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## Transparency and openness in European institutions

### Committee Opinion<sup>1</sup>

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Ms Chiora TAKTAKISHVILI, Georgia, Alliance of Liberals and Democrats for Europe

### A. Conclusions of the committee

1. The Committee on Rules of Procedure, Immunities and Institutional Affairs congratulates the rapporteur of the Committee on Legal Affairs and Human Rights, Ms Natasa Vučković, on her well-balanced and comprehensive report, and supports the proposed draft resolution and draft recommendation.
2. The report outlines a number of important concerns about decisions or pieces of legislation adopted by European institutions not in the public interest (fraud and conflict of interest) or in exchange of undue advantages to public officials (corruption) or without due consideration of all viewpoints (transparency and equal access to decision-makers). The establishment of a regulatory framework for lobbyists' activities, though welcomed, would not prevent conflicts of interest or automatically boost transparency. Disclosure of data requested by the regulations on lobbying and the "cooling off" period will only alleviate problems, not change distribution of resources; such measures are not sufficiently substantive to help ensure equal access and participation in decision-making. The challenge is now for all stakeholders – who must show themselves willing to act ethically – as well as for civil society to make these regulations an effective instrument promoting *de facto* transparency and fair decision-making. Enforcement of any regulation is crucial for creating an environment of ethical and fair lobbying in public decision-making.
3. In the light of additional observations, especially with regard to institutional interaction between economic and non-economic actors and various Council of Europe bodies, the Committee on Rules of Procedure wishes to propose some amendments to further strengthen the draft resolution and the draft recommendation.

### B. Proposed amendments

#### *Amendment A (to the draft resolution)*

At the end of paragraph 7, add the following: "and to reinforce legal and institutional guarantees for civil society and media related to the monitoring of lobbyist activities, including a possibility to verify the accuracy of data contained in a register."

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1. Reference to committee: Reference 4062 of 29 September 2014. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 14075](#). Opinion approved by the committee on 20 June 2016.



*Amendment B (to the draft resolution)*

After paragraph 10, add the following paragraph:

*“The Assembly joins the call by Transparency International to grant an equal input by citizens, interest groups and corporate bodies into legislative items under consideration by means of granting a more balanced composition of expert groups. This means clear targets for balanced composition of the European Commission’s expert groups, a legal requirement on public bodies to publish the results of consultation processes, including the views of participants, and open calls for applications to sit on advisory/expert groups.”*

*Amendment C (to the draft resolution)*

After paragraph 10, add the following paragraph:

*“The Assembly values the relevant contributions by (I)NGOs to its own work, as well as to the work of standard-setting and monitoring bodies. (I)NGOs bring expertise, identify new issues to be addressed, share information and advocate for Council of Europe standards, at European and national level. The Assembly welcomes the decision of the Secretary General of the Council of Europe to revise, in consultation with the INGO conference, the guidelines on the participatory status for INGOs within the Council of Europe. In the framework of the forthcoming revision, the Assembly invites the Secretary General to ensure that (I)NGOs involved in the Council of Europe’s work are the most varied, representative and relevant possible and ensure a fair geographical representation. Special steps should also be taken to ensure that the relevant secretariats have enough time and resources to reach out to new relevant (I)NGOs, including youth organisations, and to create new partnerships.”*

*Amendment D (to the draft resolution)*

After paragraph 10, add the following paragraph:

*“The Assembly welcomes the gradual consolidation of the Council of Europe integrity system for staff and the one set up by the Parliamentary Assembly for its members. The Assembly undertakes to take further steps to improve the Assembly’s efficiency and effectiveness in dealing with conflict of interest situations through, notably, organising information seminars for both Council of Europe staff and members of the Assembly, effectively dealing with alleged conflict of interest situations and reflecting on the need to widen the definition of conflict of interest. The Assembly invites its Bureau to continue reflecting on the best possible ways of ensuring transparency of the interactions of interest group representatives with Assembly members.”*

*Amendment E (to the draft recommendation)*

Replace paragraph 1.3 with the following text:

*“draft a regulatory impact analysis in relation to the regulation of lobbying in Council of Europe member States;”*

*Amendment F (to the draft recommendation)*

In paragraph 1.5, replace the words “consolidate co-operation” by the words “intensify co-operation”.

*Amendment G (to the draft recommendation)*

In paragraph 1.5, after the words “the Convention on Access to Official Documents” add the words “and the Criminal Law Convention on Corruption (ETS No. 173).”.

*Amendment H (to the draft recommendation)*

At the end of paragraph 1.5, add the words “having regard to the European Commission’s commitment to bring more transparent and balanced interest representation, increase the transparency of decision making and reduce conflicts of interest”.

### C. Explanatory memorandum by Ms Chiora Taktakishvili, rapporteur for opinion

1. The report presented by the Committee on Legal Affairs and Human Rights provides a very comprehensive overview of the current ethical framework within which European institutions generally operate, in particular with regard to lobbying and interaction between decision-makers and lobbyists, and echoes recent key findings, conclusions and recommendations made to further improve the set of rules and mechanisms at European Union level. However, the rapporteur for opinion would like to provide additional information on a number of issues that require closer examination.

#### 1. Regulation of lobbyist activities and transparency registers

2. The draft resolution presented supports the improvements made to the Joint transparency Register set up in the European Parliament and the European Commission and advocates the introduction of transparency registers in member States. However, experience at European Union level shows that the mere fact of having such registers would not prevent conflicts of interest or boost transparency immediately, as if by magic.<sup>2</sup> Disclosure of data requested by the regulations on lobbying, including obligatory registration of lobbyists and the “cooling-off” period, will only alleviate problems, not change distribution of resources; such measures are not sufficiently substantive to help ensure equal access and participation in decision-making. As underlined by Transparency International, “regulation is only one element of a strategy to ensure fair lobbying, ... enforcement of any regulation, but also a broader willingness by all actors involved to act ethically, will be crucial to creating an environment of ethical and fair lobbying and public decision-making”.<sup>3</sup> It is therefore for civil society to make these regulations an effective instrument ensuring *de facto* transparency and fair decision-making.

3. A European Union public consultation is being held in order to gather views on the functioning of the current Joint Transparency Register and its future evolution towards a mandatory scheme covering the European Parliament, the Council of the European Union and the European Commission, as announced in President Juncker’s Guidelines. The contribution made by Transparency International to the public consultation<sup>4</sup> contains some recommendations, in particular:

- the possibility of an equal input by citizens, interest groups and corporate bodies into legislative items under consideration by means of a more balanced composition of expert groups – which means that clear targets for a balanced composition of the European Commission’s expert groups should be set;
- the introduction of a legal requirement on public bodies to publish the results of consultation processes, including the views of participants – which would imply that deliberations of European Commission’s expert groups should be published;
- the opening of all calls for applications to sit on advisory/expert groups.

4. For the Council of Europe and its Parliamentary Assembly, there will be lessons to be learned from the results of the ongoing European Union assessment of ways of improving informed decision-making. Therefore, it seems more relevant, instead of conducting a comparative study on the regulation of lobbyist activities in Council of Europe member States (which has already been partly done in the framework of the Committee of Ministers draft recommendation under preparation on the legal regulation of lobbying activities in the context of public decision-making), to request the Committee of Ministers to conduct an impact assessment of the regulation of lobbying in Council of Europe member States. The outcomes of such an analysis would allow the identification of complementary measures to be taken to reinforce informed decision-making in addition to establishing transparency registers.

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2. Transparency International has already pointed to an inadequacy between the number of lobbyists registered and those who could have contributed to a report by a legislative body. Currently, the EU Transparency Register counts 9 000 registered entities, which is considerably low compared to the estimated number of lobbyists. The draft report of the European Parliament on “Transparency, accountability and integrity in the EU institutions” (rapporteur of the Committee on Constitutional Affairs: Mr Sven Giegold) estimates that “there are more active lobbyists in Brussels than in Washington DC”.

3. Transparency International recommendations for more transparency, integrity and equal access in EU lobbying.

4. [www.transparencyinternational.eu/wp-content/uploads/2016/05/PublicConsultationTransparencyRegisterMarch-2016\\_fa2638a1-efcd-4068-971b-bef1c8721fe2.pdf](http://www.transparencyinternational.eu/wp-content/uploads/2016/05/PublicConsultationTransparencyRegisterMarch-2016_fa2638a1-efcd-4068-971b-bef1c8721fe2.pdf).

## 2. Oversight mechanism of the Council of Europe and the Parliamentary Assembly

5. Within the Council of Europe, the Directorate of Internal Oversight is responsible for assessing governance processes and, within this framework, it is in charge of prevention and detection of fraud and corruption of staff, including senior staff. Rule No. 1327 of 10 January 2011 on awareness and prevention of fraud and corruption applies to all members of the Council of Europe Secretariat and also to specially appointed officials and persons who are not Council of Europe Secretariat members but who participate in the Council of Europe's activities,<sup>5</sup> wherever they may be held. The Rule gives a definition of the terms "corruption" and "fraud". It also foresees a protection for individuals who report reasonable suspicion of fraud or corruption. There are also special rules on the declaration of interests in the context of procurement.<sup>6</sup>

6. Turning to the Parliamentary Assembly, with the adoption of the code of conduct for members of the Parliamentary Assembly,<sup>7</sup> which contains various rules on avoiding conflicts of interest and promoting good conduct of members, the Assembly now has a solid regulatory framework. A draft report on "[Resolution 1903 \(2012\)](#): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members" (rapporteur: Mr Ian Liddell-Grainger, United Kingdom, EC) is under preparation in the Committee on Rules of Procedure, with the objective to assess the current regulatory framework with regard to the implementation of the principles of transparency, accountability and integrity promoted thereby. It is certainly not for the Assembly to adopt new rules, but to consolidate the rules of conduct applicable to members, in particular to review the registration of gifts or similar benefits that members accept while performing their duties as Assembly members. Practical steps, like the organisation of information seminars, have also to be undertaken to give the current regulatory framework an effective implementation.

7. A number of instruments are already in place and it would not be difficult to request the Council of Europe to adopt additional measures without additional resources being granted. By comparison, as it has extensively been explained in the report, the European Union transparency and oversight system is composed of the European Court of Auditors, the European Anti-Fraud Office (OLAF) and the Ombudsman. To carry out their functions these three institutions are granted individual budgets. For instance, the 2014 OLAF annual ordinary budget was €57 million to which we could also add special budgets dedicated to various training programmes for national partners.<sup>8</sup> The Ombudsman office receives €10 million per year to run its activities<sup>9</sup> and the European Court of Auditor's annual operating costs exceed €100 million.<sup>10</sup> Consequently, the three oversight institutions have a common annual budget exceeding a half of the Council of Europe's ordinary budget.<sup>11</sup> To this organisation architecture we could also add costs linked to the functioning of the Joint Transparency Register Secretariat which is pointed to as under-staffed and under-funded in the light of the ambitious tasks which the Transparency Register is expected to fulfil.

## 3. Extra-institutional actors

8. As the report rightly mentions, the European Union institutions are particular targeted by different interest groups given several big files they are dealing with such as TTIP, the Energy Union, the digital single market, new data protection laws, etc. The European Union legislative powers in implementing the internal market affect both consumers and economic actors. The Council of Europe also works with several extra institutions though the intensity of their involvement is different and the pressure exercised by lobbying groups is generally not the same as in Brussels.

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5. Judges of the European Court of Human Rights, the Commissioner for Human Rights, members of the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, members of Permanent Representations, trainees, experts, consultants, and employees of outside companies.

6. Rule No. 1375 of 13 January 2016 amending Rule No. 1282 of 18 October 2007.

7. [Resolution 1903 \(2012\)](#) "The Code of Conduct of members of the Parliamentary Assembly: good practice or a core duty?"

8. The 2014 OLAF Report, p. 9.

9. The 2015 European Ombudsman Annual Report, p. 29.

10. Annual accounts of the European Court of Auditors for the financial year 2014.

11. €260 million in 2016.

### 3.1. Type of extra-institutional actors involved in Council of Europe activities

#### 3.1.1. Economic actors

9. Notwithstanding the human rights – rather than economic – profile of the Organisation, the Council of Europe deals indirectly with several matters which could seriously impact existing business models. For instance, Committee of Ministers recommendations regarding the way of handling personal data, especially on-line collection of data, may affect the multi-billion industry of online advertising. Recommendations made with regard to the Internet, including on filtering, blocking and taking-down of illegal content, may result in additional and costly obligations for Internet providers. The Council of Europe's work on bioethics, focusing on the protection of the individual's rights, identity and dignity, affects the field of biological and medical research and developments in health technology (genetics, transplantation, biobanks, emerging technologies, new genome editing technologies, etc.), in which there has been substantial investment by the private sector.

10. There is also some interest from industry and business lobbies for the Assembly's work. For instance, the report "Handling of the H1N1 pandemic: more transparency needed"<sup>12</sup> or the report on "The potential dangers of electromagnetic fields and their effect on the environment"<sup>13</sup> have been subject to numerous comments by, respectively, pharmacological and information technology lobbyists. Given its large mandate to deal, *inter alia*, with biodiversity, natural resources, energy, transport, tourism, health, food security, pollution or technological disasters, members of the Committee on Social Affairs, Health and Sustainable Development are more likely to be contacted by industry and business lobbies.

#### 3.1.2. Non-economic actors

11. The Parliamentary Assembly and almost all steering committees and monitoring bodies of the Council of Europe have some form of co-operation with (international) non-governmental organisations ((I)NGOs). (I)NGOs are often referred to as natural allies of the Council of Europe given that they usually share fundamental values and general objectives with the Organisation. (I)NGOs are usually understood as organisations driven by the public interest and not funded by a State or a single sponsor. Besides contributing in terms of information, (I)NGOs could also adopt a proactive approach whether this concerns the drafting of a legal document or the dissemination of Council of Europe standards. For instance, the drafting process of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (ETS No. 210, "Istanbul Convention") was triggered by NGOs which mobilised various Council of Europe actors – notably permanent representations, the Parliamentary Assembly and the Steering Committee on Human Rights – to start the process and are now very active in monitoring the implementation of the Convention provisions.

### 3.2. Developments of common criteria and procedure for the selection of partner (I)NGOs

12. The current co-operation between different Council of Europe bodies and (I)NGOs could be qualified as successful. However, the department of Internal Oversight of the Council of Europe has recently issued some recommendations on how to improve (I)NGOs' input into the Organisation's activities and suggested establishing common procedures for the selection of partner NGOs<sup>14</sup>: "In order to durably secure high added value of NGO contributions, the Council of Europe must therefore optimize its selection of NGOs, utilise good practices for co-operation with NGOs in a flexible manner, and facilitate the contribution of NGOs by easing access to information and reaching out to NGOs". The lack of geographical balance has been reported too as well as the difficulty in involving youth organisations in monitoring due to lack of information on both sides.

13. The selection of NGOs depends on the type of activity carried out by a given Council of Europe intergovernmental body. The standard setting, which works on common standards, would rather call for big international NGOs able to provide a consolidated position or to carry out a comparative analysis. The monitoring mechanisms would rather call for national NGOs with a country-specific knowledge. The Parliamentary Assembly criteria in choosing (I)NGOs would be similar to those used by the intergovernmental sector and would very much depend on the report under elaboration. The Assembly committees' exchanges with NGOs are announced on committees' agendas, minutes are often published and final reports themselves often mention external actors who have contributed to their elaboration.

12. [Resolution 1749 \(2010\)](#) and [Recommendation 1929 \(2010\)](#).

13. [Resolution 1815 \(2011\)](#).

14. "Co-operation of (I)NGOs with the Council of Europe in standard-setting and monitoring", Evaluation report, 22 April 2016.

14. A recent proposed action by the Secretary General to revise, in consultation with the Conference of INGO, the guidelines on the participatory status for INGOs<sup>15</sup> within the Council of Europe could provide a good opportunity to structure the Council of Europe's relations with NGOs.

### **3.3. Access to the Council of Europe premises for extra-institutional actors**

15. The equivalent of the Joint Transparency Register does not exist in the Council of Europe probably due to the low scale of involvement of professional lobbyists and the Organisation's working methods. Representatives invited to attend steering committee meetings and meetings of intergovernmental monitoring bodies, in which they may sometimes have the status of observer, receive a temporary badge. In the Parliamentary Assembly, the problem of "interest representatives" acting on behalf of private entities or a State, seeking contacts with members within the Palais de l'Europe during sessions was raised in the context of the report on a Code of conduct of members of the Parliamentary Assembly. In its [Resolution 1903 \(2012\)](#), the Assembly considered that "clear and transparent procedures" should be introduced to regulate their access to the Assembly and it invited the Bureau of the Assembly to revise the rules governing access to the Palais de l'Europe and the use of the premises. The Bureau of the Assembly should be invited, in consultation with Assembly's committees, to continue reflecting on ways to keep track of the contacts that members have with various external interlocutors, including NGOs and other groups during part-sessions.

## **4. European Union membership in the Group of States against Corruption (GRECO)**

16. The need for more synergy between the European Union and the Council of Europe in the field of the fight against corruption has been proclaimed several times by both the Secretary General of the Council of Europe and the President of the Assembly. Formal participation of the European Union in GRECO has reappeared on the agenda since the adoption by the European Union of the 2010 Stockholm Programme and publication of the European Commission's "Anti-corruption package" in June 2011. This has been welcomed by GRECO whose statute has provided for such participation from the outset. However, a controversy was triggered at EU level by the 2012 Commission Communication on participation in GRECO where the European Commission proposed a two-stage approach requesting firstly "a full participation status" which would grant the European Union involvement in the evaluation of its member States and/or candidate countries without however being itself subject to GRECO's evaluation procedure.

17. This issue has to be resolved soon so that both organisations can start concrete talks on the precise format and content of such participation. Participation of the European Union in GRECO would contribute to more co-ordinated anti-corruption policies in Europe and strengthen the impact of the European Union's and GRECO's respective anti-corruption endeavours. The Assembly already asked the Committee of Ministers in 2013 to consolidate further the co-operation within the European Union in particular by inviting the European Union to join the Criminal Law Convention on Corruption (ETS No.173) and speeding up the negotiations on the participation of the European Union in GRECO.

18. The Juncker Commission's determination to bring more transparent and balanced interest representation,<sup>16</sup> increase the transparency of decision-making and reduce conflicts of interest provides an excellent opportunity to restart talks.

## **5. Proposals**

19. In the light of the above, the Committee on Rules of Procedure would like to complete the draft resolution and the draft recommendation submitted by the Committee on Legal Affairs and Human Rights as follows:

- a reference to the involvement of NGOs and media to ensure the accuracy of transparency registers should be added;
- the contribution by (I)NGOs to standard setting and monitoring bodies of the Council of Europe and to the work of the Parliamentary Assembly should be welcomed and a call to provide for some criteria and procedure of selection in order to grant the most varied, representative and relevant participation possible should be formulated;

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15. "State of democracy, human rights and the rule of law", Report by the Secretary General of the Council of Europe, 2015, p. 11.

16. [http://europa.eu/rapid/press-release\\_IP-16-1923\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1923_en.htm).

- the Assembly's commitment to reflect on further consolidation of the Assembly's integrity system is to be added. The Bureau of the Assembly should also be invited to reflect, in consultation with the Assembly committees, on ways to keep track of the contacts that members have with various external interlocutors, including NGOs and other groups during part-sessions, to provide for more transparency;
- the proposal to conduct comparative studies on the regulation of lobbyist activities in Council of Europe member States should be replaced by a request for a regulatory impact assessment in relation to the regulation of lobbying in member States, with the aim of identifying complementary measures to be taken to reinforce informed decision-making;
- the urgent character of restarting negotiations on European Union accession to the Criminal Law Convention and participation of the European Union in GRECO in order to contribute to more co-ordinated anti-corruption policies in Europe and strengthen the impact of the European Union's and GRECO's respective endeavours shall be underlined.