

Remaining in the shadow

Lobbying transparency in the Polish Parliament¹

Summary

Although it has been two years since GRECO² adopted the fourth evaluation round compliance report on corruption prevention in Poland in respect of members of parliament, judges and prosecutors at the end of 2014, Poland still has not adopted the recommendations regarding lobbying transparency in the Polish Parliament suggested by GRECO during that round. What is more, currently there are no proceedings in the Sejm, nor in the Senate, that are aimed at introducing the recommendations or rectifying lobbying transparency in any other way.

As shown by the yearly lobbying reports published by the Sejm and the Senate the number of registered professional lobbying entities in the Polish Parliament whose representatives obtained a parliamentary pass was no greater than 31 in the years 2012 – 2016. Moreover, only around 10 of such representatives were active during a year (actively participated in committee meetings, presented ideas in an oral and written form). In the first two months of 2017 only 17 representatives of the registered professional lobbying entities obtained parliamentary pass.

Therefore, there is a considerable risk that lobbying in Poland is performed outside the regulated area and neither the Parliament nor the Government have plans to change this situation.

Introduction

During the Fourth evaluation round GRECO *inter alia* evaluated the effectiveness of measures adopted by the Polish authorities in order to prevent corruption in respect of MPs. During the verification process, GRECO used the answers from the Evaluation Questionnaire, information received from civil society and data collected by GRECO evaluation team (GET) during a visit to Poland from 16-20 April 2012, including meetings with representatives of Polish authorities, NGOs and lobbyists. One of the main topics of the evaluation was the transparency of the legislative process, primarily in terms of the impact of lobbyists on this process in the Parliament.

¹ The briefing is current as of 21 March 2017 and was prepared by the public-interest law organization Foundation Frank Bold as a part of the project “Lobbying transparency in Poland”, funded by the Open Society Initiative for Europe, as part of the Open Society Foundation. Further information about Foundation Frank Bold may be found at the end of this briefing.

²The Group of States against Corruption

The result of the evaluation was a report adopted on 19th October 2012 and published on 25th January 2013 containing three recommendations with regard to contacts between MPs and lobbyists. At the same time GRECO encouraged Polish authorities to submit a report on the measures taken to implement the recommendations by 30th April 2014. GRECO's next step in the procedure was the adoption on 12th December 2014 and publication on 24th February 2015, of a compliance report, in which GRECO asked the Head of delegation of Poland to submit additional information regarding the introduction of lobbying recommendations by 30 June 2016 due to the lack of their implementation. The second deadline was eventually postponed until the end of September 2016.

Evaluation report

Within the Evaluation report GRECO stated that – in connection with very little official information about lobbying activities performed by professional lobbyists in the Parliament and the fact that around 300 professional lobbyists were registered in the lobbyist register³ but only about 20 of them were active in the Parliament – “it would appear that lobbying was mainly performed in an informal manner outside the regulated area, based on (informal) links between some parliamentarians and businesses, and the influence the latter may have over legislation by their contacts with the former”⁴. As a consequence GRECO issued three recommendations in the area of relations between MPs and professional lobbyists⁵:

1. “interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process, be made more transparent, including with regard to parliamentary sub-committee meetings (paragraph 32)” [Recommendation i];
2. “the “Principles of Deputies’ Ethics” be complemented in such a way so as to provide clear guidance to the Sejm deputies with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources, the obligation to submit asset declarations and on the attitude towards third parties such as lobbyists – and including elaborated examples); such standards of ethics and conduct also be introduced for senators and disseminated among them (paragraph 40)” [Recommendation ii];
3. “both in respect of the Sejm deputies and senators, the development of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians – also taking into account interests of close family members – with regard to concrete legislative (draft) provisions (paragraph 41)” [Recommendation iii].

³The Polish register of lobbyists (*Rejestr podmiotów wykonujących zawodową działalność lobbingsową – The register of entities performing professional lobbying activities*) is regulated by the Polish Lobbying Act (Chapter 3, Arts. 10–15) and is supervised by the Minister of Internal Affairs and Administration. The data collected is divided into eight fields: three of them contain only contact information about the lobbyist (name, address, and the ID number in the National Court Register or the register of business activities); the other five contain formal information connected with the registration (the registration number, the dates of registration and of later changes, the date of any deletion from the register, the ID number assigned by the Ministry, and comments (this field has never once been completed in the history of the register).

⁴GRECO *Fourth evaluation round report on corruption prevention in respect of members of parliament, judges and prosecutors in Poland*, 2012, p. 12

⁵ *Ibid*, p. 60

Compliance report

Polish authorities reported to GRECO that some steps had been taken to implement the recommendations but until the adoption of the Compliance report no changes to lobbying transparency had been introduced. Therefore GRECO concluded, with respect to all the above-mentioned recommendations, that none of them had been implemented and encouraged the Head of delegation of Poland to submit additional information in this respect. Last year, Polish authorities prepared and send GRECO a response to the findings included in the compliance report. As their communication is confidential and has not been reviewed by any entity, we consider that impartial information from a representative of the NGO sector on the same topic might be useful for GRECO's further proceeding.

Lobbying in the Polish Parliament 2012-2016

According to article 18 of the Polish Lobbying Act⁶, lobbied authorities are obliged to publish online, once a year (by the end of February), a report containing all professional lobbying information collected by the lobbied authority, including information about the lobbying topics, professional lobbyists who performed the lobbying activities, description of the forms of lobbying activities and whether they were conducted in favour of a particular regulation or against it, as well as a description of the influence the lobbying had on the final shape of a regulation.

Data collected in the tables below were derived from the reports published by the Sejm and the Senate in years 2013 – 2017⁷ (covering years 2012 – 2016) and contain information about:

1. professional lobbyists' representatives in the Parliament – number of persons who represented in the Sejm and the Senate entities registered in the lobbyist register (run by the Minister of Internal Affairs and Administration) as professional lobbying entities. The numbers in brackets represent the number of registered entities. As the list of so-understood professional lobbyists' representatives is common to the Sejm and the Senate this number is equal for both chambers of the Parliament;
2. committee meetings – overall number of professional lobbyists' representatives who took part in committee meetings (number of registered lobbyists who at least once took part in a committee meeting);
3. speeches during meetings – number of speeches given by professional lobbyists' representatives during committee meetings;
1. documents – number of documents (e.g. expertise, legal opinions, recommendations, etc.) submitted by professional lobbyists' representatives.

⁶Ustawa z dnia 7 lipca 2005 r. o działalności lobbingsowej w procesie stanowienia prawa [the Act on Lobbying Activities in the Lawmaking Process], Dz.U. 2017 item. 248. Hereinafter: the Polish Lobbying Act.

⁷Reports might be found on the Sejm and Senate official websites. They also have been published by the Frank Bold Foundation on jawnylobbying.org, a website devoted to lobbying transparency (see <https://jawnylobbying.org/rejestr/sejm/> and <https://jawnylobbying.org/rejestr/senat/>).

Professional lobbying in the Sejm since 2012				
Year	Professional lobbyists' representatives	Committees meetings	Speeches during meetings	Documents
2016	38 (31 entities)	16 (9)	2	0
2015	42 (27 entities)	47 (10)	4	0
2014	35 (22 entities)	37 (9)	2	2
2013	47 (25 entities)	28 (10)	2	4
2012	52 (30 entities)	40 (9)	3	4

Professional lobbying in the Senate since 2012				
Year	Professional lobbyists' representatives	Committees meetings	Speeches during meetings	Documents
2016	38 (31 entities)	3 (3)	1	0
2015	42 (27 entities)	4 (4)	3	0
2014	35 (22 entities)	6 (6)	2	2
2013	47 (25 entities)	11 (8)	4	6
2012	52 (30 entities)	15 (10)	6	3

The general picture of lobbying in the Sejm and Senate has not changed since the publication of the evaluation report in 2012. Only around 30 lobbying entities registered in the register run by the Minister of Internal Affairs and Administration had their representatives in the Parliament⁸. Furthermore only around 10 lobbyists per year took part in the Sejm's committee hearings (for the Senate the number is even lower), however most of them were just present at the meetings without giving any speeches. Professional lobbyists' representatives in years 2012 – 2016 delivered hardly any expertise, legal opinion, recommendation or other document to the Parliament. Therefore it is not surprising that both the Sejm and Senate inform in their yearly professional lobbying reports that professional lobbyists have no influence on the final shape of any given regulation.

On the other hand, the extent of non-professional lobbying in the Parliament is considerable. E.g. during the last 10 years representatives of nearly 300 entities took part in 561 meetings

⁸The situation has not changed much during the first months of this year. Presently only 17 professional lobbyists' representatives are registered at the Parliament.

of the Sejm's educational committee alone; only one of them represented a registered professional lobbyist⁹. As there is virtually no control over non-professional lobbying in Poland we do not have more data on actions taken by those representatives, including their potential direct meetings with MPs. Furthermore, collecting available data on non-professional lobbying – like the one connected with the Sejm's educational committee – is significantly impeded as the published information is scattered and stored in files impossible to reuse automatically.

Implementation of GRECO's 4th Evaluation Round report recommendations

Last term of the Parliament (2011 – 2015)

Although in 2014 Polish authorities informed GRECO that the Parliament was working on changing the regulation of lobbying, it has to be stated that these works were quickly abandoned and did not have any impact on legislation or improvement of lobbying transparency.

Both the Sejm and the Senate worked on the implementation of GRECO's recommendations. The Senate's Rules, Ethical and Senators' Affairs Committee presented a draft amendment of *the Act on the Exercise of the Mandate of a Deputy or Senator, the Act on the Restrictions of Business Activities for Persons Holding Public Offices, and the Act on Lobbying Activities in the Lawmaking Process*¹⁰, in which it proposed:

- change of Article 14 paragraph 3 of the Polish Lobbying Act by stating that the rules of performing lobbying activities in the premises of the Parliament - also in relation to the deputies and senators – should be regulated by the Rules of Procedure of the Sejm and the Senate;
- change of the Rules of Procedure of the Senate by introducing an obligation imposed on senators to notify the Speaker of the Senate about actions taken towards them by professional lobbyists.

This draft, however, was withdrawn by the applicant on 13th March 2015, so just 17 days after the publication of the compliance report by GRECO. Proposals included in the draft have never been referred to further legislative proceedings.

In the Sejm on 26th May 2016, during a joint meeting of the Committees of Administration and Digitisation, Deputies Ethics, Rules and Deputies' Affairs and Justice and Human Rights, *the Subcommittee on implementation of GRECO recommendations adopted in the 4th evaluation round report by the Group of States against Corruption* was formed. According to

⁹Data collected by Magdalena Wnuk, mamprawowiedziec.pl, in the article *Szary lobbying w oświacie*, which will be published on jawnylobbying.org website.

¹⁰The draft law (doc number 629) is available at a new location on the Senate website: <http://www.senat.gov.pl/download/gfx/senat/pl/senatdruki/5697/druk/629.pdf>

the information gathered by the Frank Bold Foundation¹¹, this subcommittee held merely 3 meetings during which:

- the chairperson was selected and a work plan drafted (first meeting);
- the GRECO's compliance report - submitted by the Minister of Justice - was presented (second meeting);
- possible options of proceeding were discussed (third meeting).

No minutes were taken during the subcommittee meetings, so no details of its agenda are known. The subcommittee did not present any proposal for legislative changes.

Current term of the Parliament (2015 -)

As the Frank Bold Foundation was officially informed¹², during the current term of the Sejm and the Senate, GRECO recommendations on the contacts of parliamentarians with lobbyists are not the subject of a legislative process. No drafts or resolutions have been prepared in this matter; no relevant subcommittees have been set up.

Practice

An analysis of the content of the web pages of 460 deputies carried out by the Frank Bold Foundation in December 2016 shows that only 5 of them¹³ publish - in the form of calendars - information on their meetings, however only 3 of the 5 calendars¹⁴ are regularly updated. None of them contains information about meetings of deputies with professional lobbyists, which may mean that either no such meetings ever take place¹⁵, or deputies do not want to make them public. The meetings of the remaining 457 deputies are very obscure. This means that parliamentarians do not have a need to inform citizens about their contacts with lobbyists and that the regulations should be put in place to improve the lobbying transparency in the Parliament.

Recommendations

As Poland has not been able to implement GRECO's recommendations concerning lobbying transparency in the Parliament since 2012, meanwhile halting all legislative works in this matter and not undertaking any during the current Parliament term, it appears that GRECO

¹¹Letter from the Social Communication Office of the Chancellery of the Sejm of 9 October 2015 to the Foundation Frank Bold, number of the letter: BKSP-141-26926/15

¹²Letter from the Social Communication Office of the Chancellery of the Sejm of 9th October 2015 to the Foundation Frank Bold, number of the letter: BKSP-144-9100/17; Letter from the Analysis, Documentation and Correspondence Office of Chancellery of the Senate of 22th February 2017 to the Foundation Frank Bold, number of the letter: BADK/DPK-135-5/17, DPK/32490

¹³Zbigniew Biernat, Ryszard Galla, Marek Kuchciński, Andrzej Maciejewski, Katarzyna Osos

¹⁴Ryszard Galla, Andrzej Maciejewski, Katarzyna Osos

¹⁵During the interview conducted on December 13th, 2016 by the representative of the Frank Bold Foundation, MP Andrzej Maciejewski stated that he has never met with a professional lobbyist (MP Maciejewski was elected as MP for the first time in October 2015).

should consider – in this respect – taking the measures described in Rule 32 of GRECO’s Rules of Procedure.

Background

Frank Bold is a public-interest law organisation with offices in the Czech Republic, Poland (acting as the Frank Bold Foundation) and Brussels, Belgium. At the EU-level, we are a steering group member of the European Coalition for Corporate Justice, which promotes corporate responsibility within the EU, a member of ALTER-EU, promoting lobbying transparency across Europe, and a founding member of the Justice & Environment network. In Poland, the Frank Bold Foundation is a member of the Open Government Coalition, advocating for Polish accession to Open Government Partnership, respecting the rule of law and transparent legislative process and a founding member of the CSR Watch Coalition. In 2016 the Frank Bold Foundation established the jawnylobbying.org (transparentlobbying.org) portal which is devoted to lobbying transparency in Poland and the European Union, and is the largest database of information about professional lobbying in Poland.



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