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EU STANDARDS FOR THE REGULATION OF LOBBYING

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INTRODUCTION

The deepening of European integration has contributed to the creation of supranational structures of the European Union. This in turn greatly influenced to level of the shape and volume of regulation of social relations in Europe. EU starts to regulate more areas of public life in the Member States of European Union. As a result, EU governments were in the midst reverse the impact of the various economic and social groups. One form of such reverse impact was the lobbying that intensified at EU level in the second half of the 80s of the XX century¹. Moreover, a strong increase and concentration of lobbying activities in both Brussels and Strasbourg has been observed with the unification process and European Union enlargement.

At 1992 there were approximately 3000 special interest groups of varying types in Brussels, with up to 10 000 employees working in the lobbying sector. Within this total there are more than 500 European and international federations. In addition, there are 50 offices in Brussels representing regional and local authorities. There are more than 200 individual firms with direct representation, and about 100 consultants

¹ Weindelfeld W., Wessels W., *Europa von A to Z. Taschenbuch der europäischen Integration* / Institut für Europäische Politik. – Bonn: Europa Union Verlag, 2002. – S. 267–268.

(management, and public relations) with offices in Brussels and many others dealing with Community affairs. There are 100 law firms in Belgium specializing in Community law and many more in other countries². Today, it is estimated that over 15 000 special-interest groups are active in Brussels, more than 2600 of which have their permanent offices there and perform lobbying activities with the EU institutions³. The promotion of the practice of lobbying in government institutions of the European Union quite naturally raised the question of regulating this activity.

1. GENESIS OF REGULATION OF LOBBYING REGULATION IN THE EU

The first step towards specialized regulation of lobbying in the European Union was a Written Question tabled by Alman Metten, in 1989. In 1991, Marc Galle, Chairman of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, was appointed to submit proposals for a code of conduct and a register of lobbyists. Galle's proposals included: a code of conduct with minimalist standards aimed at preventing abuse (such as prohibiting selling on documents and use of institutional premises); the establishment of 'no go' areas in the Parliament's buildings including members' offices and library facilities; examination of the role of lobbying with intergroups; and, taking an idea from the United States, the registration of lobbyists on an annual basis, spelling out the rights and obligations of those on the register, and specifying penalties for failure to comply. A final, and contentious, proposal required MEPs annually to state their financial interests and those of their staff, on a separate register⁴.

Next step towards specialized regulation of lobbying in the European Union was Communiqué of Commission of the European Communities of 4 March 1993. This Communication aimed to implement the commitment

² An open and structured dialogue between the Commission and special interest groups: Commission of the European Communities (93 /C 63 /02) // Official Journal of the European Communities. – 1993. – Volume 36. – P. 2.

³ Lobbying in a democratic society (European Code of conduct on lobbying): Report Committee on Economic Affairs and Development of 5 June 2009 / Council of European Parliamentary Assembly. – Strasbourg, 2009. – P. 2.

⁴ Lobbying in the European Union: Current Rules and Practices. Working Paper / Constitutional Affairs Series; Wilhelm Lehmann, Lars Bosche. – Luxemburg: European Parliament, 2003. – P.36.

contained in the Commission's work programmer for 1992, indicating that relations between the Community's institutions and interest groups, useful though they are, must be more clearly defined. Consideration was therefore given to the preparation of a code of conduct designed to govern relations with those organizations set up with the specific purpose of liaising with the Commission⁵. After the 1994 elections, a second attempt at regulating lobbying was undertaken by the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, which, by letter of 10 August 1994, requested authorisation to draw up a report on lobbying in the European Parliament (Glyn Ford was later appointed rapporteur) and on the declaration of Members' financial interests (rapporteur: Jean-Thomas Nordmann)⁶.

Therefore, among the EU institutions, it was the European Parliament that considered and endorsed first proposals, in 1996, for rules on lobbying in Parliament and member's financial interests. By way of Rules of Procedure 9 (1 and 2), a lobbying registry was set up, together with the College of Quaestors responsible for the implementation of these rules and the issuance of passes to «persons who wished to enter Parliament frequently with a view to supplying information to members within the framework of their parliamentary mandate». These rules became «the cornerstone of the Parliament's policy to regulate the interaction of members of Parliament and private interests»⁷. Of course implementing lobbying rules in the European Parliament were a compromise, which took into account the interests of potential EU lobbyists.

Since 1999, the European Commission has undertaken a series of transparency-related measures regulating its own administration. They include the access-to-documents legislation (Regulation 1049/2001) and a register of documents; public access to databases on consultative bodies and experts advising the Commission; wider consultation and impact assessment prior to legislative steps; the Code of Good Administrative

⁵ An open and structured dialogue between the Commission and special interest groups: Commission of the European Communities (93 /C 63 /02) // Official Journal of the European Communities. – 1993. – Volume 36. – P. 2.

⁶ Lobbying in the European Union: Current Rules and Practices. Working Paper / Constitutional Affairs Series; Wilhelm Lehmann, Lars Bosche. – Luxemburg: European Parliament, 2003. – P.37.

⁷ Lobbying in a democratic society (European Code of conduct on lobbying): Report Committee on Economic Affairs and Development of 5 June 2009 / Council of Europe Parliamentary Assembly. – Strasbourg, 2009. – P. 7.

Behaviour and the Code of Conduct for Commissioners. The so-called CONECCS (Consultation, the European Commission and Civil Society) was put in place to provide a basis for the voluntary registration of civil society organisations (such as trade unions, business associations and NGOs) willing to take part in the consultative process. However, it is estimated that no more than 7% of all lobbyists have effectively registered⁸.

A big role for improving of lobbying regulations had a Green Paper on the European Transparency Initiative was published in May 2006 and public consultation ended in August 2006. The Green Paper are defined «lobbying» like all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions. Accordingly, «lobbyists» are defined as persons carrying out such activities, working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units («in-house representatives») or trade associations. Moreover, the Green Paper had two significant positions: 1. Lobbying is a legitimate part of the democratic system, regardless of whether it is carried out by individual citizens or companies, civil society organisations and other interest groups or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers). 2. Lobbyists can help bring important issues to the attention of the European institutions. In some cases, the Community offers financial support in order to ensure that views of certain interest groups are effectively voiced at European level (e.g. consumer interests, disabled citizens, environmental interests etc.)⁹.

2. EU LEGAL ACTS THAT ESTABLISH STANDARDS FOR EU REGULATION OF LOBBYING

EU standards for the regulation of lobbying is based on series of articles of founding EU treaties and the Charter of Fundamental Rights of the European Union. According to the Treaty of Lisbon:

⁸ Lobbying in a democratic society (European Code of conduct on lobbying): Report Committee on Economic Affairs and Development of 5 June 2009 / Council of Europe Parliamentary Assembly. – Strasbourg, 2009. – P. 8.

⁹ A Green Paper on the European Transparency Initiative (COM(2006) 194 final) / Commission of the European Communities. – Brussels, 2006. – P. 5.

- 1) the functioning of the Union shall be founded on representative democracy. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen (Article 8A);
- 2) the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent (Article 8B)¹⁰.

The ability to lobby the European Union also follows from the Charter of Fundamental Rights of the European Union. The Charter contains those rights and freedoms which are the basis for lobbying in the EU:

- 1) everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media shall be respected (Article 11);
- 2) everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests (Article 12);
- 3) workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices (Article 27);
- 4) workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appro-

¹⁰ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 (2007/C 306/01) [English edition] // Official Journal of the European Union. – 2007. – December 17. – Volume 50. – P. 15.

- appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action (Article 28);
- 5) every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language (Article 41);
 - 6) any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents (Article 42);
 - 7) any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role (Article 43);
 - 8) any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament (Article 44)¹¹.

3. EUROPEAN TRANSPARENCY INITIATIVE

The European Transparency Initiative was launched in 2006, when it was adopted on the Green Paper. It was quite a significant step forward in improving the practice of lobbying in the EU. In its ETI Green Paper, the Commission suggested a new framework for lobbying activities which would be based on: 1) a voluntary registration system with incentives for lobbyists to register. The incentives would include automatic alerts of consultations on issues of known interest to the stakeholders; 2) a common code of conduct for all lobbyists, or at least common minimum requirements; 3) a system of monitoring, and sanctions to be applied in the event of incorrect registration and/or breach of the code of conduct¹².

However, European transparency initiative faced strong opposition by business associations and law firms who conduct lobbying in Brussels. A critical moment was reached in late August 2007 when the European Public Affairs Consultancies Association (EPACA), representing 38

¹¹ Charter of Fundamental Rights of the European Union (2000/C364/01) [English edition] // Official Journal of the European Communities. – 2000. – December 18. – P. 11–19.

¹² A Green Paper on the European Transparency Initiative (COM(2006) 194 final) / Commission of the European Communities. – Brussels, 2006. – P. 5.

major companies, announced that it would boycott the proposed European Commission's voluntary register which it labelled as „discriminatory and unworkable”. It further claimed that a requirement to disclose „commercially sensitive financial information” (such as client fees) was in breach of EU competition law. Many law firms also said they opposed the register. Moreover, in July 2007, the European ombudsman officially reprimanded EU Trade Commissioner Peter Mandelson for his refusal to name the lobbyists he had met¹³.

After difficult consultations between European Commission and lobbyists the first European Commission lobby register was set up on 23 June 2008. The necessity and importance to Register is explained on Transparency Portal. The Portal noted since decisions taken by the EU affect millions of European citizens, they must be taken as openly as possible. The EU institutions interact with a wide range of groups and organisations representing specific interests. This is a legitimate and necessary part of the decision-making process to make sure that EU policies reflect citizens' real needs. The decision-making process must be transparent to allow for proper scrutiny and to ensure that the Union's institutions are accountable. The European Parliament and the European Commission are committed to being open about the groups and organisations with which they interact¹⁴.

Key dates of improving of the Transparency Register:

2011 – Interinstitutional Agreement on a common Transparency Register.

2011 – First Transparency Register launched; Interinstitutional Agreement.

2012 – Commission's Transparency portal launched.

2013 – Review process.

2014 – European Parliament decision modifying the Interinstitutional Agreement on the Transparency Register.

2014 – Revised Interinstitutional Agreement on the Transparency Register.

2015 – New version of Transparency Register launched.

¹³ Lobbying in a democratic society (European Code of conduct on lobbying): Report Committee on Economic Affairs and Development of 5 June 2009 / Council of Europe Parliamentary Assembly. – Strasbourg, 2009. – P. 8.

¹⁴ Why a transparency register? // The Transparency Portal. [Electronic resource]. – Mode of access: <http://bit.ly/21D9Nem>

4. STRUCTURE AND STATISTICS OF THE TRANSPARENCY REGISTER (ON 29/02/2016)

№	Sector	Number
I.	Professional consultancies/law firms/self-employed consultants	1,085
	Professional consultancies	666
	Law firms	101
	Self-employed consultants	318
II.	In-house lobbyists and trade/business/professional associations	4,710
	Companies & groups	1,664
	Trade and business associations	2,217
	Trade unions and professional associations	548
	Other organisations	281
III.	Non-governmental organisations	2,329
	Non-governmental organisations, platforms and networks and similar	2,329
IV.	Think tanks, research and academic institutions	664
	Think tanks and research institutions	473
	Academic institutions	191
V.	Organisations representing churches and religious communities	40
	Organisations representing churches and religious communities	40
VI.	Organisations representing local, regional and municipal authorities, other public or mixed entities, etc.	437
	Regional structures	120
	Other sub-national public authorities	109
	Transnational associations and networks of public regional or other sub-national authorities	53
	Other public or mixed entities, created by law whose purpose is to act in the public interest	155
VII.	Total	9265

5. INFLUENCE OF EU STANDARDS FOR THE REGULATION OF LOBBYING FOR EU PARTNER COUNTRIES

EU standards for the regulation of lobbying influence not only on the EU Member States. These standards also extend to EU Partner Countries for helping these countries bring national legislation in accordance with European Union Law. In particular, the adoption and ratification of the Association Agreement between Ukraine and the European Union opened a new breath for the legislative regulation lobbying in Ukraine and the study of its practices in EU countries. According to Article 444 of the Agreement the Parties shall promote dialogue and cooperation between

civil society stakeholders from both sides as an integral part of EU-Ukraine relations, by means of:

- (a) strengthening of contacts and mutual exchange of experience between civil society organisations in the EU Member States and in Ukraine, in particular through professional seminars, training, etc;
- (b) facilitating institution-building and consolidation of civil society organisations, including, amongst others, advocacy, informal networking, visits, workshops, etc;
- (c) enabling the familiarisation of Ukrainian representatives with the process of consultation and dialogue between social and civil partners in the EU, with a view to integrating civil society into the policy process in Ukraine¹⁵.

The regulation of lobbying in Ukraine is very important, especially in light of Anti-corruption strategy. NGOs noted that in the past the Government did not conduct systemic and regular work with the business sector to promote self-regulation and anti-corruption measures. Similarly discussion of anti-corruption or business legislation was not meaningful. Large companies continued lobbying their interests in legislation drafting through business associations and other lobbying structures; in some cases their proposals were submitted through MPs. Small and medium business in reality had no avenues to influence legislation. An example of lack of proper consultations with business entities was drafting of a Tax Code in 2010, first draft of which resulted in public protests from companies and business associations¹⁶.

Therefore, Parliament of Ukraine was adopted Law of Ukraine «On the Principles of State Anti-Corruption Policy in Ukraine (the Anti-Corruption Strategy) for 2014–2017». According to Section 6 of the Law to implement the Anti-Corruption Strategy, it is envisaged to draft and approve a number of laws, in particular, on: creating legal foundations

¹⁵ Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони від 27 червня 2014 року: ратифіковано із заявою Законом № 1678-VII від 16 вересня 2014 року // Офіційний вісник України. – 2014. – № 75. – Том 1. – Ст. 2125.

¹⁶ Anti-Corruption Reforms in Ukraine: Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan / The Organisation for Economic Co-operation and Development. – Paris, 2015. – P. 177.

of lobbying¹⁷. The adoption of the Anti-Corruption Strategy was the result of Ukraine's implementation of the roadmap for the integration into the European Community. According to the Anti-Corruption Strategy in Ukraine has begun the process of drafting the Law of Ukraine on Lobbying.

CONCLUSION

Lobbying in the European Union is an integral and important part of decision-making in the EU. From year to year lobbying regulation in the EU is constantly improving and the number of lobbyists are increases. The main standards for regulating of lobbying in the European Union are: 1) democracy; 2) the rights and freedoms of man and citizen; 3) transparency of decision-making in the EU; 4) good governance; 5) ethical rules of conduct for public officials; 6) the using of electronic tools. EU standards for the regulation of lobbying has influence on the legislative regulation of lobbying in the EU Member States and EU Partner Countries.

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¹⁷ Засади державної антикорупційної політики в Україні (Антикорупційна стратегія) на 2014–2017 роки: затверджено Законом України від 14 жовтня 2014 року № 1699-VII // Офіційний вісник України. – 2014. – № 87. – Ст. 2473.

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