



Strasbourg, 22 March 2016

EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

(CDCJ)

Draft recommendation
of the Committee of Ministers to member states
on the legal regulation of lobbying activities
in the context of public decision-making

**Draft text submitted to key actors
among civil society, business and public bodies**

for comment by Friday 29 April 2016
to the Secretariat of CDCJ (DGI-CDCJ@coe.int)

When sending your comment, please indicate the following:

Member State or entity:

Name:

Job title:

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

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

B. Considering that promoting the adoption of common rules in legal matters can contribute to the achievement of the aforementioned aim,

C. Considering that the right to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe,

D. Recognising that increasing transparency and accountability in lobbying can strengthen public confidence in political systems,

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

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

G. Recognising that regulating lobbying activities shall not prevent the consideration of technical advice or individual opinions in the process of public decision-making,

H. Recognising that the European Court of Human Rights has established a right of access to information as an inherent part of the right to freedom of expression protected by Article 10 of the European Convention on Human Rights,

I. Bearing in mind the Criminal Law Convention on Corruption (ETS No. 173), the Civil Law Convention on Corruption (ETS No. 174), Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, and the work of the Group of States against Corruption (GRECO),

J. Bearing in mind the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the principles on protecting personal data therein contained,

K. Recalling Recommendation 1908 (2010) of the Parliamentary Assembly – reiterated by Resolution 1744 (2010) and Recommendation 2019 (2013) – in which the Assembly recommends that the Committee of Ministers of the Council of Europe elaborate a European code of good conduct on lobbying,

L. Taking note of the OECD's "Recommendation of the Council on Principles for Transparency and Integrity in Lobbying",

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

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

O. Bearing in mind that any national lobbying regulation has to comply with national constitutional law,

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

Recommends that governments of member States establish or further strengthen, as the case may be, a coherent and comprehensive framework for the legal regulation of lobbying activities in the context of public decision-making in accordance with the principles contained in the appendix hereto and in the light of their own national circumstances.

Appendix to Recommendation

Principles with the aim of guiding member States in developing policy at the national level to regulate lobbying.

Definitions

For the purposes of this recommendation and its principles:

- a) “Lobbying” means promoting specific interests by communication with a public official as part of a structured and organized action aimed at influencing public decision-making.
- b) “Lobbyist” means any natural or legal person who engages in lobbying activities.
- c) “Public decision-making” means decision-making within the legislative and executive branches, whether at national, regional or local level.
- d) “Public official” means any person exercising a public function, whether elected, employed or otherwise, in the legislative or the executive branches.
- e) “Legal regulation” means statutory regulation, a system of self-regulation or a combination of both.

A. Objective

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

B. Scope

- 2. Lobbying activities by at least the following categories should be subject to legal regulation:
 - a. Consultant lobbyists acting on behalf of a third party;
 - b. In-house lobbyists acting on behalf of their employer;
 - c. Organisations or bodies representing professional or other sectoral interests.
- 3. Exemptions to the legal regulation of lobbying should be clearly defined and justified.

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

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

D. Transparency

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

6. The rules on disclosure should be proportionate to the importance of the subject matter of the public decision-making process and should reflect constitutional guarantees.

E. Public registers of lobbyists

7. A register of lobbyists should be maintained by public authorities.

8. Information held in the register should be of a declaratory character. Lobbyists should be responsible for ensuring the information is accurate and up to date.

9. The register should be easily accessible and user-friendly. It should be available online with easy to use search facilities, open to the public and consultation should be free of charge.

10. The processing of personal data from the register should comply with applicable standards on personal data protection.

11. Information held in the register should include as a minimum:

- a. Lobbyist identification and contact data;
- b. The fields of activity and interests represented or promoted by the lobbyist, and, where applicable, the identity of clients or employer.

12. In order to further promote transparency, registers might include additional information in accordance with national conditions and requirements.

13. In the case where a member State can demonstrate that alternative mechanisms guarantee public access to information on lobbying activities and ensure equivalent levels of accessibility and transparency, it may be considered that the requirement for a public register is satisfied.

F. Standards on ethical behaviour for lobbyists

14. Lobbyists should be guided by the principles of openness, transparency, honesty and integrity. In particular, they should be expected to:

- a. Provide accurate and correct information on the lobbying assignment to the targeted public official;
- b. Act honestly and in good faith in relation to the lobbying assignment and in all contacts with public officials;
- c. Refrain from undue and improper influence over public officials and the public decision-making process;
- d. Avoid conflicts of interest.

G. Sanctions

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

H. Standards on ethical behaviour for public officials

16. Appropriate measures tailored to national circumstances should complement the legal regulation of lobbying in order to avoid risks to public sector integrity that may be created by lobbying activities.

17. These measures may include:

- a. "Cooling-off" periods that establish a period of time that has to elapse before either a public official may become a lobbyist after leaving public employment or office, or a lobbyist may become a public official after ceasing his or her lobbying activities;
- b. Guidance to public officials on their relations with lobbyists, including:
 - How to respond to communications from lobbyists;
 - Reporting violations of the legal regulation of lobbying activities;
 - Disclosing conflicts of interest;
 - Refusing or disclosing the receipt of gifts and hospitality offered by a lobbyist.

I. Oversight, advice and awareness

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

19. Oversight may include the following tasks:

- a. Monitoring compliance with the regulations;
- b. Providing guidance to lobbyists and public officials on the application of the regulations;
- c. Raising awareness amongst lobbyists, public officials and the public.

J. Review

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