
Press release

In the opinion of Transparency International Romania and of the Advocacy Academy

The law of the *lobby* is useless and it ignores the Romanian realities and priorities

Bucharest, 14 August 2005

Transparency International Romania and the Advocacy Academy - Timisoara manifest their astonishment concerning the manner in which the advocates of a *lobby* law wish to solution the suspicions regarding the influence of some public decisions by groups of interests, by legislating some means through which such groups can continue to capture the public agenda in their own advantage.

Romania's priorities are the increase of the public integrity by preventing and fighting against corruption, fighting against the conflicts of interests, consolidating the free concurrence and the increase of the transparency, not the legitimating of the clientele with contracts, allowances, and the afferent taxation, all covered by the final cost of the decision.

Transparency International--Romania and the Advocacy Academy -Timisoara draw attention to the decisional factors that a law of the *lobby* is inopportune, coming in contradiction with the Romanian legislation in force. More than that, initiating a draft law of the *lobby* would not take into account the activity of the other ministries and the planned establishment of the National Agency for Integrity.

We remind that, before legislating the defence of some individual and group interests through the law of the *lobby*, the Government, the ministries, and the public administration in general, should respect the Law for the decisional transparency (52/2003), which guarantees the participation in full transparency to the process of adopting the normative acts, of all the interested ones.

If the cooptation of the public or of the groups of interests is wished in the influencing of the public agenda, all the necessary conditions exist, by consistently applying the Law 52/2003, so that the adopting of a *lobby* law remains void of object.

For the documentation of the initiators we specify that, in Europe, the foreseen *lobby* activities, of the type present in the American political system, are forbidden and assimilated without equivoque to the trading in influence by the *Criminal Law Convention on Corruption* (Strasbourg, 1999), ratified by the Romania Parliament within the Law 27/2002.

Whilst the mechanism through which the legitimate interests of the persons can be defended within the decision making process exist, Romania's priority is to close as more doors as possible to corruption and to secure the public sector against the conflicts of interests. In this sense, the Ministry of Justice initiated the draft law regarding the National Agency for Integrity, and the Government's efforts should be focused in this direction.

We present in the annexe a series of technical arguments for which we request in a public way the re-evaluation of the intentions to adopt a *lobby* law.

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A N N E X E

Transparency International Romania and The Advocacy Academy Timisoara request in a public way the re-evaluation of the proposal regarding the lobby law for the following reasons:

I. Legislative non-correlation

The proposal for adopting a law for the regulation of the lobby activities shows the lack of coordination and of over-regulation, two important characteristics of the administrative incapacity, which can affect the European integration more severely than the “groups of interest”. We consider it legislative non-correlation because there are disregarded:

- **The European Criminal Law Convention on Corruption (Strasbourg, 1999), ratified by the Romanian Parliament within the Law 27/2002, assimilates without equivoque the *lobby* activities to the trade in influence. In order to respond to the Convention's exigencies and because trade in influence is the corruption felony most difficult to probate and/or investigate, Romania permanently improved the legislation concerning the declaration and the control of the goods/wealth, the declaration of the interests, the control and sanction of the conflicts of interest and of the incompatibilities.**
- **The draft law regarding the National Agency for Integrity, subjected by the Ministry of Justice to a public debate in the basis of the Law 52/2003, contributes, in addition, to the transparency of the relations between the decision factors and the parts interested in influencing the decisions (represented or not by professional *lobbyists*). This Agency will keep an exact record of the declarations of interest and wealth, which it will cross-control with the composition of the shareholders from the commercial societies that form the obscure “Groups of interest”, being able thus to document and prevent any attempt to influence illegitimately, with bad-will, the decisions with a normative character.**
- **The Law 52/2003 regarding the decisional transparency in the public administration creates the mechanisms for the participation and the influence of the public decisions,**

and makes it in a transparent manner through consultation. The law allows the interested persons to make pressures upon the authorities because they take into account the purviews, they can make proposals, they can request the media support when they ascertain that the interests are affected. We give as an example the project regarding the maternity indemnity in the initial form of the Ministry of Work, Social Solidarity, and Family. The decision factors have the obligation to consult with the interested parts in a decision found in a preparing state, in the framework of the transparency procedures established by the Law 52/2003.

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- The Law 78/2000 implicitly forbidden the *lobby* activities. The influence of the public policies with bad-will, made with the aim of receipting undue advantages, is illegal and represent the trading in influence felony, punished by the Romanian Criminal Code, by the Law 78/2000 for the prevention, discover, and sanction of the corruption facts. Trading in influence can not be made in a transparent way, on the basis of a contract for carrying on lobby services, and the interests served by the trading in influence will never be recorded in any declaration of interest, no matter how “tough” the *lobby* law would be, for the sole reason that they would become legal. Such a law will bring nothing new in the Romanian legislative scenery, neither in form, nor in content.
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- Trading in influence is the corruption felony most difficult to probate and/or investigate. For its prevention, Romania permanently improved the legislation concerning the declaration and the control of the goods/wealth, the declaration of the interests, the control and sanction of the conflicts of interest and of the incompatibilities. Only the incompetent and/or ill-will decision factors cannot verify the public declarations of wealth and of interests of the partners of consultation and/or negotiation, indulging them in the suspicion of corruption through trading in influence. Even though the Law 161/2003 – the anticorruption package adopted through taking upon the accountability – does not explicitly state such a verification, the righteous functionaries and high officials utilise these instruments that are available for more than 2 years.

II. Public policies non-correlation

- In absence of public consultations, in lack of the liberty to offer another approach over the regulation manner proposed by the initiator, the decisions can be erroneous or insufficient. From this perspective, the participation to the decision-making process is made in the interest of some social or professional categories, and is legitimate if it is made with good-will, as a transparent participation process, being good for the consolidation of the democracy, of the rule of law, and of the administrative capacity of applying the law. The public authorities did not manage to implement but partially the participative processes imposed by the Law 52/2003, as the evaluations effectuated by the Agency for Governmental Strategies in the last two years, reveal.
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- The *lobby* activity is, in essence, a paid service of representing some private interests, individual or of group, in front of the decision factors. This contravenes to the priorities of fighting against corruption. The attempt to influence the public policies, of the executive decisions, and/or of the normative acts is a political constant of any representative democracy, in the measure in which the promoted interests are the general ones of some social or professional categories, or which have effect upon some sectorial public policies.
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- The non-correlation with the anticorruption public policies regarding the conflicts of interest and the incompatibilities. The conflict of interest is possible to appear both for the *lobby* agencies as well as for those employing them to promote their interests, as, particularly, for those constituting the target of the *lobbyists* - in general, people found in political or administrative decision positions. It is unacceptable a law for the *lobby* activity

implying only the monitoring, verification, and control of its professionals, and not also that of the clients and of the targets of the *lobby* activity.

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- The non-correlation with the principle of the free concurrence, of the equal and transparent access to the resources within the public policies for the harmonization with the European standards in the field of the concurrence. In fact, the law will block the access of the citizens and of the groups desiring to promote in a free and transparent way the interests of the persons with decision attributions. Only those certified as *lobbyists* or those who will pay a *lobbyist* could do it anymore.
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- A draft law that is part of the Executive strategy for the fight against corruption may have such a perverse effect as to offer, in fact, its legalization, because it is not clearly stated in the proposal which are the limitations to the *lobby* activity, in order to distinguish it from the trading in influence. The lack of clarity will permit to the law to weigh in to two completely different directions: on one side, those who will commit trading in influence will be able to pretend that they go on a legitimate activity of *lobby*; on the other side, those carrying a good-will activity of *lobby*, could be accused of trading in influence.

Finally, we remind that the precedent proposal for adopting a *lobby* law faced the strong resistance of the civil society in the debate from 29 November 2002, organized by the Centre for Legal Resources and the Pro Democracy Association, and in the public hearing from 18 February 2003, organized by the Advocacy Academy, Pro Democracy Association, and the Centre for Legal Resources.

TI-Romania and the Advocacy Academy consider that the Romanian Government risks to fall in the trap of over-regulating some contractual relations for carrying out services, already regulated within the Civil Code, risks to confer to the “groups of economic interest” from the Law 161/2003 an undeserved importance for the sake of introducing some legal purviews became obsolete including at a European level, respectively it risks to throw to garbage the purviews of the Law 52/2003, through which Romania scored progresses in the European integration process, or to undermine its own draft law regarding the establishment of the National Agency for Integrity, an institution meant to prevent the conflicts of interests and to control the unjustified wealth.