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Lobbying Regulation

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Lobbying rules · Regulation · Transparency · Accountability · Mandatory register · Lobbyist registration · Self-regulation · Legislative footprint · Public agenda

Definition

Lobbying regulation refers to the set of rules, norms, and practical frameworks that aim to shape how lobbying is done in a specific political system. Rules include pieces of legislation and regulatory provisions such as laws or ministerial decrees; norms include codes of conduct or ethical standards enforced more or less thoroughly in the various contexts; practical frameworks refer to actual models or platforms (governmental or private) designed and used to enable lobbying and participation, for instance in consultation processes.

Such sets of rules, norms, and frameworks regard a wide range of topics and domains, relative to policymakers on the one hand and to interest groups and lobbyists on the other. These include lobbying registers (of lobbyists and stakeholders), revolving doors (between public and private offices) and conflicts of interest, political financing, public procurement and anti-corruption, the disclosure of meetings between public officials and representatives of interest groups, the transparency and the general openness of the policymaking processes, and the accountability of policymakers.

In the following sections of this entry, we provide an overview of the above-mentioned areas of lobbying regulation, with a special focus on lobbying registers (object of most scholars' attention in this field). We set out the reasons that have generally been put forward for the adoption of dedicated lobbying laws and discuss the indexes and the methodological aspects related to comparative research on different lobbying regulations.

A Wide Set of Domains

Studies on lobbying regulation represent a niche of the broader literature on lobbying and interest groups, which focuses on the various regulatory measures implemented typically by governmental authorities to shape the forms and the practices of lobbying in a given political context.

While most of the attention on this topic has focused on state laws purposely labeled as regulating lobbying or the representation of interests (starting from the oldest laws approved in the

USA at both state and federal level, expanding the view in recent decades to the limited number of countries – currently 18 – which have also adopted specific legislation on lobbying), lobbying regulation can actually be considered much broader than what the label seems to suggest. In fact, as ▶ lobbying is a complex and dynamic phenomenon, regulating its forms and channeling its practices necessarily requires us to deal with a multiplicity of domains and areas.

Such domains and areas are all those generally regarding the relationship between policymakers and interest groups as well the design of the policymaking process itself, operating under the values of ▶ transparency (disclosing what happens) and of participation (allowing fairer and unbiased participation in policy processes).

Notably, one can focus on:

- Registers of stakeholders, conceived as lists of organizations of different kinds that have an interest in participating in some policy processes. These registers can be more or less strongly connected to the access to specific policymaking arenas and can require the disclosure of a certain amount of information on the organization itself, on its representatives, and on its lobbying activities (such as the number of lobbyists employed or the amount of money spent, generally or on specific dossiers).
- Registers of lobbyists. Sometimes overlapping with the previous category, these are lists that somehow enable individual professionals to be legally acknowledged as lobbyists (see also ▶ "Lobbyist" in this Encyclopedia). These registers can also be more or less strongly connected to some obligations (such as periodic filing of reports on activities, or abiding to a code of conduct) and rights (such as permanent access to governmental buildings).
- Procedures of consultation, designed and implemented in different ways by public authorities (more or less open and inclusive/exclusive), for example, through ▶ Regulatory Impact Assessment (RIA) processes or through informal dialogues with specific stakeholders (see also ▶ "Stakeholder Consultations").
- Physical access to governmental buildings, such as Parliaments or Ministries. As every institution regulates the physical access to its own premises, this can be relevant for how lobbying is actually conducted in specific circumstances.
- Revolving doors. The expression generally refers to policymakers becoming lobbyists after the end of their mandate, thus enjoying an "undue" advantage in comparison with others in terms of "insider" knowledge, networks, etc. (see ▶ "Revolving Doors"). Some regulatory solutions are based on a "cooling off" period, which requires a certain amount of time to pass between the end of a public office (usually at top levels) and the position of lobbyist for a private organization. In this case, the criteria to be formally considered as a lobbyist become once again crucial. The revolving doors can also concern the opposite direction, with private actors getting elected or becoming policymakers, in some cases keeping their positions in the private sector, with concerns of conflict of interests or undue overlap of positions.
- Conflicts of interest. Partially related to the previous point, this issue concerns the way to address, disclose, or generally regulate potential conflicts of ▶ interest of policymakers having specific private interests, interests that can be affected by a decision taken in the public capacity.
- Political financing. As the financing of political parties and political candidates – as well as of think tanks – is one of the main strategies that interest groups can use to try to gain access to, or to exert influence over, policymakers, the legal framework concerning political financing (who can finance whom, and how transparent this should be) can be definitely considered as a relevant area to regulate lobbying as well.
- Public agendas of policymakers, with calendars of meetings of top public officials disclosed in real-time or ex-post, in order to aggregately "measure" (and account for) the contacts held with specific interest groups.

- Legislative footprints. These are more or less short reports that flank pieces of legislation or policies in general, explaining the process that led to the approval of the final decision, including the inputs of stakeholders involved and possibly an explanation of the reasons behind the choices made.
- Public procurement and anti-corruption. Public procurement (public authorities buying products or services on the market) is one important area of lobbying, with companies being directly commissioned or participating in public tenders to win such contracts. This is probably the field where the risk of ▶ corruption is higher. That is why public procurement procedures and anti-corruption measures can be considered part of a comprehensive regulatory framework of lobbying.

In addition to what is mentioned above, one may also consider other general elements of a political system which more or less indirectly affect how lobbying is done in a given context, such as the constitutional framework, the party system, the judicial system, freedom of information, the political culture, or the dimension of the State itself.

Different Kinds of Lobbying Registers

Researchers on lobbying regulation (both political scientists and legal scholars) devoted most of their attention to lobbying registers, main objects of all the pieces of legislation specifically (labeled as) dedicated to regulating lobbying (Brinig, Holcombe, & Schwartzstein, 1993; Chari, Hogan, & Murphy, 2010; Chari, Hogan, Murphy, & Crepaz, 2019; Crepaz & Chari, 2018; Greenwood & Dreger, 2013; Holman & Luneburg, 2012; McGrath, 2008; Newmark, 2005; Opheim, 1991; Ozymy, 2010; Thomas, 1998).

As mentioned, such registers may take different forms, according to the subject issuing the register, to the actors which are targeted for registration, and to the nature of the registration itself.

As for the subject creating the register, the most important distinction is between registers implemented by private actors (such as professional associations of lobbyists or lobbying agencies) and registers created and managed by governmental actors. The former are voluntary in nature and represent a case of self-regulation, being usually associated with the "moral" obligation to abide to some code of conduct (even if general concerns are usually raised over the actual possibilities of checks of compliance and sanctions, so that according to some they cannot even be considered a case of regulation; see Chari et al., 2010). The latter are issued by governmental institutions, such as legislative assemblies, ministries, or specific government agencies/offices and are indeed of various types.

As for the actors which are targeted for registration, some registers are conceived as lists of organizations (stakeholders of some policy process or in some cases lobbying firms), others are directed at individuals that professionally engage in lobbying activities (in some cases they refer only to consultant lobbyists, excluding "in house" lobbyists – this is for example the case of the UK Registrar of Consultant Lobbyists, or of the Polish Register of professional lobbyists), others combine the two types, for example, demanding the stakeholders to disclose who acts as a lobbyist on their behalf.

As for the nature of the registration, three main types of register can be identified:

1. Voluntary
2. Mandatory
3. Conditional.

Voluntary registers are open lists where individual professionals or organizations can voluntarily enroll, usually in exchange for benefits of some kind, if only in terms of reputation (Năstase & Muurmans, 2018). As mentioned above, such voluntary registers can be created by professional associations – examples can be found in Spain, Romania, or Latvia (Bitonti & Harris, 2017) – or by governmental authorities, which invite organizations and professionals to enroll offering facilitated access to premises or involvement in

consultation processes – such is the case of the German Bundestag or European Union institutions until 2014.

Mandatory registers are conceived of as lists that legally entitle enrolled actors to lobby, and that theoretically aim to prevent those not in the list from engaging in the activity. Examples of these registers may be found in the USA, Canada, Lithuania, Chile, Ireland, and France. Even if these registers are usually assessed very positively in various indexes of stringency (see section below), a number of loopholes and caveats need to be considered in some cases, regarding for example the various definitions of lobbying adopted, the exclusion of some categories of lobbyists (and of policymakers) from the domain of application, or the more or less robust policy implementation.

Conditional registers may be seen as a sort of mid-way option between the previous two, as such registers are formally voluntary, but public authorities can require the presence in the register itself as a condition to access consultation processes or to even meet policymakers. Such is the case of the Transparency Register of the European Union after 2014.

Motives for Adopting Lobbying Regulations

▶ Lobbying is regarded by scholars and practitioners as a form of participation that permits access to politics, going beyond just voting, in order to influence actions, policies, decisions, or their absence. However, the word lobbying is often regarded negatively by the general public. It is considered by many as a pejorative term associated with "corruption" and "unethical practices" (Bitonti & Harris, 2017; McGrath, 2008). Scandals have helped foster a perception that lobbying is in fact influence-peddling in which self-serving entities exercise greater than normal influence over policy outputs (Veksler, 2015).

Because of the negative perception of lobbying, demand has grown in many countries for the introduction of specific regulations addressing the practice of lobbying and the activities of lobbyists (Keeling, Feeney, & Hogan, 2017). Some governments, in response, have sought to introduce lobbying legislation with the objective of reducing the potential for corruption and supporting a level-playing field in the policy-making process for interest groups (Chari et al., 2010; Holman & Luneburg, 2012). Thus, in a theoretical sense, the justification for the introduction of lobbying regulations is founded upon ensuring both ▶ transparency and ▶ accountability in the political system and the policy-making process. It is transparency that permits the public to hold policy-makers to account for their decisions, or the lack thereof (Etzioni, 2010). If policymaking is more transparent, not only the public will be able to see how decisions are made, but the whole process will allow for better decisions through deliberative discussion and reflection.

Thus, lobbying laws try to regulate the activities of private actors who are seeking to influence public institutions (Chari et al., 2010). As Brinig et al. (1993, p. 377) point out the legislative regulation of lobbying takes "more account of the general welfare and less account of private interests." Lobbying regulations can be regarded as a constituent part of the larger objective of ▶ open government policies that have been implemented across the world in recent decades. However, it is vital that these lobbying regulations do not prevent citizens from approaching their elected representatives. Significantly, Chari et al. (2010, p. 129) note "there is no evidence to suggest that any lobbying legislation has inhibited ordinary citizens from going to see their representatives about ordinary issues."

Currently, 18 countries regulate their lobbying industries through dedicated pieces of legislation, but many of these only introduced regulations after the turn of the century, or during the second decade of the century in particular (Chari et al., 2019).

In federations, such as the USA, Canada, and Australia, there are lobbying regulations in place at the national, state, and/or provincial levels. The USA, which has the longest experience with regulating lobbying (having done so at the state level since the late nineteenth century), sought to regulate lobbying at the federal level in 1946, 1995,

and again in 2007 in response to episodes of corruption and undue influence (Chari et al., 2019; Zeller, 1948). Similarly, EU institutions first introduced lobbying regulations in 1996 and then again in 2007 to provide a level-playing field for the participation of interest groups, and strengthened these rules in 2011 and 2014 in response to the cash for laws scandal.

Despite moves on the parts of many countries' governments to regulating lobbying through specific lobbying laws, most jurisdictions in the world today trust the industry to self-regulate, or have only fragmented regulation in place (Bitonti & Harris, 2017). Nevertheless, regulations extant in neighboring jurisdictions, or emanating from international institutions, can serve to persuade countries to pursue their own lobbying regulations (Crepaz, 2017). It is also the case that political scandals involving lobbyists can push the issue of lobbying regulation onto the domestic political agenda. Of course, the election of a reform-minded administration, coming to office on a reform mandate, or a reforming political entrepreneur within such an administration (Hogan & Feeney, 2012), can also act as a driving force behind the introduction of lobbying regulations.

Comparing Lobbying Regulations

Over the years a number of different approaches have been developed and adopted in order to quantitatively measure and compare the relative strengths of lobbying regulations across countries. Opheim's index (1991) and Newmark's index (2005, 2017) focus upon domestic US regulatory developments. Holman and Luneburg (2012) seek to conceptualize the robustness of lobbying regulations while focusing on lobbying laws in Europe. Chari et al. (2010) adopted the Center for Public Integrity's (CPI) "hired guns method" for analyzing lobbying regulations, which results in what they refer to as CPI scores. They found that the CPI's index possessed more of the measurements necessary to capture the robustness of lobbying regulations – it had a higher content validity than the other indices (Chari et al., 2019). The CPI index employs eight major criteria for coding and scoring legislative texts: Definition of Lobbyist; Individual Registration; Individual Spending Disclosure; Employer Spending Disclosure; Electronic Filing; Public Access (to a register); Revolving Door Provisions (cooling-off periods); and Enforcement. These criteria encompass a total of 48 detailed questions. Based on the examination of a piece of legislation, each item contained within it is assigned a numerical value on the index according to the code given. Thus, the coding and scoring process is conducted manually.

The CPI score, a measure of the robustness of a lobbying law, is calculated out of a maximum of 100 possible points. The more points that are assigned to a piece of lobbying legislation the more robust it is. Crepaz (2016, p. 5) defines r*obustness* as "the level of transparency and accountability that the lobbying regulation can guarantee." While the CPI only applied its method of analysis to US state and federal lobbying regulations, Chari et al. (2019) applied it to all of the jurisdictions across globe that had introduced legislation regulating lobbying. This allowed for the direct comparison of different regulatory systems.

When the CPI index is applied to various countries' lobbying, legislation wide variations in the robustness of those regulations become evident. To enable better comparison between countries' CPI scores, Chari et al. (2019) set out a three-tiered classification system for the level of robustness of the regulations being examined. Regulatory environments scoring above 60 points are rated as high robustness systems, those scoring between 30 and 59 points are rated a medium robustness systems and those scoring below 29 points are considered to be low robustness systems (Chari et al., 2019). Table 1 shows, in the context of the theoretical classifications of Chari et al. (2019) and CPI index's major criteria for coding and scoring legislative text, the regulatory features that are likely to be encountered in *low*, *medium*, and *high robustness systems*.

Lobbying regulations located in the same scoring band (same robustness) tend to have broadly similar characteristics. For example, Ireland and the Canadian federal government have medium robustness systems in place that have cooling off

Lobbying Regulation, Table 1 Features of the three classifications of the robustness of lobbying laws

	Low robustness systems	Medium robustness systems	High robustness systems
Registration regulations	Rules on individual registration, but few details required	Rules on individual registration, more details required	Rules on individual registration are extremely rigorous
Spending disclosure	No rules on individual spending disclosure, or employer spending disclosure	Some regulations on individual spending disclosure; none on employer spending disclosure	Tight regulations on individual spending disclosure, and employer spending disclosure
Electronic filing	Weak on-line registration and paperwork required	Robust system for on-line registration, no paperwork necessary	Robust system for on-line registration, no paperwork necessary
Public access	List of lobbyists available, but not detailed, or updated frequently	List of lobbyists available, detailed, and updated frequently	List of lobbyists and their spending disclosures available, detailed, and updated frequently
Enforcement	Little enforcement capabilities invested in state agency	In theory state agency possesses enforcement capabilities, though infrequently used	State agency can, and does, conduct mandatory reviews / audits
Revolving door provisions	No cooling off period before former legislators can register as lobbyists	There is a cooling off period before former legislators can register as lobbyists	There is a cooling off period before former legislators can register as lobbyists

Source: Chari et al. (2019)

periods – the minimum amounts of time in which former politician and senior civil servants cannot engage in lobbying activities on account of potential conflicts of interest.

Many of the countries that have introduced lobbying regulations have tended, with a few exceptions, Hungary for example, to make those regulations more robust when it comes to amending the initial legislation. In the case of Canada, for example, its initial 1989 legislation, the *Lobbyist Registration Act*, scores only 37 on the CPI index, whereas the 2008 *Lobbying Act* scores 50. The 2008 legislation introduced larger and more significant fines for lobbyists who break the rules and new obligations. Table 2 summarizes the international situation in terms of lobbying laws according to the CPI index.

Conclusion

Lobbying regulation has deep roots in the value of transparency that requires to disclose how lobbying is done, using the "sunshine" principle as a disincentive for improper behaviors, according to a famous remark by the US Supreme Court Justice Louis Brandeis, who said "Sunlight is … the best of disinfectants" (Etzioni, 2010).

However, as the ▶ open government philosophy has clarified in the last few decades, the values of accountability of policymakers (see ▶ "Accountability in Democracies") and of stakeholders participation in policy processes are as crucial in shaping a more comprehensive regulation of lobbying in a given political context.

Scholars of lobbying regulation have generally devoted their attention to the analysis of the various pieces of legislation focusing on lobbyists and on the lobbying profession. In this framework we tackled the issue of lobbying registers, but we outlined a wider set of areas and topics that can be included in a more comprehensive analysis of lobbying regulations, pertaining to the policymaking process as much as the activities of lobbyists and interest groups. We recalled the motives that generally drive the introduction of specific laws on lobbying, and briefly illustrated the indexes of robustness to compare different regulatory frameworks.

Lobbying Regulation, Table 2 CPI scores for lobbying regulations found internationally

Lobbying regulation	CPI Score	Theoretical classification (Chari et al., 2010)
USA (2007)	62	High robustness
Canada (2008)	50	Medium robustness
Slovenia (2010)	47	Medium robustness
Hungary (2006 and abandoned in 2011)	*45*	Medium robustness
Lithuania (2001)	44	Medium robustness
Chile (2014)	42	Medium robustness
France (2016)	42	Medium robustness
Ireland (2015)	37	Medium robustness
Australia (2008)	33	Medium robustness
Austria (2012)	32	Medium robustness
JTR – EP and Commission (2014)	32	Medium robustness
Mexico (2010)	29	Low robustness
Israel (2008)	28	Low robustness
UK (2014)	28	Low robustness
Poland (2005)	27	Low robustness
Netherlands (2012)	24	Low robustness
Commission (2008)	24	Low robustness
Germany (1951)	17	Low robustness
EP (1996)	15	Low robustness

Source: Chari et al. (2010, 2019); Crepaz and Chari (2018)

Cross-References

- Accountability in Democracies
- Interest
- Lobbying
- Lobbyist
- Open Government
- Regulatory Impact Assessment (RIA)
- Revolving Doors
- Stakeholder Consultations
- Transparency

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