



Lobbying effective tool in public policy making processes

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Lobbying - legitimate and essential mechanism in a participatory democracy

Lobbying means all activities carried out with the objective of influencing the policy formulation and decision-making of the executive and legislative institutions and its essence involves solicited communication, oral or written, with a public official to influence legislation, policy or administrative decisions. Lobbyists are persons carrying out such activities, working in a variety of organizations, such as public affairs consultancies, law firms, NGOs, think-thanks, corporate lobby units or trade associations.

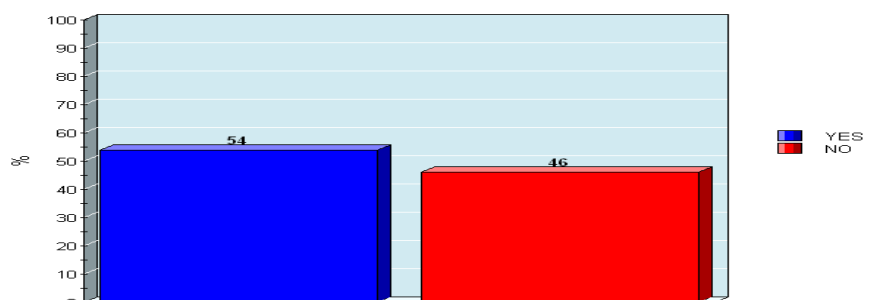
Public and private interests regularly contribute to the perception, presentation and the definition of issues in policy making in modern democratic governments. Although the term lobbying has often had negative connotations, it is considered entirely legitimate and highly essential, due to the fact lobbyists provide unique benefits to the complex decision-making processes within modern democratic systems, thereby contributing to policy outputs that regulate even the tiniest aspects of our daily lives. Lobbying is part of wider good governance approach that includes everything related to creation of government output and actions, from the participation of citizens in selection of government to rule of law and control of corruption. Bosnia and Herzegovina is a country in transition, in an urgent need to improve accountability and transparency of governing in each and every of its aspects, or in another words to enhance the policy and regulatory framework that sets the standards for good public governance. One of the steps on that path is development of the culture of transparency in lobbying.

Interest representation in Bosnia and Herzegovina

There is, without any doubt, vast variety of interests, acting alone or collectively in Bosnia and Herzegovina policy making processes. These lobby groups include, but are not limited to those with economic interests (individual private sector companies and business organizations), professional interests (trade and labor unions or farmers) and civil society interests (NGOs and associations concerned about issues such as civic rights, animal rights, human rights, health, consumer protection, environment, etc.). All three groups of stake holders in lobbying activities (public officials, business community and NGOs) have confirmed that lobbying is present in the area of public policy making processes in Bosnia and Herzegovina. Overall interview/questionnaire results confirmed that this lobbying includes all possible types of lobbying: lobbying by business associations and individual companies, lobbying by NGOs, lobbying by entity, cantonal and local governments towards the state government, lobbying by international community representatives, etc.

Source: Questionnaire conducted by author with the representatives of business community in BiH

Have you so far lobbied for your interests?



Summary

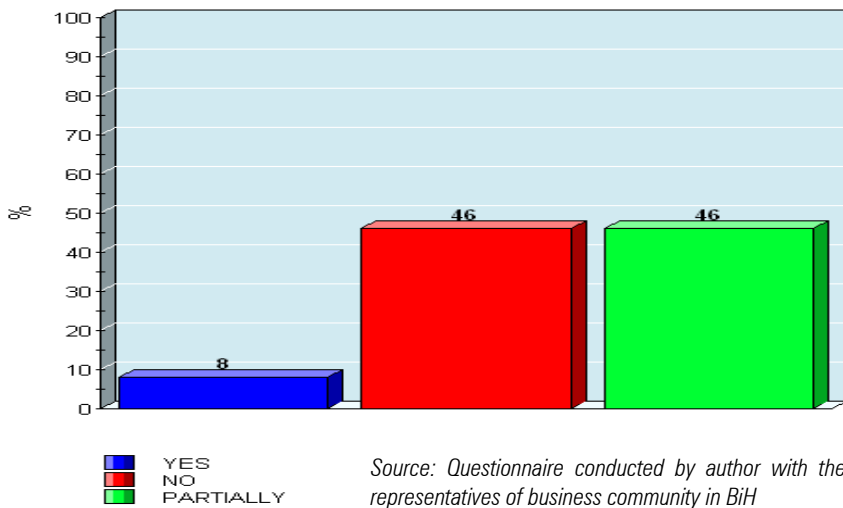
Lobbying is a legitimate technique for achievement of various interests in contemporary democratic societies. Even though Bosnia and Herzegovina is considered a country in transition and a developing democracy, lobbying does exist and it has similar techniques and purpose as it does everywhere else in the world. However, issues of equal access of interest groups to the public policy makers, transparency and accountability of the entire process and perception of lobbying by the public, are the ones not adequately dealt with by the relevant institutions and decision makers. Therefore, it would be desirable for the Bosnia and Herzegovina government to regulate lobbying activity using mandatory policy approach. Such a mandatory policy for lobbying would allow Bosnia and Herzegovina to take one step forward towards the bettering of its good governance approach and to approximate it to the international standards and best practices, at the same time approaching the ultimate aim of the fully developed representative democracy.

However, as many reports of relevant international organizations, domestic non-governmental organizations, as well as media indicate, lobbying in Bosnia and Herzegovina is considered to be negative notion, sort of “institutionalized crime” in the executive, legislative and judicial power/executive. It is often interlinked with claims of corrupt practices, or in other words claims of presence of illicit practices in lobbying activities in BiH. Another problem related to lobbying in Bosnia and Herzegovina, which was confirmed by research results, is the absence of the level playing field for interest representatives, meaning those interests which “have most money” have the best access to public policy makers, since the financial resources determine the level of capacity and readiness for lobbying. An important factor contributing to this situation is the fact that the state institutions are not open at all or are only partially open to the outside interests.

at position 99 out of 180 countries in Corruption Perception Index 2009 of Transparency International. “Corruption in Bosnia and Herzegovina”, a report by Transparency International Bosnia and Herzegovina states that BiH is a “captured state”, which relates to the corruption efforts to influence process of creating rules and laws, while the most types of corruption are directed towards the changing of the manner in which the existing laws, rules and regulation is implemented.

In spite the fact that lobbying is present in the policy making processes, policy makers in Bosnia and Herzegovina have not yet recognized the need to enhance governance approach, particularly from the aspects of accountability and transparency, through regulation of lobbying. On the other hand, unlike some of the neighboring countries (Serbia and Croatia) where lobbyists have in the recent years formed associations of lobbying with the aim of self-regulation and lobbying for a state/government regulation of this activity, lobbyists in Bosnia and Herzegovina still have not taken such a step. Therefore, highly valuable benefits that lobbyists provide to the complex policy and decision making in democracies that regulate this professional activity are often missing in the public policy making, while on the other hand this opens an even wider playfield for unfair advantages for vested interests. Another important setback of complete regulative ignorance of lobbying is the “twisted perception” of lobbying by citizens, which again limits the possibilities of their own participation in the process of policy making, at the same time limiting their possibilities to hold the policy makers accountable.

Are the state institutions open to outside interests?



This situation contributes to the fact that Bosnia and Herzegovina has made a very limited progress in the areas of public governance and fight against corruption. According to the World Bank Governance Indicators 1998-2009 Bosnia and Herzegovina is still significantly behind the regional average in the matter of progressing in the areas of Government Effectiveness, Regulatory Quality and Control of Corruption. At the same time, Bosnia and Herzegovina is ranked

How to make a step forward towards more transparency and accountability in lobbying?

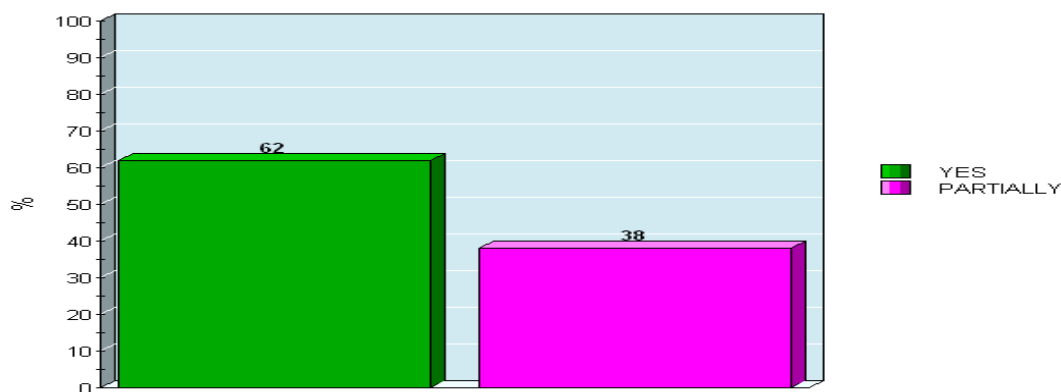
Effective tool for improvement of the current lobbying practices in Bosnia and Herzegovina would be introduction of a regulatory framework for lobbying. Statutory rules for engagement in the lobbying processes would improve citizens’ knowledge about the government actions by allowing them insight into “who is



influencing what”, when public policy is created. Justification for introducing such rules is that they strengthen two substantial elements of representative democracy: transparency and accountability. Exposed to citizens’ eye in the policy making processes government officials are more accountable and lobbyists’ actions are more transparent. Majority of the interviewed public officials have stated that “field information” provided by lobbyists should be more accessible for public policy makers and that it would contribute to more qualitative public poli-

cies, especially in the phase of their effective implementation. The same majority has also expressed an opinion that the way to achieve more transparent and accountable lobbying process in BiH is a regulatory/policy framework, which in their opinion would also change perception of lobbying by BH public, if it is accompanied by corresponding public campaign. At the same time **92,3 %** of representatives of business community feel that they should have an improved access to the state institutions when representing their interests.

Improved access achieved through regulatory framework?



Source: Questionnaire conducted by author with the representatives of business community in BiH

Without underrating the importance of self-regulation in the lobbying profession, it cannot be as widely applied and evenly balanced among different lobby groups and interests as government regulation, which can better a democracy through strengthening public confidence by transparency and increase the possibilities of citizens holding the policy makers accountable. This of course shows that the main justification for regulating lobbying is improvement of transparency and accountability in governance. Lobbying regulation is thus justified in order to render government officials more accountable and to promote the transparency of lobbyists’ action (Chari, Hogan & Murphy, 2010). Since “it takes two to lobby”, lobbyists share responsibilities with public officials for ensuring transparency,

accountability and integrity in lobbying. Consequently, joint efforts to achieve compliance with expected standards are vital, if lobbyist and public officials mean to avoid stigmatizing of the phenomenon of lobbying and make most of its benefit for public decision making (OECD, 2009).



Alma Sakota was born in 1978 in Sarajevo. She has completed her secondary education in the USA, after which she returned to BiH and acquired her University diploma at the Law Faculty of the University of Sarajevo in 2002. In 2006 she graduated from the postgraduate program of the European University College in Brussels, Belgium and obtained a Master after Master degree in European Business. Since 2002 she has been employed as Legal Adviser in different public institutions in BiH, such as Ministry of Finance and Directorate for Economic Planning of the Council of Ministers of Bosnia and Herzegovina. From 2007 onwards she is a Head of the Investor Support Department at the Foreign Investment Promotion Agency of Bosnia and Herzegovina. She is also a certified Trainer for Legal Harmonization with EU Acquis.

Recommendations for the mandatory policy framework for lobbying in Bosnia and Herzegovina:

1. Policy should be created through preparation and adoption of a law on lobbying, accompanied by codes of conduct for both lobbyists and policy makers
2. Definition of lobbying included in the law of lobbying should be broad and comprehensive (including oral and written communication), as well as the definition of policy maker/office holder (both executive and legislative branches)
3. Definition of lobbyists included in the law of lobbying should encompass both profit or non-profit entities
4. Disclosure requirements regarding the information that will be publicly available, for both lobbyists and office holders should be moderate, in order to assure that not too much burden is put upon both stakeholders
5. The law on lobbying should anticipate financial and non-financial sanctions for both lobbyists and office holders for breach of rules prescribed by the Codes of Conduct
6. Government should ensure adequate public promotion of the policy, in both preparation and implementation phase

Recommended sources

Chari, R., Hogan, J., Murphy, G. (2010). *Regulating Lobbying: a global comparison*, Manchester, Manchester University Press.

Organization for Economic Cooperation and Development (OECD) (2009). *Lobbyists, Government and Public Trust, Volume 1: Increasing Transparency through Legislation*. Paris, OECD.

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A "Policy Development Fellowship Program" has been launched by the Open Society Fund BiH in early 2004 with the aim to improve BiH policy research and dialogue and to contribute to the development of a sound policy-making culture based on informative and empirically grounded policy options. The program provides an opportunity for selected fellows to collaborate with the Open Society Fund in conducting policy research and writing a policy study with the support of mentors and trainers during the whole process. Seventy three fellowships have been granted in three cycles since the starting of the Program. All policy studies are available at www.soros.org.ba