O P I N I O N

from the "Center for the Study of Democracy" Association, "Bulgarian Institute for Legal Initiatives" Foundation and "Access to Information Programme" Foundation

on the Draft Concept paper for the Regulation of Lobbying Activities dated 17.11.2023.

Representatives of the Center for the Study of Democracy, Bulgarian Institute for Legal Initiatives, and Access to Information Programme, as part of the working group for drafting the concept paper for regulating lobbying activities, have presented their views on the regulation of lobbying in a number of statements addressed to the working group at the Ministry of Justice. This opinion reflects our comments on the Concept for Regulation of Lobbying Activities (17.11.2023) published for public consultations, as some of our comments were incorporated into the Concept during the working group's work.

Authorities' efforts to regulate lobbying should be encouraged, and the country has made such commitments within the framework of international cooperation. **The essence of lobbying is to expand access to decision-making processes**. This activity should represent legitimate interests and develop under rules that guarantee publicity, transparency, equality, inclusion, professionalism, ethics, and sanctions. Bulgaria has engaged thereof through the National Recovery and Resilience Plan - specifically in component "2.G.1 Business Environment" and

within the framework of anti-corruption reforms, which includes the development and introduction of legislative measures for regulating lobbying based on good practices from other European countries.

As for terminology concerns, it should be noted that it is necessary to make a clear distinction between the terms "lobbying" and "advocacy." Steps have been made in this direction in the concept paper, but they are not sufficient. On several occasions in the document, the same distinction is not made or is not made precisely. For example, when defining "advocacy" activity by non-profit legal entities registered in public benefit, which activity is for the benefit of society, it is recommended that such legal entities be required to indicate in their annual reports *"… whether they have had interactions with the addressees of lobbying activity and what was the result of that activity."* This means that either it goes beyond the borders set in the concept paper outlined by the term of "lobbying," or there is a mixing between "advocacy" and "lobbying." However, the need for precise differentiation is undoubted, as inaccuracies and errors in the regulation of lobbying could lead to interference in the value of democratic society, defined as "public participation in the decision-making process." The concept does not observe guarantees against such interference in the regulation of lobbying.

Additionally, the following should be noted:

First, regarding the approach to regulate lobbying, against the backdrop of the prevailing opinion in the working group for adopting a separate law, we express a position in favor of the existing practice in most countries, namely a **combination of the two regulatory approaches - normative provisions and schemes for voluntary self-regulation**. Regarding normative

provisions, **we maintain our opinion that a separate law is not necessary**, but rather the adoption of special texts including standards of behavior, ethical norms, etc., in existing laws (anti-corruption legislation, access to information, legal framework of administration) and the negative consequences of non-compliance, as well as changes at the subordinate level (in regulations, etc.). In addition, **schemes for self-regulation** should be added - for example, a Code of Conduct for Lobbyists, Charter for Ethical Behavior of Lobbyists, etc., initiated by business associations and other interested parties, open for joining. The norms contained in these self-regulation acts should initially cover the National Assembly and its administration, and gradually - the President and his administration, the Council of Ministers, the ministers, and members of the political cabinets, the regional governors, the mayors, and the chairmen of municipal councils.

Second, regarding the body maintaining the transparency register, our opinion favors the National Assembly, which by its decision can create this register, in which interested associations or other persons voluntarily register to perform lobbying, and determine the rules for its maintenance, giving instructions, etc., designating the Commission for Prevention and Countering Corruption as the executor of the decision. If such a decision is taken, the powers of the Commission for Prevention and Countering Corruption, described in the current Article 13, Paragraph 1 of the Anti-Corruption Law, will need to be supplemented. Besides leading the register, the Commission should be empowered to formulate instructions, findings, and proposals, which upon assessment can be sanctioned with an act of the National Assembly. It may be possible to create a new permanent commission (or subcommittee) on lobbying issues,

which also requires a change to the Rules of Organization and Conduct of the National Assembly (ROCNA).

Third, ethical norms regarding the behavior of MPs are contained in Section II of ROCNA, but adherence to them must be controlled, there should be transparency for violations and measures taken. According to the Rules, the Commission for Prevention and Countering Corruption adopts rules for the application of this section and is authorized to verify violations of this section - to issue a decision and impose measures (Article 151).

Fourth, it is necessary to adopt corresponding norms of ethical behavior for the parliamentary staff/administration of the National Assembly, which should be included in the Rules for the work of the administration of the National Assembly, approved by the chairman of the National Assembly, as well as all other acts related to the legal relationships of parliamentary staff (Article 8, Paragraph 1, Item 11, ROCNA). Corresponding additions, if necessary, should also be made to the rules for organizing and conducting an examination of the declarations of parliamentary staff for conflict of interest, also approved by the chairman of the National Assembly (Article 8, Paragraph 1, Item 12, ROCNA).

Fifth, we would like to note that the **concept imposes disproportionately more responsibilities, obligations, and punishments on citizens compared to public institutions**. This problem was also emphasized in the terminological note above. It is not clear what the effectiveness of the proposed registration, supervision, and sanctioning mechanisms will be. The

concept departs from its original goal of creating more transparency in the legislative and normative process[1].

Sixth, the concept does not consider the risks, through the adoption of a separate law for regulating lobbying, of **potential collision between the definitions in the concept, the functions of the supervisory body, and the existing texts in the Criminal Code and other normative acts**. In the subsequent creation of the specific texts of the future regulation, definitions should be very carefully specified so as not to allow the possibility of interpreting individual lobbying activities, which could lead to a collision with crimes against the activities of state bodies, public organizations, and persons performing public functions.

Seventh, the **concept lacks consideration of positive incentives for the registration of lobbying subjects** (for example, the right to attend meetings of collective bodies, councils, right of access to buildings and facilities of public institutions under the respective admission regime, etc.). This increases the risk given that the mechanisms envisioned in the concept may be non-functional, as it is not clear how the proposed supervisory body (the chairman of the National Audit Office) will conduct checks/inspections in the absence of registration of lobbying subjects. Also, it is not clear whether the addressees of lobbying activity will publish registers of their meetings and whether these will be separate registers (to the respective institutions) or will be published in the register to the chairman of the Audit Office.

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[1] For instance, in the latest version of the Concept, it is not foreseen for the advisors in the political cabinets of ministers, the advisors to the parliamentary committees, and the consulting contracts of the executive branch to be public (except in cases where their subject is in the field of national security).

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