



Regulating lobbying in Bosnia and Herzegovina: International standards and practices applicable to domestic situation and regulatory environment of Bosnia and Herzegovina

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Introduction

Numerous definitions of lobbying exist in today's contemporary societies, but all of them consider lobbying to be a legitimate and central part of the public policy making in the democratic systems. Thus being a "new democracy" and country in transition, Bosnia and Herzegovina (BiH) is no exception when it comes to interest representation. Various interest groups exist in BiH, all of them working and trying to influence public policy making processes, in order to obtain best results for their "cause". Good public governance is a concept that needs a lot of improvement in Bosnia and Herzegovina and lobbying is integral part of this concept. Therefore, lobbying and its practices need closer attention by BiH's authorities, as a result of an urgent need to improve accountability and transparency of the entire process and eliminate all possible unfair advantages for vested interests and corruption practices in the process of policy making. Different government approach towards lobbying would also allow for improved public policy making, the one that would take seriously into account all the highly valuable inputs that lobbyists provide to complex policy and decision making procedures. With this in mind, this research examines existing lobbying practices in Bosnia and Herzegovina together with the overview of existing approaches and models of lobbying policies and international standards in this area, in an attempt to propose the most plausible policy solution for lobbying in our country.

Objectives of the research

The goal of this research is to propose a policy/regulatory regime for lobbying activities, which would be most suitable for current policy making and lobbying practices in Bosnia and Herzegovina, but also coherent both with the national legislation and legislative framework and tradition, institutional setup and international standards and best practices. The end result should be engagement of relevant state institutions in preparation and adoption of this regulatory framework in order to enhance transparency and accountability in both policy making and lobbying activities. This would also enable policy makers to further open policy making processes in order to receive more highly valuable information when preparing complex policies and decisions, while on the other hand it would allow public better and widened participation in this process, at the same time allowing them more options for overseeing the implementation of policies and for holding the policy makers accountable.

The proposed policy framework aims also at changing the perception of lobbying of both public and policy makers, by approximating it to internationally spread and accepted perceptions and standards. This is very important, especially in the terms of European integration processes, since European Union is widely open to all kinds of public consultations and it highly values inputs received by interest groups and citizens themselves.

Research methodology

This research has analyzed existing lobbying practices in Bosnia and Herzegovina through available reports of both governmental and non-governmental organizations (NGOs), as well as the international community and media. In order to support theoretical research semi-structured interviews and questionnaires with both representatives of lobby/interest groups and representatives of government institutions were carried out to examine existing perception of lob-



bying and gather their opinions on this process in Bosnia and Herzegovina, as well as their opinions on eventual introduction of lobbying policy framework/regulation. On the side of lobby/interest groups interviews with representatives Foreign Investor Council (FIC)¹ and Center for Promotion of Civil Society (CPCS), which initiated establishment of the Agreement Network Plus, a network of leading NGOs in BiH that currently encompasses more than 400 NGOs at the BiH level, and 68 NGO members only at the level of Canton Sarajevo, were carried out. Questionnaires were carried out with individual domestic companies in different sectors and different business associations. On the side of government institutions, interviews with civil servants/senior officials in charge of creation of proposals of different policies/legislation in the six institutions at the BiH state level are included in this research, some of these being Ministry of Foreign Trade and Economic Relations of BiH, Ministry of Security of BiH, Market Surveillance Agency of BiH and Directorate for Economic Planning of Council of Ministers of BiH.

This research also included analysis of current possibilities of access to the development and implementation of public policies by different stakeholders in order to ensure the proposed lobbying regulatory policy/framework is consistent with the wider policy framework. A comprehensive desk research was conducted with the aim to provide overview of existing approaches and models of lobbying regulation or self-regulation in the European Union, Canada and Poland, in order to gain a complete view of these legislations, their similarities and common principles on which they are founded. This research also includes review of international standards for regulating lobbying, these being Principles for Transparency and Integrity in Lobbying of the Organization for Economic Cooperation and Development (OECD). These Principles provide decision makers with guidance to meet expectations of transparency and accountability and support a level playing field in developing public policies.

Lobbying – legitimate and essential mechanism in a participatory democracy

Public and private interests contribute regularly 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. According to the Green Paper of the European Transparency Initiative (2006) “lobbying means all activities carried out with the objective of influencing the policy formulation and decision-making of the European institutions”, while at the same time the Green Paper defines lobbyists “as 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”. The essence of lobbying involves solicited communication, oral or written, with a public official to influence legislation, policy or administrative decisions (European Commission, 2006). Characteristics of political systems and their structures of decision making influence the nature of lobbying, whereas

typically fragmented structures afford ease of access, however the impact of civil society actors is limited, while centralized structures create difficulties of access, but tend to result in high policy impact (Greenwood, 2003). The size and impact of lobbying in today’s contemporary world is underpinned by the figures for the resources it employs. For example, since 2008, in Europe, more than 3000 lobbyists have voluntarily registered with the European Com-

¹ Foreign Investors Council established in 2006 is a business association representing interests of foreign businesses in Bosnia and Herzegovina, as their single voice. Its membership includes over 30 international and regional companies and over EURO 4 billion investment in BiH. Mission of FIC is to promote pro business initiatives and deliver practical support to all investors to improve business environment in the country.

mission. During the 2009, recession year in the United States lobbying spending at the federal level has reached the record figure of USD 3.5 billion (OECD, 2010). These data just confirm once more that all the work carried out by the interest groups constitutes central and legitimate part within the democratic processes in democratic systems.

PROBLEM DESCRIPTION

Lobbying in Bosnia and Herzegovina

Lobbying is a central and legitimate part of the democratic processes within all liberal democratic systems. Input and feedback of lobbyists in the policy formulating processes represents essential help in developing policy outputs. In Bosnia and Herzegovina, however, concept of lobbying is often insufficiently understood or even considered as a category in corrupt practices. The main problem pertaining to the concept of lobbying in Bosnia and Herzegovina is a complete lack of any regulation or self-regulation in this area. The policy makers/government did not attempt to regulate lobbying, nor have the lobbyists organized themselves in a professional association in order to demystify the concept of their profession and set self-regulation codes and procedures.

Bosnia and Herzegovina as a developing democracy and a country strongly oriented towards achieving the goal of European Union membership, is in an urgent need to improve accountability and transparency of governing in each and every of its aspects, or in another words it should enhance the policy and regulatory framework that sets the standards for good public governance. Integral parts of such a regulatory and policy framework that supports a culture of transparency are rules and guidelines on lobbying, as well as on public consultations and participation, freedom of information legislation, rules on political parties, codes of conduct for public officials and lobbyists, mechanisms for keeping regulatory and supervisory authorities accountable and effective provision against illicit influencing (OECD, 2010). A representative democracy can be bettered through discussion and reflection, which results in more legitimate policies for all citizens. Two key terms describing a democratic system are transparency and accountability. Transparency is the ease with which the public can monitor not only the government with respect to its commitments, but also which private interests are attempting to influence the state when public policy is formulated (Broz, 2002). By accountability we mean answering to and taking responsibility for actions. At the political level, actors who are accountable for their actions include politicians, but civil servants and regulators are also under the spotlight (Chari, Hogan & Murphy, 2010).

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.). Interviews/questionnaires with three groups of stakeholders (public officials, business community and NGOs) have confirmed this statement, since the representatives of all three groups have confirmed that lobbying is present in the policy making processes in Bosnia and Herzegovina. Representatives of business community have confirmed through the questionnaire with 53,8 % of positive answers that they have already



lobbied for their interests with the state institutions, when certain public policy was created. 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. Also representatives of all three groups of stakeholders have identified lobbying as a legitimate method to present and achieve certain interests or aims through influence on public officials or legislators.

However, when asked about the perception of lobbying by the public in Bosnia and Herzegovina most of the interviewed representatives have expressed their feeling that citizens in Bosnia and Herzegovina are familiar with the expression "lobbying" itself, but they all doubt their correct understanding of this expression. The general feeling is that the public considers lobbying to be a kind of "institutionalized crime" in the executive, legislative and judicial power, or better to say they interlink it with corruption and have a very negative attitude towards it. For the purposes of a report on "Governance Structures in Bosnia and Herzegovina: Capacity Ownership, EU Integration, Functioning State", Foreign Policy Initiative BH² conducted a study on public perceptions of the state in which a focus group participants stated that there are various lobbies in Bosnia and Herzegovina (financial or energy lobbies), which with the support of political parties and religious institutions, are **privatizing the country and shaping its destiny**. They consider politicians and elected representatives to be morticians of the state, deliberately destroying its social, moral and economic cohesion. Citizens are generally distrustful of the state and do not seem to want to get closer to it, because they perceive that it can give little or nothing in return. At the same time media also often reports on different types of lobbies, such as "construction lobby", "financial lobby", "energy lobby", etc. Especially hot in the past year was the topic of "energy lobby" or "energy mafia", as some media has identified it. For example, a popular web portal DEPO has in November of 2010 published an article, which claims that the energy lobby destroys BH development projects, saying that a joint Bosnian-German investment in the renewable energy sector in BiH was stopped by different lobby interests, especially the ones of the local government. Claims presented in this or similar media reports on irregular lobbying activities in BiH have not been confirmed by any kind of investigation yet, but they should definitely be taken into account when considering lobbying practices in BiH. Presumption is that such reports are not produced "out of blue" and without any objective reasons, especially when we have in mind how often they can be seen and read in different domestic media. This presumption leads to another one, and that is the presumption that illicit practices are present in the lobbying activities in BiH.

The assessment on "Policy making and coordination in Bosnia and Herzegovina" produced by SIGMA³ finds that the policy-making and co-ordination system at all levels of Bosnia and Herzegovina is a system in transition. There is significant recognition at the top leadership levels of the need to reform the policy system, and especially to strengthen capacity for strategic advice and policy coordination. The amount of public consultations carried out as part of developing policy and legislation varies greatly from case to case. Assessment concludes that consultations with the public and with NGOs need to be improved. Council of Ministers of Bosnia and Herzegovina has in the year 2006 adopted the Rules on Public Consultations in Preparation of Legal Acts, however, as it will be discussed later on in this research, this system is not yet fully operational within the BH state institutions. The question of inclusion of different interest groups in public policy making processes is a question of access of such groups to the policy makers, these being public officials/office holders and legislators. Interviews with public officials conducted in

² The Foreign Policy Initiative BH was established in 2004 as a non-profit, non-governmental organization, dedicated to advance and influence the debate and discussion among academics, activists, and policy and decision makers in Bosnia and Herzegovina.

³ Support for Improvement in Governance and Management, a joint initiative of the OECD and the European Union, principally financed by the EU.

preparation of this research paper have shown that predominant opinion amongst them is that it is very hard for interest groups to access public policy makers. As Mr. Neskovic, Assistant Minister in the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina pointed out 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. He also pointed out that interest groups often do not know themselves how to achieve their interests and who to lobby in order to do so. The same opinion was also expressed by Mrs. Sirco, Project Manager at the Centre for Promotion of Civil Society, who underpinned the issue of capacity of NGOs to lobby for interests of civil society. Often this capacity is underdeveloped and NGOs are not able to prepare effective lobby campaigns, nor are they familiar with usage of different lobby techniques, which would enable them to achieve interests in question. This lack of capacity is often caused by lack of financial means, but also by lack of readiness by different NGOs to participate in wider NGO platforms and campaigns or by insufficient knowledge on issues that are lobbied for. Therefore, both public officials and NGO representatives have pointed out the importance of capacity building on the side of lobbyists. This point is confirmed by the statement of Mrs. Skrobic Omerovic, Executive Director at the Foreign Investors Council, who claims that FIC does not have a problem with access to public policy makers, due to the fact that their membership is composed out of some biggest foreign companies operating in Bosnia and Herzegovina. FIC represents interests of more than 30 international companies, which have invested over EURO 4 billion in BIH and they employ more than 12.000 BH citizens. On the other hand questionnaire conducted with less influential domestic associations of producers and individual companies in different economic sectors has shown that 46,2 % of the examinees consider that state institutions are not open to outside interests, while the same percentage claimed that they are only partially open and only 7,7% claimed that they are open to outside interests. At the same time, 38,5 % of the examinees stated that they find the process of making of public policies in Bosnia and Herzegovina only partially transparent, while the 46,2 % stated this process is not transparent at all. This again confirms the fact that the largest and financially stronger interest groups have less or none problems with access to the public policy makers compared to the less financially strong and less influential ones. However, the question of access to the public policy makers is not the sole responsibility of interest groups. The problem is often also on the side of public policy makers. Interviewed public officials predominantly expressed an opinion that public policy makers, i.e. public officials like themselves or legislators are often not familiar with the concept of lobbying. Therefore, they often are not even aware that they are lobbied or they refuse the contact with interests groups out of the fear they might be accused of promoting one specific interest over other ones. Of course, these kinds of fears are closely connected with the high corruption claims and constant outside and inside pressures for fighting this corruption. The issue of lobbyists’ capacity is also closely interlinked with the issue of access to the public policy makers and than again to the issue of illicit influence of certain interests. Questionnaire and interview results show predominant opinion on all sides that financially powerful interests have easier access to the public policy makers, which indicates problem of unequal access on one side, at the same time presuming that such situation opens more ground for illicit behavior and actions on the side of lobbyists, as well as on the side of public office holders.

All these findings correspond to the findings of different international reports on governance and corruption, such as World Bank Governance Indicators 1998-2009⁴, which show Bosnia and Herzegovina has made a very limited progress in the areas of Government Effectiveness, Regulatory Quality and Control of Corruption and is still significantly behind the regional average in the matter of progressing in these areas.

⁴ The World Governance Indicators organize and synthesize data reflecting the views of thousands of stakeholders worldwide, including respondents to household and firm surveys, and experts from nongovernmental organizations, public sector agencies, and providers of commercial business information. The latest update of the WGI is based on 35 data sources from 33 organizations around the world. The WGI capture six dimensions of governance for more than 200 countries and territories between 1996 and 2008. They are measured on a scale 0 - 100:

1. Voice and Accountability: the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.

2. Political Stability and Absence of Violence/Terrorism: the likelihood that the government will be destabilized by unconstitutional or violent means, including terrorism.

3. Government Effectiveness: the quality of public services, the capacity of the civil service and its independence from political pressures; and the quality of policy formulation.

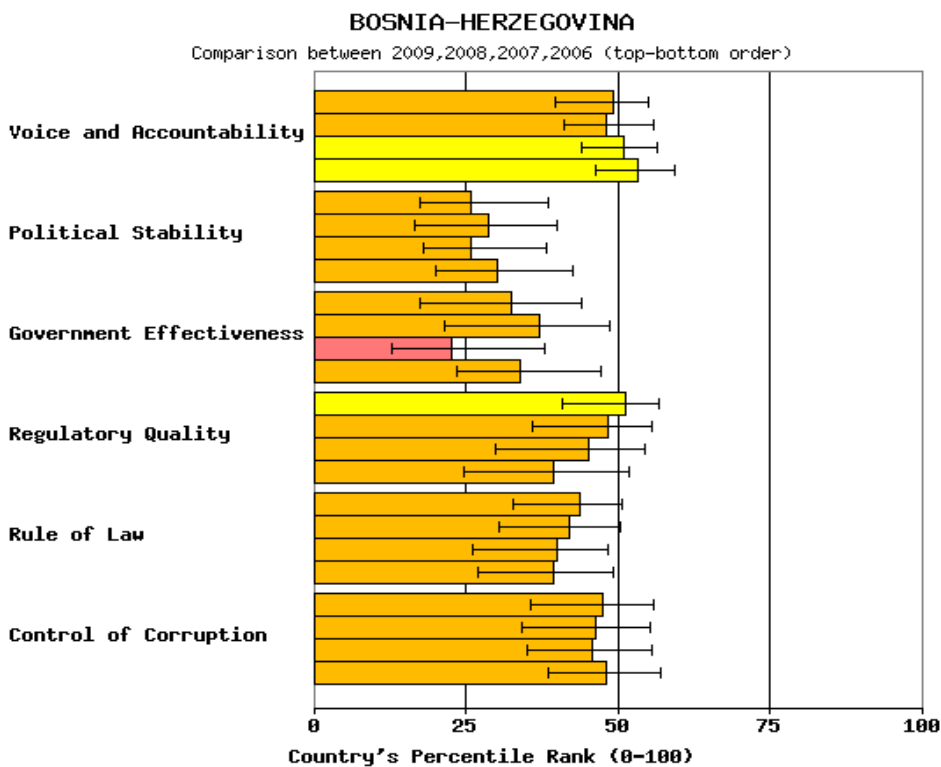
4. Regulatory Quality: the ability of the government to provide sound policies and regulations that enable and promote private sector development.

5. Rule of Law: in and abide by the rules of society, including the quality of contract enforcement and property rights, the police, and the courts, as well as the likelihood of crime and violence.

6. Control of Corruption: the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests.



Graph 1. The World Governance Indicators, World Bank Institute



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), *The Worldwide Governance Indicators: Methodology and Analytical Issues*

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

At the same time, Bosnia and Herzegovina is ranked at position 99 out of 180 countries in Corruption Perception Index 2009⁵ 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. The report also claims that distribution of the large part of GDP through government at different levels, without elementary transparency and citizens' participation in decision-making process, has completely distorted the sequence of priorities and has placed public interests far under the interests of the narrow circle of ethno-national political oligarchies. If the phenomenon of "captured state" is observed as a closed circle, influence of political elites and powerful oligarchies is manifested in producing the laws in their interest. Most of the comparative and especially specific researches done for BiH show mainly the same picture in the past 10 years. Research of the World Bank, *Anti-corruption in Transition from 2006* showed that BiH is perceived as a state in which the state capture phenomena is largest out of the 33 transitional countries encompassed by the research. Presence of the socially most dangerous types of corruption practices, respectively political corruption, which does make BiH a "captured state", is confirmed also by the *Global Corruption Barometer* of Transparency International. Citizens perceive parliament/legislature as very corrupted with the mark 3,9, on the scale from 1 to 5, where 1 indicates non-existence of corruption, and 5 extremely high presence of corruption. Complex phenomena of "state capture" has its consequences in all segments of governance, having in mind the fact that it presumes

⁵ Corruption Perception Index is the best known of Transparency International's tools. It has been widely credited with putting TI and the issue of corruption on the international policy agenda. The CPI ranks more than 150 countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys.

narrow private interests to public interests, which practically means that government does not create and conduct public policies in the public interests. The response in order to fight the corruption is a strategic planning for fight against corruption and the basic principle of the strategic planning is transparency in the creation of anticorruption polices and their implementation, with participation of the representatives of civil society, academic community and media. In order to alter status quo, it is essential that the public demands for the conduct of necessary reforms exist, which would be best articulated by strengthening of the trust in certain state pillars.

In the latest Progress Report in Bosnia and Herzegovina 2010⁶ European Commission finds that BiH needs significant further efforts towards professional, responsible, transparent and efficient state civil service based on efficiency and expertise at all levels of government. Findings of this report related to corruption confirm that BiH has achieved limited progress in the fight against corruption, which is still largely present in the public and private sector, and it affects judiciary, tax and custom authorities, public procurement and privatization. The implementation of Strategy for Fight against Corruption 2009-2014 has started and the Law on Establishment of the Agency for Corruption Prevention and Coordination of the Fight against Corruption has been adopted, however Agency is not yet operational. European Commission also notes that Code of Behavior for Civil Servants on the state level, which should regulate prevention and detection of corruption, has not been adopted yet.

The above facts and findings just confirm the fact that outside interests are present in the policy-making processes; however there are no statutory rules for their engagement in such processes. In this sense, it is important to improve citizens' knowledge about the actions of government, by rules who will allow public an 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.

Existing good governance policy framework and its implementation in BiH

Rules on Consultations in Preparation of Legal Acts

Council of Ministers of BiH has in September 2006 adopted Rules on Consultations in Preparation of Legal Acts⁷, which created legal and institutional framework for cooperation of citizens and Civil Society Organizations (CSOs) with the state public institutions in the procedure of developing, preparing and implementing the public policies, as a part of participatory democracy, which contributes to enhancement of good governance of public policies and efficiency of representative democracy. Implementation instruments prescribed by the Rules are following: appointment of the coordination officer, assessment of the impact of the legal act onto the public and determination of the form of consultation, assessment of the financial impact of the consultation, publishing of the planned normative works on the website of the institution, fulfilling of the minimal consultation obligation, developing of internal procedures for consultation process, concluding of agreements with CSOs if necessary, refusal to put the legal draft on the Council of Ministers Agenda because of lack of the consultation process. However, Report on Implementation of the Rules on Consultations in Preparation of Legal Acts in the Institutions of BiH, prepared by the Ministry of Justice of BiH in September 2010, has found out that most of the ministries and

⁶ Bosnia and Herzegovina is a potential candidate country for EU accession following the Thessaloniki European Council of June 2003. On 16 June 2008 the EU and Bosnia and Herzegovina signed the Stabilization and Association Agreement (SAA), which will enter into force once its ratification process has been completed. Annually European Commission adopts its strategy document explaining its policy on EU enlargement. The document includes also a summary of the progress made over the last twelve months by each candidate and potential candidate country (progress report).

⁷ Published in the "Official Gazette of BiH", no. 81/06



other institutions of BiH implement these Rules only partially, and even in the ministries where the Rules are implemented, this implementation is formal, not quintessential. Implementation of the rules is characterized by number of problems, which can be divided into two groups. First group are problems of functional nature and pertain to establishing and functioning of the instruments for implementation of the Rules. The key problems here are: non-fulfillment of the commitment on establishing of the implementation instruments, lack of determination on the side of the institutions to implement the Rules, lack of knowledge on the side of civil servants and CSOs for the consultations, lack of promotion of the Rules amongst civil servants, citizens and CSOs. Second group of problems are of substantial nature and pertain to the essence of conducted consultations. The key problems here are: most institutions do not fulfill their obligation to conduct consultations, other than formally, no institution except Ministry of Justice of BiH has internal procedures for conduct of the Rules, no institution has concluded agreements on consultation with CSOs and individuals, Council of Ministers has never used its right to reject to put into agenda a legal draft that has not undergone consultation procedure, the Rules regulate consultations in the phase of legal draft, but not in the early phase of public policy creation.

Besides obvious lack of implementation of the Rules on Consultations in Preparation of Legal Acts stated above, in relation to lobbying the Rules themselves have some substantial shortcomings. First is that the Rules are designed for public consultation only at the stage where legal drafts have already been prepared and published by the relevant institution, but not in the early phase of creation of the legal proposals or other public policy instruments, such as strategies. The second shortcoming is that the Rules are mainly designed for the CSOs, partially ignoring all the other interest groups. Third shortcoming is that the Rules have not identified criteria for assessment which legal acts have substantial impact onto the public, which led to the complete lack of conduct in the substantial consultation procedure.

The Law on the Freedom of Access to Information

The Law on the Freedom of Access to Information⁸ at the level of BiH was adopted in year 2000. The Law prescribes the right of every natural and legal person to access the information controlled by public body, while at the same time every public body has the corresponding obligation to publish such information. Human Rights Ombudsmen⁹ of Bosnia and Herzegovina in its Annual Report on Results of the Activity of the Institution of the Human Rights Ombudsmen in BiH 2009 has concluded that only few public institutions completely fulfill their obligations in this area. This fact implies that public institutions in BiH have not recognized this Law as an instrument for bettering of democracy, promotion of public participation when they issue decisions and achievement of greater transparency of their work. Out of 61 public institutions 5 have not appointed an officer for informing and 9 have only partially fulfilled their obligation to prepare the Guide on the Access to Information for the citizens. Besides this, significant divergences in the keeping of statistical data in this area have been noticed, which is a consequence of the fact that most public institutions have not developed mechanisms for the access to information and for keeping statistical data according to the Law. The Ombudsmen have also noted difficulties in the Law implementation in the area of prescribed exceptions. This is especially present when public institution refuses to grant access to information on the grounds of protection of personal information or public interest, without a proper explanation. The Law clearly prescribes that personal information and secret dossiers cannot automatically be exempted from the general rule of information publishing. Ombudsmen conclude it is necessary to continue the work on promotion of the Law, as a strong anticorruption tool in the hands of public, which enhances transparency of the public institutions' work.

⁸ Published in the "Official Gazette of BiH", no. 28/00, 45/06 and 102/09

⁹ Institution of the Human Rights Ombudsmen of BiH is empowered according to the Law on the Freedom of Access to Information to collect information on the implementation of the Law and to report on the situation annually.

The Law on Conflict of Interest

¹⁰ Published in the "Official Gazette of BiH", no. 16/02, 14/03, 12/04 and 63/08

The Law on Conflict of Interest in the BiH Institutions¹⁰ aims to prevent conflict of interest by prescribing special obligations for elected officials, executive officeholders and advisors in the BiH institutions, when performing public function. Conflict of interest is present in situations where elected officials, executive officeholders and advisors have private interest, which affects or may affect legality, openness, objectivity and impartiality in performance of public function. Enforcement of the provisions of this Law is a task performed by the Central Election Commission of Bosnia and Herzegovina (BiH CEC). According to the data published on the BiH CEC official website in year 2010, when enforcing the laws on the conflict of interest on the entire territory of BiH, the BiH CEC has initiated 54 proceedings for establishing responsibility of elected officials, executive officeholders and advisors, and has pronounced 35 sanctions. These decisions of the BiH CEC were challenged by 21 appeals. A total of 20 appeals were rejected, and only one was permitted. Monetary fines were pronounced in the total amount of BAM 59.000,00, whereof a total of BAM 33.946,00 was paid to the budget. However, European Commission in the Progress Report for Bosnia and Herzegovina 2010 finds that the implementation of the Law on Conflict of Interest is uneven on the territory of the entire state of BiH. European Commission notes that in the twelve months until September 2010, BiH CEC has determined 2 violations of the state Law on Conflict of Interest and 15 violations of the Law on Conflict of Interest of the Federation of BiH. Therefore, European Commission considers such implementation of the Law on Conflict of Interest insufficient in terms of the general need for the fight against corruption.

Regulating lobbying - road to transparency and accountability in governance

Bosnia and Herzegovina is at the moment a political system, which does not regulate lobbying in any manner or in another words government has still not attempted to address issue of lobbying by any kind of policy or legal proposal. On the other hand, unlike some of the neighboring countries (Serbia¹¹ and Croatia¹²) 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. 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. 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 and corruption practices in this process of policy making. 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. Introduction of statutory rules for lobbying would also send a strong message to the European Union that Bosnia and Herzegovina is ready to allow all groups to legally and transparently protect and achieve their interests.

Opinions collected from three groups of stakeholders in preparation for this research have confirmed above statement. Majority of the interviewed public officials have stated that "field information" provided by lobbyists should be more accessible for public policy makers and that

¹¹ Serbian Society of Lobbyists established and commenced its activities in January 2009 (one of primary activities is lobbying for adoption of state law on lobbying)

¹² Croatian Society of Lobbyists established and commenced its activities in June 2008 (one of primary activities is lobbying for adoption of state law on lobbying)



they would contribute to more qualitative public policies, 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. As, Ms. Sofic, Executive Director at the Directorate for Economic Planning of the Council of Ministers of BiH pointed out, regulatory framework should be comprehensive and concrete and when implemented in a same package with strong promotion (about lobbying possibilities) it would gradually alter the perception of lobbying by citizens themselves. 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, while 61,5 % thinks this access could be achieved through regulatory/policy framework for lobbying (the remaining 38,5 % feels that improved access would be partially achieved through regulatory/policy framework for lobbying). Representatives of all three groups of stakeholders agree on the issue of shared responsibility of policy makers and lobbyists. At the same time 53,8 % of business community representatives feel that regulatory framework for lobbying would change public perception of this process, while the 38,5 % stated that this perception would be partially altered.

Lobbying is a concept that goes back many centuries, however in today's globalised world it continues to have negative connotations. There is a growing international recognition of the fact that provisions on penalizing illicit influencing on public officials is not enough to maintain trust in public decision making and that policies that require disclosure of information on key aspects on communication between public officials and lobbyists are becoming vital aspects of transparency in good governance (OECD, 2009). Notwithstanding the rarity of regulating lobbying in European context, there are six lobbyists' regulatory regimes in Europe. These six countries that have national laws on lobbying are: Germany, Lithuania, Poland, Hungary, United Kingdom and France. European Union also has a framework for lobbying, which will be discussed later. Australia, Canada, USA, Taiwan and Israel are non-European states that regulate lobbying. 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). The most important element to achieve these goals of lobbying regulation is the element of "money in politics" where the potential for undue influence peddling and corruption arises and where citizens worry about whose interests have influence in policy-making. Thus, this is the element that needs the closest observation when introducing statutory rules for lobbying. 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).

POLICY OPTIONS

OECD Recommendation on Principles for Transparency and Integrity in Lobbying

On 18 February 2010, the OECD Council approved the OECD Recommendation on Principles for Transparency and Integrity in Lobbying. This is the first international policy instrument to provide guidance for policy-makers on how to promote good governance principles in lobbying. The instrument is an important contribution to support cleaner, fairer and stronger economies as it promotes open government and a level playing field for businesses and stakeholders in developing and implementing public policies. The Principles present the available regulatory and policy options to decision makers. They reflect experiences of countries with diverse socio-political and administrative contexts. The Principles were developed in parallel with the European Transparency Initiative and the Code of Conduct for Interest Representatives of the European Commission.

The 10 Principles for Transparency and Integrity in Lobbying are:

I. Building an effective and fair framework for openness and access

1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies
2. Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts
3. Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks
4. Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying.

II. Enhancing transparency

5. Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities
6. Countries should enable stakeholders – including civil society organizations, businesses, the media and the general public – to scrutinize lobbying activities

III. Fostering a culture of integrity

7. Countries should foster a culture of integrity in public organizations and decision making by providing clear rules and guidelines of conduct for public officials
8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying

IV. Mechanisms for effective implementation, compliance and review

9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance
10. Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience" (OECD, 2010).



European Union

In order to better understand the significance of the lobbying regulations in place at the European Union (EU) level and to understand which institutions lobbyists seek to influence, it is important to name the major institutions of EU, where supranational policy is made: the European Commission (EC), the Council of Ministers (CoM) and the European Parliament (EP). The first two are the dual executive of the EU, where the EC is a lead legislation initiator, while the CoM adopts, amends or rejects EC's legislative proposals, defining the EU's long-term goals. The EP is the only institution that is directly elected by citizens of the EU and it shares the legislative role with the CoM. Of the 15000 lobbyists working in the EU, it is estimated that 70 % work directly or indirectly for corporate/industrial interests, 20 % represent the interests of regions, cities and international organizations and 10 % represent trade unions and NGOs. EC senior officials rank information coming from industrial lobbyists as the next highest source, after information received by their staff members, colleagues and own research. Senior officials from all three institutions agree that the best way to receive information from lobbyists is through face-to-face meetings, written materials, and conferences, seminars and workshops (Chari, Hogan & Murphy, 2010).

In order to access the EP lobbyists must register providing their personal information and information on the organization they work for, as well as nature of their work, interests for which they are acting and which MEPs are their references. The Rule 9(4) of the Rules of Procedure of the EP says: "The Quaestors¹³ shall be responsible for issuing nominative passes valid for a maximum of one year to persons who wish to enter Parliament's premises frequently in order to supply information to Members within the framework of their parliamentary mandate in their own interests or those of third parties. In return, those persons shall be required to:

- respect the code of conduct published as an annex to these Rules of Procedure;
- sign a register kept by the Quaestors."

The register of the accredited lobbyists is available on the EP's website, but it only reveals the names of the lobbyists and the organizations they work for. As of January 3, 2011 the EP Register contains names of 1834 accredited organizations with 2863 individual lobbyists.

EC is the hot spot for lobbying activity in the EU, given its prominent role in the policy process. In June 2008 EC has opened a voluntary Register, with its web interface and database, which offers user-friendly access both to interest representatives for their online registration and subsequent updates and to the public at large, for the consultation of its content. "Interest representation" activities for which registration is expected are defined as "activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions" (European Commission, 2008). All registrants must disclose following information: name of the company, who is the head of organization, contact details in Brussels, goals and fields of interest of the organization, information on organization's membership, total revenues relating to lobbying EU institutions (professional consultancies and law firms), an estimate of cost associated with direct EU lobbying (in-house lobbyists) and the organization's overall budget and its main sources (NGOs and think-thanks). While registering, interest representatives commit themselves to the elements of the Code of Conduct, which is a part of the EC document "A framework for relations with interest representatives (Register and Code of Conduct)". The present Code contains seven basic rules, specifying how interest representatives should behave when representing their interests (European Commission, 2008):

¹³ The European Parliament elects 5 Quaestors. The Quaestors are responsible for administrative and financial matters directly concerning Members, in accordance with guidelines laid down by the Bureau.

Interest representatives shall always:

1. identify themselves by name and by the entity(ies) they work for or represent;
2. not misrepresent themselves as to the effect of registration to mislead third parties and/or EU staff;
3. declare the interests, and where applicable the clients or the members, which they represent;
4. ensure that, to the best of their knowledge, information which they provide is unbiased, complete, up-to-date and not misleading;
5. not obtain or try to obtain information, or any decision, dishonestly;
6. not induce EU staff to contravene rules and standards of behavior applicable to them;
7. if employing former EU staff, respect their obligation to abide by the rules and confidentiality requirements which apply to them.

Registered entities are informed and agree that breaches of the above rules by their representatives may lead to suspension or exclusion from the Register following a Commission administrative process paying due respect to proportionality and the right of defense.

All the data required for entry into the Registry is publicly available on the EC website. As of January 3, 2011 Register counted 3390 interest representatives.

Canada

Canada has enacted the first lobbying legislation in 1989, hence it has more than two decades of experience in implementing legislation on lobbying. The Canada Lobbying Act (federal legislation) has seen amendments in 1995, 2003 and 2008, with the aim to correct loopholes from previous acts and introducing heavier obligations for lobbyists (Chari, Hogan&Murphy, 2010). Principal focus of the Canadian Lobby Act (Office of the Commissioner of Lobbying, 2008) is registration. Individuals who are paid to lobby are required to register with the Office of the Commissioner for Lobbying. The people who lobby on voluntary basis are not required to register. The fundamental reason for the obligatory registration, as it is reflected in the legislation, is to ensure transparency and openness in democratic process. If citizens, lobby groups and office holders know who is lobbying whom this will allow for a better idea of who is trying to influence policy. Citizens will benefit because they can see which private interests are seeking to affect policy and influence state institutions; other lobbyists will benefit, because they can see what their competitors might be doing; and politicians benefit because they can be seen as open and helping increase legitimacy in the political process because there is increased transparency in policy making as far as citizens are concerned (Chari, Hogan&Murphy, 2010). The Lobbying Act is based on four key principles.

1. Free and open access to government is an important matter of public interest.
2. Lobbying public office holders is a legitimate activity.
3. It is desirable that public office holders and the general public be able to know who is attempting to influence government.
4. The system of registration of paid lobbyists should not impede free and open access to government.

The Lobbying Act covers broadly all forms of communication between lobbyists and office holder, including all oral and written, formal or informal communication. The act provides for three categories of lobbyists: consultant lobbyists¹⁴, in-house lobbyists (corporations)¹⁵ and in-house lobbyists (organizations)¹⁶. Public office holders' definition is very broad, and it includes: elected members of legislature or parliament, members of their staff, employees of

¹⁴ Individuals, who for payment, lobby on behalf of a client.

¹⁵ Employees of corporations that carry out commercial activities for financial gain: they lobby as significant part of their duties.

¹⁶ Employees of non-profit organizations, such as associations and universities.



the government and government agencies, and individuals whom government has appointed to government (Chari, Hogan&Murphy, 2010). All lobbyists are required to disclose certain information when they are registering and to re-register every six months (as long as they are pursuing political activity). These information include: their names and personal information, as well as the information on lobbying firm/employer, the names of the parent or subsidiary company that would benefit from lobbying, the organizational members of the coalition groups, the specific subject matters lobbied (including legislative proposals, bills, policies, regulations, grants, programs, contributions or contracts sought), the names of federal departments or agencies lobbied, the description of offices held and the timeline for the lobbyists who are former office holders, description of offices held together with source and amount of any government funding provided to the client and the communications techniques used.

In 1995 when the legislation was amended, provision was made for the Lobbyists' Code of Conduct which came into effect in 1997. Its purpose is to assure the Canadian public that lobbyists are required to adhere to high ethical standards, with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making. In this regard, the Lobbyists' Code of Conduct complements the disclosure and registration requirements of the Lobbying Act. Lobbyists file their registrations electronically with the Office of the Commissioner for Lobbying and the Register is well-known and heavily used by lobbyists, journalists, public office holders, citizens and other (OECD, 2009). There is a single filing approach for corporations and non-profit organizations, which means that the responsibility for registration lies with the most senior officer in the corporation, and not the individual lobbyist. The Act provides for two main types of penalties and sanctions. First ones are financial fines and the other one is imprisonment or the combination of both. The Office of the Commissioner for Lobbying enforces the Act in number of ways, such as the registration process, media monitoring, advisory letters, administrative reviews, investigations and strategic enforcement. As of January 6, 2011 the Canadian Federal Registry of Lobbyists counted 2936 registered lobbyists.

Active Registrations for: 2011/01/06	
Consultant registrations:	2142
In-house Corporation registrations:	315
In-house Organization registrations:	479
Total active registrations:	2936

Source: Office of the Commissioner for Lobbying of Canada

Poland

Poland is one of the three so called "New Member States of the EU"¹⁷ that have introduced legislation on lobbying. As an ex-socialists state, Poland has in the past two decades, as well as all the other Eastern European states, undergone the transition process towards the democracy and market economy. The social and political context of Poland's transition process is particular and the Polish people have perceived lobbying very negatively. Research consistently demonstrated that all too often lobbying in Poland has consisted of networks of

¹⁷ The fifth enlargement of the EU occurred in 2004 and 2007, when following countries have joined the EU: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, then Bulgaria and Romania (2007).

informal connections based on the principle of “reciprocity of mutual services”, where the access to the relevant decision maker was considered the key capital (OECD, 2009). Such problems are partly due to the country’s communist past, but are also related to its present. In 2006, Transparency International found that 41 % of Poles felt their politicians were not doing enough to combat corruption, while slightly smaller percentage felt that politicians were not doing enough to prevent bribery (Chari, Hogan&Murphy, 2010). Such negative public opinion was even strengthened by few lobbying affairs that took place in the mid-2000s. Those cases aside, important fact is that even in the 1990s the Polish lobbying industry was growing and simultaneously undergoing major transformation. Those who enjoyed privileged policy-making positions under communism - including state corporations and trade unions – continued to exercise significant power, particularly in the transition to democracy. At the same time, various professional groups and organizations have formed and gained strength, which led to establishment of Association of Professional Lobbyists in Poland in 2003 (Chari, Hogan&Murphy, 2010). Association developed voluntary Code of Professional Ethics for the industry and for its membership.

On July 7, 2005 Polish Parliament passed the Act on Legislative and Regulatory Lobbying, which came into force in March 2006, after it was elaborated for approximately two years by the Extraordinary Committee¹⁸, which proposed numerous amendments to the draft Act (OECD, 2009). The Polish Act’s underlying orientation is promotion of good governance through enhancing transparency of the legislative process. The Act specifically sets out that (The Parliament of Poland, 2005):

¹⁸ The Extraordinary Committee is the special body of the Polish Parliament. Usually ordinary committees work on all drafts, but if the draft is complicated or needs more attention, the Parliament can establish the Extraordinary Committee with a single purpose to work only on this specific Act.

- Lobbying means any legal action designed to influence the legislative or regulatory actions of a Public Authority (Article 2.1.)
- Professional lobbying means any paid activity carried out for or on behalf of a third party with a view to ensuring that their interests are fully reflected in legislation or regulation proposed or pending (Article 2.2.)
- Professional lobbying can be carried out by a firm or by an individual – a professional lobbyist (Article 3.3.)
- The Minister of Interior and Administration is competent to maintain the registry of lobbyists. The entry in the Register shall contain the following: the name and address of the professional lobbyist, registered office address and any other address of the professional lobbying firm concerned; and in cases of a professional lobbying firm their number in the National Court Register or their firm registration number (Article 10)
- Every February an annual report is to be published by the registrar outlining the level of the lobbying activity in the previous 12 months (Article 18)
- Fines up to cca. EURO 12,800.00 may be imposed against those who lobby professionally, but who have not formally registered. This fine may be applied multiple times for repeated breaches of the rules (Article 19).

Intention to make law-making process in Poland more transparent was built into this Act, which prescribed the Government the obligation to develop their Legislative Work Programs related to drafting legislation every six months and to publish them on their website (Article 3). Article 7 prescribes that after the Program is published, anyone can notify their interest in the legislation or the regulation involved, which is done on an official form that is then also published. Articles 8 and 9 also prescribe that where the legislative proposal has been tabled before the Parliament public hearing may be conducted. Those parties who have notified their



interest should be able to present an opinion concerning the specific draft during the public hearing. Important is also that this Act introduced the Amendments to two other acts, namely:

- The Act of 9 May 1996 on carrying out the mandate of a Deputy to the Parliament or of a Senator (Article 21),
- The Act of 8 August 1996 on the Council of Ministers (Article 22).

By these amendments leaders of the parliamentary caucuses, deputies and senators, as well as ministers, are required to publicly disclose the information on their collaborators, including: their names, dates of birth, places of employment over the three-year period, sources of income over the three year period and information concerning the business activity undertaken during the three-year period preceding the date on which the person became an employee in the parliament or the government.

The Registry of entities conducting the professional lobbying activity is maintained, as mentioned above, by the Ministry of Interior and Administration, it is public and electronically available. Separate files are kept for every registered entity entered into Register. As of August 2009, 141 entities conducting professional lobbying activities had been registered (OECD, 2009).

POLICY OPTIONS AND RECOMMENDATIONS

This research has in previous section looked into the problem of lobbying activity in Bosnia and Herzegovina, as well as into the international standards for lobbying and lobbying regulation in EU, Canada and Poland. The question is which solution would be most suitable for the lobbying practices in Bosnia and Herzegovina, in order to develop standards and rules that adequately address public concerns and conform to existing legal and administrative context? There is no doubt that there are multiple plausible solutions, however the questions leading creation of one of them in BiH is weather to undertake any steps towards lobbying policy and if yes, weather to choose voluntary or mandatory approach in designing this policy, which should be balanced, fair and enforceable? The following policy options will address these issues.

Policy option I

The first policy option would be not to undertake any steps towards regulating lobbying in BiH and leave the participation of interest groups unregulated or only partially regulated by existing public consultation policy. However, taking into account data and findings presented in the above sections, this solution would not be recommendable for the current situation in Bosnia and Herzegovina. On contrary, introduction of policy/regulatory framework for lobbying would be advisable step in this process of transition to the fully democratic society and one additional step toward enhancement of transparency and accountability in the good governance approach.

Policy option II

Another policy option would be for the government of BiH to choose to implement voluntary approach in creation of lobbying policy, similar to the one implemented by the European Commission at the EU level. This option would imply setting up of a voluntary registry for lobbyists

together with the Code of Conduct for Lobbyists. Lobbyists would be invited to register into the registry, at the same time committing themselves to the rules and principles set out in the Code. Registration into registry would allow lobbyists easier access to the legislators and policy-makers, since the later would be more open to receive and listen to the registered lobbyists and their interests. This policy option would definitely be a step forward for the transparency and accountability in the lobbying activities in BiH, however the question that comes forward is the implementation. EU, namely, had a very developed and open relationship with interest representatives even before introduction of the voluntary registry policy, which allowed for this policy to be implemented and quite successful after its adoption. The main problems that would arise when trying to implement such a policy in BiH are again the issues of equal access and transparency in lobbying process. The assumption is that again only less powerful interest representatives would voluntarily register into the register and subjects themselves to the rules of the Code of Conduct, while the larger and more powerful ones would continue to use their own channels of influence. At the same time, the fact that lobbyists in BiH have not attempted to associate and self-regulate themselves, puts forward the question of their willingness to voluntarily register for lobbying activities. This of course does not contribute either to the creation of the level playing field or the enhancement of transparency and accountability in the policy making process itself. Besides this, such policy does not touch upon the responsibility of the policy makers themselves, which is necessary in terms of the shared responsibility in lobbying process, as it was underpinned by all three groups of stakeholders, with whom the interviews and questionnaires were conducted. This is especially important, when we have in mind that the institutions at the level of BiH state lack the Code of Behavior for Civil Servants, which should regulate prevention and detection of corruption. Highly unlikely outcome of such a policy would also be a shift in perception of lobbying by the public, which is very important for the accountability of public policy makers. In case of unsuccessful implementation of such policy it is more likely that this perception would be worsened, than bettered. Success of this policy is also highly questionable, if we have in mind previously discussed policy for public consultation in preparation of legal acts, whose implementation is only partial due to the clear lack of sanctions for non-compliance on the side of policy makers and low promotion of such a mechanism amongst both policy makers and interest representatives.

Policy option III

Third and final policy considered in this research would be for the government of BiH to undertake the mandatory approach in creation of the lobbying policy, the same path Canada and Poland have taken when creating their own lobbying policies. Taking into account current lobbying practices, need for enhancement of transparency and accountability in governance approach, issues related to corruption, opinions collected from the relevant stakeholders in lobbying process, as well as the international trends in this area this research suggest this would be most plausible solution for BiH at this moment. Legitimacy and essentiality of lobbying in contemporary democratic world is not questionable and it has not been for a long time, however lobbying practices are closely interrelated with country's democratic and constitutional settings. Effective standards and procedures that ensure transparency and accountability in decision making are essential to reinforce public trust. Therefore, there is a growing recognition that regulations, policies and practices, which require disclosure of information of key aspects of the communication between public officials and lobbyists, have become vital aspects of transparency in 21st century democracies (OECD, 2009). Besides growing international drive



for mandatory regulation in the field of lobbying, questionnaire and interview results obtained from the relevant stakeholders in Bosnia and Herzegovina point in the same direction. As mentioned in the previous sections, 61,5 % percent of the business community representatives answered positively when asked if they consider that introduction of legal framework (rules) for lobbying would allow for their enhanced/institutionalized access to the state institutions, while at the same time 38.5 % consider that this would enhance their access partially. Besides this, majority of policy makers/public office holders expressed an opinion that mandatory lobbying regulation would be right approach for bettering the lobbying practices and perception of lobbying in Bosnia and Herzegovina. Most of them also pointed out that the regulatory framework for lobbying should be precise, clear, quite strict and include the shared responsibility of lobbyists and policy makers. Introducing mandatory lobbying policy, would enable government of BiH to strengthen its efforts toward more transparent and accountable governance approach, at the same time allowing for gradual creation of level playing field for interest representation, giving the public more right to monitor the public policy making processes and to gradually alter their perception of lobbying activities.

Assessment of Policy option II and Policy option III

Criteria	Policy option II	Policy option III
1. Equal access for all stakeholders/interest representatives	Unlikely, due to the fact that the registration is voluntary	Guaranteed, due to the fact that registration is mandatory in order to approach any public policy maker officially
2. Consistent with the wider policy and regulatory frameworks	Yes	Yes
3. Definition of lobbying	Broad, covering all forms of communication between lobbyists and public policy makers	Broad, covering all forms of communication between lobbyists and public policy makers
4. Definition of lobbyist and public policy maker	Broad range of policy makers and lobbyists (including both profit or non-profit entities)	Broad range of policy makers and lobbyists (including both profit or non-profit entities)
5. Degree of transparency and accountability	Low	Considerably high, with intention of improving with the longer implementation time
6. Opportunity for all stakeholders to oversee lobbying activities	Low	Considerably high, with intention of improving with the longer implementation time
7. Rules for conduct for public policy makers	Non-existent	Mandatory code of conduct, with clearly set standards
8. Responsibility for lobbying actions	On the side of lobbyists	Shared responsibility between lobbyists and public policy makers
9. Sanctions for inadequate lobbying practices and behavior	Non-existent	Clearly set sanction for both lobbyists and public policy makers (financial sanctions, removal from the registry for lobbyists and disciplinary procedures for public policy makers)
10. Altering of the public perception of lobbying	Highly unlikely	Likely, with gradual shift to positive perception over implementation time, due to the right given to public to monitor public policy making processes

Policy recommendations

This research has looked into nature of lobbying generally and it has examined lobbying practices in Bosnia and Herzegovina together with the international standards for lobbying, as well as the practices in regulation of lobbying of the EU, Canada and Poland. Although application of international standards and some of the reviewed practices in lobbying regulation would be more than desirable in Bosnia and Herzegovina, the mandatory policy approach suggested by this research must be realistic, or in another word in line with current policies and field situation. In creation of such a policy main questions would be related to the type of the appropriate legal instrument, definitions of terms of lobbying and lobbyist, definition of disclosure requirements for both lobbyists and office holders and necessity of their public availability, sanctions in case of breach of rules for both lobbyists and office holders and adequate public promotion of the policy in order to ensure its proper implementation.

Taking into account above stated question this research proposes following recommendations for the creation of mandatory lobbying policy:

1. Policy should be created through preparation and adoption of a law on lobbying, as it is the case in Canada and Poland.

In order to give the policy necessary importance and regarding the BH legal system, the most appropriate mandatory legal instrument for lobbying policy would be law adopted by the Parliamentary Assembly of BiH. The competent institution for preparation of the draft law would be Ministry of Justice of BiH, which has cooperation with the civil society at the core of its responsibilities and is already assigned the task of implementation of the policy of public consultations. Integral part of this law should be codes of conduct in lobbying for both lobbyists and policy makers/office holders, which should set clear expected standards of conduct for both parties in the process in order to address concerns of illicit influencing or corruption. This is recommendable also in the light of fostering culture of integrity in decision making – a principle set out by OECD. Of course the essence of the law would be mandatory registration of lobbyists into the publicly available registry led by the above mentioned Ministry. This policy should be constructed and implemented alongside the public consultations policy, which has been examined in the sections above.

2. Definition of lobbying included in the law of lobbying should be broad and comprehensive, as well as the definition of policy maker/office holder

The law on lobbying should broadly cover all forms of communication between lobbyists and policy makers/office holders, including all oral and written communication with the aim to influence policy creation or implementation by legislative or regulatory public authority. Same logic should be applied to the definition of public authority, which in this case should aim to cover broad range of policy makers in both legislative and executive arms of the government, including both elected officials and civil servants. Such broad definitions of lobbyists and office holders would contribute to elimination of illicit influence of vested interests, while at the same time ensuring impartiality and enhancing transparency on the side of office holders.

3. Definition of lobbyists included in the law of lobbying should encompass both profit or non-profit entities, as it is in the case of EU and Canada

In order to provide a level playing field proven necessary for better governance approach in the previous sections and to incorporate international standards into the legislation, it is neces-



sary to include both profit and non-profit entities in the definition of lobbyists. Therefore, the definition would include three groups of lobbyists: consultants (consultancies and law firms), in-house lobbyists/corporations (employees of individual firms) and in-house lobbyists /organizations (employees of NGOs, think-thanks, non-profit associations). Registration for lobbying would not prevent any of the groups to participate in the public consultation procedure in accordance with already existing rules.

4. Disclosure requirements for both lobbyists and office holders should be moderate, in order to assure that not too much burden is put upon both stakeholders

Since BiH does not have any policy regarding lobbying yet, in the first stage of introduction and implementation of law on lobbying, disclosure requirements for both lobbyists and office holders should be moderate, taking into account general administrative and financial capacities of both. Therefore, this research suggests that lobbyists should be required to disclose following information by the occasion of registering into registry of lobbyists: their names and the names of the company/organization, who is the head of the company/organization, contact details, information on organization's membership, specific subject matters of lobbying and which government institution do they seek to lobby. It is advisable that the registration is performed electronically and the register should be available for use and review for public, other lobbyists, as well as office holders. On the side of office holders, law should anticipate the obligation of the relevant office holder to communicate (orally or in writing) only to the registered lobbyist, who seeks to represent certain interest, in order to ensure equal access. On the other hand, this would be an incentive for lobbyists to register, or otherwise, they would not be able to communicate with relevant office holders, at least not officially. Office holders should also be obliged to attach in a pre-prescribed form all communications conducted with registered lobbyists to a relevant policy proposal, before sending it to the government for consideration. If suggestions of certain lobbyists were included in the policy proposal, explanation of such action should be also attached to the same proposal. After that specific policy proposal is adopted and published by all relevant instances, its' text together with all the previously named communications and explanations could be also published on the website of the institution that has led the process of preparation of that certain policy act. This way access for all interest groups would be more fair and equitable, while at the same time obligations prescribed for both lobbyists and office holders would allow general public to have an insight into lobbying activities in the public policy making processes, making the entire process more transparent.

5. The law on lobbying should anticipate sanctions for both lobbyists and office holders for breach of rules prescribed by the Codes of Conduct

As it is in the case of Poland the law should prescribe quite rigid financial sanctions for the breach of rules for lobbyists. In case of repeated breaches it would be advisable to anticipate the removal of the lobbyists from the register, which would disable his/her official access to the policy makers. At the same time it is necessary to prescribe also financial sanctions for the office holders in case of the behavior not in line with the Code of Conduct, in order to ensure shared responsibility principle. In case of substantial or repeated breaches it would be advisable to anticipate the possibility of starting the disciplinary procedures, already prescribed by other regulations for civil servants. The procedure for determining the breaches for both lobbyists and office holders should be conducted by the Ministry of Justice of BiH, upon notification by a third party or self initiatively.

6. Government should ensure adequate public promotion of the policy, in both preparation and implementation phase

In the preparation phase of the law on lobbying various interest groups, experts, as well as office holders, should be invited to participate with their opinions, comments and suggestions in order to ensure the legal act to be tailored to actual needs and situation on the field. This would also enable successful implementation of the policy in the later stage. Implementation strategy should also include promotion campaign using media, in order to raise awareness of such policy and its possibilities for all involved parties (public, media, interest groups and office holders). This campaign could be also a tool for the government to open itself more to the public, improving transparency and accountability and opening the door for the demystification of lobbying activities in the public policy processes. At the same time it would be advisable for the government to undertake steps to thoroughly inform office holders of their obligations and rights gained through this legal act, in order to ensure proper implementation on their side.

CONCLUSION

This research has already identified lobbying as 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.

Interviews

- Mr. Dusan Neskovic, Assistant Minister, Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina
- Ms. Alida Sofic, Assistant Director, Directorate for Economic Planning of the Council of Ministers of Bosnia and Herzegovina
- Mrs. Nerimana Rifatbegovic, Expert advisor, Ministry of Security of Bosnia and Herzegovina
- Mrs. Azra Tabakovic Kedic, expert advisor, Agency for Market Surveillance of Bosnia and Herzegovina
- Mrs. Bojana Skrobic Omerovic, Executive Director, Foreign Investors Council Bosnia and Herzegovina
- Mrs. Mirjana Sirco, Project Manager Network Plus, Center for Promotion of Civil Society
- 2 anonymous interviews with public office holders



Questionnaire

Questionnaire (anonymous) was conducted with individual domestic firms in different sectors and business associations.

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Useful websites:

<http://www.oecd.org>
<http://www.publicintegrity.org>
http://vpi.ba/eng/index_eng.html
<http://drustvolobistasrbije.org/index.html>
<http://www.hdl.com.hr>
<http://www.ti-bih.org>
http://ec.europa.eu/civil_society/interest_groups/
<http://info.worldbank.org/governance/wgi/index.asp>
<http://www.izbori.ba/eng/default.asp>
http://www.europarl.europa.eu/news/public/default_en.htm
http://europa.eu/lobbyists/interest_representative_registers/index_en.html
<https://webgate.ec.europa.eu/transparency/regrin/welcome.do>
http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/h_nx00261.html



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