

Steering Committee on Media and Information Society - CDMSI



28 April 2016

Draft Comments of the Steering Committee on Media and Information Society (CDMSI) on the draft Recommendation of the Committee of Ministers to member states on the legal regulation of lobbying activities in the context of public decision-making prepared by the European Committee on Legal co-operation (CDCJ)

1. The CDMSI welcomes the draft Recommendation and thanks the CDCJ for the opportunity to submit comments. The draft Recommendation contributes to strengthening the right of the individual and the public to access information regarding public decision-making, particularly with respect to lobbying activities. Access to such information can reinforce transparent and accountable democratic processes.
2. Civil society plays a crucial role in defending and promoting societal interests. The phrase included in the definition of lobbying in the draft Recommendation, notably *"promoting specific interests by communication with a public official as part of a structured and organized action aimed at influencing public decision-making"* does not permit the necessary distinction between lobbying and civil society activities in the public interest. A more precise definition of lobbying activities should be found in order to avoid abusive restrictions on the rights of civil society as a consequence of lobbying regulation. Moreover, the definition of lobbying might also be expanded to include indirect communications with public officials such as through asking or mobilising the general public to contact legislators and the executive concerning different public policy issues.
3. Therefore, the CDMSI suggests including the phrases in bold in the definition of lobbying: "Lobbying means promoting specific interests, **in particular economic or professional**, by communication with a public official, **directly or indirectly**, as part of a structured and organised action or campaign by **business or other interest groups** aimed at influencing public decision-making."
4. In some sectors lobbying promotes the absence of legislative action or other regulation by the legislature or the executive. The definition of "public decision-making" included in the draft recommendation might limit its scope of application only to those instances when a decision materialises in a formal act/instrument of the public authorities. The CDMSI proposes that this definition be reformulated and broadened as follows: "Public decision-making means all governance processes related to the development and application of public policies within the legislative and executive branches, whether at national, regional or local level. It includes the process of making a choice between a

number of options and committing to a future course of action or abstention from decision-making”

5. The CDMSI welcomes Section C of the draft Recommendation, which provides safeguards for the right to express one’s opinions and the right to petition individually or collectively as well as the right to campaign for political change and to participate in political activities. In order to strengthen these safeguards, the CDMSI recommends adding the phrase in bold in section C/4 “Legal regulation of lobbying should not in any form or manner whatsoever infringe on the democratic right of individuals **to freedom of expression and the right to freedom of assembly and association that are enshrined in Articles 10 and 11 of the European Convention on Human Rights**”. Those who believe that their right to freedom of expression or their right to freedom of assembly has been infringed as a consequence of actions by state authorities should be able to challenge these actions and have access to an effective remedy as foreseen by Article 13 of the European Convention on Human Rights.
6. As regards Section D, it is not clear from the draft Recommendation whether it is lobbyists or public authorities, or both that should disclose information on lobbying activities. This, read together with Section E/7 and 8, may mean that lobbyists are to disclose information in a declaratory way which begs the question whether it would be feasible to expect such disclosure from lobbyists. The CDMSI suggests these provisions clarify the rules on disclosure and their relation to the public register of lobbyists. In respect of the latter, the CDMSI suggests that the minimum requirements in Section E/11 should also include information on the budget spent on lobbying activities as well as information on lobbyists’ ownership of related companies. This will permit the public to have better information on the scale of lobbyists’ actual expenditures on their endeavours to influence the public decision-making process and on their specific role.
7. Moreover, the CDMSI is of the opinion that the objectives of this important recommendation could be better reached by setting more detailed benchmarks for the specific information on lobbying activities that should be disclosed. In this regard, public officials should be required to proactively publish position papers, agenda proposals, reports, information on sponsoring activities or events, or any other input of lobbyists to public policy development and implementation. This would bring a significant improvement to the public’s understanding of the decision-making process and help it to hold its representatives accountable. The CDMSI also underlines the need to ensure sufficient protection of whistle-blowers in line with Recommendation [CM/Rec\(2014\)7](#) on the protection of whistleblowers.