

# ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

## BEST PRACTICES IN REGULATION OF LOBBYING ACTIVITIES

### QUERY

Could you provide best practice examples on how to regulate lobbying activities?

### CONTENT

1. Lobbying, corruption risks and the need for regulation
2. Effective coverage of the lobbying community
3. Registration systems for lobbyists
4. Quality and frequency of disclosure
5. Oversight and enforcement mechanisms
6. Self-regulation mechanisms
7. Regulating the public sector
8. Conclusion
9. References

### SUMMARY

Regulation of lobbying is a relatively new global practice and in many places legislation is either non-existent or lags behind the growing industry of lobbying. Compared to European countries, lobbying has long been regulated in Canada and the United States, where comprehensive disclosure requirements for lobbyists have been in place for more than two decades. In these countries, regulations for transparency in lobbying are accepted as a matter of doing business in the profession. Regulatory regimes in Europe remain weaker overall. Slovenia stands out as having a relatively robust framework, while Lithuania and Poland still lack sufficient enforcement mechanisms for their recently passed legislation.

As demonstrated by the examples discussed below, an effective framework for regulating lobbying activity should ensure comprehensive coverage of the lobbying community through broad but clear definitions of lobbyists and their activities, with a mandatory disclosure regime that allows the public to have comprehensive knowledge regarding who finances what lobbying activities as well as the financial price of those activities. Lobbying regulation should be accompanied by broader measures aimed at transparency and accountability in the public sector, including prevention of conflicts of interest and robust asset declaration systems.

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### Date

Submitted: 24 April 2012  
Responded: 26 April 2012

## 1 LOBBYING, CORRUPTION RISKS AND THE NEED FOR REGULATION

Lobbying typically refers to the attempts of interest groups to influence decisions made by the government, legislators or members of regulatory agencies. It is a central and legitimate part of the democratic process. Lobbying enables interest groups to understand, track and shape the development of legislation and regulation. This activity, when undertaken with integrity and transparency, can be a legitimate and positive force. Yet, the extensive funds at the disposal of many interest groups and the close relationship that exists between some private sector actors and lawmakers can lead to undue, unfair influence in a country's policies and create risks for political corruption.

Public confidence in how public policy is formulated, and in whose interest, has been negatively affected by numerous stories of dubious behaviour of public officials engaging in corruption through lobbyists. When undue influence is leveraged on behalf of a particular set of interests, the decisions that ensue do not necessarily represent the public's best interest. They may even be detrimental to it.

Influence-peddling, in which special interests exercise too much power over public policy for self-serving purposes, has become a major concern for many modern liberal democracies in recent years (Holman 2009). However, regulation of lobbying is a relatively new global practice and in many places legislation is either non-existent or lags behind the growing lobbying industry.

The role of regulation of lobbying is to shed light on and make the public aware of the interests behind proposed policies and the links between lobbyists and policymakers.

As the assessment of the National Integrity Systems in the European Union has shown, most European countries have yet to implement legislation to control lobbying; those that have regulations in place often lack enforcement mechanisms and sanctions for non-compliance. Transparency International's policy

position, "[Controlling Corporate Lobbying and Financing of Political Activities](#)", proposes some recommendations for mitigating the corruption risks posed by lobbying:

Lobbying regulation alone cannot guarantee the integrity of public decision making. Such efforts would need to be introduced in the context of broad and robust mechanisms of government transparency and accountability. Measures aimed at preventing conflicts of interest and requiring asset disclosure requirements for public officials help to mitigate some of the risks posed by undue influence.

## 2 EFFECTIVE COVERAGE OF THE LOBBYING COMMUNITY

Lobbying groups may include those with economic interests (corporations), professional interests (trade unions and professional associations) and civil society interests (such as environmental groups).

These groups seek to influence policy by various means, including direct communication with law makers and government officials (Chari, Murphy, Hogan 2007). Some interest groups may carry out their lobbying activities through hired firms or individual lobbyists, while others might engage in direct lobbying through use of in-house lobbyists or lawyers. Clear definitions of both lobbying activities and the role of a lobbyist are essential for ensuring that all lobbying activities are adequately covered by the regulation.

The definition should be sufficiently broad to capture professional lobbyists who influence public policy and sufficiently narrow to avoid confusion with citizens' activities, such as petitioning governments. Governments can define basic coverage terms broadly and then identify appropriate areas for exemption.

### Country examples

The approaches used by the United States and Canada are often referred to as good practice in this regard. The **United States** Lobbying Disclosure Act (LDA) of 1995, defines lobbying activities as

...contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

A lobbying contact is defined as “any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official”. The term “lobbyist” refers to “any 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 3-month period.”

The **Canadian** Lobbying Act of 1985 identifies three types of lobbyists: a consultant lobbyist (a person hired to communicate on behalf of a client, either a professional lobbyist or any individual, who in the course of his or her work for a client communicates with or arranges meetings with a public office holder); an in-house lobbyist who works for compensation in an entity that operates for profit; an in-house lobbyist who works for compensation in a non-profit entity.

The definitions in place in the United States and Canada are both sweeping in scope and provide fairly clear definitions as to who must register as a lobbyist and what information must be disclosed. While the definitions in European countries, such as **Lithuania** and **Poland**, only include contract lobbyists, formulations in the United States and Canada are more comprehensive, covering all persons who receive compensation and spend a significant amount of time attempting to influence public policy. The advantage of the US and Canadian approach is that the definitions captures in-house lobbyists for corporations and non-profit organisations, lawyers who lobby on behalf of one of more clients, as well as contract lobbyists (Holman 2009), who work for a specific company or cause under a defined contract. Usually, contract lobbyists constitute the overwhelming majority of lobbyists.

## Towards good practice

Whatever specific guidance is provided on coverage definitions, the regulatory framework should make clear that when lawyers or other professional service providers engage in lobbying activity this should be treated no differently than for other persons. A good approach would be to define covered persons in terms of the activities they engage in, rather than their career designations, such as when a lawyer represents a client in a trial or other public setting. This approach will help to mitigate the risk of clients being encouraged to hire certain types of providers so as to avoid public disclosure requirements. Coverage should also be clarified for lobbyists of domestic and foreign interests. These are often regulated differently, with higher reporting standards imposed on foreign lobbyists than their domestic counterparts (e.g. South Korea). While there may be legitimate reasons for drawing some distinctions, harmonisation is desirable. Minimum standards should apply to everyone.

Full text of the US Lobbying Disclosure Act 1995:

[http://www.senate.gov/legislative/Lobbying/Lobby\\_Disclosure\\_Act/compilation.pdf](http://www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act/compilation.pdf)

Full text of the Canada Lobbying Act 1985:

<http://laws.justice.gc.ca/eng/acts/L-12.4/>

## 3 REGISTRATION SYSTEMS FOR LOBBYISTS

Registration of lobbyists allows the public to know which interests groups are engaged in lobbying to influence public policy. Ideally, registration system should allow public disclosure of a lobbyist’s identity, as well as his or her clients, issue areas, targets, techniques and financial information.

### Country examples

Registration of entities and individuals defined as “lobbyists” by the legislation in the **United States** and **Canada** is mandatory and the registration information is public. In the United States, as a general rule, a lobbyist or the organisation employing a lobbyist must register with the Secretary of the Senate and the Clerk of the House of Representatives 45 days

after a lobbyist first makes a lobbying contact or is employed or retained to make a lobbying contact. Any organisation that has one or more employees who are lobbyists must file a single registration on behalf of such employees for each client on whose behalf the employees act as lobbyists. In Canada, lobbyists communicating with the public office are required to file registration information with the Lobbying Commissioner no later than 10 days after entering into such an undertaking.

Within Europe, **Slovenia** is the only country to have a mandatory register of lobbyists. This register has comprehensive coverage and is regulated under the Integrity and Prevention of Corruption Act of 2010. Lobbyists must register the following information: personal name of the lobbyist, tax number, address, name and registered office of the enterprise, sole proprietor or interest organisation if they employ the lobbyist, and the area of registered interest. All information except the tax number is made publicly available online. Public officials may agree to contact a lobbyist only after checking whether the lobbyist has been entered in the register of lobbyists.

Legitimate lobbying can only take place after a person or organisation has entered the register of lobbyists. “Lobbied persons” are obliged to report contact with lobbyists within three days of the contact. Although the Slovenian law has been assessed as robust, in practice implementation has been problematic. While more and more lobbyists are entering their details into the register, public officials rarely report contact with them and so the degree of contact and influence remains opaque. In order to incentivise public officials to report contact with lobbyists and to increase public awareness of the law, the Commission for the Prevention of Corruption publishes weekly updated lists of reported lobbying contacts.

An English-language version of the Slovenian law is available here:

[http://www.regulatelobbying.com/images/Slovenia\\_Lobbying\\_Law-3.pdf](http://www.regulatelobbying.com/images/Slovenia_Lobbying_Law-3.pdf)

**France** and **Germany** do not have mandatory registers but have tried to incentivise lobbyists to register by providing them with registration passes,

which allow easier access to Parliament. However, due to their voluntary nature and lack of rules, both registration systems are criticised for lacking the strength to effectively capture all lobbying activity. In Germany, the registry serves primarily as a system for issuing passes to enter the parliament buildings. The registry consists only of organisations seeking access to parliament buildings, rather than the individuals, and does not include any financial information, information on who is participating in lobbying on behalf of an association, or on what issues the organisation lobbies. Additionally, the registry only applies to *Bundestag* (low chamber), not *Bundesrat* (high chamber).

The registration of lobbyists in the **EU institutions**, which now falls under a single “transparency register” applicable for both the European Commission and the European Parliament, remains voluntary. Its voluntary nature has been criticised for having been ineffective in capturing the heavy lobbying activity taking place in Brussels.

### Towards good practice

Thus far, mandatory registers of lobbyists have proven to be more successful than voluntary registers in reflecting lobbying activities in a more comprehensive manner and bringing greater transparency to the system. Currently, both the **UK** and **Irish** governments are considering the introduction of mandatory registers of lobbyists.

## 4 QUALITY AND FREQUENCY OF DISCLOSURE

### General principles

Who finances which lobbying campaign is precisely the type of information that informs the public and policy-makers on the merits of a lobbying campaign. It is important to know, for example, that the insurance industry is funding a lobbying campaign to oppose a national health care bill, or that the energy industry is trying to influence the outcome of negotiations over climate change legislation, affecting caps on emissions. With such knowledge, lawmakers can better evaluate the political pressures they are subject to and the public can better assess the

integrity of public officials and their decisions, potentially influencing the choices citizens make in elections.

For lobbying disclosure to be meaningful, lobbyists must identify their clients and, at least in general terms, describe the activities they are involved in. The regulatory framework should also establish mandatory minimum guidelines to indicate what issues are being lobbied on and what amounts are being spent to influence those public policies. This is standard practice in established systems.

### Country practices

The reporting requirements for lobbyists in the **United States** are comprehensive and encompass a wide range of issues, such as the identities of lobbying organisations and individual lobbyists, the identities and business addresses of clients, and the issues lobbied on, including specifying the pieces of legislation being lobbied on. Additionally, lobbyist income and expenditure have long been publicly disclosed. Financial disclosure includes income per client and overall lobbying expenditures, every three months.

Information disclosure seems to be less frequent in European countries, where lobbying activity is at least partially regulated. According to the law in **Lithuania**, lobbyists must submit an annual report of their lobbying activities to the registry. In addition to name, address, phone number and certificate number, a registered lobbyist must also present his or her income from lobbying activities, expenditures on lobbying activities, and the title of an effective or draft legal act the lobbyist was seeking to influence. The reports are published in the Official Gazette of Lithuania.

It has been argued, particularly in the European context, that providing basic financial information would be too onerous for lobbyists to gather or too difficult for the public to understand. However, this has been proven to be no more burdensome for lobbyists to estimate than the information routinely maintained for tax and other purposes. Nor is the information difficult for the public to understand.

## 5 OVERSIGHT AND ENFORCEMENT MECHANISMS

As with any other regulation, effective implementation of the framework for controlling lobbying activities requires robust mechanisms of oversight and enforcement. While examples of strong enforcement are scarce or almost non-existent in the European context, analysing practices in Canada and the United States seems to be more useful when assessing the effectiveness of the system. As shown by the examples, effective oversight requires a mandated and well-resourced oversight entity, a strong verification mechanism and enforceable sanctions.

### Canada

In **Canada** oversight is performed by the Office of the Commissioner of Lobbying, which was established in 2008 to support the Commissioner of Lobbying. The Commissioner is an independent agent of Parliament, appointed by both houses for a term of seven years. The Commissioner's mandate is threefold: to maintain the Registry of Lobbyists, develop and implement educational programmes to foster public awareness of the requirements of the Act, and to conduct reviews and investigations to ensure compliance with the Act and the Lobbyists' Code of Conduct. The Commissioner reports annually to both houses of Parliament and also reports on investigations conducted in relation to the Code.

In 2008, in the federal lobbying registry, 17 formal complaints against lobbyists were initiated and six additional complaints were carried over from the previous year, including 13 allegations of unregistered lobbying.

### United States

Enforcement of the lobbying laws in the **United States** takes two steps: First, the Secretary of the Senate or Clerk of the House sends a notice of potential noncompliance to registrants where a problem seems to exist. If the registrants decline to justify their actions or correct errors, the case is referred to US Attorney's Office for the District of

Columbia for follow-up action. In 2007, 330 cases were referred to the latter office. “Subsequent compliance” by 16 registrants took place after the referral was made. The Attorney’s Office then sent “contact letters to the 252 registrants to secure compliance with the Act.” While in previous years the Attorney’s Office rarely prosecuted any cases, a new lobby law introduced in 2007 attempts to deal with this enforcement gap by requiring each agency to file public reports on the number of enforcement referrals and actions taken each year (Holman 2009).

## Slovenia

In Europe, Slovenia stands out as a promising example, although its lobbying regulation is quite new and it remains to be seen to what extent its robust rules will be enforced. Lobbyists in Slovenia must report to the Commission for the Prevention of Corruption (CPC) about their work and there are sanctions in place in the case for wrongful lobbying. These sanctions include a written admonition, a ban on lobbying in a specific case, a ban on lobbying for a specific period of time (not less than 3 months and not more than 24 months), or deletion from the register. Following introduction of the sanctions, an increase was reported in the number of registrations and the CPC is making efforts to incentivise public officials to also report their contacts with lobbyists.

## 6 SELF-REGULATION MECHANISMS

In some countries where there is no mandatory regulation of lobbying activity, the perception of undue influence by lobbyists has led to the adoption of self-regulatory measures for transparency. This has been the case in the **United Kingdom** and a few other European countries.

One of the most important tools for self-regulation is the Code of Conduct for defining ethical behaviour, which has been adopted by professional lobbying associations. One component of a more effective ethics code for lobbying associations is that membership is made contingent upon agreeing to abide by the code. Codes can list the constraints on activities and also prescribe specific behavioural

rules for lobbyists. For example, codes for the Association of Professional Political Consultants (APPC) and the Public Relations Consultants Association (PRCA) in the United Kingdom provide general principles as well as guidance on the practice of lobbying: they include some specific restrictions on the flow of money from lobbyists to government officials.

National associations, such as the Public Relations Institute of **Ireland** (PRII) or the **Swedish** Public Relations Association (SPRA), are active forces in training lobbyists and promoting ethical standards of behaviour. These national associations participate in regional associations, such as the European Public Relations Confederation (CERP), where they share experiences and knowledge through conferences and studies.

While significant steps can be taken in self-regulation of lobbying activity, self-regulation cannot be as widely applied and evenly balanced among different professions related to government. When it comes to the effectiveness of controlling lobbying activity, the examples suggest that enforcement actions taken under self-regulatory regimes in Europe may not be adequately addressing problems that arise.

## 7 REGULATING THE PUBLIC SECTOR

Regulation of lobbying alone cannot guarantee transparency and accountability in policy-making. It has to be accompanied by effective mechanisms for enhancing ethics among public officials, thus helping to build public trust in government. Governments should adopt and enforce regulations that reduce opportunities for conflicts of interest. These include regulating the movement of public officials into lobbying jobs and vice versa (a practice known as the “revolving door”), introducing mandatory cooling-off periods for outgoing politicians and public officials, and regular declaration of assets and interests by public officials that are verified and monitored by the relevant anti-corruption bodies.

## 8 CONCLUSION

The political environment and the state of governance should be considered the determinants of the appropriate regulatory regime for lobbying activities in a given country. However, all democracies require a certain set of transparency and accountability measures in policy-making. In the lobbying field, transparency should be guaranteed by a government-led programme of lobbyist registration and disclosure, with a properly administered register of lobbyists and enforced rules. It is essential to have a system that allows adequate disclosure of who is paying how much to influence which policies. At the same time, lobbying regulation should be accompanied by measures to enhance transparency and accountability in government, such as effective prevention of conflict of interests, regulation of the revolving door and comprehensive asset and interest disclosure by public officials.

## 9 REFERENCES

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