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TECHNICAL PAPER

Analysis of the Draft Law on the Integrity of Lobbying in Ukraine and related legislation

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ABBREVIATIONS

Council of Europe Recommendation	Recommendation of the Committee of Ministers to member States of the Council of Europe on the legal regulation of lobbying activities in the context of public decision making (Committee of Ministers, 22 March 2017)
GRECO	Group of States against Corruption
Interinstitutional Agreement	Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register (20 May 2021)
NAPC	National Agency for Prevention of Corruption
OECD	Organisation for Economic Co-operation and Development
OECD Recommendation	Recommendation of the Council of the Organisation for Economic Co-operation and Development (OECD) on Principles for Transparency and Integrity in Lobbying (18 February 2010)



1 EXECUTIVE SUMMARY

Lobbying has an impact on the outcome of public policies by promoting the interests of various groups or people. Undue and non-transparent influence on the law-making process may have negative effects on the overall public interest. Therefore, the Council of Europe, the Organisation for Economic Co-operation and Development (OECD), and the European Union call for transparency in the policy-making process and regulation of lobbying.

The standards provided by these international organisations outline the need to ensure the following aspects in regard to lobbying activities:

- to provide for a legal definition of lobbying;
- to define precisely the persons entitled to conduct lobbying activities;
- to require a mandatory registration of the lobbyists;
- to set out core principles for the ethical behaviour of lobbyists in a code of conduct;
- to assign an oversight body to monitor compliance;
- to provide effective, proportionate and dissuasive sanctions for the breach of rules related to lobbying activities and to impose a “cooling-off” period for former public officials moving into lobbying activities.

The present paper analyses the draft legislation of Ukraine proposed to regulate lobbying activities in the law-making process and suggests improvement proposals inspired by international standards and country examples. The draft legislation was developed by the National Agency for Prevention of Corruption (NAPC) of Ukraine and this paper has been commissioned upon the request of the Agency.

The draft Law on the Integrity of Lobbying in Ukraine is a concise regulatory document, which comprises most key elements expected from a lobbying law. The draft law defines what lobbying is as well as stipulates exemptions from its scope of application, which are generally in line with the practice of other countries. The draft law envisages regulating the activities of both natural and legal persons that engage in lobbying in their own interests or interests of a client. According to the draft law, all lobbyists will be required to provide data about themselves and their lobbying activities in the transparency register. Lobbyists will have their rights and obligations, including universally recognised requirements such as the requirement to disclose to lobbied persons the fact of lobbying, the matter of lobbying and the client, to provide the lobbied persons with reliable information and refrain from misleading statements, to provide truthful information to the register in a timely manner, etc.

The accompanying package of draft amendments to other laws includes, *inter alia*, provisions to ensure the recording and transparency of the legislative footprint in association with lobbying activities as well as provides for several administrative offences such as lobbying without registration and failures to comply properly with obligations to submit information to the transparency register.

Some areas that require further consideration are the limited scope of the draft law, which covers mainly lobbying regarding law-making process but not all public decision making, absence of *ex-ante* verification of data that potential lobbyists provide to the register upon registration, relatively mild sanctions for violations and absence of sanctions for failures to comply with several obligations that the draft law defines.



2 INTRODUCTION

The term “*lobby*” refers to the hallways of the UK Houses of Parliament, where in the 19th century representatives of various groups would gather to meet with members of Parliament. Another legend links the term with the lobby of the Willard hotel in Washington, D.C. where representatives of various interests tried to attract the attention of the U.S. President Ulysses S. Grant (1869 – 1877). The existence of such channels in the Anglo-Saxon world is doubtless an acknowledgement of the importance of civil society and its contribution to the public decision-making process.

The practice of lobbying has grown considerably in the recent years. Any decision involving the community has complex ramifications. Governments and elected representatives can no longer ignore the impact of globalisation on national policy, nor ignore all interests involved in large investment projects. Regulatory proliferation and an unstable legal environment have also served to bolster the influence of intermediary groups. Hence, public decisions cannot be made in an ivory tower where economic operators and civil society would play a negligible role. At the same time, citizens’ disaffection with the electoral process and the decline in public confidence in the political class are helping to increase the role of lobbying in public debate. As observed in the report on Lobbying in a democratic society¹, produced in 2009 for the Parliamentary Assembly of the Council of Europe, “*Lobbying that takes place in accordance with clear, transparent rules is a legitimate part of the democratic system and is one way of allowing citizens to express their concerns. Moreover, lobbying viewed as a channel to expertise and feedback is helpful for informed and balanced conduct of public affairs*”. The challenge, however, is two-fold: firstly, to ensure that lobbyists do not turn the decision-makers themselves into lobbyists, and secondly, to ensure that promoting the particular interests in question does not conflict with the interest of the community at large.

Lobbying is poorly regulated at the moment in Ukraine, where several acts deal with related matters, these include: the Law of Ukraine on Rules of Procedure of the Verkhovna Rada of Ukraine, the Law of Ukraine on Committees of the Verkhovna Rada of Ukraine and the Law of Ukraine on Prevention of Corruption. All these laws are not very robust in terms of transparency, monitoring and sanctioning with regard to the lobbying process. In the 4th Round Evaluation Report of Ukraine (8 August 2017), the Council of Europe Group of States against Corruption (GRECO) noted that: “*there are no rules on lobbying which could shed more light on the many interests that may permeate the legislative process*”. It recommended “*the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process*”.² As candidate for accession to the European Union, Ukraine aims to bring its legal framework on lobbying in line with international standards and to comply with the recommendations of the GRECO.

The draft legal framework for the fair conduct and organisation of activities of subjects of lobbying in Ukraine, which has been provided for this review, represents a substantial step to reduce the impact of corruption factors in the processes of preparation and adoption of normative-legal acts. The draft legislative package also aims at amending other legal acts, in particular the Law of Ukraine on Rules of Procedure of the Verkhovna Rada of Ukraine and the Law of Ukraine on Committees of the Verkhovna Rada of Ukraine. A third part of the

¹ [Lobbying in a democratic society \(European Code of Conduct on Lobbying\)](#) - Report | Doc. 11937 | 05 June 2009, Committee

(Former) Committee on Economic Affairs and Development, Rapporteur: Mr José MENDES BOTA, Portugal, EPP/CD

² Council of Europe, Group of States against Corruption (GRECO), [4th Evaluation Round “Corruption prevention in respect of members of parliament, judges and prosecutors”](#), 8 August 2017, accessed on 25 July 2023

legal proposal focuses on amendments to the Law of Ukraine on Prevention of Corruption and to the Code of Ukraine on Administrative Offences regarding violations of legislation in the sphere of lobbying. The present TP aims to review these provisions vis-à-vis international standards and practices in this area.

Three standards are particularly relevant for the purposes of the current review:

- the Recommendation of the Committee of Ministers to member States of the Council of Europe on the legal regulation of lobbying activities in the context of public decision making, adopted by the Committee of Ministers on 22 March 2017 (hereinafter referred to as "Council of Europe Recommendation")³;
- the Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register⁴ (hereinafter referred to as "Interinstitutional Agreement");
- the Recommendation of the Council of the Organisation for Economic Co-operation and Development (OECD) on Principles for Transparency and Integrity in Lobbying, adopted the 18 February 2010 (hereinafter referred to as "OECD Recommendation"). It has been complemented on May 20, 2021 by a report, which describes the new challenges the decision-makers face and the risks attached to special interest groups.⁵ In view of the evolution of the lobbying and influence landscape in the past decade, the OECD Recommendation is expected to be revised and updated following online consultations⁶. For the purpose of the analyses in this paper the consultants refers to the Recommendation of 2010.

The above-mentioned recommendations and the Interinstitutional Agreement define standards and ways of conduct, which serve as guidelines for setting up the domestic legislative frameworks. Legislation from other countries which have proven their value, may also provide examples of good practices and clarify the provisions of the different draft laws, which have been proposed in Ukraine.

For the purpose of this document, only the articles of the draft laws which raise questions will be analysed. The strength of the legal framework on lobbying depends also on the integrity of both policy-makers and lobbyists and on other rules connected with lobbying, such as the regulations on conflicts of interest⁷, gifts⁸ or political finance for electoral campaigns and political parties and on the enforcement of these rules. However, this analysis provides a desk review of the proposed legal texts while taking into account challenges identified in the implementation of lobbying requirements in other jurisdictions. The analysis and recommendations should be considered carefully by the authorities in conjunction with the previous experience of all stakeholders in the application of related pieces of legislation in Ukraine.

³ Council of Europe, [Recommendation of the Committee of Ministers to Member States of the Council of Europe on the legal regulation of lobbying activities in the context of public decision making](#) (22 March 2017), accessed on 12 July 2023

⁴ [Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register](#), accessed on 12 July 2023

⁵ OECD, "Lobbying in the 21st century", 21 May 2021, accessed on 12 July 2023.

⁶ [OECD, Online public consultation on the draft revised Recommendation on Transparency and Integrity in Lobbying](#), accessed on 12 July 2023,

⁷ Article 31-1 of the Law of Ukraine "On Rules of Procedure of the Verkhovna Rada"

⁸ Articles 23 and 24 of the Law of Ukraine "On Prevention of Corruption" combined with Article 3



3 ANALYSIS

3.1 Scope of lobbying

A preliminary remark is necessary regarding the scope of the draft Law on the Integrity of Lobbying of Ukraine and the subjects that the draft Law refers to.

Whereas in the OECD and the Council of Europe recommendations “public officials” are people in the executive or in the legislative branch, whether elected or appointed, and objects of lobbying are broadly termed as public decision making or legislative, policy or administrative decisions⁹, Article 1 of the draft Law on the Integrity of Lobbying in Ukraine focuses its attention on the law-making process.

Paragraphs 2 and 4 of Article 1 of the draft law deserve particular attention:

“2) lobbying – influence on subjects of law-making activity during planning, development of a draft of a normative legal act (its concept) and adoption (issuance) of a normative legal act, which is carried out by the methods provided for by this Law;

4) the object of lobbying – a normative legal act, in the process of planning, developing and adopting (publishing) of which, influence on the subjects of law-making activity is carried out”.

The scope appears to partly resemble the definition of lobbying of the Polish Law on Lobbying Activity in the Law-Making Process: “...lobbying activity is any activity carried out using methods permitted by law, aimed at exerting influence on public authorities in the law-making process.” (Article 2, Para 1).¹⁰ One difference, however, lies in the treatment of “influence”. The draft Law of Ukraine defines lobbying as influence, while the Polish law focuses on activity “aimed at exerting influence”. In practice not every lobbying activity achieves influence. Lobbying activities may be associated with attempted but unsuccessful influence. According to the Council of Europe Recommendation, lobbying is “aimed at influencing public decision making”. In other words, the intent to influence rather than the fact of influence is a defining feature.

The documents provided by the Ukrainian authorities do not contain the definition of a subject of law-making activity. According to the draft Law on Law-Making Activity (currently in preparation for the second reading at the Verkhovna Rada of Ukraine), subjects of law-making activity are bodies of state authority, bodies of local government, their office holders and other subjects with powers to adopt (issue) normative legal acts and, in particular, the Verkhovna Rada, the President, the Cabinet of Ministers, a ministry, other state bodies that have law-making powers, bodies of the Autonomous Republic of Crimea, heads of local state administrations, bodies of local government, bodies of professional self-government that have powers of subjects of law-making activity.¹¹

According to the Council of Europe Recommendation, 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”. Public decision making “means decision making within the legislative and executive branches, whether at national, regional or local level”. The principles outlined by the OECD Recommendation are primarily directed at decision-makers in the executive and legislative branches. They are relevant to both national

⁹ Article 3 of the Recommendation of the OECD and c) and d) of the Recommendation of the Council of Europe

¹⁰ [Polish Law on Lobbying Activity in the Law-Making Process](#), accessed on 18 July 2023.

¹¹ [Draft Law on Law-Making Activity](#), accessed on 18 July 2023.



and sub-national level. There is a trend to introduce transparency requirements on lobbying not only at national but also at regional or local levels (Australia, Austria, Canada, Latvia, Lithuania, North Macedonia, Slovenia, Spain). The OECD Recommendation has a wider scope too, by including “*the design of projects and contracts*”.

A legal framework on lobbying has to embrace all levels of governance: the legislative as well as the executive branch at the national level. The efficiency of a legislation on lobbying will be measured towards its inclusion of these branches. Members of Parliament have the vocation to meet interests’ groups. Upstream in the legislative procedure draft laws are also prepared by persons entrusted with top executive functions engaged in contacts with lobbyists, who may seek to influence the public decision-making process.

The public decision making that the Council of Europe Recommendation refers to is not just law-making procedure. It may cover draft laws as well as administrative decisions. Some countries have taken this general approach to public-decision making. Canadian legislation includes “*the activity related to the awarding of any grant, contribution or other financial benefit*”¹².

Public procurement and concession contracts, when the estimated, tax-excluded value of the contract, is equal to or greater than the EU-defined thresholds¹³, enter the scope of public decisions in France¹⁴.

In Ireland, the preparation of an enactment or the award of any grant, loan or other financial support contract, any license or other authorisation involving public funds has to be registered¹⁵. A criterion for consultant lobbying in the United Kingdom is the taking of any steps by the government in relation to any contract, agreement, grant, financial assistance, licence or authorisation¹⁶.

Recommendation 1:

The draft Law on the Integrity of Lobbying of Ukraine includes in its remit lobbying in the law-making process, which is narrower than the scope envisaged by international recommendations and most laws on lobbying in other countries. Ukrainian authorities should consider expanding the definition of lobbying and the scope of the draft Law by linking lobbying to the intent to influence rather than actual influence and recognising a broader scope of public decisions that can be subject to lobbying, for example, the preparation or amendment of any policy programme (strategy, action plan, etc.) and the award or withdrawal of a contract, grant, licence, contribution, or other benefit.

Ukrainian authorities should also consider expanding the dedicated legal framework on lobbying in central governments for top executive functions, considering that lobbying embraces the executive branch as well as the legislative branch.

¹² 5 (1) v of the Lobbying Act of Canada

¹³ E.g. in Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement

¹⁴ Annexe Article 3, 1° Décret 2017-867 9 Mai 2017

¹⁵ Ireland, “[Summary of the main provisions of the Regulation of Lobbying Act 2015](#)”, available at the following link, accessed on 12 July 2023

¹⁶ [United Kingdom, Office of the Registrar of Consultant Lobbyist Guidance on Compliance](#), accessed on 12 July 2023



3.2 Regulations of lobbying

Article 2 of the draft Law on the Integrity of Lobbying in Ukraine refers to the legal sources that should be taken into consideration in the field of lobbying. As it has been underlined, *“there is no internationally recognised definition of a lobbyist, neither linguistic or legal”*¹⁷ and the reference to “international treaties” in Article 2 of the draft Law could be clarified and complemented. Lobbying is indirectly related to corruption for example. International treaties, which deal with corruption such as the Council of Europe Civil Law and Criminal Law Conventions have been ratified by Ukraine respectively on the 19 September 2005 and the 27 November 2009.

The recommendations of the Council of Europe and of the OECD cannot be considered as international treaties, nevertheless they are important guidance sources to which the authorities can refer.

Recommendation 2:

As the international standards on lobbying provided for by the Council of Europe, the European Union and the OECD are a significant source of guidelines on lobbying, the Ukrainian authorities could refer to these standards in the explanatory note to the draft Law on the Integrity of Lobbying. The standards provided for by these recommendations could inspire the authors of the draft laws as these are currently the most relevant principles (soft law) on lobbying at international level.

3.3 Field of the law

Imposing transparency measures equally on all stakeholders, who aim to influence decision-making processes could be considered as a radical solution for increasing scrutiny of public decisions. Nevertheless, the Council of Europe Recommendation admits exemptions to legal regulations on lobbying. Pursuant to the point B, item 3 of this Recommendation, exemptions to legal regulations on lobbying should be *“clearly defined and justified”*. The Interinstitutional Agreement has provided exemptions which are similar to the ones envisaged in the draft Law on the Integrity of Lobbying in Ukraine. Some of the exemptions in the draft Law include: the political parties¹⁸, the churches, the scientists and experts and the diplomatic institutions.

Political parties whose status is granted by Article 36 of the Ukrainian Constitution and the Law on Political Parties, exercise the freedom of expression during electoral campaigns and outside electoral campaigns. Their activity must be protected, but it happens that organisations can be created or affiliated with political parties and can interfere in the law-making process. This case is taken into account by Article 4 (2) e) of the Interinstitutional Agreement. These entities, which may be considered as third parties, should be registered among the subjects of lobbying, provided for in Article 1 (5) of the draft law. The same applies for legal entities and structures created to represent churches, according to the Article 4 (2) f) of the Interinstitutional Agreement. The question of the inclusion of philosophical and non-confessional organisations may be raised. However, the special status of churches may deserve a special treatment¹⁹, compared with philosophical and non-confessional organisations.

¹⁷ Tilman Hoppe [“A study on the feasibility of a Council of Europe legal instrument on the legal regulations of lobbying activities”](#) (2014), accessed on 12 July 2023

¹⁸ Political parties are not considered as lobbyists in Austria (as an example)

¹⁹ They are excluded for instance in Austria and in the United States



Generally, the exemptions provided by the draft Law on the Integrity of Lobbying have full or partial analogues in lobbying laws of several European countries – diplomatic activities (Austria²⁰, Germany²¹, Latvia²²), professional activities of journalists (Germany, Lithuania²³), activities of political parties (Austria, France²⁴, Germany, Latvia, Lithuania, North Macedonia²⁵), activities of religious organisations (Austria, France, Germany, Lithuania).

The exemption of scientists and experts involved as subjects of supportive law-making activity provided for by the draft Law of Ukraine is wide. According to the draft Law on Law-Making Activity (currently in preparation for the second reading at the Verkhovna Rada of Ukraine), subjects of supportive law-making activity are “persons participating in the law-making process and performing the functions of scientific, expert, advisory, technical and other types of law-making process provision”.

Organisations in the broad sense provided by the Interinstitutional Agreement include companies, associations, non-governmental organisations, trade unions, universities, research institutes, law firms and consultancies. It is also worth mentioning that in the report on the functioning of the Transparency Register of the European Union (2022), 552 professional consultancies and 84 law firms have been recorded²⁶. In France in 2022, 6% of the interest groups recorded by the High Authority for Transparency in Public Life were professional consultants and 1% law firms²⁷. In the United Kingdom, guidance issued by the Office of the Registrar of Consultant Lobbyists clearly identifies law firms among the categories falling within the remit of the lobbying regime. If the firm has any contact with ministers or permanent secretaries, it should consider carefully whether it needs to register. The total annual lobbying activities of law firms in the United States amounted to USD 15,355,091 in 2022 and the total number of the reported lobbyists was 236²⁸. Therefore, some legislations consider that an interest representation action may be driven by professional consultants and lawyers, who are particularly familiar with the legal process and parliamentary procedure. It would not be justified to exclude consultants and legal firms through the notion of experts, even if they are excluded in certain countries (Austria for instance).

One legitimate reason for the exemption of the lawyers would be the need to preserve confidential information between the lawyer and his/her client. Under principle 5 of its Recommendation, the OECD considers that “*Disclosure of lobbying activities should provide sufficient, pertinent information on key aspects of lobbying activities to enable public scrutiny. It should be carefully balanced with considerations of legitimate exemptions, in particular the need to preserve confidential information in the public interest or to protect market-sensitive information when necessary*”. Article 8 of the European Convention of

²⁰ [Austrian Law on Transparency of Lobbying and Interest Representation](#), accessed on 18 July 2023.

²¹ [German Law Introducing a Lobby Register for the Representation of Interests towards the German Bundestag and towards the Federal Government](#), accessed on 18 July 2023.

²² [Latvian Interest Representation Transparency Law](#), accessed on 18 July 2023.

²³ [Lithuanian Lobbyists Activities Law](#), accessed on 18 July 2023.

²⁴ [French Law relating to the Transparency of Public Life](#), accessed on 18 July 2023.

²⁵ North Macedonia, [Law on Lobbying](#), accessed on 18 July 2023.

²⁶ Annual Report of the European Parliament, the Council of the European Union and the European Commission on the functioning of the Transparency Register, available at the following link: europarl.europa.eu/at-your-service/files/transparency-and-ethics/lobby-groups/en-annual-report-on-the-operations-of-the-transparency-register-2022.pdf, accessed on 12 July 2023

²⁷ [France, Hight Authority for the transparency in public life, 2022 Activity Report](#), accessed on 12 July 2023

²⁸ [Open Secrets, Following the Money in Politics](#), accessed on 12 July 2023



Human Rights protects the fundamental right of professional privilege. Nonetheless, a distinction has to be made between the activity of the Parliament and the judicial process of defending litigants. On the one hand lawyers cannot carry out their task, if they are unable to guarantee to those they are defending that their exchanges will remain confidential²⁹. On the other hand, when lawyers intervene as intermediaries between their clients and the lawmakers, this information will be shared by various stakeholders in the legislative process, such as parliamentary committees, and will not remain confidential.

The exemption of scientists raises questions too. Policy-makers do not always have the scientific background to interpret the impact of certain political decisions and funding of research may be in the hands of lobbyists to seek an influence on the political making process. Scientific studies may highlight selective findings or dismiss doubts and criticism to shape a public decision. Research centres are not bound everywhere by transparency requirements in their lobbying activities. Austria, Belgium, France, Germany, the United States disclose for instance these activities, but it is not the case for Denmark, Switzerland or the United Kingdom. In its report on Lobbying in the 21st century, OECD makes recommendations for strengthening scientific advice³⁰. It considers that Governments should establish effective mechanisms for ensuring appropriate and timely scientific advice in crisis situations. They should work with international organisations, to ensure coherence between national and international scientific advisory mechanisms on complex global societal challenges. Governments and responsible institutions should implement measures that build trust in science advice for policy making. The Covid crisis has showed that lobbying could create doubt among ill-informed people, and policy-makers were not always able to balance the input of ill-intended information. For these reasons the grounds for the exclusion of scientists may be put in question.

In order to narrow down the exemption regarding providers of scientific and expert support, Ukraine could consider examples of laws where similar exemptions are limited to situations when authorities have requested the support. Consider the exemptions in the Austrian law ("*activities carried out at the instigation of a functionary*", Article 2, Item 6), the Lithuanian law ("*activities of individuals, when they, on the initiative and invitation of state and municipal institutions or bodies, take part as experts or specialists in meetings, sittings, consultations on the preparation of draft legal acts in accordance with the Law on the Legislative Framework of the Republic of Lithuania*", Article 7, Item 2) and the Interinstitutional Agreement (making submissions in response to direct and specific requests from any of the Union institutions, their representatives or staff, for factual information, data or expertise, Article 4, Para 1, Item d). However, these exemptions also comprise a risk that lobbyists could abuse the exemption and take "advantage of the invitation to speak with an official to also promote her or his own agenda. Should this happen the underlying reason for the exemption would be undermined and an act of lobbying would remain undisclosed under the pretence of an exempted communication with an official."³¹ To prevent such abuse, it is important to clearly limit the exemption to explicitly expressed needs of the authority.

²⁹ ECHR Michaud v. France, judgment of 6 December 2012, §§ 118-119

³⁰ OECD, Transparency and Integrity in lobbying, available at the following link: <https://OECD Report-Transparency-and-Integrity-in-Lobbying.pdf>, accessed on 12 July 202

³¹ Council of Europe (2017), [Legal Regulation of Lobbying Activities in the Context of Public Decision Making](#), p. 22, accessed on 18 July 2023.



Recommendation 3:

Limit the exemption of subjects of supportive law-making activities, whose main function is scientific and expert support, to instances when they act upon a contractual basis with a subject of law-making activity or upon a direct and specific request for factual information, data or expertise of a subject of law-making activity.

The risks involved in lobbying and influence activities of foreign interests are high. Diplomatic institutions are out of the scope of the draft law, like the example of Canada³². On the other hand foreign third parties remain liable to the requirements of the draft law. Consultant lobbyists representing the interests of foreign governments are bound by the same disclosure requirements as other actors. Under the EU Interinstitutional Agreement, activities by third countries will be covered, when they are carried by legal entities, offices or networks without diplomatic status or are represented by an intermediary³³. Foreign third parties are subject to the requirements of the draft law, and in this regard the text is in line with international standards and good practices.

Conversely, the draft Law on the Integrity of Lobbying seems to lack an exemption for simple activity of an individual citizen on his/her own behalf and in his/her own or non-commercial public interests. According to the draft Law, the activities limited to participation in public consultations and the use of the rights provided for by the Law of Ukraine on Citizens' Appeals and the Law of Ukraine on Access to Public Information are not considered lobbying. However, it is not clear whether this exemption covers all situations when a citizen occasionally attempts to influence law-making activities on his/her own behalf and in his/her own interests by exercising his/her individual civic freedoms and rights, for example, on social media, in a personal blog or in the form of a public protest.

In this regard the exemptions provided in the Austrian law ("*activities of a person with which he/she pursues his/her non-entrepreneurial personal interests*", Article 2, Item 2) and the Lithuanian law ("*an opinion expressed by a natural person on legislation, except in cases where a natural person systematically and continuously prepares drafts of legal acts and proposes to initiate consideration of these drafts of legal acts in accordance with the procedure established by legal acts and when these drafts of legal acts are prepared representing other than his/her personal interests or a natural person expresses an opinion regarding legislation and this opinion is expressed by representing legal entities pursuing business goals or associations uniting such legal entities*", Article 7, Item 6) could be considered.

Recommendation 4:

Define a comprehensive exemption for occasional activities of an individual citizen on his/her own behalf and in his/her own or non-commercial public interests.

3.4 Methods of lobbying

The scope of lobbying activities which has been drawn by the international recommendations is broad:

- "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" (Recommendation of the Council of Europe).

³² 4 (1) e of the Lobbying Act

³³ Article 4 (2) d



- „Activities carried out by interest representatives with the objective of influencing the formulation or implementation of policy or legislation, or the decision-making processes of the signatory institutions or other Union institutions, bodies, offices and agencies” (Interinstitutional Agreement).
- “Lobbying, the oral or written communication with a public official to influence legislation, policy or administrative decisions, often focuses on the legislative branch at the national and sub-national levels. However, it also takes place in the executive branch, for example, to influence the adoption of regulations or the design of projects and contracts. Consequently, the term public officials include civil and public servants, employees and holders of public office in the executive and legislative branches, whether elected or appointed” (OECD Recommendation).

The wording of Article 4 of the draft Law on the Integrity of Lobbying in Ukraine meets these standards. Article 4 (Point 5) could be complemented by mentioning actions using social platforms and networks. Today the classical shake of hands has turned into tweets or hashtags, which reflect the opinion of very few persons. Companies may use social media advertisements to influence the narrative, with positive or negative messaging through targeted social media campaigns. Campaigns of communication may have different forms: information, misinformation or disinformation. Misinformation refers to incorrect or wrong information without any malicious intention. Disinformation is a deliberate attempt to make people believe things which are not accurate. This risk of manipulation, which may involve fabricated information blended with facts and the amplification of the message, must not be ignored and has to be regulated by a specific legal framework.

In Canada, lobbyists are required to disclose any communication techniques used. It includes any appeals to members of the public through mass media, or by direct communication, aiming to persuade the public to communicate directly with public office holders, as pressure to endorse a particular opinion³⁴. The Lobbying Act categorises this type of lobbying as “*grassroots communication*”. Similarly, the EU Transparency Register covers activities aimed at “*indirectly influencing*” EU institutions, including through the use of intermediate vectors such as media, public opinion, conferences or social events.

Recommendation 5:

Actions using social platforms and networks should be taken into account among different forms of communication techniques which may influence indirectly subjects of law-making activity. These forms of communication should be explicitly mentioned in Article 4 of the draft Law on the Integrity of Lobbying, for example, organising and using online platforms and online or offline networks. If this recommendation is implemented in the law, take into consideration that the NAPC will need to develop and run a dedicated monitoring system for the social networks.

3.5 Communication activities, electoral campaigns and party funding

This risk of rise of conflict of interests and trading in influence is particularly important in period of electoral campaigns for members of Parliament. The events, meetings, information campaigns, which are indicated by Article 4 of the draft Law on the Integrity of Lobbying in Ukraine could favour the incumbent candidates and infringe the opportunity of chances in the electoral campaigns. They could be used as a form of sponsorship for candidates and potentially favour an unfair electoral competition between candidates. Attention has to be paid to the risk of abusing the broad scope of lobbying to circumvent restrictions imposed by

³⁴ 5 (2) j of the Lobbying act



the regulations on sponsorship, provided for by Article 14 of the Law on Political Parties and Article 51 (7) of the Electoral Code on pre-election campaigning of Ukraine.

A programme for amending legislation or adopting a new legislation could be an important part of an electoral campaign. A broad scope of lobbying activities could indirectly increase sponsorship from third parties which might favour corruption. One option would be to prohibit any form of activities listed in Article 4 of the draft Law on the Integrity of Lobbying in Ukraine during electoral campaigns.

The connection between lobbying and contributions to elections funds of candidates may be relevant too. The risk of the circumvention of lobbying to fund electoral campaigns and political parties should not be neglected. Preventing lobbying activities from clients which could at the same time make donations or sponsorship to candidates or political parties should be considered. For this reason, both channels should be sealed (lobbying and political finance).³⁵ Examples³⁶ of relevant restrictions which could be taken into account include requiring lobbyists to disclose their campaign contributions in their lobbying reports; requiring lobbyists to disclose their fund-raising for the benefit of candidates in their lobbying reports; prohibiting contributions by lobbyists to legislators and other elected officials, or, to the elected officials they are registered to lobby; prohibiting lobbyists from organising fundraisers or serving as campaign treasurers.

Recommendation 6:

Restrictions on sponsorship and donation from clients of subjects of lobbying during electoral campaigns could be considered.

3.6 Restrictions to lobbying

Article 5 of the draft Law on the Integrity of Lobbying in Ukraine sets up restrictions to lobbying. Some of these restrictions require additional clarification.

According to Article 5 (2) of the draft law the “*Foreign policy*” cannot be the object of lobbying activities. The ratification of international treaties by the Verkhovna Rada of Ukraine is provided for by Article 9 of the Constitution. However, ratification of a treaty is one part of foreign policy. For instance, an international trade agreement will entail a discussion in the Verkhovna Rada of Ukraine but would be excluded from lobbying (even though its ratification requires a parliamentary vote). Lobbyists will be tempted to seek an influence on this vote but as it does not fall in the scope of Article 5 (2), the risk is that they exert influence in other ways which are not subject to effective transparency safeguards. This exemption is too broad, and a difference should be made between the laws related to the foreign policy which may be subject to lobbying and the other ways to conduct foreign policy. As far as a legal process is related to foreign policy it should be liable to lobbying. Foreign commercial and national interests are very often intertwined. Moreover, foreign third parties, may be considered as subjects of lobbying. So foreign policy is not totally out of the scope of the draft law.

³⁵ In the past, political parties for instance were prohibited to receive donations from public companies (or with Government capital), as well as from private companies performing public services pursuant to contracts with public authorities, for the duration of such contracts (Serbia). The same rule applied in Spain before the ban of donations from private companies. Public procurements and political finance were sealed in these 2 countries. A similar approach could be used for lobbying as the risk of corruption is the same in both cases.

³⁶ See for example Richard Briffault, Lobbying and Campaign Finance: Separate and Together, Columbia Law School, 2008, accessed 26/07/2023.



According to Article 5 (9) of the draft law adoption of acts of individual action cannot be liable to lobbying. It is considered that the terminology of “*individual action*” as provided currently is vague. Lobbying may serve the interests of a sector or of a specific company and not general purposes. The restriction on individual action should not be used as a loophole for lobbying. One option would be to make a distinction between individual actions related to business interests or not. The Lobbying Law in Austria refers to individual business interests, and lobbying of such interests is subject to the rules rather than being prohibited³⁷. If a businessman tries to convince the member of Parliament in his/her constituency to vote for a new law, it will be considered as lobbying³⁸.

Lists of issue areas that may not be subject to lobbying are rare in lobbying laws of European countries. International standards such as the Council of Europe Recommendation and the OECD Recommendation do not stipulate such limitations. In addition, global and European human rights principles prohibit arbitrarily restricting the right to practice interest representation. The International Covenant on Civil and Political Rights guarantees the freedom to seek, receive and impart information and ideas of all kinds (Article 19) and the right and opportunity of every citizen to take part in the conduct of public affairs without discrimination or unreasonable restrictions (Article 25). The European Court of Human Rights has ruled that Article 10 of the Convention, which guarantees the right to receive and impart information and ideas without interference by public authority, applies to “everyone”, whether natural or legal persons³⁹. Insofar as lobbying includes the activities protected by the Convention for the Protection of Human Rights and Fundamental Freedoms, it is considered an occupation protected by the rights and freedoms. Therefore, only such restrictions of lobbying should exist that are prescribed by law, pursue a legitimate aim and are necessary in a democratic society. In this context, it is not immediately clear why areas that in any democratic society can be subject to broad public debate, for example, amendments to the Constitution, foreign policy activities, amendments to the legislation on elections and referendums should be specifically exempt from the realm of legally permitted lobbying.

Recommendation 7:

Reduce the list of areas where normative legal acts cannot be objects of lobbying to a minimum that clearly pursues a legitimate aim and is necessary in a democratic society. In particular, the legislative process related to acts of ratification of international agreements should be liable to lobbying. Individual actions for individual business purposes should also be considered as a legitimate lobbying activity.

3.7 Code of Ethical Conduct for Lobbying Participants

Article 6 of the draft Law on the Integrity of Lobbying in Ukraine is in line with the three international texts mentioned in the “Introduction” chapter. However, it is presented in a rather formal manner. It doesn’t set out the standards and rules relating to the subjects of lobbying.

³⁷ “Tätigkeiten einer Person, mit denen diese nicht- unternehmerische eigene Interesse wahrnimmt” (1 Abschnitt § 2, 2 Lobbying und Interessenvertretungs- Transparenzgesetz)

³⁸ [Tilman Hoppe, A study on the feasibility of a Council of Europe legal instrument on the legal regulations of lobbying activities](#), accessed on 12 July 2023

³⁹ [Judgement of 22 May 1990 of the European Court of Human Rights in the Autronic AG case, No. 12726/87, para. 47](#), accessed on 18 July 2023.



In point 14, the Council of Europe Recommendation refers to the ethical commitments to which interest representatives (lobbyists) are subject. On its side, the OECD Recommendation (points 14, 15 and 16) shares the same values as well.

The contribution of the Interinstitutional Agreement to this question is more operational. It sets up a link between the covered activities of lobbying and the observance of the code of conduct. It means that the code of conduct is not just a statement of good practices but requires lobbyists to comply with the code of conduct: *“Applicants that submit a complete application for registration shall be eligible to be entered in the register if they carry out covered activities and observe the code of conduct set out in Annex I (‘code of conduct’).”*

In particular registrants have *“to ensure that the information that they provide upon registration, and subsequently administer in the framework of their covered activities, is complete, up-to-date, accurate and not misleading, and agree to that information being made available in the public domain”*.

The draft Law on the Integrity of Lobbying in Ukraine could be inspired by such a rule, making the adherence to the code of conduct a precondition for the registration. For this reason, the code of conduct should be joined/incorporated to the future legislation on integrity of lobbying because it is a key point of this legal framework. In France, nine ethical obligations are incumbent on interest representatives:

- “- Declare their identity, the organisation they work for and the interests or entities they represent in their relations with public officials;*
- Refrain from offering or giving to public officials gifts, donations or any advantages of significant value;*
- Refrain from inciting public officials to violate ethical rules applicable to them;*
- Refrain from using fraudulent means to obtain information or decisions from public officials;*
- Refrain from obtaining or attempting to obtain information or decisions by deliberately misinforming public officials or by resorting to deceptive manoeuvres;*
- Refrain from organizing conferences, events or meetings in which public officials would be remunerated, in any way, for speaking;*
- Refrain from using the information obtained from public officials for commercial or advertising purposes;*
- Refrain from selling to third parties copies of documents of the government or of an independent administrative or public authority, and from using the letterhead and the logo of these public authorities and administrative bodies;*
- Strive to comply with all the rules set out in points 1 to 8 in their relations with the direct entourage of public officials.”*

The Dutch Code of Conduct on integrity in central government helps public officials to deal with influence⁴⁰.

Rules of good conduct may be drawn up by interest representatives' associations too, as is the case in Italy, the Netherlands and the United Kingdom.

⁴⁰ [The Dutch Code of Conduct on integrity in central government](#), accessed on 12 July 2023



Recommendation 8:

The code of conduct setting out the standards of good behaviour for the subjects of lobbying should be joined/incorporated to the future Law on the Integrity of Lobbying in Ukraine and adherence to this code by the subjects of lobbying should be a precondition to be registered.

3.8 Acquisition and termination of the status of a subject of lobbying

According to the Article 7(1) of the draft Law on the Integrity of Lobbying in Ukraine, "A person acquires the status of the subject of lobbying from the moment of entering information about him/her into the Register". It means that the registration will take place on a base of a declaration and this status will be withdrawn by the monitoring body (the National Agency for Prevention of Corruption), if the person did not comply with the rules of Article 11 of the draft law. It is important to note that at this stage, the subject of lobbying may start its activities. The supervision is going to be an ex-post supervision in Ukraine.

In comparison, Lithuania takes the approach of ex ante supervision where the Chief Official Ethics Commission within five business days from the date of receipt of the application, shall examine the application of the lobbyist and take a decision regarding the inclusion of the person in the list of lobbyists⁴¹. As result "only the persons on the register (and who has produced the document confirming the payment of the state fee for entering in the Register of Lobbyists) have the right to carry out lobbying activities⁴²."

The requirements for applicants provided for by the Interinstitutional Agreement are stronger. Pursuant to Article 6 (3) of the Agreement, applicants may be requested to substantiate their eligibility to be entered in the register and the accuracy of the information submitted by them.

The secretariat of the Register shall activate an applicant's registration once the applicant's eligibility has been established and the registration is considered to satisfy the requirements set out in the Annex on information to be entered into the register. Once an applicant's registration has been activated, the applicant shall become a registrant (Article 6 (4) and (5)).

The supervision by the monitoring body to be registered, as regulated by the Interinstitutional Agreement, is more complex than in the draft law and the candidate has to motivate his/her application. If there is a political will to strengthen the NAPC, the draft Law could be amended, to increase the monitoring role of the Agency in the process of registration and to accept the subject of lobbying only after a validation.

The right for the subject of lobbying to enter the premises of the Rada should be more precise.

Recommendation 9:

The subject of lobbying should be registered only if the legal requirements on the information to be entered into the register have been fulfilled and validated by the NAPC.

Persons authorised to execute state or local government functions may not be subject of lobbying, including for a period of one year after the termination of their mandate (Article 7, Para 2, Item 1 of the draft Law). Prohibitions or restrictions for public officials to act as lobbyists for a certain time after the termination of their official status is a common rule in

⁴¹ Article 10, 4 of the Act 27 June 2000

⁴² Article 10 ,1 of the Act 27 June 2000



different countries. The Council of Europe also recommends a “cooling-off” period for former public officials. 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 should be necessary.

For the OECD, countries should consider establishing restrictions for public officials leaving office in the following situations: to prevent conflict of interest when seeking a new position, to inhibit the misuse of “confidential information”, and to avoid post-public service ‘switching sides’ in specific processes, in which the former officials were substantially involved. It may be necessary to impose a “cooling-off” period that temporarily restricts former public officials from lobbying their past organisations. Conversely, countries may consider a similar temporary “cooling-off” period restriction on appointing or hiring a lobbyist to fill a regulatory or an advisory post.

The “cooling-off” periods (“quarantine”) and the rules on access are important measures to regulate the phenomenon of “revolving doors” in respect of former Members of Parliament moving into the private sector as consultants or lobbyists in their own capacity or as employed. Just a few countries have adopted such regulations for Members of Parliament (Canada, Israel, Latvia, Lithuania, North Macedonia, Portugal, Slovenia, United States).

The waiting period in question may be up to five years, in Canada, and may apply to all activities. The Lithuanian Law on the adjustment of public and private interest in civil service sets up a one-year cool-off period, regarding the conclusion of employment contracts for the management of entities over which former politicians, had power of supervision or control or in favour of which she/he participated in decision-making to obtain state orders or financial assistance, during the year immediately prior to the end of his/her functions. According to the Integrity and Prevention of Corruption Act in Slovenia, a two-year ban is imposed to Parliament from entering into a business contract with an entity in which a parliamentarian, who has left office acts as a legal representative. A one-year ban is imposed on entering into a business contract with an entity in the management or capital of which the parliamentarian participates, either directly, or through other legal persons. An official may not lobby before two years have passed since his/her office ceased.⁴³ In Latvia, a public official may not be a lobbyist in matters where he/she him/herself has been engaged as a public official. The restriction is in force for two years since his/her powers regarding the matters terminated.⁴⁴ In North Macedonia, elected and appointed persons, secretaries in local self-government units, general secretaries, state secretaries, responsible persons in a public enterprise or a public institution established by the lobbied body and responsible persons in organisations with public authorities cannot lobby during their term of office and during three years from the date of the termination of the term of the office.⁴⁵

Recommendation 10:

The one-year “cooling-off” period for former public officials before they can become lobbyists is rather short, Ukrainian authorities should consider setting it at two years, which is a usual period of time in several other countries.

⁴³ [Slovenian Law on Integrity and Prevention of Corruption](#), accessed on 18 July 2023.

⁴⁴ [Latvian Interest Representation Transparency Law](#), accessed on 18 July 2023.

⁴⁵ North Macedonia, Law on Lobbying, available at the following link: https://dksk.mk/wp-content/uploads/2021/06/Adopted-Law-on-Lobbying_en.pdf, accessed on 18 July 2023.



3.9 Information to be entered into the Register

3.9.1 Data to be provided

A formal but comprehensive mechanism to identify the natural or the legal person and the respective information required to be reported to the Register needs to be in place. According to the draft Law on the Integrity of Lobbying in Ukraine this information covers the lobbyist, its activities and its structure with the number of employees. The date of conclusion of the agreement, its term and its price are part of the information which has to be submitted too.

If we make a comparison with the requirements of the Annex II of the Interinstitutional Agreement, we note that certain requirements of the Interinstitutional Agreement, are not recorded, as presented below:

- an annual estimate of the full-time equivalents for the persons involved in covered activities according to the following percentages of a full-time activity: 10 %, 25 %, 50 %, 75 % or 100 %;
- goals, remit, fields of interest and geographical level of engagement;
- organisations of which the registrant is a member and entities with which the registrant is affiliated;
- registrant's members and/or affiliation with relevant networks and associations.

Names of persons with authorisations to access the European Parliament's premises have to be recorded as well (Annex II, Interinstitutional Agreement). Having a lobbying certificate also gives its holder access to buildings of public authorities and entitles them to attending meetings.

Concerning the financial agreement as defined by Article 1(6) of the draft Law, we can imagine an increase of the total costs of the lobbying activities under the agreement. Hence it would be more appropriate to get the exact amount of the full year operations of the subject of lobbying. The draft Law could be amended accordingly to ensure that the information on the financial agreement is updated.

In some European countries lobbying laws require disclosing actually received amounts of money. In Austria lobbying companies have to disclose in the register, *inter alia*, within nine months of the end of the financial year for the previous financial year, the total turnover generated from lobbying activities (Article 10). In Slovenia, a lobbyist report shall comprise, *inter alia*, data on the amounts of payment received from interest organisations for which the lobbyist lobbied separate for each issue which the lobbyist lobbied, but if the lobbying process is an integral part of a service contract that also includes other activities and the value of the lobbying cannot be unambiguously defined, the value of the service contract is reported, where the lobbyist indicates the percentage of the payment for the lobbying process (Article 64)⁴⁶.

Recommendation 11:

Submit to the register information on the amounts of money actually received by a lobbyist for lobbying activities.

For the provision of the data on lobbying activities, the draft Law sets the deadline of 10 days from the date of occurrence of the relevant circumstances. However, some of the data

⁴⁶ [Slovenian Law on Integrity and Prevention of Corruption](#), accessed on 18 July 2023.



can be provided more efficiently for a period of time rather than for a set moment (especially data on annual expenses). Moreover, the need to provide each new or amended data item within 10 days represents a significant burden. For this reason, many laws on lobbying envisage period-based (quarterly, semi-annual or annual) reporting.

Recommendation 12:

Consider quarterly, semi-annual or annual reporting of data about the execution of lobbying activities.

Data listed in Article 9 (2) of the draft law include a notification of incompatibility circumstances established by part two of Article 8 of this Law. The incompatibility circumstances seem to be stipulated by Article 7 (2) of the draft Law.

Recommendation 13:

Clarify the reference in Article 9 (2) to the incompatibility circumstances that must be entered in the register.

In order to support compliance, the register could publish notices regarding imposed penalties and case summaries conducted by the relevant authority into compliance. One example of such mechanism is reflected in the British Office of the Register of Consultant Lobbyists guidance on compliance⁴⁷.

Recommendation 14:

The register could publish in an annex, case summaries to help subjects of lobbying and guide them in the effective implementation of their reporting obligation. The authorities could consider introducing provisions to ensure that this can be implemented in practice.

3.10 Implementation of lobbying

The draft Law on the Integrity of Lobbying in Ukraine makes a distinction between the method of lobbying (Article 4) and the rights and obligations of the subject of lobbying (Article 12). Article 12 states the rights and obligations of the subject of lobbying. A lobbyist may, *inter alia*, submit to the lawmakers his/her own analytical materials to the draft laws. The information from the clients and from the lawmakers will feed into these analytical materials.

Article 12, Para 2, Item 11 (obligation to disclose in the register annual expenses for lobbying and/or connected activity) appears redundant. It repeats the respective requirement found in Article 9, Para 2.

Prohibition to represent client with conflicting interests is common in laws and codes of conduct of lobbyists. The prohibition protects the interest of clients as well as prevents misleading the addressees of lobbying regarding what particular interest is lobbied at any given moment.

Recommendation 15:

Consider adding a prohibition of simultaneous lobbying on behalf of several clients with conflicting interests.

⁴⁷ [United Kingdom, Office of the Registrar of Consultant Lobbyist Guidance on Compliance](#), accessed on 12 July 2023



It is important to note that the draft Law on the Integrity of Lobbying in Ukraine provides that the subjects of lobbying should be included in the list of authors of the documents entered in the legislative process. The subjects of lobbying will be allowed to speak in the committees⁴⁸ (similar to the practice of Latvia⁴⁹ and Lithuania⁵⁰). A recorded legislative footprint will contribute to the transparency of law-making. It will be a way to know, what groups of interest, the members of Parliament met and heard from and what input to drafting law was given by these groups. Another way to disclose lobbying activities in Parliament is the publication of agendas of members of Parliament with their meetings with lobbyists, as in Spain. Nonetheless, a mandatory legislative footprint is more efficient in terms of transparency of the legislative procedure. The OECD Recommendation highlights this need for transparency: *"The public has a right to know how public institutions and public officials made their decisions, including, where appropriate, who lobbied on relevant issues"*. This legislative footprint is also a concrete reply to the Council of Europe Recommendation, which considers that *"Information on lobbying activities in the context of public decision-making processes should be disclosed"*.

The draft amendments of the Law on Rules of Procedure of the Verkhovna Rada of Ukraine supplement the transparency requirements of the draft Law on the Integrity of Lobbying. The Rules of Procedure are to be amended to include several provisions on the publicity of the activities of the subjects of lobbying:

- The disclosure of the authors of the draft laws, including the positions and the names of the organisations they represent (Article 91 (8));
- The availability of the analytical materials on the website of the Verkhovna Rada of Ukraine (Article 92 (4));
- The deadline for "lobbying entities" (subjects of lobbying) to submit their analytical materials (Article 93 (8)). The power given to the chairman of the Verkhovna Rada of Ukraine to set requirements for such materials in this provision should be clarified in more detail.
- The contents of the files of draft laws with their relevant analytical materials submitted by subjects of lobbying (Article 97 (1)).

Taking into consideration that the legislative process has several steps it should be further analysed if the legislative footprint should be introduced at every step of the readings of the draft. A balance has to be struck between the right for public scrutiny and the freedom of Members of Parliament to make a decision.

The disclosure of the footprint which should be frequently updated under these circumstances must not be a burden for the Parliament. The Polish Senate provides an example of good practices: *"When a committee reports on legislation or legislative proposal it has been considering, the rapporteur informs about the activities performed by professional lobbyists during the course of the committee work and presents their desired outcome of that consideration as well as the committee position in the given matter"*⁵¹.

In a few European countries members of parliament are required to provide information on consultations with lobbyists that have taken place in the development of proposals that these members table for draft laws and other acts reviewed by the Parliament. In Latvia, a

⁴⁸ Article 48 (6) of the Law on Committees of the Verkhovna Rada (draft)

⁴⁹ Article 169 ROP

⁵⁰ Article 149 Seimas of the Republic of Lithuania Statute

⁵¹ Article 63.3 A Rules and Regulations of the Senate



representative of a public authority, when submitting a draft of a public decision or a proposal for it, indicates the interest representation activities that took place during the initiation or development of the draft of the public decision. If interest representation activities took place during the preparation of the proposal, they should also be reflected in the table of proposals for the consideration of the draft law, in the statement of objections expressed in opinions or in other similar documents in cases where such documents are to be prepared in accordance with regulatory enactments. (Article 6, Para 3)⁵²

Subjects of lobbying are allowed to enter administrative buildings of state and local self-government bodies. At least regarding the premises of the Verkhovna Rada of Ukraine, the names of the persons with the authorization to enter the premises should be entered into the transparency register. Article 48 of the Law of Ukraine on Committees of the Verkhovna Rada of Ukraine could regulate the right of the access to the premises of the Parliament.

Recommendation 16:

Proposals presented by subjects of lobbying and the positions of the parliamentary committees regarding the proposals within each stage (reading) of the legislative process could be a part of the legislative footprint.

Recommendation 17:

The rights of the subjects of lobbying to enter public premises should be clarified in accordance with Article 1 of the draft Law on the Integrity of Lobbying in Ukraine.

The legislative package associated with the draft Law on the Integrity of Lobbying does not comprise rules regarding the recording and transparency of the legislative footprint in subjects of law-making other than the Verkhovna Rada. It is important that sufficient transparency and possibilities for public scrutiny are ensured in all subjects of law-making activity.

Recommendation 18:

Oblige all subjects of law-making activity to record and publish details of persons who participated in the development of draft normative legal acts, proposals presented by subjects of lobbying, and pertinent analytical materials submitted by subjects of lobbying.

3.11 Monitoring of lobbying

Legislation and regulations can only be judged in terms of their application and their associated monitoring machinery.

The Council of Europe Recommendation considers that the oversight of the regulations on lobbying activities should be entrusted to designated public authorities. and 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.

The OECD calls on a “properly resourced monitoring and enforcement”.

⁵² [Latvian Interest Representation Transparency Law](#), accessed on 18 July 2023.



More concretely in the Interinstitutional Agreement, it falls to the secretariat of the Register to carry out the monitoring of the registration, to make investigations on the basis of complaints and to declare the registration concerned eligible or not.

The scope of the oversight of the National Agency for Prevention of Corruption is determined by Article 14 of the draft Law on the Integrity of Lobbying in Ukraine and by Articles 11 and 12 of the Law of Ukraine on Prevention of Corruption. Amendments of Article 12 of the Law on Prevention of Corruption empower the Agency to receive notifications of individuals and legal entities about violation of the requirements of the legislation on lobbying, to conduct on their own initiative the verification of possible violations of the requirements of legislation on lobbying as well as to introduce prescriptions on violations of the requirements of legislation on lobbying. Article 14 of the draft Law on the Integrity of Lobbying pertains to the Articles 11 and 12 of the draft amendments of the Law on Prevention of Corruption. The Agency shall monitor "the compliance with the requirements of the legislation on lobbying within the powers defined by the Law". The powers of the Agency in this regard are provided for by the proposed amendments to Article 11 of the Law on Prevention of Corruption. The provision of point 6-2 states that the Agency will be authorized to monitor the compliance with the requirements of legislation on lobbying. The Agency shall be in charge of the establishment, the functioning and the maintenance of the register (Article 8 of the draft Law on the Integrity of Lobbying in Ukraine), the termination of the status of subjects of lobbying in the register (Article 11), receiving notifications from individuals and legal entities on violation of the requirements of the legislation on lobbying, conducting on its own initiative an inspection of possible facts of violation of the requirements of the legislation on lobbying and making orders on violation of the requirements of the legislation on lobbying (Article 12), the treatment of the cases of suspicion of violation by the subjects of lobbying which will be reported to the Agency (Article 14).

These proposed amendments should be considered in view of the substantial means of investigation of supervisory bodies in some other states. The Commissioner in Canada may conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or the Act, as applicable⁵³.

The French High Authority for Transparency in Public Life can carry out onsite investigations and its requests for communication of information cannot be refused on grounds of professional secrecy⁵⁴. The Irish Standards in Public Office Commission may also carry out onsite inspections and take extracts from any documents it may require⁵⁵. The Lithuanian Chief Official Ethics Commission is entitled to conduct an investigation if it comes to its knowledge that persons do not comply with legal requirements⁵⁶.

The Council of Europe Recommendation invites the member states to adopt sanctions for non-compliance with lobbying regulations, which should be "*effective, proportionate and dissuasive*", three terms that traditionally appear in the wording of European international documents. The OECD calls for visible and proportional sanctions, which should combine innovative approaches, "*such as public reporting of confirmed breaches, with traditional financial or administrative sanctions, such as debarment, and criminal prosecution as appropriate*". In the Interinstitutional Agreement, it is up to the secretariat to carry out the

⁵³ 10.4.(1) of the Lobbying Act

⁵⁴ Article 18-6 Loi 2013-907 11 Octobre 2017 relative à la transparence de la vie publique

⁵⁵ Article 19, 4 of Regulation Lobbying Act 2015

⁵⁶ Article 13, 3 of the Act of 27 June 2000



monitoring of the registration, to make investigations on the basis of complaints and to declare the registration concerned, eligible or not. The secretariat has a scale of decisions at its disposal. It can give instructions to the registrant for remedy. After a contradictory procedure, the registrant concerned may be declared eligible and the investigations will be closed. The registrant concerned may be declared ineligible for absence of covered activity. When it has been established that the registrant was ineligible, the secretariat shall remove the registration concerned from the register. Two kinds of sanctions may be imposed: the prohibition of the interest representative from registering between 20 working days and 2 years and the disclosure of the measure on the website of the register ("*Name and shame*"). The decisions of the secretariat may be appealed to the management board and then to the European court of justice.

There are minor and more serious breaches of the law. The non-registration is a criminal offence in Canada. In Finland sanctions for neglecting the reporting obligations will be liable to conditional fines imposed by the National Audit Office⁵⁷. When the French High Authority for Transparency in Public Life detects, on its own initiative or following report, a breach of ethical rules, it sends a formal notice to the concerned lobbyist. The formal notice which may be published, orders the lobbyist to comply with its obligations after allowing him to present his observations. After a formal notice, and for the next three years the disregard of ethical obligations is punishable by one year imprisonment and a EUR 15 000 fine⁵⁸. But in its report 2018, the French supervision authority concluded that the choice of criminal sanctions was not necessarily the most appropriate way to punish breaches, due to the long and cumbersome procedures, potentially leading to a sentence that was likely to be perceived as light by the person concerned. It also concluded that the maximum amount for fines incurred for legal persons (EUR 75 000) is negligible for large companies⁵⁹. The German Lobbying Act makes a difference between the offences, which are deliberately committed (EUR 50 000) and the ones which are the result of negligence (EUR 20 000)⁶⁰. In Greece fines in amounts between EUR 5000 and EUR 20 000 may be imposed and the interest representative will be removed from registering between 6 months and 2 years or definitely⁶¹. Slovenia provides for different types of sanctions: written reprimand, prohibition of lobbying in specific cases, prohibition of lobbying for a specific period of time, no shorter than three and no longer than 24 months, removal from register, fines of EUR 400-100 000⁶². In the United Kingdom, if a person or organisation commits an offence under the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, the Registrar can impose a civil penalty of up to GBP 7500 or refer the matter to the Director of Public Prosecutions for potential criminal prosecution⁶³.

The draft amendments to the existing Ukrainian regulations raise several questions.

⁵⁷ Ministry of Justice of Finland, [Transparency Register Guide](#), accessed on 12 July 2023

⁵⁸ Article 18-9 Loi 2013-907 11 Octobre relative à la transparence de la vie publique

⁵⁹ France, High Authority for Transparency in Public Life, 2018 Activity Report, available at the following link: https://www.hatvp.fr/rapports_activite/rapport_2018/pdf/HATVP_RA2018.pdf, accessed on 12 July 2023

⁶⁰ Lobbyregistergesetz, § 7 (3) Bussgeldvorschriften

⁶¹ Act 4829/ 2021 10 September 2021 on Strengthening and accountability of state institutional bodies

⁶² [Republic of Slovenia, Commission for the Prevention of Corruption, "Lobbying"](#), accessed on 12 July 2023

⁶³ [United Kingdom, Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act \(2014\)](#), accessed on 12 July 2023



3.11.1 Proportionality of sanctions

The sanctions in the future legal framework are provided by the draft amendments of the Code on Administrative Offences. The amounts of the fines vary according to the breach of the rule. Fines of approximately EUR 9800 - 16 500 may be applied for first-time non-compliance related to the obligations to provide information to the register. Ban on lobbying for one year will apply for the violation in the field of lobbying (Article 172-9-4 of the Code), if the person has been subjected to administrative penalties for the same violations regarding provision of information repeatedly during the year or if lobbying has been made in the interests of a person, who cannot be a client, or a lobbyist has concluded a contract of lobbying with such person.

Lobbying without registration will be punished just by a fine (approx. EUR 13 000 - 19 500, Article 172-9-3). If the offence is repeated in the year, the fine will increase (approx. 19 500 - 26 000). However, lobbying without any registration seems to be more serious than a violation of legislation. Doubts about the adequate proportionality of these sanctions could be expressed regarding the criteria set out by the Council of Europe Recommendation. We can consider that lobbying activities without registration under an opaque way should be subject to much higher sanctions than lobbying activities which break the law but which are registered. The difference of the amounts of the fines between both cases is minimal. The ban of lobbying will not apply to a person which exerted lobbying without any registration but to the registered person committing the same offence within a year. This ban for a year will be added to a fine. In that context sanctions of lobbying without registration might be of little effect.

Apart from the proportionality between the penalties for the different violations, it is also noticeable that the violations related to lobbying do not invoke the highest levels of fines possible under the Code on Administrative Offences. Considering the huge economic value that may be associated with some lobbying efforts, it would be reasonable to envisage the possibility to apply in serious cases the highest fines permissible under the Code.

There are no administrative sanctions for failures to comply with several obligations of subjects of lobbying that are defined by Article 12, Para 2, including compliance with requirements of the Code of Ethical Conduct and making payments related to lobbying in a non-cash form. For example, in Slovenia, lobbyists can be subject to penalties for violations such as failure to identify themselves to lobbied persons and provision of inaccurate, incomplete or misleading information to lobbied persons (Articles 69, 70, 74)⁶⁴.

Recommendation 19:

Increase fines for violations in the area of lobbying, especially for lobbying without registration, envisage a prohibition for a person to be registered as a lobbyist for at least a year if they have been found guilty of lobbying without registration, and define offences associated with non-compliance with other obligations of subjects of lobbying.

3.11.2 Powers of the National Agency for Prevention of Corruption

Articles 11 and 12 of the Law on Prevention of Corruption provide for the mandate of the NAPC with regard to the lobbying regulations. Nonetheless, the Agency is not entitled to impose the abovementioned sanctions. It can only record the offences through authorized

⁶⁴ [Slovenian Law on Integrity and Prevention of Corruption](#), accessed on 18 July 2023.

officers (Article 255 of the Code on Administrative Offences). It can only be presumed that these sanctions will be imposed by the judiciary.

Recommendation 20:

Mandating the NAPC to impose fines/sanctions and removal of entities from the register, if needed, seems to be justified for effectiveness reasons. Should this suggestion be in line with the aim of the legislator, consideration should be given to empowering the NAPC to impose sanctions in regard to violations of the lobbying regulations. However, this may be introduced only in a systemic manner as a matter of policy decision of the authorities (also in regard to any other administrative violations falling within the mandate of the NAPC).

Recommendation 21

Criminal sanctions could be considered at a later stage and applied in case of non-registration (in this case the NAPC would refer the case to the justice). As regards monetary sanctions, these could be imposed by the NAPC in case this falls within the aim of the legislator.

3.12 Liability of legal persons

The draft Law on the Integrity of Lobbying in Ukraine allows legal entities to be subjects of lobbying (Articles 1 (5) and 7, Para 2 (7)). Similarly, to natural persons they are subject to an obligation of registration (Article 9, Para 1 (2)).

The subject of the proposed offences in the Code of Administrative Offences are individuals and heads of legal entities which, in accordance with part one of Article 7 of the draft Law on the Integrity of Lobbying in Ukraine, are registered as lobbying entities. But a note, which completes the wordings of the new Article 172-9-4 of the Code of Administrative Offences related to violations of legislation in the field of corruption, stipulates that: "*The subject of offences in this article is individuals and heads of legal entities which, in accordance with part one of Article 7 of the Law of Ukraine on Integrity of Lobbying in Ukraine, are registered as lobbying entities*". This statement should be clarified in order to explain whether heads of legal entities could also be sanctioned for offences to Article 172-9-3 where applicable. The current wording seems to indicate that subjects of offences to Article 172-9-3 liable to sanctions are different from the ones to Article 172-9-4. It also seems that only natural persons will be liable to a fine pursuant to Article 172-9-4. In case we refer to Article 3 of the Law of Ukraine on Prevention of Corruption, both individuals and legal entities, except for minor breaches, "*have the view to persuade the person to unlawfully use his or her official authority*". It is generally the employer who is liable. On the other hand, where an offence is committed by a company with the consent or connivance of a person in control, that person is also liable for the offence.

Recommendation 22:

The scope of application of Article 172-9-3 and the possibility to impose sanctions under the Code on Administrative Offences to both natural and legal persons which have infringed the legal rules on lobbying, should be clarified.

3.13 Sanctions for lawmakers

The subjects of lobbying as well as representatives of subjects of law-making are required to comply with the rules on lobbying. To secure compliance and to strengthen the legal framework on lobbying, sanctions for representatives of subjects of law-making regarding corruption in connection with lobbying could be recalled in the Law of Ukraine on Prevention



of Corruption. It would promote the visibility to the legal framework on lobbying for the public opinion and give a comprehensive picture of the regulations on lobbying. It could raise awareness of the regulations and values on lobbying among stakeholders too.

Recommendation 23:

The sanctions applying to representatives of subjects of law-making connected to lobbying activities liable to corruption-related offences could be recalled in the Law of Ukraine on Prevention of Corruption. As the representatives of subjects of law-making take final decisions in drafting and adopting normative legal acts, the sanctions should be higher compared to those which apply to the subjects of lobbying. They should be liable to the sanctions for corruption-related offences according to the Law of Ukraine on Prevention of Corruption if there is evidence of corruption.

4 RECOMMENDATIONS TO AMEND THE DRAFT LAWS ON LOBBYING IN UKRAINE

The national stakeholders in Ukraine are advised to consider the following aspects:

- 1) The transparency, integrity and fairness in the public decision-making process are essential for the public interest and the competition of businesses.
- 2) Members of the Parliament, other public officials and lobbyists share responsibility to apply the principles of transparency, integrity and fairness, in order to maintain confidence in public decisions.
- 3) A legal framework to enhance transparency in lobbying activities in the law-making process ensures a greater degree of accountability and trust in political decisions.
- 4) Having regard to the Recommendation of the Council of the Organisation for Economic Co-operation and Development (OECD) on Principles for Transparency and Integrity in Lobbying, adopted the 18 February 2010.
- 5) Having regard to the Recommendation of the Committee of Ministers to member States of the Council of Europe on the legal regulation of lobbying activities in the context of public decision-making, adopted by the Committee of Ministers on 22 March 2017.
- 6) Having regard to the Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register.

The Ukrainian authorities should consider the following recommendations in order to improve the current draft legislative framework on the integrity of lobbying:

- 1) Ukrainian authorities should consider expanding the definition of lobbying and the scope of the draft Law by linking lobbying to the intent to influence rather than actual influence and recognising a broader scope of public decisions that can be subject to lobbying, for example, the preparation or amendment of any policy programme (strategy, action plan, etc.) and the award or withdrawal of a contract, grant, licence, contribution, or other benefit. Ukrainian authorities should also consider expanding the dedicated legal framework on lobbying in central governments for top executive functions, considering that lobbying embraces the executive branch as well as the legislative branch.
- 2) As the international standards on lobbying provided for by the Council of Europe, the European Union and the OECD are a significant source of guidelines on lobbying, the Ukrainian authorities could refer to these standards in the explanatory note to the draft Law on the Integrity of Lobbying. The standards provided for by these recommendations could inspire the authors of the draft laws as these are currently the most relevant principles (soft law) on lobbying at international level.
- 3) Limit the exemption of subjects of supportive law-making activities, whose main function is scientific and expert support, to instances when they act upon a contractual basis with a subject of law-making activity or upon a direct and specific request for factual information, data or expertise of a subject of law-making activity.
- 4) Define a comprehensive exemption for occasional activities of an individual citizen on his/her own behalf and in his/her own or non-commercial public interests.
- 5) Actions using social platforms and networks should be taken into account among different forms of communication techniques which may influence indirectly subjects of law-making activity. These forms of communication should be explicitly

mentioned in Article 4 of the draft Law on the Integrity of Lobbying, for example, organising and using online platforms and online or offline networks. If this recommendation is implemented in the law, take into consideration that the NAPC will need to develop and run a dedicated monitoring system for the social networks.

- 6) Restrictions on sponsorship and donation from clients of subjects of lobbying during electoral campaigns could be considered.
- 7) Reduce the list of areas where normative legal acts cannot be objects of lobbying to a minimum that clearly pursues a legitimate aim and is necessary in a democratic society. In particular, the legislative process related to acts of ratification of international agreements should be liable to lobbying. Individual actions for individual business purposes should also be considered as a legitimate lobbying activity.
- 8) The code of conduct setting out the standards of good behaviour for the subjects of lobbying should be joined/incorporated to the future Law on the Integrity of Lobbying in Ukraine and adherence to this code by the subjects of lobbying should be a precondition to be registered.
- 9) The subject of lobbying should be registered only if the legal requirements on the information to be entered into the register have been fulfilled and validated by the NAPC.
- 10) The one-year "cooling-off" period for former public officials before they can become lobbyists is rather short, Ukrainian authorities should consider setting it at two years, which is a usual period of time in several other countries.
- 11) Submit to the register information on the amounts of money actually received by a lobbyist for lobbying activities.
- 12) Consider quarterly, semi-annual or annual reporting of data about the execution of lobbying activities.
- 13) Clarify the reference in Article 9 (2) to the incompatibility circumstances that must be entered in the register.
- 14) The register could publish in an annex, case summaries to help subjects of lobbying and guide them in the effective implementation of their reporting obligation. The authorities could consider introducing provisions to ensure that this can be implemented in practice.
- 15) Prohibit simultaneous lobbying on behalf of several clients with conflicting interests.
- 16) Proposals presented by subjects of lobbying and the positions of the parliamentary committees regarding the proposals within each stage (reading) of the legislative process could be a part of the legislative footprint.
- 17) The rights of the subjects of lobbying to enter public premises should be clarified in accordance with Article 1 of the draft Law on the Integrity of Lobbying in Ukraine.
- 18) Oblige all subjects of law-making activity to record and publish details of persons who participated in the development of draft normative legal acts, proposals presented by subjects of lobbying, and pertinent analytical materials submitted by subjects of lobbying.
- 19) Increase fines for violations in the area of lobbying, especially for lobbying without registration, envisage a prohibition for a person to be registered as a lobbyist for at

least a year if they have been found guilty of lobbying without registration, and define offences associated with non-compliance with other obligations of subjects of lobbying.

- 20) Mandating the NAPC to impose fines/sanctions and removal of entities from the register, if needed, seems to be justified for effectiveness reasons. Should this suggestion be in line with the aim of the legislator, consideration should be given to empowering the NAPC to impose sanctions in regard to violations of the lobbying regulations. However, this may be introduced only in a systemic manner as a matter of policy decision of the authorities (also in regard to any other administrative violations falling within the mandate of the NAPC).
- 21) Criminal sanctions could be considered at a later stage and applied in case of non-registration (in this case the NAPC would refer the case to the justice). As regards monetary sanctions, these could be imposed by the NAPC in case this falls within the aim of the legislator.
- 22) The scope of application of Article 172-9-3 and the possibility to impose sanctions under the Code on Administrative Offences to both natural and legal persons which have infringed the legal rules on lobbying, should be clarified.
- 23) The sanctions applying to representatives of subjects of law-making connected to lobbying activities liable to corruption-related offences could be recalled in the Law of Ukraine on Prevention of Corruption. As the representatives of subjects of law-making take final decisions in drafting and adopting normative legal acts, the sanctions should be higher compared to those which apply to the subjects of lobbying. They should be liable to the sanctions for corruption-related offences according to the Law of Ukraine on Prevention of Corruption if there is evidence of corruption.

5 CONCLUSION

The draft Law which has been initiated is a positive step in terms of transparency of the public decision-making process by the lawmakers. However, additional progress has still to be made in several directions: the enlargement of the scope of subject matter of lobbying covered by the regulations, the increase and effective application of the powers of the NAPC, the proportionality and the strengthening of the sanctions. Exemptions from the scope of subjects of lobbying should be defined so as to ensure that consultants law firms and, in most cases, also scientists are covered. The NAPC seems to be the most legitimate entity to supervise the registration of applicants to become lobbyists and to impose sanctions to the persons which infringe the law. The sanctions should be proportional to the breaches of law and apply both to legal and physical persons. The term of post-employment restrictions should be increased to reduce the risks of influence peddling and the suspicions of rewarding past decisions that may benefit future employers.

Many countries have encountered significant challenges to ensure a satisfactory degree of compliance with new lobbying laws. Lobbying involves considerable amounts of informal interactions, and complete supervision of these relations would require permeating considerable swathes of the political realm with police-type surveillance. On the other hand, failures to ensure reasonable levels of impartial implementation of the laws breed cynicism and encourage scepticism about the rule of law. It is important to manage expectations of the public and convey the message that transparent and fair lobbying will develop and come to dominate over hidden, unethical and even corrupt practices gradually. In this development, laws may have to be adjusted more than once to resolve unforeseen challenges that will unavoidably arise in the implementation.

A comprehensive solution for ensuring transparency and integrity requires more than just a well-developed lobbying law. A certain culture should develop that associates open and legitimate lobbying with respectability. Public officials should develop the sense that knowingly meeting and cooperating with lobbyists who ignore the legal procedures is damaging to their reputation to the level that can derail their careers.

Many other building blocks are necessary to improve the policymaking environment. To name just a few based on international practice, they are:

- Regular use of transparent, inclusive and interactive public consultation procedures;
- Vigorous implementation of rules that prevent inappropriate influences with the help of private donations for public authorities and private donations for political parties, campaigns, etc.;
- Comprehensive monitoring, transparency and enforcement of rules concerning parallel (outside) activities and income of public officials.

In this regard, each country faces its own specific challenges. The analysis of such challenges in Ukraine is beyond the scope of this technical paper, but the idea of a lobbying law as one of many elements of the integrity system is valid there like it is everywhere.