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23 November 2010

Lobbying in a democratic society (European Code of conduct on lobbying)

Reply to Recommendation¹: Recommendation 1908 (2010)
Committee of Ministers

1. The Committee of Ministers has attentively examined Parliamentary Assembly [Recommendation 1908 \(2010\)](#) on "Lobbying in a democratic society (European Code of conduct on lobbying)", which it has brought to the attention of the governments of the member states and forwarded to the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO) and the Conference of International Non-governmental Organisations (INGOs) for information and possible comments. The opinions and comments of the Conference of INGOs and GRECO are appended to this reply.

2. The Committee of Ministers welcomes the interest shown by the Parliamentary Assembly with regard to lobbying activities and their potential impact on the functioning of democratic institutions and political decision making on matters of public interest. It shares 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.

3. The Committee of Ministers is also convinced that ensuring the transparency of lobbying activities helps to combat the loss of confidence in institutions and declining interest in politics. It believes that greater transparency of these activities would furthermore provide an effective prevention tool in the fight against corruption. In this connection, it notes that GRECO believes that drawing up a European code of conduct on lobbying would be beneficial for efforts to fight against corruption and that GRECO stands ready to provide assistance as appropriate, including in the framework of monitoring. The Committee notes that the Conference of INGOs also supports the idea of drafting such a code. It welcomes the fact that the Conference proposes to take part in any work that might be carried out on drawing up this code.

4. Questions prompted by lobbying practices were raised, alongside other topics linked to democratic governance, at the session of the Forum for the Future of Democracy, held in Yerevan from 19 to 21 October 2010. In the light of the Forum's conclusions and the findings of the study which the Venice Commission has decided to carry out, in response to Parliamentary Assembly [Resolution 1744 \(2010\)](#), on the expediency of taking standard-setting measures at national and European level with regard to activities of extra-institutional actors in a democratic system, the Committee of Ministers will examine the possible follow-up to the Assembly recommendation to draw up a European code of conduct on lobbying. The Assembly will be notified of the Committee's conclusions on this matter in due course.

1. adopted at the 1098th meeting of the Ministers' Deputies (17 November 2010)



Appendix 1 to the reply

Opinion of the Conference of International Non-governmental Organisations (INGOs)

1. The Conference of INGOs thanks the Ministers' Deputies for sending it the Parliamentary Assembly [Recommendation 1908 \(2010\)](#) on "Lobbying in a democratic society (European Code of conduct on lobbying)" for information and comment.
2. At its plenary meeting on Thursday, 24 June 2010, the Conference of INGOs decided by a majority, with four votes against and two abstentions, in favour of the idea of drafting a European code of conduct on lobbying to be adopted by the Committee of Ministers of the Council of Europe.
3. The Conference of INGOs would like to take an active part in the group appointed to draw up this code. The issues at stake are very important because such a code would help to smooth relations between citizens, economic players and political groups.
4. The first article of the code should describe its specific purpose: it is intended first and foremost to enhance the participatory aspects of democracy.
5. This goal can be achieved through the regulation of lobbying activities but would not be served by any restriction on freedom of association.
6. Ultimately, the aim is to enable as many stakeholders as possible to participate as much as possible so that we can look beyond private, corporatist interests and pinpoint what is in the general interest, thus legitimising political decisions. In other words, the idea is to help civil society as a whole to become more involved in consultation processes set in motion by the political authorities. This is also the aim of the Code of Good Practice for Civil Participation in the Decision-Making Process drawn up by the Conference of INGOs. In this code, it is submitted that a constructive relationship between the authorities and NGOs should be based on the following common principles: participation, trust, accountability and transparency and independence.
7. The INGOs subscribe fully to the principle of transparency put forward by the Parliamentary Assembly and share its view that it is essential in order to restore the trust of 800 million Europeans in politics. They are increasingly committed to applying this principle to themselves and have placed it at the heart of the charters of good NGO governance that they have drawn up.
8. As to lobbying activities properly speaking, the code should be designed to promote free expression for all parties and the principle of transparency should allow everyone to influence debate without having to use means of pressure or manipulation which undermine democratic debate.
9. In this respect, the NGOs feel that they make a positive contribution to lobbying activities. Common rules might therefore be desirable.
10. As regards the methods to be promoted, those drafting the code should try to identify pragmatic, efficient and simple solutions that can be properly implemented and not impose any unnecessary restrictions on economic players and associations, which would probably be circumvented anyway by the least transparent organisations.
11. The proposals in paragraph 11 of the Parliamentary Assembly recommendation already outline some of these methods:
 - encouraging all stakeholders to participate;
 - enhancing transparency, in particular through declarations of the funding sources of the lobby or NGO concerned;
 - preventing conflicts of interest among people and bodies involved in lobbying activities.
12. The Council of Europe has a unique means of involving civil society in its activities in the form of the Conference of INGOs, which comprises 366 INGOs with participatory status, representing in turn several thousands of NGOs throughout Europe. This enables civil society to make a contrasting yet comprehensive contribution representing all its diversity.

Appendix 2 to the reply

Comments of the Group of States against Corruption (GRECO)

At their 1085th meeting (26 May 2010), the Ministers' Deputies of the Council of Europe decided to communicate Parliamentary Assembly [Recommendation 1908 \(2010\)](#) on "Lobbying in a democratic society (European Code of conduct on lobbying)"² to GRECO for information and possible comments. At its 48th Plenary meeting (27 September – 1 October 2010), GRECO adopted the following comments with a view to their transmission to the Committee of Ministers:

1. GRECO notes with interest the call of the Parliamentary Assembly to elaborate a European code of good conduct on lobbying, considering that unregulated, secret lobbying may undermine democratic principles and good governance. GRECO concurs with the Assembly when it stresses, in paragraph 9 of its recommendation, that greater transparency of lobbying activities can make political and economical players more accountable and restore public confidence in government authorities' democratic functioning.

2. Bearing in mind that there is not much regulation available on lobbying in its member states, GRECO welcomes paragraph 11 of the recommendation which invites the Committee of Ministers to elaborate a code of conduct including, *inter alia*, a clear definition of lobbying; measures to ensure transparency; rules for politicians and civil servants as well as members of pressure groups and the business sector; and foreseeing the registration of lobbying entities. The recommendation thus takes due account of the fact that the phenomenon of lobbying involves two sides, the lobbyist and the elected representatives and other officials who are lobbied (there may, however, be more actors involved).

3. GRECO wishes to draw attention to the Programme of action against corruption as adopted by the Committee of Ministers on 21 November 1996 [GMC (96) 95], according to which the establishment and implementation of rules drawing the line between lobbying and corrupting should be encouraged. As was stressed in the Programme of action against corruption, lobbying is not in itself something evil but the role of lobbyists is of a sensitive nature as the borderline between exertion of influence (which is legal) and trading in influence (which in many countries is illegal) is not always easy to distinguish. Against this background, GRECO is convinced that the drawing-up of a European code of conduct on lobbying would also be beneficial for the fight against corruption. In particular, the objective of establishing a precise definition of lobbying may assist countries in dealing with the issue of trading in influence and in better preventing conflicts of interest, for example, in respect of persons moving from the public to the private sector and vice versa ("revolving doors"), a well known feature of the "lobbying industry".

4. GRECO has not yet devoted any of its evaluation rounds specifically to the issue of lobbying. That said, in the context of its forthcoming 4th Evaluation Round which is devoted to "Corruption prevention in parliamentary assemblies, the judiciary and among other actors of the pre-judicial and judicial process" existing standards of conduct for members of parliamentary assemblies vis-à-vis lobbyists and lobbying will also be assessed. Moreover, it should be recalled that the High-level conference held on the occasion of GRECO's 10th Anniversary (5 October 2009) included a round table debate on future challenges and emerging subject areas. In this context the issue of "lobbying and corruption" was discussed and it was concluded that this topic would clearly merit more attention in the future.

5. In the light of what has been stated above, there is clearly a growing demand in Europe and elsewhere for the establishment of regulatory frameworks in respect of lobbying. The elaboration of a European code of conduct in lobbying therefore appears very timely and GRECO stands ready to provide assistance as appropriate, in particular by duly monitoring the implementation of provisions relevant to the fight against corruption that might be contained in a possible legal instrument adopted in pursuance of the Assembly's recommendation.

2. Assembly debate on 26 April 2010 (11th sitting) (see [Doc. 11937](#), report of the Committee on Economic Affairs and Development, rapporteur: Mr Mendes Bota). Text adopted by the Assembly on 26 April 2010 (11th sitting).