

## POSITION

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

regarding the draft Concept for the Regulation of Lobbying Activities, dated November 17, 2023, and the discussion held on January 31, 2024.

This position is a continuation of the views repeatedly presented by the teams of the Center for the Study of Democracy, the Bulgarian Institute for Legal Initiatives, and the Access to Information Programme, as part of the working group for the development of the draft Concept for the Regulation of Lobbying Activities. It reflects our position in relation to the European Commission's comments on the Concept for the Regulation of Lobbying Activities published for public discussion (November 17, 2023) and the issues raised at the working group meeting with representatives of the EC on January 31, 2024.

### **First, regarding the regulatory approach**

Despite the prevailing opinion in the working group for the adoption of a separate law, we have expressed and maintain a position in favor of the existing practice in most countries, namely, a **combination of two regulatory approaches - statutory provisions and voluntary self-regulation schemes**. Regarding statutory provisions, we maintain our previous opinion that a separate law is not necessary, but rather the adoption of special texts, including standards of conduct, ethical norms, etc., in existing laws (anti-corruption legislation, access to information, the legal framework of administrative activity) and the negative consequences of non-compliance, as well as amendments of by-laws (in codes of conduct, internal rules, guidelines, etc.). In addition, self-regulation schemes - for example, a Code of Conduct for lobbyists, a Charter for ethical behavior of lobbyists, etc. should be encouraged and initiated by business/professional associations and other interested parties, opened for joining. The statutory provisions and norms contained in these acts of self-regulation should initially cover the National Assembly and its administration, and gradually - the President and his administration, the Council of Ministers, the ministers, deputy ministers, and members of political cabinets, regional governors and their deputies, mayors and their deputies, and chairpersons of municipal councils.

This position does not contradict the commitment undertaken by Bulgaria in the National Recovery and Resilience Plan - in particular in component "2.C.1 Business Environment" and within the framework of reforms to combat corruption, which includes the development and introduction of legislative measures to regulate lobbying, based on best practices from other European countries.

Within the EU, there is no uniform, mandatory regulation of lobbying, i.e., member states are free to decide which approach or approaches to choose. This circumstance was also pointed out by representatives of the EC in the discussion held on January 31, 2024, where it was indicated that it is a matter of argumentation and motivation of the country as to what approach it considers appropriate. There is a proposal for a directive to establish harmonized requirements in the internal market regarding the transparency of interest representation carried out on behalf of third countries. Apart from the fact that this proposal addresses interest representation carried out on behalf of third countries, it was published at the end of last year and is still to be discussed.

In its annual reports on the rule of law, the EC makes recommendations to many member states to introduce rules for lobbying, standards for transparency, and registers of lobbyists, but without insisting that this should be done through a special law.

## **Second, regarding the definition**

We agree with the principal note on the necessity for a broad definition based on the standards of the OECD and the Council of Europe, but taking into account the national context and specifying the activities, incl. criminal ones, that are not lobbying.

We find the standard of the Council of Europe for defying lobbying more suitable for the Bulgarian context<sup>1</sup>. It is necessary to formulate exceptions to the definition of lobbying – e.g., activities such as political consulting, advocacy<sup>2</sup>, etc., that are not

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<sup>1</sup> "lobbying" means promoting specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making

<sup>2</sup> For us, as representatives of civil society, it is of particular importance to define the activity of "advocacy" by non-profit legal entities registered for public benefit, which activity is in the interest of society. In this case, it is recommended to impose an obligation on such legal entities to indicate in their annual reports "whether they have interacted with the recipients of lobbying activities and what the outcome of this activity was." This means that either it goes beyond the limits of the concept outlined by the notion of "lobbying," or there is a mixing between "advocacy" and "lobbying." However, the necessity of making a precise distinction is undoubted, as it is correctly pointed out in the concept, inaccuracies and mistakes in the regulation of lobbying could lead to interference with the value of a democratic society, defined as "public participation in the decision-making process." The concept does not provide guarantees against such interference in the regulation of lobbying.

lobbying<sup>3</sup>. For all exceptions from the scope of the definition of lobbying, a solid rationale should be provided in the concept.

In recent years in Bulgaria, there has been a hostile environment towards non-governmental organizations, as noted in several studies. Proposals to limit the funding of non-governmental organizations by international donors, as well as various forms of restrictions on their work, are periodically introduced in the National Assembly. There is a risk that the regulation of lobbying activities could introduce barriers that hinder the effective work of civil society. The National Strategy for Prevention and Counteraction to Corruption in the Republic of Bulgaria (2021 – 2027) mentions that the registration of lobbyists could be voluntary.

We accept the European Commission's note on the nature of lobbying and agree that lobbying is not only performed for a fee or solely in the interest of private interests. However, the standards of the Council of Europe and the OECD explicitly state that the regulation of the relationship between lobbyists and public authorities should focus on those who do it as a profession. Future legislative initiatives should take into account the need for a balance of regulatory power and should primarily target cases where lobbying is conducted as a professional activity. We suggest that the concept should include a clarification that for lobbying activity to be legitimate, it should be conducted transparently and on an equal basis. In this regard, as well as with the following comment, we propose that the section "From this perspective, the need to build a modern legal framework for lobbying activity in Bulgaria, which takes into account leading trends and available good practices for regulating the transparency and publicity of lobbying as one of the democratic forms of representation and achieving legitimate group and private interests" should have the part "and achieving legitimate group and private interests" removed.

In connection with the European Commission's third comment, we propose that the text referred to be replaced with the following: "Lobbying is any form of representation of interests — both good and bad — before state/public officials. The transparency of lobbying activities guarantees a legitimate and open way to influence policies. Therefore, the aim of regulating lobbying is to ensure that lobbying activities are conducted in a manner that ensures transparency, integrity, and equality."

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<sup>3</sup> Currently, the concept does not account for the risks of potential collision between the definitions in the concept, the functions of the supervisory body, and the existing texts from 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 to avoid the possibility of interpreting individual lobbying activities in a way that could lead to a collision with crimes against the activity of state bodies, public organizations, and individuals performing public functions.

We suggest taking into account the note that lobbying is problematic when conducted under unequal conditions, as one of the parties gains privileged access to state officials.

### **Third, regarding the registration of lobbyists**

We accept the recommendation for the registration of the following:

- the identity of the lobbyists
- the purpose of the lobbying activity
- individuals in relation to whom lobbying activity has been or is being conducted (incl. cases of established contacts, but not to register every sent email, they can be described chronologically, e.g., "regular contacts, including 3 meetings in month ... year ... regarding law/bill x")<sup>4</sup>

OECD standards for registration of lobbyists should be followed, according to which “[...] To adequately serve the public interest, disclosure on lobbying activities and lobbyists should be stored in a publicly available register and should be updated in a timely manner in order to provide accurate information that allows effective analysis by public officials, citizens and businesses.”

It is imperative to introduce 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 access control regime, etc.).

It is also necessary to define how checks/inspections will be conducted in the absence of registration of lobbying subjects. Currently, this is missing in the powers of the control body proposed in the concept (the chairman of the Court of Auditors). It is also unclear whether the recipients of lobbying activity will publish the 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 Court of Auditors.

### **Fourth, regarding the body responsible for maintaining the transparency register**

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<sup>4</sup> Non-profit legal entities registered for public benefit essentially engage in advocacy and, given the existing legal framework and political context in Bulgaria, the requirement to specify equivalent circumstances in their annual activity reports for declaring lobbyists is a sufficient guarantee for the transparency and publicity of their activities. There is no need for imposing additional administrative burdens and their registration in separate registers, which would also complicate the ability to monitor their work due to the fragmentation of the sources where information is published.

We reiterate our opinion in favor of a solution whereby the National Assembly, through its decision, should create this register, in which associations or other entities interested in conducting lobbying activities can voluntarily enroll, and define the rules for its maintenance, issuance of instructions, etc., designating the Commission for Prevention and Counteraction of Corruption as the executor of this decision. If such a decision is made, the powers of the Commission for Prevention and Counteraction of Corruption, as described in the current Article 13, Paragraph 1 of the Anti-Corruption Act, will need to be expanded. Besides maintaining the register, the commission should be authorized to formulate instructions, findings, and proposals, which upon assessment could be sanctioned with an act by the National Assembly. It may also be possible to create a new permanent committee (or subcommittee) on lobbying issues, which would also require changes to the Rules of Organization and Procedure of the National Assembly (ROPNA).

In this context, we remind that the GRECO recommendations for the regulation of lobbying activities focus on individuals holding high public offices (IHHPO), not on third parties. It is precisely on IHHPO that the requirement for registration of meetings and contacts, as well as their purpose, the storage and processing of information, and its disclosure should be concentrated as a commitment of the institutions<sup>5</sup>.

It should also be considered that ethical norms regarding the behavior of Members of Parliament are contained in Section II of the Rules of Organization and Procedure of the National Assembly (ROPNA), but their adherence should be monitored, with transparency regarding violations and measures taken. According to the ROPN, the Parliamentary Commission for Prevention and Counteraction of Corruption adopts rules for the application of this section and is empowered to establish violations under this section - to issue decisions and impose measures (Art.151).

It is necessary to adopt corresponding norms of ethical behavior for parliamentary staff/administration of the National Assembly, which should be included in the Rules for the Operation 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

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<sup>5</sup> GrecoEval5Rep(2022) 9 Preventing Corruption and Promoting Integrity in Central Governance (senior public positions) and Law Enforcement Bodies. Assessment Report for Bulgaria. Fifth Evaluation Round. GRECO recommends (i) to introduce rules on how individuals holding senior public positions engage in contacts with lobbyists and other third parties aiming to influence legislative and other government activities; and (ii) to systematically disclose sufficient information about the purpose of these contacts, as well as the identity of the individuals with whom the meetings were held and the specific issues discussed.

relationships of the parliamentary staff (Art.8, para.1, item 11, ROPN). If necessary, corresponding amendments should also be made in the rules for the organization and the procedure for conducting checks on the declarations of parliamentary staff for conflicts of interest, also approved by the Chairman of the National Assembly (Art.8, para.1, item 12, ROPNA).

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