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Lobbying in a democratic society (European Code of conduct on lobbying)

Report

Committee on Economic Affairs and Development

Rapporteur: Mr José MENDES BOTA, Portugal, Group of the European People's Party

Summary

The report notes that the activities of different interest groups have been constantly increasing at the level of the European institutions and the Council of Europe member states. However only four member states adopted laws on lobbying activities and in ten other member states of the Council of Europe this question has been discussed in national Parliaments.

The rapporteur considers that pluralism of interests is an important element of democracy, but unregulated or secret lobbying may be a danger and can undermine democratic principles and good governance.

The draft recommendation proposes a number of principles for the elaboration of a European Code of good conduct on lobbying with a view to improving transparency in this field.

A. Draft recommendation

1. The Parliamentary Assembly notes that during recent decades the activities of different interest groups have been constantly increasing. This phenomenon is true both at the level of the Council of Europe member states, and at the level of the European institutions. Moreover, a strong increase and concentration of lobbying activities in both Brussels and Strasbourg has been observed with the unification process and European Union enlargement. Today, it is estimated that over 15,000 special-interest groups are active in Brussels, more than 2,600 of which have their permanent offices there and perform lobbying activities with the EU institutions.

2. The Assembly is convinced that pluralism of interests is an important feature of democracy and it is perfectly legitimate for members of society to organise and lobby for their interests. However, unregulated, secret lobbying as such may undermine democratic principles and good governance. In a democracy, all interests ought to be duly taken into account and all citizens should have equal access to the law and decision-making.

3. The Assembly notes that very few Council of Europe member states have regulated lobbying activities in some way. Thus surveys have shown that among 14 countries having regulated lobbying or considered the issue within their parliaments, only four European countries have adopted a law on this issue.

4. The Assembly is concerned by the fact that such a situation may undermine democratic principles and good governance in those Council of Europe member states where democratic traditions are not deeply rooted and where absence of effective mechanisms of checks and balances exercised by civil society constitute a danger.

5. The Assembly welcomes the fact that the European Parliament was the first European institution to regulate lobbying activities on its own premises. A lobbyists' register has been created and a code of ethics introduced, with which lobbyists must comply. Moreover, the opening by the European Commission of the first register of European lobbyists on 23 June 2008 constitutes an important step in the sense that it allows a standardisation of these activities at European level, reinforces the culture of dialogue and consultation, enhances transparency, and will also in the long run improve lobbyists' negative public image.

6. The Assembly notes that both the United States and Canada have taken steps to regulate lobbying activities. It considers that the member States of the Council of Europe could draw many interesting lessons from these two countries' lawmaking experience in this field and the problems encountered in applying their legislation. However, there is no single solution to all the questions raised by lobbying activities.

7. The Assembly recalls its Recommendations and Resolutions on fighting corruption (Resolution 1214 (2000)), the financing of political parties (Recommendation 1516 (2001), Resolution 1264 (2001) and Resolution 1546 (2007)), corporate ethics in Europe (Resolution 1392 (2004)), conflict of interest (Resolution 1554 (2007)) and the state of democracy and human rights in Europe (Resolution 1547 (2007) and Recommendation 1791 (2007)), as well as a series of reports on member states under the Assembly procedure for monitoring their obligations and commitments.

8. The Assembly is concerned by the fact that in recent decades we have seen a dramatic decline in public confidence in politics in many Council of Europe member states. The lack of transparency in political lobbying activities can be deemed to constitute one of the causes of this phenomenon.

9. The Assembly is convinced that, in a democratic society, citizens are entitled to know the identity of the lobbying organisations which influence political decision-making and voting by members of parliament. Therefore, greater transparency of lobbying activities can make political players even more accountable and restore public confidence in government authorities' democratic functioning.

10. Citizens consider access to political decision-makers with a view to providing them with information and attempting to influence their decisions as one of their democratic rights. However, this access or lobbying possibility must be fair and equal, transparent and governed by democratic rules. If citizens do not believe that they can have a real influence on political decision-makers, democracy may be undermined.

11. Taking into consideration the importance of the activities of different interest groups in the member States of the Council of Europe, the Assembly recommends that the Committee of Ministers of the Council of Europe should elaborate a European Code of good conduct on lobbying based on the following principles:

11.1. lobbying should be very clearly defined, differentiating between lobbying as professionally compensated activity and the activities of the organisations of civil society;

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

11.3. rules applicable to politicians, civil servants, members of pressure groups and business enterprises 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;

11.4. entities involved in lobbying activities should register;

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

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

B. Explanatory memorandum by Mr Mendes Bota, rapporteur

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I. Introduction: on lobbying and lobbyists

1. European democracies increasingly face complex challenges stemming from globalisation, notably the influence of interest groups and economic powers on political decision-making, and the declining trust and participation of citizens in democratic institutions and processes.

2. While the pluralism of interests is an important feature of democracy and it is perfectly legitimate for members of society to organise and lobby for their interests, unregulated, secret lobbying as such may lead to the corruption of democratic principles and good governance. In a democracy, all interests ought to be duly taken into account and all citizens should have equal access to law and decision-making.

3. Holding decision makers accountable to prevent any abuse of office has been a major concern of democratic societies, with continuous efforts to better enforce anti-corruption measures at all levels.

4. Across Europe, progress is being made in the area of rules on political party finances, conflicts of interest and as regards the political influence on justice systems. This has also been reflected in the Parliamentary Assembly's work through debates on the role of parliaments in fighting corruption (Resolution 1214 (2000)), on the financing of political parties (Recommendation 1516 (2001), Resolution 1264 (2001) and Resolution 1546 (2007)), on corporate ethics in Europe (Resolution 1392 (2004)), on conflict of interest (Resolution 1554 (2007)) and on the state of democracy and human rights in Europe (Resolution 1547 (2007) and Recommendation 1791 (2007)), as well as a series of reports on member states under the monitoring (of obligations and commitments) procedure.

5. However, as the Council of Europe Octopus Interface Conference on Corruption and Democracy, held in Strasbourg on 20-21 November 2006, showed, very few of the Organisation's member states have, more or less effectively, regulated lobbying.

6. On a European level, the European Union generates a great number of legal norms that affect also non-EU countries; yet the role of lobbies needs to be clarified which is the aim of the European Transparency Initiative launched in May 2006. The gap in understanding between European institutions and citizens has unfortunately grown and so has a suspicion about these institutions' policies and decisions. This situation calls for a comprehensive response.

7. Your rapporteur is convinced that a European code of conduct for lobbyists could be a highly valuable step in strengthening transparency, accountability, public confidence and citizen participation in the democratic process as part of a broader set of legislative measures.

8. This report will therefore present compelling arguments for the Council of Europe to start working on such a text as a matter of priority and will encourage member states to adopt effective rules on lobbying. It will review selected national experiences, best practices and views from the corporate sector, civil society interest groups and professional lobbyists in order to formulate proposals for action at European and national level.

9. There is a growing public awareness that many decisions in parliaments and governments are made as a result of lobbying by peers or outside pressure groups. Although the term of lobbying has been coined from the 'lobbies' or hallways of parliament where members gather before and after debates, today lobbying takes many different forms.

10. Lobbying is generally understood as a concerted effort to influence policy formulation and decision-making with a view to obtaining some designated result from government authorities and elected representatives. In a wider sense, the term may refer to public actions (such as

demonstrations) or 'public affairs' activities by various institutions (associations, consultancies, advocacy groups, think-tanks, NGOs, lawyers, etc.); in a more restrictive sense, it would mean the protection of economic interests by the corporate sector (corporate lobbying) commensurate to its weight on a national or global scene.

11. In European public opinion, lobbying very often tends to have a negative connotation and is frequently perceived as a form of corruption/manipulation that excludes ordinary citizens from decision-making and circumvents the general interest of the population.

12. At the same time, one should not forget that lobbying that takes place in accordance with clear, transparent rules is a legitimate part of the democratic system and is one way of allowing citizens to express their concerns. Moreover, lobbying viewed as a channel to expertise and feedback is helpful for informed and balanced conduct of public affairs.

II. The experience of the United States and Canada

13. The United States and Canada are among the few advanced western democracies that have extensive regulations on lobbying activity. Their regulatory profile and experience are particularly relevant for the purpose of this report. The overview of regulations described below refers of course to the federal level of these countries while the jurisdiction of federal entities might vary considerably.

14. In the mid-1990s the United States re-codified rules on lobbying by enacting the federal "Lobbying Disclosure Act of 1995" in which the Congress admitted that earlier "lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose" while estimating that "the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government".

15. The law defines lobbyists as any person receiving compensation of $ 5,000 or more per six-month period, making expenditures of $ 20,000 or more per six-month period, for lobbying or making more than one lobbying contact and spending 20 % or more of his or her time over a six-month period on lobbying activities for an organisation or a particular client. Also, organisations are required to register if they plan to engage in lobbying activities during any six-month period and incur at least $ 20,500 in lobbying expenses.[1]

16. Virtually any communication – written or oral, with either "covered legislative branch officials"[2] or "covered executive branch officials" regarding the formulation, modification or adoption of policy or legislation, and the administration or execution of a federal program or policy – is considered as lobbying.

17. Lobbyists must register within 45 days of making a lobbying contact or being employed for such activities. They must disclose information on any organisation that provides more than $10,000 in support in a six-month period and plays a major part in the supervision of the registrant's lobbying activities, as well as the identity of a foreign entity that influences the registrant's lobbying activities or is an affiliate of the client and has a direct interest in the outcome of the lobbying activity.

18. Every six months registered lobbyists are required to file detailed reports on their activities, including a "good faith" estimate of their total expenses relating to lobbying during that period. Any cases of ill-compliance with the law should trigger investigation. However, this aspect seems to be the Achilles heel of the act. In the experts' view, the Department of Justice's enforcement of the act appears to be very weak and the policy of confidentiality that surrounds it is at odds with the purpose of the act.

19. According to a study of the Centre for Congressional and Presidential Studies at American University, direct expenditures on lobbying in the United States rose from $ 1.4 billion in 1998 to $ 2.1 billion in 2004, amounting to nearly $ 5 million a year spent to influence the votes of each member of Congress. In 2007 the figure was $ 2.82 billion. The actual figures, including sums spent on more covert forms of lobbying, were estimated to be up to five times as large. The number of registered lobbyists more than doubled in just five years (2000-2005) to reach 35 000 and it appeared that, since 1998, over 40% of departing members of Congress took on jobs to lobby former colleagues. According to another study, by the NGO "Public Citizen in the USA", the commercial return on every dollar spent on lobbying is $ 100.

20. In 2002, Zbigniew Brzezinski, former national security adviser to President Jimmy Carter, called Washington "the most corrupt capital in the world" describing the nation's political culture as one "in which there's no distinction between what is illegal and what is unethical". As if to echo these concerns, the country's political system was shaken up in 2005 by the Abramoff affair – one of the worst corruption scandals in the federal capital – and the resignation of a republican congressman who admitted taking $ 2.4 million in bribes to "promote" certain companies for defence contracts. An opinion poll revealed that nearly 90% of Americans saw political corruption in Washington as a serious or very serious problem.

21. This politico-corporate turmoil prompted proposals for legislative revisions of the lobbying act as regards a more detailed disclosure of all sorts of contributions from lobbyists to politicians and a requirement to double to two years the ban on former congressmen to lobby their colleagues.

22. After the Democrats strengthened their position in the Congress in late 2006, some industries (pharmaceutical, oil and gas groups and government contractors in Iraq) came under increased parliamentary scrutiny. On the very first day of the new Congress, new ethics rules for the House were approved and on 24 May 2007 the lobbying reform bill (H.R. 2316) was adopted.

23. Canada adopted its first federal law on lobbying – the Lobbyists Registration Act – in 1989 and amended it in significant ways in 1995, in 2003 and in 2004. Unlike the American legislation, the Canadian lobbyist law does not aim to monitor lobbying activities, nor does it require disclosure of all related financial information (spending reports) of lobbyists or clients they represent[3]; it does not oblige politicians to record contacts or ensure that those who lobby them are registered. It is believed that having a registry is enough to secure the level of transparency and openness in the democratic process from which all participants (citizens, public office holders, lobbyists and politicians) can benefit.

24. The act defines as a lobbyist any individual who for payment, on behalf of any person or organisation, undertakes to liaise with a public office holder in an attempt to influence the development of legislative proposals, positions on or amendments to laws and regulations, policy development, meeting agenda, attribution of grants, funds or other benefits and contracts. Later

amendments strengthened the definition to cover all communication made by the lobbyist to public officials (these include elected members of the jurisdiction's legislature or parliament and their staffs; employees of government and government agencies; government members). The law also makes a distinction between those who lobby on behalf of clients (consultant lobbyists) and those who lobby on behalf of their employers (in-house corporate or organisational lobbyists).

25. When registering, lobbyists must disclose their position and titles (as well as a description of the offices held if a former public official is concerned), client details and affiliation, subject matters of activity and results sought, information on governmental institutions lobbied, communication techniques used (including grass-roots lobbying[4]), sources and amounts of any governmental funding obtained for clients and indications on whether payment is contingent on the success of the lobbying.

26. Once registered, all lobbyists have to re-register every six months for as long as they pursue their activity. There are about 3200 registered lobbyists in Canada. Given potential conflict of interests, federal ministers cannot act as lobbyists for two years after leaving office and former high-level civil servants have to wait one year. Virtually all lobbyists in Canada register online and citizens are allowed to access the registries at all levels.

27. Canada also has the Lobbyists Code of Conduct in effect since 1997. This code defines acceptable standards of lobbyists' action and sets out key rules. Accordingly, when lobbying, lobbyists must disclose who they represent and for what matter; they should provide accurate information and handle confidential information with caution, inform their clients of their obligations, avoid conflict of interest of the parties involved and abstain from exercising any improper influence.

28. Critics of the code have been prompt to point out shortcomings relating to vague definitions which are open to multiple interpretations, for instance regarding what constitutes 'improper influence'. Thus, although in theory breaches of the code trigger the Registrar's investigative powers and can lead to bad publicity (but no fines), in reality there have been no cases of such investigation.

29. Failures to comply with the requirements of the Lobbyists Registration Act are prosecuted with fines and, in certain cases, imprisonment (of up to two years). However, observers note loopholes in the lobbying regulations and weak enforcement due to insufficient resources and the lack of independence of the investigative power (the Registrar) from the Ministers' Cabinet.

30. Moreover, if federal rules on the Conflict of Interest and Post-Employment Code for Public Office Holders bar ministers, their staff and Cabinet appointees from becoming lobbyists for one to two years after they leave the official post, there appear to be no rules prohibiting lobbyists from working for Cabinet ministers and government departments they are lobbying or for political parties and election candidate campaigns. Under the new Government, consultations are held to tighten up the rules of the game on lobbying in the light of the implementation of the Federal Accountability Act.

III. Current practice in the European Union and other European Institutions

31. After World War II, European states have been gradually transferring decision making power to supranational institutions. Regarding the European Union, this is particularly true of the

last two decades which have been marked by the development and consolidation of the single European market (as reflected in the signature of the Single European Act in 1986), the Economic and Monetary Union (with the signature of the Maastricht Treaty in 1992) and a single European currency, as well as the latest attempts to adopt a European Constitution.

32. This trend of integration, successive waves of enlargement and the rise of Brussels as a policy making and governance hub resulted in a growing activity and focus of lobby groups on European policies. It is estimated that around 15 000 interest groups[5], including some 2600 with offices in Brussels, currently lobby EU institutions.

33. Among the EU institutions, it was the European Parliament that considered and endorsed first proposals, in 1996, for rules on lobbying in Parliament and member's financial interests. By way of Rules of Procedure 9 (1 and 2), a lobbying registry was set up, together with the College of Quaestors responsible for the implementation of these rules and the issuance of passes[6] to "persons who wished to enter Parliament frequently with a view to supplying information to members within the framework of their parliamentary mandate". These rules became "the cornerstone of the Parliament's policy to regulate the interaction of members of Parliament and private interests".

34. EP rules define lobbyists as private, public or non-governmental bodies that can provide knowledge and expertise in numerous economic, social, environmental and scientific areas but make no explicit mention of interest groups trying to influence policy or decision making nor specify who can be lobbied (i.e. MEPs, their staff, civil servants, etc.). The formula used is very soft, if not vague. Although names of lobbyists are made available to the public on the EP website, other relevant information (such as the nature of the lobbyists' work, the interests for which they are acting or any parliamentary references as indicated on the registration form) is not. There are over 4200 institutions accredited to lobby in the EP.

35. Appended to the rules of procedure is the code of conduct which lobbyists are expected to follow. This code is of rather general nature in providing minimalist standards and broad concepts which are difficult to measure and monitor (for instance indication to refrain from any action to obtain information dishonestly or to disclose to third parties copies of documents obtained from parliament). The only sanction for lobbyist breach of the code is the withdrawal of the pass to access Parliament, which is very rare.

36. We note that, in comparison to the Canadian and American regulations, EP requirements of mandatory information for lobbyist registration are very modest. Thus, lobbyists are not asked to disclose entities lobbied, subject matters pursued and EP activity covered, any contingency fees involved, communication techniques used, resources spent and any indication of office earlier held as a civil servant or elected representative. There are also no rules stipulating that former MEPs or EP officials are not allowed to lobby for a certain period after quitting their official functions.

37. Since 1999, the European Commission has undertaken a series of transparency-related measures regulating its own administration. They include the access-to-documents legislation (Regulation 1049/2001) and a register of documents; public access to databases on consultative bodies and experts advising the Commission; wider consultation and impact assessment prior to legislative steps; the Code of Good Administrative Behaviour and the Code of Conduct for Commissioners. The so-called CONECCS (acronym for 'Consultation, the European Commission and Civil Society') was put in place to provide a basis for the voluntary registration of civil society

organisations (such as trade unions, business associations and NGOs) willing to take part in the consultative process. However it is estimated that no more than 7% of all lobbyists have effectively registered.

38. Siim Kallas, Vice-President of the European Commission and Commissioner for Administrative Affairs, Audit and Anti-Fraud, opened a new chapter in the debate on lobby regulation with the European Transparency Initiative, launched in November 2005[7] and adopted, as a 'communication', on 21 March 2007. The Initiative aims to provide more information to the public on the end beneficiaries of EU funds, anti-fraud findings of EU and national investigations, as well as on a full range of interest groups lobbying the Commission, and to start a debate on common ethical rules to be applied to all EU's lawmakers (i.e. including Commissioners, officials, MEPs and the Council of the European Union). Having considered the 'pros' and 'cons' of mandatory registration for lobbyists, the Commission finally decided:

● to open, in spring 2008, a new voluntary register for interest representatives with an "alert" function;

● to strengthen the implementation of the Commission's consultation standards with the use of a website for online consultations and linked to the register;

● to prepare a code of conduct for relations between interest representatives and the EU institutions, which will be monitored by the Commission.

39. The register will comprise information on the registrants' resources, major clients and/or funding sources, depending on the different categories of actors concerned: *professional consultancies* and *law firms* are asked to disclose the turnover linked to lobbying EU institutions and the relative weight (in round percentage figures) of their various clients in this turnover; 'in-house' lobbyists and business associations should indicate their estimated costs associated with the direct lobbying of EU bodies; NGOs and think-tanks should declare their overall budget and the breakdown of main sources of financing.

40. Apparently, the estimate of the cost of the lobby effort is deliberately left to registrants' own appreciation in a 'self-regulating mode'. This looks like pretty much toothless regulation, even if we consider lobbyists' arguments about a 'fundamental misconception that money equals influence' and 'commercial confidentiality'.

41. Commissioner Kallas had warned however that a failure of self-regulation and voluntary registration would inevitably lead towards mandatory registration with more stringent reporting requirements and penalties for non-disclosure.

42. A critical moment was reached in late August 2007 when the European Public Affairs Consultancies Association (EPACA), representing 38 major companies, announced that it would boycott the proposed European Commission's voluntary register which it labelled as "discriminatory and unworkable". It further claimed that a requirement to disclose "commercially sensitive financial information" (such as client fees) was in breach of EU competition law. Many law firms also said they opposed the register. Moreover, in July 2007, the European ombudsman officially reprimanded EU Trade Commissioner Peter Mandelson for his refusal to name the lobbyists he had met.

43. On 23 June 2008 the first European Commission lobby register was set up. The register requires organisations to indicate their objectives and missions and their main activities of interest representation and to provide financial information, so that the driving forces behind a lobbying effort become clear.

44. The register requires "organisations lobbying on behalf of third parties to indicate the names of their clients. When registering, interest representatives must sign up to a code of conduct which has been adopted by the European Commission." The code sets out the following general principles: "openness, honesty and integrity — which should guide the activities of interest representatives when they are dealing with the European Commission. The code also formulates seven clear rules of behaviour that interest representatives are expected to respect."

45. Clearly, the opening of a European Commission lobby register constitutes appreciable progress towards the standardisation of lobbying at European level, which makes it possible to strengthen the culture of dialogue and consultation with parties concerned, enhance transparency and improve the often negative image of lobbies in public opinion.

46. It is important to note that lobbies' views on the establishment of the register differ. While public affairs consultancies consider that NGOs have a steadily increasing impact on political decisions, NGOs themselves do not see themselves as lobbies.

47. It is also important to note that inclusion in the register is not compulsory, but optional. Those who are registered, however, will have the advantage of being able to take part in online consultations that the Commission organises, quite apart from the fact that inclusion of an organisation in the register can improve its image and credibility in the eyes of the public.

48. As for whether there should be a separate register for the European Parliament or a single register for the two institutions, Commissioner Kallas is pleased that the European Parliament has proposed "a joint working group to set up [the latter type of] register as soon as possible".

49. The Council of Europe's rules on relations with interest groups are not explicit. Relevant provisions are dispersed in a number of internal staff regulations and the Statute (Articles 36, 40, as well as the Statutory Resolution (51) 30 as regards relation with intergovernmental and non-governmental international organisations) or codified in several texts adopted by the organs of the Organisation (the Committee of Ministers and the Parliamentary Assembly).

50. The Rapporteur welcomes in particular the adoption by the Assembly of Resolution 1554 (2007) on "Conflict of interests" of Assembly members. We should also single out the Committee of Ministers' Resolutions (2003) 8 and 9, respectively on "Participatory status for international non-governmental organisations with the Council of Europe" and on "Status of partnership between the Council of Europe and national non-governmental organisations".

IV. The experience of certain member States of the Council of Europe[8]

51. In Germany, lobbying tends to be perceived as a somewhat opaque process whereby improper influence on policy making is sought. Therefore relations between government and private actors (such as businesses, churches or trade unions) are almost never referred to as lobbying. The

German Bundestag is among the few parliaments in the EU that has specific rules on the registration of lobbyists.

52. Each year interest groups wishing to approach parliament and/or the federal government in order to defend their views must register by submitting information on their name, headquarters, composition of the board of management and directors, field of interest, number of members and names and addresses of their representatives, but no financial information is requested for registration purposes.

53. Moreover, as the register is limited to trade unions and professional organisations, various individual corporations that might lobby do not have to register. The register is published online and the whole procedure is overseen by the President of the Bundestag. When registered, interest representatives have access to buildings and may participate in the preparation of federal legislation (but cannot be heard by parliamentary committees).

54. At the same time, the parliament can invite organisations that are not on the register to provide information on an ad hoc basis and makes it quite clear that consultation with interest groups, especially professional associations, is an essential part of the legislative process. As this consultation might take place at a very early stage (once a first draft bill is prepared by civil servants), interest representatives may learn about a bill being prepared even sooner than parliamentarians themselves and thus influence the initial draft proposals. In addition to rules on registration, the Basic Law of the country specifies that federal ministries should only co-operate with national federations and representative organisations.

55. There are also several relevant codes of conduct for the executive, parliamentarians and civil servants that require the reporting of various gifts, travel expenses, any additional income, campaign and party fundraising, as well as membership in external bodies. Several country-wide lobbyist entities, such as the Deutsche Gesellschaft für Politikberatung (German Association of Political Consultants) and the Deutsche Public Relations Gesellschaft (German Public Relations Society), have their own voluntary codes of conduct to which all their members are encouraged to adhere. Each of the 16 German Länder has own rules on lobbying which are largely similar to those of the federal level.

56. In France, there have been numerous recent initiatives to make lobbying more transparent, and even to regulate it by passing a law. A motion for a resolution designed to amend the French National Assembly's rules of procedure has been tabled in the Assembly.

57. Lobbying has very negative connotations in France. London's campaign to be allowed to host the 2012 Olympic Games and the reactions of the media and politicians showed that public opinion still had a very negative image of lobbying, even though nobody contested the legitimacy of the vote of the members of the International Olympic Committee.

58. On 16 January 2008 the National Assembly Committee on Economic Affairs, the Environment and Regional Affairs examined an information report on lobbying, the main proposals of which are as follows:

- promote properly conceived lobbying in France;

- adopt a definition of lobbying;
- draw up a code of ethics setting out a number of rules concerning lobbies' attitudes;
- set up a parliamentary register of lobbies;
- organise consultations with lobbies before legislation is discussed;
- publish a directory of parliamentarians according to specialisation.

59. Since 1991, there has been a French association of lobbying and public affairs consultancies (Association française des conseils en lobbying et affaires publiques - AFCL) covering the main consultancies operating in France. The AFCL has a code of ethics for its members.

60. On 9 October 2008, 18 trade unions and associations appealed to the French National Assembly for a law clarifying the links between elected representatives and lobbies.

61. In Poland, debate on lobbying regulations took place against the background of widespread public mistrust of state institutions and the way democracy worked. Public opinion surveys revealed that a majority of Poles associated lobbying and interest representation with corruption, illegal campaign financing, a favouritism and opaque decision making. In response and as part of the EU accession process, the Polish Parliament took regulatory steps in July 2005 by adopting the Act on Lobbying in the Legislative Process which came to supplement the existing general rules regarding access to documents, consultation procedures, conflict of interests, asset declaration, internal control mechanisms in public administration, public procurement and the like.

62. The act sets out framework rules of the game for lobbyists, their supervision, register (of professional lobbyists) and sanctions for violating the act's provisions. Under the act, lobbying is defined as any activities pursued by any legally permissible means and aimed at exerting influence on public authorities involved in the legislative process. The Council of Ministers is requested to publish its legislative work programme with information on draft bills, aims pursued and solutions sought, institutions and officials involved and any documents relating to work on the draft bills in question.

63. The act also introduces the institution of a public hearing as a means of consulting stakeholders throughout the legislative process. The register of professional lobbyists was designed to contain, amongst other things, accounts on lobbyists' activities for preceding years and information on the staff of parliamentary clubs.

64. Although Polish lobbyists are still in the early phase of organisation, there is an association of professional lobbyists in Poland (Stowarzyszenie Profesjonalnych Lobbystów w Polsce – SPLP) which developed a code of professional ethics towards the self-regulation of its members. However we should also note that the Act on Lobbying is not sufficiently explicit on the role and duties of non-professional lobbyists such as business associations or NGOs.

65. Lobbying in the United Kingdom has a long tradition. It is estimated to be worth about £ 1.9 billion and employ some 14,000 people. This activity has grown significantly in the last decade and continues to evolve in a self-regulatory system headed by the Association of Professional Political

Consultants (APPC) and the Public Relations Consultants Association (PRCA) that group only professional lobbyists. Both associations maintain membership directories and have codes of conduct. Member organisations are requested to list the names of their clients and their consultancy staff but there is no incentive to register and experts say that companies will only register and disclose information in full if it is in their commercial interest to do so.

66. The political establishment of the United Kingdom has been shaken up in the last two years by the so-called 'sale of peerages' scandal concerning the connection between political donations and peerages. As, in accordance with the electoral law, even small sums donated to a political party have to be declared as a matter of public record, several politicians have been accused of circumventing the law after they offered substantial undeclared contributions in the form of loans (even for an indefinite duration) in exchange for nominations for a life peerage.

67. As a result, in June 2007 the British Public Administration Select Committee launched an investigation into the lobbying industry. The inquiry seeks to address "the transparency of the lobbying industry, the effectiveness of recent attempts at self-regulation, and whether the rules for those in Parliament and government should be changed".

68. On 22 May 2008, Mr Michael Meacher, Member of the House of Commons and former United Kingdom Environment Minister, tabled an Early Day Motion (EDM)[9] calling for transparency in lobbying, which was signed by over 130 members of parliament, including 10 members of the United Kingdom delegation to the Assembly.

69. The motion's signatories expressed concern about the transparency of lobbying. They are convinced that greater transparency in lobbies' relations with members of parliament is needed to restore public trust in Parliament. Accordingly, they suggest setting up a register of individuals and organisations involved in lobbying and the introduction of an enforceable code of ethics for members of parliament and civil servants.

70. In November 2008, the British Public Administration Select Committee and the Alliance for Lobbying Transparency organised a hearing on lobbying in the House of Commons. The participants raised the following issues: the need for greater lobbying transparency, particularly in the case of lobbying by big business; the need to introduce a lobby register in the House of Commons; the trend in certain countries towards the regulation of lobbying, including regulation by law; and lobbying by trade unions, NGOs and other organisations.

71. Then, in January 2009, a Sunday Times investigation revealed that four members of the House of Lords were proposed to accept fees to amend laws on behalf of business clients, in clear breach of the "no paid advocacy" rules which stipulate that no member may accept a financial inducement as an incentive or reward for exerting parliamentary influence.

72. In Hungary, Parliament passed a Lobbying Act in September 2006 to regulate the impact of the activities of various pressure groups on governance. The Act describes lobbying as a paid activity designed to influence government policy or legislation. It sets up a register, and registration is compulsory for individuals engaged in lobbying but voluntary for lobbying organisations.

73. Every three months lobbyists must submit a report listing the Executive's decisions that were the target of their efforts, the means used, the names of civil servants or persons in positions of responsibility they contacted and the names of their employers.

74. Sanctions vary, from being struck off the register for a period of one to three years to a fine of up to € 40,000. There are very few reports of meetings, however, because both lobbyists and those being lobbied agree not to report them.

75. The term "lobbying" has negative connotations, which is why many lobbying organisations do not consider themselves as such.

76. In 2001, having set up a Central Ethics Committee, Lithuania introduced a lobby register. It is compulsory to register in order to have the right to lobby. Information about lobbies is available in the supplement to the government's Official Gazette, "Vastybes Zinios".

77. In 2003 and 2006, Parliament amended the Lobbying Act several times to also include non-profit-making lobbying organisations. The amended Act governs all types of lobbying.

V. General conclusions

78. The rapporteur is convinced that, in a democratic society, citizens are entitled to know the identity of the lobbying organisations which influence political decision-making and voting by members of parliament. Greater transparency of lobbying activities can make political players even more accountable and restore public confidence in government authorities' democratic functioning. This transparency is an effective means of combating the risk of a loss of trust in politics and in democracy.

79. It can be seen that at both national level, within Council of Europe member states, and European level, within the European institutions, lobbying has become a necessary and virtually day-to-day activity, which is in full expansion. This inevitably requires regulation. With the European unification process and EU enlargement a strong increase in lobbying activities has also been observed in both Brussels and Strasbourg.

80. The rapporteur has noted that both the United States and Canada have taken steps to regulate lobbying activities. The member states of the Council of Europe can draw many interesting lessons from these two countries' lawmaking experience in this field and the problems encountered in applying their legislation. However, there is no single solution to all the questions raised by lobbying activities, which are not always comparable.

81. Attention can be drawn to the following principles that apply to the regulation of lobbying activities in the United States and Canada:

- public reporting in matters of lobbying;
- the categories of lobbyists;
- the obligation to register;

● the content of obligatory disclosures;

● the principle of potential conflicts of interest and the two-year ban on performing lobbying activities after leaving office.82

82. It is clear that greater transparency regarding lobbyists' identities and activities could increase public confidence in politicians' integrity. In this connection, it can be pointed out that an opinion poll conducted in the United States showed that nearly 90% of Americans consider that Washington has a serious political corruption problem. It is probably not by chance that one of the very first measures taken by the new US President Barack Obama on 21 January 2009, just after his investiture, concerned the problem of lobbying in the US government.

83. As for the European Union and other European institutions, with the successive waves of enlargement, Brussels has become a governance and decision-making hub. Nowadays, it is estimated that over 15,000 special-interest groups are active in Brussels, more than 2,600 of which have their own offices there and perform lobbying activities with regard to the EU institutions.

84. It can also be noted that the European Parliament was the first European institution to decide to regulate lobbying of its members. A lobbyists register has been created and a code of ethics has been introduced, with which lobbyists are expected to comply. However, this code is rather general in nature and lays down minimal standards which are hard to measure and to supervise. In the event of a breach of the code of ethics, the only sanction that can be taken against a lobbyist is withdrawal of his/her pass, which is a very rare occurrence.

85. It can consequently be seen that, compared with the rules in force in the United States and Canada, the European Parliament's requirements are relatively lax. On the other hand, the European Commission has made considerable progress in its work on the regulation of lobbying. On 23 June 2008 it opened a first register of European lobbyists. The rapporteur considers that the introduction of this register is an important step since it allows a standardisation of these activities at European level, reinforces the culture of dialogue and consultation, enhances transparency and will also in the long run improve lobbyist negative public image.

86. As regards Council of Europe member states, surveys have shown that 14 countries have, in one way or another, either regulated lobbying or begun to discuss the issue within their parliaments. In view of the diversity of the member states' experience, the different states of progress of the work in this area and the US and Canadian wealth of experience in this field, the rapporteur is convinced that the Council of Europe could propose to its member states that consideration be given to drawing up a European code of good practice in lobbying matters based on the following principles:

● adopting a very clear definition of lobbying;

● enhancing transparency in the field of lobbying;

● laying down rules applicable to political officials, civil servants, members of pressure groups and business undertakings;

● setting up registers of all persons involved in lobbying activities;

● holding prior consultations with lobbying organisations on any proposed legislation in this field;

● encouraging well-defined, transparent, honest lobbying which could raise the public profile of persons involved in these activities.

87. Citizens have a democratic right of access to political decision-makers so as to provide them with information and attempt to influence their decisions. However, this access or this lobbying possibility must be fair and equal, completely transparent and governed by clear, democratic rules. If citizens do not believe that they can have a real influence on political decision-makers, democracy may be undermined.

88. In recent decades we have seen a dramatic decline in public confidence in politics in many Council of Europe member states. The dearth of transparency in political lobbying activities can be deemed to constitute one of the causes of this.

Appendix 1

Table showing the regulation of lobbying in certain

Council of Europe member states

Country	Regulation	Distinctive features
Austria	No	Economic interest groups such as employers' organisations and trade unions have a significant input into the making of law in the context of the "social partnership". They are consulted during the law-making process.
Denmark	No	"Unwritten traditions" are respected. Interest groups must be registered with the committee they lobby and may address a standing committee.
France	No	On 16 January 2008 the Economic Affairs, Environment and Regional Affairs Committee of the National Assembly examined an information report on lobbying. On 9 October 2008, 18 trade unions and associations appealed to the National Assembly for a law clarifying the links between elected representatives and lobbies.
Germany	Yes	The German parliament is one of the few parliaments in Council of Europe member states to have specific rules on the registration of lobbies. There is a register for trade unions, professional organisations and individual companies.
Greece	No	The concept of lobbying does not exist in Greek law.
Hungary	Yes	A Lobbying Act setting up a register was passed in September 2006 with the creation of a register.
Ireland	No	There is a code of good practice.

Italy	No	There were attempts to introduce legislation in the 1980s, and there is now pressure to introduce a register of lobbies.
Lithuania	Yes	A law setting up a register of lobbies was passed in 2001.
Luxembourg	No	The Chamber of Deputies, a parliamentary committee or members of parliament may hear lobbies on their own initiative or at the latter's request.
Netherlands	No	Lobbies may obtain passes providing access to Parliament, which are valid for between one day and one year. They may contact members of parliament, attend meetings and consult documents.
Georgia	Yes	A law requiring professional lobbies to register was passed in 1998.
United Kingdom	No	On 22 May 2008 Mr Michael Meacher, Member of the House of Commons and former United Kingdom Environment Minister, tabled an Early Day Motion (EDM) calling for transparency in lobbying, which was signed by over 130 members of parliament. On 5 November 2008 the British Public Administration Select Committee and the Alliance for Lobbying Transparency organised a hearing on lobbying in the House of Commons.
Poland	Yes	In 2005 Poland passed a law setting out framework rules governing lobbying, its supervision, the registration of professional lobbies and sanctions in the event of an infringement of the law.

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Members of the committee: Mr Márton Braun (Chairperson), Mr **Robert Walter** (1st Vice-Chairperson), Mrs Doris Barnett (2nd Vice-Chairperson), Mrs Antigoni Papadopoulos (3rd Vice-Chairperson), MM. **Ruhi Açikgöz**, Ulrich Adam, **Pedro Agramunt Font de Mora**, Roberto Antonione, Robert Arrigo, Viorel Riceard Badea (alternate: Mr **Traian Constantin Igaş),** Zigmantas Balčytis, Mrs Veronika Bellmann, MM Radu Mircea Berceanu, Vidar Bjørnstad, Luuk Blom (alternate : Mr **Tuur Elzinga)**, Mrs Maryvonne Blondin, MM. Predrag Bošković, **Patrick Breen**, **Erol Aslan Cebeci,** Lord David Chidgey, Mrs **Elvira Cortajarena Iturrioz,** MM. Valeriu Cosarciuc, Joan Albert Farré Santuré, Relu Fenechiu, Guiorgui Gabashvili, Marco Gatti, Zahari Georgiev, **Paolo Giaretta,** Francis Grignon, Mrs Arlette Grosskost, Mrs Azra Hadžiahmetović, Mrs Karin Hakl, MM. Norbert Haupert, Stanisław Huskowski, Ivan Nikolaev Ivanov, Igor Ivanovski, Čedomir Jovanović, Mrs Nastaša Jovanović, MM. **Antti Kaikkonen**, Oskars Kastēns, **Emmanouil Kefaloyiannis,** Serhiy Klyuev, **Albrecht Konečný**, Bronisław Korfanty (alternate: Mr **Piotr Wach**), Anatoliy Korobeynikov, **Ertuğrul Kumcuoğlu**, Bob Laxton, Harald Leibrecht, Mrs **Anna Lilliehöök,** MM. Arthur Loepfe, Denis MacShane, Yevhen Marmazov, Jean-Pierre Masseret, **Miloš**

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*N.B.: The names of the members who took part in the meeting are printed **in bold***

Secretariat to the committee: Mr Newman, Mr de Buyer, Mr Chahbazian, Mr Pfaadt.

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[1] Amounts are adjusted to inflation every four years since 1997.

[2] Members and elected officers of Congress; any employee of, or any person working in the capacity of (but not volunteers or contractors) a Member of Congress, a committee, leadership staff, or a working group or caucus; and a senior employee of the Clerk of the House or Secretary of the Senate.

[3] Contributions to political parties must be reported separately under the Canada Elections Act.

[4] Grass-roots lobbying is understood as appeals to the public through mass media or direct communication to persuade them to communicate directly with a public official in order to pressure him/her to endorse a particular opinion.

[5] They comprise the following: European trade federations (32%), consultants (20%), companies (13%), NGOs (11%), national associations (10%), regional representations (6%), international organisations (5%) and think tanks (1%).

[6] Valid maximum one year.

[7] A Green Paper on the European Transparency Initiative was published in May 2006 and public consultation ended in August 2006.

[8] Appendix 1, Table showing the regulation of lobbying in certain Council of Europe member states.

[9] An EDM is a formal motion tabled in the House of Commons. Very few EDMs are currently debated in Parliament. Such motions are generally used by members of parliament to make their views known on various issues and events.