



TRANSPARENCY
INTERNATIONAL
BULGARIA

LOBBYING IN BULGARIA

INTERESTS, INFLUENCE, POLITICS

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The main priority in the work of Transparency International – Bulgaria is the elaboration and implementation of methods and programs for counteracting of corruption on national and regional level.

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Authors: Katia Hristova-Valtcheva, PhD, Linka Toneva-Metodieva PhD

Editors: assoc. prof. Ognyan Minchev, assoc. prof. Teodora Kaleynska

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LOBBYING IN BULGARIA: INTERESTS, INFLUENCE, POLITICS

NATIONAL REPORT

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

According to Transparency International's 2013 Global Corruption Barometer, 59% of Bulgarians believe that their government is run by a few big entities which are acting in favour of their own interests. This report, *Lobbying in Bulgaria: Interests, Influence, Politics*, aims to assess the influence of lobbying on public decision-making in Bulgaria – with a particular focus on how fair, transparent and ethical lobbying activity in Bulgaria is. It finds that lobbying in Bulgaria remains largely unregulated and much of it happens behind closed doors and beyond public scrutiny.

As a result, there is no commonly shared understanding among the expert community and the public as to what lobbying is and what its legitimate and acceptable forms are. “Lobbying” has thus become a term used to explain any practice or phenomenon that remains non-transparent, non-public, “behind the scenes” in the political-institutional process in Bulgaria.

Lobbying is understood in this report as any attempt to influence political decision-makers by or on behalf of any organised group. The report assesses the rules and practise of lobbying through the perspective of three core dimensions – Transparency, Integrity and Equality of Access. An overall score (in % form) has been calculated for each of the core dimensions. Bulgaria's country score on each of these three criteria is alarmingly low – and thus, it receives a paltry 25% overall.

For the past fifteen years the debate around the need to regulate lobbying in Bulgaria has recurrently emerged on the political and public agenda. Four draft legislative proposals have been elaborated during the 2000s and none of them has received the necessary political support to be transformed into legislation.

Concerted efforts for enhanced transparency of the political process are clearly needed, given the fact that public trust in national institutions in 2014 reached as low as 14% for the national parliament and 18% for the national government¹. Importantly, 77% of Bulgarians are unsatisfied with the functioning of the democratic system in the country². If sustained, this tendency may have unfavourable effect on the overall democratic process.

The three key questions this report seeks to answer are:

How transparent are lobbyists and lobbying activities?

Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working?

Are there enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests?

¹ Standard Eurobarometer 81, Spring 2014, http://ec.europa.eu/public_opinion/archives/eb/eb81/eb81_publ_en.pdf.

² Ibid.

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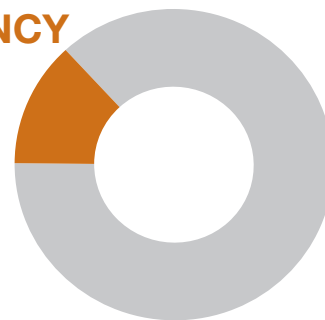
To what extent is Bulgaria safeguarded against undue lobbying?

25%



TRANSPARENCY

13%



The public does not have sufficient knowledge of who is lobbying whom, on what issues, when and how they are being lobbied, how much money is being spent in the process and what the results of the lobbying efforts are.

INTEGRITY

25%



A robust ethical framework for lobbyists (including companies) and lobbying targets is not yet in place in Bulgaria. The full potential of self-regulation is far from being utilised to foster integrity in lobbying. The onus for integrity is insufficient both with regards to public officials and representatives, as well as those who lobby them.

EQUALITY OF ACCESS

38%



Equality of access is the best ranking indicator for fair and ethical lobbying in Bulgaria. And yet the country's score is relatively low. While formal opportunities for participation exist, there is still much to be done to make access to decision-making and policy-making processes more equal.

Unpacking the results – why does Bulgaria do so badly?

The current legislation in place in Bulgaria does not refer to or use the term “lobbying”. There is no public register of lobbying activities, and the public does not have knowledge of who is lobbying whom, on what issues, when and how they are being lobbied. Moreover, information on how much money is being spent in the process as well as the results of lobbying efforts is not published or made publicly available. There are no requirements for public officials to report on meetings with lobbyists, nor are there any requirements for proactive publication of public officials’ and ministers’ calendars. The concept of a legislative footprint, which details the time, person and subject of a legislator’s contact with a stakeholder, has not been adopted. **The score for Bulgaria on the criterion of “transparency of lobbying” is thus dramatically low, coming in at just 13%.**

A robust ethical framework for lobbyists (including companies) and lobbying targets is not yet in place in Bulgaria. **On the integrity indicator, Bulgaria’s score is just 25%.** The full potential of self-regulation is far from being utilised to foster integrity in lobbying. The onus for integrity is insufficient both with regards to public officials and representatives, as well as those who lobby them.

Equality of access is the best ranking indicator for fair and ethical lobbying in Bulgaria. **And yet the country’s score is relatively low, at 38%.** While formal opportunities for participation exist, there is still much to be done to make access to decision-making and policy-making processes more equal.

The broader legal environment does not sufficiently support ethical lobbying. Considerable flaws exist in a number of laws and regulations, which are related to lobbying practices. This includes the normative framework on access to information, political financing and conflicts of interest.

Media and civil society organisations are a vital part of any democratic political framework. They can serve as watchdogs, monitoring and promoting transparency in politics. On top of this, they can promote integrity

in interest representation, acting as mediators as well as influencers over the political process. The Bulgarian media is susceptible to increasing risks of undue influence on editorial policies. This has resulted from the growing political and economic dependencies of the sector. Such editorial policies may compromise the independence of the sector, meaning that some important public topics remain a taboo and are rarely covered in media.

Civil society is vibrant. There are a growing number of non-governmental organisations, many of which concentrate on the issues of anti-corruption, good governance and institutional monitoring. At the same time, however, many civil society organisations are increasingly becoming the target for political and state influence. This is especially alarming considering the risk of politically and governmentally controlled CSOs serving as a “curtain” for private interests. These CSOs operate in the framework of various consultative councils, formed by different institutions and thus distort equality of access to the political decision-making process.

3 http://www.transparency.org/whatwedo/answer/legislative_footprint

What are the possible remedies?

TI Bulgaria recommends the following measures:

-  Public authorities – both the parliament and the government - must introduce adequate (including legal) instruments that support transparent and ethical lobbying. In particular, they should utilise the legislative footprint tool. This would provide detailed information on who sought to influence legislation, what piece of legislation was targeted and by which channels influence was sought.
-  The National Assembly must introduce a Public Registry of all organisations that submit written opinions on draft bills to the parliamentary committees. The register should include information on the name and headquarters of the organisation. Members of the management board, fields of expertise and type of represented interests should also be provided.
-  The National Assembly should adopt a parliamentary Ethics Code in order to develop the ethical infrastructure within the National Assembly as a step towards restoring public trust in the democratic functioning of the legislature.
-  Public authorities must make conflict of interest prevention an effective tool for adherence to the requirements for the “revolving door” of appointments between the public and private sector.
-  The government must review the access to information regime to ensure a more robust framework for active publication of information by institutions. This must involve the removal of existing obstacles to electronic access to public information.
-  Public authorities – both the National Assembly and the government - must guarantee reasonable timeframes for public consultation (at least 30 days) and to organize the consultative process in a manner that is friendly and accessible to the stakeholders by: publishing an annual legislative programme of the National Assembly; publishing preliminary concepts on the need for and effect of the respective legislation; publishing of records of the consultations that have taken place on each draft legislative act.
-  Business and professional associations must make better use of self-regulation mechanisms. They must promote the standards of integrity in their interaction with public authorities. They also need to make explicit reference to integrity standards in their Ethics Codes. Where such codes are not yet in place, they should be adopted without delay.

INTRODUCTION

Aim of This Report

Transparency International's European National Integrity System regional report Money, Power and Politics (2012) found that in most European countries, the influence of lobbyists is shrouded in secrecy. This is a major cause for concern. When undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the decisions that may affect them. Problems arise when lobbying is non-transparent and unregulated. Issues also develop where privileged access is granted to a select few, while others are excluded from decision-making processes. Corporate lobbying in particular raises concerns because it often involves companies with vast sums at their disposal. These companies develop close relationships with lawmakers, so are able to gain undue and unfair influence in a country's politics and policies.³

A recent Eurobarometer report revealed that 81% of Europeans agree that overly close links between business and politics in their country has led to corruption. More than half of the respondents believe that the only way to succeed in business in their country is through political connections.⁴ This corroborates the data from TI's Global Corruption Barometer 2013, which found that in many European countries, more than 50% of people believe that their country's government is to a large extent or entirely run by a few big interests.⁵

This report is structured in two main parts. The analysis begins by mapping the lobbying landscape in Bulgaria. It provides a contextual analysis of the national historical, socio-political and legal situation with regard to lobbying. This chapter also discusses the intensity and scale of lobbying efforts. It reviews the various cultural understandings of the term 'lobbying' as well as perceptions of lobbying practices in the country. Further relevant issues, such as self-regulation of lobbying activities in addition to the role of the media and civil society as watchdogs in monitoring and reporting on lobbying activities, are also discussed.

Following this, the "Regulating Lobbying" chapter assesses the degree to which national regulation (public law and private self-regulation) adequately provides for public sector integrity. In particular, it focuses on the transparency of lobbying activities and public decision-making. It also reviews the extent to which the legal framework can ensure ethical lobbying and conduct by public officials. The ability of the law to safeguard equality of access to public decision-making processes is also discussed. The assessment was done using a series of 65 questions⁶, as well as in-depth expert interviews with parliamentarians, representatives of business and professional associations, non-governmental organizations and the media in Bulgaria.

3 See TI (2012) <http://www.transparency.org/enis/report>

4 See Eurobarometer (February 2014) Special Report on Corruption: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm

5 See TI (2013) <http://www.transparency.org/gcb2013/report>

6 See Annex 1 for more details on the methodology and research approach used in this study.

This report is part of the European Commission funded ‘Lifting the Lid on Lobbying’ project. The project involves 18 European countries which

assess the situation with regard to lobbying and its regulation in their country-context.⁷

The Aim of the Report is to:

-  Assess existing lobbying regulations, policies and practices in Bulgaria.
-  Compile evidence about corruption risks and incidences related to a lack of lobbying control.
-  Highlight promising practices around lobbying found in Bulgaria.
-  Provide recommendations and solutions for decision-makers and interest representatives in the public and private sector.

Definitions

The definition of lobbying for this project is: “Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making carried out by or on behalf of any organised group”.⁸

“Lobbyists” can include not only professional lobbyists, but private sector representatives (in-house lobbyists), public affairs consultancies, representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.⁹

We believe that regulation should capture all who lobby professionally. So, our definition purposefully

excludes individual citizens lobbying on their own behalf. Instead, this is considered part of a normal healthy democratic process and not something which should be unduly regulated. A number of case studies are included in the report. They highlight deficiencies in the framework of interest representation. Moreover, the case studies clearly show that there are risks for society at large when there is insufficient transparency, integrity and equality of access in regard to interest representation. Problems may also arise when lobbying is allowed to take place in the shadows or without any regulation. More encouragingly, the report also provides examples of some positive lobbying practices that have been identified in our research.

7 The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

8 This definition draws heavily on the Sunlight Foundation Lobbying Guidelines (<http://sunlightfoundation.com/blog/2013/12/03/announcing-sunlights-international-lobbying-guidelines/>), the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying (2014, forthcoming) and Council of Europe Parliamentary Assembly Recommendation 1908 (2010) on lobbying in a democratic society.

9 See Transparency International (2012) Regional Policy Paper ‘Lobbying in the European Union: Levelling the Playing Field’, accessible online at http://www.transparency.de/fileadmin/pdfs/Themen/Politik/ENIS_Regional_Policy_Paper_Lobbying.pdf

MAPPING THE LOBBYING LANDSCAPE IN BULGARIA

Twenty-five years after the collapse of the communist regime in Bulgaria, the country experienced a deep political crisis. The crisis brought about the unprecedented dissolution of the parliament just one year after its election in 2013. The origins of the crisis are found in the effects of undue pressure on both the political and economic life of the country. This was followed by the total erosion of public confidence in the integrity of state authorities.¹⁰ "Behind the scene politics" became a narrative covering a variety of non-transparent decision-making practices, including lobbying.

National Context: The Political and Legal Environment Do Not Support Transparent Lobbying

Bulgaria is among the new EU member states that have re-shaped its political landscape after the collapse of the communist regime in 1989. Traditionally having been a unitary state, the new Bulgarian Constitution of 1991 made a choice in favour of a European type of parliamentary system. The Constitution provides for a pluralist party system, and it contains provisions for a directly elected president, aided by a vice-president, both of whom enjoy five year terms of office. The National Assembly (Narodno sabranie) is a unicameral parliament with 240 members. Each member is elected for four-year terms by direct popular vote. The Council of Ministers, which is elected by the National Assembly, is the executive state body and directs the domestic and foreign policy of the country. The government manages the implementation of the state budget and also organises the management of state property. On top of this, the government approves or rescinds certain categories of international treaties pointed out in the Constitution.¹¹

The decision-making process in Bulgaria provides different channels for interest representation. The legislative process within the National Assembly commences with the submission of a bill by a Member of Parliament or the

Council of Ministers. The bill is examined by an assigned Rapporteur Standing Committee and is then adopted through two readings. MPs may submit written motions for amending a bill that has been adopted at first reading. This must be done within a period specified by Rules of Procedure of the National Assembly. The President of the Republic may return an act adopted by the National Assembly for further consideration. If the President decides to veto an act, the veto could be overcome with a majority of more than one-half of all MPs.

The legislative process inside the National Assembly is regulated by its Rules of Procedure. There is currently no mandated practice or approach for parliament to follow in terms of developing and planning annual legislative programmes. Instead, the Rules of Procedure require newly submitted bills to be registered in a publicly accessible register within the day of their deposition (Art. 73 p. 1).¹² Furthermore, details of the Standing Committee to which any new bills have been assigned must also be announced. The Statutory Instruments Act provides for a 14-day period for any interested parties to provide comments. These are the major tools that open the space for a transparent process of interest representation.¹³

10 <http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/bulgarien-im-griff-von-korruption-und-guenstlingswirtschaft-13084686.html>

11 Official website of the Council of Ministers, <http://www.government.bg/>

12 <http://www.parliament.bg/bg/rulesoftheorganisations>

13 Art. 26 (2); source: <http://www.lex.bg/bg/laws/ldoc/2127837184>

Following a neo-corporatist approach, the legislative framework provides for a centralised mechanism for consultation in public policy-making processes. According to the Administration Act, the Council of Ministers may create councils as standing advisory bodies of the government. These councils are tasked with ensuring coordination in the sphere of executive power. They also cooperate with other state bodies, local self-government authorities and non-governmental organisations. Together, they formulate and implement state policy in a particular area or on important matters of public relevance.¹⁴ Members of government may establish councils as expert advisory units to find solutions to problems. The government may also create working groups, using experts' particular competencies to fulfill specific tasks. As of June 2014, the functioning consultative bodies included 35 councils established by laws, 20 councils established by government ordinances and some 5 more established by decisions of other bodies.¹⁵ Nevertheless, no specific transparency and accountability requirements on the work of those consultative bodies are provided for.

The policy-making process in the broader sense provides for the participation of state administration and various regulatory bodies. These have a substantial role in the process of policy-making and implementation through the mechanisms of the elaboration of the secondary legislation.

Some specifics of the legislative process in Bulgaria have the potential to open up the door for undue influence rather than transparent representation of interests. This is especially due to the significant instability and unpredictability of the Bulgarian legal order, which allows for a high degree of changeability of enactment processes - including the practice to amend acts by transitory and final provisions of other acts as well as the persisting trend for acts to provide grounds for issuing too many bylaws. These practices, which are far too common, technically prevent any substantial discussion and consideration of legitimate interests.¹⁶

14 Art. 21 (1); source: <http://www.mi.government.bg/en/library/administration-act-382-c25-m258-2.html>

15 <http://www.saveti.government.bg>

16 For instance, on average 60% of the adopted acts are amended or supplemented during the first year after their promulgation, 35% of the acts on average are declare non-compliant with the Constitution; the transitory and final provisions of one adopted act provide for the amendment of 24 acts on average. Source: Center for Legal Initiatives, Legal Barometer issues 1 to 8 for the period 2010 – 2013; http://www.cli-bg.org/index_eng.html

Previous Attempts to Regulate Lobbying: A Chronicle of Failures Foretold

The topic of legal regulation concerning lobbying was raised in Bulgaria for the first time in the late 1990s. In 2002, “Novoto Vreme” parliamentary group brought before the 39th parliament a draft Law on Publicity and Registration of Lobbyists and Lobbying¹⁷. According to the draft law, a lobbyist was any juridical person who undertook lobbying activities occupationally or at least once per year. The individual may be acting on their own initiative, or assigned to the lobbying activity by another person in return of remuneration. The draft law defined lobbying as the act of influencing the enactment, revision or repeal of a law or the rejection of a bill. Lobbying was also any act that influences the implementation or dismantling of executive measures connected to the development and/or the implementation of governmental programmes and initiatives.

Outside the scope of regulation were activities such as: the affairs of representative employees’ organisations or employers’ organisations. Additionally, not regulated are the activities of not-for-profit organisations carried out as part of projects which received free financial support from the European Union or international organisations. Moreover, providing the lobbying targets with positions, studies, or any other general information, which does not contain specific proposals regarding the enactment, revision or repeal of legal or administrative acts or the rejection of bills for such acts, were not included in regulation.

The draft law defined potential lobbying targets as the Parliament, President and the Vice President, the executive bodies mentioned in Article 19 of the Administration Act, as well as the bodies of local self-government. Further, public officials, members of cabinet and persons working in the executive or parliamentary or presidential administration, could be considered lobbying targets according to the law. The draft foresaw registration of lobbyists and lobbying. It was to be done in a Public Registry which would

be established as a juridical person, funded by the state budget. The Registry was to be presided over by a director, elected by the National Assembly for a five-year term. It would be an independent national body that registers information, which it is obliged to publish. The Registry would also oversee adherence to the Law on Publicity and Registration of Lobbyists and Lobbying.

Fines and material penalties were stipulated for persons who were involved in lobbying without having registered accordingly.

The 2002 draft law was put up for discussion in a parliamentary commission. However, all debate was thwarted at an early stage and the draft was consigned to the history books.

Work on a new draft for a Lobbying Act was restarted in 2006. It related to the enactment of a new Strategy for Transparent Government and Prevention and Combating Corruption. Three draft laws were developed during this period. These include the Publicity of Lobbying Bill submitted by members of the Movement for Rights and Freedoms Parliamentary Group; the Publicity of Lobbying Bill, prepared by the members of Parliament Assia Mihaylova and Lyuben Dilov Jr.; and, the Publicity of Lobbying Bill written by a working group, under the auspices of the national ombudsman.

The Publicity of Lobbying Bill submitted by Assia Mihaylova and Lyuben Dilov Jr. defined the lobbyist as a person who is hired with financial compensation by a client. Following the definition, the lobbyist provides services which involve more than one lobbying contact and are registered according to the order established by the law itself. In this draft law, lobbying was defined as every activity undertaken for remuneration to the benefit of a third person. Such activities are defined as being carried out with means permitted by the law. They are aimed at influencing the bodies of state power and those of local self-government in exerting their powers representing or protecting the interests of this person. Lobbying contact was every oral or written communication (including electronic communication) with the executive or legislature. It also included communication regarding

¹⁷ Draft Law on Publicity and Registration of Lobbyists and Lobbying. It was introduced by B. Tsekov and a group of members of parliament (data and signature: 23.07.2002, 254-01-66, leading committee: Committee on Civil Society, 39th National Assembly, <http://parliament.bg/bills/39/254-01-66.pdf>).

local self-government bodies which is carried out on behalf of a client. The related communication concerns the enactment, revision or repeal of acts of parliament or subordinate legislation.

Several related practices were outside the scope of the definition for lobbying, according to the draft law. These included the affairs of representative employees' organisations and employers' organisations, on the issues of employment, insurance relations and the standard of living. In addition, left out were the activities of non-profit organisations carried out as part of projects which received free financial support from the European Union, international organisations or specialised programmes of foreign governments. Furthermore, the affairs of political parties, as well as the activities of representatives of international organisations, the European Union, foreign governments or foreign political parties, were also not included. On top of this, mass media and their representatives' activities connected to collecting, disseminating and analysing information were not considered to be lobbying. Finally, giving oral or written opinions, positions, studies or other information at the request of national institutions, did not fit into the given definition.

This draft law applied to lobbying activities directed towards the bodies of state authority and the bodies of local self-government in exerting their powers.

Some important restrictions were also provided. Lobbying would be prohibited in connection with: acts issued under the provisions of the Public Procurement Act as well as granting concessions under the provisions of the Concessions Act. Further prohibited were registrations and licenses to broadcast a television or radio station issued under the provisions of the Radio and Television Act. Additionally lobbying would not be allowed in the issuing of licenses and permits. Also prohibited would be lobbying in relation to: the bodies of revenue administration, state financial control or other public control bodies; the bodies of the judiciary; the Constitutional Court; and, the National Audit Office. Persons who occupy an elected or appointed office in the bodies subject to lobbying could not be involved in lobbying activities while occupying the respective office. This also applied to a period of two years after the termination of authority or of their employment or service relationship. There were also restrictive provisions in relation to political donations made by lobbyists.

The obligation of identification was introduced for the lobbyist. This applied to any written correspondence with the representatives of the lobbied

bodies or on the occasion of undertaking lobbying activities or lobbying contact. The obligation required the lobbyist to specify the number and date under which he is registered in the Public Lobbyist Registry. In establishing personal contacts with representatives of public authorities or on the occasion of undertaking lobbying activities, the lobbyist would be obliged to announce on whose behalf he is lobbying. The lobbyist must also state what the desired end result of his or her lobbying activity is. A Public Lobbyist Registry was to be established as an executive agency under the Minister of State Administration. The Registry would register lobbyists and ensure publicity and public access to information on them. It would also ensure that the law is followed.

The bill was discussed within the Parliamentary Commissions, but did not secure the necessary support to enter plenary sessions.

Yet another proposal entitled **Publicity of Lobbying Bill** was prepared by the Movement for Rights and Freedoms parliamentary group in 2006. According to this draft law, every natural or juridical person had the right to lobby directly or through an intermediary (a lobbyist). Lobbying (lobbying activities) was defined as influencing with a lobbying goal. The lobbying targets could be the following institutions: the President and the Vice President of the Republic; public officials; ministers and deputy ministers; members of political cabinets; mayors and deputy mayors; governors and deputy governors; members of parliament and municipal council members.

A lobbying goal, according to the draft law, was the influence aimed at the enactment, rejection, revision or repeal of acts. Such acts included: acts of the National Assembly; subordinate legislation; administrative acts; official documents determining the state's policies in a specific sector, issued or approved by the Council of Ministers or the National Assembly; and, official documents determining policies, issued or approved by the bodies of local self-government and local administrations.

A Registry to the National Audit Office was provided for in the draft law. This is the mechanism through which the registration of lobbying activities takes place. The Registry would be public and accessible through the internet. According to the draft law, lobbyists would be obliged to submit information about their identity, lobbying goal and lobbying targets. They would also have to openly state the foreseen forms of influence. Accounts were to be submitted every six months for the lobbying

activities being performed as well as details on the funds spent. The accounts would be public and include: information on the legislation or specific actions of the bodies of the legislature, the executive, or of local self-government, which have been involved in the communication of lobbying goals. Also publicised would be a list of persons who were involved in carrying out lobbying activities. Moreover, revenue and expenditure accounts for the performed lobbying activities complete with copies of the original documents verifying the amount of funds would also be published. The implementation of the law was assigned to the head of the National Audit Office.

In 2008, a draft Publicity of Lobbying Activity Bill was elaborated and submitted to parliament by a group of MPs.¹⁸ Its preparation was assigned to an interdepartmental working group coordinated by the Ombudsman of the Republic of Bulgaria. Among the experts in the group are members of the Commission on Combating Corruption to the 40th National Assembly, the Council of Ministers and authorised members of the Supreme Judicial Council. Also included were representatives of a broad range of civil society organisations, including Transparency International-Bulgaria, Journalists against Corruption Club, “Access” Association. The draft law aimed to create a mechanism to inform the public of the lobbying activities of a broad range of organisations and persons. The increased transparency in the process of preparation, discussion and enactment of legal and administrative acts would undoubtedly limit the room for behind-the-scenes pressure for the implementation of various private, personal or group interests. Lobbying was defined as the undertaking of contacts with the purpose of influencing by lawful means the enactment, revision or repeal of legal or administrative acts, as well the rejection of drafts for such acts.

The draft law also defined lobbying targets. This included the National Assembly and members of parliament; the bodies of the executive according to Article 19 (2) and (4) of the Administration Act; and, municipal councils and municipal council members.

Provided for were relevant exceptions which largely repeated the principles adopted in the previous draft laws. Namely, this included the exclusion from the scope of the law activities of representatives of employers’ organisations on the issues of employment

and insurance relations as well as on the issues of the standard of living. Exceptions also included lawyers, bar associations and lawyer companies in and on the occasion of practicing the lawyer profession. In addition, organisations of elected or appointed representatives of state administration and bodies of local self-government and local administration were also not included as lobbying targets. Likewise, non-profit juridical persons – on the occasion of the implementation of projects and initiatives to the public benefit, involving the preparation of proposals to improve the legislation funded by the public budget or through free financial support from the European Union or from other programmes and competitions organised by public institutions – were not considered to be lobbying targets under the definition. Outside the scope were also political parties and their representatives, representatives of international organisations, of the European Union, of foreign governments and of foreign political parties. Furthermore, mass media and their representatives were also exceptions to the definition of lobbying targets. Finally, public officials from bodies defined as potential objects of lobbying on the occasion of carrying out their functions and public obligations, were additionally excluded from the scope of the law.

Activities which were not defined as lobbying also included: filing complaints, signals, requests, declarations or other documents provided for in a law. Further excluded were issuing opinions, positions, studies or other general information on economic, social or political issues that do not contain specific proposals for the enactment, revision or repeal of legal or administrative acts. In addition, not defined as lobbying were the rejection of bills for such acts; participation in advisory bodies; and, the gathering of information on acts and actions of the national bodies under the provisions of the Access to Public Information Act.

The draft law provided for a Public Registry. The Registry would be maintained by the National Assembly. It would concern persons undertaking lobbying and their representatives who liaise with members of parliament, participate in the meetings of parliamentary commissions or have permanent access to its buildings. Data about persons carrying out lobbying had to be entered in the registry. Likewise, specific information on the participation of lobbyists in parliamentary commission meetings had to be provided to the Registry. Moreover, the issues lobbyists submitted oral or written positions on, the full text of the written positions submitted to the National

¹⁸ Publicity of Lobbying Activity Act, brought to Parliament by B. Velikov and a group of MPs, <http://parliament.bg/bills/40/854-01-50.pdf>

Assembly and information on meetings that members of parliament have had with lobbyists, would have to be recorded in the Registry. The National Assembly had to maintain a Registry of persons who have access to its buildings as assistants of members of parliament. In this Registry, it was also noted whether the assistant receives any remuneration from the National Assembly's budget as well as any other position he is simultaneously occupying.

Similar requirements were stipulated for maintaining Public Registries of lobbying in the executive branch of government, and in the municipal councils. A one-year prohibition period for lobbying activities ("cooling-off") had been provided for. This applied to persons who occupy an elected or appointed office in the bodies defined as lobbying targets in the act. Such persons would be prohibited from engaging in lobbying activities for 12 months after the termination of their authority, employment or service relationship. Some specific prohibitions and restrictions on the performance of lobbying and donations from lobbyists to the benefit of public officials, political parties and coalitions, were also put forward.

Neither of these draft laws received the necessary parliamentary support to be adopted by the National Assembly.

Broader Legal Framework Does Not Guarantee Transparency and Integrity of Lobbying

While no legal regulation on lobbying per se exists, the broader legal environment is characterised mainly by a distinct emphasis on introducing safeguards on the part of policy-makers. Yet, not so much focus is on providing room for effective transparency and integrity policies. Implementation of existing legislation is also a significant problem. Important regulations and special legislation have been adopted, including criminalisation of trading in influence, as well as access to information, political financing and conflict of interests' prevention laws. In all of these areas, however, considerable implementation flaws have resulted in poor support for transparent lobbying.

Trading in Influence Regulation: Poor Implementation Results

Since 2002, the Bulgarian Penal Code has criminalised both active and passive trading in influence (new Article 304b).¹⁹ This was an effort to meet the requirements of the Criminal Law Convention of the Council of Europe.²⁰ This provision also meets the obligations under Art. 18 of the UNCAC.²¹ Nevertheless, the scarce statistics maintained by Bulgarian authorities, reveal poor implementation of the provision and its limited impact as an effective dissuasive tool. For the last three years (2011-2013), courts in Bulgaria have convicted only 7 persons for trading in influence.²²

Access to Information: Improvement of the Existing Framework Needed

The Access to Public Information Act was adopted in Bulgaria in 2000 and later amended subsequently in 2007 and 2008 after broad civic discussion. The implementation of the Act in Bulgaria has resulted in an accumulation of rich legal practice. Over 360,000 requests for information have been submitted to date. In addition, over 1600 court rulings of the Supreme Administrative Court have been issued on the basis of the Access to Public Information Act.²³ Yet, the application of the Act so far has shown serious legislative deficits. It has highlighted the lack of explicit obligation of the public administration to support information requestors. Also underlined were the inadequate standards for proactive disclosure of information and for sanctioning non-compliance. Obstacles in the electronic access to information were also indicated. Furthermore, deficiencies in other related regulations were also demonstrated (for example, on public procurement, on public consultations, on classified information, etc.).

¹⁹ SG No. 92/2002

²⁰ Ratified SG 42/27.04.2001

²¹ Ratified SG 89/03.11.2006

²² http://www.transparency.bg/media/cms_page_media/141/LegalReport_UNCAC_2014_TIBG.pdf

²³ Access to Information Programme. 2014. The State of Access to Information in Bulgaria in 2013, Report, p. 5. (http://store.aip-bg.org/publications/ann_rep_bg/report2013.pdf)

In terms of implementation, there are three crucial dimensions for improving the existing legislation for access to public information. These include: (1) a more robust framework for active publication of information, (2) removal of the current obstacles to electronic access; and, (3) adoption of standards for transforming the existing institutional perception of access to public information as an administrative procedure for responding to inquiries, into a basic constitutional right of citizens. In light of these shortcomings, the Access to Information Program Foundation has continuously insisted on the initiation of a broad public and expert discussion for amendment of the existing Access to Public Information Act²⁴.

Furthermore, the Freedom of the Press Index 2013 by Freedom House has stressed that:

*“the law on freedom of information [in Bulgaria] is considered fairly robust, state institutions sometimes improperly deny information requests. Legislation passed in 2011 has reduced journalists’ access to an important official registry of private companies’ contracts and activities. The broadcasting regulatory body is subject to pressure from the government, politicians, and large corporate interests.”*²⁵

In view of these shortcomings, the initiation of a broad public and expert discussion for amendment of the existing Access to Public Information Act is urgently needed²⁶.

Political Financing: Flaws in Implementation

The financing of electoral campaigns in Bulgaria is still in need of considerable improvements in terms of implementation of the legislative requirements. In the period 2000-2011, the legislation on political activity was amended in order to improve regulation concerning the financing of political parties, as the result of a broad-ranged advocacy campaign by Transparency International-Bulgaria. An annual state subsidy is allocated to parliamentary parties and coalitions in proportion to the number of valid votes received. The state subsidy is also granted to all political parties that received at least one per cent of the vote in the last parliamentary elections. The state subsidy is annually decided upon by the National Assembly with the State Budget Law. Annual reports about expenditure of political parties have to be submitted to the National Audit Office by 31 March of the following year. A party that fails to submit annual reports is deprived of state subsidy and unable to participate in the following elections. A list of donors and donations must also be published. Corporate donations are forbidden. Individual donations should not exceed 10,000 BGN, equivalent to about € 5,100. The law also provides for financial sanctions for parties who fail to adhere to the transparency and accountability requirements (from 5000 to 10 000 BGN). However, there is limited evidence that these control mechanisms and sanctions are implemented if parties do not comply with financing regulations. In this sense, the regulatory framework is still undermined by a non-existing enforcement culture. This has been a continuous pattern in dealing with campaign and party financing. This aspect of accountability, transparency and control has been particularly emphasized by the Group of States against Corruption committee of the Council of Europe in its 2009 Bulgaria report.²⁷

24 Access to Information Programme. 2014. The State of Access to Information in Bulgaria in 2013, Report, (http://store.aip-bg.org/publications/ann_rep_bg/report2013.pdf)

25 Freedom of the Press Index, Freedom House, 2013, <https://freedomhouse.org/report/freedom-press/2013/bulgaria#.VGXfHcl9WiE>

26 Access to Information Programme. 2014. The State of Access to Information in Bulgaria in 2013, Report, (http://store.aip-bg.org/publications/ann_rep_bg/report2013.pdf)

27 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Greco-Eval3\(2009\)7_Bulgaria_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Greco-Eval3(2009)7_Bulgaria_One_EN.pdf)

The Index of Financing of Political Parties in Bulgaria and the Index of Financing of Election Campaigns in Bulgaria have both been developed and regularly published by Transparency International-Bulgaria since 2001. They demonstrate that the political system in Bulgaria remains in a state of a legitimacy crisis as regards to the transparency of political financing. The indices are based on objective indicators. This includes the publicity and accountability of political parties with regard to their financial activities, as well as the public perceptions of the transparency and accountability of political financing. A scoring on the scale of 0 to 10 is being used. 10 signifies a maximum level of financial transparency and 0 signifies a lack of any transparency. Scores below 5 points demonstrate the existence of significant problems with regard to guaranteeing transparency and accountability of political financing. These issues hinder the integrity of the overall political process. The Index of Transparency of the Financing of the Bulgarian National Assembly elections 2013 amounted to 4,08 points. The Index of Transparency of the Financing of the European Parliament Elections Campaign in 2014 (score of 3,68) marked a significant downfall in comparison to the indices for the 2011 and 2013 election campaigns. The comparative analysis of the trends, registered through these instruments, demonstrates that legislative amendments have had some positive impact on the transparency of political financing in Bulgaria. Nevertheless, the achieved levels of transparency and accountability do not yet reflect the high public expectations for integrity and transparency of this process.

Assets Disclosure & Conflict of Interest Prevention: a Tool Still to Deliver

Assets disclosure and conflict of interests' prevention are two specific tools, adopted in Bulgaria as stand-alone legislation in 2000 and 2008 respectively.

The Public Disclosure of Senior Public Officials Financial Interests Act was adopted in 2000 and amended every year in the period between 2002 and 2008. The latest attempt for amendment of the law in breach of all existing requirements for public consultation in the spring of 2013 raised reasonable public discontent²⁸. Senior public officials, ranging from the President to members of parliament to judges of the highest courts, have to submit their property and income declarations to the public register. Declarations include information about owned real estate, vehicles and securities. Also required to be disclosed are shares in limited liability companies and partnership companies, as well as registered shares in joint-stock companies. Moreover, shares acquired through participation in privatization transactions, other than cases of bond (mass) privatisation and other income must also be noted. Verification of declarations is carried out by the National Audit Office. The registry contains both submitted declarations and names of individuals who failed to declare their assets, income and/or property. All information is made publicly accessible through the website of the National Audit Office, subject to the Personal Data Protection Act.

In 2008, a new Conflict of Interest Prevention and Ascertainment Act,²⁹ was promulgated. It imposes various requirements on a wide list of officials who perform public duties. It also regulates the procedure for declaring incompatibility and disclosure of personal interests. The declaration includes information regarding participation in the activity trade companies or in their controlling organs; liabilities over BGN 5,000 (around EUR 2,500) in domestic or foreign currency; contracts related to the activity of the occupied public post; and private interests. A suspension procedure is provided in case a public official is in a situation

28 http://www.capital.bg/politika_i_ikonomika/bulgaria/2013/03/10/2019232_opasen_populizum_zh_grajdansko_obshtestvo/.

29 Title amended, SG No. 97/2010, effective as of 10.12.2010

of conflict of interests while executing his duties or powers (Art. 19). Furthermore, a member of a collegial body who has declared a conflict of interests shall not participate in the deliberation and voting. A cooling-off period is established for one year, after leaving public office. Officials, who have been sanctioned for a breach of the law, are not entitled to hold public office for one year (with the exception for those, who have been elected). The Act grants protection to whistleblowers. A special independent body – the Commission for Prevention and Ascertainment of Conflict of Interests – is set up with the competencies to implement the law.

Nevertheless a number of public scandals in recent years raised the question whether these instruments adequately shed light on undue dependencies of the officials who perform public duties.³⁰

30 http://www.capital.bg/politika_i_ikonomika/bulgaria/2013/04/03/2034681_emil_dimitrov_e_v_konflikt_na_interesi/ http://www.capital.bg/politika_i_ikonomika/bulgaria/2012/12/09/1964568_skandalut_gugusheva_zasenchi_provala_markovska/

Intensity and Scale of Lobbying

The development of interest groups in Bulgaria, in the aftermath of the communist regime breakdown, has been deeply marked by the particularity of the national political context. Interest groups had to face an intense number of challenges. These stemmed from several converging and diverging agendas that took place at an accelerated pace. Such agendas included political liberalisation that has opened up the freedom for association; the re-establishment of industrial relations in the context of transforming the state planned economy to a market one; the institutionalisation of a democratic policy-making process establishing new venues and channels for interest representation; and, the accession to the EU providing a new arena for interest interaction in a multi-level governance environment. Political liberalisation and the re-establishment of industrial relations allowed for the proliferation of interest groups. Yet, they also paved the way for interest groups' ideological fragmentation and organisational instability. The end of the socialist system led to considerable changes in the organisation of civic and special interest groups. On the one hand, there was a number of interests that had not existed or been organised before. On the other hand, already existing organisations had to restructure in order to perform new tasks in a new environment. They often had to cope with a loss of legitimacy because of their close proximity to the old system.

Interests in a Post-communist Era: Organised Representation versus Persisting Undue Influence

There is no specific normative regulation of lobbying in Bulgaria. However, the current Bulgarian legal framework does contain all necessary legislative prerequisites to allow for **freedom of association and operation of interest groups**. There have been no administrative or other barriers to interest groups over the last 20 years. Nor do interest groups experience significant state or other influence on their activities.

The right of association is stipulated in Article 44 § 1 of the Constitution of the Republic of Bulgaria.³¹ Interest groups are free to set up in accordance with the Non-Profit Legal Entities Act.³² Non-profit legal entities (NPLE) can take two legal organisational forms - associations and foundations. All non-profit legal entities in Bulgaria

are subject to registration in the register of the district court by domicile. The activity of those registered for public benefit is under the supervision of the Minister of Justice. The Minister maintains a register of those organisations as legal entities and controls their financial accountability. The Minister of Justice also monitors the correspondence of their performed activities with the legislation in force and their activities as per registration.

The majority of interest groups in Bulgaria choose to register as Non-Profit Legal Entities performing activities for public benefit. This is because performing activities for public benefit is a precondition for being granted the status of nationally representative organisations. Once the status has been granted, organisations are invited to be partners in the policy-making process in a variety of spheres.

In addition to freedom of association provisions, current Bulgarian legislation has influenced the development of interest groups by setting up **standards for representation and involvement in policy-making consultation procedures**. As a general rule, only interest groups that have acquired the status of representative organisations at national level are allowed to take part in official consultation procedures carried out by the government and state agencies.

³¹ Constitution of the Republic of Bulgaria, accessible at: <http://www.const-court.bg/Pages/LegalBasis/>

³² Promulgated SG. 81/6 Oct 2000

Following a **neo-corporatist approach** to the involvement of interest groups in the policy-making process, strict criteria for representatives at national level have been established. In addition, procedures for consultations have been created with special laws in a variety of fields such as health care,³³ consumer protection³⁴ and social integration of people with disabilities.³⁵ In most cases, the state provides financial assistance to the nationally representative associations on a competitive basis. A number of professional associations hold a special legal status. Membership in these organisations is mandatory for those working in specific, mostly self-employed types of jobs such as lawyers and physicians.

In 2001, a special act established the Economic and Social Council as an independent consultative body. The Council is charged with expressing the will of interest groups and civil society organisations on the economic and social development of the country.³⁶ Provisions on the membership of the ESC enforces the state recognition of the following interest groups: representative organisations of the employers and national-level trade unions on, as well as organisations of agricultural producers, industrial corporations, craftsmen, professional branch organisations, consumers, women, environment protection groups and organisations for the protection of people with disabilities.³⁷

The present Bulgarian landscape of interest groups in **the field of economic policy** has developed throughout the last two decades and nowadays assembles business and professional (branch) associations, and trade unions. The latter were the first to re-emerge after the breakdown of the communist regime. Trade and professional associations followed different and sometimes controversial dynamics of establishment and consolidation.

As opposition to the post-communist incumbent elite declined as a uniting factor after 1991, Bulgaria's **trade unions** maneuvered to shape new roles for themselves. Representing 40 percent of the population

in a wide open political culture, trade unions exerted tremendous influence on policy in the years that followed. This was connected to the radical economic reforms which resulted in the erosion of certain worker rights that had been taken for granted under the command economy. At present, the trade unions landscape in Bulgaria is relatively fragmented. It is dominated by the country's two representative confederations. However, both organisations have to face the challenges of membership dropouts and decreasing density.

The present landscape of the Bulgarian **employers' associations** is even more fragmented. It has at least six peak organisations being most influential as members of the NCTC. Starting almost from scratch (private economic activity being constitutionally forbidden under the communist rule), their establishment, professionalisation and consolidation proved to be difficult and sometimes controversial processes.

Professional (branch) associations followed a similar trend but a slower pace of formation. Those assembling interests in the major economic sectors inherited from the socialist times were the first to organise (like the Union of Private Agriculture Producers, the Bulgarian Branch Chamber Machine Building, the National Chamber of Electrical Engineering in Bulgaria and the Bulgarian Branch Chamber Roads, and the Bulgarian Chamber of Information Technologies among others).

The structure of the system of functional interest intermediation in Bulgaria has undergone dramatic changes during the 25 years of its re-establishment, following the end of the socialist era.

Two major conflict lines have marked the early stages of interest groups formation. This could be attributed to the period associated with the processes of political liberalisation and re-establishment of industrial relations. In other words, major conflict in establishing interest groups is connected to the breakdown with the old regime and the subsequent domination of the political system by elites. As a result, some interest groups have displayed decreasing density and a high level of competitiveness (with a most striking trend in the case of trade unions). Interest groups have also been characterised by weak and fragmented support from constituencies which has triggered a low level of interest articulation (in the case of employers' associations). On the other hand, the breakdown of the communist regime in Bulgaria was marked by the appearance of high-profile public interest associations. They enjoyed a high level of public support and managed to debate and formulate the political agenda of democratic transformation.

33 Art. 86 of the Health Care Act, promulgated SG. 70/10 Aug 2004, last amended SG. 100/21 Dec 2010

34 Articles 167 to 177 of the Consumers Protection Act, promulgated SG. 99/9 Dec 2005, last amended SG. 18/1 Mar 2011

35 Art. 6 (2) of the Integration of People with Disabilities Act, promulgated Prom. SG. 81/17 Sep 2004, last amended

36 Economic and Social Council Act, promulgated SG. 41/24 Apr 2001, amend. SG. 120/29 Dec 2002, amend. SG. 20/4 Mar 2003, amend. SG. 17/24 Feb 2006, amend. SG. 36/4 Apr 2008, amend. SG. 82/16 Oct 2009

37 Art. 7 of the Economic and Social Council Act

Bulgarian NGOs filled the vacuum of policy capacity and expertise in a political process, heavily dominated by the incumbent elite. The predominant mode of interest intermediation was of a political protest style. This was marked by the explicit staging of events in order to attract attention and expand conflict. Interest groups had focused their influence tactics on the parliamentary institution as the most important agent of the democratisation process.

An important incentive for developing institutionalised dialogue with interest groups was the EU accession process. This is because the principle of partnership between public authorities and interest representation groups is a major tenet of the EU's multi-level governance. It must be applied to all levels of government. The institutionalisation of the dialogue has diversified the interest groups point of access. This has provided for the further specialisation and professionalisation of interest groups. The established neo-corporatist model of interest intermediation provided the ground for enlarging and consolidating interest groups' constituencies.

The country's post-accession agenda - both as a general agenda and as specific policies related to different social spheres - has further enhanced the role of civic interest groups. NGOs continue to compensate for the inability of official Bulgarian institutions to give relevant expertise, to develop adequate policies and to provoke meaningful debates. The predominant mode of interest intermediation has changed to information and consultation politics.

At the same time, the non-transparent privatisation process led to the emergence of powerful economic actors with opaque capital origin. This has enabled the development of obscure corporate interests and the proliferation of **illicit networks of policy influencing**. In 2008 the Center for the Study of Democracy underlined that a significant grey economy persists. The grey economy is composed of the loops of politically connected companies. These companies seek to gain preferential treatment and unfair advantage over their competitors through close ties to local and central authority. These companies use their politically protected grey monopoly profits for state capture with the aim to preserve their preferential treatment.³⁸

Scale of Lobbying: Institutionalised Dialogue Limitations

Given the nascent stage of interest groups development in Bulgaria, it follows that they do not display many of Western European style modes of interacting with the country's political system. For instance, political parties provide no channel of influence. This is because the party system itself is still undergoing dramatic transformations. It lacks the presence of socially and ideologically embedded sustainable organisations. Interest groups insist on remaining above party politics as part of their constant efforts to gain legitimacy. The only exceptions to this trend are the environmental interest groups which are closely affiliated with the Bulgarian green parties. Although corporate donations have been forbidden since 2009, business interests influence political parties through individual financial assistance on a random basis. The most common approach is to fund all major competing parties. Direct lobbying within a party is also associated with the practices of business interests for influence.

Practices of exercising influence on the legislature have evolved over time. During the first decade of post-communist transformation, interest groups used either mass demonstrations before the Parliament building or indirect lobbying through MPs expert circles (each member of parliament has the right to use the services of external experts, while neither the funding nor the appointment of experts are transparent). In the absence of clear rules of interests, declarations or public consultations, corruption scandals and allegations have pushed the parliament to establish new modes of interaction with interest groups. With the 2001 legislature onwards, the parliament has institutionalised dialogue with civil society counterparts. Parallel to the establishment of the ESCB, a permanent parliamentary Committee on the Problems of Civil Society was set up. This Committee aimed to serve as a bridge between civil society and parliament in an effort to address EU criticisms regarding clientelism and corruption. The practice of inviting interest groups to take part in public hearings organised by other permanent committees dates back to the same period. Nowadays, Bulgarian interest groups seek to influence the legislature by promoting amendments in the committee stage. However, this practice has yet to demonstrate tangible results.

38 Centre for the Study of Democracy, CSD Brief 15, p.7, <http://www.csd.bg/~igardev/typo3/artShow.php?id=9366>, p. 7

On the other hand, the activities of interest groups are largely unregulated. Bulgarian think tanks have advocated for increased transparency and decreased clientelism. They have repeatedly urged the parliament to legalise and regulate lobbying. Yet they have not yet achieved success.³⁹ Instead, parliamentarians have tried to enforce internal rules for transparency in their interaction with interest groups. They have done this by making public the names of MPs' expert circles and establishing records of MPs' interests and former affiliations. Records are available for public scrutiny on the parliamentary website.⁴⁰ However, media coverage and expert observations indicate that members of key committees such as agriculture, finance, and healthcare are particularly likely to have ties to relevant groups. Scandals still persist and usually contribute to the poor public image of the legislature.⁴¹

At the level of the **executive**, there are institutional arrangements aimed at supporting civil society actors' participation. Yet these do not translate into significant contributions to policy-making in practice. Although interest associations' representatives can take part in various forums and advisory bodies attached to the ministries (whose total number is 72), these forums have a very restricted composition. Moreover, such forums have an almost non-existent influence on policy. Apart from the process of formal consultation with the major employers' and employees' representative organizations, interest groups' associations are seldom invited to take part in bodies where real decision-making power rests. Powerful bodies include major regulatory authorities, like the State Energy and Water Regulation Commission. Such organisations have been regularly criticised for the lack of any kind of dialogue with interested grassroots groups.

In a number of spheres the interaction between interest groups in Bulgaria and government institutions typically consists of various forms of cooperation where interest groups performing the role of service providers contracted by the state.

To overcome these structural deficiencies, interest groups (namely patients' rights, women rights, environment and trade unions) started to develop and

implement a variety of indirect protest practices. These practices included withdrawing from advisory functions, refusing to provide information or declining to cooperate in administering legislation. Agriculture and environment interest groups are the most active in using direct protest actions like road blocking. Some patients' and human rights groups have also won notable successes by seeking court action.

Diffuse interest groups (environment, consumer rights, patients' rights, etc.) are particularly disadvantaged in the policy process. So, they focus their actions on the use of public strategies such as information politics. Media campaigns are a major tool of influence used by these interest groups in Bulgaria. For instance, members of the For the Nature environmental coalition had been campaigning for months against the non-transparent practice of exchanging cheaper forests for state-owned green areas. This included areas along the Black Sea coast and in the high mountains. If the exchange went ahead, these areas would immediately be turned into construction development sites. The public has supported the majority of campaigns. This has resulted in spontaneous citizen actions against the tourist construction bonanza in the mountains and along the coast. Related campaigns have been flourishing out of internet chat rooms and the blogosphere, onto the streets of Sofia and other major cities since 2007⁴².

39 Tenth Social Political

Forum dedicated to the fight against corruption, January 2009, <http://www.parliament.bg/en/news/ID/1689/>; The „The Roles of Lobbyists” forum (November 2010), <http://www.parliament.bg/en/news/ID/2143/>

40 <http://www.parliament.bg/bg/parliamentaryregister/3>

41 <http://www.temanews.com/index.php?p=tema&iid=616&aid=14600>

42 Antonov, P., 2007, Grass root(er)s: Green e-activists of Eastern Europe enter politics, <http://oldsite.zelenite.bg/1648>;

Most prominently, legitimate lobbying activities are undertaken by:

 employers organisations and trade unions within the well-established tripartite corporatist mechanism of consultation;

 NGO representatives and think tanks through a variety of consultation mechanisms.

There is also a shared perception among the public and expert community that less formal lobbying takes place with strong pressure from private economic interests (as demonstrated by interview respondents, media analysis and desk research). This type of pressure on the legislature and executive in favour of specific interests, can be considered shadow-lobbying or non-transparent-lobbying.

The perspectives towards lobbying among interviewees for this study varied considerably. Media representatives were inclined to provide a more negative perspective on the political and institutional system, compared to respondents from the business sector or parliamentarians. They tended to assess the entire system of governance as captured by lobbyist interests (seen as non-transparent and non-public).

In terms of sector specifics, a clear picture is difficult to draw. This is due to the fact that a large part of lobbying activity in Bulgaria is perceived to be conducted in an informal and non-transparent manner. Interview respondents most often outline energy, construction (and tourism), the banking sector, healthcare and pharmaceuticals as the sectors heavily pressured by lobbying.

„Apparently lobbying is most active in the economic sectors where preconditions exist for overcoming the mechanisms for market competition, where economic actors easily negotiate among one another, forming oligopoly and monopoly structures. In these sectors, the possibility for legislative amendments in favour of individual interests is strongest. The medicine is clear – civic control over monopolies and accompanying draft legislation with convincing motives and in-depth impact assessment.”⁴³

Some interviewees, however, point out that lobbying in Bulgaria should not be assessed on a sectoral basis:

„It is hard to distinguish specific sectors, but rather – we should speak about individual companies, separate economic actors”.⁴⁴

⁴³ Interview with representative of business association, 24 March 2014.⁴⁷

⁴⁴ Interview with representative of media, 11 April 2014.

Cultural Understanding of Lobbying

The debate around the need to regulate non-transparent lobbying in Bulgaria is not new. In the past 15 years the topic has recurrently emerged in the political and public agenda. However, there is still no explicit regulation regarding the acceptable forms of influence by interest groups over the legislative and governance process. Yet, the public perception of lobbyists' pressures on public institutions is notably present in public and media debates and discourse. "Lobbying" is used to explain any practice or phenomenon that remains hidden or "behind the scenes" (to use the popular expression) in the political-institutional process in Bulgaria. This includes phenomena like corruption, mafia and oligarchy.

There is an obvious threat – the persistent lack of political will to ensure transparency in the decision-making process. This may result in non-transparent lobbying becoming "business as usual"; the common mode of functioning of the political process. This raises the danger of watering down the transparency and integrity debate. It may marginalize the very notion of transparency and integrity.

It is worth looking at the various definitions and notions of "lobbying", as used in the Bulgarian public debate.

Bulgarian think-tanks and researchers working in the field of interest representation have provided various definitions of lobbying. These have mostly been in rather neutral terms:

 „attempting to influence the adoption of a governmental decisions – professionally and in return of remuneration. Lobbying *stricto sensu* is therefore professional lobbying”,⁴⁵

 „direct communication or request upon someone to communicate on our behalf, with officials from the legislative or executive branches of government, with the aim to influence a legislative or administrative act”.⁴⁶

45 Tsakova, I. 2007, The Lobbying Activity: Nature, Specifics, Techniques, In: Lobbying and Lobbying Practices, Economic Policy Institute, Sofia.

46 Mihaylov, A. 2000, How To Lobby, Foundation for Local Government Reform, Sofia.

Some CSOs acknowledge lobbying as their main mission and activity. For example, Foundation Animus Association uses the term lobbying to describe its activities for changing public perceptions in regard to victims of violence. To this end, the Association engages institutions in addressing the problems of victims of violence and including them in the agenda of social and health-care reform.

There is no specific Bulgarian word or phrase for lobbying. The English-language term, lobbying, is very widely used in Bulgarian contexts. However, some local words are often used to describe practices that are seen as similar as lobbying. For instance, the term “behind-the-scenes” (in Bulgarian: “zadkulisie”) is a prominent example, especially in recent discourse.

Lobbying is most often used in a strongly negative sense in public, political and media discourse. Hence, it is somewhat surprising that all our expert interviewees gave a balanced and neutral assessment of lobbying. They perceived it as an integral part of the democratic political process. A commonly used definition of lobbying is: “the attempt to influence a governmental or legislative decision in a particular direction and in favour of particular interests”.

„Lobbying is the regulation of the will for profit; a way to regulate the interaction between business and political class”.⁴⁸

„What professional lobbyists do is through their contacts to connect the people, who are interested in a given subject. That’s the lobbyist – he’s a well-connected man”.⁴⁹

Interestingly, the expert community directly or indirectly distinguishes between positive and negative lobbying. The thin red line is drawn in relation to the level of transparency and openness. Acceptable lobbying is the one you can talk about in public. It is the type of lobbying that is conducted “in the sunlight”. In other cases of lobbying, the shadow practices employed are far from democratic interest representation. The respondents to the research for this report used a number of concepts to describe such lobbyists: “lobbying in the negative sense”, “hodataistvo”, “corruption”, “nepotism”, “trading in influence”.

„There is a difference between lobbying and lobbying. To use the term itself does not bring any negative connotations. There is nothing wrong in lobbying when it is transparent, open (what, why, to what purpose, with what means?). And when it is in protection of the public interest”.⁵⁰

While lobbying in Bulgaria still remains a long way from an acceptable form of regulation and transparency, it borders with phenomena that are an explicit form of malpractice (corruption, bribery and nepotism).

This is a clear legislative and procedural deficit. It needs to be overcome with effective mechanisms. Such mechanisms include publishing of a legislative footprint document, along with detailed motivation and impact assessments as an appendix to all draft legislation, as well as improved public consultation mechanisms.

⁴⁸ Interview with a representative of Internet-based media, 4 April 2014.

⁴⁹ Interview with a representative of business association, 16 April 2014.

⁵⁰ Interview with a representative of professional association, 1 April 2014.

Self-Regulation: A Gap Yet To Be Filled

The clack of a legal definition of lobbying explains the lack of a common understanding of the specific mechanisms which allow interest groups to contribute towards an environment of fair, transparent and ethical lobbying activity. Although some broad self-regulatory framework does exist, it is inadequate to guarantee effective adherence to integrity principles in lobbying. Nor can the existing framework provide for adequate monitoring of compliance with the related principles. Some of the professional and business associations, individual companies and not-for-profit organisations in Bulgaria have adopted their own codes of ethics. Moreover, some self-regulatory oversight bodies do exist. Relevant examples include:

The Ethics Code of the *Bulgarian Recycling Association* stipulates that its members base their activities on the principles of loyal competition and professional responsibility. It requires members to avoid situations which create conflict of interest (Art. 8).

The Ethics Code of the *Bulgarian Chamber of Commerce and Industry* stipulates that political influence and pressure should not be used in industrial and non-industrial activities in order to achieve certain interests for individuals or a group of individuals (Art. 2).

One of the definitions of ethical behaviour used in the Ethics Code of the *Bulgarian Association for Information Technologies* is “not to cause purposefully detrimental damages to other companies, institutions and individuals” (Art. 3).

The *Bulgarian Hotel and Restaurant Association* declares that free and loyal competition, adherence to the legislation, as well as zero tolerance towards corruption and informal economy, are its key ethical principles.

The *Bulgarian Web Association* underlines its responsibility towards state and society. It points out that its members should actively cooperate with various institutions in regard to any matter that concerns the Web, its content and its regulation.

The *Bulgarian Association of Public Relations Agencies* Ethics Code stipulates what the competencies and skills of its members are to be directed towards. It specifies that they are to be used to develop and sustain mutual understanding, mutual assistance and mutually

beneficial cooperation between the organisations and the public. Its members should respect diverse opinions and the freedom of expression. They should work openly and with regard to public interests and observe the principles of independence (providing independent advice and bearing responsibility for their actions). Members should also prioritise loyalty (being faithful to their clients and employers without neglecting their responsibility towards society). Freedom of information exchange is also specifically mentioned. In particular, the exchange of true, accurate and timely information has key importance for observing the public interest. It can contribute to building competent opinion-sharing and decision-making processes in a democratic society.

Overall, however, the existing Ethics Codes rarely contain explicit behavioural principles that steer members and employees away from unethical situations in regard to public decision-making. This is particularly the case with regard to lobbying.

Private sector ethics codes in most cases mention requirements for the honesty and accuracy of information provided to public officials. They state that such provision of information should refrain from using information obtained in violation of the law. That it should also refrain from encouraging public officials to violate the law. In some cases, ethics codes contain provisions on gifts and hospitality. They do not, however, explicitly require members and employees to publicly disclose the identity of those who they are representing. Nor do they require employees to openly state what they are lobbying for. The control and sanctioning mechanisms provided in ethics codes do not tend to focus on unethical lobbying. In any case, sanctioning mechanisms are not always in place.

The Role of Media and Civil Society in Lobbying Oversight

Media as a Watchdog: The Deepening Problem of Media Dependencies

The 1991 Constitution provides the legal framework for free media in Bulgaria. It guarantees the standard protections of freedom of speech, freedom of the press and the prohibition of censorship.⁵¹ Furthermore, no strict regulations or requirements for formal education or qualification exist with regard to entry into the journalistic profession. So, in practice there is free and open access to the profession and tough competition among a growing number of journalists. These conditions, however, have not necessarily led to improved quality of the media. Nor have they increased media plurality. In fact, there are wide-spread and increasing practices of self-censorship and trading in influence.⁵²

In-depth expert assessments on the implementation of the legal framework and the practices in the media sphere in Bulgaria, have continuously pointed to the flaws in the implementation of the normative framework. This has led to disregard of the rights and freedoms of journalists. It has also resulted in an increase in censorship and self-censorship practices.

The *National Integrity System Report 2011* of Transparency International-Bulgaria has pointed out that investigative journalism is weak in the country. Though there are some investigative journalists and programmes, they often deal with minor issues or remain superficial. This is especially the case when there is a risk of affecting interests of the media owners, or their political and business friends. Corruption has been among the main topics covered in the media ever since the early 2000s. There is hardly a news bulletin or commentary programme, where the issue is not mentioned. This has been accompanied by lengthy published reports on corruption allegations.

Yet the findings of such allegations have rarely been proven later in court. The assessment has underlined that this overrepresentation of corruption in the media may be counter-productive. Firstly, rather than raising awareness of citizens and educating them to be vigilant and non-complacent towards such social practices, it may breed cynicism and complacency. Secondly, corruption allegations are amenable to political uses by populist political players.⁵³

According to Freedom House's 2013 *Freedom of the Press Index*, Bulgaria ranks 77th. It has a rating of 37 points and receives a "Partly Free" status. The assessment has pointed out that freedom of speech and of the press is constitutionally protected. Whilst these rights out of 197 countries and territories are generally respected by the government, reporters continue to face pressure and intimidation aimed at protecting economic, political and criminal interests. Political leaders sometimes display intolerance for media criticism. On top of this, a number of outlets show a strong pro-government bias. According to the Freedom House assessment "impunity for crimes against journalists remains the norm, encouraging self-censorship". Commercial media frequently tailor their coverage to suit the interests of key financial backers. This includes corporations and national or local government bodies.⁵⁴

Bulgaria also retains the status of lowest ranked European Union country in the *World Press Freedom Index 2014* of Reporters without Borders.⁵⁵ The assessment underscores that in 2013 reporters were repeatedly the victims of police violence during public demonstrations which called for the government's resignation.⁵⁶ Independent journalists, especially investigative reporters, have been exposed to harassment, including arson attacks on their cars.

⁵¹ State Gazette no 56/13.07.1991.

⁵² National Integrity System Report, Bulgaria, 2011, Transparency International-Bulgaria, p. 179.

⁵³ National Integrity System Report, Bulgaria, 2011, Transparency International-Bulgaria, p. 194

⁵⁴ Freedom House, 2013, <http://www.freedomhouse.org/sites/default/files/FOTP%202013%20Full%20Report.pdf>

⁵⁵ World Press Freedom Index 2014, Reporters without Borders <http://rsf.org/index2014/en-eu.php>

⁵⁶ <http://en.rsf.org/bulgarie-police-attack-journalists-covering-26-07-2013,44980.html>

The *Bulgarian Foundation Media Democracy*⁵⁷ has also outlined the growing tendency of deterioration of the media landscape in Bulgaria. The foundation states that this has arisen chiefly as the result of the political and economic dependencies of the Bulgarian media. Censorship and self-censorship has increased in 2013. In line with this, a number of media have worked on “political requests”. Moreover, some of the paramount public topics have remained taboo for journalists. Hence, such topics have not been well covered for public consumption. While formal media ownership has become more apparent, informal influence on editorial policies with financial and power instruments has flourished. Negative PR, libel and manipulative public imaging have become tools in the arsenal of an unprecedented war among the media. The battle is taking place in the very centre of the public sphere.

Lobbying as a concept is very often the focus of media interest, and it often makes headlines. At the same time, it should be underscored that media attribute very different, often contradictory meanings and connotations to lobbying. In the media, lobbying is often used interchangeably with image building (public relations).⁵⁸ Overall, however, the term “lobbying” is most often used with a negative connotation attached to it. This is especially the case as it often relates to allegations of corruption and trading in influence. Moreover, the term lobbying also tends to be used to refer to scenarios where legislative acts or amendments are debated and passed in parliament, allegedly to the privilege of certain private interests. Nevertheless, there are examples of media usage of the term in rather neutral or positive ways. These occurrences are mostly in cases where broader public interests are concerned, as can be seen particularly in the sphere of environmental issues and nature preservation.

Civil Society and the Issue of Lobbying

Bulgaria has a vibrant civil society with a growing number of non-governmental organisations. Many of these organisations focus their work on the issues of anti-corruption, good governance and institutional monitoring. There have been abounding studies and analyses in recent years on the development and capacity of CSOs in the country.⁵⁹ Their findings show ambivalent tendencies in terms of civil society's role and capacities, which need to be understood within the broader framework of the democratic process.

Some positive developments in the role and capacity of CSOs are visible. There are a number of non-governmental organisations that have a relatively well-developed organisational structure, trained personnel, capacity and expertise for project management and providing services. Many CSOs have the potential to exert influence on societal processes and are also able to organise advocacy campaigns. Civil society in general has reached a good understanding of the need for shared values such as transparency, democratic governance, volunteering, tolerance, and the necessity to form coalitions and to work in networks. There is also a shared understanding of the need for sustainable dialogue with state institutions. Dialogue can be developed by initiating projects and programmes and seeking institutional cooperation.⁶⁰ These tendencies underline the positive direction of the evolution of civil society, which has developed significantly over the past two decades and has demonstrated the potential for civic activism.

At the same time, having emerged as donor-driven, Bulgarian civil society faces significant challenges in terms of its financial and policy independence. Related issues include limited funding (especially private) for CSOs and the risk of public officials taking control

57 <http://www.fmd.bg/?p=8644>

58 Ex. “Saxe-Coburg-Gotha lobbies for a good image of the country”, headline in Monitor Daily (16.12.2005), <http://www.monitor.bg/article?id=64129>; “Two companies polish off our image in the US”, title in Standard Daily (02.06.2007), <http://paper.standartnews.com/bg/article.php?d=2007-06-02&article=190872>;

59 See for example, Transparency International - National Integrity System report 2011, pp.196-207; Centre for the Study of Democracy 2010; Open Society Institute-Sofia 2011, Bulgarian Centre for Not-for-profit Law 2009.

60 A quantitative study, “Civil Society Index 2008-2010” (CSI), conducted by Open Society Institute-Sofia within the CIVICUS Civil Society Index framework, p.77.

of the NGO sector. Further challenges concern the generally low level of transparency of funding matters, remaining suspicions of conflict of interest and the low administrative capacity of many civil society representatives.

Transparency and integrity within Bulgarian civil society is an important, unresolved challenge. According to research data, only around 14 per cent of CSOs publish their activity reports on their websites, including financial reports.⁶¹ It should be noted that organisations registered as working for the public benefit have the obligation to provide their financial reports to the Minister of Justice. He then publishes them in a public Register.

There has been a concerted effort on the part of some central CSOs (OSI-Sofia and BCNL being the initiators) in early 2000s to develop a sector-wide code of ethics. Yet, at the time of writing, such a mechanism has not been adopted. This is especially problematic considering the fact that civil society is expected to lead by example in the area of integrity mechanisms for self-regulation.

Assessments show that CSOs have not yet been especially successful in holding state institutions accountable. The Civil Society Index 2008-2010 data shows relatively low scores with regard to indicator responsiveness (holding government accountable in dealing with corruption, unemployment and poverty – the main concerns of Bulgarian society).⁶² Neither CSOs themselves nor the experts reviewing their activity evaluate the sector's anti-corruption policy-reform initiatives as being adequate. However, these results should be put into perspective. They should be evaluated against the background of the relative failure of both the government and political parties to introduce effective measures against corruption.⁶³ Further significant obstacles exist which hamper meaningful civil society participation in the formation and implementation of anti-corruption and good governance policies. These include: the short timeframe envisaged for public consultation on draft legislation and policies (14 days according to Art. 26 of the Law on Normative Acts); the lack of explicit obligation on the administration to

publish the consultative positions of stakeholders; and, the lack of obligation to provide feedback and justifications.

Against this backdrop, there are several important civil society initiatives in the area of transparency of the political process and open government that are worth mentioning. Among others, one example is the annual assessment reports on access to information in Bulgaria, conducted by the Access to Information Programme.⁶⁴ A further example is the Transparent Judicial Appointments Initiative of the Bulgarian Institute for Legal Initiatives. This initiative undertakes independent public scrutiny of the procedures for career development and leadership formation in the Bulgarian judicial system.

With regard to the issue of lobbying, one important tendency should also be discussed when assessing the capacity, independence and role of civil society in Bulgaria. Many CSOs are increasingly becoming the target for state capture. This is a dangerous trend in a sector that is independent by definition.⁶⁵ CSOs maintain a large amount of independence in the implementation of their mission and policies. Their dependence, however, comes indirectly, through reliance on state funding. Particularly during the EU accession years, the CSO sector has been increasingly "captured" by actors. These actors include government officials, local authorities and even some "grey" businesses.⁶⁶ A whole segment of civil society has been established and functions solely for the purpose of EU/state funds (mis)appropriation. The number of PONGOs and GONGOs (politically and government-owned NGOs) is on the rise. These organisations benefit politicians-businessmen at the national and importantly, local level.⁶⁷ Indirect evidence of this tendency includes the eightfold rise in the number of NGOs in Bulgaria between 2000 and 2010.⁶⁸ A significant part of the financial overturn in the sector (approximately 50 per cent) is covered by politically and administratively controlled CSOs.⁶⁹ This is especially alarming considering the risk of politically and governmentally controlled CSOs serving as a "curtain" for private interests. Such CSOs act within the

61 See details in Transparency International - National Integrity System report 2011.

62 Civil Society Index 2008-2010, TI NIS 2011.

63 Civil Society Index 2008-2010, TI NIS 2011.

64 See Annual Reports on the State of Access to Information, <http://www.aip-bg.org/en/publications/annualreports/>.

65 Centre for the Study of Democracy 2010, p. 57.

66 Centre for the Study of Democracy 2010, Transparency International National Integrity System report 2011.

67 Centre for the Study of Democracy 2010.

68 Ibid, p. 35.

69 Ibid, p. 37.

framework of various advisory bodies and procedures. This problem will be further discussed in the next chapter.

This chapter aimed to present a mapping of the lobbying landscape in Bulgaria, by providing a contextual analysis of the national historical, socio-political and legal situation with regard to lobbying. The next chapter will assesses the degree to which the legislation in force and the private self-regulation provides for public sector integrity. In particular, it will focus on the transparency of lobbying activities and public decision-making. It also reviews the extent to which the legal framework can ensure ethical lobbying and conduct by public officials. The ability of the law to safeguard equality of access to public decision-making processes will also discussed.

REGULATING LOBBYING: TRANSPARENCY, INTEGRITY AND EQUALITY OF ACCESS

The regulation of the transparency and integrity of influence over the decision-making processes is yet a missing tool in the general legislative framework. It would provide for more transparent policy-making processes. It would also enable greater public confidence in the democratic functioning of state institutions.⁷⁰

Definitions: Lobbying, Lobbyists & Lobbying Targets

The general legal framework in Bulgaria lacks a mechanism for regulating lobbying activity which can effectively contribute to increased transparency in the decision-making process and deepening of public trust in the democratic functioning of institutions. There is no legal definition of lobbying, lobbyists or lobbying activities in the legislative framework in force in Bulgaria. As regards the definitions of lobbying, the four draft laws discussed in the previous chapters have all adopted a very similar general frame for the regulation of lobbying. It includes: defining the subject, scope and method of registration, relevant prohibitions, restrictions and administrative-penal provisions. Nonetheless, significant differences were present in the approach towards the issue of lobbying and its regulation.

The draft laws, submitted by MRF and by the working group to the national ombudsman give a detailed definition of lobbying. The draft law, initiated by Assia Mihaylova and Lyuben Dilov Jr., however, stipulates solely that lobbying is every activity undertaken for remuneration to the benefit of a third person. According to this definition, lobbying is activity carried out with means permitted by the law. It is and aimed at influencing the bodies of state power and those of local self-government in exerting their powers and representing or protecting personal interests. This kind of approach holds a risk of excessive discretion on the matter of what practices constitute lobbying. Consequently, this poses the danger of corruption practices such as trading in influence being included

within the lobbying framework.⁷¹ The definition proposed in the draft law, prepared by the working group to the national ombudsman, differs somewhat. It reduces lobbying mainly to influencing the drafting and enactment of legislative acts. This approach is somewhat unsatisfactory. This is especially so in the context of Bulgaria's membership in the EU, given the transfer of growing legislative authority to the Council of Ministers of the EU as a supranational legislature.⁷²

Part of the criticism against the lobbying laws, drafted in Bulgaria so far, is the lack of an accurate conception of what lobbying regulation should cover. Further criticised is the limited understanding of

70 National Integrity System in Bulgaria, Transparency International-Bulgaria, p. 16, [http://www.transparency.bg/media/publications/NIS%20BULGARIA%20ENG\(1\).pdf](http://www.transparency.bg/media/publications/NIS%20BULGARIA%20ENG(1).pdf)

71 Sitarska, D. 2007, Regulating the Lobbying Activity in Bulgaria, In: Lobbying and Lobbying Practices, Economic Policy Institute, Sofia, p. 109, <http://epi-bg.org/dmdocuments/lobirane.i.lob.praktiki-ALL.pdf>.

72 Ibid.

how lobbying can and should be distinguished from other types of activities, such as advocacy. The bill submitted by A. Mihaylova and L. Dilov Jr., for instance, uses the remunerative character of lobbying as a distinguishing criterion. Alternately, the draft law, submitted by Kamen Kostadinov lays stress on lobbying as advocacy in the legislative process. The working group to the national ombudsman adopts a similar approach using the narrowest definition of lobbying.⁷³

The discussion of lobbying regulation in Bulgaria has so far remained confined to political statements and unfulfilled promises for future action. None of the prior draft laws are presently being discussed as a viable foundation of a prospective lobbying law. If legislative work on a lobbying law is to commence in a mid-term perspective, it will probably be based on a new proposal. However, the current state of play on the issue and the unstable political situation makes it difficult to predict whether a lobbying law will be on the political agenda in the near future. This uncertainty remains despite repetitive recommendations from European partners and monitoring organisations to move ahead with an ethical normative framework for interest representation, including lobbying.

⁷³ Markov, D. 2007, Distinguishing and Confusing the Terms Advocacy, Lobbying and Corruption in Bulgaria, In: Lobbying and Lobbying Practices, Economic Policy Institute, Sofia, p. 114, <http://epi-bg.org/dmdocuments/lobirane.i.lob.praktiki-ALL.pdf>

Towards Improved Transparency

A general trend towards improving publicity in the work of state bodies in Bulgaria can be observed. Nevertheless, transparency is still a standard that is yet to be met. This is especially true regarding the processes of interests' representation and lobbying.

Plenary sessions and committee sittings in parliament are generally open to the public.⁷⁴ Individual citizens have access to the parliamentary sessions and committee meetings following the regime of access to the National Assembly. This regime however remains largely in the discretion of the chairperson of the respective committee. If representatives of CSOs, trade unions, professional and industries' associations request so, they may attend permanent committee meetings.⁷⁵ They may also submit written opinions on draft bills to the rapporteur committee.⁷⁶ The rapporteur committee has the obligation to include a summary of the written opinions received. These opinions are delivered in the report for the first reading in plenary of the bill under consideration.⁷⁷ There are explicit requirements to publish the agenda three days prior to committee sittings.

However, there is no legal requirement for MPs to disclose the information consultations regarding proposed amendments to legislative bills under review in parliament. There is no lobbying regulation.

Nor is there a register of lobbyists, which means that the public does not have knowledge of who is lobbying whom. Nor does the public know on what issues lobbying is taking place, or when and how it is occurring. Moreover, not publicized is how much money is being spent in the process of lobbying or what the results of lobbying efforts are.

There are also **no requirements for public officials to report on meetings with lobbyists**. Likewise, there are no requirements for proactive publication of public officials' and ministers' calendars.

The instrument of a **legislative footprint** which would detail the time, person and subject of a legislator's contact with a stakeholder has not been adopted. Published as an annex to legislative reports, it could potentially provide insight into who gave input into draft legislation.

⁷⁴ Constitution of the Republic of Bulgaria, Art. 82

⁷⁵ Rules of Organisation and Procedure of the 42st National Assembly, Art 28

⁷⁶ Rules of Organisation and Procedure of the 42st National Assembly, Art 40 (1)

⁷⁷ Rules of Organisation and Procedure of the 42st National Assembly, Art 40 (2)

TRANSPARENCY

13%



Access to information **50%**

Registration and disclosure by lobbyists **0%**

Oversight of register and sanctions **0%**

Legislative footprint **0%**

The current legislation in place in Bulgaria does not refer to or use the term “lobbying”. There is no public register of lobbying activities, and the public does not have knowledge of who is lobbying whom, on what issues, when and how they are being lobbied. Moreover, information on how much money is being spent in the process as well as the results of lobbying efforts is not published or made publicly available. There are no requirements for public officials to report on meetings with lobbyists, nor are there any requirements for proactive publication of public officials’ and ministers’ calendars. The concept of a legislative footprint, which details the time, person and subject of a legislator’s contact with a stakeholder, has not been adopted. The score for Bulgaria on the criterion of “transparency of lobbying” is thus dramatically low, coming in at just 13%.

The country score for Bulgaria on the criterion “transparency of lobbying” is dramatically low – **Bulgaria’s score is only 13%.**

As one respondent summed up,

„...the largest possibilities for influencing are in the primary steps of the process – the informal consultations within working groups with unclear composition, structuring, follow-up, non-transparency of opinions, procedures, timeframe. What follows? Who takes the decision? The official framework for citizen consultations – www.strategy.bg⁷⁸ – is the formal mode of interaction between citizens and institutions. Formally speaking, that is the framework where most of the general public consultation takes place. But it is the less active framework. It is on paper, it does not work. The process at the web-portal for consultations strategy.bg is passive from the institutional point of view, instead of proactive seeking for citizens’ input. On the other hand, the process of working groups is more active, but much less formal. There are no clear principles regulating access, composition and mode of operation. The activities of these working groups are informal. Effective consultations do take place between government and business; they constantly talk to one another. External actors, experts with a broader profile are in practice not being invited. Bear in mind that the meetings between the government and business may also be fully informal. They may even stand entirely outside any legal regulation.”⁷⁹

Respondents from media and civil society also explicitly outline the problem of non-transparent appointment in the executive and judicial sectors. They particularly make note of the processes at the high institutional and managerial level. These processes

contribute to public perceptions for secretive, behind-the-scenes decision-making:

„Despite certain procedural transparency at the later stages of the appointment process, in practice the inherent mechanism for proposing certain nominations for appointment remains entirely non-public. In my opinion, this lack of transparency refers to all processes within the executive and legislative branches of government, as well as to the activities of the Supreme Judicial Council. Certain political, economic and power circles take preliminary decisions on appointments and legislation, or on reform in a particular direction. Their motives remain unclear to the public. Then the so called public phase of the process follows, when the decision is simply put forward with objectives and motives, which are very different from the genuine ones.”⁸⁰

These deficiencies explicitly link back to the lack of lobbying regulation. The implication is that favours can be handed out at the discretion of individuals (“jobs for the boys”). This reinforces the cosy and often non-transparent relationship between business and politics.

There is a clear perception that the public phase for consultation and decision-making is often sustained purely for legitimization purposes. - In other words, it is mere window dressing. In light of this, decreasing levels of public trust in the institutional and policy-making process are hardly surprisingly. However, they should be a cause of great concern for policymakers.⁸¹ The overall effect of these trends is the constant decrease in the overall public satisfaction with the democratic functioning in the country, clearly evidenced by the European Values Study data from 2008⁸². The majority of Bulgarian citizens believe that the social transformation process is deeply unfair. The disappointment with the functioning of the democratic institutions escalates towards dangerous dimensions, leading to lasting unwillingness for participation in the political process and dissatisfaction with democracy in general.

78 The official forum for public consultations, managed by the Ministerial Council of the Republic of Bulgaria (<http://www.strategy.bg/>).

79 Interview with representative of a civil society organization – think tank in the economic field, 26 March 2014.

80 Interview with representative of the media, 11 April 2014.

81 See among others the Transparency International’s Global Corruption Report 2013, the Standard Eurobarometer 80 Autumn 2013, the European Values Study 2008, etc.

82 Fotev, G. (compiler). European Values in the Bulgarian Society Today, Sofia University Press.

CASE STUDY - TRANSPARENT APPOINTMENTS: AN ALTERNATIVE TO ILLICIT LOBBYING IN THE JUDICIARY

In view of the repeated recommendations on fostering judicial independence, raised within the framework of the European Commission's CVM reports (2007-2014) for Bulgaria, and Freedom House's lowered rating of Bulgaria for judicial framework and independence (2012), the issue of political and economic pressures over the judiciary in Bulgaria is an issue of clear importance. The term "lobbying" is often used negatively. It is used to describe the general public's suspicions about illicit economic and political dependency of the Bulgarian judiciary and its governing body – the Supreme Judicial Council.⁸³

As an alternative to non-transparent judicial appointments and pressure over the managerial level of judicial institutions, an innovative civic project concerning independent public scrutiny of the career development and leadership formation of the judicial system has been pioneered by the Bulgarian Institute for Legal Initiatives (BILI). BILI is an independent not-for-profit organisation working for the promotion of rule of law in Bulgaria. In 2012, BILI took the lead of a coalition of NGOs that advocated for legislative changes. The coalition aimed to increase transparency in the process of nomination and election of Supreme Judicial Council members.

A subsequent amendment of the Judicial System Act⁸⁴ has introduced a whole set of new transparency standards in the appointment procedure. Nominations of candidates are now to be accompanied by a detailed career record. There is now further opportunity for public scrutiny on a candidate's integrity. This is possible through the submission of a declaration disclosing his or her financial interests. The candidate must state the origin of the funds through which he or she has acquired his or her property. Moreover, open on-line access to a candidate's profile is provided prior to the election procedure. In addition, civil society and professional organisations have been granted the opportunity to provide public statements on a candidate's integrity. They may also put forward questions. On top of this, public hearings of all candidates became a mandatory procedure before their election.

The Transparent Judicial Appointments Initiative has been assessed as a good practice in the 2013 EU Anti-corruption Report on Bulgaria.⁸⁵ The outcome is a knowledge-based framework for the evaluation of candidates for elections and promotions in the Bulgarian judicial system, based on public information.⁸⁶

83 <http://www.legalworld.bg/21878.vss-uvolni-ivan-dimov.html>

84 <http://www.vss.justice.bg/en/start.htm>

85 2013 EU Anti-corruption Report, Annex on Bulgaria, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_bulgaria_chapter_en.pdf, Brussels, 3.2.2014, COM(2014) 38 final, p.10.

86 Transparency of Judicial Appointments Initiative website, <http://judicialprofiles.bg/en/pages/methodology>

Fostering Integrity

Ethical Framework for Lobbyists and Lobbying Targets is Insufficient

Transparency of lobbying must be embedded within a broader public sector integrity framework. This would mitigate the risks of conflicts of interest when important decisions are being taken. Our research sought to find an answer to the following overarching questions about integrity: Is there a robust ethical framework for lobbyists (including companies) and lobbying targets in the country? To what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

Data shows that significant improvements are needed in the overall legislative and procedural framework that is aimed at ensuring integrity in the public sector in Bulgaria. On this indicator, **Bulgaria scored only 25%**.

How can this low result be explained?

The full potential of self-regulation is far from being utilised to foster the integrity of lobbying. A robust ethical framework for lobbyists (and companies) and lobbying targets in the country is not yet in place in Bulgaria. The onus for integrity is insufficient both as regards to public officials and representatives, and those who lobby them.

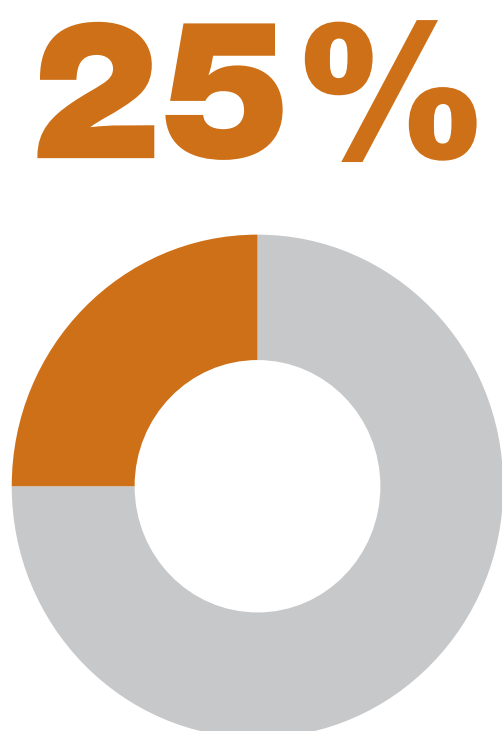
According to the National Integrity System study of Transparency International-Bulgaria, **parliamentary integrity is alarmingly low** as compared to other indicators that determine the institutional capacity to play an important role in the National Integrity System.⁸⁷

Annually members of parliament and public servants in the National Assembly are required to fill in declarations on conflicts of interests and report on their assets. For the first time, legislators were sanctioned in accordance to the Conflict of Interest Prevention and Ascertainment Act. Two MPs were fined for not submitting declarations. In addition, three MPs were sanctioned for failing to comply with the Conflict of Interest Prevention and Ascertainment Act by filing a conflict of interest declaration on a specific occasion (art. 12 (4) and failing to file an abstention (Art. 19 (1) in the process of preparation, discussion and adoption of legislative acts. The decisions adopted by the Conflict of Interest Prevention Commission show that as a result of ineffective parliamentary practice in this area 4 pieces of legislation have been adopted in favour of private interests since 2011⁸⁸.

87 http://www.transparency.bg/media/cms_page_media/121/NIS_Report_Bulgaria_2011_1.pdf

88 <http://www.trud.bg/Article.asp?ArticleId=832811>; <http://cpaci.bg/aktove/acts2013/reshenia/472-reshenie205>; <http://cpaci.bg/aktove/acts2013/reshenia/474-reshenie206>

INTEGRITY



**Post and
pre-employment
restrictions:** **33%**

**Code of
conduct for
public
sector
employees** **42%**

**Code of
conduct for
lobbyists** **0%**

**Self-regulatory
code(s) of
ethics** **25%**

A robust ethical framework for lobbyists (including companies) and lobbying targets is not yet in place in Bulgaria. The full potential of self-regulation is far from being utilised to foster integrity in lobbying.

There are still no effective rules on gifts and hospitality for legislators. This vacuum became evident and led to concern when it was highlighted following a reported scandal involving MPs. A journalistic investigation which showed that 16 MPs missed a plenary sitting because they were at a promotion of luxury cell phones, expecting to get free samples, received broad public response.⁸⁹ Whilst some internal institutional practices have been developed in response to persistent public pressure, they are still far from addressing the major legislative deficits in the area of integrity mechanisms: a Parliamentary Code of Ethics and regulation in the area of lobbying. The lack of adequate regulations is compensated by ad hoc and ad hominem decisions on a case by case basis referring to the laws on conflict of interests and public disclosure of assets. These however cannot create the premise for a complex solution to the existing systemic problem in the area of public sector integrity.⁹⁰

While certain **post-employment and pre-employment restrictions** do exist, they do not provide optimal guarantees for integrity. The Conflict of Interest Prevention and Ascertainment Act provides for a one year cooling-off period. It should also be mentioned that the internationally established good standards in the field require at least a 2-year cooling-off period. In practice, there have been a number of cases in which former members of parliament, senior public servants, ministers and ministerial advisers have moved directly into the private sector without a preliminary opinion by the oversight body. There is no mechanism to provide formal permission to many former public servants to take up a position in the private sector where they could lobby their former employer. The existing legislation does not provide for effective control over the cases where former members of parliament, senior public servants (including in regulatory bodies), members of the executive (national and subnational levels) and advisers take up position which allows them to lobby their previous employer. Under the Conflict of Interest Prevention and Ascertainment Act, an independent Commission for prevention and of conflict of interest has been established, acting as a collegiate body. However, its functioning shows a contradictory practice regarding the adequate oversight of the restrictions provided for in the law. As a result, the existing legal framework fails to achieve the expected effect of prevention.

⁸⁹ Each and every Bulgarian newspaper and news site has reflected on the event; see reporting of Weekly Capital http://www.capital.bg/politika_i_ikonomika/bulgaria/2010/12/02/1004381_deputati_v_polza_na_obshtestvoto/

⁹⁰ It is telling that the Permanent committees on parliamentary ethics at the National Assembly systematically report lack of rules for ascertainment and sanctioning of behavior that can be qualified as breach of ethical rules and norms

CASE STUDY - INADEQUATE SYSTEM OF CONFLICT OF INTEREST PREVENTION UNDERMINES PARLIAMENTARY INTEGRITY AND PUBLIC TRUST IN INSTITUTIONS

An investigation was opened in early November 2013 against a Vice-President of the 42nd National Assembly, the Head of the Committee of Legal Affairs, considered to be among the most influential politicians in Bulgaria⁹². He is being investigated for transferring substantial sums of money to off-shore bank accounts in the Seychelles. Pre-trial proceedings have been initiated against him and his stepson, for money laundering and taxation crimes. The politician himself is also being investigated for document crime in the form of submitting a false asset declaration to the National Audit Office.

The stepson of the parliamentarian operates an extensive renewable energy business⁹³. Many media sources explicitly connect the former Parliament Vice-President to the energy lobby⁹⁴. Furthermore, his stepson has been appointed as his non-permanent assistant throughout the 41st National Assembly. This appointment raises further conflict of interest questions⁹⁵.

This is the first court case of this nature, initiated by the Prosecutor's office against a politician of such stance⁹⁶. The Bulgarian Institute for Legal Initiative, a not-for-profit foundation in the area of rule of law, has named this case the most high-profile corruption scandal in contemporary Bulgaria. It sheds light on a number of systemic deficits. A Vice-President of the National Assembly remained in a situation of dramatic conflict of interest for years before the authorities registered what was happening. According to the Institute, this means that the entire system of conflict of interest and corruption prevention mechanisms has failed to deliver⁹⁷.

The case demonstrates the urgent need for rethinking the mode of functioning of the system of control and prevention of conflict of interests and corruption among high-level public officials. **It is imperative that the National Assembly develops its own policy for effective prevention of conflict of interest in the work of MPs and parliamentary committees to guarantee transparency of the legislative activity. The fact that there is no stable practice of declaring conflict of interest in a particular case during the preparation, discussion and adoption of legislative acts also raises serious concern.**

92 Mediapool, 7 November 2013, <http://www.mediapool.bg/prokuratura-ulichi-bisero-v-i-sina-mu-v-prane-na-pari-i-danachni-izmami-news213247.html>

93 BTV, 8 November 2013, <http://bvtvnews.bg/article/bulgaria/dovedeniyat-sin-na-bisero-v-svarzan-s-biznesa-sas-zelena-energiya.html>

94 Mediapool, 8 November 2013, <http://www.mediapool.bg/general-ot-dans-e-izdal-na-dogan-informatsiyata-za-hristo-bisero-v-news213298.html>; Capital Weekly, 5 November 2013, http://www.capital.bg/politika_i_ikononika/bulgaria/2013/11/05/2175803_durjavnata_mashina_se_zadeistva_sreshthu_hristo_bisero-v/; 24 Chassa Daily, 7 November 2013, <http://www.24chasa.bg/Article.asp?ArticleId=2424068>; 24 Chassa Daily, 9 November 2013, <http://www.24chasa.bg/Article.asp?ArticleId=2428260>;

95 24 Chassa Daily, 7 November 2013, <http://m.24chasa.bg/Article.aspx?Id=2424051>

96 Mediapool, 7 November 2013, <http://www.mediapool.bg/prokuratura-ulichi-bisero-v-i-sina-mu-v-prane-na-pari-i-danachni-izmami-news213247.html>

97 Legal World online magazine, 8 November 2013, <http://www.legalworld.bg/33221.kazusyt-bisero-v-nalaga-sistemna-reforma-i-operacia-chisti-ryce.html>

The existing codes of conduct for public sector employees do not reflect specific ethical lobbying guidelines (i.e. standards on how public officials should conduct their communication with interest groups, a duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors). The codes of conduct only partially address conflict of interest, gifts and hospitality issues. They also address asset declaration issues but in a piecemeal and insufficient manner. The existing **complaint mechanism** allowing public officials and citizens to report violations of the public sector code of conduct has a limited scope. **Training and awareness-raising programmes** for public officials on integrity issues, including lobbying rules and guidelines, are insufficient.

There are no existing legal requirements and regulations concerning the integrity of lobbyists. **No statutory code of ethics for lobbyists** exists. Therefore, no sanction mechanism can be applied for failing to respect lobbying integrity principles.

Some broader self-regulatory framework does exist. However, it is inadequate to guarantee effective adherence to lobbying integrity principles and respectively, oversight. Some professional and business associations have adopted their own **Codes of Ethics**. Moreover, self-regulatory oversight bodies do exist. However, these do not include explicit behavioural principles that would safeguard employees against engaging in unethical lobbying situations. Usually these codes include requirements to ensure the accuracy of information provided to public officials. The codes stipulate that any information used, should not be obtained in violation of the law. The codes also advise against encouraging public officials to violate the law. Moreover, certain provisions on gifts and hospitality are also provided for. Existing private sector ethics codes, however, do not explicitly require their members to publicly disclose the identity of those whom they are representing and what they are lobbying for. Some professional and business associations provide complaint and sanction mechanisms. However, such mechanisms are not particularly targeted towards unethical lobbying. Hence, a robust sanctioning mechanism is not always in place.

„Both public institutions and private interests should bear the responsibility to guarantee integrity and transparency in the decision-making process. Because even though the MP is bound to represent the people and the civil society organizations are bound to represent civil society, this may be mere window-dressing in an attempt to mask your real intentions in a publicly acceptable manner“⁹¹

91 Interview with an MP, 16 April 2014.

Self-Regulation: An Important Integrity Mechanism Is Missing

There is an apparent institutional deficit in the regulation of the impact of interest groups into the decision-making and legislative process. Could business self-regulation be a viable alternative to this?

For this report, business and professional associations were assessed to see whether and how they utilize the ethics code instruments. We assessed a sample of 40 organizations from all the key economic sectors in the country. Out of the sample, only 14 were found to have published an ethics code (or document of similar nature) on their website. From the available information on the websites, a clear conclusion can be drawn that ethics codes regulate in detail the relationships among the members belonging to their association. Despite this, they rarely establish frameworks and standards in the interaction between the association and its members, as well as with public institutions. This means that lobbying per se is not self-regulated. Hence, a strong tool for setting the standards of integrity and transparency in the interest of both the business sector and the society has so far been neglected.

As one interviewee put it:

„Darkness gives birth to monsters. Lobbying is a new practice, but society is still largely uninformed about what lobbying means – what lobbying is and what lobbying is not. What is publicly acceptable and what isn't. It's overall very simple – where self-regulation is missing, regulation takes place. If the private sector does not initiate its self-regulation, the legislators will do the job. But if they fail to properly comprehend the issue, the result may be unsatisfactory”⁹⁸

⁹⁸ Interview with representative of business association, 16 April 2014.

Equality of Access: Levelling the Playing Field

Key Legislative Deficiencies Obstruct Meaningful Access

Bulgaria scores highest for equality of access to the political and policy process. This score is among a set of three key indicators for ethical lobbying (transparency, integrity and equality) that have been assessed as part of this research. Yet, the country score on access equality is nevertheless relatively low: **38 per cent**. This score reflects two sub-dimensions. The first, consultation and public participation, achieved a score of 50 per cent. The assessment of advisory groups, however, gained a lower score of 25 per cent.

There is still much to be done to make access to the policy process much more equal for all stakeholders.

The existing legal framework allows for citizens and the public (corporations and civic organisations) to provide input to parliament. Yet it does not make explicit provisions to ensure equal access, sufficient notice and time to receive this input. Varied means for public participation in the formulation, implementation and evaluation of policies are provided for in the existing legislation. Furthermore, the legal framework explicitly requires public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes. In practice, the **most routinely used forms of public participation** are informal consultation with selected groups. These include public notice and calling for comment, public meetings, online consultations on proposals, advisory and expert groups and preparatory public committees. In principle, consultations are often open to any member of the public.

Meanwhile, key deficiencies in the legislation process obstruct transparency and active input from all stakeholders. This creates an uneven “playing field” for interest representation. It also runs the risk of possible over-representation of private interests or interest groups, which may exert implicit pressures on the system. These deficiencies concern both the normative framework and the process of its implementation.

EQUALITY OF ACCESS

38%



**Consultation
and Public
Participation in
Decision-
making**

50%

**Advisory/
Expert
Group
Composition**

25%

Equality of access is the best ranking indicator for fair and ethical lobbying in Bulgaria. And yet the country's score is relatively low. While formal opportunities for participation exist, there is still much to be done to make access to decision-making and policy-making processes more equal.

The limited timeframe for public consultation on draft legislation was underlined by our interviewees as an outstanding problem. The Law on Normative Acts stipulates a 14-working days timeframe for obligatory consultation on draft legislation. This time scope is considered by all interviewed experts as inadequate. A further deficit comes from the fact that this obligatory public form of consultation takes place at a very late stage of the decision-making process. Hence, the broader public and interested parties may not have any real potential for impact.

„The consultative processes in my field, in the banking sector and the pensions sector in Bulgaria are primitive. Bulgaria is not a “free access” society. Neither in an economic, nor in a political point of view⁹⁹.“

A key legislative deficit is related to the lack of adequate normative requirement for motivation of legislation. The Law on Normative Acts stipulates vague and ineffective requirements. In practice the law allows for bringing draft legislation to parliament with motives which lack content and even lack basic financial considerations.¹⁰⁰ According to interviewed experts, the meaningful motivation and impact assessment which should accompany each piece of draft legislation could be one of the most effective tools of legal protection against non-transparent lobbying.

The limited use of impact assessment for draft legislation contributes to a process of concurrent amendment of legislation.¹⁰¹ Unpredictable and constantly changing legislation, however, is a major obstacle for doing business in Bulgaria. According to representative surveys, unpredictable legislation is among the three most often quoted obstacles to doing business in the country. Further issues to doing business are slow administrative service and problematic access to credit¹⁰².

„The problem stems from inadequate compliance with the normative requirement to motivate draft legislation and legislative amendments – it is often unclear what interests stand behind the proposals for amendments¹⁰³.“

99 Interview with a representative of a business association, 15 April 2014.

100 Interview with representative of a civil society organization – think tank in the economic field, 26 March 2014.

101 Interview with a representative of a business association, 24 March 2014.

102 See the regular surveys of the Bulgarian Chamber of Commerce and Industry, <http://www.bcci.bg/>.

103 Interview with a representative of a business association, 24 March 2014.

The legal framework on the composition and transparency of **advisory and expert groups** cannot guarantee effective public oversight. **A key deficit concerns the lack of transparency of their activities. The lack of legislative regulation of their composition is also cause for concern.** There is a high level of discretion in the process of composition of these consultative bodies. It is usually decided upon at ministerial level in the specific sector. However, this is not the only problem. The issue stems from the lack of legislative obligation to publicly announce the early intention to develop draft legislation or policy proposals. This limitation creates a difficulty for the institution in question to identify the appropriate experts to participate in the working groups on a particular issue. Yet if a preliminary concept was announced early on in the decision-making process, it would create the opportunity for an adequate reaction on the part of stakeholders. This in turn means that the institution could outline the necessary circle of expertise to employ in the process. This would also effectively limit time wasted in which working groups debate on issues without the full range of necessary expertise. It would help to avoid cases in which important stakeholders are only included when the final draft legislation or policy has already been adopted.¹⁰⁴

The key problem regarding **advisory councils with broader civil society participation** was found to be their lack of explicit mandates and competencies:

„Some of these public counsels serve imitative purposes, creating certain visibility and perception of openness and transparent consultation. Others have a more effective function. But the general rule is that they are not based on explicit regulation. The worse deficit however is that they lack a clear mandate, an unambiguous clarity as to issues they have the mandate and competence to debate on.”¹⁰⁵

¹⁰⁴ Interview with a legal expert, non-governmental organization representative, 17 April 2014.

¹⁰⁵ Interview with a legal expert, non-governmental organization representative, 17 April 2014.

CASE STUDY: CIRCUMVENTION OF THE WORKING GROUP INPUTS ON A NEW PENAL CODE RAISE EXPERT DISCONTENT AND IMPEDE THE LEGITIMACY AND OWNERSHIP OF AN IMPORTANT LEGISLATIVE ACT

Expert working group discussions improve the quality of proposed legislation. They consolidate the consensus of the decision-makers. Ultimately, they support the development of civil society ownership in the implementation of adopted measures. However, if those are neglected or inadequate, the proposed draft legislation may lack vital legitimacy and ownership.

A draft proposal for a new Penal Code has raised expert and civic discontent. The draft has been adopted by the Ministerial Council and submitted for parliamentary approval in the National Assembly. Expert and civic discussions on the draft proposal for a new Penal Code started back in 2009. Then two consecutive working groups were established at the Ministry of Justice. The first working group finished deliberations in 2012. Following the critical comments by magistrates on some of its proposals, a second working group was established. The second group had broader inter-institutional participation. By mid-2013, a uniform draft proposal had not yet been agreed upon by the participating experts and civil society representatives in the second working group. The working group had experienced ongoing disagreement. Hence, the group decided to engage the Ministry of Justice in the consultations. Following this, several alternative texts containing diverging opinions were created by working group members and sent to the Ministry for consideration.¹⁰⁶

On 21 December 2013, the Ministry of Justice published a draft Penal Code on its website. The draft was also posted on the official public consultations web-portal, as required under the Law on Legislative Acts. The law states that a 14-day public consultation must be held on any piece of draft legislation. However, this is an absolutely insufficient time-frame, as noted by the Head of the Legal Team at the Access to Information Programme Foundation.¹⁰⁷ On 15 January 2014, the Ministerial Council approved the draft.¹⁰⁸

The draft raised discontent among the expert community. They claimed that many of the texts differ from what had been discussed and agreed upon during the preparatory phase. Many of the experts taking part in the working group consultations explicitly inquired as to the authorship of the draft Code.¹⁰⁹ The National Ombudsman also criticized the public consultation process as being inadequate. According to him, the draft Code, published by the Ministry of Justice had not been publicly discussed. Society had not seen the Code in its final version before it was approved.¹¹⁰

According to the Bulgarian Helsinki Committee, the output of the working group has been substituted unilaterally by the Ministry of Justice. Yet the group was created namely to improve and provide legitimacy of the Code. As a result, many parts of the draft Code contradict major acts of international law and European Union legislation. Provisions of the Code also contravene recommendations of bodies of the United Nations and the Council of Europe, as well as decisions of the European Court of Human Rights.¹¹¹

¹⁰⁶ See the discussion in "Obektiv" Magazine, 31 January 2014, <http://www.bghelsinki.org/bg/publikacii/obektiv/obektiv/2014-01/noviyat-nakazatelen-kodeks-po-brimkata-na-zakona/>.

¹⁰⁷ See the discussion in "Obektiv" Magazine, 31 January 2014, <http://www.bghelsinki.org/bg/publikacii/obektiv/obektiv/2014-01/noviyat-nakazatelen-kodeks-po-brimkata-na-zakona/>.

¹⁰⁸ <http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?s=001&p=0228&n=5513&g=>

¹⁰⁹ See the discussion in "Obektiv" Magazine, 31 January 2014, <http://www.bghelsinki.org/bg/publikacii/obektiv/obektiv/2014-01/noviyat-nakazatelen-kodeks-po-brimkata-na-zakona/>.

¹¹⁰ "24 Chassa: Daily, 20 January 2014, <http://www.24chasa.bg/Article.asp?ArticleId=2936303>; "Sega" Daily, 20 January 2014, <http://www.segabg.com/article.php?sid=2014012000019985004>

¹¹¹ Bulgarian Helsinki Committee, 21 January 2014, Critical Notes on the Draft Penal Code, http://www.bghelsinki.org/media/uploads/documents/expert_statements/2014-01_kritichni-belezhki-vyrhu-proekta-za-nov-nk.pdf

The example shows the risks stemming from the lack of adequate procedures for holding expert and public consultations on draft legislation. Clear requirements need to be adopted as to how consultative positions are reflected in the final proposed draft. The inadequate 14-day timeframe for broad public consultation on the draft proposals needs to be reviewed. Unambiguous rules for the handling of positions received during the consultation process have to be put in place. Furthermore, explicit rules are needed in the appointment of members of working groups. These should guarantee that all expertise needed to develop a piece of legislation is included in the composition of the working group.

Society and Contra-Society: A New Tension Growing?

The issue of the effectiveness of civil consultation is yet another important dimension. The international discussion on regulating lobbying focuses on the issue of the distinction between broader societal interest representation (advocacy) and influencing for private/group benefit (lobbying).¹¹² In the Bulgarian debate, however, a different tension evolves within civil society. Many of the respondents from all sectors (decision-makers, NGOs, business, media) voiced a concern that a reliable distinction between authentic and non-authentic civil society interest representatives is difficult to draw. This is a particularly acute problem, given the data which shows that “a substantial part of the turnover (above 50%) of the not-for-profit sector is actually implemented by politically and institutionally controlled non-governmental organizations.”¹¹³

„Just like any other process in Bulgaria, substitution is easily allowed for. During the Supreme Judicial Council membership appointment from the parliamentary quota, not-for-profit organisations sprouted, which had absolutely no relevance to the issue and cannot persuade me why their expertise is important to that particular case. There was outright substitution. When [such consultative and civil society bodies] are being formed, there should be clear analysis of why certain organisations are selected. Unfortunately, I am prone to thinking that organisations are being selected [granted access to these processes] on the basis of the criterion obedience, rather than their expertise.”¹¹⁴

„It is often possible that civic, societal interests serve as a cover-up for rather different types of interests. For example, many patients’ associations often press forward for specific medicines, of a particular pharmaceutical producer. The general public may not be aware of such specificities, but what is hidden behind is lobbying...”¹¹⁵

112 And thus the key question is whether broader societal interest representative should undergo similarly strict regime for registration and for disclosure as private interest lobbyists.

113 Centre for the Study of Democracy, 2010, pp. 37.

114 Interview with representative of media, 11 April 2014.

115 Interview with Member of Parliament, 16 April 2014.

Roads Ahead: Effective Transparency of Lobbying Is Clearly Needed

There is a shared understanding of the deficiencies in the existing transparency mechanisms. Experts have identified limitations of both a normative and procedural nature. Some of these can be overcome by adopting explicit regulations. They must focus on the access and influence of private, group and public interests in the decision making process.

Regulation of lobbying through legislative measures is seen as the precondition to achieve vital civic engagement in the political process:

„The regulation on this activity is the precondition for sustaining higher level of citizen engagement regarding the legislation in force and pressuring for better legislative solutions than the existing ones. The strength of democracy is exactly in engaging the broadest possible sectors of society.”¹¹⁶

The instrument of “legislative footprints” also receives broad expert approval.

„Publicity is needed in the contacts of decision-makers with those who lobby them. When these processes are openly declared, society will know from the onset what interests influence a given governmental decision. This would make sense. Of course we should bear in mind the risk of any regulation being watered down.”¹¹⁷

Our respondents stress the instructive value of the mechanisms which foster transparency and integrity, despite the possibility for non-compliance. Indeed, this is seen as a key problem in the Bulgarian context:

„Legislation on lobbying is useful in the sense that it will be a tool for awareness-raising and education, rather than a tool for ensuring compliance. When you at least try to conform to a standard, you have to demonstrate some decency. When even the façade is missing, decency is all gone. Maybe through some form of compliance to such standards, the next generation will develop such values.”¹¹⁸

„In my opinion a law on lobbying would have a positive impact by bringing a large part of the interactions which are now considered shadowy, into daylight. When it is clear who lobbies whom and why, the processes will maybe become more transparent, more open.”¹¹⁹

However, the prevailing view stresses the need for effective oversight mechanisms to bring the shadow lobbying into light:

„Lobbying legislation makes sense only if it makes lobbying transparent, if it brings it into an open ground. Even now lobbying is public and transparent when it is in the interest of the general public. But the question is whether possible legislation will have the power to bring the shadow lobbying into light. Somehow I am skeptical, bearing in mind that we are talking about the Bulgarian context.”¹²⁰

¹¹⁶ Interview with representative of business association, 24 March 2014.

¹¹⁷ Interview with representative of media, 11 April 2014.

¹¹⁸ Interview with a representative of web-based media, 4 April 2014.

¹¹⁹ Interview with a Member of Parliament, 16 April 2014.

¹²⁰ Interview with a representative of professional association, 1 April 2014.

„I have personally always been in favour of enhancing the “sunlight” governance, so to speak, rather than regulating strictly lobbying. Of course, there need to be rules on lobbying, but firstly the transparency and publicity of the overall governance process needs to be established. Mechanisms of decision-making need to be clear. Lobbying regulation comes as the logical next step. You first need to have a transparent playing field where actors come forth, and then you can proceed with lining up and tracing the field.”¹²¹

At the same time, the expert community sees existing potential in self-regulatory mechanisms for improving the framework of transparency and integrity of interest representation in Bulgaria.

Bulgaria's low country scores on each of the three assessed dimensions – transparency, integrity and access equality – demonstrate the vast room for development of the frameworks for transparency, integrity and equality of access. The right of participation is a cornerstone of the democratic process. Ultimately, these improvements would help to restore public trust in politics. And lobbying is one avenue for interest groups to be involved in the decisions that may affect them. Public policies need to be balanced, effective, rational and to reflect the broader public interest, which requires transparency, integrity and equality of access to the decision-making and policy-making processes.

¹²¹ Interview with a legal expert, non-governmental organization representative, 17 April 2014.

CONCLUSIONS AND RECOMMENDATIONS

In a post-communist context marked by a biased understanding of the proper relationship between freedom of economic activity and political decision-making, lobbying in Bulgaria has remained an unclear concept. An accelerated process of (re)emergence of a variety of interest groups and CSOs has ensured a plurality of stakeholders in the country's new democracy. This has been achieved in parallel to an intensive legislative process which had to re-shape the overall establishment of new rules of political, economic, cultural and social life. With no specific regulation in place, "lobbying" in Bulgaria has become a term used to explain any practice or phenomenon in the political-institutional process that remains non-transparent, inaccessible to the public and done "behind the scenes". The lack of a commonly shared understanding among the expert community and the public as to what legitimate interest representation is, can also be seen as the effect of a number of scandals involving politicians and high-rank representatives of state authorities. Bulgarian think tanks have advocated for increased transparency and decreased clientelism. They have repeatedly urged the parliament to legalise and regulate lobbying. However, these efforts have yet to achieve success.

And as it currently stands, few companies would openly identify their business activities as lobbying. Meanwhile, the activities of civic and professional organisations are usually referred to as advocacy for public interest.

Concerted efforts for enhancing the transparency of decision-making processes are still urgently needed. Whilst there is special legislation on conflict of interests prevention, access to public information, public consultations on draft legislation of the Ministerial Council, implementation shows poor results.

The legislation in force in Bulgaria does not use the term lobbying. There is no public register of lobbyists and the public does not have knowledge of who is lobbying whom or on what issues decision-makers are being lobbied. Nor does the public know when and how they are being lobbied, how much money

is being spent in the process and what the results of lobbying efforts are. There are no requirements for public officials to report on meetings with lobbyists. Likewise, no requirements for proactive publication of public officials' and ministers' calendars exist. The concept of a legislative footprint, which details the time, person and subject of a legislator's contact with a stakeholder, has not been adopted.

As highlighted in this report, self-regulation in the private sector regarding lobbying is still far from being effectively used as a mechanism for enhancing transparency and integrity. Business associations rarely promote integrity standards specifically in the interaction with public authorities, while state institutions and political actors are still far from the establishment of effective ethical infrastructure at all levels of governance. The onus for integrity is insufficient both with regard to public officials and representatives and those who lobby them.

Which are the areas for priority action?

-  The parliament and the government - must introduce adequate (including legal) instruments that support transparent and ethical lobbying. In particular, they should utilise the *legislative footprint* tool. This would provide detailed information on who sought to influence legislation, what piece of legislation was targeted and by which channels influence was sought.
-  The National Assembly must introduce a *Public Registry* of all organisations that submit written opinions on draft bills to the parliamentary committees. The register should include information on the name and headquarters of the organisation. Members of the management board, fields of expertise and type of represented interests should also be provided.
-  The National Assembly should adopt a parliamentary *Ethics Code* in order to develop the ethical infrastructure within the National Assembly as a step towards restoring public trust in the democratic functioning of the legislature.
-  Public authorities must make *conflict of interest prevention* an effective tool for adherence to the requirements for the “revolving door” of appointments between the public and private sector.
-  The government must review the access to information regime to ensure a more robust framework for *active publication of information* by institutions. This must involve the removal of existing obstacles to electronic access to public information.
-  Public authorities – both the National Assembly and the government - must guarantee *reasonable timeframes for public consultation* (at least 30 days) and to organize the consultative process in a manner that is friendly and accessible to the stakeholders by: publishing an annual legislative programme of the National Assembly; publishing preliminary concepts on the need for and effect of the respective legislation; publishing of records of the consultations that have taken place on each draft legislative act.
-  Business and professional associations must make better use of self-regulation mechanisms. They must promote the standards of integrity in their interaction with public authorities. They also need to make explicit reference to integrity standards in their Ethics Codes. Where such codes are not yet in place, they should be adopted without delay.

ANNEX 1

METHODOLOGY NOTE

Assessing Lobbying Rules and Practice – Our Approach

Transparency is crucial if there is any chance of public trust in politics being restored. When looking at transparency around lobbying practices, our research sought to answer the following overarching question: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives (b) on what issues they are being lobbied (c) when and how they are being lobbied (d) how much is being spent in the process (e) what is the result of these lobbying efforts? We also sought to investigate whether the onus for transparency is placed on both the lobbyist and the public official/representative.

We believe that transparency of lobbying must be embedded within a broader public sector **integrity** framework which mitigates the risks of conflicts of interest when important decisions are being taken. To understand how well-insulated countries are against undue lobbying, our research sought an answer to the following overarching questions about ethical lobbying: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

Finally, when regulating lobbying, transparency and integrity measures are crucial but they must be accompanied by rules that allow for **equality of access** to decision makers, which is essential to fairness and pluralism in the political system. Our research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests.

Data Collection and Validation

The research was carried out by Transparency International-Bulgaria during the period from March 2014 to September 2014. When conducting the research, the researcher team drew on numerous normative documents and secondary sources such as Transparency International's European National Integrity System regional report "Money, Power and Politics", Transparency International-Bulgaria's National Integrity System Report (2011), reports and analyses by Foundation "Access to Information Programme", Open Society Institute-Sofia, Centre for the Study of Democracy, Institute for Market Economy, Foundation for Local Government Reform, Economic Policy Institute, the Standard Eurobarometer survey data, research and rankings by Freedom House, Reporters without Borders, CIVICUS and others.

This secondary data was complemented by primary data obtained from 12 in-depth interviews with Members of Parliament, representatives of companies and business associations, representatives of civil society organizations and professional organizations, and journalists. Interviews were particularly useful for finding out additional information not on the public record, and for gathering evidence on the implementation of regulations and more generally, what is happening in practice. A list of interviewees is included in Annex 2 of this report.

The research was primarily qualitative; however a quantitative element was also included in order to evaluate the robustness and efficacy of national regulations and self-regulation mechanisms around lobbying and to allow for some comparison across the countries.¹²² To this end, a set of 65 indicators were scored by the researcher, based on the qualitative information gathered through the research.

A 3-point scale was used to score the indicators, with a minimum score of 0 and a maximum score of 2.¹²³ In order to calculate the overall scores for the country, and for the three dimensions of Transparency, Integrity and Equality of Access, a simple aggregation was performed. Specifically, a total score (as a percentage) was calculated for 10 sub-dimensions (Access to information, Lobbying registration systems, Verification and oversight mechanisms, Legislative footprint, Pre-

and post-employment restrictions, Codes of conduct/ethics for policymakers, Codes of conduct/ethics for lobbyists, Self-regulation of the industry, Consultation and participation mechanisms in public-decision-making and Expert and advisory group composition). A simple average was then calculated to provide an overall score for the three key dimensions of Transparency, Integrity and Equality of Access. The overall country score was calculated by averaging these three dimensions.

The completed questionnaire and scores are included as an annex to this report (see Annex 3).

¹²² A regional report compiling and comparing the national results is foreseen for publication in early 2015.

¹²³ In a limited number of cases, where no logical intermediary position exists, only a minimum value of 0 and a maximum value of 2 are offered.

ANNEX 2

LIST OF INTERVIEWS

24 March 2014	Representative of business association
26 March 2014	Representative of a civil society organization – think tank in the economic field
1 April 2014	Representative of business association
1 April 2014	Representative of professional association
4 April 2014	Representative of web-based media
11 April 2014	Representative of media
15 April 2014	Representative of business association
16 April 2014	Member of Parliament
16 April 2014	Representative of business association
17 April 2014	Legal expert, non-governmental organization representative
26 June 2014	Member of Parliament
16 August 2014	Representative of civil society organization

ANNEX 3

DATA COLLECTION QUESTIONNAIRE

Transparency

1

To what extent does the law clearly and unambiguously define ‘lobbyists’ to capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics?

0 – No definition/Wholly inadequate definition covering a small proportion of lobbyists

1 – Partially but inadequately/too narrowly/too broadly defined

2 – The law clearly and unambiguously defines lobbyists to include professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.

Country Score: 0

Comments: In Bulgaria there is no legislation that defines lobbyist or lobbying activity

Check all categories covered by law:

- ☐ Professional lobbyist
- ☐ Private Sector Representatives
- ☐ Public affairs consultancies
- ☐ Representative from NGO
- ☐ Representative from a for-profit corporation
- ☐ Representative from industry/professional association
- ☐ Trade unions
- ☐ Think tanks
- ☐ Law firms
- ☐ Faith-based organisations
- ☐ Academics
- ☐ Other, please specify _____

2

To what extent does the law/regulation define 'lobbying targets' in a sufficiently broad manner to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions?

0 – Lobbying targets are not defined in law/ Wholly inadequate definition covering a small proportion of lobbying targets

1 – Lobbying targets are inadequately defined in law (including some but not all of the above-mentioned targets)

2 – Lobbying targets are broadly and adequately defined in law to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions

Country Score: 0

Comments: In Bulgaria there is no legislation that defines targets of lobbying activity

Check all categories covered by law:

- ☐ National Legislators
- ☐ Subnational Legislators
- ☐ National Executive
- ☐ Subnational Executives
- ☐ Executive Advisors
- ☐ High-level public officials
- ☐ Regulatory bodies
- ☐ Private bodies performing public functions
- ☐ Other, please specify _____

3

To what extent is the term 'lobbying'/'lobbying activities' clearly and unambiguously defined in law/regulation to include any contact (written or oral communication, including electronic communication) with lobbying targets (see above) for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position?

0 – No definition/Wholly inadequate definition covering a small proportion of lobbying activity

1 – Partially but inadequately/too narrowly defined

2 – Definition is clear and unambiguous and is comparable to the following international standard¹²⁴: any contact (written or oral communication, including electronic communication) with lobbying targets for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position.

Country Score: 0

Comments: In Bulgaria there is no legislation that defines the term 'lobbying'/'lobbying activities'

¹²⁴ See Sunlight Foundation Lobbying Guidelines (<http://sunlightfoundation.com/blog/2013/12/03/announcing-sunlights-international-lobbying-guidelines/>), the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying (2014, forthcoming) and Council of Europe Parliamentary Assembly Recommendation 1908 (2010) on lobbying in a democratic society

Access to Information

4

To what extent is there a comprehensive access to information law that guarantees the public's right to information and access to government data?

0 - No law exists

1 - Law exists but with inadequacies

2 – Comprehensive law in place

Country Score: 2

5

In practice, to what extent do citizens have reasonable access to information on public sector activities and government data?

0 – In practice, citizens face major problems in accessing information and/or frequent violations of the law

1 – In practice, access is not always straightforward/citizens often face obstacles to access

2 – In practice, it is easy for citizens to access to information on public sector activities and government data

Country Score: 1

6

Do access to information laws apply to lobbying data?

0 – No law exists/Law does not apply to lobbying data

1 – Some but not all lobbying data accessible under access to information laws

2 – Access to information laws cover lobbying data

Country Score: 0

Comments: No legal regulation exists.

Registration and Disclosure by Lobbyists

7

Is there a lobbyist register in the country?

0 – No register exists

1 – Voluntary register exists/A register for a particular institution exists but does not apply to all lobbying activity

2 – A mandatory register exists

Country Score: 0

8

Where a register exists, to what extent does it capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics in the country?

0 – Wholly inadequate scope covering only a small proportion of lobbyists

1 – Register captures many of the categories of lobbyists mentioned above but there are still some gaps

2 – The register clearly captures professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.

Country Score: 0

Check all categories covered by register:

- ☐ Professional lobbyist
- ☐ Private Sector Representatives
- ☐ Public affairs consultancies
- ☐ Representative from NGO
- ☐ Representative from a for-profit corporation
- ☐ Representative from industry/professional association
- ☐ Trade unions
- ☐ Think tanks
- ☐ Law firms
- ☐ Faith-based organisations
- ☐ Academics
- ☐ Other, please specify _____

9

To what extent are lobbyists required to register in a timely (within 10 days of beginning of lobbying activity) manner?

0 – No compulsory registration

1 – Lobbyists required to register, but with significant time lag (more than 10 days)

2 – Lobbyists required to register within 10 days of beginning lobbying activity

Country Score: 0

10

To what extent are lobbyists required to report regularly on their lobbying activities and expenditures in a timely manner (max real-time - min quarterly)?

0 – No requirement to report/Reporting less often than annually

1 – Reporting requirement less often than quarterly but more often than annually

2 – Realtime - Quarterly reporting required

Country Score: 0

11

To what extent are lobbyists and organizations that lobby required to publicly disclose relevant personal and employment information: name of the organization (if applicable); address and contact information; names of all active lobbyists working on behalf of the organization (if applicable)?

0 – No information required to be publicly disclosed by lobbyists

1 – Only basic information required to be publicly disclosed

2 – Sufficient information required to be publicly disclosed

Country Score: 0

Check all categories covered by law:

- ☐ Name (of individual or organisation)
- ☐ Address and contact details
- ☐ Names of all active lobbyists working on behalf of organisation
- ☐ Other

12

To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on lobbying objectives and clients: name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied?

0 – No information required to be publicly disclosed by lobbyists

1 – Only basic information required to be publicly disclosed

2 – Sufficient information required to be publicly disclosed

Country Score: 0

Check all categories covered by law:

- ☐ Name of the persons or organizations paying for the lobbying activities
- ☐ Names of the lobbyists' clients
- ☐ Specific subject matter lobbied
- ☐ Specific legislative proposals, bills, regulations, policies, programmes, grants, contributions or contracts sought

13

To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on who they are lobbying and what they are advocating: name and title of the public representative or public body with whom the lobbyist engaged and the date and type of such engagement as well as any information and/or supporting documentation communicated to policymakers?

0 – No requirement to report

1 – Only basic information required to be publicly disclosed

2 – Sufficient information required to be publicly disclosed

Country Score: 0

Check all categories covered by law:

- ☐ The name of the public representative or public body with whom the lobbyist engaged
- ☐ Date of engagement
- ☐ Type of engagement (personal visit, accepted invitation to event, official hearing)
- ☐ Supporting documentation communicated to policymakers

14

To what extent are lobbyists and organizations that lobby required to publicly disclose lobbying expenditures, including spending on efforts to support lobbying, loans, sponsorships, retainers, or the purchase of tickets for fundraising events?

0 – No information on expenditures required to be publicly disclosed by lobbyists

1 – Only basic information on expenditures required to be publicly disclosed

2 – Sufficient information on expenditures required to be publicly disclosed

Country Score: 0

15

To what extent are lobbyists and organizations that lobby required to publicly disclose political donations to parties and candidates?

- 0 – No requirement for public disclosure of political donations
- 1 – Insufficient requirements for public disclosure of political donations
- 2 – Sufficient information on political donations required to be publicly disclosed

Country Score: 0

16

To what extent are lobbyists required to publicly disclose 'in kind' contributions: In-kind contributions may include advertising, use of facilities, design and printing, donation of equipment, or the provision of board membership, employment or consultancy work for elected politicians or candidates for office?

- 0 – No information on 'in-kind' contributions required to be publicly disclosed by lobbyists
- 1 – Insufficient information on 'in-kind' contributions required to be publicly disclosed by lobbyists
- 2 – Sufficient information on 'in-kind' contributions required to be publicly disclosed

Получен резултат: 0

17

Is information disclosed by lobbyists publicly available online in a searchable machine-readable open-data format?

- 0 – Information not available online
- 1 – Information available online but not in a searchable machine-readable open-data format (eg. Hand-written and scanned documents used)
- 2 – Information publicly available online in a searchable machine-readable open-data format

Country Score: 0

18

To what extent do the lobbyists register and provide sufficient/timely information in line with legislative obligations?

- 0 – Little or no compliance with legal obligations
- 1 – Some lobbyists comply but there are many cases of non-compliance
- 2 – Broad compliance with legal obligations

Country Score: 0

Oversight, Verification and Sanctions

19

To what extent is there an independent, mandated and well-resourced oversight entity charged with managing registration of lobbyists, offering guidance to individuals and organisations, monitoring returns, and investigating apparent breaches or anomalies (this includes powers to investigate complaints made but also to instigate investigations even where no complaint has been lodged)?

0 – No oversight entity exists

1 – Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight

2 – A fully mandated and resourced oversight entity is in place

Country Score: 0

20

To what extent is there a pro-active verification mechanism to audit disclosures and reports and detect anomalies?

0 – No verification mechanism exists

1 – Verification exists but is inadequate

2 – Adequate verification mechanism exists

Country Score: 0

21

In practice, to what extent are anomalies detected and followed up on by the oversight body?

0 – Little or no detection of anomalies

1 – In general, the oversight body is somewhat active in following up on anomalies detected

2 – In general, the oversight body is active in following up on anomalies detected

Country Score: 0

22

In practice, to what extent are anomalies detected and reported by others (e.g. investigative journalists) followed up on by the oversight body?

0 – Little or no detection of anomalies

1 – In general, the oversight body is somewhat active in following up on anomalies detected and reported by others

2 – In general, the oversight body is active in following up on anomalies detected and reported by others

Country Score: 0

23

To what extent does the law provide for penalties for knowingly filing a false lobbying registration return or failure to file a return?

0 – No penalties exists

1 – Penalties exist but they are inadequate

2 – Adequate penalties exist in law

Country Score: 0

24

To what extent are penalties for knowingly filing a false return or failure to file a lobbying registration return implemented in practice?

0 – Never

1 – Sometimes

2 – Always

Country Score: 0

25

To what extent are oversight bodies required to publicly disclose the names of all individuals or organizations found to have violated lobbying rules or regulations?

0 – No requirement to publicly disclose names of those who violate rules

1 – Disclosure of names of those who violate rules is at the discretion of the oversight body

2 – Mandatory disclosure of names of those who violate rules and details of the violation

Country Score: 0

26

To what extent are the names of all individuals or organizations found to have violated lobbying rules or regulations published in practice?

0 – Never

1 – Sometimes

2 – Always

Country Score: 0

Legislative Footprint

27

To what extent does the law require the publication of a 'Legislative Footprint' (document that details the time, event, person, and subject of legislators' and senior public officials' contact with a stakeholder) as an annex to all legislative records?

0 – No legislative footprint foreseen in law

1 – Piecemeal requirements to indicate who has sought to influence legislative or policy making processes in place

2 – The law requires publication of a legislative footprint as an annex to all legislative records

Country Score: 0

28

In practice, do legislators/public officials publish a legislative footprint including details of the time, person, and subject of contacts with stakeholders?

0 – No information on contacts publicly disclosed by legislators/public officials

1 – Some but insufficient information on contacts publicly disclosed by legislators/public officials

2 – Sufficient details of legislators' contact with stakeholders published

Country Score: 0

29

To what extent are senior public officials required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?

0 – No requirement to make documentation related to meetings public

1 – Piecemeal requirements to make documentation related to meetings public

2 – The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

Country Score: 0

30

To what extent are public representatives (national and subnational legislators) required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?

0 – No requirement to make documentation related to meetings public

1 – Piecemeal requirements to make documentation related to meetings public

2 – The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

Country Score: 0

Integrity - Post-employment and Pre-employment Restrictions

31

To what extent does the law provide proportionate moratoria or 'cooling off periods' before former members of parliament, senior public servants, ministers and advisers can work as lobbyists?

0 – No cooling off period in place

1 – Less than 2 year cooling off period in place

2 – Cooling off period of at least 2 years in place

Country Score: 1

Comment: The Conflict of Interest Prevention and Ascertainment Act provides for one year cooling-off period¹²⁵.

32

To what extent do 'cooling off periods' for those who wish to work as lobbyists apply to former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers?

0 – No cooling off period in place

1 – Cooling off period is in place but does not apply to all categories above

2 – Cooling off period applies to all categories above

Country Score: 1

Tick categories covered:

- ☐ Former members of parliament (national)
- ☐ Former members of parliament (sub-national)
- ☒ Former members of national Executive
- ☐ Former members of subnational Executives
- ☒ Advisors
- ☒ Senior Public Servants
- ☒ Senior staff of regulatory bodies
- ☒ Other

¹²⁵ Article 21. (1) (Supplemented, SG No. 26/2009, effective 31.03.2009) Within one year after vacating office, any public office holder, with the exception of a person referred to in Items 1, 2, 3, 6, 11, 12 and 12 of Article 3 herein, shall not have the right to conclude employment contracts or other contracts for the fulfilment of management or control functions with any commercial corporations or co-operatives in respect of which the said office holder has performed any actions involving disposition, regulation or control or has concluded any contracts therewith during the last year of execution of the official powers or duties thereof, nor to be a partner, to hold interests or shares, to be a managing director or member of a management or supervisory body of any such commercial corporations or co-operatives.

33

In practice to what extent do former members of parliament, senior public servants, members of the executive and advisers move easily and directly into the lobbying sector?

0 – There have been a significant number of cases of former members of parliament, senior public servants, ministers, ministerial advisers moving directly into the lobbying sector

1 – There have been a number of cases of former members of parliament, senior public servants, ministers, ministerial advisers to moving directly into the lobbying sector

2 – Former members of parliament, senior public servants, ministers, ministerial advisers rarely move directly into the lobbying sector, usually respecting a cooling off period

Country Score: 1

34

To what extent does the law require former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers to receive permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?

0 – No permission required

1 – Insufficient Restrictions (Insufficient coverage)

2 – Permission required and applies to all above-mentioned categories

Country Score: 0

35

In practice, to what extent do former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers seek permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?

0 – Never

1 – Sometimes

2 – Always

Country Score: 0

36

To what extent is there an independent, mandated and well-resourced oversight entity charged with managing post and pre-employment restrictions, offering guidance to individuals and organisations, and investigating apparent breaches or anomalies?

0 – No oversight entity exists

1 – Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight

2 – A fully mandated and well-resourced oversight entity is in place

Country Score: 1

Comments: Under the Conflict of Interest Prevention and Ascertainment Act establishes an independent Commission for prevention and ascertainment of conflict of interest which is insufficiently mandated to provide effective oversight.

Codes of Ethics for public sector employees

37

To what extent is ethical/responsible lobbying addressed in public sector codes of conduct (e.g. do they specify standards on how public officials should conduct their communication with interest groups, specify a duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors?)

0 – No code of conduct exists for public officials and/or codes of conduct do not reflect ethical lobbying guidelines

1 – Codes of conduct address ethical lobbying in a piecemeal or insufficient manner

2 – Codes of conduct comprehensively address ethical lobbying

Country Score: 0

Comments: A general Code of conduct for public administration exists, but it does not reflect ethical lobbying guidelines such as standards of communication with interest groups, duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors.

38

To what extent do public sector codes of conduct specify standards on how public officials should deal with conflicts of interest issues?

0 – No code of conduct exists for public officials and/or codes of conduct do not adequately reflect conflict of interest issues

1 – Codes of conduct address conflict of interest issues in a piecemeal or insufficient manner

2 – Codes of conduct comprehensively address conflict of interest issues

Country Score: 1

39

To what extent do public sector codes of conduct specify standards on how public officials should deal with gifts and hospitality issues?

0 – No code of conduct exists for public officials and/or codes of conduct do not adequately reflect gifts and hospitality issues

1 – Codes of conduct address reflect gifts and hospitality issues in a piecemeal or insufficient manner

2 – Codes of conduct comprehensively address reflect gifts and hospitality issues

Country Score: 1

40

To what extent do public sector codes of conduct deal comprehensively with interest and asset declaration issues?

0 – No code of conduct exists for public officials and/or codes of conduct do not adequately reflect asset declaration issues

1 – Codes of conduct address asset declaration issues in a piecemeal or insufficient manner

2 – Codes of conduct comprehensively address asset declaration issues

Country Score: 1

41

To what extent is there a complaint mechanism allowing any public official or citizen to report violations of the public sector code of conduct?

0 – No complaints mechanism exists

1 – Complaints mechanism exists but is limited in scope

2 – Robust complaints mechanism exists

Country Score: 1

42

To what extent are there training and awareness-raising programmes for public officials on integrity issues, including lobbying rules and guidelines?

0 – No training/awareness-raising programmes exist on integrity issues

1 – Piecemeal and irregular approach to training/awareness-raising on integrity issues

2 – Comprehensive and regular training/awareness-raising on integrity issues

Country Score: 1

Codes of Ethics for Lobbyists

43

To what extent is there a statutory code of conduct for lobbyists including clear sanctions for failure to adhere to lobbying regulations?

0 – No code of conduct exists

1 – Code of conduct exists but it is inadequate

2 – Statutory code of conduct including sanctions exists

Country Score: 0

44

In practice, to what extent are sanctions applied for failure to adhere to lobbying regulations?

0 – Sanctions rarely/never applied

1 – Sanctions applied, but inconsistently

2 – Sanctions consistently applied

Country Score: 0

45

To what extent does the law and/or the lobbyists' code of conduct require disclosure regarding and provide restrictions on lobbyists being hired to fill a regulatory, financial decision-making or advisory post in government?

0 – No disclosure requirements or restrictions in place

1 – Insufficient Restrictions and disclosure requirements (e.g. lobbyist must deregister but no further restrictions)

2 – Sufficient disclosure requirements and restrictions in place (e.g. potential veto of appointment and/or restriction in types of decisions the employee would be involved in making)

Country Score: 0

46

To what extent does the law and/or codes of conduct prohibit simultaneous employment as a lobbyist and a public official?

0 – No mention of prohibition of simultaneous employment as a lobbyist and a public official

1 – Law/Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official

2 – Law/Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

Country Score: 0

47

To what extent is there a complaint mechanism allowing any policy-maker or citizen to report violations of the lobbying regulations?

0 – No complaints mechanism exists

1 – Complaints mechanism exists but is limited in scope

2 – Comprehensive complaints mechanism exists

Country Score: 0

Self-regulatory Codes of Ethics for Lobbyists

48

To what extent are there self-regulatory code(s) of ethics managed by professional association(s) for lobbyists or by companies themselves?*

- 0 – No code of ethics exists
- 1 – Code of ethics exists but it is inadequate
- 2 – Code of ethics including sanctions exists

Country Score: 1

49

To what extent do existing self-regulatory codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations*¹²⁶

- 0 – Codes do not provide any behavioural principles that steer lobbyists away from unethical situations
- 1 – Codes mention behavioural principles but are vague and/or incomplete
- 2 – Codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations

Country Score: 1

Check all categories covered by codes:

- ☒ Requiring honesty and accuracy of information provided to public officials
- ☐ Requiring early disclosure to public officials of the identity of client and interests being represented
- ☒ Refraining from using information obtained in violation of the law
- ☒ Refraining from encouraging public officials to violate the law
- ☒ Banning gifts above a de minimis value, fees, employment or any other compensation from a lobbyist to a public official
- ☐ Requiring speedy disclosure of any conflict of interest and management of such conflicts of interest or recusal
- ☐ Making ethics training a condition of membership in the association
- ☐ Establishing a reasonably independent mechanism for monitoring and enforcing compliance to the ethics code
- ☐ Others, please specify _____

¹²⁶ Based on OECD (2009) Lobbyists, government and public trust: Promoting integrity by self-regulation, p.33 <http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=gov/pgc%282009%299>

50

To what extent do existing self-regulatory codes require lobbyists to publicly disclose the identity of who they are representing and what they are lobbying for?*

0 – No information required to be publicly disclosed by lobbyists

1 – Only basic information required to be publicly disclosed and/or the information is not public

2 – Sufficient information required to be publicly disclosed (name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied)

Country Score: 0

51

To what extent do existing self-regulatory codes prohibit simultaneous employment as a lobbyist and a public official?*

0 – No mention of prohibition of simultaneous employment as a lobbyist and a public official

1 – Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official

2 – Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

Country Score: 0

52

To what extent is there a complaint mechanism allowing any member or non-member of the association to report violations of the lobbying code of ethics?*

0 – No complaints mechanism exists

1 – Complaints mechanism exists but is limited in scope

2 – Robust complaints mechanism exists

Country Score: 0

53

To what extent are there reasonably independent mechanisms for the monitoring and enforcement of compliance with the ethics code(s)?*

0 – No monitoring and enforcement mechanisms exists

1 – The monitoring mechanism exists but is not independent, or is limited in scope

2 – A robust and reasonably independent monitoring and enforcement mechanism exists

Country Score: 1

Equality of Access - CONSULTATION AND PUBLIC PARTICIPATION IN DECISION-MAKING

54

To what extent is the Parliament required by law to allow citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input?

0 – The legal framework does not consider the provision of input to the legislative process.

1 – The legal framework allows for citizens and the public (corporations, civic organizations) to provide input to parliament, but it does not make any provisions regarding equal access, sufficient notice and time to receive this input

2 – Parliament is required by law to allow the citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input.

Country Score: 1

55

To what extent does the legal framework lay out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies?

0 – There are no procedures and rules for participation in policy discussions and decision making processes, or they are ad hoc to each policy and decision making process.

1 – There are some provisions for making public the means of participation in policy, but they are not specific, or they are relegated to policy directives.

2 – Yes, there is a specific regulatory framework that clearly lays out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies.

Country Score: 1

Comment: The legal framework provides for a mandatory consultation only of draft bill in a specific timeframe, it does not specify mechanisms to disseminate public meeting information. No specific rule provides for public participation in policy implementation and evaluation.

56

To what extent does the legal framework explicitly require public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes?

0 – There are no provisions regarding the consultation of groups and stakeholders affected by policy.

1 – Some provisions regarding the equal participation of affected groups exist, but they are not specific, or they are relegated to policy directives.

2 – The legal framework explicitly requires public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes.

Country Score: 1

57

In practice, which of the following forms of public participation are routinely used?

- ☒ Informal consultation with selected groups
- ☐ Broad circulation of proposals for comment
- ☒ Public notice and calling for comment
- ☒ Public meeting
- ☒ Posting proposals online
- ☒ Advisory/Expert Groups
- ☒ Preparatory Public Commission/committee
- ☐ Others, please specify _____

58

In practice, to what extent are consultations open to participation from any member of the public?

0 – Consultations are rarely/never open to any member of the public

1 – Consultations are sometimes but not always open to any member of the public

2 – Consultations are generally open to any member of the public

Country Score: 1**59**

In practice, to what extent are the views of participants in the consultation process made public?

0 – The views of participants in the consultation process are rarely/never made public

1 – The views of participants in the consultation process are sometimes but not always made public

2 – The views of participants in the consultation process are always made public

Country Score: 1**60**

To what extent does the legal framework explicitly require public authorities to provide a detailed justification on why and how various submissions have or have not been taken into account in policy and decision-making processes after consultation?

0 – There are no provisions requiring public authorities to explain whether and how they have considered participation, or there is no participation provided for

1 – There are some provisions requiring public authorities to explain whether and how they have considered submissions, but they are not specific, or they are relegated to policy directives

2 – The law explicitly requires public authorities to provide a detailed justification on why and how submissions have or have not been taken into account in policy and decision-making processes after consultation

Country Score: 1

Advisory/Expert Group Composition

61

To what extent is there a legal obligation to have a balanced composition (between private sector and civil society representatives) of advisory/expert groups?

0 – No requirement to have balanced composition

2 – The law requires meaningful balanced composition between private sector and civil society representatives

Country Score: 0

62

In practice, to what extent is there a balanced composition (between private sector and civil society representatives) of advisory/expert groups?

0 – Advisory groups are generally biased towards particular interests

1 – Advisory groups are sometimes balanced, sometimes not

2 – There is a meaningful balance between private sector and civil society representatives on advisory groups

Country Score: 1

63

To what extent are lobbyists prohibited from sitting on advisory/expert groups in a personal capacity?

0 – Lobbyists can freely sit on advisory groups in a personal capacity

2 – Lobbyists are prohibited from sitting on advisory/expert groups in a personal capacity

Country Score: N/A

64

To what extent are corporate executives prohibited from sitting on advisory groups in a personal capacity?

0 – Corporate executives can freely sit on advisory groups in a personal capacity

2 – Corporate executives are prohibited from sitting on advisory/expert groups in a personal capacity

Country Score: 0

65

With regard to advisory/expert groups, to what extent is membership information, agendas, minutes and participants' submissions required to be made public?

0 – Information not publicly available

1 – Information available, but only on request

2 – Information publicly available online or in print form

Country Score: 1

Transparency International-Bulgaria
Sofia 1463, 50, Sándor Petöfi Str., fl. 1

Phone: +359 2 986 77 13, +359 2 986 79 20

Fax: +359 2 986 78 34

e-mail: mbox@transparency.bg

www.transparency.bg