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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

STUDY

**ON THE ROLE OF EXTRA-INSTITUTIONAL ACTORS
IN A DEMOCRATIC SYSTEM**

OUTLINE PROPOSAL

by

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THE ROLE OF EXTRA-INSTITUTIONAL ACTORS IN A DEMOCRATIC SYSTEM

1. Purpose and scope of the study

to examine and report on:

- the phenomenon of extra-institutional actors in national and international democratic systems;
- the scale of their involvement in the political process of the Council of Europe and its member States;
- their impact on the functioning of democratic institutions and on the legitimacy of democratic processes;
- the existing legal framework in Council of Europe member States;
- the desirability and feasibility of additional standard-setting at national and European levels (yes this is the aim).

All this in the perspective of safeguarding and enhancing the functioning of a real and pluralist democratic system of legislation and administration.

2. Definition of lobbying and corruption

Lobbying is defined as the act of non-public individuals or groups, each with varying and specific interests, attempting to influence decisions at the political level. The attempt to influence may take place by many means, including direct communications with government officials, presentation to state officials, draft reports to public officials, or even simple telephone conversations. Lobbying is a central and legitimate part of the democratic process within all liberal democratic systems. The term lobbying should *not* be confused with the term corruption.

Transparency International (TI) states that "Corruption is operationally defined as the abuse of entrusted power for private gain. TI further differentiates between "according to rule" corruption and "against the rule" corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, constitute the former. The latter, on the other hand, is a bribe paid to obtain services the bribe receiver is prohibited from providing."

(source: http://www.transparency.org/news_room/faq/corruption_faq#faqcorr1)

3. Definition of extra-institutional actors

Actors who do not stem from, or do not operate within, the traditional political institutions (parliaments, governments, judiciary, local representative and administrative bodies, and political parties) but exert an influence on the decision making of these institutions. These may include non-governmental institutions, persons and groups. They are engaged or try to engage in lobbying, *i.e.* action taken in an attempt to exert influence from outside on policy making, rule making and decision taking at the public level in the interest of the lobbyist or his client.

(N.B.: The study will focus on the national level of regulations).

4. Categories of extra-institutional actors the study focuses on

- economic interest groups or institutions (e.g. banking, business)
- professional interest groups (e.g. trade unions)
- professional consultancies
- religious organisations
- civil society groups (e.g. human rights groups; environmental protection groups)

5. Target groups the study focuses on

- politicians
- civil servants

(N.B.: the judiciary, although also facing corruption, will be left out of scope of this study. The principle of independence and impartiality of the judiciary is dealt with by other regulations).

6. Positive and negative aspects of lobbying

positive: enhances transparency of decision taking

- enhances the democratic system by contributing to pluralism
- enhances public interest and involvement in politics
- enhances citizens' confidence in state and political institutions
- enhances respect for ethical standards
- provide additional channels of oversight by the public
- build trust in public officials and institutions
- provides external information
- brings in external expertise
- enhances society support and legitimisation
- assist in balancing interests and representing minorities
- promote consensual planning ("polder model")

negative: decisions are not based upon their own merits

- negative impact on the authority of public institutions
- weakening the democratic process
- weakening the legitimacy of the decisions made
- weakening transparency and accountability
- lack of representative participation
- disturbing the balance of interests
- risk of biased information and misinformation
- risk of bribery and corruption

7. Modalities of lobbying

(N.B. these are not confined in institutional premises)

- formal consultation through institutionalised channels
- informal contacts with individual politicians or civil servants branches
- ad hoc involvement or on a regular basis

- involvement by invitation or on own initiative
- participation in hearings
- participation in a delegation
- conferences
- sending information or documents
- reporting in the media
- disguised lobbyist invited as an expert

8. Ways of facilitating lobbying

- providing lists of legislative and regulatory plans, and of important other action
- facilitating access to persons, buildings and information

9. Systems to regulate lobbying

- laws and regulations
- soft law , self regulation (voluntary code of conducts)
- registration of lobbyists
- information on financial interests and spending
- transparency of lobbyist and their interests
- verification of records of conduct
- accessibility of registers for the public
- periodic audits
- reporting by the lobbyists
- parliamentary control
- independent regulatory body with reporting obligation

These systems may, depending on their contents and scope, be lowly regulated, medium regulated and highly regulated systems

10. Selective admission of interest groups

In principle : Any attempt to influence

- only nation wide representatives of interests
- only "peak" associations
- only in the legislative process
- only registered lobbyists
- only professional lobbyists

11. Ways of promoting regulated and controled lobbying

- independent monitoring institution (at the constitutional level)
- formalisation of the process and of procedures
- transparency of the process and procedures
- institutionalised channels of lobbying
- special access and/or facilities
- special treatment in providing information

12. Goals and benefits of regulating lobbying

- transparency of policy and decision making
- accountability
- preserving the democratic system
- prevention of misconduct on the part of public officials
- setting up an integrity system in public institutions
- promoting, enhancing and controlling integrity of extra-institutional actors
- prevention of abuse of information by former politicians or civil servants once they have left office by way of 'cooling off' (revolving door) provisions in lobbying legislation
- purify politics
- prevent illegal or unethical behaviour of lobbyists
- prevent abuse of information to the detriment of others
- prevent donations and personal gifts
- curtailing bribery
- increasing public awareness of, and citizen participation in, politics

13. Possible measures

- further formalisation of process and procedures
- establishing legal and practical obstacles to illegitimate influence
- control of contacts (passes for entering buildings)
- sanctions: suspension, removal from the register, penalty, mobilization of shame, tort action

14. Effectiveness

See the method of analysis pursued by the Centre for Public Integrity, and its checklist:

- transparency; full disclosure
- accountability
- registration
- spending disclosure
- public access to a register
- enforcement
- "cooling off" period of former politicians and civil servants.