



STAFF WORKING PAPER

Report on the consultation of the European Network of Ombudsmen on public officials' interaction with interest representatives

1. Background

On 11 December 2015, the European Ombudsman launched a consultation of the European Network of Ombudsmen on public officials' interaction with interest representatives.¹ The purpose of the consultation was two-fold: (i) to promote the transparency of lobbying at all levels – EU, national and regional and (ii) to determine the need for practical guidance for public officials in this area.

Beyond sensitising the Network to the importance of the issue, the Ombudsman's view was that the consultation could help raise standards throughout the EU by sharing best practice examples of effective regulation of lobbying. Members of the Network were asked how interaction between public officials and interest representatives is regulated in their countries and whether there are rules or practical guidance for public officials as regards communication with interest groups.

The present report summarises the main points made in the responses with a view to discussing this issue at a meeting of the Network in Brussels in June 2016. The report also highlights thematic areas of interest for the EU level in the context of the European Commission's ongoing public consultation on the EU Transparency Register.²

2. Overview of the responses

The Ombudsman received 15 responses to the consultation by the deadline of 31 March 2016 (see annex for the list of those who responded). While the responses are therefore not representative of the whole EU, the results generally

¹ See the letter from the European Ombudsman launching a consultation of the European Network of Ombudsmen concerning public officials' contacts with interest representatives, as well as the Staff Working Paper: Consultation of the European Network of Ombudsmen concerning public officials' contacts with interest representatives.

² http://ec.europa.eu/transparency/civil_society/public_consultation_en.htm



underscore the premise of the consultation that awareness of how lobbying operates and how transparent it is could be improved across the Union.

In most countries, specific provisions regulating lobbying, coupled with guidance for public officials do not exist. Many respondents mentioned that interaction between public officials and interest representatives is indirectly touched upon in anticorruption, ethics or freedom of information legislation, as well as codes of conduct for public servants. Some respondents noted that emphasis is put on ensuring that as many stakeholders as possible are involved and heard in the drafting of legislation to ensure a sufficiently balanced representation of interests. Others considered that lobbying regulation in their countries is at present insufficient.

Systems similar to the EU Transparency Register are currently in operation at the national level in two of the countries that responded (Ireland and Austria). Other respondents mentioned unsuccessful initiatives in this context or pending plans to consider establishing similar registers.

3. Overview of lobbying transparency frameworks in 13 EU Member States (plus Iceland/Norway)

The Austrian Ombudsman Board reported that a register for lobbying and advocacy has been in operation since 2013. In principle, lobbying activities may be conducted only after successful registration in the register. The impact of the register has in practice been relatively low to date, mainly because the register lacks real obligations for registrants, effective enforcement mechanisms, public access to detailed data in the register, as well as rules for public officials.

The Federal Ombudsman of Belgium explained that the country does not operate a transparency register, nor do federal regulations define lobbying activities. Preparatory work on possible lobbying regulation as regards the federal administration is ongoing. At present, civil service staff regulations and a non-binding handbook contain guidelines for federal civil servants on managing conflicts of interest in the public service.

The People's Ombudsman of Croatia welcomed the European Ombudsman's initiative to promote lobbying transparency and voiced a shared concern for the issue, as there is currently no legal framework in place regulating lobbying in Croatia. As regards supervising public officials, the Croatian Parliament has appointed a Commission on Conflict of Interest to issue decisions as regards violations of conflict of interest rules.

The Public Defender of Rights of the Czech Republic noted that there is no register nor specific rules for interest representatives in the country. Lobbying activities are generally understood as a way of promoting particular interests and lobbyists do not necessarily have a good reputation among the public.



The Danish Parliamentary Ombudsman reported that public officials' contacts with interest representatives are not regulated directly in Denmark. Regulations on conflicts of interest, access to information and duty of confidentiality indirectly touch upon some of the questions raised in the European Ombudsman's consultation. Rules exist also in the area of transparency of expenses and activities of ministers as well as activities and financial interests of Members of Parliament.

The Chancellor of Justice of Estonia noted that lobbying activities are not defined or regulated in any specific regulation in Estonia. The issue is touched upon indirectly in anticorruption, criminal and civil service regulations, among others. These acts aim to prevent corruption and ensure that officials perform their functions impartially and in the public interest.

The Finnish Parliamentary Ombudsman explained that in Finland the concept of lobbying is not defined in legislation or public sector codes and that the country does not operate a register for lobbyists. Emphasis is put on hearing interest groups and publishing documents widely in connection with legislative drafting, as well as on transparency rules in the area of funding electoral campaigns. An Open Government Partnership initiative is ongoing to ascertain the value of establishing a lobbyist register.

The Office of the Commissioner for Fundamental Rights of Hungary pointed out that the country operated a lobbying act from 2006 to 2010, but the provisions were not effectively implemented in practice and an insignificant number of lobbying activities were reported. As a result, the act was repealed and the focus is now on involving the broadest possible range of stakeholders in consultations instead of applying strict rules to interest representatives.

The National Ombudsman of Ireland explained that in Ireland, a new Regulation of Lobbying Act of 2015 requires that any person who falls within the scope of the Act, who is communicating with a Designated Public Official about a relevant matter, must register and submit returns to a lobbying register three times a year. Registration is mandatory and any lobbyist contacting an Irish official must report the interaction on the register. Thus, it is up to the lobbyist and not the official to make the disclosure. Public officials do not have any specific obligations under the Act but general guidelines exist for interaction with lobbyists.

The National Coordination Body of Regional Ombudsmen in Italy noted that attempts to regulate lobbying at the national level have so far failed in Italy. Rather than regulating the transparency of lobbyists contacting the administration or politicians, a lot of emphasis has been put on strengthening provisions against corruption and ensuring a balance of interests in the public service. At the same time, two regions in Italy run regional transparency registers, which seem to be of a voluntary nature.

The Ombudsman of Latvia expressed support for the European Ombudsman's initiative to promote lobbying transparency, considering the deficiencies in the country's current regulation of this area. While lobbying is not regulated in the



country by a specific act, emphasis is put on involving the public in the decision-making process and ensuring transparency in terms of who has been consulted during these procedures. Codes of ethics for public officials exist but the Ombudsman of Latvia suggested that they are mostly not implemented in practice.

The National Ombudsman of the Netherlands noted a growing awareness in the country as regards lobbying transparency, although there are no specific mechanisms in place to prevent undue influence in decision-making processes. The Dutch Parliament recently adopted a motion to require legislative proposals to include an extensive section on 'stakeholder views' to shed light on how stakeholders participated in the process. Interest representatives also need to sign up to a public register to gain permanent access to Parliament's premises.

The People's Advocate of Romania noted that legislation specific to lobbying does not exist in the country, but related questions are regulated in acts that focus on ensuring transparency in decision-making and allowing all stakeholders to participate in the drafting of legislation. Several proposals to regulate lobbying have been rejected in the past years, but a private association of lobbyists runs a voluntary register in the country. The self-regulatory system consists of a code of ethics for lobbyists, a transparency register and a supervisory committee.

The Icelandic Ombudsman noted that public officials' contacts with interest representatives are not specifically regulated in the country. Administrative procedure and freedom of information acts, as well codes of conduct for public officials, are however relevant in this context.

The Norwegian Ombudsman noted that there is no lobbying register in operation in the country, although Members of Parliament have regularly proposed establishing such a register. Instead, Parliamentary Committees regularly host open hearings that all interested parties can attend, most meetings are open to the public and documents received by Parliament are publicly accessible.

4. Thematic areas of interest for the EU level

By way of background, the Joint European Parliament-European Commission Transparency Register was set up in 2011 to answer key questions such as what interests are being pursued at the EU level, by whom and with what budgets.³ The Register, which is currently voluntary, is built around a public website where organisations and individuals representing particular interests register and provide information about those interests. It includes a Code of Conduct governing relations of registered interest representatives with the EU institutions, and entails obligations also for senior EU officials.

³ <http://ec.europa.eu/transparencyregister/public/homePage.do>.



With more than 9 000 registered entities (April 2016), it is safe to say that the EU Transparency Register is working (particularly bearing in mind that such registers have been attempted at the national level with varying degrees of success) and that the EU is leading the way in regulating lobbying transparency in Europe. The European Ombudsman has welcomed a number of initiatives by the European Parliament and the Commission to improve the Register, but has also called for further improvements to the system, including the introduction of a mandatory register grounded in legislation and the participation of the Council of the EU.

In March 2016, the Commission launched a public consultation on the performance of the current Register and on its future evolution towards a mandatory scheme covering the European Parliament, the Council of the EU and the European Commission.

It is worth noting that the Council of Europe has also launched a public consultation in relation to its draft recommendation of the Committee of Ministers to Member States on the legal regulation of lobbying activities in the context of public decision-making.⁴

a) Ensuring meaningful regulation of lobbying activity

Several of the European Ombudsman's past suggestions for improvement to the EU Transparency Register focused on ensuring that the system is robust enough to give the public an accurate picture of lobbying today in the EU. Responses to the consultation of the European Network of Ombudsmen also highlight the importance of ensuring that lobbying rules entail real obligations and that the system is in practice implemented effectively in order to regulate lobbying in a meaningful way.

The National Ombudsman of Ireland pointed to elements of the country's new transparency register that could be considered to constitute good practice in pursuing effective regulation of lobbying. The Irish system requires any lobbyist contacting an Irish official to report the interaction on the lobbying register via submissions three times a year. Thus, registration of all lobbying activities is mandatory and it is up to the lobbyist and not the official to disclose meetings.

The Austrian Ombudsman Board pointed to reasons why the country's transparency register, which is in principle mandatory, has so far had relatively little impact. The system does not impose any specific restrictions or obligations for registrants, and although it foresees penalties for violating the rules, a clear enforcement mechanism does not exist. The general public can only access basic data in the register, so it is impossible for the public to find out who has actually contacted public officials and which interests are being pursued.

The Office of the Commissioner for Fundamental Rights of Hungary noted that a previous lobbying act in the country was repealed because the provisions

⁴ http://www.coe.int/t/dghl/standardsetting/cdcj/lobbying/lobbying_EN.asp?



were not implemented in practice and an insignificant number of activities were reported.

b) Guidelines for public officials in their contacts with interest representatives

The EU Transparency Register entails a number of obligations for senior EU officials. For instance, the Commission has decided that its top officials will only meet with representatives of registered entities and that details of those meetings shall be published online.

According to the Austrian Ombudsman Board, a weak point of the Austrian lobbying rules is precisely that the legislation does not contain any rules for public officials. This means that public officials can meet with registered and non-registered representatives as they wish.

Other responses to the consultation suggested that there is arguably room across Europe for more practical guidance or rules in this context, as no detailed practical guidelines for public officials in their contacts with interest representatives were identified. In the same vein, a report produced by Transparency International has noted that, aside from Slovenia, public sector codes of conduct in Europe fail to provide clear guidance on what constitutes acceptable lobbying or to specify standards on how public officials should conduct their communication with interest groups.⁵

In view of the above, the possibility of developing guidelines for public officials on contacts with lobbyists could be examined in the framework of the European Network of Ombudsmen.

c) Contacts with EU Member State representatives

At the EU level, questions have been raised about how lobbying of EU Member State representatives, in Brussels and in national capitals, can best be governed. What is more, EU institutions, Member States and interest representatives need to be aware of differing or competing lobbying rules at the national and EU level.

National practices identified in the consultation reveal that officials covered by the Irish lobbying provisions include Irish MEPs and top officials of the Permanent Representation of Ireland to the EU. The Austrian Lobbying Act similarly covers officials at the Austrian Permanent Representation to the EU.

d) Lobbying activities by law firms

Research suggests that the legal profession often plays a significant role in assisting interest groups to make their case to policy makers who are necessarily concerned to ensure that what they do is well grounded in law. A tendency to overlook lawyers as also potential lobbyists seems to exist at the national level.

⁵ Transparency International, "Lobbying in Europe: Hidden Influence, Privileged Access", 2015. http://issuu.com/transparencyinternational/docs/2015_lobbyingineurope_en?e=2496456/12316229



The National Coordination Body of Regional Ombudsmen in Italy noted that the regional lobbying register for Tuscany does not contain any law firms, while the People's Advocate of Romania noted that only one law firm was registered in the country's voluntary self-regulatory register. In Austria, activities of law firms are mainly excluded from the scope of the register. By way of contrast, the Irish register does not contain exemptions for any profession lobbying on behalf of a client with the result that members of the legal profession carrying out lobbying activities are also expected to register.

e) Lobbying by former officials

Lobbying by former officials is another persistent topic of discussion at the EU level. At present, the EU Staff Regulations prohibit in principle former senior officials, for 12 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.

The consultation revealed that very few rules exist in this context at national level. Most respondents stated that no restrictions on lobbying by former officials were in force. The National Ombudsman of Ireland noted that a one year cooling-off period was applied for certain public officials, while the Czech and Estonian responses pointed to post-employment restrictions in certain situations.

f) Other means of ensuring lobbying transparency

The Ombudsman of Latvia drew attention to the fact that draft annotations to regulatory acts should indicate the representatives of organisations and institutions with whom consultations took place during the process, as well as criteria for how these organisations were selected. This is regarded as an important means to ensure transparency in the preparation of legislation.

The National Ombudsman of the Netherlands noted that the Dutch Parliament has recently adopted a motion to require legislative proposals to include an extensive section on 'stakeholder views' to shed light on how stakeholders participated in the process.

Other responses mentioned similar disclosure obligations for written contributions to legislative proposals. The Austrian Ombudsman Board noted that even though an obligation exists to disclose written comments to all publicly announced laws, no personal contacts must be disclosed, which means that it is impossible for the general public to get to know who has worked on the original bill or provided verbal input. Equally, it remains unclear which lobbyists tried to influence the legislation and which political representatives they met during the process.



ANNEX

List of national ombudsmen offices and similar bodies who responded to the consultation

The Austrian Ombudsman Board
The Federal Ombudsman of Belgium
The People's Ombudsman of Croatia
The Public Defender of Rights of the Czech Republic
The Danish Parliamentary Ombudsman
The Chancellor of Justice of Estonia
The Finnish Parliamentary Ombudsman
The Office of the Commissioner for Fundamental Rights of Hungary
The National Ombudsman of Ireland
The National Coordination Body of Regional Ombudsmen in Italy
The Ombudsman of Latvia
The National Ombudsman of the Netherlands
The People's Advocate of Romania
The Icelandic Ombudsman
The Norwegian Ombudsman