

Corruption Risks in Regulations and Lobbying

Transparency Serbia

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Summary

Risks of corruption in regulations

The Law on Prevention of Corruption has been in force for more than two years now (since September 1, 2020), and in the meantime it has been amended several times. Those changes were related to the fulfillment of GRECO's recommendations (although the Law was allegedly in compliance with those recommendations when it was adopted) and agreements from inter-party pre-election dialogues. The authentic interpretation of that law from 2021 also led to a significant narrowing of the field of application in practice. New amendments are in the pipeline in order for Serbia to fulfill certain recommendations of GRECO from the fifth round of evaluation, recommendations of ODIHR that were issued after the April elections, and the latest joint recommendations of the Venice Commission and ODIHR.

Reducing the risk of corruption was proclaimed as one of the basic goals of this Law, which is why the Agency's competences were expanded. All state administration bodies (that is, ministries and special organizations) are obliged to submit draft laws to the Agency for opinion on the assessment of the risk of corruption. This obligation exists when the draft law refers to one of the areas that are particularly risky for the emergence of corruption or regulates issues covered by ratified international treaties in the field of fighting corruption.

During the adoption of this Law, Transparency Serbia made a number of proposals for improvement. We namely pointed out the following: *The current provision contains useful rules on assessing the risk of corruption and the opinions the Agency issues on some of these laws. However, the provision does not cover all situations when such an opinion of the Agency is necessary. These are situations when other types of legal acts are passed, starting with the Constitution, through laws that may mention risks of corruption but contain useful provisions for suppressing it, to proposals for by-laws that can also be significant from the point of view of anti-corruption policy and determining the risk of corruption. Furthermore, the provision now focuses on draft laws prepared by state administration bodies, but does not include those acts proposed by other authorized proposers - e.g., the Ombudsman, MPs, the National Bank of Serbia, the Assembly of AP Vojvodina, 30,000 citizens in the framework of a people's initiative. No less important are situations when the Government's law proposal is significantly different from the draft of the same law which the Agency has already given an opinion on, or when there are amendments in the parliamentary procedure that would introduce new risks of corruption or undermine good solutions from the draft law.*

The results of the implementation of the newly introduced obligation were mostly absent during the first year of the implementation of the Law, as we showed in the [report](#) from 2021, and the situation in 2022 was even worse, as it can be seen from this report.

In the past (2013-2018), before the legal obligation to submit a draft law was established, the Agency, on its own initiative or at the request of institutions, analyzed specific acts from an anti-corruption point of view and published its findings. The new Law, which has institutionalized the issuance of such opinions, did not, unfortunately, foresee the obligation to publish them. This significantly reduced the

possible beneficial effects of the introduction of this measure, and for gaining the support of the general public for solving the problems in the draft laws that the Agency observed. This legal deficiency was finally overcome in December 2022, when the Agency established the practice of [publishing](#) issued opinions. It can be regretted, however, that the setting up of the Agency's new website in 2022 was not used to give greater importance to this segment of the Agency's work, so as to highlight it more clearly on the website, because currently these opinions can only be found by someone who knows exactly where and how to look for them.

When giving opinions on draft laws, the Agency applies and mostly observes the [Methodology for Assessing the Risk of Corruption in Regulations](#), which it developed in cooperation with the OSCE Mission to Serbia. The exceptions that we observed in this year's survey concern primarily the failure to draw attention to the omissions of the ministries in the very process of drafting the Law and consultations with the public in each specific case, where there have been such deficiencies.

During this research project, the implementation of which was supported by the OSCE Mission to Serbia¹ Transparency Serbia collected information from the Agency and from specific ministries that prepared draft laws, and then [published](#) them on its website.

Transparency Serbia also used other sources as part of its research - information released on public hearings, draft laws adopted by the Government and laws adopted by the National Assembly. In this way, we determined that even during 2022 (as well as a year before), the competent ministries in most cases **did not respect** even their elementary obligation to submit draft laws to the Agency for opinion.

In connection with the determination of "areas of particular risk", where there is an obligation to submit a draft, the Law refers to strategic documents. Since the adoption of a new national strategy for the fight against corruption has been awaited for years (the previous one was valid for the period 2013-2018, and the new one was announced for the middle of 2023), the only document of its kind remained [the Revised Action Plan for Chapter 23 of the Negotiations with the EU](#). The Plan highlighted the following eight areas: **healthcare, taxes, customs, education, local self-government, privatization, public procurement and the police**. In addition to these areas, the opinion of the Agency should be requested when the draft law regulates issues concerning ratified international conventions.

Even if acts that are (at least partially) related to ratified international anti-corruption conventions are not taken into account, it is obvious that in this period the Ministry of Finance did not ask the Agency for an opinion on the laws related to the area of tax and customs, which laws were adopted by the Assembly at the end of 2022. The current convocation of the National Assembly also adopted seven laws on ratification of international treaties and one law on loan confirmation. By default, the said treaties also contain certain rules from the area of taxes or customs duties.

The Law on Prevention of Corruption does not stipulate the obligation of the Assembly to request an opinion on corruption risks in the proposed authentic interpretations of the Law. The practice of adopting authentic interpretations that fundamentally and retroactively change the provisions of the law, instead of just specifying through them which of the possible interpretations of the existing provision is correct, was frequent towards the end of the work of the previous parliamentary convocation. This was one of the reasons why Transparency Serbia sent the Constitutional Court an

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[initiative](#) to determine the constitutionality and legality of the provisions of the Law on the National Assembly and the Rules of Procedure of the National Assembly in the part related to the procedure for adopting authentic interpretations. Fortunately, in the new convocation of the Parliament, there were still no attempts to enact authentic interpretations, and we hope that there will not be any before the Constitutional Court considers the constitutionality of this type of decision-making in the National Assembly.

In the course of 2022, the Agency gave an opinion only on one of the drafts of the Law on Referendum and People's Initiative and on amendments to the "parent" Law on Prevention of Corruption.

Concerning the Law on Referendum and People's Initiative, the Agency made numerous useful proposals for making the articles more specific, most of which were not accepted, for which no valid or no explanation was provided. Regarding the Amendments to the Law on Prevention of Corruption, which established the duty of the President of the Republic to clearly explain to the interlocutors and the public whether he is acting in that capacity or in the capacity of a party leader, the Agency had no objections. However, as Transparency Serbia pointed out when this Law was in the parliamentary procedure, the explanation of the proposed changes was incomplete and numerous dilemmas that arise in practice have not been resolved.

As part of this year's research, we pointed out very significant corruption risks in a series of judicial laws, which are passed for the purpose of harmonizing with the amended Constitution and the law that was presented for public discussion by the Ministry of Internal Affairs in December. These are regulations that should have been submitted to the Agency for opinion, but it is currently unknown whether this has actually been done (the public debate is currently still ongoing).

When it comes to judicial regulations, the main risk is represented by overly broad provisions on the immunity of members of judicial councils, insufficiently regulated transparency of the work of public prosecutors' offices, courts and judicial councils, as well as the use of numerous insufficiently defined terms that are therefore subject to discretionary interpretation. In the new draft of the Law on Internal Affairs, similarly to last year's law, which was withdrawn after public protests, controversial are the provisions on biometric surveillance, discretion in granting approval for the use of the term "police", in ensuring the publicity of work as well as significantly increased discretionary powers in employment, including opportunities for nepotism.

In order to illustrate the allegation that the risks of corruption should be identified and eliminated in all laws, and not only those concerning some previously identified "risk areas", we have also analyzed other regulations that were passed in this period. We observed the existence of such risks (insufficient transparency) in the amended Law on the Budget System, despite the fact that some changes were made precisely with the aim of improving transparency. Similarly, we noticed shortcomings in the Law on the Budget for 2023 and the Law on the Final Account of the Budget for 2021, primarily in the form of the absence of explanations for many important items. When it comes to public finances, our analysis also included the law regulating the allocation of new state aid to young people, whose unsubstantiated explanation indicates that the real reasons for passing the law differed from the proclaimed ones.

This year's amendments to the Law on Ministries have also been the subject of analysis. This act has never had the form of a draft, but was proposed directly by the members of parliament. Here, too, the

most controversial issue is the absence of an adequate explanation for the proposed reorganization, as well as the insufficiently clear division of responsibilities between the newly established Ministry for Public Investment Management and other ministries.

Taking all of the above into account, it can be concluded that the following is necessary:

1. That the amendments to the Law on Prevention of Corruption provide for the obligation to seek opinions not only on draft laws from the listed areas, but for all acts prepared by ministries;
2. That the duty to seek opinions on the risks of corruption must be extended to other stages of the legislative procedure, to other proponents besides ministries, as well as to other acts besides laws, and above all to proposals for amending the Constitution and proposals for authentic interpretations of laws;
3. That the Government of Serbia, in cooperation with the Agency for the Prevention of Corruption, determine the way in which it will monitor the fulfillment of the obligations of the ministries to submit drafts for opinion;
4. That the Government and the National Assembly, in cooperation with the Agency for the Prevention of Corruption, determine the method of monitoring compliance with the recommendations provided by the Agency for eliminating risks and the obligation to explain the reasons for non-compliance with those recommendations.
5. That the law establishes the obligation to publish the opinions that the Agency provides on the risks of corruption in regulations, as well as information on the actions of the ministries based on those opinions, and that the Agency gives more importance to raising the awareness of the public about this segment of its work.

Application of the Law on Lobbying

The implementation of the Law on Lobbying began on August 14, 2019, eight months after it was adopted, based on the recommendation of GRECO (the Group of States against Corruption in the Council of Europe), which was supposed to be implemented by the end of 2016.

The recommendations [given in the fifth round of the GRECO evaluation](#) from July 2022 again deal with lobbying, and their content and critical review of the regulations in this area is a very pleasant surprise after the [undeserved favorable evaluations](#) by the same institution from 2020, which partly concerned the same areas (legislative procedure and rules from the Law on Prevention of Corruption). For the fifth round, GRECO's evaluators collected data in September 2021, and Transparency representatives indicated to them a number of shortcomings in the regulations and their implementation, which GRECO apparently took into account to a large extent when formulating its conclusions and recommendations.

Two years ago, among other things, GRECO noticed an alleged increase in the transparency of the legislative procedure and gave favorable evaluations for the start of the implementation of the Law on Lobbying, which was obviously premature.

The Law on Lobbying sets as a rule that the lobbyist must address in writing the official or public servant working on the adoption of a regulation and explain who he works for and which is the act in question, so that they can later jointly report all contacts to the Agency for the Prevention of Corruption. The main problem is the control of the application of the Law. Namely, this Law does not contain a single

mechanism to determine whether an interested person, instead of engaging in lobbying based on the prescribed rules, has used some informal form of communication with decision makers. While the legislator completely excluded such informal contacts from the concept of lobbying, it failed to either expressly prohibit them or ensure their transparency.

Even if the rules on informal lobbying were more explicit, it would be difficult to determine the extent to which they were followed. It could be somewhat easier to determine whether directly interested individuals, companies, organizations and associations have formally addressed state bodies, parliamentary groups and generally "lobbied persons". Such contacts may have the character of a contact with "unregistered lobbyists" and authorities should keep records of them. The most information should be available when interested parties hire professional intermediaries - registered lobbyists - to represent their interests before the authorities that pass general legal acts.

In its new report, GRECO recognized as a problem the fact that this Law regulates **only lobbying that happens place according to formal rules**, and not that which takes place through informal contacts of lobbyists with the president, prime minister, ministers and their advisers and chiefs of staff. Another big problem that GRECO points to is that **there is no obligation for officials and state authorities to disclose** all of the formal and informal contacts by lobbyists who have approached them. The deadline for Serbia to fulfill these recommendations is September 30, 2023. Transparency Serbia has called on the Ministry of Justice, the Agency for the Prevention of Corruption, the National Assembly and its Committee for the Judiciary, the state administration and local self-government to promptly initiate the procedure for amending this Law and other laws that should be amended in order to fulfill the recommendations of GRECO, but for now this has not been done.

Transparency Serbia continued to investigate the application of laws in 2022 in the institutions that can be expected to be most exposed to lobbying - the Government of Serbia and ministries, the National Assembly and the President of the Republic. With the request for access to information of public interest, we requested the submission of copies of records referred to in Article 30, paragraph 6 and 7 of the Law on Lobbying. Those provisions stipulate that the authority is obliged to keep records of lobbying contacts for officials who are elected, appointed, named, employed or otherwise employed in that authority. Also, every lobbied person is "obliged to prevent the occurrence of adverse consequences for the public interest that may arise as a result of lobbying".

At the same time, we have collected data from the Agency for the Prevention of Corruption as to which lobbying contacts were reported to that institution, both in 2022 and 2021.

In contrast to similar research that we conducted in 2020 and 2021, we have now finally learned that there have been some cases (seven) of registered lobbying.

It can rightfully be assumed that the number of cases of lobbying, if not by registered lobbyists, then at least by unregistered ones (representatives of directly interested business entities and their associations), is much higher. As it can be seen from the information provided by the Agency, not a single case of lobbying by unregistered lobbyists has been reported, so there is a strong suspicion that such cases are not being reported.

In its annual report, which the National Assembly has not yet considered, the Agency recommended that the Law be amended to ensure the transparency of data contained in lobbyists' reports, as well

as data on contacts between lobbyists and public officials or persons employed in the public sector. However, the Agency did not make an effort to improve the transparency of the work of lobbyists, as well as the actions of authorities and lobbied persons by publishing the information it already possesses. Although the Agency's new website was created in 2022, it does not even include a column where such data would be published.

We made a total of 25 requests. Much more often than in previous years, we encountered a situation where institutions withheld an answer. Thus, the public was deprived of information about whether there have been any lobbying contacts with **the Cabinet of the Prime Minister, the Ministry of Science, Technological Development and Innovation, the Ministry of Family Care and Demography, the Ministry of Environmental Protection, the Ministry of Agriculture, Forestry and Water Management, the Ministry of Defense, the Ministry of European Integration, the Ministry of Internal Affairs, the Ministry of Finance, the Ministry of Youth and Tourism, the Ministry of Health and the Ministry of Construction, Transport and Infrastructure.**

This information was also denied a year ago by the **Cabinet of the Prime Minister and the Ministry of Environmental Protection, while the Ministry of Finance** is denying this information for the third year in a row. The National Assembly, the General Secretariat of the President and the representatives of the executive authorities expressly [denied](#) the existence of contacts with lobbyists, and therefore the existence of records kept about such contacts. The only exception is the Ministry of Economy. It provided information on lobbying for the purpose of [Amendments](#) to the Bankruptcy Law from April and [August](#) 2022.

The Ministry of Foreign Affairs informed us that the procedure for appointing the person who will be in charge of implementing the provisions of the Law on Lobbying is underway.

Based on the data provided to us by the Agency, since the beginning of the implementation of the Law, only seven reports of lobbied persons have been submitted to them. Not one of those reports was published on the Agency's website (currently there is no such legal obligation).

In 2021, there were reported cases of lobbying with the involvement of a registered lobbyist, which lobbying was directed at the acting director of the Agency for Medicines and Medical Devices (in connection with the production of raw materials and medicines in Serbia), on 10.6.2021, (client Agricol), lobbying through a registered lobbyist with the Minister of Construction, 30/7/2021, in connection with the exemption from certain provisions of the collective bargaining agreement for the activity of the road industry (client Trace Srbija AD), recorded 2/9/2021, lobbying through a registered lobbyist with the Minister of Finance in connection with the Law on Fiscalization, 14/05/2021 (client Daisy Tech JSC), lobbying with the Acting Assistant Minister of Health on 23/09/2021, through a registered lobbyist regarding the legalization of cannabis for medical purposes (on behalf of the National Association of Hemp Growers of Serbia), as well as by the same organization, starting from 4 November 2021, with the Acting Assistant Minister of Agriculture. In 2022, only two cases of lobbying were reported, where a professional lobbyist hired by a lawyer, found himself in front of the Assistant Minister of Economy in connection with the Bankruptcy Law (on two occasions).

The probability that none of the interested parties addressed the Government, the President of Serbia or the Parliament and MPs, as well as half of the ministries regarding regulations, during the whole of 2020 and 2021, as well as the first ten months of 2022, is almost nil. Namely, in that period, those

bodies participated in the adoption or drafting of several hundred laws, decrees, rulebooks and other general acts that affect the interests of hundreds of thousands of economic entities. It is much more likely that none of them (including those who prepared, proposed and adopted the Law on Lobbying) was aware that a new obligation had been established and that the implementation of these obligations by officials and employees in government bodies is not monitored. If there is any monitoring of compliance with the obligation, it is construed very narrowly and is reduced to recording contacts with registered lobbyists, when they themselves emphasize that they are coming in this capacity.

The existence of "unregistered lobbying" (which the Law allows) is also indicated by the information published by associations that gather domestic or foreign businessmen about their work, indicating the measures they proposed to the Government of Serbia or specific ministries, on the basis of the interests and problems pointed out by their members.

We believe that this situation is partly caused by weaknesses in the Law itself, where there is no clear obligation of officials and other lobbied persons to report lobbying contacts within the authorities. Also, the possibility of public control is minimal, since there is no duty to proactively release data on the work meetings of public officials. Therefore, **in addition to improving the laws and practices of institutions**, it is necessary for the Agency for the Prevention of Corruption to pay more attention to the training of public officials and employees in relation to the recognition of potential lobbying activities to which they are exposed and the proper recording of such activities.

In this period, most of the publicly expressed doubts about possible hidden or public influences during the drafting of general legal acts were related to the process of decisions that were made or are still made in connection with the exploitation of mineral resources, primarily lithium. At the same time, it is not entirely clear whether the subject of lobbying could primarily be the adoption, amendment or repeal of some regulations or only the adoption of specific acts, which are not the subject of the Law on Lobbying. At the end of 2021, there were mass protests aimed at banning lithium mining in Jadar and Radjevina, as well as in other parts of the country. Formally, the request presented at the protest referred to the withdrawal of amendments to the Law on Expropriation, as well as changes to certain provisions of the Law on Referendum and People's Initiative. After the government accepted these proposals, on January 20, 2022, the Government of Serbia decided to repeal the administrative acts related to the activities of the company "Rio Tinto" and thus "accepted the demands of environmental organizations." The company's announcement also mentions that the spatial plan for the "Jadar" Project has been canceled. In the new convocation of the parliament, proposals for laws related to the exploitation of this ore were submitted, and one such proposal was formulated in the form of a people's initiative even before the constitution of the new convocation of the National Assembly. The parliament, however, has not yet discussed this people's initiative, contrary to the provisions of the Law. It is noticeable that at the end of 2022, the narrative of the representatives of the government changed significantly, and the "firm decision", made before the the presidential and parliamentary elections were called, was significantly relativized by the views of the president, ministers and deputies saying that giving up lithium mining was a big mistake. Furthermore, the company with which the state terminated its cooperation has resumed its activities.

This case, which received a lot of public attention, is an excellent illustration of how little Serbian citizens know about the reasons for the issuance of both general and specific decisions.