Lobbyists, Governments and Public Trust

VOLUME 2

PROMOTING INTEGRITY THROUGH SELF-REGULATION

OECD

Lobbyists, Governments and Public Trust

PROMOTING INTEGRITY
THROUGH SELF-REGULATION

Volume 2

OECD

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:
OECD (2012), *Lobbyists, Governments and Public Trust, Volume 2: Promoting Integrity through Self-regulation*, OECD Publishing.
http://dx.doi.org/10.1787/9789264084940-en

ISBN 978-92-64-08493-3 (print)
ISBN 978-92-64-08494-0 (PDF)

Corrigenda to OECD publications may be found on line at: *www.oecd.org/publishing/corrigenda*.

© OECD 2012

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to *rights@oecd.org*. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at *info@copyright.com* or the Centre français d'exploitation du droit de copie (CFC) at *contact@cfcopies.com*.

Foreword

Lobbying is once more at the top of the policy agenda, as the success or failure of public policy reforms seem to be increasingly influenced by private interests, to the potential detriment of public interests. For example, approximately USD 3.3 billion was spent just on lobbying the United States Congress in 2011. While the benefits of comprehensive efforts by interest groups to inform policy decisions are obvious, the possibility of lobbying avoiding public policy reforms and capturing the public interest cannot be excluded.

Where professional lobbyists are the representatives of private interests – rather than interest groups themselves – greater regulation of the profession has been demanded. In 2009, the OECD published an overview on government legislation of lobbying as one of the options, in Lobbyists, Government and Public Trust: Increasing Transparency through Legislation, *Vol. 1, which reviewed lessons learned from legislation and government regulations in Australia, Canada, Hungary, Poland, the United Kingdom and the United States.*

Self-regulation by lobbyists is another approach. The methods and experiences of this option are presented in this volume, which sheds light on the "other side of the coin": the achievements and shortcomings of self-regulatory measures taken by professional lobbying associations themselves. It reviews measures that the lobbying profession has taken in order to develop codes of conduct for lobbyists and to foster compliance at the national level, as well as at the supranational level in Europe. The findings show a growing emphasis on setting rules for self-regulation that also provide disciplinary procedures for violations, although ensuring compliance remains a challenge.

The report also presents the results of a survey of lobbyists' attitudes to government regulations and self-regulation. This is one of the most comprehensive and extensive surveys done on the subject. The findings show consensus amongst lobbyists on the need for transparency in their profession: 76% of lobbyists interviewed agreed that transparency would help alleviate the negative perception surrounding their profession, and 61 per cent said that they would welcome mandatory disclosure of their activities.

Open government initiatives, and pressing calls for transparency and integrity in both the public and private sector are raising the stakes for effective frameworks of lobbying. With this second volume, the OECD is making another important contribution to the policy debate on the quality of public governance for better public policies, especially in the current context of persistent economic and social crisis situations.

Rolf Alter
Director
Public Governance and Territorial
Development Directorate

Acknowledgements

Lobbyists, Governments and Public Trust, Vol. 2, was prepared under the leadership of Rolf Alter, Director, Public Governance and Territorial Development Directorate. The report was co-ordinated and supervised by János Bertók, Public Sector Integrity Division. The report was drafted by Craig Holman, Ph.D. (Public Citizen) and Thomas Susman, Esq. (Director, Governmental Affairs Office, American Bar Association).* Additional research assistance was provided by Meagan Chen and Lucas Tieman. Special thanks are given to Christian Vergez for his guidance and Virginia Tortella for her support throughout the project. Karena Garnier, Carrie Tyler and Claude Jacqmin edited and prepared the report for publication.

The OECD Secretariat is thankful to the members of the Public Governance Committee and the Network on Public Sector Integrity for their comments and feedback which supported the preparation of this report.

* The conclusions reached in this report are those of the authors alone and do not necessarily reflect the opinions of Public Citizen or the American Bar Association.

Table of Contents

Acronyms 10

Executive Summary 13

Introduction 17
Methodology 18
Notes 20
Bibliography 20

Chapter 1. **Private Interests, Public Conduct: The Essence of Lobbying** . . 21
Introduction 22
Definitions of "lobbying" 22
Lobbying is at a crossroads 26
"Good" *versus* "bad" lobbying 27
Cost/benefit analysis of lobbying 29
Reciprocity principle 30
Notes 32
Bibliography 32

Chapter 2. **The Role of Professional Lobbying Associations in Self-Regulation of Lobbying** 35
Introduction 36
Public Relations Institute of Ireland 37
Swedish Public Relations Association 40
Croatian Society of Lobbyists 41
Chartered Institute of Public Relations, Association of Professional Political Consultants and Public Relations Consultants Association in the UK 42
Society of European Affairs Professionals 47
Notes 48
Bibliography 48

Chapter 3. **Codes of Conduct for Lobbyists** 51
Introduction 52
From moral to behavioural codes 52
Codes of conduct for the lobbying profession 54
Behavioural principles for professional lobbying 54
Bibliography 57

Chapter 4. **Lobbyist Regulatory Regimes in Europe** 59
Introduction 60
Germany 60
Hungary 61
Lithuania 61
Poland 62
France. 62
EU institutions 64
Note 65
Bibliography 65

Chapter 5. **Lobbyists' Attitudes Toward Self-Regulation and Regulation of Lobbying in Europe** 67
Introduction 68
Lobbyist survey results 69
Public sector survey results 85
Notes 87
Bibliography 87

Chapter 6. **Conclusion: Options for Enhancing Transparency and Accountability through Self-Regulation and Regulation of Lobbying** 89
Introduction 90
Enhancing transparency and accountability through self-regulation 90
Enhancing transparency and accountability through regulation 97
Finding the appropriate mix of self-regulation and regulation of lobbying. 105
Notes 106
Bibliography 106

Annex A. **Survey Questions** 109

Annex B. **Code of Lisbon** 114

Annex C. **Code of Brussels** 117

Annex D. **Association of Professional Political Consultants Code of Conduct** 120

Annex E. **Persons and Organisations Interviewed in the Course of this Study** 123

List of tables

1.1. Number of registered lobbyists at the US Federal Government and their spending 30
5.1. Description of lobbyist survey respondents. 68
5.2. Subject to a code of conduct?. 70
5.3. Does the lobbyist code of conduct provide meaningful guidance? . . 70
5.4. Are there effective rewards or penalties imposed in the code of conduct?. 72
5.5. Have any lobbyists been penalised for violating the lobbyist code of conduct?. 72
5.6. Is competition for business between lobbyists a motive to help ensure ethical behaviour?. 73
5.7. Would transparency help alleviate problems of inappropriate influence-peddling by lobbyists?. 76
5.8. Those who believe ethics is a problem cross-tabulated with who would best manage a lobbyist transparency programme 82
5.9. Transparency useful cross-tabulated with government regulations improve transparency 85
5.10. Regulation improves transparency cross-tabulated with who would best manage a transparency programme. 85

List of figures

5.1. Is inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, a problem? . . 74
5.2. Does the public perceive a problem of inappropriate influence peddling by lobbyists?. 75
5.3. Transparency is useful in alleviating actual or perceived problems of influence-peddling. 76
5.4. Which lobbying activities, if any, should be subject to transparency and made public record? 77
5.5. Should transparency of lobbying activity be mandatory or voluntary?. 80
5.6. Who would best manage a lobbyist transparency programme? . . . 81
5.7. Regulation would improve transparency in policymaking 83
5.8. Regulation of lobbying activity would improve transparency 84
5.9. Which measures are “very effective” in curtailing inappropriate influence-peddling by lobbyists over public officials? 86

Acronyms

ABA	American Bar Association
ALL	American League of Lobbyists
ALTER-EU	Alliance for Lobbying Transparency and Ethics Regulation
APPC	Association of Professional Political Consultants, United Kingdom
BdP	*Bundesverband deutscher Pressesprecher*
CAD	Canadian dollars
CEO	Chief executive officer
CERP	European Public Relations Confederation
CIPR	Chartered Institute of Public Relations, United Kingdom
DPRG	*Deutsche Public Relations Gesellschaft*
EC	European Commission
EP	European Parliament
EPACA	European Public Affairs Consultancies' Association
ETI	European Transparency Initiative
EUR	Euro
EUPRERA	European Public Relations Education and Research Association
FAA	Federal Accountability Act, Canada
FAQ	Frequently asked questions
GAO	General Accountability Office, United States
HDL	Croatian Society of Lobbyists
HIAA	Health Insurance Association of America, United States
HLOGA	Honest Leadership and Open Government Act, United States
IPRA	International Public Relations Association
LDA	Lobbying Disclosure Act, United States
LRA	Lobbyists Registration Act, Canada
LRS	Lobbyists Registration System, United States
ORL	Office of the Registrar of Lobbyists, Canada
PASC	Public Administration Select Committee, House of Commons
PLN	Polish Zlotych
PR	Public relations
PRCA	Public Relations Consultants Association, United Kingdom

PRII	Public Relations Institute of Ireland
SEAP	Society of European Affairs Professionals
SPRA	Swedish Public Relations Association
TÜHİD	Turkish Public Relations Association
UK	United Kingdom
US	United States
USD	United States dollars

© OECD 2012

Executive Summary

Undue influence-peddling – in which special interests may exercise too much sway over public policy for self-serving purposes – may merely be a problem of perception, or a more serious problem in reality, for a democratic society. A democratic government requires legitimacy to function properly, and legitimacy comes from the trust and support of its citizenry. Any widespread perception of undue influence-peddling in government tears at the very fabric of that legitimacy.

In several democratic societies, the rise of the profession of lobbyists – especially lobbyists who are well compensated to represent special interests – has challenged at least the perception of governmental legitimacy. In some nations, such as the United Kingdom, the perception of undue influence-peddling by lobbyists has spurred professional lobbying associations to adopt self-regulatory transparency measures. The aim has been to help assure the public that policymaking is being done in the public's interest. But it is not clear whether, or under what conditions, self-regulatory transparency measures are enough to preserve democratic legitimacy. Following allegations in the UK about lobbying activities by former ministers in March 2010, the government announced that it would introduce legislation calling for a mandatory lobbyist registry. In other nations, such as the United States, the government has long imposed mandatory transparency regulations on all lobbyists.

This report examines self-regulation and regulation of the lobbying profession in an effort to rein in the perception or reality of undue influence-peddling, with a particular emphasis on experiences in Europe. The authors begin with a theoretical analysis of the nature of lobbying and its value to democratic governance. Lobbying serves a necessary and useful function in democratic governance. Even though the profession is based in the private sector, the purpose of lobbying is exclusively to influence public policies, making it unique from all other private-sector enterprises. Lobbying ultimately serves a governmental function, which cannot be said of any other business. In their role of creating a bridge between the private and the public sector, lobbyists and public officials instinctively relate according to the "reciprocity principle", in which lobbyists providing needed research, gifts or other items of value help create a sense of reciprocal obligation on behalf of appreciative public officials. This unique nature and relationship between

lobbyists and public officials alone warrants special transparency requirements not due others in the private sector.

The study documents steps taken by lobbying associations in Europe in self-regulating the profession through a series of personal interviews with leaders of the associations. These interviews unveil an extensive analysis of the history and roles lobbying associations serve in professionalising the practice of lobbying. Some of the professional lobbying associations have refined ethics codes for lobbyists from general concepts to specific behavioural guidelines in an effort to curtail inappropriate influence-peddling. These associations have also dedicated extensive resources to ethics training and education for lobbyists – a role in which the professional associations excel.

The research then quickly turns to employing the most comprehensive survey to date of attitudes among lobbyists towards self-regulation and regulation of the lobbying profession in Europe. Many of the results of this survey are surprising, such as finding a marked consensus among lobbyists that transparency of the profession is necessary and constructive, but also some sharp differences on the nature of the "best" lobbying transparency programme.

Lobbyists in Europe of all stripes – contract lobbyists, corporate lobbyists and not-for-profit lobbyists – recognise there is a damaging public perception of undue influence-peddling by the lobbying profession. As a result, more than three-fourths of surveyed lobbyists support public transparency of lobbying activities. A large majority of lobbyists support a *mandatory* system of lobbyist transparency. However, sharp differences begin to emerge within the lobbying profession over who would best manage a lobbyist transparency programme. Most notably, lobbyists who believe that inappropriate influence-peddling within the profession is a "frequent" or "occasional" problem, strongly favour a government-run lobbyist transparency programme. Lobbyists who believe that ethical violations are "not often" or "never" a problem in the profession tend to favour a lobbyist transparency programme managed by a professional association or by lobbyists themselves.

This finding alone highlights the importance of context in evaluating the merits of self-regulation *versus* regulation of the lobbying profession. Where public cynicism in the integrity of government is not so strong, carefully planned and administered efforts by lobbyists and their lobbying associations to abide by principles of transparent and honest policymaking may well be sufficient. In jurisdictions where public cynicism is more challenging, a stronger set of self-regulations and regulations may be in order to regain the trust of the citizenry. Clearly, an "appropriate model" for establishing transparency and accountability in government to a large extent must be tailor-made for the political realities of each jurisdiction and country.

Nevertheless, the study results identify several options for self-regulation and regulation of the lobbying profession that can help achieve the bottom line of reducing the appearance or reality of undue influence-peddling by lobbyists and strengthening the public's trust in government.

Measures that can enhance transparency and accountability through *self-regulation* include:

- Developing and promulgating an ethics code for lobbyists that relies less on general principles of honesty and integrity and more on specific behavioural principles that can help steer lobbyists away from unethical situations, such as restricting the flow of gifts or compensation from lobbyists to public officials.
- Providing extensive, mandatory ethics training as a condition of association membership.
- Enforcing compliance to the ethics code through an investigative panel that is reasonably independent of lobbyists and the lobbying associations.
- Establishing an association-run lobbyist registry, disclosed to the public through the Internet.

While several significant steps can be taken to strengthen self-regulation of the lobbying profession, it cannot as widely be applied and evenly balanced as government regulation. Regulation of lobbying, if carefully defined and prudently administered, can capture all those who lobby for compensation regardless of primary occupation, and leave untouched volunteer citizen efforts to shape public policy. The purpose of useful lobbying regulation is to follow the trail of money in politics.

Survey results indicate that in jurisdictions where cynicism in government is growing or already at high levels, or where lobbying is becoming a high-financed profession, government regulation of lobbying addresses many of the problems that self-regulation cannot. Regulatory measures that enhance transparency and accountability include:

- Capturing all persons who pass a minimal threshold of paid lobbying activity as "professional lobbyists" in the transparency programme, rather than only those who voluntarily join a lobbying association, by carefully defining who must register as a lobbyist and what activity must be disclosed to the public.
- Mandating registration and disclosure of professional lobbyists, their clients and certain financial activity, all records of which are to be made easily available to the public on the Internet.
- Monitoring and enforcing compliance to the lobbyist registration and disclosure requirements, as well as any other violations of lobbying laws or ethics rules, through a governmental agency that is fully independent of the

lobbying profession and demonstrably more inclined to take enforcement actions than the voluntary lobbying associations.

- Extending transparency and accountability measures beyond lobbyists to public officials as well, including restrictions on conflicts of interest, full financial disclosure of investments and properties owned by government officials, and restrictions and disclosure on the "revolving door" between the private and the public sector.

Introduction

The regulation of lobbying and undue influence-peddling, in which special interests exercise too much sway over public policy for self-serving purposes, have become major concerns for many modern liberal democracies from Europe to the Americas in recent years. Nation-states that rely on the trust and support of their citizenry for survival are awakening to a startling realisation that they may be losing both. Public confidence in how public policies are being formulated, and in whose interest, has been shaken by the global mismanagement of the financial services sector and by repeated stories of lobbyist corruption.

The financial services sector in the United States, for example, spent USD 3.4 billion on lobbying the federal government from 1998 through 2008, seeking largely to deregulate the financial industry to their advantage. In 2007 alone, the financial services sector employed a legion of 2 996 lobbyists to ply the industry's interests on Capitol Hill (Consumer Education Foundation, 2009).

The financial services industry also peddled their deregulatory interests throughout much of Europe. As European Internal Markets Commissioner Charlie McCreevy noted:

> "*What we do not need is to become captive of those with the biggest lobby budgets or the most persuasive lobbyists: We need to remember that it was many of those same lobbyists who in the past managed to convince legislators to insert clauses and provisions that contributed so much to the lax standards and mass excesses that have created the systemic risks. The taxpayer is now forced to pick up the bill.*" *(Hoedeman, 2009)*

A decade of financial deregulation contributed to the collapse of the financial services sector and created the need for a massive intercontinental "bailout programme". The public – which is now being called upon to pay for the recklessness of the financial services industry and the lack of oversight by regulators – has grown increasingly alarmed that self – serving influence of special interests has been able to penetrate so deep inside the halls of government, ignoring and undermining the interests of the citizenry.

As a result, many democracies have begun to respond to this loss of public confidence through a variety of means to rein in special interest dominance over public affairs. One such response under consideration among

some governments is "lobbying reform", including mandatory registration of lobbyists, disclosure of lobbying activity and restrictions on the interaction between lobbyists and government officials.

Actual or perceived corruption and undue influence-peddling – and the calls within government for lobbying reform – have not gone unnoticed by the lobbying community. Professional lobbying associations have taken a renewed interest in promoting ethical codes of conduct and in some cases, such as the Public Relations Institute of Ireland, providing extensive ethics training for lobbyists.

Government officials, lobbyists and the public alike recognise that undue influence-peddling is a major threat to a democratic form of government based on the principles of equality and popular representation. The question is not whether a problem exists, but what to do about it. The inclination of government is to regulate lobbying. The inclination of the lobbying profession is to assuage actual and perceived corruption through self-regulation and ethics training.

Underlying both regulation and self-regulation of the lobbying profession are the concepts of transparency and accountability. Public confidence demands some level of openness in the policymaking arena as reassurance that government is operating in the public's interest.

This research takes a close look at the efforts of the lobbying profession to address the problem of undue influence-peddling through self-regulation in Europe and compares these steps to the regulatory measures taken by some governments. The approaches of self-regulation and regulation are examined for their ability to combat undue influence-peddling and to bring integrity back to government and the profession of lobbying. This analysis proceeds first through a theoretical discussion of the essential nature of lobbying and then documents the regulatory and self-regulatory terrain among member countries of the Organisation for Economic Co-operation and Development (OECD). It is followed by a series of attitudinal surveys of professional lobbyists, lobbying associations and government officials working in the fields of transparency and corruption in the public sector. Finally, an assessment is offered as to how well self-regulation and regulation of lobbying may reach their objectives and whether they could be mutually reinforcing.

Methodology

This study provides both a theoretical and descriptive analysis of lobbying, focusing on the self-regulation and regulation of lobbying activity in Europe. The study examines the underlying principles and definitions of lobbying and describes the existing framework for self-regulation and regulation of the profession. The types of various self-regulations and regulations of lobbying are charted. Finally, a set of recommendations are

offered to help the lobbying profession and government achieve transparency and accountability in policymaking – the primary objectives of reasoned governance in democratic societies.

Three different methodologies are employed in the course of this study. The first is a theoretical analysis of the definition and key components of lobbying. This involves a discussion of the basic principles of a democratic society and the role served by lobbying in that society. The evolution of the legal definition of lobbying is provided along with an assessment of its impact on policymaking.

In order to examine the history and role of voluntary lobbying associations in professionalising the field, a series of interviews were conducted with leaders of many of the lobbying and public affairs associations in Europe. This analysis of professional lobbying associations crossed the continent, from the United Kingdom to Scandinavia, Germany and Croatia. Additional interviews[1] were conducted with selected governmental officials in Canada and the United States who are in charge of administering their respective lobbyist registries. These additional interviews reveal some insights into the costs and burdens of government-run registries.

Finally, and most importantly, two web-based surveys were conducted: a primary survey of European lobbyists' attitudes towards self-regulation and regulation of the profession; and a secondary survey of government regulators in Canada and Europe. The primary survey consisted of 16 brief multiple choice questions distributed widely among self-identified lobbyists throughout Europe. A much smaller, secondary survey polled the attitudes of public disclosure offices in national and provincial governments, such as a government's Office of Ombudsman or a lobbyist Office of Registry, if such office exists. The United States was specifically excluded from the secondary survey because the authors sought to tap the experiences of nations with newer efforts to foster transparency and to regulate corruption and undue influence-peddling.

The primary survey of lobbyist attitudes and the secondary public sector survey were provided as web-based surveys. The primary survey was conducted from 6 February to 13 February 2009. The secondary survey of the public sector was conducted from 10 February to 23 February 2009. The primary survey is attached as Annex A.

The primary survey focused exclusively on the attitudes towards self-regulation and regulation of lobbyists in Europe. But the absence of a comprehensive registration system of lobbyists in Europe renders it impossible to identify the full universe of the lobbying community for sampling purposes. The only practical means available for building an adequate sample pool is to rely on self-identified lobbyists as indicated in

their membership with a recognised lobbying or public relations professional association or civic organisation. There are many such associations and organisations at both the national, regional, supranational and international levels that publish some or all of their membership. When e-mail contact addresses could be identified for these self-identified lobbyists, they were included in the sample pool.[2]

The rate of response to the primary survey was striking. The authors were able to mine the e-mail addresses of about 1 005 self-identified lobbyists and received a surprisingly large number of full responses from 189 European lobbyists, amounting to an overall response rate of 18.8%. This is the largest response yet for any previous survey research on lobbyists' attitudes.

As a result of the problem in identifying the sample pool of lobbyists in Europe, there have been rare such undertakings. The few that have been conducted relied on a small number of responses. A study by Raj Chari, John Hogan and Gary Murphy, for example, received about 80 responses from lobbyists surveyed, for a 6.5% response rate. A follow-up study received a similarly low response rate. An earlier survey of both European and American lobbyists towards regulatory reform by one of the authors of this report also received relatively few responses, from 74 lobbyists representing a response rate of 14.4% (Chari *et al.*, 2007; Chari *et al.*, 2008; Holman, 2009).

Notes

1. See Annex E, "Persons and organisations interviewed in the course of this study", for a listing of these interviews.
2. See Annex E for a listing of organisations tapped for building a sample pool for the primary survey.

Bibliography

Chari, Raj, John Hogan and Gary Murphy (2007), "Regulating Lobbyists: A Comparative Analysis of the United States, Canada, Germany and the European Union", *The Political Quarterly*, Vol. 78, No. 3, pp. 422-438.

Chari, Raj, John Hogan and Gary Murphy (2008), "Next Door They have Regulation, But Not Here…", *Canadian Political Science Review*, Vol. 2, No. 3, pp. 125-151.

Consumer Education Foundation (2009), "Sold Out: How Wall Street and Washington Betrayed America", Los Angeles, *www.wallstreetwatch.org/reports/sold_out.pdf*.

Hoedeman, Olivier (2009), "Secrecy Prevails Among EU Lobbies", *Brussels Sunshine*, Brussels, *http://blog.brusselssunshine.eu/2009/03/secrecy-prevails-among-eu-banking.html*.

Holman, Craig (2009), "Lobbying Reform in the United States and the European Union: Progress on Two Continents", in Conor McGrath ed., *Interest Groups and Lobbyingin United States and Comparative Perspectives: Essays in Ethics, Institutional Pluralism, Regulation, and Management*, Edwin Mellen Press, Lewiston.

© OECD 2012

Chapter 1

Private Interests, Public Conduct: The Essence of Lobbying

This chapter shows how the lobbying profession arrived at a crossroads. Lobbying has undeniable impact on the democratic principles of equality, accountability, informed consent and participation. Lobbyists provide expertise and insights to government officials, and translate information from scientific data to public opinions into understandable terms. Lobbying can also serve well-financed special interests with adverse impact on public policies. Research shows that the public's trust in government in general, and lobbying in particular, has fallen to critical lows in many countries. When asked to rate the honesty and ethical standards of people in various professions in a 2008 Gallup poll, lobbyists ranked the lowest in public integrity (5%) along with telemarketers and used car salesmen.

Recognising the complexity of the lobbying phenomenon, this chapter focuses on the essence of lobbying and discusses the advantages of an objective and empirical definition of lobbying and lobbyists. It also highlights the connection between lobbying and the behavioural phenomenon of the "reciprocity principle", and the cost/benefits of lobbying practices. This chapter explains how valuable the return can be, for example USD 1.2 billion in one case – a ratio of about 1:100. As a result, the regulation of lobbying and undue influence-peddling has become a major concern for both governments and the lobbying profession.

Introduction

A democratic system of government rests on several principles of political legitimacy. One principle is a certain degree of political equality among the citizenry. If one class of citizens is much more powerful and influential than others, then the democratic system is in peril. A second principle is government accountability. Those who govern must be attentive to the needs of the citizens and accountable to the public at large. A third principle is the informed consent of the governed. For citizens to provide their informed consent there must be a significant level of transparency in government. Just as important, citizens must have a reasonable opportunity to participate in government to have their voices heard. When these principles of equality, accountability, informed consent and participation are muted or lost, the legitimacy of the government will soon fail.

The profession of lobbying bears substantial weight on each of these pillars of democratic legitimacy. When exercised properly, lobbying can strengthen accountability in government and the participation of citizens in policymaking. But when lobbying becomes an excessively elite profession, exclusively serving well-financed special interests, it can become quite damaging to the citizen's perception of political legitimacy.

Definitions of "lobbying"

For a term that is so well known and so frequently invoked, one would expect a consensus behind what the term "lobbying" means. As noted in Chapter 1, there is no such consensus. Political scientists Frank Baumgartner and Beth Leech bemuse in their review of the literature on lobbying that the "word 'lobbying' has seldom been used the same way twice by those studying the topic". (Baumgartner and Leech, 1998 at 33)

Some practitioners in the lobbying profession view lobbying in its most sweeping and elemental forms, as acting to influence the decisions of others, whether personal, business or governmental (Bouetiez, 2006). Some academic scholars also offer a broad, philosophical definition of lobbying, but focusing on its governmental function. Lester Milbrath, for example, defines lobbying as "the stimulation and transmission of communications, by someone other than a citizen acting on his own behalf, directed to a governmental decision-maker with the hope of influencing his decision". (Milbrath, 1963 at 7)

Nonetheless, a clear definition can be elusive. Lobbying can be an effort to influence different levels of government (local, national, regional or transnational) or different branches of government (judicial, legislative or executive). It can be carried on by many different actors with very different objectives, such as corporate lobbyists, contract lobbyists, not-for-profit lobbyists, public relations professionals and even governments attempting to influence each other. Some lobbyists may carry out lobbying activities as incidental to other activities, such as lawyers pursuing the legal interests of their clients or political activists attempting to influence elections. Lobbying can take the form of "direct lobbying" contacts with government officials or as indirect appeals to the general public to influence governmental decisions, generally known as "grassroots lobbying".

Recognising the complexity of the concept of lobbying is essential to the debate about rules and regulation of the profession. The definition will determine who, when and what is subject to any transparency or regulatory regime. Since this chapter compares systems of self-regulation of lobbyists with regulatory regimes across countries, it is necessary to further delve into definitions.

One general definition of "lobbying" provided by the Public Relations Institute of Ireland, Chartered Institute of Public Relations and the Public Relations Consultants Association, and which has found considerable support within the institutions of the European Union, is "the specific efforts to influence public decision making either by pressing for change in policy or seeking to prevent such change. It consists of representations to any public officeholder on any aspect of policy, or any measure implementing that policy, or any matter being considered, or which is likely to be considered by a public body". (PRII, 2009a)

This is an adequate definition for self-regulatory regimes of the profession, since self-regulation essentially relies on voluntary decisions to join a professional lobbying association or to voluntarily register as a lobbyist with any other entity. The European Commission, with its voluntary lobbyist registry, provides an equally general definition of lobbying as "all activities carried out with the objective of influencing the policy formation and decision-making process of the European institutions" (European Commission, 2006 at 1). The European Commission's definition, though simpler, is in fact more embracing in that it also captures "grassroots lobbying" activity – appeals to the general public to contact governmental officials for the purposes of influencing public policy. Either definition is fine under a voluntary system of self-regulation, in which the primary objective of a definition of lobbying is to focus on activity designed to affect public policies.

However, when it comes to establishing a government-run transparency programme or regulatory regime, especially if the programme is mandatory, clarity of definitions will determine the success or failure of the regulatory programme. It is absolutely essential to make the definition of "lobbying" and "lobbyist" as objective and empirical as possible.

Recent history in the United States reveals how an ambiguous definition can lead to unintended consequences. Despite the fact that the US Congress as early as 1946 intended to set up a mandatory registry of lobbyists at the federal level, an ambiguous definition of "lobbying" left the decision to register a subjective, voluntary choice of lobbyists for nearly 50 years. The early American Federal Regulation of Lobbying Act of 1946 required anyone whose "principal purpose" was to influence the passage or defeat of legislation in Congress to register with the Clerk of the House and the Secretary of the Senate and to file quarterly financial reports (Holman, 2008).

The greatest problem with the early law was that it relied upon a subjective threshold in determining who had to register and provided an ambiguous definition of what information they had to declare. Most lobbyists felt that their primary purpose was something other than influencing Congress – their primary purpose was to practice law, conduct business, or serve some non-lobbying function. Furthermore, a study by *Congressional Quarterly* found that the "Act's vagueness in 1946 on what constitutes lobbying spending permits pressure groups to decide for themselves what they shall report as lobbying expenditures". (CQ Weekly Report, 1960 at 407)

As a result, the US General Accounting Office (GAO) in 1991 found that about 10 000 of the 13 500 individuals and organisations listed as key influence peddlers on Capitol Hill in a book, entitled Directory of Washington Representatives, were not registered as lobbyists. Yet, of those listed in the book, a sample survey found that 75% had indicated they contacted both members of Congress and their staff, dealt with legislation, and sought to influence Congress or the Executive Branch. The situation in the United States would not improve until the definitions of "lobbying" and "lobbyists" were made much more quantifiable under the new Lobbying Disclosure Act of 1995 (LDA).

The Canadian Lobbying Act followed suit by refining the definition of "lobbying" for Canada's mandatory lobbyist registration programme. Though the language in the Canadian Lobbying Act itself is fairly ambiguous, implementing regulations have been adopted to provide objective standards and thresholds for when a person qualifies as a lobbyist and must register. Several thresholds must be met in order for a person to be classified as a lobbyist. Someone is a lobbyist in Canada if that person:

- Communicates with designated public office holders (who are listed in the regulations) for the purpose of influencing public policy.

Box 1.1. **Definition of lobbyist and lobbying in the United States**

In the United Stated the LDA of 1995 provides the following definition of "**lobbyist**":

- Makes more than one lobbying contact with a covered official.
- Receives compensation of USD 2 500 for a contract lobbyist, or expends USD 10 000 for a lobbying organisation, within three months.
- Spends at least 20% of work time per client or employer on lobbying activities.

"**Lobbying activities**" are defined as "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and co-ordination with the lobbying activities of others".

Source: US LDA of 1995.

- Receives compensation or a salary to make such communications.
- Spends 20% or more of employment duties conducting research and preparation for the purpose of facilitating lobbying communications.

An additional note on definition: the last clause of the definition is critical in addressing the "lawyer problem". Lawyers have a very legitimate stake in protecting lawyer-client confidentiality when it comes to regular litigation or advice. But, under the Canadian Act or the LDA, if a lawyer is conducting substantial lobbying activity on behalf of any single client, the lawyer must declare the lobbying activity on behalf of that client only. The 20% threshold is *per client*. If a lawyer, for example, has ten clients, nine of whom hired the lawyer to handle their divorces, but one of whom hired the lawyer to lobby, and pays the lawyer a certain amount of compensation for lobbying activity, then the lawyer must register and declare the lobbying activity done on behalf of that single client. This definition both protects lawyer-client confidentiality in the realm of the legal profession, and provides transparency of lobbying activity performed by the lawyer in the capacity as a lobbyist.[1]

Several of the regulatory regimes in Europe and elsewhere lack such quantifiable definitions of lobbying and thus face serious challenges in implementation. In Lithuania, for example, a general definition of lobbying leaves the decision to register largely discretionary, resulting in only 13 registrants in 2007. In Australia, as well as Lithuania and Poland, the definition of lobbyist only includes those who are hired by a third party to

lobby, and thus excludes major segments of the lobbying community who work "in house" at a corporation or not-for-profit organisation. [The European regulatory systems are addressed briefly below under "Regulatory Regimes in Europe".]

Self-regulatory regimes also rely on clear definitions of lobbying in order to provide guidance to the profession. But the sheer success or failure of mandatory systems to achieve stated objectives depends entirely on very sharp and, preferably, quantifiable definitions to reduce discretion. The more objective the definition, the more it can achieve intended consequences.

Lobbying is at a crossroads

The profession of lobbying today is at a crossroads when it comes to supporting or undermining political legitimacy. While lobbying continues to be a necessary and important part of democratic governance, communicating to the government the concerns of the governed, the profession in many advanced democratic societies has become so closely identified with wealthy special interests that the public's trust in government in general, and lobbyists in particular, has fallen to dangerous lows. Survey after survey shows that many citizens widely believe governments are run by a few special interests and that politicians and lobbyists tend to be untrustworthy.[2]

On average, three out of four European citizens surveyed in 2007 agreed that corruption in government is a major problem (75%) (European Commission, 2008). This is slightly higher than in 2005 when 72% felt corruption was a major problem. This viewpoint varies from country to country – with citizens in Greece, Portugal, Hungary and Romania the most critical, and citizens in Denmark, Finland and the Netherlands the least – but the numbers generally have been rising.

A recent survey of trust in government in the United Kingdom drives home the concern that some special interest groups wield excessive control over national government (House of Commons, 2009). Particularly alarming to some surveyed is the practice of special interest groups and lobbying firms hiring people with personal contacts in the heart of government, such as former members of Parliament, giving the special interests extraordinary influence. In a separate survey, citizens in the United Kingdom believe that local Members of Parliament and councillors, civil servants and government ministers were less likely to tell the truth than family doctors, judges, and police officers. In fact, according to the poll, television news journalists were trusted just as much as a respondent's local Member of Parliament (BMRB, 2008).

An earlier survey in Poland showed that 35% of Polish citizens and 19% "of parliamentarians believed that bribery could be successful in effecting a change in the law" (McGrath, 2005 at 25).

The amount of influence certain groups have over governmental officials is also a source of public concern. In a survey published by the Joseph Rowntree Reform Trust, 2 231 people were asked how much influence should be appropriate for particular special interest groups, as opposed to how much influence those groups actually wield. Six per cent of those surveyed believe that large companies should have a "great deal of power…over government policies", but when asked how much influence large companies actually have, 29% answered that they had a great deal of influence (Joseph Rowntree Reform Trust, 2006).

Of course, attitudes toward government corruption are affected by many different factors, but the role of professional lobbyists and financially powerful special interests is clearly one such factor. When asked to rate the honesty and ethical standards of people in various professions in a 2008 Gallup poll, lobbyists ranked the lowest in public integrity (5%) along with telemarketers and used car salesmen (Jones, 2008). European lobbyists in turn tend to view civil society and the media as too powerful or untrustworthy (European Centre for Public Affairs, 2008).

A sharp and damaging ethical schism has emerged in many countries between the lobbying profession and the public.

"Good" *versus* "bad" lobbying

Despite the popular association of lobbyists with corruption, it would be very difficult for government officials to conduct the public's business without lobbyists. As discussed in Chapter 2, lobbyists serve an invaluable function in democratic governance. They provide useful information and expertise to government officials on any given matter. They represent interests that may be adversely and unintentionally impacted by a poorly deliberated public policy. And they translate into understandable terms everything from scientific data to public opinions. Just as importantly, lobbyists then inform their employers and clients of the actions of government officials, helping hold the government accountable and assisting to effectuate compliance with the laws.

This dichotomy in the role of lobbyists in democratic governance has prompted some observers to distinguish "good lobbying" from "bad lobbying". American journalist Karl Schriftgiesser once proposed how to distinguish the two:

> "*The basic test of the goodness of lobbying is truth…. Lobbying that is not for truth is bad… [while] lobbying on behalf of the rights of all men as individuals under fair competition to choose, to earn, to own, is ethical. Lobbying against such rights is bad…*" *(Schriftgiesser, 1951 at 230)*.

The Woodstock Theological Center attempted to refine Schriftgiesser's simplistic view with a lobbyist code of conduct (2002). In its two-year project the Woodstock Center pulled together theologians, academics and practitioners to lay down seven principles of ethical behaviour for lobbyists. These principles are:

- The lobbyist-client relationship must be based on candour and mutual respect.
- The pursuit of lobbying must take into account the common good, not merely a particular client's interest narrowly considered.
- A policymaker is entitled to expect candid disclosure from the lobbyist, including accurate and reliable information about the identity of the client and the nature and implications of the issues.
- In dealing with other shapers of public opinion, the lobbyist may not conceal or misrepresent the identity of the client or other pertinent facts.
- The lobbyist must avoid conflicts of interest.
- Certain tactics are inappropriate in pursuing a lobbyist agreement.
- The lobbyist has an obligation to promote the integrity of the lobbying profession and public understanding of the lobbying process.

According to the Woodstock Center:

"*If the result of the public policy, for example, is that it supports racial discrimination, or unduly burdens the poor, or leaves children unprotected, or violates civil liberties, or creates unjust distribution of social benefits and burdens, or threatens the environment, then we know it is wrong and must be opposed*". *(2002 at 20)*

However noble, these attempts to distinguish "good lobbying" from "bad lobbying" are fraught with normative judgment and may not serve as useful guidance in all, or even most, real-world situations. Few lobbyists, let alone their employers or clients, would agree on what constitutes the "common good" (Susman, 2008).

Nevertheless, inherent in the *process* of lobbying, as opposed to its outcome, is a principle that can help guide appropriate lobbying behaviour – the fact that lobbying activity is a bridge between private interests and public conduct. Unlike all other business or professional activity, the exclusive purpose of lobbying is to affect public decisions of government. Lobbying transcends the private sphere of all other business and professional activity and steps squarely into the public sphere.

Other businesses and professions make decisions that usually affect a small or select group of private individuals – buying or selling commodities among consumers or trading services for a willing customer. Lobbying, on the

other hand, is not just a private matter. Lobbyists are indeed hired to represent a private special interest or client, but they do so before the public sector. The public policy decisions lobbyists attempt to sway impact, in one way or another, the public generally. A government contract secured by a lobbyist for a private business is paid for by the public. A tax cut engineered by a lobbyist for a paying client affects the size of the public treasury and impacts other public policies. A change in the law won by a lobbyist on behalf of a private party governs all citizens.

Lobbyists may represent the private sector but they inevitably impact the public sector. This cannot be said of any other business or profession.

Cost/benefit analysis of lobbying

It is perhaps impossible to develop an empirical measure of the value returned to employers and clients for each dollar spent on lobbying. But evidence suggests the value returned is indeed substantial.

The simple fact that businesses continue to invest heavily in lobbying indicates that the business community sees a net profit in lobbying government. The net profit may be as straightforward as a lucrative government contract or as subtle as an alteration of the tax code or a modification of environmental protection laws. In the United States, where lobbyist financial activity is a matter of public record, businesses, organisations and individuals spent USD 3.2 billion in 2008 lobbying the federal government, up 13% from the previous year despite the onset of a serious economic recession.[3] Between 1998 and 2011, lobbying spending more than doubled, increasing from USD 1.44 billion to USD 3.30 billion (Center for Responsive Politics, 2012)

Leading the pack of big lobbying spenders in the United States is the financial services industry. Over the decade of 1998 through 2008, the finance sector spent about USD 3.4 billion on lobbying the federal government, the most of any sector. In the last year alone, financial services spent nearly a half billion dollars on lobbying, a figure that will most certainly be eclipsed as the sector lobbies intensely to shape the massive financial bailout and economic stimulus programmes of the federal government. These data do not include expenditures made by the industry on "grassroots lobbying".

The financial bailout programme of the federal government is revealing of the effectiveness of lobbying. In an attempt to rescue banks and private lenders from their reckless business practices, the federal government has infused more than USD 700 billion into the financial services and automotive sectors. These same banks and companies spent USD 77 million on lobbying the government during the early administration of the bailout programme. They spent another USD 37 million on campaign contributions in 2008. That amounts to a 258 449% return on their investment (Center for Responsive Politics, 2009; Public Citizen, 2009).[4]

Table 1.1. **Number of registered lobbyists at the US Federal Government and their spending**

Year	USD Billions	Number of lobbyists[1]
1998	1.44	10 408
1999	1.44	12 936
2000	1.57	12 536
2001	1.64	11 834
2002	1.82	12 120
2003	2.05	12 917
2004	2.18	13 169
2005	2.42	14 070
2006	2.62	14 518
2007	2.86	14 847
2008	3.30	14 228
2009	3.50	13 789
2010	3.55	12 962
2011	3.33	12 659

1. The number of registered lobbyists has been modified by the Secretary of the Senate for each year to exclude registered lobbyists who file no financial activity reports. As a result, the previously high record of about 35 000 registered lobbyists in the United States has been scaled down to the more accurate number of active registered lobbyists recorded here.

Source: Center for Responsive Politics, *http://www.opensecrets.org/lobby/index.php*.

That figure on a return on investment could well be misleading because it is difficult to determine whether the financial services sector got what it wanted or whether the sector would have received the bailout funds regardless of lobbying activity.

A more specific indicator of the rate of return of lobbying expenditures comes from a single lobbying firm in the United States. The Carmen Group took in USD 11 million in fees in 2004, and produced USD 1.2 billion in government contracts and assistance to its clients – a ratio of about 1:100. The pay-off is large but fairly typical, noted Carmen's president David Carmen (Birnbaum, 2006).

Reciprocity principle

The pay-off of lobbying may be great, but the pay-off is not necessarily an indication of undue influence-peddling. Money spent on lobbying usually can be viewed as an opportunity or educational expenditure – money spent to introduce the company to government officials and to teach these officials of the particular situation of the company and the costs/benefits of a particular public policy or government contract. Even though such benefits clearly favour those who have the money to spend on lobbying to the disadvantage of those who do not, this is not corruption *per se*.

Lobbying activity moves into the category of corrupt practices when something of value to the governmental official is exchanged for official

favours. The most blatant form of corruption is the outright bribe, which is illegal in all advanced democracies. But undue influence-peddling by some lobbyists is often far more subtle and not necessarily illegal. Undue influence-peddling frequently follows what is known as the "reciprocity principle" (Susman, 2008).

More than 50 years ago, US Senator Paul Douglas described the essence of undue influence-peddling through reciprocity:

> "*Today the corruption of public officials by private interests takes a more subtle form. The enticer does not generally pay money directly to the public representative. He tries instead by a series of favors to put the public official under such a feeling of personal obligation that the latter gradually loses his sense of mission to the public and comes to feel that his first loyalties are to his private benefactors and patrons. What happens is a gradual shifting of a man's loyalties from the community to those who have been doing him favors. His final decisions are, therefore, made in response to his private friendships and loyalties rather than to the public good. Throughout this whole process, the official will claim – and may indeed believe – that there is no causal connection between the favors he has received and the decisions which he makes*" *(Douglas, 1952 at 44)*.

The reciprocity principle has its origins in human nature and has been confirmed by a variety of clinical studies. In a seminal 1971 experiment, psychologist Dennis Regan conducted a series of laboratory studies in which subjects were asked to rate the aesthetics of paintings in what they thought was an art appreciation study. Sometimes the subject would be given a soft drink during breaks; other times not. Sometimes the soft drink was offered by a likable confederate; other times it was offered by a rude one. After each trial, the confederate then tried to sell raffle tickets to the subject. Subjects who received a soft drink bought more raffle tickets than those who did not receive a drink. Even subjects who were offered the drink by a rude confederate tended to buy more raffle tickets. A sense of reciprocal obligation was influencing the subjects' behaviour regardless whether they found the giver likeable (Susman, 2008).

Psychologist Robert Cialdini examined this study and others like it. Cialdini noted that for "those who owed a favor, it made no difference whether they liked him or not; they felt a sense of obligation to repay him, and they did" (Susman, 2008 at 16). Cialdini further observed that a "person can trigger a feeling of indebtedness by doing us an uninvited favor". Additionally, a "small initial favor can produce a sense of obligation to agree to a substantially larger return favor". (Cialdini, 2001 at 23)

Reciprocity frequently is at play in lobbying activity. Lobbyists are fully aware of the value of creating a sense of obligation with a public official. Lobbyists are quick to pick up the tab at lunch or provide public officials with

various gifts, small and large. Hosting a reception to honour a public official is an immensely valuable lobbying tool. Even providing needed research, advice or other types of favours can bolster the sense of reciprocity. In several democratic societies, making campaign contributions to a candidate or political party is perhaps the most valuable gift a lobbyist can give to a public official.

Notes

1. The 20% per cent threshold triggering lobbying registration for lawyers and others was devised by Peter Levine, former staffer of Sen. Carl Levin (D-Mich.).
2. See, for example, Joseph Rowntree Reform Trust, (2006) and BMRB Social Research, (2008).
3. Lobbying in the United States occurs at state and local levels as well as the federal level. To the extent we address lobbying in the United States in this report, we focus on the federal level.
4. The lobbying expenditures and campaign contributions by the recipients of the bailout program continue unabated into 2009. Eight major banks – Citigroup Inc., JPMorgan Chase and Co, Bank of America Corp., Goldman Sachs, Morgan Stanley, Wells Fargo and Co., State Street Corp. and Bank of New York Mellon Corp. – spent a total of USD 12.4 million on lobbying in the first half of the year. Lobbyists and political action committees of these businesses made another USD 6 million in campaign contributions and hosted at least 70 fundraising events for members of Congress in the first half of 2009.

Bibliography

Baumgartner, F. and B. Leech (1998), *Basic Interests: The Importance of Groups in Politics and Political Science*, Princeton University Press, Princeton.

BMRB Social Research (2008), "Survey of Public Attitudes Toward Conduct in Public Life", Committee on Standards of Public Life, London.

Bouetiez, Gael du (2006), "Will the ETI Deliver?" Constitutional Committee of the European Parliament, Brussels.

Birnbaum, Jeffrey (2006) "Lobbyists Continue to Thrive", *Washington Post*, 14 February 2006.

Center for Responsive Politics (2009), "TARP Recipients Paid Out USD 114 Million for Politicking Last Year", *Capital Eye*, 4 February 2009.

Center for Responsive Politics (2012), *www.opensecrets.org*.

Cialdini, Robert (2001), *Influence: Science and Practice*, Allyn and Bacon, Boston.

Consumer Education Foundation (2009), "Sold Out: How Wall Street and Washington Betrayed America", Los Angeles, *www.wallstreetwatch.org/reports/sold_out.pdf*.

CQ Weekly Report (1960), Congressional Quarterly, Washington DC, 11 March 1960.

Dos Santos, Luiz Alberto (2007), "Percepções dos Políticos e Burocratas Sobre o Lobby e Sua Regulamentação no Brasil", [Perceptions of politicians and bureaucrats on lobbying and its regulation in Brazil], unpublished paper.

Dos Santos, Luiz Alberto, da Costa Paulo Mauricio T. (2010) *Addressing corruption and transparency across Latin America: The lobby regulation initiatives* (forthcoming)

Douglas, Paul (1952), *Ethics in Government*, Harvard University Press, Cambridge.

European Centre for Public Affairs (2008), "Survey: EU lobbyists Wary of Media, Civil Society", *EurActiv*, 10 March 2008.

European Commission (2008), "The Attitudes of Europeans Toward Corruption", *Eurobarometer*, No. 291, April 2008.

European Commission (2006), *Green Paper on European Transparency Initiative*, COM, Brussels.

Jones, Jeffrey (2008), "Lobbyists Debut at Bottom of Honesty and Ethics List", *Gallup Poll*, 7-9 November 2008, *www.gallup.com/poll/103123/lobbyists-edebut-ebottom-ehonesty-eethics-elist.aspx*.

Hoedeman, Olivier (2009), "Secrecy Prevails Among EU Lobbies", *Brussels Sunshine*, Brussels, *http://blog.brusselssunshine.eu/2009/03/secrecy-prevails-among-eu-banking.html*.

Holman, Craig (2009), "Lobbying Reform in the United States and the European Union: Progress on Two Continents", in Conor McGrath ed., *Interest Groups and Lobbyingin United States and Comparative Perspectives: Essays in Ethics, Institutional Pluralism, Regulation, and Management*, Edwin Mellen Press, Lewiston.

Holman, Craig (2008), "Making the US Lobbying Disclosure Act Work as Intended: Implications for the European Transparency Initiative", Public Citizen, Washington DC. *www.cleanupwashington.org/documents/makingldawork.pdf*.

House of Commons (2009), "Lobbying: Access and Influence in Whitehall", Report of the Public Administration Select Committee, London.

Joseph Rowntree Reform Trust (2006), "State of the Nation", ICM Research, York, *www.jrrt.org.uk/%20uploads/SoN%202006%20summary%20of%20findings.pdf*.

McGrath, Conor (2008) "*The Development and Regulation of Lobbying in the New Member States of the European Union*", Journal of Public Affairs, Vol. 8, Issue 1, pp. 15-32.

Milbrath, Lester (1963), *The Washington Lobbyist*, Rand McNally: Chicago.

Organisation for Economic Co-operation and Development (2007), "OECD Guidelines for Managing Conflict of Interest in the Public Service: Report on Implementation", OECD, Paris, *www.oecd.org/dataoecd/18/35/39691164.pdf*.

Public Citizen (2009), "Bank-Rolling Congress", Washington DC, *www.citizen.org/documents/Bank-erolling_Congress.pdf*.

Public Relations Institute of Ireland (2009a), "*PRII Positions Papers: Regulation of Lobbying*", *www.prii.ie/show_content.aspx?idcategory=1&idsubcategory=2*.

Schriftgiesser, Karl (1951), *The Lobbyists: The Art and Business of Influencing Lawmakers*, Little, Brown, and Co., Boston.

Susman, Thomas (2006), "Lobbying in the 21st Century: Reciprocity and the Need for Reform", *Administrative Law Review*, Vol. 58, No. 4. pp. 737-752.

Susman, Thomas (2008), "Private Ethics, Public Conduct: An Essay on Ethical Lobbying, Campaign Contributions, Reciprocity, and the Public Good", *Stanford Law and Policy Review*, Vol. 19, No. 1, pp. 10-22.

Woodstock Theological Center (2002), *The Ethics of Lobbying: Organized Interests, Political Power and the Common Good*, Georgetown University Press, Washington DC.

© OECD 2012

Chapter 2

The Role of Professional Lobbying Associations in Self-Regulation of Lobbying

European professional lobbying associations have been instrumental in educating and training lobbyists and promoting a code of ethics for the lobbying profession. This chapter presents five case studies on the following professional lobbying associations which have played a significant role in the self-regulation of lobbying:

- *The Public Relations Institute of Ireland:*

  Founded in 1953, with just under 1 000 members, it is the leading public relations association in Ireland and has been a strong promoter of integrity standards for the lobbying profession.
- *The Swedish Public Relations Association:*

  The second largest national public relations association in Europe with more than 5 000 members, it conducts extensive research and provides training to lobbyists on issues relating to the conduct of lobbying and public relations.
- *The Croatian Society of Lobbyists:*

  One of the youngest professional lobbying associations in Europe, it has enacted its own Code of Ethics and disciplinary procedure and has been active in promoting not only self-regulation, but also government regulation.
- *The UK Chartered Institute of Public Relations, the Association of Professional Political Consultants and the Public Relations Consultants Association:*

  With collectively more than 9 000 individual members and more than 220 organisational members, they constitute the three premier lobbying associations in the UK with ample experience in education, training and self-regulation of the public relations and lobbying profession.
- *The Society of European Affairs Professionals:*

  The largest lobbying association in Brussels, it focuses on developing professional standards for lobbying the European Union institutions and was influential in the adoption of the European Transparency Initiative.

Introduction

Throughout most of Europe, professional associations in the fields of public affairs and lobbying are abundant in number and prolific in activity. These associations are prevalent at the national, regional and global levels, frequently overlapping and complementing each other's work. National associations, such as the Public Relations Institute of Ireland (PRII) or the Swedish Public Relations Association (SPRA), are active forces in training lobbyists and promoting ethical standards of behaviour. These national associations, in turn, participate in regional associations, such as the European Public Relations Confederation (CERP), where they share experiences and knowledge through conferences, presentations and studies. Several of these associations stretch well beyond Europe and are transnational in nature, such as the Global Alliance. This network of professional associations helps ensure that vast numbers of lobbyists and political consultants in Europe are tied to, and familiar with, the practices and norms of their colleagues.

The European experience stands in stark contrast to the United States, where few such professional associations for lobbyists exist at the state and federal levels. Only one association, the American League of Lobbyists (ALL), enjoys much recognition. But even ALL has a fairly small membership of fewer than 900 members out of an estimated total of at least 60 000 state and federal registered lobbyists.[1] Few of these members participate in the activities of ALL.

Much of the difference between the more robust professional associations in Europe and more sanguine associations in the United States can be attributed to the different regulatory environments. A general absence of regulatory constraints makes self-regulatory measures all the more important.

In Europe, the associations usually encompass far more than the lobbying profession. They almost always are dominated by other public relations professionals. As discussed earlier, the lack of a clear and uniform definition of "lobbyist" from country to country renders precise numerical comparisons impossible, but public relations professionals significantly outnumber their lobbyist colleagues within most of these associations. Nonetheless, public affairs specialists who communicate with government officials and attempt to influence public policy are well represented in professional public relations associations.

A small number of European associations are tailored specifically to the lobbying profession, especially those based in Brussels. The Society of European

Affairs Professionals (SEAP) and the European Public Affairs Consultancies' Association (EPACA) are comprised primarily of those attempting to influence official policies of the European Union's governing bodies. In the United Kingdom, the Association of Professional Political Consultants is heavily composed of the lobbying profession as well as other political operatives. The Chartered Institute of Public Relations in the UK has a specific division of the association dedicated to lobbyists, the Government Affairs Group.

There are dozens of active professional associations across Europe that address lobbying activity.[2] Many of these associations are the subject of this research. The associations analysed in this research are by no means an exhaustive list of professional associations that encompass the lobbying profession in Europe.

Several of these associations play a particularly active role in educating and training lobbyists and promoting a code of ethics for the lobbying profession. At least two professional associations – the Association of Professional Political Consultants and the Public Relations Consultants Association, both based in the United Kingdom – maintain their own lobbyist registries, made available to the public. Case studies of selected associations are discussed in greater detail below.

Public Relations Institute of Ireland

The Public Relations Institute of Ireland (PRII), based in Dublin, was founded in 1953. PRII is the leading public relations association in Ireland. It has just under 1 000 individual members drawn from public relations and communications professionals as well as the lobbying profession. These individual members come from dozens of different public relations and lobbying firms. The association is affiliated with the European Public Relations Confederation as well as the Global Alliance.

The primary purpose of PRII is education and training on the most effective techniques of public relations and lobbying. The institute offers extensive training seminars and courses, and even offers a diploma for graduation from its own school. Between March and June of 2009, for example, PRII provided its members with ten different workshops, ranging from "media interview skills" to "advocacy techniques for the not-for-profit sector". It hosts an ongoing series of educational forums, luncheons and conferences.

In addition, the institute offers its own diploma programme. The programme consists of seven modules the student must complete:

- Public Relations in Practice;
- Media Relations and Media Writing;
- The Professional Environment;

- The Business and Government Environment;
- Specialised Areas of Public Relations;
- Advanced PR Writing; and
- Public Relations Campaigns and Presentation Skills.

PRII also is a strong promoter of ethical standards in the public relations field generally and the lobbying profession specifically. All members of PRII must subscribe to the ethics Code of Lisbon, Code of Athens and the PRII Code of Practice for Public Affairs and Lobbying with their signature (Davis, 2009). The Diploma programme as well as various workshops address the significance of these codes and instruct students on proper lobbying conduct. The courses are not mandatory, but approximately 20% of PRII's members go through the Diploma programme. Many non-members also take the classes.

PRII's own code of conduct for lobbyists was promulgated in 2003, following a controversy over improper influence-peddling by one of the institute's members. That member voluntarily resigned from the Institute and left the profession (Davis, 2009).

The new PRII Code of Conduct recognises that lobbying is a valuable profession for the functioning of democracy. The preamble reads in part:

> *The Public Relations Institute of Ireland (PRII) believes that professional public affairs practice and lobbying are proper, legitimate and important activities, which ensure an open two-way communication between national and local government (including the Oireachtas, the entire public service, as well as other bodies funded wholly or mainly from public funds), the institutions of the European Union (EU) and bodies whose activities and interests are governed, regulated, impacted or otherwise influenced by such institutions. Furthermore, PRII believes that the existence of a defined code for the practice of public affairs and lobbying will serve to enhance the integrity of the democratic process.*

In addition to mandating lobbyists to adhere to general principles of honesty, accuracy and compliance with all local, national and EU laws and regulations, the code also requires that lobbyists are to "actively disclose, at the earliest possible opportunity, the identity of clients on whose behalf they are making representations on matters of public policy or decision-making…" The code further prohibits members of any parliament or legislative assembly, including the European Parliament, from simultaneously serving as a lobbyist. Members of the national government, including full-time advisors to the national government, must not provide lobbying services in exchange for compensation.

Violations of the code are punishable under the regular disciplinary procedures of PRII. Anyone inside or outside the institute may file a complaint against a member for breach of the lobbying code of conduct. The complaint would be handled in a formal two-stage process. First, an investigative

committee is established to determine whether the complaint is without merit. If the investigative committee deems the complaint not to be frivolous, a formal "dispute committee" would then be created and empowered to conduct a trial. The dispute committee consists of one non-member, such as the head of the Chamber of Commerce, and two members of the institute. The accused may be represented by a lawyer. If the dispute committee rules against the accused, sanctions can range from reprimand to expulsion from PRII.

Since the initial controversy in 2003, there have been no complaints filed against members so far and no investigations for violations of the code (Davis, 2009).

In the last few years, PRII has not been bashful to call for a government registry of lobbyists, though the institute believes that other regulations of lobbying "would be premature at this time" (PRII, 2009). As early as 2006, Pat Montague, former president of PRII, said that it was in the interest of democracy that there should be greater openness, transparency and accountability about those who conducted lobbying and about those on whose behalf they were seeking to influence decision-makers (Sunday Business Post, 2006).

This view was cautiously affirmed by the current executive director of PRII. "The issue of regulation *versus* self-regulation is a complex question", said Gerry Davis of PRII. Generally the institute favours transparency of lobbying through a government registry, Davis reiterated, but only if the concepts of "lobbying" and "lobbyist" are carefully and appropriately defined, and that the registry applies across a "level playing field" (Davis, 2009). An appropriate registry, for example, should not automatically exclude the legal profession under the principle of "lawyer-client confidentiality".

While PRII is ready to accept a government-run lobbyist registry, if properly designed, the Institute proposes a "review group" to study whether further regulations of lobbying activity are appropriate. The review group would be comprised of governmental officials and private interests and would examine the practice of lobbying in Ireland. The group could develop the definition of lobbying that serves as the basis for the registry. More importantly, the review group would help develop government guidelines on lobbying activity, presumably based on PRII's code of conduct. "An assessment of how these guidelines are being implemented should then follow, with a view to introducing stricter measures in the event of a failure by lobbyists and those being lobbied to adopt these guidelines" (PRII, 2009).

In the meantime, according to PRII, "a register should be established and a system whereby registered lobbyists can access debates in *Dail Eireann* at any given time should be introduced" (PRII, 2009). The registry of lobbyists, then, should serve as a type of permit system granting easy access to the Parliament houses.

Recently, the institute also endorsed as "eminently sensible" new rules on how lobbyists pay a visit to members of the parliament houses, the *Dail* and the Senate (Marriot, 2006). The new Parliamentary rules limit the number of lobbyists that members can receive up to four people in their office at a time. The rules also prohibit lobbyists from buttonholing members in the Parliament restaurant or other facilities. The rules are intended to prevent large "pressure groups" from lobbying members. PRII noted that lobbyists who belong to the institute lobby in small groups anyway and so would not be affected.

Swedish Public Relations Association

The Swedish Public Relations Association (SPRA), founded in 1950, is the second largest national public relations association in Europe. It boasts of nearly 5 000 individual members. SPRA is associated with the European Public Relations Confederation (CERP), Global Alliance, and the European Public Relations Education and Research Association (Euprera). Margaretha Sjoberg, Secretary-General of the Swedish association, serves as 2009 president of CERP.

Much like PRII in Ireland, the Swedish association excels in education and training of lobbyists and other public relations professionals through workshops, seminars and conferences. SPRA offers a three-day class for all members three times every year, known as the Communication Mentoring Programme. One session of the class focuses on ethical conduct. Though the class is voluntary, about 20 to 30 members participate in each round of classes (Sjoberg, 2009).

SPRA conducts extensive research on issues relating to the conduct of lobbying and public relations. The association conducts independent research as well as joint projects with academic institutions and other associations. Every year since 1982 the association has surveyed the public relations community to document the changing demographics of the profession, the work climate, and the prospects for the future of public relations and lobbying. In March 2006, SPRA initiated a research project with Örebro University on lobbying in the European Union, with a primary focus on communication strategies and Swedish actors.[3]

The Swedish association also plays a very active role in promoting strict ethical principles in the practice of lobbying and public relations. After decades of adhering to a general ethics code (Code of Venice), SPRA rewrote its code in 2005 to make it more reflective of the Swedish experience, now called "Professional Standards of the Swedish Public Relations Association". The new code is very philosophical, committed to defending an "open society… characterised by freedom of expression and the rights of all people, within legal frameworks, to search for and use information". It applies the principles of honesty and openness to all its member "professional communicators",

defined as those who conduct professional information and communication tasks, including lobbyists.

The code empowers the board of directors of SPRA to appoint an enforcement committee to investigate non-frivolous complaints and to determine whether a violation of the code occurred. If the enforcement committee determines that a violation has occurred, it can issue sanctions ranging from reprimand to expulsion from the association.

There has been only one formal enforcement action, taken in 1972. Nevertheless, authorities within the association have conducted additional informal consultations and interviews over the years regarding potential infractions of ethical principles. Most recently, for example, a consultancy firm involved in a failed project in South Africa offered as part of its defence that it was consulting with ethics officials of the Swedish Public Relations Association (Sjoberg, 2009).

Officials at SPRA do not favour any form of government registry or regulation of the lobbying profession beyond existing legal constraints. The new targeted code of conduct, ethics training by the association and informal consultations are believed by leaders of the association to be sufficient to keep lobbying abuses in check in Sweden.

Croatian Society of Lobbyists

The Croatian Society of Lobbyists (HDL) is one of the youngest professional lobbying associations in Europe, created in June 2008. HDL currently has 80 members and is growing. Its stated function is to make lobbying activities in Croatia professional, legitimate and legal. HDL supports Croatia's Euro-Atlantic integration and seeks to intensify the participation of Croatian interest groups in European integration processes.

HDL is planning to register 15 to 20 members as lobbyists with the European Parliament under the Quaestor programme to secure building permits and the European Commission under its voluntary registration system, and they will also join the Society of European Affairs Professionals (SEAP) (Republic of Croatia, 2008). HDL's web page provides direct links for Croatian lobbyists to register not just with the European institutions but also with the United States.

The Croatian Society of Lobbyists enacted a Code of Ethics as an internal self regulatory document. The code is enforced by a Court of Honour of five members that has the authority to investigate any potential lobbying scandals or violations of the code. Sanctions for violations include reprimand by the board of directors, exclusion from HDL, or even public recognition of the violation and violator on the Society's web page, depending on the egregiousness of the violation (Vlahovic, 2009).

In its brief history so far, the Croatian Society of Lobbyists has not encountered any reports of misconduct by its members. However, the Society is not planning to rely on self-regulation of the profession.

The Croatian Society of Lobbyists has initiated various activities to promote the lobbying profession and to create a legal framework for governmental recognition. The Society has the strong support of Croatian Vice President Đurđa Adlešić. It has launched a media campaign explaining the advantages of regulating the profession in more than 60 published articles and a dozen TV and radio appearances.

On 20 October 2008, the Society organised a roundtable discussing the importance of the lobbying profession that hosted distinguished guests from the Croatian government and Parliament, Kristian Schmidt, deputy commissioner of European Commission Vice President Siim Kallas, SEAP representatives as well as representatives of several non-governmental organisations, labour unions, political parties and the media (Vlahovic, 2009).

Following the conference, the Croatian Society of Lobbyists issued a declaration supporting:

- Creation of a mandatory public register of lobbyists.
- Creation of a *bona fide* code of conduct for lobbyists.
- Establishment of a legal framework for lobbying activities.

Early in 2009, the Croatian Ministry of Justice accepted the Society's initiative and is forming a special working group to study the issue and promulgate a draft for a new lobbying registry and regulations. The working group will consist of representatives from the Ministry of Justice, Ministry of Economy, Croatian Society of Lobbyists members, members of the Croatian Employers Association and non-governmental organisations (Vlahovic, 2009).

Chartered Institute of Public Relations, Association of Professional Political Consultants and Public Relations Consultants Association in the UK

The Chartered Institute of Public Relations (CIPR), the Association of Professional Political Consultants (APPC) and the Public Relations Consultants Association (PRCA) are the three premier lobbying associations in the United Kingdom. They serve similar functions, but with some notable differences. CIPR and PRCA involve a broader spectrum of public relations professionals, while APPC focuses more narrowly on the public affairs sector. CIPR consists of individual members, while APPC and PRCA consist of corporate or organisational members. APPC and PRCA also impose more ethical constraints on its members than CIPR.

Founded in 1948 in London, the Chartered Institute of Public Relations is the leading public relations and lobbying association in Europe, with more than 9 000 individual members. It is associated with the European Public Relations Confederation (CERP) and a founding member of Global Alliance. CIPR has a specific division – Government Affairs Group – solely focused on issues concerning the lobbying profession.

The Association of Professional Political Consultants was established in 1994 by five independent political consultancies. APPC arose from scandal. In 1994, the *Guardian* uncovered a sensational story of members of Parliament accepting cash and gifts from lobbyists in exchange for official favours. One Minister immediately resigned, admitting that he had taken cash from a lobbyist in exchange for asking specific Parliamentary questions. Within days a second Minister resigned because of the scandals. The affairs forced the lobbying profession to take action to reassure the government and the public about its ethical standards. The result was the creation of APPC and its code of conduct. The APPC code prohibits lobbyists from engaging in any financial relationship with government officials and requires that all members of APPC register their identities and the identities of their clients, which is now made available on the APPC web page.

APPC has 61 organisational members, including many of the largest lobbying and public affairs consulting firms in the UK. Burson Marstellar, Atherton Associates, and Munroe and Foster, for example, have joined the association. The association's membership represents about four-fifths of UK's political consultancy sector, measured by turnover.

The Public Relations Consultants Association was formed in 1969 and is the leading trade association in the United Kingdom for the public relations consultancy industry. PRCA has more than 160 organisational members, representing about 70% of the UK public relations industry's fee income.

While all three associations provide education and training, CIPR specialises in the education function. CIPR supports the training and education of its members through a wide variety of events, ranging from breakfast briefings, dubbed "Freshly Squeezed" meetings, to workshops, seminars and conferences. It provides a series of different industry-recognised degrees in lobbying and public relations. These include: the "Foundation Award" for students and others who are considering public relations and lobbying as a new career option; the "Advanced Certificate" for college graduates in the first few years of a lobbying or public relations career; and the "CIPR Diploma" for those who have been in the profession for some time already and would like to enhance their careers. The Diploma programme is now available on-line to be more accessible.

All classes are voluntary. In 2007, 784 members of CIPR participated in the association's continuing education programmes, or about 9% of its membership. More than 150 members have achieved Accredited Practitioner status, completing three years of association-sponsored study (Chartered Institute of Public Relations, 2007).

APPC offers three training seminars a year to its members. Participation is voluntary, but the association noted a record attendance of 50 delegates at its March 2007 training seminar (Association of Professional Political Consultants, 2008). The seminars focus on the code of conduct for lobbyists and public affairs professionals.

CIPR has a highly developed and formalised ethics system for lobbyists and public relations professionals. All members are required to pledge adherence to the Code of Professional Conduct with their signature. The Professional Practices Committee of the Institute handles complaints against members of the Institute who may be in breach of the Code.

The code emphasises that honest and proper regard for the public interest, reliable and accurate information, and never misleading clients, employers and other professionals about the nature of representation or what can be competently delivered or achieved, are vital components of robust professional practice. However, CIPR's code, unlike ethics codes of many other professional associations, does not require that lobbyists disclose the identities of their clients to those whom they lobby. Furthermore, the code does not prohibit lobbyists from employing members of Parliament or other governmental officials.

The CIPR Code of Professional Conduct is viewed as a living document which evolves to stay up to date. Following a consultation with members, it was last reviewed and re-written in March 2000. The resulting changes transformed the code into a document emphasising positive "best practices" rather than a document emphasising negative "thou shall not" commands.

The new code empowers CIPR executive officers to initiate investigations into potential violations rather than wait for a formal complaint to be lodged. Any individual or organisation may file a formal complaint against a member of CIPR if they believe the member breached the code of conduct. Each year the association receives about 20 to 30 calls or letters complaining about a member's behaviour. Formal written complaints are much less frequent, about four a year (Hamilton, 2009).

Most complaints are resolved through conciliation in which the Institute negotiates a voluntary conclusion to a conflict between the complainant and the lobbyist or public relations professional. Conciliation agreements remain confidential.

If no conciliation is reached, the complaint is referred to the Complaints Committee for minor offenses or the Disciplinary Committee for egregious

abuses. Both committees are composed of people outside the public relations profession. The committees may request written evidence and call witnesses. Both sides in a dispute may be represented by legal counsel. Following the formal hearing, a summary and outcome of the complaint will be made public record. Possible sanctions range from informal advice to public reprimand to expulsion from the association.

Over the last five years, formal hearings of the Complaints Committee have been held to consider 10 cases, only one of which was related to lobbying misconduct. Formal hearings of the Disciplinary Committee have been conducted only twice in the last 10 years, resulting in one "severe" reprimand of a member (Hamilton, 2009).

The code of conduct for the APPC, on the other hand, embodies much of the association's primary function: creating a professional relationship between lobbyists and the government. The APPC code explicitly prohibits lobbyists from providing financial inducements, including employment, to any public official in the United Kingdom, whether elected or appointed. Entertainment and gifts of token value are allowed. APPC member associations cannot reimburse Parliamentarians to serve on their board of directors nor pay Parliamentarians to give a speech at a seminar or conference. These restrictions presumably apply to individual employees of APPC member associations as well, making the reach of the ethics code quite extensive (MacDuff, 2009a).

Most important, and a unique trait shared with only one other professional lobbying association – Public Relations Consultants Association – the Association of Professional Political Consultants runs its own public disclosure registry of lobbyists. APPC members must file reports with the association on a quarterly basis, disclosing the identities and contact information of the lobbying entity, the names of its lobbyists and staff working on the lobbying campaign for that period, and the names of their clients in each three-month period. This registry is provided to the public on the APPC's web page.

As discussed in greater detail in the concluding section, APPC is working with CIPR and PRCA in the United Kingdom to create an umbrella professional association encompassing both individual lobbyists and lobbying corporations and associations. The objective of this umbrella association is to impose a similar code of ethics across the entire swath of UK's lobbying professionals who belong to one of the three major lobbying groups. The code of ethics of the umbrella association, it is hoped, would include a lobbyist registry for all members of APPC, PRCA and CIPR made available to the public (MacDuff, 2009a).

Under APPC's code of conduct, any person may file an ethics complaint against a member of APPC. The complaint is initially handled by the APPC

management committee to determine if it is frivolous. If the complaint is deemed to have some merit, a professional practices panel is appointed to investigate the complaint. The professional practices panel may solicit witnesses or other evidence pertinent to the investigation and conduct formal disciplinary hearings. The panel may sanction violators with reprimand, suspension, remedial action, or expulsion.

In APPC, professional practices panel investigations are very rare, but they do happen on occasion. One scandal 10 years ago prompted a panel investigation, and another hearing was scheduled in 2008 to investigate a complaint, but it was cancelled when the complaint was settled in court (House of Commons, 2009).

Despite the formalised structure for addressing complaints in both associations, the rarity of handling complaints and issuing sanctions against lobbyists has drawn the attention of the Public Administration Select Committee of the House of Commons. The committee analysed the complaints procedures of CIPR as well as two other professional associations in the United Kingdom and concluded:

> "*A complaints system that was working would have produced more than three cases in the last 10 years, even if the vast majority of lobbyists were operating ethically and transparently. Reprimands and 'severe' reprimands, the only outcomes to have been seen in the two cases decided against members of any of the three umbrella groups (both within CIPR), are not of a kind that would give confidence to any outsider that disciplinary processes are robust*" *(House of Commons, 2009 at 21)*.

In response to increasing calls in the United Kingdom for government to regulate the lobbying profession, CIPR, APPC and PRCA issued a joint press release and guidelines for appropriate lobbying practices for all lobbyists to follow, not just members of the associations (Morris *et al.*, 2007). These guiding principles advise lobbyists to be transparent about one's own identity, but not necessarily of the lobbyist's clients, and to avoid offering any financial inducement to government officials for the purpose of attempting "to influence the decision making process".

This last clause of the joint statement appears to be a compromise with CIPR, which does not prohibit the exchange of gifts or compensation between lobbyists and public officials in its ethics code. By limiting the prohibition to the exchange of gifts or compensation *for the purpose* of influencing government officials, the policy simply bans bribery – which is already illegal – rather than banning gifts, compensation or fees that are provided by lobbyists to public officials for "legitimate" purposes and which raise the spectre of reciprocity (Morris *et al.*, 2007).

Society of European Affairs Professionals

The Society of European Affairs Professionals (SEAP) has been in existence for more than a decade. It is the largest lobbying association in Brussels, with more than 260 individual members, and focuses on developing professional standards for lobbying the European Union institutions.

Though SEAP offers some educational events and training seminars, its emphasis is on developing co-operative relationships between the lobbying community and members and staff of the European Parliament, European Commission and European Council. SEAP works with members and staff of the European Union institutions (EU) advising on proper procedures governing access to the premises and governmental officials. It also provides the networks making that access much easier.

To promote standards of professionalism within its ranks, SEAP has adopted its own SEAP Code of Conduct. The code was first adopted in 1997 and has since been modified, most recently in 2009. Recent changes to the Code include creating a procedure to discipline members for violations and, importantly, mandating that all members take a 90-minute training seminar on the content of the code.

The ethics code is succinct and non-prescriptive. It lays down general principles of behaviour rather than an exhaustive list of do's and don'ts (SEAP, 2007b). The code requires that lobbyists disclose their identities and the identities of whom they represent. It also prohibits lobbyists from offering any financial inducements to staff, officials or members of the EU institutions, which includes a ban on employing current EU officers. Former EU personnel may be employed by a lobbying firm if in compliance with the rules of the EU institution.

Complaints for violations of the code of conduct may be filed by anyone, a recent change from the previous system of only allowing complaints to be filed by EU officials and members of SEAP (Sheppard, 2009). A complaint must be submitted in writing to the SEAP president, who then turns it over to the code of conduct committee for an investigation. The committee may dismiss the complaint or proceed to a fuller investigation by interviewing the parties involved. If a violation is found to have occurred, the SEAP Board of Directors may issue a private or public written reprimand, suspend the member for three months, or expel the member from the association. The suspension or expulsion would be posted on the SEAP web page (SEAP, 2007a).

No complaints against a member of SEAP have ever been filed (Sheppard, 2009). However, there has been at least one ethics transgression by a member informally negotiated to resolution within SEAP.

SEAP lobbied extensively on the European Transparency Initiative, a legislative campaign in the European Commission to establish a lobbyist

registry. SEAP opposed a mandatory registry, but was comfortable with a voluntary system of lobbyist registration. The association opposed financial disclosure for lobbyists and the imposition of an ethics code by the government (SEAP, 2006). The final registry of the European Commission conformed with much of what SEAP had lobbied. Registration is voluntary; lobbyist names are not reported; only total expenditures of a lobbying entity, such as a corporation, firm or organisation, are disclosed; and associations may follow their own codes of ethics rather than the code suggested by the European Commission.

Notes

1. The Center for Public Integrity identified 39 660 registered lobbyists in 2004 among states that keep such records, at: *http://projects.publicintegrity.org/hiredguns/chart.aspx?act=lobtoleg*. The US Secretary of the Senate has identified 15 965 active registered lobbyists at the federal level in 2008.
2. See Annex E for a sampling of organisations.
3. Camilla Berggren, former public affairs consultant at European Public Policy Affairs, will present the sponsored doctor's thesis on the subject in 2010.

Bibliography

Association of Professional Political Consultants, (2008), 2008 Annual Report, *www.appc.org.uk/index.cfm/pcms/site.newsandevents.appc_annual_report_2008*.

Chartered Institute of Public Relations (2007), *Strengthening the Industry*, CIPR Annual Report.

Davis, Gerry (2009), Interview (telephone) with authors.

Hamilton, Emma (2009), Interview (email) with authors.

House of Commons (2009), "Lobbying: Access and Influence in Whitehall", Report of the Public Administration Select Committee, London.

Marriot, Hannah (2006), "Irish Parliament Moves to Bar Uninvited Lobbyists", *PR Week UK*, 11 August 2006, *www.prweek.com/uk/news/search/576965/Irish-eparliament-emoves-ebar-euninvited-elobbyists*.

MacDuff, Robbie (2009a), Interview (telephone) with authors.

Morris, Gill, Rod Cartwright, and Lionel Zetter (2007), "Public Affairs Bodies Join Forces and Launch Guiding Principles for All", AAPC/PRCA/CIPR Press Release, London, 22 October 2007.

Müller, Ulrich (2009), Interview (telephone) with authors.

News Release, 12 September 2008.

Public Citizen (2009), "Bank-Rolling Congress", Washington DC, *www.citizen.org/documents/Bank-erolling_Congress.pdf*.

Public Relations Institute of Ireland (2009b), "Training Workshops", Dublin, *http://prii.ie/training_ workshops.aspx*.

Republic of Croatia (2008), "Croatian Lobbyists Soon to be Registered with European Institutions",

SEAP (2006), "SEAP Views on the European Transparency Initiative Green Paper", Brussels, *http://ec.europa.eu/transparency/eti/docs/contributions/26_C7_ch1_SEAP.pdf*.

SEAP (2007a), "Procedure for Dealing with Non-Compliance with the SEAP Code of Conduct", Brussels, *www.seap.be/linkdocs/code-eprocedure.pdf*.

SEAP (2007b), "SEAP Code of Conduct – FAQ", Brussels, *www.seap.eu.org/linkdocs/code_faq.pdf*.

Sheppard, Philip (2009), Interview (email) with authors.

Sjoberg, Margaretha (2009) Interview (telephone) with authors.

Sunday Business Post (2006), "PRII Urges Lobbyist Register", 5 March 2006.

Vlahovic, Natko (2009), Croatian Society of Lobbyists, letter to the authors.

© OECD 2012

Chapter 3

Codes of Conduct for Lobbyists

Considered as the least coercive means of regulating lobbying, codes of conduct for lobbyists constitute a valuable instrument in providing meaningful and concrete guidance on how to conduct lobbying without unwittingly falling into unethical situations.

This chapter provides an overview of the evolution of ethic codes from general and grand principles of morality to more specific behavioural codes of conduct. The chapter shows how more recently, professional lobbying associations and public relation associations in Europe have tailored ethics rules to address specific concerns of the lobbying profession. The chapter ends by reviewing the effectiveness of codes of conduct and outlining the necessary elements for a successful ethics code.

Introduction

Lobbyists' codes of conduct can be invaluable instrument in professionalising the practice of lobbying and gaining greater public confidence in the profession. Ethics codes set ground rules for lobbyists in their relations with public officials, clients, the public, and even other lobbyists, and can help lobbyists avoid representing conflicting or competing interests. Professional codes of conduct are often the least coercive means of regulating lobbyist behaviour. Lobbyist's associations that create and promote these codes attempt to enhance the professional calibre of the lobbying community.

Most ethics codes for the lobbying and public relations professions establish four general areas of responsibilities – professional duties, duties toward clients, duties toward mass media and public opinion, and duties toward colleagues and the profession. The Codes of Brussels, Lisbon, Athens, and Venice contain guidelines for all of the duties of a practitioner, as do many of the organisations' own codes of conduct. Each of these codes attempts to address the four areas of responsibilities to a greater or lesser degree. However, distinct differences in the codes arise for those that emphasise moral principles and those that emphasise proper behaviour.

From moral to behavioural codes

> "[t]he fact that public relations has a Code of Ethics is certainly unknown to most users of public relations and will be surprising to many".
>
> *Source:* Calver (1951) at 3.

A moral code, such as the Athens Code, is "based on the 'ethical principles' of public relations, referring to the *Universal Declaration of Human Rights*". Moral codes tend to distinguish the profession into "good lobbyists" and "bad lobbyists". As we have seen in the discussion of the Woodstock principles, such a dichotomy of the profession can be simplistic and offer only limited guidance to practitioners in the field. On the other hand, a behavioural code, such as the Code of Lisbon, is concerned with the behavioural standards of the profession. The two codes are not inconsistent, but rather complementary to one another.

The discussion of the professional lobby associations in Europe showed that many of the ethics codes for lobbyists have evolved over the years from general and grand principles of morality to more specific behavioural codes of conduct. This trend represents a marked improvement in the relevance of these codes, as

the more specific behavioural codes offer concrete guidance to lobbyists on how to conduct business without unwittingly falling into unethical situations.

One of the first public relations codes was established by the Public Relations Society of America. The code, which took effect in 1951, was a compromise between those who were "striving for ideal if not idealistic behaviour and those who wanted no Code at all" (Calver, 1951 at 3). The code, as anticipated by many, was modified over the past 58 years in efforts to keep up with changing times. Additionally, the value of any code largely depends on knowledge of its principles by practitioners. As one of the founders of the original code stated: "[t]he fact that public relations has a Code of Ethics is certainly unknown to most users of public relations and will be surprising to many" (Calver, 1951 at 3).

The Code of Venice was established in May 1961 by the International Public Relations Association (IPRA). The code, named for the site of the meeting place, "aimed at establishing accepted standards of professional ethics and behaviour in the field of public relations to be adhered to by all members of the Association worldwide". The Code of Venice began the movement from moral principles into setting standards for appropriate behaviour. It has served as a basis for other codes of conduct, such as the Code of Athens, the Code of Lisbon, and the Code of Brussels.

The Code of Venice is also the first to address all four areas of general principles. The code establishes appropriate behaviour for conduct towards employers and clients, conduct towards the public and media, and conduct towards colleagues. Additionally, it establishes definitions of personal and professional integrity, personal integrity being "the maintenance of both high moral standards and a sound reputation", and professional integrity being adhering to professional rules and laws of government.

The Code of Athens, informally known as the International Code of Ethics, was adopted by IPRA and the European Public Relations Confederation (CERP) in 1965, and was later modified in Teheran in 1968. The Code of Athens, authored by Lucien Matrat of France, is based on the United Nations' *Universal Declaration of Human Rights*. It attempts to address intercultural issues, encouraging public relations practitioners to avoid insult or insensitivity to members of any culture. Since the code is based on a UN document, the IPRA was later recognised by the UN and is currently a roster group, consulting for the agency's Economic and Social Council.

An additional code of conduct to which many public relations associations adhere is the Lisbon Code. The Lisbon Code, or the European Code of Professional Conduct in Public Relations, was adopted at the General Assembly of the CERP in April 1978 in Lisbon. The code, similar to the Athens Code, derives from the *Universal Declaration of Human Rights*. While the Athens Code relates to the needs of people, the Lisbon Code outlines basic ethic rules,

such as showing "honesty, intellectual integrity, and loyalty". The Lisbon Code has many similarities to the Venice Code, outlining specific obligations toward clients and employers, public opinion and information media, fellow practitioners, and the profession itself.

The newest of the grand codes, the Brussels Code, is an extension of the Athens and Lisbon Codes, adopted in 2006 by the IPRA. The Brussels Code specifies conditions for the ethical practice of public affairs and relations. Among the topics specified are integrity, transparency, dialogue, accuracy, falsehood, deception, confidentiality, influence, inducement, conflict, profit, and employment. The Brussels Code may also be seen as a compromise between the moral and behavioural codes, combining the two to create comprehensive guidelines for public relations professionals to follow.

Codes of conduct for the lobbying profession

More recently, professional lobbying associations and public relation associations in Europe have been refining codes of conduct to address specific concerns of the lobbying profession. The Society of European Affairs Professionals (SEAP), for example, drafted its own SEAP Code of Conduct in 1996, when the organisation was founded. Subsequent revisions have been made throughout the years, including the imposition of sanctions on whoever fails to abide by the code of conduct, the harshest being expulsion from the SEAP with public notice on the society's website. Additionally, SEAP requires that its members undergo a 90-minute seminar about the code.

One of the larger public relations associations in Europe is the Public Relations Institute of Ireland (PRII). PRII has a Code of Professional Practice, which is a condition of membership. Uniquely, the Code of Professional Practice is specifically related to the quality of public policy. The first area, conduct towards the public, requires that the member shall "not seek to improperly influence the decision-making processes of government". In this aspect, the PRII Code of Professional Practice is much more specific than general ethics codes, which often simply state that the practitioner has a duty towards the public, to keep them informed. Since lobbying is mostly unregulated by the government of Ireland, the PRII attempts to fill the void and oversee the activities of lobbyists, assuring the public that their influence is both ethical and professional. Additionally, the PRII code requires that lobbyists will reaffirm their commitment to the Code of Lisbon and the Code of Athens.

Behavioural principles for professional lobbying

PRII's Code of professional Practice was adopted in 2003 as a means to make the ethics rules more tailored toward the profession of lobbying. It is largely a behavioural code that spells out appropriate behaviour by lobbyists

toward government officials, toward the public and toward clients and employers. It requires that lobbyists disclose their clients when making lobbying contacts with public officials, and prohibits members of legislative assemblies from soliciting or accepting lobbying employment simultaneously. The Code also requires that lobbyists recuse themselves from matters in which there may be a conflict of interest with the client or employer.

As was noted above in the discussion of professional lobbying associations, a small number of lobbyist codes of conduct have become quite specific in prescribing proper behaviour for the profession. The code for the Association of Professional Political Consultant (APPC) in the United Kingdom, for example, prohibits lobbyists from giving gifts or employment to government officials. The APPC code deals to some degree with the behavioural phenomenon of the "reciprocity principle". It recognises that gifts and the exchange of money from lobbyists to public officials often create an obligatory working relationship, which can set the stage for undue influence-peddling, either in the public's perception or in fact.

> "a well functioning, self-regulatory system ... is more efficient because alleged contraventions can be examined quicker and cheaper".
>
> *Source:* Bart Pattyn (2000) at 267.

The stronger lobbyist ethics codes – the codes that provide some meaningful and concrete guidance on how to conduct lobbying – include a series of prescriptions of ethical behaviour that attempt to ensure a professional relationship between lobbyists and public officials. These norms attempt to steer lobbyists away from conflicts of interest and the perception of receiving official favours in exchange for things of monetary value. The behavioural principles identified in some of the lobbyist ethics codes that help achieve these objectives include:

- Requiring the information conveyed to public officials is accurate and honest.
- Mandating that lobbyists promptly disclose their clients and interests they represent to public officials.
- Prohibiting simultaneous employment as a lobbyist and a public official, which could raise serious conflict of interest issues, both in perception and in reality.
- Banning gifts above a *de minimis* value, fees, employment or other compensation from a lobbyist to a public official.
- Requiring that lobbyists recuse themselves from matters in which a conflict of interest arises with a client or employer, unless such conflict is fully disclosed and all parties agree that it is manageable.

- Making ethics training a condition of membership in the association.
- Establishing a reasonably independent mechanism for monitoring and enforcing compliance to the ethics code.

A lobbyist code of conduct is a critical pillar of self-regulation of the profession. As Huub Evers notes: "a well functioning, self-regulatory system will prevent most government interventions … and is more efficient because alleged contraventions can be examined quicker and cheaper" (Pattyn, 2000 at 267).

But it is not clear how effective these codes are in practice. Some surveys suggest that many public relations officers within an association may be unaware of its ethics code. In 2005, a significant survey was published by Leipzig University's Chair of Public Relations and Communication Management on behalf of *Bundesverband deutscher Pressesprecher (BdP)* (European Public Relations Education, 2005). One of the major findings of the study showed that only half of the respondents were aware of any codes of ethics, such as the Code of Lisbon and Code of Athens. The survey showed a lack of knowledge of widely accepted ethical opinions. Moreover, 82% of the respondents stated that press officers must not lie, "but also agree that it is tolerable to keep quiet about important issues". About 11% believe that a lie on behalf of their organisation's interest is legitimate, while only 6% believe one must always "tell the absolute truth".

More recently, the annual survey of members of the Swedish Public Relations Association presented mixed results as to how useful its code of conduct is to most members of SPRA. The 2007 survey showed that slightly more than half of its members (57%) were aware of the association's professional code of conduct. A majority of those aware of the code felt that they benefit from its principles in their daily work, to a greater or lesser extent. Only 16% of those aware of the code felt its principles were very useful in guiding their daily work, 67% felt the code was somewhat useful, and 17% said the code was not at all useful (Swedish Public Relations Association, 2007).

The ultimate effectiveness of any ethics code for lobbyists depends not just on whether the principles are pertinent to the conduct of lobbying, but also on the extent of ethics training provided to lobbyists, as well as the mechanisms in place to monitor and enforce compliance to the code.

Selected ethics codes for the profession are provided in the appendices to this study. The Code of Lisbon is provided as Annex B, the Brussels Code as Annex C, and the APPC code as Annex D.

Bibliography

Calver, Homer (1951), "Now that we have a Code –", *Public Relations Journal*, Vol. 7, No. 2, pp. 3-17.

European Public Relations Education and Research Association (Oct. 2005), Newsletter, Brussels.

Pattyn, Bart ed. (2000), *Media Ethics: Open Source Dialogue*, Peeters, Belgium.

SEAP (2007b), "SEAP Code of Conduct – FAQ", Brussels, *www.seap.eu.org/linkdocs/code_faq.pdf*.

Swedish Public Relations Association (2007), "Info 2007: Member Survey", Stockholm, *www.spra.nu/media/9219632/info%202007%20kortversion_en.pdf*.

© OECD 2012

Chapter 4

Lobbyist Regulatory Regimes in Europe

This chapter outlines major developments and trends in lobbyist regulatory regimes in selected European countries, the European Parliament and the European Commission.

As indicated in the chapter, the scope and reach of European regulations are considerably limited than similar regulations in the United States and Canada. For example, most lobbyists registries are voluntary (European Commission and European Parliament, France, Germany, Hungary) and constitute primarily a registration system to enter Parliamentary buildings. Moreover, voluntary registration has not received a significant response from lobbyists. For example, some 5 102 individuals and 1 871 organisations registered with the European Parliament for passes, even though there are an estimated 15 000 lobbyists active in Brussels.

The chapter also notes an important development in France with the recognition of the lobbying profession. Previously, the lobbying phenomenon was not recognised in France on the grounds that parliamentarians are elected to serve the general interest and should not represent special/group interests.

Introduction

Unlike in the United States and Canada, there are few government regulatory regimes for the lobbying profession in Europe. The few that do exist in Europe tend to be limited in scope and reach. European countries with some form of regulation include Germany, Hungary, Lithuania and Poland, and most recently France, along with the permanent pass registration system of the European Parliament and the voluntary registry established by the European Commission.

Germany

In Germany, the registry is voluntary and is not designed as a lobbyist registry *per se*. Instead, it is primarily a registration system for issuing passes to enter the parliamentary buildings. The registry is only of organisations seeking access to the parliamentary buildings rather than individuals and does not include any financial information, who is participating in lobbying on behalf of an association, or what issues the organisation lobbies. Additionally, the registry only applies to the *Bundestag*, not the *Bundesrat*.

The registry was established as a requirement of Annex 2 of the Rules of Procedure. It calls for registered groups to disclose the associations' name and seat in the union, the composition of the board and management, the general interest of the group, the number of members, names of the associations' representatives, and the address of its office at the seat of the Bundestag and of the federal government. The list of associations, as written in Annex 2, is to be published each year in the *Federal Gazette*.

The Bundestag can "also invite organisations that are not on the register to present information on an *ad hoc* basis" (Chari *et al.*, 2007 at 423). Therefore, the register does not provide a barrier for lobbyists. The Bundestag is also "of the view that many people should participate in the substantive elaboration of bills, but responsibility for enacting bills must be assumed by those elected for this purpose, hence the nature of invitations to those not on any register" (Chari *et al.*, 2007 at 423). Legislative proposals are currently being considered for establishing a full regulatory system of the lobbying profession in Germany, but prospects for passage are uncertain.

Hungary

Hungary first established its voluntary lobbyist registry in 1994 (McGrath, 2008). To join the lobbyist registry, lobbyists could not have a prior criminal record and they had to have a college degree. The application for a person included the applicant's full name and address, the applicant's mother's name, the applicant's place and date of birth, the applicant's official certificate of criminal history issued within the past three months and a copy of the university diploma or a certified Hungarian translation if it was issued abroad.

A business or firm wishing to join the lobbyist register had to provide the name and address, the names and addresses of the authorised representatives, a copy of proof of the establishment of the business or firm and the names of persons authorised to lobby on behalf of the business or firm. A lobbying license was then issued, and all information was for public record.

The government adopted Act XLIV on Lobbying Activities and came into force in September 2006. The law solidified Hungary's lobbying framework and aimed to regulate issues connected with the impact of interested individuals engaged in policy making and public governance. Within this law, registered lobbyists submitted a quarterly report regarding their lobbying activities. Lobbyists disclosed the executive decisions that were the target of the lobbying activities, an indication of the concrete objectives of lobbying activities relating to a specific bill, a list of means used in connection with the case, names of officers of the executive decision-making body, the number of lobbying contacts, and any gifts provided, their individual value, and the name and position of the person affected. This information was also made public.

The Hungarian lobbyist registry was maintained by the Central Office of Justice. By September 2010, there were approximately 600 lobbyists registered. The Hungarian Civil Liberties Union noted that less than half of all Hungarians lobbyists actually registered, suggesting that lobbyists and public officials chose not to disclose their relations.[1] The law was abandoned in January 2011 and a new law has yet to be drafted.

Lithuania

Lithuania's Lobbyist Register began in 2001. The lobbyist's registration programme only applies to contract lobbyists who attempt to influence the legislative branch and specifically exempts in-house lobbyists for not-for-profit groups and other entities. Contract lobbyists file an application to be recorded in the register and to lobby the government. The application provides:

- the full name, phone number, place of residence, and place of work in the last year;
- name, registration number, and address of the head office if a legal person is applying;

- information about employees of a lobbying organisation who will be performing lobbying activities, including full name, telephone numbers.

Many of the same qualifications to be a lobbyist in Hungary apply in Lithuania.

Lobbyists in Lithuania submit an annual report of their lobbying activities to the registry. In addition to name, address, phone number, and certificate number, a registered lobbyist must also present his or her income from lobbying activities, expenditures on lobbying activities, and the title of an effective or draft legal act influenced by the lobbyist. The reports are published in the *Official Gazette* of Lithuania. In 2007, there were 13 registered lobbyists in Lithuania, of which 11 were active (Piasecka, 2007).

Poland

Public cynicism regarding the integrity of the Polish government, followed by a sensational scandal dubbed the "Rywin's affair", which exposed a number of irregularities in the lawmaking process, paved the way for a mandatory lobbyist registry in 2006 (OECD, 2008). The Polish Lobbyist Registry is maintained by the Minister of the Interior and Administration. The Polish registry, like Lithuania's registry, applies primarily to contract lobbyists. However, Poland's law does apply to those who lobby both the legislative and executive branches of government. The registry is public information, accessible through the Public Information Bulletin of the Minister of Interior and Administration. Unusually, and perhaps appropriately, annual reports on lobbying contacts are submitted by government officials themselves.

Registration may be submitted in paper format or online. For entrepreneurs, the application must contain such information as the company name, corporate seat and address of the entrepreneur who will lobby. Non-entrepreneurs must provide the full name and address of the person who wishes to lobby. The register is not free, costing applicants PLN 100.

As of August 2009, 141 entities had registered. Out of the 141 entities, the Ministry of Interior and Administration refused 17 applications to register, because of formal causes, 4 entities were crossed out. Unregistered lobbyists can be fined up to PLN 50 000. As of 31 August 2009, no fines had been imposed on any entities.

France

France is the most recent of European countries that established lobbyist regulation and registration by the legislature. The lobbyist register, which is voluntary, is tied directly to a pass system that grants entry to the *Palais Bourbon*, the building that houses the National Assembly, the lower house of Parliament. Only individuals may participate in the register. Any individual who wants a pass must register, submit a photo and identify their clients. There is no financial disclosure required.

The Senate has followed the National Assembly in amending its own in-house regulations and taking steps to lay down rules for lobbyists, representatives of interest groups (*groupes d'intérêts)* that frequently contact its members. This is a genuine novelty; the principle of lobbying was not recognised in France on the grounds that parliamentarians are elected to serve the general interest and should not represent special/group interests. The notion of an imperative mandate is still prohibited. But this new step marks a recognition of the profession of lobbying, which is written into the Senate Bureau's General Instructions in the form of a new article on Lobbying.

The new regulations on lobbying, adopted by the Senate Bureau on 7 October 2009, lay down provisions similar to those adopted by the National Assembly on 2 July 2009. They include new arrangements for gaining entrance to the *Palais du Luxembourg* (Senate building), including the requirement to display a pass and to agree to abide by a Code of Conduct. There are ten articles to this Senate Code of Conduct for lobbyists. For further details, see Box 4.1 below. The regulations prohibit any payment of fees for speaking at conferences held in the Senate.

These arrangements came into force in the National Assembly when it reconvened in October 2009, and in the Senate on 1 January 2010.

Box 4.1. **Code of Conduct for Lobbyists in the French Senate**

Article 1

The register of lobbyists shall include the following information:

- their name and address;
- the name and address of their employer;
- their field of intervention;
- and, where appropriate, the name of the clients on whose behalf they are acting.

This register shall be available for consultation on the Senate Internet site.

Article 2

In their contacts with Senators, lobbyists shall state their identity, the name of their employer and the interests they represent. They shall refrain from seeking to meet or contact senators importunately.

Article 3

Lobbyists shall comply with the Senate regulations applicable to persons allowed entry to its premises.

Box 4.1. **Code of Conduct for Lobbyists in the French Senate** *(cont.)*

Article 4

Lobbyists shall comply with the rules governing conferences, meetings and other events held at the Senate. In particular, they shall refrain from holding conferences, events or meetings in which the speaking arrangements involve payment of any form of financial compensation.

Article 5

Any promotional or commercial action by lobbyists shall be prohibited on the Senate premises.

Article 6

Lobbyists shall be prohibited from using the Senate logo, except with express permission from the Communications department.

Article 7

They shall be prohibited from undertaking any action with a view to obtaining information or documentation by fraudulent or unfair means.

Article 8

They shall be prohibited from transferring against payment, or any form of compensation, parliamentary documents or any other Senate document.

Article 9

Lobbyists shall refrain from providing Senators with information that is deliberately incomplete or inexact with intent to mislead.

The information they provide shall be available on request to any Senator.

Article 10

Lobbyists shall undertake to forward by electronic mail to the relevant services, with a view to publication on the Internet website, any information concerning the invitations issued by them to Senators, their colleagues, Senate officials or Senate bodies.

Source: www.senat.fr/role/groupes_interet.html.

EU institutions

The European Parliament (EP) in Brussels first introduced a lobbyist registry in 1996. However, the system was never deemed a mandatory registration system. Instead it was an optional registration that provided registrants with easier access to the institution with permanent passes. All other lobbyists sought temporary passes each time they entered the Parliament and no such registration or passes were required of lobbyists who worked outside the halls of Parliament. Registrants were required to adhere to the Parliament's code of ethics. By September 2010, approximately 5 102 individuals

and 1 871 organisations registered with the Parliament for passes, although at that time there were an estimated 15 000 lobbyists active in Brussels.

In June 2008, the European Commission (EC) pursued a novel experiment in lobbyist registration with the launching of a voluntary register following the "European Transparency Initiative" pioneered by EC Vice President Siim Kallas. The EC had also chosen a system of voluntary registration, but it encouraged participation in its registry through a different incentive than entry passes. Organisations or individuals registered as an "interest representative" (thereby avoiding the presumed derogatory label of "lobbyist"), and disclosed a moderate amount of information. Registrants provided information on who they represented, what their mission was and the total revenue from all clients from lobbying. Registrants then disclosed a rank order of clients in decreasing order of contract value, based on ranges in value of every EUR 50 000 or 10 per cent of total revenues. The names of individual lobbyists were not disclosed. By September 2010, approximately 3 102 entities had registered.

The different systems between the European Commission and the European Parliament presented foreseeable challenges, and as such, the two entities signed an Interinstitutional Agreement forging a common Transparency Registry in June 2011.[2] Citizens wishing to obtain information on individuals and organisations in contact with EU institutions are now able to do so in this "one-stop shop" system that increases transparency. Similar to the former registers, the Transparency Registry remains voluntary; however only those registered in the system can access the appropriate badges for entry. It also contains accessible statistical data on registered parties, a listing of individuals with access rights to the Parliament and organisations and individuals who are engaged in EU policy-making and policy implementation. The common Register incorporates former separate Parliament and Commission registers. The European Council has also indicated that it will join the register and participate in the new comprehensive lobbyist disclosure system.

Notes

1. See *www.spectrezine.org/europe/chatterjee.htm*.
2. Access to the Transparency Register is available at: *http://europa.eu/transparency-register.index_en.htm* and individuals who complete the registration process will be granted for up to 12 months.

Bibliography

Alliance for Lobbying Transparency and Ethics Regulation (2009), The Commission's Lobby Register One Year On; Success or Failure? *www.alter-eu.org/sites/default/files/documents/register-assessment-after-one-year.pdf*.

Chari, Raj, John Hogan and Gary Murphy (2007), "Regulating Lobbyists: A Comparative Analysis of the United States, Canada, Germany and the European Union", *The Political Quarterly*, Vol. 78, No. 3, pp. 422-438.

Dos Santos, Luiz Alberto (2007), "Percepções dos Políticos e Burocratas Sobre o Lobby e Sua Regulamentação no Brasil", [Perceptions of politicians and bureaucrats on lobbying and its regulation in Brazil], unpublished paper.

Dos Santos, Luiz Alberto, da Costa Paulo Mauricio T. (2010) *Addressing corruption and transparency across Latin America: The lobby regulation initiatives* (forthcoming)

McGrath, Conor (2008) "The Development and Regulation of Lobbying in the New Member States of the European Union", *Journal of Public Affairs*, Vol. 8, Issue 1, pp. 15-32.

Organisation for Economic Co-operation and Development (2008), *Lobbyists, Governments and Public Trust: Building a Legislative Framework for Enhancing Transparency and Accountability in Lobbying*, OECD, Paris.

Piasecka Aneta (2007), "Lithuania", Vilnius, *www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-eLithuania-efinal.pdf*.

Taylor, Simon (2009), "EU Edges Closer to Single Register for Lobbyist", *European Voice*, 9 April 2009.

© OECD 2012

Chapter 5

Lobbyists' Attitudes Toward Self-Regulation and Regulation of Lobbying in Europe

This chapter presents the results of the most comprehensive survey to date of attitudes among lobbyists towards self-regulation and regulation of the lobbying profession in Europe. Lobbyists responded to questions concerning codes of conduct, the extent of the influence-peddling problem, transparency, and regulation of the lobbying activity.

Results show that the great majority (90%) of lobbyists are aware of the negative public perception concerning the lobbying profession and that transparency of their activities is useful in addressing actual or perceived problems of inappropriate influence-peddling by lobbyists. Surprisingly, only the minority of lobbyists surveyed (26.5%) believe that a government regulation of lobbying would not improve transparency and accountability in policy-making.

Moreover, responses to the survey show that the most common form of ethics guidance among lobbyists is codes of conduct. Nearly all lobbyists surveyed (91%) indicated that they are subject to a code of conduct, most commonly an ethics code of a lobbying association. Very few respondents said they are subject to a government code of conduct.

The chapter also notes that although it is widely assumed that professional lobbyists in Europe tend to oppose the creation of a lobbyist registry and publicly disclose their lobbying activity, the survey evidences that lobbyists are in fact willing to participate in a registry, even a mandatory one (61%), and disclose the information publicly on the Internet (82%). There are diverse views, however, about which lobbyists and what activities should be disclosed to the public and who should manage the transparency programme. Contextual features, such as trust in public institutions and level of compliance, are determining factors in the choice of preference by lobbyists.

Introduction

While it is widely assumed that professional lobbyists throughout Europe tend to staunchly oppose efforts to create a lobbyist registry and publicly disclose their lobbying activity, this assumption is not borne out by survey results. Most lobbyists in Europe are quite willing to participate in a registry, even a mandatory lobbyist registry, and disclose much of their lobbying activity on the Internet for all to see. In fact, many lobbyists recognise the need for such disclosure to protect the integrity of the profession.

Disputes arise primarily over matters of implementation, such as "Who should manage the registry?" and "How much information should be disclosed?" Particular concerns are expressed as to the definition of "lobbyist", which determines who should be subject to the self-regulations or regulations of the profession.

Two separate surveys were conducted for this study: a primary survey of lobbyists' attitudes toward self-regulation and regulation of the profession in Europe and a secondary survey of government regulators in Canada and Europe. Among the survey respondents in the primary survey, the largest group consists of lobbyists working for a lobbying firm or self-employed, known as "contract lobbyists", reflecting their larger numbers among professional lobbying associations. Respondents also represent in-house corporate lobbyists and in-house lobbyists for not-for-profit organisations. The breakdown is as follows:

Table 5.1. **Description of lobbyist survey respondents**

Number of lobbyist respondents

		Lobbyists in survey
N	Valid	189
	Missing	0

Employer

		Frequency	Percent	Valid percent
Valid	Contract lobbyist	128	67.7	67.7
	For-profit corporation	25	13.2	13.2
	Non-profit organisation	36	19.0	19.0
	Total	189	100.0	100.0

Which level of Government do you lobby primarily?

		Frequency	Percent	Valid percent
Valid	National	97	51.3	51.3
	EU	92	48.7	48.7
	Total	189	100.0	100.0

Source: OECD survey.

A separate, much smaller survey queried officers in government disclosure offices in Canada and Europe about self-regulation and regulation of lobbyists, as well as the effectiveness of other forms of government regulations for reining in the potential for corruption. Eight public disclosure offices offered their input, only two of which are offices that manage a lobbyist registry. The remainder included such offices as government ombudsmen or ethics officials.

Lobbyist survey results

The lobbying community in Europe has shown a great deal of openness and candour in discussing the practice of lobbying and self-regulation and regulation of the profession – an openness similarly shown in an earlier study (Holman, 2009).

Code of conduct

First and foremost when it comes to self-regulation or regulation of the lobbying profession, a code of conduct for lobbyists is of primary importance. An ethics code is the single most significant pillar in establishing proper norms of behaviour for lobbyists and setting the principles of professional conduct. A lobbyist code of conduct can come in many forms. It can be proffered either as a set of business principles by a company, or as an established ethics code of a lobbying firm or association, or as legal constraints on lobbying activity by a governmental agency.

Nearly all respondents (91%) indicate that they are subject to a lobbyist code of conduct. As shown in Table 5.2, an ethics code of a lobbying association is the most common form of ethics guidance among the respondents. Very few respondents said they are subject to a government code of conduct, even though such a code exists for some of those who lobby the European Parliament (EP) and European Commission (EC). The small number is likely a reflection that the ethics codes for both EU institutions are only applicable to those who voluntarily join the registries and that EC registrants may opt to adhere to their own professional association's code rather than the prescribed government code.

Table 5.2. **Subject to a code of conduct?**

		Frequency	Percent	Cumulative percent
Valid	Association code	117	61.9	61.9
	Business code	49	25.9	87.8
	Government code	6	3.2	91.0
	n.a.	5	2.6	93.7
	No	12	6.3	100.0
	Total	189	100.0	

Source: OECD survey.

Most respondents indicate that the lobbyist code of conduct provides meaningful guidance on how they conduct day-to-day lobbying activity. A substantial majority (60%) of all lobbyists surveyed agree with the statement that "the code provides good principles easily applied to specific situations". About 25% of respondents are a little more ambivalent, agreeing that the code provides good general principles but questioning how often those principles can be applied to real world situations. A small percentage of respondents (7%) said the code is too abstract to provide much, if any, meaningful guidance. Just as many respondents (7%) offer no answer.

Differences in attitudes on the utility of a lobbyist code of conduct are quite evident between contract lobbyists, corporate lobbyists and lobbyists from not-for-profit organisations, with the latter being particularly sceptical. As shown in Table 5.3, while none of the contract lobbyists said that an ethics code provides no meaningful guidance at all, 12% of corporate lobbyists indicate that a code provides little or no guidance, and about 17% of not-for-profit lobbyists agree. A whopping third of not-for-profit lobbyists decline to answer, reflecting that many in the not-for-profit sector have no established lobbyist code of conduct.

Table 5.3. **Does the lobbyist code of conduct provide meaningful guidance?**

		Employer					
		Lobbying firm		Corporation		Non-profit	
		Count	Col %	Count	Col %	Count	Col %
Code Useful?	Yes	87	68.0	15	60.0	13	36.1
	Somewhat	36	28.1	6	24.0	5	13.9
	Not really	4	3.1	2	8.0	3	8.3
	No			1	4.0	3	8.3
	n.a.	1	0.8	1	4.0	12	33.3

Source: OECD survey.

The effectiveness of any lobbyist code of conduct in shaping behaviour invariably depends on the system of "carrots or sticks" to motivate compliance to the code. The options of rewards to encourage compliance or sanctions to discourage violations vary widely from the public sector to the private sector, and also vary widely within the private sector, depending on the particular policies or bylaws of the company or professional association.

When it comes to laws in the public sector, compliance is almost always spurred through the threat of penalties for infractions. Compliance to the codes for the institutions of the European Union are notable exceptions. Both the Parliament and the Commission use the carrot approach, attempting to reward lobbyist registration and compliance to the codes. In the Parliament, lobbyists may register and agree to comply with the ethics code in exchange for a permanent pass for easier access to the institution. The Commission, on the other hand, provides lobbyist registrants with automatic alerts of pending government business. Earlier research found that few EC lobbyists consider the automatic alerts as much of an incentive to register and comply. About 21.3% of lobbyists said the EC automatic alerts are a slight incentive, while 14.9% believe it is a significant incentive to register and comply (Holman, 2009).

When it comes to lobbyist codes of conduct in the private sector, businesses and associations have no legal recourse for punishing violations. They can, however, offer more modest rewards and penalties. One such reward is the privilege to join the association. Several lobbying associations require signed consent to abide by the code as a condition of joining. Another reward may be earning an association-sponsored diploma or certificate. Most often, compliance with the code is sought through the threat of sanctions, such as a reprimand for violations or even expulsion from the association.

As shown in Table 5.4, few lobbyists feel that rewards to induce compliance to an ethics code are effective (12.2%). The vast majority feel that rewards generally provide little incentive. Slightly more than a third of lobbyists (37.6%) believe that there are effective penalties in place to deter violations of the code. Over half of respondents (50.8%) believe that even the system of penalties for infractions has little or no effect on lobbyist behaviour.

Of far greater concern for the principle of self-regulation of lobbying behaviour within the private sector is that a majority of those surveyed are unaware of any lobbyist who has ever been penalised for violating a lobbyist code of conduct. This issue is discussed at greater length in the study's section of interviews and analysis of the operations of individual professional lobbying associations, where it is found that formal and informal disciplinary proceedings are rarely, if ever, conducted by an association against a member.

Table 5.4. **Are there effective rewards or penalties imposed in the code of conduct?**

		Count	Col %
Reward for compliance?	Yes	23	12.2
	Not really	78	41.3
	No	68	36.0
	n.a.	20	10.6
Penalty for violations?	Yes	71	37.6
	Not really	73	38.6
	No	23	12.2
	n.a.	22	11.6

Source: OECD survey.

It may well be that confidential disciplinary actions or advice that are not publicly recorded have been offered more frequently within lobbying associations. Even so, only about 6.9% of respondents said that they know several instances in which lobbyists have been penalised for violating a code of conduct. A surprising 32.3% said they are aware of a few such instances, but most respondents (50.3%) said they are unaware of anyone being reprimanded or otherwise penalised for infractions and another 10.6% provide no answer (see Table 5.5).

Table 5.5. **Have any lobbyists been penalised for violating the lobbyist code of conduct?**

		Count	Col %
Any lobbyists penalised?	Several	13	6.9
	A few	61	32.3
	None	95	50.3
	n.a.	20	10.6

Source: OECD survey.

With or without a code of conduct, it is sometimes suggested that competition in the marketplace can have a significant impact on the ethical behaviour of lobbyists. It is well known among lobbyists that certain breaches in professional practice, such as providing a governmental official with information that is inaccurate, will take a toll on the credibility and effectiveness of that lobbyist. It is an unwritten rule among lobbyists that if you do not know the answer to a government official's question, say so with the reassurance that you will find the answer and report back.

This raises the possibility that ethical behaviour of lobbyists may also be affected by the marketplace.[1] As lobbyists compete for the attention of government officials, do they grow increasingly attuned to conducting business in an ethical fashion?

According to the lobbyists surveyed, that is not usually the case. As shown in Table 5.6, 30.2% of respondents believed that the marketplace did in fact encourage ethical behaviour among lobbyists. But 56.6% of respondents said that competition has no impact on ethical behaviour or, worse yet, may discourage ethical practices. The marketplace may indeed encourage competent conduct, but perhaps it is not as strong a force in encouraging ethical conduct.

Table 5.6. **Is competition for business between lobbyists a motive to help ensure ethical behaviour?**

		Count	Col %
Competition impacts ethics?	Encourages	57	30.2
	No impact	80	42.3
	Discourages	27	14.3
	n.a.	25	13.2

Source: OECD survey.

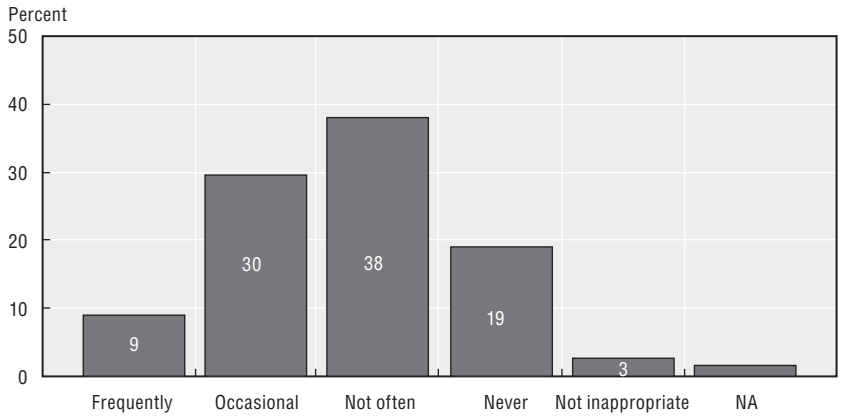
Actual or perceived problem

While the news is awash with stories of undue influence-peddling and corruption by lobbyists, the reality of the practice of lobbying is very likely far less sinister. This does not mean, however, that a problem of inappropriate influence-peddling by lobbyists does not exist. In fact, this survey shows that a substantial percentage of lobbyists themselves believe that there is a problem of inappropriate lobbying behaviour, both in actuality and in perception of the lobbying profession.

Respondents were asked: "Generally speaking, do you think inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, is a problem?" As shown in Figure 5.1, about 39% of all lobbyists surveyed indicate that inappropriate influence-peddling is a "frequent" or "occasional" problem in politics. Almost as many respondents (38%) feel that there is "not really" much of a problem with inappropriate influence-peddling, while only 19% believe such behaviour "almost never happens". A small handful of lobbyists feel that seeking official favours with gifts or misrepresenting issues is not inappropriate lobbying behaviour.

Figure 5.1. **Is inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, a problem?**

		Frequency	Percent	Cumulative percent
Valid	Frequently	17	9.0	9.0
	Occasional	56	29.6	38.6
	Not often	72	38.1	76.7
	Never	36	19.0	95.8
	Not inappropriate	5	2.6	98.4
	n.a.	3	1.6	100.0
	Total	189	100.0	



Source: OECD survey.

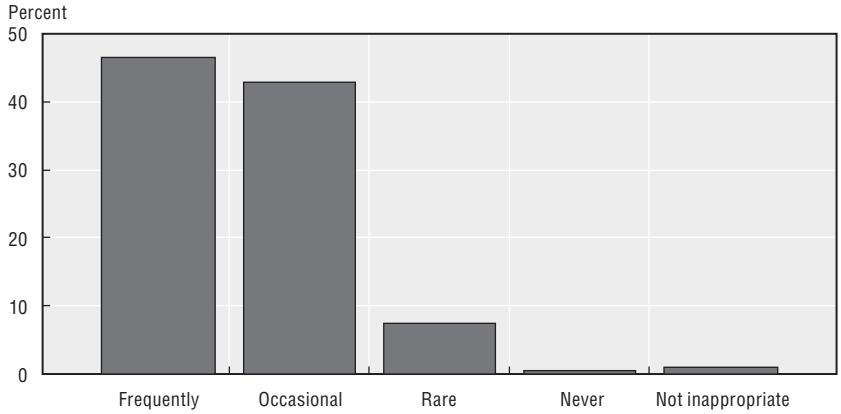
While there are clear differences in viewpoint between contract lobbyists, corporate lobbyists and lobbyists for not-for-profit organisations on this issue, significant elements within each sector believe a problem exists. Among contract lobbyists, 30.5% believe inappropriate influence-peddling is a frequent or occasional problem, 44% of corporate lobbyists believe so, and 63.9% of not-for-profit lobbyists believe it is a problem. About 23.4% of contract lobbyists believe inappropriate influence-peddling almost never happens, 12% of corporate lobbyists believe so, and 8.3% of not-for-profit lobbyists believe such behaviour almost never happens.

Attitudes among all categories of lobbyists shift heavily toward the "frequent problem" and "occasional problem" end of the scale when asked: "Does the public perceive that there is a problem of inappropriate influence-peddling by lobbyists?" As shown in Figure 5.2, only about 8% of all lobbyists surveyed believe that the public does not perceive a problem in the ethical behaviour of lobbyists.

Though this finding of a negative public perception of the lobbying profession may be obvious, it is important nonetheless. One challenge for the lobbying profession is to reasonably ensure that lobbying activity will be

conducted in an open and ethical manner, so that the integrity of the profession is maintained. This way, lawmakers and other governmental officials can seek consultations with lobbyists with confidence. A second challenge for the lobbying profession, and every much as critical, is to help gain the public's confidence that governmental decisions are being made in a fair and honest manner – that the integrity of government is maintained. The perception problem is likely to be the most formidable.[2]

Figure 5.2. **Does the public perceive a problem of inappropriate influence peddling by lobbyists?**



Source: OECD survey.

Transparency in lobbying activity

Transparency is often touted as one of the most powerful tools available for combating actual and perceived undue influence-peddling by lobbyists and corruption in government. The lobbyists surveyed in this study feel very much the same way throughout Europe.

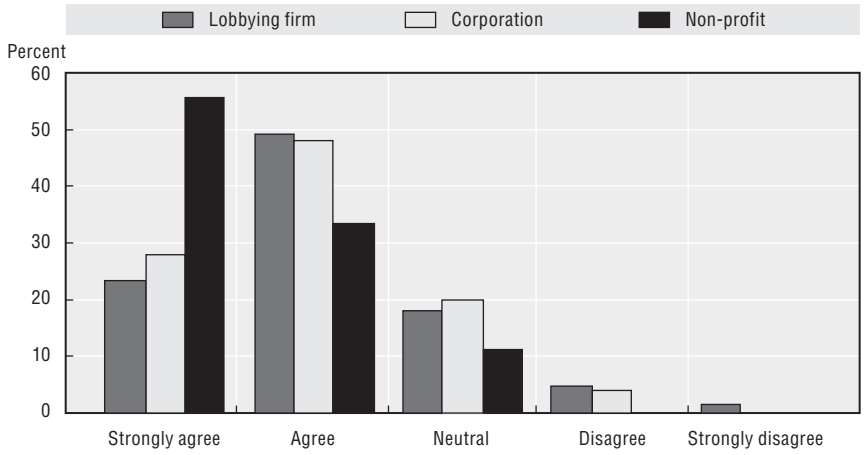
As shown in Table 5.7, more than 76% of respondents "agree" or "strongly agree" with the statement: "Some level of public transparency of lobbying activity would help alleviate actual or perceived problems of inappropriate influence-peddling by lobbyists". Only about 5% of respondents "disagree" or "strongly disagree".

The sentiment that transparency is useful in addressing actual or perceived problems of the profession crosses all three category types of lobbyists, though lobbyists for not-for-profit organisations are significantly more inclined to "strongly agree". As shown in Figure 5.3, those who disagree that transparency is useful for restoring the integrity of the profession are few and far between.

Table 5.7. **Would transparency help alleviate problems of inappropriate influence-peddling by lobbyists?**

		Frequency	Percent	Cumulative percent
Valid	Strongly agree	57	30.2	30.2
	Agree	87	46.0	76.2
	Neutral	32	16.9	93.1
	Disagree	7	3.7	96.8
	Strongly disagree	2	1.1	97.9
	n.a.	4	2.1	100.0
	Total	189	100.0	

Figure 5.3. **Transparency is useful in alleviating actual or perceived problems of influence-peddling**



Source: OECD survey.

The controversy within the lobbying community is not whether transparency of lobbying is useful to the profession – it is – but which lobbyists and what lobbying activity should be disclosed to the public. Supplemental interviews conducted with leaders of lobbying associations in Europe reveal a great deal of concern that the definition of "lobbyist" be fair and balanced, so as not to exclude lawyers and others who lobby as a corollary to their regular professions. The issue of "who" is a lobbyist subject to transparency is a matter of definitions, discussed at greater length elsewhere in this study. The issue of what type of lobbying activity should be subject to transparency is included in this survey.

Consensus runs fairly high among all category types of European lobbyists surveyed that a lobbyist transparency programme should disclose at least:

- the lobbyist's name;

- the lobbyist's employer;
- the lobbyist's client;
- general issues lobbied; and, somewhat surprisingly,
- campaign contributions made to political parties or candidates.

Transparency of lobbyist income and expenditures is largely rejected by contract lobbyists and, less so, by corporate lobbyists. Not-for-profit lobbyists, on the other hand, show somewhat greater support for disclosure of overall lobbying income, lobbyist income per client, overall lobbyist expenditures, and lobbying expenditure per issue lobbied. Both contract lobbyists and not-for-profit lobbyists express some willingness to disclose their contacts with governmental officials as the following Figure 5.4 indicates.

Implementation of a Lobbyist Transparency Programme

Debate has raged for several years in the European Commission, and now the European Parliament, whether a system of lobbyist registration should be mandatory for all lobbyists or voluntary for those lobbyists who wish to register.

As part of the European Transparency Initiative, the European Commission planned on revisiting the voluntary approach within one year after implementation to assess whether the programme is functioning properly. This assessment was issued on 28 October 2009. The report declared the voluntary registry a partial success, but decried avoidance of registration by law firms and think tanks. The report also proposed revising the register to

Figure 5.4. **Which lobbying activities, if any, should be subject to transparency and made public record?**

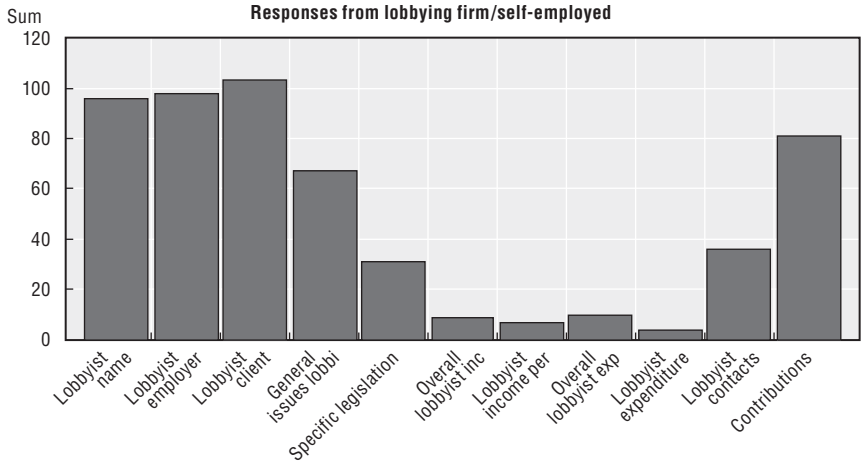
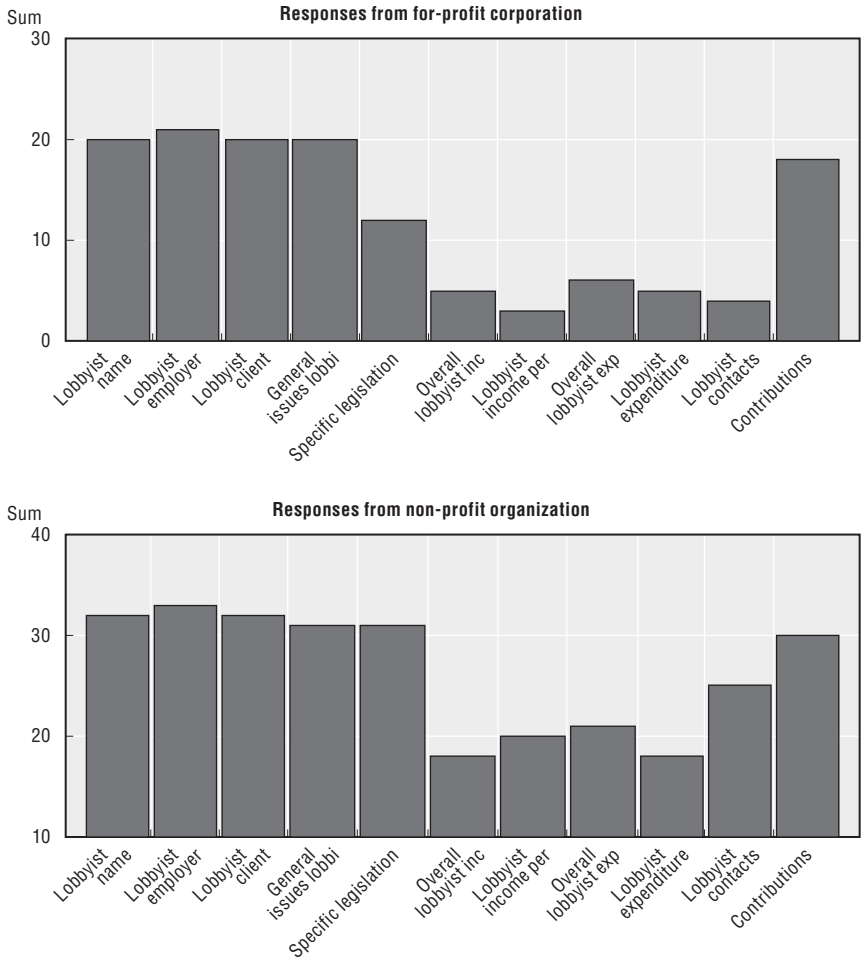


Figure 5.4. **Which lobbying activities, if any, should be subject to transparency and made public record?** *(cont.)*



Source: OECD survey.

tighten rules on financial disclosure. The changes include giving lobbyists less choice on how they disclose income from their clients and ending the distinction between direct and indirect lobbying activities. Under the current rules, lobbyists can declare the income from clients as a percentage of their total income (in bands of 10%) or in actual amounts (in bands of EUR 50 000). A single accounting system of actual amounts would make it easier to compare data from different lobbyists, and thus the report recommended ending the percentage bandwidth category.

There is also consideration of forming a joint registry between the Commission and the Parliament. On 6 May 2010, the European Commission and European Parliament relaunched negotiations through its Working Group on lobbyists to develop a joint registry. Vice President Maroš Šefčovič is leading the Commission's delegation while MEP Diana Wallis is leading the Parliament's delegation. Uniting the Commission register with the current Parliament register would help encourage more lobbyists and consultancies to register, because many lobbyists value their badge of access to the Parliament buildings (Taylor and King, 2009). At the same time, however, there is growing sentiment within the European Parliament to go further than the measures of ETI and the badge system by establishing a mandatory register, especially following the gains of the Green party in the 2009 elections. Whether any of these proposals eventually gain acceptance will be determined in the coming year or two.

The debate over a mandatory *versus* voluntary lobbyist registry rages despite evidence that the lobbying community in Brussels itself is quite comfortable with a mandatory system of lobbyist registration (Holman, 2009).

The broader lobbying community surveyed in this study in Europe feels much the same way. In fact, in separate interviews discussed elsewhere in this study, several leaders of lobbying associations expressed preference for a mandatory system as the only equitable option to ensure that the transparency rules apply to all.

Most other lobbyists surveyed in Europe seem to agree that lobbyist registration should be mandatory. As shown in Figure 5.5, more than 61% of all respondents believe that a lobbyist registration and transparency programme should be "mandatory for all lobbyists". About 18% of respondents prefer a voluntary system of registration and disclosure, and 15% are "neutral" on the issue.

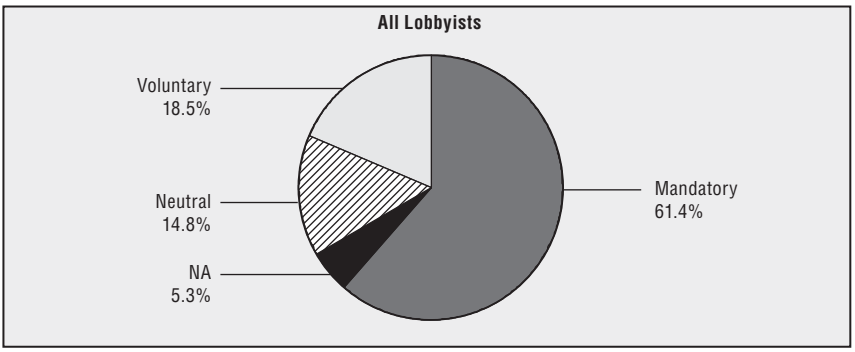
This support for a mandatory lobbyist registry again runs the gamut of all categories of lobbyists, with 80.6% of not-for-profit lobbyists favouring a mandatory system, 57% of contract lobbyists supporting mandatory registration and disclosure, and 56% of corporate lobbyists supporting the same. Mandatory *versus* voluntary registration and disclosure of lobbying activity is simply not an area of much dispute – at least not within the lobbying community.

An even greater consensus exists within the lobbying community surveyed that information subject to disclosure in the lobbyist transparency programme should be made available to the public over the Internet. More than 82% of all lobbyists surveyed agree that lobbyist disclosure records should be put on-line. Only 9% disagree, with another 9% offering no opinion.

Figure 5.5. **Should transparency of lobbying activity be mandatory or voluntary?**

Mandatory v. Voluntary disclosure by type of lobbyist

Employer			Frequency	Percent	Cumulative percent
Lobbying firm	Valid	Mandatory	73	57.0	57.0
		Neutral	20	15.6	72.7
		Voluntary	27	21.1	93.8
		n.a.	8	6.3	100.0
		Total	128	100.0	
Corporation	Valid	Mandatory	14	56.0	56.0
		Neutral	8	32.0	88.0
		Voluntary	3	12.0	100.0
		Total	25	100.0	
Non-profit	Valid	Mandatory	29	80.6	80.6
		Voluntary	5	13.9	94.4
		n.a.	2	5.6	100.0
		Total	36	100.0	



Source: OECD survey.

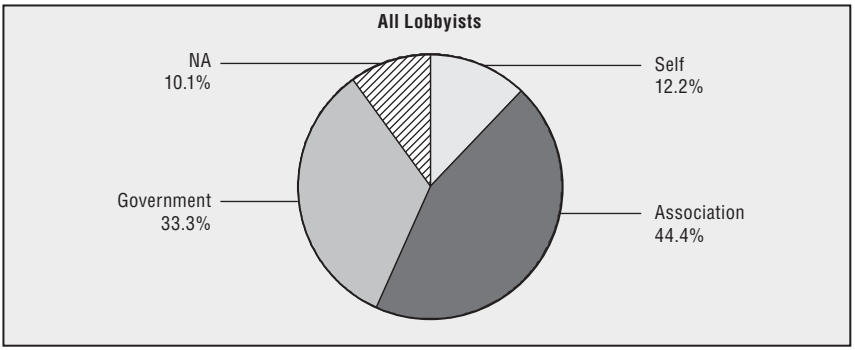
Much of the consensus on the nature of a lobbyist transparency programme fades away with the issue of who should manage the programme. As shown in Figure 5.6, a slight majority of contract lobbyists (51.6%) prefer that the lobbyist registration and transparency programme be managed by a professional lobbyist association, 21.9% of contract lobbyists favour the government running the transparency programme, and 14.8% suggest that transparency should be handled lobbyists themselves.

Nearly a half of corporate lobbyists responded (48%) prefer a government-run lobbyist transparency programme, with 36% expressing preference for an association-run programme, and 8% prefer doing it themselves.

Figure 5.6. **Who would best manage a lobbyist transparency programme?**

Who best manage disclosure? (by type of lobbyist)

Employer			Frequency	Percent	Cumulative percent
Lobbying firm	Valid	Self	19	14.8	14.8
		Association	66	51.6	66.4
		Government	28	21.9	88.3
		n.a.	15	11.7	100.0
		Total	128	100.0	
Corporation	Valid	Self	2	8.0	8.0
		Association	9	36.0	44.0
		Government	12	48.0	92.0
		n.a.	2	8.0	100.0
		Total	25	100.0	
Non-profit	Valid	Self	2	5.6	5.6
		Association	9	25.0	30.6
		Government	23	63.9	94.4
		n.a.	2	5.6	100.0
		Total	36	100.0	



Source: OECD survey.

Among not-for-profit lobbyists, a large majority (63.9%) believe the lobbyist transparency programme should be managed by a governmental agency. A quarter of respondents favour an association-run programme, while 5.6% believe lobbyists should handle it themselves.

Overall, the lobbying community is split on the issue of who should manage the lobbyist transparency programme. Among all lobbyists, 44.4% believe it would be better managed by a professional lobbying association, 33.3% believe the government would do a better job at running the transparency programme, and 12.2% think it should be managed by lobbyists themselves.

Sharp differences of opinion among lobbyists over who would best manage a lobbyist transparency programme also arise between those who believe that inappropriate influence-peddling within the profession is a "frequent" or "occasional" problem and those who do not. As shown in Table 5.8, lobbyists who believe that ethical violations are a problem for the profession overwhelmingly favour a government-run lobbyist transparency programme. Lobbyists who believe that ethical violations are "not often" or "never" a problem in the profession tend to favour a lobbyist transparency programme managed by a professional association or by lobbyists themselves.

Table 5.8. **Those who believe ethics is a problem cross-tabulated with who would best manage a lobbyist transparency programme**

		Ethics a problem?			
		Frequently	Occasional	Not often	Never
		Col %	Col %	Col %	Col %
Who best manage disclosure?	Self	5.9	7.1	11.1	22.2
	Association	11.8	28.6	59.7	55.6
	Government	70.6	55.4	19.4	11.1
	n.a.	11.8	8.9	9.7	11.1

Source: OECD survey.

Regulation of lobbying activity

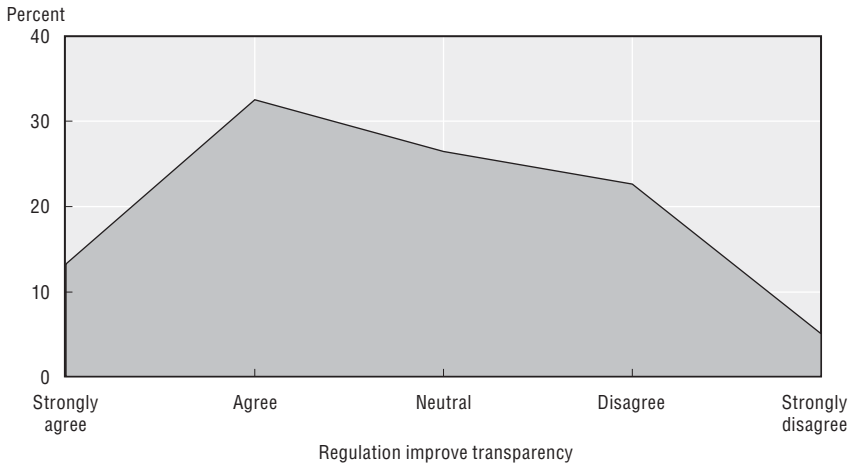
Another surprising result of this survey is that more lobbyists in Europe agree than disagree with the statement: "If legislation regulating lobbying activity were implemented, then transparency and accountability in policy-making would be improved". Similar to lobbyist attitudes on mandatory registration, the expected outpouring of opposition to government regulations of the profession among rank-and-file lobbyists is vastly over-exaggerated. A majority of European lobbyists surveyed believe that some government regulation of lobbying would improve the integrity of government

As shown in Figure 5.7, there is a decided shift in lobbyist attitudes favouring regulation. Among all lobbyists, 45.9% "strongly agree" or "agree" that government regulations would improve transparency and accountability in policymaking. About 26.5% of all lobbyists "strongly disagree" or "disagree" that regulation would improve transparency and accountability. Slightly more than a quarter of all respondents (25.4%) are neutral on the issue.

Figure 5.7. **Regulation would improve transparency in policymaking**

Regulation improve transparency

		Frequency	Percent	Cumulative percent
Valid	Strongly agree	24	12.7	13.3
	Agree	59	31.2	45.9
	Neutral	48	25.4	72.4
	Disagree	41	21.7	95.0
	Strongly disagree	9	4.8	100.0
	Total	181	95.8	
Missing	System	8	4.2	
	Total	189	100.0	



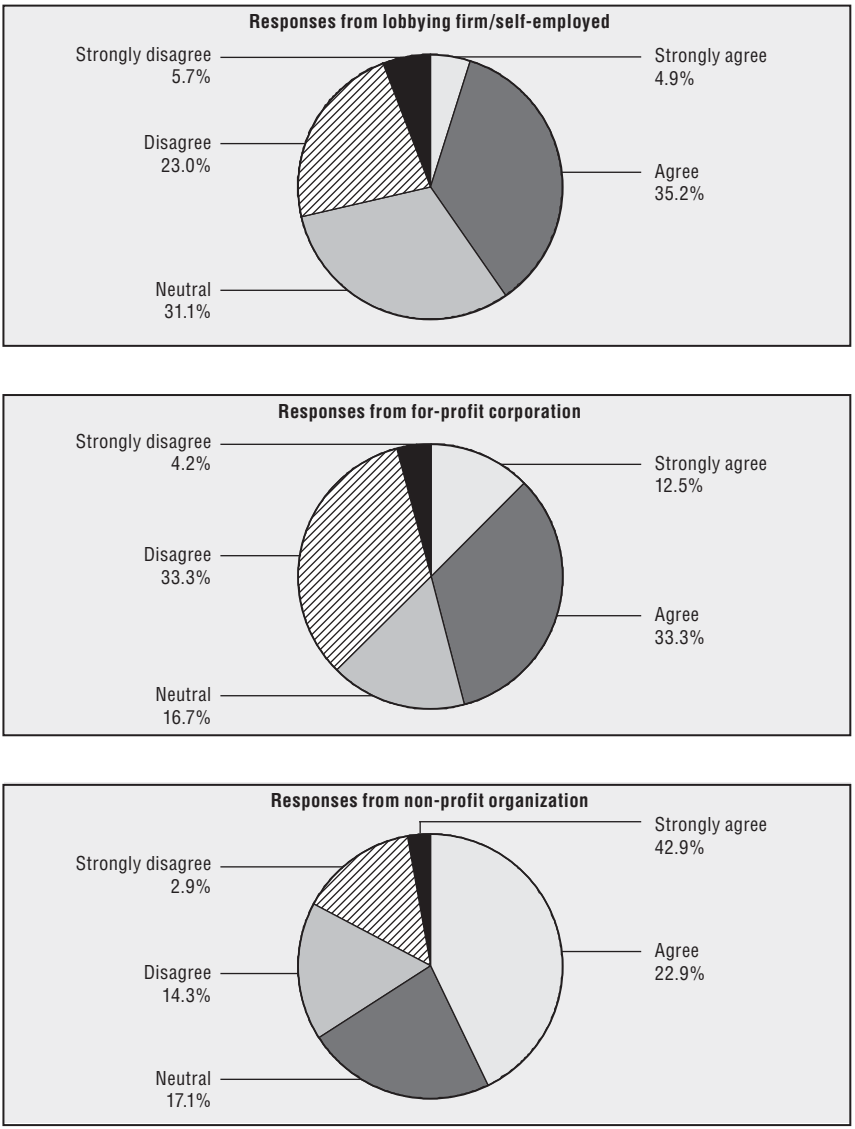
Source: OECD survey.

No doubt the results of this survey would vary depending on how "government regulation" is defined, but as a general concept the lobbying community in Europe, like its counterpart in the United States, recognises that some regulation of the profession can produce positive results for the integrity of government.

When broken down by type of lobbyist, support for the idea that some government regulation of the profession can enhance accountability clearly is strongest among not-for-profit lobbyists. Nevertheless, significant pluralities agree with the concept as well among contract lobbyists and corporate lobbyists. As shown in Figure 5.8, a large percentage of contract lobbyists, and less so corporate and not-for-profit lobbyists, are "neutral" on the issue.

Not so surprisingly, those who agree that transparency of the lobbying profession is useful in alleviating actual or perceived problems of

Figure 5.8. **Regulation of lobbying activity would improve transparency**



Source: OECD survey.

inappropriate influence-peddling are more likely to agree that some government regulation is also useful. Those who disagree that transparency is constructive also disagree that government regulation would improve transparency and accountability in policymaking (see Table 5.9).

Table 5.9. **Transparency useful cross-tabulated with government regulations improve transparency**

		Regulation improve transparency				
		Strongly agree	Agree	Neutral	Disagree	Strongly disagree
		Col %	Col %	Col %	Col %	Col %
Transparency is useful	Strongly agree	39.3	33.9	14.3	8.9	3.6
	Agree	2.4	42.9	27.4	23.8	3.6
	Neutral		10.0	43.3	43.3	3.3
	Disagree		14.3	42.9	14.3	28.6
	Strongly disagree			50.0		50.0
	n.a.				100.0	

Source: OECD survey.

Similarly, those who agree that some government regulation would improve transparency and accountability believe that government is best suited to manage a lobbyist transparency programme. Those who disagree that government regulation would be constructive generally believe that a professional lobbying association or lobbyists themselves are best suited to manage a lobbyist transparency programme. Those who are neutral on the issue of government regulation heavily favour an association-run transparency programme (see Table 5.10).

Table 5.10. **Regulation improves transparency cross-tabulated with who would best manage a transparency programme**

		Regulation improve transparency				
		Strongly agree	Agree	Neutral	Disagree	Strongly disagree
		Col %	Col %	Col %	Col %	Col %
Who best manage disclosure?	Self	8.3	11.9	6.3	12.2	44.4
	Association	8.3	39.0	56.3	70.7	33.3
	Government	83.3	47.5	16.7	4.9	11.1
	n.a.		1.7	20.8	12.2	11.1

Source: OECD survey.

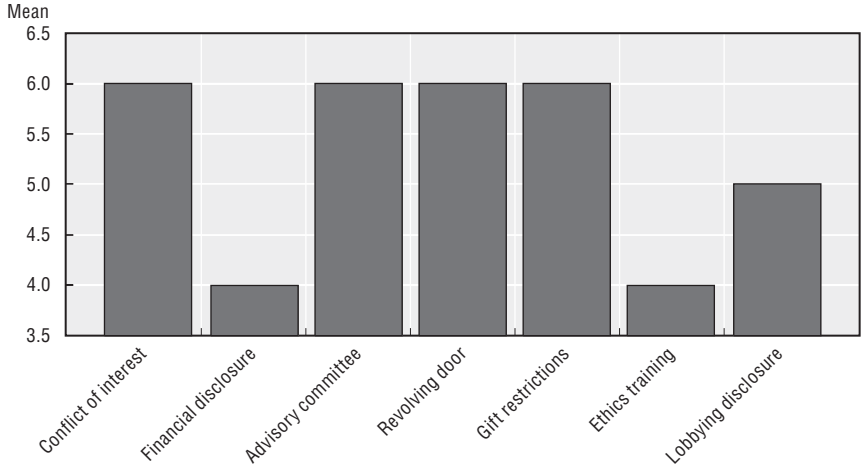
Public sector survey results

In a separate and much smaller survey, several public disclosure offices of national and provincial governments in Europe and Canada were queried about their attitudes on lobbying self-regulation and regulation as well as the effectiveness of other governmental regulations in addressing inappropriate influence-peddling. All of the offices asserted that lobbying of government officials by private interests is "very extensive" or "somewhat common".

As expected, these governmental offices almost universally "agree" or "strongly agree" that transparency measures would help alleviate actual or perceived problems of inappropriate influence-peddling by lobbyists. All of the offices that responded call for a mandatory system of lobbying registration and transparency and believe that the programme would best be managed by a governmental agency. They also "agree" or "strongly agree" that some government regulation improves transparency and accountability in policymaking. There is no opposition expressed among respondents to any of these concepts.

Perhaps the most interesting result of this public sector survey is that these offices have as much confidence in other forms of ethics regulations besides lobbying reforms for promoting transparency and accountability in government. Lobbying transparency is important, but so are conflict-of-interest regulations for public officials, restrictions on officials receiving gifts from private parties, ethics training for government employees, personal financial disclosure for high ranking officers in the government and disclosure of who sits on advisory committees. While lobbying transparency is certainly useful for maintaining integrity in government, according to respondents, transparency and ethics restrictions should also apply to government officials (see Figure 5.9).

Figure 5.9. **Which measures are "very effective" in curtailing inappropriate influence-peddling by lobbyists over public officials?**



Source: OECD survey.

Notes

1. One of the largest lobbying firms in the United States, PMA Group, recently disbanded because of ethical and possibly illegal transgressions. PMA made extensive use of the revolving door in recruiting former congressional staffers with close connections to congressional committee chairmen, and made campaign contributions to these same officials, to help secure budget appropriations for its paying clients. Following a raid of PMA offices by the Department of Justice searching for evidence of bribery or other corrupt practices, the public perception of PMA's practices led to the agency's demise. Several of the leading members of Congress subject to PMA's lobbying efforts, and beneficiaries of PMA campaign contributions, are also under scrutiny. Former PMA lobbyists have since received employment with other lobbying firms. See Bernard, 2009.
2. Much of the perception of lobbying as a corrupting influence is rooted in history. See Susman, 2006.

Bibliography

Bernard, Michael (2009), "Pay to Play: More Revelations Regarding the Connection Between Lobbyists and Lawmakers", *Associated Content*, 12 March 2009, *www.associatedcontent.com/article/1531053/pay_to_play_more_revelations_regarding.html*.

Holman, Craig (2009), "Lobbying Reform in the United States and the European Union: Progress on Two Continents", in Conor McGrath ed., *Interest Groups and Lobbyingin United States and Comparative Perspectives: Essays in Ethics, Institutional Pluralism, Regulation, and Management*, Edwin Mellen Press, Lewiston.

Taylor, Simon and Tim King (2009), "Kallas Considers Revising Lobbying Register Rules", *European Voice*, 9 March 2009.

Transparency International and Carter Center. The Crinis Project. 2007. *Money in Politics – everyone's concern*.

© OECD 2012

Chapter 6

Conclusion: Options for Enhancing Transparency and Accountability through Self-Regulation and Regulation of Lobbying

This final chapter outlines various options available for self-regulation and government regulation of the lobbying profession and the ways to find the appropriate balance between them. The array of effective self-regulatory institutional mechanisms developed in Europe are analysed, such as the adoption of codes of conduct and making them mandatory, the strengthening of enforcement mechanisms, and the imposition of a mandatory system of lobbyist registration and internet disclosure of activities.

The chapter also recognises that self-regulation may not be effective in all situations and describes the ways in which regulation may enhance transparency and accountability. The regimes applied in the United States and Canada are highlighted as good practices for enhancing transparency in registration and disclosure as they provide broad, yet fairly clear lines distinguishing who must register and what information must be disclosed.

The chapter also addresses measures aimed at public officials, such as restrictions on conflicts of interest, financial disclosure of investments and properties owned by government officials which have proved effective to reduce influence-peddling and building public trust in government.

Introduction

The ultimate objectives of any system of self-regulation or regulation of the lobbying profession is to rein in the potential for inappropriate influence-peddling by lobbyists and to establish the public's trust that governmental decisions are being made in an open and fair manner. In proposing a "model" for the self-regulation or regulation of the lobbying profession, the survey results show that each nation has a unique set of circumstances pertinent to the practice of lobbying. While there appears to be growing cynicism among the public generally about whose interests government represents, and the role of lobbyists in influencing the policymaking process, that cynicism is much stronger in some European countries than others.

Where public cynicism about the integrity of government is not so strong, carefully planned and administered efforts by lobbyists and their lobbying associations to abide by principles of transparent and honest policymaking may well be sufficient, at least for the time being. In countries where public cynicism is more challenging, a stronger set of self-regulations and government regulations may be in order to regain the trust of the citizenry and to prevent occurrences of undue influence-peddling by lobbyists. Much like the survey results of lobbyists given above in Tables 5.9 and 5.10, those who believe that there is a serious problem of inappropriate influence-peddling and believe that transparency can help alleviate the problem are much more likely to support government regulations of the profession. Those who believe the problem is not so pervasive tend to favour association-run programmes. Clearly, a suitable "model" for establishing transparency and accountability in government to a large extent must be tailor-made for the political realities of each country.

Nevertheless, this study has identified several options for self-regulation and regulation of the lobbying profession that can help achieve the goal of reducing undue influence-peddling by lobbyists and strengthening the public's trust in government. These options are discussed below.

Enhancing transparency and accountability through self-regulation

As public opinion has fallen dramatically about the integrity of government in general, and the role of lobbyists in the policy-making arena in particular, the lobbying profession in Europe has developed an array of institutional mechanisms to help address these problems. To gain the

confidence of governmental officials with whom they work, the profession must root out inappropriate and potentially scandalous influence-peddling behaviour. At the same time, the credibility of the profession rides on the public's perception of the integrity of government – and this, nearly all European lobbyists recognise, requires some level of transparency in how lobbyists relate to government officials.

Steps can be taken to strengthen self-regulatory tools of the lobbying profession. These include:

- Make a code of conduct mandatory and specifically target ethical behaviour by lobbyists;
- Mandate ethics training for members of an association;
- Strengthen the enforcement mechanisms of a lobbying association; and
- Impose a mandatory system of lobbyist registration and Internet disclosure of lobbying activities managed by the lobbying association.

Code of conduct

One of the most important tools for self-regulation of the lobbying profession is an ethics code of conduct. As noted in the review of lobbying associations in Europe, every professional association has established principles of ethical behaviour in the form of a code of conduct. About 91% of lobbyists surveyed indicated they are subject to some form of ethics code, either from a professional association, business or the government. Those who said they are subject to a government code were a small 3.2% of respondents.

Most of the lobbying associations originally based their ethics codes upon traditional codes developed for the public relations profession, such as the Code of Athens or the Code of Lisbon. Some of the associations continue to adhere to the older codes, but several associations have made efforts to update their ethics codes and refashion the codes to apply specifically to the lobbying profession.

One component of a more effective ethics code for lobbying associations is that membership is made contingent upon agreeing to abide by the code. Rather than being just an amorphous document posted on an association's web page, members should be required to sign that they have read and will abide by the code in order to alert members that such a code exists.

Critical to the development of an effective ethics code for lobbyists is the newest tendency of some codes to embellish the behavioural constraints suggested in the Code of Lisbon and prescribe specific behavioural rules for lobbyists. The codes for the Association of Professional Political Consultants (APPC) and the Public Relations Consultants Association (PRCA) in the

Box 6.1. **Restriction of bribery and solicitation of favour**

The Association of Professional Political Consultants in the United Kingdom includes the following restriction in its Code of conduct:

"Save for entertainment and token business mementoes, political consultants must not offer or give, or cause a client to offer or give, any financial or other incentive to any person in public life, whether elected, appointed or co-opted, that could be construed in any way as a bribe or solicitation of favour."

Source: APPC Code of conduct.

United Kingdom, for example, provide more than general moral principles to guide the practice of lobbying; they also include some specific restrictions on the flow of money from lobbyists to government officials. The APPC code states: "Save for entertainment and token business mementoes, political consultants must not offer or give, or cause a client to offer or give, any financial or other incentive to any person in public life, whether elected, appointed or co-opted, that could be construed in any way as a bribe or solicitation of favour." This provision has been interpreted by officers of APPC to even prohibit paying lecture fees to government officials.

If properly enforced, such a specific code on lobbying behaviour could significantly reduce inappropriate influence-peddling associated with the reciprocity principle – government officials feeling indebted to lobbyists who have given them gifts, remuneration or other things of monetary value. It needs to be pointed out, however, that no data exist as to the compliance of APPC and PRCA members with this restriction. One formal complaint is on record of an alleged violation of this provision, against Media Strategies in 2005. Media Strategies, however, resigned from APPC before a formal hearing was launched and joined PRCA instead (House of Commons, 2009).

Enforcement mechanisms of a lobbying association

APPC has launched a new campaign at restructuring its enforcement authority to deal with a case like Media Strategies. APPC and PRCA joined with the Chartered Institute of Public Relations lobbying division in forming an umbrella organisation. The umbrella organisation seeks to promote a common ethics code and approach to self-regulation across the industry of lobbyists and public relations professionals. Though the organisation has agreed upon a set of Guiding Principles, it has not yet gained consensus on an ethics code that includes a specific constraint against the flow of money from lobbyists to government officials, nor has it developed a single enforcement entity governing all three associations.

Box 6.2. **Key Behavioural Components of a Lobbyist Code of Conduct for a Professional Association**

- Agree to abide by the code as a condition of membership or employment.
- Lobbying communications must be factually accurate and honest.
- Require disclosure of clients and interests represented to those lobbied.
- Prohibit simultaneous employment as a lobbyist and a public official.
- Mandate recusal from representing any client on matters posing a personal conflict of interest, unless the conflict is fully disclosed and manageable.
- Provide no gifts above *de minimis* value, fees, services, employment or other things of value to public officials.
- Require periodic ethics training as a condition of membership.
- Establish an independent investigative panel to monitor compliance.
- Impose sanctions for violations.

Source: Holman and Susman (2010).

Furthermore, in the survey of attitudes toward self-regulation among lobbyists in Europe, lobbyists tend to believe that a system of sanctions for violations is more compelling than inducements, though the current systems of inducements and sanctions are generally viewed as ineffective by a majority of respondents (71.9% believe positive inducements are ineffective, and 50.8% believe that the existing penalties are ineffective).

For professional associations, sanctions have been limited to reprimand or expulsion from the association, if invoked at all. A stronger form of sanctions would be to make compliance to the code conditional for *employment* in a lobbying firm, corporation or not-for-profit organisation. Egregious violations could result in job termination. APPC has attempted to make its ethics code a condition for employment among its member consultancy firms. Member consultancy firms must agree that: "It is a condition of membership of APPC that the member firm, its staff and non-executive political consultants should accept and agree to abide by this Code for itself and that members will be jointly and severally liable for the actions of their staff in relation to the Code." The association requires its members to explain their day-to-day compliance procedures with the code and to affirm that the ethics code forms part of the members' contracts of employment for lobbyists hired by the member consultancy firms (Association of Professional Political Consultants, 2009).

This emphasis of the APPC code to apply its ethics guidelines as a condition for employment among member firms likely explains why more

than a quarter of lobbyists surveyed said they are subject to a corporate code of ethics. However, there is not any record of a lobbyist being terminated by a member consultancy firm because of a violation of APPC's code of conduct.

If corporations and firms are not likely to make hiring and firing decisions based on compliance with an association's ethics code, would sanctions for violations likely be meted out by lobbyists within an association against their own members? The evidence also is not convincing. Lobbying associations throughout Europe have received few formal complaints against their members and conducted even fewer investigations of complaints or unethical behaviour.

Many lobbying associations reported no formal complaints and no enforcement actions in their history. Those who reported no enforcement actions include the Public Relations Institute of Ireland, the Society of European Affairs Professionals, the Turkish Public Relations Association, the Public Relations Consultants Association, and the Croatian Society of Lobbyists, created in 2008. The Swedish Public Relations Association reported one enforcement case in 1972, and APPC reported two cases, one formal investigation conducted a decade ago and another recent case in 2008 that was cancelled when the issue was settled in court. Perhaps the most robust enforcement track record comes from the Chartered Institute of Public Relations, reporting that it receives about four written complaints a year against members, most of which do not result in formal investigations. Over the last five years, CIPR investigations have been conducted in ten cases, only one of which involved lobbying behaviour. Even so, CIPR has convened its disciplinary committee only twice in the last decade to issue formal sanctions for violations.

It is not possible to evaluate whether informal discussions have appropriately addressed most violations of the ethics code among lobbyists. That only four formal disciplinary proceedings across Europe have been reported by professional associations in not-so-recent history suggests a very low level of enforcement. This accounts for why a majority of lobbyists surveyed said they are unaware of anyone ever being reprimanded or otherwise penalised for infractions.

If an association is going to develop an effective mechanism for investigating possible infractions and issuing appropriate sanctions for violations, the investigative panel should consist of at least some persons from outside the profession. There is an inherent conflict of interest in lobbyists sitting in judgment of lobbyists. Some associations have developed such formal investigative bodies composed of outside members, but even these have rarely initiated or handled complaints. There is a severe incongruence with perception and reality in this track record: while the public perceives a substantial problem of undue influence-peddling by lobbyists

– and even 39% of lobbyists in Europe themselves believe that inappropriate influence-peddling is a frequent or occasional problem – the lobbying associations are reporting very few enforcement actions.

Ethics training and education

All the European lobbying and public relations associations provide some amount of ethics training and education, ranging from seminars and conferences to actual courses of study and diplomas for graduation. Both the Public Relations Institute of Ireland and the Swedish Public Relations Association, for example, excel in education for their members. Education is the primary purpose of PRII, which provides its own school for lobbyists and public relations professionals. Though ethics training and education are voluntary programmes at SPRA, it offers extensive classes for all its members three times a year, in which a good share of the membership participates.

The PRII offers various workshops and courses, to help professionalise its members. It hosts an ongoing series of educational forums, luncheons and conferences. Additionally, PRII workshops are designed to allow its members to obtain the resources they may "need to grow professionally" (PRII, 2009b).

More importantly, PRII is essentially a school in lobbyist and public relations training. It offers a Diploma in Public Relations in co-operation with various universities and colleges in Ireland. The curriculum for receiving the Diploma is "suitable for those with some PR experience but without an industry-specific qualification" and "can also be undertaken by those working outside the industry but who wish to bring advanced communication skills to an existing role" (PRII, 2009c).

The Swedish Public Relations Association also takes its educational function very seriously. SPRA's education programme consists of a three-day class offered to all members three times every year, known as the Communication Mentoring Programme. One session of the class focuses on ethical conduct. Though the class is voluntary, about 20 to 30 members participate in each round of classes (Sjoberg, 2009). The goal is that once the programme has been completed, the participants "shall have gained broader and deeper knowledge and increased their skills" (Swedish Public Relations Assc, 2010).

The Chartered Institute of Public Relations specialises in education as well. CIPR supports the training and education of its members through a wide variety of events. Most significantly, CIPR has achieved such status in the industry that it provides industry-recognised degrees in lobbying and public relations. CIPR's on-going training degree, the Diploma programme, is now available on-line so as to be more accessible.

These education and training programmes are extraordinary achievements of the professional lobbying associations that provide them. Education and ethics training is a task for which professional associations are uniquely suited. Professional associations have the kind of expertise and real-world experience that is not readily available elsewhere. Judging from the participation rates in these educational programmes, their members are quite appreciative of the service.

To maximise this value of professional associations, ethics training at the very least should be mandatory as a condition of membership. Furthermore, the educational function would be made all the more valuable if, as in the case of CIPR, the professional association provides degrees in the field that are recognised within the industry as a license of professionalism.

Association registry

Another innovation by APPC for self-regulation that could well be emulated by other lobbying associations is that of a mandatory lobbyist registry for all its members, with reports filed on a quarterly basis. The registry discloses the identities and contact information of the lobbying entity, the names of its lobbyists and staff working on the lobbying campaign for that period, and the names of their clients in each three-month period. This information is then provided on-line through the association's web page.

As noted earlier, this registry was created in response to a political scandal. Disclosing the names of the lobbyists and clients is a transparency measure designed to reassure governmental officials and the public that lobbying activity is done in the open. Conflicts of interests between lobbyists, their clients and governmental officials can readily be identified on an ongoing basis – at least for members of the association.

Partly due to this association-run mandatory registry, and another like it run by PRCA, a vast majority (61.4%) of lobbyists surveyed support a mandatory system of lobbyist registration and disclosure. But this overwhelming support for a mandatory registry cannot be attributable to experience with APPC and PRCA alone given that respondents come from all across Europe, not just the United Kingdom. About 9 out of 10 lobbyists surveyed believe that the public perceives there is a frequent or occasional problem of inappropriate influence-peddling by lobbyists, and most recognise that the profession needs to take steps to counter this cynicism. More than three-quarters of lobbyists believe that transparency will go a long way toward alleviating public concerns, and a mandatory registry is just such a step.

According to lobbyists themselves, information contained in a lobbyist registry should be available on the Internet and include at least the lobbyist's name, lobbyist's employer, lobbyist's client and general issues lobbied.

According to most lobbyists, the registry also provides an ideal opportunity to report and disclose lobbying contacts with government officials and any contributions made by lobbyists to political parties or candidates.

Less support is shown among lobbyists for disclosure of financial activity, such as income received from clients or expenditures made to lobby specific legislation. While this may be the preference of many lobbyists, the profession must ask itself if the public's demand for transparency and accountability will be met if lobbyists continue to conceal who is paying how much to influence what.

However noble the current association-run registries, critical information such as general and specific issues lobbied and income or expenditures is omitted. The member disclosure reports thus are unable to show which business or client is interested in which issues and how much they are interested in those issues. The disclosure reports tend to provide much of the same information from reporting period to reporting period – the same lobbyists and the same clientele, usually with only minor modifications over the course of a year or two. This type of registry, for example, does not permit the public to find out which issues Microsoft Corporation is lobbying for and against in Europe, and how much it is spending on its lobbying campaign.

Enhancing transparency and accountability through regulation

While several significant steps can be taken to strengthen self-regulation of the lobbying profession, self-regulation cannot be as widely applied and evenly balanced among different professions as government regulation. While the umbrella organisation formed by APPC, PRCA and CIPR is a highly commendable step to broaden the numbers of lobbyists subject to an ethics code and lobbyist registry, it is important to realise that these professional associations represent primarily commercial consultancies, which comprise a small portion of all lobbyists (MacDuff, 2009b). If transparency and accountability are to be applied to all professional lobbyists, be they members of an association or not, be they lawyers who lobby or contract lobbyists, a government-run registry offers the most sweeping and thorough reach.

Capturing the lobbying community via definitions

While professional lobbying associations are necessarily limited to applying their self-regulatory regimes to their own members, governments are not so constrained. The universe of lobbyists captured for a government registry and disclosure system can extend well beyond contract lobbyists and those who voluntarily join lobbying associations. Unlike the voluntary

registration system of Hungary, and the limited definitions of who constitutes a lobbyist in Lithuania and Poland, the most effective programme that ensures transparency across all categories of lobbyists would be *mandatory* and *broad in its definition* of who is a lobbyist.

Under no means should citizens who voluntarily and without compensation exercise their right to petition government, who communicate their viewpoints with elected and appointed representatives, be subject to registration requirements or reporting or disclosure burdens. Any such imposition on average citizens is unnecessary, over-reaching and an anathema to democracy.

It is the element of *money in politics* where the potential for undue influence-peddling and corruption arises and where citizens begin worrying about whose interests have influence in policymaking. Thus, an effective system of government regulation of lobbying must focus on those who receive considerable compensation, or make significant expenditures, to influence governmental officials.

The definitions now in place in Canada and the United States are both sweeping in scope, yet provide fairly clear bright lines distinguishing who must register and what information must be disclosed. As opposed to the definition of "lobbyist" in Australia, Lithuania or Poland, which cover only contract lobbyists, and as opposed to the limited reach inherent in a self-regulatory regime, the Canadian and American definitions cover all persons – regardless of primary occupation and regardless of whether they have joined a voluntary lobbying association – who receive compensation and spend a significant amount of time attempting to influence public policy. This includes in-house lobbyists for corporations and not-for-profit organisations and lawyers who lobby on behalf of one or more clients, as well as contract lobbyists.

At the same time, it is important that a definition of "lobbyist" not be so sweeping as to capture average citizens petitioning government for redress or even the occasional compensated lobbyists. An appropriate definition also requires that any person subject to registration as a lobbyist:

- Receive a certain threshold of compensation to lobby on behalf of paying clients, or be employed by an organisation that makes significant expenditures for lobbying.
- Make one or more of lobbying contacts with "covered public officials" designated as decision-makers in government.
- Spend a significant amount of his or her work time conducting lobbying activities on behalf of *any single client* or the employing business or organisation during a reporting period.

Many nations with a regulatory regime also specify a long list of exemptions to the definition of lobbying. Typical exemptions in Australia, Canada and the United States, for example, include:

- Communications made in response to a request by public officials or government offices seeking information.
- Communications made in a public forum or in the news media.
- Communications made in a judicial proceeding or in response to an official investigation.

The specification that a person is captured under the definition of "lobbyist" if he or she spends a certain amount of time (say, 20%) lobbying on behalf of any specific client addresses head-on the "lawyer problem". Lawyers who spend a certain amount of their time on behalf of any one client conducting lobbying activity, and receive significant compensation from that client for the lobbying activity, must register and report the lobbying activity only for that specific client. The confidentiality of legal work for all other clients is protected.

This definition is sufficiently broad to capture professional lobbyists and sufficiently narrow to avoid capturing citizens petitioning government. Only a government-run registry may deliver this kind of scope and reach of the profession and offer full transparency of who is being paid to lobby the government.

It comes as no surprise that a government-run registry, backed by a broad but clear definition of lobbying, draws considerable support even from within the lobbying community. Nearly twice as many lobbyists surveyed in Europe believe that government regulation would improve transparency and accountability in policymaking. Only about a quarter of respondents "strongly disagree" or "disagree" with that statement.

A shortcoming in the definition used in Australia and the United States is that it does not include "grassroots lobbying" – paid communications to the general public intended to encourage the public to contact government officials to support or oppose specific pending legislation. Businesses, organisations and individuals may be spending twice as much (or more) on grassroots lobbying activity than on direct lobbying, but no reliable estimates exist.

A classic example of a grassroots lobbying campaign that fundamentally shaped public policy in the United States, yet went fully undisclosed at the time, was the infamous "Harry and Louise" television ad campaign. The Health Insurance Association of America (HIAA), a health insurance industry lobbying group, was fearful that Congress was about to adopt a government-run national health care programme. HIAA poured millions of

dollars into a television ad campaign featuring an average middle-class couple ("Harry" and "Louise") despairing over the allegedly bureaucratic nature of the plan and urged viewers to contact their representatives in Congress. The sponsor of the ad campaign remained secret; HIAA was not required to disclose under the nation's lobbying law. Many Americans believed that it was a truly citizen-backed campaign and responded by swamping Congress with calls and letters opposing national health care. The national health care plan was defeated.[1]

The debate has re-emerged in the United States more than a decade later and again Congress and the public are under siege by lobbying campaigns of the health care industry. In the first half of 2009, the health care industry has spent USD 1.4 million each day on direct lobbying activity, employing six lobbyists for every member of Congress, and has spent an undisclosed amount on television advertising and grassroots lobbying campaigns (Eggen and Kindy, 2009).

Government administration of the transparency programme

Clearly, the least coercive means for reining in undue influence-peddling by lobbyists is through compliance with codes of conduct administered by lobbying associations or by lobbyists themselves. But the least coercive is likely also to be among the least effective – as recognised by the public and many lobbyists themselves.

A government of laws by definition comes with mandatory prescriptions for lobbying activity and the institutional mechanisms to monitor and enforce compliance. But a heavy hand is not recommended. Citizens should feel free and unrestrained to petition government for redress without fear of violating lobby laws. This means the threshold that determines when a person must register as a lobbyist needs to be made as clear as possible. When a person crosses that threshold but fails to register, perhaps by accident, that person ought to be notified of the obligations and given a chance to rectify the situation. Enforcement actions should only be taken in egregious and deliberate violations of the lobby regulations. Since lobbying is such a fundamental part of democratic society, it is important to err on the side of caution in enforcing the laws that govern the lobbying profession.

Enforcement actions taken by the government against lobbyists in the regulated systems appear fairly active but not over-zealous. In the United States, enforcement actions have historically been rare, but greater public scrutiny of lobbying abuses has resulted in stepped-up efforts to ensure compliance. Enforcement of the lobby laws in the United States proceeds in two steps. First, the Secretary of the Senate or Clerk of the House sends a notice of potential non-compliance to registrants where a problem seems to

exist. If the registrants decline to justify their actions or take corrective remedies, the cases are then referred to the US Attorney's Office for the District of Columbia for follow-up action. In April 2008, 330 cases were referred by the Secretary of the Senate to the US Attorneys Office (all of these referrals were for the 2006 year-end reporting period, prior to enactment of the 2007 lobbying reform legislation). Removing the duplicate referrals for the same registrant reduced the number of registrant referrals to 268. "Subsequent compliance" by 16 registrants occurred after the referral was made and reduced the number of registrants for which follow-up was required to 252. The US Attorney's office sent "contact letters to the 252 registrants in an effort to secure their compliance with the Act" (United States, 2008 at 18).[2]

In the Canadian federal lobbyist registry, 17 formal complaints against lobbyists were initiated in the 2007-08 fiscal year and six additional complaints were carried over from the previous year. They include 13 allegations of unregistered lobbying. Of these, nine involve individual lobbyists, and four involve not-for-profit organisations. Of the remaining four reviews, two were initiated based on allegations that registered lobbyists were in breach of the 2007 Canadian Lobbying Act by filing registrations that did not include full disclosure of the members of a client coalition and public funding (Office of the Commissioner, 2008).

The Investigations Directorate in Canada's Office of the Commissioner of Lobbying issued a total of 26 advisory letters to lobbyists from April 2007 to March 2008. These letters resulted in six respondents replying that they were not required to register. It is worth noting that registrations were received from six of the 26 addressees shortly after advisory letters had been sent. Over this same period, an additional 193 entities, such as consulting firms, corporations, and organisations, were examined as a result of references in the media alleging unregistered lobbying activities. No further action was taken in 152 of the cases for the following reasons: 121 institutions were already registered, 21 were volunteer organisations which were not required to register under the Act, and ten instances were found to involve provincial lobbying only.

While these figures show an appropriate "velvet glove" approach to enforcement of the lobbying laws in the regulatory systems of Canada and the United States, they also suggest that the very few enforcement actions taken by the professional lobbying associations in Europe may not be adequately addressing the problems.

The social cost of government regulation does not appear to be excessive. The most complex regulatory system, that of the United States, has been implemented and administered on a shoe-string budget, consuming the time of three full-time employees in the US Secretary of the Senate's office, with additional assistance provided by shared governmental staff. The Secretary,

for example, tapped the computer expertise and generosity of the Senate Sergeant-at-Arms to develop its electronic filing and disclosure programme (Gavin, 2009). The European Commission has developed a voluntary registry that is fully capable of handling legions of registrants, complete with on-line disclosure. Its start-up cost in 2008 for the on-line register was EUR 415 000, with annual maintenance costs of about EUR 110 000 (Schmidt, 2009). The Commission registry is staffed by two full-time employees working on the design, launch, running and evaluation of the register.

The largest budget for administration of a lobbyist regulatory system is that of the Office of the Commissioner of Lobbying of Canada. The Canadian registry reports an annual budget of CAD 4 million, with 28 full-time employees. However, the Canadian office is fully equipped and staffed to handle all elements of the programme, from education and ethics training, to registration and disclosure, to handling investigations and prosecutions in-house (Office of the Commissioner, 2008).

The personal cost of government regulation also does not appear to be excessive. American lobbyists must deal with one of the most comprehensive reporting and disclosure regimes anywhere in the world. Yet, in an earlier survey of US lobbyists, the total time spent on recordkeeping and filling out disclosure forms is less than 30 hours a year for most lobbyists. Nearly a quarter of lobbyists said it was less than 10 hours per year (Holman, 2009).

Financial disclosure

Follow the money. Money in politics is the issue that all transparency and accountability measures attempt to address. The question is whether public policy is being formulated in the public's interest or in the interest of powerful financial interest groups, represented by paid lobbyists, is at the bottom line of concerns over undue influence-peddling.

So when the options for enhancing transparency and accountability in government are considered, this discussion focuses on how to reassure the public that governmental decisions are not being made simply in the interests of well-paid lobbyists and those who can afford to hire them. Such reassurance comes from opening the books and letting the public know who is paying how much to influence what. Public officials especially would benefit from this information in evaluating the merits of a lobbying campaign knocking at their door.

The survey of lobbyists in Europe shows a great deal of reluctance among the lobbying community to disclose their financial dealings. The actions of professional lobbying associations, even those that have created their own lobbyist registries, reconfirm this reluctance among European lobbyists to open their financial books.

The argument posed most frequently by European lobbyists against disclosing their lobbying income or lobbying expenditures is that such disclosure may unfairly expose competitive business practices and undermine market forces. "EPACA is opposed to any requirement that commercially sensitive or confidential financial information, such as individual client fees, be published", declared the European Public Affairs Consultancies' Association in response to the European Commission's request for public comments on its Green Paper of the European Transparency Initiative (European Public Affairs Consultancies' Association, 2006). Financial disclosure is often also criticised for opening up lobbying campaigns to public criticism, depending on who is financing the lobbying campaign.

Who is financing which lobbying campaign is precisely the type of knowledge that informs the public as well as policy-makers on the merits of a lobbying campaign? It is extremely useful to know, for example, that the insurance industry is funding a lobbying campaign to oppose a national health care bill. From that knowledge, lawmakers can better evaluate the political pressures to which they are subjected. And from that knowledge, the public can better evaluate the integrity of public officials and their decisions.

Lobbyist income and expenditures have long been publicly disclosed in the United States, and there has been no downturn in the lobbying market. Nor do most American lobbyists feel they are revealing commercially sensitive data to competitors. Disclosure of income per client and overall lobbying expenditures, every three months, is widely accepted among American lobbyists as a simple matter of doing business in the profession (Holman, 2009). That simple matter of business for the profession – financial disclosure of client income and lobbying expenditures – has proved sufficient to unravel the complex web of deception and corruption built by disgraced lobbyist Jack Abramoff and others.

Most European lobbying associations appear unwilling to set up a system of financial disclosure. If this pillar of transparency is to be achieved, it likely must come from a regulatory regime run by the government, accountable to the public rather than solely the lobbying profession.

Regulation of the governmental sector

While the objectives of transparency and accountability in policy-making can largely be achieved through the various means of self-regulation and regulation of lobbying, it may be imprudent to make lobbyists alone shoulder the entire burden of strengthening the integrity of government. Mechanisms for enhancing ethics among governmental officials are every bit as important, if not more so, in building the public's trust in government. The reciprocity

principle of human behaviour in which public officials may feel obliged to return favours calls for at least some regulation of the public sector.

The survey of public sector officials involved in transparency and lobbying regulation in Canada and Europe show that these officers value regulation of the public sector just as highly as regulation of lobbying in addressing actual or perceived problems of inappropriate influence-peddling by lobbyists over public officials. One key reform measure expressed by the public sector is restrictions on former government officials moving into businesses that they previously regulated, known as the "revolving door", and the movement of persons representing special interests into government, known as the "reverse revolving door".

These revolving doors threaten the integrity of government in at least three ways:

- Business and special interest groups may "capture" a regulatory agency by getting their own personnel appointed to key government posts.
- Public officials may be influenced in official actions by the implicit or explicit promise of a lucrative job in the private sector with an entity seeking a government contract or to shape public policy.
- Public officials-turned-lobbyists will have access to lawmakers that is not available to others, access that can be sold to the highest bidder among industries seeking to lobby.

Even if public officials are not in fact influenced by these revolving doors, the appearance of undue influence that these arrangements create casts aspersions on the integrity of government. The spinning of the revolving door could be slowed by requiring that governmental appointees recuse themselves from official matters that affect former clients or employers and imposing a "cooling off period" on when a former governmental official may work for a private company that had business pending before that official.[3]

Other public sector measures that could be taken to increase public trust in government include:

- restrictions on conflicts of interest for government officials, mandating that officials recuse themselves from matters in which they have a pecuniary interest;
- full financial disclosure of income as well as investments and properties owned by government officials; and
- limits on gifts, salaries or other financial rewards provided to government officials from private interests.

These types of measures applied to the public sector for improving the integrity of government have been discussed at length elsewhere, but merit repeating.[4]

Finding the appropriate mix of self-regulation and regulation of lobbying

Each country has a unique political environment, with its own history of governance and its own levels of public trust in policy-making. The political environment is the final determinant of the appropriate mix of self-regulation and regulation of lobbying.

All democratic societies, however, rely on a certain degree of transparency and accountability in policy-making for maintaining legitimacy. Transparency and accountability can be enhanced through a variety of measures.

Several professional lobbying associations in Europe have taken extraordinary steps to enhance the integrity of governmental policy-making. These steps include:

- Develop and promulgate an ethics code for lobbyists that relies less on general principles of honesty and integrity and more on specific behavioural principles that can help steer lobbyists away from unethical situations, such as restricting the flow of gifts or compensation from lobbyists to public officials.
- Provide extensive, mandatory ethics training as a condition of association membership.
- Enforce compliance to the ethics code through an investigative panel that is reasonably independent of lobbyists and the lobbying associations.
- Establish an association-run lobbyist registry, disclosed to the public through the Internet.

But these steps of self-regulation may not be sufficient. It must not be forgotten that the profession of lobbying is unlike any other profession. Lobbying inherently serves a governmental function. Its entire purpose is to influence public policy. In a democratic society, governmental functions need to be transparent to gain legitimacy.

A government-run programme of lobbyist registration and disclosure, if properly administered, offers a more sweeping and balanced system of transparency of the profession. It may be the only way to achieve adequate disclosure of who is paying how much to influence which policies. And regulation of the profession is more apt to be monitored and enforced. At the same time, measures to enhance transparency and accountability in government should not only address the profession of lobbying but the governmental sector as well. The advantages of government-run measures to enhance transparency and accountability in lobbying include:

- Capture all persons who pass an agreed threshold of paid lobbying activity as "professional lobbyists" in the transparency programme, rather than only

those who voluntarily join a lobbying association, by carefully defining who must register as a lobbyist and what activity must be disclosed to the public.

- Mandate registration and disclosure of professional lobbyists, their clients and certain financial activity, all records of which are to be made easily available to the public on the Internet.
- Monitor and enforce compliance to the lobbyist registration and disclosure requirements, as well as any other violations of lobbying laws or ethics rules, through a governmental agency that is fully independent of the lobbying profession and demonstrably more inclined to take enforcement actions than the voluntary lobbying associations.
- Extend transparency and accountability measures beyond lobbyists to public officials as well, including restrictions on conflict of interest, full financial disclosure of investments and properties owned by government officials, and restrictions and disclosure on the "revolving door" between the private sector and the public sector.

Notes

1. To see the "Harry and Louise" television advertisements on YouTube, go to: *www.youtube.com/watch?v=Dt31nhleeCg*.
2. See also Doyle, 2008. Prior to the lobbying scandals associated with Jack Abramoff, neither the Secretary of the Senate nor Clerk of the House referred many cases to the US Attorneys Office for further action, and the US Attorneys Office very rarely prosecuted any cases. The new lobby law in 2007 attempts to deal with this lack of enforcement action by requiring each agency to file public reports on the number of enforcement referrals and actions taken each year. The Senate announces on its website that the Secretary has referred an aggregate of 5 596 cases of potential non-compliance to the US Attorney for the District of Columbia form 2004 through mid-2009 *www.senate.gov/legislative/Public_Disclosure/cumulative_total.htm*.
3. For further discussion of the problems and potential solutions of the "revolving door" and "reverse revolving door", see Holman, 2007.
4. See, for example, Bertók, 2006; Organisation for Economic Co-operation and Development, 2007; C. Demmke *et al.*, 2007; and Djankov *et al.*, 2009.

Bibliography

Association of Professional Political Consultants (2009), APPC Response to the Public Administration Select Committee Report on Lobbying, London.

Bertók, János (2006), "Are Governance Arrangements Adequate to Prevent Conflict of Interest?" OECD Publishing, Paris.

Chartered Institute of Public Relations (2007), *Strengthening the Industry*, CIPR Annual Report.

Demmke, C. *et al.* (2007), *Regulating Conflicts of Interest for Holders of Public Office in the European Union*, EIPA Publications, Maastricht.

Djankov, Simeon et. al (2009), *Disclosure by Politicians*, National Bureau of Economic Research, Cambridge.

Doyle, Ken (2008), "DOJ Has Received 330 Possible Lobbying Violations This Years", *BNA Money and Politics Report*, 24 September 2008.

Eggen, Dan and Kimberly Kindy (2009), "Familiar Players in Health Care Lobbying", *Washington Post,* 6 July 2009.

European Public Affairs Consultancies' Association (2006), "EPACA Response to the European Commission's ETI Green Paper and Consultation", Brussels, *http://ec.europa.eu/transparency/eti/docs/contributions/20_C3_Ch1_EPACA.pdf*.

Gavin, Pam (2009), Interview (telephone) with authors.

Holman, Craig (2009), "Lobbying Reform in the United States and the European Union: Progress on Two Continents", in Conor McGrath ed., *Interest Groups and Lobbying in United States and Comparative Perspectives: Essays in Ethics, Institutional Pluralism, Regulation, and Management*, Edwin Mellen Press, Lewiston.

Holman, Craig (2007), Testimony before the House Committee on Oversight and Government Reform, US House of Representatives, Washington DC, *www.citizen.org/documents/craigtestimony.pdf*.

House of Commons (2009), "Lobbying: Access and Influence in Whitehall", Report of the Public Administration Select Committee, London.

MacDuff, Robbie (2009b), "A Clean Bill of Health?" *Total Politics*, February 2009.

Office of the Commissioner of Lobbying of Canada (2008), *Annual Report 2007-2008*, *www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/nx00319.html#s11*.

Public Relations Institute of Ireland (2009b), "Training Workshops", Dublin, *http://prii.ie/training_workshops.aspx*.

Public Relations Institute of Ireland (2009c) "Diploma in PR", Dublin, *http://prii.ie/show_content.aspx?idcategory=7&idsubcategory=0*.

Schmidt, Kristian (2009), Interview (e-mail) with authors.

Sjoberg, Margaretha (2009) Interview (telephone) with authors.

Swedish Public Relations Association (2010), "Communication Mentoring Program", Stockholm, *www.sverigesinformationsforening.se/in-english/communication-mentoringprogram-(cmp).aspx*.

United States Government Accountability Office (2008), "Lobbying Disclosure: Observations on Lobbyists' Compliance with the New Disclosure Requirements", Washington DC, *www.gao.gov/new.items/d081099.pdf*.

© OECD 2012

ANNEX A

Survey Questions

The survey on lobbyist attitudes was conducted in February 2009 by Dr. Craig Holman of Public Citizen and Thomas Susman of the American Bar Association, Washington DC for the Organisation for Economic Co-operation and Development (OECD). The survey consists of 16 brief multiple choice questions seeking opinion on lobbying regulation and self-regulation. Identity was not recorded at any point, and answers have been kept strictly confidential.

1. Which of the following options best describes your employer?

- ❏ Lobbying firm/self-employed
- ❏ For-profit corporation
- ❏ Not-for-profit organisation

2. Which level of government do you primarily lobby? [Please check as many as appropriate]

- ❏ European Union
- ❏ National [Name of country: . . . . .]

3. Are you subject to a lobbyist code of ethics?

- ❏ Yes, I belong to a business with a lobbyist code of ethics
- ❏ Yes, I belong to an association with a lobbyist code of ethics
- ❏ Yes, a lobbyist code of ethics is established by the government
- ❏ No, there is no lobbyist code of ethics
- ❏ Don't know/No answer

4. Does the lobbyist code of ethics provide meaningful guidance on how you conduct day-to-day lobbying activity?

- ❏ Yes, the code provides good principles easily applied to specific situations.
- ❏ Somewhat meaningful, the code provides good general principles that may or may not apply to specific situations.
- ❏ Not really, the code is a little too abstract to guide daily lobbying activity.
- ❏ No, the code does not provide meaningful guidance.
- ❏ Don't know/No answer

5. Are there effective rewards for agreeing to comply with the lobbyist code of ethics, such as easier access to lawmakers?

- ❏ Yes, there are effective rewards for agreeing to comply with the code.
- ❏ Not really, there are some benefits for complying but they are not compelling.
- ❏ No, there are no effective rewards for agreeing to comply with the code.
- ❏ Don't know/No answer

6. Are there compelling penalties against violating the lobbyist code of ethics?

- ❏ Yes, there are effective penalties for violating the code.
- ❏ Not really, there are some penalties but they are not compelling.
- ❏ No, there are no penalties for violating the code.
- ❏ Don't know/No answer

7. Are you aware of any lobbyists who have been penalised for violating the lobbyist code of ethics?

- ❏ Yes, several lobbyists have been penalised for violations.
- ❏ Yes, a few lobbyists have been penalised for violations.
- ❏ No, I am not aware of any lobbyists who have been penalised for violations.
- ❏ Don't know/No answer

8. Is competition for business between lobbyists a motive to help ensure ethical lobbying behaviour?

- ❏ Yes, competition encourages ethical behaviour by lobbyists.
- ❏ Competition has little or no impact on ethical behaviour by lobbyists.
- ❏ No, competition discourages ethical behaviour by lobbyists.
- ❏ Don't know/No answer

9. Generally speaking, do you think that inappropriate influence-peddling by lobbyists, such as seeking official favors with gifts or misrepresenting issues, is a problem?

- ❏ Yes, it is a frequent problem.
- ❏ Somewhat, it is an occasional problem.
- ❏ Not really, there are very few such cases.
- ❏ No, as far as I know, it almost never happens.
- ❏ No, such behaviour is not inappropriate influence-peddling.
- ❏ Don't know/No answer

10. Generally speaking, do you think the public perceives that there is a problem of inappropriate influence-peddling by lobbyists, whether or not there is a problem in actuality?

- ❏ Yes, the public perceives that this is a frequent problem.
- ❏ Somewhat, the public perceives that this is an occasional problem.
- ❏ Not really, the public perceives that this is a rare problem.
- ❏ No, the public believes that inappropriate influence-peddling almost never happens.
- ❏ No, the public does not perceive any such lobbyist behaviour as inappropriate.
- ❏ Don't know/No answer

11. How strongly do you agree with the following statement: Some level of public transparency of lobbying activity would help alleviate actual or perceived problems of inappropriate influence-peddling by lobbyists.

- ❏ Strongly agree
- ❏ Agree
- ❏ Neutral
- ❏ Disagree
- ❏ Strongly disagree
- ❏ Don't know/No answer

12. Which lobbying activities described below, if any, should be subject to transparency and made public record? [Check as many boxes as appropriate]

- ❏ Lobbyist name
- ❏ Lobbyist employer
- ❏ Lobbyist client
- ❏ General issues lobbied
- ❏ Specific legislation lobbied
- ❏ Overall lobbyist income
- ❏ Lobbyist income per client
- ❏ Overall lobbyist expenditures
- ❏ Lobbyist expenditures per issue/legislation lobbied
- ❏ Log of lobbyist meetings with public officials
- ❏ Political party/campaign contributions by a lobbyist

13. Should transparency of lobbying activity be mandatory for all lobbyists or voluntary for those who wish to disclose?

- ❏ Mandatory for all lobbyists
- ❏ Neutral
- ❏ Voluntary for lobbyists who wish to disclose

14. If some level of public transparency of lobbying activity were implemented, who would best manage a lobbyist transparency programme?

- ❏ Lobbyist themselves
- ❏ Voluntary lobbying associations
- ❏ Administrative agency of the government
- ❏ Don't know/No answer

15. If some level of public transparency of lobbying activity were implemented, should the public records be made available on the Internet?

- ❏ Yes
- ❏ No
- ❏ Don't know/No Answer

16. How strongly do you agree with the following statement: If legislation regulating lobbying activity were implemented, then transparency and accountability in policymaking would be improved.

- ❏ Strongly agree
- ❏ Agree
- ❏ Neutral
- ❏ Disagree
- ❏ Strongly disagree
- ❏ Don't know/No answer

17. Are there any additional comments you would like to make?

. . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

ANNEX B

Code of Lisbon

In the practice of his profession, the public relations practitioner undertakes to respect the principles set forth in the Universal Declaration of Human Rights and, in particular, to freedom of expression and freedom of the press which affect the right of the individual to receive information. He likewise undertakes to act in accordance with the public interest and not to harm the dignity or integrity of the individual.

In his professional conduct, the public relations practitioner must show honesty, intellectual integrity and loyalty. In particular, he undertakes not to make use of comment or information that. to his knowledge or belief, is false or misleading. In the same spirit he must be careful to avoid the use, even by accident, of practices or methods incompatible with this Code.

1. Public relations activities must be carried out openly: they must be readily identifiable, bear a clear indication of their origin, and must not tend to mislead third parties.

2. In his relations with other professions and with other branches of social communications, the public relations practitioner must respect the rules and practices appropriate to those professions or occupations, so far as these are compatible with the ethics of his own profession. A public relations practitioner must respect the national Code of Professional Conduct and the laws in force in any country in which he practices his profession and must exercise restraint in seeking personal publicity.

Specific professional obligations

A. Towards clients or employers

3. A public relations practitioner shall not represent conflicting or competing interests without the express consent of the clients or employers concerned.

4. In the practice of his profession, a public relations practitioner must observe complete discretion. He must scrupulously respect professional confidence, and

in particular must not reveal any confidential information received from his clients or employers – past, present or potential – or make use of such information, without express authorisation.

A public relations practitioner who has an interest that may conflict with that of his client or employer must disclose it as soon as possible.

A public relations practitioner must not recommend to his client or employer the services of any business or organisation in which he has a financial, commercial or other interest without first disclosing that interest.

A public relations practitioner shall not enter a contract with his client or employer under which the practitioner guarantees quantified results.

A public relations practitioner may accept remuneration for his services only in the form of salary or fees. On no account may he accept payment or other material rewards contingent upon quantifiable professional results.

A public relations practitioner shall not accept as a reward for his services to a client or an employer any remuneration from a third party, such as discounts, commissions or payments in kind, except with the agreement of the client or employer.

When the execution of a public relations assignment would be likely to entail serious professional misconduct and imply behaviour contrary to the principles of this Code, the public relations practitioner must take steps to notify his client or employer immediately and do everything possible to see that the latter respects the requirements of the Code. If the client or employer persists in his intentions, the practitioner must nevertheless observe the Code irrespective of the consequences to him.

B. Towards public opinion and the information media

The spirit of this Code and the rules contained in preceding clauses, notably clauses 2, 3, 4 and 5 imply a constant concern on the part of the public relations practitioner with the right to information, and moreover the duty to provide information, within the limits of professional confidence. They imply also a respect for the rights and independence of the information media.

Any attempt to deceive public opinion or its representatives is forbidden. News must be provided without charge or hidden reward for its use or publication. If it should seem necessary to maintain the initiative in and the control of the distribution of information within the principles of this Code the public relations practitioner may buy space or broadcasting time in conformity with the rules, practices and usages in that field.

C. Towards fellow practitioners

The public relations practitioner must refrain from unfair competition with fellow-practitioners. He must neither act nor speak in a way which would tend to depreciate the reputation or business of a fellow practitioner, subject always to his duty under clause 10b of this Code.

D. Towards the profession

The public relations practitioner must refrain from any conduct which may prejudice the reputation of his profession. In particular he must not cause harm to the PRII, its efficient working or its good name by malicious attacks or by any breach of its constitution or rules.

The reputation of the profession is the responsibility of each of its members. The public relations practitioner has a duty not only to respect this Code himself but also to:

a) assist in making the Code more widely and better known and understood;

b) report to the competent disciplinary authorities any breach or suspected breach of the Code which comes to his notice;

c) take any action in his power to ensure that rulings on its application by such authorities are observed and sanctions made effective.

ANNEX C

Code of Brussels

RECALLING the Code of Venice 1961 and the Code of Athens 1965, of the International Public Relations Association, which together specify an undertaking of ethical conduct by public relations practitioners worldwide;

RECALLING that the Code of Athens binds public relations practitioners to respect the Charter of the United Nations which reaffirms "its faith in fundamental human rights, in the dignity and worth of the human person";

RECALLING that the Code of Athens binds public relations practitioners to observe the moral principles and rules of the "Universal Declaration of Human Rights";

RECALLING that public affairs is one discipline undertaken by public relations practitioners;

RECALLING that the conduct of public affairs provides essential democratic representation to public authorities;

This Code of Brussels is a code of ethical conduct applying to public relations practitioners worldwide as they conduct public affairs and interact with public authorities including staff and public representatives.

In the conduct of public affairs, practitioners shall:

1. Integrity

Act with honesty and integrity at all times so as to secure the confidence of those with whom the practitioner comes into contact;

2. Transparency

Be open and transparent in declaring their name, organisation and the interest they represent;

3. Dialogue

Establish the moral, psychological and intellectual conditions for dialogue, and recognise the rights of all parties involved to state their case and express their views;

4. Accuracy

Take all reasonable steps to ensure the truth and accuracy of all information provided to public authorities;

5. Falsehood

Not intentionally disseminate false or misleading information, and shall exercise proper care to avoid doing so unintentionally and correct any such act promptly;

6. Deception

Not obtain information from public authorities by deceptive or dishonest means;

7. Confidentiality

Honour confidential information provided to them;

8. Influence

Neither propose nor undertake any action which would constitute an improper influence on public authorities;

9. Inducement

Neither directly nor indirectly offer nor give any financial or other inducement to members of public authorities or public representatives;

10. Conflict

Avoid any professional conflicts of interest and to disclose such conflicts to affected parties when they occur;

11. Profit

Not sell for profit to third parties copies of documents obtained from public authorities;

12. Employment

Only employ personnel from public authorities subject to the rules and confidentiality requirements of those authorities.

13. Sanctions

Practitioners shall co-operate with fellow members in upholding this Code and agree to abide by and help enforce the disciplinary procedures of the International Public Relations Association in regard to any breaching of this Code.

ANNEX D

Association of Professional Political Consultants Code of Conduct

Preamble

This Code of Conduct covers the activities of regulated political consultants, defined as APPC member companies, their staff and non-executive consultants, in relation to all United Kingdom, English, Welsh, Scottish and Northern Ireland central, regional and local government bodies and agencies, public bodies and political parties (hereinafter "institutions of Government"). This Code applies equally to all clients, whether or not fee-paying.

It is a condition of membership of APPC that the member firm, its staff and non-executive political consultants should accept and agree to abide by this Code for itself and that members will be jointly and severally liable for the actions of their staff in relation to the Code. Regulated political consultants are required to endorse the Code and to adopt and observe the principles and duties set out in it in relation to their business dealings with clients and with institutions of government.

Other conditions of membership of APPC include:

- Undertaking an annual compliance procedure in respect of the Code.
- Being bound by the terms of the APPC Complaints and Disciplinary Procedure.
- Providing four times a year to APPC the names of all fee-paying clients and consultancy staff during the previous three months for publication in the APPC Register.

The Code of Conduct applies the principles that political consultants should be open and transparent in their dealings with parliamentarians or representatives of institutions of government; and that there should be no financial relationship between them. APPC members are determined to act at all times with the highest standards of integrity and in a professional and ethical manner reflecting the principles applied by this Code. In the view of APPC, it is inappropriate for a person to be both a legislator and a political consultant.

The Code of Conduct

1. In pursuance of the principles in this Code, political consultants are required not to act or engage in any practice or conduct in any manner detrimental to the reputation of the Association or the profession of political consultancy in general.

2. Political consultants must act with honesty towards clients and the institutions of government.

3. Political consultants must use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements made or information provided to clients or by or on behalf of clients to institutions of government.

4. In making representations to the institutions of government, political consultants must be open in disclosing the identity of their clients and must not misrepresent their interests.

5. Political consultants must advise clients where their lobbying activities may be illegal, unethical or contrary to professional practice, and to refuse to act for a client in pursuance of any such activity.

6. Political consultants must not make misleading, exaggerated or extravagant claims to clients about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions.

7. Save for entertainment and token business mementoes, political consultants must not offer or give, or cause a client to offer or give, any financial or other incentive to any person in public life, whether elected, appointed or co-opted, that could be construed in any way as a bribe or solicitation of favour. Political consultants must not accept any financial or other incentive, from whatever source, that could be construed in any way as a bribe or solicitation of favour.

8. Political consultants must not:

- Employ any MP, MEP, sitting Peer or any member of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Assembly.
- Make any award or payment in money or in kind (including equity in a member firm) to any MP, MEP, sitting Peer or to any member of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Assembly, or to connected persons or persons acting on their account directly or through third parties.

9. Political consultants must ensure that they do not benefit unreasonably by actions of any third party that, if undertaken by the consultant, would be considered a breach of the Code.

10. Political consultants must comply with any statute, Westminster or Scottish parliamentary or National Assembly of Wales or Northern Ireland Assembly or

Greater London Assembly resolution and with the adopted recommendation of the Committee on Standards in Public Life in relation to payments to a political party in any part of the United Kingdom.

11. Political consultants who are also local authority councillors are prohibited from working on a client assignment of which the objective is to influence a decision of the local authority on which they serve. This restriction also applies to political consultants who are members of Regional Assemblies, Regional Development Agencies or other public bodies.

12. Political consultants must keep strictly separate from their duties and activities as political consultants any personal activity or involvement on behalf of a political party.

13. Political consultants must abide by the rules and conventions for the obtaining, distribution and release of parliamentary and governmental documents.

14. Political consultants must not hold, or permit any staff member to hold, any pass conferring entitlement to access to the Palace of Westminster, to the premises of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Assembly or any department or agency of government. The only exceptions are:

- where the relevant institution is a client of the political consultant and requires the political consultant to hold a pass to enter their premises;
- where the political consultant holds a pass as a spouse of a member or as a former member of the relevant institution, in which case the pass must never be used whilst the consultant is acting in a professional capacity.

15. Political consultants must conduct themselves in accordance with the rules of the Palace of Westminster, Scottish Parliament, National Assembly of Wales, Northern Ireland Assembly or Greater London Assembly or any department or agency of government while within their precincts, and with the rules and procedures of all institutions of government.

16. Political consultants must always abide by the internal rules on declaration and handling of interests laid down by any public body on which they serve.

17. Political consultants must not exploit public servants or abuse the facilities or institutions of central, regional or local government within the UK.

18. Political consultants must disclose the names of all their fee-paying clients and consultants in the APPC Register.

In all their activities and dealings, political consultants must be at all times aware of the importance of their observance of the principles and duties set out in this Code for the protection and maintenance of their own reputation, the good name and success of their company, and the standing of the profession as a whole.

ANNEX E

Persons and Organisations Interviewed in the Course of this Study

Box E.1. **Individuals Interviewed**

- *Davis, Gerry.* Executive Director, Public Relations Institute of Ireland (PRII), Dublin.
- *Gavin, Pam*. Superintendent of Public Records, US Senate, Washington DC.
- *Gorpe, Serra*. Member of the Board, Turkish Public Relations Association (TÜHİD), Istanbul.
- *Hamilton, Emma*. Public Affairs Officer, Chartered Institute of Public Relations (CIPR), London.
- *Hoedeman, Olivier*. Director, Corporate Europe Observatory (CEO), Amsterdam.
- *MacDuff, Robbie*. Chairman, Association of Professional Political Consultants (APPC), London.
- *Müller, Ulrich*. Director, LobbyControl, Köln, Germany.
- *Schmidt*, *Kristian*. Deputy Head of Cabinet for European Commission Vice President Siim Kallas, Brussels.
- *Sheppard, Philip*. Member of the Board of Directors, Society of European Affairs Professionals (SEAP), Brussels.
- *Sjoberg, Margaretha*. Secretary-General, Swedish Public Relations Association (SPRA), Stockholm.
- *Vlahovic, Natko.* Secretary-General, Croatian Society of Lobbyists (HDL), Zagreb.
- *Wesselius, Erik*. Director, Corporate Europe Observatory (CEO), Amsterdam.

Box E.2. **Organisations Consulted**

- Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), *Regional*.
- Association of Professional Political Consultants (APPC), *London*.
- Chartered Institute of Public Relations (CIPR), *London*.
- Croatian Society of Lobbyists (HDL), *Zagreb*.
- Deutsche Public Relations Gesellschaft (DPRG), *Berlin*.
- European Public Affairs Consultancies' Association (EPACA), *Brussels*.
- European Public Relations Confederation (CERP), *Regional*.
- International Public Relations Association (IPRA), *Regional*.
- Office of Commissioner of Lobbying of Canada, *Ottawa*.
- Office of Quebec Lobbyist Commissioner, *Quebec*.
- Public Relations Consultants Association (PRCA), *London*.
- Public Relations Institute of Ireland (PRII), *Dublin*.
- Society of European Affairs Professionals (SEAP), *Brussels*.
- Swedish Public Relations Association (SPRA), *Stockholm*.
- Turkish Public Relations Association (TÜHİD), *Istanbul*.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(42 2010 15 1 P) ISBN 978-92-64-08493-3 – No. 57693 2012

Lobbyists, Governments and Public Trust

VOLUME 2

PROMOTING INTEGRITY THROUGH SELF-REGULATION

This second volume of the OECD study on lobbying examines self-regulation of lobbying and explores various options for enhancing transparency and accountability. It specifically reviews the definition of lobbying, the role of professional lobbying associations, and the experience of codes of conduct developed for lobbyists in various country contexts.

Table of contents

Chapter 1. Private Interests, Public Conduct: The Essence of Lobbying

Chapter 2. The Role of Professional Lobbying Associations in Self-Regulation of Lobbying

Chapter 3. Codes of Conduct for Lobbyists

Chapter 4. Lobbyist Regulatory Regimes in Europe

Chapter 5. Lobbyists' Attitudes toward Self-Regulation and Regulation of Lobbying in Europe

Chapter 6. Conclusion: Options for Enhancing Transparency and Accountability through Self-Regulation and Regulation of Lobbying

Related reading

Lobbyists, Governments and Public Trust, Vol. 1: Increasing Transparency through Legislation (2009)

Please cite this publication as:

OECD (2012), *Lobbyists, Governments and Public Trust, Volume 2: Promoting Integrity through Self-regulation*, OECD Publishing.
http://dx.doi.org/10.1787/9789264084940-en

This work is published on the *OECD iLibrary*, which gathers all OECD books, periodicals and statistical databases. Visit ***www.oecd-ilibrary.org***, and do not hesitate to contact us for more information.

OECD publishing
www.oecd.org/publishing

ISBN 978-92-64-08493-3
42 2010 15 1 P