

The European conditionality and the legislation on lobbying, conflicts of interest and the fight against corruption in the Balkans

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Good afternoon and thank you very much for giving me the opportunity to talk in this conference.

I will talk about the legislation on the fight against corruption and the conflicts of interest of public officials in the Balkans countries candidates for EU membership. I will focus primarily on the regulation of lobbying, which is the pressure of private interests on public decision, while considering the interconnections between the different laws and supervisory authorities. In making this analysis I tried to identify models of legislation considering not only the European democratic conditionality but also the situation in other European countries, especially other new democracies (the first generation of post communist democracies). This approach is necessary, not only in terms of standards to be followed but also because the European conditionality has been applied in a quite similar manner both to the first generation of post communist democracies and to the current candidates. It is therefore interesting to see how the previous candidates have responded to it and how effective the legislation adopted in these areas have been so far.

The main points on which to focus are:

1. The cultural context of the candidate countries, which is the main conditioning factor in the fight against corruption and in the law enforcement
2. The legislation and its assessment by the Group of States against corruption (GRECO)
3. The comparison between the new member States of the Union and the candidates
4. Critical points, both in legislation and in law enforcement, coming back to the cultural contest

As for the cultural contest, it is well known that in the new democracies, the fairness of decision-making process is highly conditioned/impaired by corruption and lack of transparency. Italy also must be included in the list of countries with a high level of corruption in the public sphere. The situation is improving, also tanks to some relevant

legislative initiatives, but it is not enough (corruption in the Balkans is a problem especially in the judiciary while in Italy it invests mainly local authorities and public procurement).

If we look at the *list of Transparency International* the ranking indicates the following results:

RANK	COUNTRY	2014 SCORE	2013 SCORE	2012 SCORE
1	Denmark	92	91	90
3	Finland	89	89	90
4	Sweden	87	89	88
5	Norway	86	86	85
5	Switzerland	86	85	86
8	Netherlands	83	83	84
9	Luxembourg	82	80	80
12	Germany	79	78	79
12	Iceland	79	78	82
14	United Kingdom	78	76	74
15	Belgium	76	75	75
17	Ireland	74	72	69
23	Austria	72	69	69
26	Estonia	69	68	64
26	France	69	71	71
31	Cyprus	63	63	66
31	Portugal	63	62	63
35	Poland	61	60	58
37	Spain	60	59	65
39	Lithuania	58	57	54
39	Slovenia	58	57	61
43	Malta	55	56	57
47	Hungary	54	54	55
43	Latvia	55	53	49
53	Czech Republic	51	48	49
54	Slovakia	50	47	46
61	Croatia	48	48	46
69	Bulgaria	43	41	41
69	Greece	43	40	36
69	Italy	43	43	42
69	Romania	43	43	44
64	Turkey	45	50	49
50	Georgia	52	49	52
64	The FYR of Macedonia	45	44	43
76	Montenegro	42	44	41
80	Bosnia and Herzegovina	39	42	42
78	Serbia	41	42	39
94	Armenia	37	36	34
103	Moldova	35	35	36
110	Albania	33	31	33
110	Kosovo	33	33	34
119	Belarus	31	29	31
126	Azerbaijan	29	28	27
126	Kazakhstan	29	26	28
136	Kyrgyzstan	27	24	24
136	Russia	27	28	28
142	Ukraine	26	25	26
152	Tajikistan	23	22	22
166	Uzbekistan	18	17	17
169	Turkmenistan	17	17	17

The need to regulate in a specific act addressed to public decision makers phenomena such as lobbying and conflict of interest has been expressed in several EU countries. There is a general need for more transparency and civic participation but in the so called “new” democracies it is also necessary to protect a fragile democracy, where connections between

economics and politics often degenerate into scandals provoking political crisis. In all the former communist countries a certain legacy of the past (non only communist), inevitably exists (a greater role of the state in economy and an incomplete delimitation between public and private interests). Corruption is widespread, especially in the Balkans and the former Soviet Union, and it is an obstacle to the consolidation of market economy and to the European Union membership.

At the same time, however, the countries of the region play a pioneering role in experiencing an advanced legislative regulation of lobbying, as well as of the prevention of conflicts of interest, and fight against corruption. Precisely because of their cultural background, the drafting of rules to promote transparency of decision-making is dealt with particular enthusiasm, especially to meet the demands from outside (OSCE, Organization for Security and Co-operation in Europe, The Groupe of States against corruption or GRECO or the European Commission).

As for the models of legislation, we must consider that in all the European countries there is a lack of uniform and clear regulatory patterns in this subjects. Such an explication is necessary to understand the limits of the conditionality process.

In Europe, most of the legislations on lobbying have been adopted precisely in the former communist countries. On paper these laws are quite sophisticated, albeit with some gaps, revealing a large engineering effort and the knowledge of foreign models (the US model prevails in the absence of successful European examples). However, the failure of their enforcement confirms the problematic circulation of legislative models in countries culturally very different.

The great heterogeneity of the post-communist area should be at the same time underlined. Countries of Central Europe and the Baltic could take advantage of a cultural environment which is more inclined to the fairness and transparency in the public sphere, notwithstanding the similar deficiencies in law enforcement. Some of these countries, like for example Estonia, tend to a Scandinavian-style public behaviour, where attitudes of high professional ethics and self-regulation predominate.

I want to underline that legislative models for the Balkans have been especially those from the new EU member States, especially Slovenia. Indeed, the new EU Member States, when adopting legislation on lobbying and conflict of interest, in the absence of established European models in the field, introduced some innovative aspects.

Also, there was a big discussion among specialists as for the need for a specific act regulating lobbying. Some authors suggested to adopt Codes of Conduct for lobbyists and ethical Codes for politicians or to introduce provisions on lobbying in the rules of procedure of different public bodies. In Hungary, the lobbying act was repealed in 2011: the new right-wing government led by Fidesz believed that it was a measure largely inoperative and unable to cope with the problem of corruption. These countries were also well aware that they are imitating a phenomenon in vogue especially in the Anglo-Saxon world, as evidenced by the use of terminology imported from English.

As for the kind of regulation the topics of discussion were the same currently debated at European Union level or in the countries of the 'old' Europe: it is preferable to adopt harsh laws or to leave space to Codes of Conduct? Registration must be voluntary or mandatory? It is more effective the model based on the penalty or on the incentive?

In short, what kind of legislation do the new democracies need?

Considering the complexity of issues at stake, one may think that it is better to adopt different pieces of legislation. In fact, with some exceptions, measures against corruption and conflicts of interest and promoting transparency and citizens' participation to public decision-making are usually contained in separated acts. However, this could result in a lack of clarity and effectiveness.

The interaction between different measures is confirmed by the fact that the authorities in charge of control over lobbying activities are usually also involved in managing anti-corruption or ethics (in the candidate countries of the Balkans it is usually an anti-corruption authority or commission; the autonomy of these bodies needs to be strengthened, following GRECO reports, and they must be also best equipped financially).

Slovenia: Commission for the prevention of corruption (2010): predecessors were the Government's Office for the Prevention of Corruption established in 2002 on the recommendation of the GRECO replaced in 2004 by the Commission for the Prevention of corruption which competences were sensibly expanded with the 2010 Act (lobbying oversight, whistleblowers protection, integrity of public sector, etc.)

Macedonia: State Commission for the prevention of corruption (2002)

Serbia: Anti-corruption Agency (2010)

Montenegro: Agency for the Prevention of Corruption, 2016 (until the end of 2015 DICO)

Kosovo: Anti-corruption Agency (2007)

Bosnia-Erzegovina: Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption (2009)

Albania: Government Commission for Fight against Corruption (1999); High Inspectorate for the Declaration and Audit of Assets (2005). The model is different in Albania because the Commission is dependent from the government.

Let us see what is the legislative framework on lobbying and conflicts of interest in the countries of Central and Eastern Europe and the Balkans.

Specific laws on the regulation of lobbying activities have been adopted in Georgia (1998), Lithuania (2000), Poland (2005), Hungary (2006), Slovenia (2010). As for the candidate countries, the only laws currently in force are those of Macedonia (2008, revised in 2011) and Montenegro (2011 and 2014).

Moreover, in the same countries rules designed to promote transparency of decision-making, with reference to Parliament and Government and the rest of public administration, are contained in the legislation on the prevention of conflicts of interest in the public sphere (Lithuania 1997, Latvia 2002, Slovakia 2004, Albania 2005, the Czech Republic 2006, Macedonia 2007, Kosovo 2007, Montenegro 2009, Bulgaria 2010, Bosnia 2012), or the transparency in the political activity (Romania 2003). There is a legislation to prevent corruption or fight against corruption in almost all of these countries (for candidate countries see the laws of Macedonia 2002, Serbia 2008, Bosnia 2009, Montenegro 2014). Also related to our theme are the laws on political parties and their financing, on the behavior of state employees, on the status of MPs, the parliamentary rules of procedure (containing provisions on transparency of the legislative process and citizens participation, especially in Serbia, Montenegro and Albania¹) and codes of ethical conduct (adopted by government in Montenegro, being adopted in Serbia, suggested by GRECO for Albania and Macedonia), the public procurement legislation (Bosnia 2004, Albania 2006, Kosovo 2004 and 2010, Macedonia 2004 and 2007, Montenegro 2009, Serbia 2002 and 2008) and the provisions on transparency of the income of public officials (mainly contained in the legislation on the prevention of conflicts of interest).

Debates on the adoption of specific laws on lobbying have been underway for several years in the Czech Republic, Slovakia, Bulgaria, Romania, Russia, Ukraine. In Serbia and Croatia draft legislations regulating lobbying have been prepared at the initiative of the associations of lobbyists², while nothing yet exists in Albania, Kosovo and Bosnia despite the requests made by GRECO and the European Commission reports. In Bosnia, Kosovo and Serbia laws on protection of whistle-blowers have been recently adopted. The rules on whistle-blowers

are instead included in the law regulating the prevention of corruption in Slovenia and Montenegro.

Among the candidate countries of the Balkans, the legal framework of Macedonia and Montenegro is recent (or recently updated/amended) and quite comprehensive, thanks to the European conditionality. This is confirmed by GRECO Reports on the prevention of corruption of legislators, judges and prosecutors, respectively of December 2013 and August 2015. However, in addition to problems of applying rules and the lack of civic education, it is noted that the Macedonian Law on lobbying provides transparency requirements only for lobbyists and not also for the MPs, and that it is generally only 'embrionic'. As for Montenegro, the GRECO notes that the the 2011 Law has never been applied because it lacked the mandatory requirement of registration for lobbyists. The new 2014 Law properly established that requirement, so as to obtain the approval of GRECO, notwithstanding the lack of practical application of both the new and the old rules.

The analysis of the legislation allows for some general considerations.

Laws or draft laws are addressed in nearly all the cases only to professional lobbying. In fact, apart from the already signaled conceptual confusion (in particular between *professional lobbying*, *in-house lobbying* and *advocacy*), non-profit organizations are not included in the benefits of the law even if this exclusion could push the lobbyists who do not want to register to hide behind the screen of the NGOs.

In the 2014 Law on lobbying of Montenegro, which is the most recent among the candidate countries, three kinds of lobbyists are considered, i.e. individual lobbyists, lobbying companies and NGOs. The distinction between the lobbying activity of an NGO (allowed at the conditions required by law) and the civil initiatives (not included in this law) is not clear. The law seems to equate companies and NGOs conducting lobbying activities for third parties (Art. 9), even if the goals of these two legal persons are usually completely different.

The registration of lobbyists is mandatory in all countries. In Montenegro the requirements for registration are particularly complex (the largest part of the Law) and differ for lobbyists and legal entities conducting lobbying activities. Considering the criticism of the European institutions to the previous 2011 Law, such an attention is understandable. However, this complexity makes the law unenforceable perhaps even more than the last. I have no data on the number of registered lobbyists but I assume that they are very few. The activity of unregistered lobbyists is much more widespread in the whole area. The most virtuous country

of the former Yugoslavia, namely Slovenia, has about sixty registered lobbyists and it puts the data on-line, respecting the transparency requirement.

As for benefits to which registered lobbyists are entitled, in general it is about taking part in the procedure for adoption of legal acts by presenting proposals and explanations, conducting an assessment of the projects, explaining to the public the need to adopt, amend or cancel a measure, informing the public about legislation being prepared in parliament, in government or in other public or municipal institutions, receiving information and documents about the subject of their attention by public authorities, submitting opinions to the working bodies of the executive and legislative branches at central and local levels, organizing meetings between representatives of public bodies and their clients, organizing public meetings, expressing their opinion before the authority that shall adopt the decision, etc. No specific advantages are considered in the 2014 Law of Montenegro.

With regard to obligations put on lobbyists, this is primarily the preparation and submission of periodic reports. Obligations or duties of the authorities are provided for only in a few cases (art. 30 of the 2014 Law of Montenegro, art. 25 Law of Macedonia). In Montenegro the question of authority and of registration is quite ambiguous for the moment. The new Agency for the Prevention of Corruption will take over supervision of a series of rules, including those on lobbying, from January 2016. Until that date, the Directorate for Anti-Corruption Initiative (an institution within the Ministry of Justice) will carry out the tasks relating to lobbying activities (Art. 47). No official information about this oversight function of the DACI is currently available. According to the 2014 Law (Artt. 34, 35, 39) the lobbied person has a series of duties (prepare an official note containing detailed information about lobbyists who contacted her/him; refuse further communication with a lobbyist if the subject is contrary to the public interest or constitutional principles or otherwise inappropriate; notify the Agency about the illegal lobbying, etc.) and failure to comply results in financial penalties (from 500 to 20,000 euros, Art. 45).

The inadequacy of the legislation examined mainly relates to the independence of supervisory bodies, managing registers, and the absence or inadequacy of penalties for non-compliance with legal obligations (registration, periodic reports). Fines are so mild, compared to the potential gains of lobbyists, as not to represent a deterrent at all. However it should be considered positively the effort to make the public authority responsible for the transparency of its lobbying contacts, although the mechanism is rarely functional, being too bureaucratic or not sanctioned. In general, the shortages of the legislation examined consist, as already

noted, in its poor implementation; at times in the lack of rules preventing the so-called revolving doors.

The Slovenian model

If we compare the legislation on lobbying of Macedonia and Montenegro and that on conflicts of interest or fight against corruption in Albania, Kosovo, Serbia and Bosnia-Herzegovina (in which a specific law on lobbying has not yet been adopted, although in Serbia the draft has already been processed), we notice in all these cases that the Slovenian model is taken into account. In fact, the same public authority (usually an anti-corruption agency or commission) is the main reference point for monitoring the public officials' behaviour in order to prevent both corruption and conflicts of interest, including asset declaration and the supervision of the lobbying activities (were existing). From this point of view we can say that a sub-model of the former Yugoslavia countries exists, while Albania differs slightly, in addition to not provide much information about it. However the results are generally disappointing and there is no cultural awareness on the point. As suggested in the GRECO report, it is necessary to invest much more on the public officials training.

Let us see more accurately some cases.

Montenegro

Up to January 1, 2016 there will be two 'binary' but not parallel systems:

1. The Law on the Prevention of Conflict of Interest and the Commission for the Prevention of Conflicts of Interest
2. The Law on the Prevention of Corruption managed by the Directorate for Anti-Corruption Initiative or DICO³.

The law on the Prevention of Corruption, which was adopted on December 9, 2014 along with the new Law on Lobbying, states that starting from the first January 2016, the new Agency for the Prevention of Corruption will operate, taking the place of DICO and of the Commission for the Prevention of Conflicts of Interest. The new 'super-body', which should have greater guarantees of autonomy, will deal with the conflicts of interest and the fight against corruption, lobbying and statements of assets of public officials, and also the protection of whistleblowers (the Art. 4 lists minimum six functions). In fact, from January 2016, according to the Art. 115, the Law on Prevention of Conflicts of Interest and the Law on Civil Servants and State Employees will be formally repealed (both laws are fairly recent, going back their original versions respectively to 2009 and 2011).

Serbia

The main reference is the Law on the Anti-corruption Agency (LACA), adopted in 2008. The LACA is being amended following the GRECO suggestions in order to clarify and specify a certain number of provisions as well as to differently regulate some important issues, especially ones related to the conflict of interests, the holding of several public offices concurrently, asset and income declaration by officials. The Law on Lobbying is also being adopted and there is a recent specific Law on the Protection of Whistleblowers (in force since June, 4 2015). Even here the Agency handles everything, except the protection of whistleblowers. The GRECO recommends the adoption of specific rules on the conflict of interests of MPs (suggesting to add specific rules for MPs in the same LACA or in the Law on National Assembly). It also criticizes the bill on lobbying because it does not provide for the citizen participation (but it confuses different things; special rules for the public participation are laid down in the rules of procedure of the Parliament, however not applied). In general, the Agency's role should be strengthened, with more resources, autonomy and personal.

Albania

There is only the Law of 2005 on the Prevention of Conflicts of Interest in the exercise of public functions (rules on conflicts of interest, accessory employment, activities and financial interests, gifts and contracts), considered by GRECO very advanced on paper. The same GRECO, however, marks the defects of the legal framework of the country, the lack of implementation, the need for more transparency and of an ethical conduct of MPs; '...the existing regulations mainly focus on restrictions and prohibitions, to the detriment of public disclosure and transparency...further efforts are needed not only to close the implementation gap but also to ensure that the information on persons exercising an official function is disclosed in a timely and efficient manner...moreover the lack of a clear commitment to ethical conduct has been marked'. Another critical point is the continuing amending the legislation.

With regard to lobbying, the GRECO recommends to regulate the MPs' contacts with lobbyists and third parties but it does not make clear whether it is needed a specific law or an amendment to the Law on the Prevention of Conflict of Interest.

On the basis of the law on the Prevention of Conflicts of Interests (Art. 41) the High Inspectorate for the Declaration and Audit of Assets is the *central* authority responsible for the implementation of the law, while the authorities or structures responsible for the implementation of this law in the public institutions are: a) the superiors of the officials, according to the hierarchy, within a public institution; b) the directorates, units of human

resources or units especially charged, according to the need and the possibilities of every public institution; c) the superior institutions.

HIDAA has been established in 2003 as an independent body in charge of collecting public officials' assets declaration and identifying cases of conflict of interest. HIDAA officers check the logical coherence of all declarations, and subject assets declarations from high-ranking officials and officials in positions.

There is also a 2006 Law on the protection of whistleblowers and a 2010? Law on public procurement which establishes a Public Procurement Agency.

What about the Government Commission for Fight against Corruption? (1999)

FYROM Macedonia

There are two different laws, the 2002 Law on the Prevention of Conflicts of Interest and the 2007 Law on the Prevention of Corruption, but a single supervisory body, the State Commission for the Prevention of Corruption. The rules on the cooling off period are contained in the Law on the Prevention of Corruption. The GRECO recommends to develop the rules on the conflicts of interest. As in the case of Serbia, it evaluates quite positively the rules on public participation in the legislative process but complains the lack of enforcement and also suggests the adoption of an ethical code for MPs. As we see, the legislation is not generally considered sufficient!

The Commission for the Prevention of Corruption is therefore responsible for many things: raising awareness of all public officials including MPs, on conflicts of interest, lobbying, gifts, assets and interests. It has also supervisory tasks as regards statements on conflicts of interest and asset declaration. According to GRECO, legislation must be improved to ensure a more in-depth scrutiny of statements of interest and asset declaration submitted by MPs, judges and prosecutors, 'in particular by streamlining the verification process under the aegis of the State Commission for the Prevention of Corruption'.

Bosnia-Erzegovina

As for the legislative framework, there are: Law on Conflict of Interest in BiH, 6/02 (amended several times until 87/13); Law on the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption, 103/09, 58/13; Law on Whistleblower Protection in the Institutions of Bosnia-Herzegovina, 100/13.

The Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption was created in 2009. It is an independent and autonomous administrative body, which reports to the Parliamentary Assembly of Bosnia and Herzegovina. The Agency is responsible for preventive anticorruption work and for coordinating the fight against

corruption in public institutions as well as the private sector. Among other things its responsibilities include: preparation, coordination and supervision of the Strategy for the Fight against Corruption; monitoring and supervision of the implementation of Conflict of Interest regulations in public institutions; act on corruption complains filed by the public; monitoring and supporting the implementation of laws and regulations aimed at preventing corruption; cooperating with national scientific and professional organizations, international organizations, the media and non-governmental organizations on prevention of corruption; developing educational programs on the prevention of corruption and the fight against corruption; and making information about the state of corruption within the country public to the citizens.

Kosovo

Anti-Corruption Agency (ACA) is an independent institution established in July 2006, and commenced operation on 12 February 2007. The legal basis for the establishment of the Agency is the Anti-Corruption Law (2004/34) which defined its responsibilities and scope of work.

The mandate of the Agency is focused on detecting and investigating corruption cases, on efforts to prevent and combat corruption and increase public awareness with the aim of building a sound society based on the rule of law.

Competences of the Agency are stipulated in Article 5 of the Law no. 03/L-159 on Anti-Corruption Agency.

The following acts represent the basic legal framework according to which the Agency exercises its mandate:

1. Law no. 03/L-159 on Anti-Corruption Agency
2. Law no. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials
3. Law no. 04/L-228 on Amending and Supplementing Law no. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, (which entered into force in 2014);
4. Law no. 04/L-051 on prevention of Conflict of Interest in Discharge of Public Functions

ACA is an independent body, accountable to the Assembly and its responsibilities are regulated based on the provisions of the Law on Suppression of Corruption??. According to the Article 23 of the Corruption Suppression Law, the ACA should prepare the Anti-corruption Strategy for the government and approval by the Assembly and has the

responsibility for making amendments and its implementation. The ACA, to which public officials report cases of corruption, forwards all information regarding corruption to the Office of the Public Prosecutor, and monitors the assets of senior officials through a process of declaration of their assets.

Law on Prevention of Conflict of Interest in Exercise of Public Function no. 02/L-133 approved by the Assembly in November 2007.

Law on Amending the Law no. 02/L-133 on Prevention of Conflict of Interest in Exercise of Public Function, no. 03/L-155.

Law on anti-corruption Agency no. 03/L-159

Law on declaration, origin, control of assets for public senior officials and declaration, origin and control of gifts for all public officials 04/L-050

Law on prevention of conflict of the interest 04/L-051

Law on Suppression of Corruption (provides for an Anti-corruption Agency), 17 July 2007??

Concluding remarks

Considering the high number of countries analyzed, the complexity of national legislations, the numerous and not always clear European requirements, I will make only a few general concluding remarks.

First, it is worth highlighting again the relevance of the cultural context. The relationship between public and private interests, more than other types of relationships, depend on the cultural context. Considering this, we can theoretically suggest a stricter regulation where the quality of the democratic system is problematic, where there are widespread phenomena of political malpractice and the absence of a developed civic and political culture.

In addition, one of the features of the post-communist societies consists in the transition from a planned to a market economy. In this long and complex transition the intertwining of public and private interests has provoked a widespread corruption and the misappropriation of public goods in a context of savage capitalism. Taking into account these economic and cultural conditions, a regulation from the top is needed to encourage proper behaviors elsewhere resulting from spontaneous imitation.

Another aspect of which be aware of is the conceptual distinction between similar phenomena which deserve a different legislative regulation (*public affairs, interest representation, advocacy* and *lobbying* are often confused). This applies to all European countries.

Another general observation comes from the experience of the countries of Central and Eastern Europe that are already members of the European Union. Although they carefully

followed European conditionality and adopted for example specific regulations on lobbying, these laws have in most cases failed. In fact, the pressure of interests on public decision-makers continues to operate outside of the legal requirements. The number of lobbyists included into official registers is very low. The system of sanctions is weak and not provided of incentives to register. The obligations of MPs and other elective officials are missing or inadequate since the laws focus mainly on economic stakeholders.

Despite this, the reports of the European institutions, such as those of the Group of States against Corruption, continue to encourage the adoption of rules on lobbying. These reports also do not include updated information on executive power and civil service, sectors where the risk of corruption is higher, as well as in the legislative offices of the parliament. Generally, assessments and recommendations of the European institutions are rather contradictory. They do not always suggest similar solutions when the conditions of the countries are the same.

Another sore point lies in the proliferation of legal instruments covering the various aspects of the fight against corruption, and the lack of coordination between them. This causes enforcement shortcomings. As evidenced by the GRECO reports, which are quite similar for the four candidate countries examined (Serbia, Montenegro, Macedonia, Albania⁴), ‘there is a noticeable gap between the law and practice’, though these countries have recently improved the legislative framework following the GRECO, European Commission and OSCE suggestions (and also the pressure of lobbyists associations).

As for the participation of citizens, the European institutions reports emphasize an insufficient public participation in the legislative process, although there are specific provisions in parliamentary rules of procedure in almost all candidate countries. This calls for an interesting reflection concerning again the cultural context. In the socialist Yugoslavia and in its individual republics, much more than in other socialist countries, institutions of popular participation in decision-making were numerous (including social control)⁵. The reintroduction of such institutions could be more useful than the import of formula that even abroad have proved to be unsuccessful.

New democracies are especially sensitive to the issue of fighting corruption and consequently are focused on stricter rules. However, as the practice demonstrates, an excessive rigidity of the rules or a hyper-regulation is likely to be paradoxical, pushing more and more the pressure of interests outside the legal track. Without a high sense of civic culture, like that existing in Great Britain or in Scandinavian countries (characterized by the ethic of self-regulation), the balance must be found in the middle. It should be considered the ‘package’ of related laws to

prevent, or make visible, the intertwining of private interests with general interest. Wherever there is an 'excess' of legislation, namely the dispersion and overlapping of sectoral rules with the general aim to promote transparency and fight corruption. This the reason why the Slovenian model could be actually appropriate to the candidate countries, and indeed it is followed by most of the countries of the former Yugoslavia.

As for the law enforcement, its fragility is also due to the excessive harshness of the rules, which pushes many lobbyists to act outside the law. The same public officials do not consider the mechanisms of voluntary registration credible. But such criticism also involves the (few) other laws adopted by Western European countries.

The kind of regulation of lobbying which former communist countries adopt is punitive / repressive and non-promotional. Only in some cases (Poland) there is an effort to add to the classic objectives also rules designed to encourage participation. It is an innovative approach, which could lead to interesting developments.

As for the Western Balkans, their democratic development has been delayed and compromised by the war and the rebirth of nationalist forces. For them, therefore, the democratic conditionality is more complex, with additional requirements with respect to the Copenhagen criteria. It seems, however, that these countries are diligent in adopting the legislation required or recommended, while the problems of implementation are abysmal. It also appears that the European authorities are using these countries as test subjects for a legislation very advanced on paper, but destined to fail in practice.

Once again, the real problem is the cultural one. The culture of compliance, transparency and understanding of the characteristics of democracy (to act for the public good) is missing. How do you remedy this cultural deficit? Enhancing education, training at all levels of the civil service. Not with the multiplication of rules, or their continuous amendment. The real code of ethics is not a written text, but the one built with hard work in the conscience and transmitted by example at the highest levels.

In short, new democracies are experiencing interesting innovations in the regulation of pressure of interest groups, particularly in the legislative process. However, they also testify the failure of regulations too advanced for the social and economic context in which they are called to apply. A part of responsibility rests with the same legislation (too severe or vice versa not equipped with appropriate sanctions) but also with the background difficulties of these societies, not very different from those observed in Italy, albeit for a different type of cultural heritage.

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1. In both cases there is not only the problem of legislative improvement, also recommended, but of implementation and the abandonment of the practice of the emergency legislative procedures that the government has encouraged. Generally NGOs dealing with the fight against corruption and favouring transparency – such as www.trasparentnost.org.rs – contest the lack of public and parliamentary debate in the legislative process considering that the government always prevails recurring to the emergency procedure (the same has been observed in Montenegro).
 2. The Serbian lobbyists Association also adopted a code of conduct: www.drustvolobistasrbije.org/eticki-kodeks.html. In Croatia, a draft Act on Lobbying has been prepared – in close consultation with the Croatian Lobbyist Association, representatives from the private sector, legal professionals, trade unions and non-governmental representatives – and awaits further development. The draft includes a broad definition of lobbying activities and lobbyists (not restricted to commercial activity), the institution of a register of lobbyists to be managed by the Ministry of Justice, the requirement to report on lobbying activities on a regular basis, and finally, sanctions in the event of non-compliance.
 3. <http://antikorupcija.me>.
 4. It would be enough to provide a single evaluation for all candidates of the Balkans. They have similar contextual situations from the point of view of traditions, culture, problems to be solved.
 5. It should be recalled that public debates on draft laws and constitutions represented, in the socialist state, a substitute for freedom to participate to the public decision-making.