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## Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making

*(Adopted by the Committee of Ministers on 22 March 2017  
at the 1282<sup>nd</sup> meeting of the Ministers' Deputies)*

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The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose, *inter alia*, of safeguarding and realising the ideals and principles which are their common heritage;

Considering that adopting common rules in legal matters can contribute to the achievement of the aforementioned aim;

Considering that the right to participate in public affairs is one of the democratic principles shared by all member States of the Council of Europe;

Recognising that lobbying can make a legitimate contribution to open government and well-informed public decision making;

Recognising that increasing transparency and accountability in lobbying can strengthen public confidence in political systems;

Recognising that regulating lobbying can strengthen its legitimacy and integrity and provide a transparent framework in which stakeholders can contribute to public decision making;

Recognising that regulating lobbying activities should not prevent the consideration of technical advice or individual opinions in the process of public decision making;

Recognising that the European Court of Human Rights has established a right of access to information as an inherent part of the right to freedom of expression protected by Article 10 of the European Convention on Human Rights (ETS No. 5);

Having regard to the Criminal Law Convention on Corruption (ETS No. 173), the Civil Law Convention on Corruption (ETS No. 174), Recommendation Rec (2000)10 of the Committee of Ministers to member States on codes of conduct for public officials, and the work of the Group of States against Corruption (GRECO);

Having regard to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the principles on protecting personal data contained therein;

Recalling Parliamentary Assembly Recommendation 1908 (2010) on "Lobbying in a democratic society (European code of good conduct on lobbying)" – reiterated by Resolution 1744 (2010) on "Extra-institutional actors in the democratic system" and Recommendation 2019 (2013) on "Corruption as a threat to the rule of law" – in which the Assembly recommends that the Committee of Ministers of the Council of Europe draw up a European code of good conduct on lobbying;

Taking note of the OECD's "Recommendation of the Council on Principles for Transparency and Integrity in Lobbying" (C(2016)16);

Recognising and valuing the work of civil society organisations and other bodies seeking to promote transparency in lobbying;

Noting that many member States of the Council of Europe have rules governing conflicts of interest, access to public officials and transparency of the legislative process, but most of them have no comprehensive framework for the regulation of lobbying;

Bearing in mind that any national lobbying regulation should comply with national constitutional law;

Considering that there is a need to encourage the adoption of such frameworks, based on common principles, in the member States,

Recommends that governments of member States:

- establish or further strengthen, as the case may be, a coherent and comprehensive framework for the legal regulation of lobbying activities in the context of public decision making, in accordance with the guiding principles contained in the appendix hereto and in the light of their own national circumstances;
- ensure that this recommendation is translated and disseminated as widely as possible and more specifically among lobbying groups, business, trade unions, industry confederations, public bodies, regulatory authorities, civil society NGOs, politicians, academics.

#### *Appendix to Recommendation CM/Rec(2017)2*

Guiding Principles on devising policy at national level to regulate lobbying

#### **Definitions**

For the purposes of this recommendation and its principles:

- a) "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;
- b) "lobbyist" means any natural or legal person who engages in lobbying;
- c) "public decision making" means decision making within the legislative and executive branches, whether at national, regional or local level;
- d) "public official" means any person exercising a public function, whether elected, employed or otherwise, in the legislative or executive branches;
- e) "legal regulation" means statutory regulation, a system of self-regulation or a combination of both.

#### **A. Objective of legal regulation**

- 1. Legal regulation of lobbying should promote the transparency of lobbying activities.

#### **B. Activities subject to legal regulation**

- 2. Lobbying activities in at least the following categories should be subject to legal regulation:
  - a. consultant lobbyists acting on behalf of a third party;
  - b. in-house lobbyists acting on behalf of their employer;
  - c. organisations or bodies representing professional or other sectoral interests.

- 3. Exemptions to legal regulations on lobbying should be clearly defined and justified.

#### **C. Freedom of expression, political activities and participation in public life**

- 4. Legal regulation of lobbying activities should not, in any form or manner whatsoever, infringe the democratic right of individuals to:
  - a. express their opinions and petition public officials, bodies and institutions, whether individually or collectively;
  - b. campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively.

#### **D. Transparency**

5. Information on lobbying activities in the context of public decision-making processes should be disclosed.
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.

#### **E. Public registers of lobbyists**

7. A register of lobbyists should be maintained by public authorities or other designated bodies.
8. Information held in the register should be of a declaratory character. Lobbyists should be responsible for ensuring the information is accurate and up to date.
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.
10. The processing of personal data from the register should comply with applicable standards on personal data protection.
11. Information held in the register should include as a minimum:
  - a. the name and contact details of the lobbyist;
  - b. the subject matter of the lobbying activities;
  - c. the identity of the client or employer, where applicable.
12. In order to further promote transparency, registers may include additional information in accordance with national conditions and requirements.
13. In the case where a member State can demonstrate that alternative mechanisms guarantee public access to information on lobbying activities and ensure equivalent levels of accessibility and transparency, it may be considered that the requirement for a public register is satisfied.

#### **F. Standards of ethical behaviour for lobbyists**

14. Lobbyists should be guided by the principles of openness, transparency, honesty and integrity. In particular, they should be expected to:
  - a. provide accurate and correct information on their lobbying assignment to the public official concerned;
  - b. act honestly and in good faith in relation to the lobbying assignment and in all contact with public officials;
  - c. refrain from undue and improper influence over public officials and the public decision-making process;
  - d. avoid conflicts of interest.

#### **G. Sanctions**

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

#### **H. Public sector integrity**

16. Appropriate measures tailored to national circumstances should be in place in order to avoid risks to public sector integrity that might be created by lobbying activities.
17. The measures referred to in the preceding paragraph could include:
  - a. a "cooling-off" period, namely 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 lobbying activities;

- b.* guidance to public officials on their relations with lobbyists, in particular concerning:
- refusing or disclosing the receipt of gifts and hospitality offered by a lobbyist;
  - how to respond to communications from lobbyists;
  - reporting violations of the regulations or rules of conduct on lobbying activities;
  - disclosing conflicts of interest;
  - preserving the confidentiality of data.

**I. Oversight, advice and awareness**

18. Oversight of the regulations on lobbying activities should be entrusted to designated public authorities.

19. Oversight may include the following tasks:

- a.* monitoring compliance with the regulations;
- b.* providing guidance to lobbyists and public officials on the application of the regulations;
- c.* raising awareness among lobbyists, public officials and the public.

**J. Review**

20. The framework for the legal regulation of lobbying activities should be kept under review.