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REPORT

**ON THE ROLE
OF EXTRA-INSTITUTIONAL ACTORS
IN THE DEMOCRATIC SYSTEM
(LOBBYING)**

**Adopted by the Venice Commission
at its 94th Plenary Session
(Venice, 8-9 March 2013)**

on the basis of comments by

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I. INTRODUCTION

1. On 23 June 2010, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1744 (2010) on “Extra-institutional actors in the democratic system”. The Resolution underlined the potentially beneficial role of extra-institutional actors’ participation in the political process, as an expression of political pluralism, but also noted with concern the risks involved for democracy.

2. The Resolution considered that “the influence of extra-institutional actors on political decision making needs further examination” and invited the Venice Commission to study the issue, in particular with regard to:

*“20.1. the scale of the involvement of extra-institutional actors in the political process in the Council of Europe member States, as well as at the international level;
20.2. the impact of these actors on the functioning of democratic institutions and on the legitimacy of the democratic political process;
20.3. the existing legal framework for such activities in the Council of Europe member States and the appropriateness of taking additional standard-setting measures at national and European levels.”*

3. On this basis the Venice Commission decided to undertake a study on “the role of extra-institutional actors in a democratic system”, in order to provide the Parliamentary Assembly with an analysis which could assist it in reconsidering the issue on the basis of the findings of the Venice Commission, as foreseen in §21 of its Resolution 1744 (2010).

4. The present report was drawn up on the basis of comments from Co-Rapporteurs Mrs Haller and Mrs Peters, Mr Haenel and Mr Maiani, of the contribution by Dr Raj Chari acting as expert (CDL-DEM (2011 002) and of an outline prepared by Mr van Dijk (CDL-DEM (2011)001).

5. Preliminary discussions on earlier drafts took place in the Sub-Commission on Democratic Institutions on 24 March and 12 June 2011 and 13 December 2012. The present report was adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013).

A. Background Information

6. The Parliamentary Assembly’s Resolution on “Extra-institutional actors in the democratic system” must be put into a larger context, namely the concern about the loss of confidence of citizens in State and political institutions. The declining level of interest and involvement in politics by the population within country members of the Council of Europe combined with an increasing level of the activities of different interest groups constitute an additional source of concern.

7. In a previous Resolution 1908 (2010), on “Lobbying in a democratic society (European code of good conduct on lobbying)”, adopted by the Assembly on 26 April 2010, the Parliamentary Assembly has also recommended that the Committee of Ministers of the Council of Europe elaborate a European code of good conduct on lobbying.

8. The Committee of Ministers shared the Assembly's view that, while it is legitimate for interest groups to organise themselves in society and take action aimed at furthering their interests, it is also important to ensure in the same time that lobbying activities do not undermine democratic principles and good governance. It further decided to follow-up to the

Assembly's Recommendation to draw up a European code of conduct on lobbying, in the light of the conclusions of 2010 Forum for the Future of Democracy and the findings of the current study of the Venice Commission.

9. The present report has taken into consideration this background and related expectations when defining its purpose and scope.

B. Scope and structure of the study

10. This report seeks to analyse the phenomenon of extra-institutional actors' participation in national democratic systems in light of democratic standards. After delimitating the notion of lobbying for the purpose of the report, describing its modalities and the scale of involvement of lobbying actors in the political process, the report intends to assess lobbying activities against democratic standards. The report further proposes a reflection on the opportunities and risks of lobbying for the functioning of democratic institutions. By examining and evaluating the existing legal systems of lobbying regulation, the report finally intends to provide an overview of possible strategies to strengthen the democracy-supportive role of extra-institutional actors in a democratic society.

11. Safeguarding and enhancing the functioning of a real and pluralist democratic system of legislation and administration while enabling expression and promotion of diverse views and interests constitute the main perspective of this analysis.

II. THE CONCEPT OF LOBBYING

A. Definition of lobbying

12. Lobbying can be broadly defined as “the oral or written communication” by private individuals or groups, each with varying and specific interests, “with a public official to influence legislation, policy or administrative decisions”¹. The attempt to influence may or may not be successful – it is the act of private actors attempting to influence public actors that is essential.

13. To further refine this definition, and thus distinguish lobbying from activities that do not raise the same concerns and are rather an integral part of the representative or institutional process, two additional specifications may be usefully apposed:

(a) lobbying is carried out by an “extra-institutional” actor, i.e. an entity or person who is not, in doing so, exerting public authority or fulfilling a constitutional mandate. This criterion can exclude or include the activities of the same person or entity depending on the context. A professional order may be exerting public authority when it discusses deontological regulation (and thus, can potentially be lobbied), but it is lobbying when a bill affecting the profession is pending before government or Parliament and it aims to influence that decision, in the absence of a formal advisory role. Economic and social councils, which have been created throughout Europe and all over the world², usually exercise such a formal advisory role and, whatever their composition, do not engage in “lobbying” as defined here. Political parties may be private, “extra-institutional” actors strictly speaking, but generally they have a constitutional mandate to help in articulating the public interest (see e.g. art. 21 German *Grundgesetz*; art. 49 Italian Constitution; art. 11 Polish Constitution). Their role in formulating policy that is then debated in public decision-making bodies does not fall under the definition of “lobbying”, but constitutes the expression of representative democracy.

¹ The OECD, Recommendation of the Council on Principles for Transparency and Integrity in Lobbying of 18 Feb. 2010 – C (2010)16.

² See the International Association of Economic and Social Councils and similar institutions <http://www.aicesis.org/spip.php?page=index&lang=en>

(b) lobbying usually involves the lobbyists receiving directly or indirectly consideration for their services to attempt to influence political decisions, i.e. pursuing this activity on a “professional” basis. This criterion is intended to exclude from the definition of lobbying forms of participatory democracy such as petitions to Parliament or the actions of everyday citizens who may seek to discuss matters of importance with their representatives.

14. Based on this definition, this report uses the terms “interest groups”, “lobbyists” and “extra-institutional actors” interchangeably. The European Commission’s register has listed the main categories of extra-institutional actors/interest groups/lobbyists as follows³: professional consultancies, law firms, in-house corporate lobbyists (lobbyists that work in businesses and industries), professional associations, trade unions, NGOs and organizations (such as human rights groups and environmental protection groups), think tanks, academic organizations, representatives of religious organizations. All such actors are relevant for the purpose of the report, in that they share the abovementioned features of being extra-institutional actors who aim to influence policy, on a professional basis, without thereby executing a constitutional mandate. It should be underscored that including them all, in their diversity, under the definition of “lobbyists” does not imply any value-judgment as to their respective activities and contributions to democratic life.

15. As for the ‘targets’ of “lobbying” – that is, those who are lobbied – these include politicians and civil servants and the concerned public institutions. The potential “lobbying” of the judiciary will be left out of scope of this study as the principle of independence and impartiality of the judiciary is dealt with by other regulation that is not ‘lobbying regulation’ *per se* as discussed later in the report. Donations to political parties as a form of lobbying will also be left out of the scope of the report, since this issue is dealt with in other adopted texts of the Venice Commission⁴.

B. Lobbying modalities and scale of involvement

16. Lobbyists may seek to influence political decisions by way of many means. This may include, but is not limited to, the following: direct communication with both politicians and civil servants (either inside or outside institutional premises); offering advice or presentations to officials, either on an *ad hoc* or regular basis ; giving draft reports to public officials wherein specific details of policy itself are drafted; pursuing informal contacts with individual politicians or civil servants branches, including having simple telephone conversations with such personnel; formal, or invited, consultation through institutionalised channels; participation in hearings, such as Parliamentary committees; participation in a delegation or conference; solicited or unsolicited sending of information or documents to politicians and civil servants. By contrast, it would be overstretching the concept of lobbying given in para. 12 to also include attempts to influence policy *via* open participation in public discourse (interviews, *communiqués*, dissemination of position papers and/or reports, etc.).

17. In terms of scale of involvement, it is well established that, in all democratic political systems, lobby groups exert a strong influence when public policy is formulated and political decisions are made⁵.

³ This categorization has been followed by Chari R. and D. O’Donovan. 2011. ‘Lobbying the European Commission: Open or Secret?’ *Socialism and Democracy*, Vol. 25/2: 104-124.

⁴ See Code of Good Practice in the field of Political Parties, CDL-AD (2009)002, §38 ff.

⁵ See, for example, Dahl, R. 1961. *Who Governs?* Yale University Press; Baumgartner, F. R., and B. L. Leech. 2001. ‘Interest Niches and Policy Bandwagons: Patterns of Interest Group Involvement in National Politics.’ *The Journal of Politics*, 63(4): 1191-1212; Baumgartner, F., J. Berry, H. Hojnacki and D. Kimball, 2009. *Lobbying and Policy Change*. Chicago: University of Chicago Press; Chari, R. Murphy, G. and Hogan, J. 2007. ‘Regulating Lobbyists: A Comparative Analysis of the USA, Canada, Germany and the European Union’ *The Political Quarterly*, 78(3): 422-438.

18. The size and number of lobby groups that are active in any political system will vary according to countries. Their presence and role today in all political systems has become ubiquitous. One would expect that the more pluralist democracies, which are open to several competing interests, having the opportunity to influence policy-making, would see relatively more interest groups functioning than those political systems which have been traditionally defined as corporatists⁶.

III. DEMOCRATIC STANDARDS AND LOBBYING

19. Within the Council of Europe, models and conceptions of democracy vary widely, and such variations undoubtedly have a decisive influence on the way in which lobbying is regarded. In a schematic manner, one can identify two ideal-types at the opposite ends of the spectrum:

(1) The model of democracy built around the idea of the *intérêt général* resulting not (only) from the clash of partly irreconcilable individual interests, but being a (surplus) added value that is only achievable if citizens and their organizations participating in the political process transcend (at least partly) sectorial interests in light of the interests of society as a whole. This model, which stems from the French Revolution, assumes that not only the parliamentarians and members of the Government hold a public function, but also citizens as citizens taking part in the public debate do so.

(2) The more “competitive” model of democracy in which the common good (*bonum commune*) or general interest is viewed as the sum of competing private (individual) interests. To extend the reference to the French Revolution, the “citoyen” side of the citizen is hence largely replaced by its “bourgeois” side.

20. The former understanding suggests a tighter regulation of lobbying. Indeed, the democratic process should ensure that the participation of citizens and of their organizations to the general interest is not undermined and/or prevented by lobbying. The latter understanding tends more towards a “laissez faire” approach to lobbying, in the sense that democracy can be, more or less, reduced to a well - organized lobbying.

21. No Council of Europe member State is only built on one of these two extremes, that reflect either two ideal-types. On the contrary, States’ traditions, stemming from their specific history put them at various points of this axis. The great diversity of Member States’ political traditions and the absence of common standards addressing lobbying specifically, and lobbying regulation, indicate that this is a matter on which States enjoy a broad discretion.⁷

22. The European Convention of Human Rights (ECHR) and the case-law of the Strasbourg Court do not directly address lobbying as defined in the previous section. Nevertheless, they do delineate a normative framework that is relevant when considering the opportunities and risks, and possible regulation, of lobbying activities. The most immediately relevant constitutional standards are the democratic principle as a core legal value of the Council of Europe, pluralism as a legal element of the European Convention scheme, as well as freedom of expression and of association as fundamental rights. Furthermore, the Council of Europe has adopted recommendations that ought to be taken into account when considering lobbying regulation.

⁶ See, for example, Schmitter, P. 1974. “Still the Century of Corporatism” *Review of Politics* Vol. 36 No. 1 (January); Chari R. Hogan, J, and Murphy G. 2010. *Regulating Lobbying: A Global Comparison*. Manchester: Manchester University Press, Chapter 4.

⁷ All the more so since the European Court of Human Rights recognises the States’ margin of discretion even in matters related to core democratic rights: see ECtHR (GC), 6.10.2005, *Hirst v. United Kingdom*, , No. 74025/01, para. 60.

A. Lobbying and the ECHR

1. The democratic principle and pluralism

23. The ECHR and the Court's case-law require member States to establish and maintain an "effective political democracy".⁸ The Convention guarantees an individual right to participate in free and fair elections (Art. 3 Additional Protocol to the Convention 1)⁹ which encompasses a subjective right to have central elements of the democratic process respected.¹⁰ Also, the Convention allows restrictions of fundamental rights, but only to the extent that this is "necessary in a democratic society".¹¹

24. As noted above, the ECtHR has not yet dealt directly with lobbying. From its case-law, the following statements can be drawn which are relevant as a legal standard for the regulation of lobbying activities:

- The Court has repeatedly stated that democracy constitutes a "fundamental feature of the European public order" and that there is "a very clear connection between the Convention and democracy".¹²

-The Court holds "that the Convention was designed to maintain and promote the ideals and values of a democratic society".¹³ The democratic system of governance is the only model of governance compatible with the Convention.¹⁴

25. Lobbying activities are, *inter alia*, manifestations of pluralism. The Court has repeatedly held that "there can be no democracy without pluralism".¹⁵ Pluralism, in this context, does not only refer to tolerance towards, and the free interplay of, a plurality of opinions, political tendencies, and interests. It also implies a political process that ensures, alongside rule by majority, the "fair and proper treatment of minorities" – a term that the Court appears to use in its broadest term – and "avoid[ance] of any abuse of a dominant position"¹⁶. Arguably, this implies that the political process allows some room for the voicing of affected interests beyond the formation of political majorities. But in order to secure genuine pluralism, regulation must guarantee transparency and safeguards to prevent a distortion of influences. Against the background of the existing case-law, such regulation, which constitutes limitations of the fundamental rights of free speech and freedom of association (see below),

⁸ Preamble: "... Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an *effective political democracy* and on the other by a common understanding and observance of the human rights upon which they depend" (emphasis added). In the case-law ECtHR, *United Communist Party of Turkey and others v. Turkey*, 30.1.1998, No. 19392/92 (dissolution of a political party), para. 45; ECtHR, *Ahmed and others v. United Kingdom*, 2.9.1998, No. 22954/93, para. 52.

⁹ Art. 3 AP 1: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

¹⁰ ECtHR (GC), *Hirst v. United Kingdom*, 6.10.2005, No. 74025/01, paras 57-58.

¹¹ See paragraphs 2 of Articles 8, 9, 10 and 11 ECHR.

¹² ECtHR, *United Communist Party of Turkey and Others v. Turkey*, 30.1.1998, No. 19392/92 (dissolution of a political party), para. 45; ECHR (Grand Chamber), *Gorzelik et al. v. Poland*, 17.2.2004, No. 44158/98 (rejection of the application for registration of an association considering itself an "organization of the Silesian national minority"), para. 88.

¹³ ECtHR, *United Communist Party of Turkey and Others v. Turkey*, 30.1.1998, No. 19392/92 (dissolution of a political party), para. 45; ECtHR (Grand Chamber), *Gorzelik et al. v. Poland*, 17.2.2004, No. 44158/98 (rejection of the application for registration of an association considering itself an "organization of the Silesian national minority"), para. 88; ECtHR (Grand Chamber), *Gorzelik et al. v. Poland*, 17.2.2004, No. 44158/98, para. 89.

¹⁴ ECtHR (Grand Chamber), *Gorzelik et al. v. Poland*, 17.2.2004, No. 44158/98, para. 89; ECtHR, *United Communist Party of Turkey and Others v. Turkey*, 30.1.1998, No. 19392/92.

¹⁵ ECtHR (Grand Chamber), *Refah Partisi and others. v. Turkey*, 13.2.2003, No. 41340/98, para. 89; ECtHR (Grand Chamber), *Socialist Party and others. v. Turkey*, 25.5.1998, No. 21237/93 (dissolution of a political party by the Constitutional Court), para. 41; ECtHR, *Freedom and Democracy Party v. Turkey*, 8.12.1999, No. 23885/94 (dissolution of a political party), para. 37.

¹⁶ ECtHR (Grand Chamber), *Gorzelik et al. v. Poland*, 17.2.2004, No. 44158/98, para. 90.

is permitted to the extent that it pursues the legitimate aim to safeguard democracy, and as long as it is proportionate to reach this objective.¹⁷

26. The Court emphasized that “[i]n view of the very clear link between the Convention and democracy [...], no one must be authorised to rely on the Convention’s provisions in order to weaken or destroy the ideals and values of a democratic society. Pluralism and democracy are based on a compromise that *requires various concessions* by individuals or groups of individuals, who must sometimes agree to *limit some of the freedoms they enjoy (...)*”.¹⁸ Importantly, a State may enact regulation with the legitimate aim to “ensure that the effectiveness of the system of local political democracy was not diminished through the corrosion of the political neutrality of certain categories of officers,”¹⁹ and to “protect the rights of others, council members and the electorate alike, to effective political democracy”.²⁰ Because, as will be shown, lobbyists might damage the democratic rights of (other) citizens and “effective political democracy”, lobbying regulation is legitimate - from the standpoint of this case-law - in order to protect democracy as long as it is proportionate and does not unduly limit the lobbyists’ democratic rights.

2. Freedom of association and freedom of expression

27. Freedom of association and freedom of expression as guaranteed by Article 10 and 11 ECHR, are of special importance in connection with pluralism. Concerning Article 11, the Court has noted that, while political parties play an “essential” role for pluralism and democracy, associations “formed for other purposes, including those [...] pursuing various socio-economic aims, are also important”.²¹ In this perspective, “where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively”.²² Article 10 ECHR guarantees *inter alia* the right to receive and impart information and ideas without interference from public authorities. To the extent that it entails such activities, lobbying falls under the protection of Article 10. It is apposite to note here that the intensity of this protection varies depending on the type of “speech” at issue, whether it is more “commercial” or more “political”²³. Advocacy for (e.g.) human rights may thus conceivably attract a stronger protection than lobbying for the interests of a particular economic actor, without prejudice to applicability, in both cases, of the notions of “lobbying” and “lobbyist” (see above, para. 12-14). It should be noted that the guarantees of Article 10 and 11 are closely connected: “given that the implementation of the principle of pluralism is impossible without an association being able to express freely its ideas and opinions, the Court has also recognised that the protection of opinions and the freedom of expression within the meaning of Article 10 of the Convention is one of the objectives of the freedom of association”.²⁴

28. Both provisions are directly relevant to the issue of lobbying. Groups and associations involved in lobbying do benefit from Article 11 – to the extent that they qualify as “associations” under its terms. Furthermore, the various modalities of lobbying detailed above consist of receiving and imparting information and ideas as per Article 10 ECHR.

¹⁷ ECtHR, *Ahmed et al. v. United Kingdom*, 2.9.1998, No. 22954/93, para. 52 et seq. (on restriction of the political activities of certain local government officials).

¹⁸ ECtHR (Grand Chamber), *Refah Partisi and others. v. Turkey*, 13.2.2003, No. 41340/98, para. 99 (emphasis added).

¹⁹ ECtHR, *Ahmed et al. v. United Kingdom*, 2.9.1998, No. 22954/93, para. 53.

²⁰ ECtHR, *Ahmed et al. v. United Kingdom*, 2.9.1998, No. 22954/93, para. 54.

²¹ ECtHR, *Gorzelik and others v. Poland and [GC]*, 17.02.2004, No. 44158/98, para. 92.

²² *Ibidem*.

²³ See eg. ECtHR *Mouvement Raëlien v. Switzerland*, 13.07.2012, No. 16354/06, para.61.

²⁴ *Ibidem*, para. 91.

29. This does not mean that the ECHR and Strasbourg case-law recognize a “right to lobby” as such. The primary focus of Article 11 is to protect the creation, continuing existence, and autonomy of associations from undue interference from the State²⁵. Furthermore, the case-law relating to Article 10 does not (yet) recognize a general right of access to administrative data and documents, still less a general right of interested parties and civil society organizations to be involved in public decision-making processes.

30. That said, Articles 10 and 11 do have implications for the participation of extra-institutional actors in decision-making processes.

31. On the one hand, impediments placed by States on the lawful activities that are necessary to attain the statutory goals of associations need to be justified. More specifically, the Court has found that some “explanation” was needed for “restrictions on the possibility of associations to distribute propaganda and lobby authorities with their ideas and aims [...]” - thus implying that such activities should, in principle, be open to associations.²⁶ Special principles apply to trade unions, which are explicitly mentioned in Article 11. According to the Court, trade unions are entitled under Article 11 to “protect the occupational rights” of their members and thus – to the extent that this is required for this purpose – “to be heard” by the State organs acting as employers.²⁷

32. Likewise, the Court’s case-law on Article 10 is gradually moving “towards the recognition of a right of access to information”, which is instrumental to the dialogue between civil society at large and political authorities – and has indeed recognized such a right, at least insofar as access to “information of general interest” by an NGO playing a “social watchdog” role similar to that of the press was concerned.²⁸

33. Last but not least, the Court’s case-law recognizes specific “participatory” rights for certain kinds of decision-making procedures – although not on the basis of Article 10 ECHR, but rather as a procedural implication of other fundamental rights that might be affected by public decisions.²⁹

B. Lobbying and Council of Europe guidelines

34. Building on the legal foundations laid down in the Convention, the Council of Europe institutions have developed a rich body of practice concerning the involvement of extra-institutional actors in public deliberations.

35. The Council of Europe has itself engaged in dialogue with international NGOs by according them participatory status³⁰. As for standard-setting, special mention must be made of Recommendation CM/Rec(2007)14 of the Committee of Ministers on the legal status of non-governmental organisations in Europe. This document lays down a set of minimum standards concerning the creation, organisation, management and legal status of NGOs. It also addresses their participation in decision-making in the following terms:

²⁵ See Venice Commission’s Compilation on Freedom of Association CDL (2012)080.

²⁶ ECtHR, *Koretskyy and others v. Ukraine*, 3.4.2008, No. 40269/02, para. 52.

²⁷ ECtHR, *National Union of Belgian Police v. Belgium*, 27.10.1975, No. 4464/70 para. 39. It should be noted that on this occasion, the Court distinguished this right from a right of trade unions to be “consulted” by State organs acting as employers, expressly rejecting the thesis that such a right could flow from Art. 11.

²⁸ ECtHR, *Sdružení Jihočeské Matky v. Czech Republic*, No.19101/03, decision on admissibility of 10.7. 2006, pp. 9-10; ECtHR, *Társaság a Szabadságjogokért v. Hungary*, 14.4.2009, No. 37374/05, paras 26-28 and paras 35-36; Venice Commission, Opinion on Act CXII of 2011 on Informational Self-Determination and Freedom of Information (Hungary), CDL-AD(2012)023, § 57. See also, in more decisive terms, HRC, *General Comment No. 34*, CCPR/C/GC/34, 21.7.2011, § 18 ff ; Inter-American Court of Human Rights, *Case of Claude-Reyes et al. v. Chile*, 19.9.2006, §77.

²⁹ ECtHR, *Hatton and others v. United Kingdom*, [GC], No. 3602/97, 08.07.2003, para. 128.

³⁰ See CM/Res(2003)8 and the Resolutions on the “consultative status” of INGOs that preceded it.

“76. *Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people’s opinions as to the functioning of society. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.*”

36. The aspect of participation has been further elaborated upon by the Code of Good Practice on Civil Participation in the Decision-Making Process³¹, whose aim is to define at European level a set of general principles, guidelines, tools and mechanisms for the involvement of civil society organisations in the political decision-making process. This document, adopted by the Conference of INGO³²s on 1 October 2009, has been endorsed by the Committee of Ministers “as a reference document for the Council of Europe and as a basis for a possible further development of the framework for the empowerment of citizens to be involved in conducting public affairs in European countries”³³.

37. Throughout their adopted texts, the institutions of the Council of Europe have articulated a predominantly positive view of civil society organisations’ involvement in public affairs. The “*existence of an active civil society and its non-governmental organisations*” is consistently characterized as an integral part – even an “*important and indispensable element*” – of the model of pluralist democracy promoted by the Council of Europe³⁴. In this perspective, NGOs are seen as an expression of pluralism, as promoters of increased democratic participation in times of citizen disaffection, and as promoters of accountability and transparency in times of dwindling trust in political institutions³⁵. Their involvement in public affairs is also considered as beneficial insofar as it increases decision-makers’ “*sensitivity to public opinion*” and allows them to benefit from expert knowledge that would otherwise not be available to them³⁶.

38. It should be stressed that such positive connotations are most often attributed not to extra-institutional actors at large, but to NGOs in particular³⁷. The tone is markedly less positive when it comes to “interest groups” or “lobbies”. In relation to these, the Parliamentary Assembly and the Committee of Ministers have had to say that “*it is*” – in principle – “*perfectly legitimate for members of society to organise and lobby for their interests*”, but that at the same time unregulated such activities carry the risk of undermining democratic principles³⁸.

39. It is however extremely difficult to operate clear-cut analytical distinctions between “NGOs” and “lobbyists”. CM/Rec(2007)14 defines NGOs as voluntary, self-governing, non-profit organisations. This definition excludes actors such as commercial corporations directly lobbying for their interests, and it does include e.g. charities, voluntary groups, and the like. But it also includes entities whose purpose it is to promote the interests (including economic interests) of its members, such as professional associations³⁹. More generally, no criterion offers itself to distinguish accurately between the positively connotated “NGOs” and negatively connotated “lobbies”, however defined: both come under the protection of the same human rights guarantees, although as noted the degree of protection may vary in

³¹ See http://www.CouncilofEurope.int/t/ngo/Source/Code_English_final.pdf

³² The Conference of INGOs of the Council of Europe refers to the the Council of Europe’s statutory relations with NGOs through the INGOs holding participatory status.

³³ Declaration by the Committee of Ministers on the Code of Good Practice for Civil Participation in the Decision-Making Process, 21 October 2009.

³⁴ See e.g. CM/Res (2003)8, preamble.

³⁵ See in particular CM/Rec (2007)14, preamble.

³⁶ See e.g. CM/Res (2003)8, Preamble, as well as the Explanatory memorandum to CM/Rec (2007)14, CM(2007)78 addendum 2, §135 ff.

³⁷ See however PACE Resolution 1744 (2010), § 7, referring in the broadest sense to “extra-institutional actors” (§ 4 ff).

³⁸ PACE Resolution 1908 (2010), § 1 and 2, and reply from the Committee of Ministers, § 2. See also § 11.1 of the Resolution, where the Assembly insists that lobbying should be very clearly defined and distinguished from the activities of civil society organisations.

³⁹ CM/Rec (2007)14, §1-4 ; see Explanatory memorandum, cit., §32.

relation to the kind of “speech” they are engaged in (see above, section A and particularly para. 27); both are involved in the same activity, i.e. “lobbying”⁴⁰; both raise in principle – as extra-institutional actors attempting to influence political decisions – the same structural concerns regarding the functioning of democracy⁴¹.

40. Such concerns have been expressed, in particular, by the Parliamentary Assembly. The Assembly has been careful to distinguish the participation of extra-institutional actors, whatever its benefits to democracy, from what it regards as the “core” of the democratic process: parliamentary democracy, supported by free and fair elections ensuring representativeness, (political) pluralism, and the equality of citizens⁴². While it has consistently encouraged parties and political institutions to open to NGOs, it has stressed that there should be no confusion of roles, and that the involvement of extra-institutional actors must not be allowed to undermine transparency and accountability, to distort the will of the people, or to endanger the democratic equality of citizen⁴³.

41. To sum up, the model of pluralist democracy contemplated by the ECHR, and more broadly by the Council of Europe *acquis* in the field of democracy, is *a priori* favourable to the involvement of civil society in the conduct of public affairs; the guarantees of Articles 10 and 11 ECHR – though not recognizing a fully-fledged “right to lobby” – do enshrine key, albeit fragmentary, guarantees in that regard; and non-binding Council of Europe documents emphasize the “essential contribution” of NGOs to the realisation of pluralist democracy, postulating their active involvement in public affairs.

42. That said, it also emerges clearly from ECHR case-law that lobbying is not an unmitigated good, and that States have a wide margin of discretion in taking measures – even measures having considerable impact on human rights – to prevent the political process from being “tainted by undue pressure or inappropriate lobbying, or even by straightforward corruption”.⁴⁴ Free speech and free association can be limited for the protection of democracy if it “harm[s] democracy itself”.⁴⁵ Likewise, Council of Europe adopted texts emphasise that the participation of extra-institutional actors in the political process carries both opportunities and risks, and that it can be beneficial only “under some conditions”⁴⁶.

C. Opportunities and risks of lobbying for democracy

43. As noted above, lobbying can be seen as enhancing the democratic system by contributing to pluralism. It assists both in balancing interests and representing minorities. The participation of private actors in the policy making process in their field of interests can be viewed as indispensable, as it allows individuals or groups who may not otherwise be able to participate in politics to have a role in the policy process. For example, a citizen organization concerned about human rights may seek to lobby the State to pursue tougher laws regarding abuses of such rights.

44. This has the concomitant effect of enhancing citizen’s involvement, confidence and trust in State and political institutions if these institutions are receptive to demands and concerns of such citizen organizations.

⁴⁰ Even the abovementioned Code of Good Practice on Civil Participation, which treats at the outset NGOs as distinct from “lobbies” (section I, p. 3), then routinely includes “lobbying” among their activities (e.g. at p. 9).

⁴¹ See in particular PACE Resolution 1744 (2010), § 9.

⁴² See in particular PACE Resolution 1908 (2010), § B i) and v); PACE Resolution 1908 (2010), § 6. See also Lawrence PRATCHETT and Vivien LOWNDES, *Developing Democracy – An Analytical Summary of the Council of Europe’s acquis*, Council of Europe, 2004, p. 46 ff.

⁴³ See in particular PACE Resolution 1908 (2010), § 7; PACE Resolution 1744 (2010), § 8 ff. In relation to “lobbying”, PACE Recommendation 1908 (2010), § 2 and 10.

⁴⁴ ECtHR, *Wypych v. Poland*, 25.10.2005, No. 2428/05.

⁴⁵ ECtHR, *Freedom and Democracy Party v. Turkey*, 8.12.1999, No. 23885/94 (dissolution of a political party), para. 41.

⁴⁶ PACE Resolution 1744 (2010), § 7.

45. Another positive aspect is that interest groups offer external information and bring in external expertise when public policies are being formulated. Given the complexity of contemporary regulation, the technical information or expertise provided for by extra-institutional actors can be seen as helping inform policy-makers of different policy choices. Lobbying is then regarded as adding legitimacy and credibility to policy choices.

46. However, it is also important to note that expertise and external information is not confined to lobbyists. Expertise can likewise be provided by independent groups, ad-hoc commissions which would be financed by public funds or by the regular participation in public life (in the framework of conferences, meetings and auditions) of any private body, be it an enterprise, an association or trade unions.

47. Whilst one may consider the expertise provided by external actors as an asset, on the other hand, one must bear in mind that the information provided by any sectorial group entails the risk of being partial. Experts of a specific economic sector may limit their advices to the specific interests of their client. These actors can even support diametrically contradictory point of views, which indicates that their arguments cannot be considered as neutral expertise. It is the task of the political process itself to resolve such conflicts of special interests.

48. Hence, the external information or expertise provided by lobbyist raises more generally the issue of the relationship between democracy and expertise. It is important to emphasize that expertise cannot replace democracy. This can be illustrated by the role of the citizen in a democratic society compared with the role of the lobbyist. The lobbyist deals only with a specialized area, while the citizen in a general point of view must take all political issues into consideration. The holder of a public mandate can and should ask for opinions of experts; but in the end, he/she must weigh the arguments and arbitrate from a general point of view.

49. Finally, even though the participation of private actors in the policy making process in their field of interests can be viewed as indispensable for public policy decisions, the involvement of extra-institutional actors in decision-making processes can also be merely regarded as a matter of good administration rather than as an essential component of democracy. Voters are ultimately the essential elements of the democratic process. In this perspective, it is up to the voters to sanction, with their votes, undesired decisions or policies, whether these have been taken after a simple consultation or under the influence of lobbies.

50. Apart from this aspect, some activities of extra-institutional actors aimed at influencing political decision may raise further concerns with regard to legitimacy, representativeness, transparency and accountability, which are fundamental principles of democracy.

51. One important reason for concern is that lobbyists are not elected officials. Despite their potential influence in decision making process, their economical weight, they do not represent the whole society and hence cannot pretend representing the interests of the citizens or of the society as a whole. Compared to the officials elected in universal suffrage and fair and free elections they are not representatives of the citizens and therefore lack legitimacy and representativeness.

52. Lobbyists are not accountable for their actions when seeking to influence public policy whereas elected politicians are accountable for their actions when in office and can be voted out of office. However, in political systems without lobbying laws, this principle of accountability might be significantly weakened by the fact that citizens are not aware with which lobbyists that politician have met, who is lobbying who and why. Citizens may hence feel they cannot sanction politicians by voting them out when they are concerned about their receptiveness to lobbyists. This impact on the principle and level of accountability may in turn feed the public's increasing cynicism of politics which the public deems to lack legitimacy. Lobbying activities further lead to lack of transparency in the political system.

53. Another main problem is the very unequal means and resources of different actors. This may become a source of concern since resources do matter. It is usually the case that lobbyists with the 'most money' to dedicate to their lobbying activities (such as hiring staff, renting an office in the region they are lobbying, having conferences to explain their policy positions, etc.) are usually the ones that are able to exercise relatively more and sustained political pressure. In other words, the playing field is not even.

54. In addition, the revolving doors' practice (in the form of easy and quick moves of persons from private employment to public office or from public offices to private companies) increases the opportunity for private companies to activate their network of former collaborators once those have become public policy makers or increases the concerns on the integrity of governmental decisions that are made by public officials seeking to leave government service for private employment. These practices risk to create a pernicious conflict of interest, understood as a situation in which public officials have private-capacity interests 'which could improperly influence the performance of their duties.'⁴⁷ Such conflicts typically arise from personal or professional relations with extra-institutional actors. Hence, the line between a normal and an offensive participation or pressure of economically or /and strategically powerful private companies or actors in public policies can be difficult to draw.

55. Finally, lobbying may even cross the line to criminal behaviour in form of bribery and other acts of criminal corruption. The Council of Europe has developed a number of multifaceted legal instruments dealing with matters such as the criminalisation of corruption in the public and private sectors (Criminal Law Convention on Corruption ETS 173 and Additional Protocol ETS 191)⁴⁸, liability and compensation for damage caused by corruption (Civil Law Convention on Corruption ETS 174)⁴⁹, conduct of public officials (Recommendation R (200)10, Model Code of Conduct for Public Officials)⁵⁰. These instruments are aimed at improving the capacity of States to fight corruption domestically as well as at international level. The monitoring of compliance with these standards is entrusted to the Group of States against Corruption (GRECO). Arguably, from this perspective, lobbying must be regulated fairly densely so as to allow all involved actors to clearly distinguish between legal lobbying and illegal corruption.

IV. LOBBYING REGULATION: ANALYSIS

A. The notion of regulation of lobbyists

56. One way to combat potential negative impacts of lobbying – particularly the concerns regarding accountability and transparency – is to regulate lobbyists' actions. Regulation here means a State-made legal framework of codified, formal rules that are passed by Parliament and which are enforced in order to guarantee transparency in policy-making. Any interest group that pursues lobbying activity in breach of these rules risks sanctions such as fines or even criminal sanctions.

57. Regulation in that sense is not mere self-regulation of interest groups based on their own professional standards, or voluntarily complying with suggestions made by the political system (as in the European Commission's register established in 2008, as well as the common register (Transparency Register) between the Commission and the EP established in 2011).

58. The importance of establishing lobbying regulation has been underlined by international organizations such as the OECD, which has openly called for more transparency and integrity in lobbying. In 2010, the OECD stated that lobbying regulation help promote 'open

⁴⁷ This is the canonical definition by OECD, Organisation for Economic Co-operation and Development (OECD), *Managing Conflict of Interest in the Public Sector: A Toolkit* (Paris: OECD, 2005), at 7.

⁴⁸ <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=173&CM=1&DF=&CL=FRE>

⁴⁹ <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=174&CM=1&DF=&CL=FRE>

⁵⁰ [http://www.coe.int/t/dghl/monitoring/greco/documents/Rec\(2000\)10_FR.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_FR.pdf)

government and a level playing field for businesses and stakeholders in developing and implementing public policies.⁵¹

B. Components of lobbying regulation

59. Existing lobbying regulation typically contains all or some of the following requirements and features: Lobbyists must register with the State before contact can be made with any public official. Lobbyists must clearly indicate which ministry/public actors the lobbyist intends to influence. Lobbyists must clearly outline individual and/or employer spending disclosures. There is a publicly available list with lobbyists details available for citizens to scrutinize. There is a lobbying supervisory authority that performs periodic audits and enforces the lobbying regulation, and sanctions lobbyists that do not register or give misinformation. This authority may also report to Parliament on a regular basis. The regulation must ensure that former public officials cannot immediately jump into the world of lobbying once they have left public office. This is referred to as a 'cooling off' period, or as 'revolving-door' provisions. Revolving-door provisions seek to avoid harmful conflict of interest, and seek to prevent that politicians can take inside information with them if they become lobbyists. Cooling off periods typically range from two to five years.

C. Goals and advantages associated with lobbying regulation

60. As noted, two main objectives of lobbying regulation are to ensure transparency of the political system and the accountability of political actors.

61. In the context of law and governance, transparency implies mechanisms which ensure that policy measures are "open to public scrutiny. Transparency includes making it clear who is taking the decisions, what the measures are, who is gaining from them and who is paying for them."⁵²

62. In the context of lobbying, transparency means that information is available to the public not only about government activity, its motives and objective, but also but also about private interests attempting to influence the State when public policy is formulated. A political system is transparent if such information is available to those who will be affected by governmental law-making, decisions and enforcement, and when the information is accessible, sufficient, and easily understandable.

63. Transparency in that sense is instrumental for securing accountability and for unveiling conflict of interest. Lobbying regulation seeks to contribute to transparency in that sense, because the requirement of lobbyist registration, and an obligation on lobbyists to disclose the identity of those on whose behalf action is being taken, sheds light on the identity and actions of those who lobby and those who are lobbied.

64. Transparency as brought about by lobbying regulation increases the political actors' accountability. Accountability is "a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences."⁵³ Accountability mechanisms in place do not only allow for ex post scrutiny of the law-making process by the public, but also have an ex ante effect of preventing misconduct by lawmakers and other office holders because they are aware of being held accountable.

⁵¹ OECD, Recommendation of the Council on Principles for Transparency and Integrity in Lobbying of 18 Feb. 2010 – C (2010)16, para. 7.

⁵² John BLACK/Hashimizade Nigar/Myles GARETH, "Transparent Policy Measures", in: *Oxford Dictionary of Economics*, 3rd ed. Oxford, 2009, at p. 458.

⁵³ See Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework.' *European Law Journal*13 (2007), 447-468, at 450.

65. Linked and partly overlapping with these two main points are a host of other advantages associated with lobbying rules, including: Preserving the democratic system and its integrity by levelling the playing field for various non-State actors. This need flows from the principle that citizens' should have not only formally equal votes in elections, but also equal political opportunities in fact. A second function of lobbying rules is to manage (as far as possible) the risk of public-sector conflict of interest which arises from the activities of extra-institutional actors.⁵⁴

66. Increasing citizen awareness of 'how politics works', can ultimately incite more political participation. Regulation can also promote and enhance the integrity of extra-institutional actors. Regulation enhances prevention of misconduct on the part of public officials. Probably, lobbying regulation can prevent the abuse of information by former politicians or civil servants once they have left office by imposing a 'cooling off' period on them. From the lobbyists perspective, having a lobbyist register allows them to see what other competitors and clients are doing. A lobbyist register allows politicians to openly state they are meeting with lobbyists, helping remove public perceptions that 'back-room' deals being done.

D. Drawbacks of setting-up lobbying regulation

67. Despite these benefits of lobbying rules, lobbying regulation implies drawbacks and disadvantages.

68. The main argument, which is even put forward by lobbyists themselves, against establishing lobbying regulation relates to costs to the political system and the society. Setting up a registry, hiring staff to monitor it and later enforcing the rules all cost significant amounts of money. Formulating and implementing the rules mean a loss of State funds that may otherwise be used for other purposes, which becomes especially important in economic recession time.

69. Overall, the advantages of (some) lobbying regulation have been recognized by international organizations such as the OECD, which has openly called for more transparency and integrity in lobbying. In early 2010, the OECD stated that lobbying regulation helps promote open government and a level playing field for businesses and stakeholders in developing and implementing public policies.⁵⁵

E. Implementation of lobbying regulation

70. The principal means by which States can ensure that the lobbying laws are in fact respected is to establish a lobbying supervisory authority. Examples of such bodies are found in the United States and in Canada. Both countries have well-staffed authorities who are independent from political (parliamentary) interference. This means that, although the lobbying supervisory authorities may have to report to Parliament on a regular basis, the Parliament itself cannot interfere when the lobbying supervisory authority makes decisions. Neither can Parliament remove officials of that lobbying supervisory authority if their investigations are counter to the desires of political parties or other partisan interests. A similar type of independence from parliament is granted to the "Chief Institutional Ethics

⁵⁴ See on this issue : Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique, Pour une nouvelle déontologie de la vie publique (rapport de la commission remis au Président de la République of 26 January 2011) ; Christoph Demmke, Mark Bovens, Thomas Henökland, Karlijn van Lierop van Lierop, Timo Moilanen, Gerolf Pikker and Ari Salminen, Regulating Conflicts of Interest for Holders of Public Office in the European Union. A Comparative Study of the Rules and Standards of Professional Ethics for the Holders of Public Office in the EU-27 and EU Institutions (Maastricht: European Institute of Public Administration, 2007); Anne Peters/Lukas Handschin (eds), Conflict of Interest in Global, Public, and Corporate Governance (Cambridge UP 2012).

⁵⁵ OECD, Recommendation of the Council on Principles for Transparency and Integrity in Lobbying of 18. Feb.2010 – C (2010)16, Principle I 1: '1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.'
http://www.oecd.org/document/62/0,3746,en_2649_34135_41878910_1_1_1_1,00.html

Commission” in Lithuania, even though that Commission does not have either comparable manpower or resources to their North American counterparts.

71. In some European States, however, one sees supervision and enforcement of lobbying regulation linked to ministries or performed by ministries themselves. For example, in Poland, the Ministry of Internal Affairs and Administration is tasked with maintaining the register of lobbyists. Also during the Hungarian experience with lobbying regulation⁵⁶, supervision was linked with the Central Office of Justice. In the case of the European Parliament (where lobbyists are granted access rights to the European Parliament for up to 12 months), authorities do not have the power to fully control lobbying, because lobbyists who seek to influence public officials outside of the confines of the EP are not required to register.

72. Furthermore, in some other European States, the control of lobbyists sought by regulation itself can be side-stepped as seen in Germany. In principle, lobbyists cannot be heard by a Parliamentary committee or be issued a pass admitting them to parliamentary buildings unless they are on the register. However, the Bundestag can also invite organisations that are not on the register to present information, effectively giving them special treatment. This in essence means that not being on the register is no real barrier to being in contact with Parliamentary committees or members of the Bundestag.

F. Types of regulatory systems and their effectiveness

73. So far⁵⁷, within the Council of Europe member States, ten countries have already introduced statutory rules on lobbying : Austria in 2012; France in 2009; Georgia in 1998; Germany through rules of procedure of the Bundestag in 1951, amended in 1975 and 1980; Hungary in 2006, repealed in 2011; Italy at the regional level in the Consiglio regionale della Toscana and in Regione Molise in 2004; Lithuania in 2001; Poland in 2005, Slovenia in 2010; “The former Yugoslav Republic of Macedonia” in 2008.

74. For a broader perspective it is useful to mention that the United States sees regulation in all of its 50 States, while Canada has regulation in six of its ten provinces. Israel has established rules in 2008. In the EU itself, the institutions which have rules are the EP since 1996 and the Commission, which went from a model of self-regulation to a voluntary register of interest representations in 2008. As from June 2011 a common registry (transparency register) between the Commission and EP has been constructed.

75. Several Council of Europe member countries are either drafting or considering implementing lobbying regulation: the Czech Republic, Croatia, Denmark (is contemplating the development of a registry), Ireland, Montenegro, Serbia, Ukraine and the United Kingdom.

76. The list of the existing legal framework in Council of Europe member States reveals different types of systems that can be theoretically classified and whose effectiveness can be assessed.

77. Based on a classification scheme developed by the Centre for Public Integrity⁵⁸, scores have been assigned to each State (with lobbying legislation), based on a survey concerning eight key areas of disclosure for lobbyists and the organisations that put them to work: definition of lobbyist, individual registration, individual spending disclosure employer spending disclosure, electronic filing, public access to a registry of lobbyists, enforcement, revolving door provisions (with a particular focus on ‘cooling off periods’).

⁵⁶ Legislation introduced in 2006 and repealed in 2011.

⁵⁷ Sources: Chari’s research April & May 2012, October & November 2011, January & April, 2011; Chari et al. 2010 op cit.; McGrath, C. 2008. ‘The Development and Regulation of Lobbying in the New Member States of the European Union’, *Journal of Public Affairs*, 8(1–2); Updated by Chari in December 2012.

⁵⁸ <http://www.publicintegrity.org/>

78. On the basis of scores and interviews concerning these areas, three broad types of categories of lobbying regulatory systems can be distinguished: low regulated systems, medium regulated systems, and highly regulated systems. Council of Europe member States have mainly launched low and medium regulated systems, whereas high regulatory systems can be found in the United States and Canada.

1. Low regulated system

a. Description

79. Low regulated systems can be found in Germany, the EP, the EU Commission's 2008 voluntary initiative, France and Poland. These systems have the following general characteristics: Rules on individual registration exist, but little details have to be given (such as in the case of the EP where lobbyists do not have to state which subject matter/bill/institution they are lobbying). The laws are applicable to legislative lobbyists, but the legal definition of lobbyist here does not comprise executive branch lobbyists. There are no rules on individual spending disclosure (i.e. a lobbyist is not required to file a spending report) or on employer spending disclosure (i.e. an employer of a lobbyist is not required to file a spending report). There is a weak system for on-line registration and registration includes having to do some form of 'paperwork.' Lobbyist lists are available to the public, but not all details are necessarily collected/given (such as spending reports by lobbyists). The competent institutions for applying and implementing the rules on lobbying have little enforcement capabilities. They may or may not be independent from government ministries. No cooling off period is mentioned in the legislation, which means that legislators/members of the executive can register as lobbyists immediately on leaving office.

b. Advantages

80. Low regulation at least provides for a minimum standard of registration for lobbyists. Independent monitoring agencies may exist. However, these are not really watching the behaviour of lobbyists to ensure they conform with the lobbying rules. Additionally, the bureaucratic burden for lobbyists is relatively light, and the maintenance of a register and the issuing of passes for lobbyists to enter into political institutions are not burdensome for the State either. Overall, the costs for the State in terms of setting up and entertaining such a system are relatively low.

c. Disadvantages

81. The disadvantage of low regulation is that it does not fully inform the public about what type of influence lobbyists have on politics. Lobbyists do not have to reveal whom they are lobbying, or what issue they are lobbying on. Accordingly, both transparency and accountability are less likely to be ensured in the low-regulated systems when compared to either medium or high regulatory systems. But there is more information – and thus transparency - available to the public on the political activity of lobbyists than in political systems that have no lobbying laws.

2. Medium regulated system

a. Description

82. Medium Regulated Systems are in Lithuania, Hungary (2006 legislation), Canada, several US States. The characteristics of this system include: Rules on individual registration exist and are relatively tighter than with low regulated systems (i.e. the lobbyist must generally state the subject matter/bill/governmental institution to be lobbied). In addition to legislative lobbyists, the definition of lobbyist does recognize executive branch lobbyists. Some, although not complete, regulation exists surrounding individual spending disclosures (such as gifts are prohibited). There is no regulation for employer spending reports (i.e. an employer of a lobbyist is not required to file a spending report). There is a robust system for

on-line registration. Public access to a lobbying register is available and updated at very frequent intervals, although spending disclosures are not in public domain. In theory, a State agency can conduct mandatory reviews/audits, although it is infrequent that the agency will prosecute violations of regulation given lack of resources and information. Finally, there is a cooling off period before legislators, having left office, can register as lobbyists.

b. Advantages

83. The main advantages of medium regulation systems are that they provide the public with access to a register of lobbyists, and those who are lobbied, by requiring lobbyists to provide information on whom they are lobbying within government, whether elected legislators, executives, or public officials. While more information must be provided to the central register compared to low-regulation systems, resulting in more work, once such a system has been set up, both lobbyists and administrators find it easy to deal with and quickly become accustomed to it. Online registration, which is clearly efficient and effective in some cases, requires little effort to use and update, without high maintenance costs. Some jurisdictions with medium level regulation can have offices as small as 5 people. In other words, costs to the State, while more burdensome than lower regulatory system, are relatively lower than that found generally in denser regulatory systems.

c. Disadvantages

84. The disadvantages of medium regulation include that lobbyists do not have to declare full details of who their employers are. Also, complete spending disclosures are not in the public domain. In that context, while the public can see who the lobbyist is, who is the lobbied, and what issue they are lobbying on, it cannot get a complete picture of those employing the lobbyist. In addition, medium regulation can clearly lead to loopholes within, through which lobbyists can for instance provide so-called 'free consultancy' to political parties.

3. Highly regulated system

a. Description

85. A highly regulated system can be found in the US; it is not seen in any European State (or within the EU institutional system). Characteristics of this type of system include that rules on individual registration exist and are the tightest (for example, not only is subject matter/institution required when registering, but the lobbyists must also State the name of all employees, notify almost immediately any changes in the registration, and must provide a picture). Similar to medium regulated systems, the definition of lobbyist does recognize executive branch lobbyists. In addition, tight individual spending disclosures are required, in stark contrast to both low and medium regulated systems. These include: a lobbyist must file a spending report, his/her salary must be reported. All spending must be accounted for and itemised. All people on whom money was spent must be identified; spending on household members of public officials must be reported. All campaign spending must be accounted for. Employer spending disclosure is also tight unlike other 'lowly regulated' or 'medium regulated' systems, an employer of a lobbyist is required to file a spending report and all salaries must be reported. A system for on-line registration exists. Public access to lobbying registry is available and updated at very frequent intervals, including spending disclosures, which are public (the latter of which is not found in the other two systems). State agencies can and do conduct mandatory reviews/audits, and there is a statutory penalty for late and incomplete filing of a lobbying registration form. There is a cooling off period before legislators, having left office, can register as lobbyists.

b. Advantages

86. This system offers the most comprehensive solution to ensuring that lobbyists cannot unduly influence elected representatives or public officials. Additionally, the requirement to disclose full details in all regards, particularly mandatory spending disclosures as well as significant reviews or audits of lobbyists by sizeable independent regulatory agencies, immune from government interference, further limits the potential for lobbyists to engage in illegal acts. The obvious benefit taking these two points together is increased transparency and accountability in the political system.

c. Disadvantages

87. Two main disadvantages of highly regulated systems can be observed. First, by adopting such comprehensive regulation, and what some may even consider to be a 'burden' on lobbyists (who have to file and update their profile regularly), governments could be accused of acting with undue zeal. Second, putting in place such a system comes with relative high financial cost compared to other types of systems.

88. In closing, it is important to underline that it is not within the scope of this report to evaluate which of the different types of regulatory systems described above are the 'best' for each State, at least from a normative point of view. This is something that each government in power has to evaluate, particularly by asking itself, 'what are the main goals and objectives we seek to gain by pursuing lobbying legislation' and 'what are the financial costs to the State that we are comfortable with when implementing such a law'?

89. However, given the principles and standards developed within and by the Council of Europe and other international organisational coupled with increasing demands from citizens seeking more transparency in politics, especially in the context of the financial and economic crisis, the regulation of lobbying activities seems more and more a suitable response both to enhance the positive aspects lying in lobbying and to counter the potential threats to the democratic process.

V. CONCLUSIONS

90. The presence and role of extra-institutional actors (lobbying) has become ubiquitous in all democracies. However, even though lobbying has become an important part of policy-making, voters are and remain the essential ultimate component of democratic life.

91. The ECHR, and more broadly the Council of Europe acquis in the field of democracy, is *a priori* favourable to the involvement of civil society in the conduct of public affairs. Non-binding Council of Europe documents emphasize the "essential contribution" of NGOs to the realisation of pluralist democracy, postulating their active involvement in public affairs.

92. The guarantees of Articles 10 and 11 ECHR, though not recognizing a fully-fledged "right to lobby", do enshrine key, albeit fragmentary, guarantees in this regard. This means that any lobbying regulation must not unduly curtail the fundamental rights of lobbyists which are involved. Any regulation must be proportionate to secure legitimate aims, notably the objective of preserving an effective democracy.

93. The participation of extra-institutional actors in the political process carries both opportunities and risks, and can be beneficial for the society only if a number of conditions are met.

94. As a contribution to pluralism, extra-institutional actors may be regarded as a way for improving the functioning of the democratic system. However, the actual activities of extra-institutional actors aimed at influencing political decision-making may raise concerns with

regard to legitimacy, representativeness, equality, transparency and accountability, which are fundamental principles of democracy.

95. Different types of systems' regulation have been adopted throughout Europe. This tendency seems to denote an increasing interest in effective regulation in this field. The two main objectives of that regulation are to ensure transparency of the political system and the accountability of political actors.

96. Against the international standards and principles, taken together with increasing demands by citizens who seek more transparency in politics, the regulation of lobbying activities seems indeed a suitable response both to strengthening the positive aspects lying in the role of extra-institutional actors and to countering the drawbacks if not threats to the democratic process that lobbying might entail.