lobbying landscape in the Czech Republic and highlights key gaps and deficiencies in the approach to regulating lobbying, which leave society exposed to the risks of unclear and unfair decisions being taken by public officials and representatives in the name of the public.

Lobbying is a legitimate part of the public decision-making process. However, as a way of influencing political decisions it does not have a good reputation in the Czech Republic. Almost 90% of Czech citizens believe that the links between business and politics are too close and over two-thirds believe that the only way to succeed in business is through political connections.<sup>1</sup>

Lobbying is widely perceived as a negative phenomenon: non-transparent, non-public, and “behind the scenes”. There are a couple of reasons for this: it is virtually impossible to find out who is lobbying whom, with what goal and on whose behalf, as there are no disclosure or reporting requirements; and the potential of regulation and self-regulation is far from being utilised to foster integrity.

“We do not want to get rid of all forms of lobbying. However even if its undesired forms cannot be perfectly prohibited, we cannot be reconciled with them”.<sup>2</sup>

This report describes the legal, political, and cultural context of lobbying in the Czech Republic in all its manifestations. Through the research and three case studies it illustrates and assesses lobbying practices in the country. The research is a part of a project with 19 countries and assesses lobbying practices on three elements: *transparency*, *integrity* and *equality of access*. These elements are assessed by 65 indicators, with the results presented as percentages.<sup>3</sup>

While access to information scored up to 75%, the non-existence of registration and disclosure rules, lack of an oversight mechanism and weak legislative footprint created environment, where *transparency* of lobbying achieved just 19%. When looking at *integrity* and *equality of access*, they are both achieved about one third of the desired standards with 38% and 30% respectively. There was a more satisfactory score when looking more closely at consultations and participation in decision-making. These along with self-regulatory mechanisms for lobbyists scored over 50%.

Czech politicians have expressed interest in regulating lobbying since 2005. Although there have been three proposals of bills to regulate lobbying both directly and indirectly, there is no legal regulation to this day. The current government has not even included the topic of lobbying regulation into its programme.

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<sup>1</sup> See Eurobarometer (February 2014) *Special Report on Corruption*. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm).

<sup>2</sup> “Golden Lobbying”, Jan Havlíček (lawyer), available at: [www.hajan.estranky.cz/clanky/neviditelny-pes---moje-clanky/zlaty-lobbying.html](http://www.hajan.estranky.cz/clanky/neviditelny-pes---moje-clanky/zlaty-lobbying.html).

<sup>3</sup> See the methodology for a full description of the scoring system.

From a self-regulation point perspective, the only rules that can be traced are in the public affairs sector. The Association of Public Affairs Agencies introduced a Code of Ethics in 2012, but it applies only to the six members of the Association. There is also a Code of Ethics in another organisation – the Association of PR Agencies, but it is not directly linked to lobbying. From the parliamentary perspective, there is no Code of Conduct for MPs.

There are a number of obstacles facing both those trying to lobby ethically and those trying to regulate lobbying in the Czech Republic.

- There is a **negative understanding of lobbying**, as a result of scandals, non-transparency and absence of definition of lobbying activity, lobbyist and/or lobbying contact.
- There **are weak rules for political parties financing** that open up a large space for undue influence in politics.
- The **post-employment rules are weak** for public officials and politicians, and the key issue is that they do not apply to MPs, hence enabling a revolving door between the public and private sectors to swing continuously. This potentially allows former MPs to exploit their networks to the advantage of their new employer and allows private sector companies to use job prospects as inducements to get public decisions made in their favour.
- **“Last minute” amendments of the laws** proposed by individual MPs have a negative impact on the quality of the laws and of the whole legislative process. Such amendments are often used as vehicles to radically change the meaning of particular acts to the benefit of a certain interest group.
- Despite adopting the **Civil Service Act** in 2002, the government has repeatedly suspended its implementation and only now is negotiating a new law that will finally cease the political influence and create professional staff in public administration.

## Recommendations for the Czech Republic

1. The government should introduce a **comprehensive definition of lobbying/lobbyist/lobbying targets** and adopt rules to enable registration and monitoring of lobbying activities and contacts in executive and public sectors.
2. Chamber of Deputies and the Senate should consider **adoption of a Code of Conduct for MPs**, which will include reporting of lobbying contacts.
3. The government and parliament must **update the existing rules of conflict of interests for legislative, executive and high-ranking public sector employees**. They should specifically include former MPs in the post-employment rules with cooling off periods from 12 to 24 months. Such rules should be monitored by an independent oversight body, or in the case of MPs by the Parliamentary Committee.
4. The government should push forward with a **new law on financing political parties**, including election campaign financing (limits for maximum spending, obligatory reporting on campaign spending, public access to the reports on campaign spending, independent

audit of campaign spending) in accordance with Council of Europe (GRECO) recommendations.

5. The government should further specify **regulations of accepting gifts and favours**; and lobbying contacts in line with the new Act on Public Service.
6. The government and parliament should **establish clear rules for participation of external stakeholders in legislation process, decision-making** and in consultation processes as well to establish **clear rules for expertise and advisory boards**.
7. The government and parliament should introduce a **transparent and accessible footprint of the legislative and/or decision-making process** enabling the public to trace the origin of different amendments made by individual MPs.
8. Lobbying, government relations and public affairs companies and similar companies are invited to adopt a Code of Conduct requesting to the extent possible that their clients and lobbying objectives are made public.
9. Chambers of Commerce, industry associations and key individual business players are invited to make public, to the extent possible their lobbying objectives towards government and contacts realised for this purpose.

# INTRODUCTION

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Transparency International's (TI) European National Integrity System regional report *Money, Politics, Power* (2012) found that in most European countries, the influence of lobbyists is shrouded in secrecy and a major cause for concern.<sup>4</sup> When undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the decisions that may affect them. Problems arise when lobbying is not transparent and unregulated and where privileged access is granted to a select few, while others are excluded from decision-making processes. Corporate lobbying in particular raises concerns because it often involves companies with vast sums at their disposal developing close relationships with law-makers and thus gaining undue and unfair influence in a country's politics and policies.<sup>5</sup>

A recent Eurobarometer report revealed that 81% of Europeans agree that overly close links between business and politics in their country has led to corruption and more than a half believe that the only way to succeed in business in their country is through political connections.<sup>6</sup> This corroborates the data from TI's Global Corruption Barometer 2013, which found that in many European countries more than 50% of people believe that their country's government is to a large extent or entirely run by a few big interests.<sup>7</sup>

This report is part of a regional project involving the assessment of lobbying regulations and practices in 19 European countries.<sup>8</sup>

The report begins by mapping the lobbying landscape in the Czech Republic, giving a contextual analysis of the national historical, socio-political and legal situation with regard to lobbying. It also discusses the intensity and scale of lobbying efforts and the various cultural understandings of the term "lobbying" and perceptions of lobbying practices in the country. Other relevant issues such as self-regulation of lobbying activities and the role of the media and civil society as watchdogs in monitoring and reporting on lobbying activities are also discussed.

Following on from this, the report assesses the degree to which national regulation (public law and private self-regulation) adequately provides for *transparency* of lobbying activities and public decision-making, *integrity* in lobbying and conduct by public officials and *equality of access* to public decision-making processes, using a series of 65 assessment questions.<sup>9</sup>

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<sup>4</sup> Transparency International (2012), *Money, Politics, Power: Corruption Risks in Europe*, Transparency International: Berlin. Available at: [www.transparency.org/enis/report](http://www.transparency.org/enis/report).

<sup>5</sup> Ibid.

<sup>6</sup> See Eurobarometer (February 2014) *Special Report on Corruption*. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm).

<sup>7</sup> See Transparency International (2013), *Global Corruption Barometer 2013*, Berlin: Transparency International. Available at: [www.transparency.org/gcb2013/report](http://www.transparency.org/gcb2013/report).

<sup>8</sup> The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

<sup>9</sup> See Annex I for more details on the methodology and research approach used in this study.

# MAPPING THE LOBBYING LANDSCAPE IN THE CZECH REPUBLIC

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## NATIONAL CONTEXT: POLITICAL, SOCIAL AND LEGAL

The Czech Republic's political system is a pluralist multi-party parliamentary democracy with the prime minister as the head of government. The parliament and the legislative power are divided into two chambers – the Chamber of Deputies (the lower chamber, 200 MPs) and the Senate (the upper chamber, 81 Senators). The strength and the power of the chambers are not equal, however. The lower chamber significantly dominates in the legislative process and provides the Cabinet with the vote of confidence. In order to ensure stability the Senate cannot be dissolved – unlike the Chamber of Deputies.

The executive power is divided between the prime minister and his/her Cabinet; and the president. The president is elected by the popular vote (two-round run-off system) from 2012. According to recent discussions about the legitimacy of his/her office, his/her competencies are limited and do not shift the political system closer to a semi-presidential system. The prime minister and his/her coalition Cabinet are still more important for everyday politics. More than 55% of all drafts of new legislation were made by the government in the last election period (63% of all laws that have passed the legislative process).<sup>10</sup>

From the administrative division perspective, the Czech Republic is a unitary state with a single system of central governmental. Following the process of decentralisation, the territory was divided into 13 regions and the capital in 2000. Each region has its own elected representation (regional assembly) and governor (*hejtman*). Regions are responsible for local self-government with their own budgets. They also have the right to propose new legislation to the Chamber of Deputies.

### Attempts to regulate lobbying – a chronicle of failures

Discussions of lobbying and lobbying regulation date back to the early period of transition towards democracy in the Czech Republic. Unfortunately, the public, politicians, entrepreneurs and “intermediaries of influence” have not paid any attention to what lobbying really means. Although some non-problematic lobbying, persuasion and influence can be found, the general understanding of the term lobbying among public is biased – with the immediate associations being corruption, undue influence and clientelistic networks.

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<sup>10</sup> See: <http://psp.cz/sqw/sntisk.sqw?o=6&F=N>.



The first interest in the topic was rather academic at the turn of the millennium. The Institute for Economic and Political Culture (IPEK) organised several seminars on lobbying during 2004, and published two proceedings of papers dealing with lobbying regulation globally and tried to push the topic to the political agenda – without any success.

The first real<sup>11</sup> effort to introduce rules on lobbying by politicians can be traced back to fall 2005, when the former president of the Chamber of Deputies Lubomír Zaorálek (ČSSD),<sup>12</sup> proposed a Code of Ethics for members (Proposal of Code of Ethics for Members of Chamber of Deputies 2005) to “increase trust and credibility of Members” and set “rules” for them rather than for the lobbyists. In the 5<sup>th</sup> section it declared that a:

“Member of the Chamber of Deputies of Parliament of the Czech Republic is obliged to meet only those representatives of lobbying and interest groups in the Chamber that have registered according to the internal Chamber rule.”

Moreover, the member was obliged to report all gifts, income and other benefits connected to his/her office of the MP or his/her relatives and acquaintances. It was intended that lobbyists would be “regulated indirectly”: when entering Chamber they had to sign in a planned register, which would be administered by the Chamber. The Code was eventually signed only by nine members (out of 200) and was swiftly swept under the carpet.

A further promise to regulate lobbying came in a Programme Statement of Mirek Topolánek’s (ODS)<sup>13</sup> Cabinet in 2007. Together with an “effective fight against corruption” the government had committed to prepare a “law regulation of lobbying activities”, including “the transparent system of registration”.<sup>14</sup> However, it remained at the level of proclamations only and the government was not able to prepare any proposal for a change in the law.

Civil society organisations have continually called for progress in this field (Transparency International Czech Republic; Oživení; EPS). In 2009, a student initiative, the Inventory of Democracy, demanded the government to solve most important problems of Czech society, two of them related to monitoring and regulating lobbying activities and individual amendments to legal norms,<sup>15</sup> in the context of the upcoming 20th anniversary of Velvet Revolution and the collapse of communism.

In 2009, opposition members of Chamber of Deputies, Sobotka and Tejc (both ČSSD), proposed a draft lobbying act (Proposal of Lobbying law, 2009a). The draft, inspired by Slovak and American examples, slightly differed from other lobbying laws in the world – lobbying was understood as licensed business; the politicians should disclose all contacts with lobbyists; and the register should be administered by the Ministry of Interior. All this finally led to a negative statement by the government,<sup>16</sup> and the draft was rejected by the Chamber during the first reading in the fall of 2009.

In mid-December 2009 a new draft was proposed – it revised the former one and was submitted by three coalition government parties.<sup>17</sup> Despite the fact that the new proposal had resolved some

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<sup>11</sup> The historical part is based on author’s chapters in Czech book dealing with lobbying and interest representation (Vymětal, P., Laboutková, Š. Muller, K.B.: Lobbying v moderních demokraciích, Grada 2010 and Vymětal, P. (2014, forthcoming)).

<sup>12</sup> ČSSD – Czech Social Democratic Party (left-wing party in the Czech political spectrum).

<sup>13</sup> ODS – Civic Democratic Party (liberal-conservative right-wing party in the Czech political spectrum).

<sup>14</sup> See: [www.vlada.cz/scripts/detail.php?id=20780](http://www.vlada.cz/scripts/detail.php?id=20780).

<sup>15</sup> See: [www.inventurademokracie.cz/historie/](http://www.inventurademokracie.cz/historie/).

<sup>16</sup> See: [www.psp.cz/sqw/text/tiskst.sqw?o=5&ct=832&ct1=1](http://www.psp.cz/sqw/text/tiskst.sqw?o=5&ct=832&ct1=1).

<sup>17</sup> See: [www.psp.cz/sqw/text/tiskst.sqw?O=5&CT=994&CT1=0](http://www.psp.cz/sqw/text/tiskst.sqw?O=5&CT=994&CT1=0).

of the problems contained in the former draft, other more important issues remained (lobbying as licensed entrepreneurship with no special requirements to be met; and the register administered by the Ministry of Interior) and it introduced other tools (open calendars of politicians), significant financial penalties and a ban on any lobbying activities in the case of non-compliance. The law finally passed the legislative process in the Chamber in May 2010. In June 2010 the Senate rejected the proposal.

After the new elections, the political newcomers took the issue of lobbying onto their political agenda. In spring 2011 Respekt Institut<sup>18</sup> together with Lenka Andrysová<sup>19</sup> and the Sociological Institute of Academy of Science of the Czech Republic organised four expert round-tables on lobbying. The main goal was to “create a specific recommendation in the form of structured positions that could be used by Ministry of Interior during preparation of a new draft on Lobbying law”.<sup>20</sup> Various experts (representatives of interest groups, lobbyists, politicians, academics, NGOs) participated in round-tables and discussed specific issues related to the regulation of lobbying, both at the legal and self-regulating levels.<sup>21</sup> The issues covered were: (1) legitimisation of regulation of lobbying; (2) finding proper definition of a lobbyist; (3) definition of lobbying target; (4) categories of lobbyists, their rights and duties.<sup>22</sup> Discussions resulted in a recommendation to adopt a regulation of lobbying by law; to define lobbyists and their duties; as well as the specific definition of the lobbying target (public office holder), specific definition of lobbying activity, to introduce adequate penalties and to consider establishing an authority with relevant competencies for effective oversight of lobbying.<sup>23</sup> The requirement of the public and NGOs to deal with some rules on lobbying can be documented by the initiative of EPS,<sup>24</sup> which published the Outlines for Regulation of Lobbying (EPS 2011), a draft of a new lobbying act<sup>25</sup> and a position paper.<sup>26</sup>

The proposal for the new law began at the Ministry of Interior during 2012 when the intra-ministerial debate on the bill started. The law was proposed in the “four variants” that differed in the extent of lobbying targets and the areas/activities to be regulated.<sup>27</sup> Nearly 200 comments were collected during this process. The broader scope of the regulation was preferred, as well as the mandatory reporting of lobbying contacts by both lobbyists and lobbying targets.<sup>28</sup> In the beginning of 2013 the Cabinet stopped all work on regulation of lobbying by a law as a result of a number of important comments and conflicts in proposed concepts. In spring the Cabinet addressed a claim to develop other constructive solutions with the same regulatory effect on

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<sup>18</sup> Think-tank established in 2001 supporting development of civil society in the Czech Republic and abroad, organising public discussions and from 2008 also providing analysis and recommendations for public policies supporting good governance. The think-tank closed its activities by the end of 2012 (RESPEKTInsitut 2012).

<sup>19</sup> Member of Chamber of Deputies (2010-2013) for Public Matters (liberal central party).

<sup>20</sup> See: [www.respektinstitut.cz/expertni-stoly-o-lobbingu](http://www.respektinstitut.cz/expertni-stoly-o-lobbingu).

<sup>21</sup> See: [www.respektinstitut.cz/expertni-stoly-o-lobbingu](http://www.respektinstitut.cz/expertni-stoly-o-lobbingu).

<sup>22</sup> See: [www.respektinsitut.cz/wp-content/uploads/Zavery\\_stul\\_1.pdf](http://www.respektinsitut.cz/wp-content/uploads/Zavery_stul_1.pdf); [http://www.respektinstitut.cz/wp-content/uploads/zavery\\_stul\\_2.pdf](http://www.respektinstitut.cz/wp-content/uploads/zavery_stul_2.pdf); [www.respektinstitut.cz/wp-content/uploads/zavery\\_stul\\_3\\_final.pdf](http://www.respektinstitut.cz/wp-content/uploads/zavery_stul_3_final.pdf); [www.respektinstitut.cz/wp-content/uploads/zavery\\_stul\\_4.pdf](http://www.respektinstitut.cz/wp-content/uploads/zavery_stul_4.pdf).

<sup>23</sup> See: [www.respektinstitut.cz/wp-content/uploads/zavery\\_expertnich\\_stolu\\_o\\_lobbingu.pdf](http://www.respektinstitut.cz/wp-content/uploads/zavery_expertnich_stolu_o_lobbingu.pdf).

<sup>24</sup> EPS – Environmental Law Service, public interest law organisation that has advocated for the legal resolution of serious social problems since 1995. In 2013 after affiliating other organisations it was renamed Frank Bold.

<sup>25</sup> See: [www.eps.cz/sites/default/files/publikace/paragrafovane\\_zneni\\_navrhu\\_zakona\\_o\\_lobbingu\\_eps.pdf](http://www.eps.cz/sites/default/files/publikace/paragrafovane_zneni_navrhu_zakona_o_lobbingu_eps.pdf).

<sup>26</sup> See: [www.eps.cz/sites/default/files/tema/pozicni\\_dokument\\_lobbing\\_final.pdf](http://www.eps.cz/sites/default/files/tema/pozicni_dokument_lobbing_final.pdf).

<sup>27</sup> See: [www.korupce.cz/assets/protikorupcni-temata/Navrh-zakona-o-lobbingu.pdf](http://www.korupce.cz/assets/protikorupcni-temata/Navrh-zakona-o-lobbingu.pdf).

<sup>28</sup> See: [www.korupce.cz/assets/protikorupcni-temata/Informace-o-prubehu-pripravy-navrhu-zakona-o-lobbingu-a-o-moznostech-dalsiho-postupu.pdf](http://www.korupce.cz/assets/protikorupcni-temata/Informace-o-prubehu-pripravy-navrhu-zakona-o-lobbingu-a-o-moznostech-dalsiho-postupu.pdf).

lobbying but conducted by different means.<sup>29</sup> Within a couple of weeks a new set of measures was proposed, including:<sup>30</sup>

- Establishing an open electronic library of prepared legislation (eKLEP) to the public<sup>31</sup>
- Implementing an eCollection of laws and eLegislative projects
- Proposing the Code of Ethics for Members of both chambers of the parliament
- Introducing a Corruption Impact Assessment of proposed regulations as a standard part of the legislative process
- Updating the Rules of Procedure of the Chamber of Deputies and the Senate, and introducing a legislative footprint
- Proposing to establish lobbying as a licensed entrepreneurship and create a register of lobbyists in the Register of Licensed Businesses
- Introducing a cooling-off period for former public officials (revolving doors regulation)

The Cabinet introduced the indirect way of regulating lobbying by targeting politicians and public officials.<sup>32</sup> However, this approach did not propose to introduce commonly used measures such as a legislative footprint, establishing the register of gifts or disclosure and register of financial interests of politicians and public officials to support principles of transparency and accountability. On the other hand, defining lobbying as a licensed business seems to be highly questionable – the key definition of lobbying (forms and channels of communication with politicians and/or public officials) is not included in any rule. Fragmenting regulation in parts and dealing with particular issues of decision-making processes shows the unwillingness of the former government to solve the issue efficiently.

Moreover, after a scandal in the prime minister's office and his resignation in June 2013, the caretaker government did not complete any of the proposed measures. The only one in force was the establishment of two databases zVlády (the database that displays and allows the public to search through the agendas of government meetings, meeting minutes, resolutions and materials published for the government meetings, when not subject to confidentiality) and vLegis (a catalogue that allows searches of publicly available documents of the government, including legislative proposals, meeting agendas, records, resolutions and other materials).

A group of MPs also started work on the Code of Ethics of Members of Parliament again and proposed its draft in February 2013,<sup>33</sup> and was supposed to establish the Ethics Committee. It was sent to the Chamber of Assembly but due to internal conflicts in political parties, it was left for the next seating of the new Chamber.<sup>34</sup>

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<sup>29</sup> See:

[http://racek.vlada.cz/usneseni/usneseni\\_webtest.nsf/0/ECA08C10E3822CBCC1257AF400278813/\\$FILE/40%20uv130116.0040.pdf](http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/ECA08C10E3822CBCC1257AF400278813/$FILE/40%20uv130116.0040.pdf).

<sup>30</sup> See: [www.korupce.cz/assets/protikorupcni-temata/ostatni/Informace-o-moznostech-reseni-regulace-lobbingu-v-Ceske-republice-jinak-nez-specialnim-zakonom.pdf](http://www.korupce.cz/assets/protikorupcni-temata/ostatni/Informace-o-moznostech-reseni-regulace-lobbingu-v-Ceske-republice-jinak-nez-specialnim-zakonom.pdf).

<sup>31</sup> In 2000 government introduced the Electronic System of Document Circulation (ODok) and today it contains five applications – eKLEP, eVláda, zVlády, vLegis, Library of prepared legislation. Only eKLEP and eVláda are not available to the public (ODok 2014).

<sup>32</sup> More about models of regulation see Kalniņš (2005), Pross (2007), Vymětal (2010: 71-86).

<sup>33</sup> See: [www.korupce.cz/cz/protikorupcni-temata/ostatni/eticky-kodex-poslanec-108312/](http://www.korupce.cz/cz/protikorupcni-temata/ostatni/eticky-kodex-poslanec-108312/).

<sup>34</sup> See: [www.epravo.cz/zpravodajstvi/eticky-kodex-poslanec-je-napsany-ale-asi-az-pro-pristi-snemovnu-91403.html](http://www.epravo.cz/zpravodajstvi/eticky-kodex-poslanec-je-napsany-ale-asi-az-pro-pristi-snemovnu-91403.html).

After preterm elections in October 2013, the new government conducted an organisational restructure and the whole agenda was moved to Ministry of Human Rights, Equal Opportunities and Legislation operating in the Government Office, Department of Legislative and State Conception, Office of Fighting against Corruption.<sup>35</sup> The Policy Statement of the government<sup>36</sup> does not include any reference to the regulation of lobbying. In related issues it just promises to fight corruption and to “ensure that citizens have control over the financing of political parties” and that “the Government shall guarantee unobstructed access to all legislation via the project of electronic collection of laws and international treaties”.

According to these statements the government continues to use the electronic system of document circulation ODok, especially the Library of Proposed Legislation. Moreover, the government has published the Plan of the Government’s Legislative Work for 2014,<sup>37</sup> as well as the Outlook of the Government's Legislative Work for the years 2015–2017.<sup>38</sup> A draft act on political financing will be introduced by September 2014. Based on this, it is clear that regulating lobbying is not a government priority and if there is a proposal of any lobbying regulation in the future it will be probably an initiative of MPs.

## Broader legal environment does not support ethical lobbying

As we have seen, there is no specific law to regulate lobbying. However, there are some related laws and regulations that are worth mentioning, including on issues of access to information; political financing; and trading in influence. In all of these areas, however, we find considerable flaws and a broader legal environment, which does not support ethical lobbying.

In the case of trading in influence, the Czech Republic signed the UN Convention against Corruption (UNCAC) on 22 April 2005, but finished the ratification process quite late on 29 November 2013. The key problem was that the Czech Republic opposed the introduction of the instrument of criminal liability of legal entities for corruption until 2011. The Czech Republic also signed (15 October 1999) the Criminal Law Convention on Corruption and ratified it on 8 September 2000; it took force on 1 July 2002.<sup>39</sup>

Trading in influence is covered by the Criminal Code (Act no. 40/2009) in §255 labelled as “Misuse of information and position in business contact”. According to the police statistics,<sup>40</sup> data for 2013 show that there were 28 cases detected – six were solved – and 12 people were investigated and prosecuted and for a total damage of more than 60 million CZK (approx. 2.2million euro). The number of cases does not reach 30 per annum, but the total amount of damage fluctuates significantly: 45 cases for 140 million CZK (approx. 5.2 million euro) in 2012; 26 cases for 93 million CZK (approx. 3.5 million euro) in 2011; 31 cases for 151 million CZK (approx. 5.6 million euro) in 2010, 20 cases for 65 million CZK (approx. 2.4 million euro) in 2009; 40 cases for 165 million CZK (approx. 6 million euro) in 2008.

With regard to access to information, a cornerstone of public sector transparency, the Act on Free Access to Information (Act no. 106/1999 Coll.) builds a basic framework within which the public can demand information from the state authorities, local governments and their bodies and public

<sup>35</sup> See: [www.korupce.cz/cz/dokumenty/oznameni-o-organizacni-zmene-117134/](http://www.korupce.cz/cz/dokumenty/oznameni-o-organizacni-zmene-117134/).

<sup>36</sup> See: [www.vlada.cz/assets/media-centrum/dulezite-dokumenty/en\\_programove-prohlaseni-komplet.pdf](http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/en_programove-prohlaseni-komplet.pdf).

<sup>37</sup> See: [www.vlada.cz/assets/media-centrum/dulezite-dokumenty/plan\\_legislativnich\\_praci\\_2014.pdf](http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/plan_legislativnich_praci_2014.pdf).

<sup>38</sup> See: [www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Vyhled-legislativnich-praci-vlady-na-leta-2015-az-2017.pdf](http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Vyhled-legislativnich-praci-vlady-na-leta-2015-az-2017.pdf).

<sup>39</sup> See: [www.mzv.cz/public/e3/c0/53/755918\\_664282\\_webMZV702002.pdf](http://www.mzv.cz/public/e3/c0/53/755918_664282_webMZV702002.pdf).

<sup>40</sup> See: [www.policie.cz/soubor/12-celkova-kriminalita-za-obdobi-od-01-01-2013-do-31-12-2013.aspx](http://www.policie.cz/soubor/12-celkova-kriminalita-za-obdobi-od-01-01-2013-do-31-12-2013.aspx).



institutions. According to the law, authorities must reply within 30 days and can charge a reasonable fee for compiling information, but the quality of answers often varies.

In case of political party financing, GRECO has criticised the Czech Republic for a long time<sup>41</sup> for non-transparent funding of political parties, lacking regulations on political campaigns financing and for insufficient transparency of annual financial reports of political parties. The current legislative framework covers:

- a) General Law on Association in Political Parties and Movements (Act no. 424/1991 Coll.)
- b) Specific laws regulating elections (European Parliament, parliamentary, presidential, regional, and municipal) are providing some regulation of campaigns (Act no. 62/2003; Act no.247/1995; Act no. 275/2012; Act no. 130/2000; Act no. 491/2001)

The Law on Association in Political Parties and Movements (Act no. 424/1991 Coll.) sets only two requirements for political parties in terms of financing – they have to disclose all gifts, gifts over 50,000 CZK (approx. 1,850 euro) should be accompanied by donor contract, and submit annual financial report to the Mandate and Immunity Committee by 1st April next year at the latest. There are some other limitations (ban on accepting gifts from state funded institutions), but generally speaking the regulation of political party funding is weak. There is no oversight body that would monitor the obligation to report donations; report and detect any anomalies or breaches of the rules; or provide any sanctions and penalties.

The rules on financing of election campaigns of political parties are even weaker. Only in the case of presidential elections there is a cap on expenditures: 40 million CZK (approx. 1.5 million euro) for the first round, 10 million CZK (approx. 365,000 euro) for the second round, with mandatory – so-called transparent – banking accounts enabling public online access, and compulsory campaign auditing within 60 days of the elections. There are no requirements set for other elections – no limits, no mandatory online accessible transparent accounts, no campaign auditing, and no cap on gifts from individuals and companies.

Although many NGOs and academics advocate for stricter rules (Transparency International; Rekonstrukce státu; Klimešová, Bureš, Bouda 2012), the former government did not succeed in passing a draft of the law. The current Cabinet has announced the proposal of a new regulation by September 2014 and more than three quarters of all MPs have signed up to the “Nine Priorities” of Rekonstrukce státu (Reconstruction of the State), where stricter control of political party financing is at the top of the list. There are also civil society initiatives that directly deal with party funding (Politicefinance.cz 2013) or political campaigns (Transparetnivolby.cz 2012) monitoring (see chapter 1.5.).

## INTENSITY AND SCALE OF LOBBYING

The absence of regulations makes it rather difficult to evaluate the intensity and scope of lobbying efforts in the Czech Republic. It is true that corporations as well as NGOs and trade unions are

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<sup>41</sup> See:

[www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)10\\_CzechRep\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)10_CzechRep_One_EN.pdf)<[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)1\\_CzechRepublic\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)1_CzechRepublic_EN.pdf)>.<[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)10\\_CzechRep\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)10_CzechRep_One_EN.pdf)>

important actors in the decision-making and policy-making process, but they participate in an ad hoc manner and only when invited by a public authority. Many of these actors do not build permanent hierarchical umbrella structures – the influence is rather fragmented. Moreover, many actors trying to influence public decision-making do not label their activities as lobbying and use other names instead (see below). Therefore it is very hard to estimate the intensity and scale of lobbying in the Czech Republic. On the other hand, the social dialogue and tripartite negotiation between representatives of trade unions, chamber of employers and the government is a part of Czech law (Act No. 2/1991 and No. 262/2006).

There is lack of data to evaluate the types of lobbying. The consultations and hearings of committees in the parliament are generally open to the public (except the Organizational Committee and Mandate and Immunity Committee or by decision of the committee about non-public sitting (Act no. 90/1995, §37)). Czech law does not prohibit other forms of interest representation and lobbying. However, the media does inform the public about meetings between politicians and representatives of selected corporations, especially at the golf tournaments and during vacations, which raises questions about who sponsored the trips and why those people met (Toscana affair; Dubai golf affair).

A prominent example is the Toscana affair (July 2009), which involved former prime minister, Mirek Topolánek, and other ministers of his Cabinet who met with lobbyists – representatives of a Czech energy company in Italy during their vacation in the company's luxurious residence<sup>42</sup>. Similarly the Dubai golf affair (February 2011) involved the president of the Budget Committee, Pavel Suchánek (ODS), who spent a weekend in the United Arab Emirates playing golf with influential businessmen and lobbyists. The never answered question was who really paid the expenses for these trips.<sup>43</sup> From that point of view informal meetings are frequent and there is very little information about most of them.

A Burson–Marsteller study (2013)<sup>44</sup> provides the only source of data on lobbying targets' perceptions and experience with lobbying. When asked who the lobbyists are, trade unions were identified only by 15% of respondents, trade associations by 27% and NGOs by 25%. Public affairs agencies and professional organisations earned the highest share (54%, and 52% respectively). Law firms and think-tanks got little attention (17%), as well as companies (35%) or journalists (12%); but academics got a surprisingly high rating (15%).

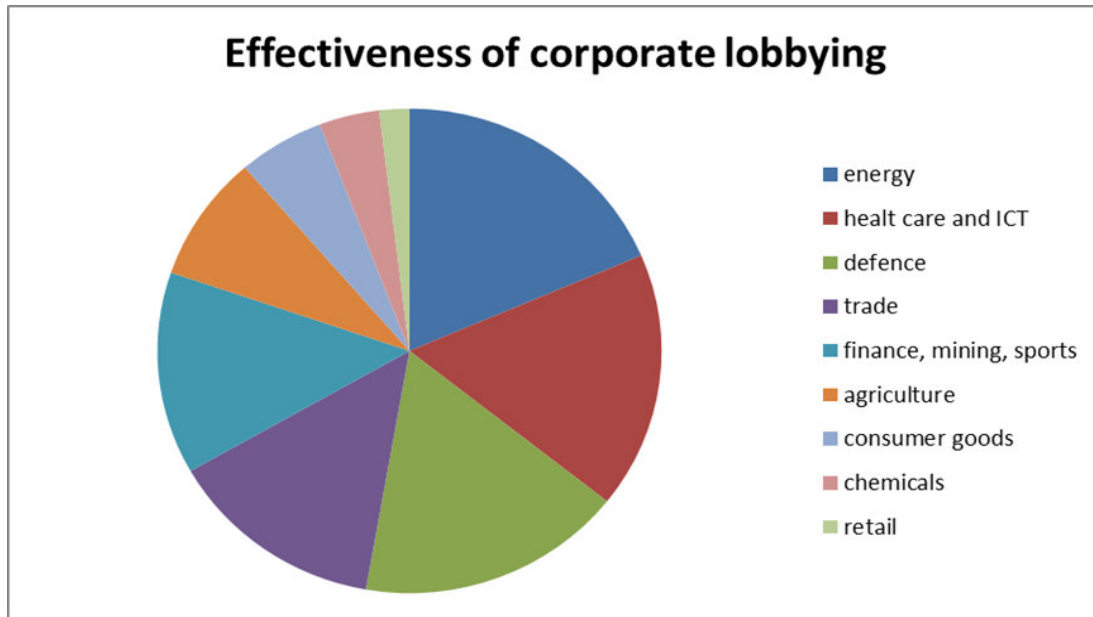
The study provides data on the effectiveness of lobbying activities promoted by corporations. Although the data is based only on observations of policy-makers, to some extent it can be used as a proxy variable of the intensity – the main field of interest for the subjects and their success. From the effectiveness point of view, the most effective corporate lobbying is in the energy sector, health care, information and communications technology (ICT) and defence. Lower levels of effectiveness were recognised in trade, the financial service sector, mining, sports and transportation.

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<sup>42</sup> See: <http://zpravy.aktualne.cz/prehledne-anabaze-toskanske-vily-expremiera-topolanka/r~i:article:645674/>

<sup>43</sup> See: <http://zpravy.aktualne.cz/domaci/muz-z-ods-v-dubaji-s-lobbisty-kdo-platil-nechce-riect/r~i:article:692020/>.

<sup>44</sup> See: [http://lobbyingsurvey.burson-marsteller.eu/wp-content/uploads/2013/05/european\\_lobbying\\_survey\\_2013.pdf](http://lobbyingsurvey.burson-marsteller.eu/wp-content/uploads/2013/05/european_lobbying_survey_2013.pdf).



Source: Burson–Marsteller study (2013)

There is a completely different picture of effectiveness in the case of NGOs – this is caused by different goals and topics of their main activities. The most successful sector/topic is the environment, followed by human rights, sports, health care, social service and transportation. One point is particularly interesting, however: NGOs are active and successful only in some sectors, mostly in those connected with post-material values or general interests. In these fields they can propose expertise, but can also struggle with financially stronger corporate interests.

## CULTURAL UNDERSTANDING OF LOBBYING

The public understanding of lobbying activities in the Czech Republic is rather negative. There are several reasons for this. First, the general population sees lobbying as a synonym for non-transparent behaviour and/or corruption, and lobbyists are seen as invisible and hidden people, who promote influence using an unidentified range of tools, including bribes. This picture is also propagated by the media – they label lobbyists and their activities as people on the edge of the law (Dalik affair),<sup>45</sup> connected with misuse of public money,<sup>46</sup> or European funds etc. This contributes to misunderstanding what lobbying really is and using the term “lobbying” and/or “lobbyist” is purely negative. As a result, lobbyists avoid using the term “lobbying” for their activities and rather “hide or cover” themselves by other activities – consulting or expertise. The key issue is that the state authorities have not developed an effective definition of lobbying and/or lobbyist. Lacking a shared meaning and understanding, various inaccurate interpretations have become widespread.

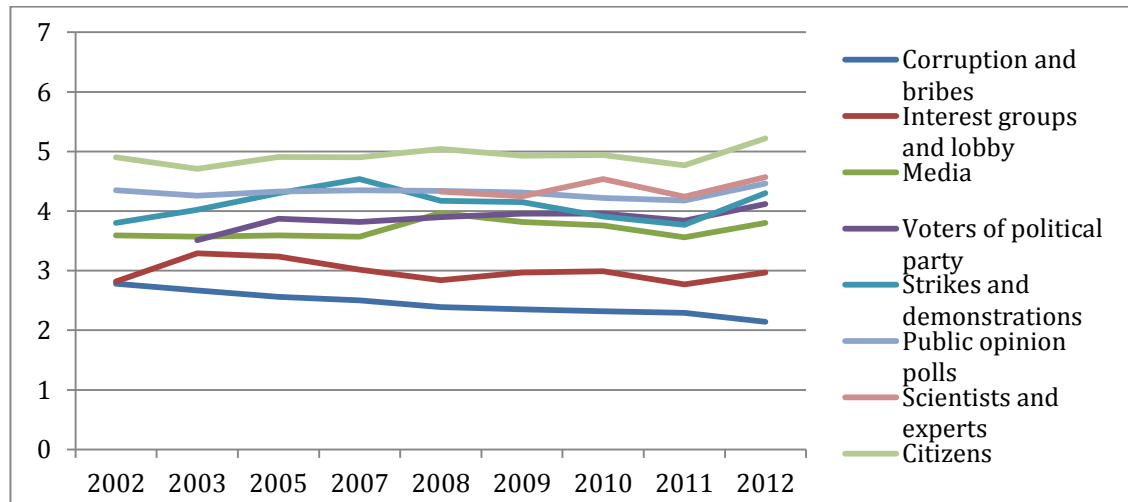
The public opinion polls by the Centre for Independent Public Opinion Research (CVVM) “Morality of politicians and the influence on political decision-making” carried out between 2010 and 2012

<sup>45</sup> See: [http://zpravy.idnes.cz/marek-dalik-zatcen-kvuli-kauze-pandur-d80-/krimi.aspx?c=A121008\\_101818\\_krimi\\_js](http://zpravy.idnes.cz/marek-dalik-zatcen-kvuli-kauze-pandur-d80-/krimi.aspx?c=A121008_101818_krimi_js).

<sup>46</sup> See: [http://zpravy.idnes.cz/na-drahych-jizdenkach-vydelaval-lobbista-rittig-tvrdi-protikorupcni-fond-153-/domaci.aspx?c=A111206\\_124846\\_praha-zpravy\\_ab](http://zpravy.idnes.cz/na-drahych-jizdenkach-vydelaval-lobbista-rittig-tvrdi-protikorupcni-fond-153-/domaci.aspx?c=A111206_124846_praha-zpravy_ab).

asked the population what influenced the decisions of politicians the most.<sup>47</sup> On the scale of 1 (most influential) to 7 (least influential), the most influential (grade 1) were corruption and bribes (33% in 2010 up to 41% in 2012), second were the interest groups and lobbying (21% in 2010 up to 23% in 2012) and third was the media (around 8% over the period).<sup>48</sup> Even more interesting is the average score on the scale 1 to 7 during the last decade. Table 1 below shows that corruption and interest groups' positions are significantly stable. The question is whether the population really differentiates between illegal corrupt activities and lobbying and representation of interests.

### Public perceptions of the influence of institutions and groups on decisions of politicians



**Note:** Scale from 1 (most influential) to 7 (no influence). The answers “I don’t know” were not included in the calculation.

**Source:** CVVM.

Another public opinion poll<sup>49</sup> shows that more than 73% of the Czech population claim that lobbying leads to corruption. The majority believes that regulation of lobbying activities will result in a more transparent political process. Of the respondents, 87% believed that a register of lobbyists is an effective tool to fight corruption, 28% of CEOs were against a register, and 90% of experts participating in discussions on lobbying support some form of regulation of lobbying.

According to the Burson–Marsteller study<sup>50</sup> Czech policy-makers see lobbying as an area of an undue influence on the democratic process (33%) and only 6% claim that lobbying can play a positive role in the society. In what appears to be a contradiction, up to 83% agree that ethical and transparent lobbying helps policy development. This indicates that policy-makers have the same negative association with the word “lobbying” as the general population and their initial reaction

<sup>47</sup> See:

[http://cvvm.soc.cas.cz/media/com\\_form2content/documents/c1/a3752/f3/101028s\\_pd100412.pdf](http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a3752/f3/101028s_pd100412.pdf)<[http://cvvm.soc.cas.cz/media/com\\_form2content/documents/c1/a3856/f3/101134s\\_pd110414.pdf](http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a3856/f3/101134s_pd110414.pdf)><[http://cvvm.soc.cas.cz/media/com\\_form2content/documents/c1/a6799/f3/pd120410.pdf](http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a6799/f3/pd120410.pdf).

<sup>48</sup> The other factors influencing political decisions are: voters of political party (around 5%), strikes and demonstrations (around 4%), public opinion polls (around 3%), scientist and experts (around 1%), citizens (around 2%), and trade unions (around 1%).

<sup>49</sup> See: [www.respektinstitut.cz/wp-content/uploads/zavery\\_expertnich\\_stolu\\_o\\_lobbyingu.pdf](http://www.respektinstitut.cz/wp-content/uploads/zavery_expertnich_stolu_o_lobbyingu.pdf).

<sup>50</sup> See: [http://lobbyingsurvey.burson-marsteller.eu/wp-content/uploads/2013/05/european\\_lobbying\\_survey\\_2013.pdf](http://lobbyingsurvey.burson-marsteller.eu/wp-content/uploads/2013/05/european_lobbying_survey_2013.pdf).



is to see it as something dubious. The study also covers questions about effectiveness of lobbying of different subjects in the Czech Republic: the most effective are thought to be professional organisations and companies (52% each); trade associations and trade unions, PA agencies and law firms share almost the same level (42–45%); and much lower effectiveness was recognised in the case of NGOs (29%), think-tanks (25%), academics (18%) and citizens (14%). Journalists (44%) and embassies (25%) scored surprisingly high.

### DOMESTIC VIOLENCE ACT: LOBBYING IS NOT 'ALL BAD' – A CASE OF LOBBYING FOR THE PUBLIC GOOD WITH TRANSPARENCY AND STAKEHOLDER INVOLVEMENT

Before 2007 responses to incidents of domestic violence in the Czech Republic was virtually non-existent. These offenses were considered private matters unless they had reached the level of a crime. The NGO Bílý kruh Bezpečí (White Circle of Safety, further as BKB) succeeded in a long-run lobbying and advocacy campaign for new legislation related to domestic violence. Thanks to a clear goal, transparent procedures, a correctly framed agenda, extensive background work, and involvement of broad area of stakeholders, the Domestic Violence Act saw the light of day in 2006.

Before the legislative change there had been a major barrier to initiating prosecutions due to the need to get the victim to grant consent. The prevalent opinion of public and the law enforcement bodies was that such way of protecting domestic violence victims was sufficient, the state should not interfere and domestic violence was a problem of marginal segment of population. This was in contrary to surveys and empirical findings from counselling centres that showed that up to 36% of population was at risk of domestic violence.<sup>51</sup> If there had not been structured lobbying for the adoption of a specific law on domestic violence, there would have been no chance of enforcing legal standards that ensure real protection of its victims (approx. 1,400 families each year).<sup>52</sup> Such an approach was developed by Bílý kruh bezpečí – White Circle of Safety (BKB).

Intending to make domestic violence a public matter rather than a purely private one, the NGO came up with three main project objectives: (a) to create the possibility of permanent and easily available assistance for aggrieved individuals (telephone hotline); (b) to create awareness and change the public opinion,<sup>53</sup> and (c) to prevent the occurrence of domestic violence (preferably by law). These goals were supported by continuous PR activities and campaigns at national, regional and local levels through educating the police, medical staff and the other members of society.

In order to ensure transparency and effectiveness, the project was clearly and openly defined in terms of its objectives and milestones:<sup>54</sup>

I. Milestone 1: Providing a strong mandate for promoting any future legislative change, BKB

<sup>51</sup> See: [www.domacinasili.cz/uvodni-strana/vice-o-projektu/](http://www.domacinasili.cz/uvodni-strana/vice-o-projektu/).

<sup>52</sup> See: <http://domacinasili.cz/files/uploaded/Archiv/ps.htm>.

<sup>53</sup> See: <http://domacinasili.cz/files/uploaded/Archiv/ps.htm>.

<sup>54</sup> See: <http://domacinasili.cz/files/uploaded/Archiv/index.html>.

firstly collected the most crucial data related to domestic violence in Czech Republic.<sup>55</sup> The results showed that domestic violence was a widespread problem in society.

II. Milestone 2: In order to start solving the issue immediately, a telephone helpline was set up, offering expert advice and support to victims of domestic violence and their family members.

III. Milestone 3: BKB organised and coordinated a model of interdisciplinary collaboration in the city of Ostrava. In total, 11 state, municipal and non-governmental institutions participated in a joint interdisciplinary team. This model was then transferred to other municipalities.

The first three phases revealed an important finding: even perfect practice does not have the means to protect vulnerable people from further violence – to do that the legislation had to be changed.

IV. Milestone 4: The Alliance Against Domestic Violence (APDN) – a group of seven influential people including a minister, district governor, MP and representatives of business and non-governmental sectors – and the Expert Group of the Alliance, including judges, psychologists, lawyers, and police officers were founded. During eight months in 2004 the Expert Group prepared a draft law on protection against domestic violence, including an explanatory memorandum. The Alliance and Expert Group members presented the draft repeatedly at the Parliamentary sessions, thus openly increasing pressure on the policy-makers. Through an MPs' initiative this bill was negotiated and adopted thanks to the large involvement of social stakeholders.

V. Milestone 5: While simultaneously lobbying for the bill in both chambers of the parliament, some necessary tools and methodologies for a smooth implementation were created, such as presentations and workbooks for professionals, including medical staff, social workers and police officers.

VI. Milestone 6: BKB in collaboration with the Ministry of Labour and Social Affairs and the Association of Governors helped to build a network of regional intervention centres.

The BKB case proves that lobbying can be a fully legitimate tool, but only if certain conditions are met. First, it is important to be active and participatory from the very beginning (definition, framing, expertise). Thorough preparation, clear goals, transparent advocacy and expertise based on real life experiences are all helpful tools. Second, it is crucial to involve politicians, professionals and CSOs and invite them to actively participate (APDN). Rather than building a coalition of support, it is important to present results and provide expertise (APDN expert group), explaining why political solutions are needed. Finally, in the case of legislative change it is crucial to analyse all impacts of the regulation (including all costs for the state) and necessary changes in other related acts (amendments). All this is of crucial importance for the future credibility of the proposed legal norm, its goals, advocacy and lobbying.

## SELF-REGULATION OF LOBBYISTS' ACTIVITIES

Self-regulation of lobbying and/or the interest representation activities is not extensive. There is no association of lobbyists that would hold any form of lobbying in its name. On the other hand there are at least two types of subjects frequently identified as lobbyist – PR companies and Public Affairs companies that both have established voluntary professional associations.

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<sup>55</sup> See: [www.stem.cz](http://www.stem.cz).

The Association of PR Agencies (APRA) was established in 1995 with voluntary membership. Its Code of Ethics is built upon International Communications Consultancy Organization Code of Ethics for submitters.<sup>56</sup> All members are obliged to follow all ethical and professional standards; to provide independent consultancy and services and to guarantee truthfulness and privacy of information. The Code was set up on 4 November 2004, and mostly covers the information exchange between PR representatives and clients. APRA has currently 20 members with further 16 private companies that have also signed the Code.<sup>57</sup>

The second body is the Association of Public Affairs Agencies (APAA) that was established on 30 May 2012, with the goal of supporting transparency, professionalism and openness on the market.<sup>58</sup> It provides two types of membership – regular for business/legal entities and affiliated for individuals – and currently has six members.<sup>59</sup> The association has developed a mandatory Code of Ethics as a part of its Statute, covering both the professional integrity and the relations with institutions (external integrity), including the ban on conflict of interests (“PA company may not find itself in conflict of interests”) and/or misuse of information (“ban on misuse of information that the PA company has acquired during interest representation”).<sup>60</sup>

As described, the membership as well as the extent of the self-regulation is very limited. The birth of APAA was complicated, as the first attempt for establishing the professional association could be traced back to 2006/7. Only APRA offers a professional education and training system (for PR professionals, not particularly for lobbying). There is no other “register” than the lists of members of these associations.

NGOs sometimes have their own Code of Ethics, but mostly the area of lobbying is not explicitly covered – usually they mention only information sharing, open communications and professionalism in public relations (Transparency International Česká republika<sup>61</sup>; Oživení).<sup>62</sup> On the other hand, lobbying and its regulation has become a hot topic for NGOs.

The corporate sector mostly does not have internal codes dealing with lobbying. Only some corporations (banks, construction companies [Skanska], mining companies [OKS a.s.] etc.) have introduced Codes of Ethics dealing with honest behaviour, but none is specifically focused on lobbying. The biggest companies enlist voluntarily to the APRA Code of Ethics for contractors (Kofola, a.s., McDonald’s ČR s.r.o., Plzenald Prazdroj, a.s., Siemens, s.r.o. etc.).

## WATCHDOGS: THE ROLE OF MEDIA AND CIVIL SOCIETY IN MONITORING LOBBYING

Overall, the landscape of Czech media is rather complicated. Though the recent report on World Press Freedom Index<sup>63</sup> ranks the Czech Republic as 13 out of 180 countries in the world, and the Freedom House<sup>64</sup> ranks it as “free” and at 19 out of 197 countries,<sup>65</sup> the National Integrity System

<sup>56</sup> See: [www.apra.cz/cs/o\\_apra/profil.html](http://www.apra.cz/cs/o_apra/profil.html).

<sup>57</sup> See: [www.apra.cz/cs/o\\_apra/eticky\\_kodex.html](http://www.apra.cz/cs/o_apra/eticky_kodex.html).

<sup>58</sup> See: [www.apaa.cz](http://www.apaa.cz).

<sup>59</sup> See: [www.apaa.cz/clenove/](http://www.apaa.cz/clenove/).

<sup>60</sup> See: [www.apaa.cz/stanovy-a-eticky-kodex/](http://www.apaa.cz/stanovy-a-eticky-kodex/).

<sup>61</sup> See: [www.transparency.cz/doc/zakladni\\_dokumenty/2\\_Etick\\_kodex.pdf](http://www.transparency.cz/doc/zakladni_dokumenty/2_Etick_kodex.pdf).

<sup>62</sup> See: [www.bezkorupce.cz/wp-content/uploads/2009/12/eticky-kodex-oziveni.pdf](http://www.bezkorupce.cz/wp-content/uploads/2009/12/eticky-kodex-oziveni.pdf).

<sup>63</sup> See: [http://rsf.org/index2014/data/index2014\\_en.pdf](http://rsf.org/index2014/data/index2014_en.pdf).

<sup>64</sup> See: <http://freedomhouse.org/sites/default/files/FOTP%20Detailed%20Data%20and%20Subscores%201980-2013.xls>.

study for the Czech Republic<sup>66</sup> shows the weak points in the country: notably a slight discrepancy between the legislation and the regulation of the media, and the everyday reality. The key problems can be summarised as follows:<sup>67</sup>

- Public broadcasting faces intensive market competition. Viewing statistics influence their activities and they have to follow the commercial pressures on their content and form of published information.
- Public media are exposed to indirect political influence (budget, the Media Council).
- The public has limited information about the ownership structure of the private media, about rules dealing with internal organisation of editors' offices and the ways journalists deal with ethical dilemmas (even though there is a Code of Ethics for journalists).

The media quite often report on corruption scandals, misuse of power, red tape and undue influence and they often participate actively in detecting and uncovering them. On the other hand, they do not follow the scandals to the end – many stories on scandals peter out due to police or justice failures and it is difficult to assess whether the media are merely loudspeakers or are doing meaningful investigative work. The information in the news is often superficial and abbreviated.<sup>68</sup>

The case of a private publishing house MAFRA (Mladá fronta DNES, Lidové noviny and Metro newspapers, music TV stations Óčko, Óčko Gold and Óčko Expres, virtual provider MOBIL.CZ) acquired last year by a multi-billionaire businessmen Andrej Babiš, who entered politics (second-most successful political party in preterm elections in autumn 2013) and became the Minister of Finance, currently opens questions about “Berlusconisation” of the Czech private media (ownership of media by a politician)<sup>69</sup>.

The media, as well as the majority of people, use the label “lobbying” for various activities, including corrupt dealings and the media significantly influences and sometimes distorts the picture and point of view of society. They often use the term “lobbyist” for people who are in close contact with politicians and profit from contracts with the state, state or statutory companies. Such contacts are attractive for some media, but they are not able to differentiate between “real”, ethically performed lobbying activities/contacts, and other, potentially problematic, contacts and downright corrupt acts.

Civil society organisations, or the NGO sector, are developed and rich from the perspective of the number, legal forms and their goals/activities.<sup>70</sup> The organisations fulfil the needs of their members as well as offer services on a non-market basis, especially social services. In terms of general anti-corruption work, there is an increasing number of advocacy and watchdog organisations and initiatives that deal with corruption and democracy issues. There are also a

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<sup>65</sup> The subindexes were (the score “0” means best score) legal environment 4 (scale 30), political environment 8 (scale 40), economic environment 7 (scale 30), press freedom 20 (scale 100) (FH 2013b).

<sup>66</sup> The media in the Czech Republic were evaluated by 54 points (out of 100) in total, the particular categories: potential (75/100), corporate governance (46/100), role in the system (42/100). For more data see TI Czech Republic, *Study of National Integrity System of the Czech Republic*, Prague: Transparency International, 2011.

<sup>67</sup> See: [www.transparency.cz/doc/TIC\\_Studie\\_narodni\\_integrity\\_www.pdf](http://www.transparency.cz/doc/TIC_Studie_narodni_integrity_www.pdf).

<sup>68</sup> See: [www.transparency.cz/doc/TIC\\_Studie\\_narodni\\_integrity\\_www.pdf](http://www.transparency.cz/doc/TIC_Studie_narodni_integrity_www.pdf).

<sup>69</sup> See: [http://www.rozhlas.cz/radiozurnal/host/\\_zprava/berlusconizace-medii-je-tady-mysli-si-josef-klima--1306375](http://www.rozhlas.cz/radiozurnal/host/_zprava/berlusconizace-medii-je-tady-mysli-si-josef-klima--1306375)

<sup>70</sup> In the study of National Integrity System, civil society in the Czech Republic was evaluated by 56 points (out of 100) in total, the particular categories as follow: potential (75/100), corporate governance (42/100), role in the system (50/100). For more data see TI Czech Republic, *Study of National Integrity System of the Czech Republic*, Prague: Transparency International, 2011.



number of initiatives and platforms dealing with various problematic issues and mobilising the public around selected topics: Pankrácká výzva<sup>71</sup> - pressure to fire the CEO of the Czech Energy Company due to his potential conflict of interest<sup>72</sup>; Platform for public Procurement (Transparentnizakazky.cz) for changing the law on public procurement; and Rekonstrukce státu etc.

The weakest points of the Czech civil society are low levels of transparency and generally insufficient rules for organisational governance. There is a relatively large part of the NGO sector that profits from tax relief and receives public financing without being accountable (publishing information on who runs those organisations, etc.).<sup>73</sup>

Historically the topic of lobbying was on the agenda of, Inventura Demokracie<sup>74</sup> and Respekt Institut<sup>75</sup>. However, the recent “nationwide” project indirectly related to this issue was Rekonstrukce státu (Reconstruction of the State). Founded in 2013, the project put together 20 anti-corruption NGOs in order to streamline the legislative process of “nine most important anti-bribery acts” (REST 2014) and to provide extensive lobbying on the following issues:

- Politics with no secret sponsors (political party financing)
- Declaration of assets possessed by politicians
- Public contracts published on the Internet
- Abolition of bearer shares
- End of advantages in appointments to state companies’ boards, de-politicisation of public administration (adoption of the Civil Service Act including the Code of Conduct of public officials which will regulate lobbying contacts)

Although the activities were interrupted by pre-term elections the bill on civil service was adopted in 2014.

Two other independent projects are worth mentioning.

In 2012 with the change of the presidential election system to a direct vote, TI Czech Republic ran the Transparentnivolby.cz project (the Transparent Elections) to set and then to monitor criteria going beyond the campaign rules and moreover to monitor financial spending of candidates through their transparent banking accounts. The project continues monitoring all elections in the Czech Republic (parliamentary, European Parliament, local councils) in order to support and advocate for the need of stricter regulation in this area.

Politickefinance.cz (Political Finance) focuses on auditing annual financial reports of political parties. It also publishes all relevant information (if not limited by the law on privacy) on the Internet, because not all parties have electronic versions of reports. Again, the advocacy for stricter rules for political financing is obvious. Both projects try to track incomes, ensuring that donations from individuals as well as corporate bodies are not paid to affect behaviour of the

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<sup>71</sup> See: [www.eps.cz/pankrac/](http://www.eps.cz/pankrac/).

<sup>72</sup> <http://frankbold.org/pankrac/>

<sup>73</sup> See: [www.transparency.cz/doc/TIC\\_Studie\\_narodni\\_integrity\\_www.pdf](http://www.transparency.cz/doc/TIC_Studie_narodni_integrity_www.pdf).

<sup>74</sup> See: [www.inventurademokracie.cz/historie/](http://www.inventurademokracie.cz/historie/).

<sup>75</sup> See: [www.respektinstitut.cz/expertni-stoly-o-lobbingu/](http://www.respektinstitut.cz/expertni-stoly-o-lobbingu/).

party, and expenses, and to ensure that there is clarity on who really arranges the campaigns and how lobbyists and/or PR agencies participate.

At the local level there are a number of NGOs and activities promoting transparency in politics and open politics towards the public, including the online streaming of public meetings of municipal councils (Oživení).

# REGULATING LOBBYING: TRANSPARENCY, INTEGRITY AND EQUALITY OF ACCESS

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In this section, we provide a more detailed assessment of the regulation of lobbying and related activities in the Czech Republic, with a focus on *transparency*, *integrity* measures and *equality of access* to decision-makers.

## TOWARDS TRANSPARENCY

When looking at transparency around lobbying practices, the research sought to answer the following overarching questions: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives; (b) on what issues they are being lobbied; (c) when and how they are being lobbied; (d) how much is being spent in the process; (e) what is the result of these lobbying efforts etc.? It also sought to investigate whether the onus for transparency is placed on both lobbyists and public officials/representatives. The findings offer a rather bleak picture with regard to transparency of lobbying in Czech Republic.

There is little transparency on the issue of lobbying. The public has almost no information on who lobbies public representatives – there is no register of lobbyists, no legal requirement set on meetings and their disclosure – and what issues have been lobbied. There is rarely any information about meetings, although some politicians voluntarily disclose them on their websites, and no information on money spent on lobbying or on the result of lobbying.

There is no legal or other document issued by the state authorities that can provide a definition of lobbying, lobbying activities/contacts, lobbyist and/or targets of lobbying. Although there were some proposals and drafts attempting to define these aspects, none of them has succeeded in passing the legislative process.

There is a law on Free Access to Information (Act no. 106/1999), adopted in 1999 after long-term advocacy and lobbying efforts by an NGO Otevřená společnost (Open Society). The law is working and is functional, although the RTI Rating<sup>76</sup> shows numerous inadequacies in comparison with similar legislation in other countries. According to the law all state/public authorities, as well as local governments and public institutions, have to answer public queries within 30 days. However, they can charge a fee for copying documents and/or additional personnel costs connected with compiling the answers. In some cases, such as classified information, business secrets, for national security reasons, or information on property and personal information (§7-10) answers cannot be provided. Sometimes the authorities try to create obstacles: they charge fees for printing information that is published on the Internet or in already printed documents (breaching §6); they

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<sup>76</sup> See: [www.rti-rating.org/view\\_country.php?country\\_name=Czech%20Republic](http://www.rti-rating.org/view_country.php?country_name=Czech%20Republic).

answer different questions to the ones posed; or they charge for additional costs connected with searching for and compiling information. According to the law, the questioned authority is obliged to send a clearly calculated estimation of costs for answering the query to the applicant (§17). However, such data may not cover any information on lobbying or lobbying contacts.<sup>77</sup>

There is no registration and disclosure system on lobbying in the Czech Republic. “Lobbyists” are not required to publish any reports on their activities or expenditures, information on lobbying objectives and clients, or information on targets lobbied and the matter of lobbying.. A legislative footprint does not exist, although there was an intention to introduce this measure in 2013. Senior public officials and public representatives are not required by law or any other rules to proactively publish documentation and/or calendars related to meetings with lobbyists.

### PUBLIC PROCUREMENT ACT: BACK TO THE ROOTS – THE BIG ONES ALWAYS WIN

As a part of efforts to improve anti-corruption legislation, in 2012 the government came up with an amendment to the Public Procurement Act. The goal was to spend public money more effectively and wipe out the legal loopholes that were enabling corrupt behaviour. Almost as soon as the Act was passed, various actors started lobbying to reverse the new regulation. The main players were the Ministry of Regional Development allied with the anti-corruption NGOs as the advocates of the initial amendment versus the Ministry of Industry and Trade, the Association of Regions, and various trade organisations, many of them sector-specific,<sup>78</sup> which sought to enforce a second amendment. The work of lobbyists was fruitful and a new amendment was introduced; hampering the important proportion anti-corruption agenda.

Identified as one the main areas prime for corruption; the Czech Republic’s public procurement budget is approximately 24 billion euro per annum.<sup>79</sup> The initial amendment to the Public Procurement Act (2012) was supposed to make the procurement process more transparent and competitive. The main improvements were: lowering the monetary threshold for the investment to be regulated by the Public Procurement Act; forcing the procurers to announce future tenders at least one month upfront and providing justification; cancelling the investment when only one bidder places an offer; creating special committees for assessing the contractors.<sup>80</sup>

The opponents of the tightened regulation criticised the increased bureaucracy within the procurement process. It was predicted that EU funds would be underspent, as the whole procurement process was prolonged and expensive to administer. Taking advantage of the economic downturn, they claimed that the amendment stopped procurers from investing and thus negatively affected the Czech GDP.

In the fall of 2013 the new government quickly approved the senate proposal and passed another amendment to the Public Procurement Act that reversed many of the anti-corruption advances. It therefore took approximately one year for the lobbyists to change the legislation partially back

<sup>77</sup> See: [www.mvcr.cz/clanek/analyza-zakona-o-svobodnem-pristupu-k-informacim-po-projednani-vladou-a-informace-k-priprave-novely-tohoto-zakona.aspx](http://www.mvcr.cz/clanek/analyza-zakona-o-svobodnem-pristupu-k-informacim-po-projednani-vladou-a-informace-k-priprave-novely-tohoto-zakona.aspx).

<sup>78</sup> See: [http://ceskapozice.lidovky.cz/zakon-za-pokles-verejnych-zakazek-nemuze-tvrdi-ministerstvo-pui-/tema.aspx?c=A130425\\_220200\\_pozice\\_120183](http://ceskapozice.lidovky.cz/zakon-za-pokles-verejnych-zakazek-nemuze-tvrdi-ministerstvo-pui-/tema.aspx?c=A130425_220200_pozice_120183).

<sup>79</sup> See: [www.ceskatelevize.cz/ct24/ekonomika/243700-objem-verejnych-zakazek-se-propadl-na-rekordni-minimum](http://www.ceskatelevize.cz/ct24/ekonomika/243700-objem-verejnych-zakazek-se-propadl-na-rekordni-minimum).

<sup>80</sup> See: [www.tzb-info.cz/9714-novela-zakona-o-verejnych-zakazkach-prinesla-pokles-poctu-i-hodnoty-zakazek](http://www.tzb-info.cz/9714-novela-zakona-o-verejnych-zakazkach-prinesla-pokles-poctu-i-hodnoty-zakazek).



to the previous status quo.

Both public procurers and contractors were opposed to the 2012 amendment, which strengthened anti-corruption powers. This indicates that the amendment was either truly inappropriate or it directly threatened a system of undue benefits for both sides. Svatoslav Novák, the President of the ICT Union provided one of the typical arguments against the amendment:

“the procurers are often demanding unrealistic, sometimes even existence-threatening, conditions. The criterion of the lowest price along (which is actually not required – authors note) with terminating the investment in case of a single bidder left are dangerous for successful ICT projects.”<sup>81</sup>

The then Minister of Industry and Trade Martin Kuba added:

“the value of public investments has significantly dropped. We desperately need to change the legislation so that it starts enabling the economic growth. We cannot let the Act worsen the current depression.”<sup>82</sup>

Note that Mr Kuba is a representative of the free-market wing in ODS – a political faction based on liberal economic thinking and is definitely not known for supporting economic growth through a large number of public investments.

However, related research among public contractors has shown that even after 2012, 78% of public contractors would never accept a contract that would not cover their costs (or on very rare occasions only).<sup>83</sup> It is unclear why procurement measures that are often used in the private sector would be so lethal in the case of public procurement. Furthermore, the Ministry for Regional Development responsible for public procurement stated that neither the volume, nor the value of public money invested in 2012 had dropped relative to 2011.<sup>84</sup>

It therefore seems that much of the information used by the opponents was not based on solid statistical data, or was misinterpreted and used in the emotional context of the economic crisis, hoping to reframe the topic from transparency to arguments about economic growth. Supposedly, such arguments are used as a way to represent the welfare of certain interest groups. Jan Sixta, the then deputy of the Minister of Regional Development, claimed: “during the legislative process, there were pressures demanding opt-outs from the tightened regulation for sectors such as legal advisory,”<sup>85</sup> suggesting that further sector-specific lobbying took place.

The current system for lobbyists does not provide a clear understanding of what the real motivations of various actors are. The case of the Public Procurement Act shows just another situation where the public has good reason to believe that their representatives were in fact supporting the interests of lobbyists, even when the lobbyist’s intentions sought to hide them. This could be resolved if the whole policy-making process was significantly more transparent, so that one could understand the motivations of the respective actors. This could be achieved if the companies had to make their lobbying activities more visible by law; if the public representatives

<sup>81</sup> See: [www.ceskatelevize.cz/ct24/ekonomika/243700-objem-verejnych-zakazek-se-propadl-na-rekordni-minimum/tp://www.tzb-info.cz/9714-novela-zakona-o-verejnych-zakazkach-prinesla-pokles-poctu-i-hodnoty-zakazek](http://www.ceskatelevize.cz/ct24/ekonomika/243700-objem-verejnych-zakazek-se-propadl-na-rekordni-minimum/tp://www.tzb-info.cz/9714-novela-zakona-o-verejnych-zakazkach-prinesla-pokles-poctu-i-hodnoty-zakazek).

<sup>82</sup> See: [http://ceskapozice.lidovky.cz/kuba-versus-jankovsky-brzdi-zakon-o-verejnych-zakazkach-ekonomiku-1f2-/tema.aspx?c=A130304\\_054000\\_pozice\\_99815](http://ceskapozice.lidovky.cz/kuba-versus-jankovsky-brzdi-zakon-o-verejnych-zakazkach-ekonomiku-1f2-/tema.aspx?c=A130304_054000_pozice_99815).

<sup>83</sup> See: [www.otidea.cz/blog/verejne-zakazky-20132014-od-losovacek-k-podstrelenym-cenam-](http://www.otidea.cz/blog/verejne-zakazky-20132014-od-losovacek-k-podstrelenym-cenam-)

<sup>84</sup> See: [http://ceskapozice.lidovky.cz/zakon-za-pokles-verejnych-zakazek-nemuze-tvrdi-ministerstvo-pui-/tema.aspx?c=A130425\\_220200\\_pozice\\_120183](http://ceskapozice.lidovky.cz/zakon-za-pokles-verejnych-zakazek-nemuze-tvrdi-ministerstvo-pui-/tema.aspx?c=A130425_220200_pozice_120183).

<sup>85</sup> See: [http://ekonomika.idnes.cz/zakon-o-verejnych-zakazkach-a-novelizace-ff7-/ekonomika.aspx?c=A130317\\_205814\\_ekonomika\\_ert](http://ekonomika.idnes.cz/zakon-o-verejnych-zakazkach-a-novelizace-ff7-/ekonomika.aspx?c=A130317_205814_ekonomika_ert).

published information about meeting with lobbyists; and potentially, if the politicians and the political parties made their properties and incomes respectively more transparent.

## FOSTERING INTEGRITY

Transparency of lobbying must be embedded within a broader public sector integrity framework, which mitigates the risks of conflicts of interest when important decisions are being made. The research sought an answer to the following overarching questions about integrity: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives? Again, the Czech situation leaves a lot to be desired.

In the Czech Republic there is no strong ethical framework either for lobbyists, or for high-ranking politicians (no Code of Ethics for MPs). There are some voluntary ethical regimes in some corporations, PR and PA companies, but they differ significantly and mostly do not primarily deal with lobbying. There is a Code of Ethics for civil sector employees, but the provisions that indirectly deal with lobbying are vague.

There is a one-year cooling off period applied to public officials for employment in a company that in the previous three years had a governmental contract according to Conflict of Interests Act (Act No. 159/2006 Coll.) Surprisingly the cooling off period does not apply to the MPs. The law does not set a specific ban on lobbying. In practice some politicians move quite easily to the private sector where their prior contacts from politics can be used (e.g. former prime minister Topolánek became a non-paid CEO of Thermal Power Plants Association)<sup>86</sup>. There is no body that judges and grants permission for former politicians or regulates the revolving door between the public and private sectors.

### LOTTERY ACT: CHAMELEONS IN THE PUBLIC SERVICE – ALWAYS READY TO HELP AND PROTECT SOMEONE’S INTEREST

Without the fame of Las Vegas or Macau, the Czech Republic has been one of the top-scorers in the number of gambling machines per capita in the world.<sup>87</sup> The evolution of the anti-gambling legislation suggests that it is not only an inherited love for gambling of the Czechs that allows virtually every citizen access to a gambling machine within walking distance from their doorstep, but also the systematic work of the gambling lobby. One of the main topics related to the gambling agenda since 2009 has been the question of whether it should be the Ministry of Finance or the municipalities who provide licences for the gambling machines and casinos. Arguably the uncontrolled betting industry lobby has succeeded in preventing the legislative shift in responsibilities to the local municipalities. Since the municipalities are directly accountable to their local electorate, they are much less likely to grant licenses to casinos (which are vastly unpopular among the average citizens) than the central regulator.

Even though Czech legislation from 1990 granted local municipalities the option to prohibit the standard slot machines, the appearance of the new Video Lottery Terminals (VLTs) posed a new

<sup>86</sup> See: <http://byznys.ihned.cz/c1-52755260-potvrzeno-topolanek-povede-teplarenske-sdruzeni-zvolili-ho-jednomysln>

<sup>87</sup> See: [www.gamingta.com/pdf/World\\_Count\\_of\\_Gaming\\_Machines\\_2013.pdf](http://www.gamingta.com/pdf/World_Count_of_Gaming_Machines_2013.pdf).

question of how to categorise them appropriately. Around 1998 the CEO of Sazka, one of the biggest betting corporations in the country, ordered an expert legal report that pronounced that VLTs did not fall under the slot machines jurisdiction.<sup>88</sup> Soon after, the report was adopted by the Ministry of Finance as an argument for why they should be responsible for granting permissions for VLTs, and not the municipalities. The fruitful bond between the gambling lobby and the central government had begun. In the following years Czech cities experienced a boom of new VLTs.<sup>89</sup> Gradually the situation started putting the municipalities into direct opposition with the Ministry of Finance.

In 2006 the lobby celebrated a great success when Petr Vrzáň was named the head of the Lottery and Gaming Regulatory Body at the Ministry of Finance. Being responsible for lottery regulation and legislation, the former manager of Happy Day Casino remained in office only until he got another position as the head of the Association of Central Lottery System Operators.<sup>90</sup> He was quickly replaced by Karel Korynta who became famous for visiting non-public gambling industry shows. His club-like pictures with hostesses at the festival along with a claim that “it is logical that he (as the regulator) wants to see what is new in the business” remained the only public disclosure of what was happening behind the closed casino doors.<sup>91</sup>

Meanwhile the municipalities and NGOs started putting pressure on the central government to grant them the right to regulate the VLTs in their territories. In 2009 such an amendment to the law from 1990 entered the legislative process. First the government criticised the amendment mainly on the basis that “there would be too much of an administrative burden laid on the municipalities”.<sup>92</sup> Later the Budgetary Committee changed the amendment so that the municipalities could either prohibit gambling for good or not at all; and set the deadline for the owners to have their machines shut down in the next ten years.<sup>93</sup> Since a part of the lottery tax goes to sponsoring “public beneficiary activities”, the opponents of the amendment further tried to reframe the discussion and started an emotional debate about the lack of children’s playgrounds and similar public benefits, should the amendment be passed. Surprisingly, the parliament ignored the changes suggested by the government and the Budgetary Committee and passed the bill in its prior version. This “mistake” was later corrected by the president who used his veto, providing the same arguments against the amendment as the government.<sup>94</sup>

Referring to the aforementioned process, the 2010 Annual Report of the Security Information Service warned that private forces from the gambling industry were successful in affecting the legislative process at all levels to their own benefit.<sup>95</sup> The same is repeated in the reports from 2011 and 2012.<sup>96,97</sup> The media further reported on a number of suspicious meetings between the

<sup>88</sup> See: [www.parlamentnilisty.cz/kraje/jihomoravsky/Vliv-sazkarske-lobby-oslabil-Ustavni-soud-200239](http://www.parlamentnilisty.cz/kraje/jihomoravsky/Vliv-sazkarske-lobby-oslabil-Ustavni-soud-200239).

<sup>89</sup> See: [www.ruleta.cz/statistika-mf/](http://www.ruleta.cz/statistika-mf/).

<sup>90</sup> See: [http://ceskapozice.lidovky.cz/hazardni-kolecko-petra-vrzane-dkt-/tema.aspx?c=A110113\\_140300\\_pozice\\_2786](http://ceskapozice.lidovky.cz/hazardni-kolecko-petra-vrzane-dkt-/tema.aspx?c=A110113_140300_pozice_2786).

<sup>91</sup> See: [http://www.lidovky.cz/urednici-ministerstva-financi-bojovali-proti-hazardu-na-setkani-obchodniku-s-hazardem-gr1-zpravy-domov.aspx?c=A121002\\_185851\\_In\\_domov\\_jkz](http://www.lidovky.cz/urednici-ministerstva-financi-bojovali-proti-hazardu-na-setkani-obchodniku-s-hazardem-gr1-zpravy-domov.aspx?c=A121002_185851_In_domov_jkz).

<sup>92</sup> See: [www.psp.cz/sqw/text/orig2.sqw?idd=60257](http://www.psp.cz/sqw/text/orig2.sqw?idd=60257).

<sup>93</sup> See: [www.psp.cz/sqw/text/tiskt.sqw?o=5&ct=971&ct1=2](http://www.psp.cz/sqw/text/tiskt.sqw?o=5&ct=971&ct1=2).

<sup>94</sup> See: <http://byznys.ihned.cz/c1-44160210-klaus-vetoval-loterijni-zakon-byl-podle-nej-jen-predvolebnim-lakadlem>.

<sup>95</sup> See: [www.realfourleafclover.com/about/](http://www.realfourleafclover.com/about/).

<sup>96</sup> See: [www.bis.cz/n/2012-08-22-vyrocn-zprava-2011.html](http://www.bis.cz/n/2012-08-22-vyrocn-zprava-2011.html)

<sup>97</sup> See: [www.bis.cz/n/2013-11-07-vyrocn-zprava-2012.html](http://www.bis.cz/n/2013-11-07-vyrocn-zprava-2012.html)

gambling lobby and the law-makers (mainly members of the Budgetary Committee) during the same period.<sup>98 99 100</sup> Without any clear evidence, it is relatively safe to say that the regulatory bodies were shaped and to some extent infiltrated by lobbyists. Sources further suggest that some politicians were using the gambling industry's money to improve their parties' accounts and that financial donations from people connected with gambling industry represent an important income for political party financing.<sup>101</sup> On a positive note, such a critical period strengthened the NGOs, civil society activists and the media, who increased pressure on the law-makers, resulting in new amendments in upcoming years.

Among the factors that created such a shady environment was the absence of the Civil Service Law, as well as the lack of effective "revolving door" and conflict of interest legislation that allowed people such as Vrzáň and Korynta to represent the lobby within the regulatory bodies. Furthermore, in the early 2010s it was still difficult to receive information from public administrative bodies on topics such as the number of VLTs licensed or records on political party funding. Therefore the lack of legislation on political party financing adds to the generally shady area of lobbying. It is little wonder that the public has come to have clearly negative, almost criminal-like, associations with the term "lobbying".

There is a Code of Ethics for public sector employees,<sup>102</sup> but the Code does not address any rules or guidelines in the case of lobbying. There is a provision on conflicts of interest, but it provides only a general statement. Employees are obliged to avoid situations of conflicts of interest, but it is unclear what happens when employees disclose a conflict. There is a complaints mechanism mostly guaranteed by whistleblowing phone hotlines at each ministry. Moreover, TI Czech Republic offers legal assistance/consultation service (whistleblowing hotline) for the public. The Code addresses an overall ban on any gifts or hospitality given to public sector employees.

Interests and assets declarations are not covered by the Code; only high-ranking employees are required to make declarations according to the Law on Conflict of Interests, but these declarations are limited in scope. In accordance to the Law on Public Service, there are specific conditions to be met prior to being employed in the public sector. However, mechanisms for subsequent training of employees are not implemented – only part of this law is in force to date<sup>103</sup>. Employees sometimes attend awareness-raising programmes, but these are not prescribed by any rule, nor are the content or form of such programmes.

There is no statutory code of conduct for lobbyists and there are no required disclosures or restrictions on them. The only regulation that can somehow affect them is the prohibition of simultaneous employment as a lobbyist and a public official in the Labour Act, which primarily deals with public sector employees – they cannot sit in executive and supervisory boards of corporate bodies but they can do business (according to the approval of employer). However they

<sup>98</sup> See: [e-loterijni-firmy-s-poslanci-nebo-ne-fnh-/tema.aspx?c=A101222\\_065043\\_pozice\\_1959](http://e-loterijni-firmy-s-poslanci-nebo-ne-fnh-/tema.aspx?c=A101222_065043_pozice_1959)

<sup>99</sup> See: [ceskapozice.lidovky.cz/podivna-schuzka-mezi-poslanci-a-loterijni-lobby-fta-/tema.aspx?c=A101209\\_145649\\_pozice\\_1289](http://ceskapozice.lidovky.cz/podivna-schuzka-mezi-poslanci-a-loterijni-lobby-fta-/tema.aspx?c=A101209_145649_pozice_1289)

<sup>100</sup> See: [rd-seznamte-se-s-temi-kdo-mu-sli-na-ruku-pyv-/domaci.aspx?c=A111111\\_162727\\_domaci\\_kop](http://rd-seznamte-se-s-temi-kdo-mu-sli-na-ruku-pyv-/domaci.aspx?c=A111111_162727_domaci_kop).

<sup>101</sup> See: [http://zpravy.idnes.cz/vyzkousel-jsem-politiky-co-vsechno-udelaji-za-milion-pd2-domaci.aspx?c=A090927\\_120306\\_domaci\\_jan](http://zpravy.idnes.cz/vyzkousel-jsem-politiky-co-vsechno-udelaji-za-milion-pd2-domaci.aspx?c=A090927_120306_domaci_jan)

<sup>102</sup> See: [www.vlada.cz/assets/media-centrum/aktualne/Etický\\_kodex\\_uredniku\\_a\\_zamestnancu\\_verejne\\_spravy.pdf](http://www.vlada.cz/assets/media-centrum/aktualne/Etický_kodex_uredniku_a_zamestnancu_verejne_spravy.pdf).

<sup>103</sup> The new Civil Service Act (Act Nr. Xxx/2014 Coll.) was adopted in 2014 and will enter the force on 1 July 2015.



are required to avoid conflicts of interest (§303–304). There is no complaint and/or reporting mechanism for violating lobbying regulations.

There are some self-regulatory Codes of Ethics for groups of people that can be labelled as lobbyists, as mentioned in previous chapter. There are two groups that can be identified as lobbyists' associations – the Association of PR Agencies (APRA) that provides a Code (signed by nearly 20 companies outside of PR professional industry), and the Association of PA Agencies (APAA). The APRA Code deals with professionalism in PR industry and does not specifically regulate lobbying. The APAA Code is more specific and sets some standards of communication and representation of interests towards politicians and public officials. The only sanction is the exclusion of the member, however. The same can be said about other issues – only the APAA Code is more relevant and formulates more obligations for its members: disclosing his/her identity and interests to public officials (if client does not insist on privacy of his/her identity); refraining from using any obtained information for violating the law; ban on providing financial and non-financial benefits and compensation to politicians and public officials when representing the clients' interests; avoiding conflict of interests; and participating in the Conciliation Board for solving compliance with the Code of Ethics. The APAA Code also sets strict rules on simultaneous employment in public sector and/or in politics, and provides a complaint mechanism for violating the Code, but there is no provision on whether the non-members can complain against the APAA members' behaviour. The coverage of the lobbying sector is relatively limited – the rules cover just the APAA, which only has six members.

## EQUALITY OF ACCESS: LEVELLING THE PLAYING FIELD

While regulating lobbying transparency and integrity measures are crucial, they must be accompanied by rules that allow for equality of access to decision-makers. This is essential to ensure fairness and pluralism in the political system. The research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions, which best serve society and broad democratic interests. The findings are mixed in this regard.

Although the government consults with various actors on proposed law and policies, the diversity of participating players is limited and their interests/ideas are quite homogenous. There is no rule to ensure a balance of participants on various subjects during consultations, and there is a lack of transparency about the participants. On the other hand some companies as well as NGOs are able to push initiatives that lead to new policies, laws and/or decisions (Pankackavyzva.cz; REST).

Consultation and public participation is limited in legislative processes. Mainly corporations or NGOs can provide their own (non-requested) expertise, but the impact is perceived as limited and selective. Anyone can submit proposal informally through an MP; they can also start a petition; or can participate in a Committee meeting, but the impact is uncertain.

There is a timetable for proposed laws (ODok system) that is not fully available to the public. However, the current government has started to publish a list of planned legislative work.<sup>104</sup> Only the Regulatory Impact Assessment mechanism asks for public comments and opinions, but there is no principle of proportionality for participation of interest groups set by the law (it is only a recommendation, not an obligation). Moreover, it applies to government documents only.<sup>105</sup> Interest groups can participate in official consultations, but there is no requirement to make their comments public. If any comments are submitted to the authorities (in case of outline and/or a draft of the law), only the comments that are categorised as “essential” are required to be answered and justified, and the author of the comments has to be informed about how the authority has dealt with his/her comments.<sup>106</sup>

The composition of the advisory/expert groups for new legislation is sometimes balanced, sometimes not and it highly depends on the topic of the agenda, political orientation of the government and/or majority in the parliament. There are no rules that would prohibit any interest groups, lobbyist or corporate representatives from participation in the advisory and/or expert groups. Furthermore there are no rules that would regulate disclosure of information on expert/advisory group members, agendas, minutes and contributions of participants.

In practice if such groups exist in the parliament, all records published cover only official negotiations without a list of participants. Even though there is an audio record of such sessions, it is not publicly available and it is deleted after six months from the day of the meeting. If the governmental expert/advisory groups are formed, the government announces the composition of the group and its agenda (topic, issues). The expert group can publish documents as a result of its

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<sup>104</sup> See: [www.vlada.cz/assets/media-centrum/dulezite-dokumenty/plan\\_legislativnich\\_praci\\_2014.pdf](http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/plan_legislativnich_praci_2014.pdf);  
[www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Vyhled-legislativnich-praci-vlady-na-leta-2015-az-2017.pdf](http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Vyhled-legislativnich-praci-vlady-na-leta-2015-az-2017.pdf).

<sup>105</sup> See: [www.psp.cz/sqw/text/tiskt.sqw?o=5&ct=832&ct1=1](http://www.psp.cz/sqw/text/tiskt.sqw?o=5&ct=832&ct1=1).

<sup>106</sup> See: [www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Vyhled-legislativnich-praci-vlady-na-leta-2015-az-2017.pdf](http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Vyhled-legislativnich-praci-vlady-na-leta-2015-az-2017.pdf).

work and make recommendations to the government. At the ministerial level there are no rules for such expert/advisory groups and in most cases ministers have their advisers.

# METHODOLOGY

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This report is part of the European Commission funded “Lifting the Lid on Lobbying” project, which sees 19 European countries assess the situation with regard to lobbying and its regulation in their country.<sup>107</sup> The report aims to:

- Assess existing lobbying regulations, policies and practices in the Czech Republic
- Compile evidence about corruption risks and incidences related to lack of lobbying control
- Highlight promising practice around lobbying found in the Czech Republic
- Provide recommendations and solutions for decision-makers and interest representatives in the public and private sector

## DEFINITIONS

The definition of lobbying for this project is “Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making carried out by or on behalf of any organised group”.<sup>108</sup>

‘Lobbyists’ can include not only professional lobbyists, but private sector representatives (in-house lobbyists), public affairs consultancies, representatives from NGOs, corporations, industry/professional associations, trade unions, think-tanks, law firms, faith-based organisations and academics.<sup>109</sup>

We believe that regulation should capture all who lobby professionally and our definition purposefully excludes individual citizens lobbying on their own behalf, as this is considered part of a normal healthy democratic process and not something that should be unduly regulated.

A number of case studies are included, which highlight incidences of undue lobbying in the public procurement and gambling sectors, clearly showing there are risks for society when lobbying is allowed to take place in the shadows or without any regulation. More positively, we also include some promising practices identified in our research.

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<sup>107</sup> The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

<sup>108</sup> This definition draws heavily on the Sunlight Foundation Lobbying Guidelines (<http://sunlightfoundation.com/blog/2013/12/03/announcing-sunlights-international-lobbying-guidelines/>); the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying (2014, forthcoming); and Council of Europe Parliamentary Assembly Recommendation 1908 (2010) on lobbying in a democratic society.

<sup>109</sup> See Transparency International (2012) ‘Lobbying in the European Union: Levelling the Playing Field’, Regional Policy Paper, Berlin: Transparency International, available at: [www.transparency.de/fileadmin/pdfs/Themen/Politik/ENIS\\_Regional\\_Policy\\_Paper\\_Lobbying.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Politik/ENIS_Regional_Policy_Paper_Lobbying.pdf).

### Assessing lobbying rules and practice – our approach

**Transparency** is crucial if there is any chance of public trust in politics being restored. When looking at transparency around lobbying practices, our research sought to answer the following overarching questions: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives (b) on what issues they are being lobbied (c) when and how they are being lobbied (d) how much is being spent in the process (e) what is the result of these lobbying efforts? We also sought to investigate whether the onus for transparency is placed on both the lobbyist and the public official/representative.

We believe that transparency of lobbying must be embedded within a broader public sector **integrity** framework, which mitigates the risks of conflicts of interest when important decisions are being taken. To understand how well-insulated countries are against undue lobbying, our research sought an answer to the following overarching questions about ethical lobbying: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

Finally, when regulating lobbying, transparency and integrity measures are crucial, but they must be accompanied by rules that allow for **equality of access** to decision-makers, which is essential to fairness and pluralism in the political system. Our research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests.

## DATA COLLECTION AND VALIDATION

The research was carried out by Petr Vymětal with the support of Radim Bureš, Ivana Dufková, Adam Novák and Tereza Zběžková from Transparency International Czech Republic during the period from March to December 2014. The researchers drew on numerous secondary sources such as national laws, international evaluation reports and other legal documents, relevant national studies and media articles. This secondary data was complemented by primary data obtained from seven in-depth interviews with former policy-makers, lobbyists and experts in the field of lobbying from civil society organisations.

Interviews were particularly useful for finding out additional information not on the public record, and for gathering evidence on the implementation of regulations and more generally, what is happening in practice. A list of interviewees is included in Appendix II. In a number of cases, anonymity was requested by interviewees because of the sensitivity of the information and this was granted. The research was primarily



qualitative, but a quantitative element was also included in order to evaluate the robustness and efficacy of national regulations and self-regulation mechanisms around lobbying, and to allow for some comparison across the countries.<sup>110</sup> To this end, a set of 65 indicators was scored by the researcher, based on the qualitative information gathered through the research.

A 3-point scale was used to score the indicators, with a minimum score of 0 and a maximum score of 2.<sup>111</sup> An overall score (in % form) was then calculated for each of the core dimensions: *transparency*, *integrity* and *equality of access*. The completed questionnaire and scores are included in Appendix III.

This report provides a detailed look at the lobbying landscape in the Czech Republic and highlights key gaps and deficiencies in the approach to regulating lobbying, which leaves society exposed to the risks of unclear and unfair decisions being taken by public officials and representatives in the name of the people. Our aim is to bring attention to the issue and promote positive change. To this end, the report puts forward a set of key recommendations and solutions suggesting how the weaknesses identified should be tackled.

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<sup>110</sup> A regional report compiling and comparing the national results is foreseen for publication in early 2015.

<sup>111</sup> In a limited number of cases, where no logical intermediary position exists, only a minimum value of 0 and a maximum value of 2 are offered.

## LIST OF INTERVIEWS

### Public procurement:

- Interview with Martin Kameník, president of Oživení, 20 May 2014.
- Interview with Jiří Boudal, Reconstruction of the State, 23 May 2014.

### Domestic violence:

- Interview with Petra Vitoušová, director of White Circle of Safety, 9 April 2014.

## LIFTING THE LID ON LOBBYING: TAKING SECURITY OUT OF POLITICS IN EUROPE

### CZECH REPUBLIC

OVERALL SCORE: 29%

How well is Czech Republic insulated against unfair and opaque lobbying?

How strong are mechanisms to ensure transparency, integrity and equal access to public decision-makers?

Transparency

Sub-Category	Value
Access to	75%
Registration	0%
Oversight of	0%
Legislative	0%
<b>Total</b>	<b>19%</b>

Integrity

Sub-Category	Value
Post-	25%
Code of	50%
Code of	20%
Self-regulatory	58%
<b>Total</b>	<b>38%</b>

Equality of Access

Sub-Category	Value
Consultation	50%
Advisory/Exper	10%
<b>Total</b>	<b>30%</b>

## Data Collection Questionnaire

### Definitions

- 1. To what extent does the law clearly and unambiguously define ‘lobbyists’ to capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics?**

0 – No definition/Wholly inadequate definition covering a small proportion of lobbyists

1 – Partially but inadequately/too narrowly/too broadly defined

2 – The law clearly and unambiguously defines lobbyists to include professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.

Check all categories covered by law:

- Professional lobbyist
- Private Sector Representatives
- Public affairs consultancies
- Representative from NGO
- Representative from a for-profit corporation
- Representative from industry/professional association
- Trade unions
- Think tanks
- Law firms
- Faith-based organisations
- Academics
- Other, please specify \_\_\_\_\_

- 2. To what extent does the law/regulation define ‘lobbying targets’ in a sufficiently broad manner to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions?**

0 – Lobbying targets are not defined in law/ Wholly inadequate definition covering a small proportion of lobbying targets

1 – Lobbying targets are inadequately defined in law (including some but not all of the above-mentioned targets)

2 – Lobbying targets are broadly and adequately defined in law to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions

Check all categories covered by law:

- National Legislators
- Subnational Legislators
- National Executive
- Subnational Executives
- Executive Advisors
- High-level public officials
- Regulatory bodies
- Private bodies performing public functions
- Other, please specify \_\_\_\_\_

**3. To what extent is the term ‘lobbying’/‘lobbying activities’ clearly and unambiguously defined in law/regulation to include any contact (written or oral communication, including electronic communication) with lobbying targets (see above) for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position?**

0 – No definition/Wholly inadequate definition covering a small proportion of lobbying activity

1 – Partially but inadequately/too narrowly defined

2 – Definition is clear and unambiguous and is comparable to the following international standard: any contact (written or oral communication, including electronic communication) with lobbying targets for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position.

### **Transparency**

**Framing Questions to bear in mind when constructing the narrative for this section:**

To what extent does the public have sufficient knowledge of (a) who is lobbying public representatives (b) on what issues they are being lobbied (c) when and how they are being lobbied (d) how much is being spent in the process (e) what is the result of these lobbying efforts etc? Is the onus for transparency placed on both lobbyists and public officials/representatives?

### **Access to Information**

**4. To what extent is there a comprehensive access to information law that guarantees the public’s right to information and access to government data?**

0 - No law exists

1- Law exists but with inadequacies

2 – Comprehensive law in place

**5. In practice, to what extent do citizens have reasonable access to information on public sector activities and government data?**

0 - In practice, citizens face major problems in accessing information and/or frequent violations of the law

1- In practice, access is not always straightforward/citizens often face obstacles to access

2 – In practice, it is easy for citizens to access to information on public sector activities and government data

**6. Do access to information laws apply to lobbying data?**

0 - No law exists/Law does not apply to lobbying data

1- Some but not all lobbying data accessible under access to information laws

2 – Access to information laws cover lobbying data

### **Registration and Disclosure by Lobbyists**

## 7. Is there a lobbyist register in the country?

### 0 - No register exists

1- Voluntary register exists/A register for a particular institution exists but does not apply to all lobbying activity

2 – A mandatory register exists

## 8. Where a register exists, to what extent does it capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics in the country?

### 0 – Wholly inadequate scope covering only a small proportion of lobbyists

1 – Register captures many of the categories of lobbyists mentioned above but there are still some gaps

2 – The register clearly captures professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.

Check all categories covered by register:

- Professional lobbyist
- Private Sector Representatives
- Public affairs consultancies
- Representative from NGO
- Representative from a for-profit corporation
- Representative from industry/professional association
- Trade unions
- Think tanks
- Law firms
- Faith-based organisations
- Academics
- Other, please specify \_\_\_\_\_

## 9. To what extent are lobbyists required to register in a timely (within 10 days of beginning of lobbying activity) manner?

### 0 - No compulsory registration

1 - Lobbyists required to register, but with significant time lag (more than 10 days)

2 – Lobbyists required to register within 10 days of beginning lobbying activity

## 10. To what extent are lobbyists required to report regularly on their lobbying activities and expenditures in a timely manner (max real-time - min quarterly)?

### 0 – No requirement to report/Reporting less often than annually

1 – Reporting requirement less often than quarterly but more often than annually

2 - Realtime - Quarterly reporting required

## 11. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant personal and employment information: name of the organization (if applicable); address and contact information; names of all active lobbyists working on behalf of the organization (if applicable)?



0 - No information required to be publicly disclosed by lobbyists

1 - Only basic information required to be publicly disclosed

2 - Sufficient information required to be publicly disclosed

Check all categories covered by law:

Name (of individual or organisation)  
Address and contact details  
Names of all active lobbyists working on behalf of organisation  
Other

**12. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on lobbying objectives and clients: name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied?**

0 - No information required to be publicly disclosed by lobbyists

1 - Only basic information required to be publicly disclosed

2 - Sufficient information required to be publicly disclosed

Check all categories covered by law:

Name of the persons or organizations paying for the lobbying activities  
Names of the lobbyists' clients  
Specific subject matter lobbied  
Specific legislative proposals, bills, regulations, policies, programmes, grants, contributions or contracts sought

**13. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on who they are lobbying and what they are advocating: name and title of the public representative or public body with whom the lobbyist engaged and the date and type of such engagement as well as any information and/or supporting documentation communicated to policymakers?**

0 – No requirement to report

1 – Only basic information required to be publicly disclosed

2 - Sufficient information required to be publicly disclosed

Check all categories covered by law:

The name of the public representative or public body with whom the lobbyist engaged  
Date of engagement  
Type of engagement (personal visit, accepted invitation to event, official hearing)  
Supporting documentation communicated to policymakers

**14. To what extent are lobbyists and organizations that lobby required to publicly disclose lobbying expenditures, including spending on efforts to support**

**lobbying, loans, sponsorships, retainers, or the purchase of tickets for fundraising events?**

0 - No information on expenditures required to be publicly disclosed by lobbyists

- 1 - Only basic information on expenditures required to be publicly disclosed
- 2 - Sufficient information on expenditures required to be publicly disclosed

**15. To what extent are lobbyists and organizations that lobby required to publicly disclose political donations to parties and candidates?**

0 - No requirement for public disclosure of political donations

- 1 - Insufficient requirements for public disclosure of political donations
- 2 - Sufficient information on political donations required to be publicly disclosed

**16. To what extent are lobbyists required to publicly disclose 'in kind' contributions: In-kind contributions may include advertising, use of facilities, design and printing, donation of equipment, or the provision of board membership, employment or consultancy work for elected politicians or candidates for office?**

0 - No information on 'in-kind' contributions required to be publicly disclosed by lobbyists

- 1 - Insufficient information on 'in-kind' contributions required to be publicly disclosed by lobbyists
- 2 - Sufficient information on 'in-kind' contributions required to be publicly disclosed

**17. Is information disclosed by lobbyists publicly available online in a searchable machine-readable open-data format?**

0 - Information not available online

- 1 - Information available online but not in a searchable machine-readable open-data format (eg. Hand-written and scanned documents used)
- 2 - Information publicly available online in a searchable machine-readable open-data format

**18. To what extent do the lobbyists register and provide sufficient/timely information in line with legislative obligations?**

0 - Little or no compliance with legal obligations

- 1 - Some lobbyists comply but there are many cases of non-compliance
- 2 - Broad compliance with legal obligations

**Oversight, Verification and Sanctions**

**19. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing registration of lobbyists, offering guidance to individuals and organisations, monitoring returns, and investigating apparent breaches or anomalies (this includes powers to investigate complaints made but also to instigate investigations even where no complaint has been lodged)?**

0 - No oversight entity exists

- 1 - Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight
- 2 - A fully mandated and resourced oversight entity is in place

**20. To what extent is there a pro-active verification mechanism to audit disclosures and reports and detect anomalies?**

0 - No verification mechanism exists

- 1 - Verification exists but is inadequate
- 2 - Adequate verification mechanism exists

**21. In practice, to what extent are anomalies detected and followed up on by the oversight body?**

0 - Little or no detection of anomalies

- 1 - In general, the oversight body is somewhat active in following up on anomalies detected
- 2 - In general, the oversight body is active in following up on anomalies detected

**22. In practice, to what extent are anomalies detected and reported by others (e.g. investigative journalists) followed up on by the oversight body?**

0 - Little or no detection of anomalies

- 1 - In general, the oversight body is somewhat active in following up on anomalies detected and reported by others
- 2 - In general, the oversight body is active in following up on anomalies detected and reported by others

**23. To what extent does the law provide for penalties for knowingly filing a false lobbying registration return or failure to file a return?**

0 - No penalties exist

- 1 - Penalties exist but they are inadequate
- 2 - Adequate penalties exist in law

**24. To what extent are penalties for knowingly filing a false return or failure to file a lobbying registration return implemented in practice?**

0 - Never

- 1 - Sometimes
- 2 - Always

**25. To what extent are oversight bodies required to publicly disclose the names of all individuals or organizations found to have violated lobbying rules or regulations?**

0 - No requirement to publicly disclose names of those who violate rules

- 1 - Disclosure of names of those who violate rules is at the discretion of the oversight body
- 2 - Mandatory disclosure of names of those who violate rules and details of the violation

**26. To what extent are the names of all individuals or organizations found to have violated lobbying rules or regulations published in practice?**

- 0 - Never
- 1 - Sometimes
- 2 - Always

## Legislative Footprint

**27. To what extent does the law require the publication of a ‘Legislative Footprint’ (document that details the time, event, person, and subject of legislators’ and senior public officials’ contact with a stakeholder) as an annex to all legislative records?**

0 - No legislative footprint foreseen in law

- 1 - Piecemeal requirements to indicate who has sought to influence legislative or policy making processes in place
- 2 - The law requires publication of a legislative footprint as an annex to all legislative records

**28. In practice, do legislators/public officials publish a legislative footprint including details of the time, person, and subject of contacts with stakeholders?**

- 0 - No information on contacts publicly disclosed by legislators/public officials
- 1 - Some but insufficient information on contacts publicly disclosed by legislators/public officials
- 2 - Sufficient details of legislators’ contact with stakeholders published

**29. To what extent are senior public officials required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?**

0 - No requirement to make documentation related to meetings public

- 1 - Piecemeal requirements to make documentation related to meetings public
- 2 - The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

**30. To what extent are public representatives (national and subnational legislators) required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?**

0 - No requirement to make documentation related to meetings public

- 1 - Piecemeal requirements to make documentation related to meetings public
- 2 - The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

## Integrity

**Framing Questions to bear in mind when constructing the narrative for this section:**

Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

## Post-employment and Pre-employment Restrictions

### 31. To what extent does the law provide proportionate moratoria or 'cooling off periods' before former members of parliament, senior public servants, ministers and advisers can work as lobbyists?

0 - No cooling off period in place

1 - Less than 2 year cooling off period in place

2 - Cooling off period of at least 2 years in place

### 32. To what extent do 'cooling off periods' for those who wish to work as lobbyists apply to former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers?

0 - No cooling off period in place

1 - Cooling off period is in place but does not apply to all categories above

2 - Cooling off period applies to all categories above

Tick categories covered:

Former members of parliament (national)  
Former members of parliament (sub-national)  
Former members of national Executive  
Former members of subnational Executives  
Advisors  
Senior Public Servants  
Senior staff of regulatory bodies  
Other

### 33. In practice to what extent do former members of parliament, senior public servants, members of the executive and advisers move easily and directly into the lobbying sector?

0 - There have been a significant number of cases of former members of parliament, senior public servants, ministers, ministerial advisers moving directly into the lobbying sector

1 - There have been a number of cases of former members of parliament, senior public servants, ministers, ministerial advisers to moving directly into the lobbying sector

2 - Former members of parliament, senior public servants, ministers, ministerial advisers rarely move directly into the lobbying sector, usually respecting a cooling off period

### 34. To what extent does the law require former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers to receive permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?

0 - No permission required

1 - Insufficient Restrictions (Insufficient coverage)

2 - Permission required and applies to all above-mentioned categories

**35. In practice, to what extent do former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers seek permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?**

0 - Never

1 - Sometimes

2 - Always

**36. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing post and pre-employment restrictions, offering guidance to individuals and organisations, and investigating apparent breaches or anomalies?**

0 - No oversight entity exists

1 - Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight

2 - A fully mandated and well-resourced oversight entity is in place

#### **Codes of Ethics for public sector employees**

**37. To what extent is ethical/responsible lobbying addressed in public sector codes of conduct (e.g. do they specify standards on how public officials should conduct their communication with interest groups, specify a duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors?)**

0 - No code of conduct exists for public officials and/or codes of conduct do not reflect ethical lobbying guidelines

1 - Codes of conduct address ethical lobbying in a piecemeal or insufficient manner

2 - Codes of conduct comprehensively address ethical lobbying

**38. To what extent do public sector codes of conduct specify standards on how public officials should deal with conflicts of interest issues?**

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect conflict of interest issues

1 - Codes of conduct address conflict of interest issues in a piecemeal or insufficient manner

2 - Codes of conduct comprehensively address conflict of interest issues

**39. To what extent do public sector codes of conduct specify standards on how public officials should deal with gifts and hospitality issues?**

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect gifts and hospitality issues

1 - Codes of conduct address reflect gifts and hospitality issues in a piecemeal or insufficient manner

2 - Codes of conduct comprehensively address reflect gifts and hospitality issues



**40. To what extent do public sector codes of conduct deal comprehensively with interest and asset declaration issues?**

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect asset declaration issues

1 - Codes of conduct address asset declaration issues in a piecemeal or insufficient manner

2 - Codes of conduct comprehensively address asset declaration issues

**41. To what extent is there a complaint mechanism allowing any public official or citizen to report violations of the public sector code of conduct?**

0 - No complaints mechanism exists

1 - Complaints mechanism exists but is limited in scope

2 - Robust complaints mechanism exists

**42. To what extent are there training and awareness-raising programmes for public officials on integrity issues, including lobbying rules and guidelines?**

0 - No training/awareness-raising programmes exist on integrity issues

1 - Piecemeal and irregular approach to training/awareness-raising on integrity issues

2 - Comprehensive and regular training/awareness-raising on integrity issues

**Codes of Ethics for Lobbyists**

**43. To what extent is there a statutory code of conduct for lobbyists including clear sanctions for failure to adhere to lobbying regulations?**

0 - No code of conduct exists

1 - Code of conduct exists but it is inadequate

2 - Statutory code of conduct including sanctions exists

**44. In practice, to what extent are sanctions applied for failure to adhere to lobbying regulations?**

0 - Sanctions rarely/never applied

1 - Sanctions applied, but inconsistently

2 - Sanctions consistently applied

**45. To what extent does the law and/or the lobbyists' code of conduct require disclosure regarding and provide restrictions on lobbyists being hired to fill a regulatory, financial decision-making or advisory post in government?**

0 - No disclosure requirements or restrictions in place

1 - Insufficient Restrictions and disclosure requirements (e.g. lobbyist must deregister but no further restrictions)

2 - Sufficient disclosure requirements and restrictions in place (e.g. potential veto of appointment and/or restriction in types of decisions the employee would be involved in making)

**46. To what extent does the law and/or codes of conduct prohibit simultaneous employment as a lobbyist and a public official?**

- 0 - No mention of prohibition of simultaneous employment as a lobbyist and a public official
- 1 - Law/Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official
- 2 - Law/Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

**47. To what extent is there a complaint mechanism allowing any policy-maker or citizen to report violations of the lobbying regulations?**

- 0 - No complaints mechanism exists
- 1 - Complaints mechanism exists but is limited in scope
- 2 - Comprehensive complaints mechanism exists

**Self-regulatory Codes of Ethics for Lobbyists**

**48. To what extent are there self-regulatory code(s) of ethics managed by professional association(s) for lobbyists or by companies themselves?\***

- 0 - No code of ethics exists
- 1 - Code of ethics exists but it is inadequate
- 2 - Code of ethics including sanctions exists

**49. To what extent do existing self-regulatory codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations?\***

- 0 - Codes do not provide any behavioural principles that steer lobbyists away from unethical situations
- 1 - Codes mention behavioural principles but are vague and/or incomplete
- 2 - Codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations

Check all categories covered by codes:

- Requiring honesty and accuracy of information provided to public officials
- Requiring early disclosure to public officials of the identity of client and interests being represented (APAA only)
- Refraining from using information obtained in violation of the law (APAA only)
- Refraining from encouraging public officials to violate the law
- Banning gifts above a de minimis value, fees, employment or any other compensation from a lobbyist to a public official. (APAA only)
- Requiring speedy disclosure of any conflict of interest and management of such conflicts of interest or recusal (APAA only)
- Making ethics training a condition of membership in the association.
- Establishing a reasonably independent mechanism for monitoring and enforcing compliance to the ethics code.(APAA only)
- Others, please specify \_\_\_\_\_

**50. To what extent do existing self-regulatory codes require lobbyists to publicly disclose the identity of who they are representing and what they are lobbying for?\***

0 - No information required to be publicly disclosed by lobbyists

1 - Only basic information required to be publicly disclosed and/or the information is not public (APAA only)

2 - Sufficient information required to be publicly disclosed (name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied)

**51. To what extent do existing self-regulatory codes prohibit simultaneous employment as a lobbyist and a public official?\***

0 - No mention of prohibition of simultaneous employment as a lobbyist and a public official

1 - Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official

2 - Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official (APAA only)

**52. To what extent is there a complaint mechanism allowing any member or non-member of the association to report violations of the lobbying code of ethics?\***

0 - No complaints mechanism exists

1 - Complaints mechanism exists but is limited in scope (APAA only)

2 - Robust complaints mechanism exists

**53. To what extent are there reasonably independent mechanisms for the monitoring and enforcement of compliance with the ethics code(s)?\***

0 - No monitoring and enforcement mechanisms exists

1 - The monitoring mechanism exists but is not independent, or is limited in scope

2 - A robust and reasonably independent monitoring and enforcement mechanism exists

**Equality of Access - The Level Playing Field**

**Framing Questions to bear in mind when constructing the narrative for this section:**

Are there sufficient spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests?

**Consultation and Public Participation in Decision-making**

**54. To what extent is the Parliament required by law to allow citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input?**

0 - The legal framework does not consider the provision of input to the legislative process.

1 - The legal framework allows for citizens and the public (corporations, civic organizations) to provide input to parliament, but it does not make any provisions regarding equal access, sufficient notice and time to receive this input

2 - Parliament is required by law to allow the citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input.

**55. To what extent does the legal framework lay out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies?**

0 - There are no procedures and rules for participation in policy discussions and decision making processes, or they are ad hoc to each policy and decision making process.

1 - There are some provisions for making public the means of participation in policy, but they are not specific, or they are relegated to policy directives.

2 - Yes, there is a specific regulatory framework that clearly lays out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies.

**56. To what extent does the legal framework explicitly require public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes?**

0- There are no provisions regarding the consultation of groups and stakeholders affected by policy.

1- Some provisions regarding the equal participation of affected groups exist, but they are not specific, or they are relegated to policy directives.

2- The legal framework explicitly requires public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes.

**57. In practice, which of the following forms of public participation are routinely used?**

Informal consultation with selected groups

Broad circulation of proposals for comment

Public notice and calling for comment

Public meeting

Posting proposals online

Advisory/Expert Groups

Preparatory Public Commission/committee

Others, please specify \_\_\_\_\_

**58. In practice, to what extent are consultations open to participation from any member of the public?**

0 - Consultations are rarely/never open to any member of the public

1 - Consultations are sometimes but not always open to any member of the public

2 - Consultations are generally open to any member of the public

**59. In practice, to what extent are the views of participants in the consultation process made public?**

0 - The views of participants in the consultation process are rarely/never made public

1 - The views of participants in the consultation process are sometimes but not always made public

2 - The views of participants in the consultation process are always made public

**60. To what extent does the legal framework explicitly require public authorities to provide a detailed justification on why and how various submissions have or have not been taken into account in policy and decision-making processes after consultation?**

0 - There are no provisions requiring public authorities to explain whether and how they have considered participation, or there is no participation provided for.

1 - There are some provisions requiring public authorities to explain whether and how they have considered submissions, but they are not specific, or they are relegated to policy directives.

2 - The law explicitly requires public authorities to provide a detailed justification on why and how submissions have or have not been taken into account in policy and decision-making processes after consultation.

**Advisory/Expert Group Composition**

**61. To what extent is there a legal obligation to have a balanced composition (between private sector and civil society representatives) of advisory/expert groups?**

0 - No requirement to have balanced composition

2 - The law requires meaningful balanced composition between private sector and civil society representatives

**62. In practice, to what extent is there a balanced composition (between private sector and civil society representatives) of advisory/expert groups?**

0 - Advisory groups are generally biased towards particular interests

1 - Advisory groups are sometimes balanced, sometimes not

2 - There is a meaningful balance between private sector and civil society representatives on advisory groups

**63. To what extent are lobbyists prohibited from sitting on advisory/expert groups in a personal capacity?**

0 - Lobbyists can freely sit on advisory groups in a personal capacity

2 - Lobbyists are prohibited from sitting on advisory/expert groups in a personal capacity

**64. To what extent are corporate executives prohibited from sitting on advisory groups in a personal capacity?**

0 - Corporate executives can freely sit on advisory groups in a personal capacity

2 - Corporate executives are prohibited from sitting on advisory/expert groups in a personal capacity

**65. With regard to advisory/expert groups, to what extent is membership information, agendas, minutes and participants' submissions required to be made public?**

0 - Information not publicly available

1 - Information available, but only on request

2 - Information publicly available online or in print form



