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“On Regulation of Lobbying Activities in Ukraine” which was registered in the Verkhovna Rada of
Ukraine by People’s Deputy of Ukraine Valeriy Konovaliuk on the 20th of October, 2010.
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EXPLANATORY NOTE
To Draft Law of Ukraine
On Regulation of Lobbying Activities in Ukraine

1. Necessity of the Act

In a democratic society, lobbying is an inseparable component of political process, because this is a special system of implementation of the interests of various social groups by means of influence over legislative and executive authorities of a State. Lobbyists or their groups perform an important function of intermediaries between the public and governmental authorities by informing the latter about the interests of separate groups of citizens and state of affairs in specific areas of the life. Positive work of the institution of lobbying is to the advantage of the society because such institution makes an important complement to the sophisticated system of checks and balances by means of allowing to compare collective interests, capabilities and consequences of different actions and contributes to representation of such interests and capabilities in the political decisions.

Nobody in the Ukrainian society has any doubts with regard to existence of the lobbying at all levels of power, but the issue of legislative regulation of this phenomenon has not been solved up to now.

Absence of a proper legal regulation of the lobbying in Ukraine implies a number of problems, among which one of the most important is the problem of inequality of groups of the population in exercising influence over decision making by the authorities. This is depicted, in particular, by the fact that separate influence groups having tight connections with separate representatives of the power, ensure adoption of legal-regulatory acts, which take into maximal account their interests, while other social stockholders, which do not have the aforementioned connections nor, frequently, even access to the offices of the governmental and local self-government authorities have no chances to share their views with the persons at power and to ensure consideration of their interests during decision-making. This implies a situation when a significant number of legal regulatory acts take into account interests of narrow circle of citizens and social groups and are not sufficiently grounded.

Another essential problem is that the absence of mechanisms ensuring openness of the lobbying prevents citizens of Ukraine from clear identification of

those who influence the process of making these or other decisions, of specific methods of exercising such influence and hence, from identification of political forces and specific persons politically responsible for adoption of the respective decisions.

In addition, absence of legislative regulation of the lobbying contributes to development of corrupted forms of influence over adoption of legal-regulatory acts and promotes favorable environment for abuse of the office.

As far as constitutional foundations of the lobbying in Ukraine are concerned, the Constitution of Ukraine contains a number of provisions constituting grounds for implementation of legal regulation of this social phenomenon. In particular, Constitution of Ukraine establishes that the people are the sole source of power and the people exercise power directly or through the state authorities and local self-government bodies (Art.5 Part 2); the right to freedom of thought and speech, and to free expression of person's views and beliefs are guaranteed (Part 1 Art. 34); everyone has the right to freely collect, store, use, and disseminate information by oral, written, or other means at his/her discretion (Part 2 Art. 34); citizens have the right to participate in the administration of state affairs (Part 1 Art. 38); everyone has the right to address individual or collective petitions, or to personally recourse to public authorities, local self-government bodies, officials, and officers of these bodies (Part 1 Art. 40).

It should be noted that the Fundamental Law of Germany does not refer to the lobbying either, but this State has the effective Regulation "On Registration of Unions and their Representatives in Bundestag", which provides for an efficient regulation of the lobbying in the German Parliament.

Legislative regulation of the lobbying in Ukraine could ensure public and governmental control over it but unless this is done, the lobbying will be tightly interwoven with corruption.

The law on regulation of the lobbying must define the lobbying as a legal democratic way of interaction between the power and society; create obstacles for abuses and corruption; protect public authorities from unlawful influence; take the lobbyists out of the shadow; contribute to growth of professionalism and responsibility of the public officials in the process of development and implementation of the governmental policies; give the citizens an opportunity to know who lobbies what within the public authorities; establish efficient mechanisms of control; promote formalization of the interests of different social groups; define legal forms of lobbying.

2. Goals and Objectives of the Draft Law

The draft law is aimed at regulation of the lobbying in Ukraine, which, although is not officially recognized by the Ukrainian legislation, is still carried out within the governmental and local self-government authorities.

The draft law will contribute to decrease of the number of corrupt and shadow schemes of influence over activities of representatives of the power because any contacts of the lobbyists with officials and officers will have an open nature while the

lobbyists will be requested to report on their activities. The draft law will also foster development of civil society in Ukraine and growth of the citizens' influence over the public administration by means of granting equal opportunities of the influence over the authorities for different groups and social layers of the public.

3. General Characteristics and Main Provisions of the Draft Law

The draft Law proposes establishment of legal grounds and procedures for lobbying in Ukraine, rights and obligations of the lobbyists, safeguards of their activities.

The Draft Law defines "lobbying" as lawful influence by the registered and accredited due to the established procedure persons (lobbyists), which is exercised at requests over the governmental and local self-government authorities, their officials and officers during development and adoption (participation in the adoption) of legal-regulatory acts by them. Any registered natural or legal person, which exercises at requests lawful influence over the governmental and local self-government authorities, will be recognized as a lobbyist.

Provisions of the proposed draft law will apply exclusively to the legal relations arising between the lobbyists and governmental and local self-government authorities and never restrict activities of any civil society organizations, political parties, religious organizations and other associations, which represent and defend their legitimate interests and legitimate interests of their members within the governmental and local self-government authorities.

The draft law suggests regulating the lobbyism carried out at such governmental and local self-government authorities: Verkhovna Rada of Ukraine; Administration of the President of Ukraine; Cabinet of Ministers of Ukraine; Ministries and other Central Executive Authorities; Verkhovna Rada of Autonomous republic of Crimea; Council of Ministers of Autonomous Republic of Crimea; village, settlement, city, district and oblast councils.

It is also proposed to forbid any opportunities for lobbying in the following areas: organization and activities of the executive authorities and foundations of the civil service; national security and defense; judiciary and administration of justice; territorial division.

Also, the Draft Law prohibits any lobbying at: National Bank of Ukraine and its units; Tax Administration of Ukraine and its units; State Customs Service of Ukraine and its units; judicial bodies; law enforcement authorities; Armed Forces of Ukraine and other military formations.

According to the Draft Law, the right to engage in the lobbying will be granted to natural and legal persons, who are registered in the Register of Lobbyists of Ukraine and have obtained Certificate of the right to engage in lobbying.

Persons engaged in the civil service and service with the local self-governments; employees of state-owned or municipal enterprises, institutions and organizations; persons holding political positions or having representative mandate; judges and judicial staff; employees of prosecutor's offices, military servicepersons, ranks and files and officers of the police and any other bodies where special ranks are

assigned to their personnel; persons declared by a court legally incapable partially incapable; persons, which have been convicted for intentional crimes, provided that such criminal record has not been cancelled or discharged due to procedure established by law shall not be allowed to engage in the lobbying.

It is proposed to entrust the process of the State registration of the lobbyists to the Ministry of Justice of Ukraine, which keeps the register of Lobbyists of Ukraine.

To carry out lobbying within the governmental and local self-government authorities, the lobbyists will be obliged to obtain an accreditation valid for one year with the respective governmental and local self-government authorities.

According to the draft law, the following rights will be granted to the lobbyists:

- 1) to represent and to defend rights and lawful interests of their customers;
- 2) to appeal to the governmental and local self-government authorities;
- 3) to receive from the governmental and local self-government authorities information related to activities of such authorities, except for restricted information;
- 4) by appointments made in advance, to have meetings with officials and officers of the public authorities;
- 5) to prepare and to promulgate results of social researches, expertise, analytical and other materials;
- 6) to organize and to conduct public events (round tables, conferences and seminars);
- 7) to take part in drafting legal-regulatory acts;
- 8) due to the established procedure, to have access to the offices of the authority of their accreditation;

Also, the draft law contemplates a number of obligations for the lobbyists, including: obligation to comply with the legislation of Ukraine; to provide for credible information; to comply with the working schedule of the authorities of their accreditation; to refrain from putting obstacles for operation of the authorities of their accreditation; to report periodically about their lobbying activities; and other obligations.

It is established that a lobbyist shall report on his/her activities to the Ministry of Justice once in three months.

Governmental control and supervision of the lobbyists' activities shall be exercised by the Ministry of Justice of Ukraine, law enforcement authorities, State tax authorities, prosecutor's offices and other governmental authorities within the framework of their powers and in the manner established by the legislation of Ukraine.

According to the Draft Law, the lobbyists will be subject to taxation due to the common procedure contemplated by the effective tax legislation and may not use any simplified system of taxation.

4. Status of Legal-regulatory Framework within this Area of Legal Regulation

Participation of the citizens in development and adoption of legal-regulatory acts is now regulated by the Constitution of Ukraine and by the Law “On Appeals of Citizens”. At the same time, the effective legislation of Ukraine does not provide for definition of the notion of the lobbying or for any manners of engagement in such activity, for targets of the lobbyist’s influence nor for any liability for violations in the lobbying business.

5. Feasibility Study

The implementation of the proposed Law of Ukraine “On Regulation of Lobbying in Ukraine” will require expenditures from the State Budget of Ukraine, which are proposed to be covered through the fees to be charged for the State Registration of the Lobbyists and registration of changes in the Register of the Lobbyists of Ukraine. The amount of such fees will be established by the Cabinet of Ministers of Ukraine.

6. Projections of Social Implications

The regulation of the lobbying in Ukraine by means of adoption of the proposed draft law will allow for establishing of an efficient interaction between the public and governmental and local self-government authorities, which will ensure consideration of the interests of a wide circle of the citizens and social groups in the legal-regulatory acts, for ensuring well-grounded decisions to be made and for improvement of the quality of the legislation in general.

Also, the Draft Law will allow for reduction of the number of acts of corruption and malfeasances in the public offices due to existence of the governmental and public scrutiny over the lobbying.

Adoption of this Draft Law will strengthen transparency and openness of operations of the governmental and local self-government authorities. In particular, the citizens will be able to clearly understand who is influencing the decision-making process, in which manner the lobbying is exercised and who are its targets, which political forces and specific persons are politically liable for adoption of specific decisions.

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