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Towards a transparency register within the Parliamentary Assembly

Introductory memorandum

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1. Introduction

1. The present introductory memorandum is based on a motion for a resolution that was tabled on 24 June 2021 and referred to the Committee on Legal Affairs and Human Rights for report on 27 September 2021.¹ The Committee appointed me as rapporteur at its meeting on 7 December 2021.

2. The authors of the motion for a resolution argued that there has been widespread lobbying by NGOs in the Parliamentary Assembly, leading to concerns about the transparency and accountability of the decision-making process. A transparency register or “lobby register” already exists in a range of different member States. The motion for a resolution called for the creation of such a transparency register specifically for PACE, proposing the following elements:

- a mandatory register for members to disclose with which NGOs and lobby groups they interact in the framework of their activities and/or functions within the Assembly;
- a mandatory register for lobbyists and NGOs active within the Assembly, where they describe their mission statement, by whom they are financed and with which Assembly members they meet;
- a separate Code of Conduct for lobbyists and NGOs.

3. In this introductory memorandum I will firstly outline the context and issues at stake on the subject of transparency of lobbying at PACE. Second, I will set out the rules currently in force at the Assembly. Third, I will examine the relevant standards set in this area by the Council of Europe, including by the Committee of Ministers, the Group of States Against Corruption (GRECO), and the Venice Commission. Fourth, I will explore a series of additional considerations which are relevant in the PACE context. Fifth, I will briefly outline relevant standards and practices applicable in some member States. Finally, I will set out some preliminary conclusions and proposals for further work.

2. The issues at stake

4. The 21st Century has seen a significant growth in the scale and visibility of political lobbying. The exchange of information and ideas of civil society with public decision-makers is a necessary and important part of democracy. However, lobbying can endanger democratic good governance if the influence and authority of lobbyists extends beyond their legitimacy and transparency. The increase of lobbying activities in societies is often matched by an increase in public demands for regulation of such activities.

* Document declassified by the Committee on 11 October 2023.

¹ Assembly [Doc.15330](#)

5. The Assembly has helped lead the calls for greater transparency. In April 2010 PACE adopted a recommendation calling on the Committee of Ministers to produce a European code of good conduct on lobbying.² Following subsequent PACE recommendations on a similar theme,³ in 2017 the Committee of Ministers adopted Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision-making. This period coincided with a proliferation of lobbying regulations in different member States.

6. Meanwhile, the regulatory provisions of PACE itself have remained more limited. For example, there is no specific code of conduct for lobbyists/NGOs and no 'lobby register' of individuals or organisations carrying out advocacy at PACE. The code of conduct for members has clear prohibitions on them carrying out lobbying activities at the Assembly or obtaining personal benefit from their work at PACE - but beyond this it has limited guidance on how members should interact with lobbyists/NGOs.

7. When examining the case for reform of the Assembly's regulations, it is also important to consider the particular context of PACE. A significant number of persons carrying out advocacy at the Assembly are doing so because they believe their governments are acting in a repressive fashion. There are a large number of cases where such repressive actions have been confirmed by the European Court of Human Rights, ranging from killings carried out by state actors, to the imprisonment of politicians, activists, journalists and lawyers who are deemed to be political opponents.⁴ It is important that greater transparency of lobbying at PACE does not facilitate this kind of repression, by making an easily accessible list of persons whom certain government authorities may wish to target. Transparency regulations should also not diminish the ability of civil society as a whole to engage with PACE. Finally, any new regulations should be proportionate to the human and financial resources of PACE (which are significantly less than those available to national parliaments or the European Parliament) and not least ensure that the administrative burden on Assembly members is proportionate, as any obligations would come on top of those they already have to fulfil at national level and at the Assembly according to the rules already in place.

8. This Introductory Memorandum explores the rules currently in force at PACE, the relevant international standards, and the particular PACE context, to examine whether improvements can be made to the Assembly's regulatory framework.

3. Rules currently in force at the Parliamentary Assembly of the Council of Europe

3.1. Declarations of Interest

9. Following Rule 13 and 6.2.b of the PACE Rules of Procedure, all PACE members undertake to abide by the Code of Conduct for members of the Parliamentary Assembly ("the Code of Conduct"). This requires all members to complete and submit a declaration of interests at the opening of each annual session.⁵ The rules governing the declaration are further set out in an Explanatory Note.⁶ The system of submitting and publishing declarations of interests is designed to provide relevant information on any interest which, on account of its nature, scope or intensity, could reasonably be regarded as liable to influence or be seen as influencing members' actions, words or voting decisions, and which could help to identify any actual or potential conflicts of interest in connection with the exercise of the parliamentary mandate in the Assembly.⁷ The declaration of each PACE member is published on the PACE website.

10. There are eleven different types of interest that members are required to declare. These include remunerated professional activities, positions in companies, management or advisory positions for institutions and non-commercial entities (including NGOs), consultancies, donations, gifts, travel abroad paid for by others, and any relevant interests of family members/staff.

² [Recommendation 1908 \(2010\)](#) on Lobbying in a democratic society (European code of conduct on lobbying)

³ [Resolution 1744 \(2010\)](#) on extra-institutional actors in the democratic system; [Resolution 1943 \(2013\)](#) on corruption as a threat to the rule of law

⁴ e.g. *Gongadze v. Ukraine* (34056/02), judgment of 08/11/2005; *Selahattin Demirtaş (No. 2) v. Turkey* (14305/17), judgment of 22/12/2020; *Aliyev v. Azerbaijan* (68762/14 and 71200/14), judgment of 20/09/2018; *Rashad Hasanov and Others v. Azerbaijan* (48653/13), judgment of 07/06/2018; *Khadija Ismayilova (no. 2) v. Azerbaijan* (30778/15) judgment of 27/02/2020;

⁵ Code of conduct for members of the Parliamentary Assembly (Compendium of provisions in force as of January 2022), paragraph 18

⁶ Explanatory Note on declaration of interests by members of the Parliamentary Assembly, unanimously approved by the Committee on Rules of Procedure, Immunities and Institutional Affairs 15 May 2018 and revised in the light of decisions taken by the Committee on 10 December 2018

⁷ *Ibid.*, paragraph 2

11. However, the declaration does not require Assembly members to declare meetings that they have held with lobbyists/NGOs, in the fulfilment of their duties relating to PACE.

3.2. *Other relevant sections of the Code of Conduct*

12. The Code of Conduct requires Assembly members to: take decisions solely in the public interest and not be bound by instructions that would jeopardise the ability to respect the Code of Conduct;⁸ avoid conflicts of interest and resolve any conflict of interest in favour of the public interest – or if they are unable to do so, disclose the conflict;⁹ and avoid using their position to further the interests of themselves or others (persons or entities) in a way that is incompatible with the Code of Conduct.¹⁰

3.3. *The Code of Conduct for Rapporteurs*

13. Rule 50.1 of the Assembly's Rules of Procedure requires members to act in accordance with the Code of Conduct for Rapporteurs. Paragraph 1 requires rapporteurs to act in accordance with the principles of neutrality, impartiality and objectivity.¹¹ These principles include an obligation to declare any economic, commercial, or financial interests connected with the subject of the report;¹² an undertaking not to accept any reward or other personal benefit in connection with the exercise of their duties;¹³ an undertaking to refrain from any act which may cast doubt on their neutrality;¹⁴ and, of most relevance to this report, an undertaking not to seek or accept instructions from any government or governmental or non-governmental organisation, or pressure group or individual.¹⁵

14. Under paragraph 3 the Code of Conduct for Rapporteurs, the committee can ask the rapporteur, or the rapporteur may decide himself/herself, to publish, in an appendix to the draft report, a list of people met in the process of drafting his/her report. Under paragraph 4 of the code, if a rapporteur fails to honour one or more undertakings, in particular if he or she failed to declare any relevant interests or made an untruthful declaration, the committee shall withdraw his or her mandate and replace him or her.

3.4. *Access to Council of Europe premises*

15. Appendix XVII of the PACE Rules of Procedure sets out the rules relating to accessing the premises of the Council of Europe during PACE part-sessions and Committee meetings. These set out some regulations relevant only to PACE sessions and Committee meetings, but also incorporate subsidiary rules issued by the Secretary General of the Council of Europe and the Director General of Administration.¹⁶ The premises of PACE are accessible to members of NGOs that are part of the Council of Europe Conference of International Non-Governmental Organisations; individuals with press accreditation; and also persons who have been invited by a parliamentarian, parliamentary delegation, political group, committee, or permanent representation.

16. The wearing of badges is compulsory.¹⁷ Areas of movement and the right to access different areas should be determined by the issuing of distinctive badges for each category of people.¹⁸ Parliamentarians should assume full responsibility for movements, behaviour and departures of the people they have invited.¹⁹ No parliamentarian may invite more than six people per day.²⁰ The maximum period for which badges may be issued for lobbyists/NGOs is one day, but this rule is applied more flexibly in practice.²¹ Access to the chamber is restricted to members of national delegations, government representatives, certain staff members of the

⁸ *Ibid.*, paragraph 5.2

⁹ *Ibid.*, paragraph 9

¹⁰ *Ibid.*, paragraph 13

¹¹ Code of Conduct for Rapporteurs, paragraph 1.1

¹² *Ibid.*, paragraph 1.1.1

¹³ *Ibid.*, paragraph 1.1.3

¹⁴ *Ibid.*, paragraph 1.1.4

¹⁵ *Ibid.*, paragraph 1.1.2

¹⁶ [PACE Rules of Procedure, Appendix XVII](#) – Access to the Palais de l'Europe and use of offices, paragraphs 2 and 4

¹⁷ *Ibid.*, paragraphs 4 and 26

¹⁸ *Ibid.*, paragraph 7

¹⁹ *Ibid.*, paragraph 9

²⁰ *Ibid.*, paragraph 9

²¹ *Ibid.*, paragraph 11

Council of Europe and delegations and the heads of other Council of Europe bodies. Other individuals can only access the chamber upon invitation from the PACE President or PACE Secretary General.²²

17. Any persons who are in an area which they were not authorised to enter without good reason, or whose behaviour compromises the smooth conduct of Assembly business, may, at the request of the President of the Parliamentary Assembly or the Secretary General of the Assembly, be removed and permanently prohibited from entering the Council of Europe.²³ The President of the Parliamentary Assembly or the Secretary General of the Assembly may ask the Directorate General of Administration/Directorate of General Services to deny access to any individuals in respect of whom he/she has been informed or has good reason to believe that their behaviour is liable to disrupt the activities of the Assembly.²⁴

18. Committee meetings are held in private. The following persons have access to committee meetings (with certain exceptions): committee members and their substitutes; other members of the Assembly and certain other delegations (in committees where they are allowed); limited numbers of secretaries of delegations; secretaries of political groups (in committees where they are allowed); members of the Committee of Ministers or any other minister of the government of a member State; Permanent Representatives/Ministers' Deputies, or one of their deputies, of member States of the Council of Europe; the Secretary General and Deputy Secretary General of the Council of Europe; the Secretary General of the Assembly; and staff of the secretariat of the Assembly. The Chair of the committee may also invite guests and experts for a hearing on a specific agenda item, as well as one person from a limited list of Council of Europe and member State bodies.²⁵ Committees may decide that a certain part of a meeting may be open to the public, but this can only apply to hearings or exchanges of views, which are held with experts, government officials, representatives of international organisations, or members of civil society.²⁶

19. A committee may decide to hold all or part of a meeting *in camera*, i.e. with only members of the committee or its secretariat present. The Monitoring Committee and the Committee on the Election of Judges to the European Court of Human Rights normally meet *in camera* as a matter of course, except in the case of a joint meeting with other committees or exchanges of views if the committee so decides.²⁷

3.5 Previous debate concerning a transparency register

20. The rules set out above were put in place by the Committee on Rules of Procedure, Immunities and Institutional Affairs following the proposals included in Assembly Resolution 2182 (2017) on 'Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members', as well as Resolution 2170 (2017) on 'Promoting integrity in governance to tackle political corruption'. These resolutions also called for the creation of a transparency register within the Parliamentary Assembly.²⁸ In a meeting of the Bureau of the Assembly on 31 May 2018, the Bureau discussed this issue, on the basis of a memorandum on the subject of access to the Assembly prepared by the Secretary General of the Parliamentary Assembly.²⁹ This memorandum explores the recommendations of the Group of States Against Corruption on transparency regulations in the Assembly;³⁰ the added benefits that

²² *Ibid.*, paragraph 15

²³ *Ibid.*, paragraph 36

²⁴ *Ibid.*, paragraph 37

²⁵ *Ibid.*, paragraphs 19-20. In regard to the specific invitations, the rules state that the following persons may attend at the invitation of the Chair of the committee, for a specific agenda item, where appropriate: "*directors general and directors of the Council of Europe; secretaries of Council of Europe bodies (Committee of Ministers, Commissioner for Human Rights, Congress of Local and Regional Authorities, European Court of Human Rights) and steering committees and expert committees of the Council of Europe; the Private Office of the Secretary General; permanent representatives or ambassadors of States which have observer, partner for democracy or special guest delegations to the Assembly; representatives of other international organisations with which the Parliamentary Assembly has a co-operation agreement; representatives of the Conference of INGOs; subject to a maximum of one person per committee or body; guests and experts for a hearing.*"

²⁶ *Ibid.*, paragraph 19

²⁷ *Ibid.*, paragraph 19. The Monitoring Committee and the Committee on the Election of Judges to the European Court of Human Rights shall meet *in camera*, except in the case of joint meetings with other committees or hearings or exchanges of views if the committee so decides.

²⁸ Assembly Resolution 2182 (2017), paragraph 6; Resolution 2170 (2017), paragraph 10.4

²⁹ Memorandum prepared by the Secretary General of the Parliamentary Assembly on the Follow-up to Resolution 2182 (2017): "Promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members": rules on access to and movement within the Council of Europe during Assembly sessions and meetings (AS/Bur (2018) 12 rev). I have been provided with relevant extracts for the purposes of drafting this introductory memorandum.

³⁰ "Assessment of the Code of Conduct for Members of the Parliamentary Assembly of the Council of Europe", adopted by GRECO in June 2017. Further discussed below.

a lobby register would make to transparency; the issues involved in such a register; and the possibility of introducing a code of conduct for lobbyists/NGOs. The memorandum noted that a transparency register was technically feasible and would bring benefits in terms of transparency. However, a number of concerns were also raised, including: the fact that access to the Council of Europe as a whole was not regulated by the Assembly, so any requirement to register in order to have access to the Palais might have limited impact; the risk of pressure or repression being carried out against individuals/organisations publicly listed on a register; and the Assembly's resource limitations. The Bureau of the Assembly invited the Committee on Rules of Procedure "to give further consideration to the question of the possible creation of a transparency register of interest representatives".³¹

21. The Committee on Rules of Procedure, Immunities and Institutional Affairs discussed additional transparency regulations in meetings held on 3-4 September 2018 and 15 January 2019. Members of the Committee raised a number of points in favour of a register, relating to benefits for transparency and security. However, a large range of concerns were raised by Committee members on the issue, including: a reluctance to introduce a new bureaucratic mechanism without a compelling reason; that a transparency register was not necessary given that the Assembly did not work on economic regulation and was therefore not subject to huge levels of corporate lobbying; that a transparency register would only serve to restrict legitimate passing of information to Assembly members, particularly by smaller organisations; and that a transparency register would create a disproportionate burden on the Assembly's limited resources. Given the existence of these concerns, ultimately in a meeting of 15 January 2019 a majority voted not to adopt a transparency register at the Assembly. Some members also spoke briefly in favour of a new code of conduct for those carrying out lobbying, but a vote was not taken on proposals to introduce such a measure.³²

4. Council of Europe Standards

4.1. Parliamentary Assembly of the Council of Europe

22. In April 2010 PACE adopted [Recommendation 1908 \(2010\)](#) on Lobbying in a democratic society (European code of conduct on lobbying). The Assembly noted the constant increase in the activities of various interest groups, both at the level of member States and of European institutions. Whilst it is perfectly legitimate for members of society to organise and lobby for their interests, the Assembly noted that unregulated lobbying may undermine democratic principles of good governance. There was no single solution to the questions raised by lobbying activities and at the time very few member States had introduced lobbying regulations of any kind. The Assembly concluded that pluralism of interests is an important feature of democracy, but the lobbying for those interests must be fair and equal, transparent and governed by democratic rules.

23. Taking this into account, the Assembly recommended that the Committee of Ministers of the Council of Europe elaborate a European code of good conduct on lobbying based on the following principles:

23.1. lobbying should be very clearly defined, differentiating between lobbying as a professionally compensated activity and the activities of civil society organisations, not forgetting self-regulating entities in different economic sectors;

23.2. transparency in the field of lobbying should be enhanced;

23.3. rules applicable to politicians, civil servants, members of pressure groups and businesses should be laid down, including the principle of potential conflicts of interest and the period of time after leaving office during which carrying out lobbying activities should be banned;

23.4. entities involved in lobbying activities should be registered;

23.5. prior consultations should be held with lobbying organisations on any draft legislation in this field;

23.6. well-defined, transparent, honest lobbying should be encouraged so as to improve the public image of persons involved in these activities.

³¹ 'Possible creation of a transparency register of interest representatives', AS/Pro (2018) 15

³² I have been granted access to the relevant extracts of the minutes of the following meetings of the Committee on Rules of Procedure, Immunities and Institutional Affairs for the purpose of preparing this report: meeting held in Paris on 3-4 September 2018; and a meeting held in Brussels on 15 January 2019.

24. Another PACE resolution later in the same year reiterated the Assembly's concerns and invited the Venice Commission to publish an opinion on lobbying (which is described below).³³ PACE raised the issue again in a resolution on 'Corruption as a threat to the rule of law', adopted in 2013, once again calling on the Committee of Ministers to produce a European code of good conduct in regard to lobbying.³⁴

4.2. Committee of Ministers

25. In March 2017 the Committee of Ministers adopted Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making. Similarly to PACE [Recommendation 1908 \(2010\)](#), this text recognised that lobbying can make a legitimate contribution to well-informed public decision-making, but that transparency, accountability, and ultimately regulation could strengthen the legitimacy and integrity of the process. The Committee of Ministers considered that there was a need to encourage the adoption of appropriate frameworks based on common principles. It therefore recommended that governments of member States, "*establish or further strengthen, as the case may be, a coherent and comprehensive framework for the legal regulation of lobbying activities in the context of public decision making*", in accordance with principles set out in an appendix and taking into account national circumstances.³⁵

26. The appendix to the Recommendation sets out a definition of lobbying as "*promoting specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making.*" The appropriate objective of legal regulation is identified as "*promoting the transparency of lobbying activities*".³⁶ Information on lobbying activities in the context of public decision-making should be disclosed, but the rules on disclosure should be proportionate to the importance of the subject matter of the public decision-making process, should reflect constitutional guarantees, and should not infringe on the rights of individuals to express opinions or campaign for political/legislative changes.³⁷ The Committee of Ministers recommended that a register of lobbyists should be maintained.³⁸ This should be easily accessible to the public and contain, as a minimum, information on the name and contact details of the lobbyist, the subject matter of the lobbying activities, and the identity of the client or employer (where applicable).³⁹

27. The Committee of Ministers also sets out standards of ethical behaviour for lobbyists, who should be guided by principles of openness, transparency, honesty and integrity. In particular, they should be expected to:

- 27.1. provide accurate and correct information on their lobbying assignment to the public official concerned;
- 27.2. act honestly and in good faith in relation to the lobbying assignment and in all contact with public officials;
- 27.3. refrain from undue and improper influence over public officials and the public decision-making process; and
- 27.4. avoid conflicts of interest.⁴⁰

28. There should also be appropriate guidance to public officials on their relations with lobbyists, tailored to national circumstances, in particular concerning:

- 28.1. refusing or disclosing the receipt of gifts and hospitality offered by a lobbyist;
- 28.2. how to respond to communications from lobbyists;
- 28.3. reporting violations of the regulations or rules of conduct on lobbying activities;
- 28.4. disclosing conflicts of interest;

³³ [Resolution 1744 \(2010\)](#) on extra-institutional actors in the democratic system

³⁴ [Resolution 1943 \(2013\)](#) on corruption as a threat to the rule of law

³⁵ Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making, page 2

³⁶ Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making, Appendix, paragraph 1

³⁷ *Ibid.*, paragraphs 4 to 6

³⁸ *Ibid.*, paragraph 7

³⁹ *Ibid.*, paragraphs 9 to 11

⁴⁰ *Ibid.*, paragraph 14

28.5. preserving the confidentiality of data.⁴¹

29. Legal regulations on lobbying should contain effective, proportionate and dissuasive sanctions for non-compliance.⁴² Oversight of the regulations on lobbying activities should be entrusted to designated public authorities.⁴³ Oversight may include the monitoring of compliance with regulations, providing guidance on the application of the regulations, and raising awareness among lobbyists, public officials and the public.⁴⁴

4.3. *The Group of States Against Corruption (GRECO)*

30. In June 2017 GRECO published an analysis of the Code of Conduct for PACE members.⁴⁵ The assessment noted that PACE had played a key role in promoting the need to regulate and increase transparency of lobbying activities, but that it had not itself established a comprehensive set of rules and arrangements in the area. Interlocutors spoken to in the drafting of the GRECO report noted that the premises of PACE are accessible to a wide variety of persons, and that PACE members or secretariat did not always have the means to properly identify whom they were meeting with. The GRECO analysis indicated that Committee of Ministers Recommendation Rec(2017)2 “*could be easily adapted by PACE*”.⁴⁶

31. In regard to the conduct of PACE members, it was noted that the Code of Conduct prohibited members from acting as lobbyists in the Assembly themselves, but that it did not regulate how they could engage with lobbyists and other third parties seeking to influence PACE. An exception to this was section 1.1.2 of the Code of Conduct for Rapporteurs, which prohibits rapporteurs seeking or accepting instructions. GRECO suggested that this safeguard should be broadened so that it applied to PACE members other than rapporteurs whose responsibilities were equally relevant, such as chairpersons of committees and subcommittees, leaders of political groups, members of the Bureau, and the President of the Assembly. Overall, GRECO recommended that PACE “*introduce a robust and consistent set of rules for PACE members on how to engage in relations with lobbyists and other third parties seeking to influence the parliamentary process.*”⁴⁷

32. GRECO’s Fourth Round Evaluation reports have addressed how this should be done, by assessing the need for parliaments to provide for proper rules on how parliamentarians engage with persons seeking to influence their work.

4.4. *Venice Commission*

33. Following a request from PACE, in 2013 the Venice Commission published a report “on the role of extra-institutional actors in a democratic system (lobbying).”⁴⁸ This stated that lobbying regulations in national parliaments normally contained all or some of the following features: (1) a requirement for lobbyists to register with the State before contact can be made with any public official; (2) a requirement for lobbyists to clearly indicate which ministry/public actors he or she intends to influence; (3) a requirement for lobbyists to clearly identify individual and/or employer spending disclosures; (4) a publicly available list with lobbyists’ details; (5) a lobbying supervisory authority that performs periodic audits and enforces the regulations and sanctions those who do not abide by them; and (6) a prohibition on former public officials immediately working as lobbyists once they have left public office.⁴⁹ The report also highlights that the principal way by which States ensure that lobbying laws are respected is through the creation of a lobbying supervisory authority.⁵⁰

34. The Venice Commission noted that additional financial cost was a disadvantage of introducing lobbying regulations.⁵¹ Nevertheless, the regulation of lobbying activities was a suitable response to the needs of both

⁴¹ *Ibid.*, paragraph 17

⁴² *Ibid.*, paragraph 15

⁴³ Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making, Appendix, paragraph 18

⁴⁴ *Ibid.*, paragraph 19

⁴⁵ ‘Assessment of the Code of Conduct for Members of the Parliamentary Assembly of the Council of Europe’, Adopted by GRECO 76 (19-23 June 2017)

⁴⁶ *Ibid.*, paragraphs 48 to 50

⁴⁷ *Ibid.*, paragraphs 50 to 51

⁴⁸ ‘On the role of extra-institutional actors in a democratic system (lobbying)’, Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013)

⁴⁹ *Ibid.*, paragraph 59

⁵⁰ *Ibid.*, paragraph 70

⁵¹ *Ibid.*, paragraph 68

strengthening the positive aspects of the role of extra-institutional actors and to countering the drawbacks, if not threats to the democratic process, that lobbying might entail.⁵²

⁵² *Ibid.*, paragraph 96

5. Additional considerations in the context of PACE

5.1. Ensuring civil society access to Council of Europe institutions

35. It is important that any new regulations on civil society engagement with PACE do not inappropriately restrict civil society's participation in the Assembly's work. This would be contrary to the stated goal of the Committee of Ministers of the Council of Europe, which has emphasised in recent years the need to strengthen civil society's involvement in the institution. Most notably, following their meeting in Reykjavik on 16 to 17 May 2023, heads of state and government of member States of the Council of Europe issued the "Reykjavik Declaration – United around our values". This called for "a review and further reinforcement of the Organisation's outreach to, and meaningful engagement with, civil society organisations and national human rights institutions."⁵³ Similarly, in the May 2021 meeting of the Committee of Ministers in Hamburg, ministers agreed a strategic framework of the Council of Europe for the following four-year period, in which they "reiterated the importance of further strengthening the role and meaningful participation of civil society organisations as well as national human rights institutions in the Organisation".⁵⁴

36. The Assembly has adopted a number of Resolutions urging states to strengthen civil society space.⁵⁵ For example, [Resolution 2095 \(2016\)](#) called on member States to "refrain from adopting laws that impose disproportionate restrictions on defenders' activities";⁵⁶ and [Resolution 2362 \(2021\)](#) urged member States to "refrain from enacting new legislation entailing unnecessary and disproportionate restrictions on NGO activities".

37. It is therefore important that the views and needs of civil society are taken into account during the formation of any new lobbying regulations, to ensure that possible reforms enhance rather than hinder civil society's engagement with PACE and the wider Council of Europe.

5.2. Ensuring the safety of civil society

38. The Assembly has a particular role in Europe's public debate. As the deliberative organ of the Council of Europe, it is a forum for discussing the protection of human rights, democracy, and the rule of law. This involves assessments about the degree to which these fundamental values are being protected in member States. Inevitably, this will mean that civil society engaging with PACE will often be doing so to highlight perceived shortcomings in the law and practices of States relating to human rights, democracy, and the rule of law. Unfortunately, there are many serious allegations of member States carrying out repressive activities against such critical voices.

39. This repression has been well-documented in judgments of the European Court of Human Rights. Examples include the abduction and killing of independent journalists;⁵⁷ the arbitrary imprisonment of the leaders of rival political parties;⁵⁸ disbarment of lawyers representing such political opponents⁵⁹ or who have been critical of government policy;⁶⁰ the termination of mandate of judges who raise concerns about the protection of judicial independence⁶¹ or act in defence of the rule of law;⁶² and the arrest and imprisonment of youth activists to punish them for political engagement.⁶³

40. Assembly [Resolution 2225 \(2018\)](#) expresses concern at the increase in the number of reprisals against human rights defenders in the Council of Europe space. The most recent update on this issue in our Committee is from a revised information note on the 'Situation of human rights defenders in Council of Europe member

⁵³ 'Reykjavik Declaration – United around our values', 16-17 May 2023, page 8

⁵⁴ 'The Strategic Framework of the Council of Europe and forthcoming activities', 131st Session of the Committee of Ministers, Hamburg (videoconference) 21 May 2021, section 'On forthcoming activities of the Council of Europe', paragraph 12

⁵⁵ These include: Res 2095(2016) on 'Strengthening the protection and role of human rights defenders in Council of Europe member States'; Res 2225 (2018) on 'Protecting human rights defenders in Council of Europe member States'; and Res 2362 (2021) on 'Restrictions on NGO activities in Council of Europe member States'

⁵⁶ [Resolution 2095 \(2016\)](#) on 'Strengthening the protection and role of human rights defenders in Council of Europe member States' paragraph 6.3

⁵⁷ e.g. *Gongadze v. Ukraine* (34056/02), judgment of 08/11/2005

⁵⁸ e.g. *Selahattin Demirtaş (No. 2) v. Turkey* (14305/17), judgment of 22/12/2020

⁵⁹ e.g. *Bagirov v. Azerbaijan* (81024/12 and 28198/15), judgment of 25/06/2020

⁶⁰ e.g. *Hajibeyli and Aliyev v. Azerbaijan* (6477/08 and 10414/08), judgment of 19/04/2018

⁶¹ e.g. *Baka v. Hungary* (20261/12), judgment of 23/06/2016

⁶² e.g. *Juszczyszyn v. Poland* (35599/20), judgment of 06/10/2022

⁶³ e.g. *Rashad Hasanov and Others v. Azerbaijan* (48653/13), judgment of 07/06/2018

States', produced by Ms Alexandra Louis (France, Alliance of Liberals and Democrats for Europe) in February 2022. Ms Louis concludes that "*the situation has not improved but has even worsened in certain Council of Europe member States*".⁶⁴ Human rights violations have also become increasingly transnational, as highlighted in a draft resolution and recommendation recently adopted by this committee addressing transnational repression by state actors.⁶⁵ The Committee urged governments to ensure the protection within their own borders of individuals who are at risk of human rights violations perpetrated by foreign state actors. This also applied to human rights defenders and activists who engage with international organisations including the Council of Europe.

41. Similarly, it is important that PACE protects individuals who are brave enough to highlight perceived threats to human rights, democracy and the rule of law in their own countries to members of the Assembly. It is essential that any regulations introduced to enhance transparency of lobbying do not expose people to additional risk. In particular, a publicly accessible register of groups and individuals carrying out advocacy at the Assembly might facilitate the repression of some who are listed on it, or perhaps simply have a chilling effect on civil society activity. Finally, it would be inconsistent with the protection offered by other bodies of the Council of Europe – such as monitoring bodies and the Commissioner for Human Rights – who operate a confidentiality principle aimed at protecting civil society from intimidation and reprisals.

5.3. *Ensuring the proportionality of transparency regulations with the resources of PACE and Assembly members*

42. PACE is a "part-time" assembly, in the sense that it is composed of parliamentarians from member States' legislatures, who meet for limited periods each year. As a result, PACE does not have the same resources as a national legislature or the European Parliament; or the capacity to ensure the raising of additional funds for new areas of activity. It would therefore not be advisable to establish transparency regulations requiring significant administrative resources, unless it is clear that additional funds could be found to support it.

43. This consideration should affect how the Committee views the proportionality of enacting certain types of transparency regulations. For example, France's High Authority for Transparency in Public Life is an independent body responsible for declarations of assets and interests by public officials, as well as a register of individuals and organisations engaged in lobbying. It is engaged in facilitating the declarations of a very large number of people, as well as monitoring and complaints. Nevertheless, it is worth noting that the High Authority has 65 permanent staff and a budget of around 8 million euros.⁶⁶ The total budget for the whole of PACE's activities is around 17 million euros.⁶⁷ Even taking into account the large number of people monitored by France's High Authority, the figures give some indication of the additional resources that would be required to ensure the functioning of certain regulatory requirements at PACE.

44. It is also important to assess the administrative burden on Assembly Members. In particular, the motion for a resolution calls for a requirement that every member submit a declaration about meetings they have with certain third parties on the subject of Assembly business. It is not clear that this is a proportionate measure, particularly given the part-time nature of parliamentarians' work at the Assembly and the fact that these requirements would come on top of the requirements under the existing Assembly rules and those imposed by their national parliaments.

6. **Standards and practices of national parliaments in member States**

45. There are a very wide range of standards and practices in member States. Below are two examples: a more complete survey will be conducted for the full report.

6.1. *France*

46. The High Authority for Transparency in Public Life was created in 2014. It is an independent body responsible for declarations of assets and interests by public officials, as well as a lobby register of individuals and organisations engaged in lobbying.⁶⁸ The lobby register operates as follows. Persons or organisations engaged in lobbying activities are obliged to register within two months of the definition of lobbying applying to

⁶⁴ AS/Jur (2022) 01 Rev (28 February 2022), paragraph 47

⁶⁵ 'Transnational repression as a growing threat to the rule of law and human rights', report by Sir Christopher Chope (United Kingdom, European Conservatives Group and Democratic Alliance), AS/Jur (2023) 17

⁶⁶ Executive Summary of the 2021 Activity Report, High Authority for Transparency in Public Life, page 9 (English version)

⁶⁷ Council of Europe Annual Programme and Budget 2022-2025 (2023 adjusted), page 113

⁶⁸ Executive Summary of the 2021 Activity Report, High Authority for Transparency in Public Life (English version)

them. They need to disclose their identification, the identification of senior executives and individuals engaged in lobbying, the scope of lobbying activities, their membership in organisations, and - if the lobbyist carries out activities on behalf of third parties - the identity of these third parties. The obligation to declare this information is one element of a list of ethical rules that lobbyists are obliged to abide by. When the High Authority detects a breach of the rules (including a failure to properly register information), it sends a formal notice to the lobbyist in question. The formal notice, which may be published, orders the lobbyist to comply with its obligations, after allowing him or her to present his or her observations. During the three year period after a formal notice has been issued, any failure to abide by the ethical obligations is punishable by one year's imprisonment and a 15,000 euro fine.⁶⁹

47. There is not an obligation for lobbyists to declare particular meetings they have with parliamentarians; or for parliamentarians to declare meetings that they have with lobbyists.

6.2. *United Kingdom*

48. In the UK there is a mandatory register for specific types of lobbying, and a voluntary register for wider instances of lobbying.

49. The Office of the Registrar of Consultant Lobbyists is an independent statutory office, under the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014. The registrar manages the UK Register of Consultant Lobbyists. This is a statutory lobbyists' register, but only consultant lobbyists need to register – and only if they are lobbying ministers or senior civil servants. Lobbyists acting on behalf of themselves or of their employer do not have an obligation to register, but there are voluntary registration schemes. Furthermore, there is no obligation to register in order to conduct lobbying with parliamentarians (unless the parliamentarian is also a minister).⁷⁰ Consultant lobbyists are obliged to register before conducting any lobbying of ministers or senior civil servants, as well as submit details of clients they have lobbied for or been paid to lobby for each quarter. There is not an obligation to declare every meeting. The registry does not require lobbyists to abide by a code of conduct, although relevant voluntary codes of conduct can be declared in the registry.⁷¹

50. In addition to the mandatory Register of Consultant Lobbyists, there is also the voluntary UK Lobbying Register, which is run by an industry body. This register exists to promote transparency and professional standards in lobbying, applicable to lobbying that fall outside the limited scenarios requiring mandatory registration on the Register of Consultant Lobbyists, including the lobbying of parliamentarians, and any lobbying carried out by individuals representing an organisation (or themselves), rather than consultants working for a third party. Registration includes signing up to a code of conduct.⁷²

6.3. *The European Union*

51. The European Parliament, the Council of the European Union and the European Commission have a joint Transparency Register, in the form of an online database listing the individuals and organisations that try to influence EU policy and legislation. The register is voluntary, but each of the three EU institutions above requires registration as a precondition for carrying out certain activities. In regard to the EU parliament, individuals/organisations need to be registered if they wish to have a badge to enter EP buildings; or participate as a speaker in Committee hearings or MEP grouping events.⁷³ All members “*should adopt the systematic practice*” of only meeting lobbyists that are registered on the transparency register, and “*should publish online*” all scheduled meetings with lobbyists.⁷⁴ Rapporteurs and Committee Chairs in the European Parliament shall register all of the lobbyists/NGOs that they meet with.⁷⁵

⁶⁹ <https://www.hatvp.fr/en/high-authority/regulation-of-lobbying/list/#what-is-the-register-ri>

⁷⁰ <https://registrarofconsultantlobbyists.org.uk>

⁷¹ <https://registrarofconsultantlobbyists.org.uk>. The Registrar may issue a statutory Information Notice, requiring the provision of relevant information for the register. Where a person or organisation has not complied with the requirements of the register, the Registrar can issue a civil penalty of up to £7500 or refer the matter to the Director of Public Prosecutions for potential criminal prosecution.

⁷² <https://lobbying-register.uk/about/>

⁷³ <https://www.europarl.europa.eu/at-your-service/en/transparency/lobby-groups>

⁷⁴ Rules of Procedure of the European Parliament, Rule 11.2 and 11.3

(https://www.europarl.europa.eu/doceo/document/RULES-9-2023-05-08-RULE-011_EN.html)

⁷⁵ Rules of Procedure of the European Parliament, Rule 11.3 (https://www.europarl.europa.eu/doceo/document/RULES-9-2023-05-08-RULE-011_EN.html)

52. All registrants on the Transparency Register must respect a Code of Conduct.⁷⁶

7. Preliminary conclusions and proposals for future work

53. The present report takes place against a wider background of review by the Assembly of the standards governing how members engage with third parties. In particular, Mr Frank Schwabe (*Germany, SOC*) is in the process of preparing a report on “Respect for the rule of law and fight against corruption within the Council of Europe”, which is due for adoption by the Committee on Rules of Procedure, Immunities and Institutional Affairs before the end of this year.⁷⁷ Meanwhile, following their meeting in Reykjavík on 16 to 17 May 2023, heads of state and government of Council of Europe member States issued the “Reykjavik Declaration – United around our values”. This called for a review and further reinforcement of the Council of Europe’s engagement with civil society organisations and national human rights institutions.⁷⁸

54. There is therefore an ongoing reflection by PACE and the Council of Europe as a whole about how to ensure strong ethical practices when dealing with external actors - and also about how to promote greater engagement with civil society. My view is that these issues must be examined together. The Assembly can promote greater engagement with external interlocutors, whilst simultaneously increasing the transparency of that engagement. Reforms to address these issues should be carried out concurrently, as they are inherently interlinked. A review of the Assembly’s engagement with civil society and the transparency of that engagement could be conducted by the Committee on Rules of Procedure, Immunities and Institutional Affairs, with the benefit of extensive consultation with all of the relevant stakeholders. This would help promote pluralism, whilst also ensuring the protection of integrity and accountability.

55. This report should serve as an important contribution to future discussions in this area. My preliminary view on the issue of transparency regulations is that the Assembly could strengthen its existing framework, but that changes should be kept proportionate to the PACE context. In particular, there could be a code of conduct for NGOs/lobbyists seeking to engage in advocacy at PACE. The code of conduct for members could also be strengthened, for example by extending the prohibition on the seeking or taking of instructions - currently only applicable to rapporteurs - to a wider range of assembly members (as suggested by GRECO in its 2017 report⁷⁹). There could also be a transparency register for lobbyists/NGOs. However, given the concerns set out in section 5 above – for example in regard to the safety of civil society – such a register should not be made mandatory, and provision should be made for the resources needed to administer such a register.

56. The final report will include a more extensive survey of current standards and practices in member States, as well as the views of civil society and Assembly Members on possible reforms. In order to obtain additional information, I intend to hold a hearing in our committee at the next available opportunity. This will involve representatives of France’s High Authority for Transparency in Public Life, the Group of States Against Corruption, and Council of Europe’s INGO Conference.

57. In addition to the expert speakers, I would welcome extensive contributions from the Committee’s Members on this issue, as it is important to understand their views on an issue that it is directly relevant to their future work. I should finally like to invite the Committee to give me guidance as to whether the final report should take the usual form of a preliminary draft resolution and an explanatory report, or whether the option of an information report, without a draft resolution for adoption by the Assembly would be more appropriate, in view of the proposal that this work should feed into the wider discussion on promoting ethical behaviour in the Assembly led by the Committee on Rules of Procedure.

⁷⁶ https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=CODE_OF_CONDUCT

⁷⁷ Assembly [Doc.15195](#)

⁷⁸ ‘Reykjavik Declaration – United around our values’, 16-17 May 2023, page 8

⁷⁹ ‘Assessment of the Code of Conduct for Members of the Parliamentary Assembly of the Council of Europe’, adopted by GRECO 76 (19-23 June 2017), paragraphs 50-51