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## Extra-institutional actors in the democratic system

### Report<sup>1</sup>

Committee on Political Affairs and Democracy

Rapporteur: Mr Hendrik DAEMS, Belgium

### Summary

In modern democratic societies, there exists a variety of actors who do not stem from the traditional state and political institutions, but seek to exert an influence on the political process. They may include trade unions, advisory bodies, the business community, interest and pressure groups, advocacies, lobbies and networks of influence, as well as the media.

Activities of extra-institutional actors may be beneficial for the functioning of a democratic political system insofar as they contribute to political pluralism which is the cornerstone of a genuine democracy.

At the same time, some activities of extra-institutional actors aimed at influencing political decision making may raise concerns with regard to legitimacy, representativity, transparency and accountability, which are fundamental principles of democracy. Moreover, while seeking to influence political decisions in accordance with the sectoral interests which they represent, extra-institutional actors aim to alter the balance of interests as it results from normal political processes.

The report concludes that the influence of extra-institutional actors on political decision making needs further examination and proposes to invite the Venice Commission to study the issue, with special attention to the scale of the involvement of extra-institutional actors in the political process, their impact on the functioning of democratic institutions, 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.

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1. Reference to Committee: Decision by the Bureau, Reference 3628 of 25 January 2010.



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## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly recalls the Council of Europe's key role in, and particular responsibility for, safeguarding and promoting pluralist democracy in Europe. The Organisation must continue to follow closely new trends and anticipate tendencies in the evolution of our societies in order to identify and remedy deficiencies and to improve the quality of democracy which is the greatest value for all Europeans.
2. As already expressed in its previous resolutions, the Assembly remains concerned by the declining level of public interest and involvement in politics and by the loss of citizens' confidence in state and political institutions.
3. It notes, however, that traditional state and political institutions – parliaments, governments, the judiciary, as well as political parties – are not the sole participants of the democratic political process. In modern democratic societies, there exists a variety of other actors which do not stem from the traditional branches of institutional power, but exert an influence on the process of formation of those institutions and on the political decision-making process therein.
4. Such extra-institutional actors may include trade unions, constituted advisory bodies, the business community, interest and pressure groups, advocacies, lobbies and networks of influence. Furthermore, the media play an important part in the political process. Finally, attempts of groups involved in illegal activities to exert influence on political decision-making should not be underestimated.
5. While the influence of extra-institutional actors on politics is not a new phenomenon, both its scale and its visibility have considerably increased in recent years, in particular with the spread of information and communication technologies. The Assembly therefore considers that the role of extra-institutional actors needs to be better understood in terms of their impact on democratic institutions and procedures, and taken into account in the efforts to strengthen and improve democracy.
6. The Assembly strongly supports political pluralism as one of the key principles of a genuine democracy. Therefore it notes that, under some conditions, activities of extra-institutional actors may be beneficial for the functioning of a democratic political system insofar as these actors:
  - 6.1. provide a framework for individuals to associate among themselves and jointly express views and defend their interests;
  - 6.2. encourage wider participation in public life and provide opportunities to engage in the political process;
  - 6.3. offer a link between the people and the political institutions;
  - 6.4. allow a better representation of specific interests and needs, including those of minorities;
  - 6.5. provide expert information in the field of their activity needed for informed political decision-making;
  - 6.6. provide additional channels of public oversight over political decisions.
7. At the same time, the Assembly believes that some aspects of activities of extra-institutional actors aimed at influencing political decision-making may raise a number of concerns with regard to fundamental principles of democracy.
8. In particular, the legitimacy of extra-institutional actors is often doubtful as their mandate does not stem from the whole society; their representativity is limited and difficult to assess. At the same time, the real influence and authority of such actors may extend far beyond their legitimacy and representativity.
9. The lack of transparency as regards the internal functioning of extra-institutional actors and their relations with public institutions and officials may cause suspicions of political corruption and further damage the image of, and public confidence in, political institutions. In addition, extra-institutional actors are not subject to any genuine democratic accountability.
10. While seeking to influence political decisions in accordance with sectoral interests which they represent, extra-institutional actors aim to alter the balance of interests as it results from normal political processes. Consequently, the will of the people may be distorted, the principle of political equality of citizens is endangered and the public confidence in democratic decision-making may be damaged even further.

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2. Draft resolution adopted by the Committee on 1 June 2010.

11. Although the media are not part of state institutions, they are often referred to as the “fourth power” due to their influence on public opinion and, as a consequence, on the political process. Free pluralist media are one of the cornerstones of a democratic society, insofar as they allow circulation of accurate information which is needed for decision-making.
12. At the same time, the media as an instrument of political influence, may be misused and abused when they serve to circulate selective or biased information and misinformation in order to manipulate public opinion or to pursue narrow party or private business interests.
13. In this respect, the Assembly reiterates its concerns, already expressed in its [Resolution 1547 \(2007\)](#), that the media in many cases tend functionally to replace political parties by setting political agenda, monopolising political debate and creating and choosing political leaders. Moreover, it considers that the self-assumed role of ultimate judge which some media tend to play, may seriously damage the political process.
14. The Assembly believes that political and state institutions should involve various extra-institutional actors and citizens more actively in the decision-making process. However, in order to improve public confidence in public institutions of government, and thus strengthen democracy and the rule of law, the decision-making process needs to be more transparent.
15. People have a democratic right to know those actors who have access to government decision-making for the purpose of influence. All kinds of influence which are not exercised in full transparency should be considered as being suspicious and harmful to democracy.
16. Accordingly, democratic institutions should reject any attempts to influence political decisions which are made in a non-transparent way.
17. The Assembly refers to its [Recommendation 1908 \(2010\)](#) on lobbying in a democratic society (European Code of conduct on lobbying), and reiterates the suggestions contained therein.
18. That said, it considers that the influence of extra-institutional actors on political decision-making needs further examination, including in the framework of the Council of Europe’s Forum on the Future of Democracy.
19. In consequence, the Assembly invites the Venice Commission to study the issue, in particular with regard to:
  - 19.1. 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;
  - 19.2. the impact of these actors on the functioning of democratic institutions and on the legitimacy of the democratic political process;
  - 19.3. 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.
20. The Assembly resolves to reconsider the issue of the role of extra-institutional actors in the democratic system on the basis of the findings of the Venice Commission.

## B. Explanatory memorandum by Mr Daems, rapporteur

### 1. Introduction

#### 1.1. Origin of the report

1. In the margin of the Forum for the Future of Democracy held in Kiev in October 2009 and dedicated to electoral systems, several colleagues and I informally exchanged ideas on an increasingly growing influence, in today's politics, of various actors who do not belong to traditional political institutions.
2. While this phenomenon is not new, it would seem that both its scale and its visibility have considerably increased in recent years, in particular with the spread of information and communication technologies. We thus felt that it needs to be better understood in terms of its impact on democratic institutions and procedures, and taken into account in our common reflection on the ways to strengthen and improve democracy.
3. I therefore wrote to the chair of the Political Affairs Committee and suggested that a report on this issue be prepared for the next debate on the state of democracy in Europe, to be held in the Assembly in June 2010.
4. From the outset, I stress that this report is not intended to provide an academic study on extra-institutional actors, nor to bring ready-made answers. My purpose is rather to provoke a debate, to offer to Assembly members an opportunity to share their experiences, concerns and ideas, and to identify issues which may need to be looked at and possibly regulated from the institutional viewpoint.
5. I also wish to refer to [Recommendation 1908 \(2010\)](#) on lobbying in a democratic society (European code of conduct on lobbying) adopted by our Assembly in April 2010 on the basis of the report prepared by our colleague, José Mendes Bota, for the Committee on Economic Affairs and Development. Both the recommendation and the report provide an interesting analysis of European and international lobbying.

#### 1.2. Definition of the subject, limitation of the scope

6. By extra-institutional actors of power, I mean those which do not stem from the three branches of institutional power (legislative, executive, judiciary) but exert an influence on the process of formation of these institutions and/or on the political decision-making process therein. In my view, such actors primarily include the media, lobbies and interest groups, economic operators and informal networks of influence, but also, unfortunately, some less reputable or even illegal circles (organised crime, etc.).
7. For the sake of clarity, I do not intend to put much focus on those more or less institutionalised actors who exercise their political influence openly and in an established framework (for example, trade unions, formal advisory bodies, etc.). I have also chosen not to make a specific point on non-governmental organisations (NGOs).
8. Finally, though political parties do not belong to "classical" state institutions, their primary goal is exactly to be involved in politics and they form the backbone of modern democracy. Therefore, I do not include them as extra-institutional actors.

#### 1.3. The phenomenon of general interest versus group interest

9. In a democratic system, where the power stems from the people, political decisions are deemed to be taken, and public policies conducted, in "general" or "public" interest, that is, for the benefit of the entire people and society as a whole.
10. However, common interest in its "pure state" may only exist as an abstract notion. In practice, it is a result of complex interaction between a variety of private interests of individuals, social groups, economic actors and other constituent elements of social fabric. Some of these interests may be in clear contradiction with each other and with what is perceived to be the interests of the majority.
11. Striking the right balance between, on the one hand, various individual and group interests, and on the other hand, the common interest of the society as a whole is, therefore, one of the main challenges for a democratic political system. It is also an essential component to be taken into account when assessing public support for democracy (or trying to understand the causes of the lack of such support), and a key condition for its sustainability and stability.

## **2. Categorisation of the actors in the political decision process**

### **2.1. Primary actors in the political decision process**

12. Decision making is the essence of the exercise of power. The way in which decisions are made is one of the key indicators of the nature of a given political regime.

13. Modern societies are organised as states; decisions concerning the whole of, or a considerable part of, the society are taken at the level of the state, which is deemed to guarantee the safeguarding of the common interests.

14. In representative democracies, political power is vested in the people and is exercised through the popular election of people's representatives who are entrusted with the authority to take decisions in the name and in the best interest of their constituents.

15. In accordance with the principle of separation of powers, central institutions of a state form a Trias Politica (government, parliament and the judiciary), where each one has separate and independent powers and areas of responsibility. These are the main decision-making instances. Although their structure, method of election/appointment and prerogatives differ from one political system to another, these institutions are generally composed of decision-makers proper (president, ministers, members of parliament and judges) bearing responsibility for decisions, and the administrative staff (non-elected and non-politicised civil servants) participating in the preparation of decisions.

16. In addition to those three traditional institutions which correspond to the three branches of power, state or quasi-state institutions of other types may exist in modern democracies, like independent auditing organs, bodies in charge of elections, various supervising institutions and regulatory agencies, etc. While their competences may be limited, the status that they enjoy is established by law and they exercise powers and make (or participate in making) decisions on behalf and in the interests of all of the people.

17. Furthermore, in modern democracies, there are often institutions which act on behalf of all of the people but with particular focus on specific interests of certain categories of the population (disabled persons, women, children, minorities, etc.), it being understood that taking care of the particular needs of these social groups is in the best interest of society as a whole.

18. Though political parties do not belong to the state institutions and certainly do not act on behalf of all of the people, they are undoubtedly among the most influential actors of the political system. The fundamental aim of a political party is the attainment of political power and public office for its designated representatives. In a democracy, political parties are involved in selecting suitable candidates to run for elective office and conducting electoral campaigns, selecting candidates for appointive political office when winning elections, and co-ordinating policy decisions of their office-holders when in power. Through all these activities, parties are deeply involved in the political decision-making process.

19. Last but not least, I should mention the most numerous category of primary decision makers in a democracy – citizens who, by voting for whom they consider to be the best available candidate, define the composition of the political institutions and the orientation of political decisions.

20. At the same time, participating in the formation of democratic institutions through electoral process is not the only – and probably not the main – way in which citizens express and pursue their interests. Modern democratic societies offer a variety of forms allowing citizens to make their needs heard and, in one way or another, taken into account.

### **2.2. Institutionalised actors**

21. In this category, I include, on the one hand, large groupings of self-organisation (like trade unions), and, on the other hand, officially established advisory bodies.

22. Trade unions are socio-professional organisations of workers and employees set up by themselves to achieve common goals such as better working conditions. While their primary purposes are not political, trade unions are commonly involved in political activity and often promote legislation favourable to the interests of their members or workers as a whole. To this end they may pursue campaigns, undertake lobbying or support individual candidates or parties for public office.

23. Although trade unions are not representative of the whole population, the legitimacy of their political action is generally not put in doubt, even if the public acceptance of some specific forms of such action may vary.

24. Councils of state and other constituted advisory bodies are not directly involved in public politics, but are contributing to decision making by formulating opinions on various political issues, thus allowing social groups represented to legally express political preferences and influence political choices.

### **2.3. Less formal and informal actors**

#### *2.3.1. Economic actors*

25. For its part, the business community tries to influence public policies in a direction favourable to it, both collectively (in the form of employers' associations or federations, industry trade groups or trade associations) and individually. This can take the form of contributions to the campaigns of political candidates and parties, contributions to "issue" campaigns not tied to a candidate or party; and lobbying legislators to support or oppose particular legislation.

26. Businesses also often sponsor the activities of various think tanks and advocacies, and use the services of public relations (PR) and government relations (GR) agencies.

#### *2.3.2. Interest groups*

27. An interest group is a group of people who share common attitudes and/or objectives and set up a formal organisation to serve specific common interests. Such interest groups may occasionally engage in some form of lobbying or other political activities with respect to issues of direct interest to their members.

28. Those interest groups that exist primarily for exerting political influence as a means of affecting government policies or legislation are often referred to as pressure groups.

29. Contrary to political parties, interest or pressure groups do not normally put forward candidates for public office under their own name (although they may sometimes endorse particular candidates), but are interested in influencing those who are in office.

#### *2.3.3. Media*

30. Although the media are not part of state institutions, they are often referred to as the "fourth power" due to their influence on public opinion and, as a consequence, on the political process. Free pluralist media are one of the cornerstones of a democratic society, insofar as they allow circulation of accurate information which is needed for decision making.

31. At the same time, the media as an instrument of political influence may be misused and abused when they serve to circulate selective or biased information and misinformation in order to manipulate public opinion or to pursue the interests of conglomerates. For more reflection on the risks of excessive media concentration for democracy, I refer colleagues to the report on "Democracy in Europe: crisis and perspectives" prepared by Mr Andreas Gross ([Doc. 12279](#), paragraph 34 of the explanatory memorandum).

#### *2.3.4. Advocacy, lobbies and networks of influence*

32. Advocacy is a general term for any activity that a person or organisation undertakes to influence policies. Such activities may be motivated from moral, ethical or faith principles, or aimed at protecting interests, and include media campaigns, public speaking, commissioning and publishing research or polls or the distribution of newsletters.

33. Lobbying is a form of advocacy where a direct approach is made to legislators or government officials on a specific issue, with the aim to promote (or to prevent) specific changes in legislation in the interests of a given entity. With regard to lobbying, I refer colleagues to Mr Mendes Bota's report on "Lobbying in a democratic society (European code of conduct on lobbying)" prepared in the Committee on Economic Affairs and Development, and [Recommendation 1908 \(2010\)](#) adopted by the Assembly during its April 2010 part-session.

34. While advocacy groups act publicly and in an organised manner, networks of influence are mostly invisible for the general public. Those are believed to be informal gatherings of more or less influential individuals where they communicate in a personal capacity and establish personal relations which may prove useful for influencing decisions.

### *2.3.5. Dubious and/or unacceptable actors*

35. I would include in this last category those actors who serve, or are linked with, the interests of groups involved in illegal activities (organised crime, trafficking of all kinds, etc.). As the real nature of these activities cannot be openly exposed, such groups may make use of “proxy” bodies (foundations, etc.), consultancies or lawyers in order to influence the decision-making process. However, they are the main source of political corruption.

## **3. Channels of political influence**

### **3.1. Institutionalised channels**

36. Institutionalised channels of political influence are those through which individuals, groups and other actors can exercise their influence on the formation, and participate in the functioning, of political institutions in accordance with procedures proper to these institutions as established by law.

37. With the legal framework differing considerably from one country to another, those institutionalised channels may include:

- Participation in the electoral process (for example, putting forward independent candidates; campaigning; financing electoral campaigns of particular candidates; observation of elections; lodging complaints in courts, etc.);
- Participation in the legislative process (for example, initiating legislation; participation in public hearings in the parliament; providing opinions upon request or at own initiative, etc.);
- Petitioning.

### **3.2. Informal channels**

38. Here we find a broad variety of channels for exerting influence on institutional decisions by means which are not specified by procedures and regulations governing these institutions.

39. Such channels may range from those which are not “institutionalised” in a given country (including some of the above-mentioned) to those which are not expressly forbidden by the law (and sometimes even beyond): media campaigns, setting political agendas through policy reports, public demonstrations, strikes, direct lobbying, etc.

## **4. Consequences on the functioning of the political system**

40. Activities of some categories of extra-institutional actors may be beneficial for the functioning of a democratic political system:

- they can provide a framework for individuals to come together and express their views;
- they can encourage wider participation in public life and provide opportunities to engage in the political process;
- they may offer a more efficient link between the people and the political institutions;
- they can allow a better representation of specific interests;
- they may better defend minorities and make their specific needs better known and heard by the society, and taken into account at institutional decision-making level;
- they may be a source of expert information for the political institutions based on their specialist knowledge in the field of their activity;
- they may provide additional channels of public oversight over political decisions and serve as extra-institutional “checks and balances”.

41. However, activities of extra-institutional actors and groups may raise a number of issues related to the fundamental principles of democracy.

42. *Legitimacy and representativity.* The institutional actors are deemed to be representative of the whole society (guaranteed through general elections) and hold their legitimacy from the acceptance that they exercise power in the general interest. On the contrary, in addition to the fact that they do not stem from general elections, extra-institutional actors are, by definition, representative of a part of the society and therefore do not enjoy full legitimacy. At the same time, extra-institutional actors often have a tendency to position themselves as self-proclaimed representatives and defenders of the general interest. In addition, the views presented to the political decision makers and to the general public by the leaders of an interest group might be unrepresentative of that group, in which case even the internal legitimacy of such leaders and groups would be in doubt. Inversely, groups which enjoy considerable support of the public and positive coverage in the media, and have the capacity to mobilise their followers, are often regarded as partners by state institutions, thus obtaining additional legitimacy and authority which may go beyond their effective representativity.

43. *Transparency and accountability.* There may be a variety of situations in this field but, as a rule, extra-institutional actors have a lesser degree of external transparency (awareness by the general public of the internal functioning of such actors and of methods which they use to attain their goals), and both external and internal accountability, as compared to institutional actors. Moreover, the lack of transparency may cause suspicions of political corruption.

44. *Interference in decision making and distortion of the balance of power.* By definition, when getting involved in the political process, extra-institutional actors seek to influence the political decisions of institutions in accordance with their sectoral interests. While doing so, they aim to modify the distribution of power, to change the order of priorities on the public political agenda and to alter the balance of interests as it results from general elections, in favour of particular interests which they represent. As a consequence, the principle of political equality of people is endangered, since those interest groups which are better organised structurally and enjoy substantial financial backing and positive media attention have better chances to have their political preferences taken into account than others.

## 5. Conclusions

45. Democracy is a system of government by the people and in the interest of the people. Raising individuals' awareness of their responsibility for their destiny and involving them in the management of public affairs makes democracy stronger. It is therefore fully legitimate and welcome for the citizens of a democratic society to seek to influence, in line with their interests and/or convictions, decisions which are taken at the level of state institutions.

46. However, such influence must be exercised in accordance with the law, in full transparency and with due respect to the interests of other persons and of the common interests of society.

47. Political and state institutions should involve various extra-institutional actors and citizens more actively in the decision-making process. At the same time, in order to improve public confidence in public institutions of government, and thus strengthen democracy and the rule of law, the decision-making process needs to be more transparent.

48. People have a democratic right to know the actors who have access to government decision-making for the purpose of influence. All kinds of influence which are not exercised in full transparency should be considered as being suspicious and harmful to democracy.

49. Accordingly, democratic institutions should reject any attempts to influence political decisions which are made in a non-transparent way.

50. The influence of extra-institutional actors on political decision making needs further examination, with particular attention to:

- 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;
- the impact of these actors on the functioning of democratic institutions and on the legitimacy of the democratic political process;
- the existing legal framework for such activities in the Council of Europe member states and to the appropriateness of taking additional standard-setting measures at national and European levels.

51. The Assembly should consider this issue once again, in a more detailed way, on the basis of such a study, which could be entrusted to the Venice Commission.