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THE EVOLUTION OF LOBBYING REGULATION AND THE TOOLS TO CONTROL LOBBIES' ACTIVITIES. SPECIAL REFERENCE TO THE CATALAN REGULATIONS*

Clara I. Velasco Rico**

Abstract

This article provides a doctrinal approach to the concept of lobbies and discusses the evolution of the main regulatory models tested at comparative level. Subsequently, this theoretical background is applied to the current situation of lobbying regulation in Spain and the Catalan regulations in this field are assessed.

Key words: regulation; interest group; lobbies; register; transparency.

L'EVOLUCIÓ DE LA REGULACIÓ DELS GRUPS D'INTERÈS I ELS INSTRUMENTS PER AL CONTROL DE LA SEVA ACTIVITAT. ESPECIAL REFERÈNCIA A LA NORMATIVA CATALANA

Resum

Aquest article ofereix una aproximació doctrinal al concepte de grup d'interès i analitza l'evolució dels principals models reguladors assajats en l'àmbit comparat. Posteriorment, s'aplica aquest bagatge teòric a la situació actual de la regulació dels grups d'interès a l'Estat espanyol i es fa una valoració de la normativa catalana en la matèria.

Paraules clau: regulació; grup d'interès; lobbys; registre; transparència.

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** Clara I. Velasco Rico, associate professor (temp.) of administrative law at Pompeu Fabra University (UPF). B.A. and Ph.D. in law and B.Sc. in political science and administration. Departament de Dret, edifici Roger de Llúria (Campus de la Ciutadella), c. de Ramon Trias Fargas, 25-27, 08005 Barcelona. clara.velasco@upf.edu, @claravelascoric.

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Summary

1 Introduction: the current situation regarding lobbying regulation

This paper deals with the origins, definition and evolution of the different models for regulating so-called "lobbies" and refers to the situation in Spain and, in particular, Catalonia concerning the matter. The paper also explains the role that has been reserved for lobbies in certain democratic systems in accordance with the social valuation of their activity. It also outlines a chronology of the regulations approved concerning lobbies in different legal systems and highlights regulations considered to be pioneering. With regard to lobbying regulation in Spain, this paper highlights its fragmentary nature, which has allowed the systems in autonomous communities, such as Catalonia, to have more advanced regulations concerning this issue. The text thus focuses on analysis and assessment of the regulations concerning the Register of Interest Groups of the Public Administration of Catalonia, and the regulations concerning the Register of Interest Groups approved by the Parliament of Catalonia.

The methodology used to produce this study is based on a review and bibliographical selection of reference works on the questions dealt with, while developing critical analysis of the Catalan lobbying regulations. The reader will find bibliographic references in this work mainly written by public law authors, although there are some absolutely essential citations from political scientists. In the author's opinion, the use of hybrid biographical sources concerning issues such as this enriches the discourse.

The reason behind this article lies in the current political and doctrinal interest in studying and implementing measures that ensure greater transparency in public decision-making procedures, while also aiding in the fight against corruption. Corruption has become a global concern, as it affects the economic development of states and, indirectly, people's lives and well-being in many different ways. Hence, the 2030 Agenda, adopted by the United Nations General Assembly on 25 September 2015, includes cross-cutting measures to fight against corruption.[1] Specifically, goal 16.5 seeks to substantially reduce corruption and bribery in all their forms. The Government of Catalonia shares this goal and has recently presented the *Strategy to fight against corruption and strengthen public integrity.*[2] There are twenty-five specific measures to be developed and actions 15 and 16 focus on lobbies.

Thus, on the one hand, action 15 in the Strategy focuses on "[d]etermining the minimum contents of diaries that must be made public, as well as publishing the regulatory proposals made by lobbies", which would imply "[...] establishing the minimum contents that each of the public fields in diaries must contain in order to ensure homogeneity, accessibility and understanding by the public. As a supplement to this, all of the regulatory proposals presented by lobbies to senior officials and management staff in the Government of Catalonia and the public sector will be published". On the other hand, action 16 in the Government of Catalonia project seeks to "[e]xpand the scope of the obligations arising from the action protocol in relation to lobbies to subdirectors general and the like". It is thus necessary to publish "[...] in the public diary of the Government of Catalonia lobbies, the relationships of subdirectors and subdirectors general and the like with lobbies and, consequently, establish the obligation for prior registration of lobbies in such cases".

Apart from the actions envisaged, which we will comment on below, the Strategy presented by the Catalan executive is intended to ensure that lobbies' actions are known to society as a whole in order to increase the transparency of the entire public decision-making process and thus give visibility to the way in which public and private collective and individual interests are intertwined in the management of public affairs. These measures will also make it possible to create a trace or footprint of lobbies' actions in the regulatory process (Ponce, 2019). These actions are clearly intended to break the relationship that exists in the collective imagination between lobbies, the defence of private interests—in a manner that neglects the public interest—and political and administrative corruption (Rubio, 2017: 400).

In reality, and in order to begin to define the concept, while a lobby seeks to influence the person taking the decision, corruption seeks to control him/her. What pressure and corruption have in common is the seeking and defence of special or private interests in the decision-making process. The former seeks legitimacy in democratic interplay as a "partner" of the public powers or an "interest conveyor", while the latter ends up

1 UN. 2030 Agenda. (Retrieved: 31.01.2020).

2 Government of Catalonia (2020). *Estratègia de lluita contra la corrupció i d'enfortiment de la integritat pública*. (Retrieved: 31.01.2020).

filling up the events and politics sections of newspapers and causing scandals and resignations in countries in Europe and around the world (Sourice, 2015).

2 Doctrinal and regulatory definitions of lobbies

The concept of lobbies (also known as "interest groups", "pressure groups" or "influence groups", which are terms used indistinctly in this work) has been defined by doctrine in various ways. The approaches differ considerably depending on the scientific discipline and the perspective from which the phenomenon is analysed. In the social sciences, basically in political science and sociology (Solís, 2017), there have been clear difficulties with providing a single, comprehensive definition of lobbies (Jordan et al., 2004). Firstly, from an organisational point of view, lobbies have been defined, by analysing their members, as associations with shared attitudes (Truman, 1951: 37).

Secondly, a variant of this doctrinal view adds that the characteristic feature of these associations is the voluntary participation of their members (whether individual or collective members, i.e. other organisations) in the activities of the group organised around a specific issue (Jordan et al., 2004). From the viewpoint of lobbies' functions, a third doctrinal position has been developed concerning these political actors, which are defined as associations that exercise a representative function that conveys the desires of their members to those in positions of political authority and public authorities (Key, 1964: 18).

Finally, adopting a syncretic focus, a restrictive concept of a lobby has been coined, which is defined based on three characteristics (Solís, 2017): 1) *organisation*, which implies the aggregation of individuals' or organisations' concerns; 2) *political interests*, which refers to those organisations' attempts and desire to influence political outcomes, and 3) *informality*, i.e. the associations are not seeking to hold public positions or stand for election but are instead pursuing their objectives through informal interactions with politicians or bureaucrats (Beyer et al., 2008). In this regard, Bernadí & Cerrillo point out that "lobbies are just another actor in governance networks in which there is interaction between interdependent actors, public authorities and private and social organisations that share the resources they provide" (Bernadí & Cerrillo, 2017: 3).

Moreover, Rubio characterises lobbies as any autonomous and organised union of individuals that performs actions to influence power in the defence of common interests (Rubio, 2003). One should thus take into account that the actions of a lobby may also be performed through an individual and that the most up-to-date regulations take this possibility into account. This formula is sufficiently broad to cover "pressure and influence [activities], such as representing their members before the government; offering a channel for political participation apart from elections; contributing their members' knowledge about the situation to the political process; setting the public agenda and monitoring the government's activity to verify the status of their interests" (Rubio, 2017: 401-402).

The main NGOs in the sector—Access Info Europe, Open Knowledge, Sunlight Foundation and Transparency International—have defined lobbying as "any direct or indirect communication with a public official that is made, managed or directed with the purpose of influencing public decision-making".[3]

Lastly, we should mention that, from a legal point of view, in our domestic legal system there is already a regulatory definition of a lobby in article 2(g) of the Catalan Law 19/2014, of December 29, on Transparency, Access to Public Information and Good governance . This specifically stipulates that lobbies are "private natural or legal persons who actively participate in public policies or decision-making processes in Catalonia for the purpose of influencing the direction of those policies and the defence of their own interest or that of third parties, or a public interest". This definition in the Catalan regulations is clearly in line with the provisions of the *Green Paper - European Transparency Initiative* [COM (2006) 194 final, 3 May 2006], which was then in force. At that time, it established the following definition of a lobby's activity: "a legitimate part of the democratic system, regardless of whether it is carried out by individual citizens or companies, civil society organisations and other interest groups or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers)". However, it is important to stress that the OECD recognises the

3 Access Info Europe, Open Knowledge, Sunlight Foundation and Transparency International. (2015). *Estándares internacionales para la regulación del lobby: Hacia una mayor transparencia, integridad y participación*. (Retrieved: 02.02.2020).

difficulty of establishing a single regulatory definition of lobby that can be used in all legal systems, since each of the national regulations passed reflects particular characteristics and concerns or debates that have arisen in each specific context (OECD, 2009: 18).

3 Lobbies, participation in public affairs and corruption

Neither the definition nor the (organisational, functional or mixed) perspective adopted to define a lobby is entirely neutral, since they imply, from the very beginning, a certain positioning concerning the appropriateness and rightness of their actions in putting pressure on those with political responsibilities and managers in the public administration (Rubio, 2017: 400-401). Up until very recently (the middle of the 1990s), our administrative law tradition, with clear roots in the French tradition, tended to identify the public administration with the public interest. Consequently, this has caused a regulatory and doctrinal rejection of the involvement of private groups in the public decision-making process (Molins López-Rodó, 1996: 189).

Nevertheless, the majority of administrative law doctrine clearly evolved in the second half of the 1990s. Basically, the "ritual" invocation (García de Enterría, 1989: 47) of the public interest has been set aside and the focus is now on respecting, safeguarding and defending the rights of citizens in relation to public authorities. During that period, the value of the constitutional principle of social and political pluralism came to the fore, and mechanisms began to be used to stimulate participation by affected sectors in the public decision-making process (Molins López-Rodó, 1996: 190). In the Spanish Constitution (CE) of 1978 one can already find the constitutional grounds that allow lobbying to be channelled through regulations. This activity comes under the general right to participate in regulatory processes that "society" is recognised as holding (Ridao, 2019: 96). There is a part of doctrine that considers lobbying activity to be covered by that stipulated in articles 7, 9.2 and 105 of the Spanish Constitution, as well as the regulations concerning citizens' legislative initiatives (art. 87.3) (Ridao, 2019: 98). It has also been considered that, from a democratic viewpoint, the activity performed by lobbies should be linked to the achievement of certain principles and constitutional rights such as the sovereignty of the people (art. 1.2 CE), political equality and personal dignity with regard to a set of civil rights such as freedom of expression (art. 20 CE), assembly (art. 21 CE), association (art. 22 CE), participation (art. 23 CE) and petition (art. 29 CE) (Revuelta & Villoria, 2016: 412-413).

From the point of view of public management, it is said that lobbies perform essential tasks for our democratic systems. Firstly, they are necessary in order to understand the extent to which the existing regulations are capable of adapting and responding to the real needs of the public, which are constantly evolving alongside social, economic and political changes. Lobbies are thus an ideal tool to detect problems that have arisen when putting certain public policies into practice. Finally, as mentioned, lobbies allow different preferences the public may have concerning certain problematic situations to be made visible (Chaqués, 2015). Furthermore, since the end of the twentieth century, thanks to the development and extensive spread of information and communication technologies throughout all levels of society, new participatory movements have arisen in civil society. These movements or groups are often organised online or through the internet and the new communication tools are capable of questioning the public powers more rapidly and directly than in previous eras (Bartlett & Vèrnia, 2015: 195).

In other legal systems, the participation of lobbies in the process of deciding and implementing public policies is also not an undisputed issue from the viewpoint of both society and doctrine. This is also the case in the cradle of lobbying regulation, the United States (Chari et al., 2019). Part of doctrine considers that the prototypical characteristics of the way lobbies operate in this country are, on one hand, commonplace, that this is constitutionally protected from restrictive or robust regulation or legislation, and that it is wildly unequally distributed across the population (Feldman, 2014: 493). Due to these characteristics of lobbying, it is considered that this activity may affect good governance in at least three ways: firstly, by narrowing the factual and informational basis for governmental action, lobbying promotes "stupidity"; secondly, lobbying may impede their service to the entire populace and therefore contribute to injustice; finally, by diminishing popular contributions to representative governance, lobbying "delegitimises putatively democratic governments" (Feldman, 2014: 494). This statement is connected to the view of certain political scientists who argue, based on the statist tradition, that lobbies are a danger to the full sovereignty of the State. In this regard, one should recall that "[a]mong these, the German political scientist Theodor Erschenburg has

said that 'egotistical interest groups' of associations delegitimise 'the State's authority', at the same time as undermining the necessary conditions for political consensus in democratic systems" (Pont Vidal, 1998: 265).

In addition to this potential harm for democratic systems, one must add the fact that lobbying commonly takes place on two levels (Rubio, 2017: 402). On the one hand, through unstructured participation inside or outside of the relevant administrative procedures (preliminary questions, hearing, public information) and, on the other hand, through their activity in institutional participation bodies (Rubio, 2017: 402). However, furthermore, one must take into account that their action is not necessarily performed at either of these two levels through formal mechanisms or procedures established in law. In other words, there is informal activity by lobbies, in particular influence, which takes place outside the procedural sphere of administrative action (Cerrillo, 2011: 84). This informal activity is not indifferent to the law (Rubio, 2017; Ponce, 2019), as it is subject to the constitutional principles that apply to any administrative activity, although the traditional guarantees of the rule of law were not put in place to tackle these kinds of situations (Cerrillo, 2011: 87).

It has been argued that the fact that there are pressure groups reveals a lack of participation channels provided by a particular legal system and/or institutional system. According to some authors, the "best way to eliminate pressure groups is to acknowledge the fairness of the private interests and claims of interest or promoting groups and to establish means and institutions through which they can assert their legitimate interests or causes, i.e. to bring about good organisation of public life" (Ferrando, 1977: 12).

In this context, although informality and illegality are not synonymous concepts, as Ponce emphasises "[...] the informal decision-making process brings with it the danger of disregarding (and therefore restricting) the legal positions of third parties", which implies "the danger of a possible trend towards illegal administrative action" (Ponce, 2015: 39). In the same way, Villoria highlights that the risks of corruption and unethical practices related to lobbying may materialise at any stage in the process of producing public policies and, apart from the typical forms of conduct listed below, they also include, among others, financing political parties in order to obtain more beneficial regulations once the party is in power; diluting regulations to voluntarily create loopholes in order to avoid establishing real controls; passing regulations as a way of debilitating restrictions on certain behaviours or actions in order to make laws mere window dressing; weakened enforcement of controls and application of laws; and hindering the application of penalties by putting pressure on decision-makers (Villoria, 2020). According to the cited author, "in all of these cases, the regulator or body responsible for implementing the policy abuses its power by favouring specific private interests, harming the public interest or, at least, disregarding it" (Villoria, 2020).

Among other objectives, such as seeking transparency in the actions of the public powers, lobbying regulation may define, delimit and, ultimately, mark out or separate lawful forms of influence from typical conduct that may be subject to criminal penalties (prohibited negotiations, perversion of the course of justice, influence peddling or bribery), which may come within the broad concept of corruption (Aragüàs, 2016: 255). Moreover, the fact of passing a lobbying regulation makes it possible to set limits on the phenomenon of revolving doors and prevent regulatory capture, which may be brought about by the material and human resources lobbies have (Aragüàs, 2016: 255; Villoria, 2020).

However, there is a part of doctrine that doubts the ability of regulation to rein in lobbies' actions. In the United States, where the constitutional foundation of lobbying is in the First Amendment to the Constitution (Chari et al., 2019), Feldman states that while any given position advanced by a particular lobby or the style in which it is conveyed may well be unethical, it is neither legally nor practically feasible to regulate the content of the positions taken by lobbyists (Feldman, 2014: 494). It seems to us that this option has not been implemented in any of the legal systems to which this paper refers. However, as the author also states, it is neither legally nor practically feasible to impose too many rules on the various methods used by lobbyists when they communicate with political officials (Feldman, 2014: 494), at least in the United States context, where lobbying is part of the right to petition enshrined in the First Amendment to the Constitution. In any case, in spite of these precautions, many legal systems have opted to establish more or less strict regulations concerning lobbying and the tools to control it, as we will explain in the following pages.

4 Lobbying regulation models

4.1 Regulatory options

Legislatures have various regulatory options at their disposal in dealing with lobbying, just as in any other case. Firstly, they can decide not to specifically regulate the matter. In other words, the legislature may not directly regulate lobbying and require lobbies only to comply with the regulations generally applicable to any other natural or legal person (such as the Criminal Code, the administrative procedure regulations, the public sector contracting regulations, the regulations concerning disqualifications, etc.). This alternative is based on two arguments: "on the one hand, it is thought that the response to fraudulent decision-making by public servants is sufficient to cover this situation and makes specific regulations unnecessary; on the other hand, it is considered that regulating pressure groups would imply granting them a seal of approval within the democratic system" (Rubio, 2017: 404). Nevertheless, the fact that the legislature decided not to pass specific regulations may create problems and abusive situations, as explained by Villoria (2020). Spain is in this situation, as the national legislature has not yet passed a general regulation governing lobbying and the obligations, rights and duties of lobbyists.

The second regulatory option is to allow the lobbying industry to self-regulate. According to Darnaculleta (2002), self-regulation has been suggested as an alternative or a supplement to state deregulation and as a transfer of duties and responsibilities to society. According to the self-regulation model, establishing and subsequently monitoring the requirements to perform the activity would be the responsibility of associations or groups of lobbyists (Rubio, 2017: 404). The potential of the self-regulation system lies in allowing professional associations of lobbyists to adopt codes of conduct with very strict levels of ethical requirements, as a way of being accountable to society and ensuring that their actions are in accordance with the law. This is the case, for example, in the United Kingdom, where any organisation that wishes to be part of the professional association of lobbyists is bound by the obligations stipulated in its code. It has been argued that it is "[...] reasonable to give free rein so that this raising of the bar may take place through self-regulation and may affect the relationship with the public institutions with which they [the lobbies] interact, and the clients they work for, and, therefore, the shared code has sufficient contents; without seeking to be an exhaustive regulation" (Bartlett & Vèrnia, 2015: 207).

The self-regulation model has often coexisted with the third regulatory model, i.e. the model of non-compulsory registration, with some exceptions, as we will see below. This combination is the most widespread in common law countries (Rubio, 2017: 405). The registration model was first adopted by the United States and Canada and although this kind of regulation has spread to some other countries, Chaqués emphasises that "the majority of advanced democracies do not have a lobby register". In this model, in addition to registration, there is an obligation on lobbyists to adopt a code of conduct governing the organisation's behaviour and also that of the individual members. This regulatory structure has been common since the first regulation of this kind was passed in 1946. It is also the model that has been followed in the European Union and the OECD and, with some nuances, it has been adopted in countries with political and legal traditions as different as Australia, Canada, Poland, Hungary, Israel, France, Slovenia, Mexico, Austria, the Netherlands, Chile and the United Kingdom, for example (Rubio, 2017: 405; Chari et al., 2019). According to doctrine, the setting up of lobby registers is a measure that can help make the motivations of the public powers more transparent, as well as make it possible to better monitor corruption and, at the same time, encourage "a closer connection between the public's preferences and the actions of the public powers" (Chaqués, 2015).

Finally, the last of the models we will analyse in this section switches the focus of regulation from the active party in the lobbying to the passive party. In other words, this model affects (and controls) the behaviour of those being lobbied. The fundamental tool in ensuring control of lobbying in accordance with this regulatory model is publishing diaries. Based on the information that the diaries must contain, the public and other actors involved in the public decision-making process can find out who a public official has met with, which trips he/she has made and, also, any gifts he/she has received. This new system was first implemented in Chile in 2014. In this regulatory structure, the burden of publishing the pressure or influence exercised does not fall on the lobbyists but instead on the members of the public powers who are lobbied (Rubio, 2015: 405).

As one can see, there are various methods to control the activity performed by lobbies. Unfortunately, none of these has proven to be infallible and to completely prevent unethical or outright illegal conduct, whether by lobbies or their members or public officials. Human beings are certainly corruptible. However, as we will see below, legal systems have clearly been evolving—albeit slowly (Chari et al., 2019)—and, in some cases, through trial and error, increasingly sophisticated regulations have been passed. Systems have been crossed with one another, even by adopting supplementary tools that come from or were created in other regulatory structures, in order to ensure that lobbying does not exceed the legally stipulated thresholds.

4.2 A brief chronology of lobbying regulations passed: with special attention to pioneering regulations

In addition to the substantive objectives mentioned above to mark out the lawful conduct under these regulations that is defined from a criminal or administrative point of view, formally, "[...] the regulation of lobbies is justified by the desire to promote transparency and reduce corruption, guarantee political representation and accountability on the part of political elites, and to improve the efficiency and effectiveness of public policies" (Chaqués, 2015). Consequently, in the comparative sphere, many examples of countries that have passed lobbying regulations can be found. Nevertheless, the author argues that "[...] only a third of OECD countries regulate lobbying and the majority of these have only done so since 2005" (Chaqués, 2015).

If one analyses the panorama for national lobbying regulations, one can monitor the passing of such regulations over the years. First are the states or supranational organisations that pioneered lobbying regulation. These were the ones that approved such regulations between 1900 and 1999. This group includes the United States, Canada, the EU and Germany (Chari et al., 2019).

In the case of the United States, the first federal regulations were passed in 1935, although some states had already passed their own regulations, and in 1946 the Federal Regulation of Lobbying Act was passed, which included the first regulations on the compulsory registration of lobbies. These regulations were amended in 1995 through the Lobbying Disclosure Act, which was subsequently significantly modified in 2007 with the passing of the Honest Leadership and Open Government Act. It is worth noting that the 1995 amendment in the USA was performed as the previous regulations were considered ineffective due to the lack of clarity in the regulation of the register, especially in relation to those who had an obligation to register and whose information had to be recorded (Bartlett & Vèrnia, 2015: 198). Under the current regulations, the information initially recorded by lobbies must be updated quarterly.

As far as Canada is concerned, its federal regulation concerning lobbies dates back to 1989. This model was used by other states and countries when they passed their own regulations (in the case of the United Kingdom and also Scotland). The main objective of the Canadian Lobbyist Registration Act was to make registration compulsory. The regulation of this followed the same structure as the United States (Chari et al., 2019; Bartlett & Vèrnia, 2015; Rubio, 2017). This act was amended on several occasions in 1995, 2003 and 2008, when its name was finally changed to the Lobbying Act. The latest legislation contains new obligations for lobbies and stricter penalties for lobbyists that breach them. Updating of information registered by lobbies must be updated monthly.

The EU is also one of the pioneers (Chari et al., 2019). It has been calculated that around 15,000 lobbyists operate in its territory, lobbying European institutions. This supranational organisation passed its first regulations concerning lobbies in 1996. However, that regulation was severely criticised and considered weak and lacking, as it did not make it compulsory for lobbies affecting or influencing European institutions to register. Moreover it only regulated lobbying performed in the European Parliament buildings, but not lobbying performed outside, so lobbying and its legal scope were hidden from the public (Chari & O'Donovan, 2011).

It was not until 2008 that the Commission set up a voluntary lobbyist register, which was a temporary measure until a general regulatory framework common to all EU institutions was approved. Since 2011, the EU has implemented a common transparency register for the Parliament and the Commission. It is currently moving towards the consolidation of a compulsory lobby register, although the pertinent regulation has not yet been passed (Ponce, 2019: 96). Furthermore, the importance of regulation in the EU is based on its great

influence on national regulations passed by member states, especially in relation to the contents that must be included in such registers that may be set up (Chaqués, 2015; Chari et al., 2019).

Lastly, Germany must be mentioned as one of the states that pioneered lobbying regulation, although its situation is very different to those we have analysed so far. In the case of Germany, there is no federal regulation governing lobbying or any regulations approved by the *Länder*. The only regulation in force has applied to the Bundestag since 1972. This requires all influence groups seeking to lobby the federal legislative chamber to register annually (Chari et al., 2019).

Apart from the cases we have mentioned so far as the initial innovators in lobbying regulation, and although we cannot provide a lengthy description, a second group of states can be identified that passed regulations concerning this matter during the first decade of the twenty-first century. During this stage there was an exponential increase in countries with their own regulations, including those passed in Lithuania (2001), Poland (2005), Taiwan (2007), Hungary (2006), Australia (2008) and also France.

Finally, more recently, a third group of countries has passed lobbying regulations, some of which are very innovative. Chile is one example of this. This last group is made up of Austria (2012), the United Kingdom (2014), Ireland (2015), the Netherlands (2012), Slovenia (2010), Mexico (2010-2011) and Chile (2014).

One can conclude from the foregoing chronological overview that in the last decade concern regarding lobbying regulation has accelerated. One of the causes that may explain this increase in regulations globally is perhaps, as already noted, the financial crisis that struck the global economy from 2008, which went hand in hand with a crisis of legitimacy of the public powers and citizen disaffection.

5 The lack of a general regulation and the current fragmentary regulation of lobbies in Spain

In Spain, social attention on pressure groups re-emerged from 2008 as a side-effect of the financial crisis that broke out worldwide and, in this country, resulted in significant adjustments and cuts in social benefits and in the management of public services. There was also an almost simultaneous emergence of multiple cases of corruption and client networks in various public authorities and at all levels of government. It has been rightly said that "in the embers of the profound economic crisis that Spain" went through during the first decade of the twenty-first century, "political disaffection has grown and reached quite remarkable levels" (Velasco, 2014: 66). Furthermore, in an "attempt to alleviate the effects caused by citizen disaffection with the legitimacy of competent political actors taking important decisions concerning public affairs, since the 1990s, first at local level and subsequently at all levels of government, initiatives have been implemented that promote and encourage citizen participation in the process of public decision-making" (Velasco, 2014: 67).

Nevertheless, these social concerns and regulatory initiatives have not led the national legislature to introduce specific regulations concerning lobbying. This can be explained by the fact that the prevailing perception of lobbies in this country is negative, which makes the legislature reticent to give them a status of their own in the democratic system. While in certain countries, often those in the common law tradition, the activity of lobbies has a positive reputation, as it is seen as a way of channelling the public's preferences and participating in the decision-making process, provided there is a system of transparency that makes it possible to verify the interests defended by each party involved, in other countries public opinion is the very opposite. In societies imbued with the Rousseauian conception of the exercising of legislative power (which can only be a monopoly of state institutions) there is almost congenital distrust in the intermediaries between the public powers and society, as mentioned previously (see section 3 above). In the words of Martín Mateo (2001), "[...] in Continental Europe, where the revolution in ideas took place that made it possible historically to overcome the Ancien Régime, there is greater resistance to eroding the dogma of popular sovereignty, setting the stage for social groups that could be considered heirs of an old corporatist order that had been overcome, and opening the doors of the parliamentary chambers to powerful economic organisations".[4]

4 The Spanish Law on Administrative Procedure of 1958 enshrined the participation of these "powerful economic organisations" by establishing in article 130.4 (concerning the procedure for producing general provisions) that: "Whenever possible and when the nature of the provision makes it advisable, trade union and other organisations that, by law, represent or defend public or corporate interests affected by said provision shall be given the opportunity to express their opinion in a report stating the reasons within a term of ten days from referral of the draft, except when there are opposing public interest reasons duly stated in the draft provision".

At the end of the second decade of the twenty-first century, Spain, which followed this tradition, still lacks common legislation throughout the country regulating lobbies *ad hoc*, although in our opinion one cannot state that their activity has not been regulated, only that it has been done indirectly through many different rules. Along these lines, Ponce states that, for example, formal participation through the various bodies is envisaged in more than six hundred regulations (Ponce, 2019: 101).

However, as one can easily imagine, what really concerns society and the public powers as well as scholars of the phenomenon is the informal activity by these pressure groups, as in some cases this has resulted in malpractice or even cases of corruption.[5] This concern has been felt since before the approval of the Spanish Constitution of 1978, as highlighted by doctrine (Álvarez & De Montalvo, 2014: 254), and on several occasions initiatives have been presented concerning this, all of which were unsuccessful (Aragüàs, 2015; Rubio, 2017; Ponce 2019: 100).

If there is any feature that characterises the regulation of lobbies in Spain at present it is its fragmentation. In the absence of a nationwide regulation, certain central institutions and autonomous communities have passed regulations of their own recently. On the one hand, the chairman of the Spanish Securities and Exchange Commission (CNMC) issued a decision in March 2016 implementing its own voluntary lobby register as a tool to comply with the transparency provisions in article 37 of Law 3/2013 of 4 June, creating the Spanish Securities and Exchange Commission. However, this provision did not explicitly envisage the creation of the register which, as if it were just another organisational aspect, was stipulated in a lower-ranking provision.

With regard to autonomous communities, on the other hand, in addition to the Catalan regulations that we will examine below, Castile-La Mancha (2015), Aragon (2015), Navarre (2018) and Asturias (2018) have included rules concerning lobbies in their respective laws on transparency, access to public information and good governance or in their rules concerning integrity and public ethics (Ponce, 2019: 104). Special mention should be made of the Valencian Law 25/2018 of 10 December, which regulates lobbying. This establishes, for the first time in Spain, a public and compulsory legislative footprint[6] and envisages the possibility of non-binding negotiation of rules[7] produced by the regional government (Ponce, 2019: 104).

We should stress that corporate participation was configured as a mere possibility, i.e. whether or not to allow it was up to the administrative body processing the procedure for the production of regulations based on appropriateness criteria and provided there were no public interest reasons that made it inadvisable. The text of the Law on Administrative Procedure of 1958 can be viewed here (retrieved: 05.03.2020).

5 See the report by Transparency International España *Una evaluación de lobby en España. Análisis y propuestas*. (Retrieved: 03.02.2020).

6 According to Martini (2013), the legislative footprint is a document that details the time, person and issue of contact or the meeting that a representative (or any other public official involved in producing a rule) has had with another party that has interests affected by a future regulation. The data or documents collected in the legislative footprint, published as an annex to the legislative/regulatory reports, provide knowledge about who provided information or who exercised influence in each of the draft regulations processed. The legislative footprint contributes to ensuring that the influence of lobbies on policy decisions is not disproportionate, as otherwise there could be undue influence by lobbies and state and/or regulatory capture. Legislative footprints currently still play a limited role in the debate concerning lobbying and transparency, although there are now some regulations concerning the matter, as mentioned above.

7 This way of approaching the production of regulatory texts has existed in the United States since 1990, when the Negotiated Rulemaking Act was passed (Ponce, 2019: 104). Under this act, in some cases American federal agencies do not develop their regulatory proposals internally but instead opened themselves up to the outside through a procedure of negotiated rulemaking. This procedure is formally a way of producing regulatory proposals rather than passing regulations as such. All those who have interests that may be affected by the finally approved regulation are invited to participate and the aim is to arrive at a consensus proposal, which subsequently reduces opposition by those affected and legal challenges to these rules (Strauss, 2105: 270-271). It has also been pointed out that these types of procedures may speed up the processing and passing of regulations. However, these two objectives (avoiding challenges and speeding up the process) do not appear to have materialised with their full potential according to the empirical studies that have been conducted on this question (Coglianese, 1997). The structure stipulated in the Negotiated Rulemaking Act is very simple. When an agency considers it necessary to pass a regulation that would affect only a limited number of interests and a committee representing those interests can participate in good faith negotiation, whenever a consensus proposal can be passed within the envisaged time period, the agency can establish a committee for that purpose, but is not obliged to do so (Strauss, 2015: 271). On many occasions, a neutral coordinator of the committee is appointed to identify the affected interests as well as the representatives that may adequately defend them. "Representatives from regulated firms, trade associations, citizen groups, and other affected organisations, as well as members of the agency staff [are selected]. The committee meets publicly to negotiate a proposed rule. If the committee reaches consensus, the agency typically adopts the consensus rule as its proposed rule and then proceeds according to the notice-and-comment procedures specified in the Administrative Procedure Act" (Coglianese, 1997: 1257).

In short, one can say that the autonomous communities have overtaken the central government in regulating lobbies, whether through transparency rules or through specific regulations. This fact may be positive for the national legislature because when it decides to pass a bill concerning this matter, it will be able to lean on the experience developed in regional "laboratories", the impact and effectiveness of which can be assessed.

6 The regulation contained in the Catalan Law 19/2014 on Transparency, Access to Public Information and Good Governance

The first rule that specifically regulated lobbies in Spain was the Catalan Law on Transparency of 2014, which is the regulation that has had the most practical application and development to date (Ponce, 2019: 104). The Catalan Law comes within the framework of the flow of rules during the first decade of the new century, which regulated the obligations of transparency, access to information and necessary measures to ensure good governance, as a reaction to the social pressure concerning this (Cerrillo & Ponce, 2015). Although the Catalan regulation has been the subject of various analyses, it is necessary to highlight the main characteristics concerning the legal framework for lobbies that it contains. Before outlining this, it is worth recalling that the Catalan Law is also affected by a degree of distrust or, one might say, a negative view of lobbies and their activity (Bartlett & Vèrnia, 2015: 194; Ponce, 2019: 105). One merely needs to read the preamble to see this: "The development of political and administrative activity highlights the existence of people and organisations who, lawfully, carry out activities that may influence the production and application of public policies for the benefit and interests of other people or organisations. This is an unavoidable reality, but it can be made more transparent by adopting legal measures".

In order to make the pressure exerted by these groups more transparent and determine who they are and the public officials with whom they interact, the Law contains a star instrument, which is the Register of Interest Groups. Doctrine has paid particular attention to this element of the Catalan Transparency Act, from the viewpoint of both political science and legal discipline, in recent years (Chaqués, 2015; Bartlett & Vèrnia, 2015; Aragüàs, 2016; Bernadí & Cerrillo, 2017; Ponce: 2019).

It is particularly interesting to see how the long-standing figure of administrative registers (traditionally connected with so-called "policing" or limiting activity) has been revived recently through regulations concerning the transparency of public information (simply see, among others, the regulations concerning access to environmental information, which pivot on access to the data contained in public registers). It is certainly true that "[...] Public Registers in general arise with the intention of providing the public with the general interest information they contain" (Bolaño, 2014: 19). However, determining what "administrative registers" means and the functions they have been assigned are questions still disputed by doctrine (Rams, 2009: 295 *et seq*.). There has been much debate concerning whether it is possible to unify the regulation of all public registers. Salas denies this due to the fact that not all registers are intended to ensure legal publicity as a means of providing certainty in trade, nor do all of them have a certifying function in terms of playing the role of verifying facts (Salas, 1975). On the contrary, one could state that "the purpose of many registers is to serve as an instrument of information and control for the administration itself and, on some occasions, they have even been used, through the information and control they provide, as an instrument of power over the activity and rights of citizens [...]" (Rams, 2009: 300).

In our opinion, registers of interest groups (which are administrative registers that are free of charge in Catalonia, in accordance with article 3 of Decree 171/2015 of 28 July on the Register of Interest Groups of the Government of Catalonia and its Public Sector) have been assigned three clearly differentiated objectives. Firstly, they allow public administrations to have information about who interacts with them to influence decision-making processes. Secondly, they make it easier for that public interest information to be known by the general public and, in turn, the latter may exercise social control over interactions between administrations and lobbies. Thirdly, as Salas (1975) points out, the Register of Interest Groups is also a tool for power over the activity of pressure groups and the exercising of the rights that the legal system attributes to them. Below we will clearly highlight these three functions after analysing the Catalan regulations concerning registers of interest groups.

6.1 Main aspects of the Catalan regulation: special reference to the Register of Interest Groups

6.1.1 The Catalonia Register of Interest Groups

a) General characteristics

The main instrument included in the Catalan Law 19/2014 on Transparency, Access to Public Information and Good Governance concerning lobbies is the establishment of a register regulated by articles 46 to 52 of that law. The provisions of Law 19/2014 have been implemented by Decree 171/2015, of 28 July, on the Register of Interest Groups of the Government of Catalonia and its Public Sector. However, one should recall that Decree-Law 1/2017 of 14 February amended the register system, which now acts as a Register of Interest Groups of the Government of Catalonia, local bodies and other public bodies and organisations that must create a lobby register in order to make it a Register of Interest Groups for all public authorities in Catalonia.[8] It is worth highlighting that this measure was implemented through a decree-law, among other reasons due it having been found that there was widespread non-compliance with the obligation to create registers of interest groups by the majority of those compelled to do so by Law 19/2014.[9]

According to articles 45 and 47 of Law 19/2014 and article 3 of Decree 171/2015, the purpose of the register is the registration and control of all people who work on their own behalf and participate in the defence of the interests of third parties or organisations in producing and applying public policies through contacts with public officials or civil servants or participation in official consultations within the framework of regulatory procedures. Furthermore, this register—which is electronic (art. 9 of Decree 171/2015) and managed by the department with powers over legal bodies (art. 4 del Decree 171/2015)—is to be included in the Government of Catalonia Transparency portal, and the data it contains must be made available and updated (art. 5 of Law 19/2014 and art. 3 of Decree 171/2015). These provisions ensure that the public can know this public interest information.[10]

b) Compulsory nature

With regard to the nature of the register, in accordance with the provisions in the act, it has been stated that "in spite of the absence of an explicit obligation to register in the Register, registration of lobbies in the Register is compulsory for all those who wish to influence the production and application of political policies for the benefit and interest of other people or organisations. Otherwise [...], the system of lobbying transparency would be undermined and, therefore, it would render that stipulated in Law 19/2014 without effect" (Bernadí & Cerrillo, 2017: 12). However, the compulsory nature of the register was not entirely undisputed at first (Ponce: 2019: 106) as stated by some doctrine, which considers that "there is no indication of the parliamentary procedure that makes it possible to deduce the legislature's desire to make registration compulsory" (Bartlett & Vèrnia, 2015: 196). As a result of this legislative ambiguity, at first the number of registrations in the register was very low and it did not begin to pick up until the approval of the Code of Conduct for Senior Officials of the Government of Catalonia in 2016 (Bernadí & Cerrillo, 2017: 12-13). Currently, there is little discussion about the compulsory nature of the register, especially in view of the

8 Access to the Register of Interest Groups we are commenting on is available here (retrieved: 06.03.2020). Currently, on 6 March 2020, 3,650 lobbies are registered and 42 registrations are in progress.

9 The preamble of Decree-Law 1/2017 explains that the creation of the register through the regulation is intended "on a single occasion and for all Catalan administrations to provide an institutional solution for the registration of lobbies. This measure is not merely organisational but has the primary aim of ensuring the transparency of lobbying of the public authorities. The register has thus become an essential element of the public integrity system adopted in order to deepen and regenerate the democratic system and recover public trust in public institutions. At the same time, it is a response to a situation difficult to foresee, which is the failure to effectively create registers of interest groups by the vast majority of administrations obliged to do so, even by those that are larger and have greater capacity, and the cooperation formulas envisaged in the regulatory framework for lobbies, in which various administrations involved legitimately trusted to comply with their legal obligations, have finally been revealed to be impractical mechanisms to ensure compliance with Catalan Law 19/2014 of 29 December by all of those obliged to do so".

10 In fact, article 8 of Decree 171/2015 stipulates that: "1. The Register of Interest Groups of the Government of Catalonia and its public sector includes: a) A list, ordered by categories, of the people and organisations referred to in article 6. b) Information provided by people and organisations concerning the activities listed in article 7.1. c) The common code of conduct and, when applicable, the stricter conduct undertakings referred to in article 18.1 *in fine*. d) The information about the control and investigation system in the event of breach of that stipulated in Catalan Law 19/2014 of 29 December and the common code of conduct. 2. The information in point 1(a), (b) and (c) is public with the scope stipulated in article 16.4 and point 1 of this article, except for the personal data subject to the system arising from the personal data protection regulations".

imperative in article 47 of Law 19/2014 and article 6 of Decree 171/2015, as well as points 5.20 and 5.21 of the Code of Conduct for Senior Officials and Management Staff of the Government of Catalonia and its public-sector bodies, and other measures concerning transparency, lobbies and public ethics. One should also take into account that the action protocol applicable to relationships between senior officials and management staff in the Catalan administration and its public sector and lobbies makes it compulsory to register lobbies and creates an obligation to provide proof of the registration, application or undertaking to register lobbies in order to be able to have contact with senior officials and management staff.

c) Subjective scope

Another of the aspects that initially hindered the successful implementation of the register was the vagueness regarding who had an obligation to register. The definition of those with an obligation to register in the Register of Interest Groups is very broad in the Catalan regulations and does not follow the criteria used in other legal systems to limit its scope (Ponce, 2019: 105). Article 47.1 of the Law stipulates that "the following must register in the Register of Interest Groups: a) People and organisations that, irrespective of their form of legal status, acting in their own interest or that of people or organisations, carry out activities that may influence the production of laws, regulations with force of law or general provisions or the production and application of public policies. b) Platforms, networks or other forms of collective activity that, while not having legal personality, constitute *de facto* a source of organised influence and carry out activities included in the scope of the Register". Article 6 of Decree 171/2015 contains the same provision.

It is often stated that one of the weaknesses of systems based on the establishment of a register to regulate lobbies is the difficulty of defining the people that have an obligation to register in it (Rubio, 2017: 404). For that very reason, it has been claimed that it is necessary to amend this aspect of the Catalan regulations (Aragüàs, 2016; Bernadí & Cerrillo, 2017: 18). In any case, article 13 of Decree 171/2015 establishes five categories of people who must register if they wish to perform pressure activity in relation to administrations and the public-sector in Catalonia.[11] If the Catalan Law on Transparency and the regulations concerning lobbies are amended, it would be positive to establish a more accurate definition of what a lobby is considered to be in the strict sense and carefully define the concept in order to distinguish it from others that, although they participate in public decision-making processes, do not have the same characteristics.

d) Legal consequences arising from registration

According to article 11 of Decree 171/2015, registration in the register creates, on the one hand, the right to present oneself to public officials, authorities and employees as a lobby registered in the register, as well as to be part of the distribution lists to receive automatic alerts concerning procedures, actions and public consultations regarding the activities or initiatives of the Government of Catalonia administration and its public sector concerning matters of interest to the declarant that have been stated in the statements of compliance or in subsequent modifications, and also the right to record their contribution to public consultations. One can clearly see that registration is an element that constitutes (attributes) these rights, which do not pre-exist and cannot be exercised before the interest group is included in the register. In addition to these rights, registration involves undertaking particular duties concerning the provision of information to the register and acceptance of the minimum code of conduct envisaged (art. 50 of the Law 19/2014). It is noteworthy that the Catalan regulation—by attributing rights—provides, on the one hand, a positive assessment of lobbying and, on the other hand, encourages registration in the register through measures that protect such activity. In our view, this regulation clearly shows that the register has been implemented as an instrument of power over the activity of pressure groups.

11 Art. 13 of Decree 171/2015: "[...] Category I. Consulting and advisory services sector. Subcategories: a) Professional consultancies. b) Collective offices. c) Single-person offices. Category II. Business sector and associations. Subcategories: a) Companies and groups of companies. b) Public-law corporations. c) Professional, business and trading associations. d) Other organisations: d.1. Event organisers. d.2. Media connected to companies and research organisations. Category III. Non-governmental organisations. Subcategories: a) Foundations and associations. b) Platforms and networks, *ad hoc* coalitions, temporary structures and other forms of non-profit collective activity. Category IV. Scientific and research sector. Subcategories: a) Think tanks and academic or general research institutions. b) Think tanks and research institutions linked to parties, business organisations and trade unions. Category V. Offices, networks and organisations that represent churches and religious communities".

e) Aspects rounding off the system and penalties envisaged

Although the Register of Interest Groups is the main tool in the Catalan regulations, it is certainly not an isolated measure, as the Catalan Law 19/2014 on Transparency, Access to Public Information and Good Governance has created what could be called an "ecosystem of public transparency and integrity" (Bernadí & Cerrillo, 2017: 19). Indeed, the register is accompanied, as in other comparative legal systems, with a set of measures that supplement it, such as the Code of Conduct for Senior Officials of the Government of Catalonia and the obligation on lobbies to accept the minimum code of conduct stipulated in the Decree of 2015, which envisages fifteen compulsory ethical rules. This code of conduct for lobbies is a lowest common denominator, which may be strengthened by the codes approved by each of those that register. Obviously, this entire integrity ecosystem is rooted in the foundations provided by the well-known constitutional and legal principles that govern the actions of public powers and servants.

Finally, this entire regulatory structure is rounded off with the provision of a system for the control and investigation of lobbying (art. 52 of the Law and art. 20 *et seq.* of Decree 171/2015), which goes hand in hand with penalties—which may be imposed on the initiative of the authorities themselves, although reports can also be submitted—in the case of breach (Chaqués, 2015; Bernadí & Cerrillo, 2017). Article 52 of the Law generically stipulates that breach of the obligations included in the Law or the Code of Conduct may give rise to temporary suspension of registration in the Register of Interest Groups (this provision is in accordance with article 12 of Decree 171/2015). This penalty will be published in the register itself. If the breach is serious, that will result in cancellation of the registration. Once cancellation of registration in the register takes place, lobbies will be deprived of access to the offices and services of public institutions and bodies.

In short, it can be concluded that the Catalan regulations govern the actions of pressure groups basically through the instrument of the register with the objectives and effects mentioned above. This option by the Catalan legislature is in keeping with the pioneering systems regulating lobbying. However, it cannot be described as a pure register system, as there are also other supplementary measures that make it possible to guide lobbying. Thus, the establishment of the register is accompanied with an obligation on lobbies to accept a minimum code of ethics. Furthermore, this entire regulation is linked to the obligations stipulated for public servants in the Code of Ethics for Senior Officials of the Government of Catalonia.

The indirect or direct objective of this whole regulatory framework is to control and publicise lobbying. Although these provisions are a good starting point for lobbying regulation, other tools that make it possible to shed further light on the rulemaking system, such as the legislative footprint, are lacking.

Moreover, one should remember that unlike other regulations to which we have referred, Law 19/2014 does not include in title II ("Transparency") the obligation to actively publicise the official diaries of senior officials: it only provides transparency for the official diaries of senior officials as an ethical principle. This was stated by the Committee for Guaranteeing the Right of Access to Public Information (GAIP) in Decision 151/2018 of 20 June. Consequently, the rules for publicising the diaries of senior officials and management staff in Catalonia are merely soft law rules, which greatly weakens their position in the regulatory framework and, as a result, their binding force and the consequences arising from their breach.[12] In the event of amendment of the current Catalan Transparency Act, it would be good to consider including this obligation to actively

12 The Code of Conduct for Senior Officials and Management Staff of the Government of Catalonia and its Public-sector Bodies, approved by Government of Catalonia Decision GOV/82/2016 of 21 June contains two rules of conduct closely connected to the official diaries of senior officials: firstly, the need to "provide truthful publicising [...] of the public diary with regard to everything concerning meetings with lobbies" (section 5.5), and, secondly, the appropriateness of "including the contacts established [with lobbies]" in their official diaries (section 5.21). Furthermore, the Interdepartmental Committee for Transparency and Open Government, exercising the powers conferred on it by Decree 233/2016 of 22 March, concerning the establishment of strategies and guidelines to ensure compliance with the transparency and open government regulations by the Government of Catalonia and its public-sector, approved, in the meeting on 22 July 2016, guidelines concerning the active publicising obligations arising from the Code of Conduct for Senior Officials, which determines the minimum contents that must be publicised weekly concerning the public diaries of senior officials and management staff by each of the departments and public-sector bodies of the Government of Catalonia. The following should specifically be made public: the date of the activity or contact; the name of the interest group; the number of those registered in the group, when applicable; the description and topic of the type of activity; the nominal identification and the position of the senior official or manager.

publicise the diaries in order to give this the relevance it deserves as a tool that makes it possible to guarantee transparency in the government's actions.

6.1.2 The Register of Interest Groups of the Parliament of Catalonia

One of the elements characterising the regulation of lobbies in Catalonia is the establishment of a double register system. On the one hand, there is that stipulated in Decree-Law 1/2017 of 14 February, which creates and regulates the Catalonia Register of Interest Groups and, on the other hand, the specific register of interest groups in the Parliament of Catalonia. Additional provision five of Law 19/2014 envisaged a specific system for Parliament, which included the creation of its own Register of Interest Groups.

This register has been regulated, following an amendment, in the Parliamentary Regulations. Articles 220 *et seq.* specifically regulate the Register of Interest Groups and its contents. As mentioned above, the purpose of the register is the registration and control of natural or legal persons that may influence any of the functions attributed to Parliament, whether legislative or not. Likewise, the register is intended to give regular publicity to the data it contains by publishing it on the Transparency portal (art. 222 of the Regulations).[13]

The Board of the Parliament of Catalonia is the body responsible for determining the people who must register, the categories into which they are divided and the activities that can be considered influence (art. 221 of the Parliamentary Regulations). These provisions have been reflected in the Rules for the Organisation of the Register of Interest Groups (Official Gazette of the Parliament of Catalonia, 349, 6 March 2017). In any case, publicising of lobbying must compulsorily include both the diary of contacts with Members of Parliament, their advisers and parliamentary civil servants, as well as information about the events to which representatives have been invited. It is noteworthy that the participation of lobbies in procedures concerning bills and contributions made to legislative initiatives addressed to the Parliament and parliamentary groups must also be included. This latter provision is close to but not fully in line with the concept of the public legislative footprint in the manner in which it is regulated in the aforementioned Valencian act, for example.

In addition to access to the parliamentary premises and contact with representatives and personnel of the chamber and personnel working for parliamentary groups, according to Bernadí & Cerrillo the "Regulations of the Parliament of Catalonia recognise other effects of registration in the Register of Interest Groups, such as organising and cosponsoring events on the Parliamentary premises with the authorisation of the Board or appearing before committees, in accordance with that stipulated in those Regulations (article 219.1). These effects are expanded on in the Rules for the Organisation of the Register of Interest Groups, which also envisage express recording of the contributions made to parliamentary procedures and obtaining a transparency quality stamp or seal issued by Parliament" (Bernadí & Cerrillo, 2017: 13). Once again, one can state that the regulation of the register is intended to encourage its use by providing benefits for lobbies that register and aspects that raise the profile of their work.

With regard to the obligations imposed on lobbies once they have registered, we should highlight that the details provided to the Parliament are made public and they must be correct, complete and trustworthy. There is also an undertaking to follow the code of conduct and accept the consequences arising from breaching it (art. 224 of the Parliamentary Regulations). Breach may be determined by the Board on its own initiative and anyone may also report breaches. These consequences are detailed in article 225 of the Regulations, which stipulates that breach "of the obligations stipulated in these Regulations and in the Code of Conduct for Interest Groups will give rise to the Board of the Parliament adopting measures to suspend or cancel registration in the Register of Interest Groups, based on the seriousness of the breach, in accordance with that stipulated in the internal rules of said register".

In short, after examining the regulations of the two Registers of Interest Groups existing in Catalonia, one can conclude that they are the same in most aspects insofar as they arise from the same law, i.e. Law 19/2014, although the rules governing the Parliamentary Register of Interest Groups contain some specific features tailored to the work the chamber performs and its operation, which on occasions is rather different to that of the government and administration.

13 350 lobbies are currently registered in the register and 5 applications are in process (see the data). (Retrieved: 07.03.2020).

6.2 Expected evolution

We began this paper by setting out the new strategy approved by the Government of Catalonia concerning the fight against corruption and how that document includes, among other objectives, measures to strengthen the regulatory obligations established for lobbies. In some cases these measures have been called for by doctrine for some years (Bernadí & Cerrillo, 2017; Ponce, 2019). One of the actions envisaged in the Strategy thus focuses, on the one hand, on making lobbies' diaries transparent and accessible (the minimum contents of this is to be determined by the Government) and, on the other hand, a compulsory public legislative footprint system similar to that set up in the Valencian Community will be established, creating an obligation to publish the contents of proposals made by pressure groups that are received by senior officials and management staff in the Government of Catalonia and public sector. However, it appears that the Government of Catalonia is not considering giving a seal of approval to non-binding negotiated regulation, as was performed in the Valencian regulations just mentioned.

In addition to this measure, the document recently presented considers it necessary to expand the scope of the duties in the action protocol in relation to lobbies (annex 3 of Resolution GOV/82/2016 of 21 June, approving the Code of Conduct for Senior Officials and Management Staff of the Government of Catalonia and its Public-sector Bodies, and other Measures concerning Transparency, Lobbies and Public Ethics) to people in subdirector general or equivalent positions. This measure was also considered necessary by some authors such as Bernadí & Cerrillo, who stated that "[...] supervision and transparency should be progressively extended to lobbying of public servants who are not senior officials, as well as influence activities that are not carried out face-to-face" (Bernadí & Cerrillo, 2017: 20).

These proposals can only be given a positive valuation: all measures are welcome that increase the transparency expected of public decision-making processes as well as all those that allow the traceability of regulatory initiatives to be approved. Nevertheless, the situation in Catalonia still lags far behind that in other countries (the United States or Canada), which have a far longer history of regulating these issues and have corrected imbalances that have arisen in practice.

7 Final reflections

The legal regulation of lobbies may be considered one of many other tools in the fight against corruption of the public powers. Generally speaking, in the comparative sphere, the most authoritative doctrine confirms the trend towards developing regulations similar to those passed in the United States and other common law countries (Villoria, 2020). These regulations are characterised by establishing a compulsory register of pressure groups and establishing complementary codes of conduct. A pluralistic understanding of relationships between the State and society is thus beginning to be imposed. More cautious and reluctant statist positions concerning the role of stakeholders in our democratic systems are progressively being abandoned.

However, the passing of specific regulations governing lobbying cannot work correctly without gears connecting with other provisions concerning transparency and public integrity and, above all, the development of a true culture of public ethics. Only in that way is it possible to finally overcome the reticence and negative perception that many societies have regarding lobbies.

Such regulation must also go hand in hand with measures that allow the general public to clearly know who lobbies are, how they operate and the impact they have throughout the entire cycle of public policies. These measures notably include the legislative footprint and publishing the diaries of authorities and officials. The public powers must promote knowledge by society of the pressure groups that operate in their environment, since knowing this is an essential requirement in also being able to submit them to public scrutiny.

In the case of Spain, as set out above, there is no specific regulation directly governing lobbying. However, some autonomous communities have overtaken the central government and developed their own regulations within the scope of their powers. Although it has arrived late in comparison with other regulatory systems with a lengthy history in this field, Catalonia has been a (brave) pioneer in the Spanish context. However, as we have shown, the Catalan regulations have become somewhat outdated.

The Catalan regulatory strategy has combined two levels so far. The first level established rather generic regulatory foundations in the legal sphere concerning the register, those that have an obligation to register, the publishing of the registered data, the obligation to accept a code of ethics and the consequences of breaching the system established, all of which is in Law 19/2014. The second level is all of the provisions that have been completed and reinforced by adopting soft law measures. In our view, it would be a positive step, as we have stated throughout this paper, for some of the provisions contained in the Code of Conduct for Senior Officials of the Government of Catalonia and the protocol that implements it in relation to lobbies, for example, to be elevated to the status of law. Comparing the Catalan system with the most advanced systems in the field, it would be important to establish a legal obligation to constantly actively publish the diaries of public servants (up to the level of subdirector, as stipulated in the strategy presented by the Government of Catalonia), so that the diary accessible electronically by the public matches the exact, daily reality of visits to those officials by lobbies. The development of current electronic and computer tools would make it possible to comply with a provision of this kind without insurmountable problems.

Moreover, the Catalan regulations governing lobbies pivots on the obligation on groups seeking to develop their influence on the Government of Catalonia and Administration, local bodies and the Parliament of Catalonia to register. There was initially doubt as to whether registration was compulsory, which can be seen in the fact that this characteristic of the register was subsequently confirmed through the internal organisational rules of the Government of Catalonia Administration itself. The lack of legal clarity concerning this point (in addition to technical difficulties and lack of political will) resulted in mass breach by those obliged by Law 19/2014 to create and maintain registers of interest groups. As mentioned above, the passing of Decree-Law 1/2017 was intended to correct this drift off course. In our opinion, a possible amendment of the Catalan Law on Transparency should make it perfectly clear that registration is compulsory and that it confers the rights that the law attributes to lobbies.

It should also be emphasised that the regulation of lobbies in Catalonia is moving towards a hybrid system in which, in addition to the register and the provision for a minimum code of conduct for pressure groups, other measures are being implemented to indirectly control lobbying. We are referring not only to the publication of diaries but also to the legislative footprint tool envisaged in the Strategy approved by the Government of Catalonia to fight against corruption. The inclusion of this aspect would be a great step in the right direction. Once again, we believe it is essential for regulation of the public legislative footprint to be included in a regulation with the status of law.

Finally, it may be appropriate to look into whether a law should be passed specifically concerning lobbies in order to systematise all of the provisions that, up until now, have been dispersed among various regulations, as we have seen, and also to elevate the regulatory rank of those measures considered key to the system. Alternatively, the Catalan Law 19/2014 on Transparency, Access to Public Information and Good Governance could be amended for the same purpose.

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