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A Law and Economics Analysis of Lobbying Regulation – Towards an optimal structure through the Cost Indicator Index

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A Law and Economics Analysis of Lobbying Regulation
Towards an optimal structure through the Cost Indicator Index

Een rechtseconomische analyse van regelgeving
voor lobbying

Naar een optimale structuur door middel van de
Cost Indicator Index

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Introduction

During recent years, lobbying has become an inevitable term in our daily life. The term is often used (and abused) for illustration of different situations ranging from daily politics, elections, campaigns, advocacy and even corruption! It does not surprise then that most people nowadays have a blurry idea of what lobbying actually is. The responsibility for such an inaccurate perception falls on the media, who also have blurred the perception of the process, but this has not prevented them from using it to describe a variety of situations which often do not have much to do with the term. Lobbying is simply a dynamic activity, which even further complicates all attempts at understanding and reporting about it.

Is regulation of lobbying a socially relevant topic?

The misperceptions and misunderstandings of the term lobbying unfortunately evolved in a direction where lobbying started being perceived by default as something which is negative, bad for society, democracy, the economy, equality, integrity, accountability and political image in general. This is why many lobbyists still hardly present themselves as lobbyists, especially in non-regulated environments. Being a consultant or an intermediary in many cases involves nothing but lobbying, but it also sounds less dangerous.

Public discomfort with the term was especially high whenever a lobby scandal would fill pages of the press. Even though these scandals occur rarely, they strongly affected the perception of lobbying. The Jack Abramoff scandal (2006) in the United States is probably the most infamous example of the abuse of lobbying which ended in criminal charges. The epilogue of this scandal was the conviction of Abramoff together with several White House officials, one congressman and other lobbyists involved. This scandal was probably the most important impetus for the reform of the lobbying legislation which took place in 2007, and theory offers even some evidence which correlates lobbying regulation cycles with periods of lobbying-related scandals¹.

¹ D. Lowery and V. Gray, "How Some Rules Just Don't Matter: The Regulation of Lobbyists," *Public Choice* (1997), p.145.

The EU was not immune to similar cases. The latest example from 2013 is that of former Austrian MEP Ernst Stasser. After journalists who were posing as lobbyists reported him for soliciting money in exchange for legislative influence, he was subsequently convicted for corruption and received a four-year prison sentence.

The negative public perception of lobbying was also an alarm to politicians to stay away from lobbying in the eyes of the public as much as possible². However, the constant demand for information which they create (especially in EU) has resulted in an equally constant supply of information from lobbyists, who started to concentrate in all politically or financially important cities of the world - Washington, Brussels, and London being the most in focus. This market where information is exchanged for influence on public decision-making has alarmed many watchdogs (NGOs mostly), who kept informing the public of all suspicious influence by lobbyists that endangered best public interest.

All this resulted in higher social interest in lobbying which is, among other reasons that require further elaboration, reflected in the regulation of lobbying. At one side, institutions were seeking to improve their own integrity and accountability, while politicians were trying to increase chances for being re-elected by avoiding being directly correlated with lobbyists. On the other hand, citizens and the NGOs wanted more transparency in decision-making.

Hence, the regulation of lobbying became an important social and political topic. Speaking from that point of view, regulation of lobbying is supposed to shed more light on who is seeking to influence what, why and how. It is supposed to reveal channels of influence and the key players involved. It is supposed to keep decision-making in line with the public interest as much as possible, rather than serving the private interest.

² According to a Gallup Poll regarding the public opinion of 22 different professions, lobbying is perceived as the least honest and ethical job, right after that of car salesmen. Congressmen rank a few places higher, but still three levels lower than lawyers. Furthermore, according to Pew Research, 81% of Americans believe that bribery is a common practice between lobbyists and congressmen. Obviously, the public opinion of lobbying is not high, but does the responsibility of such a negative opinion fall solely on the backs of the lobbyists and the companies for which they work, or is the problem deeper than that? - "Lobbying & Rent Seeking," n.d., <http://www.intellectualltakeout.org/library/business-and-economics/lobbying-rent-seeking>.

At the same time, the world policymaking and research arena has shown great interest in the regulation of lobbying. Their interest appears in number of studies on lobbying in general, but also on the regulation of lobbying both locally and globally. Despite this, most of these studies discuss the phenomenon from a political or purely legal point of view.

Is regulation of lobbying a relevant topic from a law and economics perspective?

At the very beginning, it would be useful to underline that this research does not aim at providing a definite answer on an important question - are there economic reasons to regulate lobbying, and if yes, which? Providing any type of a sufficient answer to this would require writing a separate book. On the other hand, this question cannot be treated as irrelevant for this research, and at least acknowledging some of the basic economic reasons for regulation should be made with regards to lobbying. Referring to potential economic reasons for regulation of lobbying in this research should be considered as an additional contribution to understanding the relevance of the topic, but certainly not perceived as an attempt to answer the question. It should be perceived as another supporting pillar of the main research question: *How can tools for the comparative assessment of lobbying regulations be improved?*

In the previous lines, the social interest of lobbying regulation was tackled in regard to transparency, integrity, democracy, etc. Similarly, purely legal reasons for regulation of lobbying would usually, as shown in the last chapter, be related to the necessity of allowing more profound exercising of political rights (the right of assembly, the right of petition, etc). Similarly, regulation of lobbying could be regarded as a contribution to the enforcement of a package of anti-corruption laws.

When it comes to economic reasons for regulation, and consequently the reasons for regulation of lobbying, things are even more complex and equally more interesting³. In explaining the economic nature of lobbying regulation, two major economic

³ For more on economic approaches to regulation and the relevant literature see J. A. den Hertog, "Review of Economic Theories of Regulation," *Discussion Paper Series / Tjalling C. Koopmans Research Institute* 10 (2010): 1-59. For more on regulations and different types of regulations see R. Van den Bergh and A. Paccas, eds., *Regulation and Economics*, 2nd ed. (Northampton: Edward Elgar Publishing, Inc., 2012).

approaches to regulation could be useful as a starting point. While one approach suggests that regulations are being made in the best public interest by a regulator who has enough relevant information to pursue the public interest (public interest theories of regulation), the other one suggests that regulators always lacks sufficient information and that regulations arise as a sum of different public and private interests involved in the process (private interest theories of regulation). Having this in mind, the economic reasons for the regulation of lobbying could be numerous and theoretically founded in both groups of theories, but in essence, lobbying is being regulated either for the protection of the public interest or for the protection and advancement of a narrower private or public interest.

The additional connecting of lobbying to some of the most important law and economic and public choice concepts will perhaps provide a slightly better insight into the relation of the regulation of lobbying and economic theories of regulation in general.

Broadly speaking, lobbying may be seen as a process where information is exchanged for the (possibility of) influence. If one assumes that regulation protects the public interest without significant cost (Posner 1974)⁴, then regulation of lobbying could be interpreted as a tool for the protection of the public interest from the assumed negative influences of lobbying. In other words, this regulation should fight market failures which could arise as a consequence of an unregulated lobbying market. Although these market failures are not certain, discussing their possible influences is useful for understanding the academic complexity of the problem, and the importance of careful lobbying regulation in regulatory practice.

For instance, linking lobbying with the asymmetry information problem (Akerlof 1970)⁵ could provide more insight into the potential dangers of lobbying in general. Before getting to that point, it is interesting to note that one can actually see the lobbying process as a tool for information asymmetry reduction, since lobbying increases the information flow from the private to the public sector and vice versa. However, it should not be forgotten that this assumption is predicated upon many preconditions and factors.

⁴ R. Posner, "Theories of Economic Regulation," *The Bell Journal of Economics and Management Science* 5 (1974): 335–358.

⁵ G. Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," *The Quarterly Journal of Economics* 84, no. 3 (August 1970).

One of the most important ones is the equal degree of access to the decision makers. If the degree is unequal, things become more complex.

In cases where different players have different degrees of access to information (primarily in terms of supply), it is difficult to estimate whether lobbying contributes to increasing or decreasing information asymmetry as the information flow is disrupted.

Hence, a lobbying regulation designed to be capable of creating equal conditions for all who wish to supply and receive information could be an answer to this problem. In other words, if a law on lobbying would successfully create conditions where all interested lobbying players could communicate their interest in the same way (having the same degree of access to decision makers), then regulation of lobbying would be a step forward in the reduction of information asymmetry which arises from unregulated lobbying activities.

Thus, the regulation should ideally allow lobbying to contribute to the reduction of information asymmetry and to the improvement of allocation efficiency. Of course, all this is true only under the assumption that regulators have all the necessary information while enforcement is expected to be perfect, and this assumption is not easy to defend (Sappington and Stiglitz 1987)⁶.

Another puzzling question to be asked in relation to the same concept is whether having more players in the lobbying market is better or worse for the information flow, and is there perhaps any relation between the number of lobbying players and the adverse selection problem?

Lobbyists have far better knowledge on the quality of the information they supply in the lobbying market than the regulators who demand it, and who moreover face costs whenever attempting to determine the quality of supplied information (Coase)⁷. As regulators are not able to distinguish high-quality information from the *lemons*, they might not be interested in paying an adequate price (grant the adequate access, Bouwen 2002)⁸ for high-quality information, which might cause suppliers of high-quality

⁶ D.E.M. Sappington and J.E. Stiglitz, "Privatization, Information and Incentives," *Journal of Policy Analysis and Management* 582 (1987): 567–582.

⁷ R. H. Coase, "The Problem of Social Cost," *The Journal of Law and Economics* 3 (1960).

⁸ P. Bouwen, "Corporate Lobbying in the European Union: The Logic of Access," *Journal of European Public Policy* 9, no. 3 (January 2002): 365–390.

information to leave the market. This could result in a lower average quality of information at the side of the supply.

Will this lead the ones with the best information outside of the lobbying market, as there is no regulator willing to sufficiently reward the high-quality supplier? How real is this fear and is the regulation of lobbying a tool to deal with it?

Perhaps an unregulated lobbying market is also capable of dealing with these challenges. A way of thinking of this is to make a parallel between the process of lobbying and the process of signalling⁹. Those who lobby intensively might be aware of the high quality of their information, and by being able to send a strong message, they indicate the quality of their information and their competitive market strength (Nelson 1974)¹⁰. Since sending an informative signal comes at a certain cost, those who are signalling stronger might be creating the conditions where they could be recognized as providers of high quality information¹¹ and where they become sufficiently rewarded by an appropriate degree of access.

A similar standpoint has been developed within political sciences under the concept of *elite pluralism* (Broschied and Coen 2007)¹² where high-quality information supply (in the competitive market) is being rewarded with more access to decision-making.

These ideas deserve much more elaboration in any case, but even discussing the potential problems contributes to higher understanding of the complexity and the nature of lobbying and its regulation.

Following the same path, yet another interesting correlation could be established. The connection of lobbying and rent-seeking is interesting, as the latter explains the dissipation of resources which are spent on lobbying instead of on the improvements of

⁹ S. Lohmann, "A Signaling Model of Informative and Manipulative Political Action," *American Political Science Review* 87 (1993).

¹⁰ P. Nelson, "Advertising as Information," *Journal of Political Economy* (1974): 729-754.

¹¹ R.L. Calvert, "The Value of Biased Information: A Rational Choice Model of Political Advice," *The Journal of Politics*, 1985.

¹² A. Broschied and D. Coen, "Lobbying Activity and Fora Creation in the EU.," *Journal of European Public Policy* 14, no. 3 (2007).

production (Tullock 1967; Buchanan et al. 1983)¹³. In other words, the problem is that market players could be incentivised to excessively spend their resources on "purchasing" favourable laws, instead of improving their products, developing cost-cutting technologies, investing in R&D, etc. This problem does not only reflect the losses in efficiency (Heckleman and Wilson 2013)¹⁴, but it also indicates the problem at the side of the regulator¹⁵, which might get captured by different interest groups and make laws which advance special, rather than the general public interest (Stigler 1971; Peltzman 1976; Tirole 1986)¹⁶. In the case of an unregulated lobbying market, an additional threat in this sense would be a wide open revolving door opportunity, which could additionally and dangerously shift the decision-making process towards the private, instead of the public interest¹⁷.

The supply and demand for regulation seen this way raises some concerns as it suggests that groups with strong interests or large membership might represent a danger for regulators who have to resist their pressures and make decisions on behalf of the

¹³ G. Tullock, "The Welfare Costs of Tariffs, Monopolies and Theft," *Western Economic Journal* (1967): The Welfare Costs of Tariffs, Monopolies and Theft; J. Buchanan, G. Tullock, and R. Tollison, "Toward a Theory of the Rent-Seeking Society," *Public Choice* 41, no. 2 (1983): 339–345.

¹⁴ J.C. Heckelman and B. Wilson, "Institutions, Lobbying, and Economic Performance," *Economics & Politics* 25 (2013): 360–386.

¹⁵ Here, it would be useful to make one distinction, as lobbying regulation literature usually does not differentiate between regulators and legislators. Both terms are in use and they stand for a body which is in charge of regulating lobbying. However, the capture theory on informational lobbying makes this distinction. While regulator is meant to be a single-body in charge of regulation (an agency for instance), the legislator is a multi-member party in charge of regulation (an assembly for instance). For more see M. Bannedsen and S. E. Feldmann, "Lobbying Legislatures," *Journal of Political Economy* 110, no. 4 (August 2002): 919–946. For the sake of clarity, this research will equally treat both terms in the sense that they refer to a body which is responsible for the regulation of lobbying. As the research is comparatively oriented and in different countries different bodies would be responsible for lobbying regulation, both terms are equally valid and this research and its results are assumed to be insensitive to the distinction.

¹⁶ GJ Stigler, "The Theory of Economic Regulation," *The Bell Journal of Economics and Management Science* 2 (1971): 3–21.; S. Peltzman, "Toward a More General Theory of Regulation," *Journal of Law and Economics* (1976): 211–248.; J. Tirole, "Hierarchies and Bureaucracies: On the Role of Collusion on Organizations," *Journal of Law and Economics* 2, no. 2 (1986): 181–214. For better understanding of the complexity of the problem and capture theory in general see also: C. Woll, "Who Captures Whom? Trade Policy Lobbying in the European Union," in *Lobbying in the European Union: Institutions, Actors ...*, ed. D. Coen and J. Richardson (Oxford University Press, 2009), 268–288; D. Helm, "Regulatory Reform, Capture, and the Regulatory Burden," *Oxford Review of Economic Policy* 22 (2006): 169–185; E. Dal Bó, "Regulatory Capture: A Review," *Oxford Review of Economic Policy* 22 (2006): 203–225.

¹⁷ For more on revolving door from the capture perspective see papers (also reviewed by E. Dal Bó, 2006): Y. Che, "Revolving Doors and the Optimal Tolerance For Agency Collusion," *Rand Journal of Economics* (1995): 378–397; D. Salant, "Behind the Revolving Door: A New View of Public Utility Regulation," *Rand Journal of Economics* (1995): 362–377.

public interest¹⁸. Should businesses, represented by well-funded interest groups, have such a dominant and influential role in the legislative process (Hanson and Yosifon 2003)¹⁹? Although some empirical findings suggest that capturing regulators is not necessarily certain in all cases (Young 2012; Falaschetti)²⁰, the fact that lobbyist continue to invest more and more funding in lobbying each year suggests that this brings them profits²¹.

Once when a "wanna-be monopolist" believes he has finally acquired the desired monopole position, the race starts over as now he has spent additional resources in defending this position against other players, who also spend resources in competing for the monopole position. Hence, rent-seeking is not only referring to activities directed at obtaining, but also at maintaining favourable wealth transfers, which might be a significant burden to economic growth and efficiency. This might be a strong statement, and theory allows some flexibility when it comes to rent-seeking and lobbying. In fact, it is quite difficult to assess which lobbying impacts were wasteful and which were not (E.C. Pasour, Jr 1987)²².

Yet, it is hard to predict what consequences the regulation of lobbying might have on rent-seeking behaviour. As lobbying regulation is generally connected with improvement of transparency, another question is whether more transparent lobbying will reveal rent-seeking tendencies? How would that influence the competition among lobbyists, and is that competition beneficial at all from the public point of view (Becker 1983)²³? Would,

¹⁸ "The demand for regulation would be connected primarily to two features of the group of beneficiaries. First, whether the beneficiary group is large and, second, whether the group has large stakes in regulation. Excessive group size could hamper successful organization of the beneficiary group... Large stakes could mobilize group members and give them an incentive to demand regulation. On the supply side, one would have to pay attention to the machinery that produces regulation: the public sector, which responds to political pressures." - E. Dal Bó, "Regulatory Capture: A Review.", p.205.

¹⁹ J. Hanson and D. Yosifon, "The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture," *University of Pennsylvania Law Review* 152 (2003): 129.

²⁰ K. Young, "Transnational Regulatory Capture? An Empirical Examination of the Transnational Lobbying of the Basel Committee on Banking Supervision", *Review of International Political Economy* 19 (2012): 663-688; D. Falaschetti, "Can Lobbying Prevent Anticompetitive Outcomes? Evidence on Consumer Monopsony in Telecommunications.", *Journal of Competition Law and Economics*, (2008).

²¹ *Lobbyists, Governments and Public Trust - Promoting Integrity through Self-Regulation (Volume 2)*, 2012. p 29.

²² E.C. Pasour, "Rent Seeking: Some Conceptual Problems and Implications," *The Review of Austrian Economics*. (1987): 123-145.

²³ G.S. Becker, "A Theory of Competition Among Pressure Groups for Political Influence," *The Quarterly Journal of Economics* 98 (1983).

perhaps, the price of the unrestricted lobbying competition be below or above the price of transaction costs required by the state to establish a fair competing environment (Goldberg 1979)²⁴, and would such a goal be feasible at all (Stigler and Friedland 1962; Posner 1971)²⁵? Would more transparency in lobbying, as some new studies suggest, attract more players which would compete more harshly and dissipate more (Denter, Morgan and Sisak 2011)²⁶, or perhaps restrictiveness of lobbying regulations do not have an impact on that (Lowery & Gray 1997)²⁷?

Answering these questions would certainly be a great contribution to better understanding if lobbying should be regulated, and what that regulation should look like, but also an important contribution to the normative law and economic analysis of lobbying regulations. If lobbying regulation is supposed to be an effective tool for reduction of distortive effects on the market (Svendsen 2011)²⁸, there are at least several economic (prevention of anticompetitive outcomes, reduction of asymmetry of information, prevention of regulatory capture, adverse selection treatment, reduction of efficiency losses²⁹) and social reasons (improvement of accountability and integrity of institutions through the improvement of transparency in lobbying) to believe that lobbying should be regulated to some extent.

However, it should be acknowledged that lobbying regulations are anyhow getting adopted, improved and removed in real life circumstances. The official motivation behind this tendency is usually satisfaction of political and social goals, while economic reasons are left completely out of the debate.

This research, by studying the cost-benefit nature of existing lobbying regulations, tends to expand the scope of the discussion and emphasize that satisfying goals of

²⁴ V. P. Goldberg, "Regulation and Administered Contracts," *Bell Journal of Economics* 7 (1976): 426-448.

²⁵ G. Stigler and C. Friedland, "What Can Regulators Regulate? The Case of Electricity," *Journal of Law and Economics* 5 (1962): 1-16; RA Posner, "Taxation by Regulation," *The Bell Journal of Economics and Management* (1971): 1097-1133.

²⁶ P. Denter, J. Morgan, and D. Sisak, "'Where Ignorance Is Bliss, 'Tis Folly to Be Wise': Transparency in Contests," 2011.

²⁷ D. Lowery and V. Gray, "How Some Rules Just Don't Matter: The Regulation of Lobbyists."

²⁸ G. T. Svendsen, "Evaluating and Regulating the Impacts of Lobbying in the EU? The Case Study of Green Industries," *Environmental Policy & Governance* 21 (2011): 131-142.

²⁹ "Various laws and rules directed to limiting the influence of pressure groups can be explained as instruments to limit wasteful expenditure on political pressure (Becker)" - J.A. den Hertog, "Review of Economic Theories of Regulation," *Discussion Paper Series / Tjalling C. Koopmans Research Institute* 10 (2010): p.27.

accountability and transparency comes at a certain cost for the society. It stresses that regulation of lobbying should take into greater consideration the economic effects of different regulatory approaches, and stimulates more research in this direction, especially in a comparative perspective.

Being inclined rather to the positive than to a normative approach, the research focuses on the actual regulations, their structure, and likely effects of specific structural approaches in adopting regulations. It offers an additional tool for improvement of comparative analysis of these structures by highlighting examples of successful and less successful practices, so that policymakers and researchers have more tools for potential optimization of both existing and newly introduced lobbying regulations.

Thus, the central question of this research, having in mind the gaps in the literature and practice, is: *How can tools for the comparative assessment of lobbying regulations be improved?*

At the moment, researchers and policymakers have only tools that are good proxies for the measurement of the benefits of lobbying regulation, with the CPI Index³⁰ as the most advanced tool. In contrast to that, both literature and practice have limited tools to study the compliance and enforcement costs of lobbying regulations.

The Cost Indicator Index (CII), introduced by this research and partially built on the CPI Index framework, represents an important innovative addition to the assessment of the costs of lobbying regulation. By combining the results from these two indices, the research offers a completely new platform for the assessment of cost-benefit features of lobbying regulations, and it demonstrates its applicability, especially in comparative research. Hence, the introduction of the new tool to the research arena is perhaps the most important contribution of this work.

However, it has to be underlined at the very beginning that the methodology can be further improved in the future, and some recommendations in this sense will be given as well. The results obtained by the application of the CII should be taken with some reserve due to their indicative nature, which is a consequence of material and time constraints,

³⁰ For details on CPI Index see Chapter II, Section III.

and difficulties in reaching a higher number of respondents in questionnaires that were used.

Another limitation, which will be discussed in Chapter III, is the challenge of establishing the CII thresholds, where certain decisions were taken in order to provide an as good classification of the CII results as possible. This has influenced the results to some extent, but not significantly. More fine-tuning in this segment would be useful in the future, but what remains important is that it is demonstrated that the CII methodology works in different scenarios, even in its current state of development. Perhaps, one should look at it as on a well designed and already functional prototype, which would certainly benefit from some fine-tuning in the future.

The last important issue to be tackled is the definition of lobbying. In other words, how much is this research sensitive to different conceptual views on lobbying? As the analysis is positive, the research focuses on different lobbying definitions that appear in different laws, but the new methodology is robust enough to deal with all definitions of lobbying that exist in different lobbying regulations.

The scope of the definition definitely plays an important role³¹. In case of the CII methodology, the type of definition may also slightly influence the cost-benefit ratio of the entire law. The CII framework also additionally allows a comparative cost-benefit assessment of different definitions, based on their scope and structures. For instance, the CII looks at whether lobbying in the executive branch is also included in the definition, as some laws recognize lobbying only within legislatures. This automatically narrows down the target group of the law and lowers overall compliance and enforcement costs. Hence, a proper definition is important.

What is considered as lobbying in this research is determined by an analysis of particular laws, and that definition is afterwards evaluated through the cost-benefit framework. General literature on lobbying offers many different definitions, and it is sometimes useful to refer to them in order to better understand what the research is

³¹ L.H. Mayer, "What Is This 'Lobbying' That We Are So Worried About?," *Yale Law & Policy Review* 26 (2008): 485. The author also emphasizes that having a single definition of lobbying would be beneficial for regulators, but at the same time since lobbying is a dynamic discipline and it has different appearances in different circumstances, using different definitions is reasonable and sometimes more effective.

about and to understand that there are many conceptual differences between similar processes that are misperceived as lobbying activities³².

The research starts with an overview of academic literature on lobbying regulation, identifies the research gap and introduces the research question (Chapter I). This review enables the reader to get inside of the lobbying regulation research arena, and it points out that economic analysis of the regulation of lobbying is relatively scarce.

The analysis continues towards an exploration of the main trends in lobbying regulation policymaking (Chapter II), which focuses mostly on Europe and the US. The purpose of this part was to provide an overview of lobbying regulation activity in general, and to explain the main differences in the US and the EU, which are the most important lobbying markets. At the same place, it is demonstrated and highlighted that estimation and studying of the effects of lobbying regulations is lacking, and that there are very few tools for comparative assessments of lobbying regulations.

After analysing the literature and regulatory tendencies around the world, the next part (Chapter III) offers a theoretical framework for the design and the application of newborn tools. Here currently available tools are discussed and explained. A detailed explanation of the CPI index which is used as the foundation for the CII is equally provided. Also, the entire evolution of the creation of the CII is explained, with special

³² There are different views on what should be considered to be lobbying and what not. Rival (2008) uses the definition of Farnel (2008) which states that lobbying are all *those political actions of firms that are meant to influence public decisions including, inter alia, laws, regulations or other things*. The definition of the Chartered Institute of Public Relations (CIPR) has even wider approach which explains what is lobbying by describing the activity of lobbying. For CIPR, lobbying represents *The specific efforts to influence public decision making either by pressing for change in policy or seeking to prevent such change. It consists of representations to any public officeholder on any aspect of policy, or any measure implementing that policy, or any matter being considered, or which is likely to be considered by a public body*. For this research, these and other similar definitions are too narrow as it is difficult to expect that all definitions from actual laws will be able to fall under one of them. Generally, what this research sees as lobbying are all type of formal and informal legal activities motivated by economic, social, political and other reasons, which are aimed at influencing lawmaking and law execution. Last but not the least important, it is useful to mention that theory (more than practice) also makes differences between lobbying groups, pressure groups, interest groups, activities of advocacy, etc. For more on these differences see S. Serenari, "Lobbying in European Union: Access to the Decisional Process" (Peter Pasmány University, Budapest, Hungary, 2005). Serenari also emphasizes that there are differences in the nature of the promoted interest. Not every interest has to be necessarily corporate driven (NGOs for instance usually use advocacy to promote certain values, and in some laws they might stay outside of the regulatory monitoring), and hence, the levels and types of influences can vary as well. In this paper, Serenari defines lobbying as *coherent and effective activity directed by a party (the promoter of a partisan interest) to address the choice of a public institution, which means to produce a legal effect, as public bodies always act and react through legal activities*.

reference to the world of RIA, Central Banks Independence and Regulatory Independence literature in regards of indices constructing methodology. At the same place the theoretical framework for qualitative analysis of lobbying regulations (The Ninefold theory) is also introduced, as well as an additional tool for the isolated assessment of individual law's articles (Cost-Benefit Labels).

The last part of the research (Chapter IV) demonstrates the application of the CII and its theoretical framework in a case study of the Western Balkans, with a special focus on Serbia. The explanation for such a choice comes from the fact that exactly these transition countries have become European leaders in lobbying regulation, although they have not had much success in introducing lobbying laws. Another reason for choosing this area is that it has not been sufficiently studied so far, mostly due to the language barriers, so for many lobbying regulation researchers this chapter can be a useful source for expanding their knowledge on lobbying regulation in this area.

Chapter I - A Law and Economics view on EU-lobbying regulation literature

1.1. Introduction

This Chapter reviews the most important academic and policy papers on lobbying regulation in the EU, both from a comparative and a *sui generis* perspective, focusing mostly on the period from 2000 onwards. It also indicates the most relevant studies related to understanding of the EU lobbying context, but it primarily focuses on specific lobbying-regulatory issues. Mentioning the most important studies on the EU level and the member states' level, it reveals areas where further research might be necessary for improved policymaking in terms of lobbying regulation. Most importantly, this part helps the reader to understand the background and relevance of the central research question - *How can tools for the comparative assessment of lobbying regulations be improved?* Some views on economic reasons for the regulation of lobbying were tackled in the introduction, and it will not be discussed in depth in this part again.

The chapter suggests that the debate, in general, suffers from a lack of regulatory impact assessment arguments related to the structure of regulatory models that are widely suggested. More precisely, a concept of costs related to lobbying regulations is not sufficiently developed and the debate mostly remains focused on costs of entry, while it ignores the social costs related to higher competition among lobbyists that may arise with greater transparency involved.

When it comes to a trans-Atlantic comparative approach, this chapter suggests that a more precise comparative analysis would be useful to estimate the real effects of the New Transparency Register of the EU. On the top of this, development of other additional comparative tools could be beneficial for cross-country legal transplantations of the best practices.

1.2. Theoretical and policy treatment of lobbying regulation in the last decade.

Lawyers and political scientists are by default mostly interested in the impact of lobbying on democracy, accountability and transparency. Consequently, economists look

on its economic impacts over society, or they look to it as to a strategic economic tool for the advancement of the economic interest of a company..

Hence, the chapter will review the major policy issues and theoretical works that were debated over the last decade exclusively in terms of the regulation of lobbying, mostly leaving other issues and debates related to lobbying in general outside the scope of the research.

Additional narrowing of the scope will be the application of a specific timeframe for the research. This Chapter will mostly deal with studies and researches from 2000 onwards, since most lobbying regulations come from this period. The work will start firstly with a brief overview of the most important and recent scientific works on lobbying in general, as those findings seem to be necessary for understanding the framework for the main area of this research – lobbying regulations.

1.2.1. Lobbying research challenges – a theoretical approach to lobbying in the last decade. Review of the key-issues that explain the context of EU lobbying regulation.

As the importance of lobbying started to increase over the last two decades in Europe and the rest of the world, except the US where it has been debated for more than five decades continuously, the academic community became more involved in providing theoretical and empirical studies dealing with different aspects of lobbying.

Without any doubt, among the most explored issues was the institutional demand³³ on information in the EU (*Bouwen 2002, 2004, 2010; Lehman 2011; Hayes-Renshaw 2011; McCown 2011; Saurugger 2011, Weslake 2011; Greenwood 2003; Eising 2004; Michalowitz 2004; Broscheid & Coen 2006; Mahoney 2004*).

This group of authors has introduced several fundamental theoretical ideas to the EU lobbying debate, mostly founded on information interdependency between the EU and the private sector. They provided theoretical and empirical data on those public-

³³ Probably the only study that directly focuses on this demand in an economic sense is the economic analysis of post-Lisbon EU lobbying (H. Hauser, 'European Union Lobbying Post-Lisbon: An Economic Analysis', *Berkeley J. Int'l L.*, 76 (2011), 680-709). He actually argues that after the Lisbon treaty it may be anticipated that the demand and supply of information will shift from their previous positions, mostly debated by Bouwen (P. Bouwen, 'Corporate Lobbying in the European Union: The Logic of Access', *Journal of European Public Policy*, 9 (2002), 365-390).

private and inter-institutional dependencies, explaining how each of the EU institutions has a different demand on different types of information³⁴. Starting from the very early works of Van Schendelen (1993)³⁵, one of the most cited authors in this domain, Bouwen has introduced a theoretical framework for corporate lobbying in the EU³⁶, by linking each of the EU institutions with the respective type of information they demand from the private sector. Bouwen further argues that the European Commission creates most of the demand on “expert-knowledge” as it has very limited institutional capacity to obtain relevant knowledge on its own.

Economically speaking – the Commission faces huge costs for obtaining relevant information necessary for efficient policymaking. Similarly, the EU Parliament creates demand on information of “European Encompassing Interest” while the Council relies on the “Domestic Encompassing Interest” type of information. This theory was the first complete theory which described the interdependencies between the EU institutions and the stakeholders³⁷.

In 2011 this approach was further extended by several important studies with specific analysis of the institutional demand for the Commission (*Bouwen 2011*); the EU Parliament (*Lehmann 2011*); The EU Council (*Hayes-Renshaw 2011*); the European Court of Justice (*McCown 2011*); the COREPER (*Saurugger 2011*) and the European Economic and Social Committee (*Westlake 2011*)³⁸. Additional studies, on the other hand (*Broscheid and Coen 2006*)³⁹, were investigating the incentives for having a “policy fora” in some policy areas, while in the other ones it does not exist. In addition, they explored why the number of actors significantly differs over the policy sectors.

³⁴ The European Commission is dependent on the Expert Knowledge (P. Bouwen 2002, 2003; F. Pappi and C. Henning 1999), the European Parliament on information containing the “European Encompassing Interest” and the EU Council on information containing the “Domestic Encompassing Interest”.

³⁵ M. Van Schendelen, ed., *National Public and Private EC Lobbying* (Aldershot: Dartmouth, 1993).

³⁶ P. Bouwen, *supra* n.33

³⁷ Stakeholders is a term widely used in the literature on lobbying in the EU, and in this sense refers to different pressure groups, interest groups, lobbyists and all the parties participating in the public affairs arena in Brussels. All of them interact in some way with the institutions of the EU and the EU needs them to improve its lacking legitimacy.

³⁸ These papers were published all together in D. Coen and J. Richardson, ed., *Lobbying the European Union: Institutions, Actors and Issues* (Oxford University Press, 2009).

³⁹ A. Broscheid and D. Coen, ‘Lobbying Systems in the European Union: A quantitative Study’, MPIFG Working papers 06/3.

Relevant scientific attention was also given to the reasons for “*the strategic choices made by lobby groups when venue-shopping*” (Eising 2004)⁴⁰. Here, the author correlates specific legal changes (the Lisbon Treaty) with the shift of choices⁴¹ of lobbyists towards the EU Parliament, which became a more attractive venue for lobbyists.

There were also works which studied the institution-stakeholder relationship in an empirical manner (Mahoney 2004)⁴². By analysing nearly 700 civil society groups active in Brussels, the author explains how the EU institutions influence the activity of interest groups by distribution of subsidies, creation of formal arenas for debate and other means of influence.

The group of above-mentioned theories represents the essential foundation for further understanding of the anatomy of EU-lobbying, especially in respect to its regulation and improvements of transparency. These theories helped in the demystification of core relations between the EU institutions and the private sector that seeks to influence them. In that sense, the level of dependency of the institutions (which is widely considered to be high) may explain why there are still no solid rules on lobbying activities in the EU.

The second group of studies is more focused on techniques of influence and the main actors in the EU lobbying arena (Gueguen 2007; Coen & Richardson 2009; Coen 2003, 2004; Burson-Marsteller’s reports from 2005 and 2009; Long & Lorinczi 2011; Thomas and Hrebenar 2000; Serenari 2005; Bouwen & McCown 2004; McGrath 2002; Pedler 2002).

Along with the exchange and demand theories, a significant number of scholars were working on determining the most used lobbying strategies and tools in Europe, how private interest is organized, what positive and negative practices are involved in lobbying, and ultimately the similarities with the US in this segment.

⁴⁰R. Eising, “Multilevel Governance and Business Interests in the European Union,” *Governance* 17, no. 2 (2004): 211–245.

⁴¹For a more economic point of view on the same issue see: Henry Hauser, ‘European Union Lobbying Post-Lisbon: An Economic Analysis’, *Berkeley J. Int’l L.*, 76 (2011), 680–709.

⁴²C. Mahoney, “The Power of Institutions: State and Interest-Group Activity in the European Union,” *European Union Politics* 5, no. 4 (2004).

When it comes to more practical works, a comprehensive EU-lobbying guide-book (*Gueguen 2007*)⁴³ was published in 2007 which is probably considered as the best practical and most accessible piece of work, but at the same time the least academic one. The author's respectable practical experience and a wide professional network in Brussels helped him to bring a new light on the anatomy of most important lobbying groups, trade associations, companies, NGOs and syndicates.

The author also examines the most common tools and strategies used, and supplements them with a number of real-life cases and interviews with the most prominent lobbyists and decision-makers. Within this less academic literature, three very informative reports prepared by Burson-Marsteller⁴⁴ (*2005; 2007; 2009*), with a variety of useful statistical data on EU lobbying, could be added. They examine the perception of lobbying in the EU, investigate what are the most effective roots of influence, measure lobbying effectiveness, compare effectiveness of corporate v. NGO lobbying, etc.

Surely, there are studies that more generally and academically explain the complex network of actors and tools in use in the EU. "*This paper surveys the history of European Lobbying and recent empirical studies on current practice. It presents some key results on the structure, methods and strategies of professional interest representation in Brussels*" (*Coen 2007*)⁴⁵.

The author tracks the historical development of lobbying, explains how the channels of influence evolved during the last decade and how firms and institutions adapted to those changes. A similar approach, but rather with a strong focus on the definition of the key-terms in the EU arena is offered by Serenari (*2005*)⁴⁶.

A more specific paper on the role and success of environmental NGOs was given by Long and Lorinczi (*2009*)⁴⁷ who analyse a strategic approach to EU lobbying, as well

⁴³D. Guéguen, *European Lobbying* (Europolitics, 2007).

⁴⁴Burson-Marsteller is one of the leading corporate-PR and marketing firms in Europe.

⁴⁵D. Coen, *Lobbying in the European Union* (Brussels, 2007), http://www.eurosfaire.prd.fr/7pc/doc/1211469722_lobbying_eu.pdf.

⁴⁶S.Serenari, "*Lobbying in European Union: Access to the Decisional Process*", Peter Pasmany University, Budapest, Hungary, 2005".

⁴⁷T. Long, L. Lörinczi, "NGOs as Gatekeepers : A Green Vision," in *Lobbying the European Union: Institutions, Actors, and Issues*, ed. D. Coen and J. Richardson (New York, NY : Nova Science Publishers, 2009), 169–185.

as the relation of EU lobbying with concepts of pluralism, elite pluralism (*Broschied & Coen 2007*)⁴⁸ and the “clientelism”.

Being aware of the importance of comparative learning when it comes to strategies and tools of influence, some studies were searching for the answers in a transatlantic perspective (*Thomas and Hrebener 2000*⁴⁹; *McGrath 2002*⁵⁰).

When it comes to this perspective, Woll (*2006, 2009*)⁵¹ aptly highlights that “despite the wealth of the lobbying literature in both the US and the EU, few studies have compared the two directly”⁵². Similarly, Thomas and Hrebener (*2000*) worked on a comparison of the EU and the US system by giving explanations on the differences between lobbying groups and their strategies, and the importance of different political frameworks for those particularities.

In another relevant study, McGrath (*2002*) compared lobbying practices in Washington, London and Brussels. The decision to compare those three cities comes from the fact that these places are the most relevant lobbying markets in the world. The research distinguishes different lobbying systems and standards, depending on their respective institutional settings and cultural factors in all three cities.

The final group of authors (*Pedler et al. 2002*⁵³; *Coen and Richardson et al. 2009*⁵⁴) enriched existing literature revealing important case studies and analysis from the EU lobbying arena. In the book edited by Coen and Richardson there are several interesting “sectoral studies” of different authors such as the cases of health lobbies (*Greer*)⁵⁵; tobacco lobbies (*Boessen and Maarse*)⁵⁶; and Agro-Industry (*Grant and*

⁴⁸ A. Broscheid and D. Coen, “Lobbying Activity and Fora Creation in the EU.”

⁴⁹ C.S. Thomas and R.J. Hrebener, “Comparing Lobbying across Liberal Democracies: Problems, Approaches and Initial Findings,” *Journal of Comparative Politics* 2, no. 1 (2009).

⁵⁰ C. McGrath, ‘Comparative Lobbying Practices: Washington, London, Brussels’, Annual Conference of the Political Studies Association. 2002
<<http://www.ppr.ro/pics/documente/comparative-lobbying-practices.pdf>> [accessed 2 July 2013].

⁵¹ C. Woll, ‘Lobbying in the European Union: From Sui Generis to a Comparative Perspective’, *Journal of European Public Policy*, 13 (2006), 456–470; C. Woll, ‘Who Captures Whom? Trade Policy Lobbying in the European Union’, in *Lobbying in the European Union: Institutions, Actors and Issues*, ed. by D. Coen and J. Richardson (Oxford University Press, 2009), pp. 268–288.

⁵² The same holds when it comes to a direct qualitative, comparative analysis of regulations in trans-atlantic perspective.

⁵³ R. Pedler, ed., *European Union Lobbying Changes in the Arena* (Palgrave Macmillan, 2002).

⁵⁴ D. Coen and J. Richardson, *supra* n.39

⁵⁵ D. Coen and J. Richardson, *supra* n.39, pp. 189–211.

⁵⁶ D. Coen and J. Richardson, *supra* n.39, pp. 212–232.

Stocker)⁵⁷. Similarly, the book published a decade ago by Pedler (2002) offers fifteen lobbying cases – from lobbying on the e-commerce trade (*Pointer*)⁵⁸, global warming and climate issues (*Boyd*⁵⁹; *Long, Salter and Singer*⁶⁰), Japanese lobbying in the EU (*Kewley*)⁶¹ etc. These cases are important for research of lobbying regulations, since they serve as an indicator of the actual lobbying market. They map the route of influence and pattern of interaction between the public and the private sector, and understanding those is essential for the shaping of the regulatory frame for lobbying.

As the EU lobbying regulation scene remains as the main focus of this research, it should be pointed out that previous paragraphs are dedicated to the most relevant and recent authors and literature on EU lobbying in general. All of those theories and empirical findings could be widened further, but the goal was only to emphasize the relevant authors and theories for the framework of this research, while marking relevant literature for all future researchers of lobbying regulation and the EU-lobbying environment.

However, the papers mentioned here are in fact very crucial for understanding the current theoretical and practical debate on lobbying regulation. In fact, it may be very hard to understand and contribute to the regulatory debate without referring to the mentioned studies and findings.

1.3. Theories and policy positions regarding the regulation of lobbying – a comparison and the EU perspective.

1.3.1. The background of the debate

The second part of this Chapter is dedicated exclusively to an overview of lobbying regulation literature. The question of whether lobbying should be a subject of regulatory intervention is not a new one. In most of the countries in the world, practically

⁵⁷ D. Coen and J. Richardson, *supra* n.39, pp. 233-255.

⁵⁸ R. Pedler, *supra* 53, pp. 35-56.

⁵⁹ R. Pedler, *supra* 53, pp. 57-86.

⁶⁰ R. Pedler, *supra* 53, pp. 87-103.

⁶¹ R. Pedler, *supra* 53, pp. 177-201.

the whole Africa and Asia⁶², this activity is completely unregulated and institutional interaction with interest representatives still mostly lacks transparency. In that part of the world, lobbying is mixed up with corruption, and that is why lobbying generally leaves a “*bad taste in the mouth*” of the general public, but nevertheless influences decision-makers.

In national economies which grow rapidly, such as India and China, the situation is also very similar. India, for instance, has a very high level of corruption⁶³, which means that not only citizens but businesses also use corruption⁶⁴ as an influence mechanism.

Regulating lobbying directly in those countries would not have a significant impact, as the rule of law is generally weak⁶⁵ and corruption is still widely used as a non-risky and quite cheap influence mechanism. In an environment where corruption is highly utilized due to a weak rule of law and other institutional problems, regulating lobbying would not make much sense since it is avoided anyway. Hence, lobbying

⁶² Except Taiwan, which was the first and only country in Asia to introduce lobbying regulation laws in 2007.

⁶³ According to the Transparency International Corruption Perception Index (2011), India had a 3.1 index of corruption (on the scale where 0 represents a maximum level of corruption and 10 represents a “no corruption” scenario).

⁶⁴ It is interesting to mention that some authors (P. Denter, J. Morgan and D. Sisak, “Where Ignorance Is Bliss, ‘Tis Folly to Be Wise’: Transparency in Contests”, Working Paper 2011 <<http://ideas.repec.org/p/usg/econwp/201128.html>>) claim that bribery is actually more desirable from an economic standpoint than lobbying. The reason for this is that bribery, according to them, represents a purely redistributive tool, while lobbying creates dissipation of resources and unrecoverable death-weight losses for the society. Of course, this is a very narrow perspective, as corruption has a large number of negative welfare effects on any society. Some studies have actually given the proof (B. Harstad and J. Svensson, ‘Bribes, Lobbying, and Development’, *American Political Science Review*, 105 (2011), 46–63; B. Harstad and J. Svensson, “Bribe to Bend or Lobby for Change,” *Unpublished Manuscript* no. February (2010), <http://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:Bribe+to+Bend+or+Lobby+for+Change+?#0>) that lobbying is nothing but a substitute to corruption, even though the empirical backup was clearly missing. The claim comes from the pure fact that under conditions where the economy is sufficiently developed, it is more rational for the firms to invest in lobbying as it is legal in the first place. Also, results achieved by lobbying are less likely to disappear, like in instances when corruption gets detected and the officials are replaced. In addition – the company’s reputation goes down significantly. In short, the authors conclude that as an economy grows, more and more firms will invest in lobbying than in corruption. This assumption has been confirmed to some extent in Chapter IV of the research regarding the case of Serbia. However, an interesting empirical study (N.F. Campos and F. Giovannoni, “Lobbying , Corruption and Political Influence in Transition Countries,” *Transition* (2006)) showed that even in poorer, less developed countries, lobbying may be a better influence tool than corruption.

⁶⁵ The rule of law index; <http://worldjusticeproject.org/rule-of-law-index/>.

regulation is a special type of regulation and it should be an upgrade to existing, preferably well-implemented, *sunshine laws*.⁶⁶

In contrast, there are attempts in other parts of the world to legally or morally deal with lobbying, mostly through laws and codes of conduct, either separately or cumulatively. In Europe, most of the member states⁶⁷ do not have specific laws to deal with this issue, and they are generally dealing with it through some general provisions in other laws. Those are laws which deal with transparency, corruption prevention or conflict of interest, codes that regulate the conduct of public employees, or there are even specific lobbying-rules within some of those laws⁶⁸.

In the US, on the other hand, regulation of lobbying has taken several phases⁶⁹ and it is still a quite debated issue. Due to a very broad regulatory experience in lobbying, most of the available studies are in fact based on the US lobbying setting, which is very different than the European one, especially in respect to lobbying incentives and mechanisms.

The obvious difference is that the legal traditions are different, but this should not be an obstacle when it comes to a qualitative analysis where some elements may be observed regardless of the differences. Accountability, transparency and costs, for instance, are categories independent from those differences and those could be

⁶⁶ "Sunshine law" is a term used widely in the literature that refers to a law that brings more transparency and reduces corruption in general. Those could be laws that impose more integrity on the work of public employees, corruption-fighting laws and lobbying laws.

⁶⁷ In Europe there are indeed very few member states which have regulated lobbying activities. The European Commission and the European Parliament have recently launched the first joint registry (which can be interpreted still as a tool of self-regulation) in 2011. The countries that have specific laws on lobbying are Lithuania (2000), Poland (2005), Hungary (2006), Montenegro (2011), Macedonia/FYROM (2008/2011), Slovenia (2011). Ukraine, Serbia, the UK, Denmark and Croatia have prepared (or are working on it as we speak) respective drafts of lobbying laws and are waiting for their adoption in legislative procedures. Germany and France have regulated lobbying by setting up a system of registrations in parliaments. Besides them, only the US, Australia, Canada, Taiwan and Israel have regulated lobbying activity.

⁶⁸ For instance Slovenia deals with lobbying in a Law on integrity and prevention of corruption – *Zakon o Integriteti in Preprečevanju Korupcije*, Uradni List 69/2011. Similarly, Israel has amended its law on Knesset (Israeli parliament) with a couple of articles on lobbying.

⁶⁹ The first formal law that was regulating lobbying was the "Foreign Agents Registration Act - FARA" introduced in 1938, then in 1946 the Federal Regulation of Lobbying Act was adopted. After several decades, The Lobbying Disclosure Act (LDA) was introduced in 1995, and finally in 2007 The Honest Leadership and Open Government Act – HLOGA was enacted. All of those laws are federal laws and they regulate lobbying on the federal level. At the same time, most of the states within the US have adopted their own lobbying regulation.

comparable. Moreover, both the EU and the US federal institutional systems are comparable to some extent as they have very similar roles, even though the institutional setting remains different.

Also, it is worth mentioning that lobbying is more intensive, aggressive and complex in the US mostly because controlled financial contributions are allowed from the private sector to public officials, and because the US decision-makers are more constituency-sensitive than the officials of the EU, especially EU Commissioners who are appointed bureaucrats and not elected officials dependent on votes.

There are other differences that have been already discussed in the literature; such as the relation of the type of legislature (an EU-type parliament v. the US Congress) with incentives to lobby (*Bennedsen and Feldmann 2002*).⁷⁰ The authors explain why lobbying is more intensive in the US than in Europe and the main finding is that a majority in the US Congress is much more flexible than a majority in European parliaments. This also means that in the US, coalitions vary from policy to policy, and there is more room for influencing individual representatives than in Europe, where heads of parties make decisions on votes and MPs just vote based on those decisions. More flexible coalitions are more suitable for lobbyist as they give more room for influence. Majorities are more unpredictable, which leaves more room for influence, and thus, it provides lobbyists with greater incentive to address decision-makers.

In the last decade, the lobbying regulation debate has emerged from relative irrelevance to become an important issue. Besides purely academic debate in the legal, political and economic field, a constant policy debate was occurring in the US and Brussels between the decision-makers, civil society and “watch dogs” who were urging for more transparency. The big alliances such as the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU)⁷¹; Corporate Europe Observatory⁷²; the European Union Information Website⁷³ or large international organizations such as the

⁷⁰ M. Bennedsen and S. E. Feldmann, ‘Lobbying Legislatures’, *Journal of Political Economy*, 110 (2002), 919–946.

⁷¹ www.alter-eu.org

⁷² www.corporateeurope.org

⁷³ www.euractiv.com

Organization for Economic Co-operation and Development (OECD)⁷⁴ were, and still are, very active in this field.

Research on lobbying regulation in general could be divided into three main approaches. The first one is a classical comparative approach which allows for an overview on lobbying regulatory techniques globally. In the second one, the EU is compared with another jurisdictions (usually the US), either on supra-national or national levels (where regulatory models from few of the EU member states are compared with the equivalent ones in the US). The third approach represents research exploring EU-lobbying in a *sui generis* perspective. Both of these approaches will be addressed in the following section.

1.4. Comparative studies on lobbying regulation

In this section, the most important and recent academic and policy papers dealing with lobbying regulation in a comparative perspective are going to be explored. However, within this approach we can identify two major trends. One group of researchers worked on comparative studies between all the countries in the world that have imposed any kinds of rules⁷⁵ related to lobbying (*Chari, Hogan and Murphy 2008, 2009, 2010; Griffith 2008; the OECD special reports from 2007a, 2007b; Flannery 2010; Malone 2004*). The other group of studies is focused almost exclusively on the comparison of “the EU approach – the US approach” (*Mihut 2008; Wesselius 2005; Woll 2006; Thomas 2004*).

The common thing in both approaches is the dominant presence of the US experiences, which should not be surprising due to its position in the world of lobbying and lobbying regulation.

The second common denominator in these studies is the clear absence of an economic reasoning in approach. Similarities and differences are compared from a legal or a political point of view, without any regulatory impact analysis. On the other hand,

⁷⁴ www.oecd.org

⁷⁵ Regulation via specific law, regulation throughout more general laws or even self-regulation practices.

there are papers that deal only theoretically with this question, but there are no examples of both a legal and economic approach united in one paper.

Probably the most recognized names in the first group of studies that are focused on a global comparison of lobbying regulations are Chari, Hogan and Murphy. This group of authors has published (2009)⁷⁶ a study that compares lobbying regulation in Canada, the US, the EU and Germany. The authors offer a useful transparency and political science-literature overview with identification of which countries in Europe have any type of regulatory rules related to lobbying. They also analyse existing tools for measurement of the strength of the lobbying regulation (Opheim's index, Brinig et al.'s rating scale and the CPI Index) and use the CPI⁷⁷ index for their own research as the most advanced available tool for comparative assessment of lobbying regulation.

They applied the CPI index on Europe, and compared European scores with the scores of the states of the US, and divided all the systems into the lowly regulated, medium regulated and highly regulated systems; simultaneously listing the characteristics of each of them. Furthermore, they have placed the EU, Poland and Germany into the lowest category – highlighting the fact that there is a necessity for improvement in European lobbying regulation practices. In medium-regulated systems, they have placed Canada, a few American states, and Lithuania and Hungary from the European group of countries that have been analysed.

In the same study, the authors have developed a logical framework for distribution of countries into any of the three systems, based on regulatory elements they have adopted in respective jurisdictions – the Threefold classification.

In addition, they tried to correlate country rankings within the CPI index with the Transparency International's Corruption Perceptions Index⁷⁸, but no significant correlation has been discovered between the two of those indices. However, this does not mean that further research in this segment may not be done in the future.

⁷⁶ R. Chari, G. Murphy and J. Hogan, 'Regulating Lobbyists: a Comparative Analysis of the United States, Canada, Germany and the European Union', *The Political Quarterly*, 78 (2007), 422–438.

⁷⁷ The CPI comes from the Center for Public Integrity, who first used this methodology.

⁷⁸ J. Hogan, R.S. Chari and G. Murphy, 'Lobbying Regulation Across Four Continents: Promoting Transparency?', *Working paper*, 2009 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1450816> [accessed 25 February 2012].

In another paper that came a year before (2008)⁷⁹, the same authors investigated the reasons for the lack of lobbying regulation in most of the countries by conducting an empirical research regarding the attitudes of the key-players towards the regulation of lobbying. Starting with political ideas (mostly transparency) underlying lobbying regulation, they continued with presentation of the results from their research based on concepts of deliberative democracy.

On the other hand, some of the most relevant conclusions have underlined that interviewed parties prefer self-regulation over a state-imposed regulation that, according to them, tends to be inefficient. Even though there are some indications to believe that may be true (cases of Macedonia, Montenegro, Hungary as well as some concerns expressed in the introduction with regards of general effectiveness of regulations) it is hard to argue that a more efficient system is one of self-regulation of lobbyists. At the same time, the results of the research show that interviewed actors⁸⁰ support the establishment of the lobbyists register and regular reporting procedures, and this support was discovered to be very strong regardless of the type of the group (politicians or lobbyists themselves). A huge support for penalization of wrongdoers is also a proof that this might be an effective enforcement tool, and it is believed among the interviewed that it would significantly deter that type of behaviour.

The significance of the data collected in above mentioned research is actually very high as there are very few recent studies with the similar database. The information on preferences of different actors towards lobbying regulations are relevant as they help researchers and policymakers in the development of more optimal regulatory frameworks, which should take into consideration inputs given both from the lobbyists and public administration.

The same authors have also published maybe the most important book related to lobbying regulation⁸¹. The book represents the most important piece of work in this

⁷⁹ J. Hogan, R.S. Chari and G. Murphy, "Next Door They Have Regulation, But Not Here": Assessing the Opinions of Actors in the Opaque World of Unregulated Lobbying', *Canadian Political Science Review*, 2 (2008), 125-151.

⁸⁰ Which include lobbyists, politicians and administrators.

⁸¹R. Chari, G. Murphy, and J. Hogan, *Regulating Lobbying: A Global Comparison* (Manchester University Press, 2010).

The book also has a webpage: www.regulatelobbying.com

field, but at the same time it does not provide many answers on the economic reasons for lobbying regulation, while the ones that are offered can be easily argued. This work does provide probably the best overview on the global distribution of lobbying regulation and it analyses all relevant laws by the CPI⁸² methodology.

However, when it comes to the reasons for lobbying regulation, they stay focused mainly on the concept of the deliberative democracy which is a political science concept and focuses on the promotion of transparency and accountability in decision-making. On the other hand, when it comes to reasons for not regulating lobbying, for the first time, some economic reasons are taken into account such as entry barriers and, generally speaking, the costs. Both arguments will be further discussed in the concluding remarks.

Yet, there is another important work (*McGrath*)⁸³ that has identified and listed all relevant lobbying legislations within the European Union countries with a focus pointed at Hungary, Poland and the Czech Republic. The author remains mostly focused on the ten new member states that joined the EU together in 2004, and he explores what kind of rules, if any, exist in those countries and observes general lobbying trends in them. The study concludes that countries which recently adopted democratic multi-party political systems are even faster in adopting lobbying control measures than the old member states, even though lobbying activity occurs at a higher level in the old ones. The relevance of this paper is exceptionally important as there are almost no studies which explore lobbying development (besides the above-mentioned group of authors – *Chari, Murphy and Hogan 2010*) in those countries.

It may be concluded that in the new member states which still have problems with corruption, the regulation of lobbying is an important task for the regulators as they do not have a well-developed general legal framework for fighting corruption.

The high level of corruption has motivated greater lobbying regulatory activity than in the old member states, but there are very few studies dealing with those new jurisdictions, and there is a great potential for research on lobbying regulation within

⁸²The CPI methodology refers to the CPI Index which measures the strength of lobbying regulation and makes it comparable across the countries.

⁸³ C. McGrath, 'The Development and Regulation of Lobbying in the New Member States of the European Union', *Journal of Public Affairs*, 32 (2008), 15–32.

them. In addition, there is still very limited information on the results of the enforcement of the lobbying rules in those countries. However, the final chapter of this research offers some fresh data and information in this sense.

Some other authors (*Flannery 2010*)⁸⁴ offer a comparative, qualitative and quantitative study on the EU, the US and Canada. While the quantitative part of the study remains based on the widely used CPI index, the qualitative part is related to measures “promulgated in legislation”. The main critique that can be attached to this paper is that the CPI index over the mentioned countries was already applied earlier by *Chari, Murphy and Hogan* (2009), so there is not much to be learned from another application over the same laws.

Besides the academic debate on lobbying regulation, the policy debate was also present in the past decade. One of the most active roles in this debate was initiated and organized by the OECD. The OECD organized a series of round tables and public discussions on lobbying regulation, which were summarized in special reports afterwards. Besides a *sui generis* approach, experts from the OECD also looked for comparative solutions and analysed if they are necessary and applicable to Europe.

After first OECD’s symposium on lobbying (held in Paris in 2007) the report *Lobbying: Models for Regulation*⁸⁵ was released. This report gives an overview on the most important regulatory regimes and outlines the most important principles in lobbying regulation that decision-makers should be aware of in designing the regulation. It deals in-depth with concrete regulatory mechanisms, and recommends who actually needs to be captured with lobbying regulation, questions how much transparency is enough, and how much financial disclosure is necessary based on comparative analysis of other jurisdictions. It highlights that all regulation should fulfil at least three core objectives – capturing the intent of lobbying, disclosure of beneficiaries and institutions that are the targets. Besides this, the report deals with comparative compliance and sanction mechanisms, while at the same time questions whether a standard or self-regulation is a better method. However, the answer still remains unknown as both

⁸⁴ P. Flannery, ‘Lobbying Regulation in the EU: A Comparison with the USA & Canada’, *Social and Political Review*, 2010, 69–78.

⁸⁵ A.P. Pross, ‘Lobbying: Models for Regulation’, *OECD Symposium on Lobbying: Enhancing Transparency*, 2007 <<http://www.oecd.org/governance/ethics/38944782.pdf>> [accessed 4 July 2013].

options have many pros and contras, and regulation in each case should be imposed by taking into account specific national circumstances.

On the other hand, this report is one of the most important policy recommendation sources as it deals with concrete mechanisms and regulatory design, unlike other papers which explore regulations from a macro perspective, without dealing in-depth with specific rules and tools. Another relevant issue that is lacking in this report is an issue of the costs of regulation. A link between costs and certain design of regulation in an economic sense is still missing, even though it is clear that this relation is important for regulators.

Moreover, besides the costs of rules' enforcement, some authors⁸⁶ concluded that fostering transparency in the lobbying market can even further boost the competition among lobbyists and increase "*unproductive competition*" to an undesired level, from a social costs point of view. They conclude that more transparency triggers more competition, which creates huge losses for society, since lobbying expenditures are unproductive. Thus, the question of lobbying costs still remains open for further research.

In other cases (*Besharov 2003*)⁸⁷ it also remains unclear how more disclosure (and more competition as a result of it) will affect the rent-seeking behaviour of the decision-makers.

Another relevant OECD report from 2007⁸⁸, similarly to the report of the Institute of Public Administration of Ireland (*Malone 2004*)⁸⁹, provides a list of countries that have regulated lobbying on a global level. While the OECD provided unofficial translations of relevant lobbying codes of Poland, Lithuania and Hungary, Malone provided the list of more than twenty countries (including Japan) that have worked on the lobbying regulation issue. Still, neither of these papers goes into legal or economic analysis, but simply describes the regulatory regimes in selected countries. On the other

⁸⁶ P. Denter, J. Morgan and D. Sisak, "Where Ignorance Is Bliss, 'Tis Folly to Be Wise": Transparency in Contests", Working Paper 2011. <<http://ideas.repec.org/p/usg/econwp/201128.html>>

⁸⁷ G. Besharov, 'Seeking Lobbying Rents', Duke University Economics Working Paper No. 02-34 2003.

⁸⁸ *LEGISLATION ON LOBBYING IN EUROPE* (Expert Group on Conflict of Interest with a Special Session on Lobbying: Enhancing Transparency and Accountability 6-8 June 2007, Château de la Muette, Paris, 2007).

⁸⁹ M.M. Malone, *Regulation of Lobbyists in Developed Countries Current Rules and Practices, Regulation* (Dublin, Ireland, 2004).

hand, these papers remain an important contribution since they provide a great starting point for further comparative legal and economic analysis.

What can be learned from this group of comparative studies? The results of this review have shown that political science dominates in those comparisons, and in some of the studies it is perhaps followed with some legal theory. Economic reasons for the introduction of lobbying regulation are not mentioned so far, and none of the regulatory models was examined from a law and economics perspective. Even though regulation is one possible tool for fighting market failures, no study actually asks this question, but rather assumes that there is a legal and political problem that has to be solved via regulation, without questioning its impact in an economic sense. Market failures do not appear to be a reason for lobbying regulation, nor is economic rationale used to backup different regulatory models.

In previous papers, transparency, accountability and improvement of decision-making are listed among the most important reasons for the regulation of lobbying. While the first two components are unquestionable, the last one remains blurry, and it is not adequately explained, especially from an economic standpoint. It still remains unknown what the conditions are in which lobbying improves decision-making in a society, if it improves it at all. It is still a mystery if lobbying reduces asymmetry of information, but at least there are studies which explain how lobbying creates rent-seeking behaviour on the side of decision-makers', and when institutions may be relatively easily captured. This knowledge, in terms of lobbying regulation, is highly beneficial since it suggests what the shortcomings and weaknesses in the lobbying cycle are. This information is, in this sense, useful in the design of better lobbying rules, especially in terms of rules for preventing conflict of interest – such as the revolving door rule.

The importance of the United States of America when it comes to any issue related to lobbying comes from the fact that it is the cradle of this activity. Moreover, the regulation of lobbying in the US was always an important regulatory issue, and even nowadays this country goes through the debate again, with even more restrictive lobbying regulation potentially being adopted in near future. Comparison between the US and EU was always the first logical comparison due to the similarities in size, economic

organization and political system. However, they are not as equal as we may think. Euractiv⁹⁰, in one of its studies on lobbying, explains the differences between the systems, highlighting the different style (consensus based in the EU v. aggressive in the US), funding differences, transparency issues, representation system and others.

Consequently, several studies dealing exclusively with a regulatory comparison between the two have emerged. Mihut (2008)⁹¹ for instance has addressed those two systems, but no clear-cut results have been offered, while highlighting that regulation in both systems is based on the need for greater transparency, honesty and accountability. Again, no economic arguments or examples of bad regulatory practice are considered, even though it is suggested that this may be something to be regulated in Romania.

1.5. The EU studies on lobbying regulation – a *sui generis* perspective

The question of whether and how lobbying should be regulated has been on the discussion agenda in Europe for about two decades. The EU so far has not shown serious interest in regulating lobbying with a formal law, while at the same time expecting lobbyists to comply with voluntary registers, and self-enforced codes of conduct that lobbyists were imposing over themselves. Even though there are many that raised voices clamouring for more formal regulation and increased transparency, the latest step taken by the EU was the introduction of a unique joint register of the European Parliament and the European Commission in 2011.

At the same time, the situation on national levels in Europe was more dynamic. Besides Germany, Lithuania, Poland, Hungary, Montenegro, Slovenia and Macedonia, some other countries are also working on drafting similar laws – the UK, Serbia, Croatia, Ukraine and Denmark⁹². The effects of those laws are yet to be explored, especially in smaller countries where the number of registered lobbyists will hardly exceed 100. This fact makes it even more reasonable to question if such regulations are necessary, and if there are other tools for enhancing transparency related to lobbying.

⁹⁰ 'EU and US Approaches to Lobbying', 2005, <http://www.euractiv.com/pa/eu-us-approaches-lobbying/article-135509> [accessed 6 July 2013].

⁹¹ L. Mihut, 'Lobbying in the United States and the European Union: New Developments in Lobbying Regulation', *Romanian Journal of European Affairs*, 2008 [accessed 6 July 2013].

⁹² Corporate Europe Observatory, "Danish Parliament Takes Steps towards Lobbying Transparency," 2012, <http://corporateeurope.org/blog/danish-parliament-takes-steps-towards-lobbying-transparency>.

There are several papers dealing exclusively with EU lobbying regulation, with a few studies comparing lobbying regulations on national levels in Europe. Moreover, no papers have yet examined the inefficient practices such as those in Macedonia and Montenegro which suggests that research should also go in this direction in the future.⁹³

Besides the focus on EU lobbying that was given by Chari, Hogan and Murphy (2011), additional papers that may be relevant are Chari & O'Donovan (2011)⁹⁴, Obradovic (2009)⁹⁵, Dalia (2011)⁹⁶, Greenwood & de Castro Asarta (2011)⁹⁷, Naurin (2008)⁹⁸, ALTER-EU (2010)⁹⁹ – a collection of articles of various authors from the practice and policy area. These studies are mostly focused on the situation in Brussels and lobbying activity between the three main institutions – the Commission, the Parliament and the Council. From the dates of publication, it may be concluded that most of the debate actually took place in the last couple of years and more works can be expected on this topic.

The main issue debated was the EU's choice not to have more formal lobbying regulation. Since 2011, the EC and the EP have set up the joint register, whereas before they maintained separate ones with similar rules. However, those rules were not enforceable¹⁰⁰ or unavoidable¹⁰¹. In these circumstances, it can be easily debated whether it is better to have no rules at all or only more formal rules that can actually be

⁹³ The regulations might be treated as inefficient ones as after their adoption there were practically no lobbyists registered. In Macedonia there was one registered lobbyist, while in Montenegro there is not even once a year after the adoption.

⁹⁴ R. Chari and D. O'Donovan, "Lobbying the European Commission: Open or Secret?," *Socialism and Democracy* 25, no. 2 (2011): 104–124.

⁹⁵ D. Obradovic, 'Regulating Lobbying in the European Union', in *Lobbying in the European Union: Institutions, Actors and Issues*, ed. by D. Coen and J. Richardson (Oxford University Press, 2009).

⁹⁶ G. Dalia, 'Il Nuovo Registro Per La Trasparenza', Working paper (Napoli, 2011).

⁹⁷ J. Greenwood, I. Asarta, "The (European) Transparency Register: A landmark development?," *Regulation*, 2011.

⁹⁸ D. Naurin, *Deliberation Behind Closed Doors: Transparency and Lobbying in the European Union* (ECPR Press, 2007).

⁹⁹ ALTER-EU, "Bursting the Brussels Bubble," 2010, www.alter-eu.org/book/bursting-the-brussels-bubble.

¹⁰⁰ More precisely, the Commission was never imposing any enforceable rules, but only a voluntary registering while expecting that lobbyist comply with a voluntary code of conduct (Register of Interest representatives). The Parliament has adopted a more formal method (Parliament's accredited lobbyist scheme) where all interested parties have to register and obtain a one-year pass for entering the parliament. This method was only revealing the list of persons holding the badge and the interest they were promoting, but no other details were revealed.

¹⁰¹ This can be well depicted via the results of a survey conducted by the ALTER-EU from March 2010. The results showed that 174 well-known lobbying firms were not registered at all in the Commission's register. The results have also shown that about 60% of all the companies were not registered at all.

enforced and serve the purpose of transparency. Some very influential organizations (mostly the Alliance for Lobbying Transparency and Ethics Regulation – ALTER-EU) were putting a lot of pressure in this direction, but were mostly receiving very broad answers back from the Commission while getting criticized by parts of the industry¹⁰².

A few authors, like Obradovic (2009) and Chari and O'Donovan (2011), were detailed in examining the history of lobbying regulation in the EU, focusing on both the Commission and the Parliament while referring to the reasons¹⁰³ for improvements that were occurring during the time. More attention was given to the voluntary register introduced by the Commission in 2008 and the information that registrants were supposed to disclose. Obradovic (2011) assiduously highlights that this register remains voluntary and that there are practically no significant incentives for the lobbyists to register, while at the same time the very few incentives might conflict with other EU regulations which guarantee equal access to information to all interested parties. This study also notices that “sanctions” potentially imposed by the Commission would not be significantly effective, especially due to the lack of a proper and efficient monitoring agency which would oversee enforcement.

Similar conclusions were discussed by Chari and O'Donovan (2011) who highlighted that not more than one-third of lobbyists were actually registered within the Commission's register. Moreover, they ask a very important question about the new joint register, which was discussed at the time between the Commission and the Parliament, regarding its actual efficiency and necessity in regard to its voluntary nature.

¹⁰² However, it is not true that all of the industry is opposed to some kind of lobbying regulation. An important survey (J. Hogan, R.S. Chari and G. Murphy 2010) actually reveals the attitude of the business world towards regulation of lobbying. This survey did cover the EU as well as other non-European jurisdictions. For instance, 58.3% of interviewed lobbyists agreed that introduction of lobbying regulation might improve decision-making, transparency and accountability. In addition, 44.4% of them agreed to the proposition that penalizing unprofessional lobbying would be a good deterrent against such behaviour. The same research revealed that 45.5% agreed that they should be required to be publicly registered when lobbying public officials. The results suggest that lobbyists do not think some regulation is bad or that it would seriously make their job too difficult. Of course, those answers do not actually explain what level and type of regulation (if any) would be optimal.

¹⁰³ *An Open and Structured Dialogue between the Commission and Special Interest Groups*, 1992, http://ec.europa.eu/civil_society/interest_groups/docs/v_en.pdf; *The White Paper on Governance*, COM(2001) 370, 2011.

As the new joint register¹⁰⁴ of the Commission and the Parliament (June 2011¹⁰⁵) was established based on joint inter-institutional agreement,¹⁰⁶ it still remains pretty unclear how significant improvements are made in comparison to previous solutions¹⁰⁷.

To date, only a few studies have directly focused on this register (Dalia 2011; Greenwood & de Castro Asarta 2011). The latter ones are stressing that the new register represents an improvement in transparency and definition of those who are about to register. However, at this moment, it is already clear that the New Transparency Register has low credibility in terms of securing transparency, as argued by the ALTER-EU¹⁰⁸.

A more detailed legal study on the development of the registry, with the different regulatory approach backgrounds of both EU institutions that created the New Transparency Register, was elaborated by Dalia (2011). He shows how the inter-institutional agreement evolved and concludes that the EU continues to apply the “soft-law” as a regulatory model: “L’adozione dell’Accordo per la trasparenza sembra confermare la tendenza delle istituzioni europee a disciplinare il loro rapporto con i rappresentanti di interessi attraverso atti di soft law” (Dalia 2011: 21). This may or may not be the best choice, but what is certain is that the previous voluntary solutions have not been very efficient. Dalia suggests the need for more information disclosure about the previous activities of lobbyists, but this may be hard to achieve due to a lack of formal lobbying book-keeping procedures in the past.

¹⁰⁴ http://europa.eu/transparency-register/index_en.htm.

¹⁰⁵ The Commission’s press release
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/773&format=HTML&aged=0&language=EN&guiLanguage=en>.

¹⁰⁶ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0174&language=EN#title2>.

¹⁰⁷ The ALTER-EU position paper reveals what could be the most important improvements with the new register. Among the issues that are warmly welcomed are a “one-stop shop method”, better registration incentives, individual lobbyists named and number of lobbyists per organization reported, lobbying goals disclosure, online availability of data, unique code of conduct, improved complaints and sanctions, and annual report on work of the register. More information is available at http://www.alter-eu.org/sites/default/files/documents/alter-eu_position_on_joint_ep-ec_register.pdf

¹⁰⁸ RESCUE THE REGISTER, *How to Make EU Lobby Transparency Credible and Reliable*, 2013, <http://corporateeurope.org/pressreleases/2013/new-report-shows-urgent-need-rescue-eus-ineffective-lobby-register>.

1.6. Conclusion of Chapter I - the future research challenges and needs

In previous pages it was already noted that there are very few economic arguments in the debate on lobbying regulation in Europe, but also in the lobbying regulation debate in general. Only two economic arguments have been mentioned in all analysed studies – entry barriers¹⁰⁹ that may arise from regulation, and broadly speaking costs. The two elements are just some of the classical effects of regulatory intervention, but it does not mean they always occur with regulation. In the case of lobbying regulation, these elements may be debated as well from a regulatory structure point of view. Different regulatory approaches (binding laws or self-regulation) differently affect the lobbying market, as well as different approaches in binding regulation might have very different reflections in terms of compliance and enforcement costs. The same holds true for their effects on transparency and accountability. Even in situations where one could talk of a complex binding regulation, it is still not certain if this would necessarily negatively affect the entry.

Even though practice indicates that after imposing stricter lobbying rules, the number of registered lobbyists drops, it does not necessarily mean that entry became more difficult. For instance, it is challenging to argue if the number of lobbyists dropped after the registration and reporting rules were imposed, just from the fact that most of the countries did not have any prior database to be used as a reference on the number of active lobbyists. Only the US may be used as an example to test this hypothesis, as they had several regulatory phases where every time stricter rules were imposed, the registration was also obligatory in the previous phase of regulation as well. Comparing previous registration levels and the new ones may be used as a reference on the relation between the regulation and more transparency and the participation/entry levels.

¹⁰⁹ Entry barriers are defined in various ways. For a review of different types of concepts, see R. P. McAfee, H. M. Mialon, and M. A. Williams, "What Is a Barrier to Entry?," *American Economic Review*, 2004. The authors analyse conceptual differences by looking at works of G. Stigler (1968), J.S. Bain (1956), J.M. Ferguson (1974) and few others.

For instance, one year after the US Honest Leadership and Open Government Act (HLOGA) went into effect in 2007 and imposed more frequent reporting and transparency rules that additionally burdened lobbyists, the number of registrations decreased. For example, according to available data on the number of registered lobbyists within the US Senate, the number of registrants in 2006 was 14,534 and in 2010 the number of registrations was 12,220. The drop was not insignificant, but it is hard to argue that this was just because the burden became higher. It is also likely that some of those who went out of the market probably did not find it profitable enough to stay for one reason, or they simply switched to other influence tools that do not force them to be registered, since registration is related to specific financial thresholds. The fact they do not meet the new threshold or they have decided not to report does not mean they do not lobby and they are out of the market. Moreover, if we observe reported lobbying expenditures in 2006 (\$2.62 billion) and in 2010 (\$3.51 billion) it becomes even more questionable if lobbying became less attractive after the introduction of harsher transparency rules.

Yet from another perspective, it is hard to argue that the introduction of additional transparency rules might significantly affect an activity which is found to be quite profitable for companies. Some studies show that the rate of return of investment in lobbying might reach a ratio as high as 22,000%, or for each 1 dollar invested in lobbying an average return was 220 dollars (*Alexander, Scholz & Mazza 2009*).¹¹⁰ Thus, it may be assumed that slightly harsher transparency rules would not negatively affect the value of lobbying significantly as a strategic economic tool that firms use, or significantly limit the entry *per se*.

There may be an additional argument which challenges the idea that lobbying regulation may reduce the entry. It has to be clarified that the regulation of pharmaceuticals, for instance, is not exactly the same as the regulation of lobbying. While in the first case entry may be decreased due to new safety and production standards that require large investments in equipment and facilities (which again create large expenses

¹¹⁰ R. Alexander, S. Mazza and S. Scholz, 'Measuring Rates of Return for Lobbying Expenditures: An Empirical Case Study of Tax Breaks for Multinational Corporations', *Journal of Law and Politics*, 25 (2009).

that small firms cannot easily meet), the rules imposed on lobbyists do not impose such costly implications for the industry.

Analysed studies do deal with regulation costs, but those costs refer only to the costs of establishing and maintaining the register of lobbyists. Even though enforcement costs are important, they are still just one side of the coin. Looking at costs in such a narrow way would suggest that lobbying should be regulated in most cases since lobbying regulation itself may not be too costly *per se*, especially in cases of non-complex regulatory models.

When it comes to the costs related to the regulation of lobbying, an additional issue which is almost completely neglected is the social cost related to competition among the lobbyists (*Becker, 1983*). It is very likely that more transparency could have a positive impact on competition among lobbyists. Not only theory (*Denter, Morgan and Sisak; 2011*) but also previously mentioned data expenditures from the US suggest this might be the case. The concern that competition among lobbyists may be seen as an unproductive endeavour, which contributes to the creation of additional costs for the society, suggests that the level and type of lobbying regulation should be chosen with great consideration.

In short, the reviewed literature suggests several conclusions:

- There is generally a lack of economic reasoning in the lobbying regulation debate, more precisely – the problems of entry and costs are usually taken too narrowly and explained incompletely. There are no predictions related to the compliance effects of lobbying regulation for the industry, and enforcement related to the public sector. Moreover, a profound efficiency analysis of different regulatory models is completely lacking. Regulation is strongly suggested by various studies due to a necessity for transparency improvement, but no study offers a comprehensive answer on which regulatory structure and approach should be taken in different cases.
- More profound qualitative, comparative legal, and learning-based studies would be welcomed especially in assessing the true quality of the New EU Transparency Register. For those more profound comparisons, additional mechanisms should be

developed for a comparative assessment of the strengths and weakness of different regulatory models.

- When it comes to EU member states' level, it would be very useful to analyse the regulatory failures of several states in their attempts at implementing lobbying regulations. Analysing reasons for those failures may be very useful for other member states with a similar environment, and which are considering the introduction of similar rules. So far there are no studies explaining this phenomenon.
- There is still lack of tools for a structured cost-benefit approach of different lobbying regulatory structures and particular mechanisms. The only existing tool - the CPI Index - provides an indication of the benefits, but there are no tools to provide an indication of regulatory cost in terms of compliance and enforcement costs related to different regulatory strategies.
- Regulators seem to lack sufficient tools to optimally structure their lobbying regulations, while researchers lack the tools to conduct a more profound and structured comparative assessment of lobbying regulations worldwide.

Chapter II - Lobbying Regulation in the Policy Arena and Current Tools for Comparative Assessment of Lobbying Regulations

1. Introduction

Chapter II will start with the introduction of the research question, based on the spotted research gaps discussed in the previous chapter. The main purpose of this part of the research is to highlight the necessity for the improvement of the tools for comparative assessment of lobbying regulations, and to discuss the options and foundations for potential improvements.

By focusing on actual policy treatments and developments of lobbying laws in the US and Europe, it will be possible to see how lobbying laws evolve in practice, and on what foundations they get introduced. This insight will additionally support the research question and highlight the need for improvement of the tools for comparative assessment of lobbying laws in the policymaking arena as well.

Further on, the chapter will pay special attention to Regulatory Impact Assessment analysis (RIA) and look into general tools which are already available for assessment of (lobbying) regulations worldwide. Some of the methodological foundations from the RIA world can be very useful for the development of the custom-made CII method, which is designed in a way to have better comparative applicability. These foundations and their usefulness for the CII will be discussed in particular.

At the end of this Chapter, the CPI index will be introduced, as well as a few other previously created tools for assessment of the benefits of lobbying regulations. The limits of these tools will be discussed, which will additionally emphasize the importance of the improvement of the assessment technique, and its expansion towards the costs assessment as well.

2. Setting the objectives and the research questions

Chapter I of this research identified the major research needs in regard to understanding and better structuring lobbying regulations. In particular, the necessity for a more cost-sensitive approach when it comes to the design of lobbying regulation was highlighted. At the same time, it was suggested that when it comes to a comparative approach, a more comprehensive (both law and economic) comparison would be helpful to understand which mechanisms tend to be efficient tools for lobbying regulation, taking into consideration transparency indication on one hand and the cost indication on the other. In addition, the introduction examined potential economic reasons for lobbying regulation in general. This research is more inclined to the idea that regulation of lobbying may be comparatively the best approach¹¹¹ to deal with possible negative effects of lobbying¹¹² and protection of the public interest¹¹³.

Holding that the motivations for the regulation of lobbying are quite the same all around the world (transparency, accountability, integrity, responding to the scandals as the most prominent ones)¹¹⁴, while expected benefits are equally hard to identify and measure, further analysis will focus on the development of a special tool equally important for researchers and policymakers.

¹¹¹ For more on theoretical foundation, see Goldberg, "Regulation and Administered Contracts"; D. Whynes and R. Bowles, *The Economic Theory of the State*, Oxford University Press (Oxford University Press, 1982). For more on why regulation of lobbying may be comparatively more desired than self-regulation see *Lobbyists, Governments and Public Trust - Promoting Integrity through Self-Regulation (Volume 2)*.

¹¹² G. Tullock 1967; J. Buchanan et al. 1983; J.C. Heckleman and B. Wilson 2013; G. Stigler 1971; P. Denter, J. Morgan and D. Sisak 2011.

¹¹³ C. Opheim, "Explaining the Differences in State Lobby Regulation," *Political Research Quarterly* 44, no. 2 (June 01, 1991): 405-421; D. Lowery and V. Gray, "How Some Rules Just Don't Matter: The Regulation of Lobbyists."

¹¹⁴ V. Kalnins, *Transparency in Lobbying: Comparative Review of Existing and Emerging Regulatory Regimes*, 2011. Or for instance see the part of the lobbying regulation rationale from the report "Submission Department of Public Expenditure and Reform Regulatory System for Lobbying in Ireland" (2012): 1-10. : *Unregulated lobbying creates risks in terms of the lack of openness, transparency and the integrity of the political and administrative decision-making. As highlighted in the final report of the Mahon Tribunal such lobbying can exacerbate corruption risks. Even small gifts and other benefits of a minor value that arise in the context of the lobbying process can engender a sense of obligation or reciprocity. Unregulated lobbying can also erode the legitimacy of democratic governance by undermining political equality between citizens or even from being seen to have this effect.* Responding to scandals by regulating is also mentioned as a reason by D. Lowery and V. Gray (1997), *Supra*, No.1.

Hence, the goal of this research is to create a special methodology for the assessment of lobbying regulations in order to:

- 1. Improve tools for the comparative assessment of lobbying regulations.*
- 2. Improve the capacity of regulators and policymakers by offering them a special cost-benefit tool for the optimization of the structure of lobbying regulations.*

These objectives could also be reframed in a research question, for an additional clarification of the intention of this research.

- 1. How can tools for the comparative assessment of lobbying regulations be improved?*

To fulfil these goals/answer the research question - this research will focus on the development of the Cost Indicator Index (CII). This tool is not aimed at replacing already available qualitative and quantitative Regulatory Impact Assessment (RIA) procedures developed and used in different countries around the world. Instead, it should be a tool used for easier comparison of different regulatory models for the regulation of lobbying, and it should expand current tools solely based on legal indicators to a comparison based both on legal and economic indicators. Similarly, it should be a useful tool for countries which have not sufficiently developed their RIA systems, or the scope of application of their RIAs is simply too narrow. In those cases, the CII (combined with the CPI) should enable them to have a simple RIA tool for their lobbying regulation proposals.

3. Reasons for improvement of comparative assessment tools for the regulation of lobbying

Once again it should be stated that this research does not aim at discussing the economic reasons for lobbying regulation or the economic nature of lobbying, even though some reference to this was provided in the introduction in order to emphasize the importance of the subject. Instead, the aim is to use a law and economics approach to improve current tools for the comparative assessment of regulatory solutions for lobbying over different jurisdictions. Upgrading the current tools should result in a better

understanding of different practices through a more comprehensive comparison of different regulatory mechanisms and their alternatives.

Lessons learned from comparisons of different regulatory solutions via law and economics indicators should serve to improve the design of future regulations of lobbying, especially in countries where RIA procedures do not exist or are too narrow in their scope. In addition, in jurisdictions where lobbying is announced to be soon regulated, regulators may use the tools offered in this research for indication of the costs and benefits of their proposals long before they can actually use a full Regulatory Impact Assessment analysis (in countries where they use it).

In the first chapter of this research, it was clearly shown that comparative studies of lobbying regulations were mostly comparing their transparency effects, while rarely analysing the design of regulations from an economic point of view. Laws with a higher level of transparency (measured with the CPI Index) were considered *a priori* as the better ones, and tools that were strengthening transparency were usually not observed together with their economic effects.

This research analyses specific regulatory approaches by focusing on concrete tools for transparency improvement in lobbying regulations, and it also seeks to categorize them based on their cost-indication dimension. An additional motivation for such an approach is the common approach of most lawyers, who usually tend to propose legal solutions without taking into consideration their economic effects, and especially their influence on social costs¹¹⁵. In some cases, such proposals have become quite ineffective laws (Macedonia and Montenegro as mentioned earlier), especially in those countries where *ex-ante* RIA tools are insufficiently developed. Hence, the Cost Indicator Index (CII) for lobbying regulations is specifically designed to be a simple but significant tool exactly for those countries, especially at the very start of the debate.

The development of the new tool should, first of all, improve the general assessment of lobbying regulations and highlight that the desired high transparency

¹¹⁵See for instance *Lobbying Law in the Spotlight: Challenges and Proposed Improvements*, 2011 <http://www.americanbar.org/content/dam/aba/migrated/2011_build/administrative_law/lobbying_task_force_report_010311.authcheckdam.pdf>; 'Discussion on Adoption of Law on Lobbying in Montenegro' <<http://www.skupstina.me/index.php?strana=zakoni&id=1824>>; *Regulatory Frame for Lobbying in Macedonia, Slovenia and Montenegro (in Serbian)* (Belgrade, 2011).

should always be paired to its cost-indication, before opting for a concrete regulatory solution. Moreover, the new scale, which adds the cost-indicator component to transparency indicators, will enable comparison of different transparency mechanisms by both legal and economic dimension and allow improved learning not only from comparisons of different regulations, but also from comparisons of different regulatory measures within a single piece of lobbying regulation.

The CPI (see Chapter III, section 6 for detailed explanation of the CPI) gives, on the one hand, an indication on transparency¹¹⁶ and accountability¹¹⁷ defined as the “*strength of lobbying regulation*” where the more points a regulation has, the stronger it is, according to this scale. The newborn scale introduced here uses for its foundation only those CPI indicators that can be evaluated in terms of the cost and burden they are expected to produce.

However, unlike a CPI score where higher means better, a CII score should be as low as possible, which indicates low compliance and enforcement costs related to lobbying regulations. Consequently, having as high a scores-difference as possible is desired – the highest possible transparency provided on the lowest possible cost (the result will have the indicative and not monetary nature).

The methodology offered in this research is designed to satisfy research and policy needs. Its simplicity allows for its wide and quick application, and its design fits well with previous methodologies used for the comparative assessment of lobbying regulations.

¹¹⁶For a general overview on transparency and its role see J.L. Broz, ‘Political System Transparency and Monetary Commitment Regimes’, *International Organization*, 56 (2002), 861–887; A Héritier, ‘Elements of Democratic Legitimation in Europe: An Alternative Perspective’, *Journal of European public policy*, 1999; L. Enriques and G. Hertig, ‘The Governance of Financial Supervisors: Improving Responsiveness to Market Developments’, 2010 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1711230>.

¹¹⁷For more on the concept of accountability see Collin Scott, ‘Accountability in the Regulatory State’, *Journal of Law and Society*, 27 (2000), 38–60; *The Real World of EU Accountability*, ed. by M. Bovens, D. Curtin and P. ‘t Hart (Oxford University Press, 2010).

4. Why is it so important to improve tools for the comparative assessment of lobbying regulation?

There are several important answers to this question, but the three most relevant ones are:

1. **The dynamics of lobbying regulation** - An important reason for improving the tools for the assessment of lobbying regulation is the dynamics of lobbying regulatory activity, especially in Europe. According to current tendencies within European countries, we can expect very dynamic regulatory activity of lobbying. On the other hand, the debate on reforming lobbying regulations in US is again very active since 2009, after the first election of the President Obama.

2. **Methodological complexity and diversity of the Regulatory Impact Assessment tools are limiting their application on comparative analysis in an easy and informative manner.** For precise assessment of a specific regulation, more detailed, quantitative and qualitative analysis should be done in each case. In countries where impact assessment tools are used, regulatory impact assessment analysis (RIA) are mostly different, and they depend on the concrete legislative, political and economic traditions of every country. Hence, the methodological differences, as well as the complexity and diversity of RIAs are obstacles for comparisons between different lobbying regulations, especially in an economic sense. To be more precise, they are obstacles for a simple comparisons based on economic indicators for the costs, and likewise comparisons by the transparency indicators of the CPI index.

3. **Limited application of the currently available tool for comparative assessment of lobbying regulation – the CPI Index** – which does not allow comparison on any economic criteria and limits comparisons only to the non-economic criteria (transparency and accountability – political criteria) which are defined as the “*strength*” of lobbying regulation. Of course, these are not completely non-economic criteria, as they could be observed as non-monetary benefits of a regulation.

Still, these limitations prevent researchers and policymakers from learning as much as they could from comparisons of different regulatory solutions. Hence, improving the tools should improve and expand the scope of learning and provide

information on the relation between benefits and costs of lobbying regulation, based on indication for both dimensions.

In order to better understand these issues and problems, each of them will be analysed individually in the following sections of this chapter: *Section I* will address the current dynamics of lobbying regulation, focusing especially on the US and EU as the two most important continents when it comes to the regulation of lobbying. *Section II* will address Regulatory Impact Assessment analysis as a tool, and highlight its limits for the comparative assessment of lobbying regulation. *Section III* will explore the structure, scope and applicability of the CPI Index, as well as its limits, while highlighting possibilities for improvement of this method, which is currently the best and the most applicable tool for the comparative assessment of lobbying regulation.

5. Section I

5.1. An overview of the recent dynamics and development of lobbying regulation

This section will address the most recent developments in lobbying regulatory activity both in the US and EU. It will first refer to the US, and then to particular European countries and the European Union. The purpose is to illustrate the significance and expansion of lobbying regulation in both continents and to show that many of the existing and future laws, especially in the South East Europe (SEE) have been proposed or adopted without any regulatory pre-assessment.

5.2. The US lobbying regulation system – an overview and current tendencies

The US has the longest tradition in lobbying regulation,¹¹⁸ both on the state and federal level. US lobbying is considered to be the most dynamic in the contemporary world, with the largest number of registered lobbying firms involved, and a continuous increase in lobbying expenditures.¹¹⁹

¹¹⁸ For more on US lobbying regulation history see Thomas Susman and William Luneburg, 'History of Lobbying Disclosure Reform Proposals Since 1955', in *THE LOBBYING MANUAL: A COMPLETE GUIDE TO FEDERAL LOBBYING LAW AND PRACTICE* (American Bar Association, 2009).

¹¹⁹ The correlation between transparency and lobbying expenditures is an interesting issue which requires more research. Some authors (P. Denter, J. Morgan and D. Sisak 2011, ""Where Ignorance Is Bliss, 'Tis Folly to Be Wise": Transparency in Contests.") were modelling this relation, and their results suggested that increased transparency that comes with regulation attracts more players into the lobby arena. More competition makes the race for influence harsher, and this leads to dissipation of resources in a "non-

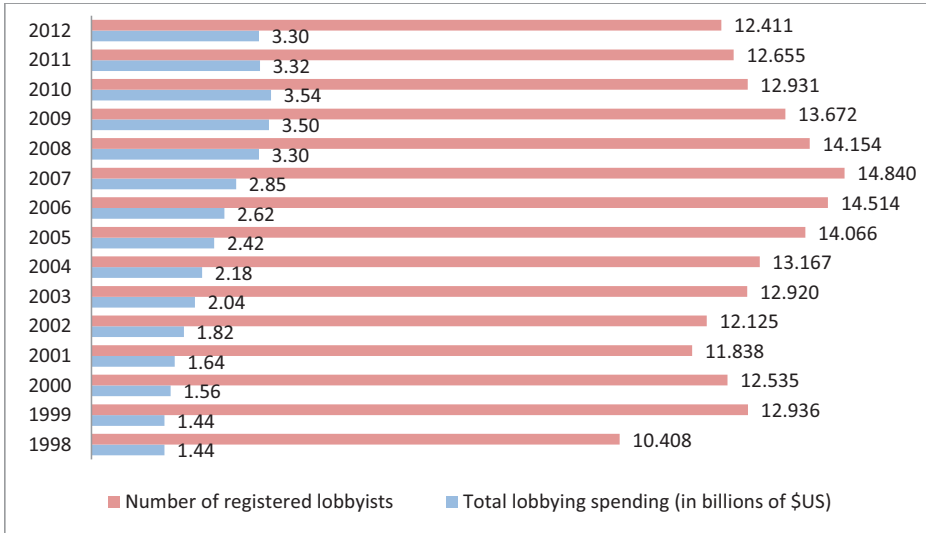


Figure 1 - Overview on lobbying spending and lobbying numbers in US

The figures clearly indicate that lobbying has been an important part of US political life in the last decade, but nevertheless lobbying has played this role for a much longer time in America. The first traces of regulatory activity related to lobbying can be found at the beginning of the 20th century. According to Chari, Murphy and Hogan (2010), the earliest steps were made individually within states long before the first federal regulation, and by 1950, 38 states already had some type of lobbying regulation.

Meanwhile, regulatory activity also started to develop on the federal level under the Public Utilities Holding Company Act¹²⁰. This act imposed reporting duties for the first time for legal and natural persons wishing to influence the US Congress. Another

productive competition". Even though this sounds as a reasonable assumption, if we look into the data on expenditures, we see they were increasing at a relatively stable rate and have not changed significantly after the introduction of the new rules. However, in 2007 when the Honest Leadership and Open Government Act was adopted, the increase in expenditures relative to 2006 was significantly larger than in other periods. Still, this does not have to be a clear indicator, as data are based on reported aggregate expenditures and the reporting rules were changed under the new law. However, growth in expenditures can be explained in another way. For instance: "...government has grown in size and complexity, more lobbyist have been needed to explain how business operates..how legislation would affect various interests"; (R. Chari, J. Hogan, and G. Murphy 2010, p.22).

¹²⁰ Public Utilities Holding Company Act (PUHCA) (United States Congress, 1935).

similar provision was introduced a year later (1936) in the Merchant Marine Act.¹²¹ These acts were the first to introduce the registration and reporting on the US federal level, but they were not the first laws on lobbying in the US, in the real sense of the word.

However, laws that were solely dedicated to regulating lobbying activities and behaviour arrived soon, and in 1938 there came the first law which was dedicated only to the regulation of lobbyists. This law and the laws that followed deserve a closer look which will reveal the tendency of lobbying regulation in the US from its beginnings:

- **1938, Foreign Agents Registration Act (FARA)**¹²² – The actual purpose of this law was not to regulate lobbying as we think of it today, but to impose registration duty on foreign citizens who were aiming to influence US federal institutions. The law was adopted as a consequence of the fear that Nazis could engage in financing some groups that could destabilize the US. It was later revised, but even though it did not focus on lobbyists in the sense in which we see them today, it was an important step in the development of lobbying regulation in the US and the world.
- **1946, Federal Regulation of Lobbying Act (FRLA)**¹²³ – This is the first US federal law on lobbying. This law for the first time required the registration of all those who wished to influence Congress. There were no rules on financial disclosure or on lobbying intentions. Instead, registration was expected to inform policymakers and the general public as to who was aiming to influence federal policies. This means that all those whose principal aim was influencing the House of Representatives or the Senate were subject to registration and quarterly reporting. The problematic issue with this law was that it was unclear who exactly was expected to be registered, because it was unclear what was to be considered as the “principal purpose”. This is why this law had quite a low compliance rate – in the report issued by the Government Accountability Office (GAO) in 1991¹²⁴ this law was labelled as ineffective.

¹²¹ *Merchant Marine Act* (United States Congress, 1936).

¹²² *Foreign Agents Registration Act (FARA)* (United States Congress, 1938).

¹²³ *Federal Regulation of Lobbying Act (FRLA)* (United States Congress, 1946).

¹²⁴ GAO, *Federal Regulation of Lobbying Act of 1946 Is Ineffective*, T-GGD-91-56, Jul 16, 1991.

- **1995, Lobbying Disclosure Act (LDA)**¹²⁵– the law that replaced the FRLA and for the first time clearly defined who were considered to be lobbyists and when exactly they had to register. The number of registered lobbyist under this law increased due to the clear financial thresholds that were clearly set – a lobbyist is a natural person who spends more than 20% of his/her working hours on lobbying, and who has received at least \$5,000 as compensation from a client. In the case of a lobbying firm (instead of a natural person) the threshold was \$20,000 semi/annually.

On the other hand, this law had its own problems. The main issue was related to reporting, which was too slow (on six months), and reports were not sent in an electronic form so there had not been enough publicly available.¹²⁶ In addition, public officials were not subject to these rules, which opened large room for different types of “benefits” that were often offered by lobbyists. Thus, this law also had to be amended in 2007 by a new set of rules.

- **2007, Honest Leadership and Open Governments Act (HLOGA)**¹²⁷– was introduced to amend the LDA, as a consequence of several corruption scandals (the most famous is the Abramoff scandal from 2006) that negatively affected accountability of the US federal institutions. Besides lobbyists, regulation was this time affecting public officials as well. The most important improvement was the introduction of the “cooling-off” clause, which prevents public officials from becoming lobbyist for a period of two years after the termination of their public contract.

This time, reporting was improved by the introduction of electronic filing, and submissions were introduced on a quarterly basis,¹²⁸ which improved overall disclosure. In addition, public officials were no longer allowed to receive gifts or compensation for travel¹²⁹. An institutionalized watchdog (Government Accountability Office)¹³⁰ was consequently established with authorization to audit¹³¹ submitted reports.

¹²⁵ *Lobbying Disclosure Act* (United States Congress, 1995). For more on LDA see E. Peterson, *CRS Report for Congress - Lobbying Reform: Background and Legislative Proposals, 109th Congress*, 2006.

¹²⁶ ALTER-EU, “Bursting the Brussels Bubble.” supra n.99, p.127.

¹²⁷ *Honest Leadership and Open Government Act (HLOGA)* (United States Congress, 2007).

¹²⁸ Since the reporting cycle was cut down from 6 to 3 months, the new thresholds for the new cycle were \$2,500 for individuals and \$10,000 for the firms.

¹²⁹ Title VI of the HLOGA: “Prohibited Use of Private Aircraft,” is related to the restrictions on the use of campaign funds for flights on non-commercial aircraft.

5.2.1. *Lobbying regulation reform tendencies from 2007– the need for even more transparency?*

Even though the HLOGA introduced impressive improvements in terms of transparency and conflict of interest prevention, President Obama heavily criticized lobbying rules and lobbyists during his election campaign in 2008: *“I intend to tell the corporate lobbyists that their days of setting the agenda in Washington are over, that they had not funded my campaigns, and from my first day as president, I will launch the most sweeping ethics reform in U.S. history. We will make government more open, more accountable and more responsive to the problems of the American people.”*

Almost immediately upon taking office, in January 2009 he issued Executive Order (EO) 13490¹³² where he limited the access of lobbyist to the executive branch of government, and which was criticized to be almost unconstitutional in terms of infringement of the First Amendment of the US Constitution which guarantees the right of petition¹³³. By this EO, the executive branch introduced additional rules for lobbying which go further beyond the HLOGA-rules. The effect of these new rules was to: (a) restrict any kind of gifts to executive officials, (b) prevent former lobbyists from getting employment in the executive branch, which may be interpreted as a “reverse cooling-off” rule, (c) limit of access of lobbyists to serve in an advisory sense¹³⁴ in executive branch committees and boards.¹³⁵

Despite this approach being generally welcomed by the public and criticized by business, the actual results of those intentions are still blurry. As Professor J. Thurber, one of the leading US lobbying scholars, noticed *“... A consequence of President Obama’s attempt to reduce conflicts of interest has seriously limited those with expertise from serving as appointees and on government advisory panels. Little seems to have*

¹³⁰ www.gao.gov

¹³¹ 2 U.S.C. § 1614

¹³² *Executive Order 13490 - Ethics Commitments by Executive Branch Personnel* (Federal Register, Vol. 74, No. 15).

¹³³ *Lobbying Law in the Spotlight: Challenges and Proposed Improvements*. p.5.

¹³⁴ The function of participation in those boards was very close to role of the consultation procedure of the EU (<http://www.europarl.europa.eu/aboutparliament/en/00c5e7159b/Consultation.html>).

¹³⁵ <http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions>

*fundamentally changed in lobbying whether it is done transparently or non-transparently. The rhetoric has changed, but the way Washington works seems unchanged*¹³⁶.

The direction of the debate has remained on a similar course even afterwards. In the most recent debate, voices were raised by several independent research centres and foundations¹³⁷, and also professional associations¹³⁸. The direction of those approaches diverges, but the general tendency is that the HLOGA again needs to be revised and additionally improved. Since all those positions cannot be summarized in this section, only two prominent ones are going to be referred to, in order to reflect the state of the debate and the direction it is going. Those are the respective positions of the American Bar Association and the Sunlight Foundation.

The American Bar Associations¹³⁹ has been particularly publicly active on this matter (within the Task Force on Federal Lobbying Laws) and they actively advocated for the reform¹⁴⁰ of the HLOGA. The ABA argues that lobbying is an important part of the democratic and political process in the US, and that it is good for both the lobbying sector and the Government to maintain the interaction as transparently¹⁴¹ as possible.

Concretely, this organization recommends that rules for registration have to be revised and set to be clearer for those who have to comply with them¹⁴². The ABA also

¹³⁶ J. A. Thurber, *Changing the Way Washington Works? President Obama's Battle with Lobbyists* (London, 2010).

¹³⁷ The Sunlight Foundation, see <http://sunlightfoundation.com/policy/lobbying/> and its project Policy Mark-up at <http://publicmarkup.org/bill/real-time-online-lobbying-transparency-act/>.

¹³⁸ Supra n.126.

¹³⁹ <http://www.americanbar.org/aba.html>.

¹⁴⁰ "The Task Force believes that the LDA disclosure system is in need of improvement." Supra n.136. p.15.

¹⁴¹ <http://www.abanow.org/2010/05/lobbying-awareness-of-rules-transparency-important/>.

¹⁴² A lobbying firm will be required to register if, on behalf of a particular client: (a) employees of the firm in the aggregate make 2 or more lobbying contacts at any time on behalf of the client; and (b) the firm receives or expects to receive from that client for matters related to lobbying activities, at least the amount specified in 2 U.S.C. §1603(a)(3)(A) (currently \$3,000) in the quarterly period during which registration would be made.

A lobbying organization will be required to register if:

(a) employees of that organization in the aggregate make 2 or more lobbying contacts at any time on its behalf; and (b) the organization expends in connection with lobbying activities at least the amount specified in 2 U.S.C. §1603(a)(3)(B) (currently \$11,500) in the quarterly period during which registration would be made. For purposes of these criteria, employee, lobbying contact and lobbying activities would be defined as under current law (2 U.S.C. §§1602(5), (7) & (8)).

urges for more complex reporting by suggesting an extensive list of items to be reported by each single registrant¹⁴³.

One of the additional things that the ABA insists on, due to the weak enforcement and audit of compliance, is strengthening of the enforcement of the lobbying rules. The current situation under the HLOGA is that the Clerk of the House and the Secretary of the Senate have to indicate non-compliance to the Department of Justice in order to identify wrongdoers. However, the Department of Justice has not been very active so far in investigating and punishing wrongdoers.

According to this position, the ABA suggests that this role should be entirely transferred to a single agency under the executive branch (most under the Department of Justice), which will have the necessary tools and power of investigation, monitoring and sanctions.

As anticipated, the position of the ABA falls prey to the general problem discussed in this research – suggestions for improvement of lobbying rules are usually cost-non-sensitive in the US. It is important to keep in mind that the ABA's voice is heard often in the US Congress as it represents an important stakeholder for the US Government. While lobbying rules in the US were outside of the scope of the Regulatory Impact Assessment procedure¹⁴⁴ so far, important stakeholders like the ABA have also shown a cost-non-sensitive approach in their recommendations.

¹⁴³ (a) the bills and topics with respect to which lobbying activity was conducted; (b) all congressional offices, congressional committees, and federal agencies and offices contacted; (c) all individuals employed by the firm or organization who both made any lobbying contact and also devoted at least twelve (12) hours during the quarterly reporting period to lobbying activities or lobbying support (as hereinafter defined) on behalf of the client; (d) all other individuals employed by the firm or organization who engaged in lobbying activities or lobbying support; and (e) all other persons and entities retained by the registrant firm or organization that engaged in lobbying support along with a statement of- (1) the nature of the lobbying support rendered with a short narrative summary of work performed; (2) the amount paid to such other person or entity for lobbying support; and (3) the names of individuals employed by that other person or entity who supervised the provision of lobbying support or devoted more than a specified number of hours to lobbying support during the quarterly reporting period.

¹⁴⁴ Due to the US RIA system which has a narrow scope of application, that has left the HLOGA outside of the scope.

Another approach which urges for even more transparency comes from the Sunlight Foundation¹⁴⁵ which actively lobbies¹⁴⁶ for the Lobbyist Disclosure Enhancement Act. The aim of this proposal is to establish The Lobbying Disclosure Act Enforcement Task Force¹⁴⁷ for improvement of enforcement of the lobbying rules, and to amend some rules set earlier in the Lobbying Disclosure Act (LDA, 1995)¹⁴⁸ in order to improve the frequency and accuracy of registration (instead of 45 days now only 5 days to register the contact with the new client), and enlarge the scope also on contacts with public officials regarding financial contributions. These changes would require lobbyists to disclose the names of the public officials they have met, dates of those meetings and the issues discussed.

The Sunlight Foundation goes beyond even current proposals and offers additional amendments of the currently employed lobbying rules, by opening a public debate on the introduction of another bill under name of the “Real Time-Lobbying Disclosure Act”¹⁴⁹. These rules, if adopted, should further strengthen democracy and counteract the “*distorting effect that lobbying has on public policy*”.

This proposal deals with various part of lobbying rules, but the most important changes it brings are:

- Registration - within 72 hours of making a lobbying contact, electronically, with an extensive list of items to be clarified and reported.

¹⁴⁵ The Sunlight Foundation is a non-profit occupied with knowledge-based work on the improvement of Government accountability and transparency. Besides other activities, it is engaged in advocating lobbying reform in the US.

¹⁴⁶ Sponsored and introduced to the Congress by Rep. M. Quigley [IL-5] (introduced 6/23/2011).

¹⁴⁷“Grants such Task Force primary responsibility for investigating and prosecuting each case referred to the Attorney General under the Lobbying Disclosure Act of 1995. Requires such Task Force to: (1) collect and disseminate information on the enforcement of such Act; (2) audit at least annually the extent of compliance with such Act; and (3) establish, publicize, and operate a toll-free telephone hotline for members of the public to report noncompliance with lobbyist disclosure requirements.”

¹⁴⁸(1) require notifications of noncompliance of lobbyist disclosure requirements to the Attorney General (instead of the U.S. Attorney for the District of Columbia); (2) amend the definition of “lobbyist” under such Act to eliminate the exemption from such Act of certain lobbyists who work for a client on a part-time basis; (3) require lobbyists to register with the Senate and House of Representatives within 5 days after a lobbying contact (currently, 45 days); and (4) expand disclosure requirements relating to contacts with executive and legislative branch officials and political contributions.

¹⁴⁹“Real Time Online Lobbying Transparency Act,” *Sunlight Foundation*, n.d., <http://publicmarkup.org/bill/real-time-online-lobbying-transparency-act/>.

- Expansion of the definition of lobbyists – elimination of the 20% rule (from the LDA, where a person who were spending less than 20% of their working time on lobbying was not expected to register. This subjective criterion was a cover for many lobbyists who lobbied without being registered).
- Reporting – requires each registered lobbyists to report in real-time (at the latest 72 hours of significant contact) their activity on a complex form.
- The Congress should make these reports available in an electronic form within 48 hours of their receipt.
- Other provisions requiring political committees to report within 72 hours all contributions they received, specifically bundled contributions.

This approach, unlike the ABA’s approach, is more radical as it looks on lobbying as a negative externality to democratic life and accountable decision-making. However, since lobbying is inevitable, the strongest possible rules should be applied, according to the Sunlight Foundation.

5.2.2. An interpretation of US lobbying regulation in regard to this research

The brief chronological analysis of the development of lobbying regulation in the US allows several important conclusions to emerge:

- Lobbying regulation was continuously developed in direction of higher transparency. Every newly adopted federal law kept expanding the scope of lobbying definition, kept decreasing time in which registration and reporting has to be completed, and kept improving public access to relevant documents.
- An active regulatory dynamic probably positively affected compliance costs. However, there is no clear information on this aspect of regulatory impacts. The debate on lobbying reform is dominated by legal and political arguments, while cost (compliance or enforcement costs) of proposed improvements were not taken into consideration nor in public debates nor under the US Congress’ capacity (due to the limited scope of the US RIA procedure).
- The current state of public debate, especially by the current US administration, civil society and part of the lobbying sector indicates a new need for more transparency

and revision of the current rules in this direction. However, it seems that proposals for improvements neglect general economic and market implications, as well as the compliance and enforcement effects of proposed improvements.

When it comes to a comparative perspective, lobbying regulation in the US has been only subject to comparative analysis of their strength measured by the CPI Index¹⁵⁰. In this perspective, US legislation is often considered as the most advanced one which goes along with high CPI scores of lobbying regulations of US federal states. However, this glorification of US lobbying regulation might be misleading since high CPI scores are observed isolated from any costs or inefficiencies. Before understanding even basic relations between certain types of regulations or single rules with their economic effects, recommending any type of regulatory model might be very difficult. In other words, it has to be understood better which tools are efficient ones and what is more beneficial than costly, even in general terms.

5.3. The European lobbying regulation system – an overview and recent regulatory tendencies

The situation in Europe is no less dynamic regarding the regulation of lobbying, especially in the last decade. Literature which deals with European lobbying and the regulation of lobbying has already been analysed in detail in the Chapter I. Here, in order to avoid repetition of other authors' work on the development of lobbying regulation in Europe, this section will provide a brief list of countries with lobbying legislation, and focus more on the general features of regulatory style, technique and recent tendencies. Due to a complete lack of research, this section will for the first time be introducing experiences and regulatory tendencies from the countries of the Western Balkans (WB). Putting focus on tendencies in this area is relevant and necessary, as lobbying regulation activity in this area is almost completely out of the international research arena¹⁵¹.

¹⁵⁰ "Lobbying Regulation Across Four Continents: Promoting Transparency?", R. Chari, J. Hogan, and G. Murphy (2009).

¹⁵¹ For instance, the most advanced book on this topic by R. Chari, J. Hogan, and G. Murphy (2010) or another important report of the same team (R. Chari, J. Hogan, and G. Murphy, *REPORT ON THE LEGAL FRAMEWORK FOR THE REGULATION OF LOBBYING IN THE COUNCIL OF EUROPE MEMBER STATES* (Strasbourg, 2011) p.23) does not mention the Macedonian Law on Lobbying which was officially in power

The reason for this is not the irrelevance of the topic or the geographical area, but a problem of availability of information for researchers in English. At the end, an overview of the current EU lobbying rules will be given.

Most of European countries still have not regulated lobbying at all¹⁵², either because they do not officially recognize lobbying as a profession or because they believe that regular laws on the prevention of conflict of interest or corruption-fighting are sufficient to counteract negative externalities on democracy caused by lobbying. Still, those countries that decided to undertake some action regarding lobbying regulation have opted for regular laws rather than soft-law¹⁵³ mechanisms, such as code of conducts, ethic codes or similar rules that are mostly expected to be self-enforced.¹⁵⁴

The latest Law on lobbying in Europe was adopted at the end of 2011 in Montenegro.¹⁵⁵ Besides Lithuania, Poland¹⁵⁶ and Macedonia¹⁵⁷ have specific laws on lobbying, while Slovenia¹⁵⁸, France¹⁵⁹ and Germany¹⁶⁰ have lobbying rules that are part of other laws or administrative rules - which cannot be considered as lobbying laws in a precise sense.

from 2008 and has been revised recently. Meanwhile, in 2011 Montenegro got the Law on Lobbying while Serbia and Croatia are very close to this point.

¹⁵² J. Hogan, R.S. Chari and G. Murphy (2010).

¹⁵³ There is an interesting article on the motivation to use soft-law in an international environment: TL Meyer, 'Soft Law as Delegation', *Fordham International Law Journal*, 32 (2009), 1-55.

¹⁵⁴ Self-regulation in lobbying is the most important alternative to mandatory regulation, and it represents some type of compromise between unregulated and regulated lobbying. However, it has to be highlighted that the majority of current EU lobbyists are in any case bound with at least some type of codes of conduct but still the pressures for regulation of their behaviour have been rising over time. This is probably because the monitoring and enforcement of compliance to those codes was not strong enough. Hence, if the internal enforcement of the compliance would be better, these mechanisms would be more efficient and probably be a better substitute to regulations. Hence, the current state of development of self-regulatory mechanisms may not provide sufficient response and it seems that regulation is still more effective in terms of securing the sufficient transparency in lobbying. For more information on self-regulation (and positions of lobbyists towards it) in lobbying, see PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE, *Lobbyists, Government and Public Trust: Promoting Integrity by Self-Regulation, Components*, 2009; *Lobbyists, Governments and Public Trust - Promoting Integrity through Self-Regulation (Volume 2, 2012)*.

¹⁵⁵ <http://www.hdl.com.hr/preuzimanje/newsdata/Sluzbeni%20list%20%20Zakon%20o%20lobiranju.pdf>.

¹⁵⁶ *LEGISLATION ON LOBBYING IN EUROPE*, Supra n.56.

¹⁵⁷ *Zakonot Za Dopolnuvanje Na Zakonot Za Lobiranje (Macedonian)* (National Assembly of Republic of Macedonia, 2011).

¹⁵⁸ *Zakon O Integriteti in Preprečevanju Korupcije (Slovenian)*.

¹⁵⁹ "REGISTER OF INTEREST REPRESENTATIVES -Représentants D'intérêts À l'Assemblée Nationale," n.d., <http://www.assemblee-nationale.fr/representants-interets/index.asp>.

¹⁶⁰ Supra n.151, p.14.

The UK¹⁶¹ and Denmark¹⁶² are currently working on their proposals and we can expect them soon to have specific lobbying regulations. Other SEE countries such as Croatia¹⁶³ and Serbia¹⁶⁴ are also very close to the adoption of laws on lobbying.

Even though they were just introduced, it is interesting to mention that Slovenian lobbying rules already had some enforcement issues (reporting duties of public officials), while Macedonian law had to be revised in 2011 because only one lobbyist was registered under the initial rules. Moreover, in 2011 Hungary abandoned its lobbying law that was in place since 2006¹⁶⁵. All these enforcement problems and regulatory diversities are evidence that countries were usually creating lobbying rules with very little understanding of the nature of lobbying activity, little comparative learning, and even without a simple *ex-ante* estimation of the effects of introduced rules, especially their compliance effects¹⁶⁶.

The reason for this might be that in smaller countries, the lobbying industry is insufficiently large, and the need for having lobbying seems to be overestimated. Another problem is that lobbying rules are badly structured due to a lack of specific expertise and general RIA application, which causes regulatory failures and resources dissipation both in terms of compliance and enforcement. Similarly, a need for having binding rules on the EU level tends to be underestimated. To some extent, these tendencies are paradoxes: the EU level which attracts most of the lobbyists is entirely under-regulated, while national approaches in countries where lobbying is regulated could be labelled as over-regulated, especially in the Western Balkans.

¹⁶¹ "Alliance for Lobbying Transparency," n.d., <http://www.lobbyingtransparency.org/about-alt>.

¹⁶² "CORPORATE EUROPE OBSERVATORY - Danish Parliament Takes Steps towards Lobbying Transparency," n.d., <http://corporateeurope.org/blog/danish-parliament-takes-steps-towards-lobbying-transparency>.

¹⁶³ "CROATIAN SOCIETY OF LOBBYISTS," n.d., www.hdl.com.hr ; "SERBIAN ASSOCIATION OF LOBBYISTS," n.d., <http://drustvolobistasrbije.org/>.

¹⁶⁴ B. Kascelan and D. Krsmanovic, *Ekonomsko i Politicko Lobiranje (Serbian)* (Belgrade: Zavod za udzbenike, 2012).

¹⁶⁵ *Supra* n.113, p.23.

¹⁶⁶As it is the case with the latest Law on Lobbying – from Montenegro. All official documents that were preceding the adoption of the law are publicly available through the website of the Parliament of Montenegro. Among three different analyses done by different committees within the parliament, none tackles the issue of costs. See 'Discussion on Adoption of Law on Lobbying in Montenegro' - <http://www.skupstina.me/index.php?strana=zakoni&id=1824>.

Like on the US federal level, most of the lobbying in Europe actually takes place within European Union institutions in Brussels, following the increasing political and economic role of the EU institutions. Specific political, legal and economic roles of those institutions attract most of the European lobbyists¹⁶⁷ both from member states and non-member states of the EU.

Due to the high demand on access¹⁶⁸ that lobbyist create over the EU institutions, and due to specific problems of democratic deficit and accountability¹⁶⁹ of the EU (especially the European Commission)¹⁷⁰, the EU has been dealing with lobbyists by its own original set of rules.

However, unlike the US where lobbying is strongly regulated by binding laws, in the EU rules were never set to be classically binding nor was there any significant mechanism for punishment of those who did not comply with the rules which were found to be ineffective even from their beginnings¹⁷¹.

The European Commission and the EU Parliament are mostly frequented by lobbyists and they had their own separate rules to deal with them, but since 2011 they

¹⁶⁷ Estimates differ based on methodology and the scope of the term "lobbying", but some authors have estimated that around 16,000 lobbyists work in Brussels. According to some authors, there are probably many more people indirectly involved in helping those who are visible, which means that this number might in fact be much higher (Guéguen, *European Lobbying*. Supra n.11).

¹⁶⁸ For more on theory of access goods see Supra n.1, Bouwen, 365–390, (2002); P. Bouwen, 'A Theoretical and Empirical Study of Corporate Lobbying in the European Parliament', *European integration online papers (EIoP)*, 7 (2003) <<http://dialnet.unirioja.es/servlet/articulo?codigo=3709235>> [accessed 2 July 2013].

¹⁶⁹ M. Bovens, D. Curtin, and P. 't Hart (eds), *The Real World of EU Accountability*, Chapters 4 (the Commission), 5 (EU Agencies) and 6 (the EU Council).

¹⁷⁰ This is something that is also highlighted by the members of the European Parliament. Recent accusations on the lack of legitimacy came from the EU representative Nigel Farage at the session held in European Parliament, Strasbourg, 16 November 2011. "And who exactly is responsible, who is in charge out of all you lot? The answer is none of you because none of you have been elected; none of you have any democratic legitimacy for the roles you currently hold within this crisis". But besides political statements, also see S. Smismans, "Representation through Interest Committees: The Case of the Tripartite Advisory Committee for Safety, Hygiene and Health Protection at Work.", in *Les Modes de Représentation Dans l'Union Européenne*, ed. S. Sauragger and B. Irondelle, 2003; D. Beetham and C. Lord, "Legitimizing the EU: Is There a "Post-parliamentary Basis for Its Legitimation," *Journal of Common Market Studies* 39, no. 3 (2002): 443–462; P. Bouwen, "Business Interest Representation and Legitimate European Governance," in *Civil Society And Legitimate European Governance*, ed. S. Smismans (Edward Elgar Publishing, 2006), 277–296; C. Crombez, "The Democratic Deficit in the European Union - Much a do About Nothing?," *European Union Politics* 4, no. 1 (2003): 101–120.

¹⁷¹ ALTER-EU Assessment of European Parliament – Commission Agreement on a Common "Transparency Register," 2011, http://www.alter-eu.org/sites/default/files/documents/alter-eu_position_on_joint_ep-ec_register.pdf.

jointly introduced the New Transparency Register, which unified the rules that lobbyists should follow both for the Commission and for the Parliament. However, for a long time the rules on lobbyists set by the Parliament and the Commission were different and unconsolidated. From that point of view, the New Transparency Register represents an important improvement¹⁷² regardless of all the problems related to its efficiency¹⁷³.

For instance, the EU parliament had its own Register set up in 1996 where interested parties were subject to registration and compliance to a code of conduct. The efficacy of these rules has also been heavily criticized¹⁷⁴. The main feature of this criticism was that the definition of lobbyist was imprecise, the registration which opened a door for a yearly pass did not have significant effect¹⁷⁵, and the code of conduct could not guarantee that lobbyists would act sufficiently ethically¹⁷⁶, especially due to weak and insufficient enforcement.

A similar but even less formal approach was afterwards adopted by the Commission. The Commission has defined its position of openness and participation with regards to outside-stakeholders in several important strategic documents such as the White Paper (2001)¹⁷⁷, the Green Paper (2006) which opened the door for establishment of the “consultation procedure”¹⁷⁸.

Due to high demand on access and its strategic approach, in 2008 the Commission launched the Voluntary register of the Commission. The word “voluntary” has to be highlighted, as unlike in the Parliament where access was directly correlated with possession of a badge, lobbying within the Commission could be exercised regardless of any registration. Those who registered were also expected to follow the

¹⁷² J. Greenwood and J. Dreger, “The Transparency Register: A European Vanguard of Strong Lobby Regulation?” (published Online) (2013), <http://www.palgravejournals.com/iga/journal/v2/n2/full/iga20133a.html#bib17>.

¹⁷³ *RESCUE THE REGISTER, How to Make EU Lobby Transparency Credible and Reliable*. Supra n. 45.

¹⁷⁴ R. Chari, J. Hogan and G. Murphy (2010; 2011), Bouwen (2003).

¹⁷⁵ Those who very simply register would carry a badge with their name and organization stated, and have full access within the Parliament building. Anyone could practically lobby for anything, as registration was just a formal act. This also meant that all lobbying outside the buildings of the Parliament was completely invisible. The registration procedure itself required only reporting of the name of the lobbyist, their affiliation to an organization, general interest of influence and duration of influencing.

¹⁷⁶ R. Chari, J. Hogan and G. Murphy (2011), p.9.

¹⁷⁷ *The White Paper on Governance, COM(2001) 370, 2001*.

¹⁷⁸ *The Green Paper - European Transparency Initiative, COM(2006) 194, 2006*.

Code of conduct, but since there was no oversight institution¹⁷⁹ nor were the penalties efficiently set¹⁸⁰ – *bona fides* was the only mechanism to rely on.

A year later it was already clear that the voluntary registration was not a very effective approach. According to the special report of the ALTER-EU¹⁸¹ the compliance rate was quite unsatisfying – “...By 25 May 2009, only 1488 organisations had registered. Only 593 of them have offices in Brussels. This means that only 22.8% of Brussels-based lobby entities have registered so far, based on the European Parliament’s estimate of 2,600 lobby groups with offices in Brussels in 2000”. Even the Commission intended to consider a change of the register from voluntary to a compulsory (after a trial period of one year), but this did not happen, despite the fact that the results of voluntary approach were unsatisfactory.

Separate rules on lobbying at the Commission and the Parliament were in place until June of 2011, when the EU Commission and the EU Parliament launched¹⁸² the new joint Transparency Register based on the special inter-institutional agreement¹⁸³, and it is operated by the Joint Transparency Register Secretariat under the General Secretariat of the Commission. The main improvements brought by this action could be summarized in following way¹⁸⁴:

- *One-stop shop*—Information on lobbying in one place; no parallel lobbying transparency systems for the Parliament and the Commission.
- *Better incentive for registration*—Lobbyists working with a firm or organisation that is not registered in the joint register will no longer be able to get a long-term ‘lobbyist’ access badge to the European Parliament.

¹⁷⁹ *The Commission’s Lobby Register One Year On: Success or Failure?*, 2009.

¹⁸⁰ “The Commission will impose a penalty only if it can establish that one or more of the seven rules in the code of conduct have been broken. The possible penalties are: (a) temporary suspension from the register and withdrawal of any associated advantages for a set period or until the body complained against corrects the situation; (b) exclusion from the register in the event of severe and persistent failure to comply with the code” – The Commissions Code of Conduct for Register of Interest Representatives (the old register).

¹⁸¹ *Supra* n.178.

¹⁸² “Press Release: ‘Commission and European Parliament Launch Joint Transparency Register to Shed Light on All Those Seeking to Influence European Policy’ IP/11/773,” n.d.

¹⁸³ *Agreement Between the European Parliament and the European Commission on the Establishment of a Transparency Register for Organisations and Self-employed Individuals Engaged in EU Policy-Making and Policy Implementation*, n.d.

¹⁸⁴ The summary of relevant improvements is taken from the *ALTER-EU Assessment of European Parliament – Commission Agreement on a Common “Transparency Register.”* (2011).

- *Individual lobbyists named—Names of individual lobbyists will be displayed in the register, but the proposal only covers lobbyists with access badges to the Parliament.*
- *Number of lobbyists per firm or organisation is to be reported*
- *Main legislative proposals lobbied on—The proposal only requires a general list. Especially for consultancies (including law firms), a list of the main legislative proposals being lobbied on for each client is crucial.*
- *Open data—Data to be “made available in electronic, machine-readable format”.*
- *One code of conduct for all lobbyists—All registered lobbyists have to comply with a common code of conduct.*
- *Regular data checks.*
- *Improved complaints and sanctions mechanism.*
- *Complaints procedure has been clarified—Maximum penalty is removal from the register, blacklisting and withdrawal of Parliament access badges.*
- *Annual reporting on operation of the register with input from stakeholders.*
- *Review—There will be a review of the register at the latest two years after its launch.*

For the first time all registrants are consolidated in one, easy searchable database and the rate of registration since the establishment has been positive¹⁸⁵.

The latest figures from the same year indicate 5,834 registered parties, which reflects the continuous but moderate growth in registering¹⁸⁶. For instance, in June 2011, just before the New Transparency Register was launched, the number of registrants within the old Commissions’ Register of Interest representatives was just above 4,000 while the Parliament in March 2011 had about 4,500 registrants. The new joint database should provide more accurate estimates on the total number of lobbyist operating at the EU level and provide easier public access to transparency-relevant data.

However, despite all the improvements it is difficult to judge the New Transparency Register as a significantly better tool, in comparison with the earlier EU approach¹⁸⁷. First of all, it has to be clear that introduction of the New Transparency

¹⁸⁵ Statistic report from the New Transparency Register, January 12, 2012.

¹⁸⁶ ‘Statistics for the Transparency Register - on 10.07.2013 there were 5,834 Registrants in the Register’.

¹⁸⁷ Supra n.183.

Register does not represent a transition from soft-law to a binding law. The EU has remained on the assumption that soft-law mechanisms could be further improved, and that stronger enforcement is not necessary for improvement of transparency, which is clear from its official position¹⁸⁸ from the time that the Register of Interest Representatives was in place.

However, this approach can be easily criticized from an economic standpoint, as it is widely acknowledged that different regulatory models, especially soft-laws and regular laws, create different incentives for the behaviour of regulated parties. Lindstedt and Naurin (2010)¹⁸⁹ have been investigating the effects of increased transparency on the reduction of corruption levels. Their findings indicate that “...transparency requirements that are implemented by the agent itself are less effective compared to non-agent controlled transparency institutions, such as free press”. Before arriving to this conclusion they had divided transparency into transparency controlled by the agent itself and transparency which is not under the agent’s immediate control, as the two affect corruption in different ways. The conclusion that might be extracted from their results, which is particularly interesting for this research, is that transparency measures which are implemented by the agent-itself are less efficient than measures enforced by a third party.

These findings could be easily replicated with the EU and the New Transparency Register, but still, the EU has remained in a position of trust¹⁹⁰ with self-enforcement of the transparency, in spite of the concerns that came from civil society and academia.

5.3.1. An interpretation of the EU lobbying regulation in regard to this research

From the overview of the EU and European national practices, we can also derive several important conclusions in regard to the goals of this research:

- Lobbying regulation activity in European countries is in expansion, but research and public debate still lack a sufficient level of expertise on the experiences of other

¹⁸⁸ “European Commission Press Release MEMO/08/428” (European Commission, n.d.).

¹⁸⁹ C. Lindstedt and D. Naurin, “Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption”, *International Political Science Review*, 31 (2010), 301–322.

¹⁹⁰ “European Commission Press Release MEMO/08/428.” - “The Commission is ready to trust the profession. The register offers lobbyists legitimacy and recognition as a profession. With self-declaration, the registrant takes responsibility for supplying correct information, and the Commission believes this trust should first be tested, before considering the possibility of more binding regulation.”

countries. At the EU level, the voluntary system shows strong weaknesses in terms of securing transparency in lobbying.

- One of the most active European regions is the Western Balkans, where the most recent lobbying regulation has been adopted, while few countries are very close to the adoption of laws on lobbying. However, there is practically no research on these developments in the Western Balkans, mostly due to linguistic barriers for foreign researchers. This research will strongly focus on this region in Chapter IV, since it is important to update the international research scene on developments in the most active lobbying-regulation environment.
- Regulation of lobbying on national levels is diverse and often followed by regulatory failures. Those failures are insufficiently used as references for other countries which tend to regulate lobbying, even though they reveal what are the most common weaknesses of lobbying-regulation structures. This research will specifically focus on this issue as well.
- The CPI Index has not yet been applied to the countries of the Western Balkans due to the language barrier for the international research community and these regulations have not been classified within the Threefold theory of lobbying regulations. In this research, CPI scores for the Western Balkan countries will be calculated and for the first time offered to the international research community.
- The lobbying-regulation approach of the EU remains one based mostly on self-enforcement, even though self-enforced transparency has been criticized in the literature.

6. Section II: The standard tools for assessment of regulation impact – Regulatory Impact Assessment Analysis (RIA) and lobbying regulation

In general, the RIA procedure is a procedure which developed countries use before imposing important regulations. The type, scope and depth of the analysis differ from case to case.

How exactly can RIA methods contribute to this research? The newborn Cost Indicator Index is actually based on a mixture of different methodologies, and one of the main pillars on which the CII is erected is RIA. As there is a large number of studies on RIA methods and their application, and since RIA approach is the major one when it comes to practical regulatory assessment, it would be hard to build any special regulatory impact assessment tool without referring to standard RIA procedures.

In fact, those procedures could be very useful and could additionally enhance the methodological background of the CII. Precisely speaking, RIA is useful in explaining what is considered to be a cost and what is a benefit in the practical meaning, and what are the options for the assessment of both.

In addition, this section will also highlight that classical RIA methods are not so useful as comparative tools for assessment of lobbying regulations, because they mostly focus on the impacts in a specific context, and often even by expressing monetary values. Their diversity and complexity prevents them from being applied broadly and simply, like the CPI Index in case of lobbying regulation, and in many cases they are simply not applied because they either do not exist or their scope of application is too narrow.

However, RIA methodologies can be used to improve understanding of the nature of lobbying regulation, and to develop a more specific tool, the Cost Indicator Index, which will together with the CPI Index provide better assessment of specific regulatory models, but also improve comparative assessment of lobbying regulations.

6.1. What do we use RIA for, and what are the most common methods?

The idea behind any RIA is to examine the social, legal and economic effect of a regulation. RIA is a tool that provides, usually *ex-ante*, estimates on benefits or costs or

associated risks (or combination of some of them) of specific regulation and enables policymakers to make more accountable decisions related to regulation. According to the official Impact Assessment Guidance of the UK¹⁹¹, an Impact Assessment is both:

- *A continuous process, consistent with the policy appraisal cycle, as set out in the Green Book, to help policymakers to fully think through the reasons for government intervention, to weigh up various options for achieving an objective and to understand the consequences of a proposed intervention; and*
- *A tool used by policymakers to assess and present the likely costs and benefits (monetized as far as possible) and the associated risks of a proposal that might have an impact on public, private or civil society organizations, following the Green Book's appraisal and evaluation techniques.*

By conducting an RIA, regulators strive to understand what the actual problem is that needs to be addressed by a society¹⁹². If the problem exists (social, economic, legal, etc.), then alternative approaches are short-listed, and each of them is then examined by their cost-benefit or cost-effectiveness nature. Regulators then suggest an optimal solution for the problem which may be additionally cross-checked through a cost-benefit framework in order to get as precise estimates as possible. In addition, RIAs are applied not only for discovering what solution is most efficient in terms of social costs, but also to support government's expertise, due process and accountability.

Today, countries use different types of methods to justify their regulatory activity. Besides the US, Europe also has its own experience in impact assessment of regulations¹⁹³. Most European countries have some kind of tools for assessment of regulation, but those tools differ in many aspects - while the US, and generally, countries of Western Europe use a more structured approach based on monetizing, some of the

¹⁹¹ *Impact Assessment Guidance – When to Do an Impact Assessment*, 2011.

¹⁹² For general information on the topic see R. Baldwin, M. Cave and M. Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press, 2012); A.I. Ogus, *Regulation: Legal Form And Economic Theory* (Clarendon Press, 1994); R.W. Hahn and P.C. Tetlock, 'Has Economic Analysis Improved Regulatory Decisions?', *The Journal of Economic Perspectives*, 6789 (2008).

¹⁹³ A. Renda, *Impact Assessment in the EU: The State of the Art And the Art of the State* (Brussels: Centre for European Policy Studies - CEPS, 2006).

Eastern European Countries¹⁹⁴ rely on reports of a narrative character¹⁹⁵. This is yet another obstacle which makes comparisons of lobbying regulations' impact quite difficult. Even if the countries would apply their respective RIA, the methodological differences would not allow clear and informative comparison.

The OECD which intensively works on RIA improvements in its member countries¹⁹⁶, has classified several main types of RIA, and each of them has its own application depending of the type of regulation and impacts that could actually be analysed in each case:

<i>Type of the RIA</i>	<i>Description</i>
<i>Cost-Benefit Analysis (CBA)</i>	<i>Regulation is desirable if estimated benefits exceed the costs.</i>
<i>Cost-Effectiveness Analysis</i>	<i>Calculation of costs per unit of benefit achieved. Policies that can generate the same or higher benefits at no greater cost are preferred.</i>
<i>Risk Analysis</i>	<i>Quantitative assessment of the magnitudes of the risk affected by the policy and their associated health consequences.</i>
<i>Risk-risk analysis</i>	<i>Comprehensive assessment of all risk effects of a policy, including those in response to costs, to ensure that on balance, the policy reduces risk.</i>
<i>Cost assessment</i>	<i>Assessment of the costs of regulation on business, consumers and workers. May include an attempt to ensure that cost levels are not too high.</i>

Those various types of RIA are mostly conditioned by the nature of costs and benefits related to different types of regulations. Thus, in order to understand which approach fits best for general examination of the regulation of lobbying, it will be useful to analyse expected benefits of lobbying regulation from an Impact Assessment point of

¹⁹⁴ *PROGRESS IN POLICY REFORM IN SOUTH EAST EUROPE MONITORING INSTRUMENTS*, 2001, <http://www.oecd.org/gov/regulatory-policy/2408446.pdf>.

¹⁹⁵ A. Renda, *Law and Economics in the RIA World: Improving the Use of Economic Analysis in Public Policy and Legislation* (Intersentia, 2011). p.82

¹⁹⁶ *Regulatory Impact Analysis - Best Practices in the OECD Countries (1997)*, 1997. p.176

view. Understanding their nature is beneficial for optimal choice of the tools for assessment of a lobbying regulation's impact.

6.2. The nature of the benefits of lobbying regulation

In the world of the RIA, the benefits of regulatory intervention should be precisely quantified in all situations where this is possible, especially if benefits could be monetarily expressed. Sometimes, impacts could be of a non-economic nature, such as social¹⁹⁷ and environmental benefits, which are harder to estimate in a monetary sense.

In cases where both benefits and costs could be monetized and quantified, it would be recommended to conduct as precise as possible a Cost-Benefit Analysis (CBA), and to confront those two parameters before regulatory decision. If benefits dominantly exceed costs – the policy could be considered to be desirable. However, the problem with application of the CBA, when it comes to lobbying, comes from the nature of the benefits associated with lobbying regulation. This is why the nature of lobbying regulation benefits has to be clarified in the first place, since it is exactly these conditions which determine the choice of an appropriate impact analysis.

As outlined in Chapter I of this research where relevant literature was examined and in Section I of this Chapter where current tendencies were addressed—the benefits associated with the regulation of lobbying could be summarized under the concepts of transparency, accountability¹⁹⁸ and deliberative democracy. All three elements represent non-economic benefits¹⁹⁹, and thus, they are very hard to directly assess and measure in

¹⁹⁷ For instance, the UK's IA Toolkit (2011) provides a list of examples of the social impacts such as safety at work, education, impacts on human rights, etc.

¹⁹⁸ See for instance RIA report on lobbying regulation in Ireland - *Regulatory Impact Analysis in Relation to the Regulation of Lobbying Bill* (Dublin, Ireland, 2013).

¹⁹⁹ Even the mentioned benefits do not look as economic benefits at first sight; they could be seen as important factors which could influence the economy of the lobbying market and the level of social cost. For instance, it is still uncertain how increased transparency affects the competition among lobbyists and lobbying expenditures (P. Denter, J. Morgan and D. Sisak 2011) which are often seen as inefficient (G. Tullock 1967; J. Buchanan et al. 1983; J.C. Heckleman and B. Wilson 2013; G. Stigler 1971; P. Denter, J. Morgan and D. Sisak 2011). This illustration just reveals that what is considered to be beneficial from political or legal sciences perspective does not necessarily have to be equally beneficial from an economic perspective. Hence, more research in this direction would be beneficial for better understanding of these relations and design of policies which would take into consideration both important dimensions. Even though this research does not provide an explicit answer on these relations, for the first

monetary terms. From an RIA perspective, this means that a partial RIA²⁰⁰ could be more appropriate for assessing regulatory impacts of lobbying regulations.

The benefits of regulations, in general, are usually easy to guess in most cases just by looking into the motivation for the intervention stated at the beginning of any regulatory procedure. The only problem remaining is that identified benefits could be very difficult to quantify and express monetarily. *“However, determining the size of these benefits and, in particular, trying to express them in monetary terms can be very difficult. This is because many regulatory benefits involve things that do not have an obvious market value – such as lives saved, injuries avoided and pollution or environmental degradation prevented”*²⁰¹. This is pretty much the case with the regulation of lobbying, where societies tend to regulate lobbying almost exclusively driven by non-economic reasons, which are by default difficult to monetize and conform to costs that could be more easily estimated.

Having explained that, the nature of benefits associated with the regulation of lobbying suggests that analysis which mostly focuses on cost (cost assessment approach) seems to be more optimal than a complete CBA. However, this approach does not mean that benefits are completely neglected in the assessment. In fact, the CPI analysis will be used as an original method for assessment of benefits associated with lobbying regulations, while classical RIA methods will be used to construct a complementary tool for the costs assessment. Used together, the CII and the CPI could be considered as a special RIA tool for lobbying regulations.

6.3. Cost assessment in practice – the UK’s Cost Compliance Assessment as an example

Due to the scope of this research, it will be inutile to review all existing methods in Europe. Instead, focus will be given to the UK Impact Assessment procedure (one of

time it discusses in detail the economic costliness of regulation of lobbying which is also an important contribution in the direction of economic analysis of regulation of lobbying.

²⁰⁰ Partial RIA could be the one that refocuses only on cost or only on benefits. A business impact analysis or cost effectiveness analysis could be a partial RIA, for instance.

²⁰¹ *Introductory Handbook for Undertaking Regulatory Impact Analysis* (OECD Publishing, 2008), p.13.

the previous versions applied in the UK) which was among the pioneering ones in the Europe, and which focuses mostly on costs borne by regulations.

It has to be mentioned that this analysis is not a Cost Benefit Analysis (CBA), but more a partial impact analysis which focuses mostly on costs, while leaving benefits aside due to their hardly measured nature. The reason why some countries use a partial CBA (regularly or sometimes) is that in some cases, like in the case of lobbying, benefits might be pretty difficult to monetize. Furthermore, this analysis helps regulators to estimate how large the burden of regulation is, both on the private and public sector.

The UK has pioneered the use of RIA in Europe, almost immediately after the US (1985)²⁰², by adopting and institutionalizing the Impact Assessment procedures for upcoming laws, which should estimate in a monetary sense all feasible economic and social costs and benefits. This means that all proposals which affect the private sector and third parties are subject to examination, unless they go below a specifically prescribed threshold.

Even though the UK kept improving Impact Assessment procedures over time (from a Cost Compliance Analysis to a more complete CBA), the one which is most interesting for this research is the Compliance Cost Assessment approach, which dominated the UK's Impact Assessment methodology before the latest changes were introduced in Impact Assessment documents in 2011²⁰³.

The UK Compliance Cost Analysis (CCA) is a method used to determine the actual cost of compliance of the industry, but it also focuses on non-economic impacts such as social and environmental parameters. The analysis is applied both on primary and secondary legislation (which is wider in scope than the US RIA).

This CCA tool used the UK is a tool for both qualitative and quantitative impact analysis. The structure of the CCA is based on the following steps ²⁰⁴:

- **Title:** name of the proposed measure; indication of whether the CCA is draft or final.

²⁰² Which is currently run by a special executive organ – the BRI (Better Regulation Executive). The BRI has to run, as early as possible, an Impact Assessment analysis for any regulation that creates costs to third parties.

²⁰³ Those changes are defined in the *Impact Assessment Guidance – When to Do an Impact Assessment (2011)*, *The Impact Assessment Toolkit (2011)*; 'Impact Assessment Overview', 2011; *Green Book - Appraisal and Evaluation in Central Government* (London, 2003, updated in 2011).

²⁰⁴ *Regulatory Impact Analysis - Best Practices in the OECD Countries (1997)*, p.60.

- **Purpose:** describe the purpose of the proposed measure and its intended effects.
- **Options:** describe the alternative approaches to achieving the objectives and say why these were not favoured.
- **Sectors:** identify the business sectors or types of business likely to be affected; estimate the total number of businesses involved; comment on the numbers of small firms or self-employed in the sector.
- **Consultation:** show what sources were used and describe any consultations with business, including the length of time allowed for responses.
- **Business costs:** estimate the compliance costs for a “typical” business in each of the specific sectors identified. Costs are split into “recurring” or on-going costs and “non-recurring” or one-off costs. Recurring costs include staff costs, consumable materials, inspection and periodic license fees, and enforcement. Non-recurring costs include investment in plant and machinery, buildings and infrastructure, legal and consultancy fees, training, redundancy and IT.
- **SMEs:** carry out a specific assessment of the impact on small firms (the Small Business Litmus Test).
- **Sector costs:** summarize the total estimated compliance costs for all specific sectors or types of business likely to be affected.
- **Competitiveness:** Describe any effects on the competitive position of UK-based businesses in domestic, EU or other markets.
- **Monitoring:** state how and when compliance costs will be monitored.
- **Enquiries:** provide a contact point for comments.

These steps were undertaken every time before a proposal reaches the Council of Ministers, but also before it reaches public consultation procedure. This approach allows a monetary estimation²⁰⁵ of regulatory cost-effects on third parties and entire industries. Since the UK is planning to adopt some type of lobbying rules in the near

²⁰⁵ This estimation is actually made based on the feedback of the Industry, which according to UK experience tends to provide reliable information. “Experience has shown that business is much more likely to supply good information on costs if departments themselves provide initial cost estimates, no matter how rough and ready. We strongly recommend that departments provide such estimates in early CCA drafts and that these be circulated for critical comment as part of the consultation process.” Regulatory Impact Analysis – best practices in the OECD Countries (1997), p.63.

future, it is going to be very interesting to see the results of a more complete CBA analysis for a lobbying law.

The structure of this CCA is shown in detail, as it might serve as a starting point for the creation of cost-indicators for the analysis of lobbying regulation. At its core, it strongly focuses on estimation of costs that might be caused by regulation. Also, the benchmarks, such as type of the costs and size of the industry, might be well used to build up the Cost Indicator Index for lobbying regulation, combined together with some additional existing methods and tools.

In the case of analysis of a lobbying regulation by this CCA, the method would need to be improved by also introducing costs related to the public side, which is responsible for enforcement and monitoring of lobbying regulation compliance. Only with such an improvement might this technique be used for the development of the cost indicators for lobbying regulation since lobbying rules tend to be burdensome both for the private and the public sector. And this has to be taken into consideration from the very beginning.

6.4. The depth of the analysis – the principle of proportionality in the application of Impact Analysis

There is an additional important issue to consider in regard to lobbying regulation impact assessment strategy. Lobbying regulation is not a common regulation that appears in all countries, but rather a specific regulation that only some countries have adopted so far. This means that it is not a necessary and important as regulation on public finances, banking, stock markets, medical practice, etc.

Interpretation of this particularity means that, when adopting lobbying laws, most countries do not need to take fully detailed CBA in adoption of lobbying regulation. This approach is also clearly stated in the previously mentioned UK's Impact Assessment Toolkit (2011). This Toolkit also deals with proportionality, which refers to "*appropriate level of resources to invest in gathering and analyzing data for appraisals and evaluations*", which depends on factors such as: *the level of interest and sensitivity surrounding the policy; the degree to which the policy is novel; the scale, duration and distribution of expected impacts; the level of uncertainty, etc.*

This said, it can be suggested that in cases of a particular regulation, which does not have so direct and significant an impact on the overall economy and society, a complete and detailed RIA is not necessary. Not only that, but in lobbying regulation terms it is usually going to be a partial RIA due to specific non-monetary benefits. However, the level of depth and effort also does not need to be at the maximum, especially if one talks on national levels in Europe.

Hence, one of the main guidelines in creation of general cost indicators for lobbying is exactly this one – the level of depth, which does not have to be the most detailed one, but rather a level of an indicative nature. In any case, a more detailed explanation of the level of depth is going to be given in the next Chapter. This section only explained the rationale upon which the optimal level of depth for assessment of lobbying regulations is determined.

6.5. Problem of methodological diversity of RIAs – the scope and application of RIA on the regulation of lobbying.

Another important limitation of RIAs is that they usually methodologically differ over countries, or they are not applied at all in some of them²⁰⁶. Renda (2011) also highlights this problem: *“That said, RIA systems worldwide differ widely on a number of key dimensions such as the scope of the procedure, the purpose for which it was adopted, the methodology and the degree of quantification in the analysis of the impacts, the overall governance of the system and the effective volume of RIA documents that have been produced”*²⁰⁷. The author (Renda, 2011) also stresses that the motivation for the introduction of RIAs is significantly different, ranging from motives of rational policymaking (the US), over-deregulation (Scandinavian cases) to a very symbolic politics (the EU and the UK).

²⁰⁶ *“Although some developing countries are beginning to apply some form of regulatory assessment, their methods are generally incomplete and not applied systematically across policy areas”* (Kirkpatrick, Parker and Zhang, 2003). - from: *Regulatory Impact Analysis in OECD Countries Challenges for Developing Countries (2005)*. p3.

²⁰⁷ A. Renda, *Law and Economics in the RIA World: Improving the Use of Economic Analysis in Public Policy and Legislation*, p.18

Thus, RIAs divergence in terms of methodology and motives prevents this technique from being effectively used for comparison of lobbying legislatures in a simple and informative perspective.

6.6. Application of RIA in the US – a problem of the scope of RIA from a lobbying regulation perspective

In a previous section, it was explained that the US has the most experience in the regulation of lobbying. However, it is interesting and significant to note that the US (federal level) has not made any profound estimation of the impacts of the introduction of lobbying legislature. Even though RIA is applied in the US, its limited scope has left lobbying rules outside of the analysis, while only a few brief impact reports have been released by the Congress. In the following lines, a brief history of US RIA development and application will be examined with their relation to existing lobbying rules.

RIA in the US²⁰⁸ was firstly introduced in the 1980s under President Reagan's administration, continued to be developed and modified under the administrations of Presidents Bush (Sr.), Clinton and Bush (Jr.), and it is also an important pillar in the US regulatory activity even today²⁰⁹.

²⁰⁸ For a general overview of RIA in a theoretical sense see C. Radaelli and F. De F., *Regulatory Impact Assessment* (Oxford University Press, 2010); Baldwin, Cave, and Lodge, *Understanding Regulation: Theory, Strategy, and Practice*; A. Renda, *Law and Economics in the RIA World: Improving the Use of Economic Analysis in Public Policy and Legislation*; J. Froud and A. Ogus, "Rational Social Regulation and Compliance-Cost Assessment," *Public Administration* 74, no. 2 (1996): 221–237. For comparative studies on RIA see reports of the OECD: *Regulatory Policy in OECD Countries – from Interventionism to Regulatory Governance* (2002); *Regulatory Impact Analysis in OECD Countries Challenges for Developing Countries* (2005); *Indicators of Regulatory Management Systems* (2007); *Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers* (2008); *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)* (2008); *Regulatory Performance: Ex-post Evaluation of Regulatory Tools and Institutions* (2004); *Determinants of Quality in Regulatory Impact Analysis* (2006); *Methodological Guidance and Frameworks of RIA* (2007); *Regulatory Impact Analysis - Best Practices in the OECD Countries* (1997).

²⁰⁹ We can find the continuation of this policy even today within the administration under the President Obama. Section I of Executive Order 13563 from January 2011 states: Section 1. - General Principles of Regulation (a): "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure and seek to improve, the actual results of regulatory requirements" - Executive Order 13563 (White House - EO, n.d.).

The RIA procedure in the US²¹⁰ has certain limits when it comes to its scope, which is especially important for the regulation of lobbying. The main problem is that it is not automatically applicable to all legislation, but only to regulations created by federal agencies. This means that bill proposals by the US Congress, like lobbying legislation, are not subject to the RIA procedure.

The regulations that are subject to the RIA, further on, have to have a character of significant regulatory action in order to be examined by RIA. Details on what should be considered as significant are given in EO 12866:

“Significant regulatory action” means any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

As one can see from the rules issued in EO 12866, the RIA is not applied automatically and there are clear rules when it is going to be applied. According to the limits mentioned in EO 12866, and the fact that lobbying rules have been adopted in a regular legislative procedure and not introduced by independent agencies, except the rules created by EO 13563, the RIA has not been applied in cases of lobbying disclosure rules in the US so far. Hence, even the US, which has the largest lobbying regulations tradition, has not built lobbying rules on the basis of RIA.

However, when it comes to impact analysis of lobbying rules, one of the rare official impact analyses that has been conducted and released is the report *“Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and*

²¹⁰ *Executive Order 12866* (White House - EO, 1993); *Executive Order 13258* (White House - EO, 2002); *Executive Order 13422* (White House - EO, 2007); *Executive Order 13563* (White House - EO, 2011).

Open Government Act of 2007”,²¹¹ but this analysis does not include any economic indication of the cost of the new lobbying rules from 2007 nor any other lobbying rules before, because the Congress has been left outside of the scope of the RIA, as already mentioned. This report mostly deals with the comparison of previous and new lobbying rules in terms of introduced changes and compliance levels.

This does not necessarily mean that Congress is not interested in having at least some type of cost-estimation for bill proposals. In fact, as Renda (2011) noticed, the Congress actually runs its own cost-estimation for almost all bills it deals with through the Congressional Budget Office. Even though the methods used in this case are much simpler, they serve as navigation tool for decision-makers to get an idea about the cost of proposals, and their gross burden on the federal budget.

There is an additional, but similar, type of brief impact analysis done for the current lobbying regulation - *Honest Leadership and Open Government Act (2007)*. It is a 2-page report²¹² which gives an estimate of the cost of the HLOGA in a very broad way: “Subject to the availability of appropriated funds, CBO estimates that implementing the bill would increase administrative costs of the House of Representatives and the Senate by less than \$500,000 a year. Enacting the bill would not affect direct spending or revenues. The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. H.R. 2317 would impose private-sector mandates, as defined in UMRA, on the lobbying industry. The bill would require registered lobbyists that bundle contributions to submit additional reports and disclosures to the Secretary of the Senate and the Clerk of the House of Representatives. The bill also would require those lobbyists to notify the recipients of those bundled contributions about their intent to file a report on such contributions. Based on information from the Secretary of the Senate and the Clerk of the House, CBO estimates that the aggregate direct cost of all of those mandates would fall below the annual threshold

²¹¹ J.R. Straus, *Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007*, 2011.

²¹² *H.R. 2317 - Lobbying Transparency Act of 2007*.

established by UMRA for private-sector mandates (\$131 million²¹³ in 2007, adjusted annually for inflation)".

This report was probably the only estimate made by US authorities regarding the cost-impact of the HLOGA both on the private sector (below the annual threshold of the UMRA) and the public sector (approximately \$500,000). It represents a rough estimation, but it provides an overall view of the burden of the regulation of lobbying in the case of the HLOGA.

The US approach indicates that lobbying regulation is not considered as a particularly costly one. It also confirms the assumption that enforcement costs and compliance cost²¹⁴ are not analysed in-depth even in countries with a long tradition of lobbying regulation. Actually, costliness of a regulation is a relative term. In the case of the US, it is not as costly compared to the size of the sector that is the subject of the regulation and the size of the US federal budget. In smaller countries, such as Slovenia, Macedonia, Lithuania and Montenegro, \$500,000 would have an entirely different meaning.

Even though the RIA procedure in the US was introduced for better policymaking by adopting policies with the lowest possible cost, and even though estimated yearly savings were approximated to the amount of \$20 billion, part of the academic community was not as optimistic about its effect, and they even claimed that the regulatory burden kept rising over the time²¹⁵.

From the short overview of the application of the RIA in the US with regards to lobbying regulation, two important conclusions emerge:

- Firstly, the RIA in the US suffers from important imperfections when it comes to the scope and application on lobbying rules. In addition, part of the academic community was sceptical about its ability to properly assess actual cost and benefits.

²¹³ The threshold for 2011 was set to be \$144 million - <http://www.cbo.gov/publication/43151>, but since it moved up, the HLOGA impact on private-sector mandates could be even farther from the new threshold.

²¹⁴ The only part of the report that deals with compliance costs estimates costs in a quite deliberative way: *"Because the bill would require quarterly (rather than semi-annual) reporting, it would increase the number of reports filed by registered lobbyists. Since such entities already collect the information requested in the disclosure reports, however, CBO estimates that the incremental costs associated with the new reporting requirements in the bill would be minimal."*

²¹⁵ A. Renda, *Law and Economics in the RIA World: Improving the Use of Economic Analysis in Public Policy and Legislation*. p.40.

- Secondly, since lobbying regulation (the actual one - HLOGA from 2007) was under legislative competence of the US Congress, no RIA has been specifically dealing with it. The only official document that provided some estimates was the report prepared by the Congressional Budget Office, which only provided a rough estimate on the cost of the HLOGA. It is impossible to say precisely how much the estimates were, but they were expected to be under the specific threshold (under \$131 million for the public sector) and about \$500,000 for the private sector. Since closer estimates are not available, it is hard to establish a more precise relation of the cost (compliance and enforcement) and the benefits (level of strength), and consequently, to discuss the efficiency of the regulatory model.

On the other hand, this rough estimation reveals an additional issue related to the measurement of the economic impact of lobbying regulation. It suggests that benefits are extremely difficult to measure, since the only ones ever measured *ex-post* were compliance levels within the Congressional report²¹⁶ which states its purpose clearly: *“This report focuses on changes made to lobbying registration, termination, and disclosure requirements and provides analysis of the volume of registration, termination, and disclosure reports filed with the Clerk of the House of Representatives and the Secretary of the Senate before and after the HLOGA’s passage”*. This method might be used to indicate compliance levels, but not to indicate the level of transparency relative to a compliance level. This is why the CPI still remains the best tool when it comes to lobbying regulations benefits measurement.

Another important issue related to costs is that they were also difficult to measure precisely for the private side²¹⁷, which confirms the deliberative estimation in

²¹⁶ J.R. Straus, *Supra* n.211.

²¹⁷ Since public finances all around the world are under pressure, there are even ideas that the large part of costs, which would have been normally public, gets transferred to the private side. This tendency could be found in the approach of the UK. The HM Government, Consultation paper - “Introducing a statutory Register of Lobbyists”, January 2012: *“Public finances are under unprecedented pressure at the moment, and there are no public funds set aside for a register. The Government proposes that the cost of running the register and meeting any ancillary costs arising from it should be met on a self-funding basis by the lobbying industry. Experience of other registers (see Annex A for examples) suggests that individual registration, in return for an initial and then annual registration fee, provides a practical and effective basis for funding a register. The actual cost of running the register would depend on how many registrants there were, the range of information the register held, how often it was updated and what (if any) further responsibilities, such as the ‘policing’ of industry standards, the register’s operator was given.”* This approach, in fact, is clearly advising

the above-mentioned report²¹⁸. Thus, the results were more of an indication than a precise estimation, but it seems that the indication is not such a bad option if confronted with a complicated and more costly RIA which also has its own problems, as shown before. The option of the US CBO to conduct a brief study does not have to be necessarily related with insufficient RIA methodology but with the issue of analysis depth. Since the HLOGA was estimated to have no so significant effect, the depth of analysis remained quite simple and non-systematic. By introducing the CII scale, the level will still remain simple but more systematic and useful for comparative application over different regulations within single or different jurisdictions.

Further on, this means that development of the Cost-Indicator Index might be quite useful for quicker comparisons and indication of the costs of lobbying regulation based on specific cost-indicators, like in the case of the CPI Index.

7. Section III: Tools for (comparative) assessment of lobbying regulation

7.1. What is the CPI index and when do we use it?

Lobbying regulation, like any other regulation, can be the subject of a regulatory impact assessment analysis under the impact assessment procedure of any jurisdiction. But besides regular procedures adopted by different countries, the scientific community was also continuously interested in debating lobbying regulations, and it developed several tools that are used to qualitatively or quantitatively assess the specific impacts of lobbying rules – stringency, restrictiveness, strength or the direction of rules evolution over time. These methods were, unfortunately, rarely used by countries²¹⁹ for impact assessment of their lobbying rules, even though some of the methods could be successfully used for an *ex-ante* impact assessment of the benefits of lobbying regulations.

shifting the cost of operation of the registry to the private side, while running the register should be delegated to the public side. It is an interesting mechanism, as most of the registers are either fully funded and managed by the public side or they are voluntary – funded and maintained by the private side. However, a similar approach has been discussed in Serbia as well.

²¹⁸ Under \$500,000 for the public and under specific threshold for the private side (\$131 million).

²¹⁹ R.W. Hahn and P.C. Tetlock, “Has Economic Analysis Improved Regulatory Decisions?” (2008).

As lobbying regulations started to emerge firstly in the US, this country was the first one where pioneer academic tools for the assessment of lobbying regulation were developed. Even though the CPI Index represents the most widely and commonly used tool, a few other tools developed before that have to be mentioned.

The first one is the Opheim's Index²²⁰ for measurement of the stringency of lobbying regulation through three different dimensions: the scope of definition of the lobbyist, the degree of disclosure and the level of enforcement. This index mainly shows that the stringency of lobbying regulation depends on the administrative capacity of the legislators, and that better administrative capacity allows legislators to be less dependent on lobbyists, but it hardly provides any information on the relation of stringency and the cost of the lobbying regulation.

The second important tool—Brinig *et al.* Index²²¹, which was developed shortly afterwards—was more focused on measuring the restrictiveness of lobbying regulations. The authors observe lobbying regulation as a screening mechanism (regulation creates entry costs) that allows regulators to distinguish high-demanders for access from low-demanders for access. As complying with regulation is assumed to be costly, those who comply also indicate their “willingness to pay” to influence regulations, and enable regulators to screen and identify more reliable partners in the legislative process.

The third interesting tool is Newmark's Index²²² which analyses how lobbying has been changing over time in the US, and its application suggests that lobbying regulation was getting stricter and more complex over time in most jurisdictions in the US. In essence, it cannot be used for the optimization of lobbying law structures.

The most important one was already mentioned—the CPI Index that got its name after the institution that developed it: the Center for Public Integrity²²³. This Index represents an evolution from Opheim's and Brinig *et al.*'s indices in the sense that it has the ability to more deeply and systematically evaluate lobbying regulations. The CPI has

²²⁰ Got its name after Cynthia Opheim who introduced this tool in 1991: C. Opheim, “Explaining the Differences in State Lobby Regulation,” *Political Research Quarterly* 44, no. 2, 405–421.

²²¹ M.F. Brinig, R.G. Holcombe, and L. Schwartzstein, “The Regulation of Lobbyists,” *Public Choice* 77 (1993).

²²² A.J. Newmark, “Personal Relationships and Information Provision in State Lobbying: The Nature of Relationships and the Factors Affecting Them (Thesis),” 2003; A.J. Newmark, “Measuring State Legislative Lobbying Regulation, 1990–2003,” *State Politics & Policy Quarterly* (2005).

²²³ <http://www.iwatchnews.org/>.

developed this index through a procedure named “*Hired Guns*” (2003) – a ranking system that assigns a score to each state based on a survey containing a series of questions regarding state lobbying disclosure²²⁴.

This index focuses on the measurement of the strength of lobbying regulation through scores that are assigned by answering 48 questions, within eight specific areas (unlike Opheim’s which focuses on three):

- Definition of lobbyists (7 points maximum)
- Individual registration (19 points maximum)
- Individual spending disclosure (29 points maximum)
- Employer spending disclosure (5 points maximum)
- Electronic filing (3 points maximum)
- Public access (20 points maximum)
- Enforcement (15 points maximum)
- Revolving door provision (2 points maximum)

The “*strength*” refers to transparency and accountability that are, as explained before, generally perceived to be the main motives for the introduction of lobbying regulation. Both terms, from the perspective of RIA, can be seen as non-monetary benefits of the regulation of lobbying. Depending on the answers, the maximum amount of points attributed to one regulation is 100, which means that the lobbying rules are expected to provide the highest possible level of transparency and accountability. Also, all scores above 70 are considered to be very good, from 69-60 moderate and below 60 are unsatisfactory. This Index, however, does not provide any information on the costliness of different transparency levels; it simply provides an indication of regulatory strength.

At the same time, this is its main weakness from the RIA perspective. It only looks at the strength component, which can be associated with the benefits of lobbying regulations, but it completely neglects the cost component, which is equally important. Hence, the main contribution of this research is that it offers a solution to this problem and a tool which focuses on the costs while complementing the CPI analysis.

²²⁴ <http://www.iwatchnews.org/2003/05/15/5914/methodology>.

Firstly, this index was applied in the US to all states and on the federal level. The results of this analysis indicated that the highest score in the US was Washington State with 87 points, while Pennsylvania ended up with 0 as there were no lobbying rules in place at the time of analysis.

Besides its application to the US, it was also applied over some European regulations (Chari, Murphy and Hogan 2007; 2010). These results indicate, for instance, the quite modest and rather low strength level of Hungarian lobbying rules which were consequently recently abandoned (score 45), Lithuania (score 44), Poland (score 27), European Commission-old register (score 24), European Parliament (score 15), Germany (score 17).

All these results were taken based on *ex-post* evaluation of existing lobbying laws or rules. Laws from Macedonia, Slovenia and Montenegro still have not been subject to CPI analysis nor have proposals from Serbia and Croatia. Even though *ex-post* analysis provides some information on the quality of regulation, doing it *ex-ante* would be more useful as it would allow regulators to estimate the strength before they actually adopt the law, which may prevent regulatory failure, like in the cases of Macedonia, Montenegro and Hungary. Thus, this tool has great potential to be used not only for regulatory rankings, but also for practical policymaking, and that is why it is useful to explain how it is applied. In the table below are systemized CPI questions and scoring explanations that are used for analysis:

Table 1 - The CPI Index

	DEFINITION OF LOBBYIST
1.	<p>In addition to legislative lobbyists, does the definition recognize executive branch lobbyists?</p> <p>No – 0 points; Yes – 3 points</p>
2.	<p>How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?</p> <p>More than \$500 made/spent – 0 points; More than \$100 made/spent – 1 point;</p>

	More than \$50 made/spent – 2 points; \$50 or less made/spent – 3 points; Lobbyists qualify and must register no matter how much money made/spent – 4 points
	INDIVIDUAL REGISTRATION
3.	Is a lobbyist required to file a registration form? No – 0 points; Yes – 3 points
4.	How many days can lobbying take place before registration is required? 16 or more days – 0 points; 11 to 15 days – 1 point; 6 to 10 days – 2 points; 1 to 5 days – 3 points; 0 days – 4 points
5.	Is subject matter or bill number to be addressed by a lobbyist required on registration forms? No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points
6.	How often is registration by a lobbyist required? Once only – 0 points; Every two years – 1 point; Annually or more often – 2 points
7.	Within how many days must a lobbyist notify the oversight agency of changes in registration? 16 – or more days – 0 points; 11 – 15 days – 1 point; 6 – 10 days – 2 points; 1 – 5 days – 3 points; 0 days – 4 points
8.	Is a lobbyist required to submit a photograph with registration? No – 0 points; Yes – 1 point
9.	Is a lobbyist required to identify by name each employer on the registration form? No – 0 points; Yes – 1 point
10.	Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)?

	No – 0 points; Yes – 1 point
	INDIVIDUAL SPENDING DISCLOSURE
11.	Is a lobbyist required to file a spending report? No – 0 points; Yes – 3 points
12.	How often during each two-year cycle is a lobbyist required to report spending? 0 to 3 filings – 0 points; 4 to 6 filings – 1 point; 7 to 9 filings – 2 points; 10 or more filings – 3 points
13.	Is compensation/salary required to be reported by a lobbyist on spending reports? No – 0 points; Yes – 2 points
14.	Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No – 0 points; Yes – 2 points
15.	What spending must be itemized? No spending required to be itemized – 0 points; More than \$100 – 1 point; More than \$25 – 2 points; \$25 and below – 3 points; All spending required to be itemized – 4 points
16.	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No – 0 points; Yes – 1 point
17.	Is the recipient of the itemized expenditure required to be identified? No – 0 points; Yes – 1 point
18.	Is the date of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point
19.	Is a description of the itemized expenditure required to be reported?

	No – 0 points; Yes – 1 point
20.	<p>Is subject matter or bill number to be addressed by a lobbyist required on spending reports?</p> <p>No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points</p>
21.	<p>Is spending on household members of public officials by a lobbyist required to be reported?</p> <p>No – 0 points; Yes – 1 point</p>
22.	<p>Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households?</p> <p>No – 0 points; Yes – 1 point</p>
23.	<p>What is the statutory provision for a lobbyist giving and reporting gifts?</p> <p>Gifts are not reported – 0 points; Gifts are reported – 1 point; Gifts are limited and reported – 2 points; Gifts are prohibited – 3 points</p>
24.	<p>What is the statutory provision for a lobbyist giving and reporting campaign contributions?</p> <p>Campaign contributions allowed and not required to be disclosed on spending report/prohibited during session – 0 points; Campaign contributions allowed and not required to be disclosed on spending report/allowed during session – 0 points; Campaign contributions allowed and required to be disclosed on spending report/prohibited during session – 1 point; Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 1 point; Campaign contributions prohibited – 2 points</p>
25.	<p>Is a lobbyist who has done no spending during a filing period required to make a report of no activity?</p> <p>No – 0 points; Yes – 1 point</p>
26.	<p>Is an employer or principal of a lobbyist required to file a spending report?</p> <p>No – 0 point; Yes – 3 points</p>

27.	<p>Is compensation/salary required to be reported on employer/principal spending reports?</p> <p>No – 0 points; Yes – 2 points</p>
	ELECTRONIC FILLING
28.	<p>Does the oversight agency provide lobbyists/employers with online registration?</p> <p>No – 0 points; Yes – 1 point</p>
29.	<p>Does the oversight agency provide lobbyists/employers with online spending reporting?</p> <p>No – 0 points; Yes – 1 point</p>
30.	<p>Does the oversight agency provide training about how to file registrations/spending reports electronically?</p> <p>No – 0 points; Yes – 1 point</p>
	PUBLIC ACCESS
31.	<p>Location/format of registrations or active lobbyist directory:</p> <p>Photocopies from office only – 1 point; PDF or image files on the Web – 2 points; Searchable database on the Web – 3 points; Downloadable files/database – 4 points</p>
32.	<p>Location/format of spending reports:</p> <p>Photocopies from office only – 1 point; PDF or image files on the Web – 2 points; Searchable database on the Web – 3 points; Downloadable files/database – 4 points</p>
33.	<p>Cost of copies:</p> <p>25 cents or more per page – 0 points; Less than 25 cents per page – 1 point</p>
34.	<p>Are sample registration forms/spending reports available on the Web?</p> <p>No – 0 points; Yes – 1 point</p>

35.	Does the state agency provide an overall lobbying spending total by year? No - 0 points; Yes - 2 points
36.	Does the state agency provide an overall lobbying spending total by spending-report deadlines? No - 0 points; Yes - 2 points
37.	Does the state agency provide an overall lobbying spending total by industries lobbyists represent? No - 0 points; Yes - 2 points
38.	How often are lobby lists updated? Semi-annually or less often - 1 point; Monthly - 2 points; Weekly - 3 points; Daily - 4 points
	ENFORCEMENT
39.	Does the state have statutory auditing authority? No - 0 points; Yes - 2 points
40.	Does the state agency conduct mandatory reviews or audits? No - 0 points; Yes - 2 points
41.	Is there a statutory penalty for late filing of lobby registration form? No - 0 points; Yes - 1 point
42.	Is there a statutory penalty for late filing of a lobby spending report? No - 0 points; Yes - 1 point
43.	When was a penalty for late filing of a lobby spending report last levied? More than 5 years - 0 points; 4 to 5 years - 1 point; 2 to 3 years - 2 points; 0 to 1 year - 3 points
44.	Is there a statutory penalty for incomplete filing of a lobby registration form? No - 0 points; Yes - 1 point

45.	Is there a statutory penalty for incomplete filing of a lobby spending report? No – 0 points; Yes – 1 point
46.	When was a penalty for incomplete filing of a lobby spending report last levied? More than 5 years – 0 points; 4 to 5 years – 1 point; 2 to 3 years – 2 points; 0 to 1 year/agency does not accept incomplete filings – 3 points
47.	Does the state publish a list of delinquent filers either on the Web or in a printed document? No – 0 points; Yes – 1 point
	REVOLVING DOOR PROVISION
48.	Is there a “cooling off” period required before legislators can register as lobbyists? No – 0 points; Yes – 2 points

The structure of the CPI is simple, but nevertheless, it is a structured and user-friendly tool, which is important especially for policymakers who might think of using it in their analysis. From this reason, the CII index, which is going to be introduced in following chapters, will mimic its structure in order to stay as compatible and simple as possible, which should result in an increase of its policymaking potential.

7.2. Classification of lobbying regulations

In the theory of lobbying regulation, it is generally accepted that the CPI method represents the most useful tool when it comes to the assessment of lobbying rules²²⁵. It not only allows the strength indication of formal rules to be assessed – binding laws (Poland, Lithuania, etc.), and soft-law mechanisms (The EU Commission and the EU

²²⁵ R. Chari, J. Hogan, and G. Murphy, “Regulating Lobbyists: A Comparative Analysis of the United States, Canada, Germany and the European Union.”, p.3

Parliament), but it also allows very simple and informative comparisons between different solutions and their respective impacts on strength.

Due to these reasons, the CPI methodology was additionally used to create classification of lobbying regulations based on their strength, and independent of their nature – soft or binding law. The Threefold classification was developed by Chari *et al.* (2009, 2010) with the intention to systemize common trends in the development of rules for lobbying regulation. This classification divides lobbying regulations into those belonging to low-regulation systems, medium-regulation systems and high-regulation systems, based on the strength. Also, it reveals common elements for each of the systems in a qualitative sense and strives to offer a qualitative footprint for each of three categories:

Table 2 - The Threefold theory of lobbying regulations

	<i>Low-regulation systems</i>	<i>Medium-regulation Systems</i>	<i>High-regulation systems</i>
Registration regulation	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; non-employer spending disclosure	Tight regulations on individual spending disclosure, and employer spending disclosure

Electronic filling	Weak online registration and paperwork required	Robust system for online registration; no paperwork necessary	Robust system for online registration; no paperwork necessary
Public access	List of lobbyists available, but not detailed, or updated frequently	List of lobbyist available, detailed and updated frequently	List of lobbyists and their spending disclosure available; detailed and updated frequently
Enforcement	Little enforcement capabilities invested in the state agency	In theory, state agency possesses enforcement capabilities, though infrequently used	State agency can, and does, conduct mandatory reviews/audits
Revolving door	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

Low-regulation systems are those with CPI scores up to 29, medium-regulated systems up from 30 to 59 and high-regulated systems from 60 to 100. Besides quantitative belonging to the specific category, regulations within one of three ranges were also found to have common qualitative characteristics which is shown in the upper table²²⁶.

The authors also highlight that “high” does not necessarily means better and vice versa. This reserve confirms that for judging the entire impact of lobbying rules,

²²⁶ R. Chari, J. Hogan, and G. Murphy, “Lobbying Regulation Across Four Continents: Promoting Transparency?”.

additional criteria may be necessary, and this additional criteria might be found in comparison of the strength criteria (benefits) to the cost criteria (cost indication for lobbying regulation) - which is exactly what this research wants to offer.

7.3. Limits of the CPI method: ex-ante or only ex-post application?

The main problem with the CPI methodology, and the Threefold classification directly linked to it, is that they provide just one kind of information on the impact of lobbying rules. In short, they evaluate and classify different rules (qualitatively and quantitatively) based on the indication of their non-monetary benefits. Here it also has to be underlined that the CPI actually provides only indicative information on positive impacts, as it looks on the structure of rules and not on the actual compliance and enforcement levels – which is anyways more appropriate for an *ex-post* impact analysis. To be fully precise, the CPI looks into compliance levels, though in a small portion. In questions 43, 46 and 47 it is impossible to give an answer without using the CPI method *ex-post*, as these questions can be answered only by looking into actual data from an enforcement agency. The rest (great majority) of the questions can be used to evaluate rules even before they are officially adopted in a law. Moreover, applying the CPI even *ex-ante* might be fully acceptable in cases where answers to the following questions are negative, which can be answered straight from a bill proposal:

- *Question 42: Is there a statutory penalty for late filing of a lobby spending report?*
- *Question 44: Is there a statutory penalty for incomplete filing of a lobby spending report?*

If the answers are negative, there are automatically negative answers on questions 43 and 46 as well: *When was the penalty for late filling of a lobby spending report last levied? When was the penalty for incomplete filling of a lobby spending report last levied?* This means that the application of the CPI even *ex-ante* cannot be fully excluded, if the above mentioned conditions are satisfied. For instance, the CPI could be easily applied *ex-ante* on the New Transparency Register of the EU.

Ex-post Impact Assessment in general requires a more precise approach with as much monetization of costs and benefits as possible (due to better availability of data), while *ex-ante* provides more methodological freedom in estimation of both sides of the medal.

As argued before, in order to be able to have more informative and complex information on the impact of regulation, it is necessary to look the other side of the impacts medal – costs, which the CPI method fully neglects. Thus, the CPI method fails to provide information on this important issue and it only concentrates on indication of the strength – which may be misleading as the higher CPI score does not necessarily appear to be a better regulatory solution, because there is no information on costs for any transparency level which is achieved. Similarly, the threefold classification (Chari *et al.*) suffers from the same shortcoming, and luckily authors are quite aware of that.

8. Conclusion of Chapter II

Chapter II provided an insight into the EU and US approaches to world's lobbying regulation. It was shown where and how these traditions differ. While the US has been regulating lobbying for a long time, the EU has had small improvements in this sense and it still does not have an enforceable law. However, the growing public pressure might lead to the introduction of some type of lobbying regulation in the future, since this is already happening in some European countries.

The chapter also provided insights into the RIA world and concluded that RIA methods have had very limited application and contribution to the regulation of lobbying. However, the foundations and practical tools which are developed under the scope of RIA could be further used to contribute to the creation of other more custom-made tools for the assessment of lobbying laws. Also, RIA tools were not found to be applicable in comparative assessments of lobbying laws due to their diversity and the diversity of environments in which they would be applied. On the other hand, the new tool developed in this research (CII) has better potential for comparative assessment of lobbying regulations. In fact, this is one of its main strengths and contributions.

The analysis clearly shows the limits of the CPI Index (and other mentioned tools) in terms of RIA, as it only looks at one side of regulatory impacts. Both researchers and

policymakers could profit from another tool which would be able to provide at least some sort of answer to the other part of the problem - the analysis of the costs of lobbying regulations.

The next chapter explains the development of the cure for spotted weaknesses, and expands the analysis to the other side of the coin. Therefore, the Cost Indicator Index (CII) will be created and introduced to expand the scope of the assessment of lobbying regulations, and to complement the results obtained by the CPI.

Chapter III - Development of the Cost Indicator Index (CII)

1. Introduction

In the previous Chapter, it was shown how lobbying rules in most countries with lobbying regulations are set in a deliberative manner, without significant foundations in standard RIA procedures. This approach has led to either constant and frequent regulatory reconstructions or even to complete regulatory failures where lobbying regulation was withdrawn or there were no lobbyists officially registered after the adoption. Even though the academic community offered several interesting tools for analysis of the different aspects of lobbying regulations, only the CPI index has been sufficiently used but mostly by researchers.

As policymakers tend to underestimate the importance of the assessment of the cost and benefits of lobbying regulations *ex-ante*, it would be beneficial to offer them a tool which would be easy to apply on their legislative proposals before their final adoption. This application would allow them to have an indicative estimate of the costs and benefits associated with their legislative proposal, and allow them to make necessary corrections before they adopt the final version. The same tool will allow them to compare their proposals both with earlier legislation and with international legislation, which should increase their knowledge on the comparative and timeline value of their proposals. In this Chapter, a tool will be introduced which should help in overcoming these obstacles, and improve both international research and policymaking.

Hence, this chapter will demonstrate the evolution of the CII. It will explain the methodological and empirical foundations and discuss and categorize the obtained results. This will be followed by an introduction of a simple theoretical framework - the Ninefold theory. Lastly, the limits and methodological concerns will be discussed together with recommendations for potential remedies in future studies.

2. General features of the Cost Indicator Index

Before discussing the methodological foundations, it is useful to define the boundaries of the CII and its relation to the CPI. This is important because they are applied separately, even though their results could be successfully unified at a later stage.

At this juncture, their main joint features and individual characteristics are going to be explained.

1. **The CII is a separate index from the CPI index** – which means that the CII is not completely identical to the CPI in terms of the questions and scoring technique. It does mostly rely on the CPI methodology and questions, but since it measures a different type of impacts. Some changes were made to properly meet all important questions for the indication of costs estimate.
2. **The CII is designed to be applied separately from the CPI index** – which means that the results obtained by application of the CPI cannot be used for the CII, since it has several different questions and a different scoring technique. In order to get results from both methods, they have to be applied separately.
3. **The CII can be equally successfully applied *ex-ante* and *ex-post***. The CPI should normally be applied *ex-post*, but in some cases it can be successfully applied *ex-ante* if the structure of a law allows it. The CII can be applied both *ex-post* and *ex-ante*, and it serves to indicate the overall magnitude of the burden for specific legal solutions.
4. **Scoring values** – The values appearing in the CPI (0-4) are used to reflect different degrees of benefits of specific items within lobbying regulations. Their aggregate sum reflects the overall “strength” of the regulation. On the other hand, the values of the CII range from 2 to 8, and they are based on an empirical survey for each specific item. The scoring scale of the CPI, on the other hand, is more of a deliberative type, as it is not clear how the scoring values were set. However, even though the CII has a different scoring technique, the final score is normalized at the end to reflect an identical scale as of the CPI, which means that the scales of both tools range from 0 - 100, which enables the fusion of both results and their systematic interpretation within Ninefold theory.

3. **What can be learned from RIA with regards to cost indication?**

The main idea behind the application of RIA is that legal rules are justified if an analysis proves that benefits outweigh the costs. The rules *per se* create costs due to bargaining and information activities, which are costly for the subjects of regulation or for those who enforce the rules. Hence, pointing out these costs in terms of lobbying

regulation is also necessary, and RIA offers methods to address the impacts of these costs. Besides these direct and relatively easily measurable costs, there might be other costs associated with lobbying regulation. Those types of costs would be the costs that society would face as a consequence of changed rules in the lobbying arena, such as the higher deadweight losses which would arise from harsher competition among lobbyists, as a consequence of increased transparency (Denter, Morgan, Sisak 2011). However, these costs are not studied sufficiently in the case of lobbying regulation, and it would be difficult to capture and measure them. This research acknowledges those potential costs, but it focuses on direct compliance and enforcement costs which are the very subject of this analysis.

However, RIA also highlights that assessing the costs and benefits is not a simple task. Benefits do not necessarily have to be economic and they are often difficult to quantify²²⁷. It also points out that in certain cases it is only reasonable to apply partial analysis due to the high transaction costs that would be necessary to measure the benefits. This is similarly true for the costs, especially when it comes to the dilemma of how precisely they have to be measured.

Another important message from the RIA world is that only some regulations have to be closely pre-examined before they get introduced. Those are usually laws which are expected to have a large impact on society, the economy, environment, security, etc. In other cases where proposed regulations are of a less significant impact, or they address relatively small groups, RIA accepts a more relaxed approach and less precise estimations. Hence, sometimes only an indicative assessment of costs is acceptable as estimating them precisely would not be an easy task, and the subject of regulation does not require a profound approach. The mentioned US and Ireland examples are good proxies to demonstrate this principle.

If one talks about social costs from an RIA perspective, as defined in the Green Book (2011) of the UK Government, social cost should be referred to as *“the total cost to society of an economic activity - the sum of the opportunity costs of the resources used by the agent carrying out the activity, plus any additional costs imposed on society from the*

²²⁷ *Regulatory Impact Analysis - Best Practices in the OECD Countries (1997)*. p 176; *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA) (2008)*.

activity” ²²⁸. In addition, for clarity on opportunity costs, we can say that “...a cost is imposed only if some valued resource use is displaced, and the amount of the cost is the value that is foregone. This is the basic economic concept of opportunity cost; if a regulation diverts no valued resources, it imposes no costs”²²⁹.

Having clarified this, it becomes clearer that the development of the CII could be useful for the creation of a custom-made cost-benefit impact assessment tool, which can be developed by combining the CPI index, which may be used to measure the indication of benefits (non-monetary benefits), and the Cost-Indicator Index (CII) for the indication of costs. This is why the CII has to take into consideration not only the RIA methods, but also the CPI methodology and the Threefold theory developed from it.

Besides clarification of the methodological foundations, there is another important issue to be discussed - the depth of the analysis. In the RIA world, costs are usually addressed differently depending on various factors such as the availability of data, relevance and scope of the regulation, the size of the market affected, etc. In the previous pages, it was highlighted that lobbying regulation is usually considered as a subsidiary anti-corruption legislation, which is not expected to produce a high burden in terms of social costs. This is why it mostly stays outside the bounds of profound RIA procedures. Thus, before determining the type of costs and methodology for their identification, it would be useful to determine the depth of the cost impact analysis in this research.

4. What is an optimal depth level of the analysis?

The depth refers to the level of effort invested in the detection and analysis of regulatory impacts. While crucial laws which are expected to have a high impact on markets (health or financial regulation, for instance) deserve a more precise and deeper approach, subsidiary legislation or less important laws (which directly affect a relatively small portion of business or the population, such as lobbying laws), with assumable lower direct impacts, do not require as deep and costly analysis as the first category.

²²⁸ Supra n.191, p.109

²²⁹ Supra n.196, p.26.

Besides the relevance and generally low expected impacts of lobbying regulations, the depth of cost analysis should take into consideration the depth of the CPI method as well. As the intention is to combine these two scales to some extent, they have to be on depths that are as close as possible. Thus, firstly the analytical depth of the CPI methodology has to be determined.

The CPI uses a scoring technique that labels investigated regulatory rules with values of 0, 1, 2, 3 and 4 points at the maximum. The sum of points attached to each of 48 questions gives a score from 0 to 100, which is later used to classify regulations by the Threefold classification on high, medium and low-regulation systems. These three levels may be considered, from an RIA perspective, as levels of impacts in terms of benefits of lobbying regulations. A regulation, depending on its structure and indication of strength (benefits), indicates high, medium or low impact on transparency and accountability.

Referring back to the RIA, there is a similar classification of impacts mentioned in the UK's latest Impact Assessment toolkit²³⁰. This document dedicates special attention to the level of effort that has to be given to each particular impact assessment in order to have "*proportionate analysis*". This concept refers to "*appropriate level of resources invested in gathering and analyzing data for appraisals and evaluations*". The most important factors that determine the depth of the analysis are:

- *the level of interest and sensitivity surrounding the policy* (which in the case of lobbying is increasing in many countries, as shown in earlier sections);
- *the degree to which the policy is novel, contentious or irreversible;*
- *the stage of policy development;*
- *the scale, duration and distribution of expected impact;*
- *the level of uncertainty around likely impacts;*
- *the data already available and resources required to gather further data;*
- *the time available for policy development.*

All mentioned criteria should serve as a proper setting of the level of depth of analysis. The IA Toolkit distinguishes five different levels, depending on the mentioned criteria that are met in each case. These levels are:

²³⁰ Supra n.197, Chapter II

1. Level 1 – description of who will be affected by the proposals – defining which business groups, consumers and parts of the public sector will be affected.
2. Level 2 – full description of the impacts (positive or negative on any group) and order of magnitude (low, medium, high).
3. Level 3 – quantify the effect (1000 planning applications per year, 100 hours of management time, etc.)
4. Level 4 - put a value on the scale of impacts by monetising the effect. It may be the case that the costs but not benefits can be monetised. The use of indicators may help further qualify non-monetised costs and benefits
5. Level 5 – monetize fully all costs and benefits.

This IA Toolkit suggests that, depending on the mentioned factors, a proportionate level for each case should be identified and applied. The same document also suggests that for earlier stages of policy formation, levels 1 and 2 are most appropriate. This also means that for an *ex-ante* impact assessment of non-crucial laws, such as lobbying laws, these levels (1 or 2) seem to be the most appropriate, especially if the size of the industry does not imply a large expected aggregate burden.

Upon referring back to the structure of the CPI and the Threefold classification, it can be seen that their analytical depth almost perfectly fits Level 2 of the IA Toolkit. The CPI index identifies the affected sectors (public and private) and provides a scoring method, which later on serves for classification of impacts by magnitude on high, medium and low within the Threefold classification theory. Thus, the same level of depth should also be adopted for the CII as it is important to keep it complementary to the CPI Index, and to enable fast and easy comparative application of both scales. This is just one of the reasons for staying on this level of depth (IA Toolkit - Level 2), but there are additional more important ones in favour of this choice.

This level of depth is, at the same time, appropriate from the RIA perspective due to the nature and significance of lobbying regulation. Lobbying regulation usually (except the EU level²³¹ and Canada²³² with approximately 5,000 registrants, and the US federal

²³¹ Transparency Register – statistics for register:
<http://ec.europa.eu/transparencyregister/public/consultation/mainstatistics.do?action=prepareView&locale=en#en>

level with approximately 12,000²³³ registrants) burdens a relatively small business category. In Macedonia, for a long time there was only 1 registered lobbyist, while membership in professional lobbying associations in Serbia²³⁴, Croatia²³⁵, Slovenia²³⁶ and Montenegro hardly exceeds a hundred firms and individuals, according to their public membership databases. In other bigger countries, the number of registrant is indeed higher, but not significantly higher²³⁷.

Also, lobbying regulation is an exception rather than a rule, as in many countries general laws on corruption prevention are considered to be efficient enough in the protection of public integrity and fostering transparency.

Another reason is correlated with the motivation of the research regarding the application of the CII. Since one of the main intentions of this research is to improve the tools for comparative impact assessment of lobbying regulations, undertaking a deeper analysis with monetization of costs is not necessary due to the desired simplicity of comparisons of both indices. The reason for this is that monetizing of costs and comparing them within different institutional and market environments does not give immediate comparative information on the quality of lobbying regulation. For instance, if the costs of enforcement are approximated to be up to \$500,000, it also matters how big a part of a public budget (or percentage of the GDP) this is, and how many lobbyists are expected to be regulated. In other words, comparisons would be more complicated and demanding, and for information on the quality of regulations, additional information would have to be included. Another problem is whether some of this information is available at all for all countries. Hence, simplicity should remain as one of the priorities.

²³² In June 2012, according to the Canadian register there were 5169 registered lobbyists of all types (<https://ocl-cal.gc.ca/app/secure/orl/lrrs/do/slctRprt?action=selectReport&lang=eng>)

²³³ <http://www.opensecrets.org/lobby/index.php> - based on data from the Senate Office of Public Records, from 2012.

²³⁴ Register of members of Serbian lobbying Association, 68 members of the association (June 2012): <http://www.drustvolobistasrbije.org/organizacija/clanovi/>

²³⁵ Register of members of Croatian lobbying Association, 99 members of the association (June 2012): <http://www.hdl.com.hr/members.php>

²³⁶ Slovenian Commission for prevention of corruption – register of lobbyists, in total 61 registered lobbyists (June 2012), <https://www.kpk-rs.si/sl/lobiranje-22/register-lobistov>

²³⁷ French register has 150 registered interest representatives (<http://www.assemblee-nationale.fr/representants-interets/liste.asp>), Israeli register (at the webpage of the Knesset) has (June 2012) 115 registered interest representatives with permanent access.

Similarly, if the level of analysis remains less deep and focuses on the magnitude of impacts (low, medium, high), this would enable comparisons over different jurisdictions regardless of the monetary expression of the costs – in the same way as the CPI and Threefold theory are used.

Lastly, another important goal of this research is to provide policymakers with a useful *ex-ante* lobbying regulation impact assessment tool. If the analysis is conducted *ex-post*, it could be much easier to estimate the cost in a monetary sense, at least for the public side, which has to have a budget item dedicated for enforcement. However, one of the goals of this research is to provide a tool that can be used in the early policy stages where the costs are yet unclear on both sides, and to depict the relation between the indication of benefits and costs. This information, combined with the estimated size of the lobbying sector and available budget, could improve the design of the rules before they become officially adopted and potentially cause regulatory failure, like in the cases of Hungary, Montenegro and Macedonia.

5. General regulatory cost indicators as a starting point for the CII design

The problem of defining cost indicators is more a practical than a theoretical problem. Different regulatory solutions affect different parts of society and the economy in specific ways, which causes the assessment technique to diverge from case to case. However, it is possible to outline some general directions which serve as a guideline for those who work on the regulatory impact of any type of costs.

First of all, it has to be clarified as to how regulation imposes costs on society. It might be said that the costs of regulation are distributed by the allocation of separate burdens towards affected parties. *“The burden might be defined as any adverse effect experienced in the private sector from such regulation”*²³⁸.

The same holds true for the public sector as well. But an interesting question is always how the burden is distributed between the two sides, and specifically between the different groups within the private sector. In cases of lobbying, this is an especially

²³⁸ Supra no.197, p.263.

important question, as some countries (the US) impose a much higher compliance burden on lobbyists than other ones (the EU).

The OECD has probably the largest experience in gathering and systemizing different practices of RIAs. Based on that, this organization has issued a series of reports and toolkits which provide concrete recommendations on how to develop cost indicators for regulatory assessment, based on general cost indicators and different types of analysis (cost-benefit, cost-effectiveness, cost assessment, benefits assessment, risk assessment analysis, etc.)

In chapter 11 of the report “*Regulatory Impact Analysis-best practices in the OECD countries*” from 1997, an overview is given of the most important steps for development of the general indicators of regulatory costs. These indicators will serve in this research to develop the Cost-Indicator Index for lobbying, as they represent a general fusion of different approaches and techniques.

The following list introduces those indicators:

- *regulatory agency personnel*
- *regulatory agency spending*
- *other measures of regulatory agency activity*
- *compliance spending—an incremental perspective*
- *compliance spending—a survey-based perspective*
- *compliance spending—synthetic indicators*
- *more sophisticated indicators of burden*

It is important to mention that these are defined only to be indicators of costs, because measuring of a precise aggregate burden can be very difficult, and depends on the nature of regulation and availability of reliable and systematic data. Costs represent burden either for the public or for the private side, or both of them. This also means that the availability of data is influenced by the structure and size of both sides, which makes precise measurement difficult, especially an *ex-ante* assessment which is based on predictions.

Another problem is that regulation may produce additional indirect costs on other related markets, where effects are as well hard to identify and quantify as mentioned in the introduction. In the case of lobbying regulations, those could be costs

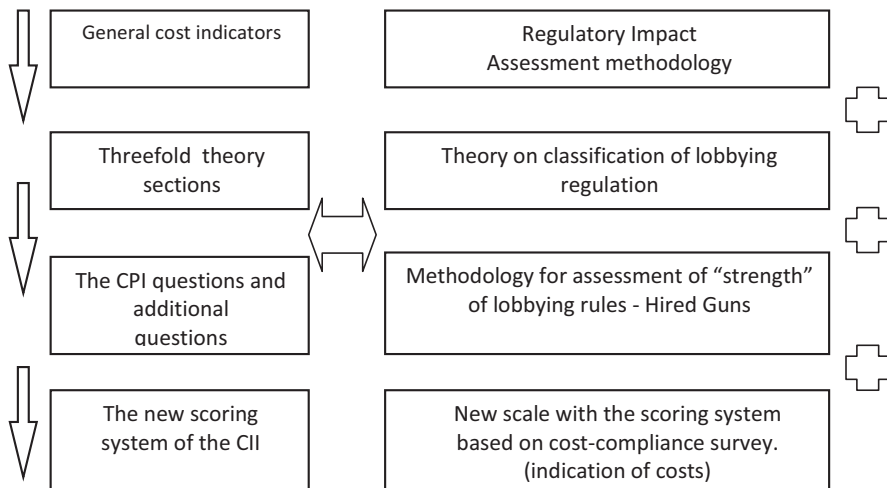
which may arise from changes in competition levels after imposing regulation, or changes in price of services that lobbyists charge their clients – which alters more or less corporate funds towards lobbying, etc. This is why using only indicators of costs makes more sense in this, but also on other similar cases.

In the regulation of lobbying, distribution of costs is almost always directed to both sides, but the design of rules strongly affects the distributional pattern. Sometimes, public burden will be minimal if there is not an enforcement agency, if there are no new staff employed, if there is no frequent auditing involved – simply if the enforcement is weak or delegated to an existing administrative unit. The same would be true for the private side if lobbyist would be asked not to register or would be required to report rarely with few details in electronic format.

6. The CPI index as methodological foundation for the Cost Indicator Index

As mentioned above, OECD general cost indicators are in fact very useful for the development of specific cost indicators for the regulation of lobbying. These indicators will be used to classify the cost-sensitive parts of lobbying regulations, which are already listed and defined under the CPI method, and grouped by their magnitude effect under the Threefold classification theory.

First it is going to be determined which general OECD cost indicators can be correlated with the Threefold theory sections. Then, each of those indicators and corresponding Threefold sections will be correlated with specific CPI questions. The map below gives an overview of the methodological structure of the CII. The left side refers to the methodological pillars of the CII, and the right side shows where those elements come from:



Below, Table 3 shows in detail the fusion and evolution of these elements. Interpreting it from the left - the first column indicates whether costs burden the public or the private side. The second column indicates which OECD general cost indicator is applied. The third column indicates which Threefold theory section is applied, and the fourth column indicates the CPI question. These elements and the fusion technique are discussed immediately after the table.

Table 3 - Methodological framework-table of the CII

General cost indicator	Corresponding Threefold Classification Sections	Corresponding CPI/CII question without CPI score values
<ul style="list-style-type: none"> Compliance spending 	Registration Disclosure	<p>1. How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?*²³⁹</p> <p>More than \$10,000 made - ? points More than \$2,500 made - ? points Regardless of the amount made - ? points</p> <p>2. Is a lobbyist required to file a registration form?</p> <p>No - 0 points; Yes - ? points</p> <p>3. How many days can lobbying take place before registration is required?*</p> <p>6 months or more - ? points; Up to a month - ? points; up to 3 days - ? points</p> <p>4. Is subject matter or bill number to be addressed by a lobbyist required on registration forms?</p> <p>No bill number/subject matter required - 0 points; Subject matter only required - ? points; Bill number required - ? points</p> <p>5. How often is registration by a lobbyist required?</p> <p>Once only - ? points; Every two years - ? points; Annually or more often - ? points</p> <p>6. Within how many days must a lobbyist notify the oversight agency of changes in registration?*</p> <p>6 months or more - ? points; Up to a month - ? points; Up to</p>
PRIVATE BURDEN		

²³⁹ Questions marked with "*" indicate that the original CPI question had to be modified in order to make sense in the CII. Reasons for changes are explained in the following sections.

		<p>3 days - ? points</p> <p>7. Is a lobbyist required to submit a photograph with registration? No - 0 points; Yes - ? points</p> <p>8. Is a lobbyist required to identify by name each employer on the registration form? No - 0 points; Yes - ? points</p> <p>9. Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No - 0 points; Yes - ? points</p>
	<p>Spending Disclosure</p>	<p>10. Is a lobbyist required to file a spending report? No - 0 points; Yes - ? points</p> <p>11. How often within a year is a lobbyist required to report spending?* Once (or once in 2 years) - ? points; Twice - ? points; Every three months or more often - ? points</p> <p>12. Is compensation/salary required to be reported by a lobbyist on spending reports? No - 0 points; Yes - ? points</p> <p>13. Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No - 0 points; Yes - ? points</p> <p>14. What spending must be itemized?* No spending required to be itemized - 0 points, All spending above \$500 must be itemized - ? points;; All spending above \$100 - ? points; All spending required to be itemized - ? points</p> <p>15. Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No - 0 points; Yes - ? points</p>

		<p>16. Is the recipient of the itemized expenditure required to be identified? No – 0 points; Yes – ? points</p> <p>17. Is the date of the itemized expenditure required to be reported? No – 0 points; Yes – ? points</p> <p>18. Is a description of the itemized expenditure required to be reported? No – 0 points; Yes – ? points</p> <p>19. Is subject matter or bill number to be addressed by a lobbyist required on spending reports? No bill number/subject matter required – 0 points; Subject matter only required – ? points; Bill number required – ? points</p> <p>20. Is spending on household members of public officials by a lobbyist required to be reported? No – 0 points; Yes – ? points</p> <p>21. Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points; Yes – ? points</p> <p>22. What is the statutory provision for a lobbyist giving and reporting gifts?* Gifts are not reported – 0 points; Gifts are reported – ? points</p> <p>23. What is the statutory provision for a lobbyist giving and reporting campaign contributions?* Campaign contributions not required to be disclosed on spending report/prohibited during session – 0 points Campaign contributions allowed and required to be disclosed on spending report/allowed during session – ? points</p>
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			<p>24. Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points; Yes – ? points</p> <p>25. Is an employer or principal of a lobbyist required to file a spending report? No – 0 points; Yes – ? points</p> <p>26. Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points; Yes – ? points</p>
<ul style="list-style-type: none"> • Regulatory (enforcement) agency personnel • Regulatory (enforcement) agency spending • Other measures of regulatory agency activity 	Electronic filing	<p>27. Does the oversight agency provide lobbyists/employers with online registration? No – 0 points; Yes –? points</p> <p>28. Does the oversight agency provide lobbyists/employers with online spending reporting? No – 0 points; Yes – ? points</p> <p>29. Does the oversight agency provide training about how to file registrations/spending reports electronically? No – 0 points; Yes – ? points</p>	<p>30. Location/format of registrations or active lobbyist directory: Photocopies from office only – ? points; PDF or image files on the Web – ? points, Searchable database on the Web - ? points; Downloadable files/database - ? points</p> <p>31. Location/format of spending reports: Photocopies from office only – ? points; PDF or image files on the Web – ? points; Searchable database on the Web - ? points; Downloadable files/database – ? points</p>
PUBLIC BURDEN	Public access	<p>32. Cost of copies:* Interested parties pay for the copies of available reports – 0 points; Interested parties do not have to pay for the copies of available reports – 5 points</p>	

	<p>33. Are sample registration forms/spending reports available on the Web? No - 0 points; Yes - ? points</p> <p>34. Does oversight agency provide an overall lobbying spending total by year? No - 0 points; Yes - ? points</p> <p>35. Does oversight agency provide an overall lobbying spending total by spending-report deadlines? No - 0 points; Yes - ? points</p> <p>36. Does oversight agency provide an overall lobbying spending total by industries lobbyists represent? No - 0 points; Yes - ? points</p> <p>37. How often are lobby lists updated? Annually or less often - ? points; Monthly - ? points; Weekly - ? points</p> <p>38. In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No - 0 points; Yes - ? points</p> <p>39. Does the state publish a list of delinquent filers either on the Web or in a printed document? No - 0 points; Yes - ? points</p> <p>40. Does the state have statutory auditing authority? No - 0 points; Yes - ? points</p> <p>41. Does the oversight agency conduct mandatory reviews or audits? No - 0 points; Yes - ? points</p> <p>42. Is there a statutory penalty for late filing of lobby registration form? No - 0 points; Yes - ? points</p> <p>43. Is there a statutory penalty for late filing of a lobby spending report? No - 0 points; Yes - ? points</p>
	<p>Enforcement</p>

		<p>44. Is there a statutory penalty for incomplete filling of a lobby registration form? No – 0 points; Yes – ? points</p> <p>45. Is there a statutory penalty for incomplete filling of a lobby spending report? No – 0 points; Yes - ? points</p> <p>46. Structure/type of oversight agency?* Already existing administrative unit with attributed tasks of Enforcement of lobbying rules – ? point; Entirely new administrative agency – ? points</p> <p>47. Is there mandatory revolving door compliance? No – 0 points; Yes - ? points</p>
	Revolving door	

6.1 Methodological framework – the analysis of funding elements of the CII

Table 3 represents the fusion of all methodological building blocks used in creation of the CII. It has four columns, and they refer to (from the left):

1. The first column shows the division of items into the public and private compliance dimension. In other words, it shows questions belonging to the private or public sector in terms of the burden they produce. Questions from 1 to 26 are associated with the burden imposed on the private sector, while questions from 27-47 are concerned with the burden imposed on the public sector.

PRIVATE BURDEN
PUBLIC BURDEN

2. The second column indicates the link of the questions to the OECD's general indicators of regulatory costs. All burden associated with the private sector belongs to the general cost indicator – *compliance spending*. Similarly, all burden associated with the public sector is correlated with three general cost indicators: *regulatory agency personnel, regulatory agency spending and other measures of regulatory agency activity*.

	OECD general regulatory cost indicators
PRIVATE BURDEN	Compliance spending
PUBLIC BURDEN	Regulatory agency personnel, Regulatory agency spending, Other measures of regulatory agency activity

3. The third column indicates the relation between the second one and the fourth one. In this column are listed the Threefold theory lobbying regulation sections. It is indicated to which of the specific OECD general cost indicators they are linked to.

	OECD general regulatory cost indicators	Threefold theory classification of lobbying regulation elements
PRIVATE BURDEN	Compliance spending	Registration regulation Spending disclosure
PUBLIC BURDEN	Regulatory agency personnel, Regulatory agency spending, Other measures of regulatory agency activity	Electronic filling Public access Enforcement Revolving door

4. The fourth column is composed of 47 individual questions, mostly taken directly from the CPI in their original form, or slightly modified. There is only one entirely new question introduced. All questions are grouped under the Threefold theory sections they belong to. The Threefold theory sections are grouped under the OECD general cost indicators they belong to, and those indicators are in the last stage grouped based on their burden effects - public or private burden.

	OECD general regulatory cost indicators	Threefold theory classification of lobbying regulation elements	The Cost Indicator Index (CII) questions
PRIVATE BURDEN	Compliance spending	Registration regulation Spending disclosure	- - -
PUBLIC BURDEN	Regulatory agency personnel, Regulatory agency spending, Other measures of regulatory agency activity	Electronic filling Public access Enforcement Revolving door	- - - - -

The CII questions are mostly identical to those from the CPI scale, with several necessary modifications that had to be introduced for methodological reasons. First of all, the CPI has 48 questions while the CII has 47. This is a consequence of the fact that some questions have been eliminated, some new ones introduced, while some of them were slightly but necessarily modified. The details on all introduced changes could be summarized in the following way:

- Questions No. 43²⁴⁰ and 46²⁴¹ were eliminated from the CII as they prevent it (and the CPI as well in some cases) to be applied as an *ex-ante* tool. These questions can be answered only by investigation of actual enforcement of lobbying rules in a particular country. Since the CII is designed with the influence of the RIA methods, it primarily serves as an *ex-ante* mechanism, but its application in an *ex-post* manner is not excluded at all after this elimination. In fact, this modification enables both applications instead of only *ex-post* application.
- One additional question was introduced as it was not part of the CPI scale, but from a cost-indication point of view it is very relevant for the CII. It is question No. 45:

Structure/type of oversight agency

- *Already existing administrative unit with attributed tasks of enforcement of lobbying rules?*

- *Entirely new administrative agency?*

This question should indicate the cost-effects of different lobbying regulations enforcement options. In some cases, enforcement is delegated to an already existing agency (Commission for prevention of the corruption in Slovenia, for instance), while in some other situations a special agency (usually called Register) has been set up with a particular task of enforcement of lobbying rules regardless (Canada, New Transparency Register of the EU, the Serbian proposal on Law on lobbying). Logically, it is expected to have lower enforcement costs (and public burden) if the law's rules are implemented with the same number of public employees than if a new agency with new staff has to be set up for enforcement purposes.

²⁴⁰ When was the penalty for late filling of a lobby spending report last levied?

²⁴¹ When was the penalty for incomplete filling of a lobby spending report last levied?

- Another change that might potentially mislead at the very first sight if two scales are compared is that they do not start with the same question. The reason for this is that question No.1 from the CPI was moved in the CII and it is placed under No. 38 (enforcement section which belongs to the public burden), in order to achieve better organization of questions according to their dependence to general cost indicators and Threefold classification sections.
- A portion of questions from the CPI has also been modified in the CII in order to better match recent tendencies and purpose of the newborn index. Those are the following questions (the CII table, marked with "*" – 1, 3, 6, 11, 14, 22, 23, 32, 46. Table 4 allows a better overview of the introduced changes:

Table 4 - modified CPI questions in the Cost Indicator Index

			Reasons and arguments in favour of the adopted change
1.	The CPI (original) question	<p>How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?</p> <p>-Qualification threshold: More than \$500 made/spent – 0 points</p> <p>-Qualification threshold: More than \$100 made/spent – 1 point</p> <p>-Qualification threshold: More than \$50 made/spent – 2 points</p> <p>-Qualification threshold: \$50 or less made/spent – 3 points</p> <p>-Lobbyists qualify and must register no matter how much money made/spent – 4 points</p>	<p>The main reason why threshold qualifications are changed is that existing ones did not offer monetary span which was large enough to capture the industry's cost-sensitiveness. Since lobbying contracts usually involve fees that are higher than \$500, the span with the maximal value that is just set as higher than \$500 did not offer much space.</p> <p>Instead, in order to better measure the cost-sensitiveness of the industry, the new monetary values introduced are taken from the current US lobbying regulation practice - Honest Leadership and Open Governments Act (HLOGA, 2007), reporting section. This law has set registration thresholds as follows:</p>
	The CII (modified) question	<p>How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?</p> <p>-Qualification threshold: More than \$10,000 made/spent</p>	<p>\$2,500 for individuals and \$10,000 for the firms.</p> <p>The new scale now has a span from \$0 over \$2,500 to \$10,000 and it allows better estimation of the cost-sensitiveness of the industry. The previous scale would,</p>

		<p>-Qualification threshold: More than \$2,500 made/spent</p> <p>-Qualification threshold: regardless of the amount made/spent</p>	<p>regardless of the threshold, indicate that lobbyist will have to register for almost any activity, as contracts are almost always over \$500. This is why the separation of costs on values lower than \$500 does not make much sense, taking into consideration the purpose of the CII.</p>
3.	The CPI (original) question	<p>How many days can lobbying take place before registration is required?</p> <p>-16 or more days – 0 points</p> <p>-11 to 15 days – 1 point</p> <p>-6 to 10 days – 2 points</p> <p>-1 to 5 days – 3 points</p> <p>-0 days – 4 points</p>	<p>The values in this question also had to be set to be wider within the CII, since the proposed time span within the CPI was too narrow for the purpose of this research. The new value of 6 months was set as a very broad threshold (previously existing in the US Lobbying Disclosure Act, 1995), while the threshold of 72 hours (3 days) was taken from the Real Time Lobbying Disclosure Act (RTLDA)²⁴², which is a proposal on lobbying reform that suggests one of the shortest, if not the shortest, registration deadlines.</p>
	The CII (modified) question	<p>How many days can lobbying take place before registration is required?</p> <p>-6 months or more</p> <p>-Up to a month</p> <p>-Up to 3 days</p>	
6.	The CPI (original) question	<p>Within how many days must a lobbyist notify the oversight agency of changes in registration?</p> <p>-16 – or more days – 0 points</p> <p>-11 to 15 days – 1 point</p> <p>-6 to 10 days – 2 points</p> <p>-1 to 5 days – 3 points</p> <p>-0 days – 4 points</p>	<p>The same logic as for question 3 is applied also in this case.</p>
	The CII (modified) question	<p>Within how many days must a lobbyist notify the oversight agency of changes in registration?</p> <p>-6 months or more</p> <p>-Up to a month</p> <p>-Up to 3 days</p>	

²⁴² Supra n.111.

11.	The CPI (original) question	<p>How often during each two-year cycle is a lobbyist required to report spending?</p> <ul style="list-style-type: none"> -0 to 3 filings – 0 points -4 to 6 filings – 1 point -7 to 9 filings – 2 points -10 or more filings – 3 points 	<p>Here, due to reasons of clarity, the question has been narrowed to three options. These new options offer a wide variety of time options: once in 2 years, every 6 months (the LDA, 1995) and at least one in 3 months (the HLOGA, 2007) or even more often (RTLDA).</p>
	The CII (modified) question	<p>How often within a year is a lobbyist required to report spending?</p> <ul style="list-style-type: none"> -Once (or once in 2 years) -Twice -Every three months or more often 	
14.	The CPI (original) question	<p>What spending must be itemized?</p> <ul style="list-style-type: none"> -No spending required to be itemized – 0 points -Itemization threshold: More than \$100 – 1 point -Itemization threshold: More than \$25 – 2 points -Itemization threshold: \$25 and below – 3 points -All spending required to be itemized – 4 points 	<p>In this question, the first item was removed since absence of reporting activity is not expected to cause any additional burden to lobbyists. This practically means there is no compliance, and consequently no costs.</p> <p>The other 3 items were kept, but the financial span was again expanded as in previous questions.</p>
	The CII (modified) question	<p>What spending must be itemized?</p> <ul style="list-style-type: none"> -All spending above \$500 must be itemized -All spending above \$100 -All spending required to be itemized 	
22.	The CPI (original) question	<p>What is the statutory provision for a lobbyist giving and reporting gifts?</p> <ul style="list-style-type: none"> -Gifts are not reported – 0 points -Gifts are reported – 1 point -Gifts are limited and reported – 2 points -Gifts are prohibited – 3 points 	<p>In this question, the first item (no reporting) and third one (type of gift received) were not relevant from the CII perspective, and thus they were eliminated. The only issue that matters here is if there is or there is not an established duty of reporting gift giving, so the question was accordingly adjusted in this</p>

	The CII (modified) question	What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – Gifts are reported –	sense.
23.	The CPI (original) question	What is the statutory provision for a lobbyist giving and reporting campaign contributions? -Campaign contributions allowed and not required to be disclosed on spending report/prohibited during session – 0 points -Campaign contributions allowed and not required to be disclosed on spending report/allowed during session – 0 points -Campaign contributions allowed and required to be disclosed on spending report/prohibited during session – 1 point -Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 1point -Campaign contributions prohibited – 2 points	Similar to the previous question. The only aspect relevant for the CII analysis is if there is an established duty to report campaign contributions or not. This is why three items were not included in the CII system.
	The CII (modified) question	What is the statutory provision for a lobbyist giving and reporting campaign contributions? -Campaign contributions not required to be disclosed on spending report/prohibited during session -Campaign contributions allowed and required to be disclosed on spending report/allowed during session	
32.	The CPI (original) question	Cost of copies: 25 cents or more per page – 0 points Less than 25 cents per page – 1 point	Within the CPI and the CII this question was the only one with a monetary value involved. Since the CII was designed to deal with the

	The CII (modified) question	<p>Cost of copies:</p> <p>Interested parties pay for the copies of available reports</p> <p>Interested parties do not have to pay for the copies of available reports</p>	<p>indication of costs and not monetary expression of costs, this question had to be changed in order to preserve methodological coherence.</p> <p>It also has to be mentioned that, nowadays, simple printouts of reports should not cause significant costs to anyone, especially due to tendencies of making databases available in an online form, like in the US.</p> <p>Thus, here it could be relevant only if the cost of copies that are provided goes at the budget of an oversight agency or not. In case it does, costs still cannot be considered as important ones as it can hardly exceed 0.10 EUR cents at this moment.</p>
46.	The CPI (original) question	<p>Is there a “cooling off” period required before legislators can register as lobbyists?</p> <p>-No – 0 points</p> <p>-Yes – 2 points</p>	<p>The question was just reformulated to emphasize the mandatory obligation of compliance. This reformulated question emphasizes that a state agency would have to conduct mandatory control of the cooling-off period.</p>
	The CII (modified) question	<p>Is there a mandatory revolving door compliance?</p> <p>-No</p> <p>-Yes</p>	

7. Empirical evidence – calibrating the values of the CII

The main challenge with the construction of the CII was to properly set values that indicate the magnitude of each question. In order to discover if lobbying rules produce any costs, and in order to have information on the magnitude of the burden, it is important to have at least some type of empirical backup. This is especially important since the CPI has already been widely used, even though it is not clear where the values

attached to each question come from²⁴³. This is why values in the CII, ranging from 2-8, were not set in a provisional way but based on empirical survey.

The survey was quantitative and qualitative. In quantitative terms, the anecdotal²⁴⁴ evidence provided aggregate information on the cost perception for different cost indicators. In qualitative terms, several interviews were conducted in order to get additional information from the field on the nature of the costs of lobbying regulation. Both types of results were used as a foundation for the CII cost indication values.

7.1 Questionnaires – anecdotal evidence from the public and private sector

Questionnaires used in this research were designed to measure compliance cost-perception both of the lobbying industry and of the public sector that deals with enforcement. There were two types of questionnaires – one for the private and another one for the public side. Both are methodologically of the same construction, but with different questions for different sides. Those that were sent to the private side (containing 26 questions) were meant to measure the cost perception of compliance with lobbying regulations, while those sent to the public side (containing 21 questions) were aimed at discovering the cost perception of the enforcement of lobbying regulation.

The questionnaires are deliberately divided into two categories – one for the public and one for the private side, even though there was a dilemma as to whether to send all questions to both categories of respondents. This would, to some extent, provide a more robust foundation, but at the same time it would not make much sense to require the private sector to estimate the costs of public enforcement, as they probably have very limited information on the level of public expenses.

Asking the public sector to estimate the cost of private sector compliance would make more sense, but as it was shown in the previous chapter, globally the public sector has a tendency of introducing lobbying regulations without estimating the private sector

²⁴³ For the purpose of this research, the Centre For Public Integrity was contacted several times in order to discover which methodology was used in construction of the CPI and its values. However, no response was ever received while in the literature it is not possible to find an answer on CPI scores' methodology.

²⁴⁴ It would be hard to call it statistical evidence due to the small sample. Hence, an empirical or anecdotal evidence is probably better and more safe term.

burden. Hence, instead of mixing questions, each sector was invited to estimate its own burden, because it is assumed they are able to estimate their own costs more precisely.

The design of the questionnaires was particularly challenging. In fact, since it was important to have a sound methodological background, the experts on market research and statistical methods were engaged in the design of the questionnaires. Precisely speaking, the design of the questionnaires was developed with the generous help of the team of IPSOS Puls Croatia (local branch of the IPSOS international), which I visited in 2012 specifically for this purpose.

IPSOS is one of the regional and global leaders in the market research services and their input was crucial. Their experts have offered valuable assistance in designing the questionnaire in terms of its length, precision and efficiency in measuring the results according to the objectives set forth by the research. They also provided help in designing the cover letter which was sent together with the questionnaire.

Initially, respondents were expected to reply within a month's time, but in order to get all the answers back it took almost three months. The private sector respondents were generally more open and interested in responding, but it was difficult to get their answers in time due to their lack of time. The public sector was even more difficult to reach and involve.

Some of the respondents only offered written comments and did not fill in the questionnaires (the US). These comments were used to backup the data that was collected through the survey, and these qualitative statements matched the results of the quantitative analysis quite well. Some respondents provided both qualitative responses and elaborated on the questions additionally in a separate letter (Slovenia). Some of them even participated in extensive phone interviews, as they found this means of communication the most suitable (UK, Belgium/Brussels).

Hence, the data collection took more time than estimated, which also slowed down entire process of the analysis. The data collection at the end resulted in both quantitative and qualitative empirical findings. Despite the decreased size of the qualitative sample, the qualitative answers were actually very valuable as they were in line with the findings.

In Table 5 is shown a sample question (from the public sector questionnaire), which shows the general features and questionnaires' design. In the left column is the question in its original form in the CII, while in the right column reflects the question from the questionnaire.

Table 5 - the design of the survey questionnaires - an example

<i>The original question from the CII</i>	<i>The question as it appeared in the questionnaire</i>
<p>7. Location/format of registrations or active lobbyist directory: Photocopies from office only – PDF or image files on the Web – Searchable database on the Web - Downloadable files/database -</p>	<p>The location/format of registrations or active lobbyist directory might affect agency expenses differently. Please indicate your opinion on the level of cost separately for each of the alternatives:</p> <p>Information on registered/active lobbyists are available as photocopies from the register only</p> <p>1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/></p> <p>Information on registered/active lobbyists are available as PDF or image files on the Web (readable only)</p> <p>1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/></p> <p>Information on registered/active lobbyists are available through searchable database on the web</p> <p>1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/></p> <p>Information on registered/active lobbyist are available through downloadable files/database</p> <p>1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/></p>

Respondents did not know what the original CII question was, but they were asked to answer a set of questions as they appear in the right column. In cases where CII questions contained multiple choice answers, these answers were divided in questionnaires into separate questions – from now on called burden indicators. This is why the questionnaires contain 67 burden indicators (individual questions), while there are in total 47 CII questions. This separation was necessary since it was important to further categorize burden indicators into cost-indication categories.

Low, Medium and High are the magnitude levels chosen to depict the impact of costs on both the private (compliance) and the public sector (enforcement), based on previously discussed OECD depth of analysis recommendations. These magnitude levels will be used to label a regulation after it has been granted with its CII score, which will further on be classified to one of the three magnitude levels.

The scale for answering questionnaires was chosen on purpose to be from 1-10, where one refers to insignificant cost impact and 10 stands for an extremely burdensome cost impact of a rule. This scale was chosen in order to have a more delicate view on cost perception, and to be able to calculate the mean for each question of the CII. The mean values of each question are further on associated with one of three possible impacts – low, medium and high. This allows observation of different legal rules independently and connects them to the magnitude indicators of desired analytical depth.

1	2	3	4	5	6	7	8	9	10
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	LOW		MEDIUM			HIGH			

Numerical values could be even individually associated with magnitude categories, but this is not necessary since they are categorized in a more profound way in the next phase of the data analysis. However, in case of direct linking, the values that are between 2-3 could be associated with low burden impact, from 4-7 with medium burden impact and from 8-10 with high burden impact. The reason for skipping the values of 1, 9 and 10 is that they do not appear as a means of any of burden indicators. This fact led to narrowing the scale from a 10 to a 7 digit-scale.

This is also the reason why the magnitude categories do not reflect the 10-digit scale, as in that scale 7 would belong to the medium impact zone, while after the adjustment it belongs to the high impact zone. The value of 7 would be reflecting different weight on 10-digit (1-10) and would remain under medium category. However, 7 has different weight on 7 digit scale (which starts with 2 and ends with 8), and this is why it was moved to the high category.

This choice can certainly be criticized. The main critique would be related to the decision to shrink the scale from 10 to 7 digits. Still, under the 10-digit scale most of the results would probably be ending under the medium zone, which would ultimately make differentiation between the results more difficult. For instance, a regulation that would end up in range between 7 and 8 and would be regarded as same as the regulation which are just above 4 (on 10-scale). However, by slightly narrowing of the medium category it would be more easy to see how big the difference is between a regulation with the score of 4 and 7, as they would fall under two categories instead of one.

Hence, this was a conscious choice which was undertaken in order to make the tool more illustrative, even though it can be seen as arbitrary. But still, this is the first step in the development of the tool, and hence, more fine tuning would be welcome and useful with a more complete statistical analysis in the future.

7.2. The sample

Even though it would be better to have a sample large enough to provide more reliable statistical data, in the case of this survey it was not possible to easily obtain such a sample, due to time, material and factual constraints. The time was also the constraint since the answers had to be collected within the period of three months.

The main challenge was surveying the public sector. At this moment, there are very few states that have regulated lobbying and just some of them have organized special units for the enforcement of lobbying regulations. Having four of them reply is not insignificant, since there are not many more available in any case. Another alternative would be to interview some of the RIA offices in countries where lobbying is not regulated, but in that case two types of respondents would have to be mixed. Hence, the

major problem within the sample is that it is small, but at the same time it would be difficult to enlarge it due to the factual constraints.

Unfortunately, this survey was also unable to involve Australia and the US in terms of the public sector. The US Senate and US House (they have separate databases) refused to participate in the survey claiming they have no right to participate in any research projects—“*as a federal agency we cannot participate in your survey*”. Even though the information from the US could be very useful due to the complexity and history of lobbying enforcement in that country, relevant institutions have not found the means or interest to participate in the survey.

On the other hand, there are thousands of lobbying firms all around the world, but due to the material²⁴⁵ and time constraints, it was decided to shift the focus to official lobbying associations, or associations which represent lobbyists and other public affairs professionals. These organizations officially represent an aggregate interest of their members, and they are by default involved in regulatory affairs related to their profession. This also means they have very good information on the needs of the industry, and costs that the industry faces in complying with different regulatory rules. Moreover, some of them derive legitimacy from large membership, and one of their main roles is to provide information on the general interest of their members. Involving associations, instead of lobbying firms directly, helped in bypassing material constraint. Thus, the sample is small in terms of statistical size, but in terms of empirical evidence it can be considered as a relevant source due to the quality and legitimacy of the respondents. The number of respondents should not mislead, because they all (except the American Bakers’ Association) legitimately represent a large number of lobbyists.

Another important factor that supports the empirical evidence is the use of significant effort required in answering the questionnaires. A profound understanding of the effects of transparency was necessary to formulate the answers, and the information obtained from respondents could be treated as high quality information. Those who

²⁴⁵ Mostly referred to the need of contacting them by phone more than several times in order to get someone to respond. Emails gets easily disregarded which was the case in this survey. Fortunately, participation was secured by phone calls and multiple emails, but still not in all cases.

decided to respond have probably provided answers based on a profound understanding of regulatory mechanisms and their burden.

The respondent rate was- 12 out of 18 potential ones (for the private side) and 4 out of 6 potential ones (for the public side.) However, not all of the respondents who participated agreed to fill in the questionnaire. One of them offered a phone interview instead, while another two sent extensive and detailed written testimonies as their answers on questions. It was important to stay flexible and allow them to contribute as they preferred, even though the objective was to get answers which can be further used to calculate the means for each question. On the other hand, the thoughts expressed in an open and extensive way certainly improved the qualitative part of the analysis.

The answering time was initially limited to one month, but it was extended to three months as it was very difficult to convince respondents to participate in the research. In fact, phone conversations and multiple reminders were necessary in order to secure the current response rate. The persistence was ultimately fruitful as people who were actually responding to the questionnaires were usually presidents of interviewed associations or directors of registries, which gives some additional weight to their answers. Table 6 provides the list of participating institutions and information on their membership. Hence, the answers obtained are valuable even though the sample is small, but under available resources and constraints it could hardly have been larger. Further on, in the review of the Regulatory Independence Indices literature, it will be shown that even small samples can produce acceptable results. This is especially true in this case as these were additionally supplemented with a qualitative analysis through letters and phone calls.

Table 6 - List of participants in the survey

	PRIVATE SIDE RESPONDENTS	N = 12
1.	Croatian Society of Lobbyists www.hdl.com.hr (99 members)	Survey completed
2.	Serbian Lobbying Association www.drustvolobistasrbije.org (67 members)	Survey completed

3.	Slovenian Society of Lobbyists www.slovenski-lobisti.si (61 member)	Survey completed
5.	Chartered Institute of Public Relations, Association of Professional Political Consultants and Public Relations Consultants Association in the UK (CIPR) (Almost 10,000 members – information on a portion of lobbyists/public affairs professionals is not available)	Phone interview with Mr Phil Morgan, Director of Policy and Communications
6.	Society of European Affairs Professionals www.saep.be (255 members)	Survey completed
7.	Association of Accredited Lobbyists to the EU – AALEP www.aalep.eu (not available)	Survey completed
8.	American Baker’s Association www.americanbakers.org Trade Association from the US	Survey completed. Since the American League of Lobbyists did not fill the questionnaire, the ABA was contacted in order to have at least one qualitative data source from the US. However, since the ABA is not a lobbying association but a lobbying organization, their answers are not as heavy as those from associations.
9.	American League of Lobbyists (1200 members) www.alldc.org www.ipaaglobal.org	Written, extensive testimony of Mr Wright Andrews, ex president and board member of the American League of Lobbyists; American Bar Association – task force on lobbying reform member; Director of the International Public Policy Advocacy Association.
10.	Italian Public Affairs Association	Survey completed

	www.pa-association.it	
11.	Association of Professional Lobbyist in Poland www.splp.pl	Survey completed
12.	Macedonian Centre for Lobbying (30 members, not accredited lobbyists)	Survey completed
	PUBLIC SIDE RESPONDENTS	N = 5
1.	Office of the Commissioner of lobbying of Canada	Survey completed
2.	Commission for prevention of corruption of Slovenia	Survey completed
3.	The New Transparency Register of the EU	Survey completed
4.	Mr Dusan Protic, a member of the working group for drafting the Serbian Law on Lobbying (Assistant Minister at Ministry of Trade and Commerce of Serbia which is responsible for enacting the law on lobbying)	Survey completed
5.	The Australia Government Register of Lobbyists	Written answer

8. Results of the survey and their incorporation into the CII

The data from the questionnaires are analysed in an aggregate way only, as respondents insisted that their answers not be disclosed individually. Based on all available answers, only the means for each question are exposed. Nine completed questionnaires were analysed on the private side with four being examined for the public sector. The data processing was done separately in Excel for each of the 67 questions, and some of them were afterwards re-bundled as they were originally part of one multiple-choice question. Here only the means for each and every answer are included and introduced²⁴⁶. Hence Table 7 (below) contains calculated mean values for each question based on the data collected through the survey, and not the separate responses from each interviewed party.

The CII is composed of 47 questions, but they were further divided into 67 individual burden indicators in the questionnaires. There were more indicators than questions due to the observation of alternatives within one question in an individual way. For instance, questions where four alternatives were offered were divided into four separate burden indicators. This also means that within a single CII question, different burden categories might appear, depending on the answer during its application.

The means of each question range in values from a minimum of 2 to a maximum of 8. Even though there were individual answers with values from 1 to 10, after the aggregation they range from 2 to 8. This means that the scale within the CII is practically composed of 7 categories of cost impacts, where 2 is the lowest and 8 is the highest cost impact category. In other words, the aggregate results indicate that there are no extremely expensive rules to comply with (9 and 10), but also that there are no completely insignificant compliance costs (1).

Using this scale with values that are based on anecdotal evidence, the maximal possible score that one regulation might achieve is 288. In other words, this would be the most burdensome lobbying regulation. Achieving this score in practice means that all

²⁴⁶ Of course, the data is still available through the returned questionnaires and can be shared upon request. Calculating the means calculating is a relatively simple procedure, and the room for error is practically zero.

questions are answered positively (no zeros), and that among cost-impact alternatives, the one with the highest value was marked.

Since it is possible to distinguish the private (1-26) and the public burden (27-47), it is also possible to look at the burden on those sides individually as well. The maximum score for the private side is 157, while for the public side it is 131. This would additionally allow observation of cost distribution between the public and the private side, which is very useful when several regulatory alternatives are compared. In an assumed situation where two lobbying regulations would result in the same overall score, comparisons between their respective cost distributions would open a room for additional insight into their quality. Besides the overall CII result of a regulation, it is important to see which part of society is bearing higher compliance pressure.

In questions 6, 32 and 37, some important adjustments were made regarding their scores. The results in questions 6 and 37 were to some extent controversial because those were the only ones within all the questions which were not following the general logic of costs associated with lobbying regulation. The main idea that arises from all the anecdotal evidence (both questionnaires and the interviews) suggests that more detailed²⁴⁷ and more frequent²⁴⁸ activities were imposing a greater burden on those who were expected to perform them. In other cases, those detailed and frequent tasks were at least considered to be of the same cost as their less complex and frequent alternatives, but they should not be more burdensome in any case. More complex and frequent reporting was found to have a higher cost impact than infrequent and simple reporting. The same holds true for the management and contents of transparency databases by an oversight agency.

²⁴⁷ W. Andrews “...If detailed reporting is required, one would have to keep a logbook. This clearly would be burdensome, costly and inevitably involve many errors, however inadvertent, that could expose one to legal liability for noncompliance.” S. Dreven “If summaries (totals) of spending have to be classified by category types. On my opinion this should take some extra work, that is why, yes, this would influence the costs more. Description of the itemized expenditure - this certainly takes a bit more work, so yes, it affects cost.”

²⁴⁸ W. Andrews “...The filing frequency issue is, like the level of detail required, a key consideration of the business costs/risks involved. Personally, I do not believe that filing once every year or two years is meaningful. While filing every 3 months is somewhat more costly/burdensome, it is quite reasonable, and in most cases certainly should not be very costly, unless the reporting also involved requiring disclosure of extensive detail, or perhaps if many reports are involved for various clients. The potential much higher cost filing concern relates in some cases to the frequency one has to file amendments to registrations/reports due to rapidly changing circumstances as to the issues, amendments, etc. that are being lobbied on.”

Still, in the two mentioned questions this was slightly different, probably due to the small size of the sample which led to a few controversial results. For instance, the results in question No. 6 indicated that it is cheaper for a lobbyist to notify an oversight agency in changes to his registration if the deadline is 3 days (4) than if the deadline is one month from the change (5). It is highly unlikely that this is the case, since the shorter the deadline means less time to react and requires more diligent paperwork²⁴⁹. Thus, the cost impact of both is at least the same and both values are set to be 5 in this question. A similar adjustment was made with question No. 37, where data suggested that if an oversight agency has to update lobbying lists monthly (7) it is more costly than updating them on a weekly basis (6). However, it is more likely that working on administrative tasks four times a month instead of once a month is more demanding in terms of agency resources.

The last remark pertains to question No.32, which was one of the questions that was modified from the CPI. This question deals with expenses related to provision to the public of transparency reports that are collected from lobbyists. Many of these reports are nowadays available online for the public. Despite that, even if the oversight agency would have to provide copies of some data to an interested party, by simply printing the data sheets – this could hardly be a costly activity. This is why the only provisory value in the CII is set to be 3, in cases that reports are printed at the expense of the public authority when an interested party wants to have them.

In some cases, alternatives are considered to be equally burdensome, regardless of their complexity which is the case with question 14²⁵⁰. This result indicates that spending itemization is considered to be burdensome *per se* for the industry, and that the level of detail does not always have a high impact on actual costs.

²⁴⁹ W. Andrews *"..In today's computer driven world, I see no reason why one should not be required to register on behalf of a client within 10 to 14 business days of being retained, or having made contacts in the case of 'in-house' corporate lobbyists. There is little public benefit in disclosing activity long after it is completed as it certainly often is if a 6 month time period is allowed. On the other hand, requiring registration within 3 days, when one is extremely busy and say a sole operator, seems unreasonably short and clearly more burdensome, although perhaps not a significant cost concern apart from legal risk if there is strong enforcement."*

²⁵⁰ What spending must be itemized?

All spending above \$500 must be itemized – 8 points

All spending above \$100 – 8 points

All spending required to be itemized – 8 points

Another odd result can be found in question 7, which is related to the submission of a photograph of a lobbyist within the registration. This should not be expected to be a costly requirement, but the data have suggested it has a score of 5, which is in the middle of the scale. Again, the small sample most likely contributed to this odd result.

Table 7 - The CII with incorporated values from the survey

The Cost Indicator Index with the survey's values attached	
The overall maximal score is 288	
Private side questions from 1 - 26	
Public side questions from 27 - 47	
1.	<p>How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?</p> <p>Qualification threshold: More than \$10,000 made - 4 points</p> <p>Qualification threshold: More than \$2,500 made - 6 points</p> <p>Qualification threshold: regardless the amount made - 7 points</p>
2.	<p>Is a lobbyist required to file a registration form?</p> <p>No - 0 points</p> <p>Yes - 5 points</p>
3.	<p>How many days can lobbying take place before registration is required?</p> <p>6 months or more - 4 points</p> <p>Up to a month - 5 points</p> <p>Up to 3 days - 5 points</p>
4.	<p>Is subject matter or bill number to be addressed by a lobbyist required on registration forms?</p> <p>No bill number/subject matter required - 0 points</p> <p>Subject matter only required - 4 points</p> <p>Bill number required - 5 points</p>
5.	<p>How often is registration by a lobbyist required?</p> <p>Once only - 2 points</p> <p>Every two years - 4 points</p> <p>Annually or more often - 4 points</p>
6.	<p>Within how many days must a lobbyist notify the oversight agency of changes in</p>

<p>registration?</p> <p>6 months or more – 4 points</p> <p>Up to a month – 5 points</p> <p>Up to 3 days – 5 points</p>
<p>7. Is a lobbyist required to submit a photograph with registration?</p> <p>No – 0 points</p> <p>Yes – 5 points</p>
<p>8. Is a lobbyist required to identify by name each employer on the registration form?</p> <p>No – 0 points</p> <p>Yes – 6 points</p>
<p>9. Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)?</p> <p>No – 0 points</p> <p>Yes – 6 points</p>
<p>10. Is a lobbyist required to file a spending report?</p> <p>No – 0 points</p> <p>Yes – 8 points</p>
<p>11. How often within a year is a lobbyist required to report spending?</p> <p>Once (or once in 2 years) – 5 points</p> <p>Twice - 6 points</p> <p>Every three months or more often – 7 points</p>
<p>12. Is compensation/salary required to be reported by a lobbyist on spending reports?</p> <p>No – 0 points</p> <p>Yes – 5 points</p>
<p>13. Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)?</p> <p>No – 0 points</p> <p>Yes – 8 points</p>
<p>14. What spending must be itemized?</p> <p>No spending required to be itemized – 0 points</p> <p>All spending above \$500 must be itemized – 8 points</p> <p>All spending above \$100 – 8 points</p>

All spending required to be itemized – 8 points
<p>15. Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified?</p> <p>No – 0 points Yes – 7 points</p>
<p>16. Is the recipient of the itemized expenditure required to be identified?</p> <p>No – 0 points Yes – 6 points</p>
<p>17. Is the date of the itemized expenditure required to be reported?</p> <p>No – 0 points Yes – 8 points</p>
<p>18. Is a description of the itemized expenditure required to be reported?</p> <p>No – 0 points Yes – 7 points</p>
<p>19. Is subject matter or bill number to be addressed by a lobbyist required on spending reports?</p> <p>No bill number/subject matter required – 0 points Subject matter only required – 6 points Bill number required – 5 points</p>
<p>20. Is spending on household members of public officials by a lobbyist required to be reported?</p> <p>No – 0 points Yes – 7 points</p>
<p>21. Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households?</p> <p>No – 0 points Yes – 6 points</p>
<p>22. What is the statutory provision for a lobbyist giving and reporting gifts?</p> <p>Gifts are not reported – 0 points Gifts are reported – 6 points</p>

<p>23. What is the statutory provision for a lobbyist giving and reporting campaign contributions?</p> <p>Campaign contributions not required to be disclosed on spending report/prohibited during session - 0 points</p> <p>Campaign contributions allowed and required to be disclosed on spending report/allowed during session - 6 points</p>
<p>24. Is a lobbyist who has done no spending during a filing period required to make a report of no activity?</p> <p>No - 0 points</p> <p>Yes - 4 points</p>
<p>25. Is an employer or principal of a lobbyist required to file a spending report?</p> <p>No - 0 point</p> <p>Yes - 5 points</p>
<p>26. Is compensation/salary required to be reported on employer/principal spending reports?</p> <p>No - 0 points</p> <p>Yes - 5 points</p>
<p>27. Does oversight agency provide lobbyists/employers with online registration?</p> <p>No - 0 points</p> <p>Yes - 4 points</p>
<p>28. Does oversight agency provide lobbyists/employers with online spending reporting?</p> <p>No - 0 points</p> <p>Yes - 5 points</p>
<p>29. Does oversight agency provide training about how to file registrations/spending reports electronically?</p> <p>No - 0 points</p> <p>Yes - 4 points</p>
<p>30. Location/format of registrations or active lobbyist directory:</p> <p>Photocopies from office only - 6 points</p> <p>PDF or image files on the Web - 3 points</p> <p>Searchable database on the Web - 4 points</p> <p>Downloadable files/database - 4 points</p>

<p>31. Location/format of spending reports:</p> <p>Photocopies from office only – 7 points</p> <p>PDF or image files on the Web – 3 points</p> <p>Searchable database on the Web – 4 points</p> <p>Downloadable files/database – 4 points</p>
<p>32. Cost of copies:</p> <p>Interested parties pay for the copies of available reports – 0 points</p> <p>Interested parties do not have to pay for the copies of available reports – 3 points</p>
<p>33. Are sample registration forms/spending reports available the Web?</p> <p>No – 0 points</p> <p>Yes – 3 points</p>
<p>34. Does oversight agency provide an overall lobbying spending total by year?</p> <p>No – 0 points</p> <p>Yes – 6 points</p>
<p>35. Does oversight agency provide an overall lobbying spending total by spending-report deadlines?</p> <p>No – 0 points</p> <p>Yes – 8 points</p>
<p>36. Does oversight agency provide an overall lobbying spending total by industries lobbyists represent?</p> <p>No – 0 points</p> <p>Yes – 8 points</p>
<p>37. How often are lobby lists updated?</p> <p>Annually or less often – 6 points</p> <p>Monthly – 7 points</p> <p>Weekly - 7 points</p>
<p>38. In addition to legislative lobbyists, does the definition recognize executive branch lobbyists?</p> <p>No – 0 points</p> <p>Yes – 3 points</p>
<p>39. Does the state publish a list of delinquent filers either on the Web or in a printed document?</p> <p>No – 0 points</p>

Yes – 4 points
40. Does the state have statutory auditing authority? No – 0 points Yes – 7 points
41. Does oversight agency conducts mandatory reviews or audits? No – 0 points Yes – 8 points
42. Is there a statutory penalty for late filing of lobby registration form? No – 0 points Yes – 8 points
43. Is there a statutory penalty for late filing of a lobby spending report? No – 0 points Yes – 8 points
44. Is there a statutory penalty for incomplete filling of a lobby registration form? No – 0 points Yes – 8 points
45. Is there a statutory penalty for incomplete filling of a lobby spending report? No – 0 points Yes - 8 points
46. Structure/type of oversight agency? Already existing administrative unit with attributed tasks of enforcement of lobbying rules – 6 points Entirely new administrative agency – 8 points
47. Is there a mandatory revolving door compliance No – 0 Yes – 8 points

9. Additional empirical information on nature of the costs of lobbying regulation

Even though the survey offered respondents the ability to reply in an anonymous way, some of them have refused to participate in the quantitative form and offered their feedback through written testimonies and interviews, and agreed to be individually named²⁵¹.

It is important to highlight that interviewed professional lobbyists, like other studies have shown²⁵², are not necessarily opposed to the regulation of lobbying and the cost that comes along with it²⁵³ as long as the cost is “reasonable”. From the regulatory capture point of view discussed earlier, this makes sense, as the lobbyist might actually be interested in being regulated as long as regulation protects them to restrict the competition. Some type of empirical evidence for this is the position of the Serbian Lobbyists Association (discussed in the next Chapter) which strongly advocates the

²⁵¹ Those are Mr Wright Andrews who is ex-president of the American League of Lobbyists where he currently serves as a board member and member of the American Bar Association – lobbying reform task force. He is also one of the funders and current director of the International Public Policy Advocacy Association. Additionally, a phone interview was conducted with Mr D. Gueguen who is president of the Pacteurope, a lobbying firm based in Brussels. Mr. D. Gueguen is a prominent lobbyist and a well-known author on lobbying issues with about thirty years of experience in European lobbying issues. Useful written comments on the top of the completed questionnaire were sent as well by Mr Simon Dreven from the Slovenian Lobbying Association.

²⁵² Most other lobbyists surveyed in Europe seem to agree that lobbyist registration should be mandatory. As shown in Figure 5.5, more than 61% of all respondents believe that a lobbyist registration and transparency program should be “mandatory for all lobbyists”. About 18% of respondents prefer a voluntary system of registration and disclosure, and 15% are “neutral” on the issue. This support for a mandatory lobbyist registry again runs the gamut of all categories of lobbyists, with 80.6% of not-for-profit lobbyists favouring a mandatory system, 57% of contract lobbyists supporting mandatory registration and disclosure, and 56% of corporate lobbyists supporting the same. Mandatory versus voluntary registration and disclosure of lobbying activity is simply not an area of much dispute – at least not within the lobbying community; *Lobbyists, Governments and Public Trust - Promoting Integrity through Self-Regulation (Volume 2)*, p 87.

²⁵³ “First, let me note my personal position or perspective on lobbying disclosure laws generally: in essence, I believe that it is very important to provide for a relatively high level of transparency in lobbying activities in order to foster public trust in and support for the democratic process by enabling the public (largely via media study and reports rather than by normal citizen’s review of lobbying reports) to have a better understanding of how lobbying is being conducted via information contained in public disclosure of lobbying reports. Reporting can also help address concerns over corruption. For such reports to be truly meaningful, they obviously must contain a reasonable level of information regarding such basic things as who is acting as a lobbyist, who has hired them, what issues are they lobbying on, what they are getting paid, what they are spending, who they are contacting, and at least what types of activities are involved in their lobbying efforts. The problem becomes, of course, what is from the perspective of your project what and how information can be disclosed at a reasonable business cost.” by Wright Andrews.

regulation of lobbying, and who has even suggested the regulatory design for this very purpose. Bearing in mind that they are advocating the adoption of their own proposed law on lobbying, it might be argued that this type of initiative could be more harmful than beneficial to the public interest (Stigler 1971).

The term “reasonable” could be interpreted differently depending on perspective. If we look at it from the CPI perspective (which is closer to the public side perspective), the minimal reasonable cost would be the one which provides a CPI score of at least 60 – the passing threshold. However, achieving this threshold does not necessarily mean that the private side would agree to this standard. A CPI score of 60 is actually quite a high score, especially for Europe²⁵⁴, while in the US, 25 out of 50 states managed to get a passing grade²⁵⁵. What would have probably been acceptable for an EU lobbyist could be summarized through the position of Daniel Gueguen who thinks that “...*regulating only some basic rules and principles would be desirable from a conceptual and a cost point of view*”. Otherwise, regulation would probably be too burdensome. Gueguen is strongly in favour of mandatory regulation of basic rules and principles, but wide enough in scope to capture law firms as well. He also argues that the current New transparency register is inefficient, especially due to a lack of effective enforcement mechanisms. From this point of view, it is a waste of public resources, according to him.

Mr Gueguen also highlighted that voluntary solutions already exist within professional associations like the SEAP, but the compliance control and enforcement over its members is insignificant²⁵⁶. On the other hand, the revolving door problem in the Commission has to be solved as soon as possible, because it strongly compromises the institutional credibility of the EU.

The interview with Daniel Gueguen has just confirmed the major problems of the EU lobbying regulation issues. From the cost perspective, his remarks led to the

²⁵⁴ Hungarian lobbying rules which were anyways recently abandoned (score 45), Lithuania (score 44), Poland (score 27), European Commission-old register (score 24), European parliament (score 15), Germany (score 17).

²⁵⁵ R. Chari, J. Hogan, and G. Murphy, *Supra* n.76.

²⁵⁶ Quite the same conclusion comes from the report PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE, *Lobbyists, Government and Public Trust: Promoting Integrity by Self-Regulation*. p 83.

conclusion that the New transparency register of the EU does not effectively contribute to higher transparency, while it certainly creates public expenditures. In terms of compliance costs, he believes that complex requirements would be an undesired and unnecessary burden to the industry. This attitude generally reflects European lobbyists' approach towards the regulation, but it also supports critics of the voluntary registration system without efficient enforcement mechanisms.

Mr Wright Andrews shares this opinion as well when it comes to the US. What usually concerns both is that definitions of lobbyist or lobbying are set too narrowly, and that they do not require everyone who actually lobbies to be registered. Mr Andrews has highlighted this issue in the US scenario: *"I also should note that I, like many other experienced lobbyists, do not believe that the current U.S. Lobbying Disclosure Act is adequate as it is filled with loopholes or flaws that enable many to avoid registering and even when registered to report relatively little and/or inadequate information"*.

This factor is relevant not only from a fairness and transparency point of view, but also from a costs impact point of view. Continuous pressures from currently registered lobbyists in this direction would definitely, if taken into consideration, lead to a higher number of registrants in the future. This might especially be relevant in national scenarios (outside the US), where the number of registered lobbyists is usually low. On the other hand, this will increase overall spending of the industry as more lobbyists will be expected to register and comply; likewise, the public sector will have to deal with more registrants. Expansion of the definitions in both directions would increase the social costs associated with lobbying regulation while at the same time contributing to more transparent decision-making²⁵⁷. Once again, it is important that the definitions of lobbying and of lobbyist are based on a compromise between transparency and social costs. This just illustrates the importance of an analytical approach in choosing a proper

²⁵⁷ W. Andrews *"...In the U.S., we now have literally hundreds of millions of dollars spent on activities designed to influence legislative decisions, but which are never reported because our law requires that the person conducting such activities make a written or oral direct communication with a covered public official. Persons engaging, for example, in massive grass roots and/or media campaigns designed to sway public opinion and have members of the public contact legislators to support or oppose a measure, but who do not themselves write, email or contact these officials, are not required to register and report. We also currently have provisions that allow many 'lobbyists' to avoid registration and reporting because the percentage of the time they spend engaging in lobbying related activities for the particular client does not reach the required 20% level"*.

definition.²⁵⁸ It also means that deliberative choices might lead to an unjustified increase of the social costs, or cause unequal treatment of parties in lobbying markets.

The CPI and the CII also deal with the definition of a lobbyist. In question 38 of the CII, regulators were asked to answer if they thought that the public cost would be influenced if the definition includes executive branch lobbyists besides the legislative branch lobbyists. The answer (3) does not imply a strong correlation between overall costs of enforcement in case the definition of lobbyist includes executive branch lobbyists as well. The reason for such an answer might be the fact that once the system for registration and transparency exists, managing more registrants is not as costly as it seems from the outside, especially if they have low compliance requirements. In any case, public expenditures would probably not be increased tremendously. On the other hand, more registrants would influence the aggregate burden imposed on the private side in a negative way.

In sum, from written and oral testimonies of respondents, two main conclusions can be derived:

- There should be a mandatory lobbying regulation system enforced by a public agency.
- Transparency is important, but compliance costs should be kept low. If requirements not involve much detailed and frequent paperwork, the cost would be “reasonable” and probably not overly burdensome.

How could these conclusions be interpreted from the theoretical framework point of view? The data from this research (especially from interviews) suggest that lobbyists are not as opposed to regulation as one might think. Moreover, in some cases

²⁵⁸ The reason why this research does not introduce any definition as a proper one is that defining lobbyists is dependent on various factors such as political tradition, economic system, institutional and/or constitutional framework. These factors determine what lobbying will look like and who would be generally engaged in it. Hence, suggesting an optimal definition would be possible in a case-by-case scenario where all these factors would have to be analysed prior to defining what lobbying is. A similar position is taken by L.H. Mayer (2008) who analysed different types of definitions and discussed their optimality in different scenarios. As an illustration, one can compare the US approach where lobbying activity comes under the regulatory radar only when its value exceeds certain financial threshold. This definition in the US case makes sense as it improves the screening process and helps the law to focus on lobbying of larger scale. A similar method in the case of a smaller country with less than 100 registered lobbyists would make little sense as most of them would fall under the radar based on the US thresholds. Thus, setting a proper lobbying definition in the regulatory sense would require lots of research for every particular case.

such as the Serbian or Montenegrin which will be addressed in the last chapter, they even actively lobby(ed) for lobbying regulation.

This should not cause much surprise if one looks back at Stigler (1971), Peltzman (1976), Tirole (1986) and other founders of the capture approach. It does not surprise that the lobbying industry, in fact, prefers to be regulated as long as they can have a high impact on the regulatory design, which in turn can be used to erect entry barriers and restrict the competition, for instance²⁵⁹.

Hence, when lobbying regulations are being designed, the voice of lobbyists should certainly be heard, but it should not be the dominating one as regulation should first of all protect and promote the public interest - which does not always have to be in line with the interest of lobbyists. This research unfortunately does not offer an answer on the relation of lobbying regulation and various (positive and negative) macroeconomic outputs of lobbying, but it simply strives to contribute to understanding of process of decreasing of direct regulatory costs (compliance and enforcement), while keeping certain non-economic benefits as high as possible. In other words, the methodologies used here cannot provide an answer on the relation of lobbying regulation to general economic effects of lobbying, but they can provide an indicative answer on direct burdens imposed on government and the industry, and provide a model for improvement of that very cost-benefit ratio.

10. Methodological concerns and limitations of the data

The anecdotal method is not a perfect one, but since the sample is quite limited due to factual constrains, this was one of the ways to get some empirical backup for construction of the CII's scores. For instance, the CPI has not offered any empirical backup of their scale of scores, and in this sense, the CII can be perceived as slightly more advanced despite all its methodological problems. However, in terms of the CII, there is certainly room for improvement of its precision in the future. At this juncture, its methodological applicability, robustness and the issue of endogeneity are going to be discussed, which is important for understanding the nature of the results obtained

²⁵⁹ "Relating the amount of capture to regulatory outcomes is difficult, mainly because measuring capture is tricky" E. Dal Bó, "Regulatory Capture: A Review.", p.126

through application of the CII. Answering these questions will improve understanding of the value of its application.

10.1. Robustness

In the world of lobbying regulation, robustness appears in two aspects – as an adjective to the structure of regulations, or an adjective to the methodology for comparative analysis of lobbying regulation. Chari, Murphy and Hogan²⁶⁰ have used this term to define lobbying regulations that usually result in a high CPI score. Their robustness arises from their complexity and ability to improve transparency by addressing a various number of relevant elements that improve the strength of lobbying regulation, and the willingness of lobbyists to learn about compliance rules. The more the system is robust, the more complex it is in terms of application of enforcement mechanisms, in terms of complexity of reporting and disclosure and *“the more likely they (lobbyists) will feel they have the responsibility to learn what they are. The opposite is also true as reflected in the responses from lobbyists in Germany: the less robust are the regulations, then the less likely that respondents would feel responsibility to learn about the rules as their impact is minimal in any case^{261”}.*

Robustness is also related to the ability of the CPI to be used as a tool for comparative analysis of different regulatory scenarios around the world. According to Chari, Murphy and Hogan – the CPI is robust enough as a method to be successfully used for analysis and comparisons of lobbying regulation worldwide²⁶². This means that the CPI as a method has sufficient resistance to different legal and political environments, and that its application outside the US regime (where it was designed) can be effectively performed in order to analyse and compare different regulations. These arguments are important to remember when discussing features of the CII as well.

If talking about the robustness of the CII, very similar arguments can be established for it as well, since it is almost completely the same in its structure to the CPI index. Besides a few minor changes within the existing questions and one entirely new

²⁶⁰ R. Chari and G. Murphy, *Examining and Assessing the Regulation of Lobbyists in Canada, the USA, the EU Institutions, and Germany*, 2007. p.67

²⁶¹ R. Chari, J. Hogan, and G. Murphy, *Supra* n.76, p.70

²⁶² R. Chari, J. Hogan, and G. Murphy, *Supra* n.76, p.62.

question which was added, the structure is practically the same. However, it has to be underlined that CII structure, in terms of cost indicators choice, is not derived from the CPI but rather from a general RIA cost assessment approach (general cost indicators as defined by OECD)²⁶³, which is melted into the CPI methodology. The choice to use the general cost indicators also mitigates the problem of selection of a proper RIA tool as the one used in this methodology can be regarded as a general approach. This certainly does not mean that there are no more optimal tools, but at least it provides some safety from the possibility that a completely wrong approach was taken.

An additional contribution to its robustness is the decision to define the impacts through different categories of magnitude and not monetary values. Monetization of the burden would influence robustness negatively because monetary expressions of burdens would require subsequent involvement of additional country-specific parameters, before comparisons with other regulations could be established. For instance, the expected burden, which is expressed monetarily, would have to be compared with additional information from an environment, such as the size of the lobbying industry, the size of the government budget, GDP, etc.

These are just some of the factors that influence the interpretation of monetary results. Again, if the cost of enforcement in the US has been estimated to be \$5 million per year, and the same estimation was made for Montenegro, it would not mean that both countries experience the same burden with regards to enforcement costs. Simply, just by looking at monetary value, we do not know if \$5 million is considered to be a large or insignificant expense, as it largely depends on the observed environment. Hence, the comparison would be impossible before involving a large number of variables.

On the other hand, if the burden is expressed in terms of indication of the magnitude (high, medium, low), we can more easily compare different lobbying regulations regardless of their origins, based on a qualitative and quantitative analysis of the regulatory structure. Upon determining the regulatory structure and costliness of regulatory elements, a comparison of aggregate burden indication across different regulations is much easier.

²⁶³ See p. 113

Another important feature of the CII is its *ex-ante* applicability. By simultaneously applying the CPI and the CII in the early regulatory phases (first draft), information could be efficiently obtained on the expected magnitudes of both benefits and costs, as well as on their correlation. This would allow legislators to reconsider regulatory design if the expected burden greatly exceeds expected strength, which will be evident through comparison of the CII and the CPI scores.

There are a few additional effects that might influence robustness to some extent, but they do not threaten to seriously discredit the application of the CII.

10.2. Relation of the actual enforcement and compliance costs – how accurate is the CII?

One of the elements that should be considered within the robustness of the method is the relevance of actual enforcement in determining real compliance costs. It has to be noted that the CII is unfortunately completely insensitive to this factor, especially because it is designed to be applied *ex ante*. However, it has been underlined that the CII is just an indicative tool and that for a more accurate estimation of costs, further analysis is required.

But here it is important to highlight that even if the CII would indicate high compliance costs in an *ex-ante* application, the accuracy of this estimation will mostly depend on the oversight of the agency's future enforcement level. If the enforcement is weak, even though the regulatory structure indicates high compliance costs, real compliance costs will probably be lower.

This was also pointed out in the interview with Mr Wright Andrews, who claims that enforcement on the US federal level is not sufficient, and that this is also reflected in the compliance costs. Low enforcement normally makes compliance activities (filing, paperwork, reporting all details, respecting deadlines, etc) less diligent, which generally lowers reporting-related costs. Consequently, a higher degree of enforcement would be expected to produce higher compliance costs.

A similar reasoning could be applied in cases of reporting which involved detailed disclosure. Firms would dedicate more resources to comply with the rules, and

even then a margin for error would exist. Hence, a failure to fully comply could provoke a sanction towards a firm, which would result in additional costs imposed on it.

These thoughts clearly show that actual compliance might be quite different than predicted, which would certainly affect the magnitude of the burden, especially on the private side. This is why it is crucial to highlight that the CII assumes that enforcement is perfect. The CII is unable to predict what the actual magnitude of burden would be, but it predicts magnitude of burden based the assumption of perfect enforcement.

Another issue is the applicability of the CII globally. It is to some extent also a critique of its robustness. One can argue that a more precise estimation of burden would be better if the scores in the CII were set exclusively on surveys for each country individually. This would mean that for each country that has to be analysed, an individual special survey on cost-perception would have to be done. Only then, with results from these “custom-made” CII scores, would further comparative assessment make sense.

On the other hand, this should not be treated as a major problem as the CPI is also successfully applied as a comparative tool, even though its scores were set specially for each case. The scoring technique of the CPI is the same in all cases, even though it is not clear how the values for each question were initially determined.

Similarly, the CII does not necessarily need to be a custom-tailored tool. Its scores are based on averages of all respondents and they reflect the general perception of burden of most common regulatory mechanism for lobbying regulation. Making the CII fully custom-made would increase its precision for each regulation, but it would have at the same time decreased its comparative value, since now all regulations are evaluated by subjecting them to a general compliance and enforcement perception.

However, it has to be noted that assessing costs in different jurisdictions is a very complex issue. It can be argued that different cost indicators have different weights in different settings and that due to this the CII might have a robustness problem. Even though the CII relies not only on CPI but also on general RIA cost indicators, this may be true to some extent. Still, the methodology introduced here represents a sound groundwork for more advanced fine tuning that could be done in the future in terms of robustness as well. A larger sample would allow more precise thresholds setting and would positively influence the robustness of the results and the methodology overall.

10.3. The CII and literature on Central Banks Independence and Regulatory Independence. How does CII look in comparison with other indices?

The CII is designed in a manner which allows it to be applied in a parallel way with the CPI index. This choice was additionally enforced by linking the CII design with the theory and practice of Regulatory Impact Assessment. However, it may also be useful to reflect this choice with the literature on Central Bank Independence (CBI) Indices and Regulatory Independence Indices, in order to have some sort of additional benchmark for judgment of the choice that was made.

The CII and CPI approaches, on the one hand, and (CBI) and Regulatory independence indices on the other hand are very different. While the first two tend to provide an indicative answer on the level of costs and benefits of lobbying laws, the latter two deal with the measurement of institutional independences. Conversely, the CPI and CII do not strive to test any independence of lobbying regulatory authority, but simply provide a helicopter view of expected outcomes associated with certain designs of lobbying regulation.

Still it might be useful to compare the assessment methods of both approaches and see whether the CII could profit from structural choices in Central Banks and Regulatory Independence theory.

Generally speaking, this literature strives to explain the relation of macroeconomic indicators to independence of central banks from their governments. Even though central banks largely enjoy formal independence from governments, there are many channels through which government can influence the policies of central banks, such as appointments of board members, participation in voting procedures, auditing control mechanisms, etc.

There are different techniques and indices created for measuring and ranking the Central bank independences (CBI). One of the first pioneer indices was introduced by Bade and Parkin (1982)²⁶⁴ and this method concentrated exclusively on de-facto analysis

²⁶⁴ M. Parkin and R. Bade, "Central Bank Laws and Inflation - A Comparative Analysis," 1982 (working paper, University of Western Ontario). Even though this has remained a working paper, it is widely cited as one of the first, if not the first, attempts of measurement of the CBI.

of independence by looking at central banks' charters. A decade later, Grilli, Masciandaro and Tabellini (1991)²⁶⁵ offered a more advanced tool to analyze CBI through various factors that influence public debt, its sensitivity to political frameworks, and the relation of monetary policies to economic performances. Alesina and Summers (1993)²⁶⁶ practically combine the previous two approaches by linking the independence indicators with the average inflation rate, and confirming the negative relation between the CBI and inflation.

One of the most cited indices developed in this period is Cukierman et al. (1992)²⁶⁷ who combine a 16-variable index (where each variable ranges 0-1) with questionnaires sent to experts, while Mathew (2006)²⁶⁸ combines numerical values attached to different legal attributes and combines them with annual inflation rates to confirm once again their negative relation. Pisha (2011)²⁶⁹ proposes new "Eurozone indices" which combines existing de-jure approaches with the analysis of CBI legislation, EU pre-accession requirements and EC's and European Central Bank's reports.

By looking at the mentioned indices and methodologies they are based upon, the first impression is that approaches significantly vary in technique and often in criteria for evaluation of the CBI. The evolution of these indices shows that they evolved from rather simple (de-facto) legal factors analysis, which over time included other variables (such as inflation) for more accurate, de-jure CBI measures.

Indices were usually constructed by adding different numerical values to specific legal attributes (similarly to CPI and CII), and in more advanced versions the scores belonging to specific sections were also differently weighted, which is not the case with CPI and CII. Cukierman et al. (1992) for instance used special questionnaires sent to experts as a means of supporting the analysis, which is also the approach used for the development of the CII.

²⁶⁵ V. Grilli, D. Masciandaro, and G. Tabellini, "Political and Monetary Institutions and Public Financial Policies in the Industrial Countries," *Economic Policy* 6 (1991).

²⁶⁶ A. Alesina and L.H. Summers, "Central Bank Independence and Macroeconomic Performance: Some Comparative Evidence," *Journal of Money, Credit and Banking* 25 (1993): 151-62.

²⁶⁷ A. Cukierman, S.B. Webb, and B. Neyapti, "Measuring the independence of central banks and its effect on policy outcomes," *World Bank Economic Review* 6 (1992): 353-398.

²⁶⁸ J.T. Mathew, "Measuring Central Bank Independence in Twenty- Five Countries: A New Index of Institutional Quality," *The IUP Journal of Monetary Economics* 4, no. 1 (2006): 6-18.

²⁶⁹ A. Pisha, *Eurozone Indices: A New Model for Measuring Central Bank Independence* (Athens, 2011).

One of the main critiques of CBI indices in general is the arbitrariness of the scores and values they use in their schemes (Mangano 1998)²⁷⁰. The CPI can also be criticized from the same standpoint, but in case of the CII, an attempt was made to minimize the arbitrariness of the scores by using special questionnaires that were sent to experts in order to determine the scores for all legal attributes and by calculating means for each of them separately.

Of course, the size of the CII sample did not allow any proper statistical analysis of the data, which does to some extent negatively influence the overall robustness of the analysis. Still, it can be said that most of the CBI indices suffer from the same problem (Cargil 2013).²⁷¹ In any case, the CII can be perceived as evolutionarily more advanced than the CPI, whose scores are set in a quite arbitrary way.

Another general critique of CBI indices is that they systematically suffer from subjectivity and personal judgments in regard of selection of criteria that are included in indices (criteria bias), the interpretation of these criteria (interpretation bias) and weights attributed to specific criteria (weighting bias).²⁷² The CII may be also affected by a certain amount of subjectivity in regard to these three issues.

When it comes to the first bias, CII to a large extent mirrors CPI and it can be said that criteria bias is minimal as the criteria were borrowed from another index. Yet it is not certain how much the CPI itself suffers from this problem. The CPI is generally perceived as a robust method (Chari et al. 2007), but it does not mean that its robustness could not be better if additional elements of lobbying regulations were included. The other two biases could also be a potential threat to the CII, especially the weighting bias, which in case of CII is reflected within thresholds settings.

Finally, maybe the main difference between CII and the mentioned indices is that they mostly look into actual (de-jure) conditions in which relevant legal CBI benchmarks exist. Being aware of the differences between the de-facto and de-jure environment, modern CBI methods apply different statistical techniques on performances and outputs

²⁷⁰ G. Mangano, "Measuring Central Bank Independence: A Tale of Subjectivity and of Its Consequences," *Oxford Economic Papers* 50 (1998): 468–492.

²⁷¹ F.T. Cargill, "A Critical Assessment of Measures of Central Bank Independence," *Economic Inquiry* 51, no. 1 (2013): 260–272., p.12.

²⁷² G.Mangano, "Measuring Central Bank Independence: A Tale of Subjectivity and of Its Consequences."

of Central Banks in an attempt to provide an answer on de-jure independence of a Central bank.

Contrary to this, the CII is designed mostly as an ex-ante mechanism that analyses legal norms primarily in their de-facto perspective. Of course, this approach can be criticized from the CBI perspective, but from the RIA perspective, an ex-ante approach has much more support and makes much more sense.

Similar conclusions could be derived by looking into the regulatory independence indices, because some of them were inspired by CBI indices. For instance, the Gilardi (2002)²⁷³ index evolved from Cukierman et al. (1992). The new index also examines four different dimensions which are additionally sub-divided and scored with values from 0 to 1. The CPI and the CII are similarly structured and organized through sections (registration, reporting, revolving door, etc) where each section contains specific pool of questions, and where each question has different weight attached.

In terms of its reliability, it seems that CII is not necessarily behind the indices from the regulatory independence world. For instance, the Independence index of Sander Johannsen (2003)²⁷⁴ based on inputs from special questionnaires shows that from the 16 regulators that the questionnaire was sent to, only 8 have responded to it. In the case of CII, the response rate was 12/18 for the private side and 4/6 for the public side. These response rates in both cases demonstrate the difficulty in collecting answers through complex and often time-consuming questionnaires. In its design, this index reflects the CII's structure, and shows that other indices could be functional, despite small samples which are statistically insignificant, but still provide the valuable empirical findings.

Of course, there are other indices which involve complex econometric tools used, for instance, for measurement of independence for telecommunication regulators (Montoya and Trillas 2007)²⁷⁵. Still, these complex and more precise methods are largely inapplicable to the CII model, due to the small sample and the selected depth level based on RIA methodologies. This is why CII should be considered to be a strong prototype

²⁷³ F. Gilardi, "Policy Credibility and Delegation to Independent Regulatory Agencies: A Comparative Empirical Analysis," *Journal of European Public Policy* 9, no. 6 (2002): 873-893.

²⁷⁴ K. Johannsen Sander, "Regulatory Independence in Theory and Practice. - a Survey of Independent Energy Regulators in Eight European Countries," 2003.

²⁷⁵ A.M. Montoya and F. Trillas, "The Measurement of the Independence of Telecommunications Regulatory Agencies in Latin America and the Caribbean," *Utilities Policy* (2007): 182-190.

version, with clear potential for some fine-tuning in the future. Yet, these more advanced methods for indices construction are good indicators for the directions in which some more advanced versions of CII could be developed within a larger sample.

Hence, the relation of CII and CBI and Regulatory Independence Indices shows that CII does not necessarily differ to a large extent from all indices mentioned in this section, especially from those which were introduced in the early 90s. Construction of some of those is structurally close to CII, but the development tendency shows that indices should take into consideration both de-facto and de-jure perspectives for more accurate measurements.

In the future, CII could definitely profit from this, but at this moment and under current assumptions the CII is still able to produce desired results which are compatible with CPI and which have foundations in the RIA world.

The most important lesson is that CII could be improved in the future by enlarging the response rate, involving more legal criteria (above current 47) for the improvement of robustness, and having more accurate statistical analysis for more precise results. The comparison actually shows that the CII can be perceived as an early-stage tool, but it also shows that it can evolve into a more precise tool with some fine-tuning and more data involved.

11. Categorization and general features of burden indicators

In order to further understand the cost impacts of different regulatory mechanisms, it is useful to group them according to their burden indication effect. This would allow additional advanced analysis of regulatory structures, in terms of understanding which parts of lobbying regulations are more or less burdensome for the private sector and public sector.

In this part are not observed questions as they appear in the CII, but as they appear in the survey questionnaires – like individual burden indicators (67 of them). The purpose of this ranking is to categorize burden indicators in different burden categories. This is not the same as ranking the CII questions based on burden indication, because

some questions are composed of several burden indicators which might belong to different categories.

This ranking will improve indication of the expensive regulatory mechanisms and improve the debate on their alternatives. There could be alternatives with higher “strength” effect (CPI) which are not necessarily more burdensome. There could also be mechanisms which do not contribute meaningfully to the regulatory “strength”, but are found to indicate significant burden. This classification will enable easier comparison between the strength and cost indications of different regulatory mechanisms. In practice, this approach could be used for comparing alternative individual regulatory mechanisms, which should allow for a more optimal structuring of a regulation as a whole.

Burden indicators are classified in 7 categories, ranging from 2 to 8 (since the lowest average scores that were found were 2 and 8), where 2 stands for least costly indicators and 8 for the most costly indicators. Even though it is clear that $8 > 7 > 6 \dots > 2$; it does not necessarily mean that in a monetary sense that items from category 8 are four times larger than those from category 2, but in terms of cost perception it is assumed to be true. Besides quantitative, these categories also have qualitative features, which are defined to be the general main characteristics of all indicators belonging to one category. Table 8 shows the distribution of burden indicators in burden category, separately for the private and public side:

Table 8: Categorization of the CII burden indicators
(67 indicators from 47 CII questions)

<p>Cost burden indicators are divided into groups ranging from 8 to 2.</p> <p>The “8” stands for the most burdensome transparency mechanisms while “2” stands for the least burdensome mechanisms.</p> <p>8 > 7 > 6 > 5 > 4 > 3 > 2</p> <p>The highest the presence of higher categories in regulatory structure - the highest overall CII score is achieved.</p>		
(8)	<p>The CII private burden indicators</p>	<p>The CII public burden indicators</p>
	<p>Is a lobbyist required to file a spending report? Yes – 8 points</p>	<p>Does oversight agency provide an overall lobbying spending total by spending-report deadlines? Yes – 8 points</p>
	<p>Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? Yes – 8 points</p>	<p>Does oversight agency provide an overall lobbying spending total by industries lobbyists represented? Yes – 8 points</p>
	<p>What spending must be itemized? All spending above \$500 must be itemized – 8 points All spending above \$100 – 8 points All spending required to be itemized – 8 points</p>	<p>Does oversight agency conducts mandatory reviews or audits? Yes – 8 points</p>
	<p>Is the date of the itemized expenditure required to be reported? Yes – 8 points</p>	<p>Is there a statutory penalty for late filing of lobby registration form? Yes – 8 points</p>
	<p>Is there a statutory penalty for late filing of a lobby spending report? Yes – 8 points</p>	<p>Is there a statutory penalty for incomplete filing of a lobby registration form? Yes – 8 points</p>

		<p>Is there a statutory penalty for incomplete filing of a lobby spending report? Yes - 8 points</p> <p>Structure/type of oversight agency? Entirely new administrative agency - 8 points</p> <p>Is there mandatory revolving door compliance? Yes - 8 points</p>
(7)	<p>How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: regardless the amount made - 7 points</p> <p>How often within a year is a lobbyist required to report spending? Every three months or more often - 7 points</p>	<p>Location/format of spending reports: Photocopies from office only - 7 point</p> <p>How often are lobby lists updated? Monthly - 7 points Weekly - 7 points</p>
	<p>Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? Yes - 7 points</p>	<p>Does the state have statutory auditing authority? Yes - 7 points</p>
	<p>Is a description of the itemized expenditure required to be reported? Yes - 7 points</p>	
	<p>Is spending on household members of public officials by a lobbyist required to be reported? Yes - 7 points</p>	
	<p>How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?</p>	<p>Location/format of registrations or active lobbyist directory: Photocopies from office only - 6 points</p>

(6)	Qualification threshold: More than \$2,500 made - 6 points		
	Is a lobbyist required to identify by name each employer on the registration form? Yes - 6 points		Does oversight agency provide an overall lobbying spending total by year? Yes - 6 points
	Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? Yes - 6 points		How often are lobby lists updated? Annually or less often - 6 points
	How often within a year is a lobbyist required to report spending? Twice - 6 points		Structure/type of oversight agency? Already existing administrative unit with attributed tasks of enforcement of lobbying rules - 6 points
	Is the recipient of the itemized expenditure required to be identified? Yes - 6 points		
	Is subject matter or bill number to be addressed by a lobbyist required on spending reports? Subject matter only required - 6 points		
	Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? Yes - 6 points		
	What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are reported - 6 points		
	What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions allowed and required to be disclosed on spending report/allowed during session - 6 points		
	Is a lobbyist required to file a registration form?		Does oversight agency provide

(5)	Yes - 5 points		lobbyists/employers with online spending reporting? Yes - 5 points
	How many days can lobbying take place before registration is required? Up to a month - 5 points Up to 3 days - 5 points		
	Is subject matter or bill number to be addressed by a lobbyist required on registration forms? Bill number required - 5 points		
	Within how many days must a lobbyist notify the oversight agency of changes in registration? Up to a month - 5 points Up to 3 days - 5 points		
	Is a lobbyist required to submit a photograph with registration? Yes - 5 points		
	How often within a year is a lobbyist required to report spending? Once (or once in 2 years) - 5 points		
	Is compensation/salary required to be reported by a lobbyist on spending reports? Yes - 5 points		
	Is subject matter or bill number to be addressed by a lobbyist required on spending reports? Bill number required - 5 points		
	Is an employer or principal of a lobbyist required to file a spending report? Yes - 5 points		
	Is compensation/salary required to be reported on employer/principal spending reports? Yes - 5 points		

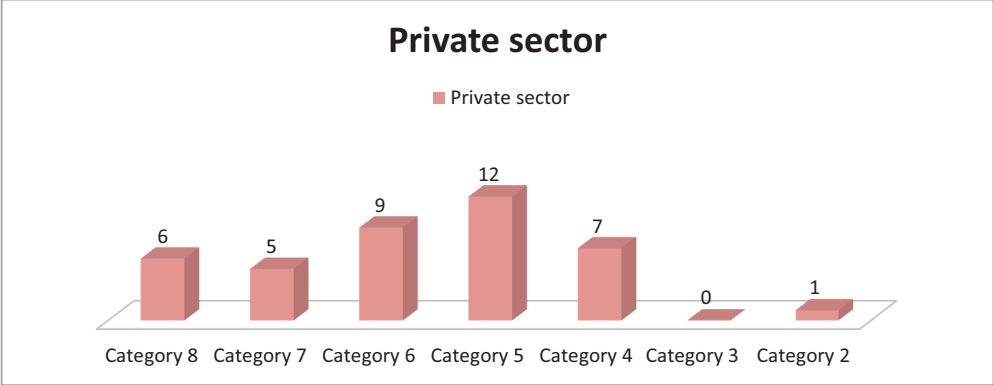
(4)	<p>How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: More than \$10,000 made - 4 points</p>		<p>Does oversight agency provide lobbyists/employers with online registration? Yes - 4 points</p>
	<p>How many days can lobbying take place before registration is required? 6 months or more - 4 points</p>		<p>Does oversight agency provide training about how to file registrations/spending reports electronically? Yes - 4 points</p>
	<p>Is subject matter or bill number to be addressed by a lobbyist required on registration forms? Subject matter only required - 4 points</p>		<p>Location/format of registrations or active lobbyist directory: Searchable database on the Web - 4 points Downloadable files/database - 4 points</p>
	<p>How often is registration by a lobbyist required? Annually or more often - 4 points Every two years - 4 points</p>		<p>Location/format of spending reports: Searchable database on the Web - 4 points Downloadable files/database - 4 points</p>
(3)	<p>Within how many days must a lobbyist notify the oversight agency of changes in registration? 6 months or more - 4 points</p>		<p>Does the state publish a list of delinquent filers either on the Web or in a printed document? Yes - 4 points</p>
	<p>Is a lobbyist who has done no spending during a filing period required to make a report of no activity? Yes - 4 points</p>		
			<p>Location/format of registrations or active lobbyist directory: PDF or image files on the Web - 3 points</p>
			<p>Location/format of spending reports: PDF or image files on the Web - 3 points</p>

			<p>Cost of copies: Interested parties do not have to pay for the copies of available reports – 3 points</p> <p>Are sample registration forms/spending reports available on the Web? Yes – 3 points</p> <p>In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? Yes – 3 points</p>	
		(2)		

How often is registration by a lobbyist required?
Once only – 2 points

Table 8 shows the full structure of lobbying regulation burden indicators. It reveals the parts of lobbying regulations with the highest and lowest burden indication, which is useful for practical policymaking. It also reveals the distribution of burden indicators by their magnitude across both the private and public sector. In order to additionally clarify the results of categorization of burden indicators, Figure 2 and Figure 3 are showing the aftermath for the private and public sector individually.

Figure 2 - structure of burden indicators for the private sector



Interpretation of Figure 2 suggests that compliance with most of the lobbying regulatory mechanisms is expected to create costs of a medium impact for the industry. As shown, most of the burden indicators are located within categories 6, 5 and 4 that are located in the middle of the graph. This is useful to see graphically, since the middle of this graph also corresponds to the middle of the 1-10 CII scale²⁷⁶ that represents the medium cost indication zone. Within this category 28 out of 40 analysed burden indicators are located. Eleven indicators belong to the high impact zone, while in the low impact zone there is only one burden-indicator.

Interpreted freely, the results suggest that complying with lobbying regulations is generally not perceived to be highly burdensome nor insignificantly burdensome, but rather of a medium impact. Hence, most of the regulatory mechanisms observed independently would have a moderate influence on compliance costs. The specific

²⁷⁶ See Table 5.

combination of those mechanisms in an aggregate way could also lead to lower or higher burdensome solutions. Hence, the average value of private burden indicators belongs to the medium range, but their combinations with other mechanisms could push the overall score of the regulation both to lower and higher burden indication zone.

Figure 3 - structure of burden indicators for the public sector

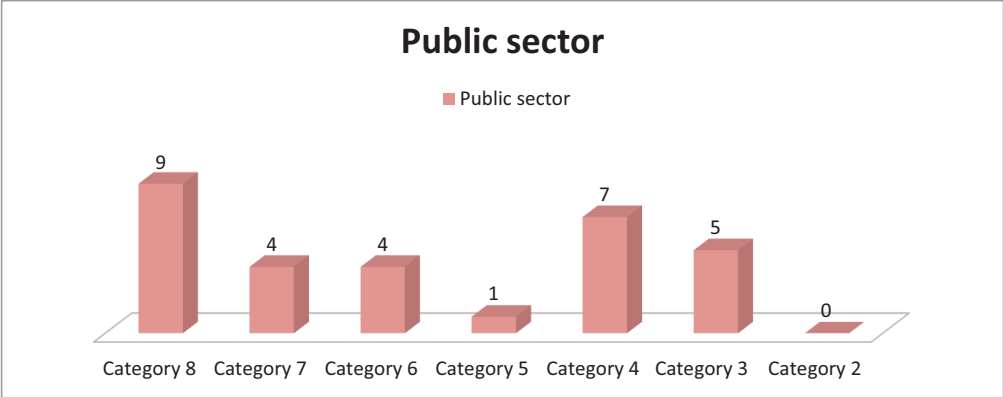
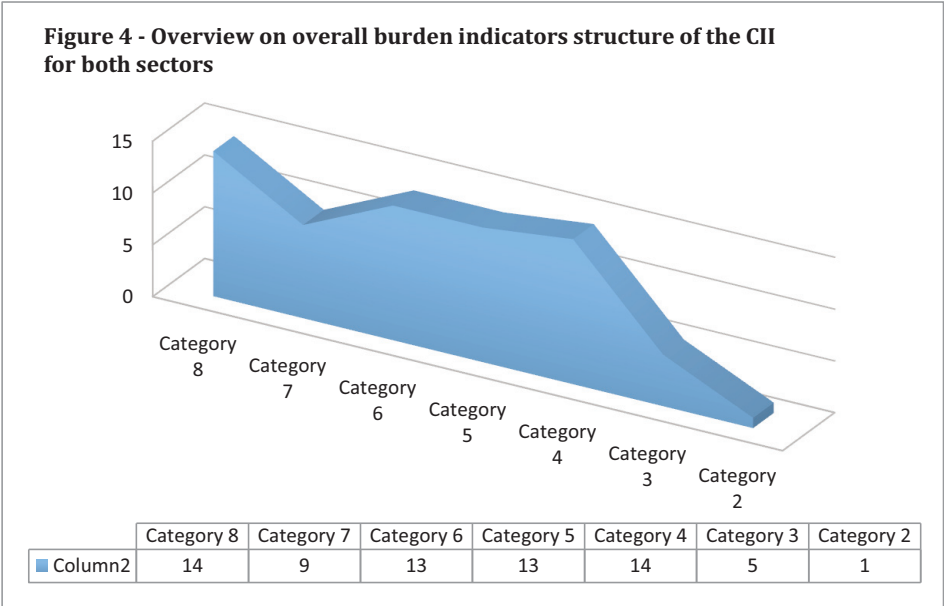


Figure 3, unlike the previous figure, does not reveal any general tendency of the burden related to the public sector. Still 13 out of 30 burden indicators are located in categories with the highest cost indication zone (8 and 7). In the medium cost indication zone (6, 5 and 4) are 12 and only 5 in the low cost indication zone. According to the results, the enforcement mechanisms are expected to be either quite costly or quite cheap to enforce. This finding suggests that a careful choice of mechanisms could indeed prevent regulations from creating high enforcement costs, and vice versa. Of course, the selection of instruments from the low cost indication zone would have to be supported with their higher CPI scores in order to avoid that both costs and benefits remain low. This type of cross-index analysis will be discussed in details in Chapter IV.

These results suggest that the most costly mechanisms are those dealing with the mandatory auditing of lobbying reports, and mandatory compliance enforcement through investigative activities and fines. Also, the establishment of a new enforcement agency is found to be the most costly. This is not surprising, since empirical evidence confirms such a prediction. For instance, the Office of the Commissioner of Lobbying of

Canada has 28 full-time employees, an annual budget of \$4.6 million CAD (approximately 3.5 million EUR)²⁷⁷ and it is certainly not a small administrative unit. Just for reviews and investigations under the “Lobbying Act and Lobbyists’ Code of Conduct”, the expenses were 1,029,656 CAD.²⁷⁸ By looking to the same source, it can be also concluded that the greatest part of the resources is actually related to staff, and investigations and review. The survey results from Figure 3 practically confirm this – indicating that the most costly part of enforcement are new agency personnel, mandatory auditing and enforcement of sanctions. This at the same time proves that the CII can be a very useful

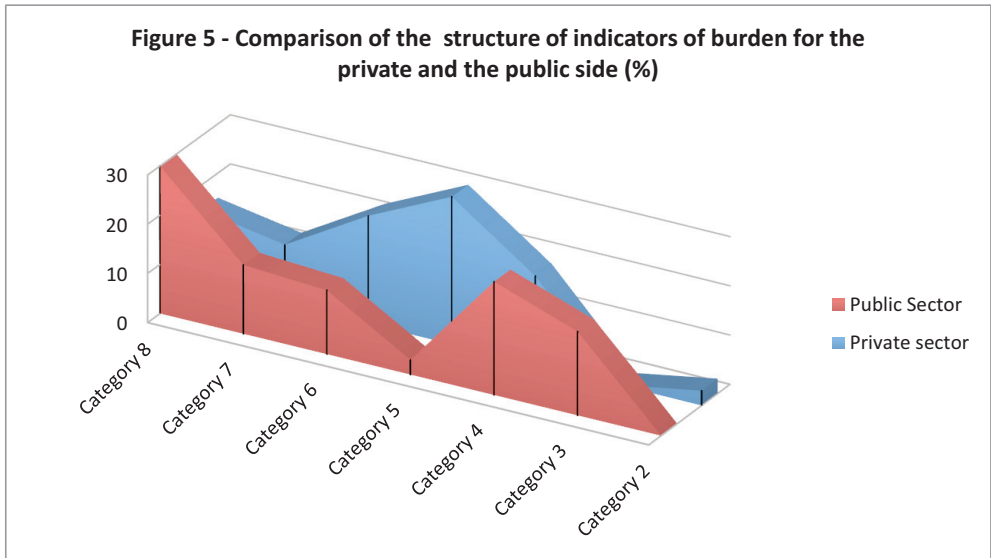


tool, if interpreted carefully and properly.

Figure 4 shows the overall distribution of burden indicators for both sectors cumulatively. The results show that the average value of all burden indicators belongs to the medium burden impact category, as most of the 67 indicators are located in the medium burden impact zone. Also, it can be noted that there are more burden indicators

²⁷⁷ Annual Report 2011/12, The Office of the Lobbying Commissioner of Canada.
²⁷⁸Financial Statements (unaudited) for the Year Ended March 31, 2011 - <http://www.ocl.gc.ca/eic/site/012.nsf/eng/00532.html>.

Figure 5 - Comparison of the structure of indicators of burden for the private and the public side (%)



at the far left (14) than on the far right (1), which means that if a rule does not belong to the medium impact zone, it is more likely to be a more burdensome than less burdensome rule. In other words, there are very few rules considered to have very low burden effect. They are usually of the moderate, or even high burden indication.

Figure 5 shows parallel structures of burden indicators (in percentages) for both sectors. Again it is possible to conclude that the burden indicators in the private sector have a general tendency of being of the medium burden impact, while those from the public side are either of a high burden or of a low burden impact.

The high burden group of indicators within the public sector is largely associated with establishing permanent institutional enforcement mechanisms. The lack of those would probably positively affect the public side's costs, and most likely the compliance costs which may be expected to be lower in the absence of enforcement

tools.²⁷⁹ Hence, even when the costs would go down the benefits could go down as well. The CPI and CII are able to predict this only to some extent, but further researches which would take more into account actual de-jure enforcement would be a valuable contribution.

Figure 5 unfortunately does not offer information on perception of the overall regulatory costs by two different groups, as each was asked to give the estimation only for the costs associated with them. This figure illustrates the dichotomy nature of the costs of enforcement which are perceived either as highly or lowly burdensome, while the compliance costs seem to be mostly in between the lower and the upper category, perceived as medium-burdensome.

While the public sector theoretically can escape high enforcement costs by applying only low-burden mechanisms, for the private sector this could be much more difficult as very few of the mechanisms are found to be lowly-burdensome. Hence, the public side seems to have more choice and more options in keeping their part of the costs low.

12. Qualitative analysis of the burden categories

Besides categorization of burden indicators quantitatively, it is possible to discuss each quantitative category's common characteristics qualitatively as well. This will be the empirically based foundation for creation of the CII-Threefold which divides lobbying regulations into low, medium and highly burdensome systems. The framework for qualitative analysis is borrowed²⁸⁰ from the Threefold classification theory²⁸⁰, and the

²⁷⁹ C. Lindstedt and D. Naurin, "Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption." but also confirmed by Mr. Andrews: *"I believe that this is an important factor in the cost of reporting. If there is lax enforcement as there is here in the U.S., registrants (and those who do not register and report, but should) will be (and are) far less diligent in their filings and this typically will lower whatever costs are involved."*

²⁸⁰ See Table 2.

new CII-Threefold theory follows the logic of the original Threefold theory based on the CPI. The results of the qualitative analysis are disclosed in the Table 9:

Table 9 - Qualitative analysis of CII burden indicators

	Registration and spending disclosure	Electronic filling System	Public access	Enforcement	Revolving door
Category 8	<p>-Lobbyists are required to submit spending reports with a high degree of details and spending item classifications with spending dates.</p>		<p>-Agency provides to the public overall lobbying spending totals by each spending-report deadline. These reports could have spending totals by industries or other similar criteria.</p>	<p>-Agency is independent bureaucratic unit, with separate personnel in charge of enforcement of lobbying regulation. -Agency conducts mandatory reviews and audits of reports and imposes fines for delays in filing and incomplete filing of reports and registration forms.</p>	<p>-There is mandatory revolving door compliance investigated by the agency.</p>
Category 7	<p>-Registration required regardless of the amount spent, reporting at least quarterly. -Required relating of precisely described financial items with the principal on whose behalf they were made. -Spending on household members of public officials just has to be reported.</p>		<p>-Public access to spending reports is unavailable in electronic form but only in the form of photocopies from the agency. -Lobby lists are updated at least monthly or even weekly.</p>	<p>-State has a statutory auditing authority of any type (this does not refer to any specific type...it can be a part of another administrative unit where the tasks for lobbying regulation enforcement are delegated to staff that deals with other administrative work, etc).</p>	
Category 6	<p>-Registration required if an individual has made/spent at least \$2,500 on lobbying. Lobbyist required to disclose the names of his clients on the registration form, with additional details</p>		<p>-Public access to lobbying registrations is unavailable in electronic form but only in form of photocopies from the agency. -Agency is required to provide an overall lobbying spending total annually. No further details required.</p>	<p>-Agency is an already existing unit which provides lobbying enforcement activities together with other public assignments.</p>	

	<p>regarding subject.</p> <ul style="list-style-type: none"> -Spending reporting at least twice annually with names of recipients of spending (and their household members) and subject matter/bill number reported. -Lobbyist report gifts given and disclose campaign contributions. 		<p>-Lobbying lists are updated annually or less often.</p>		
Category 5	<ul style="list-style-type: none"> -Required registration (with photo and bill specified)/reporting the change, up to a month after lobbying is started/change is made. -Spending reported at least once annually, overall compensation to be reported, bills specified, principal reported. -If principal has to report spending he has to report compensation for lobbying. 	<p>-Agency provides lobbyist/employers with online spending reporting system.</p>			
Category 4	<ul style="list-style-type: none"> -Registration required if an individual has made/spent at least \$10,000 on lobbying. - Required registration (subject matter specified)/reporting the change, up to 6 months after lobbying is started/change is made. -Registration at least annually. -Report of no spending 	<p>-Agency provides lobbyists/employers with online registration system.</p> <p>-Agency provides training on electronic filing of all available electronic filing options.</p>	<p>-Spending database available online in a downloadable and searchable form.</p>	<p>-Agency publishes a list of delinquent filers either on the Web or in a printed document.</p>	

Category 2	-Simple registration required once only.				
Category 3	-Definition of lobbyists refers to both executive and legislative branch lobbyists.		<ul style="list-style-type: none"> -Registration and spending database available online as PDF or image files only. No search engine or download. -Copies from the agency are available free of charge for an interested party. -Sample of registration and spending report forms available on the Web. 		

13. The CII score thresholds

In order to make the CII as compatible as possible to the CPI and the Threefold classification, but also in order to satisfy the methodological depth level (OECD Level 2), it is necessary to determine where the low, medium and high thresholds are on the CII scale, and where the general "pass level" is for a regulation. Yet, the proper setting of the thresholds is not an easy task and it influences the perception and interpretation of the results. Despite these challenges, decisions on thresholds had to be taken.

The first step would be to transform the CII current scale from 0-288 to 0-100 scale, which will make it intuitively and methodologically compatible with the CPI. This will be simply done by dividing the CII scores by 2.88. This will scale down the results and in cases of results with decimals it will be scaled up to the nearest whole number.

Secondly, the thresholds for low, medium and high impacts have to be determined. The CPI pass level threshold is 60, while the Threefold theory thresholds are for the low regulated systems (CPI from 1-29), the medium regulated systems (30-59) and the high regulated systems (60-100). In determining the thresholds for the CII, it is useful to refer back to the categorization of burden indicators.

1	2	3	4	5	6	7	8	9	10
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	LOW		MEDIUM			HIGH			

The burden indicators are mostly based on results from the empirical survey questionnaires. In those, originally the least burdensome impact was considered to be between values of 1 to 3, the medium from 3 to 7 and the high from 7 to 10. Since the actual results have narrowed this scale, which now starts from 2 to 8, the burden impacts zones are also slightly narrowed, so the new interpretation would be low impact zone from 2 to 3, medium for 4, 5 and 6, and high for 7 and 8. The middle is still left to be slightly larger than the two other categories.

This idea can be further expanded to the pass level threshold setting on the 0 to 100 CII scale. If upper logic is applied directly, the scores on the CII would be 1 to 29 for the low burden impact zone, 30-69 for the medium impact zone and 70 to 100 for the high impact zone.

Thresholds would be 30 and 70, (86 and 202 out of 288 on the original scale).

1	2	3	4	5	6	7	8	9	10
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not applicable	LOW		MEDIUM			HIGH		Not applicable	
	0-29 (0-85)		30 -69 (86 - 202)			70 and over >203			

14. The CII Threefold theory and the Ninefold theory

14.1. The CII Threefold theory

In previous sections the theoretical model and application of the Threefold theory based on the CPI index was explained. This theory provides a theoretical framework for the classification of the lobbying regulation system according to their strengths (composed of the transparency, accountability and robustness²⁸¹ of lobbying regulation). It analyses lobbying regulations qualitatively through six dimensions: registration regulation, spending disclosure, electronic filing, public access, enforcement and revolving door.

The structure of the CII is almost the same as the structure of the CPI, aside from some miniscule necessary adjustments. The CPI index application produces scores from 1-100, and divides lobbying regulations into those that have scores more than 60 (pass) and lower than 60 (fail). This means that only the systems with a score above 60 have demonstrated a sufficient level of strength. However, it has to be noted that this benchmark has been set on 60 points in quite a deliberative manner. Moreover, the values which are attached to different questions (from 1-4) are also probably set in a deliberative manner. It is not clear why some rules have a value of 4 points, while other ones are equal to 1.

Additional extension of this theory was further done by the previously mentioned Threefold classification of lobbying regulation, which has divided regulatory solutions qualitatively by similar features, and quantitatively by splitting the CPI scale into three zones. This theory has classified regulatory environments on low-regulated

²⁸¹ Robustness is mostly used as a term in natural sciences. However, its application is not exclusively limited to this area. For more on application of concept of robustness in social sciences, see J.M. Anderies, M. Janssen, and E. Ostrom, "A Framework to Analyze the Robustness of Social-Ecological Systems from an Institutional Perspective," *Ecology and Society* (2004).

systems (CPI from 1-29), medium-regulated systems (30-69) and high-regulated systems (70-100). Besides this quantitative division, each system was analysed qualitatively and for each of those systems a common set of characteristics has been found. While the CPI suggests that a higher score is better, the Threefold classification does not strongly imply this, but still it gives a solid confirmation in this direction from a qualitative point of view.

In case of the CII, the same analogy can be applied for establishing the CII Threefold theory. The only difference is that in this case, the lower the score is – the smaller the cost impact is. Without involving other criteria at this point, it can be said that it is desired to keep the cost burden as low as possible. Thus, having the lowest CII score is more desirable than having a higher CII score. In this sense, the CII works on the same foundations as the CPI, and the only difference is that in the case of the CII, lower scores indicate lower costs while higher CPI scores indicate higher benefits. In other words, it is desired to have as high a CPI score and as low a CII score.

According to this and from the burden perspective, we could divide lobbying regulation systems into the low-burdensome, medium-burdensome and high-burdensome systems, with thresholds that are the same as in the case of the CPI. At the same time, these categories are not exclusively defined by CII thresholds, but they are found to have common qualitative characteristics as well. Table 9 describes the qualitative features of different burden categories which are mentioned at this point. It is found that regulations which belong to highly burdensome systems usually have characteristics of burden categories 8 and 7, which are usually mixed with some from the medium-burdensome systems. Medium-burdensome systems mostly have features of burden categories 5 and 4. Similarly, lowly burdensome systems usually have characteristics of burden categories 2 and 3, which could be mixed perhaps with some of the burden categories from the medium-burdensome systems.

	Qualitative features
Highly burdensome >70	Regulations mostly have features of burden categories 8 and 7
Medium burdensome 30-69	Regulations mostly have features of burden categories 6, 5 and 4

Lowly burdensome 1-30	Regulations mostly have features of burden categories 2 and 3
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This could be defined as the core of the CII Threefold theory - there are three systems which classify lobbying regulations qualitatively and quantitatively on highly burdensome, medium-burdensome and lowly burdensome systems.

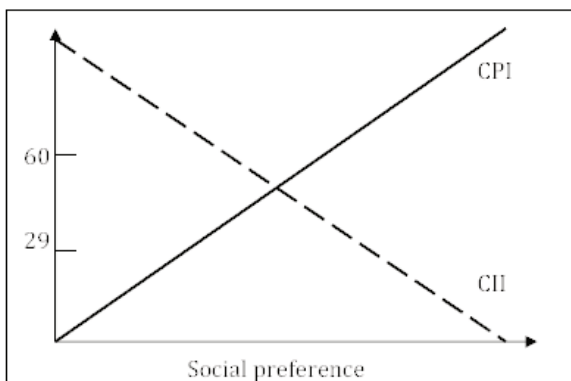
14.2. The Ninefold theory

So far, this analysis was exclusively focused on costs, without taking into consideration their relation with the benefits, which is crucial for assessing regulatory quality. The relation of those two key elements can be additionally discussed under a new theory - The Ninefold theory that will be introduced here. This theory combines the Threefold theory of classification of lobbying regulation (based on the CPI) and the CII Threefold theory of classification of lobbying regulation (based on the CII). By combining these two theories, it is possible to introduce another framework for a more structured assessment and classification of lobbying regulations, both by indication of benefits and costs.

As shown in Graph 1, it is commonly accepted that, in the case of lobbying regulation, society prefers to have the highest transparency and accountability as possible, while at the same time keeping the costs associated with these goals as low as possible – preferably at zero. The X-axis depicts this preference while the Y-axis shows the CPI and the CII scales where the maximum is 100. The far right of the X-axis would reflect a utopian situation where full transparency is achieved at zero cost, but in reality, regulations will probably fall somewhere in the middle of the X-axis.²⁸²

²⁸² It is important to note that this graph was actually created by combining two separate graphs on CII and CPI. Their intersection in Graph 1 is just a sample intersection and it does not reflect a model trade-off point. This intersection just illustrates the situation where CII and CPI scores are balanced at levels of 50 each. The regulation with this type of score could be improved by adopting the mechanisms which will increase the CPI score and at the same time decrease the CII. Thus, all points at the X axis which fall closer to the right side could be perceived as more desired ones, while the ones which would fall close to the left

At that point, it becomes important for costs and benefits to be well balanced, and it would be generally desired that the indication of costs is lower than the indication of benefits. This would mean that the benefits outweigh the costs, indicatively of course.



Graph 1 - Relation of CPI and CII and social cost

This general logic can be applied in a more profound way in order to establish a framework for using both scales' scores for determining the status of a regulation in terms of both the costs and benefits. Indeed, the Ninefold theory is comprised of a combination of two Threefold theories – the one based on the CPI and the one based on the CII. Even though the CII and the CPI could be compared directly to some extent, Threefold theories are more profound since they involve both the qualitative and quantitative elements. Hence, by positioning a regulation in one of the nine categories of the Ninefold theory, it will be possible to predict its general qualitative description and value.

side would need to be re-structured in order to push them back to the right side. The re-structuring of lobbying laws, in order to improve their cost-benefit ratio, will be demonstrated in Chapter IV.

High regulated systems (60-100)	High - <i>Low</i>	High - <i>Medium</i>	High - <i>High</i>
Medium regulated systems (30-59)	Medium - <i>Low</i>	Medium - <i>Medium</i>	Medium - <i>High</i>
Low regulated systems (0-29)	Low - <i>Low</i>	Low - <i>Medium</i>	Low - <i>High</i>
CPI CII	<i>Lowly burdensome systems</i> <i>(0-29)</i>	<i>Medium burdensome Systems</i> <i>(30-69)</i>	<i>Highly burdensome Systems</i> <i>(70-100)</i>

The Ninefold theory framework offers nine different types of lobbying regulation systems, based on their qualitative and quantitative characteristics obtained by the application of the CPI and the CII. The upper left field (High - Low) would stand for an extreme example of a regulation with high strength and low burden, while the opposite extreme would be the lower right field (Low - High). In between there are additional six fields which correspond to other possible outcomes depending on the actual regulatory structure. Through simultaneous application of both indices, it is possible to place regulations in one of nine fields, which give an indication of their cost-benefits structure, and their general position in regard to other regulations.

This framework is also useful in practical policymaking, since it is possible to monitor the evolution of regulatory proposals, if they are measured in each drafting phase. For instance, if a first proposal of a law on lobbying indicates low strength and high burden, it is possible to see whether it shifted to another category after improvements, which could be for instance medium strength and medium burden. Hence, this tool allows continuous evaluation of legislative proposals in all phases of the drafting process.

Keeping in mind that an acceptable lobbying law proposal would have to satisfy the condition that the costs do not outweigh benefits, by simultaneous application of both tools *ex-ante*, it would be possible to determine if a proposal is generally acceptable from a costs-benefits point of view. Generally speaking, all proposals which have a higher strength than burden should be considered as good, while those where categories are in middle categories could be considered as acceptable but improvable. Unacceptable solutions would be the ones where the CII category is larger than the CPI category. In any case, a more detailed explanation on the use of these results will be given in the final chapter, which will deal with application of the Theory.

15. What is the relation between burden (CII) and transparency indication (CPI)?

One additional thing that is important to observe is the relation of different CPI and CII scores, by comparing their individual values from both indices. In other words, this section will examine what are indicative cost-benefits features of individual lobbying regulations mechanisms. They will now be observed isolated from indices, in order to have as clear an image as possible on what are really very smart and efficient regulatory tools, and what are not.

Higher transparency would usually mean higher costs and vice versa. However, this presumption will be tested by assessing the transparency and cost indication values (values obtained by questionnaires and given values from the CPI) for each single CII cost indicator. In this section, burden indicators in each cost category will be rearranged in descending order, which should reflect their CPI strength (4-0). This will reveal, for each cost category, what the most desirable mechanisms are. Table 10 shows the entire overview starting with burden category 8. As in this category, burden indicators are rearranged by descending CPI values. This means that indicators with the highest CPI score are placed at the top of each category, and at the bottom are the lowest. This allows an easy and intuitive interpretation of the table.

Besides information for each cost category, it will be possible to look at the general trade-off between the strength and cost indication, and argue which regulatory mechanisms are more preferable for regulation of lobbying in different cases.

Table 10: Relation between the CPI indicators (benefits) and the CII indicators (costs)

Questions within each cost category are shown in their transparency indication in descending order, from 4 to 0.

CII category	The CII private burden indicators	CPI score	The CII public burden indicators	CPI score
(8)		4	<p>35. Does oversight agency provide an overall lobbying spending total by spending-report deadlines? Yes – 8 points</p>	2
		3	<p>What spending must be itemized? All spending required to be itemized – 8 points</p>	
		3	<p>What spending must be itemized? All spending above \$100 – 8 points</p>	
		2	<p>36. Does oversight agency provide an overall lobbying spending total by industries lobbyists represent? Yes – 8 points</p>	2

(8)		Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? Yes - 8 points	2	41.	Does oversight agency conduct mandatory reviews or audits? Yes - 8 points	2
		Is the date of the itemized expenditure required to be reported? Yes - 8 points	1	47.	Is there mandatory revolving door compliance? Yes - 8 points	2
				42.	Is there a statutory penalty for late filing of a lobby registration form? Yes - 8 points	1
				43.	Is there a statutory penalty for late filing of a lobby spending report? Yes - 8 points	1
				44.	Is there a statutory penalty for incomplete filing of a lobby registration form? Yes - 8 points	1
				45.	Is there a statutory penalty for incomplete filing of a lobby spending report? Yes - 8 points	1
				46b	Structure/type of oversight agency? Entirely new administrative agency - 8 points	X
					How often are lobby lists updated? Weekly - 7 points	3
				37c	How often are lobby lists updated? Monthly - 7 points	2
				37b	Does the state have statutory auditing authority? Yes - 7 points	2
(7)		How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: regardless the amount made - 7 points	4			
		How often within a year is a lobbyist required to report spending? Every three months or more often - 7 points	2	40.		2

(6)									
		Is the recipient of the itemized expenditure required to be identified? Yes - 6 points	1						
		Is subject matter or bill number to be addressed by a lobbyist required on spending reports? Subject matter only required - 6 points	1						
		Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? Yes - 6 points	1						
		What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are reported - 6 points	1						
		What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions allowed and required to be disclosed on spending report/allowed during session - 6 points	1						
(5)		Is a lobbyist required to file a registration form? Yes - 5 points	3	28.				Does oversight agency provide lobbyists/employers with online spending reporting? Yes - 5 points	1
		Is subject matter or bill number to be addressed by a lobbyist required on registration forms? Bill number required - 5 points	3						

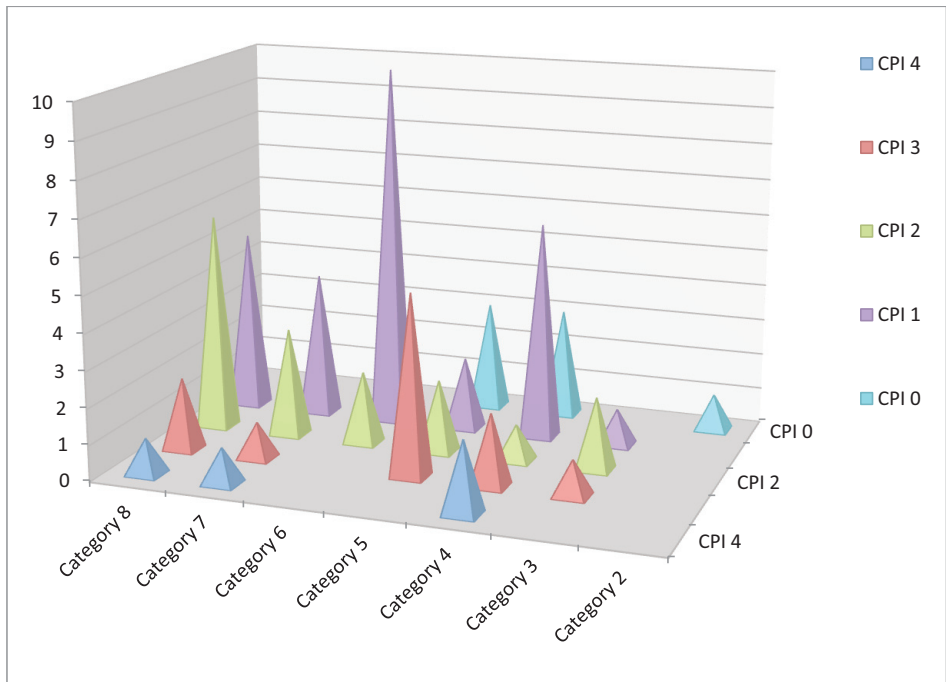
(5)							
			Is subject matter or bill number to be addressed by a lobbyist required on spending reports? Bill number required - 5 points	3			
			Is an employer or principal of a lobbyist required to file a spending report? Yes - 5 points	3			
			How many days can lobbying take place before registration is required? Up to a month - 5 points	3			
			Within how many days must a lobbyist notify the oversight agency of changes in registration? up to a month - 5 points	3			
			Is compensation/salary required to be reported by a lobbyist on spending reports? Yes - 5 points	2			
			Is compensation/salary required to be reported on employer/principal spending reports? Yes - 5 points	2			
			Is a lobbyist required to submit a photograph with registration? Yes - 5 points	1			
			How many days can lobbying take place before registration is required?	0			

	Up to 3 days – 5 points					
	Within how many days must a lobbyist notify the oversight agency of changes in registration? Up to 3 days – 5 points	0				
	How often within a year is a lobbyist required to report spending? Once (or once in 2 years) – 5 points	0				
(4)	How often is registration by a lobbyist required? Annually or more often – 4 points	2	30d		Location/format of registrations or active lobbyist directory: Downloadable files/database – 4 points	4
	Is subject matter or bill number to be addressed by a lobbyist required on registration forms? Subject matter only required – 4 points	1	31d		Location/format of spending reports: Downloadable files/database – 4 points	4
	How often is registration by a lobbyist required? Every two years – 4 points	1	30c		Location/format of registrations or active lobbyist directory: Searchable database on the Web - 4 points	3
(4)	Is a lobbyist who has done no spending during a filing period required to make a report of no activity? Yes – 4 points	1	31c		Location/format of spending reports: Searchable database on the Web – 4 points	3
	How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: More than \$10,000 made - 4 points	0	27.		Does oversight agency provide lobbyists/employers with online registration? Yes – 4 points	1
	How many days can lobbying take place before registration is required? 6 months or more – 4 points	0	29.		Does oversight agency provide training about how to file registrations/spending reports electronically?	1

					Yes - 4 points	
		Within how many days must a lobbyist notify the oversight agency of changes in registration? 6 months or more - 4 points	0	39.	Does the state publish a list of delinquent filers either on the Web or in a printed document? Yes - 4 points	1
(3)		Cost of copies: Interested parties do not have to pay for the copies of available reports - 3 points	X	38.	In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? Yes - 3 points	3
				30b	Location/format of registrations or active lobbyist directory: PDF or image files on the Web - 3 points	2
				31b	Location/format of spending reports: PDF or image files on the Web - 3 points	2
				33.	Are sample registration forms/spending reports available the Web? Yes - 3 points	1
(2)		How often is registration by a lobbyist required? Once only - 2 points	0	32.	Cost of copies: Interested parties do not have to pay for the copies of available reports - 3 points	X

Graph 2 provides information on the relation of the CII scores and the CPI scores, based on quantification of the results from Table 10. It is the snapshot of the results from the previous 3-page table, showing the distribution and the nature of CPI and CII elements seen in the fusion. It shows how many CPI values (3-4) have how many CII values (2-8) and vice versa. It clearly indicates, as assumed at the beginning of this research, that higher transparency and accountability (strength) usually comes along with higher costs. In short, more transparency is expected to be more costly than less transparency.

Graph 2 - Overview on overall relations of CII and CPI scores



As shown in the upper graph, most of the observed items are located within the middle and left part of the table, which corresponds with medium and higher cost indication. In the lowest cost categories (3 and 2), barely any strength indication can be found. In other words there are practically no regulatory benefits, without at least some

costs involved. However, it can hardly be said that there is a strong tendency of mutual exponential increase of costs with an increase of strength. Although the table suggests that there is a slight tendency which supports the idea that growth of costs follows the growth of strength, it cannot be concluded that high transparency necessarily invokes high costs.

Also, it cannot be concluded that the most effective mechanisms for transparency improvement are at the same time the most costly ones. From the perspective of policymakers, this means that complex and expensive regulation does not necessarily mean high transparency, and vice versa.

The results, on the other hand, suggest that within each category of cost there are more efficient and less efficient mechanisms, and this is what is actually beneficial for policymaking. Similarly, it can be said that for each transparency category there are mechanisms with different cost indication. Thus, when making a regulatory proposal it is necessary to look further into these alternatives in order to determine which mechanisms have the best cost-benefits ratio. This will help to determine which option, among similar alternatives, should be preferred and what are preferable mechanisms for the regulation of lobbying in general.

16. Cost-Benefit labels

To have a better understanding of the practical value of these results, another methodological tool named Cost-Benefit Labels will be introduced. The special labels mechanism has transformed the results from Table 10 into a policymaking tool which could contribute to a more efficient design of lobbying regulation structures. This tool can be very useful during periods of regulatory drafting where priority should be given to mechanisms with a better cost-benefit ratio, especially when alternatives are discussed.

Before discussing the application, the structure of the tool has to be explained. The regulatory mechanisms from Table 10 are divided in three general categories which are called cost-benefit labels (CBLs): A, B and C. Label A stands for all mechanisms where expected benefits outweigh expected costs, label B where expected benefits are on the same or almost the same level with expected costs, and label C where expected costs outweigh expected benefits. In short, A is preferred to B, B is preferred to C, while A is also preferred to C, which can be expressed this way - $A > B > C$.

Each CBL is subdivided on three sublevels: A (A1 > A2 > A3), B (B1 > B2 > B3) and C (C1 > C2 > C3). This subdivision will allow even more precise classification of all considered mechanisms, based on their cost-benefit ratio obtained from the CPI and CII scores.

To determine which category mechanisms belong to, it is necessary to compare their CII and CPI scores. Since this information is taken from different scales (CPI ranges from 1-4 and CII from 2-8), the scores should be interpreted in the following way, taking into consideration impact magnitudes: low, medium and high.

	Low (L)		Medium (M)			High (L)	
CII	2	3	4	5	6	7	8
CPI	1 (and 0)		2	3		4	

Table of Cost Benefits Labels (CBL)

A	B	C
A1 stands for CPI H / CII L	B1 stands for CPI H / CII H	C1 stands for CPI L / CII M
A2 stands for CPI H / CII M	B2 stands for CPI M / CII M	C2 stands for CPI M / CII H
A3 stands for CPI M / CII L	B3 stands for CPI L / CII L	C3 stands for CPI L / CII H ²⁸³
A1 > A2 > A3 > B1 > B2 > B3 > C1 > C2 > C3		

For instance, label A1 means that a certain mechanism has great transparency and accountability contribution at very little cost (CPI H / CII L), while on the opposite side of the scale is the C3 label, which reflects a mechanism with low transparency and accountability contribution and high costliness (CPI L / CII H). However, it has to be underlined that regulations with mechanisms solely based on the A-label would probably be incomplete, and would not make much sense in practice, since there are a limited number of mechanisms with this label. In other words, there are not A-label alternatives for

²⁸³ The letters “H” and “L” respectively mean High and Low.

all regulatory mechanisms, but just for some of them. However, in cases where several regulatory alternatives are considered, it is possible and advisable to select an alternative with a better CBL. This will be clearly demonstrated in Chapter IV during the application of the CBL tool.

After developing this tool, it is possible to integrate it in the CII index, and the final, complete version of the index is shown below in Table 11:

<p align="center">Table 11: The Cost Indicator Index</p>	<p align="center">CBL (CCI/CPI)</p>
<p>1. How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?</p> <p>Qualification threshold: More than \$10,000 made - 4 points</p> <p>Qualification threshold: More than \$2,500 made - 6 points</p> <p>Qualification threshold: regardless the amount made - 7 points</p>	<p align="center">C3 (4/0)</p> <p align="center">B2 (6/2)</p> <p align="center">B1 (7/4)</p>
<p>2. Is a lobbyist required to file a registration form?</p> <p>No - 0 points</p> <p>Yes - 5 points</p>	<p align="center">B2 (5/3)</p>
<p>3. How many days can lobbying take place before registration is required?</p> <p>6 months or more - 4 points</p> <p>Up to a month - 5 points</p> <p>Up to 3 days - 5 points</p>	<p align="center">C3 (4/0)</p> <p align="center">C1 (5/1)</p> <p align="center">B2 (5/3)</p>
<p>4. Is subject matter or bill number to be addressed by a lobbyist required on registration forms?</p> <p>Subject matter only required - 4 points</p> <p>Bill number required - 5 points</p>	<p align="center">C1 (4/1)</p> <p align="center">B2 (5/3)</p>
<p>5. How often is registration by a lobbyist required?</p> <p>Once only - 2 points</p> <p>Every two years - 4 points</p> <p>Annually or more often - 4 points</p>	<p align="center">C3 (2/0)</p> <p align="center">C1 (4/1)</p> <p align="center">B2 (4/2)</p>
<p>6. Within how many days must a lobbyist notify the oversight agency of changes in registration?</p> <p>6 months or more - 4 points</p> <p>Up to a month - 5 points</p> <p>Up to 3 days - 5 points</p>	<p align="center">C3 (4/0)</p> <p align="center">C1 (5/1)</p> <p align="center">B2 (5/3)</p>

7. Is a lobbyist required to submit a photograph with registration? No – 0 points Yes – 5 points	C1 (5/1)
8. Is a lobbyist required to identify by name each employer on the registration form? No – 0 points Yes – 6 points	C1 (6/1)
9. Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No – 0 points Yes – 6 points	C1 (6/1)
10. Is a lobbyist required to file a spending report? No – 0 points Yes – 8 points	C2 (8/3)
11. How often within a year is a lobbyist required to report spending? Once (or once in 2 years) – 5 points Twice – 6 points Every three months or more often – 7 points	C3 (5/0)
	C1 (6/1)
	C2 (7/2)
12. Is compensation/salary required to be reported by a lobbyist on spending reports? No – 0 points Yes – 5 points	C1 (5/2)
13. Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No – 0 points Yes – 8 points	C2 (7/2)
14. What spending must be itemized? No spending required to be itemized – 0 points All spending above \$500 must be itemized – 8 points All spending above \$100 must be itemized – 8 points All spending required to be itemized – 8 points	C2 (8/2)
	C2 (8/3)
	B1 (8/4)
15. Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No – 0 points	C3 (7/1)

Yes - 7 points	
16. Is the recipient of the itemized expenditure required to be identified? No - 0 points Yes - 6 points	C1 (6/1)
17. Is the date of the itemized expenditure required to be reported? No - 0 points Yes - 8 points	C3 (8/1)
18. Is a description of the itemized expenditure required to be reported? No - 0 points Yes - 7 points	C3 (7/1)
19. Is subject matter or bill number to be addressed by a lobbyist required on spending reports? No bill number/subject matter required - 0 points Subject matter only required - 6 points Bill number required - 5 points	C1 (6/1)
	B2 (5/3)
20. Is spending on household members of public officials by a lobbyist required to be reported? No - 0 points Yes - 7 points	C3 (7/1)
21. Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No - 0 points Yes - 6 points	C1 (6/1)
22. What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported - 0 points Gifts are reported - 6 points	C1 (6/1)
23. What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions not required to be disclosed on spending report/prohibited during session - 0 points Campaign contributions allowed and required to be disclosed on spending report/allowed during session - 6 points	C1 (6/1)
24. Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No - 0 points Yes - 4 points	C1 (4/1)
25. Is an employer or principal of a lobbyist required to file a spending report?	B2

No – 0 point Yes – 5 points	(5/3)
26. Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points Yes – 5 points	B2 (5/2)
27. Does oversight agency provide lobbyists/employers with online registration? No – 0 points Yes – 4 points	C1 (4/1)
28. Does oversight agency provide lobbyists/employers with online spending reporting? No – 0 points Yes – 5 points	C1 (5/1)
29. Does oversight agency provide training about how to file registrations/spending reports electronically? No – 0 points Yes – 4 points	C1 (4/1)
30. Location/format of registrations or active lobbyist directory: Photocopies from office only – 6 points PDF or image files on the Web – 3 points Searchable database on the Web – 4 Downloadable files/database – 4	C1 (6/1)
	A3 (3/2)
	B2 (4/3)
	A2 (4/4)
31. Location/format of spending reports: Photocopies from office only – 7 points PDF or image files on the Web – 3 points Searchable database on the Web – 4 points Downloadable files/database – 4 points	C3 (7/1)
	A3 (3/2)
	B/2 (4/3)
	A2 (4/4)
32. Cost of copies: Interested parties pay for the copies of available reports – 0 points Interested parties do not have to pay for the copies of available reports – 3 points	CPI score missing
33. Are sample registration forms/spending reports available on the Web? No – 0 points Yes – 3 points	B3 (3/1)
34. Does oversight agency provide an overall lobbying spending total by year?	B2 (6/2)

No – 0 points Yes – 6 points	
35. Does oversight agency provide an overall lobbying spending total by spending-report deadlines? No – 0 points Yes – 8 points	C2 (8/2)
36. Does oversight agency provide an overall lobbying spending total by industries lobbyists represent? No – 0 points Yes – 8 points	C2 (8/2)
37. How often are lobby lists updated? Annually or less often – 6 points Monthly – 7 points Weekly – 7 points	C1 (6/1)
	C2 (7/2)
	C2 (7/3)
38. In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No – 0 points Yes – 3 points	A3 (3/3)
39. Does the state publish a list of delinquent filers either on the Web or in a printed document? No – 0 points Yes – 4 points	C1 (4/1)
40. Does the state have statutory auditing authority? No – 0 points Yes – 7 points	C2 (7/2)
41. Does oversight agency conduct mandatory reviews or audits? No – 0 points Yes – 8 points	C2 (8/2)
42. Is there a statutory penalty for late filing of lobby registration form? No – 0 points Yes – 8 points	C3 (8/1)
43. Is there a statutory penalty for late filing of a lobby spending report? No – 0 points Yes – 8 points	C3 (8/1)

<p>44. Is there a statutory penalty for incomplete filling of a lobby registration form?</p> <p>No – 0 points Yes – 8 points</p>	<p>C3 (8/1)</p>
<p>45. Is there a statutory penalty for incomplete filing of a lobby spending report?</p> <p>No – 0 points Yes - 8 points</p>	<p>C3 (8/1)</p>
<p>46. Structure/type of oversight agency?</p> <p>Already existing administrative unit with attributed tasks of enforcement of lobbying rules – 6 points Entirely new administrative agency – 8 points</p>	<p>CPI score missing</p>
<p>47. Is there a mandatory revolving door compliance?</p> <p>No – 0 Yes – 8 points</p>	<p>C2 (8/2)</p>

17. Conclusion of Chapter III

This chapter introduced the Cost Indicator Index. First the methodological pillars of the index were shown, which evolved from a combination of CPI and RIA and OECD tools which were combined in order to produce a custom-made tool with specific depth, choice of legal attributes and scoring technique.

As CII scores needed to be empirically determined, it was necessary to run the empirical survey which included both qualitative and quantitative tools that resulted in more accurate CII scores setting. The empirical survey may raise some concerns, but mostly due to the small sample. Methodologically, the Index could have been more precise if a larger sample was involved. However, some other analysed indices show that a large sample is not always the *condicio sine qua non*.

At the end of the Chapter was the introduction of the Ninefold theory, which provides a qualitative framework for analysis of the results.

Lastly, the scores were divided in special cost-benefit labels (CBLs) which allow cost-benefit comparison of similar regulatory mechanisms, and an intuitive employment of those with the best cost-benefit value.

Chapter IV - Application of the CII in policymaking

1. Introduction to the application of the CII Index

This chapter focuses on the application of the CII in policymaking. The focus will be on the Western Balkans (WB), where lobbying regulation has recently been dynamic, and where countries have either poor or zero regulatory impact assessment tools at their disposal. The core of the chapter is the quantitative and qualitative analysis of the Serbian proposal on the Law on Lobbying.

The analysis will start by assessing the official motivation for regulation of lobbying, legislative procedures and the RIA capacity of Serbia, and will end with the simultaneous application of the CPI and the CII on the proposal. After a comprehensive study of its structures, practical suggestions for its improvements will be offered, taking into account other relevant country-specific information.

The last part of the chapter will be dealing with a comparative application of the CII, where quantitative CPI and CII methods will be applied to Slovenia, Macedonia and Montenegro and merged with the results from Serbia. This analysis will for the first time reveal not only the CII, but also the CPI scores for these countries, and demonstrate the added value of CII in terms of comparative assessments.

2. Regulation of lobbying in South East Europe – corruption fighting or something else?

European countries mostly have not dealt with lobbying directly by specific regulations. This, however, should not be regarded as indifference towards the importance of the transparency and integrity of the public institutions. Yet, most European countries have general laws in effect prohibiting conflict of interest, criminal laws and laws which generally prevent corruption and undue behaviour in the interaction of the public and private sector.

The SEE²⁸⁴, and within it especially the Western Balkans, have had a turbulent past in the last two decades. After the dissolution in the 90s, the former Yugoslavian

²⁸⁴ The SEE and Balkans are not quite the same, although there is a lot of misunderstanding and equalization of the two. The SEE includes: Italy, Slovakia, Austria, Slovenia, Ukraine, Hungary, Romania, Moldova, Bulgaria, Greece, Macedonia, Serbia, Bosnia and Herzegovina, Montenegro, Croatia and Slovenia.

countries decided to take their own paths towards democratization and an open-market economy, at the same time striving to become full EU-member states. This means they had to engage themselves in a rapid Stabilization and Association Process (SAP)²⁸⁵ of which the aim was to allow them to become candidates for EU membership and ultimately full members at some point later on.

One of the most important stages in this process is the harmonization with the EU laws, and eventually additional criteria that are set by the European Commission. However, this process itself is not enough to explain why some countries in SEE²⁸⁶ have imposed, or are attempting to impose, lobbying regulations while most of the EU still does not have these laws. The harmonization is certainly not the answer to explain this tendency.

From an EU-accession point of view, this tendency might be seen as premature and ambitious, but at the same time it can be interpreted as an attempt at further strengthening the rule of law and corruption prevention. On the other hand, an analysis of the reasons for lobbying regulations in some of the SEE countries (Serbia, Slovenia, Montenegro and Macedonia) may indicate another motivation which is more connected to the imposition of entry barriers in the lobbying market²⁸⁷. Considering those reasons

At the same time, the term Balkans has a narrower meaning since it refers to countries located on the Balkan Peninsula: Greece, Bulgaria, Romania, Albania, Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, Croatia, and Slovenia (although the last one is often not included). Another, even narrower category is defined as the Western Balkans (WB). The WB refers to Albania, Bosnia and Herzegovina, Croatia, Serbia, Macedonia and Montenegro.

²⁸⁵ The Stabilisation and Association Process (SAP) is the European Union's policy towards the Western Balkans, established with the aim of eventual EU membership. Western Balkan countries are involved in a progressive partnership with a view of stabilising the region and establishing a free-trade area. The SAP sets out common political and economic goals although progress evaluation is based on a country's own merits (The EC, DG Enlargement - http://ec.europa.eu/enlargement/policy/glossary/terms/sap_en.htm).

²⁸⁶ Hungary, Slovenia, Montenegro, Macedonia, Serbia and Croatia

²⁸⁷ For instance, the position of the Montenegrin Lobbying Association (MLA), in regard to the fact that one year after the adoption of a law on lobbying there are no registered lobbyists in Montenegro, is that lobbyists are not interested in registration, since according to the law, anyone can register to be a lobbyist. Precisely, the position of the MLA is that only people with university education should have an opportunity to register as lobbyists. However, this rule does not exist anywhere else in the world, and thus it is hard to give any rational explanation for such a claim, except that this association tends to create conditions where only a few could enter lobbying market, which from a capture theory perspective makes sense. This is, to some extent, incomprehensible since in one year there were no registered lobbyists at all, including those without university education. Thus, claiming that these persons could "harm the reputational capital" cannot be taken too seriously if there were no registrations of these people at all. The position of the MLA can be found at the following link: <http://www.cdm.me/drustvo/crna-gora/u-crnoj-gori-nema-registrovanih-lobist>. A similar rule existed in the Macedonian Law on Lobbying (2008), but the constitutional court ruled it was unconstitutional due to its discriminatory effects.

in greater depth could be useful in properly understanding the real motives that inaugurated the WB as a current leader in lobbying regulation in the European context.

3. Strengthening of the Rule of Law and Corruption Fighting as a Reason for Lobbying Regulation in the Western Balkans – is regulation of lobbying as relevant as it seems to be?

One can speculate that elevated corruption levels could be a reason for the regulation of lobbying in the Western Balkans. While developed European countries with a stronger rule of law have enough strong general legislation which seems to be sufficient to protect the integrity of the public sector and deter corrupt practices, the Western Balkans countries have, on top of existing anti-corruption regulation, introduced (or are about to introduce) additional legal mechanisms to improve the rule of law and enforcement of corruption fighting efforts. Does this motivation have any empirical foundation?

Analysis of this phenomenon can start by referring to the Transparency International's Corruption Perceptions Index (TI-CPI) from 2012, which offers the possibility of comparison of corruption perceptions in the SEE/WB and the rest of the EU (especially the northern EU). By looking at the figures, the results are in favour of such a claim, in the sense that high corruption risk definitely exists, and might be considered as one of the relevant reasons for adoption of lobbying regulations. For instance, Table 12 shows corruption perceptions for WB and some of EU countries:

Table 12 - TI-CPI Scores for North Europe and the Western Balkans

Rank (out of 176)	Country (EU)	Score ²⁸⁸	Rank	Country (WB)	Score
1.	Denmark	90	37.	Slovenia	61
4.	Sweden	88	62.	Croatia	46
9.	Netherlands	84	69.	Macedonia	43
13.	Germany	79	72.	Bosnia and Herzegovina	42 ²⁸⁹
17.	The United Kingdom	74	75.	Montenegro	41
22.	France	71	80.	Serbia	39

Comparing the scores of some of the developed EU countries with the ones from the countries from the Western Balkans, it is easy to conclude that the latter ones are still mostly far behind the first ones. Even though this index does not directly measure the strength of the rule of law, it can reflect the state of the actual enforcement of the anti-corruption rules which exist in the mentioned countries. Hence, it can be said that the Western Balkans probably suffer from a weaker rule of law and higher corruption levels, especially in comparison to the rest of Europe. This could also be a relevant point when it comes to the regulation of lobbying, as it primarily serves to prevent undue relations between private interests and the public sector representatives.

Another important question in this analysis is the relation of stronger rule of law and lower corruption levels (indicated by a high ranking on the TI-CPI) at one side, and existence of lobbying regulation on the other side. In other words – is lobbying regulation an inevitable part of an environment with a strong rule of law? Referring once again to the TI-CPI results (2012) indicates that the answer to this dilemma is probably

²⁸⁸ Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. A country's rank indicates its position relative to the other countries and territories included in the index.

²⁸⁹ It is interesting to note that the same score was obtained by Italy as well.

negative. Among the top twenty countries on the TI-CPI list, only five countries have some type of lobbying regulation and out of these just three have binding lobbying regulations. This means that lobbying regulation should not be perceived as a *condicio sine qua non* for a strong rule of law.

For high scores on the TI-CPI list, the key issue is likely enforcement and not just the formal regulatory framework. This conclusion arises from the fact that none of the mentioned EU countries from the left column of Table 12 actually has a proper law on lobbying²⁹⁰, even though they have scored high on the list. Exactly this fact implies that the perception of corruption is not so dependent solely on the presence of lobbying regulation, but rather on the level of enforcement of standard transparency rules, rules on the prevention of conflict of interest²⁹¹, and general strengthening of the rule of law.

A similar conclusion can be made if one just looks a cross-comparison of the Corruption Perception Index scores for the same countries before and after they introduced (or reinforced) lobbying regulations. In countries where the TI-CPI scores were high anyway, introduction of lobbying regulation could have been responsible for the slight increase (or even no increase at all) in the rankings a year after the introduction. However, Slovenia and Taiwan have been downgraded a year after they adopted lobbying laws (Table 13). This means there is not a very strong positive or negative correlation between the adoption of lobbying laws and corruption perception in observed countries. Thus, it is questionable if the introduction of lobbying regulations into legislative frameworks with already low TI-CPI scores could make significant improvement in transparency and accountability.

It is more likely that lobbying regulation could effectively serve its purpose only in the countries where basic *sunshine laws*²⁹² are implemented well, and the rule of law is already quite strong. In those systems (such as the USA, Australia and Canada) lobbying regulations were a useful upgrade which came on the top of the existing legal framework. However, introducing lobbying regulations in a system with a weaker rule of law did not seem to have any positive effect on progress within the TI-CPI scores.

²⁹⁰ Germany and France have some soft-rules which deal with lobbying within their parliaments, while Denmark and the UK are preparing to introduce lobbying regulations.

²⁹¹ Which many countries in the Western Balkans anyways have, such those from Montenegro: The Law on Prevention of Conflict of Interests, "Official Gazette of the Montenegro", No. 1/2009.

²⁹² This term is used in policymaking to reflect all legislation which improves transparency.

Certainly, this cannot be taken as proof of the inefficiency of these lobbying regulations, but at the same time it might indicate they did not make any significant positive contribution to score changes.

The conclusion that arises from this brief analysis based on the relation between lobbying regulation and the TI-CPI scores suggests that there is not such a strong influence of lobbying regulation on the perception of corruption. It can also be said that lobbying regulation is not the condition for a high TI-CPI ranking.

Table 13 provides an overview of the TI-CPI scores/rankings of several countries the year before the introduction of lobbying regulation and the year after:²⁹³

²⁹³ Comparison is made with a year after rather than with a year when the lobbying regulation was introduced. This should ensure at least one year of lobbying regulation in place, which means there was enough time for it to contribute to transparency and accountability effects.

Table 13 - TI-CPI scores for the year before and the year after the introduction of lobbying regulations

Country	Year of the introduction or improvement of lobbying regulation and the name of the regulation	The score on the year before adoption of lobbying regulation	The score on the year after adoption of lobbying regulation
Australia	The Australian Government introduced a Lobbying Code of Conduct and established a Register of Lobbyists, in force from 2008	8.6 (CPI 2007)	8.7 (CPI 2009)
The USA	The Honest Leadership and Open Government Act (HLOGA), P.L. 110-81, 2007	7.3 (CPI 2006)	7.3 (CPI 2008)
Canada	Lobbying Act, R.S.C., 1985, c. 44 (4th Supp.), in force from 2008	8.7 (CPI 2007)	8.7 (CPI 2009)
Hungary	Act XLIX of 2006 on Lobbying Activities, Government Decree 176/2006 (VIII. 14.) on the Implementation of Act XLIX of 2006 on Lobbying Activities	5.0 (CPI 2005)	5.3 (CPI 2007)
Lithuania	Law on Lobbying Activities No. VIII-1749 of 27 June 2000	3.8 (CPI 1999)	4.8 (CPI 2001)
Poland	Act of 7 July 2005 on legislative and regulatory lobbying	3.5 (CPI 2004)	3.7 (CPI 2006)
Slovenia	Zakon o integriteti in preprečevanju korupcije, Uradni list RS, št. 69/2011	6.4 (CPI 2010)	6.1 (6.1) (CPI 2012)
Macedonia	Zakonot za dopolnuvanje na Zakonot za lobiranje, Sl. vesnik na R. Makedonija, br.135/2011	4.1 (CPI 2010)	4.3 (4.3) (CPI 2012)
Taiwan	Lobbying Act, in force from 2007	5.9 (CPI 2006)	5.7 (CPI 2008)
Israel	Amendment No.25 to the Knesset Law, 2008	6.1 (CPI 2007)	6.1 (CPI 2009)

4. Magnitude of lobbying in Western Balkans as a reason for regulation

An additional important reason to mention, in the analysis of the motivation for an introduction of lobbying regulations, is the necessity for regulation based on the magnitude²⁹⁴ of lobbying. While corruption is perceived to happen more often in the Western Balkans, is the same true for the magnitude of lobbying? Do countries in the Western Balkans also deal with more lobbying than the rest of Europe, and thus, have an increased necessity to regulate lobbying? In other words, is the intensity of lobbying in the Western Balkans so strong that it requires lobbying to be regulated by special binding laws?

To answer this question – at least three elements have to be discussed:

1. Relation of lobbying and corruption – an economic standpoint
2. Size of the lobbying market
3. Political systems in place in the Western Balkans

4.1. Relation of lobbying and corruption – an economic standpoint

For understanding the necessity for regulation of lobbying in the Western Balkans, and for proper understanding of the magnitude of lobbying which might be the reason for regulation, it is essential to understand how lobbying and corruption interact together. Lobbying and corruption seem to be very similar to the general public, even as much as some people tend to say that lobbying is “legalized corruption”. However, these two are essentially different in terms of both law and economics. In terms of law, it is quite simple – bribery is a criminal offence.

Economically speaking, both lobbying and corruption have the same goal – an advancement of a narrower partisan interest. This interest does not necessarily have to be economic, but in the corporate world it is almost exclusively an economic interest.

4.1.1. Economic implications where lobbying and bribery are both allowed

The relation between lobbying and corruption should be firstly analysed through a hypothetical scenario where both are legal and equally available as strategic options for

²⁹⁴ Magnitude refers to level of lobbying which can be more precisely described either by number of registered lobbyists or amounts spent on lobbying. In the WB, both criteria could be hard to measure since there are no systematic data, except in Slovenia.

firms. A company which is interested in the protection or promotion of its economic position or interest by influencing decision-makers can choose between two – bribing or lobbying. The final choice will depend on several factors, but in this scenario lobbying tends to be less preferred than bribery.

At the beginning, let us look at lobbying as a method of economic signalling²⁹⁵. If a firm tends to send an informative signal to decision-makers (who decide on redistribution and the regulatory environment) about its importance for the national economy, this signal has to be adequately strong in order to be efficient. In terms of lobbying, it means that information transmitted towards government has to be reliable, specific, relatively novel and politically relevant in order to be influential. Further on, this means that corporate signalling (and corporate lobbying is practically just a type of signalling) is quite costly to perform, if it tends to be efficient.

This problem inevitably invokes large costs since sending an informative signal can be very costly, especially in a competitive environment. Thus, the cost of sending a signal is an important economic factor when companies choose between bribery and lobbying, in a hypothetical scenario where both are legal. Knowing this, companies would probably opt for bribery since it largely excludes classical signalling and transaction costs. Bribery in this case allows circumvention of the signalling process, which is an important factor in terms of costs.

Lobbying can be perceived as more costly than bribing from yet an additional perspective. Sending an informative signal is costly *per se*, but it becomes even more costly in a highly competitive environment where a large number of players/companies strive to lobby for scarce resources. One of the reasons why lobbying may become more competitive and include more players is transparency. As argued by *Denter, Morgan and Sisak (2011)*²⁹⁶, enhancement of transparency makes the lobbying battle harsher, with more resources dissipated and larger deadweight loss than society suffers from

²⁹⁵ Lobbying has been widely considered as a signalling mechanism even in political sciences. To see how the signalling model has been used to explain gaining political power, look at P. Bernhagen and T. Bräuninger, "Structural Power, Information Asymmetry and Public Policy: A Signaling Model of Business Lobbying in Democratic Capitalism," *2nd ECPR Conference* (2003). Also see *supra* n.9. and n.10.

²⁹⁶ P. Denter, J. Morgan, D. Sisak, *supra* n.26.

unproductive competition²⁹⁷. At the same time, authors argue that with higher competition in the lobbying arena, the probability that a firm with the most pressing interest wins becomes lower, and overall allocative efficiency in society simultaneously declines.

Hence, the insight in the relation of lobbying and corruption from these perspectives suggests that lobbying might be, strictly economically speaking, less desirable than bribery for firms. Also, bribery seems a better redistributive tool than lobbying from a social costs point of view. However, the authors have neglected other allocative problems that could arise from bribery such as hold-up problems²⁹⁸. Moreover it is an illegal activity which vastly changes the whole course of the discussion.

4.1.2. Economic implications where lobbying is allowed and bribery is prohibited

Now, let us consider another, more realistic scenario where bribery is illegal. In the previously described situation where companies would have an option between lobbying and bribery, the regulation of lobbying would not make any sense and would just make it more expensive due to increased transparency and newborn compliance costs. Even though previous theories suggest that bribery is economically more reasonable to lobbying, this would make sense only in a hypothetical scenario. In the real world environment, bribery is a criminal offence which significantly changes the flow of the analysis.

In cases where a criminal charge on bribery becomes proven in court, conviction is usually followed by serious sanctions. In terms of economics, these sanctions could be huge economic losses for a corporation which is found to be involved in bribery. Besides direct monetary losses which appear as administrative fines, indirect losses could also include losses associated with damages of reputation, loss of consumer trust, etc. These types of potential losses, thus, represent a very important factor when companies decide how to exert their influence. If a fine or the probability of detection is high enough, it

²⁹⁷ Even though this might be true, it has to be underlined that corporate lobbying expenditures still do not represent great costs in comparison with overall corporate costs of a similar nature. L. Drutman well notices that "Companies still spend a relatively small amount on politics (roughly \$3 billion) as compared to the \$200 billion a year they spend on advertising or the \$350 billion they spend a year on research and development." - L. Drutman, "The Business of America Is Lobbying," 2011.

²⁹⁸ B. Harstad and J. Svensson, *Supra* n.63.

becomes unlikely that companies would engage in bribery so easily as if there were no fines at all²⁹⁹.

Exactly this condition, according to Harstad and Svensson (2010) becomes crucial for firms to prefer lobbying to bribery. They argue that bribery is preferred only when the level of capital of the firm is small. But as a firm grows, the bribery “prices” grow as well and ultimately the firm will find it more optimal to lobby for regulation. Similarly to Campos and Giovannoni³⁰⁰ (2008), Harstad and Svensson (2006)³⁰¹ find that bribery and lobbying act as substitutes, and that firms are more incentivized to lobby when the amount of corporate capital is high, the political system is more predictable and the economy is stronger³⁰².

This comes as a consequence of the fact that firms cannot rely on enforcement of “deals” based on bribing, since bribery is legally un-enforceable, bureaucrats can always ask for new bribes, or they can simply be replaced by other bureaucrats. All these risks, including the cost associated with higher probabilities of detection under stronger rule of law, are moving the cost of bribery over the cost of compliance to regulatory regimes. In short, the effort to obtain an exemption from regulatory compliance becomes more costly than compliance itself.

Firms then have incentives to shift towards lobbying which has more permanent effects (changing of law or even deregulation) if it is successfully accomplished. In fact, firms that are engaged in lobbying are less likely to pay bribes – according to mentioned studies.

It is maybe worth mentioning that deregulation can happen from various reasons. From a public interest theory point of view, it can take place when the market failures diminish for instance (due to new technologies for example) and there is no more need for regulation. The motivation for deregulation can also come from the side of firms.

²⁹⁹ This is very general statement though and in cases of corruption it may be not fully correct. N. F. Campos and F. Giovannoni (Supra n.64) argue they should not be very high, especially in the poor countries. The reason is that high penalties lead to higher bribes and thus discourage investment incentives which may lead a country into a “bribing equilibrium”.

³⁰⁰ N. F. Campos and F. Giovannoni, 2006, Supra n.64.

³⁰¹ B. Harstad and J. Svensson, Supra n.63.

³⁰² “(b) firm size, age, ownership, per capita GDP and political stability are important determinants of lobby membership” - Supra n.63.

Equally, as firms show interest in "buying" regulations, under specific circumstances firms may be seeking deregulation as well. This might be the case in all those situations when conditions change over time, and the subject of regulation might even find more interest to be in an unregulated market for instance.³⁰³

The bottom line is that firms who seek to maximize their own benefits by influencing the regulatory framework can be equally interested in regulation, re-regulation and deregulation depending on what improves their profit maximization.

4.2. The size of the lobbying market

4.2.1. Macroeconomic preconditions for the development of a lobbying market

From the above-mentioned studies on the relation between bribery and lobbying, it can be argued that in cases of lobbying as a substitute to corruption in countries where the political system is predictable enough, the rule of law is becoming stronger, firms keep accumulating capital and national GDP has tended to grow. However, are those conditions satisfied in the Western Balkans?

In the last two decades, Western Balkans countries have made huge steps towards market liberalization, democratic and institutional capacity building and strengthening of the rule of law through EU accession processes³⁰⁴. At the same time, their economies have kept growing.

Table 14³⁰⁵ gives a useful overview of the development of the main economic trends for the Western Balkans countries. Quite positive economic trends have contributed to the creation of a generally better business environment, the arrival of multinational companies, an increase in FDI and accumulation of capital.

³⁰³ "At least four causes of deregulation can be derived from the Chicago theory of regulation. In the first place, shifts can come about in the relative political power of pressure groups, for example, as a result of the more efficient combating of free-riding, the more efficient use of media or as a result of special entrepreneurship (Ralph Nader). In the second place, deregulation can arise when politically effective groups believe that they can better promote their economic interests in an unregulated market, for example by self regulation. In the third place, deregulation can be the result of declining profits, so that the political yield of regulation declines. The fixing of prices or the introduction of entry restrictions in sectors consisting of multiple companies, such as airlines or freight, will result in competition taking place in other dimensions of the product. Competition in the area of service, such as the frequency of transport, will result in a decline in profits... Finally, deregulation can be accounted for by increasing deadweight costs." - J. A. den Hertog, "Review of Economic Theories of Regulation," *Discussion Paper Series / Tjalling C. Koopmans Research Institute* 10 (2010):p.3.

³⁰⁴ See: *Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans (Service Contract Ref. No 2010/ 256 638)*, 2013. pp.35-36.

³⁰⁵ *European Economy*, 2006.

Table 14 - Main Economic Trends, Western Balkans

		2000	2001	2002	2003	2004	2005
Real GDP growth	%	4.1	4.0	4.3	3.9	5.7	4.7
Inflation (average)	%	n.a.	24.5	6.7	4.5	3.9	6.4
Total revenues	% of GDP	n.a.	40.3	41.0	42.1	42.6	41.3
Total expenditures	% of GDP	n.a.	45.3	45.0	45.4	45.5	43.0
General government balance	% of GDP	n.a.	-5.0	-3.9	-3.3	-2.9	-1.7
Export	billion EUR	9.5	10.2	10.2	11.1	12.9	13.0
Import	billion EUR	19.4	22.9	26.6	29.0	32.5	31.8
Trade balance with world	billion EUR	-9.8	-12.8	-16.4	-17.9	-19.6	-18.8
Trade balance with EU	billion EUR	-6.9	-8.6	-10.5	-10.6	-11.7	-11.9
Current account balance	% of GDP	-3.9	-5.3	-9.8	-8.5	-8.8	-8.3
Foreign direct investment	million EUR	1.649	2.317	1.796	3.572	2.397	3.856

Besides the FDI increase in the West Balkans area and its contribution to GDP growth, there was an additional economic improvement in terms of participation of the gross domestic investment, as illustrated in Table 15:

Table 15 - Gross Domestic Investments in the SEE, The World Bank, IBRD: Western Balkan Integration and the EU, Edited by S. Kathuria, 2008

	2000	2001	2002	2003	2004	2005	Change 2000-05
SEE	19.1	20.5	20.5	21.9	23.5	23.5	4.4
Albania	27.4	28.8	26.1	25.4	26.1	23.5	-3.9
Bosnia and Herzegovina	17.0	15.6	16.9	16.9	15.5	15.9	-1.2
Croatia	21.8	21.8	22.3	29.6	29.9	29.9	8.1
Macedonia	22.3	19.1	20.6	20.0	21.4	20.0	-2.3
Serbia and Montenegro	10.9	19.5	11.7	11.4	17.3	14.2	3.2

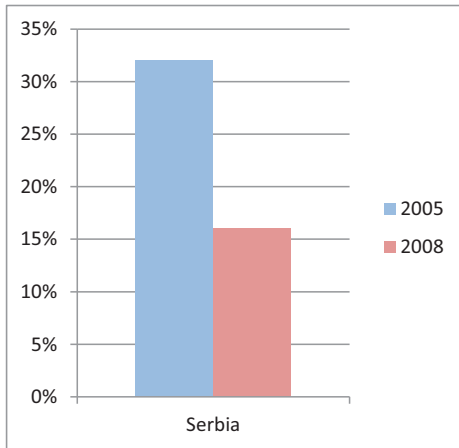
These figures clearly show that the WB economies have significantly improved in the last decade, and they were probably favourable to strategic decisions of the firms to engage in lobbying and avoid engagement in bribery.

Along with the economic growth, bribery prices have grown as well, which Harstad and Svensson (2010) claimed to be additional reason for the firms to strategically shift towards investing in lobbying.

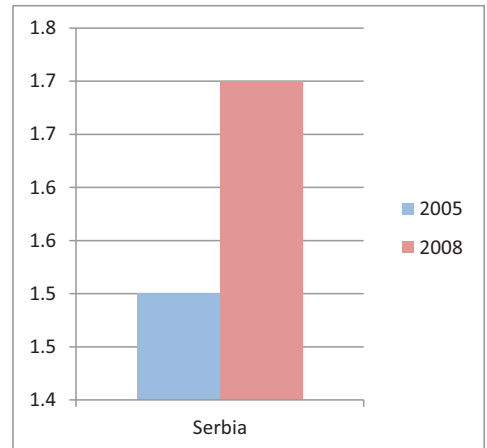
This tendency, where bribery prices grow along with the GDP, while at the same time firms report less frequent bribing, can be found in Serbia for instance³⁰⁶. It well reflects the above-mentioned theory and might be an important indicator that firms were actually incentivised to start shifting to lobbying from bribery. Graphs 3 and 4 illustrate changes in the “price of the bribery” from 2005 to 2008.³⁰⁷

³⁰⁶ In the same period, Serbia had continuous GDP growth rates: 5.4 (2005), 3.6 (2006), 5.4 (2007), 3.8 (2008); Source: World Bank (<http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>).

³⁰⁷ The data is taken from the World Bank report *BEEPS At-A-Glance 2008 Serbia*, 2010. January 2010.



Graph 3 - Bribe frequency: Percentage of firms saying unofficial payments are frequent (Left side)



Graph 4 - Unofficial Payments: Government Contracts - Percentage of contract value typically paid to secure a government contract, for all firm (Right side).

According to the data, firms reported that unofficial payments have decreased in the same period in which the price of bribery increased. In other words, the price of bribery increased while the frequency of bribery decreased significantly - by almost 50%. The increase in bribery prices was probably not the only reason for this trend, but it can be seen as one of the important reasons, especially from a point of view of above mentioned theory.

Economically speaking, a brief analysis shows that formal, economic conditions for the growth of lobbying have been mostly achieved in the WB. Strengthening of the rule of law together with economic growth, accumulation of capital, increase in bribery “prices” were some of the conditions whose specific interaction opened a door for development of lobbying market.

4.2.2. The size of the lobbying market

One of the important indicators of the magnitude of lobbying can be the size of the lobbying market. The size of the lobbying market is usually determined either by annual gross expenditures on lobbying (usually NGOs or governmental estimates) or by the number of registered lobbyists in cases where data allow this. The problem with the first method is related to its accuracy. Even in countries where lobbying is regulated and lobbyist have to disclose their finances publicly, it is still hard to capture the entire scale

of the lobbying market because reporting thresholds³⁰⁸ and imperfect enforcement always leave some room for error. On the other hand, the scope of the definition of "lobbyist" has a great influence on the estimation of the size of the market based on the number of lobbying players, and depending on who is required to register, the final number of lobbyists can change dramatically.

In Chapter III some figures were mentioned for countries where lobbying is already regulated. The number of lobbyists ranges from about 13,000 at the US federal level, around 5,500³⁰⁹ at the EU level³¹⁰ and in Canada, less than two hundred in France and Israel, and less than one hundred in Balkan countries³¹¹, with just one registered lobbyist in Macedonia,³¹² and zero in Montenegro, even a year after the adoption of the law³¹³.

The size of the market is definitely an important factor which has to be taken into consideration whenever regulation is discussed. It is an important factor which may be crucial, firstly in determining the proper RIA method, but also in determining how complex the regulatory structure is going to be and how many public resources are going to be needed for its implementation. For instance in Macedonia and Montenegro, it is very unlikely that laws on lobbying were necessary from an efficiency point of view, if there is only one registered lobbyist (Macedonia) or no registered lobbyists at all (Montenegro). Other mechanisms such as amending existing legislation could probably be a better solution.

The examples of Montenegro and Macedonia maybe deserve more discussion. There might be two main reasons for the weak results of lobbying laws and they might depend on the actual promoter of these regulations. If regulation was introduced on the initiative of the public sector, then it might be the case that the lobbying law was adopted in order to demonstrate the accountability of the state (or as a response to a

³⁰⁸ Only lobbying contracts above a certain value are reported.

³⁰⁹ *Supra* n.186.

³¹⁰ While some estimates go to about 100,000 lobbyists, including those who work indirectly on lobbying activities in the EU member states, D. Gueguen (2007).

³¹¹ Except Slovenia and Macedonia, where the membership level was determined by the official lobbying registries, in other WB countries the number of lobbyists is approximated to membership of respective lobbying associations.

³¹² Under the first law on lobbying which was additionally amended for its inefficiency by *Zakonot za dopolnvanje na Zakonot za lobiranje*, *Sl. vesnik na R. Makedonija*, br.135/2011.

³¹³ <http://www.antikorupcija.me>.

scandal),³¹⁴ but without a proper analysis of the lobbying market which practically does not exist, or is very small. Hence, the law was made just to calm the public concern but real effects were missing.

Another reason, in cases that law was demanded by lobbyists, is that they indeed strived to capture the regulator, but since the enforcement is still lacking³¹⁵ or it is very weak, they may still find it more optimal to lobby unregistered (Djankov et al. 2002), and keep being competitive by avoiding to comply with the regulation costs. In these circumstances, as argued previously, it might even be the case that lobbying is still being predominated by bribing as its substitute.³¹⁶

Hence, few or zero registered lobbyists after the adoption of lobbying laws would suggest that either the motivation for regulation may not have taken into consideration economic but rather social reasons, or that enforcement mechanisms are insufficiently functioning. Of course, this is not the list of definite reasons but rather an opinion as to possible reasons.

In essence, in the Western Balkans, the number of potential or registered lobbyists hardly exceeds 100 registrations per country, including individuals and lobbying firms. Due to political system constraints that are going to be described in the following section, it is very unlikely that even a majority of those will actually be in a position to practice lobbying permanently. This should be an important indicator of the size of the market and an important sign for those who structure lobbying regulation. That regulation should be efficient, but in terms of engagement of public expenditures it should be tailored to fit the size of the lobbying market. A small number of players, with insignificant financial impact, should be treated in as simple and least costly way as possible. Otherwise, regulatory costs could easily exceed the benefits and become an undesired social cost.

The second important issue to consider is the effect of a heavier regulative approach of entry. Lobbying regulation is also an entry regulation. If the regulatory approach is heavier, especially in a weak enforcement environment, it may potentially

³¹⁴ D. Lowery and V. Gray, "How Some Rules Just Don't Matter: The Regulation of Lobbyists."

³¹⁵ Nor Macedonia nor Montenegro have a special agency which enforces lobbying rules.

³¹⁶ See N.F. Campos and F. Giovannoni, "Lobbying, Corruption and Political Influence in Transition Countries"; B. Harstad and J. Svensson, "Bribe to Bend or Lobby for Change."

lead to the new substitution cycle from lobbying to bribery, or in the best case to illegal lobbying³¹⁷. If entry barriers are too high, this can indeed deter firms from complying with lobbying regulation, and re-incentivise some of them to alternative methods of influencing. Djankov et al. (2002), in their empirical work on the regulation of entry, find this phenomenon quite obvious: *"We find that heavier regulation of entry is generally associated with greater corruption and a larger unofficial economy, but not with better quality of private or public goods. We also find that the countries with less limited, less democratic, and more interventionist governments regulate entry more heavily, even controlling the level of economic development"*³¹⁸.

This finding could also be adapted to some extent to the lobbying regulation in the Western Balkans. Heavy regulation could be counter-productive and incentivize off-record lobbying and corruption in case entry becomes expensive. Actually, the entry itself does not have to be extremely expensive, but if the lobbying industry remains small and generates on average moderate income for lobbyists, as it is expected to be in the Western Balkans, then even moderate entry-requirements could be considered burdensome. In that case, engaging public resources for regular enforcement of lobbying regulations³¹⁹ could be even less justified.

As a conclusion in regard to the market size, lobbying in the Western Balkans is more in the initial than in a mature phase of development. Further development will be mostly connected to global economic trends and domestic economic growth, which is in any case very modest since 2008. Further on, a very complex structure of regulation of lobbying under current circumstances might not be the best idea since it can lead to additional public expenditures which could be hard to justify if the size of the market remains as small as it is. Moreover, the excessive regulation could, as discussed, create counter-incentives and redirect firms from lobbying to bribery or unreported lobbying.

³¹⁷ Which *per se* does not have to be corruption, but just any unreported lobbying which is sanctioned administratively or criminally, depending on national laws.

³¹⁸ S. Djankov et al., "The Regulation of Entry," *The Quarterly Journal of Economics* (2002): 1–37.

³¹⁹ Like in Canada where a specific public unit monitors and enforces lobbying regulation.

4.3. Political systems in the Western Balkans as a factor that influences the lobbying market

Lobbyings always takes place in a political system. The type and the dynamics of this system strongly influence the types and dynamics of lobbying³²⁰. This is why lobbying tends to be very different in different political systems. Generally, lobbying appears in legislative and executive branches, and only in the US does it appear in an indirect way in the judiciary, at the level of the Supreme Court of the US³²¹.

Hence, lobbying is actually limited to the legislative and executive branch. In the legislative branch lobbying, the target is in most cases the National Assembly, more precisely members of the National Assembly and senior staff who work on setting the agenda setting and drafting laws. In the executive branch, lobbyists strive to influence legislative initiatives, legislative drafting and enforcement of laws, by targeting ministries and independent agencies. In federal countries where decision-making is multi-layered, lobbying also follows the specific constitutional separation of powers and lobbyists are usually active in different levels of decision-making. The same holds for the EU, even though most of the European lobbyists are working in Brussels.

How do different political systems actually influence lobbying, and why is lobbying not incentivised by the Western Balkans' political systems? To answer this, one should first understand why the US has a larger lobbying industry than the EU. Maybe the most fundamental condition which allowed lobbying to grow as large as it is today is the friendliness of the US congressional voting system. Bennedson and Feldmann (2000) share this opinion as well: *“Key institutional feature to explain the different behaviour of interest groups is that in the congressional system, majority coalitions can differ across policy issues and transcend party lines, whereas in a parliamentary system the majority coalition is given for the duration of a government...We show that the flexibility of creating majorities in the Congress creates an incentive for interest groups to play an active role in the design of policy in the congressional system, while the voting cohesion in the*

³²⁰ M. Bennedson and S.E. Feldmann, “Lobbying Legislatures.”, 2002.

³²¹ L.A. Solowiej and P.M. Collins, “Counteractive Lobbying in the US Supreme Court,” *American Politics Research* no. 5759 (2009): 670-699; G.A. Caldeira and J.R. Wright, “Lobbying for Justice: Organized Interests Supreme Court Nominations, and United States Senate,” *American Journal of Political Science* no. October (1998): 499-523.

parliamentary system dissuades interest group's incentive to engage in information provision"³²².

In the US, the political majority required for passing a law is not as solid as in European style parliamentary systems³²³, where a coalition usually passes laws until it stops existing. In the US, members of Congress are not necessarily obliged to follow the voting direction of their party. Before they vote, they always take into consideration the sensitivity of the issue among their local electorate and their own state. This is why it is not surprising to have both Republicans and Democrats voting for the same bill, if it is in the interest of their state and their own electorate. In fact, their local electorate is the one which is important for re-election and this behaviour should not be surprising.

It is exactly this flexibility in majority building that creates a great channel for lobbyists to communicate their messages and transmit information. They know that convincing information may influence decision-making with undecided members of the Congress, which can affect the voting record at the end. On the other hand, in more rigid parliamentary systems where the majority usually remains stable or where government simply loses a majority, the room for influence is much more restricted.

The main problem in European parliamentary systems, with regards to lobbying potentials, is that voting decisions are made firstly within political clubs of parliamentary political groups, and usually later coordinated between leaders of political groups that have a parliamentary majority. Moreover, in cases where only one or two parties in a coalition have the required majority – decision-making is usually made at one or two places, and usually it is very conditioned upon the approval by a head of a political party. This at the same time means that lobbying becomes much more limited, and practically directed towards very few people. Under these circumstances, the voting majorities become more predictable³²⁴ and simultaneously they provide less incentives for lobbying. It also means that lobbyist could either shift their focus towards the executive branch, but only if it proves to be a more accessible point. Another alternative would be financing of the political parties which are in power, but this is in

³²² M. Bennesen and S.E. Feldmann, "Lobbying Legislatures.", 2002.

³²³ E. Helpman and T. Persson, "Lobbying and Legislative Bargaining," *Advances in Economic Analysis & Policy* 1, no. 1 (2001).

³²⁴ However, these majorities tend to have several equilibriums, according to E. Helpman and T. Persson (1998).

many countries regulated (contributions are limited or prohibited at specific time) in details, in order to prevent possibilities of corruption and conflict of interest.

What comes as a conclusion is that parliamentary systems that are common in Europe, as well as in the Western Balkans, tend to be less fertile grounds for lobbying, especially in the legislative branch. This becomes even truer in the case of the Western Balkans where political parties tend to have very efficient controlling mechanisms³²⁵ of their parliamentarians, and the entire parliamentary system suffers from the chronic democratic deficit since parliamentarians tend to be more representatives of their parties than of their electorate.³²⁶

This said, lobbying in the legislative branches in the Western Balkans does not have huge space to grow if the political system remains unchanged, and especially if economic growth does not return to levels from before 2008. This also means that the regulation of lobbying should acknowledge this fact and be better adapted to current lobbying magnitudes than to the potential ones. In other words, it should remain as simple and least burdensome as possible, but at the same time fulfil the main goals related to transparency improvement.

5. Lobbying in Serbia

In this section, the research will focus in detail on Serbia, and afterwards also on Montenegro, Macedonia and Slovenia. Currently, Serbia is working on the adoption of a law on lobbying, and for this reason it has been chosen as a country for a pioneer *ex-ante* application of the CII method. This application will demonstrate both policymaking and comparative academic use of the CII. But before applying the tool, it is important to examine the political and legal background of the lobbying regulation debate.

It is very difficult to estimate when the word "*lobbying*" was used for the first time in Serbia in its accurate meaning. However, the word "*lobbying*" has been in daily use in

³²⁵ The practice of so-called "Blank resignation letters" was prohibited from 2012 in Serbia. This practice meant that elected and appointed members of parliament (MP), who were elected under a political party list, had to submit their resignation letter to their parties at the beginning of their term. This letters had a blank space for the date, and political parties used them in cases when the MP started disobeying orders from the party's leadership or in if he/she decided to change the party. This method was introduced to prohibit political "selling" of individual MPs, but it is found to be undemocratic and even unconstitutional.

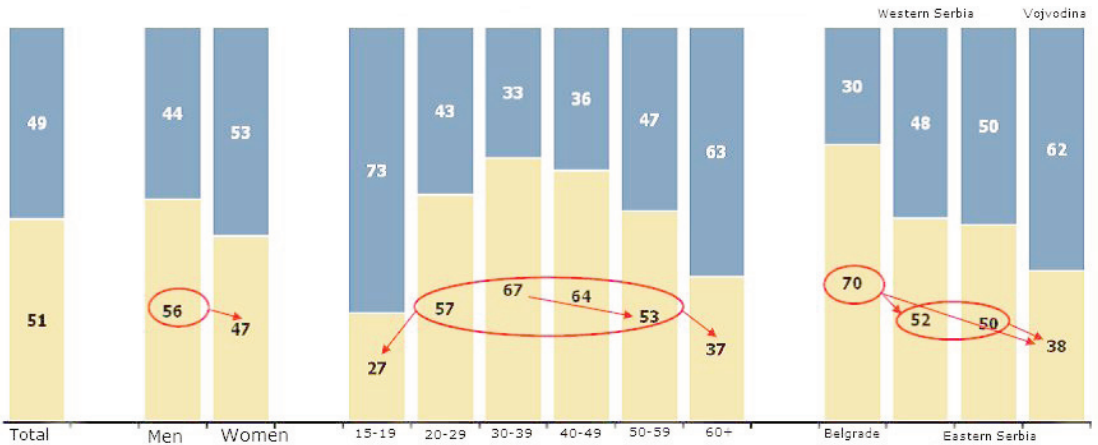
³²⁶ D. Rodin, "Dva Problema Hrvatskog Parlamentarizma," *Anali Hrvatskog Politološkog Društva* 2, no. 1 (2006).

the media, politics, public debates and Serbian society in general for at least fifteen years. In most of the cases, the term was abused and misunderstood, so the society still has quite an unclear perception of the real meaning of the word. This can be further illustrated by the results of the survey “*The Perception of Lobbying in Serbia*”:³²⁷

Have you ever heard of the term lobbying?

Results per gender, age and region (Belgrade, Western Serbia, Eastern Serbia and Vojvodina).

- 50% of the people have heard of term "lobbying".
- The highest percentage out of those who have heard for lobbying is in Belgrade and the lowest in Vojvodina.



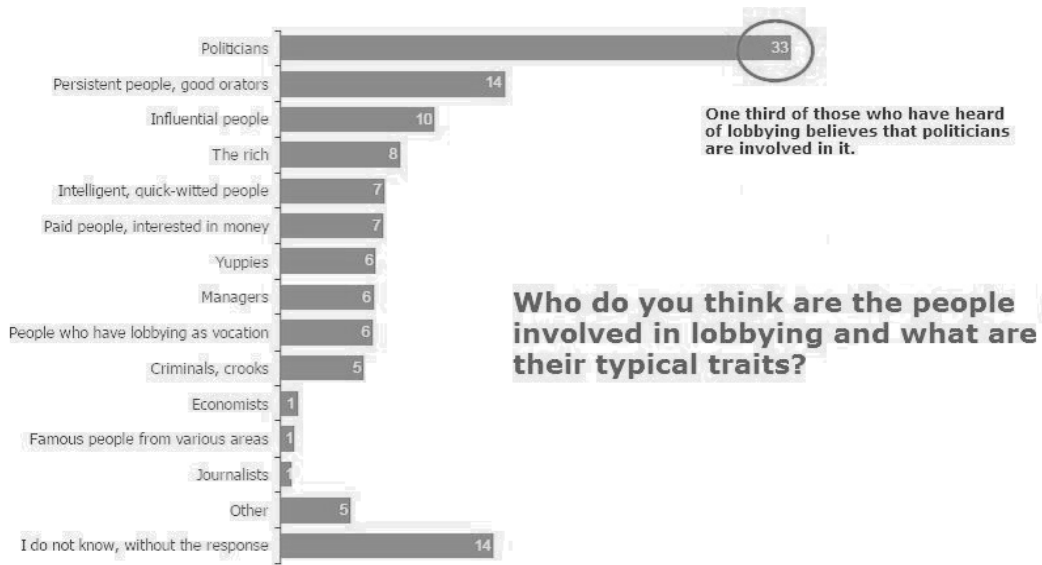
Graph 5

As we can see in Graph 5, in 2009 only half of the population had heard of the term lobbying, and most of them (70%) were living in the capital – Belgrade. However, in Vojvodina (northern region), the familiarity with the term was still quite low (38%). These indicators are unexpected to some extent, since Vojvodina tends to be the main generator of industrial and agricultural activity, with great participation in the national foreign direct investments portfolio. Moreover, it was the first region of Serbia to engage in direct lobbying in Brussels³²⁸ through the Office for European Affairs which was established in 2006. This means that Vojvodina started officially to lobby quite early in comparison to other parts of Serbia³²⁹, but still, not many people could say they even heard of lobbying.

³²⁷ *The Perception of Lobbying in Serbia* (Belgrade, 2009).

³²⁸ www.vojvodinahouse.eu.

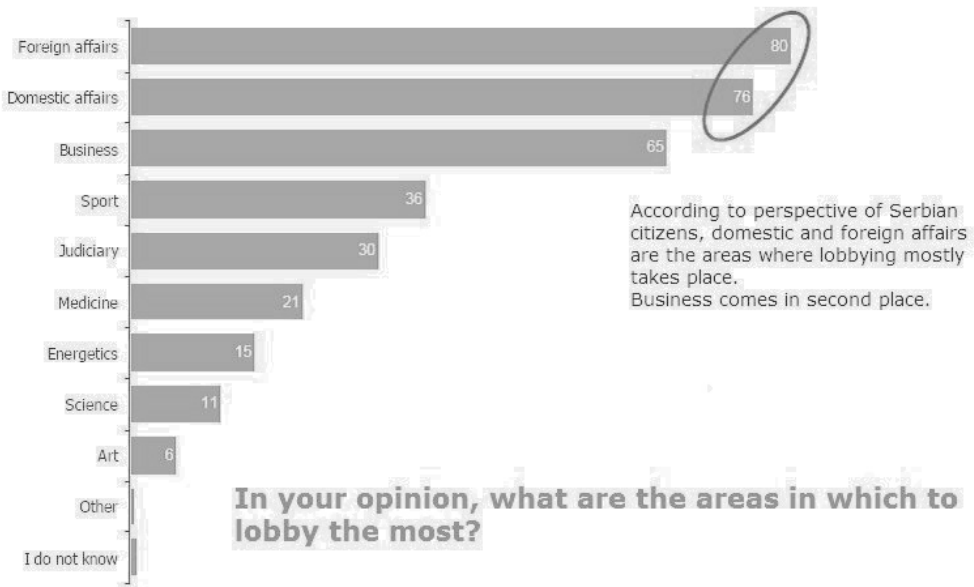
³²⁹ Such as city of Nis (established in 2011) and city of Kragujevac (established in 2011).



Graph 6

Graph 6 is showing the public perception of the main subjects engaged in lobbying. Most of the people have attached politicians with lobbying (as those who lobby), which indicates that the public has an incomplete image of the process. Nevertheless it is true that politicians are involved in lobbying on the side of the demand, but it seems that the public has failed to recognize that fact. This means that they probably do not distinguish the role of those who lobby and those who are lobbied, and it is most likely they believe that the politicians are actually those who also do lobbying.

Graph 7 reflects public opinion in regard to areas where lobbying usually takes place. Serbian citizens mostly associate lobbying with foreign and internal policy affairs,



Graph 7

and immediately after comes business. A surprising fact is that quite a large percentage of associates lobby within the judiciary, which in continental legal systems (where Serbia belongs to as well) should definitely not be an arena for lobbying.

This can be to some extent explained by the fact that corruption is still present in the Serbian judiciary, and that citizens often misperceive lobbying and equalize it with corruption in the judiciary. In Graph 8 this can be partially confirmed since 35% of people believe that lobbying is actually just a nice term for “fishy” activities. Even though this was quite imprecisely defined, the term “fishy”, which is used in this survey, can be



Graph 8

easily correlated with activities that are not ethically or even legally just.

The results of the survey generally indicate that in Serbia there is a low understanding of the concept of lobbying, and it also seems that lobbying is not on the top of the mind or concerns of the Serbian population. Thus, the only reason why Serbia decided to regulate lobbying is hardly the high public concern on the possible negative effects of lobbying, but rather a combination of reasons where the public concern plays just a partial role.

6. Legal and institutional framework for lobbying in Serbia

In this section the actual legal and institutional circumstances in Serbia, which are important for understanding the idea of regulation of lobbying and the actual capacities of the state to address this task properly will be described. Firstly, the legal framework will be addressed through an analysis of the relevant legislation. The next step will be an evaluation of the regulatory impact assessment capacity of Serbia, and finally the motivation for the introduction of lobbying regulation will be examined.

6.1. Constitutional foundations for lobbying in the Republic of Serbia

The Republic of Serbia is a parliamentary democracy. It has an executive branch with a government and president, a unicameral parliament (the National Assembly) and an independent judiciary. In order to understand the position of lobbying in the Serbian legislative and political system, one should firstly refer to the Constitution of the Republic of Serbia from 2006³³⁰.

Lobbying, of course, has not been mentioned directly in the Constitution. However, as lobbying is nothing more than a protection of interests, one should look at the constitution from this perspective, and look for the rules which provide a general legal basis for such activities. Generally speaking, some of most famous constitutional articles that provide a foundation for lobbying are the right of assembly and the right of petition. In this sense, the Serbian constitution might be considered as lobbying-friendly. More precisely, the following articles of the Constitution of the Republic of Serbia provide general legal foundations for the exercise of lobbying in Serbia:

Article 51 – Right to information

Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right.

³³⁰ The latest Constitution of the Republic of Serbia was adopted on 30 September 2006. Due to the specific political circumstances at the moment of adoption, this constitution was additionally approved by the people in October 2006. For more on Constitutional law and lawmaking in Serbia see: D. Milovanovic, N. Nenadic, and V. Todoric, *Survey on the Improvement of the Legislative Process in the Republic of Serbia* (Belgrade, 2012).; *Law Drafting and Legislative Process in the Republic of Serbia - An Assessment*, 2011.; V. V. Rakic, M. Reljanovic, and A.K. Bojovic, "Judicial Reform in Serbia 2008-2012," *Ssrn PAPERS* (2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262349.; R.Markovic, *Ustavno Pravo i Politicke Institucije* (Belgrade: Sluzbeni glasnik, 1998).

Everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law.

In the context of lobbying, free access to publicly relevant information is crucial. Everyone, according to Article 51, has the right to be informed about the political, social and economic strategies of the government, public expenditures, lawmaking process, etc. This article officially states that the public sector is open for information exchange, and that everyone has a right to be informed about actions that the country took or is about to take, except in situations where public access is limited (confidential information), which is regulated by special laws.

This possibility is essential since lobbying largely consists of accurate knowledge of information related to the public sector - mainly about its regulatory activity, distributional policies, labour laws, taxation, entry regulation, etc.

Article 54 – Freedom of assembly

Citizens may assemble freely.

Assembly held indoors shall not be subjected to permission or registering.

Gathering, demonstrations and other forms of assembly held outdoors shall be reported to the state body, in accordance with the law.

This article, together with Article 56, provides the legal foundation for what is called “grassroots lobbying”³³¹. This form of lobbying means that pressure is exercised on the decision-makers from the local communities, which act in an organized way. Some of the actions that could be considered as grassroots lobbying actions are organized public events, protests, performances, etc. All these activities are legally permitted within freedom of assembly.

Article 55 – Freedom of association

Freedom of political, union and any other form of association shall be guaranteed, as well as the right to stay out of any association.

Associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law.

Secret and paramilitary associations shall be prohibited.

Constitutional Court may ban only such associations the activity of which is aimed at

³³¹ J. Milyo, *Moving down the Grassroots*, (Institute for Justice, 2010).

violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred.
Judges of Constitutional Court, judges, public prosecutors, Defender of Citizens, members of police force and military persons may not be members of political parties.

Article 55 provides an important legal foundation for interest representation, especially representation of the organized interest. Freedom of association allows individuals, professionals, corporations and other subjects to act in an organized way in regard to their common interest. All professional associations, NGOs, trade unions, syndicates and other forms of associations derive their legitimacy from this article of the Constitution.

Article 56 – Right to petition

Everyone shall have the right to put forward petitions and other proposals alone or together with others, to state bodies, entities exercising public powers, bodies of the autonomous provinces and local self-government units and to receive reply from them if they so request.

No person may suffer detrimental consequences for putting forward a petition or proposal.

No person may suffer detrimental consequences for opinions stated in the petition or proposal unless they constitute a criminal offense.

Article 56 is yet another fundamental constitutional provision related to lobbying. The right on petition provides legal foundations for the protection of specific interest. Each individual, and moreover any group within a society, has a right to communicate their opinion and interest to the public sector and ask for improvement of its social, economic or political position within the society.

The above-mentioned articles 51, 54, 55 and 56 represent core provisions of the Constitution of the Republic of Serbia which provide room for the legal exercise of lobbying within the Serbian institutional and political system. Thus, even though it is not yet regulated and acknowledged as a special profession, there are no constitutional barriers for further regulation of lobbying as a profession and specific processes for the promotion of interest.

6.2. Legislative process and consultations with civil society in Serbia

Nowadays modern democracies tend to be as transparent as possible, and allow wider participation of citizens and various organizations in the creation of public policies and lawmaking. Similarly to the EU, Serbia at least officially welcomes the participation of the civil sector in rulemaking. Official channels for civic participation in lawmaking do not fully reflect the actual lobbying pressure on decision-makers, but they reflect the potential for lobbying activity development. Thus, an understanding of lawmaking procedures of the Government and the National Assembly are crucial for understanding both the potential for lobbying and also its actual level within each of the institutions. Hence, for a better understanding of this approach, it is necessary to understand how laws in Serbia are actually made and from where the legislative initiative comes.

According to the Constitution of the Republic of Serbia³³², the ability to propose legislation belongs to the National Assembly, Government, assemblies of autonomous provinces or at least 30,000 voters. Within the same article, this right is delegated to the National Bank of Serbia and the Civic defender (Ombudsman), but only within their special competences.

6.2.1. Legislative role of the Government - preparation of legislative proposals

From a purely legislative competence point of view, it can be said that the institutional framework in Serbia generally incentivizes lobbying. This is especially true in the case of the executive branch, which is the most important legislative initiator in Serbia. As a matter of fact, the Serbian Government is accountable for about 98% of all legislative initiatives in the country, according to estimates of the OSCE Mission in Serbia³³³. Such dominance in agenda setting makes the executive branch the most important target for lobbyist in Serbia, since the Government comprises both important legislative roles – an important role in lawmaking (initiating primary legislation)³³⁴ and the implementation of adopted laws (secondary legislation or subordinate legislation).

³³² Article 107 of the Constitution of the Republic of Serbia.

³³³ *Law Drafting and Legislative Process in the Republic of Serbia - An Assessment*. p.20.

³³⁴ In accordance with the Annual Action Program of the Government.

The task of adopting legislation is exclusively delegated to the National Assembly, which is the only institution that has primary legislative competence, while the Government has the ability to create subordinate legislation which accelerates and advances implementation of the primary legislation. Of course, subordinate legislation has to comply fully with the primary legislation, which is defined in the Constitution by articles on the hierarchy of legal norms³³⁵.

The Government initiates legislation within the competences of each ministry, where special drafting groups work on legislative proposals. Those groups are usually composed of the internal staff of the ministries and external members³³⁶ who are engaged on an ad-hoc basis³³⁷. Proposals that are created within these groups are afterwards sent to the General Secretariat of the Government, which has to determine that all formal conditions defined by the Government rules of procedure have been fulfilled. If this check proves positive, the proposal is forwarded to one of four special committees³³⁸ of the Government, which have to give an opinion on proposals within their respective competences.

A competent special committee of the Government which was appointed to deal with the proposal can, at the behest of the respective working group, initiate the process of public consultations³³⁹. This process is not initiated automatically for all proposed legislation, but only for legislation which is perceived to be of a greater public concern. The process of public consultation starts after its public announcement on the official webpage of the initiating Ministry and the webpage of the E-government. Within this

³³⁵ Article 145 of the Constitution of the Republic of Serbia.

³³⁶ Which opens room for very effective lobbying since representatives of interested social and economic groups might be included in this process. Of course, the composition of the task force groups is decided by a discrete decision of the head of the task force group.

³³⁷ It is also interesting to mention that the delegation of the legislative initiative to the individual ministries does not always reflect the nature of the legislation in the Western Balkans. A good example of this is the fact that the drafting of the law on lobbying in Serbia is delegated to the Ministry of trade and telecommunication while the same task in Croatia falls under the ministry of Justice (Independent Sector for Suppression of the Corruption).

³³⁸ Poslovnik Vlade Republike Srbije (Government rules of procedure), article 25, paragraphs 1, 2, 3, 4.

³³⁹ Poslovnik Vlade Republike Srbije (Government rules of procedure), article 41. The public consultations are generally open to everyone, not only industries but also to NGOs, unions, academia, etc. This is essentially an important feature of the process of public consultations as it suggests that there may be a competition between opposed groups, which per se, does not have to produce negative outcomes and it may even lead to an efficient regulation (G. Becker 1983). This does not mean that resources spent on lobbying are not wasted, but rather that competition among pressure groups has a beneficial impact on regulatory activity.

process, all relevant information and materials regarding the proposal are publicly available, and the initiating Ministry decides on the deadlines and methods for public participation, which in Serbia does not have a universal character in terms of the procedure on participation. After the expiration of the public consultation period, the initiating Ministry has to publish a report on the outcomes of the public consultation within a period of fifteen days.

In cases where public consultation is not required, all relevant material and documents should be made publicly available no later than before the drafting group officially recommends the Government to proceed with the legislation³⁴⁰.

6.2.2. Legislative role of the National Assembly – adoption of laws

The Government, after preparing a proposal with all necessary follow-up materials and inter-ministerial consultations, passes the proposal to the National Assembly.³⁴¹ From this step, the entire procedure is regulated by the Rules of procedure of the National Assembly³⁴². This act defines that the government (or another legitimate initiator) submits their proposals to the National Assembly in the form of a complete draft together with an explanatory document. Besides specific parts of the explanatory document³⁴³, this explanation should contain the impact assessment study, if required.

Upon the submission of proposals, if the President of the National Assembly acknowledges that all formal conditions for submission are fulfilled, the proposal will be

³⁴⁰ Poslovnik Vlade Republike Srbije (Government rules of procedure), article 42.

³⁴¹ The legislative procedure explained here is the regular legislative procedure. The Rules of the National Assembly also recognize the abbreviated procedure (Article 93) and the urgent procedure (Article 167).

³⁴² Poslovnik Narodne Skupstine Republike Srbije (Rules of procedure of the National Assembly) - [http://www.parlament.gov.rs/narodna-skupstina-/vazna-dokumenta/poslovnik-\(precisceni-tekst\)/uvodna-odredba.1330.html](http://www.parlament.gov.rs/narodna-skupstina-/vazna-dokumenta/poslovnik-(precisceni-tekst)/uvodna-odredba.1330.html).

³⁴³ Rules of procedure of the National Assembly, Article 151: *“The rationale shall contain the following: the constitutional, and/or legal basis for adopting the regulation; the reasons for adopting the regulation, in particular: an analysis of the current situation, problems that shall be resolved by the regulation; objectives to be attained by the regulation, the discussed options for resolving the problems without regulation adoption and the answer to the question why the regulation adoption is the best way to resolve the problem(s); explanation of the basic legal institutions and individual solutions; an estimate of the funds necessary to implement the regulations, including the sources of those funds; the general interest owing to which the retroactive effect is being proposed, if the Bill contains provisions with retroactive effect; reasons for adopting the Bill by an urgent procedure, if an urgent procedure has been proposed for the adoption of the Bill; reasons for proposing the regulation to come into effect before the eighth day following its publication in the Official Gazette of the Republic of Serbia; a list of the provisions of the valid regulation which are being amended (by crossing out the part of the text being modified, and inserting the new text in capital letters).”*

passed to the competent parliamentary committee, and the proposal shall be promptly (at least 15 days later) formally discussed within the assembly. With regards to competences of parliamentary committees, the proposal will be sent to the most competent one or even a few of them at the same time. In some situations, several committees will address the proposal from different perspectives. This process usually involves representatives of the proposers which can participate at the sessions.

Among regular committees, the most important are the Constitution and Legislative Affairs Committee and the Committee on Finance, State Budget and Control of Public Spending, and they will normally be expected to provide information on all proposals. In addition to them, other relevant committees will also provide their opinions via appointed *rapporteur*. Moreover, the National Assembly may establish if necessary inquiry committees which are composed of parliamentarians or inquiry commissions which may involve external participants³⁴⁴.

The main purpose of the work of the committees is to assess if the proposal is in accordance with the constitution and other legislation, to clarify the issues that might appear in terms of interpretation of some articles, to propose amendments and to give a principled opinion on the proposal.

The proposal is afterwards set for the debate in principle, on the plenum of the National Assembly. Between the debate in principle and a debate in detail, the competent committee might decide to submit additional amendments to the National Assembly. The second stage is the debate in detail, which is the final stage before the voting of the sitting National Assembly, which does not have to take place consequently after the debate in detail (in cases the proposal has to be re-framed and harmonized based on the debate). After voting, the president of the National Assembly is required to pass the law to the President of the Republic for its promulgation. Laws that are promulgated are afterwards published in the Official Gazette and they come into force no earlier than 8 days from the day of publication, or even earlier in specific cases of necessity³⁴⁵.

³⁴⁴ Rules of procedure of the National Assembly, Article 68

³⁴⁵ The Constitution of the Republic of Serbia, Article 196.

From the brief description of the legislative procedure with the main milestones of the process, the roles of the government and the parliament, it can be noted that both institutions provide some room for lobbying. Specifically, within the Government which initiates legislation there is room for influence during the proposal drafting process. The influence might be exercised by direct participation within working groups (but the places are very limited and attributed by the discrete decision of the president of the working group). Another way is participation through public consultations, but the level of influencing in this way might not be as effective as the previous one, especially due to the lack of standardized and precise procedures for public participation. Moreover, consultations with civil society are not always available, and even if they are, the time and method for participation are limited³⁴⁶. In fact, the available data suggest that in the best case, consultations took place in up to 20% of the Government bills, while the average time dedicated to this process was from 30 to 45 days³⁴⁷.

As far as the National Assembly is concerned, the room for lobbying certainly exists, but it is expected to be much more limited. The main reason is that parliamentary committees do not rely much on external participation. Secondly, influencing members of the parliament through the inquiries and individual meetings would probably remain ineffective since there is a strong party discipline which makes their voting more of a symbolic process. However, access to a head of the engaged committee could be a better channel since this person takes most of the responsibility for the eventually proposed amendments. This position is especially powerful within the Constitution and Legislative Affairs Committee.

7. Regulatory Impact Assessment procedure in Serbia

An important issue to address here is the role of the regulatory impact assessment procedure, which is under the competence of the Government. Articles 40 and 46 of the Government rules of procedure state that the Ministry has duty to provide, together with other information defined in article 39, an analysis of the effects of the proposed

³⁴⁶ Similar conclusion can be also found in the Report: Law Drafting and Legislative Process in the Republic of Serbia, An Assessment, December 2011, page 43.

³⁴⁷ Supra n.330, p.44.

legislation. The impact assessment should contain a definition of the target group(s) addressed by the legislation, estimates of the involved social costs, cost and benefits ratio of the legislation, general market and antitrust effects of the legislation, information on participation of outside parties to the drafting and estimates of the resources that are necessary for the implementation.

However, the regulatory impact assessment procedure is not mandatory. In cases where the proposing ministry estimates that it is not necessary to have an impact assessment for the proposed legislation, it only has to formally explain the reasons for that decision, and submit it together with an opinion of the Office for Regulatory Reform and Regulatory Impact Assessment, which confirms that the RIA is not necessary in that particular case.

Official RIA methodology was introduced in Serbia in October of 2004, and it was inspired by the OECD recommendations on RIA procedures. The regulatory impact assessment analysis, which a competent ministry has to submit with the proposal, has to be completed by the internal staff of the ministry following the methodology of the Office for Regulatory Reform and Regulatory Impact Assessment³⁴⁸. This methodology is in the details explained within the “RIA toolkit”, which serves as a guidebook for staff who work on proposal writing within individual ministries.

The quality assurance process for RIAs conducted within ministries is delegated to the secretariat of the Council for Regulatory Reform. This means that ministries submit their preliminary RIAs to the Council for Regulatory Reform for an opinion on the quality of the assessment. The Council will assess the quality of the analysis, suggest possible improvements and finally give a positive opinion on it, before returning it to the proposer.

The RIA in Serbia is based on two fundamental principles:

Proportionality principle - As discussed in Chapter II, an effective RIA should be as proportionate as possible to the importance and expected effects of the legislation. In Serbia, this principle also plays an important role, since detailed analysis is only necessary for legislation that has a significant impact on the environment, public health, consumers or competition. In addition to these cases, a detailed RIA is recommended

³⁴⁸ www.ria.gov.rs

when the initial immediate compliance costs are expected to exceed 500,000 EUR, or 5,000,000 EUR cumulatively for the first five years.

Precaution principle – This principle suggests that the scope and the level of the analysis should correspond to the estimated risk of undesired effects that may result as a consequence of the introduction of the legislation. This principle is especially important in the areas where it is highly difficult to assess the risk of the effects of certain legislation on the environment, population, wildlife, etc.

In regard to the possible assessment of regulation of lobbying in Serbia, it is highly questionable what type of RIA analysis will be conducted in this case. Moreover, it is questionable if there will be a RIA at all, if the proposer decides not to submit it and, this choice gets approved by the Office for Regulatory Reform and Regulatory Impact Assessment. In any case, since the lobbying market in Serbia tends to be small, the only RIA that could eventually be created would probably not be a profound one, especially due to the nature of the benefits of lobbying regulation that are mostly discussed in a non-monetary and non-economic perspective³⁴⁹. Moreover, the idea for the adoption of such legislation in Serbia is not solely motivated by public interest, but also by the private interest of the lobbying industry.

8. Anti-corruption bodies and legislation in Serbia

Whenever the regulation of lobbying is discussed, one must take into account the fact that very few countries in the world have actually regulated this process directly. Nevertheless, most European countries still have not directly regulated lobbying. One of the reasons for this is certainly the belief that a standard anti-corruption and conflict of interest-regulation are sufficiently effective tools to counterbalance the possible negative effects of lobbying. And indeed, as shown in the previous analysis of the Transparency International's CPI, most of these countries have low corruption perceptions, even though they have not regulated lobbying.

³⁴⁹ This view comes from the officially stated reasons for lobbying regulations. Of course, the benefits from introduction of lobbying regulation could be observed also in an economic dimension, depending on the approach (as discussed on page 13.)

There is yet another category of countries, which stands in between those who have special lobbying legislation and those who just have well-enforced standard anti-corruption legislation. For instance, Israel and Slovenia have added an additional part to already existing legislation to specifically address lobbying. In Israel, this was done by amending the law on the Knesset (National Assembly of Israel), while in Slovenia it was done by upgrading the Law on Integrity and Corruption Prevention, Section VIII³⁵⁰.

The Republic of Serbia, like most countries, until now has relied on standard legislation for corruption prevention and prevention of conflict of interest. The enforcement of existing legislation is divided within a complex framework of institutions, agencies and public bodies who deal with different aspects of corruption prevention, prevention of money laundering, auditing and public procurement. The most important bodies in the Republic of Serbia, from the lobbying regulation dimension, are the following ones:

- Anti-Corruption Agency³⁵¹ was established in 2008; it is the most notable among the bodies and it is directly accountable to the National Assembly. The main competences of this body include: supervision over the implementation of the National Strategy for Combating Corruption, resolution of conflict of interest, establishes and maintains property register for public officials, creates guidelines and strategies for integrity improvement for both the public and the private sector, monitors funding of political parties, etc.
- Anti-Corruption Council³⁵² is an expert council established by the Government and has an advisory role to it. This consultative body proposes different measures for corruption fighting and publishes reports on the progress of corruption fighting in Serbia.
- Public Procurement Office³⁵³ was established in 2002 as an independent governmental agency. The main task of this body is to *"help the establishment of sound procurement procedures and practices ensuring that public funds are spent in*

³⁵⁰ *Zakon o Integriteti in Preprečevanju Korupcije (Slovenian).*

³⁵¹ www.acas.rs.

³⁵² www.antikorupcija-savet.gov.rs.

³⁵³ www.ujn.rs.

an efficient and transparent way, thus complementing the government's overall drive in containing corruption”.

All these bodies, and especially the Anti-Corruption Agency, are in charge of monitoring, and to some extent implementation, of Serbian “sunshine” legislation. Among the most important legislation in this sense is the National Strategy for Combating Corruption³⁵⁴, the Anti-Corruption Agency Law³⁵⁵ and the Law on Financing Political Activities³⁵⁶.

However, difficulties in the enforcement of these laws and a lack of institutional capacity and integrity within the Anti-Corruption Agency³⁵⁷ are retarding the corruption-combating process, which still has not brought Serbia to the group of countries with lower corruption levels. Hence, these institutional mechanisms have not proven to be as effective, which confirms Serbia’s position on the Transparency International CPI.

9. Motivation for regulation of lobbying in Serbia – transparency or something else?

As discussed in previous chapters, transparency and accountability are generally perceived as the most relevant reasons for the introduction of lobbying regulation. Those reasons are undoubtedly related to the improvement of democratic procedures and the integrity of the public sector in a country. Similarly, lobbying is also perceived in Serbia as an activity that might negatively affect the integrity of the public sector, and the state was officially the first to announce regulation of this process (through the National Strategy for Combating Corruption from 2005) in order to prevent assumed negative effects of interest groups on the integrity of the public sector.

These potentially negative effects still raise significant concerns within various levels of public, private and NGO sectors: *“The interviewees also noted that specific*

³⁵⁴ Created by the decision of the National Assembly from 08.12.2005.

³⁵⁵ Official Gazette of Republic of Serbia No 97/2008 and 53/2010.

³⁵⁶ Official Gazette of Republic of Serbia No 43/2011.

³⁵⁷The Council of the Anti-Corruption Agency has, for instance, dismissed the Agency director Z. Markovic unanimously by its decision from 09.11.2012. This affair seriously compromised the work of the Agency since the director was accused of attempting to secure hold of the state-owned apartment that was at the disposal of the Agency.

*provisions of a number of laws were primarily enacted to satisfy the interests of the stakeholders or specific private interests, rather than to realise public interest. There is also the related fact that the matter of lobbying has not been legally regulated; this raises the issue of e.g. the nature, stage and way in which the stakeholders are participating in the legislative process. In addition, law does not define the remit of state administration authorities in developing this law. Finally, another factor impacting on the course and results of the legislative process is its non-transparent element, i.e. the party coalition talks and agreements; the political accountability of these subjects for the (political) decisions taken within the legislative process needs to be emphasised in that respect."*³⁵⁸

The regulation of lobbying was mentioned for the first time in the National Strategy for Combating Corruption (2005), which was adopted by the National Assembly. Chapter II of the Strategy introduces a set of recommendations for combating corruption within the political system. One of those recommendations was directly dedicated to the necessity of introducing lobbying regulations: *Enacting of law on lobbying and ensuring transparency in lobbying*. This clearly proves the motivation of the state to work to improve transparency procedures through the regulation of lobbying.

Another relevant source which confirms this motivation can be found in a follow-up document of the Strategy. That is the Action Plan for the Implementation of the National Strategy for Combating Corruption. This document represents a more detailed plan with exact methodologies for the implementation of the recommendations from the Strategy. This document states that, by at least 2008, the following tasks should have been done:

The Government and the National Assembly are responsible for

- Establishing a working group for the creation of the Lobbying Law draft, within a competent ministry of the Government
- Establishing a set of responsibilities for the Serbian Lobbying Association

³⁵⁸ D. Milovanovic, N. Nenadic, and V. Todoric, *Survey on the Improvement of the Legislative Process in the Republic of Serbia*.p.45.

Lobbyists³⁵⁹ are responsible for:

- Formal establishment of the Serbian Lobbying Association
- Introduction and adoption of the code of conduct for lobbyists

The Action Plan acknowledges that potential obstacles to the implementation of the stated activities might be created by lobbyists who are opposed to regulation. At the same place, this document outlines the list of goals that have to be achieved by implementation of the planned activities. In other words, the official motivation for the adoption of the Law on Lobbying, according to the Action Plan is:

- Decrease the risk of corruption in the public sector
- Increase in transparency levels and an upgrade of transparency procedures
- Creation of uniform standards for the professional conduct of lobbyists

It is not hard to notice that this Action Plan has not been successfully implemented, especially in terms of the deadlines. Actually, the activities that were under the competence of the state have only been partially completed (the working group for drafting was established within the Ministry for trade and telecommunications), while lobbyists established the Serbian Lobbying Association (SLA)³⁶⁰ in 2009, based on the recommendations from the National Strategy and the Action Plan. The SLA has, promptly upon its establishment, introduced a mandatory code of conduct for its members³⁶¹.

The fact that the private sector has fully met the expectations defined in the Action Plan, while the public sector showed only symbolic interest, suggests that the private sector represented by the SLA has a more profound motivation for the adoption of lobbying regulation than the public sector, which is not generally expected to happen. However, in the case of Serbia, there might be several possible explanations for this:

1. Reputation capital
2. Restriction of entry

³⁵⁹ It is difficult to determine who was held responsible for this part of the implementation of the Action Plan, since at that moment there was no official association of lobbyists in Serbia.

³⁶⁰ www.drustvolobistasrbije.org

³⁶¹ <http://www.drustvolobistasrbije.org/eticki-kodeks.html>

The first explanation is more of a general reputational nature. Most of the lobbyists around the world have acknowledged that bad reputation negatively influences their profits, and this is why they generally³⁶² do not oppose some sort of regulation. In the lobbying sector, even one scandal can severely damage the reputation of the entire profession³⁶³.

The same argument has also been officially used by the SLA. Since its beginnings, this organization has strongly supported the regulation of lobbying in Serbia³⁶⁴. The main reasons for such persistent support are the protection of the profession's reputation, proper recognition of the significance of lobbying, and recognition of the benefits of political lobbying for Serbia abroad.

Still, this intention can be interpreted differently, especially after analysis of the proposal of the Law on Lobbying that was initially created by the SLA. Numerous provisions of this proposal are restrictive in terms of entry into the market. The proposal suggests special licences for lobbying, a specific level of education for aspiring lobbyists, fees to be paid to Chamber of Lobbyists, special conditions for legal entities that provide lobbying services, etc. These provisions are, in comparison with other similar laws³⁶⁵, more restrictive in terms of entry requirements.

From a capture standpoint (Stigler 1971; Peltzman 1976; Tirole 1986; Helm 2006), it does not surprise that lobbyists actually prefer to influence the design of the lobbying regulation. By being able to affect its design and propose mechanisms, they can profit in various ways, but most importantly they can better control the entry. In the Serbian case, this becomes quite clear due to the complex list of conditions one has to meet in order to be able to officially exercise lobbying.

The brief analysis of the factors which are involved in the debate on lobbying regulation suggests that both the private and the public sector have clear undisputed motivation to regulate lobbying. Determined public motivation is clearly stated once

³⁶² 61% of all lobbyists believe that transparency of lobbying activity should be mandatory; OECD Report: Lobbyists, Governments and Public Trust, Supra n.209, p.82.

³⁶³ A nice illustration is the "Jack Abramoff -scandal" in 2006 in the US. This scandal accelerated lobbying reform in the US and the following year The Honest Leadership and Open Governments Act was adopted.

³⁶⁴ "Crowning accomplishment at the end of the initial formative period for SLA will be the introduction of the Law on lobbying in the parliamentary procedure, to be followed shortly thereafter by formation of the Serbian Chamber of Lobbyists."; taken from the webpage of the SLA.

³⁶⁵ Polish Law on Lobbying; Lithuanian Law on Lobbying.

again within the new Action plan of the New National Strategy for Combating Corruption (2008 - 2013), where adoption of the Law on Lobbying is planned latest by 2017³⁶⁶. However, the private side might be interested in the creation of certain entry barriers, together with the legitimate need for reputational capital building and its protection. Hence, the specific structure of the initial draft of the law should be interpreted taking this into account.

10. Analysis of the Serbian proposal of the Law on Lobbying – an analysis of the structure

Before conducting the CPI and the CII analysis for the Serbian proposal, its general structure and main qualitative features should be analysed in order to have a complete assessment. One of specific reasons for this is that both indices, despite their robustness, probably do not have scopes large enough to capture all the specific articles and mechanisms used in this proposal. And since the CII and the CPI methodologies only serve as indicative tools, other available analytical tools should not be excluded *a priori*, but rather used as complementary tools to support the overall analysis.

Since the working group of the Ministry of Trade and Telecommunication of Serbia has not officially published the new draft on the Law on Lobbying, this analysis will be conducted on the first proposal of the Law on Lobbying³⁶⁷ proposed by the Serbian Lobbying Association. This is the only official available proposal and the next official proposal that will be issued by the working group is not expected to be largely different than this one.

10.1. General structure of the proposal on the Law on Lobbying

In the previous chapters, the Threefold theory was mentioned, which provides a qualitative framework for the analysis of lobbying regulations. This theory is based on six key-pillars of lobbying regulations: Registration regulation, Reporting and

³⁶⁶ *The Action Plan of the New National Strategy for Combating Corruption in Republic of Serbia (2008 - 2013)*, (Belgrade, 2013). - goal No.3.1.3

³⁶⁷ Revised version of the proposal, from 2011. Available in Serbian only. The Ministry is still on the version analysed here (22.06.2013.).

spending disclosure, Electronic filing, Public access, Enforcement, Revolving door provision; and these are exactly the analytical sections that are going to be used here as a starting point for the structural analysis.

At the very beginning of this proposal, Article 1 (paragraph 2) states that the goal that is to be achieved by this law is *protection of the public integrity through lobbying activities control, especially in order to prevent corruptive and other illegal influencing within the primary and the secondary legislative process*. This statement clearly defines this law as a sunshine law, whose purpose is the protection of the public interest from undue influencing. What is more important, it recognizes lobbying both in the legislative and executive branch, which perfectly reflects the current Serbian political and legislative system.

Moreover, lobbying is clearly defined in Article 2 as an activity that should be recognized both at the state, provincial and local levels. This additional precise widening of the scope of the proposal to include all important decision-making levels should be considered as beneficial to the main regulatory goal, but it also well reflects the actual political and legislative reality in Serbia.

10.1.1. Registration rules – scope of the definition of lobbyist

Setting the scope of the definition of lobbyist is always a challenging task, as too narrow or imprecise a definition could leave room for an entire army of “invisible” lobbyists. Thus, the definition of lobbyist and lobbying should describe as precisely as possible all those persons, both natural and legal, involved in all situations which may be regarded as lobbying.

In the world of lobbying, there are usually two or three parties involved in the process, and those are decision-makers, lobbyists and their eventual clients in cases of contract lobbying. In cases of so-called *in-house* lobbying, lobbyists are part of the corporate organizational structure and they lobby directly for their corporations. In those cases, the lobbying process includes only two parties. The proposal recognizes two of these three categories and gives a definition for each of them in the Article 2. In-house lobbyists have unfortunately not been recognized, which might cause additional

problems for transparency and lead to discriminatory treatment of contract lobbyists in respect of in-house lobbyists.

Under the proposal, lobbying is defined in following way (Section II, Article 3): *Lobbying is a specialised service for legitimate influencing on public policies and the public decision-making process. Lobbying is conducted by professional lobbyists who have acquired this status under the provisions of this law. Lobbyists receive compensation for their services in exchange for legitimate decision-making influencing.*

Besides the positive definition, Article 7 additionally offers negative remuneration of what is not to be considered to be lobbying. Lobbying activities are not activities of:

- *Experts invited by public bodies to contribute to the legislative drafting, and explanation of the specific issues, regardless the compensation*
- *Journalists who regularly analyse and cover specific legislative processes*
- *Public expression of personal or organizational attitude towards regulations*
- *Natural persons who act on behalf of their private personal interest*
- *Other procedural activities before public bodies.*

The definition deserves profound analysis, as it suggests several things. Even though there is a positive and negative approach which should offer as precise a definition of the actors and the process as possible³⁶⁸. The first part of the definition, the positive one, can be considered as a standard definition based on the compensation element³⁶⁹. However, lobbying, according to this definition, cannot be offered *pro bono*, which is the case within some of the largest lobbying firms today both in the US and the EU. It is hard to explain why this article contains such restriction, and it remains unclear if influencing free of charge could be perceived as an undue lobbying. This part of the article, in any case, does not improve the quality of the proposal and there should not be formal restrictions to *pro bono* lobbying.

The second part, where exclusions are considered, leaves room for misinterpretations. For instance, experts that participate by invitation in the legislative

³⁶⁸ In fact, structurally speaking, this proposal completely follows the definition recommendations of the OECD that are based on comparative regulatory analysis. See OECD Report: Lobbyists, Governments and Public Trust.

³⁶⁹ Definitions based on the same element as are present in the 2007 US regulation (where registration is based on the financial thresholds), in Poland in 2005 (definition of professional lobbying), in the abandoned Hungarian law from 2006 (...under contract for economic consideration), etc.

drafting process at any level are considered not to be lobbyists. This opens a large room for undue influencing, since experts are not prohibited from supporting arguments beneficial to different industries. Since the experts are not required to register, and thus they do not have to disclose their business relations with different private entities, their “price” on the influence market is expected to be high in this case.

A similar practice, with proven problems in this sense, is the consultation procedure within the EU Commission. The Consultation procedure involves a large number of expert groups which provide technical know-how and support in legislative drafting within the Commission. However, even though the expert-members officially act in their personal capacity, some studies have clearly showed that a large number of independent experts are actually strongly biased towards the industry they come from, and that experts groups are not as independent as suggested by the Commission³⁷⁰.

The main drawback of the proposal in regard to the definition of lobbyist remains the lack of recognition of in-house lobbyists, who probably account for the majority of lobbyist in Serbia. All those representatives of large companies, syndicates, chambers of commerce and professional associations will remain invisible for transparency measures designed by the proposal. Their employment clearly suggests what they lobby for in general, but nevertheless they should be subject to the same disclosure requirements as professional lobbyists.

The proposal deals with these categories, to some extent, in Article 11 which regulates conditions for the invalidity of lobbying contracts. The invalidity of a lobbying contract is automatic in cases where any of the above-mentioned associations or companies agrees to promote or protect the interest of third parties. This, at the same time, means that the above-mentioned legal entities can be engaged in the promotion of their own interest, while remaining fully exempt from the transparency requirements of the proposal. The only problem appears in case they agree to lobby for third parties.

The lack of recognition of in-house lobbyists does not reflect international practice in lobbying regulation, since direct lobbying is quite common in other countries. A similar division on professional and in-house lobbyists was made in the Slovenian

³⁷⁰ Bursting the Brussels Bubble, *Supra*, pp.76-87.

law³⁷¹, which defines in-house lobbyists as "un-registered lobbyists", while professional lobbyists, which represent the interest of another party, are defined as "registered lobbyists". The main difference between the two categories is that professional lobbyists have to be officially registered in the Registry for lobbyists of the Republic of Slovenia, while in-house lobbyists do not have to be registered since they can act only on behalf of their organization. However, the rules which regulate the duty to report lobbying contacts with public officials are the same for both categories. In this sense, the Serbian proposal could have been more sensitive to this important issue, and follow the Slovenian solution as a minimum transparency requirement for the treatment of in-house lobbying.

10.1.2. Register of lobbyists

To be able to officially act as a lobbyist, one has to be admitted and subscribed into the Registry of lobbyists which is operated by the Chamber of Lobbyists. The inscription is linked to the cumulative satisfaction of the following conditions:

- Citizenship of the Republic of Serbia³⁷²
- A university degree
- Successfully completed lobbying exam³⁷³
- Absence of criminal record or similar offence which would make a person incompatible with the lobbying profession³⁷⁴
- Absence of prohibition issued by the Chamber of Lobbyists
- Absence of another employment or work in a free profession (advocates)
- Absence of cooling-off restriction (Article 22)
- Undisputed reputation and dignity
- Oath in regard to the Code of conduct

³⁷¹ Article 4, par. 15 of the Zakon o integriteti in preprečevanju korupcije, Uradni list RS, št. 69/2011.

³⁷² Which is not a standard in international regulating practice. For instance, in the US and Slovenia, there are no obstacles for lobbyists from other countries.

³⁷³ Which will be established by the Chamber of Lobbyists.

³⁷⁴ Absence of criminal record as a condition makes much sense due to the sensibility of the profession and its fragile reputation.

The inscription in the Register is valid for 5 years, and it can be renewed. Lobbyists also have to inform the Registry of any information relevant to the conditions for the inscription within 15 days of that change. Also, lobbyists are expected to immediately inform the Register if the conditions for their inscription are no longer fully satisfied, and to ask to be removed from the Register. Upon successful inscription, a lobbyist becomes entitled to carry a badge which serves as their formal identification in interaction with public officials.

This list of conditions that have to be met seems to be over-demanding. It is not clear why potential lobbyists necessarily have to have a university degree. In many situations, leaders of professional associations of free professions are not necessarily graduated, but rather regular members of a profession that does not require university education *per se* (agriculture, restaurants, tourism). This condition, perhaps, could also be interpreted to be discriminatory and unconstitutional³⁷⁵.

Another odd condition is the incompatibility of the lobbying profession with other professions. It is hard to explain why one should be restricted to having any other employment, especially if this employment has a logical compatibility with lobbying. A classical example for this would be lawyers, who often lobby both in the US and EU. Of course, in the Serbian case there is a dual problem related to this since Article 6 of the

³⁷⁵ A similar provision was abolished in Macedonia by the Constitutional Court of Macedonia as discriminatory and unconstitutional (Official Gazette of the Republic of Macedonia, 10/2010), as the Macedonian law on lobbying (106/2008) defined the obligation for lobbyist to have an university degree in the area of the subject they are lobbying about (energy, agriculture, etc). If lobbying would be similarly conditioned in the case of Serbia, there are at least three possible infringements with the following articles of the Constitution: Article 21 (Prohibition of discrimination - All are equal before the Constitution and law. Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited. Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination), Article 46 (Freedom of thought and expression - The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner.) Article 56 (Right on petition - Everyone shall have the right to put forward petitions and other proposals alone or together with others, to state bodies, entities exercising public powers, bodies of the autonomous province and local self-government units and to receive reply from them if they so request. No person may suffer detrimental consequences for putting forward a petition or proposal. No person may suffer detrimental consequences for opinions stated in the petition or proposal unless they constitute a criminal offense). For instance, imagine if an official representative (in house lobbyist) of a bakers association would be prevented from lobbying just for not having a university degree.

Legal Profession Act³⁷⁶ (2011) of the Republic of Serbia also prohibits lawyers from having other employment or side professional engagements. Hence, these rules are quite uncommon and they will probably not survive very long if they remain as they are in the proposal.

Under certain conditions, lobbyists can be unsubscribed from the Register (Article 20). A lobbyist will be unsubscribed from the Register *ex officio* if:

- If conditions for subscription are found to be invalid during the inspection, or if they are not satisfied at some point after the successful subscription
- If the Chamber issues a temporarily licence withdrawal
- In case of violation of reporting procedures defined by the Ministry
- Upon request of a lobbyist

10.1.3. *Reporting and spending disclosure and (lack of) electronic filing*

The core of every lobbying regulation is its disclosure requirements. Disclosure refers to the amount of details that lobbyists have to disclose to the public, and the frequency of this duty. Usually, lobbyists are required to disclose their clients, targets, represented interest, finances, contacts with public officials, etc. The extent of disclosure has to be set as to contribute to transparency as much as possible, while keeping the process meaningful and simple for compliance and enforcement. Meaningful disclosure means that lobbying activity has been disclosed in its key elements, while the degree of details can be sometimes more burdensome than useful, and this should certainly be avoided. In essence, the typical key elements which are to be disclosed in regard to lobbying are:

- Beneficiaries: lobbyists and their clients, amount of compensation involved
- Lobbying intentions: area of lobbying, legislation in focus, precise definition of bills
- Targets: institutions and/or individuals involved in the process

Article 40 of the Proposal deals with reporting, and according to it, lobbyist are required to submit two types of reports: the yearly report (until 15 of February, for the previous year) and the individual report (upon a request of the ministry, no later than 15 days

³⁷⁶ Official Gazette of the Republic of Serbia (Sl. Glasnik RS, br. 31/2011).

after the request). Additional extraordinary reporting is defined in Article 41, which explains that in the case of voluntary un-subscription from the lobbying register, a lobbyist has to submit an extraordinary report, for the period after the submission of his last regular report until the date of the un-subscription. Article 40 also defines mandatory elements for reports:

- Contracts with clients, and precise identification of clients
- Description of legal acts that were the subject of interest³⁷⁷
- Amount of the compensation received
- Decision-makers that were contacted³⁷⁸
- List of gifts or services provided to decision-makers

It can be said that the list of requirements that have to be disclosed are not scarce (from a comparative CPI disclosure perspective). By having publicly available all this information, it would be relatively easy to track and reconstruct the lobbying processes. First of all, it is good that all contracts on lobbying have to be disclosed regardless the amount spent on lobbying³⁷⁹. From these reports one can have full information on who lobbies and for what, what resources are involved and which public officials were contacted³⁸⁰.

³⁷⁷ The detailed description of the acts that are the subject of lobbying is actually quite an advanced method, but all modern regulations are moving towards a more precise definition of the cause of lobbying (what is lobbied for) and the targets of lobbying (who and where is lobbied). A similar precise approach is present in the Canadian Lobbying Act (2008), Section 5 – Registration of lobbyists.

³⁷⁸ This requirement seems to be well set, even from the perspective of lobbyists themselves. For instance, Wright Andrews (American League of Lobbyists) similarly suggests, in regard to US HLOGA (2007): “If a lobbying law requires, as does ours, that the report disclose only that a contact was made in say the U.S. Senate, without identifying the name of the Senator or staff member contacted, the date, issues discussed, number of times contacted, etc., then the burden is not great. On the other hand, I would argue that to have effective disclosure and meaningful transparency of the lobbying process, at least the person contacted probably should be noted”.

³⁷⁹ While in the US there are financial thresholds for reporting. These thresholds, even though quite low, leave some room for legally unreported lobbying.

³⁸⁰ It is probably better not to require extremely detailed disclosure, since this can be hard to enforce. For instance, the Canadian Lobbying Act (2008) requires lobbyists to disclose even certain details of their oral communication with designated public office holders, while public office holders should confirm this. This could generally improve transparency, but it is clear that it will be practically impossible to enforce it. A similar rule is present in Slovenian lobbying regulation, but a complicated and imprecise rule, which is at the same time time-consuming for both the lobbyist and public office holders, making this rule completely neglected by both sides. According to the Slovenian law, public office holders should report all contacts with lobbyists within 72 hours of the contact, and include all relevant information. However, in reality this rule did not have too great an effect.

However, reporting frequency remains problematic. The annual report could provide sufficient information in terms of transparency, but since it is annual it can be questioned how valuable disclosure is one year after lobbying has taken place. On the other hand, a report upon request also remains an unclear tool, since it is left to a competent ministry (which will have overall competence on lobbying monitoring) to decide the conditions for the submission of this type of report. At this point of analysis, it is difficult to know how frequent this reporting will be, but it would be advisable to have reporting more frequently than annually³⁸¹.

When it comes to filing, it is still unclear if the submission will be electronic or traditional - hard copy. In transparency and disclosure issues, speed plays a key role, so it would be desirable to have an electronic filing system in place. In addition, the results from the empirical evidence show that electronic filing is much more efficient than traditional filing (see Table 11, questions 30. and 31.) in terms of the public burden associated with the disclosure. Moreover, interviewed lobbyists have expressed a clear preference towards the electronic disclosure, which they also consider less burdensome³⁸². Similar conclusions can be also found in the relevant literature on this topic³⁸³. Thus, the Serbian lobbying regulation should definitely acknowledge this option, which may decrease both the costs of the private and the public side, increasing at the same time the depth of transparency.

10.1.4. Public access

The degree of public access, its form and simplicity are the key elements whose design and cumulative combination influences the degree of transparency. The fact that the disclosure is meaningful and requires lobbyists to fully disclose their activities does not mean by itself that transparency will be as high as expected. A poor access to disclosed information can significantly reduce transparency efforts, and make

³⁸¹ Annual reporting is also a choice of the Lithuanian Law on Lobbying (2000). On the other hand, the current regulation of the US (HLOGA, 2007) is based on quarterly reporting, which replaced the semi-annual reporting standard (LDA, 1995). In Slovenia, reporting is regularly annual, and extraordinary in the case of voluntary cancellation from the register, no later than 30 days.

³⁸² Mr Wright Andrews (American League of Lobbyists): "Once again, some of the burdens and costs can be minimized by having online reporting with drop-down options".

³⁸³ See OECD Report: Lobbyists, Governments and Public Trust: Building a Legislative Framework for enhancing transparency and accountability in lobbying, p. 65.

the whole disclosure procedure meaningless. Thus, coordination and synchronisation of these two factors is essential in order to maintain a satisfactory level of transparency.

Article 19 of the draft deals with public access. This article defines the duty of the Chamber of lobbyists to maintain the lobbying register and to create conditions for public access to the registry of lobbyists. However, the main problem with this rule is that it does not efficiently promote and support transparency. Besides the availability of the names of lobbyists, which provides minimal transparency, it would be very positive to make other relevant documents available online as well. For instance, lobbying contracts³⁸⁴ and reports could also be available online, at least quarterly. Having everything available less often would put in doubt the transparency effects.

The empirical data from the research also strongly supports the establishment of the electronic system with downloadable files/database, both in terms of registrations and spending reports. The comparative cost-benefit features (CBLs) show that this option belongs to the A2 – efficiency label, which is the second-best efficiency category, just below the A1. An acceptable alternative to this would be PDF/image files available on the web, which is labelled as the A3. In any case, once the database is scanned and posted on the web, it does not take much effort to make it downloadable. Hence, the first option should be adopted as the final solution, since it gives the best cost-benefit ratio among all discussed solutions.

10.1.5. *Public enforcement*

The enforcement can be delegated either to an independent agency which is set only for this purpose³⁸⁵, or to another public body which is in charge of other

³⁸⁴ The list of all registered contracts of US lobbyists and their clients, which contain a satisfactory level of details in regard to the clients, lobbying area and compensation received, is available through a searchable online database on the web pages of the House and the Senate. Canadian disclosure is based on public access to the registry where no reports are available, but in addition to this the Registry quarterly publishes *information about travel and hospitality expenses for selected government officials; contracts entered into by the Government of Canada for amounts over \$10,000 (with only limited exceptions such as for those relating to national security); the reclassification of positions; and the award of grants and contributions over \$25,000*. Lithuanian Law established quarterly publishing of the updated lobbying registry. All registries allow additional access to publicly available information upon specific requests.

³⁸⁵ Canada – The Office of the Commissioner for Lobbying.

similar tasks³⁸⁶. In some cases, enforcement is delegated to lobbyists and compliance is checked through the autonomous rules of their own associations³⁸⁷.

The Serbian proposal dedicates a lot of attention to the enforcement, offering a genuine structural solution. Section 5 of the proposal is entirely dedicated to the enforcement issues and it establishes the Chamber of Lobbyists. Article 26 serves as a funding article for the Chamber, which is meant to be an independent, professional association of registered lobbyists. The membership in the Chamber is obligatory for all lobbyists. This practically means that the public sector establishes a professional association which is not part of the public sector, and delegates the enforcement to it. In other words, enforcement is by law delegated to one professional organization outside of the public sector. However, the structure and the purpose of this Chamber are set by the law on lobbying.

This approach is definitely complicated, since it delegates enforcement to a body which seems to be outside of the control of the public sector. Moreover, weak enforcement cannot be fully excluded due to the problems associated with self-enforcement in transparency³⁸⁸.

The Chamber is in charge of the following tasks:

- Adopting of the Code of Conduct
- Adopting the curriculum for the lobbying exam and certification
- Adopting the rules for continuous improvement of educational standards for lobbyists
- Running the lobbying registry
- Running investigations on breaches of the Law on Lobbying and the Code of Conduct
- Issuing publicly available information upon request
- Providing dispute resolution for its membership
- Synchronizing domestic lobbying regulation with international best practices
- Cooperating with other lobbying associations internationally
- Publishing an annual report

³⁸⁶ The US, Slovenia, Australia, Israel, etc.

³⁸⁷ Mostly their compliance to the internal code of conduct. The control is not systematic, but associations react upon an inquiry or report.

³⁸⁸ C. Lindstedt and D. Naurin, *Supra* n.189.

- Dealing with other tasks delegated by the bylaws of the Chamber

The scope of the tasks delegated to the Chamber is not narrow. Besides standard tasks for a Chamber, the Chamber also runs some tasks traditionally delegated to the public sector such as investigative activities, issuing information and general running of the registry. While it completely makes sense that the Chamber controls compliance with the Code of conduct, it is unusual that it has competences to monitor the compliance to the articles of a law. However, even the bylaws of the Chamber, which more specifically define its role, have to be approved by the Government of Serbia. This could be seen as an additional insurance that the Chamber will act as a part of the executive branch, even though it is formally a professional association outside of it. At the same time, the Chamber is not exclusively financed through the budget of the state, but also by the membership fees, fees and services related to licensing and education, and different private donations. In any case, the supremacy of the state has been defined in Article 39, where the overall supervision over the Chamber is delegated to a competent Ministry (to be determined) which receives regular lobbying reports, and has the right of extraordinary investigations and control both of the Chamber and its members. Thus explained, it is not difficult to see that a certain overlapping of the competences exist between the Chamber and the responsible Ministry, since the latter one has the task of collecting lobbying reports.

Another alternative solution would be to simply delegate all enforcement tasks to the Anti-Corruption Agency and let lobbyists have their own, truly independent professional association. As this agency works on monitoring the issues similar to lobbying anyway, it could be a good starting point for the enforcement of lobbying in Serbia. A similar solution is adopted in Slovenia and Macedonia.

The Chamber has its assembly, president, executive board, supervisory board, court of honour and officer for the enforcement of the responsibility of lobbyists. Among the most important and genuine are the court of honour and the officer. The role of the court of honour is to investigate breaches and pronounce adequate sanctions. The officer, similarly, has a role to protect the reputation and act as appointed prosecutor in the process against lobbyists who are under a charge.

The Chamber has two general sanctions on disposal against lobbyists that were found in breach of the Law or of the Code of Conduct. These sanctions are aimed at the protection of the professional standards and they have an internal disciplinary character, which can generally be found in bylaws of other free professions. Depending on the degree of the breach, the Chamber can issue:

1. Temporary licence withdrawal, from 6 to 24 months, for minor breaches
2. Temporary licence withdrawal, from 6 to 24 months, and ban from participation in organs of the Chamber, for major breaches

For both types of breaches, the Chamber can issue a public or an internal warning. An interesting fact is that the proposal does not mention any type of permanent licence withdrawal, which would especially make sense in situations where a lobbyist was found guilty of a criminal offence related to influence (bribery for instance). However, this will probably be upgraded within a separate section (Section 9 - sanctions) which is still uncompleted in the draft that is examined in this analysis.

10.1.6. Revolving door

The proposal specifically deals with the revolving door provision. Article 22 sets the cooling period for two years, which can be considered as an advanced³⁸⁹ cooling off rule. This practically means that public officials from any level, appointed or employed, are restricted from performing lobbying for a period of at least two years after their public engagement/employment is ended. Economically speaking, this rule is designed so as to prevent possible negative revolving door effects on regulatory performance in light of the capture theory³⁹⁰.

10.1.7. Lobbying contract

The proposal of the Serbian Law on Lobbying is very novel in terms of specification of the type and formal elements of the lobbying contract. Similar rules exist also in Montenegro and Macedonia. Article 6 defines that a lobbying contract has to

³⁸⁹ Maybe the Canadian cooling-off clause is more advanced (Lobbying Act 2008), which sets this period at five years, with several exceptions though. Lithuanian Law, for instance, uses one year as a standard, which may be insufficient and stimulate conflicts of interest.

³⁹⁰ D. Salant, "Behind the Revolving Door: A New View of Public Utility Regulation"; Y.Che, "Revolving Doors and the Optimal Tolerance For Agency Collusion."

be in a written form. In this sense, the written form represents a formal condition for contract validity. This at the same time means that lobbying based upon informal agreements, or agreements which do not contain specific elements defined in Article 6, will not be considered as valid. Formal elements of the lobbying contract are:

- Information on parties of the contract
- Information and description of an interest which has to be represented
- Description of activities that lobbyists have to undertake while representing the interest defined in the previous clause
- Precise amount of compensation involved

The formality of this contract form could be beneficial from a transparency point of view, since a lobbying contract is going to be an integral part of lobbying reports, as defined in Article 40. The formality, in this case, will guarantee a sufficient degree of transparency since all major elements related to lobbying will have to be disclosed by default. In addition, this formality eliminates *a priori* the possibility of incomplete disclosure, which could have been the case if lobbying contracts were concluded in more informal forms. Informal and diverse contracts would have been an obstacle, since they could not guarantee the uniform disclosure of all transparency-relevant elements.

Another relevant provision related to lobbying contracts is set in Article 10. This article defines the type of obligation that exists between lobbyists and their clients, and provides an explanation on the interpretation of the rights and duties of both sides in cases of a dispute. According to this article, a lobbyist is bound by an obligation of merit, and he has a duty to conduct his work *lege artis*. This practically means that a lobbyist has a position similar to other free professions with the same type of obligation (lawyers, artists), and that according to this he cannot conclude a contract where he issues a guarantee of success. In other words, a lobbyist cannot guarantee he will succeed nor can a client refuse to pay the compensation in case of an inability of a lobbyist to change a law.

Consequently, compensation that only has elements of a success fee would make a lobbying contract invalid. This does not mean that a success fee cannot be an additional compensation element, but it cannot be the only one. In this type of

obligation, the provider of a service reserves a right to compensation if he had provided his service professionally and diligently. In the case of unprofessional or undiligent conduct of lobbyist, a client has a right to compensation upon general rules on responsibility for damages defined by the Serbian Law on Obligations³⁹¹.

10.2. The final breakdown of the proposal on the Law on Lobbying

Generally said, the first draft of the proposal on the Law on Lobbying of Serbia represents a mixture of regulatory techniques from other countries with some genuine elements and solutions. The main features of the proposal could be summarized as follows:

- Definition of lobbyists – the definition neglects in-house lobbyists and leaves them outside transparency requirements. However, in-house lobbyists are not prohibited from exercising lobbying. There is a great risk regarding “independent experts”, which act in a personal capacity within government bodies.
- Registration – available only for citizens of Serbia. Limited to professional lobbyist who do not have any other employment besides lobbying. Lawyers formally prohibited from exercising lobbying.
- Lobbying contract – the proposal defines the form and nature of the obligation between the client and professional lobbyists.
- Enforcement delegation – enforcement is delegated to the Chamber of Lobbyists, which is established by the state and responsible to the state, even though it is not formally part of the public sector. The Chamber is financed through public funds, self-financing and private donations. The ministry is competent in terms of the extraordinary control of the Chamber and lobbyists. The Chamber imposes disciplinary sanctions over its membership.
- Public access – publicly available information is managed both by the Chamber which runs the register, and the competent Ministry which receives lobbying reports. Thus, the information is not centralized and synchronized. While the registry is available online, it still remains unclear where and in which format the

³⁹¹ For more on the interpretation and position of the lobbying contract within the legal system of Serbia, see (in Serbian) *Ekonomsko i politicko lobiranje*, B. Kascelan and D. Krsmanovic, *Zavod za udzbenike*, Srbija 2012; *Drugi deo: Ugovor o lobiranju*.

reports will be available. Reporting deadlines are quite long – one year. However, the scope of the reporting is satisfactory.

- Revolving door – set at two years.

11. Application of the CPI and the CII on the Serbian proposal of the Law on Lobbying

After analysing the proposal qualitatively and underlining its strengths and weaknesses, the application of a quantitative methodology will additionally help to understand its cost-benefits quality. For assessing these features from another point of view, the CPI and the CII will be applied in order to obtain an indication of the benefits and costs³⁹². The application process has two rounds. In the first, the CPI and the CII will be applied to the current, initial Serbian proposal on the Law on Lobbying. In the second round, both indices will be applied again for an assessment of the integrated version of the Serbian proposal on the Law on Lobbying. The difference between the two versions is discussed in the following section.

11.1. Application of the CPI on the initial Serbian proposal on the Law on Lobbying

The application of the CPI should reflect the quality of the proposed legislation by forecasting its transparency and accountability features. However, due to the partially genuine structure of the proposal, the CPI application will probably not reflect all the dimensions to the full extent. On the other hand, the application will allow the comparison of the proposal with other lobbying regulations and reveal its comparative position within other regulations, which were CPI analysed worldwide.

There are two main challenges in the application of the CPI to the Serbian proposal. The first is that the CPI will be applied to the proposal of a law instead of on an existing legislation. However, since there are only two questions of the CPI interfering with *ex-ante* application, normally this should not be a problem and it would not significantly change the CPI score. The second problem is related to the incompleteness of the Serbian proposal on the Law on Lobbying. The proposal is just a first draft, which

³⁹² For the CPI scores see Annex 1 and for the CII scores see Annex 2

still fails to address sanctions and some of the crucial rules, like the format of the public disclosure and registrations design, that are meant to be determined in the future by the administrative rule of the ministry. This definitely creates a greater problem in the analysis since all these potentially positive solutions cannot be taken into account straight ahead, before they are actually written down. In most cases, these solutions are just announced by the proposal, but their actual form has to be set by an administrative rule. Thus, to counter-balance this problem, the CPI will be calculated both for the current proposal and for the integrated version of the proposal. The integrated version includes all the rules which are announced to be introduced later on by secondary legislation. Even they are not formally going to be a part of the proposal, they affect the overall effect of the legislation and they should be taken into account.

Thus, the application of indices on the original proposal is evaluating only the currently existing rules in the proposal, while the other ones which are not still included were evaluated by the score of zero. However, in case that those rules get adopted in an upgraded proposal of the law or in the additional administrative rules, they would significantly improve the proposal and bring it over the CPI-pass level of 60 points. More importantly, it would move the proposal from the medium regulated systems (30-59) to the category of highly regulated systems (60-100).

In fact, the CPI score of the proposal solely based on the existing tools is 46³⁹³, and it shows much room for improvement. But even in these conditions, the Serbian proposal scores quite well in comparison with other CPI scores from Europe³⁹⁴ and with possible improvement it could be the European legislation with the highest CPI score. However, before giving a final judgment on its quality, the initial CII has to be applied in order to have an insight into the compliance and enforcement burden.

11.2. Application of the CII on the Serbian proposal of law on lobbying

Application of the Cost Indicator Index (CII) should allow reflection of the CPI scores in their costs side. The CII score should also provide information on the overall burden indication, but also the information on individual burdens for the public and the

³⁹³ See the Annex 1

³⁹⁴ Lithuania 44, Poland 27, Germany 17, Hungary (abandoned) 45.

private sector. At the end, the cost-benefits labels (CBLs) will be additionally used for proposing possible improvements of the draft.

The calculation of the CII faces a similar challenge like the calculation of the CPI, with the only difference being that the CII can be successfully applied both to *ex-ante* and *ex-post* solutions. However, the same problem related to the incompleteness of the proposal remains. The score that is obtained by the calculation of the existing elements is 51³⁹⁵. This score, interpreted through the CII scoring index, places this proposal into the medium-burdensome regulatory systems (30-69).

Another interesting thing to mention is the division of the burden between the private and the public sector. The CII indicates that almost 2/3 (68%) of the burden is associated with the compliance of the private sector, while about 1/3 (32%) is associated with the enforcement. This ratio cannot be taken as a precise measure of the burden structure, but it indicates that the private sector might expect higher costs associated with compliance, especially since lobbyists are expected to pay for licenses and education. This also means that reflection of the burden structure might be even more inclined towards the private sector, since the CII automatically associates the enforcement agency with public expenditures. In the Serbian case, on the other hand, the Chamber is supposed to be financed both from the public and private funds.

11.3. Integration of the results from both Indices and their interpretation in regard to the possible cost-benefits improvements

Results from both indices can be incorporated into the Ninefold theory visual matrix, which allows their easy interpretation. The current scores from both the CPI and the CII suggest that the Serbian proposal has a balanced cost-benefit nature. Both results belong to the medium range of their own scales. On the other hand, there is still a significant degree of uncertainty since part of the rules that are planned to be adopted are still not entirely clarified, which makes final judgement more difficult, in case analysis remains based on the initial uncompleted proposal.

³⁹⁵ See the Annex 2

11.4. Fixing the odd structure of the proposal – getting the real CPI and the CII scores

The Serbian proposal leaves much room for improvement, mostly because a significant part of the rules have not been fully specified in the proposal itself, but left to be specified with subordinate legislation in the later phase which is under the competence of the Government of Serbia. Since there are no clear reasons for such a choice, the first thing that can be done in terms of suggestions is an integration of all the rules into a single legislation where all the norms will have the same legal power. This also eliminates possible interpretational problems which may arise from the conflict of legal norms of primary and secondary legislation.

Hence, by carefully adding the rules which were announced and meant to be included into the draft later, the new CPI score is already significantly improved as a result of this integration, and now it is 62. This change, however, resulted in the change of the CII score as well. The new integrated CII score is 78³⁹⁶.

The simple integration of all the rules not only moved the costs to the upper category (from Medium to High), but it further increased the costs in regard to the benefits. While in the original scenario the inter-score difference between the two scores was just 5 points (46:51), in the new integrated version, this difference is 16! It becomes immediately clear that simple adoption of all available mechanisms would not be the optimal choice from a cost-benefit point of view, even though it would significantly improve the transparency/accountability. This also means that additional adjustment of the entire regulatory design could be necessary.

³⁹⁶ See the Annex 4

Besides quantitatively obtained information on the CPI and the CII scores, the Threefold theories (both for the CPI and the CII) could offer an additional qualitative mapping of the key-features of the proposal. The following table summarizes the general characteristics of the Serbian proposal in respect to the two theories:

	<i>Highly-regulation Systems (CPI)</i>	<i>Highly-burdensome Systems (CII)</i>	Actual matching with the Serbian proposal
Registration regulation	Rules on individual registration are extremely rigorous	Registration regardless the amount spent on lobbying	The proposal fully matches with both dimensions.
Spending Disclosure	Tight regulations on individual spending disclosure, and employer spending disclosure	Detailed reporting, including dates and itemization, relation of the spending with the principal, reported spending on household members of public officials	The proposal fully matches with both dimensions, except the fact that the employer does not have to submit an employer report.
Electronic filling	Robust system for online registration; no paperwork necessary	Online or/and paperwork registration system and reporting available, trainings on how to compile reports	The proposal fully complies with both dimensions.
Public access	List of lobbyists and their spending disclosure available; detailed and updated frequently.	Agency provides to public overall lobbying spending totals by each spending-report deadline. These reports could have spending totals by industries or other similar criteria.	The proposal fully complies with both dimensions except the fact that reporting deadlines are regularly yearly, but there are also extraordinary reports which might be more frequent.
Enforcement	State agency can, and does, conduct mandatory reviews/audits.	Enforcement authority exists; it conducts mandatory reviews and audits of reports and imposes fines for delays in filings and incomplete filings of reports and registration forms.	The proposal fully complies with both dimensions.
Revolving door	There is a cooling-off period before former legislators can register as lobbyists.	There is a mandatory revolving door, compliance investigated	The proposal fully complies with both dimensions.

Qualitatively speaking, the Serbian proposal largely coincides to predicted general qualitative features of the two theories, with only minimal discrepancies. Both theories have successfully predicted the main qualitative features of the proposal, based on the

indication from the respective scores and previous qualitative analysis. This is an important illustration of the amount and the type of information that could be obtained from the CPI and the CII analysis.

Full matching was not expected in any case, since these theories are of an indicative nature and they can hardly fully match a law in all seven layers of the analysis. Their primary purpose is to serve as a guideline for legislators who are in the early legislative phases, since they give the general impression on the regulatory structure and the cost-benefits ratio, while indicating where eventual improvements could be introduced. Moreover, they also allow easier comparative assessment of different regulatory solutions worldwide, and their qualitative and quantitative comparison.

12. Interpretation of the results and policy recommendations

12.1. Regulatory improvement from an efficiency point of view – what can be considered as an improvement of lobbying regulation?

The main idea behind the combined use of the CPI and the CII is not just to describe a regulation, but rather to contribute to its improvement. Used separately, these indices can serve as an indication of the transparency/accountability and overall burden created by a lobbying regulation. However, a combination of the indices allowed creation of another tool which can be used to eventually improve initially obtained results.

In the previous chapter, the CBL scale was introduced, which gives an individual cost-benefit label to every analysed rule. These labels are afterwards put in specific order which indicates the cost-benefit nature of each of them and allows their comparisons. From one side, this tool can be used as a guide in initial regulatory structuring, since it indicates which rules have a more efficient cost-benefit ratio and which have a less inefficient cost-benefit ratio. That information could be used in the primary selection of rules which are considered to be included in the regulation. In other words, those rules which have low transparency/accountability impact could be excluded at the very beginning of the drafting process if they are not really necessary for some particular reason.

From another side, this tool can be useful even in more mature drafting phases. If the overall indication of the first CPI and CII scanning is not satisfactory, a reference to the CBLs can reveal if there is room for improvement of the regulatory design. This is achieved by exploring if a chosen rule has an alternative with a more preferred CBL. In cases where several improvements are possible and applied, regulation can visibly improve its cost-benefit ratio.

Still, it is important to clarify that the effects of those possible improvements on the overall legislative structure could be divided into four specific types of improvements.

- Improvement type I – individual CPI score transitioned up while individual CII score transitioned down
- Improvement type II – individual CPI score remained at the same value while individual CII score transitioned down
- Improvement type III – Both the scores transitioned down, but the CII score transitioned down more than the CPI score
- Improvement type IV – Both the scores transitioned up, but the CPI score transitioned up more than the CII score.

While the first two improvements should be introduced without any doubt, the last two improvements might not be as advisable, except in rare situations. For instance, Improvement type I can be applied where the regulation is already very burdensome and with a high CPI score. In that case, it can be used to relax the burden pressure while having minor relaxation of the CPI score. Similarly, if a regulation has very low CPI and CII scores, Improvement type III can be applied to increase the CPI score, while having a controlled and lower increase of the CII score. However, those rare theoretical situations are suggesting full reconstruction of a regulation instead of limited improvements.

The same logic can be applied to the Serbian proposal with regards to the obtained results. The Serbian proposal has the scores which indicate a slightly imbalanced solution which is inclined more toward the sides of the costs (78), while having a “pass level” in terms of the benefits (62). The available tool should be used as to move the CPI score as much above the threshold as possible, while moving the CII indication down as

much as possible from the current score of 78. Alternatively, the goal might be to increase the CPI score as much as possible without keeping the CII score fixed, or to fix the CPI score at 62 and decrease the CII score as much as possible. Lastly, if the CII score still remains above the CPI score, than the inter-score difference should be as minimal as possible, but certainly much lower than 16, as it is now.

12.2. Optimization of the Serbian proposal on the Law on Lobbying – three possible roads

Three possible roads for the structural improvement are the introduction of new rules, substitution and elimination of existing ones. Before looking at the specific CBLs of the proposal, once again the CBL categories will be shown and their meaning explained. This table provides 3 general labels: A, B and C; where A is preferred to B and C, and B is preferred to C. Each general label is composed out of three sub-labels where 1 is preferred to 2 and 3, and 2 is preferred to 3. Overall, the labels should be interpreted in the following way:

A	B	C
A1 stands for CPI H / CII L	B1 stands for CPI H / CII H	C1 stands for CPI L / CII M
A2 stands for CPI H / CII M	B2 stands for CPI M / CII M	C2 stands for CPI M / CII H
A3 stands for CPI M / CII L	B3 stands for CPI L / CII L	C3 stands for CPI L / CII H ³⁹⁷
A1 > A2 > A3 > B1 > B2 > B3 > C1 > C2 > C3		

The improvement technique which is applied on the proposal consisted of individual assessments of integral parts of the proposal, in order to understand if they are really necessary and if their elimination or substitution might lead to better CPI – CII equilibrium. Alternatively, where the elimination did not make much sense, either a new rule was added or a more efficient alternative to the existing rule was introduced. Still, with eliminations, one has to be careful since in some cases extremely inefficient rules still have to be left inside of the regulation. Those are, for instance, rules related to

³⁹⁷The letters “H” and “L” respectively mean High and Low.

penalties and their enforcement. As discussed previously, mandatory enforcement related to transparency has proven to be much more useful than self-enforcement, which makes these rules hard to exclude besides their weak CBL nature. On the other hand, their burden effect can be minimized by constructing other rules in a more efficient way.

When it comes to eliminations of the rules, the first rules that were considered to be eliminated were those with the lowest efficiency labels, namely C3, C2 and C1. The C3-label rules were the first to be eliminated since they suggest that there is an indicated cost which does not contribute to the transparency/accountability indication at all (the CPI is zero), or contributes minimally compared to other rules which have much lower cost indication and much better strength indication.

Annex 5 and the Annex 6 show which rules have been eliminated and which substituted by a rule with a preferred efficiency label. The overall improvement aftermath can be summarized in the following way:

	CPI	CII	Inter-scores difference	Types of improvement:
Initial scores after the integration of the rules into one regulation	62	78	16	<ul style="list-style-type: none"> - 6 rules were substituted with a rule with preferred efficiency-label - 8 inefficient rules were eliminated - 2 rules were added
The scores after the improvement	67	69	2	
Results illustrated by the upgrade of the CPI, downgrade of the CII and inter-scores difference:	+ 5	-9	-14	

The upper breakdown-table shows the magnitude of the improvements, and it becomes immediately clear that relying on efficiency labels could improve the initial regulatory structure. The improvement which was made here has the characteristics of Improvement type I, since the CPI score was increased while the CII score was decreased. With the proposed improvements, the CPI increased by 5 points while the CII decreased by 9 points. Moreover, the inter-score difference is now only 2, which is eight times less than in the previous version where it was 16. These differences provide an

indication of the cost-benefits balance, and in cases where improvements were made but regulation has remained inside the same Ninefold category, it allows an additional insight in the level of improvement. After the improvements, the Serbian proposal has been moved to CII High – CPI High quadrants to the left. Moreover, this time the CII score is not significantly higher than the CPI score like in the previous case. In fact, this time they are almost at the same level, which suggests that the high indication of the strength does not always cause unjustified burden, like in the case before the improvement.

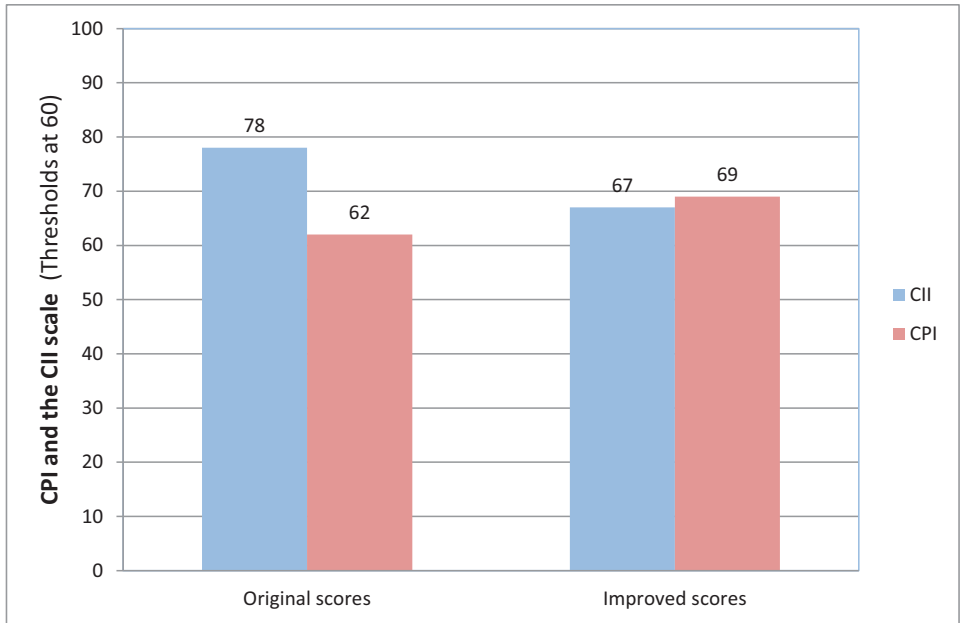
Table 17 - The Ninefold theory, Results of the improvement of the proposal

Highly regulated systems (60-100)	High – Low	CPI High (67) - CII Medium (69)	High – High
Medium regulated systems (30-59)	Medium – Low	Medium – Medium	Medium – High
Lowly regulated systems (0-29)	Low – Low	Low – Medium	Low – High
CPI CII	Lowly burdensome systems (0-29)	Medium burdensome Systems (30-69)	Highly burdensome Systems (70-100)

The upper Ninefold framework shows that the position of the proposal within the general categories positively changed, from the High-High into High (CPI) - Medium (CII). This also means that the defined C-B ratio has changed from acceptable to good. However, it should to be noted that the CII score is just below the threshold of being in

the High category. Still, the level of improvement is best seen through the inter-score difference.

Graph 9 illustrates the level of the improvement and additionally illustrates the magnitude of the improvements:



Graph 9

In this graph, it is easier to notice what the improvement has done with the scores and their inter-score difference. It becomes immediately clear that the improved scores have better equilibrium from a cost-benefits point of view.

13. Comparative application of the CII

One of the main pillars of the CII is its potential for the comparative assessment of lobbying laws. As highlighted before, this tool should improve the comparative assessment technique in order to contribute to a higher understanding of structural differences, including pros and contras, of different regulatory approaches worldwide. The comparative CPI and CII assessments should ideally help the policymakers who attempt to structure their laws while looking into other countries' experiences.

Similarly to the CPI, the CII can be applied in two main ways, where each has a different purpose:

1. **Vertical application:** where it is applied individually or with the CPI in order to measure cost-benefit indications of two or more proposals (versions) of the same regulation. This application primarily serves for improvement of initial proposals, and its application was demonstrated in the previous section. The main goal of this type of approach is to improve the regulatory structure throughout its legislative evolution.
2. **Horizontal application:** this application does not have the intention to improve a regulation proposal but to compare different regulatory solutions in different jurisdictions. Comparisons could be made proposals to proposals, proposals to existing regulations, regulations to regulations, soft-laws to soft-laws, regulations to soft-laws.

In this section, the horizontal application of the CII together with the CPI will be demonstrated. Special attention in the selection of the jurisdictions which are about to be analysed will be given to countries whose regulations have never been the subject of the CPI analysis. In this case, those countries are Slovenia, Macedonia and Montenegro. More importantly, those regulations belong to the same area as the Serbian proposal and they are the newest regulations in Europe at this time. Thus, a comparison of those solutions with the Serbian proposal could prove both interesting and beneficial.

It is difficult to guess why these regulations have not been analysed before by the CPI analysis, but one of the reasons might be that they are quite recent. The second and more important reason is that their content is not in English, and thus they are inaccessible to most global researchers. Thus, the selection of Slovenia, Macedonia and Montenegro has the purpose of demonstrating the comparative use of the CII while at the same time contributing to global lobbying regulation research, by offering the latest CPI scores for three additional regulations. The following laws will be analysed and compared, by going through each of them individually and analysing their provisions and articles through the CPI and CII Indices separately (quantitative analysis only), and then combining them into one analytical framework where they can be compared to the Serbian proposal (which was analysed even qualitatively through the previous case

study). The absence of detailed qualitative analysis of three new laws is due to length and time constraints and objectives, but the technique would look like the one from the vertical application on the Serbian case.

However, Table 17, where the comparative CII results are presented, offers the possibility to see exactly where the differences between different solutions are, and it intuitively shows where improvements could be made (by comparing actual and alternative CBLs). This allows the reader immediately to compare the mechanisms in four laws, and see if there is a room for improvement of a regulation which is analysed. Precise names of the analysed laws are listed in the table below.

Country	The name of the regulation	Binding Law / Soft-law
Serbia (unimproved version)	The Proposal on Law on Lobbying, first draft (2013)	Binding Act – primary legislation
Macedonia	Zakonot za dopolnuvanje na Zakonot za lobiranje, Sl. vesnik na R. Makedonija, br.135/2011	Binding Act – primary legislation
Montenegro	Zakon o lobiranju Službeni list CG, br. 54/11	Binding Act – primary legislation
Slovenia	Zakon o integriteti in preprečevanju korupcije, Uradni list RS, št. 69/2011	Binding Act – primary legislation

No. of the CPI Question	Table 17 Comparative application of the CPI	Serbia (integrated)	Slovenia	Macedonia	Montenegro
	DEFINITION OF LOBBYIST				
1.	In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No – 0 points; Yes – 3 points	3	3	3	3
2.	How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: More than \$500 made/spent – 0 points; More than \$100 made/spent – 1 point; More than \$50 made/spent – 2 points; \$50 or less made/spent – 3 points; Lobbyists qualify and must register no matter how much money made/spent – 4 points	4	4	4	4
	INDIVIDUAL REGISTRATION				
3.	Is a lobbyist required to file a registration form? No – 0 points; Yes – 3 points	3	3 ³⁹⁸	3	3
4.	How many days can lobbying take place before registration is required? 16 or more days – 0 points; 11 to 15 days – 1 point; 6 to 10 days – 2 points; 1 to 5 days – 3 points; 0 days – 4 points	4	4	4	4
5.	Is subject matter or bill number to be addressed by a lobbyist required on registration forms? No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points	3	1	0	1

³⁹⁸ The registration duty only refers to professional lobbyists who offer their services to third parties. In-house lobbyists do not have to register. However, formally there is a registration duty which explains why 3 points were added.

6.	How often is registration by a lobbyist required? Once only – 0 points; Every two years – 1 point; Annually or more often – 2 points	0 ³⁹⁹	0 ⁴⁰⁰	2 ⁴⁰¹	0 ⁴⁰²
7.	Within how many days must a lobbyist notify the oversight agency of changes in registration? 16 or more days – 0 points; 11 to 15 days – 1 point; 6 to 10 days – 2 points; 1 to 5 days – 3 points; 0 days – 4 points	1 ⁴⁰³	2 ⁴⁰⁴	3 ⁴⁰⁵	2 ⁴⁰⁶
8.	Is a lobbyist required to submit a photograph with registration? No – 0 points; Yes – 1 point	0	0	0	0
9.	Is a lobbyist required to identify by name each employer on the registration form? No – 0 points; Yes – 1 point	0	1	0	1
10.	Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No – 0 points; Yes – 1 point	1	1	0	0
	INDIVIDUAL SPENDING DISCLOSURE				
11.	Is a lobbyist required to file a spending report? No – 0 points; Yes – 3 points	3	3	3	3
12.	How often during each two-year cycle is a lobbyist required to report spending?	0 ⁴⁰⁷	0 ⁴⁰⁸	0 ⁴⁰⁹	0 ⁴¹⁰

³⁹⁹ The registration is renewed every five years.

⁴⁰⁰ The registration is renewed every five years.

⁴⁰¹ Annually

⁴⁰² Every three years.

⁴⁰³ 15 days

⁴⁰⁴ 8 days

⁴⁰⁵ 5 days

⁴⁰⁶ 10 days

⁴⁰⁷ Annually

⁴⁰⁸ Annually

	0 to 3 filings – 0 points; 4 to 6 filings – 1 point; 7 to 9 filings – 2 points; 10 or more filings – 3 points						
13.	Is compensation/salary required to be reported by a lobbyist on spending reports? No – 0 points; Yes – 2 points	2	2	2	2	2	2
14.	Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No – 0 points; Yes – 2 points	2	2	2	2	2	0
15.	What spending must be itemized? No spending required to be itemized – 0 points; More than \$100 – 1 point; More than \$25 – 2 points; \$25 and below – 3 points; All spending required to be itemized – 4 points	0	0	0	0	0	0
16.	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No – 0 points; Yes – 1 point	1	1	1	1	1	1
17.	Is the recipient of the itemized expenditure required to be identified? No – 0 points; Yes – 1 point	1	1	1	1	1	0
18.	Is the date of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point	1	1	1	1	1	0
19.	Is a description of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point	1	1	1	1	1	0
20.	Is subject matter or bill number to be addressed by a lobbyist required on spending reports? No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number	3	1	1	1	1	1

	required – 3 points							
21.	Is spending on household members of public officials by a lobbyist required to be reported? No – 0 points; Yes – 1 point	1	0	0	0	0	0	0
22.	Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points; Yes – 1 point	1	0	0	0	0	0	0
23.	What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – 0 points; Gifts are reported – 1 point’ Gifts are limited and reported – 2 points; Gifts are prohibited – 3 points	2	2	0	0	0	0	0
24.	What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions allowed and not required to be disclosed on spending report/prohibited during session – 0 points; Campaign contributions allowed and not required to be disclosed on spending report/allowed during session – 0 points; Campaign contributions allowed and required to be disclosed on spending report/prohibited during session – 1 point; Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 1 point; Campaign contributions prohibited – 2 points	1	1	0	0	0	0	0
25.	Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points; Yes – 1 point	1	1	1	1	0	0	0
26.	Is an employer or principal of a lobbyist required to file a spending report? No – 0 point; Yes – 3 points	0	0	0	0	0	0	0
27.	Is compensation/salary required to be reported on employer/principal spending reports?	0	0	0	0	0	0	0

	No - 0 points; Yes - 2 points							
	ELECTRONIC FILLING							
28.	Does the oversight agency provide lobbyists/employers with online registration? No - 0 points; Yes - 1 point	1	1	0	0	0	0	0
29.	Does the oversight agency provide lobbyists/employers with online spending reporting? No - 0 points; Yes - 1 point	1	1	0	0	0	0	0
30.	Does the oversight agency provide training about how to file registrations/spending reports electronically? No - 0 points; Yes - 1 point	1	1	0	0	0	0	0
	PUBLIC ACCESS							
31.	Location/format of registrations or active lobbyist directory: Photocopies from office only - 1 point; PDF or image files on the Web - 2 points; Searchable database on the Web - 3 points; Downloadable files/database - 4 points	3	2	1	1	1	1	1
32.	Location/format of spending reports: Photocopies from office only - 1 point; PDF or image files on the Web - 2 points; Searchable database on the Web - 3 points; Downloadable files/database - 4 points	1	1	1	1	1	1	1
33.	Cost of copies: 25 cents or more per page - 0 points; Less than 25 cents per page - 1 point	1	1	1	1	1	1	1
34.	Are sample registration forms/spending reports available the Web? No - 0 points; Yes - 1 point	1	1	0	0	0	0	0
35.	Does the state agency provide an overall lobbying spending total by year? No - 0 points; Yes - 2 points	2	0	0	0	0	0	0

36.	Does the state agency provide an overall lobbying spending total by spending-report deadlines? No – 0 points; Yes – 2 points	2	0	0	0
37.	Does the state agency provide an overall lobbying spending total by industries lobbyists represent? No – 0 points; Yes – 2 points	2	0 ⁴¹¹	0	0
38.	How often are lobby lists updated? Semi-annually or less often – 1 point; Monthly – 2 points; Weekly – 3 points; Daily – 4 points	1	1	1	3
	ENFORCEMENT				
39.	Does the state have statutory auditing authority? No – 0 points; Yes – 2 points	1	2	1	2
40.	Does the state agency conduct mandatory reviews or audits? No – 0 points; Yes – 2 points	0	2	1	2
41.	Is there a statutory penalty for late filing of lobby registration form? No – 0 points; Yes – 1 point	0	1 ⁴¹²	0	2
42.	Is there a statutory penalty for late filing of a lobby spending report? No – 0 points; Yes – 1 point	1	1	1	1
43.	When was a penalty for late filing of a lobby spending report last levied? More than 5 years – 0 points; 4 to 5 years – 1 point; 2 to 3 years – 2 points; 0 to 1 year – 3 points	0	3 ⁴¹³	0	0

⁴¹¹ However they do publish an annual lobbying report with information on which subject matters and who was lobbied the most.

⁴¹² Practically, there is a penalty for those who lobby without being registered. The late registration rule should be interpreted as to also consider situations where there is a statutory penalty for those who lobby without being registered. Late registration rule in cases where lobbying cannot start before the registration practically cannot exist since lobbying is automatically considered as illegal. However, Slovenian law punishes those who lobby without being registered (for those who are expected to register).

⁴¹³ According to the Annual report on Lobbying Activity of the Commission for Prevention of Corruption of the Republic of Slovenia, the Commission issued 18 admonishments, 2 warnings and 1 fine in 2012.

44.	Is there a statutory penalty for incomplete filing of a lobby registration form? No – 0 points Yes – 1 point	1	0	0	1
45.	Is there a statutory penalty for incomplete filing of a lobby spending report? No – 0 points; Yes – 1 point	1	1	1	0
46.	When was a penalty for incomplete filing of a lobby spending report last levied? More than 5 years – 0 points; 4 to 5 years – 1 point; 2 to 3 years – 2 points; 0 to 1 year/agency does not accept incomplete filings – 3 points	0	0	0	0
47.	Does the state publish a list of delinquent filers either on the Web or in a printed document? No – 0 points; Yes – 1 point REVOLVING DOOR PROVISION	1	1	0	0
48.	Is there a “cooling off” period required before legislators can register as lobbyists? No – 0 points; Yes – 2 points TOTAL POINTS	2	2 ⁴¹⁴	2 ⁴¹⁵	0
		62	57	37	39

⁴¹⁴ Two years

⁴¹⁵ One year for appointed or elected officials. Ordinary staff do not have to wait and they can lobby immediately after they leave the public service.

Table 18 Comparative application of the CII									
Compliance burden		C&B Label (CCI/CPI)	Serbian proposal	Slovenia	Macedonia	Montenegro			
1. How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? More than \$10,000 made – 4 points More than \$2,500 made – 6 points Regardless of the amount made – 7 points	C3 (4/0)								
	B2 (6/2)								
	B1 (7/4)	7	7	7	7	7			
2. Is a lobbyist required to file a registration form? No – 0 points Yes – 5 points	B2 (5/3)	5	5	5	5	5			
	C3 (4/0)								
3. How many days can lobbying take place before registration is required? 6 months or more – 4 points Up to a month – 5 points Up to 3 days – 5 points	C1 (5/1)								
	B2 (5/3)	5	5	5	5	5			
	C1 (4/1)								
4. Is subject matter or bill number to be addressed by a lobbyist required on registration forms? Subject matter only required – 4 points Bill number required – 5 points	B2 (5/3)	5	5	4	0	4			
	C3 (2/0)	2	2	2	4	2			
5. How often is registration by a lobbyist required? Once only – 2 points Every two years – 4 points Annually or more often – 4 points	C1 (4/1)								
	B2 (4/1)								
	B2 (4/2)								

<p>6. Within how many days must a lobbyist notify the oversight agency of changes in registration? 6 months or more – 4 points Up to a month – 5 points Up to 3 days – 5 points</p>	C3 (4/0)						
	C1 (5/1)	5	5	5	5	5	5
	B2 (5/3)						
<p>7. Is a lobbyist required to submit a photograph with registration? No – 0 points Yes – 5 points</p>	C1 (5/1)	0	0	0	0	0	0
	C1 (6/1)	0	1	0	0	6	6
<p>8. Is a lobbyist required to identify by name each employer on the registration form? No – 0 points Yes – 6 points</p>	C1 (6/1)	6	1	0	0	0	0
	C2 (8/3)	8	8	8	8	8	8
<p>9. Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No – 0 points Yes – 6 points</p>	C3 (5/0)	5	5	5	5	5	5
	C1 (6/1)						
<p>10. Is a lobbyist required to file a spending report? No – 0 points Yes – 8 points</p>	C2 (7/2)						
	C1 (5/2)	5	5	5	5	5	5
<p>11. How often within a year is a lobbyist required to report spending? Once (or once in 2 years) – 5 points Twice – 6 points Every three months or more often – 7 points</p>	C1 (5/2)	5	5	5	5	5	5
	C2 (7/2)						
<p>12. Is compensation/salary required to be reported by a lobbyist on spending reports? No – 0 points Yes – 5 points</p>	C1 (5/2)	5	5	5	5	5	5
	C2 (7/2)						

<p>13. Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No - 0 points Yes - 8 points</p>	C2 (7/2)	8	8	0	0
<p>14. What spending must be itemized? No spending required to be itemized - 0 points All spending above \$500 must be itemized - 8 points All spending above \$100 - 8 points All spending required to be itemized - 8 points</p>	C2 (8/2)	0	0	0	0
	C2 (8/3)				
<p>15. Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No - 0 points Yes - 7 points</p>	B1 (8/4)				
<p>16. Is the recipient of the itemized expenditure required to be identified? No - 0 points Yes - 6 points</p>	C3 (7/1)	7	7	7	7
<p>17. Is the date of the itemized expenditure required to be reported? No - 0 points Yes - 7 points</p>	C1 (6/1)	6	6	0	0
<p>18. Is the date of the itemized expenditure required to be reported? No - 0 points Yes - 8 points</p>	C3 (8/1)	8	8	0	0
<p>19. Is a description of the itemized expenditure required to be reported? No - 0 points Yes - 7 points</p>	C3 (7/1)	7	7	0	0
<p>20. Is subject matter or bill number to be addressed by a lobbyist required on spending reports? No bill number/subject matter required - 0 points Subject matter only required - 6 points Bill number required - 5 points</p>	C1 (6/1)	6	6	6	6
<p>20. Is spending on household members of public officials by a lobbyist required to be reported? No - 0 points</p>	B2 (5/3)	5			
<p>20. Is spending on household members of public officials by a lobbyist required to be reported? No - 0 points</p>	C3 (7/1)	0	0	0	0

Yes – 7 points								
21. Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points Yes – 6 points	C1 (6/1)	6	0	0	0	0	0	0
22. What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – 0 points Gifts are reported – 6 points	C1 (6/1)	6	6	0	0	0	0	0
23. What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions not required to be disclosed on spending report/prohibited during session – 0 points Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 6 points	C1 (6/1)	6	6	0	0	0	0	0
24. Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points Yes – 4 points	C1 (4/1)	4	4	1	0	0	0	0
25. Is an employer or principal of a lobbyist required to file a spending report? No – 0 points Yes – 5 points	B2 (5/3)	0	0	0	0	0	0	0
26. Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points Yes – 5 points	B2 (5/2)	0	0	0	0	0	0	0
27. Does oversight agency provide lobbyists/employers with online registration? No – 0 points Yes – 4 points	C1 (4/1)	4	4	0	0	0	0	0
28. Does oversight agency provide lobbyists/employers with	C1	5	5	0	0	0	0	0

<p>online spending reporting? No – 0 points Yes – 5 points</p>	(5/1)				
<p>29. Does oversight agency provide training about how to file registrations/spending reports electronically? No – 0 points Yes – 4 points</p>	C1 (4/1)	4	4	0	0
<p>30. Location/format of registrations or active lobbyist directory: Photocopies from office only – 6 points PDF or image files on the Web – 3 points Searchable database on the Web – 4 points Downloadable files/database – 4 points</p>	C1 (6/1)			6	6
	A3 (3/2)		3		
	B2 (4/3)	4			
	A2 (4/4)				
<p>31. Location/format of spending reports: Photocopies from office only – 7 points PDF or image files on the Web – 3 points Searchable database on the Web – 4 points Downloadable files/database – 4 points</p>	C3 (7/1)	7	7	7	7
	A3 (3/2)				
	B/2 (4/3)				
	A2 (4/4)				
<p>32. Cost of copies: Interested parties pay for the copies of available reports – 0 points Interested parties do not have to pay for the copies of available reports – 3 points</p>	CPI score missing	0	0	0	0
<p>33. Are sample registration forms/spending reports available on the Web? No – 0 points Yes – 3 points</p>	B3 (3/1)	3	3	0	0
<p>34. Does oversight agency provide an overall lobbying spending total by year?</p>	B2 (6/2)	6	0	0	0

No - 0 points Yes - 6 points									
35. Does oversight agency provide an overall lobbying spending total by spending-report deadlines? No - 0 points Yes - 8 points	C2 (8/2)	8	0	0	0	0	0	0	0
36. Does oversight agency provide an overall lobbying spending total by industries lobbyists represent? No - 0 points Yes - 8 points	C2 (8/2)	8	0	0	0	0	0	0	0
37. How often are lobby lists updated? Annually or less often - 6 points Monthly - 7 points Weekly - 7 points	C1 (6/1)	6	6	6	6	6	6	6	6
	C2 (7/2)								
	C2 (7/3)								7416
	A3 (3/3)	3	3	3	3	3	3	3	3
38. In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No - 0 points Yes - 3 points									
39. Does the state publish a list of delinquent filers either on the Web or in a printed document? No - 0 points Yes - 4 points	C1 (4/1)	4	4	4	4	4	4	4	0
40. Does the state have statutory auditing authority? No - 0 points Yes - 7 points	C2 (7/2)	7	7	7	7	7	7	7	7
41. Does oversight agency conduct mandatory reviews or audits? No - 0 points Yes - 8 points	C2 (8/2)	0	8	8	8	8	8	8	8

⁴¹⁶ All changes in the register have to be reported and sent to the Official Gazette no later than 8 days, where they are going to be published in the first next issue.

42. Is there a statutory penalty for late filing of lobby registration form? No – 0 points Yes – 8 points	C3 (8/1)	0	8	0	8
43. Is there a statutory penalty for late filing of a lobby spending form? No – 0 points Yes – 8 points	C3 (8/1)	8	8	8	0
44. Is there a statutory penalty for incomplete filling of a lobby registration form? No – 0 points Yes – 8 points	C3 (8/1)	8	0	0	8
45. Is there a statutory penalty for incomplete filling of a lobby spending report? No – 0 points Yes - 8 points	C3 (8/1)	8	8	8	8
46. Structure/type of oversight agency? Already existing administrative unit with attributed tasks of enforcement of lobbying rules – 6 points Entirely new administrative agency – 8 points	CPI score missing	8	6	6	6
47. Is there mandatory revolving door compliance? No – 0 points Yes – 8 points	C2 (8/2)	8	8	8	0
TOTAL CII SCORES:		78	69	43 ⁴¹⁷	46 ⁴¹⁸

⁴¹⁷ In Macedonia, there is officially one registered lobbyist. Compliance costs can be considered as irrelevant, while the enforcement burden is probably minimal as well.

⁴¹⁸ Since there are still no registered lobbyist in Montenegro, the compliance costs are practically zero while the public burden remains in place, but it is likely very low due to a lack of enforcement activities.

14. Interpretation of the results

The comparative application of the CPI and the CII on Slovenia, Macedonia and Montenegro has first of all revealed their scores in two indices. Both in terms of the CPI and the CII, these scores were calculated for the first time, and here the differences of the scores of analysed countries, and their comparison with the Serbian proposal, can be seen.

Besides the informative value obtained, the regional scores are useful for an additional evaluation of the Serbian proposal, since existing regional legislation seems to be a relevant reference point for the Serbian scenario. Moreover, specific problems that Montenegro and Macedonia are dealing with might be very relevant for Serbia as well.⁴¹⁹

In terms of the Ninefold theory position of the analysed legislation, the results are as follows:

Highly regulated systems (60-100)	High – Low	High – Medium	High – High Serbian unimproved proposal (62-78)
Medium regulated systems (30-59)	Medium – Low	Medium -Medium Slovenia (57-69) Macedonia: (37:43) Montenegro (39:46)	Medium – High
Lowly regulated systems (0-29)	Low – Low	Low – Medium	Low – High
CPI CI	Lowly burdensome systems (0-29)	Medium burdensome systems (30-69)	Highly burdensome systems (70-100)

⁴¹⁹ However, it has to be mentioned that this comparison was made between the qualitatively revised Serbian proposal and other unrevised law. Hence, the results only reflect the quantitative side of the comparison. At the same time the comparative table reveals which regulatory mechanisms are present and which not, but for more accurate comparison the unrevised laws would have to be analysed more precisely in the qualitative way as well.

As the results suggest, the Serbian proposal is still the most expensive one, but also the one with the highest predicted CPI score, keeping it in the moderate C-B systems group together with Macedonia, Montenegro and Slovenia. However, the last three have not passed the CPI threshold of 60 and they belong, in terms of the CPI, to the medium-regulated systems. Slovenia, at the same time, has a CPI score which is also below 60 but the CII score is almost 70, which places it closest to the unsatisfactory C-B group. This problem is clearly indicated by the high inter-score difference. On the other hand, the inter-score difference of Macedonia and Montenegro are low, which theoretically indicates better C-B balance.

A very important issue to mention is related to the actual effects of the laws in Montenegro and Macedonia. These countries are the first neighbours to Serbia, albeit much smaller ones though. Before making an important conclusion, again it is useful to refer to some relevant data on economic power, lobbying market size and perceived corruption in the analysed countries:

Country	GDP per capita in 2011 ⁴²⁰ (current US\$)	Transparency international CPI Ranking (2012)	Number of registered lobbyists (2013)	CPI	CII
Macedonia	5,058	43	1	37	43
Montenegro	7,111	41	0	39	46
Serbia	6,312	39	0 ⁴²¹	62	78
Slovenia	24,132	61	63	57	69

This table can be useful to gauge the importance of the economic conditions and corruption perception, which can be further on associated with the rule of law and the integrity of the public sector. Slovenia is the only country among those analysed with a significantly higher GDP per capita. While Macedonia, Montenegro and Serbia have GDPs from \$5,000 to \$7,000 per capita, Slovenia has a four up to five times higher GDP per capita. This said, it can be confirmed that the economic

⁴²⁰ Data of the World Bank: <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>

⁴²¹ There are about 100 members of the Serbian Lobbying Association at the moment.

conditions in Slovenia are much better, which is again related to one of the main conditions for lobbying development – an economic power with a developed market and large firms.

Similarly, the Transparency International's Corruption Perception Index also indicates that Slovenia has a better score than the three mentioned countries – it is about 20 places, below while Macedonia, Montenegro and Serbia continue being neighbours even virtually, on this list. Slovenia is not very far, but is still significantly far from them. This suggests that another condition for the substitution of the corruption by lobbying is also present to some extent – strengthening of the rule of law, and the diminishing tendency of corruptive practices.

From this brief analysis, it is not hard to notice that Serbia is much closer to Montenegro and Macedonia than to Slovenia, in terms of the conditions which affect the development and existence of lobbying markets. Thus, the regulatory failures (no registered lobbyists) in Macedonia and Montenegro might be a very important indicator for Serbia as well. Since Serbian regulation indicates high compliance and enforcement costs, one has to ask themselves if the regulation should be adopted in its current form, even if it offers satisfactory “strength” indication. Similarly, even the improved version could be questionable if no or very few lobbyists are expected to register.

Bearing this in mind, it is that Serbia either waits for an improvement in the conditions of the lobbying market, where a complex regulation can fully serve its purpose. Alternatively, more simple regulation should be adopted in order to avoid the high costs associated with the establishment of enforcement bodies and procedures. In any case, the lessons from Macedonia and Montenegro should not be disregarded, but taken as an important message.

15. Conclusion of Chapter IV

This Chapter demonstrated the applicability of the CII in not only policymaking but also in academia. The detailed analysis of the legal and political environment of Serbia showed that legal and institutional systems provide room for lobbying, and that the adoption of a law on lobbying is clearly stated within the National strategy for combating corruption, and also within the official documents of the Serbian Lobbyists Association. Hence, it seems that both sides have their own reasons for regulation, but it also seems that lobbyists are more interested in the adoption of regulation which would favour their own proposal.

The vertical application demonstrated the value of the ex-ante application of the CII and CPI. This application enables an early scan of costs and benefits, and with reference to CBLs, it enables the improvement of the regulatory structure. This improvement was demonstrated in the Serbian case where CII scores were decreased while the CPI score was increased, and at the same time the inter-score difference was minimized. All these improvements indicate unambiguous improvement in the regulatory structure, and hopefully in its performance in real circumstances.

The last part of the Chapter demonstrated the comparative advantages of the CII combined with the CPI by analysing three new lobbying regulations from Macedonia, Slovenia and Montenegro. This part also shows the robustness of the method and its easy comparative applicability both for research and policymaking.

General conclusion

The lobbying process and its regulation are becoming an important issue worldwide. Political, legal and economic sciences in the last decade produced large amounts of research on its impacts and relations to political systems, democracy, rule of law; and its relation to corruption, economic performance, etc.

The dynamic regulation of lobbying worldwide requires fast comparative learning, while pressures for the reduction of public debts require responsible and efficient policymaking. The main intention of this research was to improve both comparative assessment and practical policymaking by offering a new tool for the assessment of lobbying regulations, both structurally and comparatively.

This research primarily represents a contribution to the lobbying regulation research arena. It introduces an index which for the first time attempts to measure the direct compliance costs of lobbying regulation. The Cost Indicator Index - CII, combined with the currently the most advanced and used tool (the CPI Index which serves as a proxy for the measurement of the benefits of lobbying regulations) offers a brand new platform for qualitative and quantitative assessment of adopted lobbying laws and proposals of those laws, both in the comparative and the sui generis dimension.

In terms of costs seen through the RIA perspective, the CII was designed primarily as a tool for regulatory compliance costs assessment. In terms of benefits of regulation, this research concentrates on the most discussed reasons which can be summarised through the non-economic concepts of transparency and accountability. Hence, the research foundations are set on a narrow and specific platform which only allows for addressing the specific research question.

However, the specific platform and the research focus of the CII does not exclude the fact that there might be other, indirect, and less straightforward costs or motivations associated with the regulation of lobbying. Some of the main ideas in this sense were acknowledged in the introduction, by linking lobbying regulation to some of the godfathers of the economic theory of regulation: Coase (1960), Stigler and Friedland (1962), Tullock (1967), Akerlof (1970), Stigler (1971), Posner (1971,1974), Nelson (1974), Peltzman (1976), Goldberg (1979),

Buchanan et.al. (1983), Becker (1983), Tirole (1986), Sappington and Stiglitz (1987), and others. Some of their theories were mentioned even later throughout the research, but only with the intention to expand the level of thought on certain issues, and to highlight where more research would be valuable from the economic perspective on lobbying regulation.

The major theoretical contribution of this research is contribution in filling the gaps in research and policymaking, which focus on regulation on lobbying both in a sui generis (Chari, Hogan and Murphy 2011; Chari & O'Donovan 2011; Obradovic 2009; Dalia 2011; Greenwood & de Castro Asarta 2011; Naurin 2008; ALTER-EU 2010) and in a comparative perspective (Opheim 1991; Brinig et al. 1993; Newmark 2003; CPI (Center for Public Integrity Index) 2003; Chari, Hogan and Murphy 2008, 2009, 2010; Griffith 2008; the OECD special reports from 2007a, 2007b; Flannery 2010; Malone 2004; McGrath 2008).

The analyzed literature focuses on general comparative studies, the EU-US studies, and sui generis studies which observe certain laws in a rather isolated manner. Most of the studies focus on the US, which is the largest lobbying market and which has gone through several regulatory stages. However, none of the studies analyses lobbying regulation activities in the Western Balkans. Macedonia, Montenegro and Slovenia have already regulated lobbying, while Serbia and Croatia are on their way to do the same. This research for the first time brings the four new countries into the discussion and calculates their CPI and CII scores. The scores of Slovenia, Macedonia and Montenegro will be immediately useful for classification within the global CPI comparison with states for whom the CPI scores are already calculated.

Also, the literature generally shows a lack of economic reasoning, especially when it comes to studying and measuring the benefits and costs of lobbying regulations. When it comes to the benefits, there are several indices which analyze lobbying regulation structure, and its elements as proxies for measurement of the benefits (Opheim 1991; Biring et al. 1993; Newmark 2003). The most recent, advanced and applied is the quantitative CPI Index (2003) developed by the Center for Public Integrity. None of these tools focus on the potential costs of lobbying

laws, but they solely focus on elements that constitute the strength of lobbying laws, and offer global comparisons of lobbying regulations in this dimension only.

The CII is not just the only new tool introduced in the last decade, but it is the only tool available for comparative assessments of the costs of lobbying regulations. The CII offers a completely new platform for discussion and comparisons of different lobbying laws, and expands by involving the economic perspective as well. On the top of this, CII is methodologically compatible with the CPI and applied together they provide indicative information both on benefits and costs, which was not possible to do in comparative perspective so far.

Lastly, beside the qualitative contribution, the CII introduces an additional theoretical framework for complementary qualitative analysis of lobbying laws. The framework which is based on CPI and Threefold theory (Chari, Hogan and Murphy 2009) introduces the CII Threefold theory for classification of lobbying regulations. This framework divides lobbying regulations in three different systems: highly burdensome, medium-burdensome and low burdensome systems. Each of those reflects the CII score range, but also a set of common qualitative features for each of the three systems.

This theory was additionally merged with the Threefold theory (Chari et al. 2009) which allowed another theoretical framework to be constructed - The Ninefold theory. By combining these two theories into one, the new more advanced framework was created. The Ninefold theory allows a more structured assessment and classification of lobbying regulations, both by indication of benefits and costs. By positioning a regulation in one of the nine categories of the Ninefold theory, it will be possible to predict its general qualitative description and value. This can be considered as an important contribution, as it introduced a new framework (while at the same time utilizing the older one) for the qualitative treatment of lobbying regulations.

Lastly, this research introduces so called Cost-Benefit Labels (CBL). These labels might improve an *ex-ante* lobbying regulation impact assessment procedure, primarily in the sui generis perspective. IN other words, this tool can be used as a mechanism for improvement of the cost-benefit ratio of a proposal before it gets

officially adopted. Similarly, the CBL can also serve as a useful tool for improvement of the understanding of comparative practices.

In sum, this research introduced an important quantitative tool and a quantitative framework for further and wider study of lobbying regulations in a general cost-benefit perspective.

Besides the purely theoretical contribution, this research also contributes to the policymaking arena and practices, especially in Europe as the second largest lobbying market. Few European countries already have laws on lobbying; some of them have only self-enforced rules, while most of them do not have any lobbying regulation in place. The EU, similarly, has not yet imposed any mandatory rules on lobbying in Brussels, but rising public pressures suggests that this might be done in the near future. Few member states have already individually started moving in this direction.

Hence, the regulation of lobbying still has not reached its full expansion, but it can be expected that both EU and non-EU countries will have to introduce some sort of mandatory rules. A nice example to demonstrate this are the four analysed countries from the Western Balkans. A similar tendency is present in the US as well, where the last rules were introduced in 2007 (HLOGA), but their new reform has been actively debated since 2011.

This research pointed out that one of the main challenges in introducing new lobbying regulations is the lack of standard RIA procedures in many countries. In those countries where RIA procedures exist, the problem of the scope and the type of analysis would either leave the lobbying regulations outside of the assessment, or the type of the analysis would remain shallow and descriptive. In the lobbying regulation comparative analysis perspective, RIA procedures are not very useful as they often significantly vary in approach, type of assessment and scope.

Another problem in practical assessment of lobbying regulations is that regulators have limited tools to assess comparative solutions and to properly understand their structure. Still, they are not immune to mimicking other laws and borrowing specific regulatory solutions. The OECD reports which were analysed indicate the sensitivity when it comes to the structural choices, but they completely neglect the cost-dimensions of these choices. Hence, policymakers have

very few available tools and limited insights in all aspects of comparative learning when it comes to lobbying regulations.

However, the RIA world and its methods were valuable tools for constructing and supporting the methodology of the CII. In terms of RIA, the CII can be seen as a simple compliance cost analysis (CCA) tool. RIA literature also supports the choice of the depth of the analysis, and justifies the indicative nature of the results in this case. But what represents the highest contribution to policymaking is that the CII is easily applied in a comparative perspective, whether one thinks of comparisons within different periods of time or within different countries. It is a user-friendly tool with instantly informative results, allowing policymakers to have a better early-stage cost-benefit assessment and higher degree of comparative learning at the same time.

The central part of this research was the introduction of the CII. The Index is built on a theoretical framework borrowed from the CPI, OECD and RIA literature; and the empirical survey based on the qualitative and the quantitative analysis which was used for construction of the scoring system. In addition, this choice was compared to the Central Bank Independence and the Regulatory Independence indices literature (Bade and Parkin 1982; Grilli, Masciandaro and Tabellini 1991; Alesina and Summers 1993; Cukierman et al. 1992; Mathew 2006; Pisha 2011; Cargil 2013; Gilardi 2002; Johannsen 2003; Montoya and Trillas 2007), where it is concluded that the CII generally fits into the indices literature (Cukierman et al. 1992; Johannsen 2003), and it generally suffers from the same weakness as an early-stage tool.

The survey was quantitative and qualitative. In quantitative terms, the anecdotal evidence provided aggregate information on the cost perception for different cost indicators. In qualitative terms, several interviews were conducted in order to get additional information from the field on the nature of the costs of lobbying regulation. Both types of results were used as a foundation for the CII cost indication values.

The sample was unfortunately relatively small (the senior management responses represented 16 participating institutions represented), but sufficient for obtaining the indicative values, and hence it reached its purpose. In an isolated

analysis of studied lobbying rules, the data revealed that compliance costs of industry to most of them are expected to be of a moderate impact. Similarly, the public sector's responses revealed that enforcement mechanisms are perceived either as highly costly or as of insignificant impact on costs.

The sample and methodology can certainly be criticized. It is clear that with a larger sample and more resources, the scoring technique could be further improved which would additionally contribute to the accuracy of the CII. Thus, increasing the sample and applying more accurate statistical techniques would be beneficial for improving of the accuracy of the CII in the future.

Another challenging issue is the choice of the CII thresholds that were slightly downgraded, which can be seen as an arbitrary decision. However, it is also shown that at this stage the choice does not seem to have a significant impact on the interpretation of the results. The real degree of sensitivity will be known only after enough of CII scores became available for the analysis. But on the basis of four available scores, it does not seem that there is a large sensitivity. In any case, this is yet another reason why the CII's results have to be treated in an indicative manner. As mentioned earlier, the CII at this stage looks like a well-functioning prototype tool, which can certainly be improved in terms of accuracy in the future. Re-assessment of the thresholds based on more accurate statistical data should not be excluded in this sense.

In terms of its robustness, CII uses the strengths of the CPI and Threefold theory in order to remain a robust tool which can be easily applicable comparatively. An contribution to its robustness is the decision to define the impacts through different categories of magnitude and not monetary values. If the burden is expressed in terms of indication of the magnitude (high, medium, low), we can more easily compare different lobbying regulations regardless of their origins, based on a qualitative and quantitative analysis of the regulatory structure. The application of the CII in comparative perspective confirmed that CII seems to be robust enough. Of course, further applications would provide more accurate picture on its final robustness and ability to examine different types of laws.

Lastly, this research demonstrated that the CII, the Ninefold theory and CBL are functional. The focus of the analysis was given to the area of South East Europe

which in the last two years had the most active lobbying regulation scene. At the same time, this area remained completely outside of the academic radar. Hence, this research brings four new countries (Slovenia, Macedonia, Montenegro and Serbia) into the research of lobbying. The reason why these countries have not been previously mentioned in other studies is probably that information was inaccessible to researchers due to language barriers.

The special focus of the application was on Serbia. The Serbian whose proposal on the Law on Lobbying has been extensively analysed in qualitative and quantitative terms, taking into consideration specific political and economic circumstances of the country. The brief economic analysis shows that formal, economic conditions for the growth of lobbying have been mostly achieved in the Western Balkans. Strengthening of the rule of law together with economic growth, accumulation of capital, increase in bribery “prices” were some of the conditions whose specific interaction opened a door for development of lobbying market.

By focusing first on Serbia is shown that the lobbying regulation idea has been debated for several years, and that both the state and lobbyists showed high interest in drafting the proposal. This suggests that each side is trying to capitalize on the future law, as briefly discussed in the introduction, on rent-seeking. While the public sector needs to prove its accountability and integrity by distancing itself from undue lobbying influences, the private sector seems to be interested in controlling the access to the market, especially in terms of foreign competition. Hence, the proposal which just comes from one side should be studied carefully before adoption of the law.

The quantitative application of the CII on the Serbian proposal revealed its cost-benefits nature through calculated CPI and CII scores. Since the results implied that there is room for improvement, the CBL scheme was used to improve the cost-benefit ratio of the proposal. By using this simple method, the CPI score grew for 5 (from 62 to 67) while the CII score went down for 9 points (from 78 to 69). The total inter-score difference at the same time decreased from 14 to 2 points, which indicates a more balanced regulatory structure after the improvement.

At the very end, the comparative application of CII and CBL was demonstrated by analysing already existing laws of Macedonia, Montenegro and Slovenia.

After reviewing the application of the CPI in policymaking, the only remaining issue to be discussed is the future of lobbying regulation studies. By analysing the literature and policy approaches, it became clear that the debate is not sufficiently involving important economic arguments. We still do not know much about the precise economic output of lobbying, and the relation of regulation to that output. Also, the benefits and costs of lobbying regulation offer a large space for research. Besides these direct compliance costs studied here, there are probably many other factors which would be influenced by changing the rules of the game in the lobbying arena. Moreover, we still need to learn more on economic reasons for lobbying regulation. Besides obvious transparency and accountability reasons, it would be beneficial to learn more on economic motives of lobbying players and regulators. General economic theory of regulation provides a sound starting point for researches which would go in this direction. The results from these future researches would be useful to set the CII methodology on firmer economic foundation.

When it comes to the future of CII there is also a room for improvement. With more available resources, it would be useful to re-launch the survey in order to have a larger sample which could be treated with more precise statistical methods. This would allow more precision, and could lead to re-adjustments of the thresholds as well. This at the same time means that the CII in policymaking could be used as a tool, after adoption of the proposed improvements in the later stage. By then, this analysis mostly provides an important groundwork but not the final answer.

Besides this, it is still shown that the CII works, but it has to be underlined that its results have to be taken with certain reserve at this. The reasons for this were discussed in details. Still, the CII will probably find its place within the academic and policymaking arena, and will hopefully contribute to a better understanding of lobbying regulation.

The list of abbreviations:

ABA	American Bar Association
CBA	Cost benefit analysis
CBL	Cost benefit labels
CBO	Congressional Budget Office
CCA	Compliance costs analysis
CII	Cost Indicator Index
CPI	Center for Public Integrity's Index
EC	European Commission
EU	European Union
FARA	Foreign Agents Registration Act
FRLA	Federal Regulation of Lobbying Act
HLOGA	Honest Leadership and Open Governments Act
LDA	Lobbying disclosure Act
RIA	Regulatory Impact Assessment
SAP	Stabilization and Association Process
SEE	South East Europe
SLA	Serbian Lobbying Association
TI-CPI	Transparency International Corruption Perception Index
US	The United States of America
UMRA	Unfunded Mandates Reform Act
WB	Western Balkans

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Annex 1

	Application of the CPI on the Serbian Proposal on Law on lobbying	
	DEFINITION OF LOBBYIST	Points
1.	In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No – 0 points; Yes – 3 points	3
2.	How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: More than \$500 made/spent – 0 points Qualification threshold: More than \$100 made/spent – 1 point Qualification threshold: More than \$50 made/spent – 2 points Qualification threshold: \$50 or less made/spent – 3 points Lobbyists qualify and must register no matter how much money made/spent – 4 points	4
	INDIVIDUAL REGISTRATION	
3.	Is a lobbyist required to file a registration form? No – 0 points; Yes – 3 points	3
4.	How many days can lobbying take place before registration is required? 16 or more days – 0 points; 11 to 15 days – 1 point; 6 to 10 days – 2 points; 1 to 5 days – 3 points; 0 days – 4 points	4⁴²²
5.	Is subject matter or bill number to be addressed by a lobbyist required on registration forms? No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points	0⁴²³
6.	How often is registration by a lobbyist required? Once only – 0 points; Every two years – 1 point; Annually or more often – 2	0

⁴²² According to the Serbian proposal, lobbying cannot take place before the registration of a lobbyist.

⁴²³ To be determined by a competent ministry. Thus, even though at the moment of the analysis no points can be given, the *ex-post* application of the CPI could result in a slightly better score in case that subject matter or bills become integral parts of registration. On the other hand, the registration procedure requires only one registration, and it is questionable if reporting a bill or a field would make much sense since these categories would change over time. However, updates on actual lobbying activity would be in any case available via lobbying reports.

	points	
7.	Within how many days must a lobbyist notify the oversight agency of changes in registration? 16 – or more days – 0 points; 11 to 15 days – 1 point; 6 to 10 days – 2 points; 1 to 5 days – 3 points; 0 days – 4 points	1
8.	Is a lobbyist required to submit a photograph with registration? No – 0 points; Yes – 1 point	0
9.	Is a lobbyist required to identify by name each employer on the registration form? No – 0 points; Yes – 1 point	0
10.	Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No – 0 points; Yes – 1 point	0⁴²⁴
INDIVIDUAL SPENDING DISCLOSURE		
11.	Is a lobbyist required to file a spending report? No – 0 points; Yes – 3 points	3
12.	How often during each two-year cycle is a lobbyist required to report spending? 0 to 3 filings – 0 points; 4 to 6 filings – 1 point; 7 to 9 filings – 2 points; 10 or more filings – 3 points	0
13.	Is compensation/salary required to be reported by a lobbyist on spending reports? No – 0 points; Yes – 2 points	2
14.	Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No – 0 points; Yes – 2 points	2
15.	What spending must be itemized? No spending required to be itemized – 0 points; Itemization threshold: More than \$100 – 1 point; Itemization threshold: More than \$25 – 2 points; Itemization threshold: \$25 and below – 3 points; All spending	0⁴²⁵

⁴²⁴ Not determined.

⁴²⁵ Not determined.

	required to be itemized – 4 points	
16.	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No – 0 points; Yes – 1 point	1
17.	Is the recipient of the itemized expenditure required to be identified? No – 0 points; Yes – 1 point	0⁴²⁶
18.	Is the date of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point	1
19.	Is a description of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point	1
20.	Is subject matter or bill number to be addressed by a lobbyist required on spending reports? No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points	3
21.	Is spending on household members of public officials by a lobbyist required to be reported? No – 0 points; Yes – 1 point	1
22.	Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points; Yes – 1 point	1⁴²⁷
23.	What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – 0 points; Gifts are reported – 1 point; Gifts are limited and reported – 2 points; Gifts are prohibited – 3 points	2
24.	What is the statutory provision for a lobbyist giving and reporting campaign contributions?	1⁴²⁸

⁴²⁶ Not determined.

⁴²⁷ The Serbian proposal makes it obligatory to disclose any gifts or services provided to public officials and persons correlated with a public official (defined by the Law on Corruption fighting – Official Gazette 97/2008). According to this law, a correlated person should be considered to be a spouse or a partner of a public official, his family members upon 2nd degree, and other legal and natural persons which can be considered to be correlated to a public official.

⁴²⁸ This is actually regulated by the Law on Financing Political Activities (Official Gazette of Republic of Serbia No 43/2011). Campaign contributions are allowed and limited to the amount of 20 average salaries (natural person) and to the amount of 200 average salaries (legal entities) annually. Political parties have the duty to publicly publish online all donations which exceed the amount of one average salary, within 8 days of receiving the donation. Even though this is not regulated by the proposal on the

	Campaign contributions allowed and not required to be disclosed on spending report/prohibited during session – 0 points; Campaign contributions allowed and not required to be disclosed on spending report/allowed during session – 0 points; Campaign contributions allowed and required to be disclosed on spending report/prohibited during session – 1 point; Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 1 point; Campaign contributions prohibited – 2 points	
25.	Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points; Yes – 1 point	1
26.	Is an employer or principal of a lobbyist required to file a spending report? No – 0 point; Yes – 3 points	0
27.	Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points; Yes – 2 points	0
	ELECTRONIC FILLING	
28.	Does the oversight agency provide lobbyists/employers with online registration? No – 0 points; Yes – 1 point	1
29.	Does the oversight agency provide lobbyists/employers with online spending reporting? No – 0 points; Yes – 1 point	0⁴²⁹
30.	Does the oversight agency provide training about how to file registrations/spending reports electronically? No – 0 points; Yes – 1 point	1⁴³⁰
	PUBLIC ACCESS	
31.	Location/format of registrations or active lobbyist directory: Photocopies from office only – 1 point; PDF or image files on the Web – 2 points; Searchable database on the Web – 3 points; Downloadable	3

Law on Lobbying, since information on campaign contributions will be publicly available, this can be registered within the CPI.

⁴²⁹ Not determined.

⁴³⁰ Lobbyist will have to pass a lobbying exam which will include filing training.

	files/database – 4 points	
32.	Location/format of spending reports: Photocopies from office only – 1 point; PDF or image files on the Web – 2 points; Searchable database on the Web – 3 points; Downloadable files/database – 4 points	0 ⁴³¹
33.	Cost of copies: 25 cents or more per page – 0 points; Less than 25 cents per page – 1 point	1
34.	Are sample registration forms/spending reports available the Web? No – 0 points; Yes – 1 point	1
35.	Does the state agency provide an overall lobbying spending total by year? No – 0 points; Yes – 2 points	0 ⁴³²
36.	Does the state agency provide an overall lobbying spending total by spending-report deadlines? No – 0 points; Yes – 2 points	0 ⁴³³
37.	Does the state agency provide an overall lobbying spending total by industries lobbyists represent? No – 0 points; Yes – 2 points	0 ⁴³⁴
38.	How often are lobby lists updated? Semi-annually or less often – 1 point; Monthly – 2 points; Weekly – 3 points; Daily – 4 points	1
	ENFORCEMENT	
39.	Does the state have statutory auditing authority? No – 0 points; Yes – 2 points	1
40.	Does the state agency conduct mandatory reviews or audits? No – 0 points; Yes – 2 points	0
41.	Is there a statutory penalty for late filing of lobby registration form? No – 0 points; Yes – 1 point	0 ⁴³⁵

⁴³¹ Not determined.

⁴³² Not determined.

⁴³³ Not determined.

⁴³⁴ Not determined.

⁴³⁵ Not determined.

42.	Is there a statutory penalty for late filing of a lobby spending report? No – 0 points; Yes – 1 point	0 ⁴³⁶
43.	When was a penalty for late filing of a lobby spending report last levied? More than 5 years – 0 points; 4 to 5 years – 1 point; 2 to 3 years – 2 points; 0 to 1 year – 3 points	0 ⁴³⁷
44.	Is there a statutory penalty for incomplete filing of a lobby registration form? No – 0 points; Yes – 1 point	1
45.	Is there a statutory penalty for incomplete filing of a lobby spending report? No – 0 points; Yes – 1 point	0 ⁴³⁸
46.	When was a penalty for incomplete filing of a lobby spending report last levied? More than 5 years – 0 points; 4 to 5 years – 1 point; 2 to 3 years – 2 points; 0 to 1 year/agency does not accept incomplete filings – 3 points	0 ⁴³⁹
47.	Does the state publish a list of delinquent filers either on the Web or in a printed document? No – 0 points; Yes – 1 point	0
	REVOLVING DOOR PROVISION	
48.	Is there a “cooling off” period required before legislators can register as lobbyists? No – 0 points; Yes – 2 points	2
	TOTAL POINTS <i>ex-ante</i>	46
	MINIMUM TOTAL POINTS if proposal get corrected adopting solutions suggested by the CPI that are still not determined	63

⁴³⁶ Not determined.

⁴³⁷ To be answered *ex-post*.

⁴³⁸ Not determined.

⁴³⁹ To be answered *ex-post*.

Annex 2

Application of the CII on the Serbian Proposal on Law on lobbying	Points	C&B Label (CCI/CPI)
The Cost Indicator Index Compliance burden		
1. How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: More than \$10,000 made - 4 points Qualification threshold: More than \$2,500 made - 6 points Qualification threshold: Regardless the amount made - 7 points		C3 (4/0)
		B2 (6/2)
	7	B1 (7/4)
2. Is a lobbyist required to file a registration form? No - 0 points Yes - 5 points	5	B2 (5/3)
3. How many days can lobbying take place before registration is required? 6 months or more - 4 points Up to a month - 5 points Up to 3 days - 5 points		C3 (4/0)
		C1 (5/1)
	5 ⁴⁴⁰	B2 (5/3)
4. Is subject matter or bill number to be addressed by a lobbyist required on registration forms? Subject matter only required - 4 points Bill number required - 5 points	TBD ⁴⁴¹	C1 (4/1)
		B2 (5/3)
5. How often is registration by a lobbyist required? Once only - 2 points Every two years - 4 point Annually or more often - 4 points	2	C3 (2/0)
		C1 (4/1)
		B2 (4/2)
6. Within how many days must a lobbyist notify the oversight agency of changes in registration? 6 months or more - 4 points up to a month - 5 points up to 3 days - 5 points		C3 (4/0)
	5	C1 (5/1)
		B2 (5/3)
7. Is a lobbyist required to submit a photograph with registration? No - 0 points	TBD	C1 (5/1)

⁴⁴⁰ Practically zero days, but since this is the closest to that than it can be granted 5 points to this question.

⁴⁴¹ To be determined.

Yes – 5 points		
8. Is a lobbyist required to identify by name each employer on the registration form? No – 0 points Yes – 6 points	TBD	C1 (6/1)
9. Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No – 0 points Yes – 6 points	TBD	C1 (6/1)
10. Is a lobbyist required to file a spending report? No – 0 points Yes – 8 points	8	C2 (8/3)
11. How often within a year is a lobbyist required to report spending? Once (or once in 2 years) – 5 points Twice - 6 points Every three months or more often – 7 points	5	C3 (5/0)
		C1 (6/1)
		C2 (7/2)
12. Is compensation/salary required to be reported by a lobbyist on spending reports? No – 0 points Yes – 5 points	5	C1 (5/2)
13. Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No – 0 points Yes – 8 points	8	C2 (7/2)
14. What spending must be itemized? No spending required to be itemized – 0 points, All spending above \$500 must be itemized – 8 All spending above \$100 - 8 All spending required to be itemized – 8	TBD	C2 (8/2)
		C2 (8/3)
		B1 (8/4)
15. Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No – 0 points Yes – 7 points	7	C3 (7/1)
16. Is the recipient of the itemized expenditure required to be identified? No – 0 points Yes – 6 points	TBD	C1 (6/1)
17. Is the date of the itemized expenditure required to be reported? No – 0 points Yes – 8 points	8	C3 (8/1)
18. Is a description of the itemized expenditure required to be reported? No – 0 points Yes – 7 points	7	C3 (7/1)
19. Is subject matter or bill number to be addressed by a lobbyist required on spending reports?		C1 (6/1)

No bill number/subject matter required – 0 points Subject matter only required – 6 points Bill number required – 5 points	5	B2 (5/3)
20. Is spending on household members of public officials by a lobbyist required to be reported? No – 0 points Yes – 7 points		C3 (7/1)
21. Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points Yes – 6 points	6	C1 (6/1)
22. What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – 0 points Gifts are reported – 6 points	6	C1 (6/1)
23. What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions not required to be disclosed on spending report/prohibited during session – 0 Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 6 points	6	C1 (6/1)
24. Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points Yes – 4 points	4	C1 (4/1)
25. Is an employer or principal of a lobbyist required to file a spending report? No – 0 point Yes – 5 points	0	B2 (5/3)
26. Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points Yes – 5 points	0	B2 (5/2)
The Cost Indicator Index Enforcement burden		
27. Does oversight agency provide lobbyists/employers with online registration? No – 0 points Yes – 4 points	4	C1 (4/1)
28. Does oversight agency provide lobbyists/employers with online spending reporting? No – 0 points Yes – 5 points	TBD	C1 (5/1)
29. Does oversight agency provide training about how to file registrations/spending reports electronically? No – 0 points Yes – 4 points	4	C1 (4/1)
30. Location/format of registrations or active lobbyist directory: Photocopies from office only – 6 points PDF or image files on the Web – 3 points Searchable database on the Web – 4 points		C1 (6/1)
		A3 (3/2)

Downloadable files/database – 4 points	4	B2 (4/3)
		A2 (4/4)
31. Location/format of spending reports: Photocopies from office only – 7 point PDF or image files on the Web – 3 points Searchable database on the Web – 4 points Downloadable files/database – 4 point	TBD	C3 (7/1)
		A3 (3/2)
		B/2 (4/3)
		A2 (4/4)
32. Cost of copies: Interested parties pay for the copies of available reports – 0 points Interested parties do not have to pay for the copies of available reports – 3 points		CPI score missing
33. Are sample registration forms/spending reports available the Web? No – 0 points Yes – 3 points	3	B3 (3/1)
34. Does oversight agency provide an overall lobbying spending total by year? No – 0 points Yes – 6 points	TBD	B2 (6/2)
35. Does oversight agency provide an overall lobbying spending total by spending-report deadlines? No – 0 points Yes – 8 points	TBD	C2 (8/2)
36. Does oversight agency provide an overall lobbying spending total by industries lobbyists represent? No – 0 points Yes – 8 points	TBD	C2 (8/2)
37. How often are lobby lists updated? Annually or less often – 6 points Monthly – 7 points Weekly - 7 points	6	C1 (6/1)
		C2 (7/2)
		C2 (7/3)
38. In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No – 0 points Yes – 3 points	3	A3 (3/3)
39. Does the state publish a list of delinquent filers either on the Web or in a printed document? No – 0 points Yes – 4 points	TBD	C1 (4/1)
40. Does the state have statutory auditing authority? No -0 points Yes – 7 points	7	C2 (7/2)
41. Does oversight agency conducts mandatory reviews or audits? No – 0 points Yes – 8 points	0	C2 (8/2)

42. Is there a statutory penalty for late filing of lobby registration form? No - 0 points Yes - 8 points	TBD	C3 (8/1)
43. Is there a statutory penalty for late filing of a lobby spending report? No - 0 points Yes - 8 points	TBD	C3 (8/1)
44. Is there a statutory penalty for incomplete filling of a lobby registration form? No - 0 points Yes - 8 points	TBD	C3 (8/1)
45. Is there a statutory penalty for incomplete filling of a lobby spending report? No - 0 points Yes - 8 points	TBD	C3 (8/1)
46. Structure/type of oversight agency? Already existing administrative unit with attributed tasks of enforcement of lobbying rules - 6 points Entirely new administrative agency - 8 points	8	CPI score missing
47. Is there a mandatory revolving door compliance No - 0 points Yes - 8 points	8	C2 (8/2)
TOTAL CII SCORE (SCALED TO 0-100 SCALE)	51	
Total burden for the compliance (%) 99 Total burden for the enforcement (%) 47	68% 32%	

Annex 3

	Improved CPI score in the draft of the Serbian Proposal on Law on Lobbying – integration of all rules into a single regulation (shaded cells show where the improvements were made)	
	DEFINITION OF LOBBYIST	Points
1.	In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No – 0 points; Yes – 3 points	3
2.	How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: More than \$500 made/spent – 0 points Qualification threshold: More than \$100 made/spent – 1 point Qualification threshold: More than \$50 made/spent – 2 points Qualification threshold: \$50 or less made/spent – 3 points Lobbyists qualify and must register no matter how much money made/spent – 4 points	4
	INDIVIDUAL REGISTRATION	
3.	Is a lobbyist required to file a registration form? No – 0 points; Yes – 3 points	3
4.	How many days can lobbying take place before registration is required? 16 or more days – 0 points; 11 to 15 days – 1 point; 6 to 10 days – 2 points; 1 to 5 days – 3 points; 0 days – 4 points	4⁴⁴²
5.	Is subject matter or bill number to be addressed by a lobbyist required on registration forms? No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points	3
6.	How often is registration by a lobbyist required? Once only – 0 points; Every two years – 1 point; Annually or more often – 2 points	0
7.	Within how many days must a lobbyist notify the oversight agency of changes in registration?	1

⁴⁴² According to the Serbian proposal, lobbying cannot take place before the registration of a lobbyist.

	16 – or more days – 0 points; 11 to 15 days – 1 point; 6 to 10 days – 2 points; 1 to 5 days – 3 points; 0 days – 4 points	
8.	Is a lobbyist required to submit a photograph with registration? No – 0 points; Yes – 1 point	0
9.	Is a lobbyist required to identify by name each employer on the registration form? No – 0 points; Yes – 1point	0
10.	Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No – 0 points; Yes – 1 point	1
INDIVIDUAL SPENDING DISCLOSURE		
11.	Is a lobbyist required to file a spending report? No – 0 points; Yes – 3 points	3
12.	How often during each two-year cycle is a lobbyist required to report spending? 0 – 3 filings – 0 points; 4 – 6 filings – 1 point; 7 – 9 filings – 2 points; 10 – or more filings – 3 points	0
13.	Is compensation/salary required to be reported by a lobbyist on spending reports? No – 0 points; Yes – 2 points	2
14.	Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No – 0 points; Yes – 2 points	2
15.	What spending must be itemized? No spending required to be itemized – 0 points; Itemization threshold: More than \$100 – 1 point; Itemization threshold: More than \$25 – 2 points; Itemization threshold: \$25 and below – 3 points; All spending required to be itemized – 4 points	0
16.	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No – 0 points; Yes – 1 point	1

17.	Is the recipient of the itemized expenditure required to be identified? No – 0 points; Yes – 1 point	1
18.	Is the date of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point	1
19.	Is a description of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point	1
20.	Is subject matter or bill number to be addressed by a lobbyist required on spending reports? No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points	3
21.	Is spending on household members of public officials by a lobbyist required to be reported? No – 0 points; Yes – 1 point	1
22.	Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points; Yes – 1 point	1⁴⁴³
23.	What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – 0 points; Gifts are reported – 1 point; Gifts are limited and reported – 2 points; Gifts are prohibited – 3 points	2
24.	What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions allowed and not required to be disclosed on spending report/prohibited during session – 0 points; Campaign contributions allowed and not required to be disclosed on spending report/allowed during session – 0 points; Campaign contributions allowed and required to be disclosed on spending report/prohibited during session – 1 point; Campaign contributions allowed and required to be	1⁴⁴⁴

⁴⁴³ The Serbian proposal makes it obligatory to disclose any gifts or services provided to the public officials and persons correlated with a public official (defined by the Law on Corruption fighting – Official Gazette 97/2008). According to this law, a correlated person should be considered to be a spouse or a partner of a public official, his family members upon 2nd degree, and other legal and natural persons which can be considered to be correlated to a public official.

⁴⁴⁴ This is actually regulated by the Law on Financing Political Activities (Official Gazette of Republic of Serbia No 43/2011). Campaign contributions are allowed and limited to the amount of 20 average salaries (natural person) and to the amount of 200 average salaries (legal entities) annually. Political parties have the duty to publicly publish online all donations which exceed the amount of one average salary, within 8 days of receiving the donation. Even though this is not regulated by the proposal on the Law on Lobbying, since information on campaign contributions will be publicly available, this can be registered within the CPI.

	disclosed on spending report/allowed during session – 1 point; Campaign contributions prohibited – 2 points	
25.	Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points; Yes – 1 point	1
26.	Is an employer or principal of a lobbyist required to file a spending report? No – 0 point; Yes – 3 points	0
27.	Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points; Yes – 2 points	0
	ELECTRONIC FILLING	
28.	Does the oversight agency provide lobbyists/employers with online registration? No – 0 points; Yes – 1 point	1
29.	Does the oversight agency provide lobbyists/employers with online spending reporting? No – 0 points; Yes – 1 point	1
30.	Does the oversight agency provide training about how to file registrations/spending reports electronically? No – 0 points; Yes – 1 point	1⁴⁴⁵
	PUBLIC ACCESS	
31.	Location/format of registrations or active lobbyist directory: Photocopies from office only – 1 point; PDF or image files on the Web – 2 points; Searchable database on the Web – 3 points; Downloadable files/database – 4 points	3
32.	Location/format of spending reports: Photocopies from office only – 1 point; PDF or image files on the Web – 2 points; Searchable database on the Web – 3 points; Downloadable files/database – 4 points	1
33.	Cost of copies:	1

⁴⁴⁵ Lobbyist will have to pass a lobbying exam which will include filing training.

	25 cents or more per page – 0 points; Less than 25 cents per page – 1 point	
34.	Are sample registration forms/spending reports available the Web? No – 0 points; Yes – 1 point	1
35.	Does the state agency provide an overall lobbying spending total by year? No – 0 points; Yes – 2 points	2
36.	Does the state agency provide an overall lobbying spending total by spending-report deadlines? No – 0 points; Yes – 2 points	2
37.	Does the state agency provide an overall lobbying spending total by industries lobbyists represent? No – 0 points; Yes – 2 points	2
38.	How often are lobby lists updated? Semi-annually or less often – 1 point; Monthly – 2 points; Weekly – 3 points; Daily – 4 points	1
	ENFORCEMENT	
39.	Does the state have statutory auditing authority? No – 0 points; Yes – 2 points	1
40.	Does the state agency conduct mandatory reviews or audits? No – 0 points Yes – 2 points	0
41.	Is there a statutory penalty for late filing of lobby registration form? No – 0 points; Yes – 1 point	0
42.	Is there a statutory penalty for late filing of a lobby spending report? No – 0 points; Yes – 1 point	1
43.	When was a penalty for late filing of a lobby spending report last levied? More than 5 years – 0 points; 4 to 5 years – 1 point; 2 to 3 years – 2 points; 0 to 1 year – 3 points	0 ⁴⁴⁶
44.	Is there a statutory penalty for incomplete filing of a lobby registration form?	1

⁴⁴⁶ To be answered *ex-post*.

	No – 0 points; Yes – 1 point	
45.	Is there a statutory penalty for incomplete filing of a lobby spending report? No – 0 points; Yes – 1 point	1
46.	When was a penalty for incomplete filing of a lobby spending report last levied? More than 5 years – 0 points; 4 – 5 years – 1 point; 2 – 3 years – 2 points; 0 – 1 year/agency does not accept incomplete filings – 3 points	0⁴⁴⁷
47.	Does the state publish a list of delinquent filers either on the Web or in a printed document? No – 0 points; Yes – 1 point	1
	REVOLVING DOOR PROVISION	
48.	Is there a “cooling off” period required before legislators can register as lobbyists? No – 0 points; Yes – 2 points	2
	TOTAL POINTS – integrated version of the rules	62

⁴⁴⁷ To be answered *ex-post*.

Annex 4

Application of the CII on the Serbian Proposal on Law on lobbying (after- integration results from the step I)	Points	
The Cost Indicator Index Compliance burden		C&B Label (CCI/CPI)
1. How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: More than \$10,000 made - 4 points Qualification threshold: More than \$2,500 made - 6 points Qualification threshold: regardless the amount made - 7 points		C3 (4/0)
		B2 (6/2)
	7	B1 (7/4)
2. Is a lobbyist required to file a registration form? No - 0 points Yes - 5 points	5	B2 (5/3)
3. How many days can lobbying take place before registration is required? 6 months or more - 4 points Up to a month - 5 points Up to 3 days - 5 points		C3 (4/0)
		C1 (5/1)
	5 ⁴⁴⁸	B2 (5/3)
4. Is subject matter or bill number to be addressed by a lobbyist required on registration forms? Subject matter only required - 4 points Bill number required - 5 points		C1 (4/1)
	5	B2 (5/3)
5. How often is registration by a lobbyist required? Once only - 2 points Every two years - 4 point Annually or more often - 4 points	2	C3 (2/0)
		C1 (4/1)
		B2 (4/2)
6. Within how many days must a lobbyist notify the oversight agency of changes in registration? 6 months or more - 4 points Up to a month - 5 points Up to 3 days - 5 points		C3 (4/0)
	5	C1 (5/1)
		B2 (5/3)
7. Is a lobbyist required to submit a photograph with registration? No - 0 points Yes - 5 points	0	C1 (5/1)

⁴⁴⁸ Practically zero days, but since this is the closest to that than it can be granted 5 points to this question.

8. Is a lobbyist required to identify by name each employer on the registration form? No - 0 points Yes - 6 points	0	C1 (6/1)
9. Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No - 0 points Yes - 6 points	6	C1 (6/1)
10. Is a lobbyist required to file a spending report? No - 0 points Yes - 8 points	8	C2 (8/3)
11. How often within a year is a lobbyist required to report spending? Once (or once in 2 years) - 5 points Twice - 6 points Every three months or more often - 7 points	5	C3 (5/0)
		C1 (6/1)
		C2 (7/2)
12. Is compensation/salary required to be reported by a lobbyist on spending reports? No - 0 points Yes - 5 points	5	C1 (5/2)
13. Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No - 0 points Yes - 8 points	8	C2 (7/2)
14. What spending must be itemized? No spending required to be itemized - 0 points All spending above \$500 must be itemized - 8 points All spending above \$100 - 8 points All spending required to be itemized - 8 points	0	C2 (8/2)
		C2 (8/3)
		B1 (8/4)
15. Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No - 0 points Yes - 7 points	7	C3 (7/1)
16. Is the recipient of the itemized expenditure required to be identified? No - 0 points Yes - 6 points	6	C1 (6/1)
17. Is the date of the itemized expenditure required to be reported? No - 0 points Yes - 8 points	8	C3 (8/1)
18. Is a description of the itemized expenditure required to be reported? No - 0 points Yes - 7 points	7	C3 (7/1)
19. Is subject matter or bill number to be addressed by a lobbyist required on spending reports? No bill number/subject matter required - 0 points Subject matter only required - 6 points Bill number required - 5 points		C1 (6/1)
	5	B2 (5/3)

20. Is spending on household members of public officials by a lobbyist required to be reported? No – 0 points Yes – 7 points	0	C3 (7/1)
21. Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points Yes – 6 points	6	C1 (6/1)
22. What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – 0 points Gifts are reported – 6 points	6	C1 (6/1)
23. What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions not required to be disclosed on spending report/prohibited during session – 0 points Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 6 points	6	C1 (6/1)
24. Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points Yes – 4 points	4	C1 (4/1)
25. Is an employer or principal of a lobbyist required to file a spending report? No – 0 points Yes – 5 points	0	B2 (5/3)
26. Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points Yes – 5 points	0	B2 (5/2)
The Cost Indicator Index Enforcement burden		
27. Does oversight agency provide lobbyists/employers with online registration? No – 0 points Yes – 4 points	4	C1 (4/1)
28. Does oversight agency provide lobbyists/employers with online spending reporting? No – 0 points Yes – 5 points	5	C1 (5/1)
29. Does oversight agency provide training about how to file registrations/spending reports electronically? No – 0 points Yes – 4 points	4	C1 (4/1)
30. Location/format of registrations or active lobbyist directory: Photocopies from office only – 6 points PDF or image files on the Web – 3 points Searchable database on the Web – 4 points Downloadable files/database – 4 points		C1 (6/1)
		A3 (3/2)
	4	B2 (4/3)

		A2 (4/4)
31. Location/format of spending reports: Photocopies from office only – 7 point PDF or image files on the Web – 3 points Searchable database on the Web – 4 points Downloadable files/database – 4 points	7	C3 (7/1)
		A3 (3/2)
		B/2 (4/3)
		A2 (4/4)
32. Cost of copies: Interested parties pay for the copies of available reports – 0 points Interested parties do not have to pay for the copies of available reports – 3 points		CPI score missing
33. Are sample registration forms/spending reports available the Web? No – 0 points Yes – 3 points	3	B3 (3/1)
34. Does oversight agency provide an overall lobbying spending total by year? No – 0 points Yes – 6 points	6	B2 (6/2)
35. Does oversight agency provide an overall lobbying spending total by spending-report deadlines? No – 0 points Yes – 8 points	8	C2 (8/2)
36. Does oversight agency provide an overall lobbying spending total by industries lobbyists represent? No – 0 points Yes – 8 points	8	C2 (8/2)
37. How often are lobby lists updated? Annually or less often – 6 points Monthly – 7 points Weekly - 7 points	6	C1 (6/1)
		C2 (7/2)
		C2 (7/3)
38. In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No – 0 points Yes – 3 points	3	A3 (3/3)
39. Does the state publish a list of delinquent filers either on the Web or in a printed document? No – 0 points Yes – 4 points	4	C1 (4/1)
40. Does the state have statutory auditing authority? No -0 points Yes – 7 points	7	C2 (7/2)
41. Does oversight agency conducts mandatory reviews or audits? No – 0 points Yes – 8 points	0	C2 (8/2)
42. Is there a statutory penalty for late filing of lobby registration form? No – 0 points	0	C3 (8/1)

Yes - 8 points		
43. Is there a statutory penalty for late filing of a lobby spending report? No - 0 points Yes - 8 points	8	C3 (8/1)
44. Is there a statutory penalty for incomplete filling of a lobby registration form? No - 0 points Yes - 8 points	8	C3 (8/1)
45. Is there a statutory penalty for incomplete filling of a lobby spending report? No - 0 points Yes - 8 points	8	C3 (8/1)
46. Structure/type of oversight agency? Already existing administrative unit with attributed tasks of enforcement of lobbying rules - 6 points Entirely new administrative agency - 8 points	8	CPI score missing
47. Is there a mandatory revolving door compliance No - 0 points Yes - 8 points	8	C2 (8/2)
TOTAL CII SCORE (SCALED TO 0-100 SCALE)	78	

Annex 5

	Improved CPI score in the draft of the Serbian Proposal on Law on Lobbying – elimination, adding and alternation of inefficient rules	Points	Elimination	Switching to the alternative
	DEFINITION OF LOBBYIST			
1.	In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No – 0 points; Yes – 3 points	3		
2.	How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition? Qualification threshold: More than \$500 made/spent – 0 points Qualification threshold: More than \$100 made/spent – 1 point Qualification threshold: More than \$50 made/spent – 2 points Qualification threshold: \$50 or less made/spent – 3 points Lobbyists qualify and must register no matter how much money made/spent – 4 points	4		
	INDIVIDUAL REGISTRATION			
3.	Is a lobbyist required to file a registration form? No – 0 points; Yes – 3 points	3		
4.	How many days can lobbying take place before registration is required? 16 or more days – 0 points; 11 to 15 days – 1 point; 6 to 10 days – 2 points;	4		

	1 to 5 days – 3 points; 0 days – 4 points				
5.	<p>Is subject matter or bill number to be addressed by a lobbyist required on registration forms?</p> <p>No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points</p>	3			
6.	<p>How often is registration by a lobbyist required?</p> <p>Once only – 0 points; Every two years – 1 point; Annually or more often – 2 points</p>	2			x
7.	<p>Within how many days must a lobbyist notify the oversight agency of changes in registration?</p> <p>16 – or more days – 0 points; 11 – 15 days – 1 point; 6 – 10 days – 2 points; 1 – 5 days – 3 points; 0 days – 4 points</p>	3			x
8.	<p>Is a lobbyist required to submit a photograph with registration?</p> <p>No – 0 points; Yes – 1 point</p>	1			x (added)
9.	<p>Is a lobbyist required to identify by name each employer on the registration form?</p> <p>No – 0 points; Yes – 1 point</p>	1			x (added, for in house lobbyist)
10.	<p>Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)?</p> <p>No – 0 points; Yes – 1 point</p>	1			

INDIVIDUAL SPENDING DISCLOSURE			
11.	Is a lobbyist required to file a spending report? No – 0 points; Yes – 3 points	3	
12.	How often during each two-year cycle is a lobbyist required to report spending? 0 – 3 filings – 0 points; 4 – 6 filings – 1 point; 7 – 9 filings – 2 points; 10 or more filings – 3 points	1	x
13.	Is compensation/salary required to be reported by a lobbyist on spending reports? No – 0 points; Yes – 2 points	2	
14.	Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No – 0 points Yes – 2 points	0	x
15.	What spending must be itemized? No spending required to be itemized – 0 points; Itemization threshold: More than \$100 – 1 point; Itemization threshold: More than \$25 – 2 points; Itemization threshold: \$25 and below – 3 points; All spending required to be itemized – 4 points	4	x
16.	Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No – 0 points; Yes – 1 point	0	x

17.	Is the recipient of the itemized expenditure required to be identified? No – 0 points; Yes – 1 point	1		
18.	Is the date of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point	0		X
19.	Is a description of the itemized expenditure required to be reported? No – 0 points; Yes – 1 point	0		X
20.	Is subject matter or bill number to be addressed by a lobbyist required on spending reports? No bill number/subject matter required – 0 points; Subject matter only required – 1 point; Bill number required – 3 points	3		
21.	Is spending on household members of public officials by a lobbyist required to be reported? No – 0 points; Yes – 1 point	1		
22.	Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points; Yes – 1 point	0		X
23.	What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – 0 points; Gifts are reported – 1 point; Gifts are limited and reported – 2 points; Gifts are prohibited – 3 points	2		
24.	What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions allowed and not required to be disclosed on spending report/prohibited during session – 0 points; Campaign contributions allowed and not required to be disclosed on spending	1		

	report/allowed during session – 0 points; Campaign contributions allowed and required to be disclosed on spending report/prohibited during session – 1 point; Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 1 point; Campaign contributions prohibited – 2 points			
25.	Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points; Yes – 1 point	1		
26.	Is an employer or principal of a lobbyist required to file a spending report? No – 0 point; Yes – 3 points	0		
27.	Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points Yes – 2 points	0		
	ELECTRONIC FILING			
28.	Does the oversight agency provide lobbyists/employers with online registration? No – 0 points; Yes – 1 point	1		
29.	Does the oversight agency provide lobbyists/employers with online spending reporting? No – 0 points; Yes – 1 point	1		
30.	Does the oversight agency provide training about how to file registrations/spending reports electronically?	1		

	No – 0 points; Yes – 1 point				
	PUBLIC ACCESS				
31.	Location/format of registrations or active lobbyist directory: Photocopies from office only – 1 point; PDF or image files on the Web – 2 points; Searchable database on the Web – 3 points; Downloadable files/database – 4 points	4			X
32.	Location/format of spending reports: Photocopies from office only – 1 point; PDF or image files on the Web – 2 points; Searchable database on the Web – 3 points; Downloadable files/database – 4 points	4			X
33.	Cost of copies: 25 cents or more per page – 0 points; Less than 25 cents per page – 1 point	0		X ⁴⁴⁹	
34.	Are sample registration forms/spending reports available the Web? No – 0 points; Yes – 1 point	1			
35.	Does the state agency provide an overall lobbying spending total by year? No – 0 points; Yes – 2 points	2			
36.	Does the state agency provide an overall lobbying spending total by spending-report deadlines? No – 0 points; Yes – 2 points	0		X	

⁴⁴⁹ Has to be zero since the public access is in an online format.

37.	Does the state agency provide an overall lobbying spending total by industries lobbyists represent? No – 0 points; Yes – 2 points	0	X	
38.	How often are lobby lists updated? Semi-annually or less often – 1 point; Monthly – 2 points; Weekly – 3 points; Daily – 4 points	1		
	ENFORCEMENT			
39.	Does the state have statutory auditing authority? No – 0 points; Yes – 2 points	2		
40.	Does the state agency conduct mandatory reviews or audits? No – 0 points; Yes – 2 points	0		
41.	Is there a statutory penalty for late filing of lobby registration form? No – 0 points; Yes – 1 point	0		
42.	Is there a statutory penalty for late filing of a lobby spending report? No – 0 points; Yes – 1 point	1		
43.	When was a penalty for late filing of a lobby spending report last levied? More than 5 years – 0 points; 4 to 5 years – 1 point; 2 to 3 years – 2 points; 0 to 1 year – 3 points	0		
44.	Is there a statutory penalty for incomplete filing of a lobby registration form? No – 0 points; Yes – 1 point	1		

45.	<p>Is there a statutory penalty for incomplete filing of a lobby spending report? No – 0 points; Yes – 1 point</p>	1			
46.	<p>When was a penalty for incomplete filing of a lobby spending report last levied? More than 5 years – 0 points; 4 – 5 years – 1 point; 2 – 3 years – 2 points; 0 – 1 year/agency does not accept incomplete filings – 3 points</p>	0			
47.	<p>Does the state publish a list of delinquent filers either on the Web or in a printed document? No – 0 points; Yes – 1 point</p> <p>REVOLVING DOOR PROVISION</p>	1			
48.	<p>Is there a “cooling off” period required before legislators can register as lobbyists? No – 0 points; Yes – 2 points</p> <p>TOTAL CPI SCORE – improved CPI score 67 (instead of 61) New improved score: 67 Old score before improvement: 59 Difference between the improved and the original score: + 8</p>	2			

Annex 6

Application of the CII on the Serbian Proposal on Law on lobbying (Elimination and alternation of the rules)	Points	C&B Label (CCI/CPI)	Elimination	Switching to the alternative
<p style="text-align: center;">The Cost Indicator Index Compliance burden</p>				
<p>1. How much does an individual have to make/spend to qualify as a lobbyist or to prompt registration as a lobbyist, according to the definition?</p> <p>Qualification threshold: More than \$10,000 made - 4 points Qualification threshold: More than \$2,500 made - 6 points Qualification threshold: regardless the amount made - 7 points</p>	7	<p>C3 (4/0)</p> <p>B2 (6/2)</p> <p>B1 (7/4)</p>		
<p>2. Is a lobbyist required to file a registration form?</p> <p>No - 0 points Yes - 5 points</p>	5	<p>B2 (5/3)</p>		
<p>3. How many days can lobbying take place before registration is required?</p> <p>6 months or more - 4 points, Up to a month - 5 points, Up to 3 days - 5 points⁴⁵⁰</p>		<p>C3 (4/0)</p> <p>C1 (5/1)</p> <p>B2 (5/3)</p>		
<p>4. Is subject matter or bill number to be addressed by a lobbyist required on registration forms?</p>	5	<p>C1 (4/1)</p>		

⁴⁵⁰ This efficiency label is not fully precise since it does not offer room for the evaluation of the situation where lobbying cannot take place at all before the registration, such the Serbian proposal offers. Thus, in the CPI index, the score for this question is 4 while in the CII the closest possible solution has been selected. This will not in any case influence the final results, since both the scales are calculated separately. Moreover, even though the efficiency label is not as precise in this situation, the alternative rules to this are much below so there is little room for error in terms of choosing the most efficient one (if this issue comes to the question).

Subject matter only required – 4 points Bill number required – 5 points	5	B2 (5/3)		
5. How often is registration by a lobbyist required? Once only – 2 points Every two years – 4 point Annually or more often – 4 points		C3 (2/0)	X	
		C1 (4/1)		
	4	B2 (4/2)		X
6. Within how many days must a lobbyist notify the oversight agency of changes in registration? 6 months or more – 4 points Up to a month – 5 points Up to 3 days – 5 points		C3 (4/0)		
		C1 (5/1)	X	
	5	B2 (5/3)		X
7. Is a lobbyist required to submit a photograph with registration? No – 0 points Yes – 5 points	5	C1 (5/1)		X (added)
8. Is a lobbyist required to identify by name each employer on the registration form? No – 0 points Yes – 6 points	6	C1 (6/1)		X (added, for in house lobbyist)
9. Is a lobbyist required to include on the registration form any additional information about the type of lobbying work he or she does (i.e., compensated or non-compensated/contract or salaried)? No – 0 points Yes – 6 points	6	C1 (6/1)		
10. Is a lobbyist required to file a spending report? No – 0 points Yes – 8 points	8	C2 (8/3)		
11. How often within a year is a lobbyist required to report spending? Once (or once in 2 years) – 5 points		C3 (5/0)	X	

<p>Twice - 6 points Every three months or more often - 7 points</p>	6	C1 (6/1)		X
<p>12. Is compensation/salary required to be reported by a lobbyist on spending reports? No - 0 points Yes - 5 points</p>	5	C2 (7/2)		
<p>13. Are summaries (totals) of spending classified by category types (i.e., gifts, entertainment, postage, etc.)? No - 0 points Yes - 8 points</p>	0	C2 (7/2)	X	
<p>14. What spending must be itemized? No spending required to be itemized - 0 points, All spending above \$500 must be itemized - 8 points All spending above \$100 - 8 points All spending required to be itemized - 8 points</p>	0	C2 (8/2)	X	
<p>15. Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No - 0 points Yes - 7 points</p>	8	C2 (8/3) B1 (8/4)		X
<p>16. Is the lobbyist employer/principal on whose behalf the itemized expenditure was made required to be identified? No - 0 points Yes - 6 points</p>	0	C3 (7/1)	X	
<p>17. Is the date of the itemized expenditure required to be identified? No - 0 points Yes - 6 points</p>	6	C1 (6/1)		
<p>18. Is the date of the itemized expenditure required to be reported? No - 0 points Yes - 8 points</p>	0	C3 (8/1)	X	
<p>19. Is a description of the itemized expenditure required to be reported? No - 0 points Yes - 7 points</p>	0	C3 (7/1)	X	
<p>19. Is subject matter or bill number to be addressed by a lobbyist required on spending reports?</p>		C1 (6/1)		

<p>No bill number/subject matter required – 0 points Subject matter only required – 6 points Bill number required – 5 points</p>	5	B2 (5/3)	
<p>20. Is spending on household members of public officials by a lobbyist required to be reported? No – 0 points Yes – 7 points</p>	7	C3 (7/1)	
<p>21. Is a lobbyist required to disclose direct business associations with public officials, candidates or members of their households? No – 0 points Yes – 6 points</p>	0	C1 (6/1)	x
<p>22. What is the statutory provision for a lobbyist giving and reporting gifts? Gifts are not reported – 0 points Gifts are reported – 6 points</p>	6	C1 (6/1)	
<p>23. What is the statutory provision for a lobbyist giving and reporting campaign contributions? Campaign contributions not required to be disclosed on spending report/prohibited during session – 0 points Campaign contributions allowed and required to be disclosed on spending report/allowed during session – 6 points</p>	6	C1 (6/1)	
<p>24. Is a lobbyist who has done no spending during a filing period required to make a report of no activity? No – 0 points Yes – 4 points</p>	4	C1 (4/1)	
<p>25. Is an employer or principal of a lobbyist required to file a spending report? No – 0 points Yes – 5 points</p>	0	B2 (5/3)	
<p>26. Is compensation/salary required to be reported on employer/principal spending reports? No – 0 points Yes – 5 points</p>	0	B2 (5/2)	

The Cost Indicator Index Enforcement burden			
27. Does oversight agency provide lobbyists/employers with online registration? No – 0 points Yes – 4 points	4	C1 (4/1)	
28. Does oversight agency provide lobbyists/employers with online spending reporting? No – 0 points Yes – 5 points	5	C1 (5/1)	
29. Does oversight agency provide training about how to file registrations/spending reports electronically? No – 0 points Yes – 4 points	4	C1 (4/1)	
30. Location/format of registrations or active lobbyist directory: Photocopies from office only – 6 points PDF or image files on the Web – 3 points Searchable database on the Web - 4 points Downloadable files/database – 4 points		C1 (6/1)	
		A3 (3/2)	
		B2 (4/3)	x
	4	A2 (4/4)	x
	0	C3 (7/1)	x
31. Location/format of spending reports: Photocopies from office only – 7 point PDF or image files on the Web – 3 points Searchable database on the Web – 4 points Downloadable files/database – 4 points		A3 (3/2)	
		B/2 (4/3)	
	4	A2 (4/4)	x
	0	CPI score missing	
32. Cost of copies: Interested parties pay for the copies of available reports – 0 points Interested parties do not have to pay for the copies of available reports –	0		

3 points				
33. Are sample registration forms/spending reports available the Web? No - 0 points Yes - 3 points	3	B3 (3/1)		
34. Does oversight agency provide an overall lobbying spending total by year? No - 0 points Yes - 6 points	6	B2 (6/2)		
35. Does oversight agency provide an overall lobbying spending total by spending-report deadlines? No - 0 points Yes - 8 points	0	C2 (8/2)	X	
36. Does oversight agency provide an overall lobbying spending total by industries lobbyists represent? No - 0 points Yes - 8 points	0	C2 (8/2)	X	
37. How often are lobby lists updated? Annually or less often - 6 points Monthly - 7 points Weekly - 7 points	6	C1 (6/1) C2 (7/2) C2 (7/3)		
38. In addition to legislative lobbyists, does the definition recognize executive branch lobbyists? No - 0 points Yes - 3 points	3	A3 (3/3)		
39. Does the state publish a list of delinquent filers either on the Web or in a printed document? No - 0 points Yes - 4 points	4	C1 (4/1)		
40. Does the state have statutory auditing authority? No - 0 points Yes - 7 points	7	C2 (7/2)		
41. Does oversight agency conduct mandatory reviews or audits? No - 0 points	0	C2 (8/2)		

Yes - 8 points					
42. Is there a statutory penalty for late filing of lobby registration form? No - 0 points Yes - 8 points	0	C3 (8/1)			
43. Is there a statutory penalty for late filing of a lobby spending report? No - 0 points Yes - 8 points	8	C3 (8/1)			
44. Is there a statutory penalty for incomplete filling of a lobby registration form? No - 0 points Yes - 8 points	8	C3 (8/1)			
45. Is there a statutory penalty for incomplete filling of a lobby spending report? No - 0 points Yes - 8 points	8	C3 (8/1)			
46. Structure/type of oversight agency? Already existing administrative unit with attributed tasks of enforcement of lobbying rules - 6 points Entirely new administrative agency - 8 points	8	CPI score missing			
47. Is there a mandatory revolving door compliance No - 0 points Yes - 8 points	8	C2 (8/2)			
TOTAL CII SCORE					
New improved score: 69					
Old score before improvement: 81					
Difference between improved and original score: - 12					

Summary

The dynamic regulation of lobbying worldwide requires fast comparative learning, while pressures for the reduction of public debts require responsible and efficient policymaking. The main intention of this research was to improve both comparative assessment and practical policymaking by offering a new tool for the assessment of lobbying regulations, both structurally and comparatively.

This research primarily represents a contribution to the lobbying regulation research arena. It introduces an index which for the first time attempts to measure the direct compliance costs of lobbying regulation. The Cost Indicator Index (CII) offers a brand new platform for qualitative and quantitative assessment of adopted lobbying laws and proposals of those laws, both in the comparative and the sui generis dimension. The CII is not just the only new tool introduced in the last decade, but it is the only tool available for comparative assessments of the costs of lobbying regulations.

Beside the qualitative contribution, the research introduces an additional theoretical framework for complementary qualitative analysis of the lobbying laws. The Ninefold theory allows a more structured assessment and classification of lobbying regulations, both by indication of benefits and costs. Lastly, this research introduces the Cost-Benefit Labels (CBL). These labels might improve an *ex-ante* lobbying regulation impact assessment procedure, primarily in the sui generis perspective.

In its final part, the research focuses on four South East European countries (Slovenia, Serbia, Montenegro and Macedonia), and for the first time brings them into the discussion and calculates their CPI and CII scores. The special focus of the application was on Serbia, whose proposal on the Law on Lobbying has been extensively analysed in qualitative and quantitative terms, taking into consideration specific political and economic circumstances of the country.

Although the obtained results are of an indicative nature, the CII will probably find its place within the academic and policymaking arena, and will hopefully contribute to a better understanding of lobbying regulations worldwide.

Samenvatting

De dynamische regelgeving op het gebied van lobbying wereldwijd vereist snelle en adaptieve kennis, omdat de druk op de vermindering van de overheidsschulden een verantwoordelijke en efficiënte beleidsvorming vereist. De belangrijkste doelstelling van dit onderzoek is om zowel een vergelijkende beoordeling als praktische beleidsvorming te verbeteren, door een nieuw instrument voor de beoordeling van regelgeving voor lobbying te bieden, zowel structureel als vergelijkend.

Dit onderzoek levert primair een bijdrage aan het onderzoek op het terrein van regelgeving voor lobbying. Het introduceert een index waarmee voor de eerste keer getracht wordt de directe kosten voor naleving van regelgeving voor lobbying te meten. De Cost Indicator Index (CII) biedt een gloednieuw platform voor kwalitatieve en kwantitatieve beoordeling van bestaande wetten op het terrein van lobbying en voorstellen voor deze wetten, zowel in de vergelijkende als in de *sui generis* dimensie. De CII is niet het enige nieuwe instrument dat in de laatste jaren is geïntroduceerd, maar het is wel het enige instrument dat beschikbaar is voor een vergelijkende analyse van de kosten van lobbying regulering.

Naast de kwalitatieve bijdrage introduceert het onderzoek een extra theoretisch raamwerk voor een aanvullende kwalitatieve analyse van wetgeving op het terrein van lobbying. Door de 'Ninefold theorie' kan een meer gestructureerde assessment en classificatie van regelgeving voor lobbying worden geboden, door identificatie van zowel opbrengsten als kosten. Tenslotte introduceert dit onderzoek de Cost-Benefit Labels (CBL). Deze labels zouden een *ex-ante* regelgeving voor lobbying impact assessment procedure kunnen verbeteren, voornamelijk vanuit de *sui generis* invalshoek.

In het laatste deel van het onderzoek ligt de focus op vier Zuidoost-Europese landen (Slovenië, Servië, Montenegro en Macedonië). Dit onderzoek brengt deze landen voor het eerst binnen de discussie en berekent hun CPI en CII scores. Speciale aandacht gaat naar Servië, wiens voorstel voor de Wet op regelgeving voor lobbying uitgebreid wordt behandeld, in zowel kwalitatieve als kwantitatieve zin, hierbij rekening houdend met de specifieke politieke en economische omstandigheden van dit land.

Hoewel de behaalde resultaten indicatief van aard zijn, zal de CII waarschijnlijk zijn plaats in academisch en beleidsverband weten te vinden, en zal hopelijk bij dragen aan een beter begrip van lobbying regulering wereldwijd.

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DOTTORATO DI RICERCA IN
European Doctorate in Law and Economics (EDLE)

Ciclo XXVI

Settore Concorsuale di afferenza: 13/A4

Settore Scientifico disciplinare: SECS-P/06

TITOLO TESI

A Law and Economics Analysis of Lobbying Regulation – Towards an optimal structure through the Cost Indicator Index

Presentata da: Dusko KRSMANOVIC

Coordinatore Dottorato

Relatore

Prof. Luigi A. Franzoni

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