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April 28, 2016

Recommendations by Frank Bold to the Council of Europe's Committee on Legal Co-operation (CDCJ) on its *Draft Recommendation of the Committee of Ministers to Member States on the legal regulation of lobbying activities in the context of public decision-making*

Definitions, p. 4

a) "Lobbying" means promoting specific interests by communication with a public official as part of a structured and organized action aimed at influencing public decision-making.

Our remarks and recommendations:

The use of the word "communication", without any further description, seems to be very general and unclear. The definition should be more specific in describing what kind of communication it refers to. We therefore recommend explicitly mentioning that both oral and written communication is considered as lobbying.

What is more it is unclear whether indirect communication is covered by the definition.

The expression "structured and organized action" is similarly general and unclear. This poses a risk of one-case-lobbyists trying to bypass the regulation.

We therefore suggest removing "structured and organized action" from the definition and rewording it as: *"Lobbying" means promoting specific interests by direct or indirect, oral and written communication with a public official aimed at influencing public decision-making*.

e) "Legal regulation" means statutory regulation, a system of self-regulation or a combination of both.

Our remarks and recommendations:

In our opinion effective lobbying regulation can be introduced only as a statutory and mandatory regulation. However statutory regulation might be supported by a self-regulation – but cannot be replaced with it. Therefore, we recommend to underline that every country should introduce such regulation to its legal system.

D. Transparency, p. 5

6. The rules on disclosure should be proportionate to the importance of the subject matter of the public decision-making process and should reflect constitutional guarantees.

Our remarks and recommendations:

The rules on disclosure should be the same in every case, regardless of the perceived importance of the subject matter. Such approach not only simplifies the procedure, but also minimizes the risk of subjective assessment and overusing of considering cases as insignificant. As examples of many countries with an effective lobbying regulation show, disclosure obligations are easy to comply with and should be used extensively to strengthen public confidence in political systems and decision-making processes.

E. Public registers of lobbyists, p. 5

9. The register should be easily accessible and user-friendly. It should be available online with easy to use search facilities, open to the public and consultation should be free of charge.

Our remarks and recommendations:

In addition to the above, the data in the register should be published in an open-data format which will make it possible to further use and reuse the stored information.

E. Public registers of lobbyists, p. 5
11. Information held in the register should include as a minimum:

a. Lobbyist identification and contact data;

b. The fields of activity and interests represented or promoted by the lobbyist, and, where applicable, the identity of clients or employer.

Our remarks and recommendations:

A register of lobbyists is only a first part of an effective lobbying regulation and answers the question "who is lobbying". The next part should be information about lobbyists' activities towards authorities, answering the question "what are they lobbying for". Therefore, the register should be supplemented by information published by authorities about their lobbying contacts (as it is currently done with the information about high-ranking European Commission officials' meetings with lobbyists). Additionally, imposing an obligation on authorities to disclose information about lobbying activities may improve the quality of the collected data.

The register should contain information about lobbyists' clients and received remuneration to help determine the scale of the lobbying activity.

The register should additionally contain a "legislative footprint" which will show how effective lobbying activities are and how big is their impact on legislative process.

The register should also contain an anti-revolving door section in which information about any prior roles as public official held by a lobbyist will be stored.

It should be recommended to collect all the lobbying data in one register – information about lobbyists, lobbying contacts, a legislative footprint and an anti-revolving door section – to ensure that lobbying information is easily accessible for every interested person.

G. Sanctions, p. 6

15. Legal regulation of lobbying should contain sanctions for non-compliance. These sanctions should be effective, proportionate and dissuasive.

Our remarks and recommendations:

Sanctions should be used as an *ultima ratio*. It is important, before introducing sanctions, to introduce other measures which will encourage lobbyists to register and comply with other lobbying regulations. On the one hand, privileges encourage lobbyists to register by giving them additional opportunities to perform lobbying activities and by minimizing the inconveniences surrounding registering and reporting obligations; on the other hand, effective and inevitable sanctions deter lobbyists from taking the risk of acting outside the law. Privileges may be connected with reserving access to public officials to registered lobbyists only, or creating a special platform for communication between policy-makers and lobbyists, so as to further encourage the latter to register.

H. Standards on ethical behaviour for public officials, p. 6

17. These measures may include:

> *a. "Cooling-off" periods that establish a period of time that has to elapse before either a public official may become a lobbyist after leaving public employment or office, or a lobbyist may become a public official after ceasing his or her lobbying activities;*

Our remarks and recommendations:

The "cooling-off" period should be long enough to weaken or even break the ties a former official/lobbyist created during their last occupation. In this respect, we consider the 18-month-long and 12-month-long "cooling-off" periods in the EU and in Poland respectively to be too short. The ban period should be suited to the length of the term of office in a given country, so as to minimize the significance of lobbyists' future contacts (as lobbying is very often all about connections between lobbyists and active policy-makers). In practice, this means that when a parliament's term of office lasts four years, then a four-year prohibition should generally be enough. Therefore, we recommend as a general rule, the minimum 'cooling-off' period should be equal to the certain term of office.

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