



ANALYSIS OF THE DRAFT LAW ON FAIR LOBBYING No.10337 ADOPTED IN THE FIRST READING

On January 10, 2024, the Verkhovna Rada of Ukraine voted in favor of the Draft Law on Fair Lobbying No. 10337 dated December 13, 2023, in the first reading with 309 votes in favor.

The Conclusion of the Main Scientific and Expert Department of the Secretariat of the Verkhovna Rada of Ukraine states: «At the time of preparation of the conclusion, the draft law was not included in the Plan of Legislative Work of the Verkhovna Rada of Ukraine for 2023, approved by Resolution of the Verkhovna Rada of Ukraine No. 2910-IX dated February 7, 2023. At the same time, clause 87 of the Plan of Legislative Work of the Verkhovna Rada of Ukraine for 2022 envisaged the adoption of the draft Law «On Lobbying Activities in Ukraine.»

In the interim report on the implementation of recommendations made in the framework of the fourth round of the GRECO evaluation «Prevention of corruption among people’s deputies, judges, and prosecutors» dated March 24, 2023, GRECO reminded the Ukrainian side that the recommendation to introduce rules for the interaction of people’s deputies with lobbyists and other third parties trying to influence the legislative process was not implemented in the Second Progress Report (none of the legislative initiatives on lobbying were implemented) and offered a one-year time limit for submitting a report on the measures taken to implement the outstanding recommendations (until March 31, 2024).

Only the preparation for the European Commission’s report on the opening of EU membership negotiations with Ukraine in November 2023 forced the authorities to speed up the process of drafting and adopting a draft law on lobbying, which began in July 2023.

Thus, the state’s external political commitments and the narrow timeframe for their implementation influenced the process of a legislative initiative on the draft law on lobbying and its content. The public and expert community have reason to criticize the authorities for numerous shortcomings in the legislative initiative, its secrecy, and non-publicity. On the other hand, the government followed the formal procedures of the legislative initiative, and its representatives refuted the criticism and assured that the vast majority of comments had been taken into account before the draft law was submitted to the Verkhovna Rada.

This analysis of the Draft Law on Fair Lobbying No. 10337 adopted in the first reading is intended to clarify the situation regarding the status of the adopted legislative act.

Justification for the need to adopt the draft law

In its conclusion to the draft law, the Verkhovna Rada Committee on Legal Policy, in particular, noted:

«The legal basis for the introduction of lobbying is set out in the Constitution of Ukraine. In particular, lobbying activities are based on the following constitutional provisions: The rule of law (Article 8); political, economic, and ideological diversity of public life (Article 15); equality of constitutional rights and freedoms of citizens and their equality before the law (Article 24); the right to freedom of thought and speech, to free expression of their views and beliefs (Article 34); the right to freedom of association (Article 36); the right of citizens to participate in the management of public affairs (Article 38); the right to appeal (Article 40); the right to entrepreneurial activity not prohibited by law (Article 42).»

The adoption of the draft law on lobbying is envisaged by a number of regulatory legal acts with the aim of introducing effective regulation of the activities of subjects of influence (lobbying) on parliamentary decision-making, in particular:

- The Law of Ukraine «On the Principles of State Anti-Corruption Policy for 2021–2025»;
- The Anti-Corruption Strategy for 2021–2025;
- The Law of Ukraine «On Prevention of Threats to National Security Associated with Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)»;
- Order of the Cabinet of Ministers of Ukraine No. 1582-p dated November 24, 2021, on the action plan to prevent the abuse of undue influence by persons with significant economic and political weight in public life (oligarchs);
- The State Anti-Corruption Program for 2023–2025.

The adoption of the draft law on lobbying is also part of Ukraine's international legal obligations in the field of European integration and the scope of the European Union's law.

The subject of legal regulation of the draft law is covered by the provisions of Article 444 of the Association Agreement, including the conclusions of the European Commission on Ukraine set out in the Report dated November 8, 2023, which, in particular, recommends that the Verkhovna Rada adopt ***a framework for negotiations, in which, among other things, Ukraine must still adopt a law on lobbying in accordance with European standards as part of the de-oligarchization action plan. As part of the Association Agreement, Ukraine has an obligation to ensure the existence of a transparent dialogue between government agencies and representatives of civil society and business, but the method and forms of such legal regulation are at the discretion of the state.***

At the same time, one of the seven recommendations made by the European Commission to Ukraine in its Conclusion on the EU membership application is ***«to introduce anti-oligarchic legislation to limit the excessive influence of oligarchs on economic, political, and public life; this should be done in a legally sound manner and should take into account the forthcoming conclusion of the Venice Commission on the relevant legislation»*** (step 5). Therefore, the Venice Commission, in its Conclusion dated June 12, 2023 (para. 33), draws

attention to the need to strengthen measures to prevent and combat corruption, **including the fight against high-level corruption, which in turn should include further measures in the field of lobbying and transparency of public decision-making.**

The provisions of the draft law are largely based on international standards and good practice in the field of lobbying regulation, in particular Recommendation 1908 (2010) of the Parliamentary Assembly of the Council of Europe on «Lobbying in a Democratic Society (European Code of Good Practice on Lobbying).» Primarily, it is about introducing an open register of lobbying entities – the Transparency Register; establishing requirements for disclosure of information on lobbying activities, cooling-off restrictions, etc. At the same time, some of the provisions of the draft law raise concerns.

In addition, Ukraine is recommended to introduce rules for the interaction of people's deputies with lobbyists and other third parties trying to influence the legislative process in the interim report on the implementation of recommendations provided within the fourth round of the GRECO evaluation «Prevention of corruption among people's deputies, judges, and prosecutors» dated March 24, 2023.

The Office for Support of the Adaptation of Ukrainian Legislation to the EU Acquis in its conclusion noted that the Draft Law Reg. No. 10337 is in line with the Association Agreement between Ukraine, on the one hand, and the European Atomic Energy Community and their Member States, on the other hand, and does not contradict the recommendations of the Council of Europe and the Organization for Economic Cooperation and Development, but expressed some comments to it.

The International Foundation for Electoral Systems (IFES) in Ukraine supports the adoption of the Draft Law under reg. No. 10337 and has made some suggestions and comments to it.

Goals and objectives of the draft law

The purpose of the draft Law of Ukraine «On Fair Lobbying» is to ensure the legal framework for lobbying in Ukraine in accordance with international practices and standards, regulatory and legal regulation of the interaction between officials of state authorities and local self-government bodies with stakeholders and lobbying entities, the establishment of transparent mechanisms to ensure the activities of lobbying entities and officials of state authorities and local self-government bodies; mechanisms for controlling lobbying activities.

The preamble to the draft law states that «this law defines the legal framework for fair lobbying in Ukraine.» **At the same time, the conceptual shortcoming of the draft law is the absence of even a definition of the concept of «fair lobbying.»**

Therefore, the logic and meaning of the following wording in the Explanatory Note are unclear: **«The legal regulation of fair lobbying will provide an opportunity to build a culture of good government and a just society.»**

General description and main provisions of the draft law

The Draft Law of Ukraine «On Fair Lobbying» proposes to define:

- lobbying terminology;

- rights and obligations of lobbying entities;
- methods of influence;
- Rules of ethical conduct for lobbying entities;
- creation of a Transparency Register, which is to be held and administered by the National Agency for the Prevention of Corruption;
- the procedure for registration in the Transparency Register and exceptions thereto;
- access to the Transparency Register (open and free of charge);
- reporting of the lobbying entity to be entered into the Transparency Register;
- mechanisms for controlling the activities of lobbying entities by monitoring compliance with lobbying legislation.

According to the Main Scientific and Expert Department of the Secretariat of the Verkhovna Rada of Ukraine, the definition of the term «lobbying» and the methods of its implementation proposed in the draft law **do not fully take into account the recommendations of the Council of Europe, the OECD, and the approach taken by the EU institutions.**

The Verkhovna Rada Committee on Ukraine's Integration into the European Union also warns that the definition of «lobbying» proposed by the draft law, which means «the influence of a lobbying entity on a lobbying object, carried out using the methods defined in Article 8 of this Law,» **does not indicate the purpose for which such influence is exercised, which does not fully take into account European standards. In other words, the defining feature is the intention to influence, not the fact of influence.**

In addition, the Verkhovna Rada Committee on Ukraine's Integration into the European Union **specifically draws attention to the provisions of the draft law regarding the proposed definitions of the terms «advocacy,» whose actions are aimed at defending the public interest and are carried out without the purpose of making a profit, and «advocacy subjects,» as well as the non-extension of the lobbying institute to advocacy.** However, it remains unclear according to what procedure and under which law advocacy activities will be regulated, which does not ensure compliance with the principle of legal certainty, which requires that legal regulation of social relations be predictable for interested parties.

The draft law **applies a narrowed regulatory approach to lobbying.** The definition of lobbying refers only to the forms of communication between the subject and the object of lobbying, but it does not reflect the relevant key positions of international acts regarding the purpose of lobbying.

The draft law **does not sufficiently clearly distinguish between lobbying activities and other activities** aimed at discussing, defining, or developing state policy or legislation, which are inherent in a democratic state.

The two previous comments on the narrowed approach and the distinction from other activities are detailed in the Conclusion of the Ukrainian Parliament Commissioner for Human Rights:

- **The draft law proposes a narrowed understanding of the object and subject**

of lobbying. The scope of lobbying should be expanded to include other public decisions, such as obtaining grants and signing contracts by executive authorities.

- **lobbying should be defined not only as the actual influence of the lobbying entity on the lobbying object, but also as the intention to exercise such influence.** This was also emphasized in the recommendations of the Council of Europe based on the results of the analysis of the draft law «On Fair Lobbying and Advocacy in Ukraine» in July 2023 at the stage of its development by the National Agency for the Prevention of Corruption.
- **There is still no clear distinction between these entities, which does not ensure compliance with the principle of legal certainty of legislation.**
- **Citizens' associations and civil society organizations are important subjects of the democratic process.** They should be free to conduct research, raise awareness, and advocate on issues of public interest, as well as to represent their position and protect their rights and interests before public authorities.
- **associations have the right to participate in public and political discussions, regardless of whether their position is consistent with government policy or whether such a position requires amendments to the law.**
- **it is necessary to consider defining a clear range of entities that may be granted the right to conduct separate advocacy and lobbying activities** within the legal relations regulated by the draft law.

Such a feature of lobbying activities as **profit (lobbyist activities on a professional basis) is not clearly reflected in the definition of this concept.** But this is precisely the feature of lobbying activity articulated in the Conclusions of the Venice Commission and the Recommendations of the Parliamentary Assembly of the Council of Europe. **It is important that lobbying regulations do not impede the legitimate activities of civil society and do not impose a disproportionate administrative burden on such organizations.**

Most of the actual rights granted to lobbyists by the draft law are already provided for in the current legislation to a greater or lesser extent and can be exercised by individuals and/or legal entities without obtaining the status of a lobbyist. **Under such conditions, it is likely that lobbying entities will not be sufficiently interested in registering as lobbyists and refusing to engage in shadow (corrupt) influences.**

At the same time, the draft law **does not pay sufficient attention to addressing the issue of inequality in access to decision-making for lobbyists and other public actors.**

In the opinion of the Main Scientific and Expert Department of the Secretariat of the Verkhovna Rada **of Ukraine, the proposed approach, which imposes an obligation on lobbying objects to contact lobbying subjects at their request, needs to be further developed, as it may, in fact, lead to certain difficulties in organizing the work of governmental entities.** The conclusion of the Verkhovna Rada Committee on Rules of Procedure, Deputy Ethics, and Organization of Work confirms the position of the Office and indicates that the same applies to the right of lobbying entities to speak at a committee meeting «regarding draft laws to which they submitted analytical materials in accordance with the procedure established by the chairman of the committee meeting,» including via video conference.

Thus, the proposed amendments to Article 48 of the Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine» are inappropriate and are absorbed by the current provisions of the Law.

The draft law does not clearly define the requirements for lobbying entities, including individuals. The draft law provides only negative requirements for individuals, while there are no positive requirements at all.

The possibility of vesting the Chairman of the Verkhovna Rada of Ukraine with the authority to establish procedural rules related to the legislative process does not follow from the content of Article 88 of the Constitution of Ukraine, and therefore the validity of the proposed novelties is questionable. This is a proposal to approve the requirements for analytical materials to the draft law submitted by lobbying entities by Order of the Chairman of the Verkhovna Rada of Ukraine. This is a joint observation of both the Main Scientific and Expert Department and the Verkhovna Rada Committee on Rules of Procedure, Deputy Ethics, and Work Organization.

In order to determine the requirements for a document, including analytical materials submitted by lobbying entities, the legal nature and content of such materials must be clear. **At the same time, the submitted draft Law of Ukraine «On Fair Lobbying» does not define the concept of «analytical materials» and, accordingly, does not specify what kind of information they represent.**

The Verkhovna Rada Committee on Rules of Procedure, Deputy Ethics, and Organization of Work noted **that since the draft law provides that analytical materials may be submitted to the main committee at the stage of preliminary consideration of draft laws and other acts, it makes no sense to separate them into a separate category, since they are absorbed by the concepts provided for in part one of Article 97 of the Rules of Procedure of the Verkhovna Rada of Ukraine.**

In the new version, the requirement for the forms (electronic and paper), in which the draft law file is kept, has been eliminated. Thus, as a result of the proposed amendments, it will not be mandatory to keep the draft law file in paper form. The position of the Main Scientific and Expert Department of the Secretariat of the Verkhovna Rada of Ukraine is that legal information carriers should exist for a long time, or even indefinitely, in paper (material, not virtual) form. Such information (or at least a significant part of it) is contained in the draft law file and therefore should be in not only electronic but also paper form.

The new version of the draft, in fact, provides for the same body (the National Agency for the Prevention of Corruption) to approve the Regulation on the Transparency Register and to apply certain liability measures to offenders, **which is inconsistent with one of the fundamental principles of control activities, according to which the controlling body cannot determine the rules of its activities, i.e., its own rights and obligations.**

In addition, given the overly discretionary powers that the draft law gives to the National Agency for the Prevention of Corruption, there are significant risks of abuse of office by its authorized officials.

The new version defines corruption-related offenses as «violation of requirements, prohibitions, and restrictions established by the Law of Ukraine «On Fair Lobbying.» **Thus,**

any violation of the requirements, prohibitions, and restrictions established by the Law of Ukraine «On Fair Lobbying» will be classified as corruption-related offenses.

Financial and economic feasibility study

The implementation of the draft law does not require additional funding from the state or local budgets, as it will be covered by the annual budget of the National Agency for the Prevention of Corruption, and the creation of the Register will be financed by international technical assistance.

Consequences of the adoption of the draft law

The adoption of the Law will ensure:

- regulation of lobbying in Ukraine for optimal effective leverage to reduce the level of corruption factors in the planning, development, and adoption of regulatory acts;
- promote the establishment of a dialogue between society and the state and take into account the interests of citizens, civil society organizations, and businesses when adopting regulatory acts;
- ensure equal rights of citizens, civil society institutions, and businesses to influence public authorities, their officials, and employees in the adoption (participation in the adoption) of regulatory acts;
- increase the transparency and efficiency of public authorities, their officials and employees, and the interaction of these authorities with citizens, civil society organizations, and businesses.

The list of acts of the Cabinet of Ministers and central executive authorities, the adoption or revision of which is necessary to implement the provisions of the draft law

The only act of the Cabinet of Ministers and central executive authorities that must be adopted or revised to implement the provisions of the draft Law of Ukraine «On Fair Lobbying» is the «Rules of Ethical Conduct for Lobbying Entities.» Within three months from the date of entry into force of this Law, the Cabinet of Ministers of Ukraine is instructed to ensure the adoption of the Rules of Ethical Conduct for Lobbying Entities by adopting a Resolution. The National Agency for the Prevention of Corruption has been designated as the body responsible for drafting the Rules of Ethical Conduct for Lobbying Entities.

It is unclear from the provisions of the draft law what rules are proposed to be used for public consultations with lobbying entities. In addition, the legal purpose of introducing this separate legal act of a subordinate nature (the Rules of Ethical Conduct) into the legislation and the legal mechanisms it should be used in is not clearly understood.

EXPLANATORY NOTE to the Draft Law of Ukraine «On Fair Lobbying» (excerpt)¹

1. Justification for the need to adopt the law

The Law of Ukraine «On the Principles of State Anti-Corruption Policy for 2021–2025»² approved the Anti-Corruption Strategy for 2021–2025. Clause 2.3.3 of Section 2 of the Anti-Corruption Strategy identifies non-transparent and non-public activities of entities that influence (lobby) parliamentary decision-making as a problem. As an expected strategic result of solving this problem, the Anti-Corruption Strategy, among other things, provides for the introduction of effective regulatory and legal regulation of the activities of subjects of influence (lobbying).

Taking into account the adoption of the Law of Ukraine «On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)»³ the Cabinet of Ministers of Ukraine, by its Order No. 1582-p dated November 24, 2021,⁴ approved an action plan to prevent the abuse of excessive influence by persons with significant economic and political weight in public life (oligarchs) (hereinafter – the Action Plan).

Clause 3 of the Action Plan provides for the development and support of a draft law on lobbying in the Verkhovna Rada of Ukraine.

Resolution of the Cabinet of Ministers of Ukraine dated March 4, 2023, No. 220⁵ approved the State Anti-Corruption Program for 2023–2025 (hereinafter referred to as the State Anti-Corruption Program), which is aimed at addressing the problems identified in the Anti-Corruption Strategy and includes a list of expected strategic results and measures to implement this program.

According to clause 1.3.3.1.2 of the measures to implement the State Anti-Corruption Program, the National Agency for the Prevention of Corruption is tasked with developing and submitting to the Cabinet of Ministers a draft law that defines the following:

1. rules of interaction between officials of state bodies and local self-government bodies and stakeholders and subjects of influence (lobbyists);
2. transparent mechanisms to ensure influence on officials of state and local governments;
3. mechanisms for controlling lobbying activities and the body authorized to exercise such control.

In the interim report on the implementation of the recommendations provided in the

1 <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>

2 <https://zakon.rada.gov.ua/laws/show/2322-20#Text>

3 <https://zakon.rada.gov.ua/laws/show/1780-20#Text>

4 <https://zakon.rada.gov.ua/laws/show/1582-2021-%D1%80#Text>

5 <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>

framework of the fourth round of the GRECO evaluation «Prevention of corruption among people’s deputies, judges, and prosecutors» dated March 24, 2023, Ukraine was recommended to introduce rules for the interaction of people’s deputies with lobbyists and other third parties trying to influence the legislative process.⁶

GRECO reminded that this recommendation had not been implemented in the Second Follow-up Report (none of the legislative initiatives on lobbying had been implemented) and **suggested submitting an implementation report on the measures taken to implement the outstanding recommendations by March 31, 2024.**

According to Art. 444 of the EU-Ukraine Association Agreement, «The Parties shall promote dialogue and cooperation between civil society actors on both sides as an integral part of the EU-Ukraine relations by: ... **b) facilitating the process of institution building and consolidation of civil society organizations, including, inter alia, lobbying activities, informal communication, visits, and seminars, etc.;...**»⁷

2. Goals and objectives of the draft law

The purpose of the draft Law of Ukraine «On Fair Lobbying» (hereinafter – the draft law) is to ensure the legal framework for lobbying in Ukraine in accordance with international practices and standards, regulatory and legal regulation of the interaction between officials of state authorities and local self-government bodies with stakeholders and lobbying entities, the establishment of transparent mechanisms for ensuring the activities of lobbying entities and officials of state authorities and local self-government bodies; mechanisms for controlling lobbying activities.

3. General description and main provisions of the draft law

The Draft Law of Ukraine «On Fair Lobbying» proposes to define:

- lobbying terminology;
- rights and obligations of lobbying entities;
- methods of influence;
- Rules of ethical conduct for lobbying entities;
- creation of a Transparency Register, which is to be held and administered by the National Agency for the Prevention of Corruption;
- the procedure for registration in the Transparency Register and exceptions thereto;
- access to the Transparency Register (open and free of charge);
- reporting of the lobbying entity to be entered into the Transparency Register;
- mechanisms for controlling the activities of lobbying entities by monitoring compliance with lobbying legislation.

6 <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790>

7 https://zakon.rada.gov.ua/laws/show/984_011#Text

4. Financial and economic feasibility study

The implementation of the draft law does not require additional funding from the state or local budget and will be carried out within the allocations approved for the respective year under the CPCEL 6331010 «Supporting the activities of the National Agency for the Prevention of Corruption,» and the creation of the Register will be carried out at the expense of international technical assistance.

5. Consequences of the adoption of the draft law

The adoption of the Law will ensure:

- regulation of lobbying in Ukraine for optimal effective leverage to reduce the level of corruption factors in the planning, development, and adoption of regulatory acts;
- promote the establishment of a dialogue between society and the state and take into account the interests of citizens, civil society organizations, and businesses when adopting regulatory acts;
- ensure equal rights of citizens, civil society institutions, and businesses to influence public authorities, their officials, and employees in the adoption (participation in the adoption) of regulatory acts;
- increase the transparency and efficiency of public authorities, their officials and employees, and the interaction of these authorities with citizens, civil society organizations, and businesses.

The legal regulation of fair lobbying will provide an opportunity to build a culture of good government and a just society.

COMPARISON TABLE
to the Draft Law of Ukraine «On Fair Lobbying» (excerpt)⁸

Content of a provision of a legislative act	Content of the relevant provision of the draft law
Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine» (Bulletin of the Verkhovna Rada of Ukraine, 1995, No. 19, p. 134)	
<p>Article 48. Participation in committee meetings by invited persons</p> <p>...</p> <p>Part is missing</p>	<p>Article 48. Participation in committee meetings by invited persons</p> <p>...</p> <p>6. The persons who are the authors of the draft law under consideration and lobbying entities that have submitted analytical materials to such a draft law in accordance with part eight of Article 93 of the Rules of Procedure of the Verkhovna Rada of Ukraine have the right to participate in the meetings of the committee designated as the main committee for the preparation and preliminary consideration of the draft law.</p> <p>The committee designated as the main committee for the preparation and preliminary consideration of the draft law shall notify lobbying entities that have submitted analytical materials to the draft law in accordance with part eight of Article 93 of the Rules of Procedure of the Verkhovna Rada of Ukraine of the time and place of the meeting and the issues to which they are invited.</p> <p>Lobbying entities participating in the committee meeting have the right to speak on draft laws to which they have submitted analytical materials in accordance with the procedure established by the chairman of the committee meeting.</p>
Law of Ukraine «On the Rules of Procedure of the Verkhovna Rada of Ukraine» (Bulletin of the Verkhovna Rada of Ukraine (VVR), 2010, No. 14–15, No. 16–17, p. 133)	

⁸ <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>

<p>Article 91. Accompanying documents to a draft law, draft of another act</p> <p>...</p> <p>Part is missing</p>	<p>Article 91. Accompanying documents to a draft law, draft of another act</p> <p>...</p> <p>8. If a draft law is developed with the participation of persons who are not subjects of legislative initiative in accordance with the provisions of the Constitution of Ukraine, the draft law shall be accompanied by a list of authors containing the names of the authors and participants in the development of the draft law, as well as (if any) the positions and names of the organizations they represent.</p>
<p>Article 92. Registration of draft laws and other acts</p> <p>...</p> <p>4. All registered bills, drafts of other acts, and supporting documents are entered into a single automated system and posted on the website of the Verkhovna Rada.</p>	<p>Article 92. Registration of draft laws and other acts</p> <p>...</p> <p>4. All registered bills, drafts of other acts, and supporting documents, as well as analytical materials provided for in part eight of Article 93 of these Rules of Procedure, shall be entered by the Secretariat of the Verkhovna Rada into the database of bills of the electronic computer network of the website of the Verkhovna Rada.</p>
<p>Article 93. Preliminary consideration of draft laws and other acts in committees</p> <p>...</p> <p>Part is missing</p>	<p>Article 93. Preliminary consideration of draft laws and other acts in committees</p> <p>...</p> <p>8. Lobbying entities have the right to submit analytical materials to the main committee on the draft law. The requirements for such analytical materials are approved by Order of the Chairman of the Verkhovna Rada of Ukraine.</p>
<p>Article 97. File of the draft law</p> <p>1. For each draft law included in the agenda of a session of the Verkhovna Rada, the Secretariat of the Verkhovna Rada and the main committee shall keep a file of the draft law in electronic and paper forms. The file of a draft law contains documents submitted as a legislative initiative, documents prepared in the course of</p>	<p>Article 97. File of the draft law</p> <p>1. For each draft law included in the agenda of the Verkhovna Rada session, the Secretariat of the Verkhovna Rada and the main committee shall keep the file of the draft law. The file of a draft law contains documents submitted as a legislative initiative, documents prepared in the</p>

<p>drafting, review, revision, and adoption of the respective draft law by the Verkhovna Rada, as well as documents prepared by the Verkhovna Rada, state bodies, institutions, and organizations upon request of the Verkhovna Rada.</p> <p>2. The file of the draft law shall include the draft laws introduced, submitted, sent, considered, or adopted in the chronological order:</p> <p>...</p> <p>Clause is missing</p> <p>...</p>	<p>course of drafting, review, revision, and adoption of the respective draft law by the Verkhovna Rada, documents prepared by the Verkhovna Rada bodies, state bodies, institutions, and organizations upon request of the Verkhovna Rada, as well as analytical materials provided for in part eight of Article 93 of these Rules.</p> <p>2. The file of the draft law shall include the draft laws introduced, submitted, sent, considered, or adopted in the chronological order:</p> <p>...</p> <p>6') analytical materials submitted in accordance with part eight of Article 93 of these Rules;</p> <p>...</p>
<p>The Law of Ukraine «On Prevention of Corruption» (Bulletin of the Verkhovna Rada (VVR), 2014, No. 49, p. 2056)</p>	
<p>Article 1. Definition of terms</p> <p>1. In this Law, the following terms shall have the following meanings:</p> <p>...</p> <p>corruption-related offense – an act that does not contain signs of corruption but violates the requirements, prohibitions, and restrictions established by this Law, committed by a person referred to in part one of Article 3 of this Law, for which the law establishes criminal, administrative, disciplinary, and/or civil liability;</p> <p>...</p>	<p>Article 1. Definition of terms</p> <p>1. In this Law, the following terms shall have the following meanings:</p> <p>...</p> <p>corruption-related offense – an act that does not contain signs of corruption but violates the requirements, prohibitions, and restrictions established by this Law, committed by a person referred to in part one of Article 3 of this Law, as well as violation of the requirements, prohibitions, and restrictions established by the Law of Ukraine «On Fair Lobbying,» for which the law establishes criminal, administrative, disciplinary, and/or civil liability;</p> <p>...</p>
<p>Article 11. Powers of the National Agency</p> <p>1. The powers of the National Agency shall include:</p> <p>...</p>	<p>Article 11. Powers of the National Agency</p> <p>1. The powers of the National Agency shall include:</p> <p>...</p>

<p>Clause is missing</p> <p>...</p> <p>9) ensuring the maintenance of the Unified Whistleblower Reporting Portal, the Unified State Register of Declarations of Persons Authorized to Perform State or Local Government Functions, and the Unified State Register of Persons Who Have Committed Corruption or Corruption-Related Offenses;</p> <p>...</p> <p>Clause is missing</p> <p>...</p>	<p>6²⁾ monitoring compliance with the requirements of the lobbying legislation;</p> <p>...</p> <p>9) ensuring the maintenance of the Unified Whistleblower Reporting Portal, the Unified State Register of Declarations of Persons Authorized to Perform State or Local Government Functions, the Unified State Register of Persons Who Committed Corruption or Corruption-Related Offenses, and the Transparency Register;</p> <p>...</p> <p>15¹⁾ providing advisory explanations, methodological and consulting assistance on the application of legislative acts on lobbying;</p> <p>...</p>
<p>Article 12. Rights of the National Agency</p> <p>1. The National Agency shall have the following rights in order to fulfill its powers:</p> <p>...</p> <p>Clause is missing</p> <p>...</p> <p>6. In cases of violation of the requirements of this Law on ethical behavior, prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them, protection of whistleblowers, or other violations of this Law, the National Agency shall issue an order to the head of the relevant body, enterprise, institution, organization to eliminate violations of the law, conduct an internal investigation, and bring the guilty person to the statutory liability.</p>	<p>Article 12. Rights of the National Agency</p> <p>1. The National Agency shall have the following rights in order to fulfill its powers:</p> <p>...</p> <p>5⁸⁾ to issue orders on violation of the requirements of the legislation on lobbying, other requirements, and restrictions provided for by the Law of Ukraine «On Fair Lobbying»;</p> <p>...</p> <p>6. In cases of detection of violation of the requirements of this Law on ethical behavior, prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local self-government and persons equated to them, protection of whistleblowers, or other violations of this Law, violation of the requirements of the legislation on lobbying, other requirements, and restrictions provided by the Law of Ukraine «On Fair Lobbying,» the National Agency shall issue an order to the head of the relevant body.</p>

<p>Article 13¹. Authorized units (authorized persons) for the prevention and detection of corruption</p> <p>6. The main tasks of the authorized units (authorized person) shall include:</p> <p>...</p> <p>Clause is missing</p>	<p>Article 13¹. Authorized units (authorized persons) for the prevention and detection of corruption</p> <p>6. The main tasks of the authorized units (authorized person) shall include:</p> <p>...</p> <p>9) taking measures to detect violations of the lobbying legislation, reporting to the National Agency on the detected violations.</p>
<p>Article 14. Control over the activities of the National Agency</p> <p>...</p> <p>5. The National Agency shall prepare annual reports on its activities. The National Agency's report shall be submitted for review to the Public Council under the National Agency, which shall consider the report within two weeks from the date of submission.</p> <p>...</p> <p>The annual report of the National Agency should contain, in particular, the following information:</p> <p>...</p> <p>2) statistical data on the results of the National Agency's activities, including data on:</p> <p>the number of violations of this Law and the Law of Ukraine «On Political Parties in Ukraine»;</p> <p>...</p>	<p>Article 14. Control over the activities of the National Agency</p> <p>...</p> <p>5. The National Agency shall prepare annual reports on its activities. The National Agency's report shall be submitted for review to the Public Council under the National Agency, which shall consider the report within two weeks from the date of submission.</p> <p>...</p> <p>The annual report of the National Agency should contain, in particular, the following information:</p> <p>...</p> <p>2) statistical data on the results of the National Agency's activities, including data on:</p> <p>the number of violations of this Law, the Law of Ukraine «On Political Parties in Ukraine,» and the Law of Ukraine «On Fair Lobbying»;</p> <p>...</p>

LIST

of acts of the Cabinet of Ministers and central executive authorities, the adoption or revision of which is necessary to implement the provisions of the draft Law of Ukraine «On Fair Lobbying»⁹

Provisions of the Draft Law of Ukraine	Acts to be adopted or revised	Bodies responsible for drafting acts	The term for the adoption or revision of regulations
Provisions to be implemented directly by the Cabinet of Ministers			
3. The Cabinet of Ministers of Ukraine: within three months from the date of entry into force of this Law, to ensure the adoption of the Rules of Ethical Conduct for Lobbying Entities;	Resolution of the Cabinet of Ministers of Ukraine «On Approval of the Rules of Ethical Conduct for Lobbying Entities»	National Agency for the Prevention of Corruption	within three months from the date of entry into force of the Law

⁹ <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>

SECRETARIAT OF THE VERKHOVNA RADA OF UKRAINE
Main Scientific and Expert Department

CONCLUSION
on the Draft Law of Ukraine «On Fair Lobbying» (excerpt)¹⁰

The Main Directorate has reviewed the submitted draft, which proposes to determine:

- «lobbying terminology;
- rights and obligations of lobbying entities;
- methods of influence;
- rules of ethical conduct for lobbying entities;
- creation of a Transparency Register, which is to be held and administered by the National Agency for the Prevention of Corruption;
- the procedure for registration in the Transparency Register and exceptions thereto;
- access to the Transparency Register (open and free of charge);
- reporting of the lobbying entity to be entered into the Transparency Register;
- mechanisms for controlling the activities of lobbying entities by monitoring compliance with lobbying legislation» (clause 2 of the explanatory note).

At the time of preparation of the conclusion, the draft law was not included in the Plan of Legislative Work of the Verkhovna Rada of Ukraine for 2023, approved by Resolution of the Verkhovna Rada of Ukraine No. 2910-IX dated February 7, 2023. At the same time, clause 87 of the Plan of Legislative Work of the Verkhovna Rada of Ukraine for 2022 envisaged the adoption of the draft Law «On Lobbying Activities in Ukraine.»

Based on the results of the analysis of the provisions of this draft law, we consider it necessary to note the following in a short time:

Part 1.

The subject of legal regulation of the draft law is covered by the provisions of Article 444 of the Association Agreement¹¹, including the conclusions of the European Commission on Ukraine set out in the Report of November 8, 2023¹²...

10 <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>

11 The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, dated June 27, 2014. URL: https://zakon.rada.gov.ua/laws/show/984_011

12 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement

The provisions of the Draft Law are largely based on international standards and good practice in the field of lobbying regulation, in particular, Recommendation 1908 (2010) of the Parliamentary Assembly of the Council of Europe on «Lobbying in a Democratic Society (European Code of Good Practice on Lobbying)»¹³ (hereinafter – PACE Recommendation 1908 (2010)). *Primarily, it is about introducing an open register of lobbying entities – the Transparency Register; establishing requirements for disclosure of information on lobbying activities, cooling-off restrictions, etc. At the same time, some of the provisions of the draft law also raise concerns, which will be discussed below in this conclusion.*

Part 2.

...

2.1.

In our opinion, the proposed definition of the term «lobbying» and the methods of its implementation do not fully take into account the recommendations of the Council of Europe, the OECD, and the approach taken by the EU institutions.

In particular, the following are mentioned in the Conclusion:

- Definition of the term «lobbying» in Recommendation CM/Rec(2017)2 of the Committee of Ministers of the Council of Europe to member states on the legal regulation of lobbying activities in the context of public decision-making;¹⁴
- Definition of «lobbying» in the OECD Recommendation¹⁵;
- Definition of lobbying by the Venice Commission.¹⁶

Instead, the provisions of the draft law take a narrower approach to regulating lobbying. While the definition of lobbying refers to the forms of communication between the lobbying subject and the lobbying object, it does not reflect the relevant key positions of international acts regarding the purpose of lobbying, which is to facilitate the implementation of the lobbying subject's own vision of state policy as well as the adoption of political and administrative decisions by the authorities in accordance with the lobbying subject's own vision.

policy {COM(2023) 690 final} URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf

13 PACE. Lobbying in a democratic society (European code of good conduct on lobbying). Parliamentary Assembly of the Council of Europe. Recommendation 1908 (2010). 26 April 2010 (11th Sitting). URL: <https://assembly.coe.int/nw/xml/XRef/Xref-XHTML-en.asp?fileid=17832&lang=en#>

14 Recommendation CM/Rec(2017)2 to Member States on the legal regulation of lobbying activities in the context of public decision-making URL: <https://rm.coe.int/legal-regulation-of-lobbyingactivities/168073ed69>

15 OECD, Recommendation of the Council on Principles for Transparency and Integrity in Lobbying, OECD/LEGAL/0379 URL: <https://legalinstruments.oecd.org/public/doc/256/256.en.pdf>

16 CDL-AD(2013)011-e Report on the Role of Extra-Institutional Actors in the Democratic System (Lobbying) Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013). URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)011-e)

2.2.

In addition, the draft law does not clearly distinguish between lobbying activities and other activities aimed at discussing, defining, or developing public policy or legislation, which are inherent in a democratic state. Such a feature of lobbying activity as profit-making is not clearly reflected in the definition of this concept (clause 8, part 1, Article 1 of the draft). We note that, in the opinion of the Venice Commission, one of the additional elements of qualifying activities as lobbying is the activity of lobbyists *on a professional basis*¹⁷.

In this regard, it is also worth noting that the Recommendation 1908 (2010) of the Parliamentary Assembly of the Council of Europe, one of the six key principles of lobbying, stipulates that lobbying should be clearly defined, distinguishing it as a professional paid activity from the activities of civil society organizations. It is important that lobbying regulations do not impede the legitimate activities of civil society and do not impose a disproportionate administrative burden on such organizations¹⁸.

2.3.

A systematic analysis of Articles 14–15 of the Draft Law that regulate the rights of lobbying subjects and the obligations of the objects of influence, shows that ***most of the actual rights granted to lobbyists in Article 14 of the Draft Law ... are already provided for in the current legislation to some extent and can be exercised by individuals and/or legal entities without acquiring the status of a lobbyist***¹⁹. Under such conditions, it is likely that lobbying entities (compared to other entities that take actions to similarly influence public authorities) will bear the burden of responsibilities, face the risks of sanctions imposed by the NACP, and not be sufficiently interested in registering as lobbyists and giving up shadow (corrupt) influences.

At the same time, the draft ***law does not pay sufficient attention to addressing the issue of inequality in access to government decision-making between lobbyists, on the one hand, and other subjects of public relations who defend personal rights and interests, on the other***. Instead, when addressing the issue of legislative regulation of lobbying activities,

17 CDL-AD(2013)011-e Report on the Role of Extra-Institutional Actors in the Democratic System (Lobbying) Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013). URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)011-e)

18 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy {COM(2023) 690 final} URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf

19 This includes, for example, the right to apply to a public authority and/or its official with a proposal, application or complaint; the right to be received by officials of a public authority in accordance with the procedure established by law; the right to attend a meeting of a public authority (its structural subdivision) at the invitation of an official designated by law; the right to submit a lawmaking proposal, etc. The rights to organize public events (seminars, conferences, round tables) and invite officials to them (which, however, does not correspond to the obligation of the latter to attend them), to provide public authorities/ their officials (for example, by sending them by mail) with research results, analytical and other materials are also not limited by law. These rights are provided for, in particular, by the Laws of Ukraine «On Committees of the Verkhovna Rada of Ukraine» (clause 11, Article 16; Articles 29, 42), «On the Status of a Member of Parliament of Ukraine» (Articles 7, 24), the Rules of Procedure of the Verkhovna Rada of Ukraine (Articles 233, 235), etc.

ANALYTIC

the emergence of such entities as lobbyists in public relations, who will have expanded legal opportunities to participate in the management of public affairs and in decision-making, the state, in our opinion, should take care to equalize the opportunities of other subjects of public relations in this direction (for example, to provide that the subjects of power, when preparing a regulatory legal act with the participation of lobbyists, may involve other subjects in the relevant dialogue).

Part 3.

The preamble to the draft law states that «this law defines the legal framework for fair lobbying in Ukraine.» **At the same time, the conceptual shortcoming of the draft law is the absence of even a definition of the concept of «fair lobbying.»**

Part 4.

According to part 1 of Article 7 of the draft law, «The Rules of Ethical Conduct for Lobbying Entities (hereinafter referred to as the Rules of Ethical Conduct) shall be approved by the Cabinet of Ministers of Ukraine *after public consultations with lobbying entities and other interested parties* and shall be binding on lobbying entities.» It should be noted that the need to hold and the procedure for holding public (civic) discussions/consultations and other events aimed at clarifying public opinion on issues that need to be regulated (i.e., similar in legal nature to public consultations) *are already provided for in certain cases by a number of legislative acts of Ukraine* (e.g., the Laws of Ukraine: «On Access to Public Information, On the Principles of State Regulatory Policy in the Field of Economic Activity, On Urban Development, On Strategic Environmental Assessment, On Environmental Impact Assessment,» etc.). **At the same time, it is unclear from the provisions of the draft law what rules are proposed to be used for public consultations with lobbying entities.**

In addition, the legal purpose of introducing this separate legal act of a subordinate nature (the Rules of Ethical Conduct) into the legislation and the legal mechanisms it should be used in is not clearly understood.

Part 5.

According to the draft law, the lobbying entity has the right: «in accordance with the procedure established by law, to enter administrative buildings of state authorities and local self-government bodies during lobbying, to participate in their meetings when considering issues related to the subject of lobbying» (clause 5 of part 1 of Article 14). The draft law also proposes to amend Article 48 of the Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine» to provide that the persons who are the authors of the draft law under consideration and lobbying entities that have submitted analytical materials to such a draft law in accordance with part eight of Article 93 of the Rules of Procedure of the Verkhovna Rada of Ukraine (new part 6 of Article 48) have the right to participate in the meetings of the committee designated as the main committee for the preparation and preliminary consideration of the draft law. At the same time, the number of lobbyists who can apply for

relevant meetings or attendance at meetings is not limited by the draft.

In our opinion, the proposed approach, according to which lobbying objects are, in fact, obliged by law to contact lobbying subjects at their request, needs to be improved, as it may, in fact, lead to certain difficulties in organizing the work of governmental entities.

Part 6.

The draft law does not clearly define the requirements for lobbying entities, including individuals. Part 2 of Article 10 of the draft law lists only the grounds on which an individual cannot be a lobbying entity. Instead, the project does not require that an individual reach a certain age, have a certain level of education, possess practical skills for interaction with various government agencies, have experience in government agencies, etc.

...

Part 7.

The draft law proposes to supplement Article 93 of the Rules of Procedure of the Verkhovna Rada of Ukraine with a new part 8 as follows: «8. Lobbying entities shall have the right to submit analytical materials to the main committee on the draft law. The requirements for such analytical materials *are approved by Order of the Chairman of the Verkhovna Rada of Ukraine.*» However, ***the possibility of vesting the Chairman of the Verkhovna Rada of Ukraine with the authority to establish procedural rules related to the legislative process does not follow from the content of Article 88 of the Constitution of Ukraine, and therefore the validity of the proposed novelties is questionable.***

Part 8.

The current version of part 1 of Article 97 of the Rules of Procedure of the Verkhovna Rada of Ukraine provides that «for each draft law included in the agenda of the session of the Verkhovna Rada, the Secretariat of the Verkhovna Rada and the main committee *shall keep the file of the draft law in electronic and paper forms.*» ***At the same time, the new version of the relevant provision excludes the requirement to specify the forms (electronic and paper) in which the draft law file is kept. Thus, as a result of the proposed amendments, it will not be mandatory to keep the draft law file in paper form.***

We consider it necessary to note that in all cases where it is important to ensure the safety of a document, the authenticity of its text, and its protection against falsification (in particular, against unauthorized changes to the text), it is advisable to preserve the paper form. The Main Department also believes that in cases where a certain stage of the legislative procedure is initiated or completed, or a particular parliamentary procedure is initiated or completed, and a certain procedural goal is achieved, it is advisable to draw up the relevant documents on paper, as they have legal consequences and are legal facts. ***Legal information carriers should exist for a long time, or even indefinitely, in paper (material, not virtual) form. This is exactly the information (or at least a significant part of it) that is contained in***

the draft law file and, in our opinion, should be available not only in electronic but also in paper form.

Part 9.

Under the provisions of the draft law, the authorized state body (namely, the National Agency for the Prevention of Corruption) will monitor compliance with the requirements of the lobbying legislation and will be vested with additional powers, in particular:

- ensure the maintenance of the Lobbying Subjects Transparency Register;
- approve the Regulation on the Transparency Register;
- provide advisory clarifications, methodological and consulting assistance on the application of legislative acts on lobbying»;
- issue orders on violation of the lobbying legislation, other requirements, and restrictions provided for by the Law of Ukraine «On Fair Lobbying»;
- «In case of detection of signs of violation of the requirements of the legislation on lobbying and failure to eliminate discrepancies in the information entered by the lobbying entity in the Transparency Register, the National Agency shall take measures to bring the perpetrators to the liability provided for by law» (part 6 of Article 18 of the draft law).

Thus, the draft law essentially provides for the same body to approve the Regulation on the Transparency Register (part 1 of Article 6) and to apply certain liability measures to offenders (new clause 58, part 1 of Article 12 of the Law of Ukraine «On Prevention of Corruption»), which is inconsistent with one of the fundamental principles of control activities, according to which the controlling body cannot determine the rules of its activities, i.e., its own rights and obligations.

Part 10.

The proposed amendments to the Law of Ukraine «On Prevention of Corruption» (hereinafter – the «Law») raise some concerns. The draft law proposes to amend the current subpara. 12, part 1, Art. 1 of the Law and establish that an offense related to corruption should be understood as «an act that does not contain signs of corruption but violates the requirements, prohibitions, and restrictions established by this Law, committed by a person referred to in part one of Article 3 of this Law, as well as violation of the requirements, prohibitions, and restrictions established by the Law of Ukraine «On Fair Lobbying,» for which the law establishes criminal, administrative, disciplinary, and/or civil liability.»

...

The new provision, which refers to corruption-related offenses as «violation of the requirements, prohibitions, and restrictions established by the Law of Ukraine «On Fair Lobbying,» for which the law establishes criminal, administrative, disciplinary, and/or civil liability, does not correspond to the context of the current provision. It is formulated without reference to the existing prescription, which refers to «an act that does not contain signs of corruption, but violates the requirements established by this Law /Law of Ukraine «On Prevention of

Corruption»/requirements...» From the literal interpretation of the new version of para. 12, Part 1, Article 1 of the Law, it follows that, on the one hand, the absence of corruption in the relevant acts is not mandatory for violation of the requirements, prohibitions, and restrictions established by the Law of Ukraine «On Fair Lobbying,» and on the other hand, such violations are proposed to be considered corruption-related offenses. **Thus, any violation of the requirements, prohibitions, and restrictions established by the Law of Ukraine «On Fair Lobbying» will be classified as corruption-related offenses.**

In addition, given the overly discretionary powers vested in the National Agency for the Prevention of Corruption (monitoring compliance with lobbying legislation; ensuring the maintenance of the Transparency Register; issuing orders on violations of lobbying legislation, other requirements, and restrictions provided for by the Law of Ukraine «On Fair Lobbying,» etc.; see clauses 6-2, 9, part 1 of Article 11, clauses 5-8, 6 of part 1 of Article 12 of the Law as amended), there are significant risks of abuse of office by its authorized persons.

COMMITTEE OF THE VERKHOVNA RADA OF UKRAINE
on the Rules of Procedure, Deputy Ethics, and Organization of the Verkhovna Rada of
Ukraine

CONCLUSION

on compliance of the draft Law of Ukraine «On Fair Lobbying» with the requirements of the law, the Rules of Procedure of the Verkhovna Rada of Ukraine, and regulations adopted in accordance with them (excerpt)²⁰

Regarding the content of the proposed draft law, the Committee drew attention to ***the fact that the European Commission for Democracy through Law (Venice Commission) at its 94th plenary session on March 8–9, 2013 adopted the Report «On the Role of Non-Institutional Actors in a Democratic System (Lobbying),» which states, in particular, that «it is extremely difficult to draw a clear analytical distinction between ‘non-governmental organizations’ and ‘lobbyists’. ... In general, there is no criterion to accurately distinguish between positively connoted «non-governmental organizations» and negatively connoted «lobbyists,» however they are defined.***

...

In view of the above, the possibility of implementing the novelties proposed to Article 48 of the Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine» seems doubtful, since based on the technical capabilities of the main committee, ***it may be problematic to accommodate all participants of the meeting, including «lobbying entities» and «authors of the draft law,» the number of which is not specified in the submitted draft law and is therefore unlimited. The same applies to the right of lobbying entities to speak at a committee meeting*** «regarding the draft laws to which they have submitted analytical materials in accordance with the procedure established by the chairman of the committee meeting,» including via videoconference.

Therefore, the main committee independently determines the required number of invited persons to participate in the committee meeting, the procedure for inviting them, and determines the possibility and time of their speech during the consideration of the relevant draft law at the committee meeting.

Thus, the proposed amendments to Article 48 of the Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine» are inappropriate and are absorbed by the current provisions of the Law.

...

In addition, the proposal that the requirements for analytical materials will be determined by order of the Chairman of the Verkhovna Rada of Ukraine is not consistent with either the Constitution of Ukraine (Article 88) or the Rules of Procedure of the Verkhovna Rada of Ukraine (Article 78), which define the powers of the Chairman of the Verkhovna Rada of Ukraine, and no changes to Article 78 of the Rules of Procedure of the Verkhovna Rada of Ukraine are proposed in this draft law.

In turn, the Committee noted that the unified rules for documenting management information

²⁰ <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>

and organizing work with documents created in electronic and paper forms in the Verkhovna Rada of Ukraine, the Secretariat of the Verkhovna Rada of Ukraine, and in the bodies of the Verkhovna Rada of Ukraine whose activities are supported by the Secretariat of the Verkhovna Rada of Ukraine are determined by the Regulation on the Procedure for Working with Documents in the Verkhovna Rada of Ukraine, approved by the Order of the Chairman of the Verkhovna Rada of Ukraine No. 19 dated February 8, 2021.

At the same time, in order to determine the requirements for a document, in particular for analytical materials submitted by lobbying entities, the legal nature and content of such materials must be clear. At the same time, the submitted draft Law of Ukraine «On Fair Lobbying» does not define the concept of «analytical materials» and, accordingly, does not specify what kind of information they represent.

The proposal to amend Article 97 of the Rules of Procedure of the Verkhovna Rada of Ukraine, namely, to restate part one and add a new paragraph to part two of this article – provisions on analytical materials – is also questionable from the point of view of legal technique. Since the current version of part one of this article stipulates that for each draft law included in the agenda of the session of the Verkhovna Rada of Ukraine, the Secretariat of the Verkhovna Rada of Ukraine and the main committee shall keep the file of the draft law in electronic and paper forms. The file of a draft law contains documents submitted as part of a legislative initiative, documents prepared in the course of drafting, review, revision, and adoption of the relevant draft law by the Verkhovna Rada of Ukraine, as well as documents prepared by the Verkhovna Rada of Ukraine, state bodies, institutions, and organizations at the request of the Verkhovna Rada of Ukraine. ***Given that the draft law stipulates that analytical materials may be submitted to the main committee at the stage of preliminary consideration of draft laws and other acts*** (Article 93 of the Rules of Procedure of the Verkhovna Rada of Ukraine), their legal status is documents prepared in the process of drafting, consideration, revision, ***and adoption of the relevant draft law by the Verkhovna Rada of Ukraine, and therefore there is no point in separating them into a separate category, as they are absorbed by the concepts provided for in part one of Article 97 of the Rules of Procedure of the Verkhovna Rada of Ukraine.***

In view of the above, the Committee believes that the amendments to Article 48 of the Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine» and Articles 91, 92, 93, 97 of the Rules of Procedure of the Verkhovna Rada of Ukraine proposed in the submitted draft law are inappropriate and unjustified.

**COMMITTEE OF THE VERKHOVNA RADA OF UKRAINE
on Legal Policy**

CONCLUSION

on the draft laws on fair lobbying, on lobbying and lobbying activities in Ukraine, on state registration of lobbying entities, and lobbying in Ukraine (excerpt)²¹

...

The legal basis for the introduction of lobbying is set out in the Constitution of Ukraine. In particular, lobbying activities are based on the following constitutional provisions: The rule of law (Article 8); political, economic, and ideological diversity of public life (Article 15); equality of constitutional rights and freedoms of citizens and their equality before the law (Article 24); the right to freedom of thought and speech, to free expression of their views and beliefs (Article 34); the right to freedom of association (Article 36); the right of citizens to participate in the management of public affairs (Article 38); the right to appeal (Article 40); the right to entrepreneurial activity not prohibited by law (Article 42).

...

The Office for Support of the Adaptation of Ukrainian Legislation to the EU Acquis in its conclusion noted that the Draft Law Reg. No. 10337 is in line with the Association Agreement between Ukraine, on the one hand, and the European Atomic Energy Community and their Member States, on the other hand, and does not contradict the recommendations of the Council of Europe and the Organization for Economic Cooperation and Development, but expressed some comments to it.

The International Foundation for Electoral Systems (IFES) in Ukraine supports the adoption of the Draft Law under reg. No. 10337 and has made some suggestions and comments to it.

The All-Ukrainian public organization «Association of Taxpayers of Ukraine» supports the adoption of the Draft Law under reg. No. 10337 and made some suggestions to it.

21 <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>

POSITION
OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS
on the Draft Law «On Fair Lobbying» (excerpt)²²

...

I note that the draft law proposes a narrowed understanding of the object and subject of lobbying. I believe that the subject matter of lobbying should not be narrowed down to a regulatory act on planning, development, and/or adoption (publication), amendment, expiration (cancellation) of which the lobbying entity has an impact on the object of lobbying, but ***should be expanded to include other public decisions, such as obtaining grants, signing contracts by executive authorities.***

Moreover, lobbying should be defined not only as the actual influence of the lobbying entity on the lobbying object, but also as the intention to exercise such influence. This was also emphasized in the recommendations of the Council of Europe based on the results of the analysis of the draft law «On Fair Lobbying and Advocacy in Ukraine» in July 2023 at the stage of its development by the National Agency for the Prevention of Corruption.

In addition, paragraphs two and twelve of part one of Article 1 of the draft law define the subject of advocacy and the subject of lobbying, respectively. ***At the same time, there is still no clear distinction between these entities, which does not ensure compliance with the principle of legal certainty of legislation.***

Nevertheless, I emphasize that citizens' associations and public organizations are important subjects of the democratic process. They should be free to conduct research, raise awareness, and advocate on issues of public interest, as well as to represent their position and protect their rights and interests before public authorities.

According to Principle 6 of the Venice Commission/OSCE/ODIHR Guidelines on Freedom of Association, associations have the right to freedom of expression through their aims and activities. ***Associations have the right to participate in public and political discussions, regardless of whether their position is consistent with government policy or whether such a position requires amendments to the law.***

I believe that the legislative regulation of lobbying and advocacy activities should take into account and clearly distinguish between advocacy activities for changes to state policy and legislation, which are carried out by non-governmental organizations as part of their right to freedom of expression and participation in political discussions, and paid lobbying services.

In view of the above, I consider it necessary to define a clear range of entities that may be granted the right to conduct separate advocacy and lobbying activities within the legal relations regulated by the draft law.

22 <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>

**COMMITTEE OF THE VERKHOVNA RADA OF UKRAINE
on Ukraine's Integration into the European Union**

**CONCLUSION
on the Draft Law of Ukraine «On Fair Lobbying» (excerpt)²³**

...

2. Compliance of the draft law with the international legal obligations of Ukraine in the field of European integration and the scope of the European Union law.

...

... the specifics of legal relations within the scope of legal regulation of the draft Law in EU Member States are regulated at the level of national legislation, taking into account the Treaty on European Union and international standards, in particular:

1. Recommendation CM/Rec(2017)2 of the Committee of Ministers of the Council of Europe «On the legal regulation of lobbying activities in the context of public decision-making» of March 22, 2017 (hereinafter – Recommendation CM/Rec(2017)2);²⁴
2. Recommendations of the Council of the Organization for Economic Cooperation and Development (OECD) on the Principles of Transparency and Integrity in Lobbying, adopted on February 18, 2010 (hereinafter – the OECD Recommendation);²⁵
3. Interinstitutional Agreement between the European Parliament, the Council of the European Union, and the European Commission on a mandatory transparency register of May 20, 2021 (hereinafter – the Interinstitutional Agreement);²⁶
4. Resolution of the European Parliament (2007/2115 (INI)) on the development of the activities of representation of interests (lobbyists) in the European institutions of May 8, 2008 (hereinafter – the European Parliament Resolution).²⁷

The issues raised in the draft law are also:

- concern one of the 7 recommendations made by the European Commission in its Conclusion on Ukraine's application for EU membership dated June 23, 2022 (hereinafter – the Conclusion);
- mentioned in the European Commission's Report on Ukraine for 2023 (08.11.2023 (SWD (2023) 699 final)) and in the Communication from the European Commission on the EU Enlargement Policy (08.11.2023 COM(2023) 690 final);
- mentioned in the Conclusion of the Venice Commission of June 12, 2023 (CDL-

23 <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>

24 <https://rm.coe.int/0900001680700a40>

25 <https://legalinstruments.oecd.org/public/doc/256/256.en.pdf>

26 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.207.01.0001.01.FNG&toc=OJ%3AL%3A2021%3A207%3ATOC

27 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008IP0197>

AD(2023)018) to the Law of Ukraine «On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)» (hereinafter – the Conclusion of June 12, 2023).²⁸

At the same time, the legal analysis of the draft law took into account the Technical Report of the Directorate General for Human Rights and the Rule of Law of the Council of Europe «Analysis of the Draft Law on Fair Lobbying in Ukraine» No. ECCD-OB-UA-TP01-2023 of July 2023 (hereinafter – the Technical Report) .

3. Compliance of the draft law with Ukraine’s international legal obligations in the field of European integration and EU law.

At the same time, Article 444 of the Association Agreement stipulates that the parties shall promote dialogue and cooperation between *civil society actors* on both sides as an integral part of the EU-Ukraine relationship, in particular by facilitating the process of institution building and consolidation of civil society organizations, including, inter alia, *lobbying activities*²⁹, informal communication, visits, and seminars, etc.

Thus, under the Association Agreement, Ukraine has an obligation to ensure the existence of a transparent dialogue between government agencies and representatives of civil society and business, but the method and forms of such legal regulation are at the discretion of the state.

The legal basis for lobbying in the European Union is Article 11 of the Treaty on European Union, according to which institutions shall provide citizens and representative associations with the opportunity to express their views in all areas of the Union’s activities and to exchange views in public by appropriate means. Institutions maintain an open, transparent, and regular dialogue with representative associations and civil society. The European Commission conducts extensive consultations with stakeholders to ensure coherence and transparency of the Union’s activities.

At the same time, one of the seven recommendations made by the European Commission to Ukraine in its Conclusion on the EU membership application is **«to introduce anti-oligarchic legislation to limit the excessive influence of oligarchs on economic, political, and public life; this should be done in a legally sound manner and should take into account the forthcoming conclusion of the Venice Commission on the relevant legislation»** (step 5).

Therefore, the Venice Commission, in its Conclusion dated June 12, 2023 (para. 33), draws attention to the need to strengthen measures to prevent and combat corruption, **including the fight against high-level corruption, which in turn should include further measures in the field of lobbying and transparency of public decision-making.**

On November 8, 2023, the European Commission published its 2023 Report on Ukraine and Communication on EU Enlargement Policy, which recommends that the European Council start negotiations with Ukraine on EU accession and also recommends that the Council adopt

28 <https://rm.coe.int/eccd-bo-ua-tp01-2023/1680aca660>

29 At the same time, Article 444 of the Association Agreement in the English version contains the term «advocacy,» which in the Ukrainian version is translated as «lobbying activities.»

a framework for negotiations, in which, among other things, Ukraine should adopt a law on lobbying in line with European standards as part of the de-oligarchization action plan³⁰.

It should also be added that GRECO's interim report on Ukraine³¹ emphasizes the recommendation to **introduce rules for the interaction of people's deputies with lobbying entities and other third parties trying to influence the legislative process by March 31, 2024.**

Therefore, the draft law *does not contradict* the Association Agreement and will help Ukraine implement one of the 7 recommendations of the European Commission, as well as the GRECO recommendations.

At the same time, in the context of the assessment of the draft law's compliance with European standards for the regulation of lobbying activities, the following is noted:

...

At the same time, the definition of the term «lobbying» proposed by the draft law, which means «the influence of a lobbying entity on a lobbying object, carried out using the methods specified in Article 8 of this Law» does not indicate the purpose for which such influence is exercised, which does not fully take into account European standards.

For example, the Committee of Ministers of the Council of Europe in its Recommendation CM/Rec(2017)2 defines the term «lobbying» as «the promotion of specific interests through communication with public officials in a structured and organized manner *aimed at influencing public decision-making.*» The OECD recommendation defines lobbying as «oral or written communication with a public official *to influence* legislation, policy, or administrative decisions, often focused on the legislative branch of government at the national and subnational levels.»

In its Resolution 2007/2115, the European Parliament also agreed with the Commission's definition of lobbying as «activities carried out with the *aim of influencing policy-making and decision-making processes in the EU institutions.*»

The Technical Report (recommendation 1) also states that «in practice, not all lobbying activities achieve influence. Lobbying activities may be associated with an attempt to influence, but unsuccessful. According to the Council of Europe Recommendation, lobbying is «aimed at influencing public decision-making.» **In other words, the defining feature is the intention to influence, not the fact of influence.**»

According to the OECD Recommendation (para. 8), countries should clearly define the terms «lobbying» and «lobbyist» when they review or develop lobbying rules and guidelines to avoid misinterpretation and loopholes.

In addition, special attention should be paid to the provisions of the draft law regarding the proposed definitions of the terms «advocacy,» whose actions are aimed at upholding the public interest and are carried out without the purpose of making a profit, and «advocacy subjects,» as well as the non-extension of the lobbying institute to advocacy.

30 https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_5631

31 <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790>

Thus, based on the content of Article 444 of the Association Agreement, which deals with the dialogue between the state and civil society, the exclusion of advocacy from the scope of lobbying does not contradict this article. **However, it remains unclear according to what procedure and under which law advocacy activities will be regulated, which does not ensure compliance with the principle of legal certainty, which requires that legal regulation of social relations be predictable for interested parties.**

...

Summarizing the above, the draft law does not contradict the Association Agreement in its purpose, will facilitate Ukraine's implementation of one of the 7 recommendations of the European Commission, as well as GRECO recommendations, but needs to be finalized in order to comply with the principle of legal certainty and fully take into account European standards.