



STAFF WORKING PAPER

**CONSULTATION OF THE
EUROPEAN NETWORK OF OMBUDSMEN
CONCERNING PUBLIC OFFICIALS' CONTACTS WITH
INTEREST REPRESENTATIVES**

"Lobbying can provide decision-makers with valuable insights and data, as well as grant stakeholders access to the development and implementation of public policies. However, lobbying can also lead to undue influence, unfair competition and regulatory capture to the detriment of public interest and effective public policies. A sound framework for transparency in lobbying is therefore crucial to safeguard the integrity of the public decision-making process [...] Setting clear and enforceable rules and guidelines is necessary, but this alone is insufficient for success... Mechanisms should raise awareness of expected rules and standards; enhance skills and understanding of how to apply them; and verify disclosures on lobbying and public complaints... All key actors – in particular public officials, representatives of the lobbying industry, civil society and independent "watchdogs" – should be involved both in establishing rules and standards, and putting them into effect".

(OECD Principles for Transparency and Integrity in Lobbying)

1 Introduction

Lobbying plays an important role in functioning democracies.ⁱ But when does welcome input become undue influence? The European Ombudsman has opened a number of inquiries that can be grouped under the common theme of 'influence'ⁱⁱ, reflecting on questions such as who or what has brought their thinking or interest to bear on what ultimately emerges from the legislative or regulatory process? But there are obvious limitations of focusing only on what is happening in Brussels. Seeking to bring about influence is a highly sophisticated activity capable of adapting to the challenges imposed by the latest transparency and other rules. So while efforts made notably by the European Commission and European Parliament are to be welcomed, this issue needs to be addressed at multiple levels.



2 Aim of the present consultation

1. To promote transparency at all levels

The Joint European Parliament-European Commission Transparency Register for the registration of lobbyists was set up in 2011 to answer key questions such as what interests are being pursued, by whom and with what budgets. The Register, which is currently voluntary, includes a Code of Conduct governing relations of interest representatives with the EU institutions.ⁱⁱⁱ By early December 2015, there were 8 695 registrants.

The Register entails obligations not only for registrants but also for EU civil servants. The European Commission decided, in November 2014, that high level civil servants shall meet only with representatives of registered entities and that details of those meetings shall be published online. Lower level civil servants are encouraged to check whether organisations and individuals who request meetings are on the Transparency Register and, if they are not, to ask them to register.

The European Ombudsman has called for the introduction of a mandatory register and for the Council of the EU to participate. Even if the Council of the EU were to participate in such a register, the question remains how lobbying of EU Member State representatives, in Brussels and in national capitals, can best be governed.

Is there scope for an enhanced role for members of the European Network of Ombudsmen to play?

2. To produce practical guidance

The previous European Ombudsman worked with the Network to produce Public Service Principles for EU civil servants. These high level principles complement the EU Staff Regulations, the EU Financial Regulation and the European Code of Good Administrative Behaviour. Beyond the rules and principles laid down in these documents, there is arguably space for more practical guidelines when it comes to contacts with interest representatives.^{iv} Such a document, which should take full account of effective practice in the Member States, would seek to identify, in a succinct and easily understandable form, the key elements that should guide public officials in their contacts with interest representatives. Ideally, such practical guidance could be used both at EU and national level.

3 Challenges

Among the challenges will be:

- (i) ensuring real added-value in an area where much work has already been done (see reference material in Annex);
- (ii) defining the scope of the exercise. The OECD has found that several of the regulatory regimes in Europe lack quantifiable definitions of



lobbying and thus face serious challenges in implementation: in some countries, the definition of lobbyist only includes those who are hired by a third party to lobby, and thus excludes major segments of the lobbying community who work "in house". The EU definition of lobbying, which also covers indirect lobbying, has a very broad scope.^v

(iii) drafting guidance in a way that avoids it being too general (thus serving no useful purpose) or too specific (and thus not proving useful to both the EU and national levels).

4 Request for comments and information

As regards (1) 'To promote transparency at all levels', it would be useful to obtain an overview of how interaction between public officials and interest representatives is regulated in your country. While not exhaustive, the following questions may help guide your answers:

- a) Please explain how terms such as "lobbying", "advocacy" and "interest representation" are defined in your country?^{vi}
- b) Does your country operate a Transparency Register for interest representatives?^{vii} If so, what are its main characteristics? Does it, for example, have a specific registration and enforcement mechanism which is independent and has its own resources?
- c) What are the main implications of the register for both registrants and public officials e.g. officials can meet interest representatives only where they are registered and must publish details of such meetings?
- d) To what extent are the activities of law firms covered by the register?^{viii}
- e) Are interest representatives' contacts with the Permanent Representation of your country to the EU regulated in any way?^{ix}
- f) What provisions apply as regards lobbying by former public officials?^x
- g) Has your Office conducted any inquiries in this area? Please give details.

As regards (2), the report produced by Transparency International (see annex) noted that, aside from Slovenia, public sector codes of conduct 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. Nor do they specify a duty of documentation of contacts or a duty to report unregistered or unlawful lobbying to superiors. If you are aware of rules or practical guidance for public officials, please include this information in your reply. Please send copies of and/or internet links to any material that you mention.

It would be helpful to receive your reply by **15 March 2016**. Please note that your reply will be published on the European Ombudsman's website, unless you indicate why it should not be published. For further questions, please contact Rosita Agnew, Head of Strategic Inquiries Unit, Tel: 00 32 2 284 25 42.



Annex: Reference material

European Parliamentary Research Service Briefing (EPRS) "Transparency of lobbying at EU level", December 2015

[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572803/EPRS_BRI\(2015\)572803_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572803/EPRS_BRI(2015)572803_EN.pdf)

European Parliament Research Service Briefing (EPRS) "EU Transparency Register", December 2014

<http://www.eprs.sso.ep.parl.union.eu/lis/lisrep/09-Briefings/2014/EPRS-Briefing-542170-European-Transparency-Register-FINAL.pdf>

OECD (2012), "Private Interests, Public Conduct: The essence of Lobbying" in *Lobbyists, Governments and Public Trust, Volume 2: Promoting Integrity through Self-regulation*, OECD Publishing.

<http://www.oecd-ilibrary.org/docserver/download/4210151ec004.pdf?expires=1446201478&id=id&accname=ocid194994&checksum=02AE8714468BF13056CEA087F2E63F3E>

Transparency International, "Lobbying in Europe: Hidden Influence, Privileged Access", 2015, which examined certain aspects of the situation in Ireland, UK, Netherlands, Germany, France, Spain, Portugal, Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovakia, Hungary, Austria, Slovenia, Bulgaria, Italy, Cyprus.

http://issuu.com/transparencyinternational/docs/2015_lobbyingineurope_en?e=2496456/12316229

"International Standards for Lobbying Regulation; Towards greater transparency, integrity and participation", 2015, from Transparency International, Access Info Europe, Sunlight Foundation and Open Knowledge. <http://lobbyingtransparency.net/>

HOLMAN C. and LUNEBURG W., "Lobbying and transparency: A comparative analysis of regulatory reform", *Interest Groups & Advocacy*, 2012, p.86-90 <http://www.palgrave-journals.com/iga/journal/v1/n1/pdf/iga20124a.pdf>



Endnotes

- ⁱ Article 11 of the Treaty on European Union provides that *"the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action"*.
- ⁱⁱ See, for example, own-initiative inquiry [OI/6/2014/NF](#) into the composition of European Commission expert groups, own-initiative inquiry [OI/10/2014/RA](#) on TTIP transparency, [inquiry](#) into the European Commission's implementation of the rules governing conflicts of interest in respect of staff and former staff, and [inquiry](#) regarding the European Commission's compliance with the Tobacco Control Convention.
- ⁱⁱⁱ <http://ec.europa.eu/transparencyregister/public/homePage.do>
- ^{iv} A number of respondents to the public consultation on the draft Public Service Principles cited the area of lobbying, in particular, as deserving of further attention.
- ^v The Interinstitutional Agreement on the Transparency Register does not use the term 'lobbyist' but refers to 'organisations and self-employed individuals engaged in EU policymaking and policy implementation'. The Agreement uses an activity-based definition (i.e. whether an entity is a lobbyist depends on what the organisation does, and not on its legal status). Lobbying activities therefore cover *'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 [...]'*.
- ^{vi} See Glossary of terms contained in the EPRS briefing (see above annex) at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572803/EPRS_BRI\(2015\)572803_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572803/EPRS_BRI(2015)572803_EN.pdf)
- ^{vii} According to the Transparency International report (see above annex), of the 19 countries studied, 10 have some form of lobby register in place. These vary from mandatory registers at the national level (Austria, Ireland, Lithuania, Poland, Slovenia, the United Kingdom) 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). In addition, an EPRS briefing (see above annex) refers to the existence of voluntary registers in 3 more countries (Croatia, Germany, Romania). This survey also refers to 3 Member States which do not have any kind of lobby register (Denmark, Finland, and Sweden).
- ^{viii} The French bar association recently introduced internal rules requiring all lawyers affiliated with the association to declare their activities on the national transparency register. See http://cnb.avocat.fr/Avocat-lobbyiste-Publication-au-Journal-officiel-de-la-decision-portant-ajout-d-un-article-6-2-3-au-Reglement-Interieur_a2333.html
- ^{ix} See, by way of example, Irish Guidance for TDs, Senators and MEPs on the Regulation of Lobbying Act 2015, August 2015; <https://www.lobbying.ie/media/5994/guidance-for-tds-senators-and-meps.pdf>
- ^x Article 16(3) of the EU Staff Regulations provides as follows: *"In the case of former senior officials as defined in implementing measures, the appointing authority shall, in principle, prohibit them, during the 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."*