Lobbyists, Governments and Public Trust

VOLUME 3

IMPLEMENTING THE OECD PRINCIPLES FOR TRANSPARENCY AND INTEGRITY IN LOBBYING

OECD

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FOR TRANSPARENCY
AND INTEGRITY IN LOBBYING

VOLUME 3

OECD
BETTER POLICIES FOR BETTER LIVES

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Foreword

Citizens' trust in government provides the foundation for good governance and effective policy-making. This is especially true in the current post-crisis context in which structural reforms involve difficult choices, and where the confidence of citizens and markets is critical for fostering economic and social development. However, public opinion surveys suggest that trust in government is waning in most OECD member countries. Partly at the origin of this is the perception that policy decisions are driven by private interests at the expense of the public good.

Lobbying is a fact of public life in all countries. It has the potential to promote democratic participation and can provide decision makers with valuable insights and information, as well as facilitating stakeholder access to public policy development and implementation. Yet, lobbying is often perceived as an opaque activity of dubious integrity, which may result in undue influence, unfair competition and regulatory capture to the detriment of fair, impartial and effective policy making.

To level the playing field among all stakeholders in the policy-making process, the OECD adopted in 2010 the Recommendation on Principles for Transparency and Integrity in Lobbying – the sole international instrument aimed at mitigating lobbying-related risks of corruption and undue influence. This report takes stock of progress made by OECD member countries in implementing the Principles and shows that, while progress has been made in a number of countries, more is needed to safeguard the government decision-making process across most OECD member countries.

There is evidence of an emerging consensus on the need for transparency. Fourteen OECD member countries have introduced lobbying regulations to this effect, and others are considering to do so. More countries have introduced regulation in the past five years than in the previous 60. While this is a significant step forward, lobbying regulation has at times been scandal-driven instead of forward-looking, with questionable cost-benefit outcomes. The resulting regulations are sometimes incomplete and do not fully meet the expectations of legislators and lobbyists as to what should be disclosed, the adequate level of transparency, and options for managing lobbying systems once they are in place. Promoting compliance and enforcement is proving to be a particular challenge. Enforcement of codes of conduct and integrity standards remains relatively low, and the bulk of surveyed lobbyists indicate that there are either no sanctions for breaching codes of conduct or, if there are, they are not compelling enough to deter breaches. An additional challenge is that of poor co-ordination of transnational lobbying practices, which results in different requirements for the same actors in different jurisdictions.

Moving forward, this report also suggests how the OECD Principles can be applied in practice to promote greater trust and improve the quality of decision making. Since it takes two to lobby, both governments and lobbyists need to take their share of responsibility. In the case of governments, it is crucial to strengthen the implementation of the wider integrity framework and adapt it to evolving and emerging risks. Furthermore, in order to measure costs, identify benefits and monitor performance of lobbying regulations and frameworks, countries would benefit from identifying relevant data, benchmarks and indicators relative to transparency in lobbying, the public decision-making process

and, ultimately, the broader integrity framework. Finally, the review identifies a need to revisit and take stock of policies for managing conflict of interest to ensure that revolving door practices, as well as the unbalanced representation and influence of advisory groups are effectively mitigated.

Addressing concerns related to lobbying practices and undue influence in the decision making process is a key lever for restoring trust in government. This report will contribute to the OECD broader effort to help governments regain public confidence not only in the area of lobbying, but also in regulation, conflict of interest and campaign financing. Securing fairness in policy making and building solid foundations to ensure that public institutions serve the public interest are essential to advance better policies for better lives.

Angel Gurría
OECD Secretary-General

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Executive summary

This report reviews how risks and concerns related to lobbying have evolved and identifies lessons learned in designing and implementing measures and cost-effective solutions for safeguarding the integrity of the decision-making process. This contributes to the OECD Strategy on Trust – adopted by Ministers at the OECD Ministerial Council Meeting in May 2014 – which includes a module on "Securing fairness in policy making" in which curbing policy capture by private interests and ensuring political participation is one of its main elements.

On 18 February 2010, the OECD Council adopted the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying. The Public Governance Committee (PGC) had led the development of the Recommendation which remains the only international instrument to address concerns over lobbying practices, offer guidance on how to meet expectations of transparency and accountability, and support a level playing field in public decision making. When adopting the Recommendation, the Council requested that the PGC reports back to it on progress made in implementing the Recommendation in three years and regularly thereafter in consultation with the Regulatory Policy Committee and other relevant Bodies. Three years later, the PGC is now taking stock of the progress made in implementation by OECD member countries and key and other partner countries.

The findings of this review show that lobbying is a fact of life in the public decision-making process. It can provide decision-makers with valuable insight and data and facilitate stakeholders' access to the development and implementation of public policies. However, it can also lead to undue influence, unfair competition, and regulatory capture to the detriment of the public interest and effective public policies.

Improving the transparency and integrity of the public decision-making process, particularly by using regulation to address concerns over lobbying, has been high on many governments' agendas in the past three years. More countries have introduced regulation in the past five years than in the previous 60. Experience shows, however, that in most cases regulation has been reactive and scandal-driven instead of forward looking. Consequently, strong transparency measures designed to foster trust in public decision making have too often resulted in overshooting, whereby countries have over-zealously addressed concerns. Many have also struggled with balancing the administrative cost of transparency mechanisms. Nevertheless, lobbying regulation has generally created more openness and transparency in lobbying practices.

Although 41% of OECD member countries have acted to set or tighten lobbying standards, the process of doing so has not been without its challenges. Some have amended laws that were already in place while others, which enacted new regulations that were repealed, had to legislate again at a later date. More seasoned regulators of

the lobbying industry, like the United States and Canada, have updated their rules. The process of approving legislation on lobbying has also been both complex and lengthy in countries, sometimes requiring several rounds of voting and having to overcome significant legislative hurdles.

Countries have also struggled to implement lobbying regulations and there are still shortcomings in compliance and enforcement strategies. Enforcement of integrity standards and codes of conduct remains relatively weak and most lobbyists surveyed by the OECD indicated that there were either no sanctions for breaching standards or codes of conduct or, if there were, that they were not compelling enough to deter breaches. Although compliance among public officials is usually promoted through awareness raising and training, greater efforts to educate them are required. Legislation generally incorporates sanctions for public officials, although there is limited information on whether they are applied.

While countries have increasingly opted to regulate lobbying practices, experience has shown that streamlining lobbying regulations into the wider integrity framework remains central to addressing lobbying-related risks effectively. There is a general consensus that while it takes two to lobby, the main responsibility for safeguarding the public interest and rejecting undue influence lies with those who are lobbied, and therefore a sound public-sector integrity framework is essential.

Furthermore, countries' experience in the last three years has revealed new or heightened risks related to lobbying that demand special attention and an innovative, modern integrity framework. Revolving-door practices and, in particular, pre-public employment risks continue to threaten the integrity of public decision making. Only one-third of OECD member countries place any restrictions on hiring lobbyists to fill regulatory or advisory posts in government. Similarly, the influence of private interests through advisory groups has emerged as a growing concern. Although members of advisory groups have direct access to decision makers and are therefore able to lobby from the inside, such groups are not generally required to ensure a balanced representation of interests in their make-up.

Good governance requires assessment and data, and lobbying is not an exception. Yet, most countries struggle to measure the costs and benefits of enhancing transparency and integrity in lobbying and have trouble monitoring the performance of measures in place. Collecting data on the costs and benefits for government and lobbyists alike is key to better understanding lobbying in different country contexts, to assessing whether measures taken meet their intended objectives, and to deciding if money could be better spent elsewhere. Despite the availability of technology which considerably reduces the burden of collecting and analysing quantitative data, there is little of it available in most countries.

Policy directions

- Focus efforts on the implementation of the Recommendation on Principles for Transparency and Integrity in Lobbying to strengthen confidence in the public decision-making process and restore trust in government.
- Identify relevant data, benchmarks, and indicators relative to transparency in lobbying, the public decision-making process and, ultimately, the broader integrity framework in order to measure costs, identify benefits, and monitor performance.

- Strengthen the implementation of the wider integrity framework, as it is the prime tool for safeguarding transparency and integrity in the decision-making process in general and lobbying practices in particular. Countries could seize the opportunity to reflect on new integrity challenges and constraints and identify innovative and cost-effective measures.
- Review policies for managing conflict of interest to ensure that revolving door practices and the unbalanced representation and influence of advisory groups are effectively mitigated. Countries would benefit from highlighting and sharing good practices so as to identify the conditions for policies and practices that effectively safeguard the integrity of the public decision-making process and contribute to building trust in government.

PART I

Lobbying practices, the public decision-making process and citizens' trust in government

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Chapter 1

Lobbying risks in the decision-making process

Ensuring stakeholders' fair and equitable access to the decision-making process balances policy debates and helps create more effective polices. When conducted with transparency and integrity, lobbying yields useful information and helps decision makers produce more effective policies. However, it can also lead to undue influence, unfair competition, and policy capture to the detriment of the public interest and effective public policies.

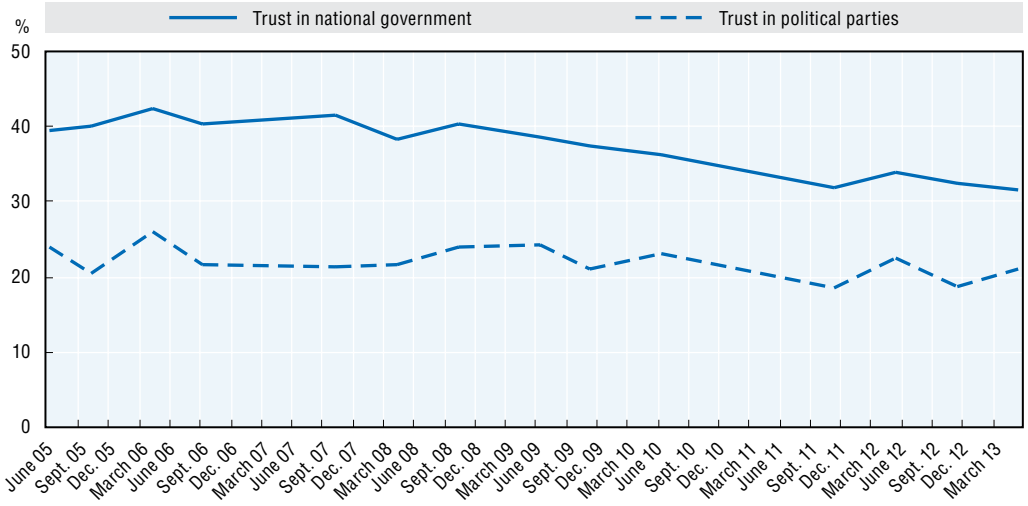
This chapter provides an analysis of current measures in place in OECD countries to promote citizen engagement and open government, and to address concerns over the public decision-making process, political finance and lobbying practices.

Trust in government is waning and the fairness of decision making is being questioned

Available data suggest that trust in the policy-making process is seriously eroded. The 2013 Eurobarometer results, for example, show that trust levels in national governments and political parties continue to wane (Figure 1.1). Across OECD member countries, some 60% of citizens do not have confidence in their national governments (Figure 1.2). Countries have responded by putting the regaining of trust at the top of their reform agendas. It is critical to decisive, effective reforms and creates the conditions for stakeholder buy-in.

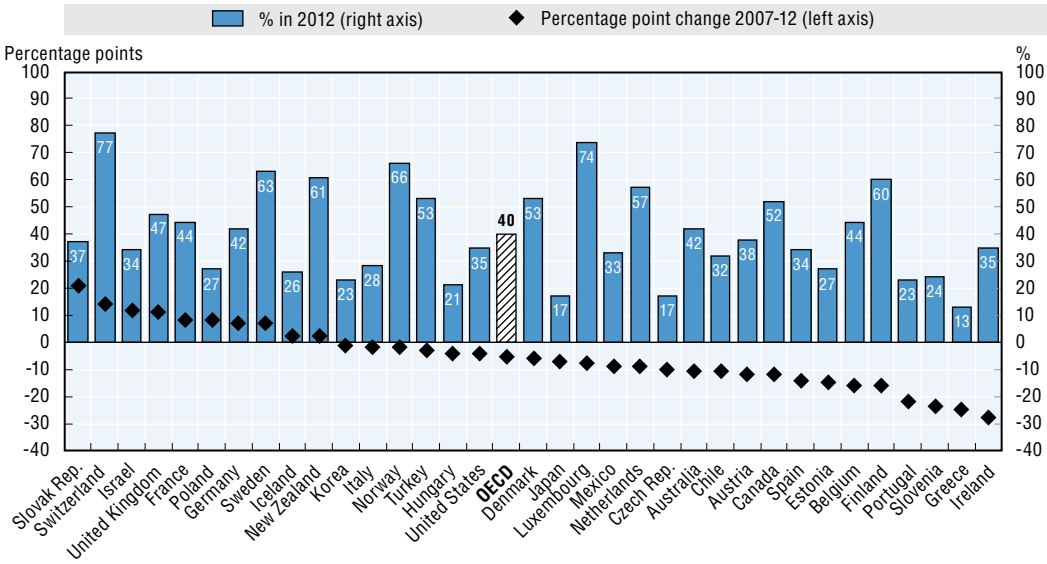
Evidence suggests a widespread sense that governments are not able to regulate markets effectively, that business exerts undue influence over public policy, and that the distribution of burdens and rewards across society is skewed. Similar findings also emerged from discussion at the OECD Forum on Transparency and Integrity in Lobbying that took place on 27-28 June 2013 in Paris. Participants emphasised that i) the true underlying question is that of fairness, ii) that there is a crisis of confidence in elites, and iii) that a major problem at the heart of the democratic system is the sentiment that the wealthiest 1% finance political parties for their particular interests. Surveys and literature also support those concerns. Vaccari (2013), for instance, argues that trust in government is crumbling

Figure 1.1. **How trust in government and in political parties evolved in 23 European OECD countries, 2005-13**



Notes: Trust in national government is evaluated as a percentage of the answer, "tend to trust", in response to the following question: "I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it? National government." Trust in political parties is evaluated as a percentage of the answer, "tend to trust" in response to the following question: "I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it? Political parties."
Source: Eurobarometer 78, *http://ec.europa.eu/public_opinion/cf/index_en.cfm*.

Figure 1.2. **Confidence in national governments, 2012**



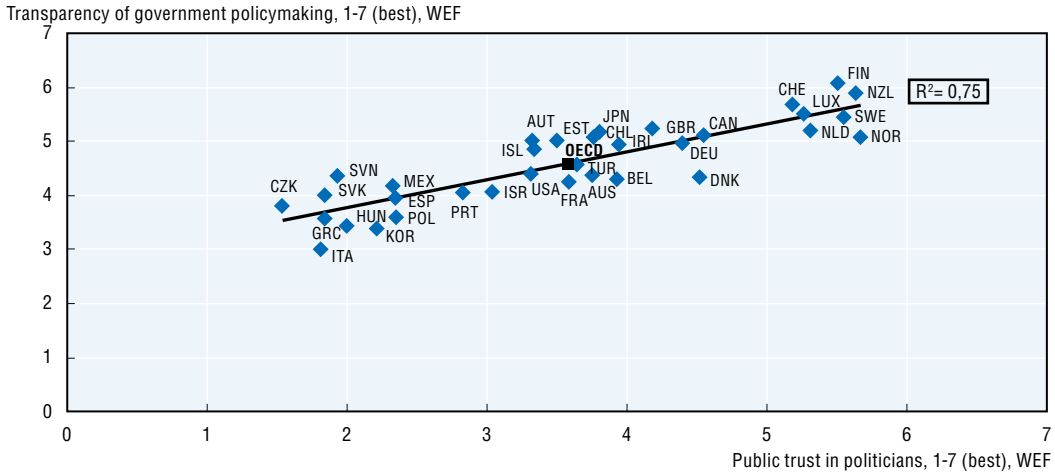
Note: Data refer to percentage of "yes" answers to the question: "In this country, do you have confidence in each of the following, or not? How about national government?"
Data for Chile, Germany and the United Kingdom are for 2011 rather than 2012. Data for Iceland and Luxembourg are for 2008 rather than 2007. Data for Austria, Finland, Ireland, Norway, Portugal, Slovak Republic, Slovenia, Switzerland are for 2006 rather than 2007.
Source: Gallup World Poll, *http://www.gallup.com/strategicconsulting/en-us/worldpoll.aspx*.

not only because of Western democracies' increasing difficulty in finding solutions to present and future challenges, but because of the "declining standards of accountability from elected officials".

According to the 2013 Edelman Trust Barometer, about half of the respondents surveyed in 26 countries distrust government. Amongst the key factors that they mention are "wrong incentives driving policies" and "corruption/fraud", which together account for 50% of reasons for trusting government less. Furthermore, changes in the perceived transparency of policy making are closely correlated with changes in trust (Figure 1.3). These findings point to the urgency of addressing the credibility of the formal institutions involved in policy making and strengthening the underlying institutional conditions that shape the process. Growing concern over regulatory capture and undue influence in the public decision-making process is prompting governments to explore how to improve transparency and integrity in lobbying, safeguard the public interest, ensure impartiality and fairness in public decision making, and provide a level playing field for all stakeholders.

A solid foundation of trust for effective policy making is of particular importance in the current context of economic recovery, where structural reform involves difficult, unpopular choices and has a critical need for the confidence of citizens and markets to reignite growth. Accordingly, the OECD has put the building of trust in institutions and government at the heart of its New Approaches to Economic Challenges Initiative (NAEC) and its Forward-Looking Agenda on Trust.[1]

Figure 1.3. **Correlation between public trust in politicians and transparency in government policy making, 2013**



Source: World Economic Forum (2013), *Global Competitiveness Report* 2013-2014, World Economic Forum, Geneva.

The OECD has identified five key policy dimensions for action by governments seeking to invest in trust:

1. **Integrity:** The alignment of government and public institutions with broader principles and standards of conduct that contribute to safeguarding the public interest while mitigating the risk of corruption.
2. **The fairness of public policy making:** The ability to propose policy-making processes and decisions that are perceived as being fair and meeting locally accepted standards,
3. **Openness and inclusiveness:** A systemic, comprehensive approach to institutionalising two-way communication with stakeholders, whereby relevant, usable information is provided and interaction fostered as a means to improve transparency, accountability and engagement.
4. **Reliability:** The ability of governments to minimise uncertainty in the economic, social, and political environment of their citizens and act in a consistent and predictable manner.
5. **Responsiveness:** The provision of accessible, efficient, and citizen-oriented public services that effectively address the needs and expectations of tax payers.

The first three policy dimensions – integrity, fairness, openness and inclusiveness – are especially relevant to lobbying, where it is essential to ensure fairness and a level playing field for stakeholders who seek to influence the decision-making process. All must be able to participate effectively in that process and the information enabling their participation needs to be available. It is crucial, too, to ensure the integrity of decision makers so that the wider public interest – and not only vested interests that can afford to spend on lobbying decision makers – forms the basis of policy making.

To facilitate practicable engagement that achieves credible compromises aligned with the public interest, a policy making process conducive to trust builds upon these core elements:

- reliable, relevant information;

- a clear information exchange structure;
- the effective articulation of actors' behaviours and expectations.

Governments are thus better able to identify policy levers that can influence the nature of the policy-making process in a manner consistent with their own specific institutional contexts. They can leverage **citizen engagement, access to information, and open government**[2] to better inform the process. Equally, country and stakeholder experience reveals the importance of **managing conflicts of interest effectively**, ensuring high standards of behaviour in the public sector, and adequately **regulating lobbying and political finance**. Meeting those requirements helps instil transparency and integrity into the whole policy-making process, limit undue influence, and safeguard the public interest.

Informed public decision-making in the 21st century requires cost-effective mechanisms to bring all stakeholders on board

OECD Principles for Transparency and Integrity in Lobbying

Principle 1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.

Ensuring all stakeholders' fair and equitable access to the decision-making process balances policy debates and helps create more effective polices. While measures to foster informed decision making and the free flow of information are essential to open government and public scrutiny, countries struggle to implement them in a beneficial, cost-effective manner.

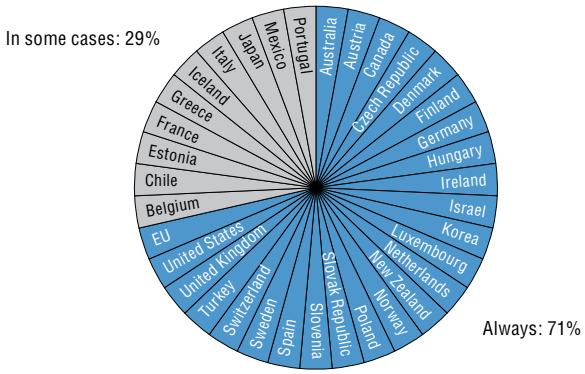
To that end, countries are engaging in a range of practices designed to increase the transparency and inclusiveness of policy making and ensure that key actors enjoy open access to relevant, public information on the decision-making process that is updated in real time. An equally important purpose of such practices is to engage citizens and make policies more effective. For example, when OECD member countries draft primary laws, 71% of them always sound out the parties affected through public consultation, while 29% do so in some cases (Figure 1.4).

When they draft new primary laws, all OECD member countries – with the exception of Norway – hold informal consultations with selected groups, 82% widely circulate bills for comments, and 65% publish a public call for comments (Table 1.1). Furthermore, 62% organise public meetings, while 82% consult with advisory groups and 71% with reparatory public commissions or committees, and as many as 82% post proposals online.

As part of efforts to level the playing field for stakeholders in the decision-making process, 68% of OECD member countries allow any member of the public to take part in consultation processes. By increasingly taking advantage of online tools and ICTs, countries are reaching out to their citizens and conducting cost-effective public consultations and other participatory practices.

In addition to public consultations, OECD countries have introduced a number of initiatives to promote open, inclusive policy making and increase citizens' participation (Box 1.1).

Figure 1.4. **Public consultation with affected parties is part of the development of new primary laws**



Source: OECD (2009), *Indicators of Regulatory Management Systems, 2009 Report*, OECD, Paris, pp. 109-10; OECD (2011), *Regulatory Management Indicators – Chile, 2011*, OECD, Paris; OECD (2011), *Regulatory Management Indicators – Estonia, 2011*, OECD Paris; OECD (2011), *Regulatory Management Indicators – Israel, 2011*, OECD, Paris; OECD (2011) *Regulatory Management Indicators – Slovenia, 2011*, OECD, Paris.

Box 1.1. **Citizen engagement and participation in New Zealand, Italy, and the Netherlands**

In New Zealand, the government has a webpage outlining the different ways in which citizens can participate in decision making at the national level and in their local communities (*http://newzealand.govt.nz/participate/have-your-say/*). The "Great New Zealand Science Project" (*www.thegreatnzscienceproject.co.nz*) is an example of a government initiative to encourage New Zealanders to make submissions on the areas of scientific research they perceived to be the most important. Ten key projects were identified and the government committed NZD 133.5 million over four years.

Italy has introduced a number of initiatives to increase citizens' participation in the decision-making process and enhance its effectiveness. One example is "Burocrazia: diamoci un taglio!" (Halt Red Tape). It is a permanent online tool that enables people and companies to report red tape issues and propose solutions. Another initiative is "Mettiamoci la Faccia" (Put your face to it) designed to regularly review – using emoticons – user satisfaction with the delivery of public services.

Zeist is a city in the Netherlands with a population of 61 000 that needed to make cuts in its yearly budget. In February 2010, the City Council asked all citizens to take part in a dialogue to help decide where the cuts should be made. Some 150 citizens participated in an interactive consultation process through eight expert committees that produced eight green books in six meetings. A further 300 citizens offered their comments through an Internet forum and schools played their part by trying to involve young people. Over a period of nine months, citizens found that EUR 4.1 million (from the flexible part of the EUR 60 million budget) could be cut. The City Council approved the green books and combined them into a white book.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

In Canada, the government uses a mixture of new technologies and traditional tools to foster informed public decision making and level the playing field so as to enable a variety of stakeholder to have their say (Box 1.2).

Table 1.1. **Consultation procedures with affected parties in OECD member countries**

	Forms of public consultations routinely used							Requirements for consultations	
	Informal consultation with selected groups	Broad circulation of proposals for comment	Public notice and calling for comment	Public meeting	Simply posting proposals on the internet	Advisory group	Preparatory public commission/ committee	Any member of the public can choose to participate in the consultation	The views of participants in the consultation process are made public
Australia	●	●	●	●	●	●	●	●	●
Austria	●	●	●	n.a.	●	●	●	●	●
Belgium	●	n.a.	○	○	n.a.	●	●	○	●
Canada	●	●	●	●	●	●	●	●	●
Chile	●	●	○	○	○	○	●	○	●
Czech Republic	●	●	○	○	●	○	○	●	○
Denmark	●	●	●	○	●	●	●	●	●
Estonia	●	○	○	○	○	●	○	○	●
Finland	●	●	○	●	●	●	●	●	●
France	●	●	○	○	○	●	●	○	○
Germany	●	○	○	○	●	●	○	●	○
Greece	●	●	●	●	●	●	●	○	●
Hungary	●	●	○	●	●	●	●	●	●
Iceland	●	●	●	●	●	●	●	●	○
Ireland	●	●	●	●	●	●	●	●	●
Israel	●	○	○	○	●	○	○	●	○
Italy	●	●	○	●	●	●	●	○	○
Japan	●	●	●	○	●	○	○	●	●
Korea	●	●	●	●	●	●	●	●	●
Luxembourg	●	n.a.	●	n.a.	n.a.	●	n.a.	○	●
Mexico	●	○	●	●	●	○	○	●	●
Netherlands	●	●	●	●	●	●	n.a.	○	●
New Zealand	●	●	●	●	●	●	●	●	●
Norway	n.a.	●	●	n.a.	●	○	●	●	●
Poland	●	●	●	●	●	●	●	●	●
Portugal	●	●	●	●	●	●	●	○	○
Slovak Republic	●	●	n.a.	n.a.	●	●	n.a.	○	●
Slovenia	●	●	●	●	●	●	●	●	○
Spain	●	●	●	●	●	●	●	○	○
Sweden	●	●	●	●	○	●	●	●	●
Switzerland	●	●	●	●	●	●	●	●	●
Turkey	●	●	●	●	●	●	○	●	○
United Kingdom	●	●	●	●	●	●	●	●	●
United States	●	●	○	●	●	●	●	●	○
EU	●	●	●	●	●	●	●	●	●
Total OECD34									
● Yes	33	28	22	21	28	28	24	23	23
○ No	0	4	11	9	4	6	7	11	11
n.a. Not applicable or missing	1	2	1	4	2	0	3	0	0

Source: OECD (2009), *Indicators of Regulatory Management Systems*, 2009 Report, OECD, Paris, pp. 109-10; OECD (2011), *Regulatory Management Indicators – Chile, 2011*, OECD, Paris; OECD (2011), *Regulatory Management Indicators – Estonia, 2011*, OECD Paris; OECD (2011), *Regulatory Management Indicators – Israel, 2011*, OECD, Paris; OECD (2011) *Regulatory Management Indicators – Slovenia, 2011*, OECD, Paris.

Box 1.2. **Canada's open, inclusive policy-making**

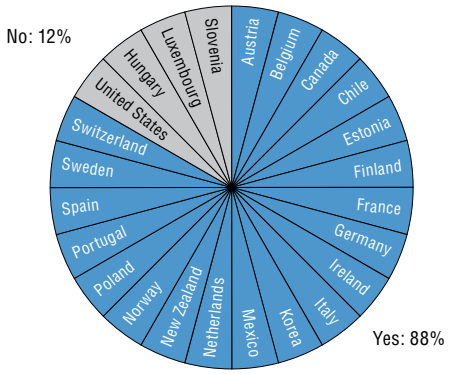
The Canadian government makes use of several tools to bring the views of all Canadians into the policy making process. In 2011, it launched its Open Government Initiative. Canadians can engage with the government online through "Consulting With Canadians", a website that gives single-window access to online and offline consultations on a range of topics. Consultations listed on the site are updated regularly by participating government departments and agencies, while the *Canada Gazette* publishes calls to take part in consultations. In addition, Canada's Forward Regulatory Plans – lists or descriptions of anticipatory changes in regulations – make the federal regulatory system more transparent and predictable for individuals and businesses alike.

Source: Government of Canada (2011), Open Government Initiative, *http://open.gc.ca/open-ouvert/aop-apgo-eng.asp*; Government of Canada, Consulting with Canadians, *www.consultingcanadians.gc.ca/hm.jspx?lang=engGovernment-wide*; Treasury Board of Canada, Government-Wide Forward Regulatory Plans, *www.tbs-sct.gc.ca/tbs-sct/ar-lr/gwfrp-ppreg-eng.asp*.

To improve transparency, governments can also make public the names of organisations and people who seek to influence the legislative process. They may, for example, disclose who – including lobbyists – they consulted when drafting legislation, so leaving a legislative footprint that facilitates public scrutiny. Most of the countries surveyed provide publicly available information on the development of policy decisions (Figure 1.5). In Finland, for example, a government bill incorporates a description of why it has been proposed, an account of the consultation process, and a brief summary of stakeholders' comments. To further enhance transparency, over two-thirds (68%) of OECD countries make public the views of those who take part in the consultation process when drafting primary laws (Table 1.1).

Further examples of countries that provide information on who was consulted and how a policy decision was reached are Austria and Germany (Box 1.3). In Austria, federal ministry working papers are posted online (*www.ris.bka.gv.at*) before they are discussed in Parliament. The parliamentary webpage (*www.parlament.gv.at*) publishes all comments on the working papers as well as reports of discussions in different committees of the Austrian Federal Parliament.

Figure 1.5. **When developing policy decisions, OECD governments provide information on who is consulted and how decisions are reached**



Note: OECD governments were asked to respond to the following question: "In the development of policy decisions, does the government provide information on who was consulted and how the decision was reached (i.e. the legislative footprint) per decision?"
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Box 1.3. **Legislative footprint in Germany**

In Germany, federal government decisions are prepared for by way of written cabinet submissions. The covering letters must contain:

1. a brief outline of the matter and a statement of the reason for proposing the decision,
2. details of which federal ministries were involved and with what results,
3. the results to emerge from consulting with associations, particularly their main suggestions,
4. the results produced by input from Länder (state) governments and any problems expected – especially if a Bundesrat (parliamentary) procedure is required,
5. the opinions of the federal government commissioners, federal commissioners, and federal government co-ordinators involved,
6. the foreseeable costs and budgetary effects of implementing the proposed decision.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Lobbying supports informed public decision making

Lobbying is a fact of public decision-making life in all countries. However, because of the complexity of the policy landscape and the issues addressed, decision makers do not always have all the relevant information. Consequently, seeing things from the viewpoint of stakeholders – i.e. the end-users of policies and regulations – is an important opportunity to gain perspective. When conducted with transparency and integrity, lobbying yields useful information and helps decision makers produce more effective policies, so ultimately improving policy outcomes (Box 1.4).

In a lobbying survey conducted by Burson-Marsteller among politicians and senior officials[3] from 20 European Union (EU) countries in 2013, 55% of respondents agreed and 25% strongly agreed that ethical and transparent lobbying helped policy development (Burson-Marsteller et al., 2013). Sixty-two per cent stated that meetings with industry were helpful in providing them with what they needed to make informed decisions in their work. Out of the surveyed EU countries that were members of the OECD, industry meetings were seen as particularly helpful in Italy and Estonia (80% of respondents). Furthermore, 28% of the politicians and senior officials questioned said that the most positive aspect of lobbying was that it yielded useful, timely information – an opinion held by as many as 61% of respondents in the Netherlands and 55% in Norway.

Box 1.4. **Lobbying leads to more effective and targeted policies in Ireland**

According to the Irish government, lobbying had a positive role in formulating more effective, better targeted policy for the Protection of Disclosures Bill (2013), which provides legal protection for whistleblowers. Submissions received from the Irish Business and Employers Confederation (IBEC), the Irish Congress of Trade Unions (ICTU), and Transparency Ireland led to meetings which helped the government develop policy. It felt that its meetings with ICTU and IBEC were of great value in the area of labour law and labour relations, while those with Transparency Ireland helped it identify important principles which were included in the final version of the Bill that came before it on 3 July 2013 for approval. The provisions of the Bill – which provides protection for workers who have been penalised by their employer for reporting serious wrongdoing in the workplace – are seen as important measures in Ireland's anti-corruption effort.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

There are also concerns and risks over undue influence and regulatory capture

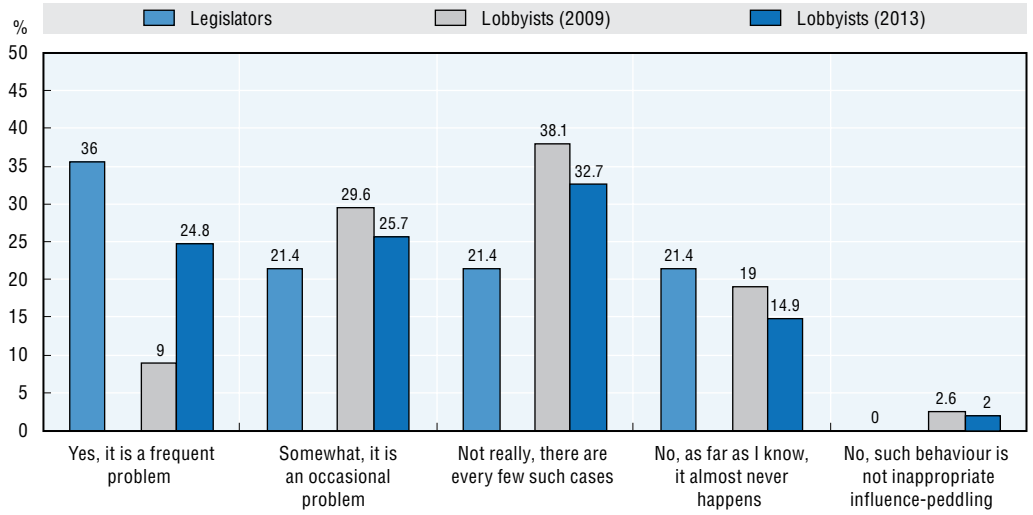
Lobbying is perceived in most countries as a practice that perpetuates special interests at the expense of the public interest. The literature has noted that the disproportionate, unregulated influence of interest groups may lead to state capture (Kaufmann et al., 2000). In the 2013 Burson-Marsteller survey, 24% of respondents stated that the most negative aspect of lobbying was that it gave undue weight to elites and the wealthy, and 14% felt that it fostered undue influence in the democratic process (Burson-Marsteller et al., 2013). As many as 55% of respondents in Norway and 40% in Hungary believed that it favoured the rich and powerful, with 33% in the Czech Republic, 26% in Greece and 24% in France sharing that opinion.

Legislators and lobbyists themselves harbour similar suspicion and negative perceptions. The share of lobbyists who believe that inappropriate influence-peddling in their business is a frequent problem rose drastically between 2009 and 2013 (Figure 1.6).

This suspicion is widely fuelled by real-life instances. Cases of undue influence in public decision-making processes and regulatory capture to the detriment of the public interest have surfaced in a number of countries. Informed voices have argued that economic crises are partly caused by the influence of specific interest groups on government decision making. For example, an IMF Working Paper published in 2009 links intensive lobbying by the financial, insurance and real estate industries in the United States (US) with high-risk lending practices (Igan et al., 2009).[4] The paper reveals how lenders who lobby more intensively on the issues of mortgage lending and securitisation have i) more lax lending standards measured by loan-to-income ratios, ii) a greater tendency to securitise, and iii) faster-growing mortgage loan portfolios. In other words lenders who lobby engage in riskier lending.

Improving the transparency and integrity of the public decision-making process, particularly by addressing lobbying, is therefore high on many governments' agendas. They are keen to mitigate the risks of undue influence and ease the suspicion that hangs over

Figure 1.6. **Inappropriate influence-peddling by lobbyists – e.g. giving gifts to curry favours from officials or misrepresenting issues – is a frequent or occasional problem**



Note: Respondents were asked the following question: "Generally speaking, do you think that inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, is a problem?"
Source: OECD 2013 Survey on Lobbying for Lobbyists; OECD 2009 Survey on Lobbying; OECD 2013 Survey on Lobbying for Legislators.

policy formulation (Box 1.5 on recent events in Australia). Indeed, in the past four years there has been a groundswell of support for more transparent lobbying practices among both lobbyists and legislators (Figure 3.2).

Box 1.5. **Australian Prime Minister's lobbyist integrity drive to ensure a clean and fair government**

Prime Minister Tony Abbott has triggered a reshuffle within the state executive of the New South Wales (NSW) Liberal Party after declaring party members should no longer work as lobbyists. Two of the state's most powerful conservative lobbyists Michael Photios and Joe Tannous resigned from their party roles just hours after the announcement. The PM said that "I am determined to ensure that as far as the new Coalition government in Canberra is concerned that not only is it clean and fair, but it's seen to be clean and fair" and that "That's why I'm determined to ensure you can either be a powerbroker or a lobbyist but you can't be both".

Mr Photios, one of the most powerful men in the state, resigned from the NSW Liberal Party executive after 30 years of service. He runs the lobby firm Premier State and is responsible for kick-starting the careers of many current NSW MPs.

NSW Premier Barry O'Farrell said in September 2013 that he instructed his department to prepare a further change to the NSW Lobbyist Code of Conduct to improve transparency and remove any perception or potential for conflicts of interest.

Source: Harvey, E. (2013), "Tony Abbott's lobbyist integrity drive prompts resignation of powerbrokers Michael Photios, Joe Tannous", *ABC News*, Australian Broadcasting Corporation website, 25 October, *www.abc.net.au/news/2013-09-19/prime-minister-tony-abbott27s-lobbyist-integrity-call-prompts-/4969650*.

Transnational lobbying practices raise new global concerns

Lobbying is evolving. As globalisation and interdependency between countries have increased dramatically in recent years, lobbying strategies and practices have become more transnational. For example, US corporations now regularly lobby the European Parliament to influence decision-making in the European market, which in turn has an impact on the US market. Similarly, European lobbyists may be active in one or more European countries and, at the same time, lobby in Brussels at the supranational level. The convergence and emergence of such global practices have spawned new concerns and risks. Who is shaping them?

Divergent rules and levels of transparency in different countries and jurisdictions have led to a proliferation of lobbying practices and inconsistent compliance at an international level. In addition, different rules for the same actors in different jurisdictions may result not only in different levels of influence, but in uneven playing fields depending on the jurisdiction in which they operate. Transnational lobbying raises questions of transparency and competition at the global level. Accordingly, countries should give special attention to cross-border lobbying practices and also address them at the global and supranational levels. To that end, they should come together with regional and international institutions in coalitions that incorporate multi-level governance processes.

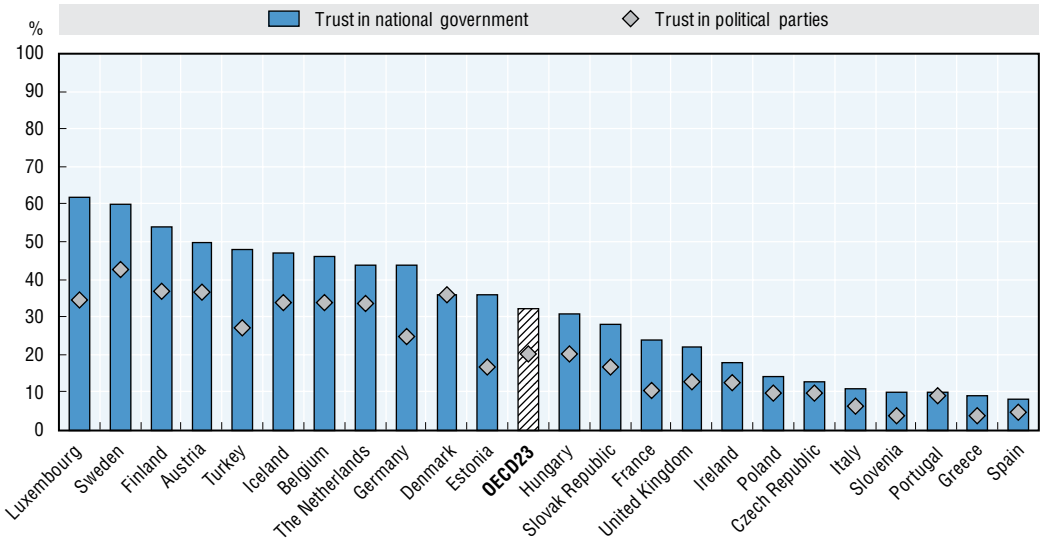
Political finance has a strong bearing on the legitimacy of the political process

Concerns over the integrity and impartiality of public decision making have not only been raised in regards to lobbying, but also increasingly on the role of money in politics. Money is, of course, a necessary component of the democratic process in that it enables

representative candidates to stand for election. However, it can also – in the absence of adequate, effective regulation – undermine democracy itself. Coupled with intensive lobbying, money in politics can lead to policy capture, distorting the incentives that drive decisions: if political parties or candidates receive donations, they might be expected to "return the favour" when they take office.

Although there is a general sentiment of mistrust in government, no institutions are less trusted or perceived as more corrupt than political parties (Figure 1.7). At the same time, the amounts of money at stake continue to burgeon. In the United States, for example, the total cost of presidential elections doubled between 1998 and 2012, reaching a total of USD 6 billion (Center for Responsive Politics, 2013).

Figure 1.7. **Trust in government and trust in political parties in 23 European OECD countries, May 2013**



Notes: Trust in national government is evaluated as the percentage of "tend to trust" answers to the question: "I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it? National government."
Trust in political parties is evaluated as the percentage of "tend to trust" answers to the question: "I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it? Political parties."
Source: Eurobarometer 78, *http://ec.europa.eu/public_opinion/cf/index_en.cfm*.

Lobbyists have a stake in regulating political finance: While most countries regulate lobbyist gifts to public decision-makers, half place no limit on campaign contributions

Although most OECD countries regulate lobbyists' gifts to public officials, half of those surveyed had no rules or guidelines governing lobbyists' donations or reporting of campaign contributions. As participants at the OECD Forum on Transparency and Integrity in Lobbying pointed out, lobbyists have realised that, although they cannot buy meals, trips or gifts for legislators, they are allowed to raise money for them. So, if they want access to and a reciprocal relationship with lawmakers, they get involved in political campaigns.

There is clear concern among both legislators and lobbyists themselves about money in politics. As many as 84% of surveyed legislators and 64% of lobbyists were of the opinion that information on contributions to political campaigns should be made publicly available through, for example, a register. However, of all the surveyed OECD member countries with

lobbyist registers in place, only Slovenia (Box 1.6) and the United States disclose information on lobbyists' contributions to political campaigns.

If governments are to regain citizens' trust, they should apply transparency and accountability requirements consistently to include the financing of such democratic processes as parliamentary elections. Yet, to this day, money in politics remains on the sidelines of most integrity efforts.

Box 1.6. **Reporting lobbyists' donations to political parties and election and referendum campaigns in Slovenia**

Article 64 of Slovenia's Integrity and Prevention of Corruption Act[1] sets out what information lobbyists' donation reports should contain and states that lobbyists must report the type and value of contributions made to political parties and the organisers of election and referendum campaigns. The Political Parties Act[2] caps donations. Paragraph 3 of Article 22 stipulates that total contributions to political parties in a given year may not exceed ten times the average monthly wage in the Republic of Slovenia as reported by the National Statistics Office for the previous year. Article 22, Paragraph 4 of the Act also states that if the total amount of contributions to political parties in a single year exceeds three times the average monthly wage per employee reported the National Statistics Office for the previous year, the natural or legal person making the contribution must report and provide information on:

- the name and registered office of the legal person, or
- the name and address of the natural or private person and the name of his or her company, and
- the amount of the total annual contribution by the legal or natural person.

1. Available at *www.kpk-rs.si/upload/t_datoteke/ZintPK-ENG.pdf*.
2. Available at *www.uradni-list.si/1/content?id=58647*.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Addressing lobbying concerns is a key policy lever for restoring trust

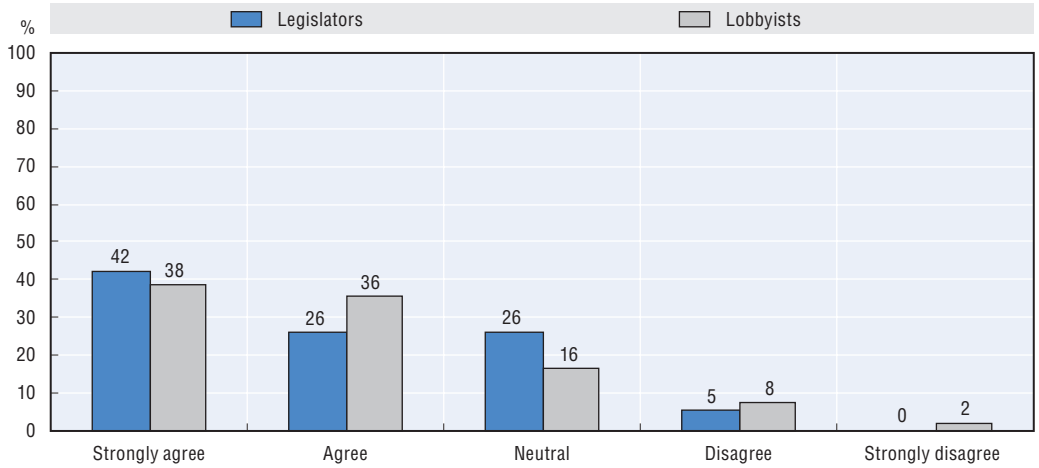
Surveyed stakeholders supported the statement that transparency in lobbying would increase citizens' trust in the decision-making process, with 74% of lobbyists and 68% of legislators agreeing and strongly agreeing (Figure 1.8). The scale of opinion suggests that addressing concerns over opaque lobbying practices (such as deals behind closed doors) is a key policy lever in governments' efforts to restore the trust of the people.

Concerns over the improper effect of private interests on official decisions prompt more and more countries to regulate lobbying

A growing number of countries are opting to regulate lobbying. From the 1940s to the early 2000s, only four countries did so. Since 2005, however, an additional ten have followed suit. Regulatory systems may be mandatory – as in Canada, for example – or voluntary, like the French scheme. Other countries, such as Ireland, are considering introducing regulations.

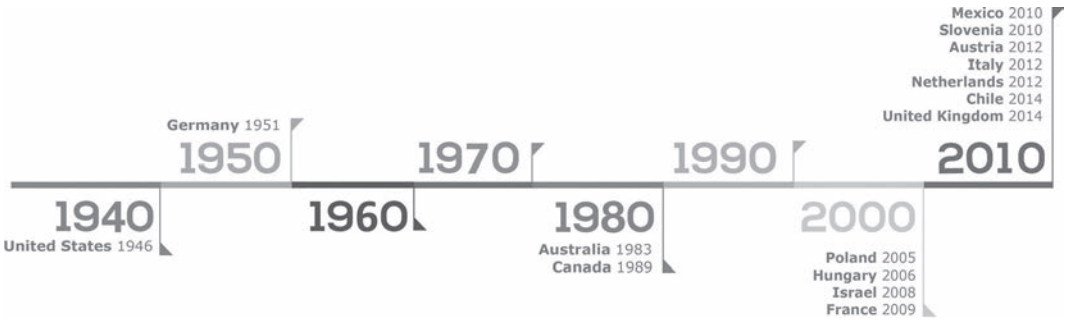
Although more and more countries have introduced regulations on lobbying, doing so has not been without its challenges. Some have amended statutory or regulatory provisions that were already in place, while others have enacted new ones only to see them repealed, before legislating or regulating once more at a later date. Australia, for

Figure 1.8. **Transparency in lobbying increases citizens' trust in the public decision-making process**



Source: OECD 2013 Survey on Lobbying for Lobbyists; OECD 2013 Survey on Lobbying for Legislators.

Figure 1.9. **Lobbying regulation timeline**[1]



1. *Australia*: Lobbying was first regulated in Australia through the Lobbyist Registration Scheme of 1983, but the scheme was abolished in 1996. The current Lobbying Code of Conduct that also established a lobbyist register was introduced in 2008.

   Canada: The *Lobbyists Registration Act* of 1989 has been amended several times and was in 2008 renamed the *Lobbying Act*.

   Chile: Chile enacted a law regulating lobbying in January 2014. However, this report refers to laws and practices adopted until December 2013 and therefore Chile's law is not analysed.

   France: On 27 February 27 and 26 June 2013, the Bureau of the French Assemblée Nationale – on the proposal of Mr Christophe Sirugue, President of the Delegation responsible for interest representatives – adopted a new regulation to review the relationship between Members of the National Assembly and interest representatives.

   Germany: Lobbying was first regulated through Article 73 of the Rules of Procedure of the German Bundestag in 1951.

   Hungary: Hungary introduced the Act XLIX of 2006 on Lobbying Activities however repealed it in 2011, introducing the Government regulation of the integrity management system of state administration bodies and lobbyists (Magyar Közlöny 30. Szám [2013. február 25]) in February 2013.

   Italy: With Ministerial decree No. 2284 of 6 February 2012, the Italian Ministry of Agricultural, Food and Forestry Policies regulated stakeholders' participation in the decision-making process of bills and draft regulations under that Ministry's authority. In addition to the Ministry's regulation of lobbying, there are three Italian regions that have introduced rules for transparency of political and administrative activities, namely Toscana (2002), Molise (2004) and Abruzzo (2010).

   Poland: The Act on Legislative and Regulatory Lobbying was passed by the Sejm (Lower House of Parliament) in July 2005. The Act was amended in 2011.

   United Kingdom: The United Kingdom enacted the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 in January 2014.

   United States: The Federal Regulation of Lobbying Act of 1946 was replaced in 1995 by the Lobbying Disclosure Act.

instance, first regulated lobbying through the Lobbyist Registration Scheme of 1983 before it abolished the scheme in 1996. Its current Lobbying Code of Conduct, introduced in 2008, also establishes a lobbyist registry. Similarly, Hungary introduced Act XLIX on Lobbying Activities in 2006, repealed it in 2011, then brought in an integrity management regulatory system for state administration bodies and lobbyists in February 2013.[5]

Some countries have had to wage complex, lengthy struggles to secure approval for legislation on lobbying, sometimes having to take it through several rounds of voting and overcome significant legislative hurdles. Mexico, for example, has regulated lobbying in the legislative branch since 2010, but only after years of parliamentary debate that dated back to 2002. Between 2002 and 2010, four ballot initiatives and decrees to create a lobbying law were introduced in the Mexican House of Representatives, as were three ballot initiatives and decrees that sought to pass amendments and addenda to the Rules for the Internal Governance of the Congress. Over the same period of time, similar moves were undertaken in the Mexican Senate with four ballot initiatives and decrees to regulate lobbying being introduced. The first aimed to draft a new law and the other three to amend and supplement the Rules for the Internal Governance of the Congress.

More seasoned regulators of the lobbying business like the US and Canada updated their bodies of law. The US replaced the Federal Regulation of Lobbying Act of 1946 by the 1995 Lobbying Disclosure Act, while Canada made several amendments to its Lobbyists Registration Act of 1989, renaming it the Lobbying Act in 2008 to reflect its broader scope.

A 56% majority of politicians and senior officials[6] in 20 EU countries surveyed by Burson-Marsteller in 2013 felt that lobbying was not sufficiently regulated in their country (Burson-Marsteller et al., 2013). The percentage of respondents who held that view was particularly high in countries – such as Portugal (100%), Spain (93%), the Czech Republic (88%), and Italy (87%) – where the government has not yet regulated lobbying. However, half or more of the decision makers questioned in Norway (59%), Denmark (57%) and Poland (50%) felt that lobbying was amply regulated.

Regulation has been reactive and scandal-driven instead of forward looking

With a consensus among stakeholders and decision makers that lobbying should be regulated and is currently inadequately so, the growing number of countries opting to regulate is an encouraging sign. To date, however, most have introduced or reformed lobby regulations on an ad hoc basis and largely in response to political scandals. Securing the necessary consensus among stakeholders before scandals take place and enough political support is mobilised has been difficult. However, in countries that have taken a more incremental approach, experience shows that consensus building has been less challenging. In light of the concerns over lobbying, public decision making, and citizens' trust, governments stand to gain considerably from an approach that is more forward-looking and less reactive and scandal-driven.

Notes

1. To read more about OECD's work on trust, see OECD (2013), *Investing in Trust: Leveraging Institutions for Inclusive Policy Making* (GOV/PGC(2013)2) and OECD (2013), *Trust in Government: Assessing the Evidence, Understanding the Policies* (GOV/PGC(2013)1).
2. The OECD defines open government as the transparency of government actions, the accessibility of government services and information, and the responsiveness of government to new ideas, demands and needs. See OECD (2005), "Open government" in Modernising Government: The Way Forward. OECD Publishing, Paris, p. 29.

3. Interviewees included politicians (both members of national Parliaments and members of the European Parliament) and senior officials from national governments and the EU institutions. In total, nearly 600 interviews were conducted.
4. The same issue is addressed in OECD (2013), *Transparency and Integrity in Lobbying*, OECD, Paris, *www.oecd.org/gov/ethics/Lobbying-Brochure.pdf*.
5. Magyar Közlöny 30. Szám (2013. február 25).
6. Interviewees included politicians (both national members of Parliaments and members of the European Parliament) and senior officials from national governments and the EU institutions. In total, nearly 600 interviews were conducted.

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Chapter 2

Balancing scope and feasibility of lobbying rules and guidelines

Although addressing concerns over lobbying starts with determining the scope of appropriate lobbying rules and guidelines, many countries have struggled to do so. While a comprehensive scope levels the playing field for all interest groups, experience shows that countries have had trouble mustering the necessary support for such an approach and that it may generate an overwhelming administrative burden. Evidence points to the advantages of incremental – step-by-step – approach to regulation, although some countries rely solely on lobbyists to self-regulate.

This chapter explores how countries have sought to strike the right balance between the costs and benefits of rules and guidelines and the scope of a well-functioning system that achieves expected objectives and addresses concerns over lobbying.

Defining the scope of lobbying rules and guidelines

Building a consensus on the scope of lobbying rules and guidelines remains challenging in OECD countries

OECD Principles for Transparency and Integrity in Lobbying

Principle 4. Countries should clearly define the terms "lobbying" and "lobbyist" when they consider or develop rules and guidelines on lobbying.

The OECD Principles for Transparency and Integrity in Lobbying state that definitions of "lobbying" and "lobbyists" need to be robust, comprehensive, and sufficiently explicit to prevent loopholes and avoid misinterpretation. At the same time, they should balance the diversity, capacities, and resources of lobbying entities with measures to improve transparency. However, building consensus on the scope of such measures and securing support from interested parties – crucial for achieving compliance with the rules and guidelines – is challenging, as the experience of countries shows.

Experience also shows, however, that consultation processes are an effective tool for bringing stakeholders on board and ensuring that proposed regulations effectively address concerns over lobbying. Austria (Box 2.1) and Ireland (Box 2.2) are two examples of countries that launched consultation processes in order to garner input from stakeholders.

Box 2.1. **The consultation process for the Austrian Lobbyist and Interest Representation Transparency Act**

In Austria, stakeholders such as the Austrian Chamber of Commerce, the Austrian Chamber of Workers, and the Austrian Lawyers Association – together with many others – were consulted as part of the process of formulating the Austrian Lobbyist and Interest Representation Transparency Act. A total of 74 organisations submitted written opinions on the Federal Ministry of Justice's proposals for the new Act and were made publicly available on the Parliament's website.* The Federal Ministry of Justice took the opinions into account and factor them into its final working paper. The final draft of the Working Paper was later discussed in the Judiciary Committee of the Federal Parliament and adopted on 27 June 2012.

* Available at www.*parlament.gv.at/PAKT/VHG/XXIV/I/I_01465/index.shtml#tab-VorparlamentarischesVerfahren*.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Box 2.2. **Consultation process for the Irish Regulation of Lobbying**

In order to further inform its work on introducing a statutory register of lobbyists and rules governing lobbying practices, the Department of Public Expenditure and Reform invited interested parties to submit their views. It sought opinions on key issues relating to options for the design, structure, and implementation of an effective Irish lobbying regulatory system based on the OECD's Recommendation on Principles for Transparency and Integrity in Lobbying. Submissions were received from a total of 61 stakeholders and have been made available online at: *http://per.gov.ie/regulation-of-lobbyists-submissions/*. The Department also met with some of the contributors to the public consultation to further discuss and clarify issues highlighted in their submissions.

Key issues to emerge from the submissions were:

- Overwhelming support in principle for the proposal to regulate lobbying. Concerns were expressed that regulation should not hinder interaction with Government.
- As for the scope of registration, the submissions included a variety of opinions on which organisations and groups should be included. The views expressed related to professional lobbyists, representative bodies, charities, trade unions and employer groups, professional services (accounting, legal firms), not-for-profit organisations and grassroots advocacy.
- On the status of charities, the submissions expressed concern that advocacy activities be treated differently or excluded and that the tax status of charities should not be compromised by their inclusion in a lobbying register.
- There was a broad consensus that clarity is required on the definition of lobbying. Issues raised included whether there should be a threshold below which regulation would not apply e.g. the percentage of time spent on lobbying, a budget, size of organisation, status and purpose of organisation. Another opinion voiced was that ordinary constituents should continue to enjoy access to political representatives.

A conference on the Regulation of Lobbying was hosted by the Minister for Public Expenditure and Reform, Mr Brendan Howlin, on 5 July 2012. It afforded a further opportunity for interested stakeholders to contribute to the development of lobbying regulations. Ms Lynn Morrison, Integrity Commissioner and Lobbyists Registrar of Ontario, gave a presentation, "How it works… a Lobbying Registration Scheme in Practice", which gave attendees insight into the Canadian system. The Department gave a presentation entitled "Key Issues on Regulation of Lobbying". A panel representing stakeholders, academics, and politicians was set up for question and answers.

After the conference, the Department accepted a second round of feedback from stakeholders and government departments on the issues in the consultation paper and those raised at the conference. These submissions are available at: *http://per.gov.ie/consultation-process-phase-11/*.

For further information, see Chapter 12. Ireland: Proposals for Registering Lobbying Activities.

Source: http://per.gov.ie/key-issues-emerging-from-the-submissions/ and *http://per.gov.ie/conference/*.

Although rules and guidelines should primarily target those who are paid to lobby – e.g. consultant and in-house lobbyists – definitions of lobbying activities should be inclusive so as to level the playing field for interest groups, be they business-oriented or not-for-profit, which seek to influence public decisions.

Lobbying rules generally apply only to paid lobbyists

OECD member countries take two main approaches to defining the scope of the lobbying rules and guidelines. They define either "lobbyist" or "lobbying". Where countries define lobbying but not lobbyist, a lobbyist is often considered in law as an entity or individual that conducts an activity that matches the statutory definition of "lobbying".

The Canadian, French, German and Polish lobbying regulations do not contain any specific definition of lobbyist. Instead – like Canada's Lobbying Act – they require individuals to register as lobbyists if they are paid to communicate with public office holders on behalf of a client or employer in respect of a number of listed matters. In other words they define behaviour and actions, but not lobbyists *per se*.

Article 4 (15) of Slovenia's Integrity and Prevention of Corruption Act[1] defines a "lobbyist" as i) any person engaged in lobbying and entered in the register of lobbyists; ii) a person who is engaged in lobbying and is employed in an interest group and lobbies on its behalf; or iii) a person who is an elected or otherwise legitimate representative of that interest group.

In the United States, Section 3 (10) of the Lobbying Disclosure Act (1995)[2] defines a lobbyist as:

> *"[A]ny individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 per cent of the time engaged in the services provided by such individual to that client over a six month period."*[3]

The definition differs at the US state level. In California, for example, Section 82039 (1) of the Political Reform Act (2013)[4] defines a lobbyist as:

> *"Any individual who receives two thousand USD or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action."*

In Austria, Paragraph 4 of the Lobbying and Interest Representation Transparency Act of 2013 (Lobbying- und Interessenvertretungs-Transparenz-Gesetz – LobbyG)[5] defines a lobbyist as a person who pursues a lobbying activity as a body, employee or contractor of a lobbying firm. A lobbying company is defined as a company whose corporate purpose includes the acquisition and performance of a lobbying job, even if not intended to be permanent.

Not only do countries use different approaches to defining the scope of lobbying regulations, they also employ different terminology to define a lobbyist. Their wording often reflects the public perception of lobbyists in certain country contexts and the reputation that they have. Not calling lobbyists "lobbyists" marks lobbying as a reputable professional activity with a view to restoring trust in the activity. In France, lobbyists are referred to as "interest representatives".

Charities are widely exempted from lobbying rules and guidelines

Although the Canadian regulation does not specifically define "lobbyist", it applies to lobbyists who are self-employed or hired by a lobbying firm, representatives of commercial and not-for-profit corporations, non-governmental organisations, the private sector, law firms, think tanks, media organisations, and churches and charities.

Charities and churches are the actors most commonly exempted from lobbying rules and guidelines. They come under the ambit of regulations only in Canada, Hungary, and Italy.[6] Other widely excluded actors are lawyers, think tanks, and media organisations. The scope of the rules and guidelines shows that, with the exception of lawyers, countries primarily cover actors that operate on a for-profit basis or conduct lobbying in an organised fashion on a regular basis, often part as their core activities (Table 2.1).

As to whether rules and regulations should apply to think tanks, the views of lobbyists and legislators differ (Figure 2.1). As many as 63% of surveyed lobbyists believe that think tanks should be considered lobbyists, while less than one-third of legislators (32%) do. Also, in accordance with the prevailing views among lobbyists and legislators, three OECD countries (Mexico, Slovenia, and the United States) do not define media organisations as lobbyists. Overall, stakeholders would prefer to see regulations with a more comprehensive scope than those in place in most OECD countries when it comes to think tanks, media organisations, churches, and charities.

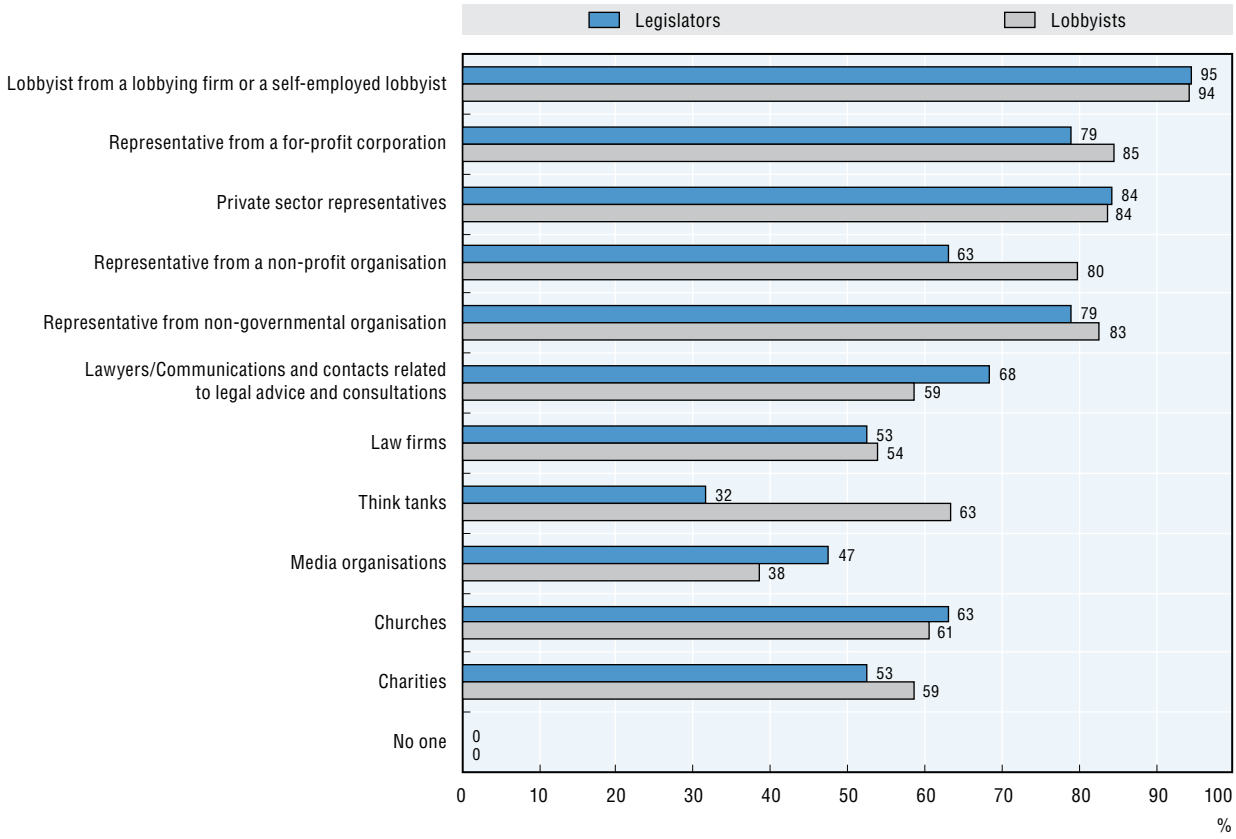
A number of actors are generally exempted from lobbying rules and guidelines. They include officials of foreign governments and diplomats members of a legislature and their staff, and government employees. Since the purpose of lobbying regulations is to address concerns over influence in the decision-making process, many of the actors most commonly exempted from regulations are those who are not considered part of the problem – or who are not at the heart of the problem, at least. Such actors include government employees, members of federal or provincial legislatures, and legislature staff (Table 2.2).

Table 2.1. **Actors covered by lobbying rules and guidelines**

	Lobbyist from a lobbying firm or a self-employed lobbyist	Representative from a for-profit corporation	Private sector representatives	Representative from a non-profit organisation	Representative from non-governmental organisation	Lawyers/ Communications and contacts related to legal advice and consultations	Law firms	Think tanks	Media organisations	Churches	Charities	Others, please specify
Austria	●	●	●	○	●	○	○	○	●	○	○	○
Canada	●	●	●	●	●	●	●	●	●	●	●	○
France	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Germany	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Hungary	●	●	●	●	●	●	●	●	●	●	●	○
Italy	●	●	●	●	●	●	●	●	●	●	●	○
Mexico	●	●	●	●	●	●	●	○	○	○	○	●
Poland	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Slovenia	●	●	●	●	●	○	○	○	○	○	○	○
United States	●	●	●	●	○	○	●	●	○	○	○	○
Total OECD10												
● Yes	7	7	7	6	6	4	5	4	4	3	3	1
○ No	0	0	0	1	1	3	2	3	3	4	4	6

Notes: Polish, French and German legislation does not contain a definition of lobbyists. In the United States, depending upon whether they are within or over thresholds, representatives of a for-profit corporation, private sector representatives, representatives of a non-profit organisation, law firms, and think tanks could be covered. With regard to lawyers, the nature of the advice and consultative services they offer determines whether or not they are considered lobbyists. In Mexico, analysts and philanthropic partnerships are defined as lobbyists. For Italy, responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Figure 2.1. **Stakeholders generally think that actors who receive compensation for lobbying should be defined as lobbyists**



Note: Respondents were asked to respond to the following question: "In your opinion, who is a lobbyist?"
Source: OECD 2013 Survey on Lobbying for Lobbyists and OECD 2013 Survey on Lobbying for Legislators.

Table 2.2. **Actors that are exempted from the requirements of rules and guidelines**

	Officials of foreign governments / diplomatic agents	Members of legislature (federal or provincial)	Member of legislature's staff	Government employees	Members of a minority institution or government
Austria	●	●	○	○	○
Canada	●	●	●	●	○
France	○	○	○	○	○
Germany	○	○	○	○	○
Hungary	○	●	●	●	●
Italy	●	●	●	●	●
Mexico	○	○	○	○	○
Poland	○	○	○	○	○
Slovenia	○	○	○	○	○
United States	○	●	●	●	○
Total OECD10					
● Yes	3	5	4	4	2
○ No	7	5	6	6	8

Notes: For Italy, the responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Most OECD countries define lobbying as activities to influence public decisions

The OECD Principles on Transparency and Integrity in Lobbying define lobbying as "the oral or written communication with a public official to influence legislation, policy or administrative decisions". Although lobbying often trains its sights on the legislative branch at national and sub-national levels, it also targets the executive branch of government – to influence the adoption of regulations, for example, or the design of projects and contracts. The term "public official" in the OECD definition consequently includes civil and public servants, and employees and holders of public office in the executive and legislative branches, whether elected or appointed.

A definition of lobbying must include any activity where an attempt is made to influence the public decision-making process. At the same time, however, it is important that citizens' rights to access government are protected. Moreover, if a regulation is mandatory, its definition of lobbying must stand up in court – a requirement that resulted in a key amendment to Canada's Lobbyists Registration Act in 2005, where the words "in an attempt to influence'" were removed from the definition of registrable communications. The change was intended to simplify the definition of lobbying by narrowing the Act's focus to apply only to communications between lobbyists and federal public office holders on specific subject matters prescribed by legislation.[7]

No single definition defines lobbying across OECD member countries. They generally choose to define lobbying as activities carried out in order to influence public decisions and policies, or as communication or contact with public officials. The European Institutions (Box 2.4) at the supranational level, for example, and Austria, Poland and Slovenia at the national level (Box 2.3), define lobbying according to the nature of the activities carried out in order to influence public decisions and decision makers.

Box 2.3. **Defining lobbying in national legislation: The cases of Austria, Poland and Slovenia**

Paragraph 4 of Austria's Lobbying and Interest Representation Transparency Act of 2013 defines lobbying activities as every organised and structured contact whose purpose is to influence a decision maker on behalf of a third person.

In Poland, the Act on Legislative and Regulatory Lobbying of 7 July 2005 regulates lobbying in the law-making process. Article 2 defines lobbying as any legal action designed to influence the legislative or regulatory actions of a public authority. The Act also defines professional lobbying as any paid activity carried out on behalf of a third party with a view to ensuring that their interests are reflected in proposed or pending legislation or regulation.

In Slovenia's Integrity and Prevention of Corruption Act, Article 4 (11) defines lobbying as the activities carried out by lobbyists who, on behalf of interest groups, exercise non-public influence on decisions made by state and local community bodies and holders of public authority with regard to matters other than those subject to judicial and administrative proceedings, to proceedings carried out in accordance with public procurement regulations, and to proceedings in which the rights and obligations of individuals are decided upon. Lobbying means any non-public contact made between a lobbyist and a lobbied party for the purpose of influencing the content or the procedure for adopting the aforementioned decisions.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Box 2.4. **Supranational legislation: lobbying according to the European Parliament and European Commission**

Lobbying is defined as all activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of the channel or medium of communication used: e.g. outsourcing, media, contracts with professional intermediaries, think tanks, platforms, forums, campaigns, and grassroots initiatives. Lobbying activities include contacting members, officials, or other staff of the EU institutions; preparing, circulating and communicating letters, information material or discussion papers and position papers; and organising events, meetings or promotional activities and social events or conferences; and invitations sent to members, officials or other staff of the EU institutions. Voluntary contributions and participation in formal consultations on envisaged EU legislative or other legal acts and other open consultations are also considered lobbying activities.

Excluded from the definition of lobbying are:

- "Activities concerning the provision of legal and other professional advice, insofar as they relate to the exercise of the fundamental right of a client to a fair trial, including the right of defence in administrative proceedings, such as carried out by lawyers or by any other professionals involved therein."
- "Activities of the social partners as participants in the social dialogue (trade unions, employers associations, etc.) when performing the role assigned to them in the Treaties."
- "Activities in response to direct and individual requests from EU institutions or members of the European Parliament, such as ad hoc or regular requests for factual information, data or expertise and/or individualised invitations to attend public hearings or to participate in the workings of consultative committees or in any similar forums."

Source: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:191:0029:0038:EN:PDF.

Other countries, like the United States, have applied a slightly different approach. Section 3 Article 7-8 of the US Federal Lobbying Disclosure Act (1995)[8] defines lobbying as contact through written, oral or electronic communication with executive or legislative branch officials in regard to: i) the formulation, modification, or adoption of federal legislation (including legislative proposals); or ii) the formulation, modification, or adoption of a federal rule, regulation, executive order, or any other program, policy, or position of the United States government. However, similarly to Austria, Slovenia, and Poland, the United States define lobbying as an attempt to influence government.[9]

Communications made in response to a request by a public official are commonly exempted from lobbying definitions

Definitions of lobbying should also clearly specify the types of communications with public officials that a country's rules and guidelines do not consider lobbying. In Canada, Slovenia and the United States, they include communication that is already on public record – such as formal presentations to legislative committees, public hearings, and established consultation mechanisms like social partnerships or communication in response to a request from a public official (Table 2.3).

Table 2.3. **Activities that are exempted from rules and guidelines**

	Communication where all elements of the consultative process are a matter of public record, e.g. Parliamentary Committee hearings	Communications made in response to a request by a public official	Communications made in response to a public official strictly requesting factual information	Information related to the decision-making process that is published in the public domain	Communications taking place outside of buildings where public decisions are made (e.g. National Assembly, Senate, Congress)	Lobbying activities below certain thresholds (e.g. in terms of time or money spent on lobbying)	Lobbying activities that are not remunerated
Austria	○	○	○	○	○	○	○
Canada	●	●	●	●	○	●	●
France	○	○	○	○	○	○	○
Germany	○	○	○	○	○	○	○
Hungary	●	○	●	○	●	○	○
Italy	○	○	○	○	○	○	○
Mexico	○	○	○	○	○	○	○
Poland	○	○	○	○	○	○	○
Slovenia	●	●	●	●	○	○	○
United States	●	●	●	●	○	●	●
Total OECD10							
● Yes	4	3	4	3	1	2	2
○ No	6	7	6	7	9	8	8

Notes: In Germany, there are no fixed definitions of the terms "lobbyist" or "lobbying activities". However, the existing rules define behaviour and actions that are prohibited. For Italy, responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Self-regulation of lobbying

Self-regulation focuses more on codes of conduct and registers, than monitoring and enforcement

When perceived conduct of lobbyists raises significant public concern, maintaining trust in decision making would require governments to set professional standards of conduct for lobbyists (OECD, 2009). However, when there are higher levels of trust in the decision-making process, self-regulation of lobbying may be sufficient to address the public's concerns. To self-regulate, lobbyists come together in professional groups to regulate their activities, mostly voluntarily, through i) a code of conduct, ii) a registry, and/or iii) a monitoring and enforcement system.

At the European Union level, big lobbyist associations regulate the lobbying activities of their members. Although they have codes of conduct in place, the associations do not generally have monitoring and enforcement system in place for detecting breaches to their codes and applying sanctions. One exception is the European Public Affairs Consultancies Association (EPACA). It has drawn up a code of conduct and instituted a professional practices panel for disciplinary hearings. The EPACA code of conduct includes twelve best practices for public affairs professionals working in consultancies across the EU. Signatories of the code commit to abide by the practices. EPACA has also set up a Professional Practices Panel (PPP) which is an autonomous body of such professionals as former members of the European Parliament, representatives of industry associations, and academics. Although it has no direct ties with the lobbying industry, the PPP is responsible for judging alleged breaches of the EPACA code of conduct. However, the effectiveness of this can be questioned. In the past five years only two breaches have come before the management committee of EPACA. Of these, the committee deemed one to be admissible and referred it to the PPP.

However the PPP threw out the case as it did not directly involve the subject company's relationship with the EU institutions.[10]

In addition to self-regulation of lobbyist associations, there are also examples of businesses that regulate their own lobbying activities. One example is the French bank, BNP Paribas, which has adopted a "charter for responsible representation with respect to the public authorities" (Box 2.5).

Box 2.5. **BNP Paribas' charter for responsible representation with respect to the public authorities**

In December 2012, BNP Paribas published its charter for responsible representation with respect to the public authorities. The charter applies to all employees in all countries, and to all activities carried out in all countries in which BNP Paribas operates. BNP Paribas was the first European bank to have adopted an internal charter for its lobbying activities.

The charter contains a number of commitments to integrity, transparency, and social responsibility. Under the terms of the integrity commitment, the charter establishes that:

"The BNP Paribas Group shall:

- comply with the codes of conduct and charters of institutions and organisations with respect to which it carries out public representation activities;
- act with integrity and honesty with institutions and organisations with respect to which it carries out public representation activities;
- forbid itself to exert illegal influence and obtain information or influence decisions in a fraudulent manner;
- not encourage members of institutions ad organisations with respect to which it carries out public representation activities to infringe the rules of conduct that apply to them, particularly regarding conflict of interest, confidentiality and compliance with their ethical obligations;
- ensure that the behaviour of employees concerned by the Charter is in accordance with its code of Conduct and internal rules regarding the prevention of corruption, gifts and invitations."

In addition, BNP Paribas' employees and any external consultants who may be engaged must inform the institutions and organisations with which they are in contact who they are and whom they represent. The bank has also undertaken to publish its main public positions on its website.

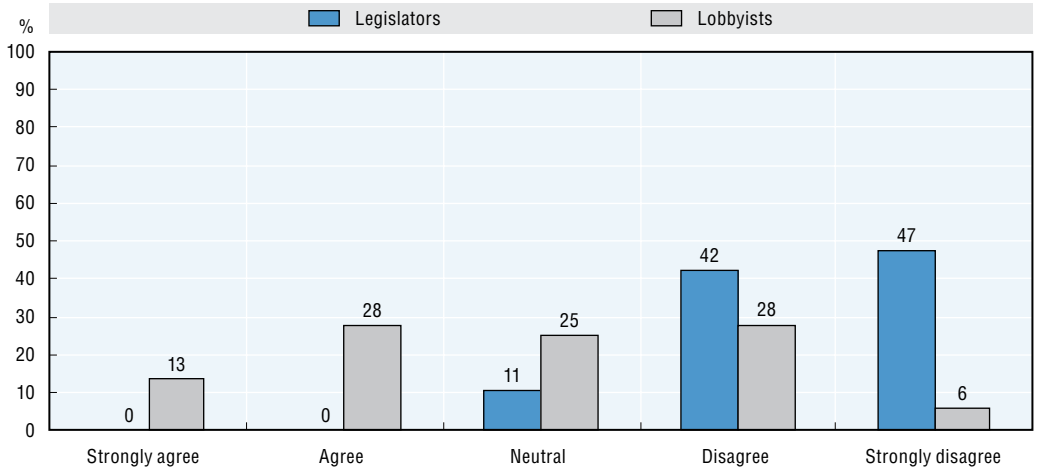
BNP Paribas provides employees concerned with regular training in best practices in public representation activities.

Source: BNP Paribas charter for responsible representation with respect to the public authorities, *www.bnpparibas.com/sites/default/files/ckeditor-upload/files/PDF/Nous%20Connaitre/Banque%20Responsable/Charter%20representation%20BNPP_UK.pdf*; BNP Paribas, *Annual Report* 2012, p. 7, *http://annualreport.bnpparibas.com/2012/ra/index.html#/0*.

Self-regulation is too limited to alleviate influence peddling by lobbyists

Although lobbyists self-regulate in a number of OECD countries – like Austria and Spain – all the surveyed OECD countries that indicated that there is self-regulation in place responded that their governments did not consider self-regulation adequate for alleviating actual or perceived problems of influence peddling by lobbyists. Similarly, most surveyed legislators disagreed, some strongly, with the statement that self-regulation of lobbying is sufficient (Figure 2.2).

Figure 2.2. **Self-regulation of lobbying (by lobbyists' associations, for example) is sufficient to alleviate actual or perceived problems of inappropriate influence peddling by lobbyists**



Source: OECD 2013 Survey on Lobbying for Lobbyists; OECD 2013 Survey on Lobbying for Legislators.

Notes

1. Available at *www.kpk-rs.si/upload/t_datoteke/ZintPK-ENG.pdf*.
2. Available at *http://lobbyingdisclosure.house.gov/lda.html*.
3. See *www.gpo.gov/fdsys/pkg/USCODE-2012-title2/html/USCODE-2012-title2-chap26-sec1602.htm*.
4. Available at *www.fppc.ca.gov/Act/2013_Act_Final.pdf*.
5. Available at *www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01465/fnameorig_232775.html*.
6. For Italy, the information refers to the lobbying regulation put in place by the Ministry of Agriculture.
7. Source: *https://ocl-cal.gc.ca/eic/site/012.nsf/eng/00442.html*.
8. Available at *http://lobbyingdisclosure.house.gov/lda.html*.
9. See, for example, Paragraph 82039(1) of California's Political Reform Act (2013) available here: *www.fppc.ca.gov/Act/2013_Act_Final.pdf*. It defines a lobbyist as any individual who receives USD 2 000 or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.
10. Source: *www.epaca.org/faq*.

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Chapter 3

Transparency in lobbying activities

There is consensus among stakeholders that transparency of lobbying activities is needed. However, many countries struggle to achieve adequate levels of transparency – i.e. disclose the right amount and types of information – or operate efficient disclosure tools and mechanisms.

This chapter reviews how OECD countries have approached the questions of what information should be disclosed, by whom, and if and how it should be made public.

Transparency in lobbying activities fosters trust

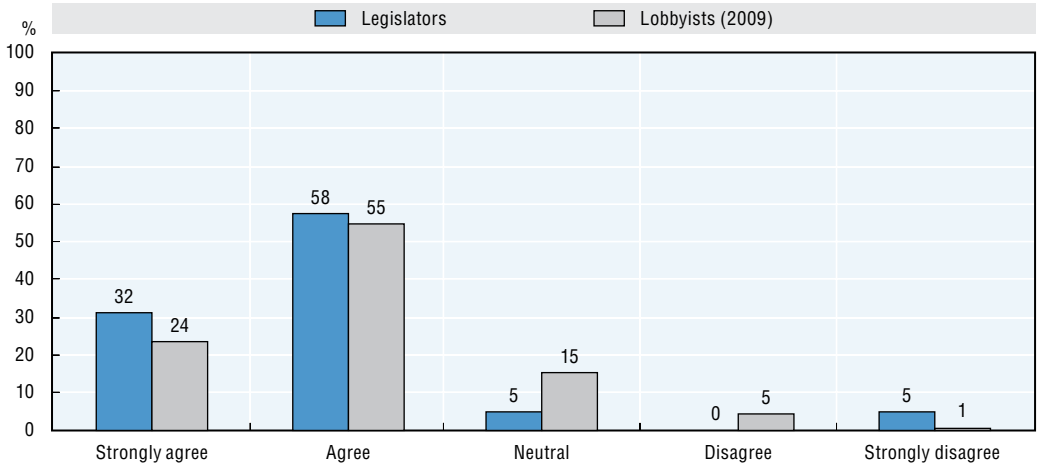
Mechanisms that ensure informed public decision making and transparent lobbying are critical parts of open government. Experts argue that transparency strengthens public confidence in political institutions and increases the power of citizens to hold decision makers and representatives accountable for their actions. Transparency, contend the experts, may also secure more impartial policy decisions by forcing representatives to filter out self-interested arguments which, because they may have a foundation in particular interests, are unlikely to prevail in an open debate (Naurin, 2005). Nevertheless, the debate is still ongoing as to just how much information needs to be made publicly available in order to shine a light on lobbying and address concerns related to it, particularly the risk of bias in the decision making.

OECD Principles for Transparency and Integrity in Lobbying

Principle 5. Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.

In the 2013 lobbying survey conducted by Burson-Marsteller, 26% of the respondent European Union (EU) politicians and senior officials[1] considered the most negative aspect of lobbying was that interests were not clearly delineated or that there was a lack of transparency (Burson-Marsteller et al., 2013). There was consensus among lobbyists and legislators surveyed by the OECD in 2013 about the need for transparency (Figure 3.1). Fifty-five per cent of lobbyists agreed, and 24% strongly agreed, that transparency in lobbying would help reduce the actual or perceived problems of influence peddling by lobbyists. Very

Figure 3.1. **Transparency in lobbying activities would help alleviate actual or perceived problems of influence peddling by lobbyists**



Source: OECD 2013 Survey on Lobbying for Lobbyists; OECD 2009 Survey on Lobbying; OECD 2013 Survey on Lobbying for Legislators.

few disagreed that transparency would be good for restoring the integrity of the profession. Fifty-eight per cent of legislators were of the same opinion as lobbyists and 32% strongly so.

Nonetheless, many countries struggle to achieve adequate levels of transparency – i.e. disclose the right amount and types of information – or operate efficient disclosure tools and mechanisms.

The vast majority of surveyed lobbyists (70%) also believed that transparency should be mandatory for all in the profession, a view shared by close to three-quarters (74%) of legislators (Figure 3.2). The percentage of lobbyists advocating transparency was nine percentage points higher than in a 2009 OECD survey of lobbyists which asked the same question – which suggests growing support for mandatory transparency.

The majority stance on transparency is echoed by other survey findings. For example, more than half (53%) of the EU politicians and senior officials questioned by Burson-Marsteller thought that a mandatory register for lobbyists would be useful in their country (Burson-Marsteller et al., 2013). That view is not, however, shared everywhere. In Norway, more than half of the respondents (51%) did not think a mandatory register would be useful. There was even cooler enthusiasm for a mandatory register in other Nordic countries: only 24% of respondents in Finland and 19% in Sweden felt a mandatory register would be useful (Burson-Marsteller et al., 2013).

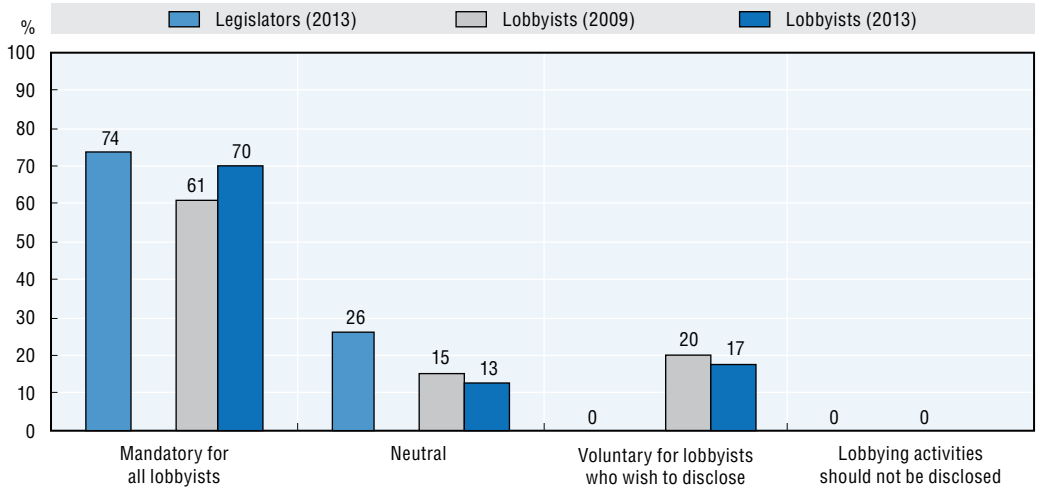
Lobbying registers enhance transparency and foster integrity in decision making

OECD Principles for Transparency and Integrity in Lobbying

Principle 6. Countries should enable stakeholders – including civil society organisations, business, the media and the general public – to scrutinise lobbying activities.

Another challenge countries are facing is how to disclose lobbying activities. The most common method is to store information on lobbying activities in a public register accessible to all stakeholders – governments, lobbyists, civil society organisations, businesses, the media, and the general public.

Figure 3.2. **Stakeholders believe that transparency in lobbying activities should be mandatory for all lobbyists**



Source: OECD 2013 Survey on Lobbying for Lobbyists; OECD 2013 Survey on Lobbying for Legislators; OECD 2009 Survey on Lobbying for Lobbyists.

Countries have in recent years moved towards designing and implementing lobbying rules and guidelines with registers as a key component of their transparency schemes. Indeed, most countries that regulate lobbying now use lobbyist registers as platforms for managing disclosed information. Of the 26 countries that responded to the OECD 2013 Survey on Lobbying Rules and Guidelines, nine – Austria, Canada, France, Germany, the Italian Ministry of Agriculture, Mexico, Poland, Slovenia, and the United States – had a lobbying register in place (Figure 3.3).

Notions of adequacy of transparency vary across countries depending on resources, concerns and the maturity of the system in place

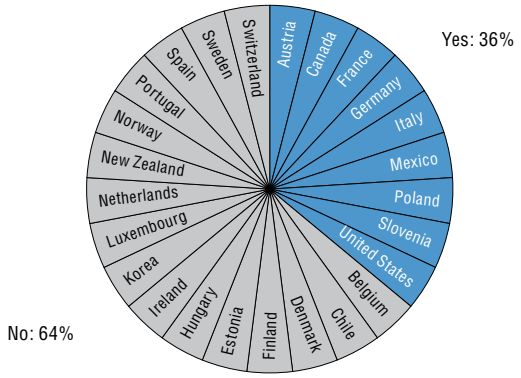
Disclosure should provide enough pertinent information on key aspects of lobbying activities to enable proper scrutiny. Countries with publicly accessible registers commonly require lobbyists (or lobby firms) to file their name, contact details, their employer's name, and the names of their clients (Table 3.1) in the registers. Any supplementary disclosure requirements should take into consideration the legitimate information needs of key players in the public decision-making process.

However, the amount and types of information disclosed and made publicly available varies across countries according to the resources available for running a lobbying register, prevailing concerns, and the maturity of the system in place. For example Canada and the United States – both of which have had a lobbying register in place for a longer time than most OECD countries – generally disclose more information than countries with more recent systems. Experience shows that the concerns over lobbying (often prompted by scandal) and political will are the chief factors behind transparent lobbying practices – transparency being determined by the amount, type, and public availability of information disclosed.

Lobbyists and legislators consider the transparency of lobbyists' financial disclosures crucial

When questioned in OECD surveys on what types of information they believed should be made public, lobbyists tended to share governments' views. Legislators diverged, however, saying that it was more important to disclose information on the financing behind lobbying activities and lobbyists' expenses than their names, contact details, or employers. One explanation for lobbyists' reticence over financial disclosure could be that such information

Figure 3.3. **OECD member countries with lobbying registers in place**



Note: For Germany, the response refers to the public list of associations representing interests *vis-à-vis* the Bundestag or the Federal Government that is kept by the President of the German Federal Parliament (Bundestag). For Italy, responses refer to the system put in place by the Ministry of Agriculture. There is no information available for Japan.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Table 3.1. **Disclosure and public availability of lobbying information**

	Names (of individuals or organisations)	Contact details	Whether the lobbyist was previously a public official	The names of clients	The name of the lobbyist employer	The name of parent or subsidiary company that would benefit from the lobbying activity	The specific subject matters lobbied	The name or description of specific legislative proposals, bills, regulations, policies, programmes, grants, contributions or contracts sought	The name of the national/ federal departments or agencies contacted	The source and amounts of any government funding received by the entity represented by a lobbyist	Lobbying expenses	Turnover from lobbying activity	The communication techniques used such as meetings, telephone calls, electronic communications or grassroot lobbying	Contributions to political campaigns	Other
Australia	●	○	●	●	○	○	○	○	○	○	○	○	○	○	○
Austria	●	●	○	◐	◐	○	◐	◐	○	○	●	○	○	○	○
Canada	●	●	●	●	●	●	●	●	●	●	○	○	●	○	●
France	●	◐	○	○	●	○	●	○	○	○	○	○	○	○	○
Germany	●	●	○	○	○	○	●	○	○	○	○	○	○	○	●
Italy	●	◐	○	●	●	○	●	●	○	○	◐	○	○	○	○
Mexico	●	●	○	○	○	○	○	○	○	○	○	○	○	○	○
Poland	●	●	○	○	○	○	◐	○	○	○	○	○	○	○	○
Slovenia	●	●	◐	◐	●	◐	◐	◐	●	○	○	◐	◐	◐	◐
United States	●	●	●	●	●	●	●	●	●	○	●	●	○	●	○
EP/EC Joint Transparency Register	●	●	○	○	○	○	●	●	○	●	●	●	○	○	●
Total OECD10															
● The information collected is publically available	10	7	3	4	5	2	5	3	3	1	2	1	1	1	2
◐ Information is collected but not made publically available	0	2	1	2	1	1	3	2	0	0	1	1	1	1	1
○ Information is not collected	0	1	6	4	4	7	2	5	7	9	7	8	8	8	7

Notes: In addition to the categories in the table, a number of countries included additional information filed in registers under "Other". Canada's "Other" category refers to the details of meetings with certain high-level decision makers. In Germany "Other" refers to the requirement to declare the number of members in an association. Slovenia requires lobbyists to provide information on gifts given to a person lobbied. In the Joint Transparency Register of the European Parliament and the European Commission, lobbyists must include information on the nature of their lobbying activities.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

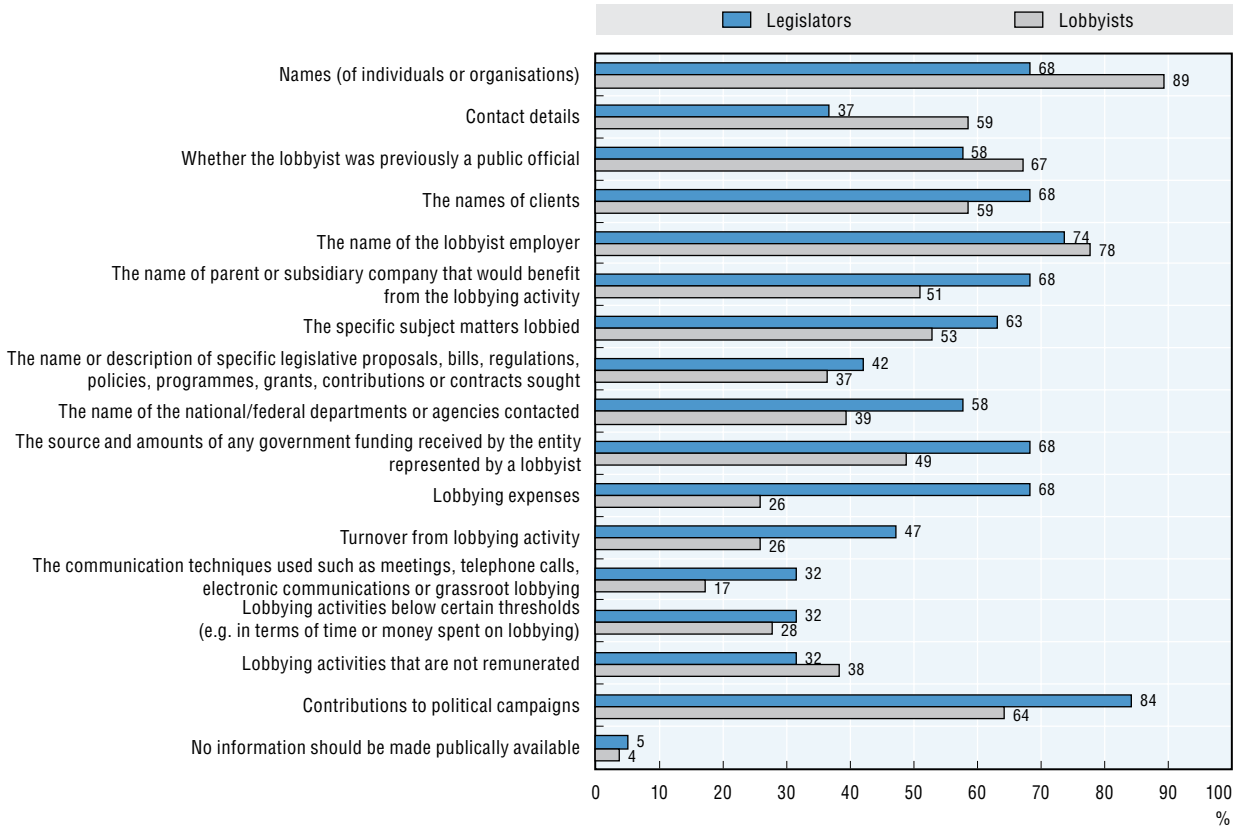
could include "trade secrets" or divulge how a particular lobbyist conducts his or her business. Indeed, most lobbyists do not think that the turnover from lobbying activities and the communication techniques used should be disclosed in a register (Figure 3.4).

Results from the OECD 2013 Survey on Lobbying showed that lobbyists believe that the types of information that it was most important to disclose to public scrutiny were: the names of lobbyists or lobby firms, their employers, whether they were previously public officials, their contributions to political campaigns, contact details, and the names of their clients.

Legislators, on the other hand, believe that the types of information it was most important to disclose and make publically available were: lobbyists' or lobby firms' names, their contributions to political campaigns, who their employers and clients were, the names of the parent companies that benefit from lobbying activities, the source and amounts of any government funding received by the entity represented by a lobbyist, and finally lobbyists' expenses.

Both lobbyists and legislators rank lobbyists' contributions to political campaigns as highly important information that should be made publically available. Yet, solely Slovenia and the United States require them to be filed in registers. And of the two countries, only the United States makes lobbyists' campaign contributions publically available.

Figure 3.4. **Types of information that stakeholders believed should be made publicly available**



Note: Respondents were asked the following question "Which of the following types of information, if any, do you think should be made publicly available, for example through a register?"
Source: OECD 2013 Survey on Lobbying for Lobbyists; OECD 2013 Survey on Lobbying for Legislators.

Striking a balance between the costs and benefits of regulating lobbying

A key challenge that governments face is that of striking a balance between collecting and managing information on lobbying activities and reaping the benefits of so doing. The administrative burden on lobbying oversight bodies of implementing lobbying regulations and on lobbyists of complying with them, together with the annual cost of institutional support mechanisms, has led a number of countries not to consider some types of communication as lobbying and, therefore, not to require them to be registered.

Worth highlighting is that although many OECD countries have instituted mechanisms to lessen the administrative burden (Table 3.2), Austria is the only one to have attempted to calculate the cost of lobbyists' regulatory obligation to comply with lobbying rules. In the Regulatory Impact Assessment which it conducted under the terms of the Austrian Lobbying Act, the Federal Ministry of Justice concluded that lobbyists' cost would be very little compared to their earnings (Austrian Federal Ministry of Justice, 2012).

One ploy used by a number of countries – *e.g.* Canada, Slovenia, and the United States – is not to register communication that is already on public record. This includes formal presentations to legislative committees, public hearings, established consultation mechanisms, or information related to the decision-making process already in the public domain (Table 4). This is one way of effectively reducing the administrative load, avoiding duplication and ensuring that resources are not devoted to making information available that already is publicly available elsewhere. For example in Slovenia, records of meetings between senior public officials and lobbyists are available under the Access to Public Information Act, but are not included in the register.

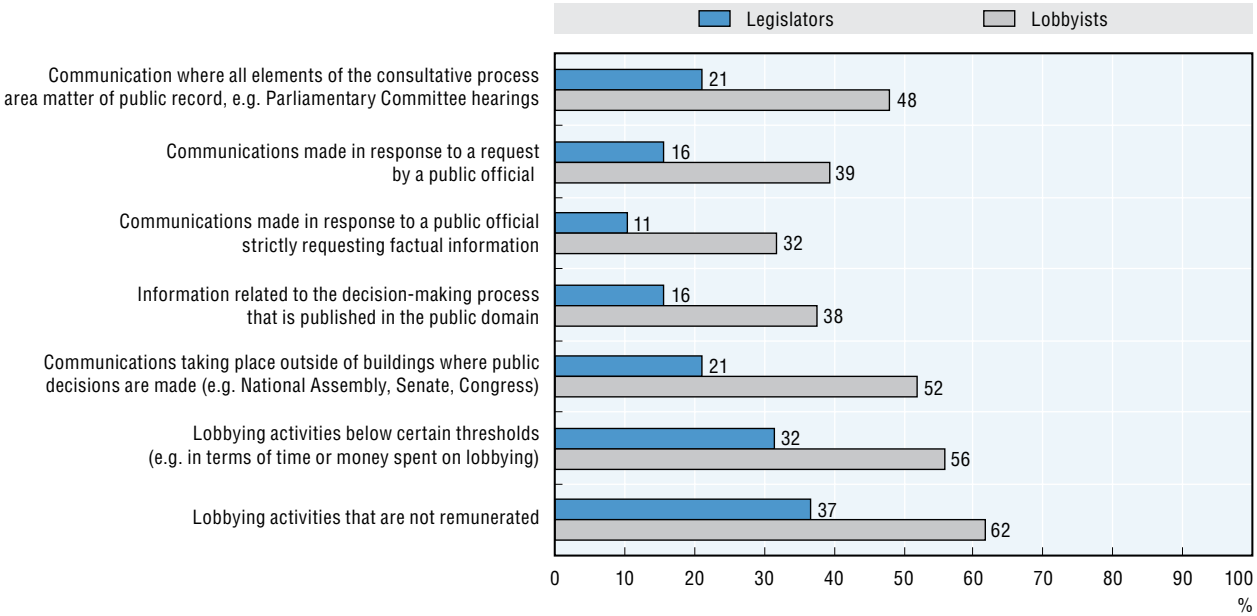
Austria, Canada and the United States have also established certain thresholds beyond which individuals – defined as "lobbyists" by those countries' statutory or regulatory rules – are required to register (Table 3.2). In this way, lobbyists and lobbying oversight bodies are relieved of paperwork and only people who lobby on more than an occasional ad hoc basis register. Canada's Lobbying Act, for example, exempts from its definition of in-house lobbyists those who spend under a certain amount of time lobbying and those whose work is not remunerated. According to Article 7(1)(b) of the act, a person needs to register his or her activities if they "constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee". The Canadian Commissioner of Lobbying has interpreted "significant" to mean 20% of one person's time. Nearly one-third of surveyed lobbyists (31%) responded that the countries where they operated had instituted registration thresholds determined, for example, by an amount of time spent on or money received for lobbying activities.

Governments across the OECD have sought to bring clarity to lobbying through regulation. They have endeavoured to define concisely and cost-effectively who lobbyists are and what lobbying entails. At the same time, they have also tried to streamline registration procedures and refrain from casting the regulatory net too wide. Yet, lobbyists themselves appear to want rules and guidelines to be more inclusive in their coverage. Most of those surveyed lobbyists felt that lobbying activities below established thresholds and those that were not remunerated ought also to come within the ambit of lobbying rules and guidelines (Figure 3.5).

As Table 3.2 shows, in an effort to lighten the administrative load on lobbying oversight bodies of monitoring and enforcing rules and regulations, a number of OECD members with registers have electronic filing systems. They enable lobbyists to register and submit

activity and spending reports online. Of lobbyists surveyed in 2013, over two-thirds (69%) noted that it took them 30 minutes or more to register (Figure 3.6).

Figure 3.5. **Actors and types of communication that stakeholders believe should be covered by lobbying rules and guidelines**



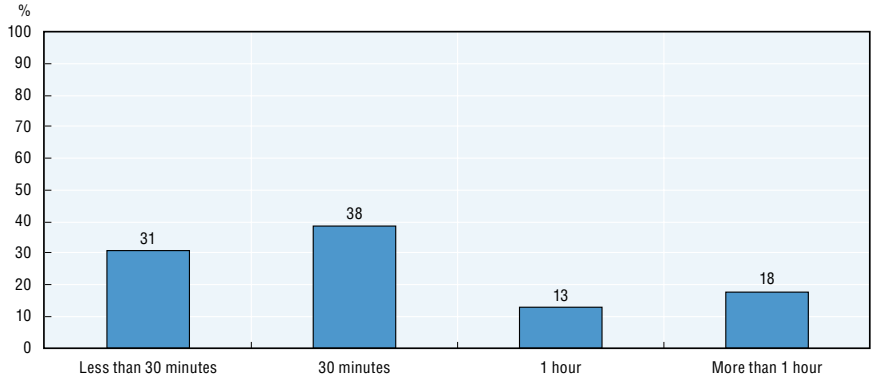
Note: Respondents were asked the following question: "Which of the following actors or types of communication do you think should be covered by lobbying rules/guidelines?"
Source: OECD 2013 Survey on Lobbying for Lobbyists; OECD 2013 Survey on Lobbying for Legislators.

Table 3.2. **Mechanisms in place to lighten the administrative load on lobbying oversight bodies of managing rules and guidelines**

	Electronic submission of registrations	Electronic submission of activity/spending reports	Electronic (automatic) verification that all information was submitted	Below a certain threshold in terms of for example time spent on lobbying, lobbyists do not need to register
Austria	●	●	○	●
Canada	●	●	○	●
France	○	○	○	○
Germany	○	○	○	○
Italy	●	●	●	○
Mexico	○	○	○	○
Poland	●	○	○	○
Slovenia	●	●	●	○
United States	●	●	●	●
Total OECD9				
● Yes	6	5	3	3
○ No	3	4	6	6

Note: For Italy, the responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Figure 3.6. **For the majority of lobbyists, it takes 30 minutes or more to register**



Note: Respondents were asked to respond to the following question: "On average, how long does it take to register?"
Source: OECD 2013 Survey on Lobbying for Lobbyists.

Note

1. Interviewees included politicians (both members of national Parliaments and members of the European Parliament) and senior officials from national governments and the EU institutions. In total, nearly 600 interviews were conducted.

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Chapter 4

Integrity in public decision making

Across countries, trust in the public decision-making process has dwindled, damaged by citizens' perceptions of corruption and the undue influence of powerful interest groups. Improper dealings between lobbyists and public officials, conflicts of interest, and revolving door practices have attracted particular attention.

Although it takes two to lobby, governments have prime responsibility for setting out clear standards of conduct for public officials who may be lobbied. In addition to reviewing moves that specifically target lobbying – to improve its transparency, for example – this chapter analyses the measures that countries have taken that address the broader integrity framework. These measures have proven valuable in addressing concerns of conflicts of interest and undue influence in the decision-making process.

Governments are increasingly implementing integrity frameworks for public decision making

Growing expectations of open and fair public decision-making has put mounting pressure on governments to ensure that official decisions are not adversely affected by private interests. A sound integrity framework has four main goals: i) determine and define integrity; ii) offer guidance towards integrity; iii) monitor integrity; and iv) enforce integrity (Table 4.1) (OECD, 2008). Yet, no matter how important those goals are, they are essentially only intentions. They can have an impact only when they are brought to life and implemented through processes and structures. Accordingly, countries have implemented a wide range of mechanisms. They range from those designed to promote a culture of integrity among decision makers and increase the transparency of the policy-making process to ones that reinforce conflict of interest management and others that protect whistleblowers and enable to them report wrong-doing.

In OECD member countries, practice shows that decision makers' disclosure of private interests is still an essential tool for managing conflicts of interest and ensuring the integrity of public decision making. However, the private interests disclosed (assets, liabilities, income sources and amounts, outside positions both paid and unpaid, gifts, and previous employment) and their public availability vary considerably both among countries and within them across the different branches of government (Figure 4.1). Disclosure practices and transparency levels are equally demanding in the executive and legislative branches, but far less so in the judiciary.

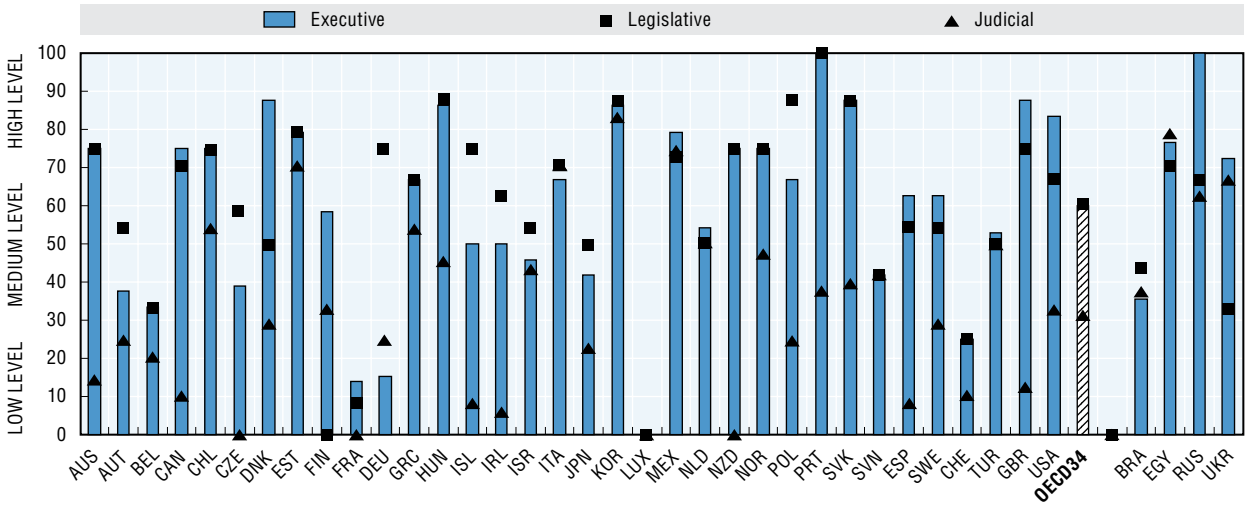
Furthermore, most OECD member countries pay closer attention to "paid outside positions" and "gifts" than any other private interest, either by prohibiting them or requiring their disclosure (Figure 4.2). Such practices can be connected to concerns regarding the decision-making process and lobbying practices.

Table 4.1. **The key components of an integrity management framework**

Determining and defining integrity	Risk analysis Code of conduct or code of ethics Conflict of Interest
Guiding towards integrity	Integrity training Coaching and counselling for integrity Declarations
Monitoring integrity	Complaints policies Whistleblowing Lobbyist registration
Enforcing integrity	Investigations Sanctions

Source: OECD (2005), *Public Sector Integrity – a framework for assessment*, OECD Publishing, Paris.

Figure 4.1. **Levels of disclosure of private interests and their public availability by country**



Note: Data reflect practices in member countries. To translate the country responses into a point system, the categories "Prohibited" and "Information is disclosed and publicly available online or print" were awarded 100 points, the highest available. "Information is disclosed and publicly available upon request" was awarded the second highest point, 67 points, and "Information is disclosed and not publicly available" was awarded the third highest point, 33 points. No points were awarded to the category "Disclosure is not required". All private interests examined were weighted equally.

Data for Brazil, the Czech Republic, Greece, Israel, and the Russian Federation refer to 2010. Similarly, data for the legislative and judicial branch of Spain refer to 2010. Information on data for Israel: *http://dx.doi.org/10.1787/888932315602*.

In **Luxembourg**, there are no requirements for the disclosure of private interests. In the **United States**, the prosecutorial function is the Executive Branch. Senior officials in the Department of Justice are required to file publicly available financial disclosure reports under the same requirements as all other Executive Branch employees. Lower level federal prosecutors have a separate, non-public, conflict of interest reporting system. Data regarding judges in **Norway** exclude lay judges and judges in conciliation boards. In **New Zealand**, judges and prosecutors are not required to disclose conflicts of interest. However, there are "Guidelines for Judicial Conduct" in place (available through the Courts website: *www.courtsofnz.govt.nz/business/guidelines/guidelines-for-judicial-conduct*). Also, prosecutors are often lawyers and have professional ethical duties that must be complied with (and can be sanctioned and even lose their practising certificate for breaching their duties, depending upon the circumstances). In **Brazil**, a new law on Conflict of Interest for Executive Branch public officials and prohibitions after leaving post (Law 12.813) entered into force in July 2013.

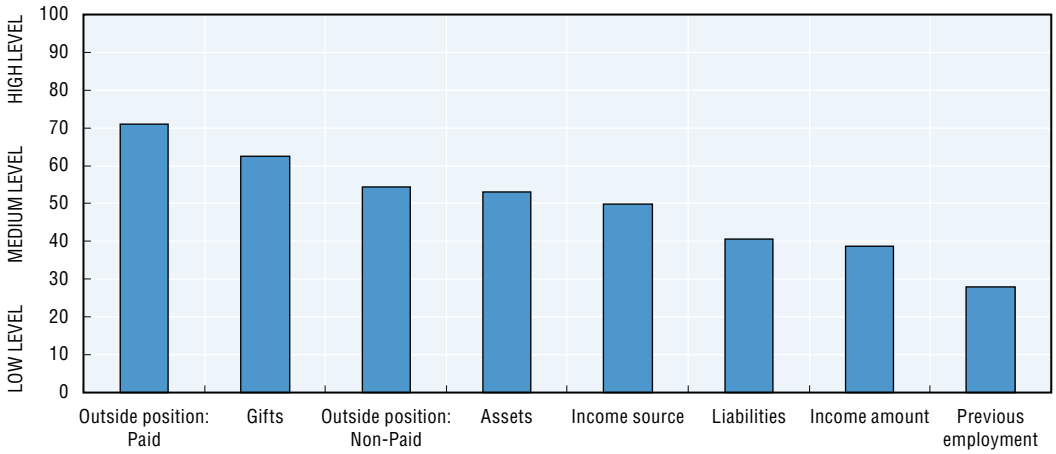
Paid outside positions. In **Austria** and **Belgium** for all positions and in Iceland and Switzerland for judges, any tenured civil servant is subject to the binding decision of the government in the case that an outside paid position may result in a conflict of interest. In **Denmark**, outside positions for judges can only be held (and must be disclosed) if these positions are reserved for judges by law or if permitted to by a special board. In **Estonia**, paid outside positions are prohibited by law for the Prime Minister, Ministers, judges and prosecutors, with the exceptions of research and teaching which should be disclosed. In **Japan**, judges may not hold a paid outside position without obtaining the permission of the Supreme Court during their terms of office. In principle, judges similarly have to obtain the permission of the Supreme Court or supervisors in the case of unpaid outside positions as well. However, there are cases where judges have not obtained the permission of the Supreme Court or supervisors where they have taken up unpaid outside positions, such as for example the position of PTA chairperson. If information about outside positions of judges is requested, personal identification information of judges may not be publicly available. In **Poland**, the Prime Minister and Ministers cannot conduct certain types of activities which may lead to a conflict-of-interest situation. Moreover, they are obliged to inform on their membership in bodies of foundations, commercial law companies and co-operatives, even if these positions are not paid.

Previous employment. In **Estonia**, no regulation requires members of the executive and legislature to publish information about previous employment; however in practice this information is proactively published.

Assets, liabilities, amounts and sources of income, and gifts. In **Iceland**, the Prime Minister is only required to disclose loans that have been written off or changed to their benefit. In **Ireland**, Parliamentarians' salaries and allowances are publicly available. In addition, all parliamentarians including office holders must disclose their personal interests, i.e. income from other sources (i.e. outside paid positions), shares, directorships, land, gifts, below cost supply of a service or travel, consultancy work, and any interest in a public contract in annual statements of interests under the Ethics Acts. These interests are publicly available on the Registers of Members' Interests. In **Mexico**, gifts must be declared if they amount to equal or greater value of 10 times the minimum wage. Information on public servants is published online if authorised by the public servants. In practice, about 66% of public servants make the information publicly available. In **Poland**, the Prime Minister and Ministers are obliged to disclose statements of means, which present for example their assets, liabilities, and income source/amount. Although the statements are not publicly available by law, almost all ministers agree to publish them online.

Source: OECD 2012 Survey on Managing Conflict of Interest.

Figure 4.2. **Levels of disclosure of selected private interests and their public availability**



Source: OECD 2012 Survey on Managing Conflict of Interest.

Stakeholders support the establishment of statutory rules or codes of conduct on dealings between public officials and lobbyists

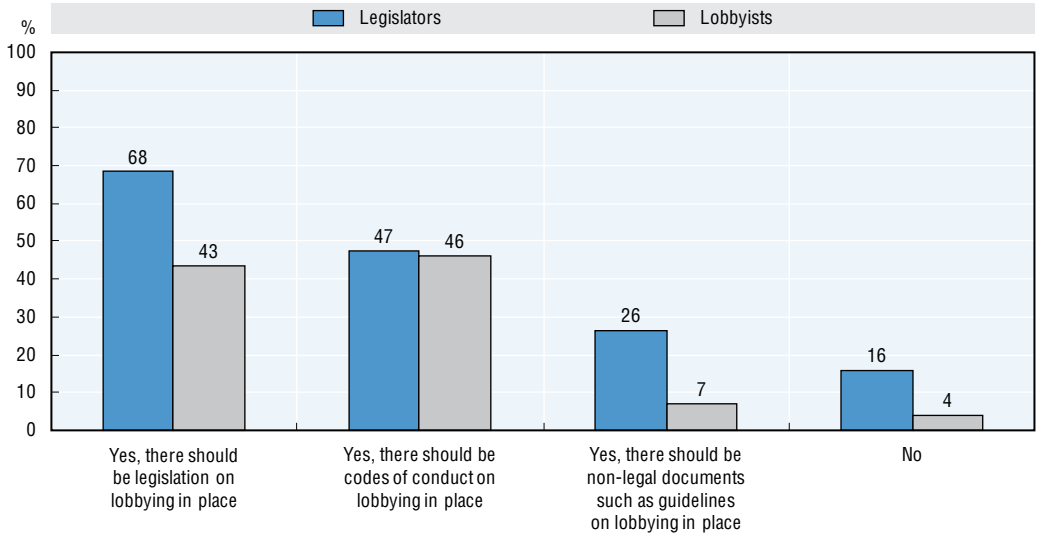
OECD Principles for Transparency and Integrity in Lobbying

Principle 7. Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.

In the 2013 OECD Surveys on Lobbying, most lobbyists and legislators questioned expressed support for lobbying rules in the form of legislation, codes of conduct, or guidelines (Figure 4.3).

Most of the OECD member countries surveyed in 2013 have, in fact, instituted principles, rules, standards, or procedures that regulate public officials' conduct in dealings with lobbyists in the executive and/or legislative branches (Table 4.2).

Figure 4.3. **Stakeholders believe that there should be rules on lobbying in place**



Note: Respondents were asked the following question: "Do you believe that there should be rules/guidelines related to lobbying in place?"
Source: OECD 2013 Survey on Lobbying for Lobbyists; OECD 2013 Survey on Lobbying for Legislators.

Table 4.2. **Principles/rules/standards/procedures in place that regulate public officials' conduct towards lobbyists**

	Yes, in primary/secondary legislation		Yes, in codes of conduct		Yes, in non-legal but official documents such as guidelines		No, but we are currently considering/debating a proposed law/regulation/code of conduct that regulates public officials' conduct towards lobbyists		No, policy or practice is not done		Other		Please specify	
	Public officials in the executive branch	Public officials in the legislative branch	Public officials in the executive branch	Public officials in the legislative branch	Public officials in the executive branch	Public officials in the legislative branch	Public officials in the executive branch	Public officials in the legislative branch	Public officials in the executive branch	Public officials in the legislative branch	Public officials in the executive branch	Public officials in the legislative branch	Public officials in the executive branch	Public officials in the legislative branch
Austria	○	○	○	○	○	○	●	●	○	○	●	●	○	○
Belgium	○	○	○	○	○	○	○	○	●	●	○	○	○	○
Canada	●	○	●	○	○	●	○	○	○	○	○	○	○	○
Chile	○	○	○	○	○	○	●	●	○	○	○	○	○	○
Estonia	○	○	○	○	○	○	○	○	○	○	○	○	○	○
Finland	○	○	○	○	○	○	●	●	○	○	○	○	○	○
France	○	○	○	●	○	○	○	○	○	○	○	○	○	○
Germany	●	●	●	●	●	●	○	○	○	○	○	○	○	○
Hungary	●	○	●	○	○	○	○	○	○	●	○	○	○	○
Ireland	○	○	○	○	○	○	●	●	○	○	○	○	○	○
Italy	●	○	●	○	○	○	○	○	○	●	○	○	○	○
Japan	●	n.a.	○	n.a.	○	n.a.	○	n.a.	○	n.a.				
Korea	○	○	○	○	○	○	○	○	●	●				
Luxembourg	○	○	○	○	○	○	○	○	●	○	○	○	○	○
Mexico	○	○	○	○	○	●	○	○	●	○	○	○	○	○
Netherlands	○	○	○	○	○	○	○	○	○	○	●	●		
New Zealand	○	○	○	○	○	○	●	●	○	○	○	○	○	○
Norway	●	●	●	●	○	○	○	○	○	○	●	●		
Poland	●	●	●	●	○	○	○	○	○	○	○	○	○	○
Portugal	○	○	●	●	○	○	○	○	○	○	○	○	○	○
Slovenia	●	●	○	○	●	●	○	○	○	○	○	○	○	○
Spain	●	○	●	○	○	○	○	●	○	○	●	○		
Sweden	○	○	○	○	○	○	○	○	○	○	●	○		
Switzerland	○	○	○	○	○	○	○	○	●	○	○	○	○	○
United States	●	●	●	●	●	●	○	○	○	○	●	○	○	○
Brazil	●	●	●	○	○	○	○	○	○	○	○	○		
Total OECD25														
● Yes	10	5	9	6	3	5	5	6	5	4	6	3	0	0
○ No	15	19	16	18	22	19	20	18	20	20	17	20	17	17

Notes: In Austria, no rules specifically cover the conduct of public officials in their dealings with lobbyists. However, there are general rules dealing with the conduct of public officials, and any breach may be sanctioned. For Italy, responses refer to the system put in place by the Ministry of Agriculture. Estonia has general rules on conflict of interest, but none that specifically govern lobbying. Responses from Japan are only available for the executive branch of government. In Norway, there are general laws on impartiality. Spain has laws and codes of conduct in place to safeguard public officials' and seniors officials' impartiality and independence and ensure that they are not affected by private interests in the exercise of public office. In Sweden, there are general rules on conflict of interest, but none that specifically address lobbying. In the United States, while executive branch conflict of interest laws (18 USC 201-203 and 205, 207, and 208) do not use the term "lobbyist" or "lobbying", they can cover lobbying activities.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

While principles, rules, standards, or procedures governing the conduct of public officials in, for example, Canada and Slovenia specifically apply to their conduct in dealings with lobbyists, other countries – such as Estonia (Box 4.1), Norway, and Sweden – rely on general regulations or codes of conduct. The Slovenian Government Code of Ethics states:

> *"I will reject invitations to participate on a paid basis in conferences, consultations and training courses in the field of my competence or to take part in drawing up comments on the relevant laws and regulations and in similar for-profit activities."*[1]

By contrast, Poland's more wide-ranging Principles of Deputies' Ethics states in Article 3 that:

> *"[A] Deputy should be guided by the public interest, and that he should not exploit his office in order to obtain any personal gain or the gain of persons close to him. Laos, he should not enjoy benefits which might influence his activity as a member of Parliament (principle of impartiality)."*

Box 4.1. **Estonia's Anti-Corruption Act**

Like many other countries, Estonia has made the abuse of public office in the decision-making process a criminal offence. Paragraph 5 of the Anti-Corruption Act (1st April 2013) governs the corrupt use of official positions, public resources, influence, and inside information.

Paragraph 5.1 states that there is corrupt use of an official position if the public official (acting in his or her official capacity) makes a decision or performs an act that violates his or her official duties in his or her own interest or in that of any third person, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest.

Paragraph 5.3 states that corrupt use of influence means the official's use of his or her actual or presumed influence in violation of his or her official duties with the objective of achieving the commission of an act by another person, or omission thereof, in the interests of such an official or any third person, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest.

According to responses to the 2013 OECD survey on Lobbying for Lobbyists, the fact that the provisions of the Anti-Corruption Act cover influence peddling and could easily lead to criminal proceedings is enough to deter professional lobbyists or clients from inappropriately lobbying or exercising illicit influence.

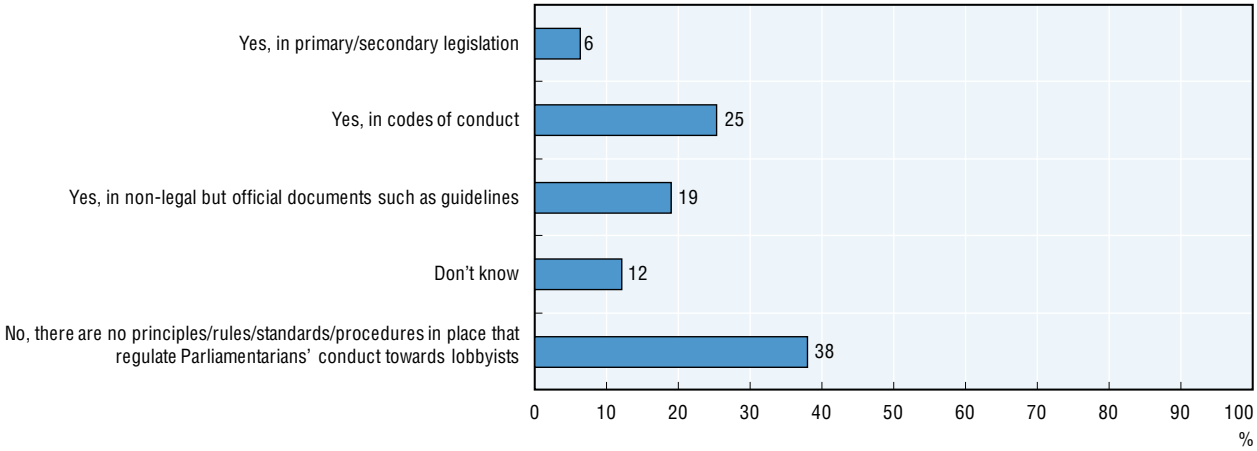
Source: Estonia's Anti-Corruption Act of 1st April 2013; OECD 2013 Survey on Lobbying for Lobbyists

Outside the executive branch, half of the surveyed legislators responded that principles, rules, guidelines, or codes of conduct governed their dealings with lobbyists (Figure 4.4).[2]

One example of a code of conduct that governs legislators' dealings lobbyists is the United Kingdom's Code of Conduct for Members of the House of Lords (Box 4.2).

Representatives of certain countries at the OECD Forum on Transparency and Integrity in Lobbying expressed the opinion that lobbying risks should be mitigated first – and sometimes only – through proper implementation of a broader integrity framework. They argued that debate and reform may be focusing too narrowly on transparency and lobbying registers while overlooking the fact that they are means to the end of a fair and inclusive policy-making process. Lobbying regulations alone, they felt, could not address concerns over lobbying and mitigate the related risks. A strongly designed and implemented public sector integrity framework would be the prime way of achieving that end.

Figure 4.4. **Principles/rules/standards/procedures that regulate legislators' conduct with lobbyists**



Note: Legislators were asked the following question: "Are there any principles/rules/standards/procedures in place that regulate legislators' conduct towards lobbyists?"
Source: OECD 2013 Survey on Lobbying for Legislators.

Box 4.2. **United Kingdom's Code of Conduct for Members of the House of Lords**

The Code of Conduct for Members of the House of Lords states that "Members of the House shall base their actions on consideration of the public interest, and shall resolve any conflict between their personal interest and the public interest at once, and in favour of the public interest".

Paragraph 8(d) of the Code states that Members "must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services".

The Guide to the Code of Conduct offers guidance as to how to interpret Paragraph 8(d). It states that Members may not assist outside organisations or persons in influencing Parliament in return for payment or other incentives or rewards. This includes "making use of their position to arrange meetings with a view to any person lobbying Members of House, ministers or officials".

Although Members are allowed to work for or hold financial interests in organisations that are involved in parliamentary lobbying on behalf of clients (such as public relations and law firms), the guidance to Paragraph 8(d) states that:

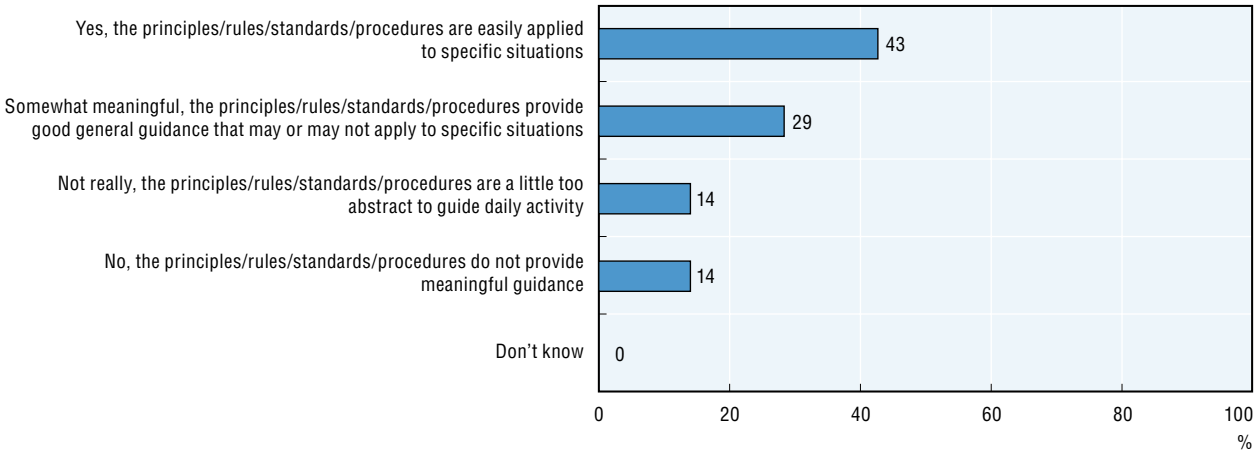
> *"Members themselves are prohibited from personally offering parliamentary advice or services to clients, both directly and indirectly. Also, Members who have financial interest in, or receives a financial benefit from, a representative organization (e.g. a trade association, trade union, staff association, professional body, charity or issue-related lobby group), are not allowed to advocate measures for the exclusive benefit of that organisation or the trade, industry or interest that it represents; nor speak or act in support of a campaign exclusively for the benefit of the representative organisation or its membership."*

Source: House of Lords (2012), Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct, *www.publications.parliament.uk/pa/ld/ldcond/code.pdf*.

Legislators see codes of conduct as a clear source of guidance on how to engage with lobbyists

To be effective, codes of conduct should give public officials clear directions on how they are permitted to engage with lobbyists. Of those surveyed legislators bound by a code of conduct, close to one-half (43%) believed that their code was easily applicable to specific situations, while approximately one-third (29%) said it offered good general guidance (Figure 4.5).

Figure 4.5. **Principles/rules/standards/procedures provide meaningful guidance as to how parliamentary officials' should conduct themselves with lobbyists**



Note: Respondents were asked the following question: "Do the principles/rules/standards/procedures provide meaningful guidance on Parliamentary officials' conduct towards lobbyists?"
Source: OECD 2013 Survey on Lobbying for Legislators.

"It takes two to lobby" – lobbyists have taken on their share of the responsibility to strengthen integrity

Governments have prime responsibility for setting out clear standards of conduct for public officials who may be lobbied. Yet, lobbyists and their clients also share a duty not to exert illicit influence and to comply with professional standards of conduct when they go about their business.

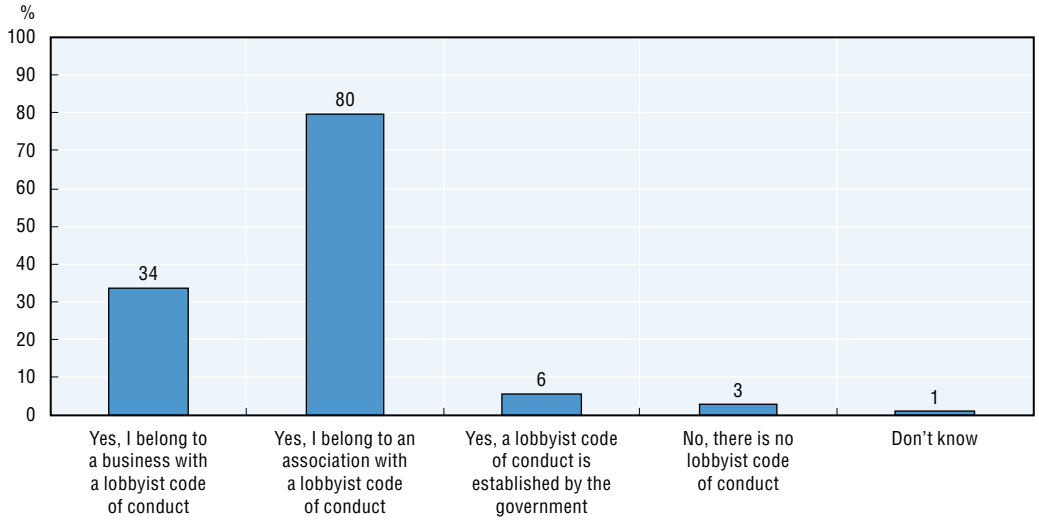
OECD Principles for Transparency and Integrity in Lobbying

Principle 8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.

To maintain trust in public decision making, lobbyists should promote principles of good governance, behave with integrity and honesty towards public officials, and provide reliable, accurate information. They should avoid conflicts of interest in relation to both public officials and the clients they represent, for example, by refusing to represent conflicting or competing interests.

Codes of conduct are lobbyists' primary source of ethical guidance. In the 2013 OECD Survey on Lobbying as many as 80% of surveyed lobbyists belonged to associations with codes of conduct and 33% worked in businesses which had codes of conduct for lobbyists in place (Figure 4.6 and Box 4.3).

Figure 4.6. **Most surveyed lobbyists are bound by codes of conduct**



Note: Respondents were asked the following question: "Are you subject to a lobbyist code of conduct?"
Source: OECD 2013 Survey on Lobbying for Lobbyists.

Box 4.3. **Lobbyists' associations' codes of conduct: the Association of Government Relations Professionals and the European Public Affairs Consultancies' Association**

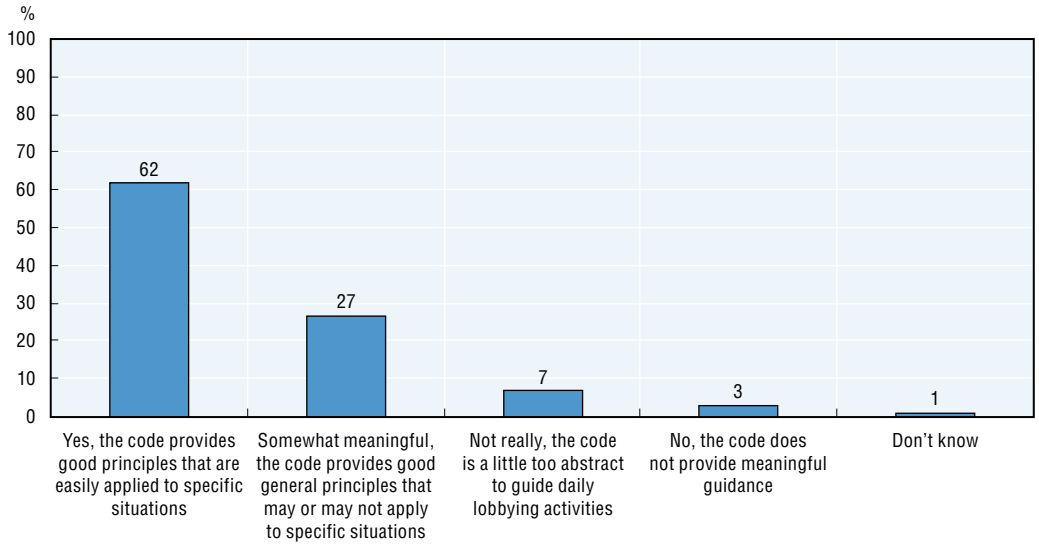
The code of ethics of the Association of Government Relations Professionals (formerly the American League of Lobbyists) asserts that a lobbyist should conduct lobbying activities with honesty and integrity and be truthful when communicating with public officials. Article 1.2 states: "If a lobbyist determines that the lobbyist has provided a public official or other interested person with factually inaccurate information of a significant, relevant, and material nature, the lobbyist should promptly provide the factually accurate information to the interested person." The code also stipulates in Article 3.1 that a lobbyist should not cause a public official to violate any law, regulation or rule applicable to such public official.

The Code of Conduct of European Public Affairs Consultancies' Association (EPACA) similarly establishes that, when carrying out lobbying, public affairs practitioners shall "neither directly nor indirectly offer or give any financial inducement to any elected or appointed public official, or staff of their institutions and political groups, nor propose nor undertake any action which would constitute an improper influence on them".

Source: Association of Government Relations Professionals, Code of Ethics, *http://grprofessionals.org/join-all/code-of-ethics*; Code of Conduct of EPACA, *www.epaca.org/uploads/Code_of_Conduct_-_adopted_2013.pdf*.

Most surveyed lobbyists were not only bound by professional codes of conduct, but as many as 62% felt that they offered clear guidance and sound principles that could easily be applied to different situations. In addition, over one-quarter (27%) of lobbyists questioned believe that their codes were meaningful to a certain degree and set out good general principles (Figure 4.7).

Figure 4.7. **Lobbyists believe that their codes of conduct offer clear guidance on how to conduct day-to-day lobbying activities**



Note: Respondents were asked the following question: "Does the lobbyist code of conduct provide clear guidance on how you should conduct day-to-day lobbying activity"
Source: OECD 2013 Survey on Lobbying for Lobbyists.

However, the ultimate responsibility for safeguarding the public interest and rejecting undue influence lies with those who are lobbied and more attention is needed on this

There is an emerging sense that there should be greater focus on the responsibility of those who are lobbied, namely public officials. They are the guardians of the public interest, and although it takes two to lobby, the ultimate responsibility for safeguarding the public interest and rejecting undue influence lies with them. Slovenia, for example, makes public officials responsible for registering any meetings they may have with lobbyists (Box 4.4). Other countries have made deliberate policy decisions to place the registration and reporting onus solely on lobbyists, rather than public officials. There are a number of rationales for this, including ensuring that the lobbying industry (and not taxpayers) pays as much of the cost of its own regulation as possible, the fact that public officials are not well-placed to provide information about lobbyists and their clients, and to avoid a chilling effect on public officials meeting with outside parties.

As well as regulating public officials' behaviour through codes of conduct and guidelines, countries seek additional ways to safeguard the integrity of the decision-making process and allow stakeholders to scrutinise who may have influenced decision makers. One practice – used by half of the surveyed OECD member countries – is to append a legislative footprint to every piece of legislation passed. The legislative footprint is a document that details who lawmakers consulted, when and why, on what matter, and how the decision was reached.

Austria makes the working papers of federal ministries available online (at *www.ris.bka.gv.at*) before they are debated in Parliament. The parliamentary webpage (*www.parlament.gv.at*) publishes all comments on the working papers as well as reports of discussions in different committees of the Austrian Federal Parliament. In Finland, a government bill incorporates a description of why it has been proposed, an account of the consultation process, and a brief

Box 4.4. **The requirement for all Slovenian public officials to report meetings with lobbyists**

Although it is incumbent on lobbyists to register in order to lobby, responsibility for reporting meetings with public officials lies with the officials themselves. The Integrity and Prevention of Corruption Act defines public officials as all official and public servants who are employed in state and local community bodies, or who work with the holders of public authority responsible for decision making, or who participate in discussing and adopting regulations, other general documents and decisions, and with whom lobbyists communicate for lobbying purposes.

Article 68 (2) of the act requires that, at every contact with a lobbyist, a lobbied official should record: the name of the lobbyist; whether the lobbyist has identified him- or herself in accordance with the provisions of the Integrity and Prevention of Corruption Act; the area of lobbying; the name of the interest group or any other organisation for which the lobbyist is lobbying; any enclosure; and the date and place of the lobbyist's visit. The lobbied official should sign his or her record of the meeting with the lobbyist and forward a copy of the record to his superior and the Commission for the Prevention of Corruption within three days. The Commission keeps records for five years.

Article 24 of the Act also states that a public official who has reasonable grounds for believing that he or she has been requested to engage in illegal or unethical conduct may report this to his or her superior or to a person to whom the superior has delegated authority.

Source: The Slovenian Integrity and Prevention of Corruption Act (2010), *www.kpk-rs.si/upload/t_datoteke/ZintPK-ENG.pdf*.

summary of stakeholders' comments. Chile, too, discloses information detailing how a piece of legislation was adopted, the hearings held, and the stakeholders consulted.

Revolving doors

While the movement between the public and private sector can bring positive results, revolving door practices also pose a risk to fairness and impartiality in decision-making

A further cause for concern over integrity is the practice of "revolving doors" – the movement of staff between related areas in public and private sectors – and its negative effects on trust in the public sector. It is to be found in all countries. In the OECD 2013 Survey on Lobbying for lobbyists, one-quarter of lobbyists questioned had previously held positions in the public sector. Most said they had worked in senior managerial or advisory capacities in ministries as, for example, ministerial advisors, managers and heads of Parliamentary staff, or advisors to Prime Ministers.

In the United States, the movement between Congress and "K Street"[3] has increased dramatically. Three per cent of retiring members of Congress became lobbyists in 1974. By 2012, that Figure had risen to 42% among members of the House of Representatives and 50% among senators (Gerson, 2012).

Movement between the public and the private sectors can be a good thing, contributing to the development of personnel and improved organisational competencies (Äijälä, 2001). However, it heightens exposure to conflicts of interest and risks of impropriety (the misuse of insider information, position and contacts). In post-public-service employment, a further risk is that of "switching sides" when a public official joins the private sector to work in the particular field in which he or she worked as a public servant.

Blanes i Vidal, Draca, and Fons-Rosen (2010) found that lobbyists who had previously worked in the office of a US senator suffered a 24% drop in generated revenue when the senator left office and that ex-staffers' lobbying revenue dropped by 50% in a single semester after their employers had left Congress. The authors suggested that "lobbyists [were] able to cash in on their connections" and that "being connected to a powerful politician [was] a key determinant of the demand for a lobbyist's services". Moreover, lobbyists connected to serving politicians earned significantly higher revenues, with ex-staffers for serving senators estimated to earn 63% more than those with no such connections (Blanes I Vidal et al., 2010).

The threat to transparency and integrity most commonly cited by lobbyists who responded to the OECD's 2013 survey was revolving doors. Like lobbyists, legislators in the OECD 2013 survey also perceived the revolving door practice as an emerging issue, with lawmakers leaving public service for the private sector. One legislator stressed that it was also problematic when MPs' assistants and other parliamentary staff started working as lobbyists. Most of the lobbyists questioned thought that a cooling-off period would be one way of dealing with the problem.

Such concerns have led countries to introduce standards and principles for preventing and managing conflicts of interest in pre- and post-public employment in order to ensure the integrity of present and former public officials (Table 4.3). In line with the survey respondents' suggestion, some countries – e.g. Australia, Canada, Chile, Slovenia, and Norway – have introduced "cooling-off" periods, during which former public officials are not to lobby their former government departments.

- Article 7 of Australia's Lobbying Code of Conduct[4] sets a cooling-off period of 18 months for ministers and parliamentary secretaries and 12 months for ministerial staff. During those times, the former are prohibited from engaging in lobbying activities pertaining to any matter on which they worked in the last 18 months of employment, and the latter in the last 12 months.
- In the United Kingdom, the Ministerial Code[5] does not allow ministers to lobby government for two years after they leave office.
- For a period of six months after they leave office, Chile prohibits officials from the executive branch of government from working in or for companies that were under the supervision and control of the public body in which they were previously employed.
- Article 56 of Slovenia's Integrity and Prevention of Corruption Act[6] stipulates that officials may not lobby until two years have elapsed since they left office. Similarly, Article 36 states that an official may not act as the representative of a commercial entity that has established or is about to establish business contacts with the body in which he or she held office until two years have passed since his or her employment terminated.
- In Canada, there are similar post-public employment restrictions, though the cooling-off period is considerably longer (Box 4.5).
- Ireland's coalition government has embarked on programme of national recovery ("Government for National Recovery 2011–2016") which contains a commitment to regulate post-public employment (Box 4.6).

Table 4.3. **Are there restrictions on public officials engaging in lobbying activities after they leave the government?**

	Yes, for senior public officials in the executive branch	Yes, for senior public officials in the legislative branch	Yes, for public officials in the executive branch	Yes, for public officials in the legislative branch
Austria	○	○	○	○
Belgium	○	○	○	○
Canada	●	●	●	●
Chile	●	○	●	○
Estonia	○	○	○	○
Finland	○	○	○	○
France	○	○	●	●
Germany	●	●	●	●
Hungary	○	○	○	○
Ireland	●	●	○	○
Italy	●	○	●	○
Korea	●	●	●	●
Luxembourg	○	○	○	○
Mexico	●	●	●	●
Netherlands	●	○	●	○
New Zealand	○	○	○	○
Norway	○	○	○	○
Poland	○	○	○	○
Portugal	●	●	●	●
Slovenia	●	●	○	○
Spain	●	○	○	○
Sweden	○	○	○	○
Switzerland	○	○	○	○
United States	●	●	●	●
Brazil	●	○	○	○
Total OECD24				
● Yes	12	8	10	7
○ No	12	16	14	17

Notes: In Finland, there are general rules on post-employment secrecy. The Ministry of Finance has issued guidelines on public-sector employment contracts and evaluation of the need for a cooling-off period when a public servant resigns.

In Ireland, the Civil Service Code of Standards and Behaviour sets out guidelines for civil servants on the acceptance of appointments and consultancies following resignation or retirement.

New Zealand has no general restrictions, although some employment contracts may have a restraint of trade clause forbidding the use of certain information.

In Norway, there are general post-employment regulations and regulations on secrecy.

Slovenia prohibits officials from practising lobbying for two years after leaving office. According to Article 4 of Slovenia's Integrity and Prevention of Corruption Act, "officials" means deputies of the National Assembly, members of the National Council, the President of the Republic, the Prime Minister, ministers, state secretaries, judges of the Constitutional Court, other judges, state attorneys, officials in other self-governing local communities, members of the European Parliament from the Republic of Slovenia unless their rights and obligations are stipulated otherwise by the regulations of the European Parliament, and other officials from Slovenia working in European and other international institutions, the Secretary-General of the Government, former officials receiving wage compensation pursuant to the law, and officials of the Bank of Slovenia unless their rights and obligations are stipulated otherwise by the Act governing the Bank of Slovenia and other regulations binding thereon.

In Sweden, officials who are bound by confidentiality of information rules continue to be bound by them even after termination of their employment.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

- At the EU level, Article 16 of the 2013 Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Economic Community states that:

  "In the case of former senior officials … the appointing authority shall, in principle, prohibit them, during the twelve months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service".[7]

Restrictions on public servants working as lobbyists after they leave office apply almost exclusively to the executive branch. Few if any measures prevent legislators from engaging in lobbying activities after leaving Parliament. Indeed, 74% of surveyed legislators responded that their countries had no laws or codes of conduct in place to that effect (Figure 4.8).

An example of a code of conduct that addresses the post-public employment situations of former parliamentarians is the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest.[8] Article 6 states that former members of the European Parliament who engage in professional lobbying or representational activities directly linked to the European Union decision-making process may not, throughout the period in which they engage in those activities, benefit from the facilities granted to former members under the rules laid down by the Bureau to that effect. Although it does not prevent former MEPs from lobbying, the article clearly states that they are not allowed to conduct lobbying through facilities that they as previous MEPs benefitted from.

Box 4.5. **Post-public employment restrictions in Canada**

For a period of five years after they cease to be public office holders, Article 10.11(1) of the Canadian Lobbying Act prohibits public officials from:

a) communicating with a public office holder in respect of:
   - i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,
   - ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,
   - iii) the making or amendment of any regulation as defined in subsection 2(1) of the Statutory Instruments Act,
   - iv) the development or amendment of any policy or programme of the Government of Canada,
   - v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or
   - vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada;

b) to arrange a meeting between a public office holder and any other person.

The activities listed are covered by the ban if they are performed for remuneration and apply to consultant lobbying. A similar prohibition applies to former designated public office holders being employed as in-house lobbyists.

Source: The Canadian Lobbying Act (R.S.C., 1985, C. 44 (4th Supp.).

Box 4.6. **Regulation of post-public employment in Ireland**

The Government's programme of work commits to amending the rules regarding senior public servants (including political appointees) or ministers working in the private sector in any area involving a potential conflict of interest with their former area of public employment.

A proposed cooling-off period, in the context of the regulation proposed, refers to a period of time after leaving office during which former office holders (and possibly others) would be barred from engaging in certain activities where a potential conflict of interest could arise with their former area of public employment.

In developing policy in this area consideration has been given to the following issues:

- The need to legislate to prevent lobbying of former colleagues immediately on leaving public employment or public office.
- The risk that a blanket ban for a defined period on taking up post-public employment might conflict with competing rights including, in particular, the right to earn a livelihood.
- The requirement for the proposed lobbying legislation to target the specific conflict of interest that potentially arises in relation to post-public employment lobbying activity rather than extending into non-lobbying related conflicts that are being examined as part of the proposed reform of the ethics legislation in Ireland.
- The likely impact on the public service's ability to recruit experts and specialists to meet short-term specific and priority skills needs.

OECD guidance highlights the requirement for controls in this area:

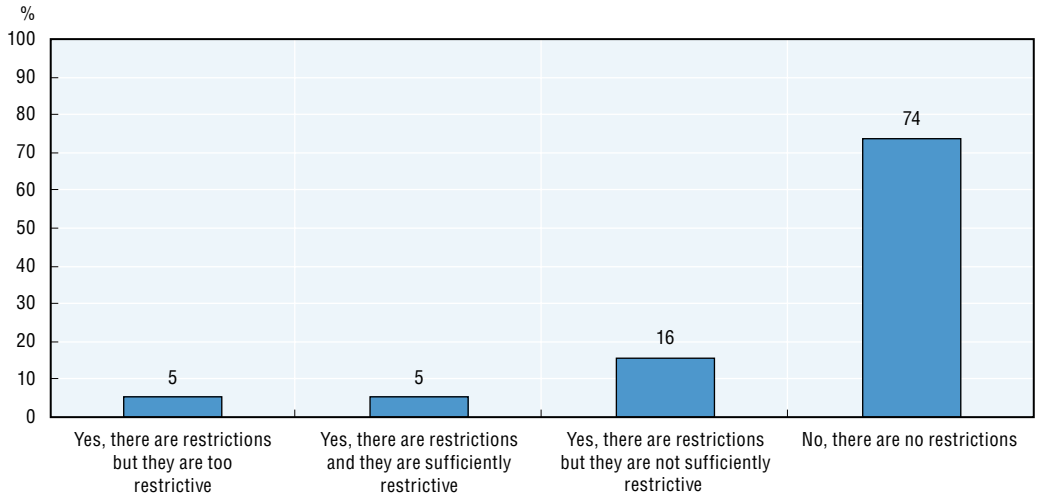
"The former employee may have privileged access to government officials. Tapping into a closed network of friends and colleagues built while in office, a government employee-turned lobbyist may well have access to power brokers not available to others. In some cases, these networks could involve prior obligations and favours."

The draft legislation requires designated public officials or office holders to apply to the Registrar for approval to lobby their former colleagues (e.g. principals, peers, or subordinates) in the public body in which they previously worked (or in a further public body to which such colleagues have subsequently transferred) during a period of one year subsequent to having left the public service. This would allow the Registrar to permit, for example, the take-up of employment but to impose restrictions in relation to engagement in certain activities rather than a blanket ban. This approach seeks to deliver on the policy objective of regulating this area while adopting a fair and proportionate approach on a case by case basis.

The decision to limit the "cooling-off" period proposed to one year reflects a review of the duration of similar provisions in other jurisdictions in respect of a wide body of public officials (notwithstanding that there are significantly longer cooling-off periods in force in some jurisdictions for more limited categories of public officials or office holders). The one-year period also aligns with the current post-public employment restriction in place under the Irish Civil Service Code of Standards and Behaviour Civil Service Code of Standards and Behaviour – Standards in Public Office Commission.

Source: Case study submitted to the OECD by the Government Reform Unit of the Department of Public Expenditure and Reform.

Figure 4.8. **Generally no restrictions are in place (e.g. a "cooling-off" period) to restrict legislators from engaging in lobbying activities after they leave Parliament**



Note: Respondents were asked the following question: "After a Parliamentarian leaves Parliament/Congress, are there restrictions in place (e.g. a "cooling-off" period) for engaging in lobbying activities?"
Source: OECD 2013 Survey on Lobbying for Legislators.

In the majority of OECD countries, public officials do not require permission before taking up an appointment in the private sector where they can lobby previous colleagues

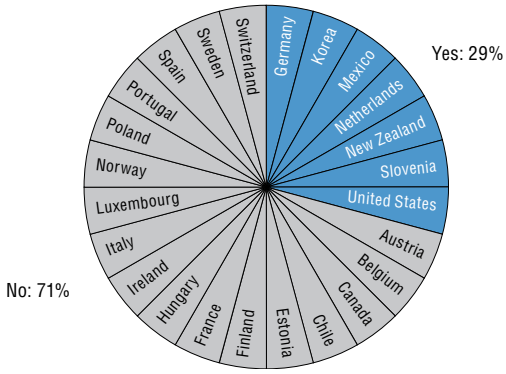
In addition to cooling-off periods, governments may require public officials to disclose offers of future employment where there is a risk of conflict of interest and to seek permission before accepting. Granting permission is generally the responsibility of senior management in public organisations. In the United Kingdom, the 1937 Memorandum on the Acceptance of Business Appointments by Officers of the Crown Services requires most senior civil servants to obtain permission before they take up business appointments.[9] Similarly, under the terms of the Ministerial Code, ministers in the UK must seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office.[10] In Norway, if transition contravenes post-employment regulations, politicians who are considering accepting a new job, taking up a position outside the public service, or starting a business should disclose to the Committee on Outside Political Appointments the requisite information at least two weeks before commencing their new occupation.[11]

Only 25% of surveyed OECD countries require officials to obtain permission before taking up a private-sector appointment where they may lobby their previous colleagues. This minority requirement was further confirmed by legislators, the vast majority of whom (79%) responded that they did not have to obtain permission before transferring to such a position.

Although many countries have post-public employment restrictions in place, few have focused on concerns related to pre-public employment

While many OECD countries restrict public officials' post-public employment, they have paid little attention to the issue of pre-public employment. Less than one-third curbs on the hiring of lobbyists to fill regulatory or advisory positions in government (Figure 4.9).

Figure 4.9. **OECD countries' restrictions on lobbyists hired to fill regulatory or advisory posts in government**

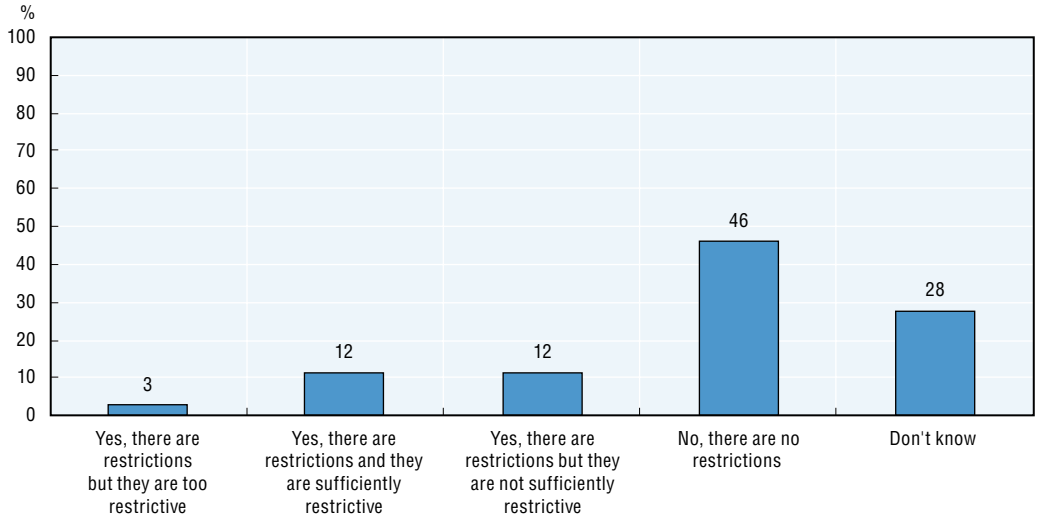


Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Surveyed lobbyists confirm the lack of restrictions, with 46% reporting that there were none in place in their country. What is more, over one-quarter (28%) did not know whether or not there were restrictions on lobbyists taking up regulatory or advisory posts in government (Figure 4.10).

Countries that do address pre-public employment concerns do so either by requiring newly hired officials to cease their previous activities or by limiting the activities or projects in which they can work. Slovenia prohibits anyone being hired for a post in government to remain registered as a lobbyist. In Sweden, however, general conflict of interest rules do not typically restrict the hiring of job applicants because of their particular background, though they might limit the types of decisions they would be entitled to be involved. In the EU, Article 11 of the amended 2013 Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Community states:

Figure 4.10. **There are generally no restrictions in place on lobbyists being hired to fill regulatory or advisory posts in government**



Note: Respondents were asked the following question: "Are there restrictions on lobbyists being hired to fill a regulatory or advisory post in government?"
Source: OECD 2013 Survey on Lobbying for Lobbyists.

"Before recruiting an official, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. To that end, the candidate shall inform the appointing authority using a specific form of any actual or potential conflict of interest. In such cases, the appointing authority shall take this into account in a duly reasoned opinion."[12]

Advisory and expert groups

Insider lobbying: The influence of private interests through advisory groups is an emerging concern

An advisory or expert group (hereafter referred to as "advisory group") refers to any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof that provides governments with advice, expertise, or recommendations. They are made up of public and/or private-sector members and/or representatives from civil society and may be put in place by the executive, legislative or judicial branches of government or government subdivisions.

In OECD countries, advisory groups go by different names. In Australia, they are referred to as advisory or consultative Committee, while the United Kingdom calls them advisory committees, councils, or boards. Governments across the OECD make wide use of them – more than half of the surveyed legislators responded that they worked with them, while over 82% of OECD members said they regularly consulted advisory groups when drafting primary laws (see Table 1.1).

However, an emerging risk to the integrity of policy making is the capture of advisory groups by private interests to exert undue influence. When, for example, corporate executives or lobbyists advise governments as members of an advisory group, they act not as external lobbyists, but as part of the policy-making process with direct access to decision-makers. Up to 79% of legislators believed that advisory groups wielded influence over policy making and outcomes, while almost half (47%) felt that advisory groups were driven by special interests and not by the good of the public or society at large. One response to the risk of advisory groups being captured by special interests has come from the EU (Box 4.7).

Box 4.7. **The discussion taking place in the EU on the risk of expert groups' capture by special interests**

On 26 October 2011, a majority of members of the European Parliament (MEPs) voted to freeze part of the budget for the European Commission's expert groups until new rules were introduced to safeguard against the groups' capture by special interests and to improve transparency. The move came in response to concerns at the presence of lobbyists and corporate executives in expert groups, problematic practices, and low levels of transparency. The freeze was lifted in September 2012 when the Commission committed to address concerns across all Directorates General (DGs) and open informal talks on drawing up guidelines for all new groups.

In parallel, MEPs levelled criticism at certain EU agencies for the way they managed their experts' conflicts of interest. In 2011, the European Parliament (EP) postponed granting the Executive Director of the European Food Safety Authority (EFSA) and the Executive Director of the European Medicines Agency (EMA) budget discharge for the financial year 2010. The EP considered that, while a dialogue with industry on product assessment methodologies

Box 4.7. **The discussion taking place in the EU on the risk of expert groups' capture by special interests** *(cont.)*

was legitimate and necessary, it should not undermine EFSA's independence or the integrity of its risk assessment procedures. The EP urged the European Court of Auditors (ECA) to finalise and present its report on conflicts of interest in the agencies that it began auditing in 2011.

In 2012, the European Court of Auditors presented its Special Report on Management of Conflict of Interest in Selected EU agencies that made vital decisions affecting consumers' health and safety. They were the European Chemicals Agency (ECHA) and the European Aviation Safety Agency (EASA), in addition to EMA and EFSA. The court concluded that none of the selected agencies adequately managed conflicts of interest. The shortcomings identified were, however, of varying degrees. In its audit of EFSA, the Court of Auditors found that scientific experts acted in the conflicting capacities of advocates and reviewers of the same concepts. In another EFSA case highlighted by the ECA, two EFSA experts were advising a private organisation on a particular concept while reviewing the same concept as members of EFSA's scientific body. Yet, in neither case did EFSA find there was a conflict of interest.

The European Commission and European Agencies are currently in the process of revising their conflict of interest management processes. Following the publication of the ECA's special report in October 2012, ECHA was mandated by the EU Agencies Network to draft a paper on conflict of interest management. It contained a checklist of the basic components in conflict of interest prevention and described how best practices could be shared. In the European Parliament's 2013 report on EFSA's budget discharge for the financial year 2011, the European Parliament noted that EFSA had taken a number of steps in the wake of the Court of Auditors' audit. They included introducing a comprehensive framework for avoiding potential conflicts of interest in 2007 and, thereafter, regularly reviewing and updating it; appointing an ethics adviser in 2012; applying the framework proposed by the Commission on Ethics and Integrity; and adopting a specific gift policy in July 2012. Although the Parliament acknowledged EFSA's efforts to improve its conflict of interest prevention and management, the EP noted that the independence and competence of its external experts were still under question from fellow food safety experts and watchdog NGOs.

Source: European Parliament, 2012 Budgetary Procedure Conciliation Document – Joint Text, Doc. No. 419112011, amended by budget line, Consolidated Document, p. 17, *www.europarl.europa.eu/document/activities/cont/201112/20111206ATT33432/20111206ATT33432EN.pdf*; Banks, M. (2011), "NGO welcomes move to block funding for EU 'expert-groups'", *The Parliament*, online journal, 1st November, *www.theparliament.com/latest-news/article/newsarticle/ngo-welcomes-move-to-block-funding-for-eu-expert-groups/#.UfDgee5KQwq*; European Court of Auditors (2012) *Management of Conflict of Interests in Selected EU Agencies*, Special Report No. 15, Publications Office of the European Union, Luxembourg, *http://eca.europa.eu/portal/pls/portal/docs/1/17190743.PDF*; European Parliament Resolution of 17 April 2013 with observations forming an integral part of its Decision on the discharge of the budget of the European Food Safety Authority for the financial year 2011 (C7-0258/2012 – 2012/2196(DEC)) *www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2013-0146+0+DOC+PDF+V0//EN*; European Parliament (2012) *Report on discharge in respect of the implementation of the budget of the European Food Safety Authority for the financial year 2010*. A7-0106/2012. Committee on Budgetary Control. Rapporteur: Monica Luisa Macovei, *www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-173* ; European Parliament (2013), *Workshop: Better Avoidance of Conflict of Interest: EU Agencies and other bodies moving forwards,* Briefing Papers, Policy Department on Budgetary Affairs of the European Parliament, Brussels.

There is generally no obligation to ensure a balanced representation of interests in advisory groups in OECD countries

In the vast majority of OECD member countries surveyed (79%), there is no obligation to have a balanced composition of members of advisory groups in terms of private sector and civil society representatives. There were also few restrictions as to who could be a

member. Seventy-nine per cent of OECD countries allowed lobbyists to be members and 92% allowed corporate executives (Table 4.4).

The vast majority of lobbyists surveyed by the OECD (78%) responded that they were allowed to sit on advisory groups in a personal capacity. Approximately one-fifth (18%) of lobbyists questioned were currently doing so (Figure 4.11).

Half of the legislators questioned were of the opinion that lobbyists should not be allowed to sit in advisory groups in a personal capacity, while a further 47% believe that the same should apply to corporate executives.

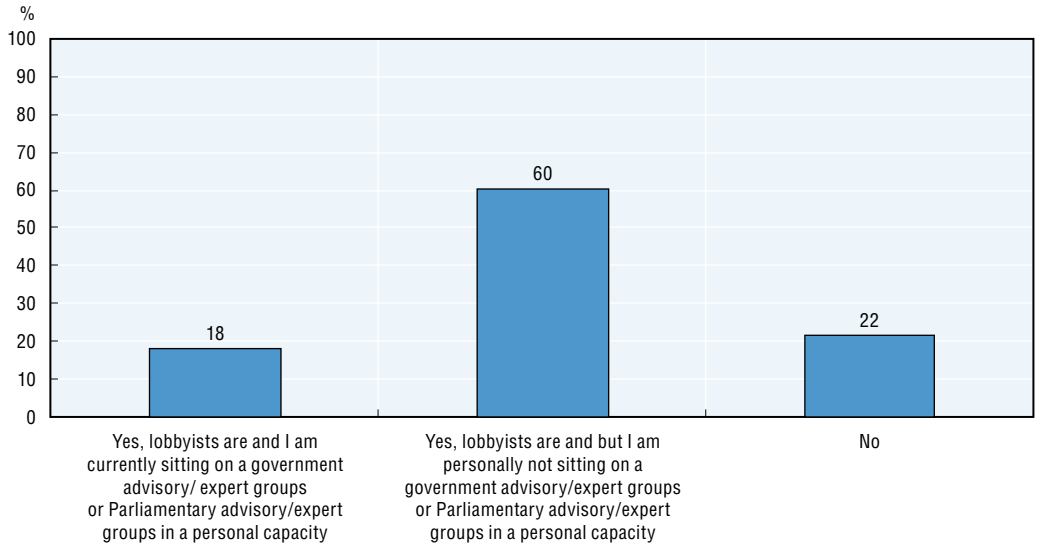
However, although private interests may influence the work of advisory groups, most OECD members require that membership, agendas, minutes, participants' submissions and other information relating to advisory groups should be publicly available so that

Table 4.4. **Advisory groups: A balanced composition of interests**

	Is there an obligation to have a balanced composition (between for example private-sector and civil society representatives) of advisory/ expert groups?	Are lobbyists allowed to sit in advisory/expert groups in personal capacity?	Are corporate executives allowed to sit in advisory/ expert groups in personal capacity?
Austria	No	Yes	Yes
Belgium	Yes	No	Yes
Canada	No	Yes	Yes
Chile	No	Yes	Yes
Estonia	Yes	Yes	Yes
Finland	No	Yes	Yes
France	No	Yes	Yes
Germany	No	Yes	Yes
Hungary	No	No	Yes
Ireland	No	Yes	Yes
Italy	No	Yes	Yes
Korea	Yes	No	Yes
Luxembourg	No	Yes	Yes
Mexico	No	Yes	Yes
Netherlands	No	Yes	Yes
New Zealand	No	No	No
Norway	No	Yes	Yes
Poland	No	Yes	Yes
Portugal	No	Yes	Yes
Slovenia	No	Yes	Yes
Spain	No	No	No
Sweden	No	Yes	Yes
Switzerland	Yes	Yes	Yes
United States	Yes	Yes	Yes
Brazil	No	Yes	Yes
Total OECD24			
Yes	5	19	22
No	19	5	2

Note: Canada requires balanced composition in some cases. For Italy, the responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Figure 4.11. **Lobbyists are allowed to sit on advisory groups in a personal capacity**



Note: Respondents were asked the following question: "Are lobbyists allowed to sit in government advisory/expert groups or Parliamentary advisory/expert groups in a personal capacity?"
Source: OECD 2013 Survey on Lobbying for Lobbyists.

stakeholders can scrutinise their work (Table 4.5). The European Commission, for example, created a Register of Commission Expert Groups and Similar Entities in December 2010. It contains information on the types of entities listed, groups' membership, the department running the groups, the procedures used to select members, groups' missions and activities.[13] Stakeholders can thus scrutinise the work of advisory groups which, in turn, could make it less likely that the interests of the few influence outcomes at the expense of the public interest. Similarly, Canada's Lobbying Act, for example, allows the public to ascertain whether any member of an advisory group is also a lobbyist. Consequently, any decision to appoint a lobbyist to an advisory group becomes a matter of political and/or public judgement.

Table 4.5. **With regard to advisory and expert groups, are membership information, agendas, minutes and participants' submission**

	Publically available online or in print?	Publically available upon request?	Not publically available?
Austria	No	Yes	No
Belgium	Yes	Yes	Yes
Canada	No	No	Yes
Chile	No	Yes	No
Estonia	Yes	Yes	No
Finland	No	Yes	No
France	No	No	Yes
Germany	Yes	Yes	No
Hungary	No	Yes	No
Ireland	No	Yes	No
Italy	No	No	Yes
Korea	No	Yes	No
Luxembourg	Yes	Yes	Yes
Mexico	Yes	No	No
Netherlands	No	Yes	No
New Zealand	Yes	Yes	No
Norway	No	Yes	No
Poland	No	Yes	No
Portugal	No	No	Yes
Slovenia	No	Yes	No
Spain	No	No	Yes
Sweden	No	Yes	No
Switzerland	Yes	No	No
United States	Yes	Yes	No
Brazil	Yes	Yes	No
Total OECD24			
Yes	8	17	7
No	16	7	17

Note: In Belgium, public availability of information depends on the type requested. Canada makes such information available in some cases. For Italy, responses refer to the system put in place by the Ministry of Agriculture. In Luxembourg, whether information about advisory/expert groups is publically available, publically available upon request, or not publically available depends on the particular advisory/expert group.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Notes

1. Available at *www.track.unodc.org/LegalLibrary/LegalResources/Slovenia/Laws/Slovenia%20Code%20of%20Ethics%20of%20the%20Government%20of%20Slovenia.pdf*.
2. For other please specify, one parliamentarian responded "Rules on transparency of economic interests".
3. K Street in Washington DC is known as a centre for numerous think tanks, lobbyists and advocacy groups. It has become a metonym for Washington DC's lobbying industry.
4. Available at *http://lobbyists.pmc.gov.au/conduct_code.cfm*.
5. Article 7.25 in the Ministerial Code, available at *www.gov.uk/government/uploads/system/uploads/attachment_data/file/61402/ministerial-code-may-2010.pdf*.
6. Available at *www.kpk-rs.si/upload/t_datoteke/ZintPK-ENG.pdf*.

7. Position of the European Parliament adopted at first reading on 2 July 2013 with a view to the adoption of Regulation (EU) No .../2013 of the European Parliament and of the Council amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union. Available at *www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-287*.
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10. See Endnote 6 above.
11. Available at *http://dx.doi.org/10.1787/735516772805*.
12. See Endnote 8 above.
13. Register of European Commission's Expert Groups, *http://ec.europa.eu/transparency/regexpert/*.

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Chapter 5

Compliance and enforcement: Making transparency and integrity in lobbying a reality

In recent years, countries have designed and implemented rules and guidelines on lobbying, yet, questions on how to achieve compliance remain. The challenge of cost-effectively enforcing regulations is evident and countries still struggle to incentivise compliance and to impose sanctions for breaches.

This chapter analyses the measure that have been implemented in OECD countries to further compliance with lobbying rules and guidelines, the sanctions in place, and mechanisms to review the lobbying rules and guidelines.

Furthering compliance with lobbying rules and guidelines

Countries should step up the use of education as a tool to promote compliance

Most countries with lobbying rules and guidelines seek to educate public officials to improve their understanding and further compliance. Although educational tools include awareness raising activities and training that vary across countries, they generally include the basic practices of distributing rules to public officials when they take office, making them available online, or providing advice in response to doubts or questions (Table 5.1).

OECD Principles for Transparency and Integrity in Lobbying

Principle 9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.

When lobbyists and legislators were asked in the OECD 2013 Survey on Lobbying what they believed to be the most efficient ways of learning about lobbying rules and guidelines, integrity standards, and transparency tools, their responses varied. Lobbyists believed workshops and briefings to be the most efficient. Legislators opted for direct communication, online training and briefings.

However, as little as 20% of surveyed OECD member countries with lobbying rules and guidelines in place organised workshops for lobbyists, and only 40% held briefings (Table 5.2). And 40% of countries offered direct communication, 30% online training courses, 40% briefings for public officials in the legislative branch (Table 5.2).

The 2013 lobbying survey conducted by Burson-Marsteller found that 15% of politicians and senior officials[1] from 20 EU countries did not know if lobbying was regulated or not (Burson-Marsteller. 2013). The percentage rose to 50% in the Netherlands (ibid.). Plainly, OECD countries need to step up their use of educational tools to raise awareness and promote compliance with lobbying rules and guidelines.

Registration checks and sanctions encourage lobbyists' compliance

To deter breaches and promote lobbyists' compliance – particularly with their obligation to disclose information – countries make their registers publicly accessible and check the veracity of the information that lobbyists file (Table 5.3). Canada verifies a 5% sample of monthly communication reports with designated public office holders in order to ensure that the information filed is complete and accurate. Slovenia conducts investigations if complaints are made to the Commission for the Prevention of Corruption or comparisons of lobbyists' reports with those of lobbied officials reveal mismatches.

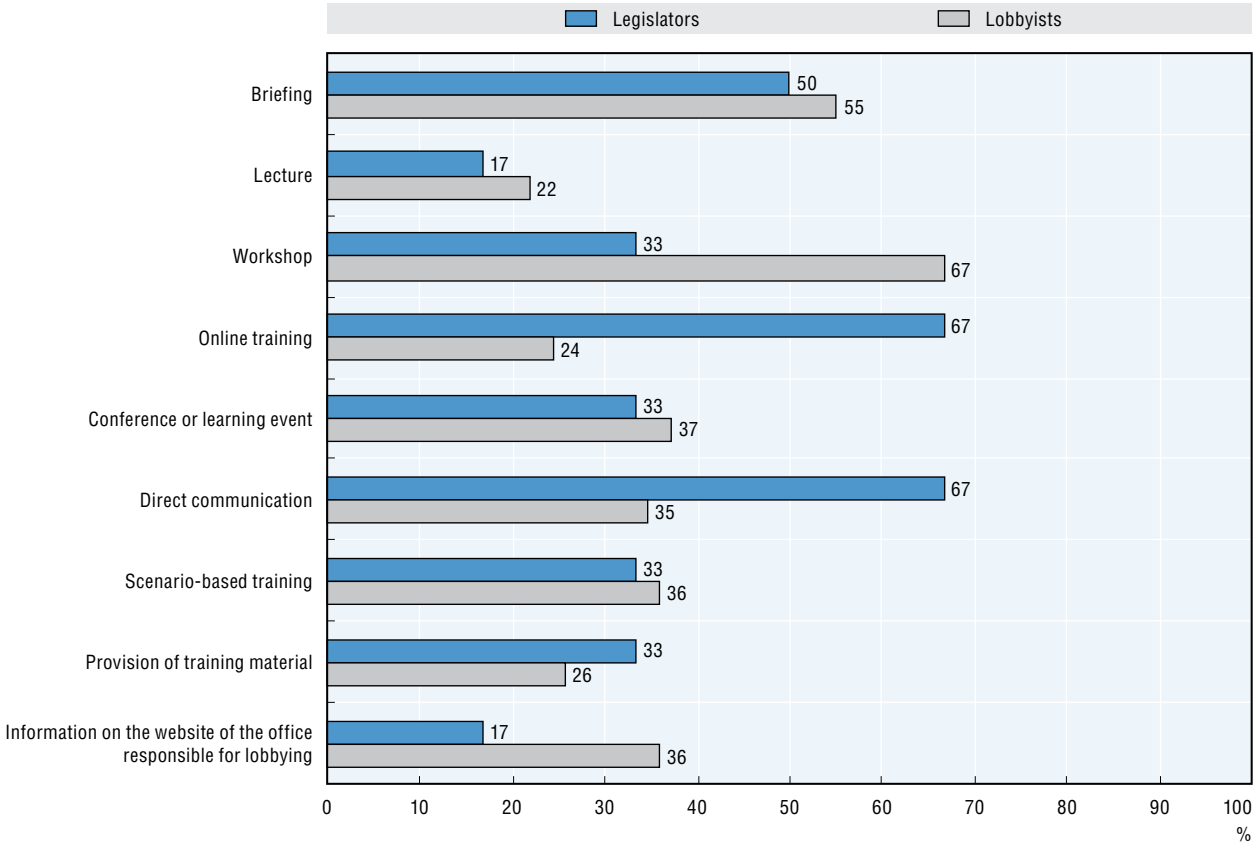
In Canada, the Office of the Commissioner of Lobbying of Canada also conducts periodic assessment of the registrations and monthly communication reports filed by individuals whom it has already reviewed for alleged breaches of the Lobbying Act. The purpose of the assessments is to determine whether a lobbyist's compliance record is

Table 5.1. **Practices in OECD member countries to promote awareness and educate public officials on lobbying rules and guidelines**

	Initial dissemination of rules/guidelines to public officials upon taking office		Proactive updates regarding changes to rules/guidelines		Ensuring online availability of rules/ guidelines for access by public officials		Provision of training to public officials, including examples of concrete situations and how they were addressed		Provision of official advise when public officials have doubts or questions regarding the rules/guidelines		The government is not promoting awareness or educating public officials on the lobbying rules/ guidelines		Other		
	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch	Officials in the executive branch	Officials in the legislative branch		Officials in the executive branch	Officials in the legislative branch
Austria	○	○	●	●	●	●	○	○	●	●	○	○	○	○	○
Canada	●	●	●	●	●	●	○	○	●	●	○	○		●	●
France	○	○	○	○	○	○	○	○	○	○	●	●	○	○	○
Germany	●	●	●	●	●	●	●	●	●	●	○	○	○	○	○
Hungary	○	○	○	○	●	○	●	○	●	○	○	●	○	○	○
Italy	○	○	○	○	○	○	○	○	○	○	●	●	○	○	○
Mexico	○	○	○	○	○	○	○	○	○	○	●	●		○	●
Poland	○	●	○	●	○	●	○	○	○	○	●	○	○	○	○
Slovenia	●	●	●	●	●	●	●	●	●	●	○	○	○	○	○
United States	●	●	●	●	●	●	●	●	●	●	○	○	○	○	○
Total OECD10															
● Yes	4	5	5	6	6	6	4	3	6	5	4	4	0	0	0
○ No	6	5	5	4	4	4	6	7	4	5	6	6	0	0	0

Note: For Italy, the responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Figure 5.1. **Most effective ways to learn about lobbying rules and guidelines according to legislators and about integrity standards and transparency tools according to lobbyists**



Source: OECD 2013 Survey on Lobbying for Lobbyists and OECD 2013 Survey on Lobbying for Legislators

improving. In 2012-13, the Office carried out 82 such compliance assessments, which led the Commissioner to initiate one administrative review. The review related to a lobbyist who had failed to file monthly communication reports within the prescribed time limits (Office of the Commissioner of Lobbying Canada, 2013).[2]

Traditional incentives and rewards fail to make compliance worthwhile

To foster a culture of compliance, certain systems offer lobbyists practical incentives for complying with the rules. In France, for example, lobbyists gain access to the National Assembly and the Senate only if they are registered. The Dutch, German and European Parliaments have established similar practices.

In Burson-Marsteller's 2013 lobbying survey, European politicians and senior officials responded that a lobby firm was more likely to secure a meeting with them if it could demonstrate transparency (64%) and was publically registered (57%). However, there are a number of instances of lobbyists not meeting those requirements. Between January 2011 and February 2012, 62% of the meetings that the European Commission Vice-President and Commissioner for Economic and Monetary Affairs, Olli Rehn, had with lobbyists were with unregistered firms (Corporate Europe Observatory, 2012).

Over half of the lobbyists surveyed by the OECD (51%) felt that no rewards or incentives were effective in furthering compliance with lobbying rules or codes of conduct.

Table 5.2. **Awareness-raising and educational activities that governments conduct on a regular basis for public officials in the executive branch (POE), public officials in the legislative branch (POL) and lobbyists (L) to further understand lobbying rules and guidelines**

	Briefings			Lectures			Workshops			Online trainings			Conferences or learning events			Direct communication			Scenario-based trainings			Provision of training material			Information on the website of the office responsible for lobbying			The government is not promoting awareness or educating on the lobbying rules/ guidelines		
	POE	POL	L	POE	POL	L	POE	POL	L	POE	POL	L	POE	POL	L	POE	POL	L	POE	POL	L	POE	POL	L	POE	POL	L	POE	POL	L
Austria	○	○	○	○	○	●	○	○	○	○	○	○	○	○	●	○	○	○	○	○	○	○	○	○	●	●	●	○	○	○
Canada	●	●	●	○	○	○	○	○	○	○	○	●	●	○	●	●	●	●	○	○	○	●	●	●	●	●	●	○	○	○
France	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	●	●	●
Germany	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	○	○	○	○	○	○	○	○	○	○	○	○
Hungary	○	○	○	○	○	○	○	○	○	●	○	○	●	○	○	○	○	○	●	○	○	○	○	○	○	○	○	○	●	○
Italy	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	●	●	○
Mexico	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	●	●	○
Poland	○	○	○	○	●	○	○	○	○	○	○	○	○	●	○	○	○	○	○	○	○	○	○	○	○	○	○	●	○	○
Slovenia	●	●	●	●	●	●	●	○	○	○	○	○	○	○	○	●	●	●	●	○	○	○	○	○	●	●	●	○	○	○
United States	●	●	●	○	●	●	○	●	●	●	●	●	●	●	●	●	●	●	●	○	○	●	●	●	○	●	●	○	○	○
Total OECD10																														
● Yes	4	4	4	2	4	4	2	2	2	3	2	3	4	3	4	4	4	4	3	0	0	2	2	2	3	4	4	4	4	1
○ No	6	6	6	8	6	6	8	8	8	7	8	7	6	7	6	6	6	6	7	10	10	8	8	8	7	6	6	6	6	9

Note: For Italy, the responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

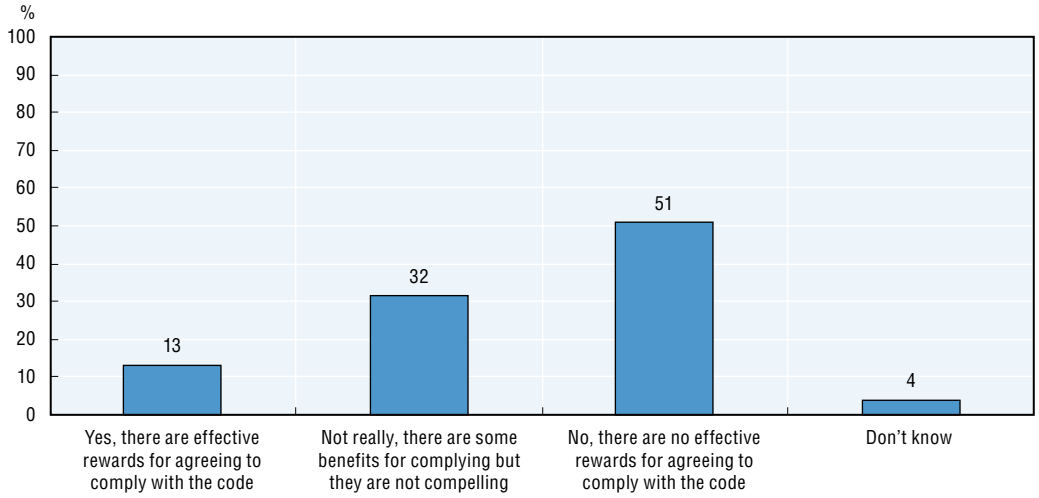
Table 5.3. **How do OECD countries ensure compliance with lobbying disclosure requirements?**

	Verify that all information was submitted	Random review of registrations/ spending reports	Random audit of registrations/ spending reports	Review of all registration/ spending reports	Audit of all registrations/ spending reports	Public availability of registrations	Public availability of activity/ spending reports	No measures are taken to ensure compliance with the disclosure requirements
Austria	●	●	○	○	○	●	●	○
Canada	●	○	○	○	○	●	○	○
France	○	○	○	○	○	●	○	○
Germany	●	○	○	○	○	●	○	○
Italy	●	○	○	●	○	●	○	○
Mexico	○	○	○	○	○	○	○	●
Poland	○	○	○	○	○	○	○	●
Slovenia	●	●	●	●	○	●	●	○
United States	●	●	●	●	●	●	●	○
Total OECD9								
● Yes	6	3	2	3	1	7	3	2
○ No	3	6	7	6	8	2	6	7

Note: For Italy, the responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Furthermore, around one-third (32%) were of the opinion that, although there were some benefits to compliance, they were not compelling (Figure 5.2).

Figure 5.2. **There are generally no effective rewards for agreeing to comply with lobbyist codes of conduct**



Note: Respondents were asked the following question: "Are there effective rewards for agreeing to comply with the lobbyist code of conduct, such as easier access to lawmakers."
Source: OECD 2013 Survey on Lobbying for Lobbyists.

Lobbying is generally overseen by bodies with wider transparency and anti-corruption duties

The actual bodies responsible for co-ordinating lobbying strategies and mechanisms differ across countries. The general trend, though, is to assign the task either to a specialised, dedicated body, as in Canada, or to one that oversees a broader range of integrity standards,

as in Slovenia (Table 5.4). A number of countries feel that it is important that lobbying oversight institutions should not be isolated. Accordingly, as lobbying is generally an issue in the overall transparency and anti-corruption agenda, they give the job to institutions with a wide-ranging integrity brief.

Table 5.4. **Oversight bodies for monitoring lobbying rules and guidelines**

	Oversight body
Australia	Department of the Prime Minister and Cabinet
Austria	Ministry of Justice and regional administration offices
Canada	The Office of the Commissioner of Lobbying
France	Ethics officer of the Assamblée Nationale and Senate
Germany	Administrative authorities or the Public Prosecutor's Offices
Hungary	The integrity advisors in each administrative agency/Ministry
Italy	The Transparency Unit at the Ministry of Agriculture
Mexico	The Board of the House of Representatives (la Mesa Directiva de la Cámara de Diputados), the Chairman of the Senate and the Internal Comptroller.
Poland	Ministry of the Digitalization and Administration
Slovenia	Commission for the Prevention of Corruption of the Republic of Slovenia
United States	Office of the Clerk of the House of Representatives and the Secretary of the US Senate implement and administer the law. The United States Attorney's Office enforces the law.
European Parliament and European Commission	EU Transparency Register Secretariat

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Sanctions for breaches of lobbying rules and guidelines

Sanctions range from naming and shaming to debarment, fines and imprisonment

Sanctions are necessary features of lobbying rules, serving as deterrents for breaches and indirectly promoting compliance. They may be disciplinary, administrative, civil or criminal in nature. Most countries apply disciplinary or administrative sanctions such as suspending practitioners from lobbying for a certain time. Only a few, however, have criminal provisions where the penalty is imprisonment. Naming and shaming convicted lobbyists is also a practice in, for example, Canada (Box 5.1).

Box 5.1. **Sanctions for breaches of the Canadian Lobbying Act or Lobbyists' Code of Conduct**

Amendments to the legislation in 2008 created the position of Commissioner of Lobbying and gave the Commissioner greater investigatory powers than the previous Registrar of Lobbyists enjoyed. The Lobbying Act provides for the following sanctions in the event of such breaches of the act as failure to file a return or knowingly making any false or misleading statement in any return or other document submitted to the Commissioner:

- on summary conviction, a fine not exceeding CAD 50 000 or imprisonment for a term not exceeding six months, or both;
- on proceedings by way of indictment, a fine not exceeding CAD 200 000 or imprisonment for a term not exceeding two years, or both.

Box 5.1. **Sanctions for breaches of the Canadian Lobbying Act or Lobbyists' Code of Conduct** *(cont.)*

If a person is convicted of an offence under the Lobbying Act, the Commissioner may prohibit the person who committed the offence from lobbying or arranging meetings with public officials or any other person for a period of up to two years.

The Commissioner may also make public the nature of the offence, the name of the person who committed it, and the penalty applied – so called "naming and shaming".

Despite the sanctions that are available, no one has ever been charged or convicted of an offence under the Lobbying Act. The Office of the Commissioner of Lobbying has forwarded case files to the Royal Canadian Mounted Police (RCMP), yet prosecutions have not commenced in ten of the eleven cases referred to the RCMP since 2005.

Source: Lobbying Act (RSC, 1985, c. 44 [4th Supp.]); Office of the Commissioner of Lobbying of Canada (2011), Administering the Lobbying Act – Observations and Recommendations Based on the Experience of the Last Five Years, report presented by the Commissioner of Lobbying to the Standing Committee on Access to Information, Privacy and Ethics, p. 30, *http://ocl-cal.gc.ca/eic/site/012.nsf/vwapj/Administering_LA_2011-12-13-en.pdf/$FILE/Administering_LA_2011-12-13-en.pdf*.

In OECD countries which have lobbyist registers – *i.e.* Austria, Canada, France, Germany, Italy (Ministry of Agriculture), Mexico, Poland, Slovenia, and the United States – all but France and Germany impose sanctions on lobbyists who breach disclosure requirements (Box 5.2). There is no provision for sanctions in Germany, as registration is voluntary. However, a lobbyists' association will not be registered if it fails to provide the information required for registration (*i.e.* the name and headquarters of the association; the composition of the boards of management and directors, the association's sphere of interest, the number of its members, the names of its representatives, the address of its office at the seat of the Bundestag (Federal Parliament) and the Federal Government). According to Paragraphs 2 and 3 of Annex 2 of the Rules of Procedure of the German Bundestag (GO-BT), representatives of unregistered associations are not admitted access to consultations in the Bundestag.

In the United States, the Government Accountability Office (GAO) annually reports on registrant and lobbyist compliance. For its 2012 report on lobbyists' compliance with disclosure requirements (published in April 2013), the GAO found that most lobbyists could supply documentary proof of compliance with the disclosure requirements of the Lobbying Disclosure Act. According to staff at the US Attorney's Office for the District of Columbia (the Office), during the 2012 reporting period the Office took steps to pursue legal action, made phone contacts, or sent emails to eight registrants that had been repeatedly referred for failure to file required disclosure reports.

According to the Office, four of the eight registrants filed the outstanding reports or terminated their registration after being contacted by an Assistant US Attorney. In September 2012, the Office reached settlement agreements with two of the registrants for USD 50 000 and USD 30 000 in civil penalties. As of March 2013, these two firms had paid their fines and had complied with their reporting requirements. In February 2013, the Office sent demand letters to the two other registrants who (as of March 2013) had not responded.[3]

Box 5.2. **Sanctions for lobbyists who breach the lobbying disclosure requirement in Austria, Italy, Mexico, Poland, Slovenia and the United States**

In Austria, three different types of sanctions are available: 1) administrative fines of up to EUR 20 000, 2) debarment from the lobbyists' register for up to three years, and/or 3) contracts may become null and void.

Under the Lobbying Decree of the Italian Ministry of Agriculture, the Transparency Unit issues a reminder to lobbyists who fail to file their annual reports by 30 July. If the unit does not receive a response within 60 days of issuing the reminder, the lobbyist is removed from the Lobbyist Register.

In Mexico, Article 268 of the Rules of the House of Representatives stipulate that the Board may suspend or debar lobbyists who cannot prove the provenance of information provided to a legislator, commission, authority, or committee of the House.

In Poland, a fine of between 3 000 and 50 000 PLN (USD 940 and USD 15 700) can be levied on an administrative decision of the Minister of the Digitalization and Administration.

In Slovenia, sanctions for failure to comply with the provisions of the Integrity and Prevention of Corruption Act are a written reminder; a ban from lobbying for a specified period of time which may not be shorter than three months or longer than 24 in duration; and removal from the register.

The United States' Lobbying Disclosure Act contains provisions for civil and criminal penalties. Civil penalties: fines of up to USD 200 000 for lobbyists who "knowingly fail to remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives". Failure to comply with the other provisions in Chapter 26 of the Lobby Disclosure Act is also punishable by a fine of USD 200 000. Criminal penalties: up to five years imprisonment and/or a fine for "whoever knowingly and corruptly" fails to comply with any provision of Chapter 26.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Sanctions for public officials are in place, but information on whether they are applied is scant

As for public officials who breach lobbying rules and guidelines, the legislation in almost all countries provides for disciplinary or administrative sanctions like fines. 45% of all OECD members that regulate lobbying also have criminal provisions, which can include imprisonment (Table 5.5).

However, with the exception of Slovenia – which in 2012 applied disciplinary and administrative penalties to 15 public officials and civil sanctions to three of them – and Japan – which in 2012 applied disciplinary or administrative sanctions to 63 public officials in the executive branch – no country compiles statistics on the number of officials punished for infringing lobbying rules. The lack of information makes it difficult to assess how well systems function.

Table 5.5. **Sanctions for public officials who breach lobbying principles, rules, standards or procedures**

	Disciplinary and administrative sanctions	Civil sanctions (e.g. fines)	Criminal sanctions (e.g. imprisonment)
Austria	●	○	●
Canada	●	○	●
France	●	○	○
Germany	●	●	●
Hungary	●	○	○
Italy	○	○	●
Japan	●	○	○
Mexico	●	○	○
Poland		○	○
Slovenia	●	●	○
United States	●	●	●
Total OECD11			
● Yes	10	3	5
○ No	1	8	6

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

Gaps identified and mechanisms to review the lobbying rules and guidelines

Gaps remain in lobbyists' compliance and enforcement strategies

Enforcement of integrity standards and codes of conduct remains relatively low and the majority of lobbyists surveyed by the OECD indicate that there are either no sanctions for breaching the standards or code of conduct or, if there are, that these are not compelling to deter breaches.

As part of their shared responsibility to strengthen the culture of integrity in their industry, lobbyist associations have created mechanisms to ensure compliance. Ninety-seven per cent of lobbyists responded that they were required by a business, a lobbyists' association, or the government to abide by a code of conduct.

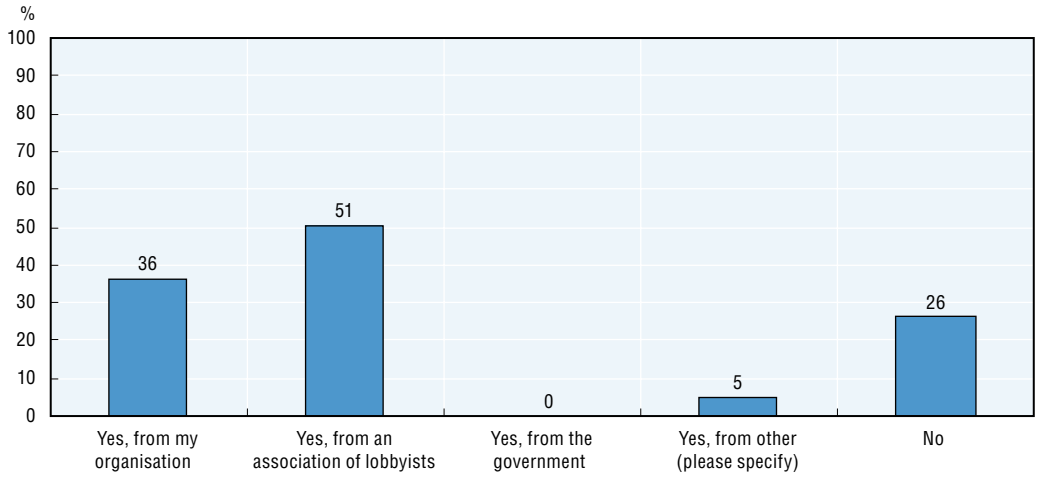
Lobbyists have also taken it upon themselves to foster integrity in their profession through awareness raising and training. Of the practitioners surveyed by the OECD, 86% had received training in integrity standards or transparency tools (Figure 5.3), but not from their governments.

Gaps remain in a central element of lobbyists' compliance and enforcement strategies. Enforcement of integrity standards and codes of conduct remains weak (Figure 5.4). Most of the lobbyists surveyed by the OECD said that government sanctions were either non-existent or non-deterrent (Figure 5.5).

Countries struggle to measure the costs and benefits of greater transparency and integrity in lobbying

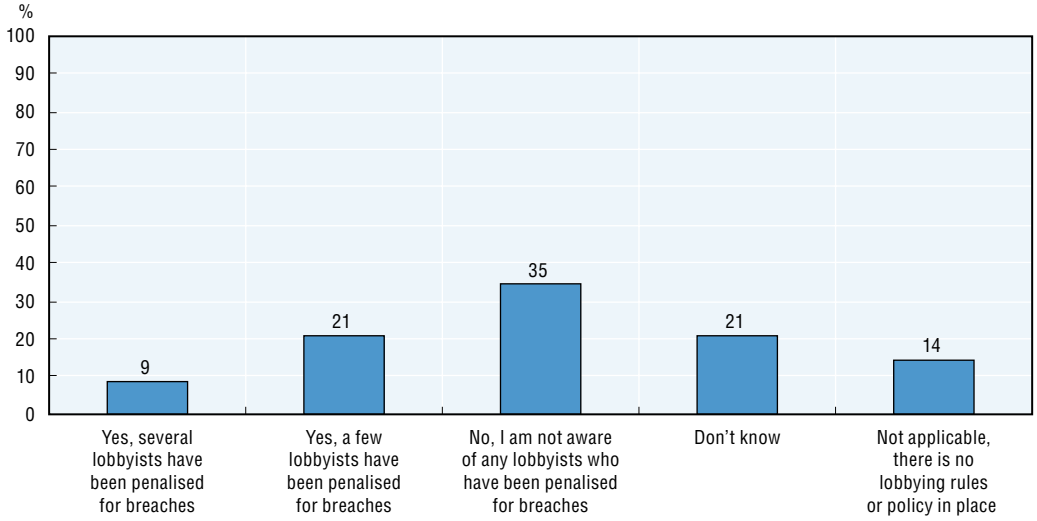
When countries address emerging concerns such as transparency in lobbying, compliance with the rules becomes particularly challenging. Setting clear, enforceable rules and guidelines is necessary, but not sufficient. To ensure compliance and deter and detect breaches, countries should design and apply a coherent spectrum of strategies and mechanisms that includes a system of monitoring and enforcement. Doing so would not

Figure 5.3. **Most lobbyists have received training in integrity standards or transparency tools from their employers or a lobbyist association**



Note: Respondents were asked the following question: "Have you received training in relation to integrity standards (e.g. Code of Conduct) or transparency tools (*e.g.* registration, activity/spending reports)?"
Source: OECD 2013 Survey on Lobbying for Lobbyists.

Figure 5.4. **Governments either have no sanctions in place or seldom apply them**

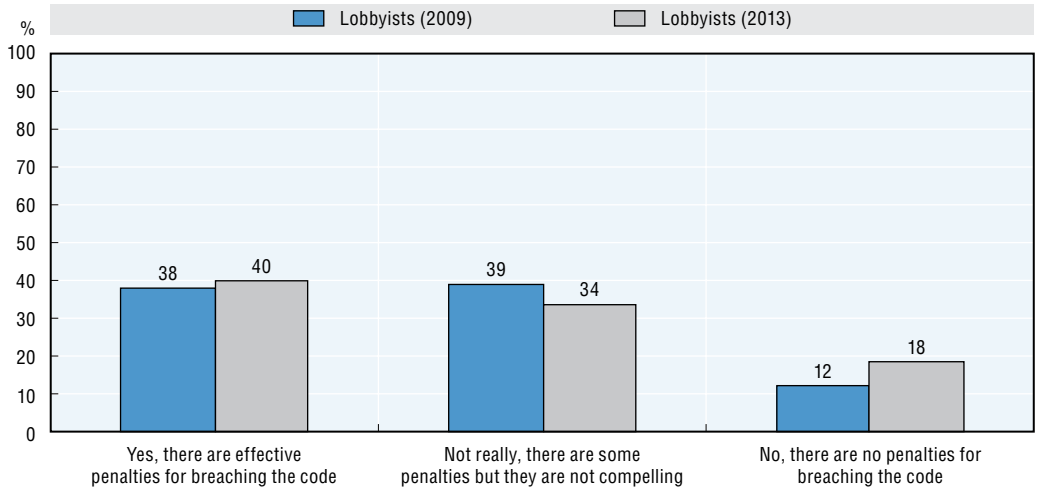


Note: Respondents were asked the following question: "Are you aware of any lobbyists who have failed to comply with lobbying rules or guidelines in your country in the last two years and have subsequently been penalised for breaches?"
Source: OECD 2013 Survey on Lobbying for Lobbyists.

only strengthen compliance, but would also allow governments to carefully weigh the costs and benefits of the system.

All components of good governance require assessment and data. Lobbying is no exception. Yet, most countries still struggle to measure the costs and benefits of enhancing transparency and integrity in lobbying. To better understand lobbying in different country contexts, it is of the utmost importance to gather data on costs for governments and lobbyists as well as on such benefits as greater trust in government and better informed, balanced, effective policies. Although technology considerably reduces the burden of

Figure 5.5. **Penalties for breaching codes of conduct are seldom effective deterrents**



Note: Respondents were asked the following question: "Are there compelling sanctions for breaching the lobbyist code of conduct?"
Source: OECD 2013 and 2009 Surveys on Lobbying for Lobbyists.

collecting and analysing data, there are still little quantitative data available in countries today.

Regular reviewing lobbying rules and guidelines is not standard practice in OECD countries

Regularly re-examining the rules and guidelines in place and how they are implemented – which includes compliance and enforcement – affords opportunities to strengthen and improve the system. Yet, not all countries that have instituted lobbying rules conduct such reviews, which prevents them to learn from experience and make necessary adjustments.

OECD Principles for Transparency and Integrity in Lobbying

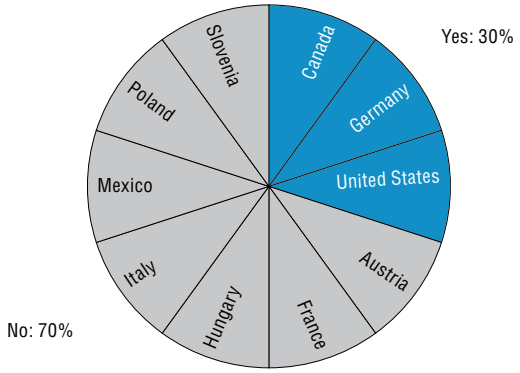
Principles 10. Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience.

Of the ten surveyed OECD countries with lobbying rules or guidelines in place, seven did not review them, how they were implemented, or how effective they were (Figure 5.6).

In the United States, there is no mandatory review process to improve the functioning of the lobbying oversight system. However, the Attorney General reports every six months to Congress on how the Lobbying Disclosure Act is administered, which includes the filing of registrations. In Canada, Article 14.1 of the Lobbying Act establishes a mandatory review of the legislation every five years by a committee of the Senate and/or House of Commons. Within a year of a review, the committee(s) must submit a report and recommend any changes to the Act. Similarly, the European Union's Transparency Register was reviewed in 2013, two years after it was instituted.

Drawing upon the experience of other countries which regulate lobbying, the Government Reform Unit of the Irish Department of Public Expenditure and Reform

Figure 5.6. **A minority of OECD governments review their lobbying rules and guidelines**



Note: Respondents were asked the following question: "Does the government review the rules and guidelines, including its implementation and its effectiveness?"

For Italy, the responses refer to the system put in place by the Ministry of Agriculture.
Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

produced a policy paper. It emphasised the main points from written submissions and meetings with participants in the consultation process and concluded:

> *"[I]t is recommended that the proposed legislation establishing the regulatory system for lobbying should make provision for a full review of the legislation, including its implementation and its effectiveness, no later than 18 months after it comes into force and every 5 years thereafter".*[4]

On that basis, the General Scheme of the Regulation of Lobbying Bill, published on 18 April 2013, includes the following:

> "Head 24 – Review procedures
>
> The Minister for Public Expenditure and Reform shall
>
> a) not later than 1 years after the commencement day and every 5 years thereafter, commence a review of the operation of this Act, and
>
> b) not later than 6 months after the expiration of the said 1 year and every 5 years thereafter, make a report to each House of the Oireachtas of his or her findings and conclusions, which should include a statement of any recommended changes to the legislation, or regulations under this Act, or its operation, resulting from that review.
>
> The review should be undertaken in consultation with the registrar. Formal consultations should be carried out with relevant Oireachtas committees in the course of the review process."[5]

If countries incorporated provisions for a review mechanism in their lobbying legislation, they would be able to draw on their experience of implementation to adapt the legislation and make it more effective.

Notes

1. Interviewees included politicians (both members of national Parliaments and members of the European Parliament) and senior officials from national governments and the EU institutions. In total, nearly 600 interviews were conducted.
2. Office of the Commissioner of Lobbying of Canada, Annual Report 2012-2013. See page 13, *www.ocl-cal.gc.ca/eic/site/012.nsf/vwapj/OCL-CAL_AR-RA_2012-2013-eng.pdf/$file/OCL-CAL_AR-RA_2012-2013-eng.pdf*.

3. United States Government Accountability Office, highlights of report to Congressional Committees on lobbying disclosure in 2012, *www.gao.gov/assets/660/653472.pdf*.
4. Government of Ireland's Department of Public Expenditure and Reform's policy proposals on regulating lobbying. See page 62 at *http://per.gov.ie/wp-content/uploads/Regulation-of-Lobbying-Policy-Proposals.pdf*.
5. General Scheme of the Regulation of Lobbying Bill, 18 April 2013. See page 38 at *http://per.gov.ie/wp-content/uploads/General-Scheme-of-the-Regulation-of-Lobbying-Bill1.pdf*.

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PART II

Country case studies

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Chapter 6

Austria: The transparency act 2013 for lobbying and interest representation

by
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This chapter provides an overview of the purpose and key elements of the Austrian Transparency Act 2013 for Lobbying and Interest Representation which came into effect on 1st January 2013. It describes the scope of coverage by the Act and the exemptions and differences in actors' Lobbying Register reporting requirements.

History of the Lobbying Act

The Austrian Transparency Act 2013 for Lobbying and Interest Representation (hereafter referred to as the "Lobbying Act") was published in the *Federal Gazette* I No. 64/2012 and came into effect on 1st January 2013. The act was a response to some unsavoury incidents – linked mainly to the uncovering of questionable practices in the European Parliament. They were roundly condemned and sparked vigorous debate among politicians and the interested public.

The public levelled criticism at the bill, even though it sought to frame a politically and socially sensitive area. The public's critical appraisal was already apparent in the evaluation process, where the Federal Ministry of Justice, which sponsored the bill, received an unusually high number of comments – over 100. Under pressure from public criticism, the bill was amended in the Justice Committee and adopted by the National Council complete with amendments.

Objectives of the Lobbying Act

Openness and transparency

The Lobbying Act aims to achieve several goals. The Act is mainly concerned with more openness and transparency in lobbyists' attempts to assert special interests by influencing the legislative and executive authorities. In principle, the assertion of individual or collective interests by influencing government officials is ethically neutral. In general, public representatives and civil servants in the executive branch are well advised to gain as comprehensive an overview as possible of the consequences of their decisions.

Problems will arise, however, if influence is exerted in a covert, secretive manner and if it is unclear which decisions are being influenced by which interests – in other words, if "wheeling and dealing" prevails. International lobbying rules are supposed to prevent such practices which are questionable from a legal and democratic point of view and violate the rule of law. The prevention of such practices is another objective of the present Lobbying Act.

Good governance

The purpose of transparency is to help improve the quality of legislative and administrative processes. If public representatives and civil servants can rely on a comprehensive level of information and wide-ranging discussions taking place prior to their decisions, the content and acceptance of legislation and administrative regulations will benefit. That is the goal of international activities that are comparable to Austria's Lobbying Act, and which the act will also achieve. The Austrian act is in line with international trends. Compared with regulations in other countries, it steers a middle course: it sets forth registration obligations and certain rules of conduct, but also provides for moderate sanctions.

Regulation and legitimisation

The Lobbying Act seeks to enhance trust in political and administrative decision processes by regulating lobbying activities. At the same time, it aims to pluck such activities from obscurity and give them the attention they deserve. Lobbying and interest representation must not be reduced to the mere assertion of economic interests on behalf of companies. The act's provisions cover not just economic interests, but the representation of social, cultural and environmental concerns, too. It also seeks to specify the manner in which civil society shall be involved in government decision-making processes.

Corruption

What the Lobbying Act cannot do is fight corruption. That is a matter of criminal law, where penalties for abuse of office and giving or taking bribes have recently been increased. Codes of conduct and registration obligations are not aimed at preventing abuse, which is regulated by criminal law. They come into play at a much earlier stage when the general question is raised of how the interests of individuals or entire groups may be articulated to the public authorities and which formalities should be observed in the process. Obviously, such rules also serve to prevent criminal acts of corruption, but that is not their primary goal.

Lobbying and representation of interests

In simple terms, the Lobbying Act rests on three pillars. First, it sets forth some rules of conduct to be observed when asserting and enforcing individual and collective interests. Such rules set specific minimum standards in dealings with public authorities. Second, the act obliges certain companies and institutions to be entered in the Register of Lobbyists and Interest Representatives. The electronic register is managed by the Ministry of Justice, and is for the most part accessible to the public online and free of charge. Third, when violated, rules of conduct and registration obligations carry appropriate sanctions: e.g. administrative penalties, removal from the register, and contractual consequences in the event of non-compliance.

Direct influencing

The Lobbying Act covers all activities by which influence is exerted directly on the Austrian legislature or government through structured, organised contact and irrespective of whether the decision process is ongoing or is yet to be put in motion. However, the act covers only interpersonal contact with civil servants or the public authorities. If a legislator or public official is not contacted directly, but pressure is exerted on them only through the media, the Act does not apply.

Nor does the Lobbying Act cover preparatory work carried out with a view to exert influence. As a case in point, research or studies performed with the purpose of finding out which person or authority is responsible for specific decisions are not defined as lobbying. However, the situation is different if the purpose of preparatory work is a specific intervention. That would be the case if a list of demands was drawn up and an appointment had been made with a decision-maker, or if a to-do list or position paper had been prepared and was to be presented. The result of the intervention would be irrelevant. The Lobbying Act also applies even if the legislative outcome is not that desired by the lobbyist, or if an administrative decision is taken against the lobbyist's wishes.

Organised, structured contacts

The Lobbying Act regulates only organised, structured contacts. Chance encounters with officials at public events, social functions, or in private, and any discussions that may take place on such occasions are not covered; nor are spontaneous reactions to specific statements by politicians or public officials at public meetings or on the Internet. A general complaint by a business person about the problems of his or her company voiced in the presence of a legislator or civil servant is not considered an organised and structured contact, even if the underlying expectation is to obtain a public contract.

Contract offers

Lobbying or the representation of interests involves direct influence being exerted on public officials with the purpose of securing a particular decision. The act does not cover contract offers by a company or the presentation of goods or services by a (sales) representative are not covered. Contract negotiations over prices or contacts within the framework of a legal relationship between the public authorities and a company are not considered lobbying.

The Lobbying Act covers action undertaken to influence the public authorities

The Federation, provinces, local authorities, and associations of local authorities

The Act does not cover each and every conceivable manner of influencing the public authorities. It applies only to activities undertaken to directly influence legislation or the administration of the Federation, the provinces, local authorities and associations of local authorities. Such activities would mainly be contacts with lawmakers, their staff, or parliamentary clubs on one hand and, on the other, interventions intended to influence ministers, provincial governors and legislators, mayors, members of the cabinet, or other government employees.

Lobbying with outsourced companies

Today, public services are frequently outsourced to companies or institutions. The Lobbying Act does not cover attempts to influence their decisions, even if they are in full public ownership. It applies only if the outside entity acts not as a private enterprise, but as the entity of a sovereign power.

Lobbying abroad and from abroad

The rules of the Lobbying Act apply to any action whose purpose is to influence a member of an Austrian legislative body (the National or Federal Council, a provincial diet, or local council) or any other decision-making body. They also apply to foreign companies lobbying Austrian functionaries.

Any attempt to approach an Austrian public servant so that he or she should influence a decision in the Council of Europe or in the European Council comes within the ambit of the Lobbying Act. However, European lobbying rules apply to similar attempts to lobby Austrian members of the European Parliament or Austrian members of the European Commission.

In the diplomatic and consular field it is customary and legitimate for states to assert and articulate their interests and those of their citizens. Such activities are explicitly exempted from the Lobbying Act. So, should a diplomat of another state accredited in

Austria stand up for the interests of his or her country, the rules of conduct and registration requirements are not applicable.

Lobbying activities that are exempted from the Lobbying Act

Activities of a public servant

If civil servants act within their sphere of competence, they are not subject to the act. This exemption applies, for example, to legislators who stand up for interests in their sphere of competence or to public officials who advocate a specific solution before their superiors.

Legal counsel and representation in proceedings

Representation of the interests of a third party in – or in connection with – administrative or court proceedings is not regulated by the Lobbying Act. When such proceedings are ongoing or pending and a party asks to be represented, there is no need for greater transparency. The exemption covers all kinds of representation, mainly those where lawyers, public notaries, public accountants or any other authorised persons intervene on behalf of their clients. Although such interventions are outside the remit of the Lobbying Act, they are subject to trade and disciplinary rules.

Interest representation is exempted from the act not only during proceedings, but during preliminary discussions, too. It is quite common for authorities meet with the interested parties beforehand and discuss any outstanding questions. The practice is particularly frequent in complicated proceedings, when companies want to sound out the situation in advance, ask for a meeting, and appoint a representative.

If a lawyer approaches a lawmaker or public official on behalf of a company with the purpose of having a legislative provision adopted or altered, he or she no longer acts as legal counsel or representative. In such an instance, the lawyer must observe the rules of conduct and registration obligations that apply to lobbyists.

The Lobbying Act applies to specialist lobbying companies, in-house lobbyists, self-governing bodies, and stakeholder associations

Generally speaking, the rules in the Lobbying Act apply to all companies, institutions, and associations that make representations to the government officials (at all levels) to advocate the individual interests of persons and companies or the collective interests of groups or companies. However, the rules of conduct and registration obligations do not apply to all to the same extent. The act distinguishes between specialist lobbying companies or in-house lobbyists advocating individual interests and advocating collective interests. Collective interests are usually represented by legally established self-governing bodies or stakeholder associations under private law. The act treats specialist lobbying companies and companies with in-house lobbyists more strictly.

Specialist Lobbying Companies

The Lobbying Act defines a "specialist lobbying company" as a company whose business objective is to take charge of lobbying contacts for a client (i.e. influence government officials in a direct, structured, and organised manner) in return for payment from that client. It is irrelevant whether lobbying is the company's only business or not. Also irrelevant is what kind of company it is, whether lobbying is its official business, what legal form it has

(be it a corporation or sole proprietorship), and whether it has a long term objective of its operations. The act considers employees of a specialised lobbying company as lobbyists.

All the obligations and sanctions in the Lobbying Act apply to lobbying companies and lobbyists. They should comply fully with the act's rules of conduct and wide-ranging registration requirements. Should they fail to abide by the act, they may be liable to severe sanctions: they may be stricken from the register, have their contracts rendered null and void, or forfeit their fees. Under certain circumstances, they may even face administrative penalties.

Companies with in-house lobbyists

The act also applies to companies that do not hire specialised lobby firms to advocate their interests to public officials, but choose to entrust the task to their own employees or organs (e.g. supervisory or executive boards). The Lobbying Act refers to such employees and organs as "company lobbyists" or "in-house lobbyists". The terms encompass all employees and organs who lobby on behalf of their company or an affiliated company, unless their lobbying activities are negligible.

The act sets a time-spent threshold beyond which company lobbyists must comply with its provisions. The threshold is 5% of the annual total of hours worked that employees devote to their (pure) lobbying activity. If lobbying accounts for less than 5% of the total time an employee spends working, he or she is not considered a company lobbyist. If the employee spends over 5% of his or her time lobbying, he or she must comply with the act's rules of conduct.

Company organs, too, are subject to regulation by the Lobbying Act if they seek to influence legislative or administrative decisions directly and in a structured, organised manner and if they exceed the time-spent threshold. Employees of a company who perform statutory professional duties are not considered company lobbyists. They include court-appointed experts, translators, or employees of a judicial support office.

Company or in-house lobbyists have to observe more extensive rules of conduct than others and are liable to sanctions under the Lobbying Act should they breach their obligations. In such an event they may face administrative penalties, be stricken from of the Lobbyists' Register, and certain contracts may become null and void under civil law.

Self-governing bodies with interest representatives

The Lobbying Act defines self-governing bodies as entities established by regulation or by a decision which champion professional or other interests on behalf of their members. They are mainly chambers of commerce and industry (including regional chambers), professional bodies, and trade associations. They represent only the collective interests of their members, not individual interests. The term "interest representative" denotes their employees and organs who spend more than half of their annual total working time lobbying. Assessments of whether employees or organs are predominantly active as interest representatives (i.e. spend more than half of their working time in that capacity) do not include activities exempted by law.

For self-governing bodies, the rules of the Lobbying Act apply only within limits. Most important is that their interest representatives may not be sanctioned.

Stakeholder associations with interest representatives

Like self-governing bodies, stakeholder associations also champion collective interests on behalf of their members. Unlike self-governing bodies, however, they are not

established by law. Instead they are private associations or operate under private law. The decisive factor in determining whether they are interest representatives or not is if they are predominantly active in the field of interest representation (i.e. spend more than half of their working time in that capacity). The representatives of stakeholder associations (organs and employees) are interest representatives in the meaning of the Lobbying Act.

The institutions that the Lobbying Act does not apply to

Full exemptions

Some organisations and institutions are fully exempted from regulation by the Lobbying Act. They include political parties and their subdivisions – confederations, sections, provincial organisations, etc. – but not "front-end" organisations or companies owned by a party. Also exempt are legally recognised churches and religious societies, together with municipality and local authority associations that champion the interests of local authorities in dealings with the federal and provincial governments. Nor are social security institutions (statutory pension, health, and accident insurance institutions) or their main professional association governed by the act's regulations.

One particularly important total exemption relates to stakeholder associations. The Act does not apply to them if they do not have any employees who are predominantly active as interest representatives in their field. The time-spent threshold is if more than half of annual working hours are devoted to influencing public officials directly and in an organised, structured manner. The fact that members of the executive board or other organs might be active for a stakeholder association has no bearing on the exemption. If stakeholder associations do not have any employees in the interest representation field, or if such employees are not predominantly active as interest representatives, they are fully exempted from application of the Lobbying Act. The original intention of the legislation was to exempt small associations.

Social partners and institutions competent to conduct collective bargaining

The only obligations that apply to "social partners and institutions competent for collective bargaining"[1] under the Lobbying Act are those pertaining to registration. They are not bound by the act's rules of conduct or liable to its sanctions (e.g. administrative penalties, being stricken from the register, or agreements being rendered null and void under civil law). Social partners include the Chamber of Economy, the Chamber of Labour, the Chamber of Agriculture (including its Conference of Presidents), as well as the Austrian Federation of Trade Unions. Partial exemptions also apply to their subdivisions, such as provincial chambers, political sections, professional associations and institutions, and individual trade unions.

Other self-governing bodies and stakeholder associations

In addition to the aforementioned actors, there are other self-governing bodies and stakeholder associations that have only to comply with registration obligations and very specific rules of conduct, which compels them to abide by the principles of lobbying and interest representation. Otherwise, the Lobbying Act's regulation does not apply to them. Importantly, they are not subject to the sanctions for which the act provides. Consequently, no administrative penalties can be imposed upon their employees or organs, nor can they be deleted from the Register of Lobbyists and Interest Representatives.

Discussions on exemptions to the Lobbying Act

Before the Lobbying Act become law and was still a government bill, the Justice Committee of the National Council discussed it at length and made some alterations subsequent to an expert hearing. The bill's essential components were adopted while strengthening some provisions, such as the legal definition of company lobbyists.

Concerning the exception for lawyers, the bill already contained such a provision, which the Justice Committee specifically redefined. In the opinion of the Federal Ministry of Justice, however, the act applies to lawyers if they act as lobbyists for certain clients outside of court or administrative proceedings – if, for instance, they approach a holder of public office to suggest that a law be amended. There are therefore no grounds to the claim that the National Council's exemption provision is a concession to professional lawyers. Such claims also overlook the fact that lawyers are subject to strict professional and disciplinary rules when acting as legal advisors or representatives, which is not true for lobbying companies and their lobbyists. The obligation for lawyers to disclose their remits and file them fully in the Register of Lobbyists and Interest Representatives would be in conflict with the their client confidentiality obligation which is protected by law. Nevertheless, the Austrian legislator has made an effort to strike a reasonable balance between that important principle of law and the public interest of ensuring transparency.

The Lobbying Act at work: Rules of conduct

Principles of lobbying and interest representation

The Act for Lobbying and Interest Representation spells out specific minimum standards for all persons, companies and institutions (except "social partners and institutions competent for collective bargaining") active in the field of lobbying and interest representation. For instance, when exercising any lobbying activity and when first contacting a public official, they must specify their tasks as well as the identity and specific interests of their employer, present information in a truthful manner, and be aware of the limitations and incompatibilities of their counterparties. They shall refrain from obtaining information by dubious means and from exerting unfair and improper pressure on their counterparties, which should not, however, prevent them from emphasising the value of their work by, for instance, stressing the repercussions of certain decisions on jobs and the labour market or by organising a demonstration.

Prior registration

There is a specific limitation on lobbying companies, companies with in-house lobbyists, and those with employees and organs operating on their behalf. They may only operate when they have been named for entry in the Register of Lobbyists and Interest Representatives. Before being named, they may take up contact with public authorities and seek to influence their decisions, but if they do not comply with the obligation, the consequences could range from an administrative penalty to their contracts being made null and void under civil law.

The Lobbying Act sets out a special registration obligation for lobbying companies. They may only execute a lobbying contract after reporting it for entry in the register. Even though the process of examining the report and entering it in the register may take some time, they may start lobbying as soon as they have reported the contract for entry.

Special obligations to be observed by lobbying companies

Lobbying companies (and they alone) are subject to additional obligations towards their contract partners and client. They must provide their clients with written or oral estimates of their fees and inform them without delay if the estimate is likely to be exceeded. They must also tell their clients which registration obligations they should meet when executing a contract. They may not claim to their clients that they have contacts and relationships with public functionaries which they do not have.

Code of conduct

Lobbying companies and companies with in-house lobbyists have to base their activities on a code of conduct. They must specify so on their website. The Lobbying Act does not contain any requirements as to the content of such a code, but companies may not content themselves with simply stating that they will comply with the legal regulations. Companies may draw up their own codes of conduct according to their needs.

Public positions incompatible with lobbying

The Lobbying Act also spells out which public offices are incompatible with lobbying. Legislators, mayors, ministers, provincial governors, provincial councillors, and public officials may not, at the same time as they hold office, operate as paid lobbyists in their field of competence. They may, however, work as company lobbyists or interest representatives if their activities do not cover their field of competence as a public servant and if their statutory duties allow them to do so.

How and where lobbyists should register

The Register of Lobbyists and Interest Representation

The second pillar of the Lobbying Act is the obligation for lobbyists and interest representatives to register in a dedicated database maintained by the Ministry of Justice – the Register of Lobbyists and Interest Representatives. Most of the data it contains are publicly available and can be accessed on the Internet. Like the rules of conduct, registration requirements depend on which type of actor that conducts the lobbying or interest representation. Again, lobbying companies are bound by the most comprehensive registration obligations. They are less far-reaching for companies with in-house lobbyists. Nevertheless, both kinds of organisation must transmit the required registration data to the Ministry of Justice before they can conduct any lobbying activity. For statutory self-governing bodies and private stakeholder associations the story is different. They are required to provide only a minimum amount of data for registration. If there are any changes in those data, they should be communicated in the register within three weeks.

Lobbying companies and their contracts

Before they start lobbying, lobbying companies must be registered in the Register for Lobbying and Interest Representation – in other words, they must have communicated their data for entry in the register. Registration is related to when a company wishes to begin lobbying and not when it was founded. As well as communicating their basic data to create an entry in the registration, lobbying companies are also obliged to register data on lobbying contracts as soon as they sign them and before they start them. Such data include the name of their client together with key data and area of which agreed upon in the contract.

Fees

There is a charge for being entered in the register, but not for filing data thereafter. The entry fee is EUR 630 for lobbying companies, EUR 210 for companies employing with in-house lobbyists, and EUR 105 for self-governing bodies and stakeholder associations.

Sanctions

Sanctions are the third pillar of the Lobbying Act. They are designed to secure compliance with the rules of conduct and registration obligations. They include paying administrative penalties, being stricken from the Lobbyist Register and contracts being made null and void. When a registration obligation is not met – e.g. a company performs a lobbying job without being registered – a fine of up to EUR 20 000 may be levied. If the offence is repeated, the fine may be increased to EUR 60 000.

In the event of lobbyists or lobby firms repeatedly and seriously breaching rules of conduct and/or registration obligations, the Federal Ministry of Justice may suspend them from the register, but always in accordance with the principle of proportionality. Suspension may last for up to three years. If a lobbyist or lobby company continues to operate in spite of being suspended from the Lobbyist Register, it is liable to a fine of up to EUR 20 000.

Finally, breaching the rules of conduct may also cause certain contracts to become null and void, so invalidating fee agreements. If a lobbyist who has knowingly violated the rules of conduct has already been paid, that fee shall be forfeited in favour of the government.

Evaluation

As the Lobbying Act came into force only on 1 January 2013 and sanctions may be applied only after a transitional period of two months as per 1 March 2013, little can yet be said about the act's effectiveness. Evaluation procedures are ongoing. So far, more than 600 companies or individuals have requested entry in the Register of Lobbyists and Interest Representatives. Moreover, the act has made an important contribution towards rising to the challenge of transparent decision-making. It would therefore be legitimate to speak of successful implementation measures.

Note

1. A comprehensive list of collective bargain partners is available at *www.bmask.gv.at*.

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Chapter 7

Brazil: Lobby regulation, transparency and democratic governance

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The development of more open regimes in Latin America has increased the transparency of the policy-making process, revealing instances of capture by private interests in public decision making. In order to address the root causes of corruption and enhance transparency in the policymaking process, a call for regulating the role and activities of interests groups has emerged in the region.

This chapter provides an overview of recent attempts to regulate lobbying in Brazil. It also explores related democratic governance achievements, such as recent laws on Access to Information and Conflicts of Interest.

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Introduction

Since colonial times, both political access and influence in Latin America have been restricted to a few groups. First, political elites – mainly white, wealthy upper-class families and individuals – have always enjoyed substantial political access without any broad-based political legitimacy. Second, the bureaucracy, which historically has not been chosen through a meritocratic and open process, has shared those privileges. Finally, access has been afforded to unofficial power groups which obtained access to the decision-making process through influence peddling and other forms of corruption.

It is important to mention that Latin America has been considered by scholars as an outstanding case of endemic corruption. Indeed, the subcontinent seems to fulfil what Caldas and Pereira (2007) describe as every "corruption variable":[1] immature democratic institutions; inefficient bureaucracy and law enforcement apparatus; over-regulated economies; gaps between private and public sector wages; economic reliance on natural resources; and early colonial formation and other cultural factors. Accordingly, 58% of Latin Americans citizens believe that the private sector offers bribes in order to influence government policies, laws or regulations. Furthermore, 61% of them – a rate higher than the global average of 56% – perceive the anti-corruption measures adopted by their governments as ineffective (Transparency International, 2009).[2]

It should also be understood that there is still a high level of perceived corruption in Brazil, which point to the need for measures that reduce the opportunity for undue influence. According to the 2009 Global Corruption Report of Transparency International, Brazil was ranked 80th out of 180 countries in 2008, with 3.5 points on a scale in which 10 denoted the lowest level of perceived corruption. In 2013, it was ranked 69th out of 176 countries on Transparency International's Corruption Index with 43 points (on a scale in which 100 is the lowest level of corruption). There were some important improvements, but the country still trails behind others on the subcontinent, such as Chile, Uruguay, and Costa Rica.

All these factors make for an environment where every public decision-making process is apt to arouse suspicion. Accordingly, interest representation in Latin America tends to be understood as a distortion of democratic ideal. Indeed, even in newly formed and developing democracies, where a more positive approach could be expected, media and common sense always link lobbying with corruption or influence-peddling, entrenching a perception that special interests are inherently illegitimate (Thomas and Hrebenar, 2008).[3] Furthermore, elected officials tend to be biased, due to the decisive role private money plays in elections by buying privileged access to decision-making. Finally, the suspicion of public decision-making is fostered by the culture of secrecy embedded in the civil service.

As a matter of fact, the main rationale for lobbying regulation initiatives in Latin America is the need to tackle corruption in order to restore trust in the government and faith in the political system. As a consequence, the virtuous role of interest groups as sources of

up-to-date information, or even the democratic requisite of a pluralistic approach to public decision-making, are mostly ignored as grounds for justifying regulation.

At the beginning of a period of democratic transition, every institution seems corrupt as that first democratic friction exposes to the light episodes of corruption that remained hidden under authoritarian regimes. So, when the transition towards democracy begins, people perceive democratic regimes as more corrupted than authoritarian ones. Even the increase in interest representation, which is nothing but a clear indication of democratic consolidation, is seen as a sign of corruption and the privileged access of economic interests. In Latin America all public decision making is considered biased because of the "inherent" – according to Thomas and Greenwood (1998)[4] – inequity of access between economic and non-economic interests.

At a later stage in the democratic transition, when institutions and practices have risen anew thanks, for instance, to the enforcement of tough anti-corruption measures, perceptions of corruption tend to fade and people gain a fresh sense of awareness of the relevance of transparency in general, and lobbying in particular, to the fight against corruption (Caldas and Pereira, 2007).[5]

Brazil and the region today appear to be at that stage, where lobbying regulation, transparency and freedom of information may be pushed onto the political agenda.

International lessons in lobbying regulation

Lobbying regulation is still a new issue for governments around the world. The first attempts to regulate lobbying date back to the end of the 19th century in some North American states and the US first legislated in 1946 (followed by reforms in 1995 and 2007). Yet, only a very small number of countries have included lobbying regulation in their rules for integrity and transparency. Those who have are the likes of Canada, Poland, Hungary, Ireland, UK, Australia, and the European Commission and Parliament.

In February 2010, after several years of research into national experiences and consultations, the OECD Council approved its Recommendation on Principles for Transparency and Integrity in Lobbying (OECD, 2010). It recommended that, in order to foster transparency and integrity, countries must regulate lobbying, defined as "oral or written communication with a public official to influence legislation, policy or administrative decisions".

For the OECD, the objectives of regulation are to gain balanced perspectives on issues, promote informed policy debate and formulation of effective policies, and allow all stakeholders – from the private sector and the public at large – fair and equitable access to participation in the development of public policies. Regulation is crucial in that it helps protect the integrity of decisions and safeguard the public interest by counterbalancing vocal vested interests. So, to foster citizens' trust in public decision-making, public officials should promote fair and equitable representation of business and societal interests.

The Organisation also recommends that, allowing for constitutional principles and established democratic practices, countries should assess the potential and limitations of various policy and regulatory options and apply the lessons learned in other systems to their own context. The rules and guidelines on lobbying should be consistent with the wider regulatory framework, taking into account how it may support a culture of transparency and integrity in lobbying. In order to enhance transparency, countries must ensure that public officials, citizens, and businesses can obtain sufficient information on lobbying activities.

In that regard, disclosure requirements could shed light on where lobbying pressures and funding come from.

Countries should also enable stakeholders – civil society organisations, businesses, the media, and the general public – to scrutinise lobbying activities, especially by using information and communication technologies to make information publicly and cost-effectively accessible. Civil society watchdogs, citizens groups, and independent media should be allowed to ensure proper scrutiny of lobbying activities. Communication with lobbyists must follow principles, rules, standards and procedures that give public officials clear directions as how they are allowed to engage with lobbyists.

Finally, countries should consider establishing so called "cooling-off periods" that temporarily ban former public officials from lobbying their old organisations. Such measures must be tailored to avoid conflict of interest, the misuse of confidential information, and post-public service "side-switching" where former public employees who worked on a particular matter or with particular parties make lobbying contacts on that matter or with those parties.

The OECD Recommendation reflects the "state of the art" and general understanding of the benefit of such legislation. It is also a roadmap that could guide Latin American governments in their specific legal and cultural contexts.

Initiatives to regulate lobbying in Brazil

Now that it is on the political agenda in Latin America, lobbying regulation has become a challenge for policy-makers because it encompasses a wide range of issues and generates high expectations. Policy makers must also make political choices as to the form, scope and instruments of the regulatory scheme best suited to their objectives.

As a matter of fact, Brazil has no legislation that specifically regulates lobbying. However, there are several rules that indirectly apply to lobbyists. The Brazilian Constitution enshrines, for instance, the right to petition and freedom of association. Consequently, it also guarantees the right to require disclosure of information and to have collective interests represented by associations. Furthermore, the country's criminal law addresses the issues of bribery, influence peddling, and other forms of corruption, while other legal provisions seek to curb the influence of money in politics. They include such articles of the Electoral Law that cap campaign expenditures both for individuals and companies and prohibit contributions from unions, political organisations, government contractors, anonymous contributors, and foreign sources.

Lobbying regulations deliver better results when part of a wider regulatory framework for good governance that incorporates rules for electoral financing (Transparency International and Carter Center, 2007),[6] information disclosure, and other measures to further the transparency and openness of decision-making process, such as open access to the schedules of public agents (OECD, 2008).[7] Rules that ensure access to information and prevent conflicts of interests play a very important role in open, transparent government, averting regulatory capture and the culture of secrecy. Also effective are public consultations and institutional arenas for public participation in the formation of new regulations. In fact, every transparency measure has in itself the power to promote a cultural change among lobbyists, citizens and public agents.

In other words, good governance is crucial to efficient lobbying regulations and transparency schemes that foster a culture of ethics in lobbying activities and public management.

Transparency

On 14 May 2002, President Fernando Henrique Cardoso issued Decree 4232 as part of a political response to scandals involving lobbyists and public officials. It was the first federal order to regulate, in general terms, meetings held between federal public agents and special interests. For the first time, a federal rule stated that special interest representatives should be registered at the public office where they intended to be heard.

The unprecedented wording did not, however, translate into immediately action. It was initially envisaged that the decree would come into force 30 days after publication, but extended shortly thereafter to 90. Then, before it could take effect, it was repealed by Decree No. 4334 of 12 August 2002, which kept Decree 4232's requirements relating to discipline and the disclosure of meetings and audiences, but abandoned the idea of a lobbying regulation based on records of organisations and lobbyists.

Decree 4334/2002 defined public agents as those who are legally responsible for taking decisions and individuals as those who request a meeting concerning private interests. The definitions covered meetings with any citizen or private organisations, which was a definite move away from the kind of lobbying regulation based on registration. It stated that requests for meetings should be addressed to the public agent, specifying the issue to be discussed and the names of everyone intending to attend, together with their particular interest in the issue. A further provision stated that the public agent must be accompanied by another public officer and that there had to be a record of the meeting that included the topics discussed and the names of all involved.

Hearings on matters related to tax administration, banking supervision, security, and other confidential topics were excluded from the scope of the decree, as were hearings open to the public. The rationale was that in such matters, a literal interpretation of the concept of lobbying could be a threat to the administrative functions that had direct dealings with the general public.

The effectiveness of Decree 4334/2002 is yet to be demonstrated. For prominent Brazilian lobbyist Said Farhat, it was never properly enforced. Although he had no objections to its provisions, which represented a government attempt to tackle corruption that was "more and more evident in all levels of public administration", he felt that they would "hardly be obeyed or put into practice", since they introduced so many "useless" formalities that even the most seasoned bureaucrats would not be able to cope (Farhat, 2007).[8] The decrees' provisions on the disclosure of meetings and schedules were eventually superseded by the 2012 Law on Access to Information and the Law on Conflict of Interests in 2013.

Registration of lobbyists

While no regulations require the registration of executive branch lobbyists, a Chamber of Deputies internal code stipulates that government and civil society representatives should be registered if they lobby the legislative branch. However, it was never properly enforced. In 2007, only 146 entities had registered their representatives, most of them from the government (Santos, 2008),[9] either the executive branch – Presidential Office, ministries, and other public offices – or the judiciary. Business representatives are the second most commonly registered lobbyists, followed by labour unions, and professional corporations.

Lobbying firms are virtually absent from the register, although their attentive presence in the daily workings of Congress may be felt by all. A 2012 survey identified 179 lobbyists from civil society and government institutions, mostly in-house lobbyists, and 37% hired for specific objectives (Maakaroun, 2012).

In the Federal Senate, there are no formal rules authorising – or requiring – a register of lobbyist and their activities, save for that which states that interest representatives may be invited to participate in public hearings. Nevertheless, in 2002, an internal rule issued by the Director's Commission established conditions (Resolution No. 11 of 1996) under which media professionals could gain accreditation to cover Senate activities. In 2010, another internal regulation (Act of the Directors Commission No. 8) extended those rules to grant credentials enabling Federal Government agencies, trades unions, and large nationwide enterprises to be represented on the basis of two representatives per institution.[10] However, there are no available public records of the credentials issued by the Senate.

Conflicts of interest

On 16 May 2013, President Dilma Rousseff approved Law No. 12.813 – the Conflict of Interest Law –which reframed all conflict of interest regulations. The law prohibited former public servants from disclosing or making use of inside information obtained by virtue of the activities they performed when in public office. It also expanded previous cooling-off provisions. During a six month cooling-off period after leaving public office, officials were prohibited from providing, directly or indirectly, any kind of service to persons or entities performing activities related to their former public position or job, or from approaching, directly or indirectly, their former public agency or entity on behalf of private interests.

The new law also sought to make lobbying contacts more transparent. Accordingly, it compelled all public officials who came within its scope to publish their daily schedules on the Internet. This disclosure rule applied not only to ministers of state, deputy ministers, and ministerial secretaries, but also – and for the first time – to public employees in less senior positions, such as senior advisers, state-owned enterprises and government agency managers, and department directors in all agencies and ministries.

Access to information

Another move to improve integrity came in November 2011 when, after a 36-month debate, the Brazilian Congress passed the Access to Information Law. The provisions of the law were intended to ensure the fundamental right of access to information and had to be executed in accordance with the basic principles of public administration – particularly the public availability of government decisions, the notion of secrecy as an exception, the disclosure of information in the public interest, the use of information technology, the promotion of a culture of transparency, and the public accountability of government officials.

The law ensured the exercise of the constitutional right of access to information, limited the secrecy of public records, reduced the number of officials with the power to declare information secret, and established procedures for accessing public records. It set forth rules for all levels of government in the Brazilian Federation, including states and municipalities. It also applies to every governmental body, including state-owned enterprises, and to every private entity that receives public resources directly from the budget or through social grants, management contracts, partnerships, agreements, or similar instruments. In its first year of implementation, more than 87 000 requests for information were made, but based on the data collected from the requests there is no way

of knowing if those people who requested information under the terms of the act were lobbyists, citizens, researchers, or other interested parties.

The enactment of the new Law on Access to Information ushered in a new perspective on the issue of the regulation of lobbying in Brazil (Angelico, Mancuso and Gozetto; 2013), as one major obstacle had precisely been the fact that public bodies were responsible for collecting and disseminating the information provided by lobbyists. The Access to Information Law removed the obstacle by requiring public organisations to have bodies that provide citizens with information on their activities, which includes lobbying activities and contacts (Angelico, Mancuso and Gozetto; 2013).

Open policy-making

Presidential Decree No. 4176/2001 states that the Office of the President, known in Brazil as *Casa Civil*, the co-ordination body at the centre of government, decides if a piece of draft legislation will be open for public consultation in order to receive comments and contributions from the public. Other items of legislation – especially concerning regulatory agencies – provide rules for notice-and-comments processes and public hearings on, for example, telecommunications, electricity, oil and gas, transportation and health surveillance.

It is also important to mention that, as an enduring consequence of 1930's state corporatism, a number of executive government departments are legally required to form policy-making boards that are open and compulsorily include companies, trade unions, and civil society organisations. At the federal level, about 90 national councils and committees – in which civil society organisations participate – provide access to policy formation and evaluation for about 1 500 representatives of government bodies, civic organisations, unions, business groupings, and minority groups. Overall, 59% of the representatives are from civil society organisations. Other important instruments of democratic governance and civil society participation in policy formation are the national conferences, 74 of which were promoted between 2003 and 2010. The year 2011 saw 8 being staged, with the participation of 10 000 delegates and a total mobilisation of 2 million participants if all the preparatory events were included. In 2012, another 5 conferences were held, and an additional 10 took place in 2013. 10 are scheduled to be held in 2014.

Political support from government and society for lobbying regulation

In recent years, public institutions responsible for anti-corruption policies in Brazil have called on the executive to bring a bill before Congress to regulate lobbying activities. In 2007, for instance, the National Strategy to Tackle Corruption and Money Laundering (ENCCLA), further to a decision from a group of more than 40 federal and local institutions, set the goal of design a bill for regulating interest representation in all government branches and to submit it to the President. The Office of the Comptroller General (CGU), together with many other public offices and professional associations, co-ordinated the effort. According to the CGU's former Secretary for Preventing Corruption, Marcelo Stopanovski, a lobbying regulation should establish limits and rules, make business more transparent, and facilitate its control (Santos, 2007).[11] Nevertheless, in December 2013 the Government had still done nothing but debate and prepare drafts, as President Dilma Rousseff did not considered it priority in an already crowded congressional agenda.

Yet, a survey carried out in 2007 among 60 members of Parliament and 60 senior government officials suggested that public servants who would be affected by the

regulation seemed to support it (Santos, 2007). In the view of 47.5% of respondents, lobbying should be regulated and limited to prevent corruption, conflicts of interest, and abuse of office, and 81.5% felt a lobbying regulation should apply to the executive, legislative and judiciary branches of government. As for its content, 71.5% of the respondents said that the regulation should focus on transparency and monitoring and 21.7% on levelling the playing field for all interest groups.

Responses to the survey point to positive expectations of the regulation: no less than 66.1% considered that a law would contribute decisively to reducing corruption and making the dealings between interest groups, politicians, and bureaucrats more transparent. However, 33.9% of respondents thought the regulation would have little effect, not only because it did not address the real causes of corruption, but also because it would mainly affect interest groups with little economic power.

As well as public officials, other key actors – such as the media, non-governmental organisations and the business sector – all supported such legislation. So, too, did lobbyists. On 10 May 2007, the Brazilian Association of Governmental and Institutional Relations (ABRIG) came into being with the objective of bringing lobbyists from all areas together within a single entity that would set standards for lobbying through "self-regulation" until such time as Congress passed a law regulating the activity.

One of ABRIG's founding members, Antonio Marcos Umbelino Lobo, stated that its goal was to "make it clear that lobbying is a legitimate and democratic activity, since the abiding image of lobbyists is that they are the ones who carry the black suitcase" (Verissimo, 2007). Guilherme Costa, responsible for the institutional relations of the State of São Paulo Industries Federation (FIESP), supported lobbyists' self-regulating initiative and stated: "ABRIG has the merit of bringing together individuals who are devoted to good practices" (ibid.).

In December 2006, Silva and Queiroz (2006) claimed that the absence of clear rules about lobbying "[had] made possible the action of adventurers, damaging the image of serious professionals and pressure groups that, in a legitimate, ethical and transparent way, [articulated] specific interests on public policy debates" (Silva and Queiroz, 2007).

According to Fernando Rodrigues, journalist on the newspaper *Folha de São Paulo* and president of the Brazilian Association of Investigative Journalism (ABRAJI), the main incentive for transparency in lobbying would be a federal law setting out wide-reaching, rigorous rules about how pressure groups can act in the corridors of power (Rodrigues, 2007).

Silva and Queiroz also backed lobbyists' self-regulation, arguing that the activity had to have rules of conduct both for public officials and lobbyists, "within the best ethical and moral framework, establishing transparency, accountability and equality before the law" (Silva and Queiroz, 2006). According to the authors, even though Brazilian lobbyists had been following "good practices", self-regulation could inhibit and punish any deviations therefrom and help to improve decision-making in Brazil. The Brazilian government should also regulate the behaviour of its own agents as soon as possible in order "to avoid the action of criminals on both sides of the equation who only contribute to the institutional decline of the country".

However, as pointed out by Murilo de Aragão from the consultancy firm Arko Advice, regulating lobbying does not solve the problem of influence peddling if there is no

transparency in the decision-making process: "as long as it is not transparent, there is no rule that would fix it" (Verissimo, 2007).

Although historically not a priority in Congress, the regulation of lobbying often returns to the political agenda, especially when scandals related to corruption and the exercise of undue influence arise and government bureaucrats and Congressmen and women are involved. As a consequence, the prevailing view of lobbying as a source of corruption reinforces the stigma that attaches to the profession. At the same time, however, it keeps the issue on the agenda.

Legal Proposals for Regulating Lobbying

A regulatory framework that brings all provisions for regulating lobbying together in a structured, formalised system is still on the agendas of the executive and legislative branches. A number of proposals for dealing with lobbying activities have been tabled in the Brazilian Parliament. The first such bill came before it in 1987, but the most relevant was Bill No. 1.202, introduced by Carlos Zarattini, a deputy from the Worker's Party in 2007. It proposed to regulate lobbying at the federal level in the government and in Parliament. It is still under consideration by the National Congress.

Indeed, Zarattini's bill is the most comprehensive and complete to date. It not only consolidates a number of legislative contributions submitted since 1987, but it also draws extensively on international experience.

It incorporates the usual provisions: the registration of public agents and professional lobbyists, "cooling-off" periods, reports of lobbying activities, and financial disclosure by lobbyists. There are also original initiatives, such as the provision of a compulsory training course for lobbyists seeking registration. The bill also entitles lobbyists to request to participate in hearings when decisions related to their remits are taken. Perhaps the most inventive feature of the proposed legislation is that it seeks to guarantee the public fair and equitable access to the decision-making process. It aims, too, to discipline the activities of lobbyists and pressure or interest groups across federal government, which implicitly embraces all three branches.[12]

Another concept introduced by Zarattini's proposal is that of "administrative decision", which denotes decision making by public officials on:

i) the proposition, consideration, drafting, editing, enactment, adoption, amendment or derogation of an administrative regulation or standard;

ii) public spending or its modification;

iii) the formation, development, or modification of a line of business or policy guideline, or its approval or rejection;

iv) the review, reassessment, approval, or rejection of an administrative act;

v) veto or sanction of a bill; and

vi) the designation of individuals for public jobs.

In fact, according to this definition, almost every public decision is the result of administrative decision making and, as a consequence, might arouse the interest of pressure groups.

According to Bill no. 1.202/2007, "lobbying" or "pressure" is "the deliberate effort to influence an administrative or legislative decision in favour of some individual or interest group, or against the interest of third parties". Lobbyists are defined as "the person, company,

association or non-governmental entity of any nature that prompt a public agent, his/her spouse/partner or any of their relatives, with the objective of achieving the administrative decision or legislative assent in favour of the interest group represented, or against the interests of third parties". The bill considers that any business or association which holds a stake in an administrative decision can be classified as an "interest group representative".

In its concern with "integrity", the proposal defines "reward" as "any sum of money or other valuable good, actually or potentially received by a public agent, his/her spouse/partner or any of their relatives, from an interest group representative or from anyone acting on behalf of an interest". As stated in Article 9, the receipt by a public agent of any political advantage, donation, benefit, courtesy or valuable gift that could affect the balance and the impartiality of his/her decision is considered an act of improbity.

The proposal also makes it mandatory to record meetings between public officials and professional lobbyists, set the cooling-off period at 12 months, and stipulates that lobbyists should file reports of their activity and of their disbursements in each fiscal year.

Individuals or companies that try to influence federal government decision-making processes must register. Executive branch lobbyists should register with the CGU, which is the federal body responsible for anti-corruption and transparency policy in the executive. There is no indication of the body responsible for such registration in Congress or the judiciary, where regulation is considered internal affair.

As for the "cooling-off" period, former public officials may register as lobbyists only once 12 months have elapsed since they left a position in government where they were involved in a policy matter that was the subject of lobbying initiatives.

Lobbyists may submit requests to take part in public hearings at which wide-ranging opinions and positions may be aired, with the number of speakers limited to six.

In order to promote equal access to decision makers, a public decision-maker who has had a meeting with an interest representative is not allowed to take a position or vote in any assembly before hearing the opposite interest in similar circumstances.

Lobbyists must attend, at their own expense, a mandatory training course within the first 180 days of registering. The course must incorporate a specific programme on ethics, legal obligations and restrictions in dealings with public officers, and methods of accountability.

Individuals who act without payment and on an occasional basis in their own interest, who merely attend public debates, or who are invited to express their opinion in public hearings are not considered lobbyists and are exempt from the obligations of Zarattini's bill.

The bill came before the Chamber of Deputies' Committee on Labour and Public Administration which approved its terms on November 2008. More than three years later, in May 2012, it was submitted to the Committee on Justice and Constitutional Affairs, where it underwent changes that significantly reduced its scope on the grounds of simplifying its terms, easing administrative burdens, and avoid constitutional conflicts. In December 2013, the newly altered bill was still awaiting final approval by the committee, before being submitted to the floor of the chamber. According to Mr Zarattini, the Committee on Justice and Constitutional Affairs will probably submit the bill to vote in the first semester of 2014.

Reasons for the success and failure of lobbying regulation schemes

Legal reforms are necessary but not sufficient for changing socially entrenched practices. Indeed, the effectiveness of formal legal provisions against corruption is usually hindered by lack of enforcement capacity. Moreover, poor access to information can actually harm the integrity framework, shielding the behaviour of public officials from public scrutiny and creating room for privileged access in the policy process.

Thus, when considered as a mere anti-corruption measure with the sole goal of curbing corruption, the regulation of lobbying is doomed. In fact, it affects corruption only indirectly. Although regulation undoubtedly levels access to decision-making by allowing anyone to participate, regardless of their economic status, the wealthy will always find easier access if bribery remains an option. And while it might help build a culture of transparency and integrity, it will only lessen perceived corruption if shored up by other forms of corruption control and accountability. In other words, the regulation of lobbying regulation alone may not influence political morality.[13]

In this sense, lobbying regulation must not only build on strict anti-corruption arguments, it should also be an effort to give all an even chance to influence. To that end, it must come complete with public disclosure of information rules, a pre-condition for "levelling the political playing field".[14] In fact, information disclosure is crucial for fighting corruption, since it is clear that the principal-agent problem flourishes when there is asymmetrical information (Klitgaard, 1994).[15]

There are some indicators that help assess the impact of lobbying regulations on corruption. The first is the perception of transparency, enhanced by public disclosure, and one of the great possible achievements of lobbying laws according to Thomas.[16]

This perception must be evaluated against this information:

1. who has benefited most from the public disclosure of lobbying,
2. the actual impact of regulations on the conduct of business by established interest groups and lobbyists,
3. how elected officials and political appointees have been affected by the regulations.[17]

Although there are no empirical studies on the direct impact of the recent attempts to regulate lobbying on perceived corruption, it can be said that the ineffectiveness of the schemes adopted in Latin America might be an enforcement issue. Otherwise, it might be that lobbying rules are inherently ineffective in a democratic setting due to the necessary fluidity of any decision-making process that intends to be as open as is required by a proper democratic regime. As stated by Loewenstein (1957), the registration and control of lobbying tend to be ineffective if the activity is considered an inherent part of democracy (Lowenstein,1957).[18] If it is truly the case, lobbying regulation schemes would be mere instruments for providing political legitimacy to governmental anti-corruption efforts.

Prospects for the future regarding corruption and lobbying in Latin America

Any assessment of prospects for Latin American regulations must bear in mind that both the sub-continent's democracies and their regulatory frameworks for transparency and participation are at an experimental stage. In other words, results are yet to be seen and will be probably different in each local context, since there is no single formula. Indeed, as far as lobbying regulation is concerned, one size does not fit all (OECD, 2007).

In Latin America, and in Brazil in particular, there have been significant changes in the way interest groups operate since the re-establishment of democracy, particularly given their recent proliferation in the transition towards a more pluralistic society (Johnson, 2008).[19] Indeed, due to neoliberal economic reforms, the big groups have seen the emergence of many smaller ones representing the same interests. As a consequence, some authors have argued that the articulation of interests in Latin America has become more pluralistic, discarding the corporatist scheme of things whereby political power was shared only among the state and corporations and unions. The growing pressure from an increasing number of distinct private interests has been the main driving force behind the emergence and rise of democratic governance institutions that has brought a number of interest groups into the inherited corporatist fold, as has happened in Brazil.

Despite regular elections, freedom of expression, political parties, independent electoral authorities and other democratic institutions, the corporatist trend that still underlies state-society relations in Latin America hinders the rise of independent interest groups (Lanna, 1999).[20] In this context of overly controlled political participation, the substance of public policy used to be defined within state bureaucracy and in its interaction with economic elites. Such a model – at once bureaucratic, corporatist, and elitist – makes the development of effective, plural political practices impossible.

In fact, apart from regulating lobbying, the Brazilian political system requires other reforms if political parties are to turn into more ideology-oriented institutions that are able to aggregate interests and not be driven by them. Electoral campaign finance reform, for instance, is essential in order to lessen the degree of political parties' clientelistic dependence on interest groups. The subsidy arrangements that sprang from the formal legal relationships between the government and the interest groups it engaged must be replaced by civil, political and economic activism that is less geared to obtaining government grants.

Finally, the design of regulatory framework that governs lobbying could improve access to information and scale down conflicts of interest if it clearly defined the procedures for public participation on public decision-making and enhanced the society's scrutiny of bureaucrats and members of Parliament.

Conclusion

The regulation of lobbying can help increase transparency and the public scrutiny of the interaction between interest groups, politicians, and bureaucrats. However, it is not sufficient. In fact, information flows from and to the government through networks of people – epistemic communities – regardless of their formal positions. As stated by Kingdon (1995), there will always be bridges built by "common values, orientations, and world views" linking people from inside to others outside the government (Kingdon, 1995).[21]

Simple practices could sharply improve the level of transparency in and access to public decision making. For instance, the agenda of any public meeting, whether in parliamentary committees or executive agencies, should be disclosed at least 24 hours in advance. Agendas should not include too extensive a set of issues, and late changes to them should not be allowed. Another initiative for enhancing transparency would be the use of regulatory impact assessments (RIAs – see above) to clearly identify who and what a proposed policy might impact, and how. In parallel to such good governance practices, there is a need for properly designed institutions to enforce yet to come lobbying regulations.

Scholars point to the regulation of lobbying as a symbolic indicator of government reaction against irregular behaviour (Lowery and Gray, 1997).[22] It can also be said that it is a positive contribution to greater transparency. In transparent public decision-making settings private interests are clearly identified and taken into account, necessarily revealing their advocates' strategies and resources. An old American political adage states: "transparency is a great corrective for deviating behaviour" (Key, 1964).[23] By shedding light on lobbies and to whom, how, and with which objectives lobbying takes place, regulation translates into practice what Justice Louis Brandeis, one of the most preeminent and progressive members of the USA Supreme Court, stated in 1914: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman" (Brandeis, 1914).

Furthermore, any regulation that respects Latin American political culture must take into account, among other things, that the region does not perceive lobbying as an inherent part of democracy. There is a need for public campaigns to restore the image of lobbying. It must be controlled, of course, but not prohibited. The public should be able to distinguish between lobbyists who rely on corruption and influence-peddling and those who professionally advocate private but legitimate interests, preserving the impartiality and autonomy of government.

Finally, lobbying regulation schemes must be very careful to avoid distortion on two fronts. First, regulations must not turn lobbyists into malign characters to be hunted down in the name of democracy. Second, they should bear in mind that there is a tendency in Latin America to build up bureaucratic obstacles that serve only as another barrier to public participation. Every regulatory initiative in the region must factor such precautions into their design. Otherwise, they will be utterly ineffective.

There is an extensive field of research yet to be explored. Almost nothing has been said about lobbying in the judiciary or the role of lawyers. Another overlooked issue given the federalism adopted across Latin America is the regulation of sub-national lobbying. There is also room for investigating interest groups and lobbyists in each country – their power, resources, and interactions within the political system and policy communities. A final highly promising area of study would be the influence of corporatist culture on interest representation in Latin America. Lobbying is an old issue at a very early stage of investigation, requiring great efforts from the academic community and policy makers responsible for the design of transparency and anti-corruption strategies.

In the Brazilian case, the recent approval and implementation of the laws on Access to Information and Conflicts of Interest stress the importance of a law to regulate lobbying that is part of a wider "good governance" framework and factors in international experience and the results of wide-ranging consultation with the public, civil society, and the media. Any lobbying regulation must introduce a system of registration and incorporate provisions for publicly monitoring lobbying activities. It must be functional and adjusted to the realities of public administration, taking into consideration vested interests, citizens, civil society organisations, and individuals in the policymaking process. And it should steer clear of the bureaucratic excesses that can raise barriers to the rights of petition, association, and freedom of expression, particularly those of the economically less well-off, so threatening their participation in public decision-making.

Notes

1. Caldas and Pereira (2007), page 28.
2. Transparency International (2009), page 40.
3. Thomas and Hrebenar (2008), page 6.
4. Thomas and Greenwood (1998), page 488.
5. Caldas and Pereira (2007), page 73.
6. Transparency International and Carter Center (2007), page 4.
7. OECD (2008), page 19.
8. Farhat (2007), page 67.
9. Santos (2008), page 416.
10. Federal Senate of Brazil, Ato da Comissão Diretora no. 8 de 2010, *www.senado.leg.br/noticias/especiais/credencial/documentos/atc-08-2010.pdf.*
11. Santos (2007), page 6-A.
12. Many other statutes explicit the meaning of "Federal Public Administration", such as Law n° 9.784/2009, which regulates administrative procedure at the Federal Public Administration and declares that its provisions are applicable to the Legislative and Judiciary while in their administrative functions.
13. Thomas and Greenwood (1998), page 511.
14. Thomas and Greenwood (1998), page 503.
15. Klitgaard (1994), page 220.
16. Thomas and Greenwood (1998), page 512.
17. Thomas and Greenwood (1998), page 511.
18. Loewenstein (1957), page 357.
19. Johnson (2008), page 95.
20. Lanna (1999), pp. 20-29. page 24.
21. Kingdon (1995), page 45.
22. Lowery and Gray (1997), pp. 139147.
23. Key (1964), page 151.

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Chapter 8

Canada: How the federal lobbying act has matured

by
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This chapter provides an update on Canada's federal lobbying legislation, the Lobbying Act. It briefly describes the purpose and key elements of the legislation on lobbying at the federal level in Canada and how it enhances the transparency of lobbying through mandatory registration of lobbying activities and reporting of communications with certain public office holders.

The chapter also provides information on the work of the Office of the Commissioner of Lobbying.

Introduction

Canada has two decades of experience administering legislation on lobbying. The first piece of federal legislation was the *Lobbyists Registration Act* which came into force in 1989. Expectations of greater transparency and integrity have put lobbying back on the political agenda repeatedly over the years.

The most recent amendment to the legislation came in 2008, when the Lobbyists Registration Act was superseded by the *Lobbying Act* (also referred to as "the Act").[1] This chapter briefly summarises how the Office of the Commissioner of Lobbying administers the act and examines three of its mandates: maintaining a registry of lobbyists that is accessible to all Canadians; fostering greater awareness of the Act's provisions through outreach and educational programmes; and ensuring compliance with both the Act and the *Lobbyists' Code of Conduct*.[2] The chapter also discusses recent challenges, such as the statutory review of the *Lobbying Act* and efforts by the Commissioner to widen education and outreach activities.

Purpose and description of the *Lobbying Act*

The *Lobbying Act* provides for the registration of persons who are paid to communicate with federal public office holders on certain matters – such communication is referred to as "registrable lobbying activity". The *Lobbying Act* provides that persons are required to register under the Act if they communicate with federal public office holders with regard to the following matters:

- the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs;
- the awarding of federal grants, contributions, or other financial benefits; and
- in the case of consultant lobbyists the awarding of a federal government contract, or the arranging of a meeting between a public office holder and another person on behalf of a client of the lobbyist.

Basic principles

The four basic principles set out in the preamble to federal lobbying legislation have remained in place since the enactment of the first piece of legislation in 1996:

- Free and open access to government is an important matter of public interest.
- Lobbying public office holders is a legitimate activity.
- It is desirable that public office holders and the general public know who is engaged in lobbying activities.
- The system for the registration of paid lobbyists should not impede free and open access to government.

Who are lobbyists and who do they lobby?

The *Lobbying Act* identifies three categories of lobbyists:

- consultant lobbyists;
- corporations' in-house lobbyists;
- organisations' in-house lobbyists.

Consultant lobbyists are individuals who, for payment, lobby on behalf of a client. They may be government-relations consultants, lawyers, accountants or other professional advisors who provide lobbying services for their clients. They must file a registration for each one of their undertakings – i.e. for every lobbying contract with every client.

In-house corporation lobbyists are employees of share-capital (for-profit) businesses. They typically work full-time and devote a significant part of their duties to public affairs or government-relations work on behalf of their employer. The most senior paid officer must register the corporation if the total lobbying activity of all employees equals 20% or more of the duties of one equivalent full-time employee.[3] The registration must include the names of all senior officers – the most senior officer and all his or her direct subordinates – who engage in any lobbying activity, as well as the name of any employee who devotes a significant share of his or her duties to lobbying activities.

In-house organisation lobbyists are employees of not-for-profit entities, such as trade unions, non-governmental organisations (NGOs), and industry associations. The most senior paid officer of such an organisation must register the names of all employees engaged in lobbying activity, if their total lobbying activity equals 20% or more of the duties of one equivalent full-time employee.

The *Lobbying Act* defines public office holders as including nearly all persons occupying an elected or appointed position in the Government of Canada, including members of the House of Commons and the Senate, political staff, officers and employees of federal departments and agencies, members of the Canadian Forces and members of the federal police force, the Royal Canadian Mounted Police (RCMP).

The Act also introduced a new sub-category of federal government public office holders known as designated public office holders (DPOH). DPOHs have been identified as senior decision-makers in government. They include the Prime Minister, Ministers and their staff, Deputy Ministers, Assistant Deputy Ministers, and others who hold positions of equivalent rank. In 2010, a regulation expanded the category to include all members of Parliament and Senators.

The *Lobbying Act* requires lobbyists to disclose additional information when they have oral and arranged communications with DPOHs.

Lobbyists: Registration and disclosure

The Registry of Lobbyists is the core instrument of transparency established by the *Lobbying Act*. The Act mandates the Commissioner of Lobbying to institute and maintain the Registry of Lobbyists (henceforth referred to as "the Registry") through which individuals, corporations, and organisations must publicly disclose their lobbying activities. The Registry, which is publicly accessible, enables public office holders and the public to see who is lobbying which federal official and what bills, regulations, policies and programs are the subjects of lobbying.

The *Lobbying Act* sets out a broad range of information that lobbyists must disclose. This information contained in the Registry includes:

- who lobbies federal public office holders, and on behalf of which corporations or organisations;
- which parent and subsidiary corporations benefit from lobbying activities;
- the organisational members of coalition groups represented by lobbyists;
- a general description of the subject matter of lobbying activities, as well as some details such as the names and descriptions of the specific legislative proposals, bills, regulations, policies, programs of interest and the grants, contributions or contracts sought;
- the government funding received by not-for-profit organisations and for-profit corporations;
- which Government of Canada departments or agencies are being contacted;
- the public offices held within the Government of Canada by individuals registered as lobbyists before they started lobbying; and
- details regarding certain oral and arranged communications with designated public office holders.

Corporations and organisations must also provide general descriptions of their business or activities.

Registry information collected under the *Lobbying Act* and the *Lobbyists Registration Regulations* is available on the website of the Office of the Commissioner of Lobbying.[4] In this way, the public can readily find out who is being paid to communicate with federal public office holders. The Registry has evolved since it was established. It now provides more information to the public than ever before and makes it available in a number of different ways to meet user needs. It is accessible at no cost in both English and French. Given the strict timelines within which information must be filed and updated by lobbyists, the Registry provides reliable, up-to-date information about individuals, not-for-profit organisations, and for-profit corporations who lobby the federal government, whether by communicating with elected officials or with public servants.

The Registry is kept up-to-date by requiring all lobbyists to update or renew their filings every six months and by implementing a single filing approach for the registration of corporations and not-for-profit organisations. Previously, an individual lobbyist was accountable for registering in-house lobbyists. Since 2005, it has been the job of the most senior paid officer in the corporation or organisation. The single filing system is intended to provide consistent treatment for all types of lobbyists and to ensure that accountability for lobbyists' actions lies at the highest levels in corporations and organisations.

The Lobbyists' Code of Conduct

When Parliament amended the *Lobbyists Registration Act* in 1996, it ushered in a major change that would clear the way for a code of conduct. The *Lobbyists' Code of Conduct* (also called "the Code") came into force on 1 March 1997. It has undergone no change since then. In 2013 the Commissioner of Lobbying completed a consultation with interested parties to determine whether the Code should be reviewed to ensure it is meeting its objective. After analysis of the consultation results, if the Commissioner determines that changes to the Code are necessary, a new draft Code will be developed and a second consultation will be launched in the fall of 2014.

The purpose of the *Lobbyists' Code of Conduct* is to assure the Canadian public that lobbying is carried out ethically and in accordance with the highest standards. The aim is to improve public confidence and trust in the integrity, objectivity, and impartiality of government decision making.

The Code establishes mandatory standards of conduct for all lobbyists who communicate with public office holders in the Government of Canada. It begins with a preamble that states its purpose and places it in a broader context before setting out the principles and rules by which lobbyists must abide.

The principles are broad, establishing in positive terms the goals and objectives that lobbyists should attain, but without establishing precise standards. The principles of Integrity, Honesty, Openness and Professionalism are goals that should be pursued and are intended as general guidance.

The Code's principles are followed by rules that set out specific obligations and requirements. The rules are organised into three categories:

- Transparency.
- Confidentiality.
- Conflict of Interest.

Under the Rules of Transparency, lobbyists have an obligation to provide accurate information to public office holders. They must also disclose the identity of the persons or organisations on whose behalf they make a representation, as well as its purpose. To their clients, employers, or organisations they must disclose their obligations under the *Lobbying Act* and the Code itself.

Under the Rules of Confidentiality, lobbyists may not divulge confidential information or use insider information to the disadvantage of their clients, employers, or organisations.

Under the rules governing Conflict of Interest, lobbyists must not place public office holders in a position of conflict of interest by their actions, nor represent conflicting or competing interests without the consent of their clients.

Education – outreach

The *Lobbying Act* gives the Commissioner of Lobbying a mandate to foster public awareness of the Act and its requirements. To that end, the Commissioner may use a number of means, such as the educational programmes that have been developed to reach out to lobbyists, their clients, public office holders, and other stakeholders.

Informing stakeholders about the objectives and requirements of the *Lobbying Act* and the *Lobbyists' Code of Conduct* leads to better compliance. Since July 2008, the Commissioner and staff in the Office have met with more than 3 000 individuals. They include lobbyists, public office holders, parliamentarians and their staff, as well as academics from various post-secondary institutions across Canada. On average, the Commissioner appears twice annually before the House of Commons Standing Committee on Access to Information, Privacy and Ethics to discuss the Office's accomplishments and activities in administering the Act and the Code.

Communicating with lobbyists

The Office of the Commissioner of Lobbying devotes significant effort and resources to inform and educate lobbyists about the requirements of the *Lobbying Act* and the *Lobbyists' Code of Conduct*.

Outreach efforts are targeted at individuals and groups of lobbyists to foster an in-depth understanding of legal and ethical requirements. They give lobbyists opportunities to address issues of concern, and help the Office identify areas where further clarification is required to facilitate registration and ensure compliance with the Act and the Code.

The Office provides personalised advice and service to registrants, each of whom is assigned a Registration Advisor. In 2012-13, the Office adopted the practice of emailing all newly registered consultant lobbyists to introduce them to their assigned Registration Advisors. The email also reminds them of registration and reporting deadlines, and offers assistance and guidance either by telephone, email, meetings in person, or on-line webinars. In 2013-14, this approach was extended to new corporate and organisational registrants.

Electronic mail-outs are a cost-effective approach for communicating key information to registrants. In 2012-13, registrants were provided with information by email on the status of the legislative review of the Act that was being conducted by the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

Lobbyists were also advised about the Commissioner's Reports on Investigation tabled in Parliament and alerted to the improvements made to the Registry's search and reporting tools during the year. Communicating by mass email with registrants allows the Office to provide guidance quickly and raise awareness of specific aspects of the lobbying regime.

Communications with potential registrants

Advisory letters are sent to individuals who appear to be engaging in lobbying activities but are not registered. Between 2012 and 2013, 113 corporations and organisations were subject to compliance verifications when the monitoring of lobbying activities revealed possibly unregistered lobbying activity. The Office confirmed that approximately 90% of the recipients were registered as required by the Act. In other cases, advisory letters were sent to educate and assist potential registrants in determining if they were subject to the Act's registration requirements.

Educating public office holders

Federal public office holders are the targets of lobbying activities. Whether elected or appointed, they are well placed to make an important contribution to the level of understanding of the Act and the Code. When public office holders understand the requirements of the Act and Code, they are more likely to recognise the legitimacy of lobbying activities and contribute to compliance.

The Commissioner and staff of the Office of the Commissioner of Lobbying regularly meet with senior federal officials and their management teams in departments and agencies. The sessions are an effective means of sharing information that relates to lobbying; determining future outreach and information needs; and discussing specific requirements of the *Lobbying Act*, including the application of the five-year prohibition on lobbying to former designated public office holders. During 2012-13, the Commissioner and her staff provided educational sessions to representatives from a wide range of federal institutions, with a particular focus upon the 20 most-lobbied ones.

In addition, during the past year, staff in the Office gave presentations on the *Lobbying Act* to the Community of Federal Regulators and the Stakeholder Relations and Public Engagement Community of Practice. Both are important groups which regularly consult with external stakeholders and may be lobbied on occasion. The Commissioner and her

staff also spoke about lobbying in programmes organised by the Canada School of Public Service for new public servants.

Educating current and former designated public office holders

The *Lobbying Act* introduced a new sub-category of federal government public office holder known as designated public office holders (DPOHs). DPOHs have been identified as the most senior decision-makers in government. Once they leave office, they are subject to a five-year prohibition on lobbying under the terms of the *Lobbying Act*. In response, current and former DPOHs are increasingly seeking advice and guidance from the Office of the Commissioner of Lobbying when they consider private sector offers of employment that could involve lobbying activity.

Assisting parliamentarians

As an independent Agent of Parliament, the Commissioner reports directly to both Houses of Parliament. The Commissioner appears primarily before the House of Commons Standing Committee on Access to Information, Privacy and Ethics to report on the activities of the Office of the Commissioner of Lobbying in administering the Act and the Code. The objective is to provide all the necessary information for helping parliamentarians understand how the Office delivers on its mandate and allows Parliamentarians to effectively perform their oversight role.

The Commissioner appeared before the Committee in March 2013 in the context of the statutory review of the federal *Conflict of Interest Act*, then again in April 2013 to discuss the Main Estimates, highlight accomplishments and outline priorities for 2013-14.

Connecting with counterparts

In Canada, the community that works to ensure that lobbying is conducted in an ethical and transparent manner is relatively small. Provincial counterparts have been established in British Columbia, Alberta, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland and Labrador. At the municipal level, there are lobbyist registries in the cities of Toronto and Ottawa. All municipalities in Quebec and the City of St. John's in Newfoundland and Labrador are covered by their respective provincial legislation.

Meetings of the network of municipal and provincial counterparts, known as the Lobbyists Registrars and Commissioners Network, are a regular venue for discussing ways to address existing issues and emerging challenges in various lobbying jurisdictions. The network normally meets twice a year in order to share experiences and discuss matters related to the administration of their respective lobbying regimes.

Topics of mutual interest discussed in 2012-13 included how lobbyist registries and codes of conduct contribute to public trust in the integrity of government decision-making, how lobbying regulators can measure their performance, and how best to undertake and benefit from consultations with stakeholders.

The Canadian federal model continues to be recognised internationally as an example of a regime that has grown and overcome challenges. The Commissioner is regularly solicited to share her views on the Canadian experience in administering the federal lobbying regime. During 2012-13, the Office of the Commissioner of Lobbying was contacted by a number of foreign officials to answer questions about the Canadian lobbying system and to assist in the development of legislative proposals in relation to lobbying.

The Commissioner regularly attends the annual Conference of the Council on Governmental Ethics Laws (COGEL), an international organisation, where she provides an annual update on developments in the Canadian federal lobbying regime as participant on a Canadian/American panel.

Each of these occasions yields an opportunity to discuss ways of addressing existing issues and to understand emerging challenges in various jurisdictions. For the Office of the Commissioner of Lobbying, such exchanges are a unique chance to share experiences and discuss matters related to the administration of existing lobbying regimes and the challenges of developing new ones.

Reaching out to Canadians through the website

The website of the Office of the Commissioner of Lobbying[5] is a cost-effective tool to disseminate a broad range of information to lobbyists, public office holders, parliamentarians, the media and the general public. In the past year, the website received nearly 98 000 visits, resulting in almost 325 000 page views.

The educational material posted on the website includes:

- multimedia tutorials on the registration process;
- the Guide to Registration;
- interpretation bulletins and advisory opinions explaining important requirements of the Act;
- guidance on the application of the *Lobbyists' Code of Conduct*;
- a primer document, entitled, "Ten Things You Need to Know about Lobbying".

This year, work on the website concentrated on raising the profile of the Registry's search and reporting tools to ensure that visitors can find them easily. Efforts focused on developing tools, such as help guides, to assist users in searching the Registry.

Ensuring compliance with the Lobbying Act and the *Lobbyists' Code of Conduct*

The Commissioner of Lobbying takes the view that knowledge and understanding of the *Lobbying Act* and the *Lobbyists' Code of Conduct*, supported by an effective education and outreach scheme, are the keys to fostering greater compliance. To effectively deter non-compliance with the requirements of the Act, efforts to educate should be complemented by a programme of monitoring and enforcement to demonstrate that there are consequences for those who are found to be in breach of the Act or the Code.

The Office of the Commissioner's compliance programme focuses on three main activities: reviews and investigation of alleged breaches of the Act or the Code; verification of data submitted by lobbyists in monthly communication reports; and the review of applications for exemption from the five-year post-employment prohibition on lobbying for former designated public office holders.

The *Lobbying Act* gives the Commissioner the authority to look into alleged breaches of the Act or the Code. Each allegation is taken seriously and assessed on its own merit before an appropriate course of action is determined.

Alleged breaches are identified through information published in the media and other public sources of information or through the monitoring of information submitted to the Registry of Lobbyists. They may also be brought to the attention of the Office of the Commissioner of Lobbying through complaints, which originate from a variety of sources –

e.g. employees of government departments, parliamentarians, and private citizens. Voluntary disclosures by lobbyists may also indicate evidence of a breach.

Certain allegations may relate to contraventions of the Act which concern individuals, corporations or organisations that may be conducting lobbying activities without being registered.

The Office conducts periodic reviews of registrations and the monthly communication reports submitted by individuals whose activities are being monitored following previous minor infringements of the Act. Such assessments are designed to determine whether the compliance record of lobbyists under surveillance is improving. Generally, their infringements relate to minor incidents of non-compliance such as failing to file a return within the prescribed time period.

The *Lobbying Act* provides for a number of breaches that are considered offences and must be prosecuted in a court of law. They are subject to fines or imprisonment and may be prosecuted by indictment or on summary conviction. The first charge under the *Lobbying Act* came in 2013 and the first conviction in July 2013, in the case of *R v. Skaling*. The fine levied against Mr Skaling was CAD 7 500.

The Commissioner has the duty to report to both houses of Parliament on completing an investigation into an alleged contravention of the Code. Since 2008, when the *Lobbying Act* came into force, the Commissioner has tabled 10 such reports in Parliament – all available to the public[6] – which found that 12 lobbyists had breached the *Lobbyists' Code of Conduct*. The investigations focused upon:

- individuals who engaged in lobbying activities, but failed to register them;
- 2 lobbyists whose political activities, combined with their lobbying efforts, placed a public office holder in a position of apparent conflict of interest;
- a former public office holder who defied a prohibition on lobbying.

There are no penalties such as fines or imprisonment for breaches of the *Lobbyists' Code of Conduct*. However, given that reputation is so important to lobbyists, these public reports may affect their employment and/or ability to attract clients and thus serve as an incentive for all practitioners to comply with the Act and the Code.

Compliance and enforcement activities

Compliance with the *Lobbying Act* is enforced in a number of ways: by communicating with registrants during the registration process; by media monitoring; by strategically monitoring lobbying activity; and by writing advisory letters to registrants and unregistered persons and entities. Administrative reviews and investigations are also tools used to strategically enforce compliance.

Registration process

The registration process is an important aspect of the application of the Act. Registration advisors in the Office of the Commissioner of Lobbying provide assistance on the registration process. They remind lobbyists to renew their registrations on a timely basis and verify that their disclosures are complete. The Office also analyses information supplied by lobbyists and verifies it where necessary, emailing questions to registrants or telephoning them about the content of disclosures. The Office approves registrations only when it is satisfied that registrations are accurate and complete and registrants have certified the accuracy of their registrations.

Media monitoring

The Office conducts media monitoring on a daily basis. It uses a sophisticated web-based monitoring system to examine the content of articles and reports in media publications that mention lobbying activities. In order to determine if any alleged lobbying activity is the subject of a valid registration, follow-up is performed by staff of the Office.

Advisory letters

The Office of the Commissioner of Lobbying sends advisory letters to individuals or organisations when media monitoring or information received indicates that unregistered lobbying may be taking place. The letters advise the recipients that they may have obligations under the *Lobbying Act*. The practice is designed to enhance organisations' and corporations' awareness of the Act and to encourage them to learn more about its requirements, either by contacting the Office or visiting its website.

Administrative reviews

The Office commences administrative reviews when it receives information from external sources alleging a possible contravention of the *Lobbying Act* or the *Lobbyists' Code of Conduct* or as a result of internal monitoring. An administrative review is not a formal investigation. Its purpose is to assemble and check factual evidence with a view to determining if an investigation is required.

If an administrative review or a subsequent investigation indicates that there are reasonable grounds to believe that a breach of the Act has occurred, the Commissioner is required by the Lobbying Act to refer the matter to the police, usually the Royal Canadian Mounted Police (RCMP). The Commissioner deals with alleged breaches of the *Lobbyists' Code of Conduct* and determines whether an investigation is required.

Investigations

Investigations of alleged breaches of the *Lobbying Act* and *Lobbyists' Code of Conduct* are carried out by the Commissioner, who has investigative powers similar to those of a superior court of record. They include the ability to summon persons so that they may give evidence under oath, enforce their attendance to that effect, and to compel them to produce documents. On completion of the investigation, the Commissioner must submit a report on investigation to the speaker of each of houses of Parliament, where the reports are then tabled.

The Lobbying Act – statutory review

The legislation that enacted the *Lobbying Act*, the Federal Accountability Act, became law on 12 December 2006.[7] The amendments relative the *Lobbying Act* came into force on 2 July 2008. The Act provides for a comprehensive review of the provisions and the operation of the Act every five years. In 2011, that statutory review was undertaken by the House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI).

In conducting the statutory review, the Committee heard from witnesses, including the Commissioner of Lobbying, lobbyists, academics and provincial and municipal counterparts. The Commissioner tabled a paper containing several recommendations to improve the *Lobbying Act*[8] and the Committee completed the statutory review and submitted its report in May 2012.[9] The Government of Canada issued its response to the Committee's report in September 2012,[10] but has implemented no legislative or regulatory

changes to date. Until such time as Parliament enacts amendments to the *Lobbying Act*, the Office of the Commissioner of Lobbying will continue to administer the current legislation.

Notes

1. The Federal Accountability Act, S.C. 2006, c. 9, enacted the changes to the *Lobbying Act*. The amendments came into force on 2 July 2008.
2. The three mandates are covered in greater depth in the annual reports to Parliament tabled by the Commissioner of Lobbying. The annual reports can be accessed at *https://ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00019.html*.
3. The legislative requirement is that the lobbying activity must consist of a "significant part of the duties of one employee" in order to constitute registrable lobbying activity. This requirement has been interpreted by the Commissioner as equivalent to 20% or more of the duties of one equivalent full-time employee. Go to *www.ocl-cal.gc.ca/eic/site/012.nsf/eng/00115.html*.
4. *www.ocl-cal.gc.ca/eic/site/012.nsf/eng/home*.
5. *https://ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00000.html*.
6. Reports on Investigation are available at: *www.ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00016.html*.
7. See Endnote 2.
8. The Commissioner's Report, *Administering the Lobbying Act*, published in December 2011, is available at *www.ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00436.html*.
9. The ETHI Report, *Statutory Review of the Lobbying Act: Its First Five Years*, is available at: *www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5577899&Language=E&Mode=1&Parl=41&Ses=1*.
10. The Government Response to the Committee's report is available at: *www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5706852&Language=E&Mode=1&Parl=41&Ses=1*.

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Chapter 9

Chile: Regulation of lobbying

by
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This chapter analyses the content of the different bills that have been discussed in the Chilean Congress, the difficulties encountered, and the debate generated on the subject of lobbying. It also analyses the new bill that require public officials to disclose and make publicly available their agendas and meetings.

Chile enacted a law regulating lobbying in January 2014. However, although this chapter deals with the content of the proposed bill, it only refers to laws and practices adopted up to December 2013.

* Chile enacted a law regulating lobbying in January 2014. However, this report refers to laws and practices adopted up to December 2013. The legislation to regulate lobbying is therefore not analysed.

Lobby regulation in Chile

The debate on lobbying has been going on for over a decade in Chile. The first bill to regulate the activity came before Parliament in November 2003. It was not enacted, and neither has any other bill since then.

The lack of any progress in legislating lobbying over the last ten years contrasts with the fact that other bills requiring transparency and integrity from the authorities and civil servants have passed into the statute books. They include acts that regulate the disclosure of personal assets and interests by public authorities and officials[1] and give the public access to information. Another piece of legislation created the Council for Transparency,[2] while reforms to the Constitution have recognised transparency as one of the principles of the Chilean legal system.[3]

One of the reasons for that progress is that there is political consensus on the need to regulate transparency. Attempts to regulate lobbying, however, have come up against the stumbling blocks of defining which activities should and should not be regulated and who lobbyists are.

This chapter analyses the content of the different bills that have come before the Chilean Congress, the difficulties they have encountered, and the debate they have generated. The chapter goes on to examine in greater depth the new rules that require authorities and officials to disclose their agendas and meetings.

Objectives of lobbying bills

It is paradoxical that a central element in strengthening citizens' confidence in their governments should be the regulation of an activity whose opacity arouses suspicion in all countries and cultures. Yet, lobbying is nothing other than legitimate stakeholder participation in the regulatory processes or, couched in legal terms, the exercise of a right recognised since the beginnings of constitutionalism as the right to petition the authorities. Furthermore, it is a fact that lobbying plays a major role in the development of public policy – a mechanism for citizens' participation and a necessary source of information that makes it possible to compare and evaluate regulatory options. Accordingly, the OECD suggests regulating lobbying and rather than turning a blind eye. A good government should be able to live up to the requirement of creating rules that generate confidence and ensure contact with public officials is conducted transparently, and according to pre-established rules.

The various bills being debated in Chile have been built on three objectives. The first objective seeks to make available to the public information on the lobbying of public officials by representatives of private interests, regardless of the individual or institution who performs the lobbying. Openly accessible information helps prevents wrong-doing and strengthens social control over the activities of all interest groups. The second objective focuses on the interested parties and seeks to offer them all equal opportunities to make their views known to the authorities or the body tasked with

regulation. Finally, the third objective, which has the regulatory authority in mind, aims to provide it with all the information available so that it can make decisions for the common good – in other words, ensure that regulation does not drive it away from citizens.

Bills in this field

The 2003 bill

In November 2003, the government submitted to the National Congress its first bill to regulate lobbying.[4] The draft drew on motions submitted by deputies, particularly Nicolás Monckeberg and Jorge Burgos. The Chamber of Deputies debated the bill for nearly two years and the Senate scrutinised it for another two years. Then, just when the lawmaking process had reached its last stages, which included a report from the Joint Committee and a presidential veto, the bill was halted.

From the outset, a hotly debated point was the definition of "lobbyist" – i.e. to whom the obligations laid down in the law would apply. In all its various drafts, the bill contained a regulation intended exclusively for professional lobbyists. The rationale behind it was provided at the beginning of the legislative process by an official of the Executive Branch in the Chamber of Deputies, who pointed out that:

> *"[T]he spirit of the bill is to regulate the lobbying activity when it is linked to the economic sphere, leaving it aside when it relates to values or other aspects, because the influence or pressure that is exerted on the latter is not equivalent … [T]he concept of lobbying should not be expanded to those other spheres because it makes the relations between the authorities and the interest groups that are not of an economic nature less flexible."*[5]

As proceedings neared their end, another official argued in the same spirit that:

> *"Ultimately, the intention is to strictly define lobbying as the activity performed by a lobbying firm, which is contracted and paid to lobby, and the activity conducted by a company to defend its own interests. The way to determine the latter is the regularity with which it lobbies."*[6]

Then, in the very last stages of the bill's passage, objections were raised, halting the process and leading the government to table a new bill. Some of the objections related to the special treatment given to representatives of "trade associations, trade unions, non-governmental organisations, foundations, study centres and professional associations".[7] None were classified as lobbyists or subject to lobbying regulations. Nor were directors, managers or attorneys of for-profit legal entities, who also had to meet fewer requirements than registered lobbyists. A further argument was that the bill did not sufficiently regulate the authorities' obligations in their dealings with groups of interest. The bill was defeated. The regulation of lobbying would have to wait for a new bill that addressed the objections to the first one.

The 2008 bill

The second bill came before Congress in November 2008.[8] It had factored in the comments and objections that deputies and specialists had made during the previous bill's passage.

The new bill defined a lobbyist as an individual who, on a routine remunerated basis, interacted with public officials to promote or represent the interests of third parties. Thus, actions carried out by individuals or entities like neighbourhood associations, NGOs, trade unions, churches, and indigenous communities were not considered lobbying.

Again, the definition of lobbyists was one of the most vigorously debated aspects of the bill. The director of a think tank, speaking before the Government Committee of the Senate, felt that "there [is] no reason whatsoever not to consider activities developed by representatives of trade associations as lobbying, especially considering that the reference to the management of individual interests is not sufficiently clear".[9] She made the same comment with regard to the exclusion of NGOs from the definition of lobbyist. A lobbyist agreed and pointed out that a negative aspect of the bill being discussed was that it "excluded from lobby management the actions developed by trade associations, trade unions, NGOs, corporations, foundations and professional associations, religious entities, neighbourhood associations and sport clubs that are not corporations".[10]

On the other hand, the president of the Chilean chapter of Transparency International criticised both the lobbying concept and the exclusion of the above-mentioned organisations from the regulation. With regard to the concept of lobbying, he pointed out that "according to the definition, meetings held by a non-profit organisation with different senators to advocate transparency or environmental protection would not be considered lobbying".[11] He expressed his views on the bill and recommended making certain changes. Those actions which, according to internationally accepted parameters, were clearly lobbying, were not regulated by this Bill given that NGOs did not work to obtain an "individual economic benefit". Instead, they sought the common good or the general interest of the Nation.

With regard to the exclusion of certain organisations, he stated:

"In that respect, we consider that the a priori exclusion of certain organizations does not have any grounds as the objective of a Lobby Act is making a legitimate activity transparent. The essence of this regulation is lobby and not the individual that carries it out. Therefore, if the actions performed by an individual or entity, regardless of their specific characteristics or goals, are lobby, then those actions must be regulated by the relevant legislation. In fact, this exclusion would be contrary to the national political reality, where lobby is developed mainly by organizations which are precisely those excluded by the bill."[12]

The Senate passed the bill after proceedings that lasted one year, but were then halted in the Chamber of Deputies.

The 2012 bill

The third bill came before Congress in 2012. The provision that regulated lobbying had been amended to finally secure the bill's approval. Whereas the first two bills focused on professional lobbyists, the third one, currently being debated, places the emphasis on passive players – i.e. the public authorities or officials likely to be lobbied. They, too, are compelled to meet requirements related mainly to the transparency of their agenda of meetings and contacts. They must disclose meetings with lobbyists and any other contact with people who have or represent a special interest and are seeking to influence an administrative or legislative decision, whether those meetings or contacts are paid or not and whether they take place regularly or only once. The information disclosed by officials will be available to the public who can thus be able to find out who has access to the authorities and with what purpose.

At the same time, groups or individuals who meet with officials will be required to divulge whether they are acting in their own name or representing a third party – in which

case they must specify the name of the third party and whether they are being paid for what they are doing.

Besides informing citizens, the bill seeks to meet another objective: non-discrimination. Individuals and entities who seek to influence policy makers on behalf of special interests are obliged to files reports. Those individuals or entities may be professional lobbyists, NGOs, churches, attorneys, etc. In other words, unlike regulations in other countries and the previous bills, the current bill has blanket coverage: all are entered into the same register of hearings.

The current bill does not broach the subject of introducing a lobbyists' register – in other words, requiring lobbyists to register in a legal register and comply with certain obligations if they wish to enjoy access to the authorities. Although the previous bills contemplated the idea of a register, they all expressly excluded certain groups which, although they advocated special interests, were not "professional lobbyists". However, the current bill pursues a similar objective because it requires public officials to disclose their agendas. A register of professional and non-professional lobbyists is built on information generated from their meetings with public officials. Although the bill is not designed to be an act that regulates the lobby industry (as in the United States or Canada), its provisions do make it possible to make lobbying transparent, regardless of who does it. It constitutes a significant stride forward in the improvement of the relationship between the government and the citizens.

The all-encompassing span the bill's definition of lobbyists and lobbied has been singled out as one of its strengths. Should it become law, it will be widely applicable to most government and public officials and avert arbitrary discrimination between lobbyists.[13]

Public officials who are prone to being lobbied

The bill currently under discussion improves on its predecessors in that it considerably widens the range of regulated public officials prone to being lobbied to this definition: those who make public decisions that affect the people. It thus includes ministers, under-secretaries, heads of departments, regional directors of public services, mayors and governors and ambassadors. It also embraces regional councillors, mayors' councillors, executive secretaries of regional councils, directors of municipal works, municipal secretaries, authorities of the Comptroller General of the Republic, the Central Bank, the Armed Forces, the National Congress, the Office of the Prosecutor and other public bodies, e.g. the Chilean Council for Transparency and the Human Rights Institute. The bill considers as likely to be lobbied people who take part in commissions that evaluate public tenders.

In the judiciary, a public official who is prone to being lobbied is the Director of the Administrative Corporation of the Judiciary, the body in charge of administrative management. Judges, however, are not included, as Chilean legislation stipulates that: "they shall … refrain from listening to any claims that the parties, or third parties, on behalf of or through their influence, try to make to them out of court".[14] However, the bill does state that the judiciary and officials of the Constitutional Court and Electoral Court may voluntarily submit themselves to the provisions of the law.

Another innovation of the current bill is that it incorporates a self-regulation rule which requires that public officials whose paid duties or position make them decision makers should, on a yearly basis, determine whether or not they are subject to the law. This is regardless of the capacity in which they have been hired by the government. The bill

also includes a provision stating that if any person considers that a specific public official or government employee meets these requirements but has not been required to keep a public agenda, an administrative claim can be filed with the authority that made such a decision.

Regulated activities

The activities that the current bill is intended to regulate are those designed to obtain or prevent the following from officials who may be lobbied:

- The preparation, promulgation, amendment, repeal or rejection of administrative laws, bills and laws.
- Decisions, for whatever reason, to enter into, modify or terminate contracts made by public officials subject to lobby and that are necessary for their operation.
- The design, implementation, and evaluation of policies, plans and programmes.

Public agenda

The core of the bill is the rule that requires public officials who are prone to lobbying to publish monthly what it calls their "agenda". Agendas must record the following information:

- Meetings held for the purpose of hearing lobbyists defend or advocate individual interests affected by a government decision. Agendas should record the names of the people or entities with whom meetings are held; on whose behalf lobbyists or lobbying entities make representations; the names of the attendees or people present at hearings and meetings; whether or not they received payment for their action; the place and date where meetings took place; and the specific matter dealt with.
- Trips made by any public officials likely to be lobbied in the course of their duties. The trip's destination, purpose, total cost, and the legal or natural person that financed it must be recorded.
- Donations received by lobbied public officials in the exercise of their duties. The nature of the gift or donation received, the date and time of its receipt, and the identity of the natural or legal person making the donation must be indicated. In Chile, public officials are allowed to accept only gifts given by governments or as part of protocol and those considered to be normal practice which are given out of courtesy and politeness.[15] Any breach of this provision is a violation of the principle of administrative probity and can lead to dismissal.

Meetings and trips that do not have to be made public are those that could compromise the general interest of the country or national security. Nevertheless, they must be reported – annually and confidentially – to the Office of the Comptroller General of the Republic.

Agendas will make it possible to know who meets with the authorities since all persons requesting a meeting – anywhere and not only in public offices – with the aim of influencing public decision-making are bound to indicate in advance whom they represent and whether or not they receive payment. This information must be published on a monthly basis on websites.

Single portal

All information the bill requires to be made public is systematically posted on a single portal by the Ministry General Secretariat of the Presidency. The website is designed to facilitate public access to information and to encourage the public scrutiny of the public servants' activities. In addition, the bill gives the Ministry the task of creating a register which lists all people who have had meetings with or been heard by government officials.

Equal treatment

The current bill eliminates any distinction in treatment or requirements between people and entities who represent special interests professionally and those who do so voluntarily – trade associations, neighbourhood groups, churches, non-governmental organisations, etc. The bill emphasises that any action undertaken to represent special interests must be open and available to public scrutiny so as to level the playing field among individuals and entities seeking access to the authorities to influence decision-making, whether they are paid or not.

Lobbyists' obligations

The current bill states that there are certain obligations for lobbyists or representatives of private interests. The obligations include delivering information to the authorities in a timely and truthful manner; disclosing the names of the people or entities they represent and whether or not they are paid by them; and providing, for legal persons, the required information on their structure and composition.

Sanctions

Public officials who fail to register the information required of them, or who do so in an inaccurate or false manner are punishable by sanctions. Penalties are managed by the Office of the Comptroller General of the Republic – an autonomous entity – for both central and decentralised government officials and the bodies under their jurisdiction. Penalties are fines, which range between USD 800 and USD 4 000.

With respect to lobbied officials from constitutionally autonomous bodies, the bill establishes a monitoring system in accordance with their autonomy. In the National Congress, for example, the Ethics and Parliamentary Transparency Committees are responsible for hearing cases of alleged integrity breaches and determining any sanctions.

Lobbyists are criminally liable and may be punished by fines in the range indicated above. Offences are knowingly omitting information or knowingly delivering false or inaccurate information – e.g. the names of the people that they represent, whether or not they receive payment, and/or information on their structure and composition of clients who are legal persons.

Notes

1. Law No. 20.088 requires authorities exercising a public function to deliver a compulsory sworn statement on their assets and private interest. The bill was proposed in 1999 and passed by the National Congress in 2005.
2. Law No. 20.285 on access to public information was proposed in 2005 and passed by the National Congress in 2008.

3. Law No. 20.050 is a constitutional reform that makes several modifications to the Political Constitution of the Republic of Chile whose discussion was initiated in 2000 and was passed 5 years later.
4. Bulletin 3407-07: bill regulating lobbying, tabled at the initiative of the President of the Republic in November 2003. Go to *www.senado.cl/appsenado/templates/tramitacion/index.php*.
5. Report of Constitution, Legislation and Justice Committee on the Bill to Regulate Lobbying,14-09-2004, page 11.
6. Senate session, Wednesday, 10 September, 2008.
7. Message No. 183-356 of April 30, 2008 of the President of the Republic in Bulletin No. 3407-07 at *www.senado.cl/appsenado/templates/tramitacion/index.php*.
8. Bulletin 6189-06, the bill establishing lobbying rules. Go to *www.senado.cl/appsenado/templates/tramitacion/index.php*.
9. First report of the Government, Decentralization and Regionalization Committee, page 18, available at *www.senado.cl/appsenado/templates/tramitacion/index.php#*.
10. Ibid., page 19.
11. Ibid., page 22.
12. Ibid., page 25.
13. Una ley de lobby para Chile (A Lobby Disclosure Act), Horizontal-Escuela de Gobierno UAI, August 2013, page 29. Available at *www.horizontalchile.cl/publicaciones/una-ley-de-lobby-para-chile/*.
14. Article 320 of the Basic Court Code.
15. Article 62 of Law No. 18.575, Organic Constitutional Framework Law for State Administration.

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Chapter 10

The EU Transparency Register: Increasing the transparency of interest representation in Brussels

by
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The Transparency Register was set up by the European Parliament and the European Commission in June 2011. Its purpose is to provide EU citizens with information about organisations engaged in activities that seek to influence the EU decision-making process.

This chapter provides an overview of the objectives of the Register as well as its scope, implementation and impact. The chapter also provides an overview of challenges faced in the implementation of the Register and the priority issues discussed in the ongoing review process.

General description of the Transparency Register system and its review

The Transparency Register refers to a system set up jointly by the European Parliament (EP) and the European Commission (EC) in June 2011. Its purpose is to provide EU citizens with key information about organisations and self-employed individuals engaged in activities that seek to directly or indirectly influence the EU decision-making process. It binds registrants to a common code of conduct which, in practice, sets standards for interest representation towards the EU institutions. It has also introduced a complaints mechanism for any person or organisation wishing to declare malpractice by a registered entity.

The system, which is voluntary, is directed at organisations rather than individuals in order to include general activities pursued with regard to institutions' decision-making processes rather than any individual's actual contacts with public officials or members of the European institutions.

Activities that fall within the scope of the register include, but are not limited to, lobbying, interest representation, and advocacy. Such activities are recognised as legitimate and necessary in the context of the democratic decision-making process at EU level, but should be subject to certain transparency criteria – citizens have the right to know who is conducting them – and must respect applicable laws and ethics rules. The system has a very wide scope of coverage, both in terms of actors and activities covered. Actors range from public affairs consultancies and law firms to charities, NGOs, religious organisations, public authorities, think-tanks and others. Currently there are almost 6 500 organisations listed in the Transparency Register, compared to around 4 000 in June 2011 – a growth rate of about 1 000 registrations per year. There are six sections for registrants to choose from, the largest of which are: Section II – "In-house lobbyists and trade/professional associations" (with over 3 200 organisations represented) and Section III – "Non-governmental organisations" (with over 1 600 organisations represented).

A recent study (Greenwood and Dreger, 2013) estimated that:

> *"[A]round three-quarters of business-related organisations active in engaging EU political institutions are in the Register and around 60% of NGOs with a European interest are in the Register. Not quite "de-facto mandatory", but substantial when compared with the rather small number of entries in some of the national registers to have emerged in Europe in recent years."*

Such evaluations, as well as the continued growth in numbers of registrants, would seem to indicate that the current system – introduced through soft rather than hard legislation – has been a useful exercise in transparency for the EU institutions and has drawn on a considerable amount of good will and co-operation from the interest representatives and stakeholders concerned. Indeed, it would seem that public affairs practitioners welcome the Transparency Register as a way of helping them to improve their reputation management.

The Transparency Register system is currently under review at political level. The agreement between the European Parliament and the European Commission on the

establishment of a Transparency Register provided for a review of the system no later than two years after it came into operation, and a joint EP/EC Working Group for the Revision of the Transparency Register was set up in June 2013. This group delivered its conclusions at the end of 2013,[1] and the new revised text of the agreement is due to be voted on in the last European Parliament plenary session of the current legislature in April. It must also be approved by the College of Commissioners in order for the two institutions to sign this new agreement. The review essentially revisited the Transparency Register after two years of operation, picking up on input from stakeholders and taking experience into account.

Other than purely technical issues, the Working Group also discussed the quality and quantity of information provided by registrants, and the enforcement and monitoring procedures. Members of the group examined the voluntary nature of the register and looked at possible legal bases in the EU treaties for a future mandatory system and if indeed this was a viable or necessary option.

Objectives and aims

The raison d'être of the Transparency Register: A historical perspective

Prior to June 2011, the Parliament and the Commission operated separate interest representative registers. The EP's arrangement, which it put in place in 1996, registered all individuals with access passes to its buildings. The information in the register, which was publicly available on the EP website, was limited to the names of the registered pass holders, their organisations, and the date of the access pass. The Commission introduced its register in 2008 for organisations that represented interests affected by it decisions. It was part of the European Transparency Initiative package, launched by the then responsible Commissioner Siim Kallas.

The Commission's register was the base of the new Transparency Register and indeed the 4 000 organisations it contained at the time of the switch-over were invited to transfer to the new system by June 2012 at the latest. Registrants in the new system were asked to supply more detailed information (particularly in terms of financial data and lobbying activities), as agreed by the two institutions during negotiations.

The EC and EP, through its Stubb report in 2008,[2] had aired the idea of a joint register as early as 2008. A common system made sense in view of the fact that the general public saw the institutions as one and that the stakeholders would welcome a "one-stop-shop". A joint working group was set up and its work culminated in the Transparency Register in 2011. It was expected that merging the two registers would provide more clarity to the outside world and demonstrate that the institutions were ready to work together in the interests of transparency. It was also thought that linking the requirement to register in the Transparency Register to the European Parliament access system would increase the incentive for organisations to register, thereby making registration "quasi-mandatory", as Commissioner Maroš Šefčovič stated on 23 June 2011:[3]

> *"All those who are not in the register will have to be asked why they can't be transparent – and they will see their daily work made more difficult by not being registered, in particular through the requirements of the European Parliament.*

The European Parliament echoed the sentiment in May 2011 in its decision on the conclusion of the interinstitutional agreement:[4]

> *"[The European Parliament] is of the opinion that the agreement will provide a strong incentive for registration since it will render it impossible for anyone to procure a badge giving access to Parliament without first registering."*

The name "Transparency Register" was chosen in order to communicate its all-inclusive character in terms of coverage of organisations and its activities, and underline the principle of open dialogue with the EU institutions. As Article 11 of the Treaties of the EU states:

> *"The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society."*

It was also a way of sidestepping the term "lobbying", which had raised objections among stakeholders and policy-makers, depending on the national context, sector of activity and approach.

Under these conditions, the European Commission and European Parliament signed an Interinstitutional Agreement (IIA) on the Transparency Register on 23 June 2011. The Council of the European Union, which currently has observer status, expressed interest – through its Presidency at the time (Hungary) – in keeping track of the Register and the review process and assessing whether to join.

The context and expected results

The agreement to set up a joint Transparency Register was the logical result of discussions on how to increase the transparency of interest representation in the EU. As previously mentioned, talks began with the European Transparency Initiative at the European Commission in 2005[5] and continued with the European Parliament's Stubb report in 2008. At the inter-institutional level, transparency was discussed in a dedicated working group. There was also considerable increase in public interest in and pressure for a transparency policy in Brussels, with a growing number of associations and interest groups "lobbying" the EU institutions accordingly.

In parallel, the EU institutions discussed and agreed upon other transparency and ethics tools which may have helped to set the general framework of discussions for the Transparency Register. They were primarily:

- Access to EU Documents with the 2001 Regulation 1049 of the European Parliament and Council[6] – negotiations over a recast started in 2008.
- Code of Conduct for Commissioners, 2011.[7]
- Code of Conduct for MEPs.[8]

Expectations with regard to results varied, depending on the political approach taken. It was a common hope, however, that a joint system would be stronger, more complete, and might help to boost public confidence in the EU decision-making process as a whole.

Design and structure

Main principles underlying the system

- Registrations apply to all. Any organisation engaged in representing interests vis à vis the EU institutions is expected to register, irrespective of its status (trade associations, consultants, lawyers firms, NGOs, think tanks, etc.). Exceptions are explicitly stated, e.g. activities specified by the EU treaties (social dialogue, etc.).

- The Register is open to organisations, not to individuals, with the exception of self-employed lobbyists. Registered entities take responsibility for the behaviour of any individual representing them and for the information they have provided.
- Registration is voluntary. It is, however, a precondition to request an accreditation for fast track access to the EP buildings, which is requested online via the Transparency Register website.
- Registrants must accept the code of conduct and related sanctions in cases of non-compliance or breaches of the code (which can lead to removal from the register).
- The scheme is managed by a common EP-EC Joint Secretariat, whose work is co-ordinated by a Commission Head of Unit.

Main tools of the system

- An interactive online public database where organisations register and update their entries and which EU citizens can consult. The entire database is accessible to the public and downloadable in XML format.
- The Code of Conduct, which sets out simple rules governing standards of behaviour and practices in relations with the EU institutions.
- A complaints mechanism allowing any citizen to trigger an administrative enquiry into suspected violations of the code by registered entities.
- Guidance material provided by the Joint Secretariat and a system of basic monitoring.

Consultation and engagement of stakeholders in the design of the Transparency Register

From the introduction of the Commission's register in 2008 to the agreement that established the Transparency Register, an ongoing exchange of views has been held with representative EU stakeholders (i.e. representatives from each section of actors present in the register). At each major step or change in the process, they have been consulted and asked to feed back to policy makers concerns and views as to proposals for regulating lobbying. A public consultation on the operation of the Register was held in 2012 to feed into the review process in 2013. Important stakeholders are the EU-wide organisations that represent the various professions, types of legal entities, and/or organisations present in Brussels, and the interest groups that advocate greater transparency at EU level, such as:

- European Affairs Consultancies' Associations (EPACA).
- Society of European Affairs Professionals (SEAP).
- International Public Relations Association (IPRA).
- Council of Bars and Law Societies of Europe (CCBE).
- BUSINESSEUROPE.
- European Association of Craft, Small and Medium-sized Enterprises (UEAPME).
- Centre of Employers and Enterprises for Public Services (CEEP).
- European Trades Union Confederation (ETUC).
- Civil Society Contact Group.
- Federation of European and International Associations (FAIB).
- Transparency International.

- Alliance for Lobbying Transparency and Ethics Regulation in the European Union (ALTER EU).
- Assembly of European Regions (AER).

The results of the public consultation[9] held in 2012 and stakeholder input to the review process on how the Transparency Register operates are publicly available on the Register's website.

The scope of the Transparency Register

All organisations and self-employed individuals, irrespective of their legal status, that engage in activities covered by the register are expected to register, except diplomatic entities such as governments, intergovernmental organisations, and missions. Certain actors are excluded: churches and religious communities; local, regional and municipal authorities; and political parties, although the offices and associations that represent them are expected to register.

The activities covered include, inter alia, contacting members, officials or other staff of the EU institutions, preparing, circulating and communicating letters, information material or discussion papers and position papers, and organising events, meetings or promotional activities and social events or conferences, invitations to which have been sent to members, officials or other staff of the EU institutions. Voluntary contributions and participation in formal consultations on envisaged EU legislative or other legal acts and other open consultations are also included.[10]

The IIA specifically excludes certain activities, such as: legal advice which does not seek to change the existing legal framework; the work of the social partners in the social dialogue in accordance with EU treaties; activities in response to a direct individual request from an EU institution or member country.

The Register is voluntary, and any organisation carrying out eligible activities may sign up, regardless of its type, size, or goals (provided that they do not contradict the EU's fundamental values). However, organisations are not allowed to use the Register as a publicity tool. The Joint Secretariat therefore reserves the right to contest the registration of an entity if there is no reason for it, or if its activities are non-relevant, given that the Register is designed to list entities that seek to influence the development and implementation of EU policy.

The implementing structure: The secretariat

In order to implement the Transparency Register, the European Parliament and the European Commission have established a joint internal operational structure, known as "the Joint Transparency Register Secretariat" (JTRS). It is made up of a small group of officials (from the European Parliament and the European Commission who meet on a weekly basis. The JTRS operates under the co-ordination of a head of unit in the Secretariat-General of the European Commission and is under the administrative supervision of the EP and EC Secretariat Generals and the political authority of the EP and EC Vice Presidents in charge of transparency questions.

The JTRS's tasks include running the Register and its website day-to-day and implementing measures to enhance the quality of the Register's content such as monitoring and enforcing provisions that include the complaints mechanism, managing the helpdesk service, and raising awareness of the system.[11]

The impact of the Transparency Register

Did the Register meet its objectives?

The political objective of increasing the general levels of transparency in interest representation in Brussels has to a large extent been reached, as the current level of registrations tend to prove (see below). As far as public awareness of the tool is concerned, it is very difficult to measure to what extent this has been achieved; although an increasing interest by academics in the system and the content of the register has been noted.

As reported in the 2012 Transparency Register Report, it was not thought that all technical objectives would be achieved during the first year of operation, and what has been achieved does not claim perfection. During the launch phase, much time and energy was devoted to solving technical issues and bringing ad hoc support and help to users through the help desk function. The objectives pursued by the JTRS in the first year were deliberately modest and tailored to the resources available in the EP and EC.

The following operational objectives were achieved to a satisfactory degree:

- Registered organisations switched smoothly from the two EP and EC schemes to the new common Transparency Register.
- Launch and operation of the technological platform and solving IT problems as they arise.
- Development of an EP accreditation request module for access rights to EP buildings.
- Drawing up user guidelines for the implementation of the IIA.
- Addressing complaints.
- Pursuing dialogue with the Council of the European Union to discuss the practicalities of its possible participation in the scheme.
- Testing and developing quality check methodologies for monitoring the content of the registrations appearing in the Transparency Register.

Current statistics show that registrations have risen steadily – from 4 000 in June 2011 to almost 6 500 in March 2014 – since the Transparency Register was introduced two and a half years ago. Growth has continued even though the monitoring system introduced in March 2012 has led to well over 400 entities being disbarred for not supplying an annual update, for failing to co-operate with general requests, quality checks or complaints, or for having non-relevant activities.

The growth in numbers of registrations, especially in the first quarter of 2014, suggests that the system is working and is widely accepted. Registrations generally show considerable flux (a sizeable proportion of registrations are stimulated by the public consultations launched by the European Commission), which reflects the flux in the legislative agenda itself. Some sub-sections of activity remain problematic, however. Law firms, for example, seem to fail persistently to register and there is still a need to filter a number of non-relevant registrations from the register, such as those that register purely for publicity reasons

In all, the general quality of information improved greatly over the two year period from 2011 to 2013 (Greenwood & Dreger, 2013). It is accessible to the public in machine-readable format and can be downloaded in XML format, which allows it to be studied and checked by researchers and academics as well as by those organisations advocating increased transparency in this area. Nevertheless, the quality of data is not yet such that it

can be comparable across sections or within each section or sub-section in the Transparency Register. The reason is that registrant entities are responsible for their own information and are encouraged to use their own methods to calculate staff numbers and cost and the relevant financial estimates applicable to their interest representation activities.

Evaluation and monitoring mechanisms introduced to assess implementation and impact

Quality checks

Even if the JTRS has not the power nor the technical means for an in-depth audit of all the declarations made in the Transparency Register, Article 21 of the current IIA assigned the JTRS the task of improving the quality of the Register's content. An IT tool in the current database allows for producing random lists of an organisation's entries to be checked as a routine process. The JTRS carries out administrative investigations if it uncovers any inaccurate information in this way, and makes direct contact the organisation concerned in order to resolve the issue. The organisation is then required to update or correct entries as needed and provide plausible explanations for erroneous data within 10 working days. Should they not do so, the JTRS suspends them from the Register. Although suspended entrants may still access the Register and modify their information, the registration of an entity is not publicly available during a suspension period. If an organisation does not make the required changes within four weeks of being suspended, it is removed from the Register. If the entity has been removed, its employees are no longer authorised to enter Parliament without a specific invitation.

Registrations are not quality-checked *ex ante*. The current procedure is random and has so far covered about one-sixth of the total register (around 1 000 checks). All registrants are obliged, however, to update their entries annually and are automatically suspended (and then removed) by the system when they do not do so.

The introduction of monitoring, the three updates of the guidelines produced and the helpdesk service have considerably helped to improve the quality of the data filed by registrants. A move towards a more targeted monitoring of the system could bring more efficient results.

Complaints procedures

On the basis of current Articles 18 and 19 of the IIA, the JTRS examined up to fifteen formal complaints during the first two years of operations, mostly related to alleged breaches of paragraph d) of the Code of Conduct. The paragraph states that registrants should "ensure that, to the best of their knowledge, information which they provide upon registration and subsequently in the framework of their activities within the scope of the register is complete, up-to-date and not misleading".

Paragraph 11 in Annex IV of the current IIA provides that, where information entered in the register is incorrect or incomplete, the registrant should be requested to correct it within eight weeks. In accordance with the IIA, registrants are accorded 10 working days to respond to the complaint before being suspended from the Transparency Register for a period of eight weeks. If, by the end of that period, the registrant entity has taken no action, it is removed from the Transparency Register.

Often, the breach of the Code of Conduct was unintentional. Filings that are incorrect (in the wrong section) or incomplete (under-reported financial information), can often be

due to an inadequate understanding of the applicable clauses in the IIA and show that better guidance is needed for registrants. In those cases the complaints are considered as "alerts".

Action taken in the course of the first two years by JTRS to improve its monitoring procedures:

- The introduction of a simple procedure for fast responses to "alerts" about misinformation or mistakes in the Register and non-registered organisations that are contacting public officials or MEPs. The JTRS should raise awareness of this "alert procedure".
- Advocacy groups for greater transparency have started to produce lists of organisations, covered by the Transparency Register and active in Brussels, which are not in the register. Such organisations could be invited to register, when relevant, in the general interest of transparency.
- JTRS has adopted monitoring procedures and updated them based on experience. It has, for example, reduced the total time allotted to quality check procedures from 10 to 6 weeks. While registrants have 10 initial days to respond, they are now removed from the register 4 weeks after being suspended rather than the former 8 weeks.
- New targeted lists will be produced for checking procedures, in order to avoid common mistakes in registrations and better guidance will be provided.

Review process

The European Parliament and the European Commission are currently conducting a review process at the political level. The Working Group for the Revision of the Transparency Register rendered its conclusions at the end of 2013. Preparatory work for this review process included: a public consultation after the first year of operations (2012); two annual reports by the JTRS (2012 and 2013); Europe-wide umbrella stakeholders' meetings (2013); and benchmarking against other public regulators (in the OECD context 2013).

In this context, the EP and EC have invited the Council of the EU to join the Transparency Register scheme. The Council has declared its willingness to consider this possibility and an observer from its Secretariat General currently participates in regular JTRS meetings and followed the review process. The Council has also stated that it will make its position clear as to whether to join the scheme by the end of the review process. Decisions contained in the newly revised agreement will be implemented at the latest by January 2015. A further review of the new system has been foreseen for 2017.

The priority issues and recommendations for the review in 2013/2014 are in particular the following:

- Quality of the content of the Transparency Register should be improved by adding certain fields of information and monitoring registrants' compliance with the rules.
- Continue to foster the increase in numbers of registrations through further external information and communication efforts. Introduction of a number of incentives for registration, linked to Parliament and Commission internal procedures (i.e. participation in events or hearings, etc.).
- Continue the active use of the Register by staff and members of the EP and EC and encourage other EU bodies, organs and agencies, to use it.
- Further clarify and produce guidelines for sections, definitions, activities, and expenditures covered by the scope of the Transparency Register.

- Ensure the Register's technical reliability and introduce additional benefits from the EP-related accreditation procedure.
- Enforce the requirement to provide a list of the main legislative files and issues on which eligible activities were pursued.
- Consider measures to ensure the authenticity and objectives of registrant entities.
- Bring further precision to the handling of complaints, and develop an efficient "alert" system.
- Consider the pros and cons of the "voluntary" versus "mandatory" nature of registration.

Challenges faced by the Transparency Register

The design and implementation phases of the Transparency Register highlighted a number of considerable challenges. Some of the most important ones include:

- Raising the profile and awareness of the Register's rules and guidelines among organisations and of its use as a transparency tool.
- The sheer number of actors involved in the EU decision-making process and drawing the line in terms of covered and non-covered activities.
- Differentiating between national and EU-wide activities, so that only EU-wide activities are covered by the Transparency Register.
- The complexity and multiple layers of lobbying activity, which reflect the EU policy-making and legislative process.
- A legal basis that does not allow for a mandatory system or for the EU to apply sanctions to third parties.
- The need to maintain the open dialogue of the EU institutions (Article 11 of the Treaty on EU), and in particular ensure that access to MEPs is as open as possible.
- To offer substantive incentives to registered entities in terms of a "privileged" relationship with the EU institutions.
- The monitoring and compliance procedures in the framework of a voluntary register.
- Responding to increased public pressure for transparency, comparability and quality of data in the current framework of a voluntary register but operating in a context of limited human resources.

Notes

1. Revised text of the agreement and recommendations of the Working Group: *http://ec.europa.eu/transparencyregister/info/consult-register/whatsNew.do?locale=en.*
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Chapter 11

Hungary: In quest of an appropriate legal framework for lobby regulation

by
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This chapter analyses the regulation of lobbying in Hungary. It focuses, in particular, on the lessons learned from Act XLIX of 2006 on Lobbying Activities, which – as a result of its largely insufficient application – was repealed in 2011. It also describes the 2013 integrity management regulatory system introduced in place of the repealed Act.

The emerging legislative power and the birth of lobbying in Hungary

When Act XI of 1987 on Legislation came into force on 1 January 1988, it ushered in a new stage in Hungary's transition process. By defining Parliament's legislative competencies and obligations, the act marked a stride towards establishing the rule of law and separation of powers in Hungary. Act XI states that citizens contribute – directly or through their elected representatives – to the creation of laws that govern their living conditions. It also sets out that law enforcement agencies, civil society organisations, and representative bodies should be involved in drafting legislation that might affect their interests – both represented and protected – and social conditions. The act goes on to state that, if draft legislation affects broad swathes of society, a wide-ranging public debate may be held.

This important change in the decision-making process confirmed the role of Parliament, further strengthened by the free elections of 1990. At the time, however, the Act on Legislation was still in force and parliamentarians could amend bills, a power that increased their clout and made them targets of Hungarian and international lobbyists. The experience of privatisation, lobbying scandals, and the drive to clean up public officialdom led to the adoption of the government's first piece of anti-corruption legislation in 2001 – Government Decision 1023.[1]

Point 4 of the decision expresses the first political commitment to regulating lobbying in Hungary. Its primary intent is to make the preparation and formulation of legislation more transparent and prevailing governmental, socio-political, economic or other interest publicly visible. To that end, the practical impact of the legislation consultation mechanism must be examined. Decision 1023 also introduces a system to ensure transparency in relations between the legislative bodies and registered interest representatives.

The government had actually planned either to amend the existing Act on Legislation, which was still in force, or to draft a new lobbying bill to bring transparency to the various interests seeking to influence members of Parliament (MPs). The government finally prepared a bill on interest representation in the legislative process and brought it before Parliament in October 2001.

The bill, however, was prepared with no public participation and soon become the subject of heavy criticism. In the words of Ibolya Dávid, former Minister of Justice:[2]

> *"Professional lobbyists found it offensive that the idea of developing a law on lobbying appeared in the government decision on the strategy against corruption. Yet the Ministry of Justice led by me wanted to make it clear that regulated and transparent lobbying has nothing to do with corruption."*

As it happened the bill would not be adopted, in the end, due to the impending elections of 2002.

The next attempt: The act of 2006 on lobbying activities

The new government ushered in by the 2002 elections had plans to regulate lobbying activities and its proposal duly appeared in the legislative programme of autumn 2002.

Though the government failed in its attempt to re-regulate the 1987 Act on Legislation due to the lack of a qualified majority, it did push through some bills that enhanced the transparency of the legislative process. However, it left to one side its proposal to regulate lobbying activities until the autumn of 2005, when it decided to move forward and draft a bill ahead of the parliamentary elections in 2006.

The government's decision to act was the result of intensive lobbying by lobbyists who demanded clear, transparent lobbying rules. The lobbyists even went as far as to create the First Hungarian Lobby Association to promote the need for regulation. Other stakeholders – even parliamentarians from the governing party – criticised the new bill and questioned its necessity. They argued that other relevant acts – on conflict of interest, on transparency (the so-called "glass pocket"), on the status of MPs and Parliament's house rules – already regulated the most significant fields of lobbying.

Act XLIX on Lobbying Activities (also called "the Act") was finally adopted in spring 2006, just before the legislative election, and came into force on 1 September 2006. The Hungarian lobbying legislation was – together with Poland's – one of the first in its kind in Europe. The preamble to the Act sets out its chief goals:

- Lay down the rules for lobbying activities, i.e. activities carried out under contract with purpose of advocating the interests of others.
- Make public the interests at play in decisions made by bodies exercising executive powers.
- Enhance confidence in the activities of decision-making bodies.

The Act itself states the scope, objectives, and principles of lobbying, some interpretative provisions (e.g. definitions of lobbying, lobbying firms, and lobbying activities, establishing connection, publications), rules of registration, the fundamental rules of lobbying, and finally the rules for reporting lobbying activities. This order is followed in the ensuing presentation of the act's provisions.

Scope and objective of the law

The Act defines lobbying activities as attempting to influence legislative or administrative action in return for contractually agreed payment. Its objective was to ensure transparency in lobbying activities, define the rules governing the relations between decision makers and lobbyists, and to lay down the fundamental guidelines for those activities. The Act also defines exceptions that specify to whom it does not apply:

- Organisations which protect and further the economic and public interests of their members in decision-making bodies that exercise executive powers.
- Advocacy mechanisms vested with the power to inform, initiate negotiations, conduct inquiries, hold consultations, or perform other activities intended to influence executive and regulatory decisions by conveying information concerning economic, social, and other goals.[3]

The scope of the Act is broader than that of the 2001 legislation. It regulated lobbying that sought to influence not only legislation but administrative decisions too, such as approving the building of a new car factory.

Another salient feature of the Act is that it applies to professional lobbyists, namely individuals or lobbying firms who operate in return for contractually agreed payment. It thus clearly separates professional practitioners from organisations that represent their

members' interests (trade unions, NGOs, chambers of commerce, etc.) and from long-standing interest representation mechanisms. Trade unions were satisfied with this solution because they fell outside the scope of the Act and so kept their prerogatives in interest representation.

By contrast, NGOs believed that they had lost their right to influence legislative and administrative decisions and lost out to professional lobbyists. In November 2005, 22 civil society organisations (CSOs) – e.g. Hungarian Civil Liberties Union, the Hungarian Helsinki Committee, the Association of Hungarian Journalists and the Ökotárs Foundation – signed an open letter to the government protesting that the Act discriminated against CSOs. They wrote:

"The twenty-two organisations call on the government to remedy the shortcomings of this bill and to do everything to assure that civil society organisations may take part in public affairs, in democratic public life, without discrimination. It is unacceptable that a lobbying act gives more rights only to the already influential lobbying organisations and makes democratic participation impossible!"[4]

Box 11.1. **Debate on defining the scope of the Bill on Lobbying Activities**

In March 2005, the Hungarian Civil Liberties Union wrote a letter to the Prime Minister's Office demanding information about the bill. The answer they received was that the bill was behind schedule. In June 2005 articles in the press claimed that some CSOs (namely the First Hungarian Lobby Association) had already given their opinion on the bill. The Hungarian Civil Liberties Union considered the bill public information. The CSOs affirmed that it was conceptually flawed because its scope covered an unreasonable small number of lobbyists. Businesses and civil society organisations representing the interests of their members and the organisations without membership acting in the public interest should have the same rights and be regulated in the same way.

The scope of the bill remained unchanged despite the fact that statutes of numerous associations declared their goal as lobbying. The bill was finally adopted without the amendments proposed by CSOs. The most important privileges that professional lobbyists enjoyed over CSO representatives were:

- Lobbyists are issued with licenses and admitted into the premises of the organisations which they lobby at pre-arranged times upon presentation of their licenses and in accordance with regulations governing admission and exit.
- A lobbyist may request permission to express views in person before a competent parliamentary committee at least once in the course of lobbying activities relating to a parliamentary decision and within the timeframe set by the committee.
- A lobbyist may request permission to express views in person to the competent minister at least once in the course of lobbying activities relating to a government decision or decisions within the timeframe specified by the director.
- A lobbyist may request permission to speak in person at least before a competent local government committee or, failing that, representative body (e.g. general assembly) in the course of lobbying activities performed in connection with a local government decision within the timeframe specified by the committee of representative body (general assembly).

- Lobbyists are allowed to give gifts (defined in the Personal Income Tax Act) to an executive decision-making body on a single occasion and in connection with a single assignment, if the value does not exceed 10% of the prevailing minimum wage.[5]

However, although a number of privileges were specified in the bill that would make it possible for lobbyists to carry out lobbying activities, it is not mandatory for the government to meet with lobbyists.

Principles

The Act defines three principles.

1. All applications of the Act's provisions must strictly adhere to the principle of equal treatment.
2. The register of lobbyists should be designed so that it does not prevent free and open access to bodies exercising executive powers.
3. The Act should have no effect on the provisions of other pieces of legislation that govern advocacy and interest representation.

The equal treatment of lobbyists should ensure fair competition in the lobbying industry. As mentioned above, only professional lobbyists enjoy free and fair competition. Other interest representation entities (e.g. social consultants, the National Council of Reconciliation, trade unions' interest representatives) were similarly privileged in accordance with the principle affirmed in the third principle. Other interest representation organisations, like associations and foundations, had fewer rights.

Interpretative provisions

The Act defines "lobbyist" as a natural person duly registered as engaged in lobbying activities. As for lobbying firms, it defines them as any legal person or any business association that is not a legal person duly registered as engaged in lobbying activities.[6] Lobbying activities are any activity or conduct that seek to influence executive decisions or to promote interests in return for contractually agreed payment.

During the preparation of the Act, discussions unfolded as to the qualification requirements of lobbyists. Some argued that it was important to have a general overview of legislation, while others contended that specialist knowledge was even more desirable in, for example, in the pharmaceutical industry. The Hungarian Bar Association insisted that lobby activities for lawyers specified the law degree as criteria of registration. Also mooted was the possibility of a separate chamber for lobbyists or a specific postgraduate course. Finally, only legal ability, no criminal record, a higher education degree, and not to be subject to any pendant decision as to removal from the register were agreed upon. For lobbying firms, the most important criterion was to have a member or employee listed in the register of lobbyists.

The Act's conflict of interest provisions stated that holders of certain offices may not engage in lobbying activities. They were the following:

- Members of Parliament, members of the European Parliament, government executives, local governments, members of bodies of representatives or bodies of local governments, mayors, lord mayors, and the chair of the General Assembly.

- The budgetary agencies governed by the Act on Public Finances; the directors, officers and members of those agencies; and persons engaged in a civil or public service capacity, in a judge or public prosecutor service capacity or in an official service capacity, under contract of employment or in any other work-capacity with these agencies.
- State-controlled economic operator; the members, executive officers, and supervisory board members of such organisations; economic operators controlled by local government and the members, executive officers, and supervisory board members of such organisations.
- Political parties and their officers.
- Public bodies and their officers.
- Public foundations and the officers of their management structures.

Furthermore, none of the above-mentioned officials may be involved as a participating member or owner in any lobbying firm, nor engaged with any lobbying firm under contract. As a corruption prevention measure, the same officials are not allowed to accept any contribution from a lobbyist or lobbying firm, with the exception of gifts whose value does not exceed 10% of the prevailing minimum wage.

Registration of lobbyists

A major innovation of the Act on Lobbying Activities was the registration of lobbyists. Lobbying activities may be pursued by natural and legal persons and business associations without the status of a legal person, subject to registration. In fact, the Act established two registers: one for private lobbyists and one for lobbying firms. It considered registration important to ensuring transparency in lobbying activities for the following reasons:

- It is clear to the public who is registered as a lobbyist and who is bound by the Act on Lobbying Activities.
- Anyone may scrutinise a lobbyist's activity in the register.
- Illicit lobbying activities are easy to disclose.
- Non-declared or inaccurately declared activities are easy to spot and check. This is because decision-making bodies must inform the registrar body of the decisions which lobbying activities target, the names of the lobbyists involved, and the means they use.
- The issue of numbered lobby licenses is based on the register.

In order to ensure compliance with the Act, executive decision-making bodies are to notify the registrar body if it has knowledge of a lobbyist being engaged in any conduct contrary to the provisions of Act. It should supply a summary of the relevant facts of the case attached together with any evidence. If it transpires that a lobbyist has breached the provisions of the Act, the registrar body adopts a resolution suspending him or her from the register and banning him or her from lobbying for one, two, or three years.

The Act provides for severe penalties. In the event that a natural or legal person or business association without legal personality engages in lobbying activities without being registered, the registrar body may pass a resolution to levy a penalty of up to HUF 10 million.[7] In the event of multiple infringements, penalties may be imposed cumulatively. The amount of a fine is be determined with regard to all applicable circumstances, in particular, to the gravity, objective and duration of the illegal conduct, any recidivism, and the actual or intended advantage gained by such conduct.

Under the terms of the Act, the government appoints by decree the body which should manage the register of lobbyists and the register of lobbying firms, the detailed regulations on lobbying licenses, and the procedural rules for imposing penalties. This body, the Central Office of Justice, is also responsible for monitoring and enforcing lobbying rules.

Fundamental rules of lobbying activities

Because lobbying may be of a very sensitive nature, with only a thin line between it and illicit influence, the Act sets forth a set of fundamental lobbying rules which require practitioners to: [8]

- Disclose to the competent officer of the body exercising executive powers the name of their employer and the reason for approaching a public official.
- Inform employers of their obligations under the terms of the Act, including the filing of the data and information contained in records.
- Use no confidential or insider information received from the employer to the detriment of the said employer.
- Promote no interests contrary to the interests of competing employers without the prior consent of the employers concerned and which they grant only in possession of sufficient information.
- Exercise particular caution, as befits any person engaged in lobbying activities, in ascertaining the authenticity, accuracy, and genuineness of the information they convey to their employer, or to the executive decision-making body on behalf of the employer.
- Advise an employer if the employer's objective is illegal or unethical and which, if carried out, violates the basic principles of the lobbyist profession, and refuse to take any action to further such an objective.
- Abide by the regulations of the bodies exercising executive powers to the extent pertaining to them.
- Obtain no information by unfair means on the actions of executive decision-making bodies.

In accordance with the provisions of the Criminal Code, the Act contains serious measures designed to separate lobbying from bribery. They may not provide, offer, or mediate any contribution – except gifts of a value not exceeding 10% of the prevailing minimum wage – to an executive decision-making body, its members or employees at any time when lobbying the body in question.

Lobbyists may invite members and officers of an executive decision-making body to trade conferences related to the matter to which their lobbying activities pertain. Nevertheless, they are not permitted to reimburse the costs of attending such conferences to the executive decision-making bodies or to persons attending on their behalf. Lobbyists are allowed to send trade materials, scientific publications and feasibility studies to executive decision-making bodies and they may supply them with the results of their own research and studies.

In order to avoid conflicts of interest, a lobbyist may not lobby any executive decision-making body in which his or her close relative may hold executive office. Nor should any lobbying activity seek to prompt an executive decision-making body not to fulfil the obligations conferred upon it by law.

Reporting lobbying activities

Transparency is central to lobbying. Accordingly, the Act on Lobbying Activities instituted a register for lobbyists and a periodic reporting obligation. The chief purpose of filing reports is to supply information on lobbying activities, principals and used methods.

Registered lobbyists had to write quarterly reports on their lobbying activities and send them to the Central Office of Justice (which operates the register) by the last day of the month following the quarter in question. Reports had to contain:

- An itemised list of the executive decisions that the lobbyist sought to influence.
- An indication of the objective(s) of lobbying activities related to a specific bill.
- A list of the means used to lobby in a specific contract.
- An indication of the names of officers of the executive decision-making body contacted and the number of occasions on which contact was made with them.
- An indication of each gift provided, their individual value, and the name and position of the recipient.
- The names of the employers of the lobbying firm and/or lobbyist.

In parallel, executive decision-making bodies that are lobbied had to submit quarterly reports to the registrar body on the decisions which lobbying activities sought to influence, the names of the lobbyists, and the means that they used.[9]

Implementing the Act on Lobbying Activities

After the Act entered into force, the Central Office of Justice established a register of lobbyists and ensured the publication of a report of lobbying.[10] It emerged that, despite all the lively political debate and attention from the lobbying industry and abroad, the application of the Act suffered from serious shortcomings. The most important data on the application of the law are collected in Table 11.1.

The number of registered lobbyists and lobbying firms was extremely low as were the lobbying activities reported. In the years covered by the reports very few lobbyists registered – a meagre total of 261 names appeared in the register. The same applies to lobbying firms: a mere 46 over the five years, during which 50 lobbyists were removed from the register.

The most surprising finding is how few reports were filed with the lobbying registrar. Just 307 lobbyists and lobbying firms transmitted only 212 reports to the Office of Public

Table 11.1. **Data on the application of the Act XLIX of 2006 on Lobbying Activities**

	2006 (01.09-31.12.)	2007	2008	2009	2010 (01.01-30.09.)	total
Registered lobbyists	75	92	56	17	21	**261**
Cancelation	0	4	16	25	5	**50**
Registered lobbying firms	15	14	9	5	3	**46**
Cancelation	0	0	1	3	0	**4**
Transmitted reports by lobbyists	15	38	50	68	41	**212**
Transmitted reports by decision-making bodies	0	4	42	63	23	**132**
Number of penalties	0	0	0	0	0	**0**

Note: For the year 2010, data are only available until 30 September 2010.

Administration and Justice. The inference is that lobbyists were extremely underemployed with an average of less than one report to file over almost five years.

Looking behind the numbers, there are even more surprising findings. Most of the reports were submitted by two dozen lobbyists, so the rest of registered lobbyists remained invisible to the authorities. Decision makers, too, were unforthcoming, sending in only 132 reports to the Central Office of Justice, very often in response to a written demand for information from the Office. In those cases, the response of decision makers was that there was no lobbying activity in the period in question or that the activity in question did not fall within the scope of the Act on Lobbying Activities.

No penalties were ever applied in the implementation of the Act. The Office initiated investigations six times, but later came to the conclusion that no penalties were needed.[11]

Even lobbyists themselves seriously criticised implementation of the Act. As ErnőTóth put it eloquently:

> *"[L]egitimate lobbying, as the possibility of legal advocacy is surrounded mostly by disinterest. The regulation of lobbying does not work in practice, its impact – despite the efforts of the Office – does not show, the provisions of the act are only slightly applied, they are not enforced by the concerned public authorities, and interest representatives take little notice of it. The law has not lived up to the social and political expectations of it and actual lobbying could not be included within the scope of the regulation. The opportunities of legitimate lobbying are limited by invisible lobbying, the political bargaining and the tradition of widespread of corruption. In these circumstances, a practical framework for transparent lobbying could not be developed, and the legislative goals laid down in the preface of the Act could not be realised."*[12]

The Act's deficiencies may be summarised as follows:[13]

- falling numbers of registered lobbyists,
- a high number of inactive lobbyists,
- certain relevant lobbying activities do not appear in the register,
- disappointment among registered lobbyists,
- multinational companies do not use registered lobbyists to influence government decisions,
- whole sectors of the economy are missing in the reports,
- decision makers are unfamiliar with the provisions of the Act,
- decision makers are unreceptive to registered lobbyists,
- incorrect interpretation of the law by decision-makers,
- lack of lobbying reports from non-registered lobbyists ("invisible lobbyists").

As early as 2008, the Central Office of Justice had spotted the Act's shortcomings and urged that it be amended. It was not.

By 2010 it had become clear that the Act on Lobbying Activities had failed. Despite the recurring proposals from civil society groups and experts, the government refused to amend the Act. Then, in 2010, the election ushered in a new government which decided to follow a new approach. Act CXXXI on the Social Participation in the Drafting of Legislation was adopted and Act XLIX of 2006 on Lobbying Activities was repealed effective 1 January 2011. Due the repeal of the Act, the registrar body's responsibility is limited to maintaining the register and publishing its data on lobbyists and former lobbying activities.

The new Act regulates social participation in the drafting of legislation (acts and government and ministerial decrees). Consultation comes under two broad categories: general and direct. Direct consultation concerns non-governmental organisations, recognised churches, professional and scientific organisations, national minority self-governments, interest representation groups, public bodies, and representatives of institutions of higher education. The conditions and framework of co-operation are to be set out in an agreement concluded between the strategic partner and minister for a specific term or for a period terminating at the latest when the Prime Minister's mandate expires.

Lessons learned

To summarise lessons learned from the Act on Lobbying Activities, it is important to acknowledge that the adoption of a rigid, foreign framework with little regard for local circumstances, legal background, or public law traditions significantly hampered its implementation. Although lobbyists and NGOs strove to create a regulation which would ensure transparency in lobbying, some organisations were not subject to the rules. The result was fragmented interest among potential lobbyists, with only professional practitioners interested in the Act's success. A significant proportion of lobbying activities thus remained invisible, giving a significant advantage to non-registered lobbyists.

Professional lobbyists found that the Act mainly prescribed obligations and that there seemed to be few benefits. Professional lobbyists' meetings with decision makers were at the discretion of the latter and lobbying licenses did not ensure priority access to government offices. The upshot was mistrust of the regulation, with more and more lobbyists demanding to be struck from the register – a trend that might have been reversed by a consistent, strict application of penalties. The fact that they were never used made the rules powerless and unable to change trends.

Still, the chief factor in the Act's failure was the ambiguous attitude of policy makers and public administration bodies towards the Act. Formally, they tried to show their commitment to transparent lobbying, but in reality, the application of the Act was weak. Ensuring that the Act's requirements were met was not a priority but an unnecessary, inconvenient task for public officials. Because penalties applied to business lobbying decision makers were not threatened with grave financial consequences.

Policy makers and government officials showed little acceptance of or support for the Act because they did not have the right organisational culture and failed to recognise the importance of transparent decision making for public trust. To that end, the integrity approach could be valuable.

A new initiative was launched in 2013 in place of the repealed Act on Lobbying Activities – Government Decree No. 50 (II. 25) on the integrity management system in public administration bodies and the procedural rules for receiving lobbyists. Entered into force on 28 March, it seeks to build integrity in public office and foster transparent lobbying. It contains rules on how government departments and agencies who report or answers to the Government should receive lobbyists. The sole exception is law enforcement agencies.

In the course of (or in connection with) their duties, public employees may meet lobbyists – anyone who is not a client or complainant or another person participating in the procedure – only after informing their superiors. The information they transmit to their superiors must include the name of the lobbyist and – if applicable – the name of the organisation he or she represents, as well as the reason for and the date and location of

the meeting. Any public office holder who becomes aware that the lobbying entity is a risk to integrity in the meeting is obliged to inform his or her superior in writing. To reduce integrity risks, the superior may prohibit the meeting between the official and the lobbyist or may make the meeting conditional on the presence of a third person (integrity adviser). Heads of department may issue a prescriptive instruction to prohibit public officials from meeting lobbyists, to restrict such meetings, or to allow them only if a third person is present.

Meetings should be registered and public officials may compile their annual reports on meetings with lobbyists through a logged electronic calendar shared with their superior. If this method of recording meetings is used, it is prohibited to delete or to modify meetings that actually took place from the electronic calendar. Any intentional violation gives rise to disciplinary liability. Heads of government bodies must review logs of meetings between their subordinates and lobbyists on an annual basis, survey the related risks, and take the measures necessary for managing such risks in a corruption prevention action plan.

These new provisions can obviously be only a partial response to the need for a detailed, effective lobby regulation. However, they can contribute to changing the administrative culture in Hungary and focusing minds on the importance of transparent decision-making processes.

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Chapter 12

Ireland: Proposals for registering lobbying activities

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This chapter describes Ireland's path in the creation of rules and guidelines on lobbying activities, including the public consultation process and the main provisions of the draft legislative proposal which may be modified prior to Government and parliamentary approval of the final Bill.

Background and context

Why legislate?

Government needs to be open to outside interests and ideas and lobbying should be regarded as a force for good and an essential element of the democratic process. In Ireland, citizens have relatively easy access to their political representatives, including ministers, through a variety of formal and informal channels. This interaction between the political system and the public provides Irish political representatives with valuable insights, information, and policy perspectives that are critical to good governance given the complexity of the challenges facing public policy makers and the wider impact which decisions of government have on all aspects of the economic and social system.

The current system, however, has given rise to public concern about the role of vested interests in policy making and the associated risk that privileged or excessive access may result in sub-optimal public policy decisions.

As highlighted in the Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments (the Mahon Tribunal)[1] of March 2012, lobbying behind closed doors can exacerbate corruption risks. The Tribunal recommended the regulation of lobbying to secure significantly greater transparency and the implementation of appropriate professional standards governing the conduct of lobbyists.

What does regulation seek to achieve?

The key objective in introducing a lobbying register is to make information available to the public on the identity of those seeking to influence public policy decisions. It is essential that the regulatory regime put in place is balanced, fair and designed in a manner compatible with the constitutional framework. It must also be appropriately aligned with the positive elements of Ireland's prevailing political culture.

The introduction of lobbying regulation in Ireland represents a significant change to the existing political culture, as it replaces a relatively informal set of arrangements with a more structured, transparent system. From the outset, therefore, the Department of Public Expenditure and Reform sought to engage as many stakeholders as possible in the change process.

Government commitments

The Irish Government's current programme of work (Programme for National Recovery 2011-2016 [PNR]) contains a commitment to introduce a statutory register of lobbyists and rules governing the conduct of lobbying. The Programme also contains a commitment to regulate post-public employment.

Overview of the public consultation process and the main related issues

First phase of public consultation

In December 2011, advertisements were placed in the national newspapers and on the Irish government website (*www.per.gov.ie*) inviting submissions from interested parties on the design, structure and implementation of an effective regulatory system for lobbying in Ireland. The consultation process was based on the agreed OECD Principles for Transparency and Integrity in Lobbying.

The response to the consultation process was positive and approximately 60 organisations and individuals initially submitted views to the Department of Public Expenditure and Reform. A number of contributors were subsequently invited to meet with officials from the Department to discuss specific issues contained in their submissions. These issues are explored in detail in the section below, "Issues raised in the consultation process on the scope of registration and disclosure requirements".

Policy paper

In July 2012 the Department published a policy paper entitled "Regulation of Lobbying Policy Proposals".[2] In overall terms, the paper examines the proposed scope of lobbying legislation and the key issues for decision.

Public seminar

A public seminar on the regulation of lobbying in Ireland was hosted by the Department in July 2012 with contributions from Mr Brendan Howlin, Minister for Public Expenditure and Reform, and Ms Lynn Morrison, Integrity Commissioner of Ontario. The seminar provided an opportunity for a full and frank debate of issues emerging from the consultation process and options for improving the proposed regulatory system.

Second phase of public consultation

A further consultation phase then took place. It focused on the issues raised at the seminar.

The Department has carefully framed its proposals to take account of the issues raised throughout the consultation process. Full details of the consultation process including all the submissions received can be found at *http://per.gov.ie/regulation-of-lobbyists/*.

Challenge of defining "lobbying", "lobbyist" and "the lobbied"

Definitions

There is universal consensus among stakeholders that clear and legally robust definitions are central to the effectiveness of any regulatory system for lobbying. Clear definitions also aid compliance as they help stakeholders understand their obligations under the regulations.

The purpose of lobbying regulation is to answer the following question: "Who is lobbying whom about what?" The definitions adopted and the final shape of a lobbying register will, therefore, be determined by the interaction of the following:

- lobbying (i.e. the activity to be regulated),
- the lobbyist (the "who" in the question),
- the lobbied (the "whom"),
- the matters on which lobbying is conducted (the "what").

How is "lobbying" defined?

A definition was needed of the activities that give rise to the requirement to register.

Box 12.1. **Guidance from overseas on defining lobbying**

While the scope of legislation overseas varies significantly, the main characteristics of definitions of lobbying in other jurisdictions are:

a) direct communication with a designated public official in an attempt to influence certain defined aspects of public policy or public administration;

b) undertaking background activities in preparing for lobbying;

c) spending above a certain proportion of working time on lobbying activities;

d) lobbying on behalf of a third party in return for payment.

The OECD Principles[3] state that "countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying". The Principles further stress that definitions should be robust so as to avoid misinterpretation and loopholes.

A number of submissions received argued that the lobbying activities in which an organisation engages on its own behalf should be excluded from the definition. Others argued that the definition should encompass all interest groups. There was also some support for including all the work that a lobbyist does before any "contact" takes place, e.g. prior research and preparation of submissions.

In view of the core objective of significantly enhancing the transparency of the policy making and decision making processes, it was decided that the Irish legislation adopt a comprehensive definition of lobbying. Lobbying will be defined as communication with designated public office holders or officials by persons who are:

- employees, owners, shareholders or partners of an organisation;
- persons operating in a voluntary capacity who hold office at the national level, e.g. the president or chairperson of an organisation;
- persons paid by third parties to communicate on their behalf;
- regarding specific policy, legislative matters, or prospective decisions of a public body.

The definition also includes the management or direction of grassroots campaigns.

The definition of lobbying activity will be targeted more on contact or communication with a public official than on seeking to encompass preparatory work, research, or planning in advance of such an engagement. It was decided not to include a test of "seeking to influence" as this has proved problematic and somewhat uncertain in its implementation elsewhere.

How is "lobbyist" defined?

There are several similarities in the manner in which other jurisdictions have approached the definition of "lobbyist".

Box 12.2. **Guidance from overseas on defining a lobbyist**

At federal level, Canada defines three different categories of lobbyists as being subject to the legislation. They are: i) consultant lobbyists; ii) in-house "corporate" lobbyists, i.e. a person who works for compensation for an organisation that is "for profit"; and iii) in-house "organisation" lobbyists, i.e. a person who works for compensation for a "non-profit" organisation.

The Canadian federal legislation only requires in-house lobbyists to register if they spend a certain proportion of time on lobbying activity.

The definitions employed by the US states usually revolve around compensation with regulations stipulating a threshold of compensation received in order to determine who is a lobbyist.

Australian regulations define a lobbyist as any person, company, or organisation who conducts lobbying activities on behalf of a third-party client or whose employees conduct lobbying activities on behalf of a third-party client.

The UK Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 states that a lobbyist, in return for direct or indirect payment, makes communications on behalf of another person or persons in the course of his or her business, and lobbying is a substantial part of that business.

Chari, Hogan, and Murphy (2010) give a broad definition of lobbyist that is dependent on the action of lobbying. Lobbyists may be from economic, professional and civil society groups. Such actors or sets of actors "seek to influence the policy-making process in such a way that their interests are reflected in public policy outcomes".

Some of the submissions received from not-for-profit organisations make the case that they should not be required to register as lobbyists because the work that they carry out is different from that of professional lobbyists.

On review of all the material available it was decided that a lobbyist should be defined as "any natural or legal person engaging in the activity defined as lobbying under the proposed legislation".

This definition is expected to capture a body corporate, partners of a partnership, an individual sole trader or the management of an unincorporated association.

Who are "the lobbied"?

A clear definition of "the lobbied, or people targeted by lobbying, is essential in order to ensure that there is legal certainty on the circumstances in which the necessity for registering communication arises.

Box 12.3. **Guidance from overseas on defining the lobbied**

The Canadian legislation provides for positions or classes of position as designated public office holders. These positions include chiefs of staff and senior advisory staff of the Leader of the Opposition in both the House of Commons and the Senate.

The UK Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 provides for communications made personally to a minister of the Crown, permanent secretary or second permanent secretary in the civil service of the state. It also provides for positions equivalent to permanent secretary.

The OECD does not explicitly supply a definition of "the lobbied". Instead those who are the targets of lobbying are referred to as "public office holders".

The scope of the definition must be balanced and proportionate so that it does not include categories of public officials whose involvement in primary decision making is peripheral. Stakeholders consulted view "the lobbied" primarily as individuals with influence in policy decisions.

The Irish Bill will provide scope for a broad category of lobbied persons. They could be brought within the scope of the Bill on a phased basis and include the following:

- ministers, ministers of state;
- members of Parliament from both houses and members of their staff;
- members of local authorities;
- special advisors to ministers;
- the Ombudsman and the Comptroller and Auditor General;
- senior civil and public servants (as prescribed by the Minister);
- such other persons or categories of persons as may be prescribed.

How are lobbying matters defined?

Critical to the effective operation of the regulatory regime is identifying the subject matter of lobbying. An overly narrow or restricted definition of matters giving rise to a registration requirement would undermine the overall policy approach of ensuring that there is openness as to the extent of lobbying on key public policy issues. However, adopting too broad a definition may lead to an excessive volume of information being reported, thus impairing effective operation of the register. Too sweeping a definition could also create a disproportionate administrative burden for registrants.

Box 12.4. **Guidance from overseas on defining the matters on which lobbying takes place**

There is a broad commonality of approach evident in the issues identified in other jurisdictions as the subject-matter of lobbying. It includes the creation and amendment of legislation, the development of government policies and programmes, and the awarding of government contracts or grants.

Given the consistency of subject matter across other jurisdictions and taking account of stakeholders' practical experience, it was recommended that the definition would encompass the following:

- the development of, or any amendment to, legislation;
- the development of, or any change in, the rules or regulations of any scheme, public programme, or policy;
- the development of, or any change in, the implementation arrangements for such schemes or programmes;
- the awarding of any grant, contribution, or any financial benefit by a public body;

Not included are implementation matters of a purely technical nature involving no new significant issues of policy.

Issues raised in the consultation process on the scope of registration and disclosure requirements

Addressing the administrative burden

Issue raised

Taking Ireland's current economic climate into account, a key priority identified by stakeholders in relation to the implementation of the lobbying regulation is that the administrative burden be proportionate. The sheer volume of information required for registration should not be such that it overwhelms the register or overburdens registrants.

A number of submissions expressed serious concern over the possible requirement to register every contact or communication, pointing to the voluminous nature of some organisations' contacts with public bodies.

Response in draft legislation

It is proposed that the emphasis should be placed on meaningful, structured reporting in the register on:

- the specific nature of the issues on which lobbying has taken place,
- persons who have been the subject of lobbying,
- sufficient information to determine the nature, scope, intensity, and type of lobbying activity.

It is not proposed that each and every lobbying contact between a registrant and a public official should be recorded in the register, but rather that summary information on those contacts should be filed.

Frequency of Updates

Issue raised

Stakeholders regarded the frequency of reporting as one determinant of the administrative burden created by the regulatory regime – as regards both the resources dedicated to completing returns to the registrar and the internal procedures and systems required to underpin the accuracy of returns.

Response in draft legislation

From a public policy perspective, the draft legislation seeks to balance the desire for timely filings in the register with the need to avoid excessive reporting. Taking into account the measures outlined above to minimise the amount of detail to be registered, the draft legislation proposes that the register be updated at four-monthly intervals.

Financial data

Issue raised

The issue of reporting financial data, e.g. the amount spent on lobbying activities, was also raised with differing views being expressed as to the public interest of disclosing such information on the register. There were queries over the administrative feasibility of extracting information on time spent on lobbying activity, where it represents a portion only of a person's time. Concerns were also expressed that cross-comparison of financial data based on approximate costs would be problematic.

A minority of contributors to the consultation process strongly supported the inclusion of data on the amount spent on lobbying, including pre-lobbying research.

Response in draft legislation

The inclusion of financial data is probably most easily captured by third party consultant lobbyists who prepare detailed charge sheets in respect of each of their clients. In an Irish context, such lobbying activity represents only a small portion of overall lobbying activity, with many organisations devoting a proportion of their time only to lobbying activity. From a public policy perspective, it was not considered desirable or necessary to impose more onerous requirements on consultant lobbyists than those applying in other sectors. Such a concern was in line with the goal of ensuring a level playing field for all engaged in lobbying activity. The draft legislation therefore does not require disclosure of financial data in relation to expenditure associated with lobbying activity.

Independent oversight and monitoring

Issue raised

There was consensus among stakeholders consulted on the need for an independent regulator to oversee implementation of the legislation.

Response in draft legislation

The draft legislation provides for the appointment of an independent regulator (the Registrar of Lobbying) to manage the implementation of the register and monitor compliance. The Registrar will also have powers to investigate breaches of the Bill. The Minister intends that the Standards in Public Office Commission (SIPOC) which currently oversees the implementation of the Ethics Acts will act as the first registrar.

Easily accessible registration system

Issue raised

There is consensus on the need for an accessible, easy-to-use on-line register which would also provide the public with access to sufficient information to enable them to assess the nature of lobbying activity taking place.

Response in draft legislation

The Bill provides for the creation of an on-line register available to the public free of charge.

Emphasis on the Registrar's education and guidance role

Issue raised

Of significant concern to stakeholders is that they could inadvertently breach the law in the months following its commencement while they are still building their understanding of the reporting requirements.

Response in draft legislation

The Registrar will be given a statutory responsibility to promote compliance by providing advice and guidance to registrants rather than solely through the exercise of its investigatory and enforcement powers. The Minister for Public Expenditure and Reform has given a commitment that the enforcement provisions will not apply during the initial phase of the Act.

Regular reviews of the legislation

Issue raised

The consultation process has demonstrated the complexity of the issues raised. Obvious risks include the unanticipated loopholes or unintended consequences of implementation, such as the excessive bureaucracy required to meet compliance standards.

Response in draft legislation

It is proposed that after the first year of the regulatory system's operation, the Minister for Public Expenditure and Reform will carry out a review. The review will also provide guidance as to the point at which the Registrar should employ full powers of investigation and enforcement. The legislation will subsequently be reviewed every five years.

Communications with public representatives

Issue raised

There was general consensus in the submissions that citizens' normal interaction with their representatives should not be included within the scope of the legislation.

Response in draft legislation

The Bill recognises that citizens' normal interaction with their local political representatives is a fundamental aspect of representational democracy and excludes it from its scope. Matters relating to land development and planning are not exempt in light of the findings of the Mahon Tribunal[4] which highlighted long-standing difficulties in that area of public policy. The Bill also exempts micro-enterprises with less than 10 employees who communicate in relation to the business of their particular enterprise. Local community organisations composed entirely of volunteers would also be excluded.

Communications between public officials

Issue raised

Feedback from public bodies pointed out that it would be inappropriate for public officials to have to register their official communications with each other.

Response in draft legislation

Reflecting the legislation's objective of shining greater light on interactions between the government and the public, the Bill does not include communications between public servants as lobbying activity. They are considered a normal part of a public servant's duties. It is more appropriate that such contacts should be accessed through other available means such as publications on departmental websites, the freedom of information legislation, accountability arrangements to both houses of Parliament, etc.

Requests from officials for information

Issue raised

Many stakeholders felt aggrieved at the prospect of being obliged to register communications where the contact was initiated by a public official in search of information.

Response in draft legislation

These concerns require a delicate balance to be struck in the legislation. It is essential that public bodies can continue to rely on the co-operation of all sectors of society for information to build up their knowledge of economic and social issues and to assist them in developing appropriate policy responses.

The draft legislation provides that purely factual information sought by a public body is exempt from registration. Information which is more in the nature of analysis, assessment, or opinion provided in response to a request from a public body will be exempt only if such information is made publicly available by that public body.

Transparency of public service groups

Issue raised

A related issue involves participation in working groups, committees, and task forces initiated by ministers. Stakeholders raised a concern that participation in such groups should not require registration as a lobbyist. They feared that such a requirement might deter participation to the detriment of effective and inclusive public policy development.

Response in draft legislation

The proposed arrangements exempt the activities of groups under public service direction but containing private sector representatives, subject to compliance with a transparency code to be issued by the Minister for Public Expenditure and Reform.

Protecting the financial interests of the state

Issue raised

In some instances, the interests of the state itself might require the publication of information to be delayed in the public interest if it relates to contacts that may affect sensitive fiscal or economic issues.

Response in draft legislation

The proposed provision allows ministers, in strictly limited circumstances, to issue a certificate delaying publication of lobbying activity where disclosure could have a serious adverse effect on the financial interests of the state. The Minister would be required to consider the public interest before making such a decision.

Commercially sensitive information

Issue raised

Representatives of the business community who participated in the consultation process argued strongly in favour of some exceptions to the obligation to publish communications which may, by virtue of the contact having taken place, be commercially sensitive.

Response in draft legislation

The Bill allows the Registrar to delay the publication of information where it could i) result in a material financial loss, ii) seriously prejudice the competitive position of that person, or iii) seriously prejudice the conduct or outcome of contractual or other negotiations. The Registrar, who has the authority to publish summary information in the register, would be required to consider the public interest before making such a decision.

Imposition of charges for registration

Issue raised

There was universal agreement among stakeholders that there should be no charge for registration. It was argued that a charge would act as a significant deterrent to compliance with the requirement to register.

Response in draft legislation

In light of the public interest in promoting compliance and the administrative overheads associated with the collection of charges, the draft legislation does not require the payment of a fee to participate in the lobbying register.

Research into other legislative models

The Department commenced a review of international approaches to the regulation of lobbyists at the beginning of 2012. Research was undertaken into regulation in Canada, the USA, Australia and several European countries. The regulation in place in the European Union institutions was also analysed, as were proposals for a regulatory regime in the UK.

As a part of this research, the Department engaged with the Commissioner of Lobbying in Canada and with the Integrity Commissioner in Ontario who both provided information on the practical functioning of registers of lobbyists in their jurisdictions.

The Department drew on the work and advice of three international experts on lobbying regulation: Professor Gary Murphy of Dublin City University, Professor Raj Chari of Trinity College Dublin, and Dr John Hogan from the Dublin Institute of Technology. It also made use of the comprehensive analysis and recommendations published by the OECD on lobbying regulation. Its proposals are also in line with the Council of Europe's recommendations on lobbying (2009).

The Department reviewed a number of private members' bills published in Ireland on the topic of regulation of lobbying since 1999.

Offences/sanctions

Measures requiring lobbying registration and the disclosure of information must be underpinned by effective enforcement.

Box 12.5. **Guidance from overseas on sanctions**

The OECD research advises that reporting proven breaches of lobbying legislation to Parliament leads to unwelcome publicity for the offending lobbyists. The OECD recommendations highlight the value of putting in place clear and enforceable rules, having a good monitoring system, and ensuring that there is strong understanding of the rules by potential registrants.

Ireland's consultations with the Canadian regulators highlighted the value of a registrar having the powers to impose administrative sanctions for minor breaches of the legislation.

Several stakeholders recommended sanctions for regulatory breaches such as failure to register or registering false or misleading information. The recommendations varied from being suspended or struck from the lobbying register to fines and terms of imprisonment.

Consideration of the research material and the consultation process led to the view that the Registrar should apply administrative sanctions for minor breaches of the legislation. The draft legislation also provides for prosecution for serious offences.

Sanctions would be expected to apply to a broad range of contraventions which could include:

- failure to register when undertaking lobbying activity;
- providing false and/or misleading information for the register;
- breaching any regulation in the legislation;
- late reporting of information (administrative sanction).

Advisory group to aid implementation

It is intended that an advisory group of experts and key stakeholders be established to assist in addressing key implementation challenges. One area in which members of the group could make an early positive contribution would be in testing the registration system prior to its going live.

Overcoming the cultural barriers

Bringing about the change of culture required to ensure successful implementation of the legislation will be an ongoing challenge that will require the active support of the political system, the public service, and stakeholders. Drawing on international precedent and significant issues raised in the course of consultation, a number of measures have been included in the General Scheme of the Bill to ensure a balanced and proportionate approach to regulation. These include:

- a phased approach to implementation of the legislation across the public service;
- a delay in the commencement of the provisions relating to investigations and offences to allow for a learning period;

- a decision not to require the registration of every contact, but only sufficient information on the nature of the communications to meet the transparency objectives of the legislation;
- the appointment of an independent registrar to oversee compliance with a statutory mandate and to educate and supply guidance;

In addition, the establishment of an advisory group that is representative of stakeholders will assist in implementation of the legislation.

Current position and next steps

The Government approved the General Scheme of the Regulation of Lobbying Bill in 2013. The General Scheme was submitted for pre-legislative scrutiny to the Joint Parliamentary Committee on Finance, Public Expenditure and Reform and their report has been received. Drafting of the Bill by the Office of the Parliamentary Counsel is advancing and it is anticipated that the Bill will be published following Government approval in quarter two of 2014. A period of time will be required prior to commencement of the legislation to enable development of the IT and information systems which will support the registration process. The timeframe for the regulatory provisions of the Bill to come into operation will depend, in the first instance, on the timeframe for the enactment of the Bill by the Oireachtas following Government approval for its publication.

The core principle guiding the government's approach, as set out in the General Scheme, is to continue to foster ongoing dialogue and engagement between the government and all sectors of society on public policy matters, while ensuring that there is an appropriate degree of transparency.

Notes

1. The Tribunal of Inquiry into Certain Planning Matters & Payments, known as the Mahon Tribunal, can be accessed at *www.flood-tribunal.ie/asp/Reports.asp?objectid=310&Mode=0&RecordID=504*.
2. Available at *http://per.gov.ie/wp-content/uploads/Regulation-of-Lobbying-Policy-Proposals-3.pdf*.
3. The Recommendation of the Council on Principles for Transparency and Integrity in Lobbying can be accessed at *http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=256&InstrumentPID=%20250*.
4. See Endnote 2.

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Chapter 13

Italy: The regulation of lobbying and the evolution of a cultural taboo

by
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In Italy, there is no comprehensive regulation of lobbying activities that cover the whole country or government. There is however rules in Tuscany, Abruzzo and Molise as well as in the Ministry of Agriculture, Food and Forestry Policies.

This chapter explores the existent regulations and analyses the reasons for not having rules and guidelines that are applicable to the country and government as a whole. The chapter also introduces the most recent initiative to regulate lobbying that was presented by the former President of the Council of Ministers, Enrico Letta, during the Council of Ministers' meeting on 24 May 2013.

Introduction

For historical, political and cultural reasons there is no systematic regulation of lobbying in Italy. Indeed, the word "lobby" has come to have criminal connotations and has been used as byword for corruption and lawlessness over the last 30 years. Nevertheless, the Constitutional Court has made clear that lobbying is a legitimate activity. Moreover, the legislature has adopted a number of rules with the objective of making the relationship between lobbyists and public decision-makers transparent and to guarantee lobbyists' involvement in the decision-making process. However, the very lawmakers who adopted the rules have often disregarded them. As a result, lobbying regulation in Italy resembles a snake that slithers schizophrenically (Petrillo, 2002).[1]

All attempts to make the system functional and to adopt clear rules governing lobbying has failed. Furthermore, the proposals which the government put forward in July 2013 do not seem to augur change.

Against this disappointing background, it is essential to underline two key factors. First, three Italian regions have adopted lobbying laws. Second, in February 2012 the Ministry of Agriculture, Food and Forestry Policies established a Register of Lobbyists, offering a first model of how such a system could be implemented in other government departments.

Why lobbying as a crime?

In Italy the word "lobby" suggests something obscure and illegal. In the collective imagination, it evokes a sense of dishonesty and improper mediation. There are three broad reasons for such a negative perception which are historical, cultural, and legal and legal in nature.

Italian legal culture has been highly influenced by the so-called "Jacobin constitutionalism" and the myth that attaches to the concept of "general interest" as formulated in the French post-revolutionary vision of the law.[2] The concept considers that the general interest – whose concrete manifestation has to be the law – pre-exists the legal system and its institutions: it cannot be regarded as the outcome of bargaining between different interests. Instead, the general interest requires the legislator to infer the collective will from the legal system's general principles. In accordance with the Jacobin approach, nobody may seek to involve citizens in a non-public interest, such as the interest of a corporation. That vision of society has long placed the state in a situation of absolute supremacy over its citizens. It was the state's duty to exclusively decide what the general interest was, and no confrontation with organised civil society was considered necessary or suitable.

From the proclamation of the Italian Republican Constitution in 1948 to the 1990s, the prevailing idea was that only political parties could represent citizens' interests. According to such thinking, the political party was the unique "tool" for citizens' participation in the national political debate (Elia, 2006) as stated by Article 49 of the Constitution (Crisafulli, 1969). Within such a framework, any intervention in the decision-making process other

than through a political party had to be considered unlawful interference. It is not, therefore, surprising that this interpretation of Article 49 should lead to the firmly held doctrine that pressure groups are something to be kept outside Parliament in order to preserve its "purity" (Zagrebelsky, 1994), a "the sickness of the representation system and an evil to be fought and deleted" (Esposito, 1958).[3]

The negative perception of lobbying is also due to the failure to apply rules designed to make the activities of public decision makers and lobbyists transparent. In fact, as further explained below, there are many rules in Italy governing the relationships between lobbies and public decision makers. Yet they are more or less disregarded, making lobbying a phenomenon that is as clandestine as the entire decision-making process.

Italy's legislature has largely ignored lobbying – not because lobbies do not exist in Italy (far from it), but because of the concern that regulating pressure groups was equivalent to legitimising their existence. Lobbies are thus a legal taboo: not worthy of being analysed from a legal point of view, yet very widely discussed across the media.

Looking for a legal framework for lobbying: Is there a constitutional right to lobby?

For all the above reasons, no specific regulation governs lobbies in the Italian legal system. However, some sections of the Constitution do refer to a "general, constitutional theory of participation"[4] in the decision-making process. It is, therefore, possible to develop a reflection on a legal framework for lobbying in Italy.

Articles 2 and 18 of the Constitution recognise the role of unions and enshrine the right of free association. Articles 3 and 49 establish the right to participate in political life and Article 50 the right to petition both legislative chambers in order to ask for legislative provision or to represent collective needs. Article 71 entitles the people to initiate legislation and Article 75 to repeal legislation through referenda. Finally, Articles 54, 97 and 98 establish that civil servants must fulfil the duties of their office with discipline and honour exclusively to serve the Nation (as similarly established in Article 67 for members of Parliament).

It is, in fact, now recognised that lobbying represents the expression of a constitutional right. Indeed, there have been a number of Constitutional Court decisions since 1974 that underline how lobbying activities promote equality and participation, requirements that are set out in the Italian Constitution.[5] For instance, in Decisions no.1 and no. 290 of 1974, the Court explicitly affirmed the constitutional legitimacy of political strikes[6] because it is a constitutional right to try to influence political decision makers. From that perspective, strikes are a tool that, along with others means of pressure, may be used to further the aims established by Article 3 of the Constitution. So, according to the Court, the practice of lobbying the constitutional authorities – unless it seeks to prevent the rights and powers that are an expression of the people's sovereignty – must be considered the legitimate demonstration of a constitutional right and, as such, cannot be prohibited.

Recently, the Constitutional Court once again addressed the issue of lobbying when it adopted Decision No. 379 of 2004 on statute of the Italian region of Emilia Romagna. As it deliberated, the court focused on lobbies' involvement in the decision-making process and found that they share experience and provide technical knowledge which enable public decision-makers to make fully informed decisions.[7]

The "Snake model": Rules and the failure of implementation

As mentioned at the start of the chapter, Italy has no systematic regulation of lobbying. Nevertheless, over the last few years, legislation that seeks to guarantee transparency and participation in the decision-making process has been passed.

However, with regard to lobbies, there is a strong contradiction in the Italian legal system. The "snake model" theory (Petrillo, 2011)[8] explains the contradiction by comparing lobbying regulations to a schizophrenically slithering snake. Just like a snake, the rules and regulations on participation creep into Italy's legal system because they are scattered across different provisions on different topics. Their implementation, too, can be defined as schizophrenic because, most of the time, they are disregarded by the very same legislator who adopted them. This is, for example, the case for Article 14 of Law No. 246 of 2005 on regulatory impact analysis (RIA). RIA is an evaluation of the potential effects of a proposed bill on citizens and companies' activities and on the organisation and functioning of the public administration. According to Article 14, the government has to conduct RIAs for all executive bills, explicitly indicating the methods and results of the consultations with stakeholders. Even if the provision is in place, the legislator and all authorities that are responsible for conducting RIAs consider Article 14 a procedural commitment of meagre importance. As a consequence, the RIA reports attached to all executive bills are voided of their essential content.

A second example of the contradiction in the attitude to lobbying relates to the rules on lobbyists in Parliament and their participation in the legislative process. According to Article 144 of the Rules of the Chamber of Deputies and Article 48 of the Rules of the Senate, all parliamentary committees may organise hearings of "local representatives, representatives of the private sector, trade associations, and other experts in the examined field"[9] in order to acquire news, information, and relevant documents for Parliamentary activity (Celotto, 2004). However, such hearings are completely discretionary and they, like fact-finding, can be manipulated by the Parliamentary majority and the Presidents of Committees. As a matter of fact, committees are free to summon and listen to whomever for as long they want. In addition, committee can deny access to certain individuals and grant it to others without any explanation. Hearings are often informal in nature with no written reports on proceedings (Gianniti and Lupo, 2008) and the parliamentary majority sometimes uses them to confirm (through the experts opinion) its own stance and orientation.

Regulating pressure groups: critical views and challenges

The shortcomings of the legal framework underscore the need for a systematic, coherent law that regulates along the lines of the OECD Principles on Transparency and Integrity in Lobbying and other countries' models (OECD; 2012, 2009). Between 1948 and 2014, 54 bills relating to pressure groups were proposed in Italy. They reflect how perceptions of lobbing have evolved in the legislature and make it possible to identify three different phases in attempts to regulate the activity.

The first phase runs from around 1976[10] to 1988. During that time, bills were characterised by the confusion between lobbying and public relations (the latter considered a synonym of the former) and a very negative view of lobbying. Lobbies had to be regulated because their actions had to be restricted.

The second phase began in 1988 with an interview of the then Minister for Institutional Reforms, Antonio Maccanico, and ended 18 years later in 2006. In 1988 the Government had at last become aware of lobbies and Minister Maccanico unveiled a bill to regulate them together with a far-reaching reform of the institutional system.[11] According to Maccanico there were no doubts: "[T]he lobbying issue is arising and we have to face it by making pressure groups public and legal, just as has been done abroad. Above all, we have to change the electoral and party financing systems."[12]

Every bill proposed during the second phase repeated the confusion between lobbyists and public relations practitioners, reaffirming the negative perception of lobbying.[13] This phase ended with the establishment of a special committee within the Chamber of Deputies, tasked with analysing bills for preventing and curbing corruption. The reasoning behind the move was that lobbying was one of the main reasons for corruption among civil servants and it therefore had to be regulated. Yet, when the draft bill developed by the committee reached final examination on 21 January 1998), the rules on lobbying were rejected.

The third phase was ushered in with an initiative of the then Minister for Implementation of the Political Schedule, Giulio Santagata. In November 2007 he proposed a bill on the representation of special interests (Bill No. 1866). Although Parliament did not approve it, it marked a turning point in the regulation of lobbying: subsequent bills were very similar to Santagata's, even reproducing its explanatory report.

Santagata's bill met a number of important requirements. First, it came up with a definition of lobbying. It was any activity not solicited by public officials and conducted by individuals or firms who represented special interests through proposals, requests, suggestions, studies, research, analysis, or any initiative or communication – oral, written, or electronic – in order to bring legal and special interests to the notice of public services.[14]

The second requirement met by the bill included duties and rights for advocates of special interests. They had to register in a special register and draw up an annual report on their lobbying activities and expenses. It was also stated that they could present proposals, requests, suggestions, studies, research, analyses, and documents in accordance with procedures established by the public services.

Finally, Santagata's bill underlined that it was not possible to regulate pressure groups only to curb them without introducing rules that applied to public service. In other words, the bill did not only set out lobbyists' obligations, it also recognised their rights, such as the right to dialogue with authorities. Furthermore, Article 7 of the bill required public services to mention lobbyists' activity in the provisions' explanatory reports in order to disclose the reasons of their choices.

No bill on lobbying has ever been approved, and of those that have been presented, only seven were discussed (for a few days) by the Assembly.

Regional laws on lobbying in Toscana, Abruzzo and Molise

The term "lobby" is a familiar one in three Italian regions: Tuscany, Abruzzo and Molise. All have adopted their own laws to try to regulate pressure groups.

Toscana

On January 2002, the Tuscany Region approved Law No. 5 on transparency in the Regional Council's work. It has three ambitious aims:

1. to assure the transparency of political and administrative activity;

2. to guarantee access and participation for a greater number of citizens;
3. to support Regional Council members in the execution of their mandate.

The law establishes a mandatory register for lobbyists who make representations to the council. It does not include activities in the executive branch. Although it offers no specific definition of lobbyists, it does define their rights and their duties. Lobbyists can advocate interests before the council, they can be heard by the council's committees and submit official requests. They also enjoy access to the council's headquarters to hear information that affects the interest they represent. Lobbyists may not, however, influence council members' freedom of judgment or vote.

Even though many associations and groups have indeed registered as lobbyists, Law No. 5 has been quietly forgotten. Registered groups have never benefitted from their entitlements, no documents have been submitted to committees, and no one has requested to be heard. Nevertheless, it is important to underline the high number of registrations and the fact that many pressure groups have also agree to publicly disclose their status and information.

The main explanation for the law's failed implementation is perhaps that its provisions concern only the Regional Council and not the executive branch. In a regional government – and especially after the constitutional reform 2011 – the executive plays a more significant role than the council. For this reason, the lobbying law was useless.

Molise

On 22 October 2004, the Molise Region decided to adopt exactly the same regulation as Toscana. Even though the cultural, economic and social environments of the two regions are considerably different, Molise's Law No. 24 is a verbatim copy of the Tuscan regulation. Consequently, this law has not produced any significant results and has remained a "dead letter" that has not been implemented.

Abruzzo

In December 2010, the Abruzzo Region adopted Law No. 61 on the transparency of political and administrative activity and the representation of special interests. The law includes some interesting definitions:

- The term "representation of particular interests" applies to any activity carried out by pressure groups through requests, suggestions, studies, research, analyses, position papers, and any other initiative or form of communication – oral, written, or electronic – in order to influence the decision-making process by advocating legal – and not only economic – interests before public decision makers.
- According to Article 3 of the law, a "lobbyist" is someone who makes representations to public decision makers on behalf of pressure groups. "Pressure groups" are associations, foundations, and committees with time-limited objectives and any company that represents special legal – and not only economic – interests.

The law has established a lobbyists' register and ensures specific rights for all who registers. Articles 5 and 6 include the same rights and duties as those set out in the Tuscan law, while extending them to the executive branch.

Unfortunately, this law has had no real effect and has basically not been implemented.

The overall outcome is that at the regional level, there are three different laws that are all ineffective. This is yet another part of the "snake model" and perhaps the clearest evidence of the schizophrenic nature of the "Italian style" regulation of lobbying.

Some change at last: The first public Register of Lobbyists of the Ministry of Agriculture

With Ministerial Decree No. 2284 of 6 February 2012, the Ministry of Agricultural, Food and Forestry Policies – drawing on European Union consultation procedures[15] – was the first ministry in Italy to regulate stakeholder participation in the decision-making process of bills and draft regulations under its authority. The regulation has two important provisions: a register of lobbyists and a permanent lobbyist consultation procedure.

According to the provisions, lobbyists who wish to participate in consultations or to transmit documents, proposals, or suggestions to the ministry are required to register in a public register. For its part, the ministry may allow only registered lobbyists to take part in online consultations when it is drawing up a bill or drafting a regulation. On completion of online consultations, which last at least 20 days, ministry officials explain in the RIAs why they have approved some lobbyists' proposals and not others.

The decree includes a definition of lobbyists as: natural or legal persons "who professionally represent licit (not only economic) interests before the Ministry of Agricultural, Food and Forestry Policies in order to influence the decision-making process or to initiate a new one". The definition also encompasses individuals or entities who represent particular interests even though they work for non-profit organisations or for organisations whose main activity is not interest representation.

The decree also contains a definition of lobbying, which it describes as representations made to the Ministry of Agriculture, Food and Forestry Policies with the intention of furthering private, licit interests. Such activities may be proposals, requests, suggestions, studies, research, analyses and any other initiative or communication by both oral, written or electronic means. Public officials cannot be lobbyists or be entered in the register as long as they represent the general interest.

There are a number of conditions for registration, such as:

- being a citizen of the EU and residing in the EU or, in the case of legal persons, having their registered office in the EU;
- being over 25 years old in case of natural persons;
- not have a criminal record or having faced proceedings for crimes against the state, government, the administration of justice, public order, public safety, the public economy, public property, public trust, and individuals;
- not having been banned, even temporarily, from working in the civil service.

The decree also established the Transparency Unit whose special mission is to manage the registration process and any other contact with lobbyists in the agricultural branch. In general, it works to guarantee the transparency of the Ministry of Agriculture's decision-making process and co-ordinates activities related to the implementation of RIAs.

Approximately 150 lobbyists registered with the Ministry of Agriculture between February 2012 and January 2014. For the first time in Italy, organisations, companies and individuals have identified themselves as lobbyists and the legitimate exercise of their activities is formalised by a set of rules. However, this new development is unique to the

agro-food sector. In the ministry's register is a wide variety of organisations, ranging from large multinational corporations in the energy sector to environmental associations and others such as the utility ENEL S.p.a., mobile phone company Vodafone, telecommunications giant Omnitel, food advocacy movement Slow Food Italia, and the Italian League for Bird Protection (LIPU).

However, important to note is that the procedure described in the decree has not yet been implemented. There are many underlying reasons, the main ones being the political instability now troubling the Italian government and the fact that the ministry has been unable to develop draft bills and regulations since other matters have had priority.

Nevertheless, the decree and its lobbyists' register have triggered a sort of revolution: never before has the debate on lobbies been so lively or the time so ripe for change in Italy.

Conclusion

The path that lobbying has followed in Italy is one of light and shadow. The involvement of lobbies and lobbyist in the decision-making process has been fraught with contradiction. The difficulties in getting people to change their minds – especially when their negative perceptions of the "lobbying phenomenon" are as deep-rooted as in Italy – should not be underestimated. Nevertheless, the Italian Government has embarked upon a genuine change of direction over the past two years. The first step was taken by the Ministry of Agricultural, Food and Forestry Policies which introduced the very first public register of lobbyists.[16]

Then, at the end of the Council of Ministers' meeting on 24 May 2013, the former President of the Council of Ministers, Enrico Letta, presented a briefing note containing guidelines on the regulation of lobbying activities. The President tasked a number of experts with developing a new executive bill to legitimise lobbying and regulate all the related transparency and integrity issues. On 5 July 2013, the Council of Ministers decided to postpone the approval of the bill (drafted by experts but not published) because too many problems had arisen. Following comments in the press[17], there is still no agreement upon any specific regulation of lobbying. Through an executive directive, President Enrico Letta entrusted the former Minister for European Policies, Enzo Moavero Milanesi, with the task of conducting comparative research on the regulation of lobbying in European countries.

The fall of the Letta government in February 2014 stopped the process of discussion on this government's bill on lobbying. Nevertheless, the new President of the Council, Matteo Renzi, emphasized in the inaugural address the need to ensure the transparency of the decision-making process and, consequently, to more consistently regulate the relationship between decision-makers and stakeholders.

This move is yet another endeavour that will most probably not be successful, but which gives an indication of how important it is to regulate the matter so that lobbying has a place in the decision-making system.

Notes

1. Petrillo (2011), pp. 297-375.
2. Colavitti (2005), p. 28.; Di Giovine (2004), pp. 309-ff.; Ridola (2005), 293-296; Volpe (2000).
3. Esposito (1958), p. 201.

4. Cotturri (2005), pp. 27-40.; Petrillo (2013b), pp. 75-93.
5. Constitutional Court, decision n. 1 and n. 290 (1974); Constitutional Court, decision n. 379 (2004).
6. Article 503, Penal Code of 1974.
7. Constitutional Court, decision n. 379 (2004).
8. Petrillo (2011), pp. 297-375.
9. Article 48, Rules of Senate and Manzella (2004).
10. The first bill was adopted in 1976 (VII legislature) on an proposal from the parliamentarian Sanese for regulating the "public relations activity", identifying the lobbyist with the responsible for public relations.
11. Maccinico, A. (1988) "Lobbisti per legge", interview with R. Rosati, in *L'Europeo*, No. 47, 18 November.
12. According to the Ministry it was necessary to reproduce the regulation adopted by the United States of America.
13. Fotia (1997), pp. 150-159 and Garella (1994), p. 94-ff.
14. Art. 2, letter e), bill n. 1866.
15. Honorati and Grimaldi (2012), pp. 99-116; Petrillo (2013b), pp. 75-93; Petrillo (2013a), pp. 2-3.
16. The Register of Lobbyists is available on the website of the Ministry of Agriculture, Food and Forestry Policies: *www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/5254*
17. *La Repubblica*, *Il Sole 24 Ore*, *Il Corriere della Sera*, 6 July 2013.

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Chapter 14

Mexico: The regulation of lobbying in the legislative branch

by
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This chapter describes the rationale for introducing lobbying rules/guidelines in Mexico's legislative branch. It describes previous attempts to regulate lobbying and why it was finally regulated at that specific point in time. The chapter also summarises the key features of the regulation in place and its impact on the decision-making process and stakeholder engagement in Mexico.

Why regulate lobbying in Mexico

The rationale for introducing lobbying rules and guidelines

Mexico has profoundly transformed its political system and re-evaluated the importance of legislative processes. The impact on its economic, social, and cultural development has highlighted a need to regulate one of the most sensitive aspects of the relationship between government and governed, i.e. the representation, promotion, and management of the affairs and interests of actors from social and private sectors *vis-à-vis* government officials, especially those in the legislative branch. In the preliminary hearings of the ballot initiatives that have come before Congress on the matter of lobbying, it was agreed that there was a need to regulate professional lobbying activities in the Legislative branch, since they can be an efficient form of mutual participation and collaboration between the public and private sectors in legislative work. Lobbying – which puts forward diverse points of view, information, proposals and alternatives that enrich legislative work – should be conducted in such a manner that all enjoy equal access to the authorities.[1]

The control that the executive exerted on the legislative agenda until 1997 precluded any need for lobbying activities in the legislative branch. With the advent of the country's new democratic order, the ruling party no longer held a majority in Congress (from 1997, to be precise). The result was greater pluralism in which political parties played a more important part in government decisions.

One of the first important debates in the Chamber of Deputies where, for the first time, the party in power did not have a majority was the submission, discussion, negotiation and approval of the set of initiatives that shaped the economic programme for 1998 – the Federal Revenue Act and the Federation Expenditure Budget. Despite the twists and turns of proceedings, the economic program was finally approved.

Its approval was an important step towards the necessary redefinition of relations between branches of government on the path to a mature democracy in which political differences were no longer an obstacle to securing a much needed consensus.

Although the Federal Revenue Bill captured the attention of politicians and analysts due to the opposition's efforts to lower the rate of value added tax (VAT), the focus shifted in the final weeks of proceedings to the Federation Expenditure Budget Bill, brought before the Chamber of Deputies by the Ministry of Finance. What concentrated minds – as it would have done in any country – was not only the size of the government expenditure programme, but Mexico's special lawmaking process in which only the Chamber of Deputies can examine, discuss, and approve the bill.

Since no single party had an absolute majority in the lower chamber, a complicated process of negotiation and lobbying ensued. The final draft of the bill was supported by the Institutional Revolutionary Party (PRI) and the National Action Party (PAN) in exchange for a number of concessions, which included increasing the resources for federal transfers to the states and municipalities.

The history of lobbying in Mexico lies in the links between state governments and the private sector in allocating and managing federal public funds for large infrastructure projects in the country. As mentioned above, the debate prompted by the Federation Expenditure Budget for 1998 changed the dynamics of negotiations in the Chamber of Deputies and, in fact, the nature of ballot initiative proceedings in Congress. As a consequence, it became necessary to ensure the transparency of every lawmaker's interests and the activities of lobbyists, who initially only conducted public relations activities.

After 1998, the more pluralistic Congress no longer passed ballot initiatives originating from the executive as they stood. On the contrary, it modified some as important the one on the petrochemical industry and simply turned down the electrical industry initiative. Before 1997, it was more than enough for private sector and civil society organisations merely to submit their proposals to officials from the executive branch. But, from 1997 onwards, it became clear that technical information had to be supplied to a Congress that had become much more involved in the public decision-making process. To this day, it is still vital to seek consensus in the legislature since there is no clear majority. Lobbying has therefore become a tool for influencing public decisions and an activity that serves the essential purpose of channelling the participation of citizens and the *de facto* powers.

The concerns that needed to be addressed

The main purpose of regulating lobbying was to improve dialogue and consensus between the legislature and the executive as the Mexican democratic system evolved. It was important to establish a strategy so that the design of public policies were the result of constant communication between Congress and the executive and achieved progress in the reforms so indispensable to the country. Between 2000 and 2006, the Federal Public Administration was unable to move forward on a number of structural reforms (in areas like taxation, labour, and energy) due to inadequate understanding and communication between the executive and law-making branches of government.

A second reason for regulating lobbying was to avoid public suspicion over decision making in the legislative process, particularly over certain laws that had an impact on the manufacturing industry and the *de facto* powers. The media published a number of investigations and opinion pieces at the time. For example, the TV news channel *Enfoque Radio* analysed the profiles of 36 registered lobbying firms. It transpired that in at least 21 cases, the managing partners were former legislators, people that had held positions in political parties, or former public officials primarily from the Presidency and the ministries of Finance, the Interior and Health.

For Porfirio Muñoz Ledo, congressman from the Labour Party (PT), the problem with regulating lobbying was that it was trying to regulate an issue that depended exclusively on the ethics of legislators. Fernando Dworak, however, academic co-ordinator of the degree course in Legislative Planning and Operation at the Autonomous Technology Institute of Mexico (ITAM), considered it quite normal for former lawmakers and public officials to dominate the lobbying profession worldwide, since they had the contacts and knew the legislative process in detail. However, he admitted that in the case of Mexico it was worrisome that there were no mechanisms of control and transparency in place.[2]

Robert Ehrman, founder of public relations firm Dynamis Consultores, estimated that the total annual profit of lobbying firms in Mexico was USD 20 million. This was low compared to the profits of USD 3.5 billion reported in the United States where there were more than 10 000 lobbying firms.

Why lobbying was regulated at that specific point in time

The changes in democratic processes that Mexico has experienced in recent decades, together with the role played by Congress in the public decision-making process, were the factors behind the regulation of lobbying.

In the year 2000, the proposed reform of the electrical industry failed its passage through Congress. Already no structural reform had been approved for two parliamentary terms as a result of the new, unfamiliar need to provide technical information to a greater number of executive actors, lawmakers, and political party members.

One year later, in 2001, came the turn of the fiscal policy reform not to be passed due to the lack of political consensus – poor communication within the political parties resulted in divergent positions. The bill's failure gave rise to the first ballot initiatives on lobbying proposed in 2002 and 2004. The explanatory memoranda to the measures stated:

> *"In the context of the modernisation of the Mexican political system which is signified mainly by the alternation of public power and a plural integration of popular representation bodies, as well as a revitalised balance of powers and greater civic participation in public affairs, the emergence of organisations and individuals dedicated precisely to lobbying as a professional activity whose main objective is to promote the legitimate interests and proposals from individuals, groups or organisations of the social and private sectors in order to harmonize them with the programmes and objectives of the popular representation bodies, has been observed."*

A further point raised in the preambles to the first initiatives was the following:

> *"In a self-proclaimed democratic state, lobbying should represent a basic form of citizen participation in the legislative process and in the development of governmental programmes and projects. As a well-channelled participatory instrument, it would enrich and strengthen democracy itself by transcending its formal level and encouraging the democratic social aspect, so as to develop new forms of the citizen-state relationship."*

The fundamental reasons for empowering citizens living in a democracy to exercise the right to give lawmakers technical information that would improve decision-making were further strengthened by a significant taxation-related affair which grabbed the attention of the media and Mexican society.

In November 2005, the-then congressman Miguel Angel Toscano alleged that the company British American Tobacco had offered bribes to eight legislators in return for their votes against the tax increase on cigarettes. According to the public complaint made by the former congressman, the tobacco company bankrolled trips to countries such as France, Costa Rica, Spain and Brazil[3] for members of different political parties. The tobacco company also bought the politicians seats at Formula 1 car races. Although Toscano could not prove his allegations and parliamentary leaders from the three main political parties demanded that he either withdrew them or disclosed evidence under penalty of bringing criminal proceedings against him for libel and slander, the public took a dim view of the negotiations that took place in Congress.[4] The affair prompted suspicion that lobbying was associated with corruption or the undue influence of interest groups from the private sector on decision-makers, which increased support for the regulation of lobbying in Mexico.[5]

The Federal Radio and Television Act dates back to 1960 and had not changed significantly in over 30 years until 2001, when the Ministry of Interior organised roundtable discussions to implement the Action Plan on Media Reform. It was the starting point for proceedings that could lead to a reform of the act. Media representatives, political parties

and television industry entrepreneurs and managers met with researchers, academics and journalists to discuss issues such as funding for public media and the responsibility to develop the media itself as a social service. Issues of technological convergence, the need to change the television industry by bringing different players into competition, and the option of having an autonomous regulator in the field were also discussed. However, a new bill was proposed under President Vicente Fox. It adopted a completely different standpoint from the one agreed by the working group.

In March 2006, several amendments and substitute amendments to articles in the Federal Telecommunications Act and the Federal Radio and Television Law[6] were passed unanimously by the Chamber of Deputies after less than 10 minutes in plenary discussion. The time it took to present and approve the amendments was so short that it was openly questioned by the public. According to those who were against the amendments, the amendments to said laws protected the digital spectrum in favour of the Mexican media duopoly formed by the two most important television stations in the country. Several groups immediately lodged complaints, giving rise to the emergence of the National Front for the New Media Law in Mexico (Frente Nacional por la Nueva Ley de Medios en México).

Established on 20 February 2008 with just over 40 organisations brought by the Mexican Association for the Right to Information (AMEDI) and the World Association of Community Radio Broadcasters (AMARC), the Front was composed of 76 members from various backgrounds such as women's groups, media professionals actors, filmmakers, writers, independent broadcasters, and students. The Front is a pressure group which, through lobbying, seeks to influence the content of laws that regulate the media in Mexico. The Front's major achievement has been to promote a constitutional controversy over the amendments to Federal Telecommunications Act and the Federal Radio and Television Law

Forty-seven senators from Legislature LIX (September 2003 to August 2006) lodged an appeal with the Supreme Court of Justice of the Nation (Mexico's highest court) on 4 May 2006, seeking to have the amendments declared unconstitutional in whole or in part. They claimed that the amendments were in violation of Articles 1, 25, 27 and 28 of the Constitution of the United Mexican States. The case was referred to Sergio Salvador Aguirre Anguiano, Minister of the Supreme Court, who ruled not only that legislative omissions should be credited to the amendments, but that 6 items, 16 paragraphs and some parts of the text of the amended laws were unconstitutional.

- The 20 years concessions. The Court held that, given the fast pace of technological development in the field, 20 years was an excessively long duration for concessions and effectively prevented the monitoring of participants.
- The attribution of telecom concessions by auction. The Court decided that the economic factor could not be a determinant in granting telecomm concessions, as it favoured wealthy actors and so hindered the reduction of social inequalities.
- Requirements for granting a concession. The Court decided that it was insufficient for the applicant merely to request a favourable opinion from the Federal Antitrust Commission. It ruled that the commission should actually emit a favourable opinion.
- The renewal of licenses without public bidding. The Court ruled that the public bidding process favoured state control over the use of the radio spectrum.[7]

The Supreme Court's ruling emphasised that the act omitted the mandate of equality in the media as provided in Article 2 of the Constitution. It also instructed the Senate to draft a new bill.

Four months later, in October 2007, the Senate created a working group made to review the legislation. It was made up of the chairs and members of the three committees (Communications and Transportations, Radio, Television and Cinema, and Legislative Studies) linked to the amended laws. On 14 July 2007, the group launched consultations with various academic, business and civil society to propose a new bill. On 6 May 2008, the working group submitted its "Analysis of the Amendment Proposal to the Telecommunications and Broadcasting Act" (Análisis previo al proyecto de reforma de Legislación en Materia de Telecomunicaciones y Radiodifusión). It incorporated the answers to a number of queries and would serve as the basis for the drafting of the new law.

Subsequently, three Legislature LX[8] congressmen – Santiago Creel and Javier Corral from PAN and Carlos Jimenez Macias Senator from the PRI – stated that there had been "pressure" to approve the initiative in the context and for the purposes of electoral propaganda for the presidential elections of 2006.[9] The allegations further fuelled society's mistrust of legislative reform.

The current legislature enforces the requirements of the Lobbyist Register and the Archive more rigorously and stricter rules ensure proper analysis of lobbyists' disclosures and information on lobbying activities carried out within Congress.

Previous attempts to regulate lobbying

Debate over the regulation of lobbying dates back to the year 2002. Since then, there have been several ballot and reform initiatives on the Rules of the Chamber of Deputies and Senate that seek to meet the concerns and needs of stakeholders and interest groups in the social and economic sectors slated for structural reform.

Seven ballot initiatives and decree proposals on lobbying came before the Chamber of Deputies between 2002 and 2005. The first four sought to initiate legislation and the last three to pass amendments and additions to Congress's internal governance rules.

1. Initiative with a draft decree for the Federal Law for the Regulation of the Professional Activity of Lobbying and Promotion of Causes. Rapporteur: Congressman Efren Leyva Acevedo of the PRI, LVIII Legislature. *Gaceta Parlamentaria* (Parliamentary Gazette), 30 April 2002.[10]
2. Initiative with a draft decree for the Federal Lobbying Act. Rapporteur: Congresswoman Cristina Ayala Portillo of the PRD. *Gaceta Parlamentaria*, 22 April 2004.[11]
3. Initiative with a draft decree for the Federal Activities and Promotion of Private Interests Act. Rapporteurs: Congressmen Antonio Morales de la Peña and Federico Döring Casar of the PAN. *Gaceta Parlamentaria*, 9 December 2004.[12]
4. Initiative with a draft decree for the Act to Regulate Lobbying Cases Management. Rapporteur: Congressman Murat Alejandro Hinojosa of the PRI. *Gaceta Parlamentaria*, 10 November 2005.[13]
5. Initiative with a draft decree that amends Article 61 bis of the Rules for the Internal Governance of the Congress and adds Article 61 bis 1. *Gaceta Parlamentaria*, 19 August 2005.[14]
6. Initiative with a draft decree to amend Articles 263-265 of the Rules of the Chamber of Deputies, led by Congresswoman Merilyn Gomez Wells of the Parliamentary Group of the Citizens Movement. *Gaceta Parlamentaria*. 25 April 2013.[15]

7. Initiative with a draft decree that amends and adds Articles 215-224 of the Rules for the Internal Governance of the Congress. Rapporteur: Congresswoman Cristina Ayala Portillo of the PRD. *Gaceta Parlamentaria*, 24 August 2005.[16]

Four ballot initiatives and decrees on lobbying came before the Senate between 2002 and 2008. The first sought to introduce a new bill and the other three to amend and add to the Rules for the Internal Governance of the Congress.

1. Initiative for the Federal Bill on Lobbying, introduced by Senator Fidel Herrera Beltran of the PRI. *Gaceta Parlamentaria*, 7 August 2002.[17]
2. Initiative with a draft decree to amend and add to Title VI of the Organic Law of the Congress of the United Mexican States, introduced by Senator Fidel Herrera Beltran of the PRI. *Gaceta Parlamentaria*, 30 March 2004.[18]
3. Draft decree that adds to Title VI "About Citizenship Participation and Legislative Lobbying" that covers Articles 136-141 of the Organic Law of the General Congress of the United States of Mexico. *Gaceta Parlamentaria*, 10 November 2005.[19]
4. Draft decree that amends the Organic Law of the General Congress of the United States of Mexico, introduced by Senator Jose Gonzalez Morfin of the PAN. *Gaceta Parlamentaria*, 26 March, 2008.[20]

The regulation of lobbying in Mexico

In Mexico, lobbying is regulated as follows:

The Rules of the Chamber of Deputies, Title VIII Chapter III

Title VIII, Chapter III of the Rules of the Chamber of Deputies[21] defines the concepts of lobbying and lobbyist, the rules to be obeyed by lobbyists seeking to influence the legislative process in the Chamber of Deputies, the requirements for enrolment in the Lobbyist Register established by the Board of the Chamber of Deputies, transparency in the lobbying process, grounds for being suspended from or stricken from the Register, and the necessary disclosures associated with the provisions in the chapters.

The second chapter of the Organic Act of Congress provides that the Board of the Chamber of Deputies (Mesa Directiva de la Cámara de Diputados) is responsible for facilitating the lower house's sessions and the work of Congress plenums. The Board is made up of a chairperson, three vice presidents and three secretaries elected by the vote of two-thirds of the members present in the lower chamber. They are appointed for one year and may be reappointed. The Chair of the Board is the President of the Chamber of Deputies and leads institutional relations with the Senate, the states and the Federal District.

On 18 October 2013 a decree was published in the *Official Gazette*, adding Paragraphs 3, 4 and 5 to Article 264 and Paragraphs 2 and 3 to Article 265 of the Rules of the Chamber of Deputies. The paragraphs introduced certain prohibitions and obligations for public servants with regard to lobbying activities; the maximum number of registered lobbyists per interest represented; and a ban on deputies and staff receiving gifts or payments of any sort.

Rules of the House of the Senate, Title IX, Chapter IV

Title IX, Chapter IV of the Rules of the House of the Senate[22] defines lobbying and establishes the obligation of Committees and Senators to report in writing the activities carried out before them by lobbyists to the Board of the House of the Senate. Title IX also

specifies the instances when Senators or support staff may be involved in corruption or other acts of malpractice during the course of lobbying activities.

Resolution of the Board of the House of Representatives

The Resolution of the Board of the Chamber of Deputies[23] establishes the general rules pertaining to the procedure for enrolling lobbyists and the activities that they carry out in the lower chamber.

Covenant of the Conference for the Management and Scheduling of Legislative Works

The Covenant of the Conference for the Management and Scheduling of Legislative Works by which the Outcome of the Process of Enrolling in the Register of Lobbyists and the Governance of the Activities Performed by the Latter within the Chamber of Deputies are Made Public[24] was issued on 31 October 2012. The covenant authorised the registration of lobbyists together with the publication of names of lobbyists in the *Gaceta Parlamentaria* of the Chamber of Deputies. It also established the procedure for obtaining and using badges.

Code of Ethics of the National Association of Professional Lobbyists

The Code of Ethics of the National Association of Professional Lobbyists is a self-regulatory instrument. The association is the only lobbyists' trade association in Mexico. Members commit to integrity by pledging to abide by the association's code of ethics.

The association defines lobbying as a mechanism that aims to "inform to influence" decision-making agents in a lawful, transparent manner for the benefit of the interests the lobbyist represents. The association's main objectives are to promote the general principles of professional ethics in lobbying among its members, publicly promote lobbying as a professional activity that is part of democratic life, and analyse and follow discussions and mechanisms that seek to regulate lobbying across the branches of government.

The National Association of Professional Lobbyists[25] does not include all the lobbyists who are registered in Congress.

Design of Mexico's lobbying regulation

Involvement, engagement and consultation of stakeholders in the design of the lobbying regulation

On Friday, 24 December 2010, the Rules of the Chamber of Deputies were published in the Official Gazette. They came into force in January 2011.

Provisional Article 12 states that any comments, reservations or proposed amendments submitted by parliamentary groups to the Board of the Chamber of Deputies should be addressed. To that end a working group was created. In the first two months of 2011, the working group was to analyse the documents with the purpose of reaching a consensus and presenting any relevant reforms to the lower chamber.

On Wednesday, 21 December 2010, the Board submitted the official document, D.G.P.L. 61-II-9-2484, to the Commission of Regime, Regulations and Parliamentary Practices. There were 73 documents containing reservations, comments and proposals from various Congress members filed between 15 and 20 December 2010 in accordance with the terms of Provisional Article 12.

The scope of the lobbying regulation

In practice, the scope of the regulation has been expanded. In the current legislature, for example, the Board of the Chamber of Deputies has determined in a covenant that, prior to commission meetings where they plan to influence the outcome of proceedings, people conducting lobbying activities must submit in writing the topics they will address and information pertaining to the companies or interests they represent. Moreover, they are authorised to take part only in the commissions for which they have been accredited.

It is expected that deputies and the support staff working in the lower house will refrain from making recommendations in return for a financial or in-kind gain for themselves, their spouses, their blood relatives, relatives up to the fourth degree of affinity, or other people with whom they have professional or business relations. Doing so could be construed as participating in lobbying.

The implementing authority

The Board of the Chamber of Deputies determines sanctions for breaches of parliamentary discipline under the terms of Article 20 of the Act of Congress. The Commission of Regime, Regulations and Parliamentary Practices will assist the Board in enforcing compliance with procedures set out in the Rules of the House.

Furthermore, the Federal Law of Administrative Responsibilities of Public Servants requires all public servants to comply with their obligations under law. Failing to do so makes them liable to the appropriate penalties. Should they, for example, accept cash or in-kind payments from persons engaged in lobbying or participate in any other ways in unlawfully influencing decisions of the Senate, they will be sanctioned in accordance with the applicable laws.

As for senators, the Chair of the Senate and the Internal Comptroller will initiate administrative proceedings arising from the Federal Law of Administrative Responsibilities of Public Servants against any public servants from the House who breach their obligations under the law. They will apply the appropriate sanctions in accordance with Article 113 of the Act of Congress.

Impact of the regulation of lobbying in Mexico

The impact of the introduction of the lobbying regulation

One of results achieved by regulating lobbying in Mexico has been the strengthening of democratic governance through lobbying activities. To that end, the Rules of the Chamber of Deputies incorporate:

- The concepts of lobbying and lobbyist.
- The rules to be observed by lobbyists should they intend to influence the legislative process.
- The registration of lobbyists in a public register instituted and managed by the Board of the Chamber of Deputies and published bi-annually in the *Gaceta Parlamentaria* and on the Chamber's website. The register contains information provided by those registering and the transparency observed in the process of registration.
- The cases in which lobbyists are stricken from the register.

Overall, the lobbying process has gained in clarity.

The Lobbyists' Register has given stakeholders an understanding of the size of the lobbying sector. The names of the 544 lobbyists who applied for registration in the House of Representatives for the current term have been published in the "Covenant of the Conference for the Management and Scheduling of Legislative Works by which the Outcome of the Process of Enrolling in the Register of Lobbyists and the Governance of the Activities Performed by the Latter in the House of Representatives are Made Public". The Board of the Chamber of Deputies has a mechanism by which the information provided by the lobbyists and the companies whose interests they represent is scrutinised to guarantee its reliability. Registration can be denied or cancelled should the information prove incorrect, incomplete, or false. Indeed, the review mechanism has resulted in several applications being turned down.

The Senate has not yet published a lobbyists' register.

How was the implementation successfully achieved?

No formal evaluations, reviews or assessments of the lobbying regulation have yet been conducted.

Implementation of the lobbying regulation has sought to involve the different stakeholders in deliberative processes. Although it has achieved that end, decision-making in Congress does not necessarily consider all stakeholder interests. It has, however, undoubtedly managed to involve the major actors. There are clear mechanisms to identify which groups have an opportunity to voice their opinions to Congress.

Lobbyists provide technical information to members of Congress, which has enriched decision making in both chambers. The requirement that commissions should conduct meetings with stakeholders has ensured that different interest groups supply technical information to legislators. Commission sessions are public, even televised. Such exposure helps increase the transparency of the information that lobbyists impart to lawmakers.

Notes

1. Legislative Decree Initiative by which the Federal Lobbying Act is issued (Iniciativa de Decreto que expide la Ley Federal de Cabildeo), introduced before the Senate on 16 March 2010 and the Legislative Decree Initiative to amend and adds Article 73, Section XXIX-P, to Article 73 of the Constitution of the United Mexican States and issuing the Federal Law which Regulates Lobbying Activities (Iniciativa con proyecto de Decreto que reforma y adiciona el artículo 73, fracción XXIX-P al artículo 73 de la Constitución Política de los Estados Unidos Mexicanos y que expide la Ley Federal que regula las Actividades de Cabildeo), 16 July 2012.
2. *www.tribunadelabahia.com.mx/noticiasdepuertovallarta/index.cfm?op=por2&recordID=34660&seccion=Mexico&tit=Cabildeo:%20negocio%20de%20pol%C3%ADticos.*
3. *www.eluniversal.com.mx/nacion/131243.html.*
4. *www.milenio.com/cdb/doc/noticias2011/b5717446ffbebd6243d28adfcfc6fb45.*
5. According a 2010 study carried out by the Centro de Investigación y Docencia Económica (CIDE), entitled "Identifying the strategies of the Tobacco Industry in Mexico", it notes that "the overall goal of the Tobacco Industry is to prevent or delay the enforcement of any control policy so the impact on consumption is minimized". Several strategies have been deployed and identified for this purpose, which can be grouped into two types: formal, which entails the use of legal tools that will allow the tobacco industry to negotiate with the State, and informal, consisting of the use of the economic power of industry to seek to capture key players in the design and implementation of policies.
6. *www.dof.gob.mx/nota_detalle.php?codigo=2122874&fecha=11/04/2006.*
7. *www.radio.uady.mx/pdf/accion_inconstitucional.pdf.*

8. Legislature LX commenced in September 2006.
9. *www.adnpolitico.com/congreso/2012/11/03/analisis-la-historia-del-cabildeo-y-regulacion*.
10. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=63223bc72290f34649d3b5e8eb4cb6ef&Clave=20351*.
11. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=63223bc72290f34649d3b5e8eb4cb6ef&Clave=970603*.
12. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=8d6df4cb5c7c12c84bebab15fe5bf329&Clave=1575984*.
13. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=63223bc72290f34649d3b5e8eb4cb6ef&Clave=2206430*.
14. *http://sil.gobernacion.gob.mx/Librerias/pp_ReporteSeguimiento.php?SID=f0db5bdc8f467850bd2bda6406e27720&Seguimiento=2255985&HistoriaLeg=1&Asunto=2122780*.
15. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=63223bc72290f34649d3b5e8eb4cb6ef&Clave=2977722*.
16. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=63223bc72290f34649d3b5e8eb4cb6ef&Clave=2138540*.
17. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=63223bc72290f34649d3b5e8eb4cb6ef&Clave=41376*.
18. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=63223bc72290f34649d3b5e8eb4cb6ef&Clave=916730*.
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20. *http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=63223bc72290f34649d3b5e8eb4cb6ef&Clave=2425919*.
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22. Available at *www.diputados.gob.mx/LeyesBiblio/pdf/Reg_Senado.pdf*.
23. Gaceta Parlamentaria, Year XV, No. 3616-I, 3 October 2012, available at: *http://gaceta.diputados.gob.mx/Gaceta/62/2012/oct/20121003-I.html#Acuerdos*.
24. Available at *www.diputados.gob.mx/cabilderos/doctos/resultado_cabilderos_LXIIV2.pdf*.
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Chapter 15

Slovenia: The regulation of lobbying in place and the challenge of implementation

by
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This chapter provides a historic overview to the regulation of lobbying in Slovenia and presents the main provisions relating to lobbying in the 2010 Integrity and Prevention of Corruption Act. The definitions of a number of key terms such as lobbying, lobbyists, and lobbied persons are presented, and the two-track approach of sharing the responsibility of registration between lobbyists and lobbied persons is introduced. Finally, some of the key challenges faced by Slovenia in the implementation of the Act are described together with potential explanations for the emergence of these challenges.

History of Slovenian lobbying regulations at a glance

On 21 February 1996, the Commission for Elections, Nominations and Administrative Affairs of the National Assembly of the Republic of Slovenia adopted a resolution to initiate proceedings on a law to regulate lobbying. On 14 July 1999, the National Assembly tabled a bill.

The next attempt to pass a lobbying law came during the following legislature, when a Member of the National Assembly proposed a bill on 30 August 2002.

The government then introduced a bill on public probity and, on 26 May 2010, the National Assembly adopted the Integrity and Prevention of Corruption Act (the IPCA, or "the Act"), Chapter VIII of which regulates lobbying. Finally, Parliament passed amendments to the Act on 24 May 2011.

The 2002 lobbying bill

The Lobbying Bill, tabled by a parliamentarian in 2002, was withdrawn before it came before the National Assembly in 2003. The bill's sole purpose was to regulate lobbying.

The draft defined lobbying as the activity of, and methods use by, interests groups to influence decision making in the executive and legislative branches of government with regard to the adoption of laws, regulations, general acts, and other decisions which are not a matter of administrative procedure.

The bill defined a lobbyist as a person who lobbies for payment. It required lobbyists to be entered in a register administered by the Secretary General of the National Assembly and to file reports once a year or within 30 days of the expiry of registration. The bill stated that the Commission of the National Assembly should supervise lobbying activities and provided for sanctions in the event of breaches of lobbying regulations. According to the provisions of the draft, lobbied persons are public officials in the legislative and executive branch at national and local levels.

Integrity and Prevention of Corruption Act – 2010 and 2011

The need and reasons for the adoption of the law

Slovenia closely followed the debate on transparency and integrity in the public sector initiated by the European Commission in 2006. Accordingly, when the Integrity and Prevention of Corruption Act (IPCA) was adopted in 2010, it included sections on the regulation of lobbying – a novelty in Slovenian legislation. The IPCA established a lobbyist register, registration requirements, and lobbyists' rights and obligations. It also contained provisions for the supervision of lobbyists' work and set forth sanctions for breaches of regulations.

The 2010 Integrity and Prevention of Corruption Act came in the wake of an increase in the number of interest groups and in their influence and pressure on public officials. The rise of lobbying and the lack of regulation had prompted concern over

the possible development of undesirable activities and corruption. Acknowledging both the influence of lobbying on the democratic process and the need to regulate it, the government responded by preparing and proposing a bill. However, after the unsuccessful attempts to pass a law devoted exclusively to lobbying, it decided to act through corruption prevention legislation.

The resulting Integrity and Prevention of Corruption Act made clear that its lobbying provisions were to be considered as temporary in nature and that they addressed only the most essential issues of lobbying. The government said that it would propose lobbying-specific legislation at a later date. However, that government is no longer in power, and neither of the subsequent administrations have yet come up with a proposal on lobbying.

Lobbying

Although Chapter VIII of the Integrity and Prevention of Corruption Act regulates lobbying, other chapters also apply to it. They are Chapter I ("General Provisions"), Chapter IX ("Use of Information and Record Keeping") and Chapter X ("Penal Provisions").

Several countries have been and are encountering difficulties in deciding whether or not to define lobbying and lobbyists in their regulations. As proposer of the Act, the Slovenian government opted to define "lobbying", "lobbyist" and related terms in Article 4 of Chapter I.

The article describes "lobbying" as the activities carried out by lobbyists who, on behalf of interest groups, exercise non-public influence on decisions made by central and local government bodies and holders of public authority when discussing and adopting regulations and other general documents on matters other than ones subject to judicial and administrative proceedings, to proceedings carried out under regulations governing public procurement, or to proceedings in which the rights and obligations of individuals are decided upon.

"Lobbying" denotes any non-public contact made between a lobbyist and a lobbied party for the purpose of influencing the content of or the procedure for adopting any of the above-mentioned decisions.

A "lobbyist" is any person engaged in lobbying and entered in the register of lobbyists, or who is employed by an interest group and lobbies on its behalf, or who is an elected or otherwise legitimate representative of the interest group.

"Lobbied persons" means officials and public servants who are employed in central and local government bodies, work with holders of public authority responsible for decision making, or who participate in the discussion and adoption of regulations, other general documents, and decisions pursuant to Paragraph 14 of Article 4, and with whom lobbyists communicate for lobbying purposes.

Finally, "interest groups" are defined as legal persons governed by private law and other legally regulated forms of association of natural or legal persons, on behalf and for the account of whom a lobbyist performs a lobbying activity.

The two-track view

The regulation of lobbying in Slovenia applies a "two-track view" that seeks to cover both those who lobby and those who are lobbied. Unlike some other jurisdictions and the first draft of the 2002 Lobbying Bill, the legislator offers a broad definition of a lobbied

person that takes in not only public officials from the executive and legislative branches of government, but also public servants employed in central or local government or as holders of public authority.

The IPCA considers that lobbying may be performed by registered as well as non-registered lobbyists. Registered, or professional, lobbyists are those registered with the Commission for the Prevention of Corruption (CPC) and who lobby on behalf of any interest group that hires and authorises them to lobby. Non-registered, or non-professional, lobbyists are those who do not need to register with the CPC and are allowed to only lobby on behalf of the interest groups of whom they are either employees or legal or elected representatives.

Lobbied persons

The Slovenian two-track approach states the rights and obligations of lobbyists and – unlike many other jurisdictions – lobbied persons. They are required, for example, to log a record of every contact they have with lobbyists. They have to forward a copy of each record to their superiors and the CPC within three days of the meeting the lobbyist.

The record of a lobbying contact should contain:

- the name of the lobbyist,
- information on whether the lobbyist has identified him- or herself in accordance with the provisions of the IPCA,
- the area of lobbying,
- the name of the interest group or any other organisation for which the lobbyist is lobbying,
- any enclosures,
- the date and place of the lobbyist's visit,
- the signature of the person lobbied.

It is the duty of the lobbied person to verify whether the lobbyist contacting him or her is listed in the register of lobbyists or not. Persons lobbied, be they public officials or servants, have to curtail any contact with a lobbyist if a conflict of interest arises during the meeting.

Lobbied persons must report a lobbyist to the CPC within 10 days of being lobbied if that lobbyist:

- lobbies outside the scope defined in the Act;
- provides the lobbied person with incorrect, incomplete, or misleading information;
- acts in contravention of provisions that prohibit the lobbied person from accepting gifts when discharging his or her duties as a public official or servant;
- should be registered and listed in the register of lobbyists, but is not.

Lobbied persons must also log all dealings with non-registered lobbyists who contact them in a non-public manner. When a person lobbied considers the contact to be illegal or contrary to the purpose of the IPCA, he or she must discontinue all contact and inform the CPC.

Lobbyists

As previously stated, the provisions of the IPCA that pertain to lobbying distinguish between registered and non-registered lobbyists. The following section focuses primarily on registered lobbyists.

In Slovenia, only natural persons may conduct lobbying activities. The Act states that a lobbyist may be any person of legal age who is not employed in the public sector and has not been stripped of contractual capacity. The purpose of the legislator was to define lobbying as an ethical activity and profession. Accordingly lobbyists must not have a criminal record of intentionally committed offences or have been prosecuted *ex officio* in the Republic of Slovenia to a prison sentence of more than six months. A person who meets these conditions and complies with provisions governing cooling-off periods after leaving public office may register as a lobbyist. It is important to note that only natural persons may perform lobbying activities.

In 2011, 59 lobbyists were registered. By 2012, the number had increased to 60 and by July 2013, there were 63 registered. Monitoring by the CPC revealed that in 2012 only 11 lobbyists were active and reported having lobbying contacts. Lobbyists who were active and lobbied on behalf of interest groups earned EUR 200 000 in total.

Exceptions to lobbying

Exceptions to activities considered lobbying were adopted with the second amendment to the Integrity and Prevention of Corruption Act. The MPs who proposed the amendments realised that the legislation regulating lobbying was in part irrational and caused some organisations considerable difficulty. It required civil society groups like Amnesty International to either hire professional lobbyists or register its employees with the CPC in order to influence decision makers. The amendments moved by the MPs considered that the following was not lobbying: actions taken by individuals and informal or interest groups with the purpose of influencing decisions by central government bodies, local self-governing bodies, and holders of public authority in consideration and adoption of regulations and other general documents directly relating to systemic issues of strengthening the rule of law, democracy, and the protection of human rights and fundamental freedoms.

Revolving doors

Slovenia has followed international praxis and provided for a "cooling-off" period for former public officials. Paragraph 3 of Article 56 states that they may not lobby until two years have elapsed from the date that they left office.

Register of lobbyists

Lobbyists must be entered in the lobbyists' register – administered by the CPC – before they can commence lobbying activities. Legal persons cannot register. Only natural persons registered as lobbyists may lobby on behalf of legal persons.

The register of lobbyists contains:

- the name of the lobbyist;
- the lobbyist's tax identification number;
- the address where the notices and invitations are to be sent (a lobbyist may be invited to and notified of all public presentations and public consultations relating to the areas in which he or she has registered an interest);
- the registered office or name and head office of the company, sole trader, or interest group that employs the lobbyist;
- the areas in which the lobbyist has registered an interest.

The CPC administers the register which it makes publically available on its website.[1]

Removal from the register

The Commission for the Prevention of Corruption strikes a lobbyist from the register if:

- it has been established that he or she has filed false data and documents in the register;
- he or she has been sentenced to a prison sentence of more than six months for an intentionally committed criminal offence prosecuted *ex officio* in the Republic of Slovenia;
- it finds that the lobbyist no longer meets the criteria for entry in the register;
- he or she states in writing that he or she no longer wishes to be a lobbyist or carry out lobbying activities.

The Commission for the Prevention of Corruption

Although it is uncommon to have an anti-corruption body overseeing lobbying activities, the legislator decided that the CPC – as an independent state body, like a court of audit or ombudsman – was to monitor lobbying activities. It decides who may register as a lobbyist, strikes lobbyists from the register, verifies lobbying reports, and sanctions lobbyists or lobbied persons.

The CPC also provides education, training, and awareness-raising activities on lobbying. Since IPCA and its provisions for regulating lobbying were adopted, the CPC has held training courses for the Cabinet Office of the Prime Minister, ministers' cabinet offices, and members of Parliament.

It organised training for MPs during a plenary session chamber of the National Assembly and ran a special workshop for public officials and municipal employees in co-operation with the association of municipalities. Approximately every two months, the CPC and the Administrative Academy of the Ministry of Interior also hold a special workshop on the IPCA where participants, who are mostly public servants, learn through case study what lobbying is, how it is conducted, and what their rights and obligations are. In addition, the CPC is always available to answer any questions on lobbying by telephone or in writing.

In 2011, the CPC issued a "systemic principled opinion on lobbying" which offered further guidance to and explanation of the lobbying regulation. The CPC conducts procedures and levies sanctions for breaches of the regulation.

Lobbyists may be subject to sanctions for the following violations:

- failing to report by 31 January of the current year for the previous year or within 30 days of the expiry of the registration period,
- failing to complete a report at the request of CPC,
- being found by the CPC to have given false information in a report.

For the above violations, lobbyists may be subject to the following sanctions:

- a written reminder,
- a ban from lobbying for a specified period of time which may not be shorter than 3 months or longer than 24 months in duration,
- removal from the register.

If a lobbyist fails to produce the personal authorisation to lobby on a particular matter given him or her by the interest group he or she represents, or if he or she does not state the purpose of the lobbying matter, he or she may be liable to the following sanctions:

- a written reminder,

- a ban from further lobbying activities on a particular matter,
- a ban from lobbying for a specified period of time which may not be shorter than 3 months or longer than 24 months in duration,
- removal from the register.

Lobbyists may also be liable to sanctions for the following violations:

- lobbying outside the scope circumscribed in Paragraph 14 of Article 4 of the IPCA,
- providing incorrect, incomplete, or misleading information to the person lobbied,
- acting in contravention of provisions that prohibit the lobbied person from accepting gifts when discharging his or her duties as a public official or servant.

For the above stated violations, lobbyists may be subject to the following sanctions:

- a written reminder;
- a ban from further lobbying activities on a particular matter;
- a ban from lobbying for a specified period of time which may not be shorter than 3 months or longer than 24 months in duration,
- removal from the register,
- a fine of between EUR 1 000 and EUR 2 000.

Lobbied persons – i.e. public officials or servants – may be liable to sanctions for the following breaches:

- failing to file a lobbying record in accordance with Paragraph 2 of Article 68 of the IPCA;
- contravening Article 69 of the IPCA by failing to refuse contact with a lobbyist who, contrary to his or her obligations under the Act, has not registered, or to break off contact when a conflict of interest arises;
- failing to report to the Commission, within the time limit specified in Article 71 of the Act, a lobbyist who acts in contravention of Article 70 of the Act or is not entered into the register of lobbyists in accordance with Article 58.

For the above violations, lobbied persons may be liable to a fine of between EUR 400 and EUR 1 200.

An individual who conducts lobbying activities despite not being entered in the register of lobbyists in accordance with Paragraph 1 of Article 58 of the IPCA or not being exempt from the obligation to register under Paragraph 4 of Article 58 may be liable to a fine of between EUR 400 and EUR 1 200.

If an interest group is fully aware that a lobbyist carrying out lobbying activities on its behalf is not registered as a lobbyist (in contravention of Article 58 of the Act), it may be subject to a fine of between EUR 400 and EUR 100 000. Interest groups are also liable to fines of between EUR 400 and EUR 100 000 for contravening Article 70 of the IPCA and ordering a lobbyist to lobby.

The CPC verifies the lobbying contact records which lobbied persons submit by comparing them to the reports filed by lobbyists. When the CPC checked records and against reports in 2012, it was moved to issue 18 reminders to lobbied persons. Drawing on information provided in the register, the CPC compiles statistics on the contacts with lobbyists reported by lobbied persons (Table 15.1) and the policy areas in which they occur (Figure 35).

Table 15.1. **Lobbying contacts broken down by ministry, parliamentary group, and other institutions, 2012**

Ministry	Contacts reported by lobbied persons
Ministry of Finance	29
Ministry of Education, Science, Culture and Sport	14
Ministry of Economic Development and Technology	13
Ministry of Agriculture and the Environment	10
Ministry of Health	4
Ministry of Foreign Affairs	2
Ministry of Interior	2
Ministry of Justice and Public Administration	1
Ministry of Labour, Family and Social Affairs	1
Ministry of Higher Education, Science and Technology	1
Ministry of Defence	0
Ministry of Infrastructure and Spatial Planning	0
Parliamentary groups	
Social Democrats	25
New Slovenia	16
Positive Slovenia	9
Democratic Party of Pensioners of Slovenia	9
Citizenship List	7
Slovenian People's Party	5
Slovenian Democratic Party	2
Other institutions	
Government of the Republic of Slovenia	18
President of the National Assembly	9
Agency of the Republic of Slovenia for Medicines and Medical Devices	32
The Slovenian Intellectual Property Office	3
Farmland and Forest Fund of the Republic of Slovenia	2
Post and Electronic Communications Agency of the Republic of Slovenia	1
Municipalities	1
Commission for the Prevention of Corruption	1

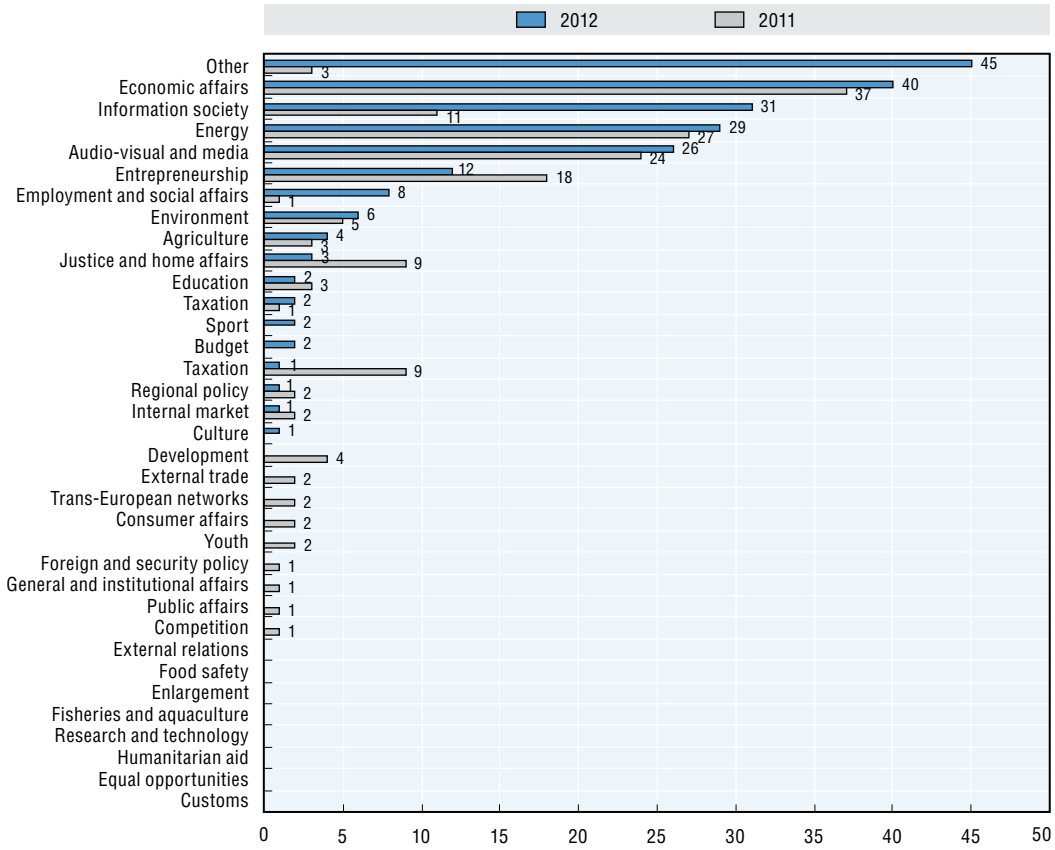
Problems with implementation and challenges for the future

Looking at the statistics for registered lobbyists and lobbying contacts soon reveals that lobbying regulation provisions are poorly implemented. As previously mentioned, 59 lobbyists were registered in 2011, 60 in 2012 and 63 in 2013. Considering the number of acts and regulations proposed and adopted in Slovenia, together with the number of public officials and public servants who are potential lobbying targets, those numbers are extremely low.

The total number of lobbying contacts reported by lobbied in 2012 was equally low – 321, against 160 in 2011. Of those, 105 did not meet the definition of lobbying spelled out in the Act (compared to 31 in 2011). In 2012, there were 31 reported contacts with registered lobbyists and 185 with non-registered practitioners.

In one example of the Act's poor implementation, only two records of lobbying contacts were filed at municipal level in 2011 and 2012 by a total of 211 mayors and more than 3 000 councillors. A further illustration is the case of the mayor of the capital city, Ljubljana, who enjoys an absolute majority on the city council. In 2011 and 2012, the city spent more

Figure 15.1. **Number of lobbying contacts by policy area, 2011 and 2012**



than EUR 270 million on construction contracts in deals with 311 companies. Throughout that time, not a single lobbying contact was reported.

It is important to emphasise that lobbying takes place all the time in Slovenia, but the problem is that it is mostly illegal. Those who do the lobbying do not register with the CPC and those who are lobbied more than often do not record their contacts with lobbyists. Some people who are well known to the media, politicians, and the general public as lobbyists have not even registered since the register of lobbyists was introduced at the end of 2010. Decades of unregulated lobbying have spoiled some lobbyists and accustomed them to being able to lobby without any requirement to report their activities. Even today they continue to "moonlight" as lobbyists, regardless of the high transparency standards that should be pursued in a modern democracy.

One reason for the Act's poor implementation is that the CPC is able to verify the accuracy of information filed by lobbyists only by reviewing lobbyists' documentation and making enquiries of the interest groups for which they have worked, the government bodies in which they have lobbied, the people to whom they have made representations, and political parties and organisers of election and referendum campaigns. The CPC cannot question or hear lobbyists or any other individuals who allegedly lobby or exercise undue influence. Yet, Slovenian legislation does not make lobbyists solely responsible for protecting the integrity of legislative and other procedures. As previously mentioned, lobbied persons must also comply with important requirement under the terms of the

IPCA. Lobbied public officials and servants must obey the law, protect public interest, and act in keeping with their responsibilities and the integrity of their office, position, or post.

The CPC has ascertained that registered lobbyists act in accordance with the provisions of the Act – yet another factor that puts the spotlight on lobbied persons. By far the most important obstacles to the successful regulation of lobbying are the low ethical standards of public officials and their persistence in disregarding rather than complying with and promoting legislation designed to enhance the transparency and integrity of policy making and the rule of law.

If the lobbied consistently adhered to the provisions of the Act and diligently recorded and reported all instances of undue influence by non-registered lobbyists, there would be significantly more lobbying contacts submitted to the CPC each year and significantly less illegal lobbying. Most important, the legislative process would be far more transparent. It is the duty of public officials and servants to diligently report lobbying contacts and refuse contacts with non-registered lobbyists or when conflict of interest may arise.

The CPC might oversee and administer lobbying in Slovenia, but the implementation of the IPCA and transparent legislative procedures for better, more legitimate policies are in the hands of public officials. It is up to them whether lobbying is properly and fully implemented, whether the public sector and government can regain trust, and whether or not the rule of law prevails.

Note

1. The CPC houses the register at *www.kpk-rs.si/en/lobbying/register-of-lobbyists*.

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Chapter 16

United Kingdom: Developing lobbying regulation in an open government context

by
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The Transparency of Lobbying, Non-Party Campaigning, and Trade Union Administration Act received Royal Assent and was enacted on 30 January 2014. Part 1 of the Act provides for a statutory register of lobbyists. The UK Government has stated that its aim is to commence the register in good time before the end of this Parliament in May 2015.

This chapter illustrates the socio-political context within which recent UK lobbying legislation has been developed and describes the evolution and design of that regulation. It goes on to describe the key challenges that were encountered during the policy development process and summarises the core provisions for the statutory register of lobbyists.

Introduction

Lobbying plays a vital role in the policy-making process, ensuring that ministers and senior officials hear a full range of views from those who will be affected by government decisions. However, it must be conducted transparently.

The United Kingdom has taken a number of steps to open up government by empowering citizens to hold politicians and public bodies to account. This is being achieved by ensuring that the actions of decision-makers are clearer and it is important that the interests of those seeking to influence them are equally transparent. This case study outlines the socio-political context within which recent UK lobbying legislation has been developed and describes the evolution and design of that regulation.

The recently enacted Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014[1] is designed to give the public more confidence in the way third parties interact with the political system. Part 1 of the Act provides for a statutory register of consultant lobbyists. It is envisaged that the register will be commenced in good time before the end of the current Parliament in May 2015.

Open government in the UK

"We want to be the most open and transparent government in the world." Prime Minister David Cameron, 2010.[2]

Open government provides an essential foundation for economic, social, and political progress by strengthening the transparency of institutions. Transparency, supported by citizen participation, generates accountability. By making and implementing commitments to open government – on transparency, participation, and accountability – the UK Government aims to transform the relationship between government, business, and the citizen, thereby opening up society.

The UK is a proactive partner in, and promoter of, the international transparency movement and has sought to lead by example during its recent presidency of the G8, where transparency was one of the core agenda items, and through the UK's lead co-chair of the Open Government Partnership (OGP).[3]

The UK's Open Government Partnership National Action Plan[4] identifies four key objectives that can be achieved through enhanced transparency:

- improve public services,
- more effective management of public resources,
- greater corporate accountability,
- the highest standards of professional integrity throughout administrations.

One of the core mechanisms for achieving those objectives has been the publication of unprecedented amounts of information about government and decision making. Since 2010, the government has proactively and regularly published:

- details of ministers' private interests,

- details of all ministers' and permanent secretaries'[5] meetings with external organisations or individuals,
- details of all ministers' and special advisers'[6] meetings with media proprietors, editors, and senior executives,
- all gifts[7] and hospitality received by ministers, permanent secretaries and special advisers.

Other published information includes details of all ministerial overseas travel, of the Prime Minister's visits within the UK, of all official and charity receptions held at the Prime Minister's main residence (10, Downing Street in London), and of people who have received hospitality at his country residence, "Chequers". Also made publicly available are the names, job titles, and pay bands of all civil servants earning more than GBP 80 000, and the job titles and pay bands for all other roles. That information is readily accessible from one website – gov.uk – and is published in open format. As such the activities of public officials – the targets of lobbying – are made clear to the public, ensuring that decision-making takes place in the open.

Lobbying in the UK

Prompted by concerns that a lack of transparency in the lobbying of government was enabling some from the corporate world to "wield privileged access and disproportionate influence",[8] the Public Administration Select Committee[9] conducted an inquiry in 2009. The Committee concluded that the existing self-regulatory regime governing the lobbying industry was inadequate and suggested that, unless the industry could swiftly and credibly reform that system, the government should introduce a statutory register of lobbyists. The Committee further recommended that the Government should publish details of all ministerial and high-level official meetings with outside interest groups. [10]

The then Government rejected the recommendation for a statutory register, concluding that effective voluntary self-regulation was the preferred approach and that the industry should be allowed the opportunity to develop a self-regulatory system commanding confidence. Although it agreed to consider the publication of all ministerial meetings with external organisations, it argued that requiring high-level officials to do the same would impose a disproportionate administrative burden on government departments. [11]

Following the Committee's report, the industry established the UK Public Affairs Council (UKPAC) whose remit was to promote and uphold effective self-regulation for those professionally engaged in public affairs and to host a public register of lobbyists. One year into its existence, however, one of the three founding bodies that made up the Council left it expressing concerns regarding the register's delivery and operation.

Origins and evolution of a statutory register

Commitment

Concluding that legislation was required to address the inadequacies of the self-regulatory system, the Conservative-Liberal Democrat coalition government committed in May 2010 to "regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency".[12] The objective was to increase available information on lobbyists without unduly restricting their freedom and ability to represent the views of businesses, groups, charities and other individuals and organisations they represented or deterring the public from getting involved in policy making.

Consultation

In January 2012, the government published a consultation document entitled "Introducing a Statutory Register of Lobbyists"[13] which invited all interested parties to comment on the policy options that would underpin the establishment of a register. The questions posed were:

- How should the terms "lobbying" and "lobbyist" be defined?
- Who should and should not be required to register?
- What information should be provided in the register?
- How often should the register be updated?
- How should the register be funded?
- What sanctions might be appropriate?
- Who should run the register?

During the 12-week consultation 260 responses were received from a broad range of stakeholders.[14] The majority welcomed the government's commitment to greater transparency in the lobbying industry and were supportive of a statutory register of lobbying interests. However, very little consensus was reached on many of the crucial questions. In parallel with the consultation, the Political and Constitutional Reform Committee (PCRC) conducted an inquiry in to the government's initial proposals for a statutory register.[15]

The evidence submitted in response to the Government's consultation and the Committee's inquiry provided an invaluable illustration of, and insight into, the complexities of introducing a statutory register. The challenges identified broadly reflected the evidence from international experiences of introducing lobbying regulation.

Policy design

Key challenges

A key element to emerge from the evidence was the need to clearly articulate the problem that the regulation was intended to address and, correspondingly, to clearly define the scope of the register. Similarly, it was acknowledged that clear definitions of the terms "lobbying" and "lobbyists" were a prerequisite to effective regulation.

The evidence also highlighted the potential risks of regulating lobbying. There was some concern that a register might act to deter or impede members of the public from engaging in policy making, that compliance with its requirements would put a bureaucratic burden on business and that the taxpayer would have to bear significant administration costs. These were risks that needed to be balanced in the context of the government's commitments to participative government, reducing regulation for business, and delivering reduced public sector spending.

Overcoming these challenges was therefore foremost in the minds of ministers and officials as they sought to develop appropriate and proportionate regulation, specifically tailored to the UK framework.

Other challenges encountered during the policy development process included ensuring the independence and accountability of the administrator of the register, ensuring the accessibility and value of collected information, and identifying proportionate sanctions for non-compliance.

Articulating the problem

The specific nature of the problem identified reflects the UK's open government framework and the significant improvements in the transparency and accountability of decision making at the most senior levels of government. For the first time, details of all ministers' and permanent secretaries' meetings with external organisations are being published on a quarterly basis, alongside unprecedented amounts of other information of interest to the public. The problem identified within that context, however, is that it is not always clear whose interests are being represented by consultant lobbyists when they meet with ministers and permanent secretaries. That is the specific policy gap that the register is intended to fill.

Developing the solution

Having articulated the problem, the solution that emerged was a register which would identify whose interests were represented by consultant lobbyists. It would do so by requiring them to disclose the names of their clients on a publicly available register. Having established a model that would reflect and complement the existing transparency regime, it then became necessary to develop provisions for addressing the challenges and risks identified.

In order to ensure a clear, enforceable definition, consultant lobbying was unambiguously defined as being paid to undertake specific communications with specific office holders on behalf of a third party. Such a broad definition, however, could capture activities unrelated to the identified problem and which might not normally be associated with consultant lobbying. As such, a number of exemptions were included to ensure the exclusion from the scope of the register:

- lobbying undertaken by parliamentarians in the course of their normal parliamentary activity,
- lobbying undertaken by an organisation or individual incidentally to their normal activity,
- the normal activities of charities and trade unions.

It was also considered necessary to exclude the smallest businesses from the requirement to register and as such those companies that are not registered with Her Majesty's Revenue and Customs for value-added tax (VAT) purposes will be exempt from the provisions of the statutory register of lobbyists.

In order to ensure that the register is administered autonomously, it will be hosted and enforced by the Registrar of Consultant Lobbyists who will operate independently of both government and the lobbying industry. In order to ensure accessibility, the register will be available online and updated quarterly.

Recognising a need to eliminate any cost to the tax payer, the register will be funded by the lobbying industry via a subscription charge.

The information required from lobbyists will be limited to that most pertinent to the identified problem, i.e. exactly whose interests they are representing. Consultant lobbyists will therefore be required to provide details of their business and to disclose on a quarterly basis the names of clients for whom they have undertaken, or been paid to undertake, consultant lobbying activities in the previous three months.

In order to ensure that the register complements the existing self-regulatory systems whereby the industry promotes ethical standards of behaviour through a range of codes

of conduct, lobbyists will also be required to declare whether or not they subscribe to a publicly available code of conduct and, if so, where that code can be accessed.

In order to distinguish between non-compliance due to administrative oversight and more serious contraventions such as intentional evasion or the provision of misleading information, both civil and criminal penalties will apply.

A crucial consideration throughout the policy development process has been that provisions should increase transparency while not discouraging engagement with those who will be affected by policy and legislative decisions. The model that has been developed is thus intended to be both proportionate and appropriate.

Summary of provisions

Consultant lobbying and the requirement to register

- The core provision is a prohibition on undertaking consultant lobbying without being entered in the register of consultant lobbyists.
- The main characteristics of consultant lobbying are:
  - communicating with ministers or permanent secretaries about government policy, legislation, or the awarding of contracts and grants, etc.;
  - on behalf of another person;
  - in return for payment (of any kind, be it direct or indirect);
  - in the course of a business.
- Exclusions will apply to:
  - those who are not registered for value-added tax (VAT) purposes;
  - those for whom lobbying is incidental to their normal professional activity;
  - the normal parliamentary activities of parliamentarians;
  - the normal activities of most charities, trade unions, and think tanks; and
  - foreign governments and international organisations.

The register and Registrar

- The register will be administered and enforced by the independent Registrar of Consultant Lobbyists.
- The Registrar will be an independent statutory office-holder.
- Consultant lobbyists will be required to provide information regarding their organisation, their clients, whether or not they subscribe to a publicly available relevant code of conduct, and to update their entry on a quarterly basis.
- The register will be publicly available online.

Compliance, penalties and offences

- The Registrar will have a duty to monitor compliance with the registration requirements.
- The Registrar will have the power to issue civil penalties in the form of fixed penalty notices (not exceeding GBP 7 500) for instances of non-compliance (administrative oversight, for example).

- For more serious contraventions of the requirement to register (e.g. deliberate non-compliance), criminal prosecutions may be undertaken (with penalties taking the form of unlimited fines).

Guidance, charges and supplementary

- The Registrar will be able to issue guidance regarding who will, or will not, be required to register.
- The register will be funded by the lobbying industry via a subscription charge.

Parliamentary passage and enactment

The legislation was introduced to Parliament on 17 July 2013. During its passage, certain provisions of the Bill were refined to reflect suggestions from members of both the House of Commons and the House of Lords.

The Bill was passed by both Houses and the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act received Royal Assent on 30 January 2014. It is expected that the register will be commenced in good time before the end of the current Parliament in May 2015.

Conclusion

The statutory register of consultant lobbyists will complement the steps that have been taken to enhance the transparency and accountability of decision makers by ensuring that the interests represented by those who seek to influence them are equally transparent. Additionally, it will complement the existing self-regulatory regime by enhancing the transparency and scrutiny of the ethical principles to which lobbyists subscribe.

The provisions reflect the distinctive context of UK open government and constitute a pragmatic, proportionate solution to a specific identified problem.

Notes

1. Available at *www.legislation.gov.uk/ukpga/2014/4/enacted*.
2. *Transparency*, Number 10 (2010) is available at: *http://webarchive.nationalarchives.gov.uk/20110503155553/transparency.number10.gov.uk/*.
3. The OGP is an international organisation that aims to secure commitments from governments to promote transparency. It was formally launched in 2011 and currently consists of 60 countries. Go to *www.opengovpartnership.org/*.
4. Available at: *www.gov.uk/government/uploads/system/uploads/attachment_data/file/208735/UK_OGP_interim_action_plan_with_Annexes_A_and_B.pdf*.
5. Permanent Secretaries are the senior civil servants responsible for overseeing the running of government departments.
6. Special advisers are employed to help ministers on matters where the work of government and the work of the political party in government overlap, and where it would be inappropriate for permanent civil servants to become involved. They are an additional resource for ministers, providing advice from a political perspective.
7. Gifts which are valued over GBP 140.
8. Lobbying: Influence and Access in Whitehall, Page 3, House of Commons Public Administration Select Committee (2009) *www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/36/36i.pdf*.
9. Select committees are all-party parliamentary committees that scrutinise the work of government.

10. House of Commons Public Administration Select Committee (2009), *Lobbying: Influence and Access in Whitehall*, First Report of Session 200809, Volume I, page 56, *www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/36/36i.pdf*.
11. House of Commons Public Administration Select Committee (2009), *Lobbying: Influence and Access in Whitehall*, Government Response to the Committee's First Report of Session 2008-09, *www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/1058/1058.pdf*.
12. Ibid., page 21.
13. *www.official-documents.gov.uk/document/cm82/8233/8233.pdf*.
14. *www.official-documents.gov.uk/document/cm84/8412/8412.pdf*.
15. *www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/153.pdf*.

ANNEX

Survey methodologies

The data included in this background document presents the results of three surveys:

- The OECD 2013 Survey on Lobbying Rules and Guidelines.
- The OECD 2013 Survey on Lobbying for Lobbyists.
- The OECD 2013 Survey on Lobbying for Legislators.

The OECD 2013 Survey on Lobbying Rules and Guidelines

Respondents to the OECD 2013 survey on Lobbying Rules and Guidelines are country delegates responsible for integrity policies and/or lobbying rules and their implementation in central government. A total of 26 OECD member countries – Austria, Belgium, Canada, Chile, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland, and the United States – together with Brazil, completed the survey. Denmark and Japan responded to selected questions.

The OECD 2013 Survey on Lobbying for Lobbyists

The OECD 2013 Survey on Lobbying for Lobbyists was distributed to individual public affairs professionals and lobbyists through national and international lobbyists' associations. The purpose of the questionnaire was to collect the views of those who lobby. The responses, which were collected anonymously, numbered over 100 and came from 16 countries.

The OECD 2013 Survey on Lobbying for Legislators

The OECD 2013 Survey on Lobbying for Legislators was distributed to individual legislators through the OECD Parliamentary Network. The purpose of the questionnaire was to collect the views on lobbying from those who potentially can be lobbied. Responses were collected from legislators in 14 countries.

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IMPLEMENTING THE OECD PRINCIPLES FOR TRANSPARENCY AND INTEGRITY IN LOBBYING

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Related reading

Lobbyists, Governments and Public Trust, Volume 2: Promoting Integrity through Self-regulation (2011)

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

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264214224-en.***

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