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OPINION ON THE COMPATIBILITY OF THE BULGARIAN LAW ON TRANSPARENCY IN INTEREST REPRESENTATION WITH EUROPEAN STANDARDS

Adopted by the Expert Council on NGO Law of the
Conference of INGOs of the Council of Europe

**The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.*

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EXECUTIVE SUMMARY

This opinion is concerned with the compatibility of the 2026 Law on Interest Representation of the Republic of Bulgaria (adopted by Parliament on 19 March 2026) with European standards.

The opinion identifies several concerns regarding the Law's compliance with the European Convention on Human Rights (ECHR), particularly in relation to the principles of legality, proportionality, and non-discrimination as developed in the case law of the European Court of Human Rights (ECtHR).

First, the Law does not meet the requirement of legal certainty ("prescribed by law") due to insufficiently defined key concepts that determine the obligation to register in the Transparency Register. Ambiguities persist regarding the meaning of "communication/contact" with designated public bodies, the scope of "commercial manner" in interest representation, and the concepts of "special organisation," "material and human resources," and "third parties." This lack of clarity grants authorities overly broad discretion in determining registration obligations.

In addition, the Law raises concerns about disproportionality. While certain professional and sectoral organisations are exempt, NGOs engaged in public-interest advocacy — including in areas such as human rights, democracy, rule of law, and environmental protection — are subject to extensive registration and reporting obligations. The broad definition of "interest representation" may also capture ordinary forms of public participation in policy-making. This approach appears inconsistent with international standards and best practice, including ECtHR case law and Council of Europe and OECD principles, which caution against undue restrictions on civil society engagement. Additional proportionality concerns arise from redundant disclosure requirements and a sanctions regime that may be excessive given the vagueness of key provisions and the limited harm associated with potential violations.

Last but not least, the Law raises issues of discrimination, which run contrary to Articles 10, 11, and 14 of the ECHR. By imposing additional obligations on public-interest NGOs while exempting certain sectoral organisations, and by linking registration to privileged access to decision-making processes, the Law risks creating unequal treatment that may unjustifiably restrict the participation of public-interest NGOs in democratic processes.

In light of these shortcomings, it is recommended that the Government use the one-year moratorium on sanctions to engage in an inclusive consultation process with civil society and consider revising the Law to ensure alignment with established principles governing lobbying regulation and European human rights standards.

A. Introduction

1. This opinion examines the compatibility of the Bulgarian Law on Transparency in Interest Representation ('the Law') with European standards governing freedom of association and its related rights.

2. Those standards are to be found in the European Convention on Human Rights ('the ECHR') and the ensuing case law of the European Court of Human Rights ('the ECtHR'), Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe ('Recommendation CM/Rec(2007)14'), the Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights ('the Joint Guidelines'), and the Recommendation CM/Rec(2017)2 of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context on decision making ('Recommendation on Lobbying').

3. The Parliament adopted the Law on 19 March 2026, following several unsuccessful attempts to regulate lobbying.[1]

4. The term 'non-governmental organisations' ('NGOs') in this Opinion refers to that in Recommendation CM/Rec(2007)14, paras. 1-2, namely, "voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members", which can be established both by individual persons (natural or legal) and by groups of such persons, and can be either membership or non-membership based—and which do not include political parties. This all-encompassing definition of NGOs thus includes both associations (membership organisations) and foundations (non-membership organisations), which are recognised institutional forms of choice for NGOs in Bulgaria.[2]

5. The opinion first outlines the key provisions of the Law affecting NGOs. It then assesses their compliance with European standards, followed by a conclusion summarising the findings of that assessment.

6. The opinion is based on the text of the Law in translation and takes into account the initial assessment of the Law prepared by the Bulgarian Center for Not-for-Profit Law.

[1] Draft laws on lobbying in various iterations were previously submitted to Parliament in 2002, 2008 and 2015, respectively. Explanatory Note pp. 15-16. See also Bulgarian Center for Not-for-Profit Law (BCNL), What is interest representation and how it will be regulated in Bulgaria, https://bcnl.org/en/what-is-interest-representation-and-how-will-it-be-regulated-in-bulgaria.

[2] Article 1(2) of the Law on Non-Profit Legal Entities.

B. Background to the adaptation of the Law

7. The Explanatory Note to the Law ('Explanatory Note') states two principal reasons for its adoption, namely: (1) honouring commitments related to the process of Bulgaria's accession to the Organisation for Economic Co-operation and Development ('OECD'), in order to ensure the compliance of national legislation with the OECD Recommendation on Principles of Transparency and Integrity in Lobbying; and (2) implementing the National Recovery and Resilience Plan, funded by the European Union ('the EU'). The latter required the Bulgarian government to fulfil a number of commitments subject to strict deadlines as a condition for the withdrawal of the designated EU funds, one of which envisaged the enactment of lobbying regulations. This legislative initiative was approved by Decision No. 203 of 7 April 2022 of the Council of Ministers of Bulgaria.[3]

8. The Explanatory Note states that the Law was prepared in collaboration with and with concurrence of the European Commission of the EU('the EC').[4]

9. A draft Concept Note on the preparation of the Law was circulated for public discussion as early as in the late 2023. Originally, it set out to provide a clear distinction between advocacy and lobbying.[5]

10. For the purpose of the draft Concept Note *advocacy* was defined as an activity carried out by non-profit legal entities and their representatives, registered for the public benefit, who aim to influence the decisions of a public authority for the benefit of society. Future legislation should require non-profit legal entities ('NPLEs') serving public interest to indicate in their annual activity reports whether they have interacted with the recipients of lobbying activities and what the outcome of such activities was. The reports were to be published in the Commercial Register and the Register of Non-Profit Legal Entities.[6]

11. However, the Concept Note, which the Ministry of Justice ('the MoJ') subsequently submitted to the Government's Council for Cooperation with Civil Society in March 2024, differed from the original one in that it abolished a distinction between advocacy and lobbying ('interest representation'), and chose the letter term only[7]

12. In early 2025, following changes in the leadership of the Ministry of Justice ('MoJ'), the latter adopted a more inclusive approach to the preparation of what became the draft Law. To that end, during the summer of 2025, it conducted preliminary consultations with NGOs regarding their key concerns related to the Concept Note, which had in the meantime already been improved under the new MoJ leadership.

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[3] Explanatory Note, pp. 13, 17

[4] *Ibidem.*

[5] Bulgarian Center for Not-for-Profit Law (BCNL), *What is interest representation and how it will be regulated in Bulgaria*.

[6] Concept Note, p. 11.

[7] BCNL, *What is interest representation and how it will be regulated in Bulgaria*.

13. The main concerns raised by NGOs during those consultations included: (1) the need to replace the terms "lobbying" and "lobbyist" with expressions carrying a more neutral connotation, given their historically negative public perception;[8] as discussed below, this concern was addressed in the final version of the Law, which chose the term: "interest representation" and "interest representative" instead; (2) the need to introduce additional safeguards to ensure respect for freedom of association and related rights, including freedom of expression and the right to privacy; and (3) the need to reduce the administrative burden associated with the new registration requirements and to provide incentives, rather than penalties, to encourage compliance with the new Law.[9]

14. Following the conclusion of the public consultation process, a consultation report was published setting out the reasons why certain comments were accepted while others were rejected. The letter included comments concerning the need to distinguish advocacy from lobbying, on the grounds that such a distinction would not comply with OECD standards on lobbying or the European Commission's position on the National Recovery and Resilience Plan.

C. Key provisions of the Law

15. The Law sets out to regulation conditions and procedure for carrying out "interest representation" before the public authorities in the Republic of Bulgaria. [10]

16. Taking into account the constitutional rights to freedom of expression and to submit complaints and petitions to the authorities, the Law aims in particular to ensure: (1) transparency in contacts with representatives of public authorities; (2) equal access for all interested natural and legal persons acting as "interest representatives" to express their views before those authorities; and (3) broad representation in the process of drafting of normative, strategic, and other acts affecting a wide range of population.[11]

17. The Law defines interest representation, interest representatives, and interested persons; establishes the principles governing interaction between public authorities and interest representatives; prescribes the obligation of interest representatives and interested persons to register in the Transparency Register together with the applicable disclosure and reporting requirements; and provides penalties for violations of the provisions governing the Transparency Register. These issues are discussed below.
Definition of interest representation, interest representatives and interested person

18. Under the Law, "interest representation" is defined as including "any oral or written communication" with a designated state body or a person referred to in Art. 5 of the Law ('designated state body/person'), carried out in support of public, group, or private

[8] Explanatory Note, p. 14.
[9] *Ibid.*
[10] Article 1.
[11] Article 2 and the Explanatory Note, p. 22.

interests, for the purpose of influencing decision-making regarding the development, amendment, supplementation, repeal, or content of: normative acts; general administrative acts; national strategic and programme documents; the positions of the Republic of Bulgaria with regard to legally binding and strategic acts of the EU or of international organisations in which the Republic of Bulgaria participates; and decrees promulgating laws or returning them for reconsideration.[12]

19. According to Article 5 of the Law, a definition of a designated state body/person whose communication with interest representatives or interested persons triggers its application entails: the National Assembly; Members of Parliament; experts and advisers to parliamentary committees and parliamentary groups; the President and Vice-President of the Republic of Bulgaria, as well as their advisers and secretaries; the Council of Ministers, the Prime Minister, Deputy Prime Ministers, ministers, deputy ministers, and members of political cabinets, including their advisers and experts; regional governors; mayors; chairpersons of municipal councils and municipal councillors; and the heads and members of other public institutions empowered to adopt or issue normative and general administrative acts in specific areas.

20. Communication with any of the foregoing designated body/person, however, is not deemed interest representation if carried by: persons holding public office, in the exercise of their powers; public bodies, when exercising their powers under the law; and a natural person acting in a personal capacity and in a personal interest, except in cases where his or her interest coincides with the interest of a legal person in which the natural person participates or has managerial functions.[13]

21. On the other hand, an 'interest representative or interested person' is defined by the Law as "any natural or legal person, including its branch, regardless of its legal form which, in defence of a public, group or private interest", seeks to exert influence on a designated state body/person on matters stipulated in the Law, i.e., as defined in Article 3(1).

22. Furthermore, the Law extends the definition of interest representatives to "groups of persons expressing a group or public interest, as well as a private interest of one of the participants in the group".[14]

23. Presumably, this also entails informal associations, which are otherwise allowed to operate and enjoy direct protection of the Constitution, insofar as the group is established for a sustained period of time and features other institutional elements for the group to be recognised as an association (e.g., a founding act or statute, an internal governance structure).

[12] Article 3(1).
[13] Article 3(2).
[14] Article 4(2).

24. The Law does not consider the following entities to be interest representatives: designated bodies/persons during their term of office and for up to one year after the termination of their mandate, service relationship, or employment related to the activities they perform; and employees of the administrations of designated bodies/persons while holding their respective positions, except where they represent registered organisations of workers or employees before the respective administration.[15]

25. All meetings in person with interest representatives must be registered on a designated body/person calendar and published on their respective web sites, along with the brief information about the content of a meeting held and its participants.[16]

Principles of interaction

26. Under the Law, the interaction between designated bodies/persons and interest representatives/persons shall be carried out in compliance with the principles of openness, transparency, accountability, good faith, and integrity.[17]

27. The Law sets out various disclosure and good faith requirements for both designated bodies/persons and interest representatives/interested persons, in order to ensure the application of these principles in the legislative process. Those relate to the participation of the latter in working groups and advisory councils, as well as holding in-person meetings and submitting comments on legislative acts during public consultation.[18]

Transparency Register

28. Under Article 13(1) of the Law, interest representatives/interested person are required to be entered in the Transparency Register ('the Register') if they satisfy at least one of the following conditions: 1) they carry out interest representation regularly as an occupation; 2) the interest representation is carried out in a commercial manner for third parties; or 3) the interest representation has been assigned against remuneration.[19]

29. The Supplementary Provision to the Law further clarifies that carrying out interest representation regularly as an occupation entails:

[15] Article 4(3).
[16] Article 8(5).
[17] Article 6.
[18] Articles 6-11.
[19] Article 13(1).

> carrying out at least 9 contacts with a designated body/person, conducted by one natural person or by different persons for one legal person, over a period of three months. Addressing a statement to more than one person shall count as one contact.[20]

30. Furthermore, interest representation is considered to be carried out in a commercial manner if the "volume of the interest representation is such that it requires a special organisation, as well as the engagement of additional material and human resources for carrying it out".[21]

31. Where interest representation is carried out by an unincorporated group of persons, the existence of the foregoing conditions shall be assessed for each one of them.[22]

32. Entries in the Register shall be made at the request of interest representative/interested persons by electronic means, and registration shall not be subject to approval by an administration employee.[23]

33. However, under Article 13(3) of the Law:

> The following persons shall not be subject to be entered into the Register, even if they satisfy any of the conditions set out in para. (1):
>
> 1. persons practising the legal profession pursuant to the Bar Act, within the exercise of that profession; 2. representative bodies of professional organisations established by law, when they express the interests of their members or exercise the powers provided for them by law; 3. participants in working groups and advisory councils established by state bodies, as well as in hearings organised by the National Assembly or by a body of the executive authority or of local self-government; 4. persons participating in advisory or representative bodies established by a normative act regulating the criteria for participation – as regards their participation in the activities of those bodies; 5. persons who, upon a documented invitation from a designated body or a person, provide information or expert opinion; 6. political parties acting within the functions assigned to them by the Constitution and the laws; 7. *registered associations of workers and employees*, when carrying out activities in defence of their interests in the field of labour and social insurance; 8. *registered employers' organisations* acting in defence of the economic interests of their members; 9. citizens in the exercise of the right of assembly, meetings and demonstrations within the meaning of the Assemblies, Meetings and Demonstrations Act; 10. citizens exercising activities under the Direct Participation of Citizens in State Power and Local Self-Government Act; 11. representatives of the mass media in carrying out their activities of collecting, disseminating or analysing information and news; 12. representatives of registered religious communities and institutions carrying out activities related to the exercise of the right to religion; 13. organisations subsidised from the state or municipal budget – only in contacts with the designated bodies with respect to the issues related to the subsidies received; and 14. diplomatic and consular representatives of foreign states, foreign public bodies, public international organisations, as well as employees of diplomatic and consular missions. (emphasis ours).[24]

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[20] Paragraph 1.1.
[21] Paragraph 1.2.
[22] Article 13(2).
[23] Article 15 (1).
[24] See Article 13 (4).

34. An interest representative that is a legal person is required to submit the following data to the Register: (1) its identification code and, for one registered abroad, the name of the registration authority and the code from the state of registration or the case number kept by the registering authority; (2) its name and legal form; (3) the names of the legal representatives or other persons authorised to represent it; (4) its contact details; (5) its field of activity/area of interest; (6) the draft act in relation to which the interest representation is carried out; (7) the number of employees or persons engaged under another legal form who carry out interest representation; (8) a declaration as to whether the representation is carried out for payment or free of charge.[25]

35. For an interested person the following shall be entered into the Register: 1. Unified Civil Number ('UCN'), and for foreigners – foreigner's personal number ('FPN') or date of birth; 2. names; 3. contact details; 4. field of activity/area of interest; 5. draft act in relation to which the interest representation is carried out; 6. if a sole trader or entrepreneur is entered – the number of persons engaged in carrying out interest representation; 7. a declaration whether the representation is carried out for payment or free of charge.[26]

36. The Register is to be established and maintained by the National Audit Office, which is also responsible for publishing the annual report on the functioning of the Register. Further rules governing the operation of the Register are to be laid down in an ordinance issued by the Minister of Justice, in coordination with the President of the National Audit Office and the Minister of e-Government.[27]

37. The Register is to be public, except for the information on the Unified Civil Number or a foreigner's personal number (date of birth of a foreigner) and the contact details of the parties involved. Everyone shall have the right to free and unfettered access to the Register through a public interface.[28]

38. An interest representative or an interested person may instigate the process of being removed from the Register" where it ceases carrying out activities for at least 6 months which trigger the mandatory entry into the Register. After deletion from the Register, the data shall be stored for a period of 5 years.[29]

39. The Law grants specific rights to interest representatives that are entered in the Register – however, at least in the version in translation, not specifically to interested persons. These include the right to: (1) receive information from designated bodies/persons on draft normative acts being prepared in areas of interest indicated in the Register; (2) be

[25] Article 14(2).
[26] Article 14(1).
[27] Article 19(3).
[28] Article 20, in connection with Article 18 (2) and (3).
[29] Article 16.

invited to participate in working groups for the preparation of draft normative acts, as well as in meetings and other relevant forums in those areas; and (3) receive authorisation from state or municipal bodies and institutions to participate in discussions on issues related to their declared interests, provided that this does not conflict with the provisions of special laws and other normative acts governing the activities of those bodies and institutions.[30]

40. An interest representative and "solo traders" entered in the Register shall indicate in their annual activity report the amount spent on interest representation. Where they are not obliged to prepare such reports, this information shall be provided in a separate declaration, which shall be filed with the Commercial Register and the Register of Non-Profit Legal Entities within the deadlines prescribed for submission of annual activity reports.[31]

Penalties

41. Fines ranging from EUR 2,500 to EUR 7,500 can be imposed on an interest representative that is a legal person if it fails to register in the Register within the prescribed deadline. For an interested person, potential fines for the same offence range from EUR 1,000 to EUR 2,500.[32]

42. In the event of a repeated violation of the new registration obligation, the offender shall be subject to fines in an amount double that prescribed.[33]
43. The Law envisages the same range of fines where an interest representative or interested person fails to timely declare, or declares false information in the Register regarding the person on whose behalf the interest representation is carried out.[34]

44. In the event of an offence giving rise to the above penalties, the supervisory authority shall first set a 14-day deadline for the offender to remedy the violation. If the violation is remedied within the prescribed period, no penalty shall be imposed on the offender.[35]

45. The establishment of offences, as well as the issuance, appeal, and enforcement of penalty decrees, shall be carried out in accordance with the procedure laid down in the Administrative Violations and Penalties Act.[36]

[30] Article 17(1).
[31] Article 17(2).
[32] Article 22(1).
[33] Article 22(2).
[34] Article 22(3) and (4).
[35] Article 23(4).
[36] Article 23(5).

46. During the first year of the Register's operation, no fines provided for under the Law shall be imposed for its violation.[37]

D. Compliance with European standards

47. According to the ECtHR's case law, any interference with freedom of association under Article 11 and its related rights under the ECHR[38] must (1) pursue a legitimate aim;[39] 2) fulfil the legality requirement; and (3) be necessary in a democratic society. The latter requires that it responds to a pressing social need and be *proportionate* to the aim pursued, i.e., limited to the minimum level of interference necessary.[40] Proportionality thus entails striking a fair balance between the general interest and the protection of fundamental rights, and the burden lies on the Member State to demonstrate compliance with these requirements.[41]

48. The foregoing principles guiding the legitimate grounds for interference with freedom of association and its related rights are expressly recognised in the Recommendation CM/Rec(2007)14. With respect to the legitimate scope of NGOs activities, it states that:

> 12. NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law.
>
> 76. Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people's opinions as to the functioning of society. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.

49. Furthermore, the OECD *Recommendation on Principles of Transparency and Integrity in Lobbying*, notwithstanding the fact that it includes advocacy in the definition of lobbying, calls for lobbying legislation to observe:

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[37] Paragraph 2. Final and Supplementary Provisions.

[38] Namely, Article 8 (*Right to respect private and family life*), Article 9 (*Freedom of thought, conscience and religion*) and Article 10 (*Freedom of Expression)*.

[39] Article 11, para. 2 of the ECHR provides for the grounds of legitimate interference with freedom of association, namely: in the interests of national security or public safety; for the prevention of disorder or crime; for the protection of health or morals; and for the protection of the rights and freedoms of others. The list of legitimate grounds provided in paragraph 2 is exhaustive (*numerus clausus*) and therefore an interference with freedom of association may not serve any other legitimate aim. See *Sidiropulos and Others v. Greece,* no. 26695/95, 10 July 1998, para. 40. Although there are some variations in the specific wording used to define legitimate interference, the same principles apply equally to rights related to freedom of association).

[40] *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009, para. 68; *Refah Partisi (the Welfare Party) and Others v. Turkey,* [GC], no. 41340/98, 13 February 2003, para. 86.

[41] *Demir and Baykara v. Turkey,* no. 34503/97, 12 November 2008 [GC], paras. 110, 119. See also ECtHR, *Guide on Article 11: Freedom of assembly and association*, updated on 31 August 2022, pp. 27-31.

> The legitimate and imperative rights of non-discrimination, freedom of expression, to petition government, peaceful assembly and association, privacy and data protection, and the need to implement international standards related to the protection and promotion of civic space, open government, and independent and plural media.[42]

(1) The requirement of legitimacy

50. The Law does not necessarily give rise to the issue of legitimacy, as seeking to regulate lobbying and making it more transparent is not inherently problematic.

51. However, insofar as the Law affects NGOs, it must also satisfy the requirements of legality and proportionality.

(2) Lack of legality

52. As already stated, any interference with freedom of association must fulfil the legality requirement i.e. must be "prescribed by law". This entails that any interference with freedom of association and its related rights must have a basis in domestic law, but it also refers to the *quality of the law* in question, and requires that it must be both accessible to the persons concerned and formulated with *sufficient precision* so that a *common person*, if need be, with appropriate advice, can *reasonably foresee* the *consequence* of a particular action.[43]

53. Article 3(1) of the Law defines "interest representation" as any oral or written communication with a designated body/person, while paragraph 1 of the Supplementary Provision to the Law seeks to clarify that "carrying out interest representation regularly as an occupation" - one of the conditions triggering the obligation of interest representatives to register in the Register - means engaging in at least nine contacts with a designated body/person over a period of three months.[44]

54. However, uncertainty remains as to what actually constitutes communication/ contact with a designated body/person. In particular, it is unclear whether this refers only to communication concerning substantive issues related to a legislative initiative, or whether it also includes communication primarily relating to technical matters, such as requests for additional information or clarification regarding the drafting process and calendar of activities.

55. In addition, Article 13(1) of the Law provides that one of the conditions for interest representative to enter in the Register is when the interest representation is carried out in a "commercial manner" for third parties, while paragraph 1.1 of the Supplementary

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[42] Preamble.

[43] *Maestri v. Italy* [GC] no. 39748/98, judgment of 17 February 2004, para 30; *Koretskyy and others v. Ukraine*, no. 40269/02, judgment of 3 April 2008, para. 47; *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009, paras. 61-64.

[44] § 1.

Provision to the Law seeks to clarify that the notion of commercial manner shall mean that the volume of the interest representation is such that it requires a *special organisation*, as well as the engagement *of additional material* and *human resources* for carrying it out.

56. Nonetheless, uncertainty remains however as to what constitutes a "special organisation" or the "engagement of additional material or human resources".

57. For example, it is unclear whether the notion of a special organisation requires certain changes to the management and operational structure of the interest representative and, if so, what threshold must be met to satisfy that requirement.

58. The lack of clarity also concerns the notion of "material" and what it actually entails: whether it refers to scientific and data-based evidence supporting the client's interests, or also to materials of another nature.

59. Finally, it is debatable whether the notion of human sources refers only to experts or also includes technical staff providing support to the work of interest representation.

60. Furthermore, there is a lack of clarity regarding the notion of "third parties" as beneficiaries of the interest representative's services. In particular, it is unclear whether this refers only to third parties with a commercial interest in a particular legislative initiative, or whether it also includes the public at large or specific segments of the population, such as minority or vulnerable groups. This issue should be considered in light of Article 14(2) of the Law, which requires a legal entity acting as an interest representative to submit to the Register a declaration stating whether the representation is carried out for remuneration or *free of charge*.

61. Overall, the foregoing shortcoming grants the competent authority an unwarranted degree of discretion in determining whether conditions for the interest representative to enter in the Register are satisfied.

(3) Lack of proportionality

62. Article 13(3) of the Law provides an exhaustive list of NGOs which are exempt from the registration and corresponding reporting requirements, even where they satisfy the conditions set out in Article 13(1), including where interest representation is carried out commercially on behalf of third parties or pursuant to a remunerated mandate. These exemptions apply to: 1) representative bodies of professional organisations established by law, when expressing the interests of their members or exercising powers conferred by law; 2) registered associations of workers and employees, when carrying out activities aimed at protecting their interests in the field of labour and social insurance; and 3) registered employers' organisations acting in defence of the economic interests of their members.

63. As a result, NGOs *advocating in the interest of the public* (e.g., human rights, democracy, the rule of law, protection of minority rights, environmental protection, animal protection[45] etc.) - including informal associations[46] - are subject to the registration, disclosure and reporting requirements set out in the Law, whereas certain categories of NGOs advocating for professional and private interests of their members are exempt from those requirements.

64. Imposing additional requirements on NGOs advocating in the public interest, while exempting certain categories of NGOs pursuing professional and private interests, appears to defy logic and raises questions regarding their p*roportionality* with respect to Articles 10 and 11 of the ECHR.[47]

65. The lack of proportionality is particularly concerning in light of the sweeping definition of interest representation set out in Article 3(1) of the Law, which encompasses virtually all conventional forms of public consultations in policy development, even if they are carried out in favour of the interest of public at large.

66. In decision *Moscow Branch of the Salvation Army v. Russia*, the ECtHR noted that, where legislation imposes new requirements on previously existing organisations, they need to be justified as being, in particular, "necessary in a democratic society".[48]

67. Similarly, in *Ecodefence and Others v. Russia*, the ECtHR ruled that the requirement of being "necessary in a democratic society" means that the government must provide "relevant and sufficient" reasons for imposing additional requirements on certain categories of NGOs.[49]

68. Given the foregoing, it is noteworthy that the definition of interest representation in the Law runs afoul the guiding principles of the Recommendation on Lobbying which identifies the following activities that should be subject to legislation: 1) consultant lobbyist acting on behalf of third parties; 2) in-house lobbying acting on behalf of their employer; and 3) organisations and bodies representing professional or other sectoral interest.[50]

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[45] In *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, 28 July 2001, the ECtHR held that Article 10 applies to the rights of *an animal protection association* advocating on matters of *public interest and political debate* and stressed the important role of associations in public discussion.

[46] Articles 4(2) and 13(2) of the Law.

[47] The ECtHR has consistently recognised that the protection afforded by Article 10 of the ECHR extends not only to association, but also to other private legal entities; see *Autronic AG v. Switzerland*, no. 122726/87, 22 May 1990.

[48] No. *72881/01* , 5 October 2006, paras 73-77.

[49] No. 9988/13, 14 June 2022, para. 159.

[50] Guiding principles B: Activities subject to legislation, Regulation, p. 8.

69. The Law, however, adopts the opposite approach by exempting certain NGOs representing professional and private interests, while extending its application to NGOs advocating in the public interest.

70. The guiding principles of the Recommendation on Lobbying further state that the legal regulation of lobbying activities should not, in any form or manner, infringe upon the democratic rights of individuals to express their opinions, petition public officials and institutions, or advocate for political, regulatory, policy, or practical change through legitimate political activities, whether individually or collectively.[51]

71. In addition, treating NGOs advocating in the public interest as interest representatives (lobbyist) is not universally embraced by the OECD member States.

72. For example, the 2024 Croatian Law on Lobbying provides a clear-cut distinction between lobbying and public advocacy.[52]

73. In the United Kingdom, under the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, an NGO must register only if they engage in "consultant lobbying" with ministers or senior officials on behalf of a paying third-party client. The legislation does not generally regulate "in-house" lobbying carried out by NGOs on their own behalf.[53]

74. According to the ECtHR's case law, the protection of personal opinions guaranteed by Article 10 of the ECHR constitutes one of the fundamental purposes of the freedom of association protected under Article 11.[54] The Court has emphasised that such protection can be effectively secured only through the guarantee of both the positive and negative dimensions of the right to freedom of association.[55]

75. The ECtHR has further held that the implementation of the principle of pluralism is impossible unless associations are able to express their ideas and opinions freely.[56] In this regard, the Court has recognised that associations play an essential role in a democratic society by participating in public debate and influencing public policy.[57]

76. Similarly, Recommendation CM/Rec(2007)14 and the Joint Guidelines provides that NGOs should be free to undertake research, education and advocacy on issues of public

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[51] Guiding principles C; Freedom of expression, political activities and participation in public law, Regulation, p. 8.
[52] Articles 2, 1) and 4, para. 1., a).
[53] For more details see Transparency International EU, *Lobby Transparency Across the EU*, 2024.
[54] *Young, James and Webster v. the United Kingdom*, no. 7601/76, 13 August 1981, para. 57: *Vörður Ólafsson v. Iceland*, no. 20161/06, 27 April 2010, para. 46
[55] *Sørensen and Rasmussen v. Denmark* [GC], no. 52562/99, 11 January 2006, para. 54.
[56] *Gorzelik and Others v. Poland* [GC], no. 44158/98, 17 February 2004, para. 91; *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007, para. 36.
[57] *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009, para. 64*; Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria,* no. 39534/07, 28 November 2013.

debate, regardless of whether the position taken is in accord with government policy or requires a change in the law.[58]

77. Some of the *disclosure requirements* stipulated by the Law also give rise to the issue of proportionality. This pertains to the obligation of interest representative to *inter alia* submit to the Register the information related to the names of the legal representatives or other persons authorised to represent the organisation and the field of activity/area of interest.[59]

78. The foregoing requirements seem problematic, given that that information is readily available in the Register of Non-Profit Entities.

79. As regards the prescribed *penalties*, it is commendable that the Law envisages that penalties shall be levied only if an interest representative fails to rectify the established lack of compliance within the prescribed deadline.

80. However, provisions regulating the range of penalties levied for the violation of the Law also give rise to the issue of *proportionality* with respect to Articles 11 and 10 of the ECHR, given the noted lack of clarity of some of the key provisions in the Law as well as the level and nature of the perceived social threat arising from the alleged violation of the Law.

81. The guiding principles enshrined in Recommendation *CM/Rec(2007)14* with respect to sanctions against NGOs is that, in most instances, the appropriate sanction against NGOs for breach of the legal requirements should merely be the requirement to rectify their affairs. Insofar as administrative, civil or criminal penalties are imposed on NGOs and/or any individuals directly responsible, they should be based on the law in force that is otherwise applicable to legal entities and should observe the principle of proportionality.[60]

82. Likewise, the Joint Guidelines states that sanctions levied on NGOs should observe the principle of proportionality. This entails that the least intrusive option shall always be chosen, that a restriction shall always be narrowly construed and applied, and shall never completely extinguish the right nor encroach on NGOs essence. In addition, restrictions must be based on the particular circumstances of the case, and no blanket restrictions shall be applied.[61]

83. In elaboration of the foregoing principles the Expert Council on NGO Law has noted that:

> 37. As all sanctions must observe the principle of proportionality, those of a financial nature ought to take account both of the seriousness of the particular infraction giving rise to it and the impact

[58] Para. 12, Recommendation; Principle 5, Joint Guidelines.
[59] Article 14(2).
[60] Paragraph 72. See also Explanatory Memorandum to Recommendation (2007)14, para. 128.
[61] Principle 10.

that the penalty would have on the NGO concerned. In particular a financial penalty that would entail the bankruptcy of the NGO concerned.[62]

84. Last, but certainly not least, the case law of the ECtHR suggests that the gravity of penalties would not necessarily be a decisive factor in the Court's deliberation as to whether a particular interference with freedom of association meets the prescribed requirements. Rather, depending on circumstances, the Court might as well deem lighter sanctions levied on an NGO to be an interference failing the *proportionality* test.[63]

(4) Prohibition of discrimination

85. The new registration, disclosure and reporting requirements imposed by the Law on NGOs advocating in the public interest also gives rise to the issue of *discrimination* under Article 14 of the ECHR in connection with Articles 10 and 11.

86. Thus, in *Rommelfanger v. Germany*,[64] the former European Commission of Human Rights ruled that associational participation in public debate is protected against discriminatory interference.

87. In addition, in *Association of Solidarity with Jehovah's Witnesses and Others v. Turkey*,[65] the ECtHR held that differential treatment of associations in access to legal recognition and *operational rights* must be objectively justified, otherwise it constitutes discrimination.

88. With regard to the prohibition of discrimination, Recommendation CM/Rec(2007)14 stipulates that governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people's opinions as to the functioning of society.[66]

89. Similarly, the Joint Guidelines note that the principle of non-discrimination prohibits both direct and indirect discrimination, requiring that all persons benefit from equal protection of the law and should not be discriminated against as a result of the practical application of any measure or act.[67]

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[62] Expert Council on NGO Law, *Sanctions and Liability with Respect to NGOs*.
[63] Thus, in *Karaçay v. Turkey*, no. 6615/03, 27 March 2007, the ECtHR considered that the sanction imposed on the applicant, although light (warning), did not meet the proportionality test. In this particular instance, it found violation of freedom of peaceful assembly. However, the principles underpinning the Court's analyses are equally applicable to (para. 37). See also *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan,* no. 37083/03, 8 October 2009, para. 63; *Vona v. Hungary*, no. 35943/10, 9 July 2013, para. 57.
[64] No, 12242/86, 6 September 1989; See also *Bączkowski and Others v. Poland*, no. 1543/06, 3 May 2007.
[65] No. 36915/10, 24 May 2016.
[66] Para. 76, Recommendation.
[67] Guiding Principle 5. Equal treatment and non-dis-crimination, para. 94, the Joint Guidelines.

90. The discriminatory treatment of NGOs advocating in the public interest must be viewed in light of the fact that Article 17(1) of the Law grants privileged access to designated bodies/persons in relation to their respective legislative activities, including the possibility for such representatives to be invited to participate in working groups tasked with preparing draft legislation, as well as in meetings and other forums in their areas of interest. Should an NGO fail to enter into the Register, its participation in the legislative and policy development process shall be significantly and unduly curtailed.

E. Conclusion

91. As noted above, the Law gives rise to a number of concerns regarding compliance with the requirements of legality, proportionality, and non-discrimination as established under the ECHR and the case law of the ECtHR.

92. As for the legality ("prescribed by law") requirement, the Law and its Supplementary Provision fail to define with sufficient clarity several key concepts that determine when registration in the Register is required.

93. In particular, uncertainty remains regarding: what constitutes "communication/contact" with designated bodies; whether only substantive advocacy or also technical exchanges are covered; and what it means to carry out interest representation in a "commercial manner."

94. In addition, the notions of "special organisation," "material resources," "human resources," and "third parties" are also insufficiently defined, including whether they extend to technical staff, non-commercial advocacy, or representation of broader public interests.

95. As a result, this lack of clarity grants the competent authority an excessively broad degree of discretion in deciding whether the legal conditions for registration.

96. As regards the lack of proportionality, although certain professional and private interests NGOs are exempt from registration and reporting obligations, NGOs advocating in the public interest — including in the areas of human rights, democracy, rule of law, minority protection, and environmental protection — remain subject to extensive registration, disclosure, and reporting requirements. This approach appears inconsistent with the stated purpose of lobbying regulation, departs from OECD best practices, and risks undermining the role of civil society in democratic participation and public debate.

97. Furthermore, the Law's broad definition of "interest representation" potentially captures ordinary public advocacy and participation in policy-making processes, including activities undertaken in the interest of the public at large. This is difficult to reconcile with international standards, including ECtHR case law, Council of Europe

recommendations, and lobbying regulation principles, which emphasise that advocacy by NGOs and participation in public affairs should not be unduly restricted.

98. Additional proportionality concerns arise from disclosure obligations requiring NGOs to submit information already publicly available in existing registers, as well as from the system of sanctions established under the Law. While the Law appropriately allows organisations an opportunity to remedy non-compliance before penalties are imposed, the proportionality of the sanctions remains questionable given the vagueness of key legal concepts and the limited social harm associated with many potential violations. International standards require that any sanctions imposed on NGOs be narrowly tailored, proportionate, and never such as to undermine the essence of freedom of association.

99. Finally, the Law raises concerns regarding discrimination against NGOs advocating in the public interest, particularly in connection with the rights to freedom of expression and association protected under Articles 10, 11, and 14 of the ECHR. International human rights standards and ECtHR case law recognise that NGOs must be able to participate in public debate and policy-making processes without unjustified differential treatment. However, the Law imposes additional registration, disclosure, and reporting obligations on public-interest NGOs, while exempting certain NGOs representing professional and private interests.

100. These concerns are further exacerbated by the fact that registration under the Law is linked to privileged access to legislative and policy-making processes, including participation in working groups, meetings, and consultations with designated bodies. As a result, NGOs that do not register may face significant and unjustified restrictions on their ability to participate effectively in public affairs, creating a risk of discriminatory exclusion from democratic decision-making processes.

101. Given the identified shortcomings of the Law, the Government should take advantage of the one-year moratorium on the imposition of penalties for violations of the Law to take into account the views of civil society and, through an inclusive process, bring the Law's provisions into line with European standards.