



Paris, 14 October 2024

PRESS RELEASE

[Legal decision]

On principle, think tanks cannot be considered lobbyists in the absence of an identified interest

Petitioned by a think tank, the Conseil d'État today annulled the guidelines adopted in 2023 by the French authority for transparency in public affairs (HATVP) as so far as they describe such think tanks as lobbyists on principle, thereby making them subject to legal obligations, including reporting obligations, regarding transparency in public affairs. An organisation dedicated to reflection, research and providing expertise on specific issues to produce work that is intended to be made public may not, on those grounds alone, be described as a lobbyist, even if it is regularly in contact with public decision-makers, including to inform them of its conclusions or promote proposals for reforming public policy. However, the Conseil d'État found that, in view of its funding, governance and the conditions under which its research and work are carried out, if such a think tank were to pursue an identified interest, it could be considered a lobbyist within the meaning of the law, and would, therefore, be subject to the relevant obligations, including reporting obligations.

Since July 2017, under law 2016-1691 of 9 December 2016 on transparency, anti-corruption measures and the modernisation of the economy, known as the "Sapin 2" Act, lobbyists are required to register with a digital directory and disclose information regarding their organisation, their area of lobbying and the resources devoted thereto, as well as the actions falling within the scope of lobbying taken with public policy-makers defined by law. That directory, which is made public by the HATVP and is available online, aims to inform citizens about the relationships between lobbyists and public authorities.

Following discussions with several think tanks, in 2023, the HATVP adopted new guidelines describing such organisations as lobbyists subject to reporting obligations in respect of the digital directory. A think tank petitioned the Conseil d'État for the annulment of these guidelines, three letters and a notice of breaches issued to it by the HATVP.

In a ruling handed down today, the Conseil d'État restated that the law on transparency in public affairs defines lobbyists as natural persons or legal entities representing an identified interest, whose main or regular activity is to influence public decision-making through communication actions (discussions, meetings etc.), particularly in respect of the content of a law or a regulatory measure.

The Conseil d'État found that in the absence of a clearly defined interest, the mere fact of being in regular contact with public authorities for carrying out research work, reporting results or promoting proposals for reform was not sufficient to describe a think tank as a lobbyist within the meaning of the law. However, it found that, in view of its funding, governance and the conditions under which its research and work are carried out, if a think tank were to pursue an identified interest, it could be considered a lobbyist within the meaning of the law, and would, therefore, be subject to the relevant reporting obligations.

The Conseil d'État found that the HATVP guidelines resulting in the qualification, on principle, of think tanks as lobbyists on the grounds that they have such contact with public authorities contradict the meaning and scope of the law on transparency in public affairs, and annulled them on this point.

The other requests for the annulment of letters and the notice of breaches issued to the petitioner by the HATVP were dismissed because they relate to preparatory measures for a potential formal demand for compliance.

Decision Nos. 472123, 475251, 487972 – 14 October 2024

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