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URGENT OPINION ON DRAFT RULES GOVERNING THE ACTIVITY OF REPRESENTATION OF INTERESTS

Italy

This Opinion has benefited from contributions made by Marta Achler, Independent Expert and Drago Kos, Independent Expert.

Based on an unofficial English translation of the Rules governing the activity of representation of interests

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EXECUTIVE SUMMARY AND MAIN CONCERNS

At the outset, this Urgent Opinion welcomes the intention to adopt a law on lobbying in Italy. Such a law and many of the provisions of the draft are important tools in the fight against corruption and the transparency and integrity of public decision-making.

At the same time, the Draft Rules at hand would benefit from imposing regulations, throughout the Draft, not only on lobbyists but also on public decision-makers. This is paramount not only to closing loopholes for corruption and as such guaranteeing the efficiency of the Law but also to ensuring that it does not unduly infringe on political and public participation and the right to freedom of association.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further enhance the Draft Rules on Lobbying:

A. To find a more balanced and nuanced approach between the obligations of the State and its representatives ("public decision-makers") and the obligations of lobbyists – whether they are civil society organizations, companies or private persons. In particular, the Draft Rules on Lobbying (in Articles 1, 5 and 11 or elsewhere) should be framed in a way which develops rules of engagement also for public decision-makers, who should be primarily accountable to the public for decisions taken, and not only for those wishing to advocate or lobby their interests; [pars 13-16]

B. To mention in the Draft Rules on Lobbying that guidance, training and awareness-raising materials for lobbyists as well as public decision-makers should be developed; [par 17]

C. To revise Article 2 (1) (a) referring to meetings or other forms of contacts and to clarify that all the mentioned activities are covered regardless of whether they are conducted in person, in writing, or by use of any digital communication tool and to carefully draft legislation to ensure that not all advocacy and awareness-raising done by civil society organizations in the public domain is qualified as "indirect lobbying"; [pars 19-21]

D. To reconsider the definition of a public decision-maker in Article 2 (1) (d) in order to cover all public officials who may become targets of lobbying, offering a simple and comprehensive definition of public decision-makers at all levels and in line with international guidance documents; [pars 22-25]

E. To revise the Article 3 (1) (g), imposing requirements of transparency and accountability, as well as regulation defined by these Draft Rules with respect to meetings of a non-public nature; [pars 26-27]

F. To conceptualize the Code of Ethics as a guidance document specifying and exploring the provisions of the Rules and facilitating ethical behaviour of both lobbyists and public decision-makers in accordance with the law. It is advisable

for the Code of Ethics to refer where appropriate to the Draft Rules, the violation of which in turn may be subject to sanctions; [pars 34-36]

G. To ensure that appropriate and proportionate sanctions are imposed not only on the "interest representatives" but also on the interest holders, the public decision-makers [par 48].

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

TABLE OF CONTENTS

I. INTRODUCTION

1. By correspondence of 5 August 2021, the Chair of the Constitutional Affairs Committee requested ODIHR's assistance inter alia, in providing a legal opinion on the draft rules governing the activity of representation of interests (hereinafter: Draft Rules on Lobbying) to assess their compliance with OSCE human dimension commitments and international human rights standards. ODIHR responded to this request by letter of 6 August 2021 confirming the Office's readiness to prepare a legal analysis.
2. This Opinion was prepared in response to the above request. The document does not provide a detailed analysis of all the provisions of the Draft Rules on Lobbying but primarily focuses on issues of concern.
3. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.

II. SCOPE OF THE OPINION

4. The Urgent Opinion covers only the proposed draft. The Opinion raises key issues and provides indications of areas of concern. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.
5. This Urgent Opinion is based on an unofficial English translation of the Draft Rules on Lobbying, which is attached to this document as an Annex. Errors from translation may result. The Opinion is also available in Italian, however, the English version shall prevail.
6. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Italy in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards, Guidelines and OSCE Human Dimension Commitments

7. Regulation of lobbying activities exists in an intersection between safeguarding the right to freedom of association and the right to participation on the one hand and eliminating opportunities for corruption on the other. Lobbying is a legitimate act of political participation, an important means to foster pluralism and a tool, ultimately, to contribute to better decision-making in the public domain. It is also part of the larger definition of "advocacy" undertaken by civil society organizations and not-for-profit groups, or "activism" which is a response of the citizenry (individuals) to decisions of public authorities. However, unequal and non-transparent access to public decision-makers

have led to lobbying, at times, also being perceived as the influence of powerful interests over decision-making.[1]

8. As defined by Council of Europe Recommendation CM/Rec(2017)2, "lobbying" means promoting specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making.[2] As such it can also be a powerful tool for exercising the right to public and political participation. In this respect, Article 25 (a) of the International Covenant on Civil and Political Rights states that "[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives."[3] This article does not relate solely to elections and referenda but to any form of public and political participation. One such way to participate in public affairs and influence the political discourse and its outcome is through associations. Article 22 of the ICCPR guarantees the right to freedom of association as does Article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR").[4] What is more, the Human Rights Committee, in General Comment 25, states that "[c]itizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association."[5]

9. At the OSCE level, participating States have committed to "ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations" (Copenhagen Document, 1990)[6] and to the aim of "strengthening modalities for contact and exchanges of views between NGOs and relevant national authorities and governmental institutions" (Moscow Document, 1991).[7]

10. While recognised as one of the legitimate forms of advocacy, with a view to counter influence disproportionately exerted by financially or politically powerful groups and to ensure transparency, lobbying activities are at times subject to stringent regulations and need to be accompanied by strong requirements of transparency and integrity to ensure accountability and inclusiveness in decision-making.[8] However, the Recommendation of the Council of Europe Committee of Ministers to member States on the legal regulation

[1] See e.g. OECD "Lobbying" https://www.oecd.org/corruption/ethics/lobbying/; OECD "Integrity and Influence in Decision-Making" https://www.oecd.org/governance/ethics/influence/.

[2] Council of Europe Committee of Ministers Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making and explanatory memorandum (22 March 2017) available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680700a40.

[3] UN International Covenant on Civil and Political Rights (hereinafter "ICCPR"), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. Italy ratified the ICCPR on 15 September 1978.

[4] The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR"), signed on 4 November 1950, entered into force on 3 September 1953. Italy ratified the Convention on 26 October 1955.

[5] Par, 8, Human Rights Committee, General Comment 25 (57), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

[6] OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 5 June-29 July 1990), available at <http://www.osce.org/fr/odihr/elections/14304>.

[7] OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow, 10 September-4 October 1991), Available at < https://www.osce.org/fr/odihr/elections/14310 >.

[8] OECD (2010), Recommendation of the Council on Principles for Transparency and Integrity in Lobbying; Council of Europe standards on lobbying transparency, Recommendation CM/Rec(2017)2.

of lobbying activities in the context of public decision making states that "[l]egal regulation of lobbying activities should not, in any form or manner whatsoever, infringe the democratic right of individuals to:

a. express their opinions and petition public officials, bodies and institutions, whether individually or collectively;

b. campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively."[9]

11. On the anti-corruption side of the lobbying equation, the United Nations Convention against Corruption, even though it does not explicitly mention lobbying, gives the fundamental international framework for definitions of and the fight against corruption.[10] Pursuant to its Article 5 (1) each State Party is obliged to "develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability." The Council of Europe's Criminal Convention on Corruption is an equally standard-setting regional convention.[11]

12. Specifically related to the regulation of lobbying are the Organisation for Economic Co-operation and Development (OECD) Principles for Transparency and Integrity in Lobbying[12] and the UN Global Compact Report "Towards Responsible Lobbying".[13] The Council of Europe's Group of States against Corruption (GRECO) has examined lobbying regulations or the lack thereof in several of its Evaluation Rounds and has also made lobbying-specific recommendations to the Italian authorities which are referred to throughout the Urgent Opinion.[14] Further important work on carving out rules on transparent lobbying are developed by civil society organizations such as the "International Standards for Lobbying Regulation" developed by Transparency International and others.[15]

2. Analysis of the Draft Rules on Lobbying

2.1 General Comments regarding Obligations of Public Decision-Makers

13. It is welcomed that Italian lawmakers is considering Draft Rules on Lobbying. Initiating of such a law is in line with the view of GRECO which, in its 2016 Evaluation Report, recommended to further develop "the applicable rules on how members of Parliament

[9] See fn 2 above.

[10] UNGA Res 58/4, United Nations Convention against Corruption (hereinafter "UNCAC"), adopted 31 October 2003, entered into force 14 December 2005, GAOR 58th Session Supp 49 vol 1, 4. Italy ratified the UNCAC on 5 October 2009.

[11] Criminal Law Convention on Corruption, adopted on 27 January 1999, available at http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=173&CM=8&DF=2/20/2008&CL=ENG;

[12] https://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf

[13] UN Global Compact "Toward Responsible Lobbying –Leadership and Public Policy" (2005) available at https://www.unglobalcompact.org/library/254.

[14] Group of States against Corruption Prevention (GRECO), Evaluation Report Italy, Adopted by GRECO at its 73th Plenary Meeting (Strasbourg 17-21 October 2016), available at https://www.unodc.org/res/ji/import/international_standards/greco_eval_4/greco_eval_4.pdf

[15] Transparency International, Access Info Europe, Sunlight Foundation and Open Knowledge International "International Standards for Lobbying Regulation", available at https://lobbyingtransparency.net/standards/.

engage with lobbyists and other third parties who seek to influence the parliamentary process, including by developing detailed guidance on the matter and securing its effective monitoring and enforcement."[16]

14. According to Article 1, the Draft Rules aim to regulate "the activity of institutional relations for the representation of interests, meant as an activity that contributes to the making of public decisions, carried out by the representatives of special interests in observance of the relevant regulations, respecting the autonomy of the institutions and with an obligation of loyalty towards them". Further, the Draft Rules on Lobbying provides for certain transparency obligations and sanctions against lobbyists violating the proposed regulations (for example, Articles 5 and 11). However, contrary to the GRECO recommendation above, it falls short to offer guidance to and regulate actions of public decision-makers.

15. Article 1 is ambiguous as it states in Paragraph 2 that among the main objectives of the law is to "ensure the knowability of the activities of those who influence decision-making processes", "facilitate the identification of responsibility for decisions made", or "to allow public decision-makers to acquire a broader information basis upon which to make informed choices."

16. However, in order to ensure that lobbying regulation is as effective as possible, and to ensure that lobbying rules do not place an undue burden on the lobbyists, it is crucial that not only lobbyists as such are bound by its provisions, but also the addressees of the lobbying, the public decision-makers. The responsibility for transparency should be shared by the lobbyists and the public officials, but it is public officials who must be accountable to the public for decisions taken.[17] Subjecting only the lobbyists themselves to regulation does not address the problem in its entirety as loopholes and incentives for corruption remain. On the contrary, making lobbyists the sole addressees of lobbying regulations risks stifling political and public participation and unduly limiting freedom of association (see further above at pars 7-10 and below at par 21 and Recommendation C). Ensuring that both lobbyists and public decision-makers are covered by lobbying regulation has long been GRECO's approach, which it stated in the Fourth Evaluation Round on the United Kingdom: "[l]obbying involves the actions of both the person who lobbies and the public official who is lobbied. For the process to be properly beneficial, both sides of the process need to act appropriately with regard to one another."[18] Specifically regarding Italy, GRECO recommended that "additional measures should be taken to better focus on the parliamentarian side of the lobbying equation".[19] Also the OECD Principles for Transparency and Integrity in Lobbying state as Principle 7

[16] Recommendation v, Group of States against Corruption (GRECO) Corruption Prevention in Respect to Members of Parliament, Judges and Prosecutors, Evaluation Report Italy Adopted by GRECO at its 73th Plenary Meeting (Strasbourg 17-21 October 2016) https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dce15; see also Group of States against Corruption (GRECO) Corruption Prevention in Respect to Members of Parliament, Judges and Prosecutors, Second Compliance Report Italy Adopted by GRECO at its 87th Plenary Meeting (Strasbourg 22-25 March 2021) https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a1ea96

[17] TI International Standards for Lobbying Regulation, Lobbyingtransparency.pdf

[18] Evaluation Report on the United Kingdom, 6 March 2013, Greco Eval IV Rep (2012) 2E, paragraph 53, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca4de

[19] Group of States against Corruption (GRECO) Corruption Prevention in Respect to Members of Parliament, Judges and Prosecutors, Compliance Report Italy Adopted by GRECO at its 81th Plenary Meeting (Strasbourg 3-7 December 2018) https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809022a7;

"Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials."[20]

RECOMMENDATION A.

The Draft Rules on Lobbying would benefit from a more balanced and nuanced approach between the obligations of the State and its representatives ("public decision-makers") and the obligations of lobbyists – whether they are civil society organizations, companies or private persons. In particular, the Draft Rules (in Articles 1, 5 and 11 or elsewhere) should be framed in a way which develops rules of engagement also for public decision-makers and not only for those wishing to advocate or lobby their interests.

17. One issue that is crucial for any regulation on lobbying but is missing in the Draft Rules at hand are provisions on how to train lobbyists and public decision makers on the content of the Draft Rules and raise awareness amongst the groups in question. Without foreseeing such capacity building and awareness raising tools, the Draft Rules and the values they are based on are at risk of not being widely understood, adhered to or enforced.[21]

RECOMMENDATION B.

It is recommended to mention in the Draft Rules on Lobbying that guidance, training and awareness-raising materials for lobbyists as well as public decision-makers should be developed.

2.2 Subject-Matter and Objectives (Article 1 Rules on Lobbying)

18. Article 1 (2) lists the principles of lobbying: publicity, democratic participation, transparency and knowability of decision-making processes. International lobbying guidelines usually mention transparency and integrity of lobbying, as well as diversity of participation and contribution to public decision-making. Although the listed objectives of lobbying are given in a comprehensive manner, which also entails several elements of integrity**, the provision might be further enhanced by specifically mentioning "integrity" and "accountability" among the principles of lobbying. "Integrity" could furthermore replace "loyalty" in Paragraph 1 (as well as in Article 2 (a).**

[20] OECD Principles for Transparency and Integrity in Lobbying, Principle 7.

[21] See e.g. Recommendation vi and pars 80 82, Group of States against Corruption (GRECO) Corruption Prevention in Respect to Members of Parliament, Judges and Prosecutors, Evaluation Report Italy Adopted by GRECO at its 73th Plenary Meeting (Strasbourg 17-21 October 2016) https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dce15; OECD Lobbying in the 21st Century – Transparency Integrity and Access (2021 OECD Publishing Paris) pp 103 ff.

2.3 Definitions (Article 2 Rules on Lobbying)

19. International guidelines require definitions in the area of lobbying to "clearly and unambiguously define what is lobbying and who is to be considered a lobbyist and lobbying target".[22] At the same time, definitions need to be broad enough to cover a variety of activities and keep up with technological advances. One of the key findings of a recent OECD publication acknowledged the increasing complexity of lobbying and stated that "[t]he definition usually used in regulations – an oral or written communication between a lobbyist and a public official to influence legislation, policy or administrative decisions – is no longer sufficient. Mechanisms and channels of influence have become more diverse, which can lead to abuse. Increasingly, government policies can be influenced by and through non-governmental organisations (NGOs), research centres and think tanks, and the use of social media strategies to inform, misinform or change public perceptions. This can damage trust in both governments and those influencing the policy-making process, particularly companies". **Definitions in the Draft Rules should be enhanced to increase their clarity and predictability and, therefore, their effectiveness.**

20. As such, in Article 2 (1) (a) the wording "submission requests for meetings, proposals, requests, etc." is ambiguous. It is suggested to clearly state that the rules cover not only requests for meetings but also meetings themselves as the most common and classic form of lobbying, as well as other forms of oral or written communications communication, whether offline or online.

21. **Additionally, "the performance of any other activity aimed at contributing to the making of public decisions" is a vague formulation that could theoretically lead to any advocacy activities, for example by civil society organizations, to be classified as lobbying. Such a practice risks to stifle the very engagement with societal and social issues that are at the core of most civil society organizations' work.**

> **RECOMMENDATION C.**
>
> **It is suggested to revise Article 2 (1) (a) referring to meetings or other forms of contacts and to clarify that all the mentioned activities are covered regardless of whether they are conducted in person, in writing, or by use of any digital communication tool. Additionally, legislation should be carefully drafted to ensure that not all advocacy and awareness-raising done by civil society organizations in the public domain is qualified as "indirect lobbying."**

22. In Article 2 (1) (a) activity of representation of interests is defined in a way that requires lobbyists to act "professionally". The word "professionally" can have different meanings, inter alia, that someone is performing an activity for compensation only or as his/her regular job or that someone is adhering to professional standards of lobbying. International guidelines explicitly state that lobbyists can act with or without compensation.[23] In addition, lobbying does not have to be a regular/full-time job of the lobbyists. **Therefore, it is suggested to delete the words "professionally" or to further clarify how the term is defined.**

[22] TI International Standards for Lobbying Regulation, Lobbyingtransparency.pdf; see also OECD Principles for Transparency and Integrity in Lobbying, Principle 4.

[23] International Standards for Lobbying Regulation, Standards - Regulatory Scope (lobbyingtransparency.net)

23. **Article 2 (1) (b) which defines "interest representatives" would benefit from further inclusions clarifying that also legal persons and representatives from abroad (including foreign governments) are covered by the regulation.**

24. Article 2 (1) (d) of the Draft Rules defines "public decision-makers". International guidelines define public officials as targets of lobbying as "any individual with decision-making powers (and their advisors), who are elected, appointed or employed within the executive or legislative branches of power at national, sub-national, or supra-national levels; within private bodies performing public functions; and within public international organisations domiciled or operational in the country concerned. "[24]

25. In Article 2 (1) (d) public decision makers are defined as officials in municipalities having 300,000 inhabitants or more or officials in administrative areas and constituencies with a population of 300,000 inhabitants or more. In fact, lobbyists can have more influence in smaller municipalities and administrative areas, where people normally know each other well and chances for a potential conflict of interests and undue influence might be bigger than in larger municipalities or administrative units. Unregistered lobbying in smaller entities might cause severe damage to those entities, especially due to the fact that other control mechanisms in those entities are often not as effective as the ones in bigger entities. **It is recommended to amend Article 2(1) (d) without a numeric minimum requirement.**

RECOMMENDATION D.

It is suggested to reconsider the definition of a public decision-maker in Article 2 (1) (d) in order to cover all public officials, who may become targets of lobbying, offering a simple and comprehensive definition of public decision-makers at all levels and in line with international guidance documents.

2.4 Exclusions (Article 3 Rules on Lobbying)

26. International guidelines only suggest two categories of exceptions from the rules on lobbying: private citizens' interactions with public officials concerning their private affairs, save for where it may concern individual economic interests of sufficient size or importance; public officials, diplomats and political parties acting in their official.[25] However, Article 3 contains an extensive list of exceptions from the applicability of the Draft Rules.

27. Pursuant to Article 3 (1) (g) "oral and written communications made during meetings and hearings of the Committees or other parliamentary bodies or during consultations held by state, regional or local administrations or public bodies" is exempted from the scope of the law. While it is unclear exactly which type of meetings Article 3 (1) (g) covers, the wording seems to allow meetings that are non-public in nature, **excluding from public scrutiny oral or written communication between private individuals, entities, or interest groups and public bodies, and thus raising risks of corruption.**

[24] International Standards for Lobbying Regulation, Standards - Regulatory Scope (lobbyingtransparency.net)

[25] Ibid.

RECOMMENDATION E.

Therefore, it is recommended to revise the Article 3 (1) (g), imposing requirements of transparency and accountability, as well as regulation defined by these Draft Rules with respect to meetings of a non-public nature.

28. Article 3 (1) (h) further exempts from the scope of the Draft Rules " representation activity carried out in the context of decision-making processes that end in memoranda of understanding or other concertation instruments". The rationale for excluding any advocacy or lobbying activities, which may result in signing a memorandum, is not clear. There is a risk that illegal lobbying might take place in a form of reaching a memorandum of understanding or a similar instrument resulting in the same benefits for the interest holders as any legal regulation or contract. International guidance documents refer to "legislation or any other regulatory measures, public policies, strategies and programmes, government contracts or grants, administrative decisions or any other public spending decision."[26] **Therefore, it is suggested to substantially revise or delete the Paragraph h) of Article 3.**

2.5 Public Register (Article 4 Rules on Lobbying)

29. Article 4 describes the establishment and functioning of the Public Register for the transparency of the activity of relations for the representation of interests, i.e. the register of lobbyists. A public register of lobbyists is an important tool to ensure transparent public decision-making. However, **any system of registration and the obligations following from the registration must be efficient and accessible and avoid overly bureaucratic and cumbersome regulations which might make it harder for smaller civil society organizations with fewer human resources to comply with the legislation. This is particularly true when registration in the public register comes with substantive privileges like in the Draft Rules on Lobbying where, pursuant to Article 10, only registered "interest representatives" can take part in consultations during law-making processes (see pars 45-47 below).**

30. **It is welcomed that the Register is kept in digital form. However, for it to be most accessible and useful the Register should be open data, meaning that it can be freely used, re-used and redistributed by anyone.**[27]

31. **For those obliged to register, it could be considered to couple the entry into the registry with specific benefits for both lobbyists and decision-makers. As an incentive, the regulations could state that decision-makers are allowed to meet only with registered lobbyists. Additionally, facilitated access to government and parliament buildings and/or notification on new legislation being considered could be envisaged.**

[26] Ibid.

[27] Accessibility and ensuring regulations keep up with technological advances are important issues for many States. See for example, European Commission 2021 Rule of Law Report

The rule of law situation in the European Union" (20 July 2021): "Some Member States have revised their frameworks to introduce more transparency and improve access to information about lobbying. Germany, for instance, adopted a new law to introduce an electronic lobby register at federal level. New rules have entered into force in Lithuania which foresee a cross declaration scheme where lobbyists, politicians and civil servants have to report their meetings in a lobbying registry." p 13, available at https://ec.europa.eu/info/sites/default/files/communication_2021_rule_of_law_report_en.pdf

32. In Article 4 (4) (a) it is required that lobbyists would be registered by "the personal data or company name and professional address of the natural person or the body". While it is clear what the "company name" is, it is not clear what kind of "personal data" will have to be submitted for natural persons. **Therefore, it is suggested to apply the language used for companies also for natural persons by replacing the words "personal data or company name" by "the name of the natural person or a company". Furthermore, in some countries, lobbyists have to indicate, within certain period of time after the end of each financial year, the volume of their lobbying activities and the number of lobbying cases. Also, in some countries, the register contains information on the intended results of the lobbying activity. Lastly, Article 4 requires regular updates of the information contained in the Register. Without a concrete timeframe, it is hard for lobbyists to adhere to this obligation. The Draft Rules on Lobbying could, for example, request the lobbyists to update a specific number of times a year or a specific number of weeks after a change that would warrant update has occurred.**

2.6 Schedule of Meetings (Article 5 Rules on Lobbying)

33. According to Article 5 all lobbyists have to keep an updated schedule of their meetings with public decision-makers and enter it in the Register. The fourth sentence obliges lobbyists to "provide a summary of the subjects discussed and the contents of the meeting, which shall be published within forty-five days after the date of the meeting". **It is not clear where the summary of subjects discussed should be published. In addition, the deadline of 45 days for publication could be reconsidered in order to ensure the public has access to this important information sooner. At the same time, the requirement that the lobbyists will have to report on the schedule of their meetings every day, represents an considerable workload for the lobbyists**. Public decision makers should also be tasked by the regulations with keeping records of their meetings. **It could be considered to decrease the frequency of reporting about meetings from daily to, for example, weekly in order not to present an undue burden to lobbyists and to require publication of the summary within two weeks of the meeting. Public officials should be tasked with the same requirements to record and report meetings.**

2.7 Code of Ethics (Article 6 Rules on Lobbying)

34. According to Article 6 of the Draft Rules, "interest representatives" registered in the Registry shall adhere to the Code of Ethics, which should be developed by the Supervisory Committee in four months' time after adoption of the Draft Rules. Breaches of the obligations laid down in the Code of Ethics may lead to penalties described in Article 11, such as: reprimand, suspension from appearing in the Register for a period not exceeding one year or removal from the Register in particularly serious cases.

35. It should also be noted that Draft Rules establish sanction and penalties for the violation of the Code of Ethics which is yet to be developed. Furthermore, although they are not particularly harsh, penalties for the violation of the Code of Ethics are similar to those imposed for violation of Article 10 of the Daft Rules (warning, reprimand, suspension, removal). More importantly, the Draft Rules require from "interest representatives" to comply with the Code of Ethics but no such obligation is imposed on "decision-makers".

36. Overall, the Code of Ethics should aim at providing guidance and additional information promoting appropriate conduct and **like the obligations in the law in general, the Code of Ethics should also be addressed to lobbyists and public decision makers alike to ensure both sides understand and abide by ethical standards. Furthermore, the Draft Rules should not impose penalties for conduct which has not yet been defined.**

RECOMMENDATION F.

In general, the Code of Ethics should be seen as guidance to specify and guide the provisions of the rules and facilitate ethical behaviour of both lobbyists and public decision-makers in accordance with the law. It is advisable for the Code of Ethics to refer where appropriate to the Draft Rules, the violation of which in turn may be subject to sanctions.

2.8 Supervisory Committee and Rights of Registered Entities (Articles 7 and 8 Rules on Lobbying)

37. **Article 7 of the Rules on Lobbying, which details the Supervisory Committee, which is tasked with control functions to ensure transparency in lobbying, would benefit from greater detail as to the manner in which the members of the Supervisory Committee shall be selected (the translation states they will be "chosen").**

38. In Article 7 (3), tasks of the Supervisory Committee are mentioned but there is no mentioning of the schedules of meetings of interest representatives and of the summaries of the subjects discussed, introduced by Article 5 above. **Therefore, it is suggested to insert a new task for the Supervisory Committee to receive and publish the schedules of meetings of interest representatives, summaries of the subjects discussed and the contents of the meeting referred to in Article 5.**

39. According to Article 7 (6), members of the Supervisory Committee are prohibited from having any financial relations with interest representatives or the companies they represent. The term "companies they represent" is narrower than the term of "interest holders", which is defined in Article 2. **Therefore, it is suggested to replace the words "companies they represent" with the words "interest holders".**

40. The rights of registered interest representatives as described in Article 8 (1) (a), coincide with the definition of "activity of representation of interests" from Article 2 (1) (a) above. Therefore, comments given in relation to Article 2 above, also apply here.

2.9 Obligations of Registered Entities (Article 9 Rules on Lobbying)

41. According to Article 9 (1), interest representatives may not pay money or any other economically significant benefit to representatives of the Government or to political parties, movements or groups, to their representatives or to intermediaries of the latter. The prohibition of paying "any sum of money or any other economically significant benefit" is too narrow to exclude the risk of corruption during lobbying. **International anti-corruption legal instruments prohibit "offering, promising or giving any undue advantage", which is the recommended formulation.**

42. **The term "representatives of the Government" does not cover some extremely important categories of public decision-makers (e.g. members of parliaments), as defined by Article 2 of the Draft Rules. It is recommended to adjust the Draft Rules accordingly.**

43. In Article 9 (3), an important element of annual reports is missing: information, if any advantage was offered, promised or given to individuals or entities mentioned in Paragraph 1 above. Such a provision will, first, enable the Committee to identify any "due" advantages, and second, enable the Committee to realise that any advantages offered, promised, or given by individual lobbyists, which were not reported, can only count as

undue advantages. **Therefore, it is suggested to revise Article 9 (3) adding reference to an indication of any advantages offered, promised or given to public decision-makers or to political parties, movements or groups, to their representatives or to intermediaries of the latter.**

44. According to Paragraph 5, the Supervisory Committee may, if it deems it necessary, ask persons recorded in the Register to provide information and data in addition to those contained in the report. **This is an important power of the Committee. However, it is recommended to amend the Draft Rules in order to give the Supervisory Committee also the power to ask for amendments to a report which is not accurate or up to date as required by Article 7 (3) (a).**

2.10 Consultation Procedure (Article 10 Rules on Lobbying)

45. According to Article 10 (1), any public decision-maker who intends to propose or adopt a legislative or regulatory measure of a general nature may initiate a consultation procedure by publishing a notice in the open access section of the register and entering the outline of the measure or an indication of its subject matter in the restricted section of the register. The use of the word "may" implies that it is a decision-maker's discretionary power to decide if s/he will initiate the consultation. Additionally, pursuant to Article 10 (2) "[i]nterest representatives may take part in the consultation only through the restricted section of the Register, by identifying themselves with the personal code assigned to them when they registered." **It is important to stress that while any consultations in the law-making process are positive and should be welcomed, the type of consultations described in Article 10 (2) of the Draft Rules cannot substitute meaningful and public consultations, open to the general public, that should be held throughout the law-making process and guaranteed by the relevant legislation.**

46. According to OSCE Commitments, laws should be adopted "as the result of an open process reflecting the will of the people, either directly or through their elected representatives" (Moscow Document of 1991, par 18.1), be accessible and open to the public and subject to their scrutiny, including impact assessments which ought to accompany them. Public consultations constitute a means of open and democratic governance; they lead to higher transparency and accountability of public institutions and help ensure that potential controversies are identified before a law is adopted.[28] Discussions held in this manner that allow for an open and inclusive debate will increase all stakeholders' understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also improves the implementation of laws once adopted. In order to be effective, consultations on draft legislation and policies need to be inclusive and to provide sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions. Public consultations should allow ample time for effective and meaningful discussion, as well as for feedback. To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process, meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings).

[28] See e.g., OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), Section II, Sub-Section G on the Right to participate in public affairs, <http://www.osce.org/odihr/119633>.

47. **In light of the above, the legislator is therefore encouraged to ensure that any new legislation is subject to inclusive, extensive and effective consultations, according to the principles stated above, at all stages of the law-making process.**

2.11 Sanctions (Article 11 Rules on Lobbying)

48. According to Article 11 (1), sanctions will only be imposed on interest representatives who do not comply with rules on participation in the consultation procedure as provided for by Article 10. Such a provision implies that rights of the lobbyists will only be exercised in a very narrow framework of a consultation procedure defined in Article 10, started by a discretionary decision of a public decision-maker. This a very restrictive approach to lobbying, which also does not cover some other very important parts of the Draft Rules – for example, the prohibition to pay any sum of money or any other economically significant benefit, as stipulated in Paragraph 1 of Article 9**. It is therefore suggested to revise Article 11, imposing sanctions for failure to comply with rules on interest representation as provided for by this Draft Rules, possibly replacing the words "who do not comply with rules on participation in the consultation procedure as provided for by Article 10" by the words "who do not comply with rules on interest representation as provided for by this Law".**

RECOMMENDATION G.

It is further recommended that appropriate and proportionate sanctions are imposed not only on the "interest representatives" but also on the interest holders and the public decision-makers.