

# ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

## DEFINING LOBBYISTS AND REGULATING LOBBYING IN EUROPE

### QUERY

First, if NGOs are attempting to influence decision making, should they be included in the definition of lobbying? Should their attempts to influence decision making be systematically logged, either by themselves as “lobbyists” or by the targets of their lobbying (politicians and public officials)?

Second, should business associations likewise be included in such lobbying registers? In Lithuania, both NGOs and business associations are determined to fight for exemption. What is the prevalent practice in the EU on these two questions, and what constitutes good practice?

### PURPOSE

In Lithuania, there are currently heated discussions ongoing regarding changes to the lobbying law. This is, in part, related to the aftermath of the Lithuania Lobbying Law project we concluded last year.

### CONTENT

1. Background: the European lobbying industry
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## 1 BACKGROUND: THE EUROPEAN LOBBYING INDUSTRY AND ATTEMPTS TO REGULATE IT

Over the last 20 years, the lobbying industry in Europe has grown rapidly. The starker example of this trend is the number of lobbyists in Brussels seeking to influence policy and legislative outcomes emanating from European Union institutions. While exact figures are hard to come by given the lack of a mandatory register of lobbyists, a 1993 Commission survey estimated there to be around 3,000 interest groups and 10,000 lobbyists (European Commission 1993), whereas by 2015 this figure was thought to be nearly 11,000 organisations and well over 30,000 lobbyists (Austrian Chamber of Labour 2015; LobbyFacts 2017a).

Attempts to regulate lobbying have not kept pace, and in many European countries legislation is either non-existent or unable to effectively oversee the industry. A 2012 survey found that only five of the Council of Europe's 32 states had laws regulating lobbying in national parliaments (Doublet 2013), while a 2015 study showed that only seven EU member states had laws or regulations specifically regulating lobbying activities (Transparency International 2015).<sup>1</sup> Despite some recent efforts to tackle the issue in the wake of undue influence scandals at both national and EU level (Council of Europe 2009), comprehensive disclosure requirements for lobbying remain the exception among European countries and enforcement mechanisms and sanctions regimes are often lacking (Transparency International 2015; Wickberg 2012).

Measures to address the inherent integrity risks in lobbyists' unrestricted access to public officials, legislators and decision makers fall into two categories: self-regulation through voluntary (often industry-specific) initiatives or regulatory regimes involving some degree of state and/or public oversight. Self-regulation of lobbying was considered in another recent query (McDevitt 2016).

In terms of regulatory systems, the main mechanisms to govern lobbying are (1) the establishment of a register of lobbyists (either voluntary or mandatory), (2) the development of a code of conduct for lobbyists, or (3) the application of a code of conduct for public officials (Doublet 2013).

A central question when developing lobbying regulations is exactly which activities constitute lobbying, and who should be subject to regulatory oversight. This is a key issue as lobbying takes a variety of forms, from professional lobbying on the part of specialised public affairs or legal firms, to in-house lobbying undertaken by associations and NGOs, as well as the work of think tanks in lobbying for certain ideas (Doublet 2013). An OECD (2013) assessment found that regulating lobbying has proved difficult due to the industry's complexity. To further muddy the waters, legal definitions of "lobbying" and "lobbyist" – key determinants of efforts to regulate lobbyists' activities – vary considerably by jurisdiction.

Some interest groups that attempt to influence government policy, legislation and priorities do not consider themselves to be lobbyists and portray their activities as advocacy, public affairs or interest representation (Transparency International 2015). Such semantic issues carry real weight, however, as those not considered lobbyists by regulation are exempt from control mechanisms to govern the industry, such as mandatory registers which require lobbyists to record their efforts to influence public officials in a transparent fashion.

This query considers two types of organisations which may argue for such exemptions – NGOs and business associations – making the case for their inclusion in comprehensive regulatory regimes and considering country examples to identify best practices.

### The need to regulate lobbying

Lobbying, if opaque and disproportionate, may lead to administrative bribery, political corruption, undue influence and state capture. Lobbying regulation is designed to make sure that interest groups conform to ethical standards when attempting to influence political decision-making processes (Kanol 2012). A regulatory regime requiring lobbyists to disclose which policy makers they are targeting on behalf of which interest groups, and how much money is being spent on these efforts can increase the transparency of the lobbying industry and the accountability of public officials, especially when combined with sanctions for non-compliance (Kanol 2012).

The 2013 OECD study Transparency and Integrity in Lobbying identified five elements key to strong and effective lobbying regulation:

<sup>1</sup> These are Austria, France, Ireland, Lithuania, Poland, Slovenia and the United Kingdom.

- 1 the definition of lobbyists and lobbying activities targeted by regulation are clear and unambiguous
- 2 disclosure requirements provide pertinent information on key aspects of lobbyists and lobbying, such as its objective, beneficiaries, funding sources and targets.
- 3 rules and guidelines set standards for expected behaviour, for example, to avoid misuse of confidential information, conflict of interest and prevent revolving door practices.
- 4 procedures for securing compliance are framed in a coherent spectrum of strategies and mechanisms, including monitoring and enforcement
- 5 the organisational leadership promotes a culture of integrity and transparency in daily practice through regular disclosure and auditing to ensure compliance

The remainder of this query considers the first element – who is considered to be a lobbyist – in light of efforts by some interest groups to portray their activities as being outside the remit of regulatory regimes such as registers of lobbyists.

## 2 BROADLY DEFINING LOBBYIST

### Who is a lobbyist?

There is no internationally accepted standard for who qualifies as a lobbyist, which is particularly problematic at the level of transnational governance bodies, such as the European Union.

This lack of consistency or common understanding exists even at the highest level among those likely to be on the receiving end of lobbying activities. In 2013, one of the largest lobbying consultancies in Europe, Burson-Marsteller, conducted interviews with 600 MPs, MEPs and senior officials on the subject of lobbying (Burson-Marsteller 2013). Their findings showed that when these public officials were asked which interest groups matched the definition of "lobbyist":

- 66 per cent named trade associations
- 58 per cent named public affairs agencies
- 57 per cent named professional organisations
- 51 per cent named NGOs
- 47 per cent named companies
- 40 per cent named trade unions

Rather revealingly, law firms were not included in the survey, despite the fact that some corporations

may increasingly be seeking to pressure policy makers through the use of in-house or consultant lawyers. Law firms tend to claim the need to ensure client confidentiality and often demand derogation from ordinary rules governing interest groups, despite the considerable influence they can exercise through such means as suing for damages due to loss of earnings in the event of unfavourable public policy decisions (Doublet 2013).

### Need for broad definition of lobbyist

In reality, all of the groups named above are likely to undertake activities that should be considered lobbying, as all of them seek to influence policy by various means, including direct communication with law makers and government officials (Chari, Murphy and Hogan 2007).

An effective framework for regulating lobbying should ensure comprehensive coverage of the lobbying community through broad but clear definitions of lobbyists and their activities. The OECD's Principles for Transparency and Integrity in Lobbying recommend adopting rules that are primarily targeted at those who receive financial compensation in return for lobbying activities, whether they are consultant lobbyists, lawyers or in-house staff (OECD 2013). They note, however, the importance of an expansive definition of lobbying which captures all entities attempting to influence public decisions to create a level playing field (OECD 2013). Transparency International (2015) likewise advocates for lobbying regulation to be based on a broad set of definitions to cover all manner of lobbying,<sup>2</sup> as well as all likely targets of lobbying.

Failure to define lobbying broadly risks leaving loopholes for special interest groups to peddle undue influence in an opaque fashion by circumventing the rules. This may take the form of using "volunteer" lobbyists where only those compensated for lobbying are required to report, or the establishment of so-called "astroturf" organisations (see later) (Cave and Rowell 2014; Doward 2013).

Increasingly, regulatory systems are not attempting to provide exhaustive lists of who constitutes a lobbyist but rather laying down what "lobbying" entails and requiring anyone engaging in such activity to register their activities. This is the case in Canada and Ireland, as well as with the European institutions.

However, while basic coverage terms should be defined widely, it is also important to identify

<sup>2</sup> According to Transparency International, lobbying regulations should be applicable to the following groups: consultant lobbyists, in-house lobbyists, public affairs firms, NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations, academics and pro-bono office holders of incorporated entities.

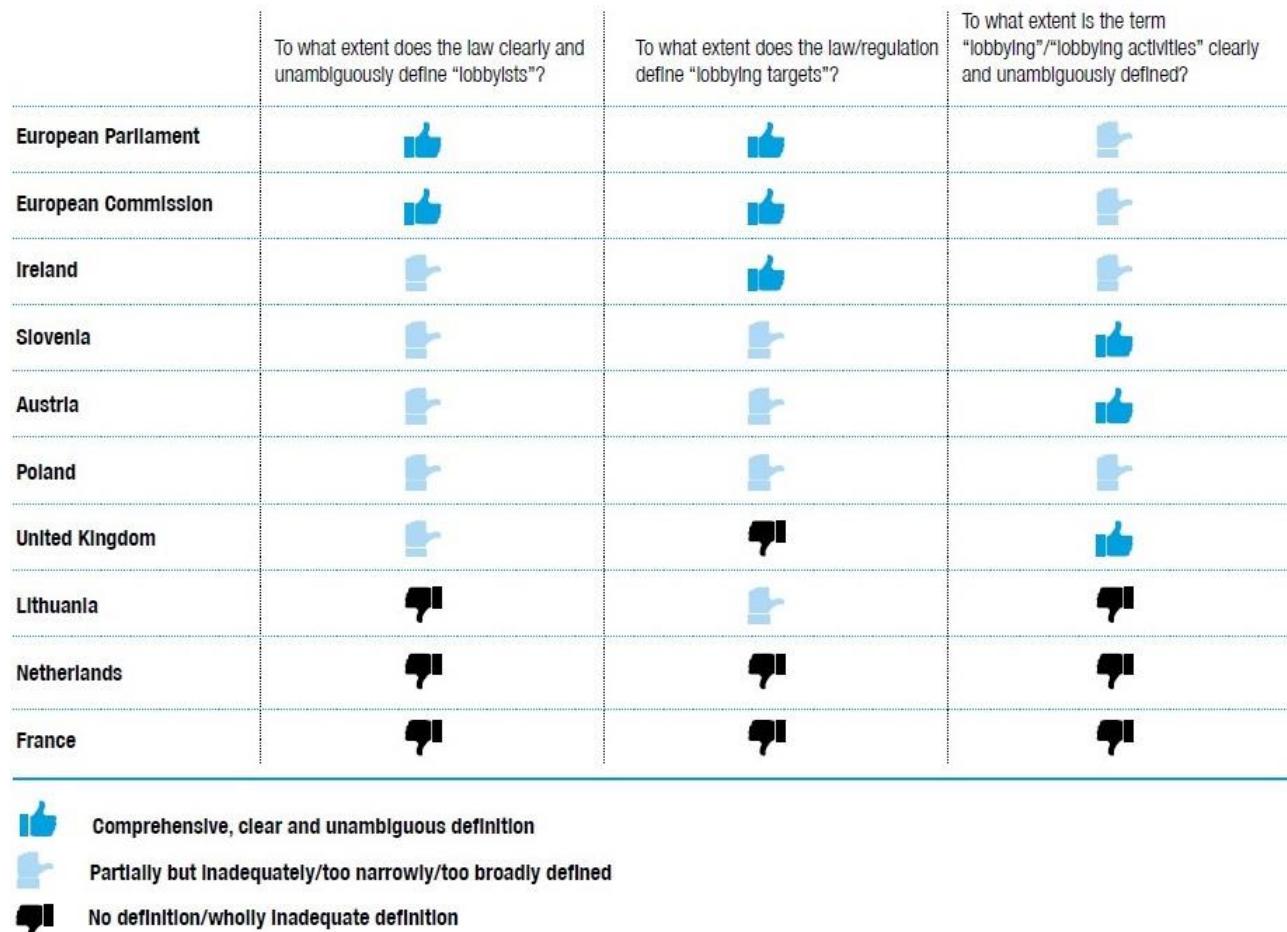
appropriate areas to be exempted from lobbying regulations so as not to overburden the oversight mechanisms (Ninua 2012). The 2013 OECD Principles state that regulations should “clearly specify the type of communications with public officials that are not considered ‘lobbying’ under the rules and guidelines” such as communication that is already on public record (formal presentations to legislative committees, public hearings and established consultation mechanisms such as petitioning).

### Prevalent practice on regulating lobbying in the EU

A survey of lobbying regulation in Europe conducted by Transparency International (2015)

found that very few EU member states have comprehensive lobbying regulations or means to systematically record contacts between lobbyists and policy makers. Few countries require public officials to document their contact with lobbyists, and where information is recorded it is generally patchy and not easily accessible to the public.

Of the countries and European institutions with regulations governing lobbying, the Transparency International study assessed the comprehensiveness of the definitions of “lobbyist”, “lobbying targets” and “lobbying activities” to be as follows:



### Mandatory lobbying registers

The most commonly-cited instrument to improve transparency of the lobbying industry is the use of mandatory lobbying registers to document interactions between private interests and public officials. Registers enable policy makers to verify who is attempting to lobby them on a specific policy,

as well as allowing the public to scrutinise interactions between public officials and special interest groups (Sunlight Foundation 2013).

Unlike systems in which the burden is on public officials to disclose the nature, frequency and volume of attempts to lobby them, mandatory registers requiring lobbyists of all stripes to publicly

disclose their names, clients, target issue and financial details capture crucial information only known to the lobbyists themselves. Moreover, systems which monitor this data and penalise the provision of incorrect information provide an additional means to identify and prosecute illicit forms of influence peddling (Zinnbauer 2009).

Across the EU, 10 countries have some form of lobby register, varying from mandatory registers at the national level (Austria, Ireland, Lithuania, Poland, Slovenia, UK) to voluntary registers applying to select institutions (National Assembly

and Senate in France, the Netherlands, EU Transparency Register) or registers which target institutions at a sub-national level (Tuscany, Molise and Abruzzo in Italy and Catalonia in Spain).

The following table summarises the extent and depth of the formal legal regulations in several EU countries. 'V' indicates a voluntary register and 'M' a register that is – at least according to the regulations – mandatory, whereas 'X' indicates the scope and nature of registration obligations.

Type of lobbying regulation	Weak			Strong	
	France	Germany	Poland	Austria	Slovenia
Mandatory or voluntary registration	V	V	M	M	M
Access pass to lawmakers	X	X	X	—	—
Lobbyist registrants:					
a. Non-profit entities	X	X	—	X	—
b. For-profit entities	X	X	—	X	—
c. Contract lobbyists	X	—	X	X	X
Covered officials:					
a. Legislative	X	X	X	X	X
b. Executive	—	—	X	X	X
Registrants disclose:					
a. Lobbyist name	X	—	X	X	X
b. Lobbyist employer	X	X	X	X	X
c. Lobbyist client	X	—	X	X	X
d. General issue lobbied	—	—	—	X	—
e. Specific measure lobbied	X	—	X	X	X
f. Aggregate lobbying income	—	—	—	X	X
g. Lobbying income per client	—	—	—	X	X
h. Aggregate lobbying spending	—	—	—	X	—
i. Lobbying spending per issue	—	—	—	—	—
j. Lobbying contacts	—	—	X	X	X
k. Political spending/contributions	—	—	—	—	X
Fines/imprisonment for violations	—	—	X	X	X
Internet access to lobbying records	X	—	—	X	X
Code of conduct required for registered lobbyists	X	—	—	X	—

Source: Kruse 2013

## Business associations

In Europe, businesses have historically sought to exert influence over public policy through membership organisations and associations, which lobby in their collective interest via semi-official or established channels (Transparency International 2015). Such associations can include chambers of commerce, trade associations and other professional associations, and are generally accountable towards their fee-paying members who comprise their governance structure, rather than a broader constituency of clients or beneficiaries (Center for International Private Enterprise 2011).

Such groupings of private enterprise by sector can actually mask a broad range of interests and vary greatly in terms of size, budget, scope of influence and lobbying behaviour (Transparency International 2015). While business associations continue to be the primary conduit for small and medium-sized enterprises to articulate their interests and lobby decision makers, the largest firms are increasingly going alone in their lobbying efforts by using in-house or consultant lobbyists (Transparency International 2015).

Nonetheless, at the European level, many of the biggest spenders in the Brussels lobbying scene continue to be business associations: the European Chemical Industry Council, EUROCHAMBRES,

Association for Financial Markets in Europe, Insurance Europe and the European Federation of Pharmaceutical Industries and Associations are all in the top 10, alongside the largest consultant lobby firms like Fleishman-Hillard and Burson-Marsteller (LobbyFacts 2017b).

At the national level too, business associations continue to be the biggest players in lobbying, particularly in countries with a corporatist tradition, the participation of business associations (alongside trade unions) in public life has been “quasi-institutionalised within the decision-making processes” (Transparency International 2015). Lithuania is a classic example: several business associations even have assigned offices on public premises and are listed in the official contact list as “representatives to the government” (TI Lithuania 2015).

As well as being one of the leading sources of lobbying funds, business associations are also more inclined to conduct their lobbying in a potentially opaque fashion. A recent study of different interests’ groups lobbying strategies found that business associations are more inclined to adopt an “inside strategy”, meaning that they seek direct contact with decision makers behind closed doors, rather than broader public relations campaigning, as is common among citizen groups and NGOs (Dür and Mateo 2013).

Given business associations’ continued market share in lobbying, their general preference for opacity and the risks of undue influence where private enterprise wields disproportionate clout, it is vital that business associations are covered by lobbying regulations (Transparency International 2013). There is growing support for this among business associations themselves, as increasing numbers of companies are seeing the positive business case for greater levels of transparency (Vigeo 2013). The International Corporate Governance Network’s (2012) Statement and Guidance on Political Lobbying and Donations encourages members to provide “clarity on the policy framework and exactly what the company is doing, who the decision makers are, when and how the company seeks to influence public policy and the political process.”

### ***Business associations’ lobbying standards***

There have been some voluntary initiatives on the part of business associations to develop transparency standards for lobbying. These are considered in more detail [in this recent Helpdesk query](#). Of particular relevance in terms of lobbying is Transparency International Ireland’s 2015 study

*Responsible Lobbying in Europe: An overview of voluntary lobbying standards and practice.*

### **CSOs/NGOs**

From a governance perspective, there are some similarities between business associations and NGOs given that their membership is usually voluntary and they tend to be non-profit making organisations. NGOs have also become major players in the lobbying game, devoting significant financial and human resources to lobbying and advocacy activities. According to the EU Transparency Register, for instance, both Greenpeace and Transparency International EU Liaison Office spend in the region of €1 million lobbying the EU institutions each year (European Commission 2017a).

Clearly not all NGOs have access to resources on the same scale, but the core purpose for many NGOs is influencing public policy one way or another rather than generating profit. Moreover, according to jurisdiction, it may be relatively simple for an interest group to establish an NGO to act as front for its lobbying or public relations activities while disguising its source of funding. In the United States in particular, there has been a heated debate regarding the impartiality or otherwise of certain NGOs and think tanks (MediaMatters 2015). In Europe too, some lobbyists’ activities are specifically designed to obscure the true beneficiaries from state or public scrutiny and, at the more extreme end, can involve interest groups setting up bogus NGOs or “creating the semblance of public support through manipulated and/or purchased opinions” a practice known as “astroturfing” (Transparency International 2015).

At worst, the NGO “status” is at risk of becoming a mere vehicle used by special interest groups to bypass monitoring mechanisms. This is a danger that genuine NGOs and civil society organisations (CSOs) should recognise and conform to the highest standards of transparency so that their model cannot be hijacked.

CSOs should be standard setters in this area: Transparency International (2016) has, for instance, developed a [Code of Ethical Advocacy](#) to govern its lobbying efforts, while others have developed [Accountability Commitments](#) for the NGO sector (Accountable Now 2014). In Transparency International’s case, this involves active disclosure of which lobby registers Transparency International is listed on, as well as a list of meetings in which Transparency International has sought to influence a decision-making process (public or private sector), naming Transparency International representatives, the advocacy target,

the date of the meeting, subject matter discussed and any materials used to support the lobbying effort.

Such voluntary initiatives are encouraging, but are no replacement for hard regulatory regimes requiring public disclosure about lobbying activities, which should detail the targets of lobbying activities, budget, individuals, political contributions and material produced in support of lobbying efforts (Transparency International 2015).

### 3 COUNTRY EXAMPLES

Until recently, most of the lobbying regulation in Europe was to be found in the newer EU member states: such legislation was adopted in Lithuania (2001), Poland (2005), Hungary (2006) and Slovenia (2010) (Verčič and Tkalač Verčič, 2012). Some scholars have contended, however, that these regulations suffered from weaknesses (particularly regarding enforcement) as they were framed in such a way as not to hinder interaction between lawmakers and private enterprise, rather than to foster transparency or reduce corruption (Holman and Luneburg 2012).

Moreover, progress has been far from linear. While western European countries have begun to legislate in this area in the past several years, the Hungarians abolished their lobbying register in 2011 and lobbyists have simply ignored the register in Poland (Millar and Köppl 2014). Moreover, definitions used in European lobbying regulations continue to be fairly narrow, confined to consultant lobbyists, rather than covering all those who receive compensation and spend a significant amount of time attempting to influence public policy, as is the case in North America (Ninua 2012).

### European institutions

In 2011, the European Commission and European Parliament launched the [Joint Transparency Register](#), a voluntary initiative which encourages lobbyists to sign up. As of January 2017, nearly 11,000 entities had registered (European Commission 2017a), including:

- 751 professional consultancies
- 130 law firms
- 392 self-employed consultants
- 2,606 companies
- 2,336 business associations
- 340 trade unions
- 2,808 NGOs
- 530 think tanks
- 263 academic institutions

As the list demonstrates, the European Commission (2017b) has adopted a broad understanding of lobbying:

“Activities covered by the register include lobbying, interest representation and advocacy. It covers **all** activities designed to influence – **directly or indirectly** – policy making, policy implementation and decision-making in the EU institutions, no matter where they are carried out or which channel or method of communication is used. The emphasis is on ‘what you do’ rather than ‘who you are’.”

The register is voluntary, and puts its faith in an incentive-based approach: to meet commissioners, cabinet members or directors-general, or be eligible for an access pass to the European Parliament, a lobbyist must be listed on the register (European Commission 2017b). Lobbyists are required to document their lobbying budget, the number of passes to the European Parliament they possess, the number of full time lobbyists they employ, as well as the number of meetings they have with the European Commission.

Despite its broad definition of “lobbyist”, the register has come in for criticism for its restricted understanding of lobby “targets”; unregistered lobbyists are still able to meet with influential Commission officials responsible for drafting legislation, such as heads of unit or deputy direct-generals. Moreover, the regulatory regime is seen to lack teeth, as there are “no powers to fine, prosecute or levy other sanctions” on lobbyists who boycott the register or upload misleading or incorrect information (Banks 2016). The voluntary nature of the list means there is no obligation to register, and a recent investigation by LobbyControl found that nine of the largest law firms that work as lobbyists in Brussels were not registered; six of the firms were from the United States, where they are listed on the mandatory lobby register (Mützel 2016).

In September 2016, the Commission launched a [proposal](#) for a mandatory register (European Commission 2016). Critics pointed out that it still was not really mandatory, it excluded most of the European Council, and did not prevent staff from meeting unregistered lobbyists. Equally concerning was that the proposal actually narrowed the definition of lobbying to exclude so-called “indirect lobbying” such as hosting events (ALTER-EU 2016).

For more information on the [the EU's Transparency Register](#), see <https://lobbyfacts.eu/>, which archives lobbying data back to 2012 from the register, as well as extracting additional data on the Commission’s

high-level lobbying interactions from the Commission's website.

## Ireland

The Irish Regulation of Lobbying Law has been in force since 2015. It adopts a broad understanding of "lobbyist", and is intended to capture lobbying activities regardless of the profession of the person (or their client) engaging in lobbying activities. In this way, the law encompasses lobbying by public affairs professionals, as well as in-house lobbyists from businesses, professional, representative or voluntary organisations, trade unions, charitable, non-profit and faith-based organisations, although the FAQ for the act notes that "a volunteer organisation with no paid staff would generally not fit within the Act" (Irish Register of Lobbying 2017a).

Lobbying targets are termed "designated public officials" (DPOs). These are defined as: ministers, members of the legislature, members of the European Parliament, members of local authorities and special advisers. Anyone who communicates with DPOs on "relevant matters" must register if they are:

- a person with more than 10 employees
- a representative or advocacy body with one or more employees
- a professional lobbyist paid to communicate on behalf of a client that falls within the previous categories

Relevant matters are considered to be:

- the initiation, development or modification of any public policy or of any public programme
- the preparation or amendment of any law (including secondary legislation such as statutory instruments and bye-laws) or
- the award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds

The obligation to report lobbying activity is incumbent on the lobbyist rather than the public official, and lobbyists must register and submit a return of their lobbying activity within 21 days (Irish Register of Lobbying 2017a). There is no cost to register as a lobbyist, and members of the public are able to [view and search the register](#) free of charge. The Lobbying Act also entails enforcement provisions, which came into effect on the 1 January 2017. These give the Standards Commission the authority to "investigate and prosecute contraventions of the Act and ... to levy fixed payment notices for certain contraventions of the

Act" such as late filing of lobbying returns (Irish Register of Lobbying 2017b).

## Slovenia

In Slovenia, lobbying is regulated under the 2010 Integrity and Prevention of Corruption Act. The act's definitions of both lobbying and lobbied targets are fairly broad, although the latter fails to include employees of state- and municipal-owned companies and external advisers when legislation is outsourced. Registration itself is confined only to professional lobbyists, although a broader range of actors are captured through public sector reporting on contacts, including in-house employees and representatives of organisations.

A weakness of the law is the reported abuse of exceptions, namely the rule that those who lobby in the public interest to strengthen the rule of law and protect human rights fall outside the ambit of the act. The exclusion is made on the basis that the public has the constitutional right to participate in public affairs. However, some evidence shows that lobbyists use this category as a legal loophole to influence public officials on other matters, thus bypassing the obligation to register and to report (TI Slovenia 2014).

Lobbyists must register the following information: (1) personal name of the lobbyist, (2) tax number, (3) address, (4) name and registered office of the enterprise, sole proprietor or interest organisation if they employ the lobbyist and (5) the area of registered interest (Transparency International 2013). All information except the tax number is available online. An English-language version of the Slovenian law is [available here](#).

## United Kingdom

Like Ireland, the UK recently introduced new lobbying regulations, the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administrative Act. The act has been heavily criticised as "glaringly inadequate" and "deliberately evasive" (Cave and Rowell 2014). The act requires only consultant lobbyists to register, which the UK Association of Professional Political Consultants estimated captures a mere 1 per cent of those who engage in lobbying in the UK (Transparency International 2015). Despite being mandatory, as of January 2017, the [register](#) contained a mere 145 consultant lobbyists (Office of the Registrar of Consultant Lobbyists 2017).

In addition, the act is concerned only with the lobbying of a very narrow group of possible targets – ministers, permanent secretaries and special

advisers. It does not apply to the lobbying of members of parliament or local councillors, the staff of regulatory bodies, private companies providing public services, or any but the most senior members of the civil service (Transparency International 2015).

The Chartered Institute of Public Relations has established a voluntary register ([the UK Lobbying Register](#)) of individual lobbyists and organisations involved in lobbying. The register is aimed at promoting professional standards in the lobbying industry.

## United States

Lobbying regulations in the United States vary greatly by state, so that nearly 50 different versions exist. Nonetheless, all states define "lobbyist" and lay down that "lobbying" is an effort to influence public policy. All states require lobbyists to register certain details and report on their lobbying activities.

The [Center for Ethics in Government](#), hosted by the National Conference of State Legislatures, has compiled exhaustive lists of how [each state defines lobbying and lobbyist](#), [each state's reporting requirements](#), and [each state's limitations on the use of public funds for lobbying](#) (Center for Ethics in Government 2015a, 2015b, 2015c). In addition, the centre has information on lobbyist oversight entities, lobbyist contingency fees, lobbyist identification, prohibitions against false statements and reports and legislators' disclosure of lobbyist connections.

At the national level, legislation defines lobbyists as any person or entity engaged in lobbying activities, provided that, during a six-month period, they either (1) receive compensation of \$5,000 (2) spend more than \$20,000 or (3) spend more than 20 per cent of their time on lobbying activities (Council of Europe 2009). Nearly all forms of communication with "covered legislative branch officials" or "covered executive branch officials" is considered lobbying if it relates to the formulation, modification or adoption of policy or legislation, or the administration or execution of a federal programme.

Lobbyists must register within 45 days of making a lobbying contact or being employed for that purpose, and registered lobbyists are obliged to file reports on their activities every six months, including an estimate of their expenses on lobbying. Consultant lobbyists are required to file a separate declaration for each client. There is a cooling off period of two years for former senators before they can become registered lobbyists (Council of Europe 2009).

Non-compliance with these regulations should result in an investigation by the Department of

Justice, but a Council of Europe expert assessment noted in 2009 that "enforcement of the act appears to be very weak and the policy of confidentiality that surrounds it is at odds with the purpose of the act" (Council of Europe 2009).

## Canada

### *Who is a lobbyist?*

Canada's lobbying legislation does not include a formal definition of "lobbyist". Rather, the law focuses instead upon the types of activities that must be registered. Nonetheless, the Lobbying Act 2008 differentiates between three types of lobbyists:

- consultant lobbyist: a person who is hired to communicate on behalf of a client. This individual may be a professional lobbyist but could also be any individual who, in the course of his or her work for a client, communicates with or arranges meetings with a public office holder.
- in-house lobbyist (corporations): a person who works for compensation in an entity that operates for profit
- in-house lobbyist (organisations): a person who works for compensation in a non-profit entity.

### *How is lobbying defined in Canada?*

In 2005, the law was amended to replace the previous requirement that lobbying must constitute "an attempt to influence" public office holders with a much broader understanding of lobbying (Shepherd 2015).

Article 5(1) of the 2008 Lobbying Act defines lobbying as communicating with designated public office holders (DPOHs) for payment with regard to:

- the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programmes
- the awarding of federal grants, contributions or other financial benefits
- the awarding of a federal government contracts (consultant lobbyists only)
- arranging a meeting between a public office holder and any other person (consultant lobbyists only).

The Commissioner of Lobbying has interpreted "communication" broadly to include verbal (for example, arranged meetings, phone calls, informal communication, and grassroots communications) or written (hard copy or electronic format) contact

with a public office holder (Office of the Commissioner of Lobbying of Canada 2009a).

### *Who has to register as a lobbyist?*

All consultant lobbyists are required to register on the [Register of Lobbyists](#) (Office of the Commissioner of Lobbying of Canada 2015).

Both types of in-house lobbyists are obliged to register if the following conditions are fulfilled:

- they are a salaried employee of the organisation on whose behalf they are expected to communicate with DPOHs
- these communications relate to the activities covered under Article 5(1) of the Lobbying Act
- their lobbying-related activities constitute a “significant part of their duties”, set at 20 per cent in an interpretation by the Commissioner of Lobbying. (Office of the Commissioner of Lobbying of Canada 2009b).

Note that those who engage in the activities listed in Article 5(1) are not required to register as a lobbyist unless they are “compensated” (generally in the form of a salary for in-house consultants or a contractual payment for consultant lobbyists). Thus regardless of whether the organisation on whose behalf an individual is lobbying is for-profit or not, if the individual is financially compensated, then they may need to register as a lobbyist. On the other hand, volunteers or citizens who communicate with public officials are not subject to scrutiny under the Lobbying Act, as they are not paid.

### *Board of directors*

If the chairperson or a member of a board of directors is not an employee of the company or non-profit organisation and receives remuneration beyond reimbursement of expenses, he/she must register as a consultant lobbyist. Consultant lobbyists are also required to disclose whether they are lobbying as a member of a client's board of directors or on behalf of an organisation of which they are a member.

If the chairperson or a member of a board of directors is also an employee of a company or a non-profit organisation, he/she may have to be registered as an in-house lobbyist, depending on whether their lobbying activities exceed the 20 per cent limit.

## 4 FURTHER READING

Bitonti, A., Harris, P., and Mariotti, C. 2017. *Lobbying and Public Affairs in Europe: Some*

*Comparative Remarks.* (Palgrave Macmillan, London).

Martini, M. 2012. ‘Influence of interest groups on policy-making’, *U4 Helpdesk Answer*.

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Transparency International Ireland. 2015.

*Responsible Lobbying in Europe: An Overview of Voluntary Lobbying Standards and Practice.*

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## 6 APPENDIX: LOBBYING REGULATIONS IN SELECTED COUNTRIES



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Austria: <a href="#">Lobbying and advocacy transparency law</a> . 2012.
Canada: <a href="#">Lobbying Act</a> . 2008.
Chile: Ley núm. 20.730 Regula el lobby y las gestiones que representen intereses particulares ante las autoridades y funcionarios. 2014.
France: <a href="#">Senate Code of Conduct for Lobbyists</a> and <a href="#">Code de conduite applicable aux représentants d'intérêts</a> ; the National Assembly <a href="#">Code de conduite applicable aux représentants d'intérêts</a> . 2013.
Germany: <a href="#">Annex 2 “Registration of associations”</a> of the Bundestag’s Rules of procedure
Hungary: <a href="#">Government regulation of the integrity management system of state administration bodies and lobbyists</a> (Magyar Közlöny 30. Szám. 2013. 50/2013. (II. 25.) (Korm. rendelet)
Ireland: <a href="#">Regulation of Lobbying Act</a> . 2015.
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Mexico: <a href="#">Reglamento del Senado de la República</a> (Senate) and <a href="#">Reglamento de la Cámara de Diputados</a> (House of Representatives). 2010.
Netherlands: <a href="#">Lobbyist Registry</a> . 2012.
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United States: <a href="#">Lobbying Disclosure Act</a> . 1995.

Source: <http://www.oecd.org/gov/ethics/lobbying.htm>

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