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**Raising the Institutional and Professional Capacity  
of the Corruption Prevention and Combating Bureau  
(Part B and C)**

(Identification No. KNAB 2005/12)

**Legal Regulation of Lobbying**

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**KNAB Raising the Institutional and Professional Capacity of  
the Corruption, Prevention and Combating Bureau  
Part B  
Legal Regulation of Lobbying**

**Report of the Short Term Expert**

**This document contains the following reports:**

- 1. Evaluating the Current Legal Framework**
- 2. Meetings, Interviews and Literature Reviews**
- 3. Lobbying in Latvia including Recommendations**
- 4. Appendix 1: Draft Guidance Material**

**KNAB Raising the Institutional and Professional Capacity of  
the Corruption, Prevention and Combating Bureau**

**Part B**

**Legal Regulation of Lobbying**

**Evaluating the Current Legal Framework**

**1. Introduction**

**1.1 This first report describes the research carried out by the short term expert and sets out initial findings and recommendations. These were presented at a workshop in Riga and, following feedback and discussion arising from the workshop, a further report with recommendations was prepared. The two reports should therefore be read together when considering the recommendations of the short term expert.**

1.2 A full review of existing Laws and Rules of Procedure which could be relevant to the regulation of the lobbying process has been carried out. Appropriate Laws and Procedures were identified with the help of KNAB. The constitution of Latvia was also reviewed and the outcome of that review is set out in more detail in the final report and recommendations arising from this work.

**2. Basis of the Review**

2.1 The review was carried out using the criteria that lobbying should be a transparent, open and legitimate process. The Laws and Procedures were reviewed to identify whether any of their contents would prevent or assist the achievement of these criteria, whether amendments can be made, or are necessary, to existing laws or whether a specific law to regulate the lobbying process is necessary or desirable.

### **3. Laws and Procedures Reviewed**

3.1 The following were reviewed:-

#### Constitution

- The Constitution of Latvia

#### Laws

- The Criminal Law
- Law on the Prevention of Conflicts of Interests in Activities of Public Officials
- Association and Foundations Law
- Freedom of Information Law
- Law on the Corruption, Prevention and Combating Bureau
- Saeima – Rules of Procedure

#### Procedures

- Rules of Procedure of the Cabinet of Ministers
- Cabinet of Ministers Instruction – Procedure for filling in Annotations

### **4. Items of Relevance**

4.1 The following extracts from the Laws and Procedures are relevant to the concept of lobbying or gave rise to questions about the need for, or feasibility of, introducing legislation specifically related to lobbying.

#### 4.2 The Criminal Law

Sections 198, 199, 320, 322 and 323 cover very clearly the offering, intermediation and acceptance of bribes identifying these actions as criminal offences. This is important if we are to place legitimate

lobbying into clear perspective. The true lobbying process cannot involve the giving or receiving of any inducements of any kind. If it does it is not lobbying but simply bribery and as such is a criminal offence.

- 4.3 Questions were raised with the short term expert about Section 326(1) of the Criminal Law – Trading with Influence. The view was put that this Section had the effect of making lobbying illegal in Latvia. It is worth setting out in full, Section 326(1), and this is done below.

“(i) For a person who commits offering or giving of material value, property or benefits of another nature to any person in order that he or she, using his or her official position, professional or social position, to personally influence the activities or taking of decision of a state official, if there are not present the elements of the crime provided by Section 323.

(2) For a person who commits accepting an offer, which has been made by any person of material value, property or benefits of another nature, in order that he or she, using his or her official position, professional or social position to personally influence the activities or taking of decisions of a state official, or to encourage any other person to influence the activities or taking of decisions of a state official, if there are not present the elements of the crime provided for by Sections 198 and 320.”

- 4.4 The key expert has reviewed this aspect in detail, including researching any similar clauses in relevant legislation in other countries. The views of KNAB’s legal department were also considered and, in the view of the short term expert this section does not prevent the legitimate lobbying process from being carried out in Latvia. Recommendations for legitimising the lobbying process in Latvia are set out in the short term expert’s second report.

- 4.5 Legitimate lobbying is designed to ensure that the knowledge and views of all interested persons are brought to the attention of the decision makers so that all the likely outcomes whether beneficial, injurious or peripheral of the proposed legislation can be taken into consideration during the decision making process.

4.6 It is the democratic right of all interested citizens to bring such considerations to the notice of decision makers either personally or through other parties, such as professional lobbyists. This is a definition of the legitimate lobbying process but once the giving or acceptance of material value is introduced the process is no longer legitimate and is not therefore true lobbying. The point here is that paying a professional lobbyist for carrying out his or her function is no different from paying a lawyer or accountant for carrying out their functions. If, however, that lobbyist then attempts to offer or is asked for some material value to achieve his or her objectives, then an offence is committed.

## **5. Revisions to Laws, Procedures and the Constitution**

5.1 During the review of the Laws and Procedures listed at 3.1 above, consideration was given to the possibility of revisions and amendments to facilitate the lobbying process in Latvia. The conclusions and recommendations are set out in the final report “Lobbying in Latvia” but to demonstrate the process of the work initial thoughts relating to some Laws, Procedures and the Constitution are set out below.

5.2 Freedom of Information Law. Section 4 of this Law defines any information which is not categorised as restricted access to be ‘generally accessible information’.

5.3 Section 10 of the Law says that “generally accessible information shall be provided to anyone who wishes to receive it, subject to equal rights of persons to obtain information. The applicant shall not be required to specially justify his or her interest in such information, and he or she may not be denied it because this information does not apply to the applicant”.

5.4 Initial thoughts are that this Law gives a right of access to non-restricted access information which could be used for legitimate lobbying purposes. The lobbying process could be strengthened by adding a section to this Law saying that the information can be used for lobbying purposes although it is probably not strictly necessary to do so.

5.5 Associations and Foundations Law. This Law was reviewed to see if it could be used to form a Lobbyists Association if such a course of action was thought to be relevant and of benefit to the lobbying process in Latvia.

5.6 Section 2 of the Law states:

“An Association is a voluntary union of persons founded to achieve the goal specified in the articles of association which shall not have a profit making nature”. As worded, this would not prevent the formation of an association to represent professional lobbyists in Latvia as although the individual members would be seeking to offer their professional services for profit the association itself would not.

5.7 One of the key objectives of the Association would be to ensure that its members work within a Code of Conduct that ensured high standards of conduct were upheld. Any member guilty of breaking the Code would be debarred from being a professional lobbyist.

5.8 Section 10 part (2) of the Law states:

“An association and a foundation may apply to State and local government authorities in matters related to the goals of the activities of the respective association or foundation, as well as to maintain the right of its members or interests protected by law in a court.

5.9 The conclusion is that a lobbyist’s association could be formed under this Law providing that it had at least two members and was registered with the Register authority.

5.10 Rules of Procedure of the Cabinet of Ministers. These Rules of Procedure include the process for amending prospective legislation as it passes through the pre and parliamentary processes. This is known as Annotation. Section 4 of the Rules says that the Annotation shall be filled out under the procedure set out in legal acts and this is supported by an Instruction Procedure for filling in annotations of draft regulatory enactments which has an Appendix covering questions relating to:-

I Necessity for the regulatory enactment;

- II Possible impact of the regulatory enactment on the development of the society and national economy;
  - III Possible impact of the draft regulatory enactment on the state budget and budgets of local government;
  - IV Possible impact of the regulatory enactment on the effective legal system;
  - V Conformity of the regulatory enactment with Latvia's international commitments;
  - VI Consultations held during production of the draft regulatory enactment; and
  - VII Enforcement measures of the regulatory enactment.
- 5.11 Items I, II and VI are of particular relevance to the lobbying process and the list of consultations currently held under item VI cover NGO's, publications in the mass media, public discussions etc, public opinion studies and consultants and experts. A specific provision could be made within this item to invite input from lobbying and lobbyists. A suggested definition of lobbying and lobbyist is in the "Lobbying in Latvia" part of this report and is placed into a possible legal framework in the second report of the short term expert.
- 5.12 It was also noticed that although the Annotation process exists it is not always fully implemented and the consultations listed under item VI do not always take place.
- 5.13 The Constitution. There are two particular sections of the Constitution that are fundamental to the establishment of a legitimate lobbying process. These are:
- S100 "Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express their views". And S104, "Everyone has the right to address submissions to state or local government institutions and to receive a materially responsive reply".

5.14 What is needed is a clear definition of what a legitimate lobbying process entails. A recommended definition and a procedure for carrying out the process in Latvia is included in the final report “Lobbying in Latvia”.

**KNAB Raising the Institutional and Professional Capacity of  
the Corruption, Prevention and Combating Bureau**

**Part B**

**Legal Regulation of Lobbying**

**Meetings, Interviews and Literature Reviews**

**1. Introduction**

1.1 Meetings and interviews were held with a number of interested persons and the short term expert reviewed many reports on the application of lobbying in the UK, European Union, USA, Canada and Australia. Publications and reports specific to the situation in Latvia were also reviewed.

**2. Meeting and Interviews**

2.1 Meetings and interviews were held with the following persons or organisations and the short term expert expresses his thanks for the time taken to attend the meetings and for the useful information and opinions expressed.

2.2 KNAB. Mrs Diana Kurpniece, Head of Public Relations and International Co-operation Division

Mrs Ilze Maurina, Corruption Analysis and Counter Measures Methodology Division

The Peoples Party. Mr Mihails Pietkevics

Researcher: Dr Valts Kalnins

Mediju Tilts PR Agency. Mr Filips Rajevskis

Cabinet of Ministers – Mrs Inga Bite-Perceva, The Political Co-ordination Department, The State Reform Department.

Parliament of Latvia. Mr Gunars Kusins, Head of Juridical Bureau, Saeima.

Transparency International Latvia/Delna.  
Mrs Inese Voika  
Mrs Liga Stafecka, Political Analyst  
Mrs Daiga Rutka, Administrative Director  
Mr Agris Varpins, Development Director

Latvian Employers Confederation, LDDK. Mrs Elina Egle, Director-General

New Era Party. Mrs Anita Kalnina

LALRG. Mr Maris Pukis, Senior Advisor

Latvia Traders Association. Mr Austris Kalnins

Latvian Farmers Union. Mr Janis Strazdins

Ministry of Economics. Mr Andris Liepins, State Deputy Secretary

Hill and Knowlton. Mr Ralfs Vilands, Director

Union for Human Rights in a United Latvia. Mr Jurijs Sokolovskis

- 2.3 It is not necessary or appropriate to itemise the individual output from each interview. Instead the major points are set out in the following paragraphs together with those areas where there was a general consensus of opinion in favour or against a particular course of action.

### **3. Output from Interviews**

- 3.1 The question of Regulation of the lobbying process cannot be considered in isolation as it is linked to a number of other parts of the democratic process. These include the funding of political parties; the willingness and ability of elected politicians to put aside self interest and to truly represent the interests of those who elected them; the true openness and transparency of the decisions making processes; the transparency and openness of the law making processes and the real ability of the ordinary citizen to influence it and; the extent to which

procedures are in place for citizens to exercise their democratic rights under the Constitution.

- 3.2 There was a general consensus of opinion against the need for a specific law to regulate lobbying. It was felt that the existing Laws and Procedures could be amended to facilitate the process and there was a minority view that the existing process was working satisfactorily and that there was no need for any changes.
- 3.3 There was however a strong feeling that some form of guidelines would be useful for all parties involved from politicians through to the general public.
- 3.4 Areas such as the funding of political parties are covered by other experts as part of this project, but the short term expert has given consideration to this as well as the other points above in arriving at the recommendations for regulating the lobbying process in Latvia.

#### **4. Literature Review**

- 4.1 The short term expert in his previous role as Head of the Anti-Fraud and Corruption Unit of the UK Audit Commission has first hand knowledge of the lobbying process as it applied to central and local government bodies in the UK.
- 4.2 As stated in 1.1 above, he also has knowledge of the processes in a number of other countries. For the purposes of this project particular study has been made of procedures in other EU countries and reports specifically relevant to Latvia have been studied. Specific documents include:-
  - Lobbying in the European Union: Current Rules and Practices, European Parliament Directorate-General for Research 2003
  - Parliamentary Lobbying between Civil Rights and Corruption. Valts Kalnins 2005.
  - Conceptual Guidelines for the Development of Provisions of Lobbying in the Republic of Latvia. Christian D. de Fouloy 2005.

4.3 All of the interviews and this literature has provided valuable background information, but the key task is to recommend a solution that will work in Latvia and which is not simply attempting to impose a process from elsewhere. The short term expert's recommendations to achieve this solution are set out in the final report "Lobbying in Latvia".

**KNAB Raising the Institutional and Professional Capacity of  
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Part B  
Legal Regulation of Lobbying**

**Lobbying in Latvia**

**1. Introduction**

- 1.1 This is the final report containing recommendations for the legal regulation of lobbying in Latvia and should be read in conjunction with the two reports entitled “Evaluating the Current Legal Framework” and “Meetings, Interviews and Literature Reviews”.
- 1.2 In common with other relatively new Eastern European EU member countries there are problems which mitigate against lobbying being seen as a legitimate process. The democratic parliamentary system in Latvia has developed rapidly over a short timescale. This, together with a Saeima made up from a comparatively high number of political parties involving the need for coalition governments to achieve consensus, means that law making is often a difficult and prolonged process. And it is a process that can be affected by shifting alliances and sudden changes to draft laws giving rise to accusations of self-interest and misconduct.
- 1.3 It is therefore extremely important that legitimate lobbying is clearly seen as such and that processes are in place for it to be done. Proper processes not only ensure the rights of individuals and groups are protected, but also protect politicians from false accusations of misconduct.
- 1.4 The short term expert has studied the situation in Latvia and has carried out an analysis of the benefits and non-benefits of various solutions which could be applied to regulating lobbying. They are set out in this report.

**2. The Alternatives**

2.1 Six possible alternative approaches have been identified. They are:-

1. No action is required.
2. Make lobbying illegal.
3. Introduce voluntary regulation and Codes of Conduct.
4. Draft a new law to regulate lobbying.
5. Make amendments to existing Laws, Regulations and the Constitution.
6. A combination of 3 and 5 above.

Each of these approaches is discussed in the following paragraphs.

2.2 No action is required. There was a minority opinion amongst the people and organisations interviewed that the existing process worked and that no changes were necessary. However, in the view of the short term expert, these opinions were expressed by people with expert knowledge of the parliamentary and law making processes and who were representing economically and politically powerful pressure groups. Their knowledge enabled them to legitimately influence the processes and they were generally successful at doing so.

2.3 However, the majority opinion was that the process was not well defined, was seen not to be transparent and to many, particularly the general public, was seen as nothing short of bribery. Even if in fact this view is not correct, the fact that this is the public perception means that processes have to be put into place to demonstrate that this perception is false.

2.4 From work carried out on the project the short term expert agrees with the findings in para 2.3 above. To take no action exposes the process to a declining degree of credibility in the eyes of the general public and can only enhance any false impressions that politicians, civil servants and local government officers are corrupt and act only out of self interest.

2.5 For these reasons, alternative number 1 – to take no action to change the existing process is not recommended.

2.6 Make lobbying illegal. Surveys carried out with the general public in a number of countries have produced a significant number of

- responses advocating that lobbying should be made an illegal activity. This again shows that there is a need to educate the public about what legitimate lobbying actually means and that it is, in fact, one of their rights in a democratic system to be able to make their views known to their elected representative.
- 2.7 This reinforces the need for implementing clear transparent processes for lobbying and highlights the need for a clear definition of what lobbying actually is.
  - 2.8 Apart from the fact that to promulgate legislation to ban lobbying would be against specific EU law, it would also be against the basic tenets of democracy and is therefore not recommended by the short term expert.
  - 2.9 Voluntary Regulation and Codes of Conduct. Many systems including that in the UK are based on the voluntary regulation of lobbyists by joining an accredited lobbyists' association. The Association draws up a Code of Conduct by which its members must abide. Failure to comply with the Code will mean expulsion from the Association. Benefits include rights of access by special pass to Parliamentary buildings and committees.
  - 2.10 The members of such organisations are professional lobbyists who are charging fees for their work, usually to large commercial organisations. However, under the UK system, to retain accreditation and that in a number of countries, they have to disclose details of their clients and their sphere of interest. This helps to create transparency.
  - 2.11 Also in the UK system, politicians are allowed to represent particular interests but must record that they are doing so in a register of interests which is open to public inspection. Although they can consult with other politicians on behalf of their clients they cannot speak or vote on any matter affecting their clients' interests. This applies both to central and local government bodies.
  - 2.12 None of these systems take away the basic right of an individual to have access to their elected Member of Parliament and to make their feelings known on any subject which may affect them, without having to use the services of professional lobbyists.

- 2.13 Latvia is a relatively small country with a limited number of professional lobbyists. Discussions with representatives from firms that carry out professional lobbying activities revealed a willingness to consider the idea of self regulation and a Code of Conduct in exchange for better access to information and possible enhanced rights of access to put their case on behalf of their clients.
- 2.14 However, one of the real problems expressed to the short term expert revolves around the relatively small size of Latvia and its population level. Many of those in positions of authority are well known to their contemporaries and frequent instances of what was termed as the “unofficial lobbying process”, what in the UK we call “the old pals act”, were illustrated.
- 2.15 This only makes it all the more important that effective transparent and clear procedures are put in place to control the process.
- 2.16 For this reason voluntary regulation and codes of conduct could have a place as part of the lobbying process for those firms engaged in professional lobbying activities. If this is felt to be helpful the short term expert will be happy to set out some guidance about what such Codes should contain.
- 2.17 Draft a new Law. There was an overwhelming consensus that drafting a new law to regulate lobbying would not be successful. There is however an important point to consider. In common with most Eastern European countries, Latvia has an inherited culture of legislative governance that prescribes action.
- 2.18 In contrast the UK system will legislate what the objective of the law is, but will leave the administrative details to be implemented by the administering body.
- 2.19 This means that under the Latvian system, any new law to regulate lobbying would have to include exactly how the process would operate whereas the UK system would set out the objectives of the law and leave the appropriate government department to work out the administrative process using secondary legislation to implement it.

- 2.20 The Latvian approach means that the primary legislation must be extremely wide ranging if it is to be workable in practice. Where this has been tried in similar countries, it has failed because not all the eventualities have been covered in the legislation and there have been insufficient means of enforcement.
- 2.21 In the view of the short term expert, currently the major problem with lobbying in Latvia is a lack of transparency in the process and a general misunderstanding that it is actually a fundamental part of the democratic process and of citizens' democratic rights. At this stage, any attempt to enshrine this into a prescriptive law will, in the view of the short term expert, not be successful.
- 2.22 For these reasons, it is recommended that no attempt is made at this time to introduce a specific law to regulate lobbying.
- 2.23 Amend existing Laws, Regulations and the Constitution. There was, as already mentioned, a strongly held belief that amongst the existing Laws and Regulations there was a sufficient framework to promote an efficient lobbying process. The short term expert agrees with this and has studied the best way of achieving the desired objectives.
- 2.24 In doing so he has taken the experience of other EU, UK and American and Australian countries and applied it to Latvia.
- 2.25 Although the methods used in other countries have a common core, that of creating transparency, the methods used to achieve this vary greatly. And it has to be said that in some countries that are democratically advanced in many ways, the process of lobbying is still not very clearly defined.
- 2.26 There are, in the view of the short term expert, very specific problems in Latvia with the process of legitimate lobbying.

These are:

1. What is lobbying?
2. The public perception that lobbying is another name for bribery.

3. Latvia is a small country and a close knit family.
  4. Apparent self interest of politicians.
  5. 75% of legislation is initiated by civil servants.
  6. Apparently open processes paying lip service to transparency.
  7. There are sudden changes to draft legislation without explanation.
  8. There are often shifting allegiances to maintain power.
- 2.27 All of these problems indicate the need for some regulation of the lobbying process and, very specifically for the need to educate people about what it actually is. The next paragraphs make recommendations to achieve these objectives.

### **3. Recommendations**

- 3.1 The recommendations set out below were included in a workshop presented by the short term expert in Riga. As a result of discussions emanating from the workshop the short term expert made alternative recommendations in his second report to address KNAB's comments on this first report and the points arising at the workshop. The recommendations set out in the second report therefore supersede those below.
- 3.2 It is firstly necessary to start with a clear definition of what constitutes lobbying. The short term expert defines lobbying as 'the right of every citizen to exercise their democratic rights to freedom of expression'. In so doing, they can exercise their rights to address submissions to State or local government institutions and to receive a materially responsive reply.
- 3.3 Addressing submissions is in effect lobbying, the exercise of democratic rights. This message can be transmitted via the media, a public interest campaign and through schools and universities.

- 3.4 A simple change to the Constitution could be used to define lobbying in Latvia by amending the Constitution at S104, by inserting the words “This right is also known as lobbying”. Alternatively, a simpler form of words is set out below.

S104 redrafted

“Everyone has a democratic right to address submissions to State or local government institutions by addressing submissions to them and to receive a materially responsive reply. This right is also known as lobbying.”

- 3.5 If this redrafting of the Constitution is acceptable it will not be necessary to change any other existing laws or to draft a new law specifically to deal with lobbying,
- 3.6 Changing the Constitution will provide the necessary change to primary law and this could then be supported by guidance material which could be promulgated as secondary legislation. This guidance would cover how the democratic right could be exercised, how civil servants and politicians should deal with the material and what feedback should given to the constituent.
- 3.7 An outline of the contents of this guidance material could include:-
1. Information about how to exercise the democratic right to raise problems or ask for information.
  2. Who to approach.
  3. Grounds for raising concerns.
  4. Standard format for initial approach.
  5. Timescales for receiving a response.
  6. How to complain if a response is unsatisfactory.
- 3.8 An example of a draft set of guidance material is at Appendix 1 of this report.

- 3.9 Although the main concern with the recommendation is to emphasise to the general public that they have a democratic right to lobby in their own interests, it is important to consider the process used by existing corporate lobbyists and by professional lobbyist charging fees for their services.
- 3.10 The processes used should be no less open and transparent and corporate lobbyists such as LDDK and LALRG should also exercise their functions within the scope of the guidance material proposed.
- 3.11 Although the number of professional lobbyists charging fees to specific corporate clients is small in Latvia, consideration should be given to forming an Association of Lobbyists with a self governing Code of Conduct. In return, members of the Association should be given open access to information likely to affect their clients where that information does not breach any laws about restricted information. Once registered, they should also be included in the list of interested parties to be consulted about appropriate draft legislation.
- 3.12 This process could be made possible under the existing Associations and Foundations Law without any need for amending it.

#### **4.0 Alternative Approaches**

- 4.1 If the change to the Constitution is not thought to be an acceptable solution, an alternative and more complicated approach will involve amendments to other Laws. For example, a new clause could be inserted into the Criminal Law highlighting the difference between legitimate lobbying processes and the corrupt and illegal act of bribery and the offering and receiving of material value, property or benefits of another nature.
- 4.2 However, such a clause would not sit easily within the Criminal Law as the basis of that law is to identify criminal actions and appropriate punishments whereas the new clause would have a permissive function to carry out legitimate lobbying.
- 4.3 In the view of the short term expert, the suggested, relatively minor changes to the Constitution will achieve the legal objectives in the most efficient way. The guidance material set out in Appendix 1 of

this report could then be enacted in a similar way to existing Rules of Procedure.

- 4.4 The short term expert will be happy to discuss these recommendations and it is proposed to present them to KNAB and other interested parties at a presentation to be held in Riga in early June.