



# Regulation of Lobbying Policy Proposals

Government Reform Unit  
Department of Public Expenditure and Reform

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## **Chapter 1: Introduction**

### **1.1 Introduction**

#### **1.1.1 The positive role of lobbying in the democratic process**

Vibrant communication and dialogue and close interaction and engagement between government and citizens are central to a well-functioning democracy and are vital to support informed and evidence-based decision making. It also helps ensure that the policy formulation and development process benefits from full information and that all individuals, groups and interests in society have an opportunity to contribute to it. It also supports the political process in finding a balance between competing interests, in fostering consensus and in helping to guide and educate public and political debate.

Interest groups, representative bodies, industry and civil society organisations, NGOs, charities and third party professional lobbyists all provide crucial input and feedback to the political and public administration systems through communication of the views and concerns of the public to Government. However, they also clearly seek to influence the policy and decision-making process in order to align it to their goals and objectives. These goals and objectives may reflect a private, commercial or sectional interest or what may be represented as a wider public interest or benefit.

By seeking to regulate those involved in this process the aim is unequivocally not to restrict the flow of information, opinions, perspectives or proposals feeding into policy making or legislation but rather to bring about significantly greater transparency so that the public at large will know who is seeking to influence whom in respect of what in relation to public policy.

It is appropriate that this activity is open to public scrutiny as part of the desirable checks and balances which help ensure any attempt to seek to exert undue or improper influence on the conduct of policy formulation and development, political decision making and preparation and implementation of legislation is discouraged.

The reports of the Mahon and Moriarty Tribunals have highlighted *inter alia* the risk that the legitimacy of the political system could be eroded by the corrosive impact of secrecy and undue influence. The regulation of lobbying is one of a suite of measures which the Government is taking to address, through an extensive programme of political and government reform, the serious concerns which have emerged in this area.

One submission<sup>1</sup> received in response to the consultation undertaken by the Department of Public Expenditure and Reform referred to a study undertaken in 2009<sup>2</sup> in which it was stated that Irish business leaders perceived that public policy in Ireland was “...unduly influenced to a greater degree than many low-income countries. This phenomenon, known as Legal

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<sup>1</sup> Transparency Ireland.

<sup>2</sup> National Integrity Systems Study for 2009

*Corruption<sup>3</sup>, is especially prevalent in jurisdictions where influence is sold or trafficked through lawful means such as lobbying or through informal networks reinforced by political donations.<sup>4</sup> In relation to the US “The International Monetary Fund has also identified a link between the influence brought to bear on the regulation of financial services and the current international financial crisis.”<sup>5</sup>*

By regulating lobbying activity through registration and reporting requirements as well as the introduction of a professional code of conduct, the aim is to strengthen public confidence in politics and in the business of government, to increase the accountability of decision makers and to subject public policy making, and those who seek to influence it, to greater openness, transparency and to the potential for appropriate independent scrutiny. The introduction of a regulatory regime for lobbying would also be of benefit to supporting the continued development of the profession of lobbyists, as those who engage in lobbying would be required to meet the necessary standards for registration, including adherence to a code of professional conduct.

The value of regulation of lobbying in fostering a culture of integrity is supported by the Organisation for Co-operation and Development (OECD) which states that:-

*“...a sound framework for transparency in lobbying is crucial to safeguard the public interest, promote a level playing field for business and avoid capture by vocal interest groups...”<sup>6</sup>*

### **1.1.2 Structure of Policy Paper**

Chapter 2 of this paper comprises an overview of the main elements of the analysis undertaken in relation to lobbying regulation and also examines the policy frameworks governing the proposed regulatory system.

Chapter 3 provides a summary of the paper’s main recommendations. The subsequent chapters comprise a more detailed discussion of the basis of each recommendation.

Chapter 4 discusses some key definitions, a key element in the effectiveness and robustness of any system of regulation.

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<sup>3</sup> According to Transparency International (*p16 National Integrity Systems, Transparency International Country Study Ireland 2009*) legal corruption arises where, while no laws may be broken, personal relationships, patronage, political favours and political donations are believed to influence political decisions and policy to a considerable degree. The report highlights that the situation is compounded by a lack of transparency in political funding and lobbying.

<sup>4</sup> Daniel Kaufman, *Legal Corruption*, World Bank Institute, 2005,

[http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal\\_Corruption.pdf](http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal_Corruption.pdf).

<sup>5</sup> Igan D., Mishra P., Tressel T., *Working Paper WP/09/287 A Fistful of Dollars: Lobbying and the Financial Crisis*, International Monetary Fund, 2009. The authors found a statistical correlation between lenders who engaged with policy-makers most intensively on issues of mortgage lending, and those who were most negatively affected during the current crisis. These lenders had looser lending standards measured by loan-to-income ratio, greater tendency to securitise, and faster-growing mortgage loan portfolios. The authors conclude that preventing a future crisis might require weakening the political influence of the financial industry or greater transparency in how public policy is influenced.

<sup>6</sup> OECD January 2010. *Transparency and Integrity in Lobbying* p.1.

Chapter 5 examines the benefits of a mandatory system of regulation compared to a voluntary or self-regulatory approach.

Chapter 6 of the paper explores the scope of proposed disclosures as well as what might represent appropriate exclusions from the regulatory system.

Chapter 7 considers the format of a register and how the information required to be submitted to the register is best made available to the public as well as what are the most cost-effective options available for doing so.

Chapter 8 reviews the question of oversight and supervision of the regulatory regime.

Chapter 9 deals with the issue of sanctions to promote compliance and sanction serious misconduct and serious breaches of regulatory requirements.

Chapter 10 addresses the introduction of professional codes of conduct for the conduct of lobbying.

Chapter 11 discusses key implementation issues such as, dealing with the volume of information, the administrative burden on registrants as well as issues that may arise regarding sensitive information.

Chapter 12 deals with the proposed ‘cooling-off’ period arising in relation to the involvement of former ministers and senior public servants in lobbying those areas that they previously had responsibility for as public officials.

Finally, chapter 13 provides information on the rules governing access by lobbyists to Leinster House.

### **1.1.3 Lobbying in Ireland**

In Ireland lobbyists can by and large be divided into two main groups, (i) professional lobbyists who would generally be public affairs specialists, and (ii) employees and on occasion office-holders in organisations such as interest groups, professional groups, trade unions and non-governmental organisations (NGOs).

Some information on the size and scale of the lobbying ‘industry’ in Ireland is contained in Appendix 1 to this paper. One illustration of the extent of lobbying in practice is provided in the response to a Parliamentary Question (PQ) enquiring into the scale and diversity of lobbying activity targeted at the Budget and Finance Bill (2012).<sup>7</sup> The answer from the Minister for Finance disclosed that submissions were received from approximately 700 different organisations, companies and individuals.

### **1.1.4 Programme for Government Commitments**

The Programme for Government contains a commitment to introduce a statutory register of lobbyists and rules governing the conduct of lobbying. The fundamental objective of this

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<sup>7</sup> Dáil Éireann Debate, Vol. 756, No.2, PQ No.: 9650/12 asked by Deputy Patrick Nulty for written answer on 21 February 2012 in relation to Budget submissions and the Finance Bill (2012).

commitment, which guides the proposed policy approach set out in this paper, is to ensure that there is an appropriate degree of transparency regarding lobbying activity. Greater transparency in this area, in tandem with the proposed strengthening of anti-corruption legislation, would also be expected to both discourage the scope for, and assist in the detection of the type of, corrupt conduct that has been facilitated through the lobbying process as set out in the report of the Mahon Tribunal.

The Programme for Government also contains a proposal for the introduction of a two-year ‘cooling off’ period which would apply to senior public servants, ministers and special advisers which would prevent them from working in a role in the private sector involving a potential conflict of interest with their previous public service role. Internationally, this issue is usually addressed as part of lobbying legislation.

The Public Service Reform Plan 2011 contains a commitment to prepare legislation to meet these objectives in 2012 with a proposed implementation date early in 2013.

### **1.1.5 Work undertaken to date**

To advance the delivery of these commitments the Government Reform Unit in the Department of Public Expenditure and Reform (DPER) has:-

- (i) undertaken research into international best practice in relation to the regulation of lobbying, and
- (ii) invited submissions from interested parties on key issues relating to options for the design, structure and implementation of an effective regulatory system for lobbying in Ireland based on the OECD’s Principles for Transparency and Integrity in Lobbying.<sup>8</sup>

Approximately 60 groups and organisations submitted views to the Department (see Appendix 2). The submissions can be viewed on the Department's website: <http://per.gov.ie/regulation-of-lobbyists>. Further information on the research undertaken in preparing this paper is set out in Section 2.

### **1.1.6 Purpose of Policy Paper**

The purpose of this paper is to set out the Minister’s proposals for the establishment of a regulatory regime for lobbyists in line with the Programme for Government commitments and drawing on the research undertaken and the responses received to date to the consultation process undertaken by the Department of Public Expenditure and Reform.

In overall terms the paper examines what activity should be the subject of regulation through the introduction of a lobbying register and rules governing the conduct of lobbying.

The paper is being published to communicate to the public and to all interested parties the main elements of the Minister’s proposed policy approach to the development of legislation governing lobbying regulation.

In addition to informing the general public of the key aspects of the proposed regulatory system, the publication of this policy paper is also intended to allow stakeholders to provide

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<sup>8</sup> OECD January 2010. *Transparency and Integrity in Lobbying*.

their views on, for example, key implementation issues relating to the Minister's proposed policy approach.

## **1.2. Context**

### **1.2.1 What is and What is Not Lobbying?**

While the definition of lobbying is discussed further in Chapter 4, it is useful at the outset to set out the broad approach, in the context of putting an effective and efficient regulatory system in place, as to what is considered lobbying and what is not considered lobbying. This crucial distinction which goes to the heart of the design of the proposed regulatory regime must be drawn on the basis that - as highlighted by the OECD<sup>9</sup> - the most effective programme that ensures transparency across all categories of lobbyists would be mandatory and broad in its definition of who is a lobbyist.

Essentially public communications with Government, the political system and the public service fall into three main categories:-

- (i) day-to-day contact between individual citizens in a personal capacity and their local political representatives, constituency TD, Councillor or public servant in relation to any issues affecting them as individuals (i.e. such contact could range, for example, from personal administrative matters to representations the individual is making on international issues) or in relation to local issues which do not have a wider national or regional impact,
- (ii) contact between individuals representing organisations either in a remunerated capacity or as office holders in those bodies and office holders (i.e. ministers) or public servants in relation to matters concerning the objectives of the organisation in which they are employed or hold office or on a wider sectoral or sectional interest, and
- (iii) interaction between individuals in professional lobbying organisations representing the interests of third party clients and political representatives, office holders or public servants.

It is essential that normal local and constituency-related interactions set out at (i) above should be unaffected by the proposals to regulate lobbying. The primary focus of this policy paper is, therefore, concerned with the types of interactions set out in (ii) and (iii) above.

The activities summarised at (i) above will be excluded from the scope of the regulatory system and it is unequivocally the case that there should be no registration requirement, in any circumstances, for an individual contacting his or her political representative or public service in the context of communicating his or her view as an individual citizen on any issue.

As stated by the OECD

*“[u]nder no means should citizens who voluntarily and without compensation exercise their right to petition government, who communicate their viewpoints with elected and appointed representatives be subject to registration requirements or reporting or disclosure burdens. Any such imposition on average citizens is unnecessary, over-reaching and anathema to democracy”.*<sup>10</sup>

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<sup>9</sup> OECD January 2009 *Lobbyists, Government and Public Trust* (Volume 2) p66.

<sup>10</sup> OECD October 2009 *Lobbyists, Government and Public Trust* (Volume 2) p66.

Reflecting on the proposed broad and comprehensive understanding of what is lobbying as is set out above (excluding only normal constituent engagement with their public representative or public servant), it is expected, in addition to consultant (i.e. third-party) lobbyists, that a very significant number of organisations and individuals would potentially be subject to the proposed regulatory system including, for example, interest groups, representative bodies, industry and civil society organisations, NGOs and charities. In this regard while it may not always be clear whether members of interest groups, representative bodies and NGOs are direct beneficiaries of the lobbying carried out by the organisations they belong to, the contention is that however altruistic the lobbying activity the public interest imperative is that it should be transparent.

One of the submissions received as part of the consultation process refers to the complication created by the right to influence policies and legislation that affect an individual's legitimate interests, and highlights that this right is balanced with the right of the public to know what policy is being influenced by whom, how and on whose behalf.<sup>11</sup>

In addition, while it may not be the case that a direct financial benefit to the members of the body carrying out the lobbying can be identified, the allocation of extra resources by government to a government programme (or in the present severely constrained budgetary environment, a decision not to reduce resources for a particular programme or to scale back a proposed reduction on the basis of lobbying against the measure) clearly impacts on the resources available for other programmes (whether currently in operation or those not initiated owing to resource constraints).

It is likely to be necessary for organisations undertaking “grassroots” lobbying campaigns<sup>12</sup>, where they encourage members of the public to contact their local political representative, to publish this information.

### **1.3. Policy Rationale for Regulation of Lobbying**

#### **1.3.1 Introduction**

Government needs to be open to outside interests and ideas. Lobbying should, therefore be regarded as a force for good and as an essential element of the democratic process. Individuals and organisations legitimately and reasonably want to influence decisions that may affect them. Government in turn needs access to the knowledge and views that lobbying can bring. Lobbying provides decision-makers with valuable insights, information, policy perspectives, identification of and debate regarding different policy options.

This role is critical given the complexity of public policy and government decision making and the wider impact of government. Evidence-based lobbying based on and underpinned by rigorous research and analysis can improve the quality of decision-making. Lobbying practices are often deeply embedded in a country’s democratic and constitutional framework.

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<sup>11</sup> Transparency Ireland

<sup>12</sup> Paid communication to the general public intended to encourage the public to contact public officials to lobby them on a specific issue.

### **1.3.2 The case for Regulation**

However, greater openness and transparency on public policy formulation, development and decision-making is considered central to securing more effective public governance. Unregulated lobbying creates risks in terms of the lack of openness, transparency and the integrity of the political and administrative decision-making. As highlighted in the final report of the Mahon Tribunal such lobbying can exacerbate corruption risks. Even small gifts and other benefits of a minor value that arise in the context of the lobbying process can engender a sense of obligation or reciprocity.<sup>13</sup> Unregulated lobbying can also erode the legitimacy of democratic governance by undermining political equality between citizens or even from being seen to have this effect.<sup>14</sup>

The exclusive purpose of lobbying by individuals or groups with different interests is to influence decisions taken at political and administrative level. There is, therefore, a strong public interest in knowing who is lobbying whom about what. Unregulated lobbying can give rise to significant public concern about the role of vested interests in policy making and risk that privileged or excessive influence may result in sub-optimal public policy decisions which might be made to suit private agendas to the overall detriment of the community and society at large. In this regard, the Mahon Tribunal recommended the regulation of lobbying to secure significantly greater transparency over the lobbying process and the implementation of appropriate professional standards governing the conduct of lobbyists.

### **1.3.3 Goal of Regulation**

The key objective in introducing a register of lobbying is to make information available to the public on the identify of those seeking to influence public policy decisions as well as providing a framework for holding those engaged in lobbying accountable for the manner in which they conduct the activity. This will allow the wider public to reach informed evidence-based judgements about the extent to which different interest groups are able to access and have accessed, and may be able to influence and have influenced, decision making and help underpin public confidence by assuaging concerns that lobbying carried out behind closed doors could override the interests of the whole community.

Regulation would be expected to contribute to the further professionalisation of and increase the public understanding of lobbying. It is also hoped that public perceptions of the lobbying profession would improve on account of the introduction of a system of regulation and that lobbying would, therefore, cease to be a pejorative term. Lobbying regulation is expected to serve a valuable function in promoting openness and transparency, supporting integrity and enhancing the efficiency and ethnicity of the public policy making and decision making processes. Regulation of lobbying renders politicians and government officials more accountable<sup>15</sup> and in and of itself helps promote transparency.<sup>16</sup> It is essential that the regulatory regime put in place must be balanced and fair to all parties and designed in a manner compatible with the constitutional framework and appropriately aligned with the positive elements of Ireland's prevailing political culture.

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<sup>13</sup> The Mahon Tribunal Report, p2532 (1.60).

<sup>14</sup> While it is not possible to have influence without access it is possible to have access but not wield any influence.

<sup>15</sup> Accountability refers to taking responsibility and having to justify to citizens actions that are taken.

<sup>16</sup> Transparency refers to the ease with which the public can monitor not only the government with respect to its activity but also examine which private interests are attempting to influence how public policy is formulated.

As highlighted above since communication is the essence of policy making the introduction of lobbying regulation cannot be allowed to impede the flow of information from the public and other bodies. It is vital that lobbying is defined in a manner which ensures that individual members of the public do not hesitate to offer their views to government. The international experience of lobbying regulation is such that there is no reason to believe that regulation will make it more difficult to gain access to key policy and decision makers. The introduction of lobbying regulation in other jurisdictions seems to have been accepted as a fact of life and has not given rise to any unintended deleterious effects.

### **1.3.4 Why not put the onus solely on office holders or on the public service to record all lobbying activity?**

The regulation of lobbying is complementary to other transparency arrangements already in place including arrangements for accountability to the Oireachtas, the Freedom of Information Acts and the Ethics and Standards in Public Office legislation. These existing arrangements put the onus on office holders and on the public service to meet certain transparency objectives and to assist the public in understanding the policy making process and in ensuring that ethical standards are being met. The aim of a lobbying register is to provide transparency on the activities of those engaged in lobbying.

The OECD identifies the following building blocks as necessary to a sound framework for regulation of lobbying:

- Standards and rules that adequately address public concerns and conform to the socio-political and legal context;
- Legislation or regulation that suitably defines the actors and activities covered;
- Standards and procedures for disclosing information that covers key aspects of lobbying such as its intent, beneficiaries and targets;
- Enforceable standards of conduct for fostering a culture of integrity by, for instance, avoiding conflict of interest and providing accurate information; and
- A coherent spectrum of strategies and practices that secure compliance.<sup>17</sup>

It is evident that the framework envisaged would require an onus to be placed on those engaged in lobbying activity to comply with certain reporting requirements and to be guided by a set of behavioural or ethical standards in communications with office holders and public servants. In looking at the Quebec experience, the OECD addresses this question as to where the onus should lie in the following terms:

*“As lobbying is a relationship between two actors, a lobbyist and a public office holder, the first question raised concerns which of these actors should bear the formal responsibility for achieving transparency. Since lobbyists initiate the relationship, it is generally assumed that they should be primarily responsible for the publicity of their endeavour to influence public office holders on behalf of the particular or vested interests they represent.”<sup>18</sup>*

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<sup>17</sup> OECD, *Lobbyists, Government and Public Trust*, (vol.1), p.3 & 4

<sup>18</sup> OECD, *Lobbyists, Government and Public Trust*, (vol.1), p.130

A register captures information from the stakeholder perspective and further complements the obligations already on office holders and public servants. It also provides a further safeguard to ensure that the full picture in relation to communications which seek to influence the policy making or decision making processes are captured and put in the public domain.

### **1.3.5 Conclusion**

The reasons for regulating lobbying in Ireland are all grounded in the principal necessity of enhancing transparency in a manner which fully respects and facilitates full and appropriate engagement, interaction and debate between interest groups and the political and administrative system.

This will help ensure that the public interest in ensuring greater transparency in policy formulation, policy development, legislation and political and administrative decision making is promoted. It is a priority to ensure that the design of the regulatory regime and its implementation fully respects the fundamental right of the individual citizen to have access and to present their view to their local political representative.

## **Chapter 2: Overview of Approach and Policy Framework**

### **2.1 Introduction**

This chapter sets out:-

- (i) a brief summary of the main elements of the research undertaken in preparing this policy paper; and
- (ii) the main themes of the policy framework governing the proposed regulatory system for lobbying.

### **2.2 Overview of Approach**

In summary, the sources of information underpinning the assessments and recommendations contained in this paper are as follows:-

- (i) OECD guidance;
- (ii) international experience;
- (iii) independent international analysis/academic research;
- (iv) submissions received as part of the consultative process; and
- (v) Private Members' Bills.

These are outlined in the following sections.

#### **2.2.1 OECD Guidance**

The OECD has developed a set of principles relating to the regulation of lobbying which have been adopted as a recommendation by all OECD Member States including Ireland. These are termed "*The 10 Principles for Transparency and Integrity in Lobbying*" and can be divided into four broad categories:-

- (i) Building an effective and fair framework for openness and access;
- (ii) Enhancing transparency;
- (iii) Fostering a culture of integrity; and
- (iv) Mechanisms for effective implementation, compliance and review.

These principles formed the basis of the consultation exercise carried out by the Department in spring 2012 and are discussed and outlined further later in this chapter.

#### **2.2.2 International experience**

Research was undertaken of lobbying regulation in Canada, USA, Australia, New Zealand and several European countries. The regulation in place in the European Union institutions was also analysed, as was the proposals for a self-regulatory regime in the UK.

As a part of this research the Government Reform Unit engaged with the Commissioner of Lobbying in Canada and with the Integrity Commissioner in Ontario who provided information on the practical functioning of registers of lobbyists in these jurisdictions.

Reports on various aspects of lobbying regulations implemented in different jurisdictions further informed the research. These included reports carried out on lobbying regulation in Canada, the UK and Australia (see Appendix 3).

### **2.2.3 Independent international analysis / academic research**

Supplementing the international research, the academic research referred to in this paper is:-

- (i) *Regulating Lobbying: A Global Comparison* by Raj Chari, John Hogan and Gary Murphy,
- (ii) Analysis published by the OECD on the subject of lobbying including:-
  - a. *Lobbyists, Government and Public Trust: Promoting Integrity by Self-Regulation*, (2009);
  - b. *Lobbyists, Government and Public Trust* (vol.1), (2009).

The academic journals consulted for relevant articles to inform the research (see Appendix 3). include:-

- (i) *Access: insider perk or key to transparency?*, Jonathon Fallon, 2011;
- (ii) *Administrative Sanctions*, J.Dara Lynott and Ray Cullinane, 2010,
- (iii) *Fistful of Dollars: Lobbying and the Financial Crisis*, Igan D., Mishra P. and Tressel T.

The Department of Environment, Community and Local Government commissioned research in 2005 from Trinity College Dublin/Dublin City University to establish a clear profile of formal systems for regulating lobbyists in public life in certain jurisdictions thereby facilitating an assessment of their relevance to public life in Ireland. Their research report, entitled “*Examining and Assessing the Regulation of Lobbyists in Canada, the USA, the EU Institutions, and Germany*” was published in 2006.

### **2.2.4 What was recommended in the submissions received?**

Submissions were received as part of the consultation process, from approximately 60 individuals and organisations. These submissions were comprehensive in their coverage of the key issues on which views were requested. The main themes emerging from these submissions included:-

- (i) The need for a clear definition of lobbying, who should be included or excluded as lobbyists and what exemptions should apply;
- (ii) The need for lobbying or advocacy activities of charitable organisations to directly relate to advancing their charitable purposes in order to maintain their charitable tax-exempt status;
- (iii) The requirement for independent oversight and monitoring of any regulatory system;
- (iv) The preservation of normal constituent access to his or her political representatives;
- (v) The need for an easily accessible registration system with minimum bureaucracy in registering or updating; and
- (vi) Support for a statutory ‘cooling off’ period to address the ‘revolving door’ issue relating to movement between the public and the private sector.

### **2.2.5 What was the approach in the Private Members' Bills?**

There have been five Private Members' Bills (PMBs) published on the topic of regulation of lobbying since 1999 and one draft Bill.<sup>19</sup> Four of the PMBs were introduced by the Labour Party and one was introduced by Fianna Fáil. Fine Gael included a draft Lobbying Bill in their "New Politics" document published in 2010.

### **2.2.6 Wider Policy Context**

In developing the proposals contained in this paper particular regard has also been given to the wider policy context and, in particular, to serious concerns about the lack of transparency in the decision-making and public policy processes. In this context, careful consideration has been given to the findings and recommendations recently published in the "*Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments*" (Mahon Tribunal Report) (see Appendix 4).

## **2.3 Policy Framework**

In essence this paper seeks to address the question of what are the critical elements of effective regulation of lobbying. The answer to that question can be ascertained through the responses to a number of further questions including:-

- What is to be regulated?
- What information should be disclosed?
- How can the successful regulation be achieved?
- How can compliance be assured?

Taking account of the issues raised in the research, a number of key policy themes guide and inform the overall approach and recommendations contained in this paper which seek to answer these and other questions. In each case the policy themes are also linked to the relevant OECD principles in order to ensure that the policy framework is complete and comprehensive in its coverage of these principles.

### **2.3.1 Creating a Level Playing Field**

*OECD Category - Building an effective and fair framework for openness and access.*

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

Opportunities to seek to influence policy should be equally available to all. By allowing stakeholders equal access to participate in the development of public policy, the process gains a balanced and informed perspective and protects against the exertion of undue influence by particular vested interests.

It is intended that the proposed regulation of lobbying, set out in this paper, will assist in bringing transparency to the decision making and policy making processes by highlighting areas of public policy where the participation of a diverse range of interest groups, in seeking to inform and influence policy and legislation, is evident and similarly where such participation is much more limited.

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<sup>19</sup> The Labour Party introduced PMBs in 1999, 2000, 2003 and 2008. Fianna Fáil introduced a PMB in 2012 and Fine Gael published a draft bill in the New Politics Paper in 2012 within the *Open Government* draft bill.

Regulation of lobbying is one of a menu of policy initiatives contained in the Programme for Government to increase openness, transparency and accountability in relation to the conduct of public policy and to provide opportunities for greater involvement and participation by the public in the policy making and legislative process.

### **2.3.2 Ensuring a Good Fit with the Political Culture**

*OECD Category - Building an effective and fair framework for openness and access.*

*OECD Principle 2 - Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts:*

The OECD recommends that countries should examine all policy options and take into account the national context when considering the introduction of lobbying regulations. Countries should consider factors such as the nature and scale of the lobbying industry, the level of public trust, constitutional principles and the implications of mandatory regulation.

The most significant factor relating to political culture in Ireland is the practice and tradition of political *clientism* as reflected in the high level of access members of the public and individuals have to their political representatives, including members of the government.

In looking at lobbying practices in Ireland, the marked differences with other larger jurisdictions have been taken into account. The professional third party lobbying industry in Ireland represents one strand of lobbying activity but in terms of scale would appear to be smaller in proportionate terms than in particular the US but also the UK. This is of particular relevance in considering the scope of lobbying to be included in any regulatory regime.

### **2.3.3 Consistency with Wider Regulatory Environment**

*OECD Category - Building an effective and fair framework for openness and access.*

*OECD Principle 3 - Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks:*

It is important that rules and guidelines on lobbying are consistent with existing and proposed legislation or frameworks that contribute to a culture of transparency and integrity. These include, in the Irish context, Ethics and Standards in Public Office legislation, Freedom of Information legislation, political funding arrangements, anti-corruption legislation and existing codes of conduct and rules for public officials or office holders.<sup>20</sup>

Consistency with other statutory requirements is of relevance, in particular, in considering the degree of financial information which should appropriately be disclosed taking account of the regime already in place in relation to disclosure by office holders and public servants under the Ethics statutory code and in relation to politicians and political parties under the Electoral Acts.

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<sup>20</sup> Ethics on Public Office Acts, 1995 and 2005, Freedom of Information Acts, 1997 and 2000. Standards in Public Office Act, 2001. Electoral Act, 1997. The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001. Prevention of Corruption Acts, 1889 and 2005. Standards in Public Office Act, 2001.

### **2.3.4 Clarity on Definitions**

*OECD Category - Building an effective and fair framework for openness and access.*

*OECD Principle 4 - Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying:*

A consistent message from international research, from the academic literature and from the OECD, is the need to have robust and comprehensive definitions of, for example, the term 'lobbying' to avoid uncertainty and misinterpretation as well as to limit loopholes and the potential for efforts to successfully 'game' the regulatory system.

In considering this issue, the approach adopted has sought to develop definitions which are broad enough to capture the full range of lobbying activity while providing clarity as to the scope of the regulation.

As alluded to above, the definition of lobbying adopted will be designed to ensure that it has no effect on, or application to, the access that individual private citizens have to their local political representatives whether by attending their constituency clinics or in terms of any other communication, contact or interaction whether in a personal, business, social, sporting or political context.

### **2.3.5 Transparency**

*OECD Category - Enhancing transparency.*

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

*OECD Principle 6 - Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities:*

If the regulation of lobbying activity is to meet its primary objective of casting more light on who seeks to influence whom, the information to be disclosed on lobbying activities will need to be adequate to enable appropriate public scrutiny.

The OECD recommends that countries utilise information and communication technologies, such as the internet, to make information on the policy making processes as accessible to the public as possible. This in turn supports the objective of promoting a vibrant civil society with access to the information that allows for public scrutiny of public policy decisions.

In limited and very specific circumstances disclosure may need to be balanced against the public interest, for example in circumstances where the information is market or commercially sensitive. Depending on the nature of the information, options including withholding from public disclosure for a fixed period of time may need to be considered in the case of such information.

Important considerations also arise in terms of the administrative cost and resource implications of requiring what could objectively be regarded as excessive disclosure requirements as well as the practical utility of voluminous information being provided in a

lobbying register in a form which is not easily accessible, not easily interpreted or meaningful in terms of transparency.

### 2.3.6 Fostering a Culture of Integrity

*OECD Category - Fostering a culture of integrity.*

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

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

The Programme for Government commitment refers to putting in place rules governing the conduct of lobbying. This is a feature of lobbying regulation elsewhere and seeks to promote the conduct of lobbying with integrity and ethical conduct, avoiding any conflict of interest – actual or perceived.

The OECD recognises that there should also be a responsibility placed on public officials and their relationship with lobbyists. This paper examines the scope for building on existing codes such as that prepared by the Standards in Public Office Commission (*SIPO Code of Conduct for Office holders*, para. 2.2.5.).

The OECD also clearly recommends that there should be a ‘cooling off’ period put in place to prevent former public officials from misusing the confidential information they obtained from their position.

This is in line with the Programme for Government commitment to ensure that no senior public servant (including political appointees) or Minister can work in the private sector in any area involving a potential conflict of interest with his or her former area of public employment, until at least two years have elapsed after he or she has left the public service.

### 2.3.7 Ensuring Compliance

*OECD Category - Mechanisms for effective implementation, compliance and review.*

*OECD Category - Enhancing transparency.*

*OECD Principle 9 - Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance:*

The differing statutory regimes in place in other jurisdictions to regulate lobbying have been categorised by researchers into high, medium and low regulation regimes respectively depending on an assessment of the specific regulatory rules in place. It is, however, stressed that the nomenclature does not imply any normative judgment regarding the appropriateness of any one system and that ‘high’ is not better, ‘low’ worst and ‘medium’ a safe middle ground.

One of the key elements of robust regulation is the strength of the oversight provisions which seek to monitor its operation, ensure compliance and deter breaches of the law. In examining options for oversight and sanctions, a guiding principle should be to seek to create a fair system with proportionate sanctions which will nonetheless encourage compliance.

Consideration has also been given in this paper to the issue of incentives for registration and compliance.

### **2.3.8 Review**

*OECD Category - Mechanisms for effective implementation, compliance and review.*

*OECD Principle 10 - Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience:*

Given the nature and significance of the regulatory measures proposed, which would have the effect of introducing a detailed regulatory scheme for lobbying where there is currently none, it is essential to provide for periodic review of the legislation put in place. This will help ensure that it is an effective system that meets the policy objectives that inspired it in the first instance and that there is full and proper consideration of proposals of how the regulatory system could be enhanced. This is particularly appropriate in circumstances where a phased approach to implementation is adopted.

## **Chapter 3: Summary of Recommendations and Proposed Next Steps**

### **3.1 Summary of Recommendations**

This chapter sets out the main recommendations for the regulation of lobbying. Each recommendation is discussed in greater detail in subsequent chapters along with the analysis, information and research that underpin these recommendations.

#### **Recommendation 1: Definition of “Lobbying”**

*It is recommended that this definition would encompass all communication by individuals employed by an organisation or acting as an officeholder of a body (other than a purely voluntary body with no remunerated officers or employees), or receiving fees or remuneration from a third party for making or organising or planning that communication on specific policy, legislative matters or prospective decisions\* with designated public officials or officeholders\*\*.*

- \* the issues on which the lobbying takes place,
- \*\* the person lobbied.

#### **Recommendation 2: Matters on which “lobbying” takes place**

*It is recommended that the definition would encompass the following:-*

- (i) *the development of, or any amendment to, legislation;*
- (ii) *the development of, or any change in, the rules or regulations of, any scheme, public programme or policy;*
- (iii) *the implementation arrangements for, or the administration of, any scheme or public programme or policy;*
- (iv) *the awarding of any grant, contribution or any financial benefit by a public body; and*
- (v) *any specific decision of the public body lobbied or any specific decision to which the public body was party that is of benefit or potential benefit to the person lobbying, or to a client of that person, other than a decision that is a matter of statutory entitlement.*

#### **Recommendation 3: Defining “lobbyists”**

*In light of the objective to adopt a comprehensive definition of lobbying, it is recommended that any individual or body who undertakes the activity falling under the definition of lobbying in the proposed legislation would have an obligation to register and report on their lobbying activity.*

#### **Recommendation 4: “lobbied” persons**

*It is proposed that a definition of designated public officials includes the following:-*

- (i) *Ministers, Ministers of State;*
- (ii) *TDs, Senators and members of their staff;*
- (iii) *Members of Local Authorities;*
- (iv) *Special Adviser; and*
- (v) *Senior Civil and Public Servants;*

Recommendations 1-4 are discussed further in Chapter 4.

### **Recommendation 5: Statutory Regulation of Lobbying**

*It is recommended, in line with the commitment in the Programme for Government, that a statutory system of regulation is introduced with mandatory registration requirements.*

This recommendation is discussed further in Chapter 5.

### **Recommendation 6: Information Disclosed on Lobbying Register**

*It is recommended that the following information should be submitted for registration on the lobbying register:-*

- (i) *The name, address, business telephone number, and principal place of business of the registrant;*
- (ii) *For those operating on behalf of third parties, the name, address, principal place of business of the registrant's client and clients on whose behalf lobbying is undertaken;*
- (iii) *The general business/commercial interest, representative/advocacy role of the registrant;*
- (iv) *The specific policy or legislative issues or areas of public administration of interest to the registrant, including the name of the Bill or other identifier of the legislation;*
- (v) *The names of principal and leading employees responsible for lobbying in an organisation.*

*It is recommended that reports for the register on lobbying activity should be made by registrants on a quarterly basis within 10 working days of the expiry of the previous quarter providing information on:-*

- *the specific nature of the issues on which lobbying has taken place;*
- *the person(s) who has/have been the subject of lobbying;*
- *summary information to determine the nature, scope, intensity and type of the lobbying activity over that period; and*
- *any changes in the registration information already submitted (i.e. i-v above).*

### **Recommendation 7: Exemptions/Exclusions**

*In line with the regulations in other jurisdictions and the Irish Private Members Bills it is recommended that the following communications/individuals are subject to exemptions:-*

- (i) *All officials of foreign Governments in the State;*
- (ii) *UN officials, EU officials and officials of other international organisations;*
- (iii) *All communications that strictly fall under legal privilege or other privilege (as would be recognised by the courts in legal proceedings);*
- (iv) *Communications made in response to a request by or to a public official strictly requesting factual information;*
- (v) *Any communications/contacts, the disclosure of which could cause a threat to the safety of a person; and*
- (vi) *Open and transparent public communication should be excluded where all elements of the consultative process are a matter of public record, e.g. Parliamentary or Oireachtas Committee hearings.*

### **Recommendation 8: Responsibilities of Public Officials**

*In parallel to the development of lobbying regulation, it is recommended that a review is carried out of the legislative options available to enhance the rules applicable to the lobbied to ensure all actual, potential and perceived conflicts of interest are managed effectively and to seek to eliminate the risk of corrupt conduct.*

Recommendations 6-8 are discussed in Chapter 6.

### **Recommendation 9: Format of the Lobbying Register**

*The format of the register should conform to international good practice comprising an electronic web-based system which is publicly available at all times via the internet.*

*It should be a particular priority to ensure that the system put in place is low-cost, accessible, easy to use, to review and to update.*

This recommendation is discussed in detail in Chapter 7.

### **Recommendation 10: Oversight/Supervisory Body for System of Lobbying Regulation**

*It is recommended that a specific regulator is put in place to oversee and supervise the operation of the lobbying register. The regulatory body should have the appropriate skills, resources and capacity to regulate effectively.*

This recommendation is discussed in Chapter 8.

### **Recommendation 11: Review of Regulatory System**

#### ***Audit***

*It is recommended that the body responsible for oversight and supervision of the regulatory system for lobbying should be subject to a legal requirement under the proposed legislation to prepare a report regarding the administration and operation of the legislation and submit/present the report to both Houses of the Oireachtas within three months after the end of each year.*

*In addition, it is recommended that a power should be provided for in the legislation so that the oversight/supervision body can, at any time, submit a special report to both Houses of the Oireachtas detailing the results of any investigation undertaken by the regulator.*

#### ***Legislative Review***

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

*The review should be undertaken on behalf of the Minister for Public Expenditure and Reform in consultation with the oversight/supervisory body for lobbying regulation. Formal consultations should be carried out with a relevant Oireachtas committee in the course of the review process.*

This recommendation is discussed in Chapter 8.

### **Recommendation 12: Sanctions**

#### ***Sanctions***

*Effective sanctions should be provided for in legislation which would act as a substantial deterrent for significant misconduct such as:-*

- (i) lobbying without being registered,
- (ii) providing false or misleading information, and
- (iii) significant breaches of the code of conduct (provided a statutory code of conduct is introduced).

*Sanctions should be clear and enforceable by the appropriate oversight/supervisory body.*

*The oversight body should have the authority to require additional relevant information from registrants (subject to appropriate and proportionate limitations) and to conduct further investigations if this additional information confirms a breach has taken place.*

*Provision should be made in the proposed legislation for the making of complaints regarding the conduct of lobbyists where it is alleged that a breach of the professional code of conduct has taken place.*

*As recommended by the Mahon Tribunal Report, administrative sanctions should be put in place including for example fines or temporary suspension or (in certain exceptional circumstances) permanent exclusion from the register (subject to legal review).*

#### ***Ensuring Compliance***

*The oversight/supervisory body should be empowered to carry out random audits to support compliance overall.*

*Effective communication strategies should be put in place to educate and inform potential registrants on the obligations they are required to meet under the proposed regulatory system. This will help underpin compliance and could be achieved by both information sessions and publicity campaigns.*

*Incentives for registration should be carefully considered. One incentive which was broadly recommended is alerts and/or invitations to consultations for registrants.*

#### ***Content of Sanctions***

*Concrete sanctions, where a breach has been proven in a criminal prosecution, should range from fines to, in serious cases, terms of imprisonment.*

This recommendation is discussed in Chapter 9.

### **Recommendation 13: Code of Conduct**

*The designated oversight/supervisory body for lobbying regulation shall develop a statutory code of conduct for lobbyists within 12 months of the establishment of the lobbying register and this code will come into effect no later than 6 months thereafter.*

This recommendation is discussed in Chapter 10.

### **Recommendation 14: Implementation Issues**

*It is recommended that an advisory group composed of relevant experts and key stakeholders is established to provide information and guidance to assist in addressing key implementation challenges.*

*It is recommended that the Department should consult widely on implementation issues in planning for the establishment of the lobbying register.*

*It is recommended that reports of lobbying activity should be made by registrants on a quarterly basis within 10 working days of the expiry of the previous quarter providing information on:-*

- *the specific nature of the issues on which lobbying has taken place,*
- *the person(s) who has/have been the subject of lobbying, and*
- *summary information to determine the nature, scope, intensity and type of the lobbying activity over that period.*

*It is recommended that the scope of, and the necessity for, a phased implementation of the proposed regulatory regime within a specified and planned time frame is assessed in due course.*

*It is recommended that the regulator for the lobbying register is assigned a role and has responsibility for providing education, guidance, information and support to assist the effective operation of the regulatory system and is required to consult formally with users on implementation and operational matters.*

This recommendation is discussed in Chapter 11.

### **Recommendation 15: Registration Fees**

*In view of current severe budgetary pressures, it is recommended that a fee structure should be considered to cover the cost of the establishment and maintenance of the lobbying register. It is not expected that the level of fee would be set at a level which would act as a significant disincentive to registration.*

This recommendation is discussed in Chapter 11.

### **Recommendation 16: Cooling off period**

*Consistent with the recommendation contained in the Programme for Government it is recommended that no senior public servant (including political appointees) or Minister can work in the private sector in any area involving a potential conflict of interest with their former area of public employment, until at least two years have elapsed after they have left the public service.”<sup>21</sup>*

This recommendation is discussed in detail in Chapter 12.

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<sup>21</sup> Programme for Government: Government for National Recovery 2011-2016, 2011

### **Recommendation 17: Access to Leinster House**

*It is recommended that all registrants on the lobbying register be required to state, as a disclosure requirement, any access rights that they have to these buildings.*

*The issue of whether registrants should be issued with access badges is an issue for the Houses of the Oireachtas to determine.*

*While recognizing that it is entirely and exclusively a matter for the Houses of the Oireachtas themselves, it may be appropriate for the Houses of the Oireachtas to consider the case for reviewing its internal arrangements in respect of lobbying activities in light of, for example, the principles and objectives set out in the legislation and the operation of the regulatory system.*

This recommendation is also discussed in detail in Chapter 12.

## **Chapter 4: Definitions and Scope of Lobbying Legislation**

### **4.1 Introduction**

There is a universal consensus among all experts, which is also reflected in many of the submissions received from the consultative process, that clear and legally robust definitions which are straightforward to understand by lobbyists and public officials, are central to the efficacy of any regulatory system for lobbying. Clear definitions will also aid compliance as stakeholders will understand their obligations under the regulations.<sup>22</sup>

The kernel of lobbying regulation relates to the answer to the following question:-

“Who is lobbying whom about what?”

The definitions adopted and the final shape of a lobbying register will, therefore, be determined by the interaction of the following:-

- (i) lobbying (i.e. the activity to be regulated);
- (ii) the lobbyist (the “who”);
- (iii) the lobbied (the “whom”); and
- (iv) the matters on which lobbying is taking place (the “what”).

In seeking to define these terms there are several examples of good practice to be drawn upon from jurisdictions with lobbying regulations already in place.

These key definitional issues will be addressed in this chapter. The recommendations made are intended to illustrate the proposed policy approach to resolving these issues. Definitions are required which succeed in encompassing all activity where an attempt is made to influence policy so that the transparency of the policy formulation and development and decision making process will be significantly enhanced.

The question of legal definitions required to implement the proposed policy approach is a separate issue to be considered in the context of the preparation of a General Scheme of a Bill and the legal drafting of that Bill by the Office of the Parliamentary Counsel subject to Government approval in due course.

A high level of legal clarity and certainty will be required on each individual element of the above in due course in order to ensure that:-

- (i) the design of the regulatory scheme overall is robust,
- (ii) it is effective in meeting its objectives, and

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<sup>22</sup> In this regard, both the Irish Constitution and the European Convention of Human Rights (ECHR) militate against laws that are unduly vague. Requirement in the Irish Constitution and article 7 European Convention for Human Rights (ECHR). See Conor Hanly’s analysis in *An Introduction to Irish Criminal Law*, (2<sup>nd</sup> ed., Dublin, 2006), page 40.

- (iii) it gives rise to a regulatory system that is practical and workable and can be implemented efficiently.

#### **4.2 Title of the Bill**

It is very important to note at the outset that many interest groups, representative groups and charitable organisations would not regard themselves as “lobbyists”. This presumably reflects in part the negative connotations now associated with lobbying and lobbyists for example, the findings of the Mahon Tribunal. These organisations are quite clear that they undertake advocacy on behalf of their members or in relation to particular sectoral or policy objectives in the public interest.

The question was, therefore, considered whether use of a term such as a “Transparency Register” (as is the case for the voluntary register of lobbyists for the EU institutions) would be preferable to the title “Register of Lobbyists”. It was however concluded that while there may be scope in the context of the drafting of the proposed legislation for using the term “Transparency Register” as a descriptor of the register, it will still certainly be necessary to define “lobbying” (i.e. the activity) with “lobbyist” defined as the party who carries out lobbying activity. The title “Public Affairs Register” may also be worth considering.

It was decided that adopting a policy approach which did not necessitate development of a definition of “lobbying” created a significant risk of creating a lack of clarity and uncertainty as to the key policy objectives of the initiative. In addition, it was believed that such an approach would exacerbate and entrench the negative associations connected with the terms “lobbying” and “lobbyist” which would be highly undesirable given the central and positive role which transparent and properly regulated lobbying would be expected to play in all elements of the development and enhancement of public policy.

#### **4.3 Defining Lobbying**

A definition will be required of whatever activities give rise to a requirement to register contact or communication in the Register. The definition must, therefore, succeed in encompassing all activity where an attempt is made to influence policy or decision making so that the transparency of those processes will be significantly enhanced.

##### **4.3.1 What is the practice abroad?**

The ‘activity’ can be broadly defined as an attempt to influence policy making and decision making processes. However, in attempting to regulate lobbying effectively other jurisdictions had to carefully tailor specific definitions of lobbying so as to protect a citizen’s right to access government. A broad range of different definitions are in existence in other jurisdictions. Some describe lobbying as being direct communication with a policy maker, others list out the specific actions that are regarded as attempting to influence the policy process while some definitions encompass the background activities in preparing for direct contact as lobbying.

A common expression used to define lobbying is ‘communication in an attempt to influence’.<sup>23</sup> However, there have been variations to this definition. Definitions used in other jurisdictions are outlined below.

#### *Canada*

The expression ‘attempt to influence’ was used in Canadian federal legislation where criminal sanctions apply. However, the requirement of proof of this prerequisite beyond a reasonable doubt proved to be an obstacle to criminal prosecution in Canada. Following this, the regulation was amended and it now states:-<sup>24</sup>

*“...communicate with a public office holder **in respect of** [specific issues listed in the legislation]*

#### *USA*

The Federal Lobbying Disclosure Act (1995) (LDA) defines lobbying in terms of contact, i.e. any contact written, oral or electronic with the designated lobbied (see section on US lobbied). The LDA also covers background work as ‘lobbying activities’.

The 50 US States define lobbying as an ‘attempt to influence government’. This is usually through oral or written communication but some States include gifts and hospitality given to the lobbied.

#### *EU Countries and EU institutions*

The European Transparency Register simply states “*...the formulation or implementation of policy and the decision making processes...*” but goes on to give a list of more precise examples. It also defines lobbying as “*activities*” carried out with the “*objective of directly or indirectly influencing*”.<sup>25</sup>

In the majority of the small number of EU countries where regulation of lobbying has been put in place, it has been based on an access system where passes are issued to registrants so that they may enter Parliament buildings. As a result, definitions of lobbying have not played a central role in these regulations.

#### *Other Countries*

In Australia lobbying is defined as it was originally defined in Canada, as an attempt to influence a government representative in an effort to influence Government decision making in particular matters. The definition also sets out a number of exclusions to protect ordinary citizens’ access to government

The UK’s self-regulatory body, UK Public Affairs Council (UKPAC), defines lobbying as ‘*...in a professional capacity, attempting to influence, or advising those who wish to influence, the UK Government, Parliament, the devolved legislatures or administrations,*

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<sup>23</sup> See the Labour Party Private Member Bill (PMB )2008, Fine Gael Draft Bills in the *New Politics* document 2010, the annex to OECD, *Recommendation of the Council on Principles for Transparency and Integrity in Lobbying* and many of the state regulations in the US (for example Arkansas and Arizona).

<sup>24</sup> OECD report *Lobbyists, Government and Public Trust*, (vol.1), pgs.116 and 117.

<sup>25</sup> The European Transparency Register, Section (1v)(8).

*regional or local government or other public bodies on any matter within their competence’.<sup>26</sup>*

#### **4.3.2 What was recommended in the submissions received?**

There is consensus in the submissions that a clear definition of lobbying is essential to ensure a level playing field and to allow for impartial and transparent rules to regulate the register. Individual submissions argue that where an organisation only lobbies on its own behalf this activity should not be included in the definition. Others argue that it should be inclusive of all interest groups.

Suggested definition from the submissions include:-

- (i) “...efforts to influence”<sup>27</sup>.
- (ii) “...all activity associated with representing [client]”.<sup>28</sup>
- (iii) “...attempting to inform and influence the decisions made by public office-holders involved in the public policy process, or the “process of seeking to shape the public policy agenda in order to influence government (and its institutions) and the legislative programme”.”<sup>29</sup>

A further argument has also been made that the definition needs to include all the work that a lobbyist does before any real ‘contact’ or ‘communication’ takes place. This can involve research etc.<sup>30</sup>

#### **4.3.3 What does the academic research say about defining lobbying?**

The fourth of the OECD principles states that “*Countries should clearly define the terms ‘lobbying’ and ‘lobbyist’ when they consider or develop rules and guidelines on lobbying*”. It is stated that definitions should be robust so as to avoid misinterpretation and loopholes. Although it is recommended that definitions principally target those who receive compensation for lobbying it is also recommended that definitions be considered more broadly to include all those who seek to influence policy. Definitions should clearly outline what is not lobbying such as communications which are already a matter of public record. In OECD’s ‘Regulating Lobbying: a Global Comparison’ the authors come to similar conclusions and define lobbying for the purpose of their study as the act of individuals or groups, each with varying and specific interests, attempting to influence decisions taken at the political level.<sup>31</sup>

Chari, Hogan and Murphy also cite a very broad definition in their research by Anthony Nownes. Nownes writes of “...an effort designed to affect what the government does”.<sup>32</sup>

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<sup>26</sup> The UK Public Affairs Council (UKPAC), definition of Lobbying at <http://www.publicaffairscouncil.org.uk/>

<sup>27</sup> Hume Brophy.

<sup>28</sup> Public Relations Institute Ireland.

<sup>29</sup> PolicyAction.

<sup>30</sup> Conor McGrath Public Affairs submission and see paragraph 1.6 of this paper.

<sup>31</sup> R. Chari, J. Hogan and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press) page 4.

<sup>32</sup> R. Chari, J. Hogan, and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press), page 3.

#### **4.3.4 What was the approach in the Private Members' Bills?**

Lobbying is defined in the 2008 Labour Party PMB as communication with a public official or arranging a meeting between a public official and any other person in an attempt to influence particular subject matters.<sup>33</sup>

The same definition is used in the earlier Labour Party PMBs. The Fine Gael draft Bill and the Fianna Fáil PMB contain similar definitions.<sup>34</sup>

The Fianna Fáil PMB includes "...*the function of a Local Authority...*"<sup>35</sup>

#### **4.3.5 Legal Professional Privilege**

In keeping with the proposed adaptation of a comprehensive definition for lobbying, it is important that the definition addresses the "lawyer problem" to ensure that lawyers, accountants and other professional advisers engaged in lobbying are encompassed within the legal definition.

As highlighted by the OECD,<sup>36</sup> lawyers and society have a very legitimate stake in protecting lawyer-client confidentiality when it comes to litigation or legal advice which strictly falls under the definition of legal professional privilege. Both the Labour Party (2008)<sup>37</sup> and Fianna Fáil (2012)<sup>38</sup> Private Members Bill contain provisions which protect information that would fall under the category of legal professional privilege.

The application of legal professional privilege should not be extended to allow for unregulated lobbying which is not transparent to take place. It is essential, therefore, that a strict definition of legal professional privilege is employed in the proposed legislation. The Registrar of Lobbyists in British Columbia (BC), Canada, provides an approach which may assist in bringing clarity to the issue of legal professional privilege and lobbying. In BC's regulatory system the act of lobbying a public office holder, as defined by the legislation, does not fall under a confidential solicitor-client communication.<sup>39</sup> Any communication that falls under the definition of lobbying must be registered.

#### **4.3.6 Summary of Proposed Approach to Defining Lobbying**

In view of the core objective of the regulatory initiative to significantly enhance the transparency of the policy making and decision making processes, it is recommended that a comprehensive definition of lobbying is adopted in the legislation which would be designed to ensure the exclusion of normal representations made by an individual as a constituent to their local political representative. This approach would also provide certainty and clarity

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<sup>33</sup> *Lobbyists Bill 2008*, section 2(2).

<sup>34</sup> The Labour Party introduced PMBs in 1999, 2000, 2003 and 2008. Fianna Fáil introduced a PMB in 2012 and Fine Gael published a draft bill in the New Politics Paper in 2012 within the *Open Government* draft bill.

<sup>35</sup> Fianna Fáil Private Members Bill 2012, *Lobbyist Bill 2012*, Section 2(i) (vii).

<sup>36</sup> OECD October 2009 *Lobbyists, Government and Public Trust* (Volume 2) P16.

<sup>37</sup> Registration of Lobbyists Bill (2008), Section 3(b).

<sup>38</sup> *Lobbyists Bill* (2012), Section 3(4).

<sup>39</sup> 'Requirements for Lawyers: Advisory Bulletin' Office of the Registrar of Lobbyists: British Columbia. [http://www.lobbyistsregistrar.bc.ca/index.php?option=com\\_content&view=article&id=130:lawyers-and-reporting-requirements&catid=25:advisory-bulletins&Itemid=100](http://www.lobbyistsregistrar.bc.ca/index.php?option=com_content&view=article&id=130:lawyers-and-reporting-requirements&catid=25:advisory-bulletins&Itemid=100).

regarding the requirement to register lobbying activity as well as facilitating compliance and legal enforceability.

#### **4.4 Recommendation 1: Definition of “Lobbying”**

It is recommended that this definition would encompass all communication by individuals employed by an organisation or acting as an officeholder of a body (other than a purely voluntary body with no remunerated officers or employees), or receiving fees or remuneration from a third party for making or organising or planning that communication on specific policy, legislative matters or prospective decisions<sup>\*</sup> with designated public officials or officeholders<sup>\*\*</sup>.

<sup>\*</sup>the issues on which the lobbying takes place,

<sup>\*\*</sup>the person lobbied.

##### **4.4.1 Points for further review**

In determining a legal definition of “lobbying” it will be imperative to ensure that it is effective in achieving definitively the exclusion of ordinary community engagement such as communication between individuals and local voluntary bodies, defined above as having no remunerated employees or officeholders, and between individuals and their local political representatives or communications in relation to representations received. In addition, the definition should exclude public representatives (other than in circumstances where they are lobbying in respect of their own business interests) who are specifically elected to public office for the purpose of representing the public.

As set out in the recommended approach above it is proposed that the definition of lobbying activity should be targeted on contact or communication with a public official rather than seeking to encompass preparatory work, research or planning in advance of that engagement. Having reviewed the issue carefully it was concluded that a sharp focus on communication or contact with a public official provided a much clearer foundation for the regulatory approach given the extent to which interest groups would be expected to engage in policy analysis and research of public policy initiatives and proposed legislation.

#### **4.5 Defining matters on which “lobbying” takes place**

As set out above, this is a critical issue to effective operation of the regulatory regime. A balanced approach is obviously essential. If too narrow or restricted a scope is adopted for the matters on which lobbying would give rise to a registration requirement, the approach would not be consistent with the overall policy approach of ensuring that there is significant transparency regarding the extent of lobbying relating to key public policy issues. However, the adoption of too broad a scope in this respect may lead to a situation where the volume of information that must be reported becomes excessive and thereby impacting negatively on the effective operation of the register in practice. This would give rise to a disproportionate administrative burden for registrants and could potentially lead to a situation that the transparency objective of the lobbying register is itself undermined by the excessive volume of information to be recorded.

#### **4.5.1 What is the practice abroad?**

There is a commonality of approach evident in terms of the issues identified in other jurisdictions as the subject-matter of lobbying.

##### *Canada*

In Canadian federal legislation the following categories are designated as those in respect of which lobbying gives rise to a registration requirement:

*(i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons, (ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament, (iii) the making or amendment of any regulation as defined in subsection 2(1) of the Statutory Instruments Act, (iv) the development or amendment of any policy or program of the Government of Canada, (v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or (vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada; or (b) arrange a meeting between a public office holder and any other person.”<sup>40</sup>*

##### *Other Countries*

In Australia, the category of issues for which lobbying falls under the regulatory regime are similar to those in Canada including the creation and amendment of legislation, the development of a Government policy or programme, or the awarding of a Government contract or grant.

The categories of issues identified by the UK industry body UKPAC<sup>41</sup> as being the subject matter of lobbying corresponds in broad terms to the legislative approach in other jurisdictions:-

- (i) the formulation, modification or adoption of any legislative measure,;
- (ii) the formulation, modification or adoption of a rule, regulation, programme or policy; and
- (iii) the administration or execution of a governmental or other public programme or policy within the UK.

#### **4.5.2 What was the approach in the Private Members' Bills?**

The description of the subject matter of lobbying included in the Labour Party's 2008 Private Members Bill included, in line with Canadian federal legislation, the following:-

- (i) the development of any legislative proposal by any Minister or any Member of either House;
- (ii) the introduction of any bill or resolution or the passage, defeat or amendment of any bill in either House;
- (iii) the making, revocation or amendment of any policy programme of a public body; and
- (iv) the awarding of any contract, grant, contribution or other benefit by or on behalf of a public body.

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<sup>40</sup> *The Lobbying Act*, Canada, Section 5(i).

<sup>41</sup> UK Public Affairs Council.

## **4.6 Recommendation 2: Matters on which “lobbying” takes place**

It is recommended that the definition would encompass the following:-

- (i) the development of, or any amendment to, legislation,
- (ii) the development of, or any change in, the rules or regulations of, any scheme, public programme or policy,
- (iii) the implementation arrangements for, or the administration of, any scheme or public programme or policy,
- (iv) the awarding of any grant, contribution or any financial benefit by a public body, and
- (v) any specific decision of the public body lobbied or any specific decision to which the public body was party that is of benefit or potential benefit to the person lobbying, or to a client of that person, other than a decision that is a matter of statutory entitlement.

### **4.6.1 Points for further review**

It will be important to ensure that the categories of issues identified above are broad and comprehensive enough to cover all major elements of public policy and decision making on which lobbying takes place, but are defined clearly to exclude representations made on behalf of individuals relating to their entitlement or access to public services or schemes. Regulation of lobbying must not have an adverse affect on the ability of third parties to interact with the system of public administrative or political representatives in order to represent the interests of individual citizens.

## **4.7 Defining Lobbyists**

### **4.7.1 What is the practice abroad?**

There are several similarities in the manner in which the definition of ‘lobbyist’ has been approached in other jurisdictions. However, some differences remain. Indeed some jurisdictions have not sought to develop a definition of lobbyist other than that of a person or body who has performed lobbying as defined in legislation.

#### *Canada*

The Canadian Federal Lobbying Act (2008) defines three different categories of lobbyists as being subject to the legislation. They include:

- (i) consultant lobbyists, i.e. a person hired to communicate on behalf of a client;
- (ii) in-house ‘corporate’ lobbyists, i.e. a person who works for compensation for an organisation that is ‘for-profit’; and
- (iii) in-house ‘organisation’ lobbyists, i.e. a person who works for compensation for a ‘non-profit’ organisation.

Provincial and municipal regulations in Canada do not stray too far from this definition.

The Canadian federal legislation only requires in-house lobbyists to register if they spend a significant amount of time on lobbying activity: “*...those duties constitute a significant*

*part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.*<sup>42</sup>

#### *USA*

The LDA lists three criteria which must be met in order to be considered a lobbyist under the Act. An individual must (i) be employed or retained by a client for financial or other compensation, (ii) have more than one lobbying contact, and (iii) lobbying activities must constitute 20% of an individuals time during a three month period. The definitions employed by the U.S States usually revolve around compensation with regulations stipulating a threshold of compensation received to determine who is a lobbyist.<sup>43</sup>

#### *EU countries and EU institutions*

The regulation in place in the EU Institutions defines a lobbyist as “*all organisations and self-employed individuals, irrespective of their legal status, engaged in activities falling within the scope of the register*”.<sup>44</sup>

As noted in relation to the definition of ‘lobbying’, as the regulations on lobbying in EU countries tends to be based on the issuing of access passes, definitions have not been a matter of particular importance.

#### *Other Countries*

Australian regulations define a lobbyist as any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client. Due to the nature of this definition in-house lobbyists do not fall within the scope of the legislation. Charities and other non-profit organisations are also not subject to regulation under this approach.<sup>45</sup>

### **4.7.2 What was recommended in the submissions received?**

In reviewing the submissions it is evident that seeking to define lobbyists could give rise to significant challenges owing to the range and diversity of suggestions as to who is and who is not a lobbyist. Themes raised in the submissions include:-

- (i) “*...that the definition of lobbyist may be cast so wide as to capture senior management and policy leads within membership (or representative) bodies...” as “...it is already very clear whose interest employed senior management and policy leads are acting in and they do not advocate or submit views on behalf of third parties...*”<sup>46</sup>;
- (ii) “*Lobbyists are those who, in a professional capacity, work to influence, or advise those who wish to influence, policy and decision making at a political level.*”<sup>47</sup>
- (iii) “*...lobbying effectiveness is much more directly related to expertise, contacts and skills than to budgetary outlay.*”<sup>48</sup>;

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<sup>42</sup> Canadian *Lobbying Act*, section 7(1)(b).

<sup>43</sup> US *Lobbying Disclosure Act* (1995), Section 10.

<sup>44</sup> *Interinstitutional Agreement on the European Transparency Register*, section IV(5).

<sup>45</sup> Australian Code of Conduct for Lobbyists, Section 3.5.

<sup>46</sup> Federation of Ophthalmic and Dispensing Opticians.

<sup>47</sup> Irish Cancer Society.

<sup>48</sup> Conor McGrath Public Affairs.

- (iv) “...the core purpose of a register of lobbyists should be to increase transparency...”<sup>49</sup>;
- (v) The issue of who should register was also raised, i.e. whether an organisation or individuals within an organisation would be required to register;
- (vi) Several representative organisations made the case that it is already very clear what kind of activity they carry out and that they should therefore not be required to register; and
- (vii) A number of submissions also argue that a not-for-profit organisation might only spend a short amount of time and/or money on lobbying unlike a professional lobbyist or a lobby group.

#### **4.7.3 Charities**

As discussed above, lobbying or advocacy carried out by organisations benefiting from the Revenue Commissioner’s tax-exempt status for charities must directly relate to advancing the organisation’s charitable purposes. Some of the submissions received from not-for-profit organisations make the case that they should not be required to register as lobbyists because the work that they carry out is very different to the work carried out by professional lobbyists.<sup>50</sup>

#### **4.7.4 What does the independent international analysis/the academic research say about defining lobbyists?**

The OECD principles relating to lobbying were discussed in the ‘Defining Lobbying’ section above. It is recommended in these principles that definitions are clear and are mainly directed at those receiving compensation for lobbying. It is also stated that “*Definitions of ‘lobbying’ and ‘lobbyists’ should be robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes*”<sup>51</sup>.

In ‘Regulating Lobbying: a Global Comparison’, the authors give a broad definition of lobbyist that is dependant on the action of lobbying. Lobbyists may be from economic, professional and civil society groups. Such actors or set of actors “... seek to influence the policy making process in such a way that their interests are reflected in public policy outcomes”.<sup>52</sup>

#### **4.7.5 What was the approach in the Private Members’ Bills?**

The 2008 Labour Party Bill provides for the registration of paid lobbyists. A lobbyist is seen as any person engaged in the activities described as lobbying.<sup>53</sup> The Fine Gael draft Bill defines a lobbyist as a person who engages in, or assists a person who engages in, lobbying and this is also restricted to paid lobbyists.<sup>54</sup> The Fianna Fáil PMB defines a lobbyist as a person who, in exchange for payment, lobbies on behalf of a client, and includes an employee, officer or director of an organisation who lobbies on behalf of that organisation.<sup>55</sup>

<sup>49</sup> Federation of Ophthalmic and Dispensing Opticians.

<sup>50</sup> Age Action, BirdWatch Ireland and Irish Council for Social Housing.

<sup>51</sup> OECD January 2010, *Transparency and Integrity in Lobbying*.

<sup>52</sup> R. Chari, J. Hogan and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press).

<sup>53</sup> Labour Party, *Lobbyists Bill 2008*, sections 2(2) and 4.

<sup>54</sup> Fine Gael, *New Politics*, p.76 section 26.

<sup>55</sup> Fianna Fáil, *Lobbyists Bill 2012*, section 2.

#### **4.7.6 Summary of proposed approach**

In simple terms, a lobbyist should be defined as any natural or legal person engaging in the activity defined as lobbying under the proposed legislation. This would be expected to capture a body corporate, partners of a partnership, an individual sole trader or the management of an unincorporated association. In legal terms it is expected that engaging in what is defined as “lobbying” rather than acting as a “lobbyist” will generate a requirement for registration and reporting.

#### **4.8 Recommendation 3: Defining “lobbyists”**

In light of the objective to adopt a comprehensive definition of lobbying, it is recommended that any individual or body who undertakes the activity falling under the definition of lobbying in the proposed legislation would have an obligation to register and report on their lobbying activity

##### **4.8.1 Points for further review**

The requirement to include a specific legal definition of “lobbyist” in the proposed legislation will be reviewed further in light, for example, of legal/drafting advice and views expressed in the course of the consultation process that has been carried out to date.

#### **4.9 Defining the Person Lobbied**

A clear definition of the targets of lobbying or the “lobbied” will also be essential in order to ensure that there is legal certainty on the circumstances in which the necessity for registering contact and communication arises. Although some differences do exist between jurisdictions in the identification of categories of public servants that are the subject of lobbying, there is a broad similarity of approach evident which can serve as a useful guide to the appropriate approach to be taken in Ireland.

##### **4.9.1 What is the practice abroad?**

Determining who the targets of lobbying are (the lobbied) is clearly as important as defining the term ‘lobbying’. What any one jurisdiction decides are positions that are likely to be lobbied reflects the structure, organisation and operation of the policy making and decision making processes in relation to key public policy and administrative issues and legislation. A key question to be determined is the level at which advice or recommendations relating to significant decisions or the decisions themselves are taken. As is the case in relation to the identification of matters on which lobbying takes place, it is important to ensure that the scope of the definition is balanced and proportionate and does not extend too broadly capturing categories of public officials whose involvement in, for example, the provision of key advice or recommendations or primary decision-making, is peripheral. It is also vital that the categories are not drawn too narrowly excluding public officials who may be highly influential in determining important decisions relating to public policy or administration. As will be seen below, different jurisdictions regard different actors across the legislative and executive branches of government as constituting the ‘lobbied’.

### *Canada*

Federal legislation defines the ‘lobbied’ as ‘Designated Public Office Holders’.<sup>56</sup> This includes all members of the Parliament and Senate, staff working in the parliamentary offices of the opposition, Chiefs of Military/Defence staff, the Judge Advocate General, certain positions on the Privy Council, and other positions appointed under the ‘Public Service Employment Act’. The Provincial and Municipal definitions include the Members of the Legislative Assembly (MLAs) of each province.

### *USA*

At federal level, the lobbied includes public officials that are elected or appointed officials as well as those employed by the federal Government. The legislation includes members of Congress and the Senate, the President and the Vice President as well as all their employees. The LDA<sup>57</sup> also has a provision to include within the scope of the lobbied officials within an international organisation. At state level, the lobbied are usually members of the state’s legislative and executive bodies.

### *EU countries and EU institutions*

As noted in relation to the definition of ‘lobbying’ and ‘lobbyist’, the regulation on lobbying in the majority of EU countries is based on the issuing of access passes therefore definitions have not been a matter of importance.

The EU Institutions regulation simply states “*Members, Officials or other staff of the EU Institutions*”.<sup>58</sup>

### *Other Countries*

Regulations in *Australia* are restricted solely to those who communicate with Government representatives. A ‘Government representative’ means a Minister, a Parliamentary Secretary, a person employed by a Minister or a Parliamentary Secretary, a government agency head, a contractor or consultant employed by a Government agency or a member of the Australian Defence Forces.<sup>59</sup>

*UKPAC* considers an attempt to influence the institutions of the government as lobbying. Therefore the lobbied as set out by UKPAC include, the UK Government, Parliament, the devolved legislatures or administrations, regional or local government or ‘other public bodies’.<sup>60</sup>

#### **4.9.2 What was recommended in the submissions received?**

The submissions that defined the lobbied viewed them as individuals with influence in policy decisions. Views expressed in the submissions include:-

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<sup>56</sup> Canada, Lobbying Act, Section 2.

<sup>57</sup> The Federal Lobbying Disclosure Act (1995).

<sup>58</sup> *Inter institutional Agreement on a Common Transparency Register between the European Parliament and the European Commission*, IV(8).

<sup>59</sup> Australia, Lobbying Code of Conduct, Section3.3.

<sup>60</sup> The UK Public Affairs Council (UKPAC), definition of Lobbying at -  
<http://www.publicaffairscouncil.org.uk/en/resources/lobbying-definition.cfm>

- (i) “...Public Representatives (including T.D.s, Senators, Local Authority Members)” also “...Office Holder and Public Officials...”<sup>61</sup>; and
- (ii) “Official of a public international organization...”<sup>62</sup> This submission also includes anyone paid from the public purse.

#### **4.9.3 What does the independent international analysis/academic research say about defining the person lobbied?**

The OECD do not explicitly give a definition of the ‘lobbied’. Instead those who are the target of lobbying are referred to as ‘Public Office Holders’.

Although those that are ‘lobbied’ are not explicitly defined within ‘Regulating Lobbying: A Global Comparison’ it is implied from the definitions of lobbying and lobbyist included in the publication that an individual that is lobbied is one with direct influence over the policy making process.<sup>63</sup>

#### **4.9.4 What was the approach in the Private Members’ Bills?**

The PMBs, 2008-2012, have attempted to define who exactly the lobbied are. These bills are dealt with below.

- (i) The Fine Gael draft Bill 2010 defines a public official (who is the target under the Bill) as an office holder or member of Dáil or Seanad Éireann in his or her capacity as such, a political party registered in the register of political parties, a special adviser and a person who is a director of a public body.<sup>64</sup>
- (ii) The Labour Party Bill 2008 is broadly similar but specifically includes the Attorney General, any person employed by a public body, a member of the Defence Forces and a member of An Garda Síochána and members of a political party.<sup>65</sup>
- (iii) The Fianna Fáil Bill is similar to the Labour Party Bill but also specifically incorporates the Chairmen and Deputy Chairmen of Dáil Éireann, Seanad Éireann, committees of the Houses, joint committees of the Houses, MEPs, the Comptroller and Auditor General, the Director of Public Prosecutions (DPP) and all Judges, but does not specifically include members of a political party.<sup>66</sup>

#### **4.9.5 Summary of Proposed Approach**

The ‘lobbied’ should generally be defined as individuals who make decisions or are influential regarding the development of a policy and are targeted by the lobbying industry. This should include, for example, political officeholders, other public representatives, senior civil and public servants (at top management i.e. MAC level), who have a significant influence/role in the public policy making, administration, decision making and legislative processes.

<sup>61</sup> Transparency Ireland.

<sup>62</sup> Dr Elaine Byrne.

<sup>63</sup> R. Chari, J. Hogan and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press).

<sup>64</sup> Fine Gael draft Bill contained in “New Politics” pages 76 -77.

<sup>65</sup> Labour Party Bill, 2008 Registration of Lobbyists Bill, Section 2(1)(a-g).

<sup>66</sup> Fianna Fail Lobbyists Bill, Section 2(1).

The Mahon Tribunal Report recommends that lobbying of national and local public officials should be included in any regulatory regime (Appendix 4).

#### **4.10 Recommendation 4: “lobbied” persons**

It is proposed that a definition of designated public officials includes the following:-

- (i) Ministers, Ministers of State,
- (ii) TDs, Senators and members of their staff,
- (iii) Members of Local Authorities,
- (iv) Special Advisers, and
- (v) Senior Civil and Public Servants

##### **4.10.1 Points for further review**

It should be legally feasible to adopt a definition which will allow, if necessary, for an extension by secondary legislation (i.e. Ministerial or Government Order) of the definition of lobbied persons if gaps or potential loopholes emerge in practice.

As was highlighted in the course of the consultation process it will be necessary to give further consideration to the treatment of headquarters staff of political parties in government in view of their potential role as lobbying intermediaries between officeholders and lobbyists.

## **Chapter 5: Options on Type of Regulation - Mandatory or Voluntary System**

### **5.1 Introduction**

The Programme for Government envisages the introduction of a statutory register of lobbyists in respect of which there would be a mandatory legal requirement for registration of lobbying activity conforming to the relevant legal definitions adopted in the legislation.

This chapter discusses the factors that have informed decision-making in other jurisdictions on whether lobbying regulation should be subject to a mandatory or a voluntary regime. In overall terms it has been found that different jurisdictions have used the different structures at their disposal to establish a regulatory system tailored to their national needs. Some have opted for the stronger legislative approach; others operate a set of guidelines enshrined in a voluntary code. It is proposed that a statutory approach will be adopted in Ireland in line with the Programme for Government commitment and consistent with the compelling reasons for which such mandatory systems have been put in place elsewhere.

### **5.2 Types of Regulations**

#### **5.2.1 What is the practice abroad?**

The table below summarises the legal basis of different systems employed by other jurisdictions when implementing a lobbying regulation.

**Fig 5.1 Table showing types of regulatory systems**

| <b>System</b>  | <b>Legal Basis</b>  | <b>Mandatory/Voluntary</b>  |
|--|---|---|
| <b>Australia</b>                                     | Non-Statutory.  | Mandatory, underpinned by the completion of a Statutory Declaration form under their Statutory Declaration Act 1959.                            |
| <b>Canada</b>  | Statutory.  | Mandatory.  |
| <b>Czech Republic</b>                                | Non-statutory.  | Voluntary.  |
| <b>EU Transparency Register</b>                      | Based on an inter-institutional agreement.  | Voluntary.  |
| <b>France</b>  | Statutory.  | Voluntary.  |
| <b>Germany</b>                                       | Regulation within the Rules and Procedures for the <i>Bundestag</i> .   | Voluntary.  |
| <b>United Kingdom Public Affairs Council (UKPAC)</b> | Self- regulatory body covering 3 public relations representative bodies, the APPC <sup>67</sup> , CIPR <sup>68</sup> and PRCA <sup>69</sup> . The PRCA resigned as a member in late 2011. | Members of the APPC and CIPR must adhere to UKPAC's rules and register. With the departure of the PRCA over 300 firms are now left unregulated. |
| <b>United States of America</b>                      | Statutory. Federal Lobbying Disclosure Act (1995).  | All US states are within the medium-high regulation level indicating that regulations are mandatory.  |

<sup>67</sup> Association of Professional Political Consultants.

<sup>68</sup> Chartered Institute of Public Relations.

<sup>69</sup> Public Relations Consultants Association.

### **5.2.2 What was recommended in the submissions received?**

The majority of submissions received demonstrate an overall support for the introduction of a lobbying register. Of those who expressed a view on the issue of whether registration should be mandatory or voluntary, the majority chose the former. Some views contributed include:-

- (i) “...favours a system of mandatory registration”<sup>70</sup>
- (ii) “...has consistently advocated for a mandatory register of all lobbyists...”<sup>71</sup>
- (iii) “...it is arguable whether a register needs to be mandatory...”<sup>72</sup>
- (iv) “...overregulation should be avoided in the framework of a voluntary system...”<sup>73</sup>

Where submissions recommend a register similar to the EU register it can be assumed that they are in favour of a voluntary register.

One submission, however, while being in favour of a register similar to that of the EU model, argues that Ireland should have a mandatory registration requirement.<sup>74</sup> Another organisation believes a register should not be implemented on a statutory basis to ensure it can be reviewed annually.<sup>75</sup>

### **5.2.3 What does the independent international analysis/academic research say about types of regulation?**

The OECD does not specifically recommend that a statutory approach to the establishment of a regulatory regime for lobbying should be adopted. However, the OECD analysis does highlight the weaknesses and loopholes that can arise under a voluntary regime and recommends, on that basis, that there are mechanisms for effective implementation of lobbying regulation and suggests setting clear and enforceable rules and guidelines for doing so...<sup>76</sup>

In ‘Regulating Lobbying: A Global Comparison’ the authors point out that statutory based regulations are characteristics of ‘Medium’ to ‘High’ regulatory systems. The authors are also generally critical of systems which are voluntary and are not enforceable through statute; they feel such systems do not provide adequate transparency in the policy making and decision making process.<sup>77</sup>

### **5.2.4 What was the approach in the Private Members’ Bills?**

All of the Bills envisage the establishment of a statutory register of lobbyists under which all paid lobbyists would be obliged to register.

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<sup>70</sup> Irish Heart Foundation.

<sup>71</sup> Hume Brophy.

<sup>72</sup> Policy Action.

<sup>73</sup> ISME.

<sup>74</sup> Hume Brophy.

<sup>75</sup> Public Relations Institute of Ireland.

<sup>76</sup> OECD 10 Principles for Transparency and Integrity in Lobbying, principles 9&10.

<sup>77</sup> R. Chari, J. Hogan and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press), Chapter 4 & page 4.

### **5.2.5 Wider Context**

The Mahon Tribunal made the following recommendations regarding the type of regulatory system that should be implemented in Ireland (Appendix 4):-

- (i) Professional lobbyists should be subject to mandatory registration requirements.
- (ii) The Tribunal's final report rejected the idea that a voluntary registration scheme would be as effective as a legally binding scheme.
- (iii) Professional lobbyists should also be required to adhere to a statutory based code of conduct.

### **5.3 Recommendations 5: Statutory Regulation of Lobbying**

It is recommended in line with the commitment in the Programme for Government, that a statutory system of regulation is introduced with mandatory registration requirements.

## **Chapter 6: Scope of Registration and Disclosure Requirements**

### **6.1 Introduction**

This chapter examines the type of information which it is proposed should be entered on a register by those engaged in lobbying. It also reviews the case for certain proposed exclusions and exemptions from registration requirements to ensure an appropriate balance and proportionality in disclosure obligations.

### **6.2 Information Disclosed in Different Jurisdictions/Systems**

#### **6.2.1 What is the practice abroad?**

There is a significant variability evident in the level of disclosure required in the jurisdictions which have registers of lobbyists in place. The French and German systems require very basic information and do not demand any financial disclosure. At the other end of the scale, in the United States, extremely detailed information is required extending in some states, to disclosures relating to any family members who are officials within the legislative or executive branch.<sup>78</sup> Section 6.2.3 below provides further detail on the differing regulatory regimes overseas.

#### **6.2.2 What was recommended in the submissions received?**

The submissions that gave specific details as to what information should be made available were largely in agreement with one another. They recommended that the following information about a lobbyist or an organisation that is engaged in lobbying activity should be disclosed:-

- (i) names (of individuals and/or organisations),
- (ii) contact details,
- (iii) whether a ‘consultant’ or ‘in-house’ lobbyist,
- (iv) whether a former public office holder,
- (v) financial information,
- (vi) areas of interest for lobbying,
- (vii) individuals and/or departments lobbied,
- (viii) location of lobbying activity.

Some submissions went into significant detail as to what financial information should be publicly available on a register. Some of the specific financial disclosures suggested include:-

- (i) lobbying expenses,
- (ii) salaries of lobbyists,
- (iii) turnover from lobbying activity,
- (iv) remuneration,
- (v) government funding received,
- (vi) ‘good-faith’ estimates (estimates of points (i) to (v) above, calculated as accurately as possible).

Many submissions pointed to the EU Transparency Register and its level of disclosure as an appropriate model for adoption in the Irish case. However, the serious caveat should be

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<sup>78</sup> See regulations in Tennessee, *Comprehensive Governmental Ethics Reform Act of 2006*, Title 3, Chapter 6, Part 3, section 3-6-302, section (b)(2)(D).

borne in mind that the EU Transparency Register's voluntary status calls into question its direct transferability into the Irish context. One submission, in its support for an EU type register claims that initial registration took up to 1 hour, while updates took no more than 20 minutes. Updates are mandatory on an annual basis but registrants may update more often if they wish.<sup>79</sup>

Some submissions suggest the establishment of a tiered/categorised register whereby different categories would be required to disclose different amounts and level of information.<sup>80</sup>

### **6.2.3 What does the academic research say about disclosure requirement?**

As discussed previously, in '*Regulating Lobbying: A Global Comparison*', when comparing and contrasting the different regulatory systems in existence, the Centre of Public Integrity's (CPI) index, which divides the systems into 'low', 'medium' and 'high' is used. In adopting this classification regime, the authors highlight that these categories do not imply some normative ranking rather they reflect the outcome in different jurisdictions of the political process and deliberation leading to the introduction of lobbying regulation in response to the specific circumstances, characteristics and events in the jurisdiction in question.

One factor used to assign a regulatory system to one of these levels is the detail of information that has to be disclosed. Low systems reveal a minimum amount of detail such as names and contact details. Medium systems may provide details about lobbyists' interests and the details of clients and former public office holders while highly regulated systems may require detailed spending reports on lobbying activities.

The information that is required by different regulatory systems is summarised in the following tables:-

**Fig 6.1 Table of Low Regulated Systems**

| <b>Country /Systems</b>  | <b>Organisation Details</b>   | <b>Financial Information</b>  | <b>Subject Details</b>   |
|--------------------------|---|---|--|
| EU Transparency Register | <ul style="list-style-type: none"> <li>• Organisation contact details &amp; name, address.</li> <li>• Number of people in the organisation.</li> </ul>          | <ul style="list-style-type: none"> <li>• Professional lobbyists &amp; law firms must disclose details of turnover.</li> <li>• In-house lobbyists must estimate the cost of lobbying activities.</li> <li>• NGOs, religious community and local/regional/municipal representatives must provide a breakdown of the main sources of funding.</li> </ul> | <ul style="list-style-type: none"> <li>• Must reveal the nature of the lobbying activities.</li> </ul> |
| France                   | <ul style="list-style-type: none"> <li>• Name &amp; contact details.</li> <li>• Name &amp; contact details of employer.</li> <li>• Names of clients.</li> </ul> | <ul style="list-style-type: none"> <li>• No financial disclosures.</li> </ul>   | <ul style="list-style-type: none"> <li>• Must declare interests.</li> </ul>                            |

<sup>79</sup> Cúram.,

<sup>80</sup> Age Action.

|         |   |   |   |
|---------|---|---|---|
| Germany | <ul style="list-style-type: none"> <li>Composition of boards of management &amp; directors.</li> <li>Number of members.</li> <li>Names of the association's representatives and <i>Bundestag</i> office address.</li> </ul> | <ul style="list-style-type: none"> <li>No financial disclosures.</li> </ul> | <ul style="list-style-type: none"> <li>Must declare the general interest of the group.</li> </ul> |
|---------|---|---|---|

**Fig 6.2 Table of Medium Regulated Systems**

| Country/<br>Systems    | Organisation<br>Details   | Financial<br>Information  | Subject<br>Details  |
|------------------------|---|---|---|
| Australia<br>(Federal) | <ul style="list-style-type: none"> <li>Names of owners, partners or major shareholders.</li> <li>Names of employees who lobby.</li> <li>Names of clients.</li> </ul>  | <ul style="list-style-type: none"> <li>No financial disclosure.</li> </ul>  | <ul style="list-style-type: none"> <li>Details of any former government representation must be given.</li> </ul>  |
| Canada<br>(Federal)    | <ul style="list-style-type: none"> <li>Name, position, title and business address of lobbyist.</li> <li>Name and address of lobbying firm/corporation.</li> <li>Client's name and business address.</li> <li>Name of principle representative of the client (the principle contact between a client and a consultant lobbyist).</li> <li>Names and business addresses of any person or organisation that controls or directs the clients' activities (e.g. chair or members of a board of directors).</li> <li>Names and addresses of parent corporation and of those who directly benefit from the lobbying.</li> <li>Names and addresses of the organisational members must be disclosed for coalition client.</li> </ul> | <ul style="list-style-type: none"> <li>Source and amount of any government funding provided.</li> <li>No spending disclosures.</li> </ul> | <ul style="list-style-type: none"> <li>Description of subject matters.</li> <li>Name of government institution/structure lobbied.</li> <li>Description of the office held and when it was held for former public office holders.</li> <li>Information of communication techniques used.</li> <li>Information on oral and arranged communications with certain public office holders.</li> </ul> |

**Fig 6.3 Table of High Regulated Systems**

| Country/<br>Systems  | Organisation<br>Details  | Financial<br>Information  | Subject<br>Details   |
|--|--|---|--|
| United States<br>of America<br><br>(State-level)<br><br>(Basic elements for 25 States which are under this category) | <ul style="list-style-type: none"> <li>Name, address &amp; contact details of lobbyist.</li> <li>Name, address &amp; contact details of employer.</li> </ul> | <ul style="list-style-type: none"> <li>Salaries paid to lobbyists must be disclosed.</li> <li>Account for all spending related to lobbying activities.</li> <li>Report on spending of household members (e.g. spouses, family members) of public office holders.</li> <li>Account for all campaign spending.</li> </ul> | <ul style="list-style-type: none"> <li>Must state the matter and institution being lobbied.</li> <li>Reveal subject area.</li> </ul> |

The OECD have found that experience suggests effective regulation depends upon, among other elements, disclosure requirements which provide pertinent information on key aspects of lobbyists and lobbying such as its objective, beneficiaries, funding sources and targets.<sup>81</sup>

A further element of effective regulation is linked to organisational leadership which promotes a culture of integrity and transparency in daily practice through regular disclosure and auditing to ensure compliance.<sup>82</sup> These findings are also articulated within the 10 Principles for Transparency and Integrity in Lobbying developed by the OECD. The fifth principle states that disclosure requirements “...should be carefully balanced with considerations of legitimate exemptions, in particular the need to preserve confidential information in the public interest or to protect market-sensitive information when necessary” and that “...disclosure on lobbying activities and lobbyists should be stored in a publicly available register and should be updated in a timely manner...”. The ninth principle expands yet further on these recommendations. It is also stated that the body responsible for monitoring, overseeing and supervising the regulatory system has an important role in putting appropriate systems in place to verify the information disclosed by registrants.

#### **6.2.4 What was the approach in the Private Members’ Bills?**

The Labour Party has provided the most extensive list of disclosure requirements by any of the political parties.<sup>83</sup> The Labour Party disclosure requirements include:-

- (i) name and business address and, if applicable, name and business address of firm,
- (ii) name and business address of the client and name and business address of any person or organisation that, to the knowledge of the person, controls or directs the activities of the client and has a direct interest in the outcome of the person’s activities on behalf of the client,
- (iii) where client is a company, the name and business address of each subsidiary of the company that, to the knowledge of the person, has a direct interest in the outcome of the person’s activities on behalf of the client,
- (iv) where client is a company that is a subsidiary of any other company, the name and business address of that other company,
- (v) where the client is funded in whole or in part by a government, the name of the government or government agency and the amount of funding received by the client from that government or government agency,
- (vi) particulars to identify the subject matter in respect of which the person has undertaken to lobby,
- (vii) whether the payment to the person is in whole or in part contingent on the outcome and degree of success of the lobbying activities
- (viii) particulars to identify any relevant legislative proposal, Bill, resolution, regulation, policy, programme, grant, contribution, benefit or contract,
- (ix) name of the public body in which any public official with whom the person has communicated or expects to communicate, or with whom a meeting is to be or has been arranged, is employed or serves,

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<sup>81</sup> OECD, *Transparency and Integrity in Lobbying*, p.1.

<sup>82</sup> *Ibid.*

<sup>83</sup> See the Labour Party PMB 2008, *Registration of Lobbyists Bill 2008*, section 4.

- (x) particulars to identify any communication technique (including appeals to members of the public through the mass media or by direct communication that seek to persuade members of the public to communicate directly with a public official in an attempt to persuade the public official to endorse a particular opinion) that the person has used or expects to use,
- (xi) such other information relating to the identity of the person, the client, any person or organisation involved etc.

The main point to note in relation to the recommendations of the political parties in this area is that none of them require any financial disclosures.

### **6.2.5 Wider context**

The Mahon Tribunal Report only recommends the following disclosures for the register of lobbyists:-

- (i) names of persons for whom you are lobbying,
- (ii) the public officials and public institutions being lobbied, and
- (iii) the objects of that lobbying activity.<sup>84</sup>

## **6.3 Recommendation 6: Information Disclosed in Lobbying Register**

It is recommended that the following information should be submitted for registration on the lobbying register:-

- (i) The name, address, business telephone number, and principal place of business of the registrant.
- (ii) For those operating on behalf of third parties, the name, address, principal place of business of the registrant's client and clients on whose behalf lobbying is undertaken.
- (iii) The general business/commercial interest, representative/advocacy role of the registrant.
- (iv) The specific policy or legislative issues or areas of public administration of interest to the registrant, including the name of the Bill or other identifier of the legislation.
- (v) The names of principal and leading employees responsible for lobbying in an organisation.

It is recommended that reports for the register on lobbying activity should be made by registrants on a quarterly basis within 10 working days of the expiry of the previous quarter providing information on:-

- the specific nature of the issues on which lobbying has taken place,
- the person(s) who has/have been the subject of lobbying,
- summary information to determine the nature, scope, intensity and type of the lobbying activity over that period, and
- any changes in the registration information already submitted (i.e. i-v above).

### **6.3.1 Points for further review**

1. Further examination will be required of the options for requiring financial disclosures as part of the registration scheme. This would give rise to the need to strike an appropriate balance between required transparency and ensuring the confidentiality of

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<sup>84</sup> *The Mahon Tribunal Report*, chapter 18, parag.1.51.

commercially sensitive information and safeguarding the right to privacy. The consultation process has also highlighted the significant administrative issues in establishing consistent and comparable financial data which could be included in the register.

## **6.4 Exceptions/Exclusions**

### **6.4.1 What is the practice abroad?**

The majority of regulatory systems for lobbying include a list of exclusions to regulatory requirements. The fourth of the OECD's 10 principles clearly states that appropriate exclusions and exemptions should be included in any regulatory regime. The OECD states that this might include communications which are already on the public record such as formal presentations to legislative committees: "*Definitions should also clearly specify the type of communications with public officials that are not considered 'lobbying' under the rules and guidelines. These include, for example, communication that is already on public record – such as formal presentations to legislative committees, public hearings and established consultation mechanisms.*"<sup>85</sup>

When considering regulations overseas, it must be noted that all jurisdictions highlight that communication between citizens and their public representatives are exempt from regulations.

#### *Canada*

The Canadian federal legislation lists out who and what is exempt from the Act. These exemptions include:-

- (i) members of a legislature (federal and provincial), their staff and other government employees,
- (ii) members of a council or statutory body,
- (iii) members of an aboriginal government or institution,
- (iv) diplomatic agents, and
- (v) officials of an international organisation granted immunities.

Actions that are excluded from the regulations include submissions for a consultation process, oral or written contributions to a committee and requests for information.<sup>86</sup>

#### *USA*

In the US federal regulation the same broad list of exclusions is in place along with a specific exclusion for media communications with the objective of seeking information.<sup>87</sup> US federal regulations give an extensive list of exclusions. Individuals and organisations exempt from regulations include public officials acting in their official capacity, media organisations, a church that has tax exemption, and foreign governments. Communications excluded include publications available through mass communication, participation in advisory committees, sub committees and congress, information in

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<sup>85</sup> The OECD *10 Principles for Transparency and Integrity in Lobbying*, principle 4.

<sup>86</sup> The Lobbying Act 2008, Article 4.

<sup>87</sup> Lobbying Disclosure Act 1995, Section 8(8)(xvi).

response to a request by an executive or legislative branch official, petitions, and proceedings that the Government must conduct on a confidential basis.<sup>88</sup>

#### *EU Countries and EU Institutions*

As the French regime is an access pass system, communications outside the National Assembly and the Senate are not captured. Lobbyists may seek appointments without having to register. A similar situation exists in Germany.

At EU level, exclusions include Member States' governments, third party governments, international intergovernmental organisations as well as their diplomatic missions. Activities concerning the provision of legal and other professional advice, in so far as they relate to the exercise of the fundamental right of a client to a fair trial etc. are also excluded. The exclusion clause very specifically creates an exclusion for all communications and contacts related to legal advice and consultations. Each exclusion is specifically stated. Social dialogue with the social partners is excluded as are responses to individual requests to EU institutions and Members.<sup>89</sup>

#### *Other Countries*

In Australia, all lobbyists who are not working for a third-party client do not have to register therefore excluding charities and other non-profit organisations. Other notable exclusions mentioned include, trade delegations visiting Australia, members of a profession such as doctors, accountants, lawyers, and persons registered under other regulatory schemes (e.g. tax agents, customs brokers, company auditors and liquidators).<sup>90</sup>

#### **6.4.2 What was recommended in the submissions received?**

There is a general consensus in the submissions that normal citizen interaction with their representatives should not be included. There is concern from some submissions that particular financial information e.g. remuneration of fees and areas of interest should not be made available to the public.<sup>91</sup>

- (i) “Interaction with government at the instigation of or by invitation of government should not be considered as lobbying”.<sup>92</sup>
- (ii) Information that is published in the public domain is put forward as an exemption.
- (iii) Some representative bodies feel they should be exempt as it “would impose an unnecessary layer of bureaucracy and cost, in circumstances where their function of making representations on issues of interest to their members and/or in the public interest is clear and transparent.”<sup>93</sup>
- (iv) A further issue raised was that “...legal privilege should only extend to the issues discussed between professional and client not to information about the activity on which they are lobbying on behalf of the client.”<sup>94</sup>

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<sup>88</sup> Lobbying Disclosure Act 1995, Section 3.8(B).

<sup>89</sup> Inter Institutional Agreement on the European Transparency Register.

<sup>90</sup> Australian Government Register of Lobbyists, FAQ.

<sup>91</sup> Association of Optometrists Ireland and the Irish Property Owners Association.

<sup>92</sup> Association of Optometrists Ireland.

<sup>93</sup> Law Society of Ireland.

<sup>94</sup> Public Relations Consultants Association.

In follow up meetings with some organisations who made submissions, some further issues were highlighted:-

The case for exempting communications relating to industrial relations matters and collective bargaining between individual public service unions and public service management. This is advocated on the grounds that requiring registration of normal ongoing communications on industrial relations matters would infringe on normal ongoing communications on industrial relations matters could adversely impact on protections afforded to social partners under the European Union treaties.<sup>95</sup>

The benefits of considering the introduction of more structured open consultation processes on legislative processes facilitated, for example, by the creation of on-line forums. This would ensure that all interest groups, representative bodies and individual members of the public – whether experts on a particular issue or not would be provided with the opportunity to make a meaningful contribution to the legislative process in an open and transparent environment. Since all such inputs would be in the public domain the need for registering the activity as lobbying would be unlikely to arise<sup>96</sup>.

#### **6.4.3 What does the academic research say about exemptions/exclusions?**

In ‘Regulating Lobbying: A Global Comparison’ the authors state that any legislation that aims to regulate lobbyists must clearly state what it does not cover. It is emphasised that this should include any citizen-representative activities. Otherwise no other specific exceptions or exclusions are discussed.<sup>97</sup>

#### **6.4.4 What was the approach in the Private Members’ Bills?**

The Private Members’ Bills from 2008-2012 inclusive highlight specific exclusions from the register.

The Labour Party PMB (2008) creates exclusions for diplomatic agents, consular officers or official representatives of foreign governments who are in the State and acting in an official capacity. Officials of the EU Institutions, UN officials and officials of other international organisations (acting in an official capacity) are not required to register. All communications that fall under legal privileged information are also excluded as are all communications that would not have to be disclosed in a court of law by reason of privilege. There is a further exclusion for any disclosures that could “*reasonably be expected to threaten the safety*” of any person.<sup>98</sup>

The Fine Gael draft Bill contains two exclusions; one for registered charities and another for members of the diplomatic corps or their staff.<sup>99</sup>

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<sup>95</sup> See the Treaty on the Functioning of the European Union,, Article 152.

<sup>96</sup> Dr Elaine Byrne, TCD

<sup>97</sup> R. Chari, J. Hogan and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press) pg 158.

<sup>98</sup> The Labour Party Bill 2008, Registration of Lobbying Bill.

<sup>99</sup> Fine Gael draft Bill “Registration of lobbyists” in the “New Politics” document 2010 p.77, Section 26© (4).

The Fianna Fáil Bill 2012 broadly includes the same exclusions as the Labour Party PMB. Public Officials and/or Office Holders acting in their official capacity are included as exclusions as are any oral or written submissions made to a committee of either House of the Oireachtas.<sup>100</sup>

## **6.5 Recommendations 7: Exemptions/Exclusions**

In line with the regulations in other jurisdictions and the Irish Private Members Bills it is recommended that the following communications/individuals are subject to exemptions:-

- (i) All officials of foreign Governments in the State;
- (ii) UN officials, EU officials and officials of other international organisations;
- (iii) All communications that strictly fall under legal privilege or other privilege (as would be recognised by the courts in legal proceedings);
- (iv) Communications made in response to a request by or to a public official strictly requesting factual information;
- (v) Any communications/contacts, the disclosure of which could cause a threat to the safety of a person; and
- (vi) Open and transparent public communication should be excluded where all elements of the consultative process are a matter of public record, e.g. Parliamentary or Oireachtas Committee hearings.

### **6.5.1 Points for further review**

Further consideration will be necessary of the case for allowing delays in the publication (but not the reporting) to the appropriate oversight body of communications, contacts or interactions which may give rise to registration requirement under lobbying regulation but would, for example, genuinely relate to market or commercially sensitive or otherwise confidential information. This could comprise potential announcements in relation to budgetary or financial matters, foreign investment or disinvestment/redundancy issues.

It is important to consider whether it is possible to define an appropriate and relatively clear boundary between trade union level industrial relations or collective bargaining issues and matters which would relate more directly to national public service pay and industrial relations policy, for example the Croke Park agreement.

Careful consideration is required of the appropriateness and legal/practical feasibility of an exemption relating to a disclosure which would harm an important public interest. While it is obviously possible to envisage scenarios where this risk would arise, the scope for misuse of such an exemption is also very evident.

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<sup>100</sup> Fianna Fáil PMB 2012, “Lobbyists Bill” Section 3.

## **6.6 Role of Public Officials**

### **6.6.1 Introduction**

Public officials are already subject to significant integrity and transparency requirements by virtue of, for example, ethics requirements and Freedom of Information legislation. The question arises whether specific rules should be put in place under the proposed lobbying regulation relating to the role and responsibilities of public officials as persons lobbied.

### **6.6.2 What is the practice abroad?**

Most countries have implemented legislation relating to the ethics of office holders. In some jurisdictions, the rules relating to lobbyists are contained within this ethics legislation.<sup>101</sup> In the UK in the absence of lobbying regulation responsibility for ensuring transparency and accountability currently lies entirely with the relevant office holder who is the subject of lobbying.<sup>102</sup>

### **6.6.3 What was recommended in the submissions received?**

Some submissions highlight that “it takes two to lobby” and that responsibility to provide transparency should not be left solely to the lobbyist. The submissions contain a number of proposals as to how public officials can play a part in regulating lobbying activities. These suggestions include:-

- (i) *“The establishment of the register should be accompanied by a broadening of the FOI Acts to ensure that access to the diaries and records of meetings between senior public servants/ Ministers with lobbyists or organisations in relation to public policy formulation.”<sup>103</sup>*
- (ii) *“Policy proposals made by Government should include a clear description of the type of organisations which the Department / Minister have been in contact with during the preparation of the proposal.”<sup>104</sup>*
- (iii) *“...for the government, Oireachtas, and government departments to publish a list of lobbyists and representatives granted meetings, including the date and topic of meetings.”<sup>105</sup>*
- (iv) *“By contrast in other countries, for example the UK, anyone has a right to request information from a public authority. Upon receipt of such a request there are statutory duties on all public authorities to: - tell the applicant whether you hold the information falling within the scope of their request; provide that information; reply to such requests within 20 working days.”<sup>106</sup>*

### **6.6.4 What does the academic research say?**

The seventh principle of the OECD Principles states that, “*Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.*” This principle states that public officials should be given clear directions on how they are permitted to engage with lobbyists. It is further

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<sup>101</sup> One example is Kentucky.

<sup>102</sup> See codes of conduct for Ministers and civil servants.

<sup>103</sup> TASC (Think-Tank for Social Change Ireland).

<sup>104</sup> Irish Heart Foundation.

<sup>105</sup> Cúram.

<sup>106</sup> FODO (Federation of Ophthalmic and Dispensing Opticians).

elaborated that, “*Decision makers should set an example by their personal conduct in their relationship with lobbyists.*”

#### **6.6.5 What was the approach in the Private Members’ Bills?**

In the Labour Party and Fianna Fáil PMBs and in the Fine Gael draft Bill there are no references to the imposition of obligations on office holders in relation to contact with lobbyists.

#### **6.6.6 Wider context**

The Mahon Tribunal Report also contains recommendations for disclosures which should be required of office holders.<sup>107</sup> The report recommends that officials are given clear guidance on how to conduct themselves with lobbyists. It also suggests that senior office holders should be required to record and publish details of their contacts with lobbyists in the development of legislative initiatives (Appendix 4).

It is considered essential, in order to ensure that an effective system of lobbying regulation is put in place, that a clear responsibility is assigned under the proposed legislation to the party engaging in lobbying to meet the regulatory requirement for registration and reporting, including where appropriate, information on relevant contacts with office holders and senior public servants. As highlighted above, a separate set of detailed requirements already apply to those office holders and senior public servants and the assessment of the steps that might be taken to further strengthen current rules relating to engagement with lobbyists is the subject of a separate legislative project.

The question of the relationship and key linkages between such legislation, the Freedom of Information Act, Ethics legislation and current and possible future Codes of Conduct will continue to be examined in parallel with the development of the regulation scheme for lobbying.

### **6.7 Recommendation 8: Responsibilities of Public Officials**

In parallel to the development of lobbying regulation, it is recommended that a review is carried out of the legislative options available to enhance the rules applicable to the lobbied to ensure all actual, potential and perceived conflicts of interest are managed effectively and to seek to eliminate the risk of corrupt conduct.

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<sup>107</sup> *Ibid*, see chapter 18 recommendations.

## **Chapter 7: Format of Register**

### **7.1 Format of Register**

#### **7.1.1 What is the practice abroad?**

Most overseas jurisdictions where a regulatory system is in place operate an online register of lobbyists system where information about the register is intended to be available to the public via the internet. The scope and extent of the information actually available online differs between different jurisdictions.

Most of the jurisdictions publish official documents such as reviews and audits of the lobbying regime accessible through the register's website. The amount of information available to the public, while determined by the level of disclosure, is also affected by how frequently the register is updated. Depending on the jurisdiction, a system could be updated regularly on a monthly, less frequently biannually or much less often on an annual basis.

The following table provides:-

- (i) a summary of the format of the register in different types of regulatory models,
- (ii) where the information can be found,
- (iii) how often the information is updated,
- (iv) publications (reports etc) produced by the relevant regulator for lobbying and,
- (v) information on who is included in the regulations.

**Fig 7.1 Table showing types of registers and information available to the public**

| <b>System</b>                   | <b>Register</b>  | <b>Publications</b>   | <b>Who is included</b>   |
|---------------------------------|--|---|--|
| <b>Low Regulatory System</b>    | <ul style="list-style-type: none"><li>• May have a weak online registration system.</li><li>• Paper work may be required.</li></ul>  | <ul style="list-style-type: none"><li>• Details of lobbying activity may only be confined to Government buildings.</li></ul>  | <ul style="list-style-type: none"><li>• The register is voluntary and therefore may not have sufficient information to reflect the lobbying environment.</li></ul>     |
| <b>Medium Regulatory System</b> | <ul style="list-style-type: none"><li>• Online registration system.</li><li>• Paperwork is not necessary or is at least limited.</li><li>• Details of registration available online to the public.</li></ul> | <ul style="list-style-type: none"><li>• Designated registrar who discloses a public annual report of the register.</li><li>• Breaches of compliance are investigated and findings publicised.</li></ul> | <ul style="list-style-type: none"><li>• Mandatory for all who lobby to register (may be statutory or non statutory) therefore providing a detailed register.</li></ul> |
| <b>High Regulatory System</b>   | <ul style="list-style-type: none"><li>• Robust system for online registration with detailed disclosures available for public scrutiny.</li></ul>   | <ul style="list-style-type: none"><li>• State agency conducts detailed reviews and audits that are available in reports available for public scrutiny.</li></ul>  | <ul style="list-style-type: none"><li>• Statutorily enforced registration to ensure a highly detailed register available for public scrutiny.</li></ul>                |

### **7.1.2 What was recommended in the submissions received?**

A common theme emerging from discussions with organisations who furnished submissions was the need for a user-friendly, easily accessible web-based register which would not be resource intensive to update. One submission recommends that a dedicated website be established, for all lobbyists', stakeholders and other interested parties, to debate in an open and public forum.<sup>108</sup>

Another submission specifically states that a paper version of the register should also be available to the public.<sup>109</sup>

It has also been suggested that information that might deter small groups from talking to policy makers should not be required.<sup>110</sup>

### **7.1.3 What does the independent international analysis / academic research say about the format of the register?**

The OECD recommends that information regarding lobbying be made available to the public through the internet to maximize accessibility. This is to enable the public to scrutinise lobbying activity. The OECD also warns that confidential information and/or market sensitive information should be respected and preserved when necessary.<sup>111</sup>

It is recommended in '*Regulating Lobbying: A Global Comparison*' that any register that is established is available online to the public. The authors also point out the advantages for lobbyists themselves of having such information available online; lobbyists may check how much a rival is engaged in lobbying activity as well as providing an advertising platform. The authors also argue that having a register available online helps to defuse public concern over lobbying.<sup>112</sup>

### **7.1.4 What was the approach in the Private Members' Bills?**

The Fine Gael (2010) and Fianna Fail (2012) draft Bills do not specifically mention that the information required for a register would be available online. All Bills have sections suggesting that the register be open to public inspection as determined by the registrar<sup>113</sup>. The Labour Party PMB (2008) has a specific provision which allows for the publication of a register online without charge.

### **7.1.5 Wider context**

The Mahon Tribunal Report states that the public should be able to make informed judgments about the extent to which different groups have input into the legislative process. The report goes on to recommend that the level of information disclosed on a register of lobbyists should be sufficient to meet the goal of informing the public of the broad objectives

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<sup>108</sup> Dr Elaine Byrne

<sup>109</sup> Age Action

<sup>110</sup> One Family

<sup>111</sup> OECD.2009. *Recommendation of the Council on Transparency and Integrity in Lobbying*.

<sup>112</sup> R. Chari, J. Hogan, and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press). pp157

<sup>113</sup> Fine Gael PMB. 2010. Section 26B(3); Fianna Fáil PMB. 2012. Section 8 & 10, Labour PMB. 2008. Section 7(3).

of the lobbying activity. It also recommends that this information should be electronically available.<sup>114</sup>

## **7.2 Recommendation 9: Format of the Lobbying Register**

The format of the register should conform to international good practice comprising an electronic web-based system which is publicly available at all times via the internet.

It should be a particular priority to ensure that the system put in place is low-cost, accessible, easy to use, to review and to update.

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<sup>114</sup> The Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments, 2012. pp 2635-2642

## **Chapter 8: Oversight and Review**

### **8.1 Oversight**

#### **8.1.1 Introduction**

The central purpose of supervision and oversight of the system of lobbying regulation is to monitor and promote compliance with the requirements of the regulatory system and also to ensure that non-compliance is detected and discouraged and, if necessary, appropriately sanctioned. It also helps protect the reputation of, what would be expected to be, an overwhelming majority of those working as lobbyists who conform to high standards of professional conduct and support the principle of enhanced transparency in lobbying.

Whatever body is chosen to discharge this role, it must possess adequate institutional arrangements including administrative independence, capacity and authority which are indispensable for implementing legislation effectively. In addition, it must be independent of political pressures and be provided with sufficient resources to carry out its role.

#### **8.1.2 What is the practice abroad?**

International experience shows that responsibility for the oversight of regulations on lobbying can lie directly with government or with an independent structure or a combination of both.

Government regulated systems include Australia where the responsibility for the ‘Lobbyists Code of Conduct and Register’ lies with the Department of the Prime Minister and Cabinet.<sup>115</sup> In the US, in line with the federal Lobbying Disclosure Act (1995), the Secretary of the Senate and the Office of the Clerk of the House of Representatives hold responsibility for the register.<sup>116</sup>

In Canada, at federal level, the Office of the Commissioner of Lobbying, an independent agent of parliament, was established in 2008.<sup>117</sup>

Systems of lobbying regulation in place in individual US states illustrate a mix of different types of oversight and supervisory models. Some are independent commissions that mainly deal with lobbying; some state registers are tied into systems overseeing a broader range of ethical requirements while others are the responsibility of the relevant state government’s Secretary of State.

The following table summarises the position regarding oversight and supervisory models in other jurisdictions.

**Fig 8.1 Oversight in Other Jurisdictions.**

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<sup>115</sup> Australia, Lobbying Code of Conduct , Section 3.7

<sup>116</sup> American Lobbying Disclosure Act 1995, Section 4(a)(i)

<sup>117</sup> Canada, Lobbying Act, Section 4.

| Country/System                                 | Oversight Body  | Legal Basis  |
|--|---|--|
| <b>Australia</b>                               | Department of the Prime Minister and Cabinet.   | Non-Statutory. Enforcement of sanctions is at the discretion of the cabinet secretary.                   |
| <b>Canada (Federal)</b>                        | The Office of the Commissioner of Lobbying.   | Statutory. Lobbying Act (2008).  |
| <b>EU Transparency Register</b>                | EU Transparency Register Secretariat.   | Non-Statutory. Established by a joint agreement between the European Parliament and European Commission. |
| <b>United States of America (Federal)</b>      | Office of the Clerk of the House of Representatives and the Secretary of the U.S. Senate.               | Statutory. Lobbying Disclosure Act (1995).   |
| <b>Highly Regulated Systems (25 US States)</b> | State agencies established especially for lobbying regulations or are tied to a wider ethics framework. | Usually Statutory.   |

### 8.1.3 What was recommended in the submissions received?

There is considerable support in the submissions received for independent oversight and supervision of the proposed regulatory system for lobbying.

Several submissions identified the Standards in Public Office Commission (SIPo) as being an appropriate regulator for lobbying regulation. One submission considers SIPo as: “...an independent public body to monitor a statutory lobbying register. Such an impartial body could foster a greater degree of trust within the industry and also enhance the reputation of the profession amongst the public” and states “it is ideally placed to enforce such a statutory lobbying register...”.<sup>118</sup>

Another submission advises that “...a single state agency be charged with managing the register, offering guidance to individuals and organisations, monitoring returns, and investigating apparent breaches or anomalies...”. SIPo has been responsible for the management of compliance with the Ethics Acts and “it is experienced in managing and sharing large amounts of sensitive and publicly-available information”, they regard it as best placed to fulfill the role.<sup>119</sup>

Some of the submissions state that the body given the job of monitoring the register should have powers of investigation where there is a suspected breach of the regulations. There are diverging opinions evident in the submissions as to the extent of the power which should be given the regulator with some contributors to the consultative process recommending that the regulator should have, for example, full jurisdiction for pursuing summary prosecutions and powers to randomly audit registrants. One submission has recommended that the regulator have the power to modify and update the rules in a flexible manner<sup>120</sup>.

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<sup>118</sup> Hume Brophy

<sup>119</sup> Transparency Ireland

<sup>120</sup> Conor McGrath Public Affairs

### **8.1.4 What does the independent international analysis / academic research say about oversight models?**

The ninth OECD principle for Transparency and Integrity in Lobbying states that “*countries should design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement*”<sup>121</sup> to ensure compliance with the regulation. In their research on lobbying regulation globally, Chari, Hogan and Murphy write that: “*Any such register should be controlled and monitored by an agency, preferably a completely independent agency.*”<sup>122</sup>

### **8.1.5 What was the approach in the Private Members’ Bills?**

Fianna Fáil and the Labour Party, in their Private Members’ Bills, recommend the Standards in Public Office Commission (SIPo) as the monitoring body for the register of lobbyists.<sup>123</sup> Fine Gael has also made this recommendation.<sup>124</sup> Fianna Fáil and the Labour Party also provide for SIPo to have powers to investigate breaches of the regulation and for reports to be laid before the Houses of the Oireachtas. However, Fine Gael has recommended that the Commission be renamed the ‘National Electoral Office’.<sup>125</sup>

### **8.1.6 Wider context**

The Mahon Tribunal Report states that the regulation of lobbying introduced should be effectively enforced and that “*the relevant enforcement authorities should have sufficient powers to require the expansion of the information filed by registrants and powers of investigation, including the power to compel the production of information and witnesses.*”<sup>126</sup>

## **8.2 Recommendation 10: Oversight / Supervisory Body for System of Lobbying Regulation**

It is recommended that a specific regulator is put in place to oversee and supervise the operation of the lobbying register. The regulatory body should have the appropriate skills, resources and capacity to regulate effectively.

### **8.2.1 Points for further review**

The SIPo Commission has been identified in the submissions received and in the various Private Members Bills as having the potential to fulfill this role. This reflects the Commission’s existing responsibilities, experience and expertise in relation to ethics legislation under the Standards in Public Office Act, 2001 and the Ethics in Public Office Act, 1995. Other options could also be examined including for example locating the responsibility within the remit of the Information Commissioner. In view of the Government’s objective to reduce and rationalise the number of state agencies it is not

<sup>121</sup> OECD 10 Principles for Transparency and Integrity in Lobbying, principle 9.

<sup>122</sup> Raj Chari, John Hogan and Gary Murphy, *Regulating Lobbying: A Global Comparison*, (Manchester: Manchester University Press) p.159.

<sup>123</sup> See the Fianna Fáil PMB 2012, *Lobbyists Bill 2012*, at section 2 and the Labour Party PMB 2008, *Registration of Lobbyists Bill 2008*, at section 2.

<sup>124</sup> See the Fine Gael draft Bill 2010 in the *New Politics* document, Section 26(b), p.77.

<sup>125</sup> See the Fine Gael draft Bill 2010 in the *New Politics* document p.72.

<sup>126</sup> The Mahon Tribunal Report, p.2640 at para. 6.20.

considered appropriate that a new body is established specifically for the purpose of acting as the regulator for the lobbying register. A further medium-term option, in light of the approach taken in other jurisdictions, is to establish an Integrity Commission Model with responsibility for the broad range of statutory transparency and accountability requirements including ethics legislation, Freedom of Information, lobbying regulation etc.

### **8.3 Regular Review of the Lobbying Regulatory Framework**

#### **8.3.1 What is the practice abroad?**

The OECD's tenth principle relating to lobbying regulation advocates that mechanisms should be put in place to ensure that necessary adjustments or revisions are made to a regulatory framework in light of experience in practice. To this end, when considering the development of a regulatory framework for lobbying in Ireland, it is useful to draw upon the experience of other jurisdictions which regulate lobbying activity and examine what mechanisms are in place to strengthen their systems and the frequency of such a review process.

The following table looks at the legal basis of the regulations, whether legislative review is relevant to the system, the role that oversight plays in translating the experiences of regulating into constructive recommendations for improving the system, and how often there is an opportunity to review the system:

**Fig 8.2 Review in Other Jurisdictions**

| <b>Country/System</b>                     | <b>Review Procedures</b>   | <b>Frequency</b>   |
|---|--|--|
| <b>Australia</b>                          | <ul style="list-style-type: none"> <li>The Secretary of the Department of the Prime Minister and Cabinet is responsible for investigating any alleged breach of regulations.</li> <li>Reports on the workings of the register are not required.</li> </ul>   | <ul style="list-style-type: none"> <li>Reviews of regulations are based on government commitments.</li> <li>Australian Senate's review 'Finance and Public Administration References Committee' released in early 2012.</li> </ul>   |
| <b>Canada</b>                             | <ul style="list-style-type: none"> <li>The Commissioner of Lobbying reports on investigations and other special reports.</li> <li>'Administering the Lobbying Act- Observations and recommendations based on the experience of the last five years' published in 2011.</li> <li>Annual report examines the activities &amp; efficiency of the office.</li> </ul> | <ul style="list-style-type: none"> <li>Legislation must be reviewed every 5 years by a committee of the Senate and/or House of Commons.</li> <li>Within a year of the review a report must be submitted by the committee and recommend any changes to be made to the Act.</li> </ul> |
| <b>EU Transparency Register</b>           | <ul style="list-style-type: none"> <li>Annual report on the operation of the register undertaken by the Secretaries General of the European Parliament and European Commission and submitted to the Vice-Presidents of their respective institutions.</li> </ul>   | <ul style="list-style-type: none"> <li>The register shall be subject to review 2 years following its entry into operation (since 2011).</li> </ul>   |
| <b>United States of America (Federal)</b> | <ul style="list-style-type: none"> <li>The Attorney General of the Federal Register must report to Congress concerning the administration of the act.</li> </ul>   | <ul style="list-style-type: none"> <li>The Attorney General's report is presented every six months.</li> <li>No mandatory review process to</li> </ul>   |

|  |  |  |
|--|--|--|
|  |  | make changes to the workings of the system.  |
| <b>High Regulated Systems (25 US States)</b> | <ul style="list-style-type: none"> <li>State agencies carry out reviews and audits of the system.</li> </ul> | <ul style="list-style-type: none"> <li>Provisions for mandatory reviews are legislated for.</li> </ul> |

### 8.3.2 What was recommended in the submissions received?

While a significant majority of the submissions received endorse the OECD's ten principles, the relevant submissions do not touch specifically on the question of periodic review. This may indicate a preference for a review mechanism being incorporated into the regulatory system, although not specifically stated.

Some submissions suggest that current Freedom of Information legislation needs to be reviewed and/or reformed in tandem with the establishment of a register for lobbyists.<sup>127</sup>

Another states that legislation could be reviewed in 3-5 years and that stakeholders and academics should be involved in the review process.<sup>128</sup>

One organisation<sup>129</sup> suggests that the register should operate initially for 3-5 years. However, it should not be implemented by statute. This is to allow for an annual review, if necessary.

Another body suggests a review and consultation after 1 year.<sup>130</sup>

### 8.3.3 What does the academic research say about review?

In '*Regulating Lobbying: A Global Comparison*' the authors point out that mandatory reviews and audits of regulations are generally characteristic of 'medium' to 'high' systems.<sup>131</sup>

### 8.3.4 What was the approach in the Private Members' Bills?

The Labour Party PMB (2008) contains a provision which would have required the body responsible for oversight and supervision of the regulatory system for lobbying to prepare an annual report on the effectiveness and functions of the register and for the report to be laid before the Houses of the Oireachtas.<sup>132</sup> The Fine Gael Draft Bill (2010) also required the creation of an annual report.<sup>133</sup> The Fianna Fáil PMB (2012) required the Standards in Public Office Commission to prepare a yearly report on the effectiveness of the register for the Minister.<sup>134</sup>

<sup>127</sup> Irish Congress of Trade Unions & Think-Tank for Social Change (Ireland)

<sup>128</sup> Nessa Childers MEP

<sup>129</sup> Public Relations institute of Ireland

<sup>130</sup> The Alzheimer's Society of Ireland

<sup>131</sup> R. Chari, J. Hogan, and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press) p106.

<sup>132</sup> Labour Party, *Registration of Lobbyists Bill 2008*. Section 50(4).

<sup>133</sup> Fine Gael, *Registration of Lobbyist Bill*. 2010. Section 26H(3)

<sup>134</sup> Fianna Fáil, *Lobbyist Bill 2012*. Section 16.

None of the PMBs or draft Bills contain a provision requiring legislation to be subject to review and potential amendment following a certain period of its operation.

### **8.3.5 Wider context**

The Mahon Tribunal report does not give any specific recommendation that an oversight body should have auditing powers or that any legislation introduced should be reviewed on a periodic basis.<sup>135</sup>

## **8.4 Recommendation 11: Review of Regulatory System**

### **8.4.1 Audit**

It is recommended that the body responsible for oversight and supervision of the regulatory system for lobbying should be subject to a legal requirement under the proposed legislation to prepare a report regarding the administration and operation of the legislation and submit/present the report to both Houses of the Oireachtas within three months after the end of each year.

In addition, it is recommended that a power should be provided for in the legislation so that the oversight/supervision body can, at any time, submit a special report to both Houses of the Oireachtas detailing the results of any investigation undertaken by the regulator.

### **8.4.2 Legislative Review**

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

The review should be undertaken on behalf of the Minister for Public Expenditure and Reform in consultation with the oversight/supervisory body for lobbying regulation. Formal consultations should be carried out with a relevant Oireachtas committee in the course of the review process.

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<sup>135</sup>The Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments, 2012. pp 2635-2642

## **Chapter 9: Sanctions**

### **9.1 Introduction**

Measures requiring lobbying registration and the disclosure of information must be underpinned by effective enforcement. Sanctions are, therefore, a necessary feature of lobbying regulation and serve several purposes but primarily act as an incentive to promote compliance and ensure that serious and/or persistent breaches of the regulatory rules are deterred.

It would be expected that sanctions could apply in the case of a broad range of potential contraventions of regulatory rules which could include the following:-

- (i) failure to register if undertaking lobbying activity,
- (ii) providing false /incomplete information for the register,
- (iii) late reporting of information,
- (iv) breaching any regulation contained in the legislation,
- (v) non-compliance with the requirements of any code of conduct if a statutory code is put in place.

The following types of sanctions may be available under the regulatory system:

- (i) *Administrative sanctions* are sanctions imposed by a regulator without intervention by a court or tribunal.<sup>136</sup>
- (ii) *Criminal penalties* (including fines and imprisonment) could arise in the case of serious regulatory breaches.

#### **9.1.1 What is the practice abroad?**

A common penalty for misconduct by a lobbyist used in Australia is removal from the register. This can range from temporary suspension to permanent removal depending on the jurisdiction and the nature of the breach. In some other countries, for example Germany, there are no sanctions in place. The OECD research advises that where investigations, which have proven violations of the Act, are reported to Parliament, e.g. Canada, this leads to unwelcome publicity for the non-compliant lobbyists involved.<sup>137</sup> In Poland there is a system of fines in place for failure to register by professional lobbyists.

#### *Canada*

Chari, Hogan and Murphy provide detailed analysis of the regulations, including sanctions, in place in Canada.<sup>138</sup> The main penalty under the Canadian Federal legislation is for failure to register. There is also a penalty for providing false or misleading information. Penalties range from fines to imprisonment. The amount of the fines varies depending on the jurisdiction and ranges from \$500 to \$200,000. Prison sentences range from six months to two years. In 2008 the Federal legislation extended the limitation period within which

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<sup>136</sup> Lynott, J. and Cullinane, R. "Administrative Sanctions" (2010) 17(1) *IPELJ* 12.

<sup>137</sup> OECD report *Lobbyists, Government and Public Trust*, (vol.1), p.86.

<sup>138</sup> R. Chari, J. Hogan, and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press)

investigations must take place from two years to ten years. The 2008 legislation also gave the Commissioner the right to “name and shame” convicted lobbyists. Any convicted lobbyist can now also be prohibited from lobbying at federal level for two years. In relation to Canada it has been suggested that the lack of prosecutions is due to the lack of resources and information available to monitoring agencies.<sup>139</sup> The majority of Canadian administrators surveyed felt that random audits should not take place and that they should only take place when there is genuine cause for investigation.<sup>140</sup>

### **9.1.2 What was recommended in the submissions received?**

Several submissions recommended the imposition of sanctions for regulatory breaches such as failure to register or providing false or misleading information when registering. These recommendations vary from exclusion from the lobbying register (temporary or permanent) to fines and terms of imprisonment. Some of the submissions further recommend the implementation of a statutory code of conduct with accompanying sanctions for breaches.

If a particular lobbyist has access to the Oireachtas one submission recommends that one sanction for breach of the regulations is that access be revoked.<sup>141</sup>

One submission has suggested that:-

- (i) where there is a proven breach an organisation should face the possible sanction of termination or retrospective cancellation of a state contract where applicable, and
- (ii) where a breach takes place it should be publicised.<sup>142</sup>

Certain submissions suggest that incentives to registration be considered alongside sanctions.<sup>143</sup>

Another submission, in line with the Mahon Tribunal Report recommendations, argued that administrative sanctions should be used as “*...the body must be prepared to impose sanctions on any of its members “who fail to meet its criteria,” and these sanctions might include “naming and shaming,” financial penalties, suspending members for a period, and expelling them from the group (PASC, 2009a, p. 43).*<sup>144</sup>

Some of the submissions state that the authority given the job of monitoring the register should have powers of investigation where there is a suspected breach of the regulations.<sup>145</sup>

Another submission suggests that in order to “*...detect and deter breaches of compliance, there should be a mechanism where people can report lobbyists they suspect are in breach of regulation, and random inspections of such companies instigated, with penalties for those in*

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<sup>139</sup> R. Chari, J. Hogan, and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press) p44

<sup>140</sup> R. Chari, J. Hogan, and G. Murphy. 2010. *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press) p144

<sup>141</sup> Public Relations Institute of Ireland

<sup>142</sup> Dr Elaine Byrne.

<sup>143</sup> Public Relations Consultants Association.

<sup>144</sup> Conor McGrath Public Affairs

<sup>145</sup> ICTU.

*breach.”*<sup>146</sup> One submission gives very detailed recommendations about the online form which should be available to make such a complaint and the information that would be required on this form.<sup>147</sup> It also states that anonymous “... complaints shall not be considered. The complaint shall specify one or more clauses of the code of conduct which the complainant alleges have been breached.”

It was also highlighted in several of the submissions that there have been no complaints filed against members of the Public Relations Institute of Ireland (PRII) for breaches of the voluntary code of conduct to which members are required to conform..<sup>148</sup>

Another organisation made the suggestion that the rules and compliance issues relating to the filing of returns is based on the “...provisions in their Companies Act relating to the duty to file accounts...” as has been suggested in the UK<sup>149</sup>.

Finally, in relation to the question of fines the issue of recording information on campaigns was mentioned in one submission on the basis that “...campaigns are on the public record and it would be very undesirable if as a consequence of the legislation individuals, trade union members, or any group of concerned citizens found themselves subject of a fine, or worse, because their ability their recording of all the campaign actions breached the rules of the lobbying register”<sup>150</sup>

### **9.1.3 What does the independent international analysis/academic research say about sanctions?**

The OECD has made several observations and recommendations relating to sanctions.

The recommendations highlight the value of putting in place clear, enforceable rules, having a good monitoring system and ensuring that there is strong comprehension of the rules and how to comply with them by potential registrants on the lobbying register.<sup>151</sup>

- (i) The OECD recommends that where a breach in the registration rules occurs (failure to register, breach of rules relating to disclosure requirements) a warning is issued giving the lobbyist time to comply before further action is taken.
- (ii) The OECD notes that a heavy handed approach to sanctions should not be adopted because this could have the effect of making citizens afraid to contact elected representatives for fear of breaching lobbying regulations.
- (iii) The OECD also highlight that effective enforcement is dependent upon co-operation with the officials who are lobbied.
- (iv) An important point made by the OECD is that heavy fines and/or imprisonment may not have a deterrent effect without other measures because some lobbyists might receive substantial financial rewards for successful lobbying which would outweigh these sanctions.

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<sup>146</sup> Nessa Childers, Member of the European Parliament.

<sup>147</sup> Public Relations Institute of Ireland.

<sup>148</sup> The Irish Heart Foundation.

<sup>149</sup> The Irish Heart Foundation.

<sup>150</sup> Irish Congress of Trade Unions

<sup>151</sup> OECD 10 Principles for Transparency and Integrity in Lobbying, principle 9.

- (v) Sanctions cannot be properly imposed if the relevant oversight body is not given powers to require extra information from registrants in cases of suspected breaches and also strong powers of investigation.
- (vi) The OECD states that officials in the appropriate oversight body for lobbying regulation have called on legislators to be more imaginative in developing sanctions that can be applied without criminal prosecutions.
- (vii) One possible incentive for registration put forward by the OECD is that free alerts about consultations be provided for registrants with the possibility that registration be made a pre-requisite for participation in these consultations.<sup>152</sup>

#### **9.1.4 What was the approach in the Private Members' Bills?**

The Labour Party<sup>153</sup> and Fianna Fáil<sup>154</sup> have both provided for significant sanctions in each of their Private Members' Bills (PMBs).

In the four Labour Party PMBs<sup>155</sup> it is stated that sanctions will be imposed for knowingly submitting false or misleading information.<sup>156</sup> On summary conviction sanctions consist of a fine or imprisonment for a term not exceeding 12 months, or both.<sup>157</sup> The proposed fine in the 2008 Bill is a sum not exceeding €10,000.<sup>158</sup> On indictment the sanction recommended is a fine (sum not specified) or a term of imprisonment not exceeding two years or both<sup>159</sup>. Under these bills, the SIPO Commission would have the authority to investigate suspected breaches.<sup>160</sup>

The Fianna Fáil PMB introduced earlier this year also recommends giving the SIPO Commission this investigatory authority.<sup>161</sup>

The Fianna Fáil Bill goes on to provide specific sanctions where a person knowingly makes any false statements in any documents submitted. On summary conviction this would consist of a fine not exceeding €1,000 and on indictment of a fine not exceeding €30,000, or a term of imprisonment not exceeding two years or both.<sup>162</sup>

Fine Gael has also provided a draft Bill where the SIPO Commission is given the same investigative powers as the other parties have suggested.<sup>163</sup> A specific offence of engaging in lobbying when not registered is included in that Bill.

<sup>152</sup> OECD *Lobbyists, Government and Public Trust*, vol. 1, p. 30-34.

<sup>153</sup> Labour Party *Registration of Lobbyists Bill 2008*.

<sup>154</sup> Fianna Fáil *Lobbyist Bill 2012*.

<sup>155</sup> The Labour Party put forward Private Members Bills on Lobbying in 1999, 2000, 2003 and 2008.

<sup>156</sup> Labour Party, *Registration of Lobbyists Bill 2008*, Section 14 and 15 also *Registration of Lobbyists Bill 2003*, Section 15.

<sup>157</sup> Labour Party, *Registration of Lobbyists Bill 2008*, Section 14 and 15 also *Registration of Lobbyists Bill 2003*, Section 15.

<sup>158</sup> Labour Party, *Registration of Lobbyists Bill 2008*, Section 15.

<sup>159</sup> Labour Party, *Registration of Lobbyists Bill 2008*, Section 14 and 15 also *Registration of Lobbyists Bill 2003*, Section 15.

<sup>160</sup> Labour Party, *Registration of Lobbyists Bill 2008*, Section 10 and 11 also *Registration of Lobbyists Bill 2003*, Section 11.

<sup>161</sup> Fianna Fáil, *Lobbyists Bill*, 2012, Sections 2 and 17.

<sup>162</sup> Fianna Fáil, *Lobbyists Bill*, 2012, Sections 18.

<sup>163</sup> Fine Gael, *Registration of Lobbyists Bill* in their "New Politics" document, 2010, Section 26G, p.79.

### **9.1.5 Wider context**

The Mahon Tribunal Report states that any measures introduced to regulate lobbying should be effectively enforced. The Tribunal recommends that enforcement authorities should be granted sufficient powers to require the expansion of the information filed by registrants and that they should also have powers of investigation. This would include the power to compel the production of information and witnesses.

The report further recommends that sanctions should include administrative sanctions and that they should reflect the gravity of the offence, (Appendix 4).

## **9.2 Legal Issues**

Further consideration of important constitutional and legal issues surrounding various sanctions may be required. Such issues include:

- (i) The right to ones good name (if names of those who breach regulations are publicised).
- (ii) Freedom of speech (if removal from register is imposed as a sanction).
- (iii) The right to earn a living (if removal from register is imposed as a sanction).
- (iv) The right to privacy (regarding the investigative powers of the monitoring authority).

It should be noted that the type of sanctions envisaged would not be inconsistent with those put in place in other regulatory systems so – although any legal or constitutional constraints need to be carefully examined – the strong presumption is that it will be feasible to put an appropriate structure of sanctions in place.

## **9.3 Recommendation 12: Sanctions**

### **Sanctions**

Effective sanctions should be provided for in legislation which would act as a substantial deterrent for significant misconduct such as:-

- (i) lobbying without being registered,
- (ii) providing false or misleading information, and
- (iii) significant breaches of the code of conduct (provided a statutory code of conduct is introduced).

Sanctions should be clear and enforceable by the appropriate oversight/supervisory body.

The oversight body should have the authority to require additional relevant information from registrants (subject to appropriate and proportionate limitations) and to conduct further investigations if this additional information confirms a breach has taken place.

Provision should be made in the proposed legislation for the making of complaints regarding the conduct of lobbyists where it is alleged that a breach of the professional code of conduct has taken place.

As recommended by the Mahon Tribunal Report, administrative sanctions should be put in place including for example fines or temporary suspension or (in certain exceptional circumstances) permanent exclusion from the register (subject to legal review).

### **9.3.1 Ensuring Compliance**

The oversight/supervisory body should be empowered to carry out random audits to support compliance overall.

Effective communication strategies should be put in place to educate and inform potential registrants on the obligations they are required to meet under the proposed regulatory system. This will help underpin compliance and could be achieved by both information sessions and publicity campaigns.

Incentives for registration should be carefully considered. One incentive which was broadly recommended is alerts and/or invitations to consultations for registrants.

### **9.3.2 Content of Sanctions**

Concrete sanctions, where a breach has been proven in a criminal prosecution, should range from fines to, in serious cases, terms of imprisonment.

## **Chapter 10: Professional Code of Conduct**

### **10.1 Introduction**

Professional codes of conduct for lobbyists relate to a set of rules, responsibilities and ethical obligations as to how lobbyists should appropriately conduct their lobbying activities. These rules and requirements are embedded in core principles and values that are expected to benefit lobbyists and those who contract their services as well as the public at large.

Codes of conduct can focus primarily on the lobbyist, the lobbied or both. Codes of conduct for the lobbied generally deal with standards in a public office, putting onus on public officials and representatives to deal with lobbyists responsibly and to respect their office/position. Codes that are aimed at lobbyists attempt to ensure that they carry out their work with professionalism and integrity when engaging with the lobbied.

#### **10.1.1 What codes of conduct contain?**

##### *Preamble*

The majority of codes of conduct contain a preamble that outlines the basic principles on which the code is based and what its aims are. Such principles usually include:

- (i) Transparency;
- (ii) Integrity;
- (iii) Accountability;
- (iv) Legitimacy; and
- (v) Access/openness to government.

##### *Definitions*

Some codes of conduct (particularly self-regulatory and non-statutory codes) include definitions of ‘lobbyist’, ‘lobbying’, ‘lobbied’ and ‘clients’ though in Ireland these definitions will be given statutory effect in legislation.

##### *Rules and Guidelines*

While a code of conduct is embedded in a set of core principles and values, this can often be regarded as vague and open to interpretation.<sup>164</sup> To alleviate this, some codes of conduct are accompanied by a set rules or guidelines. In turn these could either be a brief outline or a more specific set of rules as to how individuals and/or organisations should conduct themselves when dealing with others. Such rules and guidelines are designed to fulfill the principles of a code.

- (i) Guidelines can be a brief outline of how lobbyists should conduct themselves to ensure transparency and accountability.
- (ii) They can provide rules as to how lobbyists should conduct themselves specifically with public officials and representatives.

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<sup>164</sup> R. Chari, J. Hogan, and G. Murphy, *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press, 2010) p.42.

- (iii) They can contain more specific rules as to how to deal with former public office holders.

#### *Application*

Some codes may have specific provisions as to how the rules and guidelines are to be enforced. For example a code may contain provisions for the establishment of a register and the office that is to be responsible for its maintenance. The code may also have provisions as to how breaches of the code are to be dealt with.

#### *Consistency with Existing Ethics Structures*

- (i) Codes usually complement the existing statutes in relation to the requirement of a register.
- (ii) Most codes make reference to other rules, procedures and codes of conduct that already exist.

As an example the Public Relations Institute of Ireland's (PRII) professional code of conduct is included as Appendix 5 to this paper.

### **10.1.2 What is the practice abroad?**

#### *Australia*

Australia has a non-statutory code of conduct and register which applies only to third party lobbyists.<sup>165</sup> Enforcement and maintenance are the responsibility of the Department of the Prime Minister and Cabinet.<sup>166</sup> It includes definitions of lobbying, lobbyist and client as well as providing guidelines for the establishment of a register to record lobbyists.<sup>167</sup> Breaching the code will result in removal from the register.<sup>168</sup>

#### *Canada*

The Federal code of conduct is not a statutory instrument and did not come into effect until 1997 (the lobbying legislation was first implemented in 1989).<sup>169</sup> Its development is the responsibility of the Commissioner of Lobbying of Canada.<sup>170</sup> The code must be approved by a committee of the House of Commons before being published.<sup>171</sup> The code applies to all who fall under the definition of lobbyist whether they are registered or not.<sup>172</sup> Suspected breaches of the code will be investigated by the Commissioner and individuals found to be guilty of breaches will be “named and shamed”.<sup>173</sup>

#### *EU Transparency Register*

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<sup>165</sup> Australia, Lobbying Code of Conduct.

<sup>166</sup> Australia, Lobbying Code of Conduct, Sections 3.7 and 6.1.

<sup>167</sup> Australia, Lobbying Code of Conduct, Sections 3 and 5.

<sup>168</sup> Australia, Lobbying Code of Conduct, Section 10.2.

<sup>169</sup> Canada, Lobbying Act, Section 10.2(4), also Code of Conduct and information on the Code of Conduct - [http://www.ocl-cal.gc.ca/eic/site/012.nsf/eng/h\\_00013.html](http://www.ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00013.html).

<sup>170</sup> Canada, Lobbying Act, Section 10.2(1).

<sup>171</sup> Canada, Lobbying Act, Section 10.2(3).

<sup>172</sup> Canada, Lobbying Act, Section 10.3.

<sup>173</sup> Canada, Lobbying Act, Section 14.01.

A code of conduct was introduced with the EU's non-mandatory Transparency Register in 2011.<sup>174</sup> Signing the code is a condition of registering.<sup>175</sup> It has a short set of guidelines for registrants to follow when dealing with members, officials and staff of EU institutions.

Separate codes of conduct apply to Commissioners and MEPs restricting their involvement in lobbying activity after they leave office.<sup>176</sup> There are sanctions for violating codes of conduct.

#### *United Kingdom*

There is no code of conduct specifically for lobbyists. The onus is on public officials and representatives. However, there is a Ministerial Code of Conduct.<sup>177</sup> *Rules on Lobbying for Non-Departmental Public Bodies* also exist.<sup>178</sup>

#### *United States of America*

No code of conduct exists in relation to the Federal Lobbying Disclosure Act (1995). Rules and guidelines are provided by most US state oversight entities.

#### **10.1.3 What was recommended in the submissions received?**

Those who commented on the issue were in favour of a code of conduct to accompany the regulations. One submission advises that the “...development of a *Code of Conduct and Ethical Framework* would also help to provide guidance in this area but cannot act as a substitute for good legislation”.<sup>179</sup> Another submission states they “...do not believe that there should be a statutory code of conduct for lobbyists linked with the register”.<sup>180</sup>

#### **10.1.4 What does the academic research say about codes of conduct?**

The third principle of the OECD Principles for Transparency and Integrity in Lobbying states that when countries are regulating lobbying they should take account of how the regulatory and policy framework already in place can support a culture of transparency and integrity in lobbying and that this includes “codes of conduct for public officials and lobbyists.”<sup>181</sup> In Recommendation 1908 of the Parliamentary Assembly of the Council of Europe “*Lobbying in a democratic society (European Code of Good Conduct on Lobbying)*” it is stated that “...the Assembly recommends that the Committee of Ministers of the Council of Europe elaborate a European Code of Good Conduct on Lobbying...”<sup>182</sup>

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<sup>174</sup> Interinstitutional agreement on a common Transparency Register between the Parliament and the Commission, Annex 3.

<sup>175</sup> Interinstitutional agreement on a common Transparency Register between the Parliament and the Commission, Section (v)(17).

<sup>176</sup> *Code of Conduct for Commissioners, 2011*, Section 1.2 also *Rules and Procedures of the European Parliament, Annex 1, and Code of Conduct for Members of the European Parliament* in respect of financial interests and conflict of Interest, Article 6.

<sup>177</sup> *Ministerial Code of Conduct, Cabinet Office, May 2010*.

<sup>178</sup> *Rules on Lobbying for non-Departmental Bodies*.

<sup>179</sup> Alcohol Action Ireland.

<sup>180</sup> One Family.

<sup>181</sup> OECD *10 Principles for Transparency and Integrity in Lobbying*, principle 3.

<sup>182</sup> Recommendation 1908 of the Parliamentary Assembly of the Council of Europe, *Lobbying in a democratic society (European code of good conduct on lobbying)*, section 11.

### **10.1.5 What was the approach in the Private Members' Bills?**

The Labour Party PMB (2008) contains a code of conduct.<sup>183</sup> The Fianna Fáil PMB (2012) provides for the introduction of a code of conduct by the Registrar within twelve months of enactment of the Bill.<sup>184</sup> The Fine Gael draft Bill (2010) also provides for the introduction of a code of conduct.<sup>185</sup>

### **10.1.6 Wider context**

The Mahon Tribunal Report advises the following:<sup>186</sup>

- (i) “Professional Lobbyists should be required to adhere to a statutory based code of conduct”.
- (ii) The report of the Tribunal recognises that many who are engaged in lobbying are members of organisations which have a code of conduct they must comply with and this plays an important role in regulating lobbying.
- (iii) The aim of the code should be to ‘establish norms of behaviour for lobbyists’.
- (iv) The code should not exclusively deal with lobbyists, but also cover the lobbied.
- (v) In saying this, the report continues on to say that public office holders should be provided with more detailed guidelines for dealing with lobbyists.
- (vi) Any code to be introduced should have a specific reference to lobbyists who are former public officials.
- (vii) Public officials should be given clear guidance on how they are expected to engage with professional lobbyists with specific reference to lobbyists who are former public officials.

## **10.2 Public Relations Institute of Ireland (PRII)**

The PRII represents just under 1000 public relations and public affairs practitioners active in Ireland. They have an agreed code of conduct to which all members must adhere. The code establishes rules of engagement for lobbyists with public bodies, clients and employers.<sup>187</sup>

Members of the PRII are also subject to two other codes of conduct, the Code of Lisbon or the European Code of Professional Practice adopted by the European Public Relations Confederation (CERP) and the Code of Athens or the International Code of Ethics. However, membership of the PRII is voluntary thus lobbyists who are not members of the PRII are not subject to these codes. Nonetheless, these codes can all serve as models if a statutory code of conduct is put in place in this jurisdiction.<sup>188</sup>

These three codes are broadly similar and state many of the same principles and guidelines. There is emphasis in both the European and International codes of conduct on human rights principles. The Universal Declaration of Human Rights is specifically mentioned in both codes.

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<sup>183</sup> Labour Party PMB 2008, *Registration of Lobbyists Bill 2008*, section 9 and schedule 2.

<sup>184</sup> Fianna Fáil PMB 2012, *Lobbyists Bill 2012*, section 14.

<sup>185</sup> See the Fine Gael draft Bill 2010 in the *New Politics* document, p.78, section 26E.

<sup>186</sup> The Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments, 2012 pp 2635-2642

<sup>187</sup> The Public Relations Institute of Ireland (PRII): <http://www.prii.ie/>

<sup>188</sup> The Public Relations Institute of Ireland (PRII): <http://www.prii.ie/>

An interesting feature of the Code of Lisbon relates to remuneration. It states that a public relations practitioner may accept remuneration for his/her services only in the form of salary or fees and that on no account may payment or other material rewards contingent upon professional results be accepted. This code also states that a public relations practitioner shall not accept as a reward for his/her services to a client or an employer any remuneration from a third party, such as discounts, commissions or payments in kind, except with the agreement of a client or employer.<sup>189</sup>

There is no reason why there would be any conflict between these codes and the regulation of lobbying introduced. In fact, these codes can inform the development of that legislation.

The PRII submission proposes that, if the government creates a code of conduct as part of a lobbyists register, the code should be based on the PRII code. The current PRII is attached as Appendix 5 to this paper.

### **10.3 Recommendation 13: Code of Conduct**

The designated oversight/supervisory body for lobbying regulation shall develop a statutory code of conduct for lobbyists within 12 months of the establishment of the lobbying register and the code will come into effect no later than 6 months thereafter.

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<sup>189</sup> Code of Lisbon Section (A)(5)

## **Chapter 11: Implementation Issues**

### **11.1 Introduction**

The arrangements put in place for implementing the proposed policy approach will be critical to the regulatory project overall.

As discussed in this paper, there are policy issues where further careful examination is required and the drafting of legislation in due course – subject to Ministerial and Government approval – is likely to highlight significant and challenging issues relating to the specific and precise definition of key features of the design and operation of the regulatory system.

However, in overall terms there is significant clarity and certainty regarding the overall structural principles and objectives of the system of lobbying regulation which is proposed.

Further work is required drawing on the knowledge and expertise of key stakeholders and interested parties as well as on the practical experience of lobbying regulators oversees to ensure that there is a correspondingly high level of certainty and clarity regarding the implementation of the proposed regulatory model.

The purpose of this chapter is to highlight some of the main operational and implementation issues that would be expected to arise in successfully introducing a practical and workable lobbying register that meets the Government's objectives and to draw attention to the Department's current assessment of how these issues might be addressed in broad terms.

The Department would intend to establish, in due course, an advisory group composed of relevant experts and key stakeholders who would be in a position to provide information and guidance that will assist in addressing key implementation challenges. Moreover, in keeping with the approach adopted to the development of this project overall, the Department will continue to consult widely and take into account, in its planning for the establishment of the lobbying register, the views perspectives and concerns of all interested parties in a constructive and collaborative manner.

#### **11.1.1 Context**

In summary, the paramount implementation challenge is to establish a lobbying register that works meeting the objective of providing transparency in relation to the lobbying that takes place on public policy and decision making. The formulation of principles and objectives as well as the development of a suitable legislative framework is of course a necessary, but not a sufficient, condition for effective lobbying regulation.

There are many good practice examples across the world of where lobbying registers have been put in place and operate successfully. The Department would intend to draw on these examples in introducing a lobbying register, in due course, and indeed on the lessons available from the circumstances in which the introduction and operation of lobbying registers has initially been less successful.

Based on the Department’s assessment of the issue, informed by the submissions made and its further consultations with some contributors to the consultation process, the most significant challenge in implementing the regulatory regime will be to ensure that the sheer volume of information required to be registered is not such that the register is overwhelmed by it and the transparency which the register is intended to secure substantially eroded as a result.

In simple terms, the volume of information required by the regulatory system is a function of a number of variables;

- The number of individuals and organisations engaged in lobbying activity (the “who”)
- The number of public officials who constitute the lobbied (the “whom”)
- The extent of public policy issues on which registration is required (the “about what”)
- The amount of information to be disclosed in the register and the frequency of disclosure.

In view of the proposed comprehensive definition of the first item as discussed in chapter 4, the scope and definition of the other three categories are very important in order to ensure that the volume of information which needs to be recorded by the regulatory system is manageable and underpins the operation of an effective and efficient regulatory regime.

As set out further below, the Department believes that the final factor above (i.e. the amount and frequency of reporting) is the key to a regulatory system that functions effectively and efficiently while delivering the requisite level of transparency to meet the Minister’s overall policy objectives.

The priority for implementation of lobbying regulation is, therefore, that the administrative burden is proportionate.

### **11.1.2 What is the practice abroad?**

The administrative burden created by the regulation of lobbying in different jurisdictions depends upon the disclosure requirements imposed by the regulation and the frequency with which updates are required. Therefore, a register such as the EU Transparency Register would logically impose a far lighter administrative burden than the regulations in many of the highly regulated US states.

**Fig 11.1 Table showing the administrative burden in other jurisdictions**

| <b>Country /Systems</b>  | <b>Administrative Burden</b>  | <b>Updates</b>   |
|--------------------------|---|--|
| EU Transparency Register | <ul style="list-style-type: none"><li>• Initial registration takes 1 hour and 20 minutes to update, (as per claims).<sup>190</sup></li><li>• Transparency register secretariat required to monitor and oversee the running of register.</li></ul> | <ul style="list-style-type: none"><li>• Updates required annually.</li></ul> |
| France                   | <ul style="list-style-type: none"><li>• Daily access badges required. (Senate access cards valid for one year).</li></ul>   | <ul style="list-style-type: none"><li>• Updates required annually.</li></ul> |
| Germany                  | <ul style="list-style-type: none"><li>• List of groups who wish to lobby in the <i>Bundestag</i></li></ul>  | <ul style="list-style-type: none"><li>• Updates required annually.</li></ul> |

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<sup>190</sup> Cúram

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|--|--|--|
|  | written up annually.   |  |
| Australia<br>(Federal)   |  | <ul style="list-style-type: none"> <li>• Updated frequently<br/>(Biannually, Quarterly, Monthly)</li> </ul>                                    |
| Canada<br>Federal)   | <ul style="list-style-type: none"> <li>• At municipal level, Ontario's registry software was developed at a cost of \$50,000 (CAD).</li> </ul>   | <ul style="list-style-type: none"> <li>• A monthly return must be submitted for changes to information on the register.</li> </ul>             |
| United States<br>of America<br><br>(State-level)<br><br>(Basic elements for 25 States which are under this category) | <ul style="list-style-type: none"> <li>• Fees vary depending on the State and range from \$0-\$1000 annually.</li> <li>• Fees can also vary from State to State depending on how much a lobbyist earns, who they are lobbying and the type of lobbyist registering.</li> <li>• Photographic identification often necessary.</li> <li>• Monthly reports and annual comprehensive expense reports.</li> <li>• Some groups have difficulties in finding the time necessary to register and update.<sup>191</sup></li> </ul> | <ul style="list-style-type: none"> <li>• Any Changes to information must be noted on the online registry within a short time-frame.</li> </ul> |

The low/medium regulated jurisdictions would not appear to require registration of every contact but rather sufficient information on the nature if the contacts and issues involved.

### 11.1.3 What was recommended in the submissions received?

The major concerns from the submissions were as follows:-

- Voluminous requests:- A number of submissions expressed serious concern at the requirement to register every contact or communication due to the voluminous nature of contact with public bodies by some organisations. The administrative burden associated with such detailed reporting was considered potentially unreasonable, particularly by a number of representative organisations. Of concern also was the question of burdensome registration of multiple contacts on a single issue.
- Inadvertent omissions:- In follow up discussions with a number of stakeholders concerns were expressed about inadvertent omissions from the register. This was particularly a concern for representative bodies that may have multiple contacts with public bodies across all levels of the organisation. The primary concern was that sanctions should not be imposed in relation to such omissions.
- Fees and charges:- The majority of stakeholders were opposed to the levying of any charge on users of the register. There was concern from some submissions regarding breaches of confidentiality and the availability of names and contact details to the public.<sup>192</sup>
- Administrative burden:- The submissions vary in their view of how the register should be updated. Views range from quarterly updates to annual reports.

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<sup>191</sup> R. Chari, J. Hogan, and G. Murphy *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press, 2010).

<sup>192</sup> Age Action and The Law Society of Ireland.

- Sensitive information and confidentiality concerns:- Issues concerning the appropriate handling of sensitive information are considered crucial to the effective operation of the register.

#### **11.1.4 What does the academic research say about disclosure requirement?**

Principle 2 of the OECD 10 Principles on Transparency and Integrity in Lobbying states that, “*Where countries do opt for mandatory regulation, they should consider the administrative burden of compliance to ensure that it does not become an impediment to fair and equitable access to government.*”

In general high regulated systems have more rigorous rules on individual registration and more frequent updating of information.<sup>193</sup> The authors of ‘*Regulating Lobbying: A Global Comparison*’ suggest that the register “...should try to capture the information of who is accessing whom, what for and what monies, if any, change hands.”<sup>194</sup>

#### **11.1.5 What was the approach in the Private Members’ Bills?**

The Irish political parties have all recommended that registration be undertaken by lobbyists, as defined in the specific Bills, within a specified period of time after the lobbying activity has begun. It is stipulated by the Labour Party that any changes to the information provided by the registrant be indicated to the monitoring body within a fixed period of time after the change has taken place.<sup>195</sup> The Fianna Fáil PMB further stipulates that an annual return be filed by all registrants.<sup>196</sup>

#### **11.1.6 Assessment**

The OECD has highlighted the requirement for pertinent but parsimonious reporting on key aspects of lobbying activities in order to shed light on how public decisions are influenced by stakeholders or vested interests<sup>197</sup>. The information sought, collected and reported in the register must be meaningful and relevant to the core goals of regulation which relate to transparency, integrity and efficacy. The information demanded must be realistic in practical and legal terms. Unrealistic information and reporting requirements run the risk of undermining the legitimacy of the proposed regulatory system.

The overall purpose of the register is to provide the public with access to sufficient information regarding lobbying activities relating to public policy and decision making in order to enable the assessment of the nature and extent of that lobbying and to re-assure the public that it conforms to the public interest. The priority would, therefore, be to put in place a balanced approach which delivers transparency but not at the cost of excessive or onerous reporting requirements. Once a first registration has been completed (requiring the provision of the type of information set out in Chapter 6) the issue of to the ongoing reporting requirement is crucial.

<sup>193</sup> International Trends in Lobbying Registration - Lessons Learned for Ireland. Presentation by R Chari, J.Hogan and G. Murphy.

<sup>194</sup> R. Chari, J. Hogan, and G. Murphy *Regulating Lobbying: A Global Comparison* (Manchester: Manchester University Press,2010) (page 159)

<sup>195</sup> Labour Party PMB 2008, *Registration of Lobbyists Bill 2008*, section 4(4).

<sup>196</sup> Fianna Fáil PMB 2012, *Lobbyists Bill 2012*, section 12.

<sup>197</sup> p27 OECD (2010) *Lobbyists, Government and Public Trust Volume 1*

This reporting is the major determinant of the administrative burden created by the regulatory regime. This applies both in terms of the legal requirements for disclosure to the oversight/supervisory body responsible for the register as well as the internal procedures and systems which must be put in place by each organisation or individual which is subject to regulation (which is required in order to ensure that they are in a position to verify and validate the registration information furnished in case of any audit by the regulator or request for further more detailed information).

It is proposed that the emphasis should be placed on meaningful and structured reporting for the register on, for example:-

- the specific nature of the issues on which lobbying has taken place,
- the person(s) who has/have been the subject of lobbying, and
- sufficient information in summary terms to determine the nature, scope, intensity and type of the lobbying activity.

It is not recommended that each and every lobbying contact between a registrant and a public official should be recorded on the register. This reflects the potentially very large number of individual contacts that often take place both in respect of significant public policy issues (i.e. that are a matter of contemporaneous public interest and debate) but also on what would be regarded as specialist and technical issues (which would not be a matter of comment in the public domain and would give rise to a much narrower span of interest focused on a limited number of stakeholders and interest groups). Of course the latter issues may sometimes emerge as matters of significant public concern at a later stage.

It is important also to acknowledge that in view of the fact that it is intended to implement a system of regulation for lobbying where previously there was none, a phased and measured approach may be appropriate in the first instance to ensure that the system works from the outset and over an explicitly specified and planned time frame, fully consistent with ensuring its successful operation, the regulatory system is extended to encompass a broader set of categories (of lobbyists, the lobbied, matters on which lobbying takes place and information disclosed). What this might mean in practice can only be determined in the context of further examination, analysis and assessment of implementation issues.

Finally, the oversight/supervisory body for the regulatory system should have a key role in providing education, guidance and support to those using the register to minimise concerns and promote appropriate usage.

### **11.2 Recommendation 14: Implementation Issues**

It is recommended that an advisory group composed of relevant experts and key stakeholders is established to provide information and guidance to assist in addressing key implementation challenges.

It is recommended that the Department should consult widely on implementation issues in planning for the establishment of the lobbying register.

It is recommended that reports of lobbying activity should be made by registrants on a quarterly basis within 10 working days of the expiry of the previous quarter providing information on:-

- (i) the specific nature of the issues on which lobbying has taken place,
- (ii) the person(s) who has/have been the subject of lobbying, and
- (iii) summary information to determine the nature, scope, intensity and type of the lobbying activity over that period.

It is recommended that the scope of, and the necessity for, a phased implementation of the proposed regulatory regime within a specified and planned time frame is assessed in due course.

It is recommended that the regulator for the lobbying register is assigned a role and has responsibility for providing education, guidance, information and support to assist the effective operation of the regulatory system and is required to consult formally with users on implementation and operational matters.

### **11.2.1 Points for further review**

The foregoing recommendations which relate to detailed implementation issues will be the subject of further examination in light of future decisions on the proposed policy approach and the drafting of the consequent legislation for lobbying regulation.

## **11.3 Fees**

### **11.3.1 What is the practice abroad?**

In the majority of jurisdictions where a register of lobbyists has been introduced there is no charge for online registration but a fee is charged for paper registration.

### **11.3.2 What was recommended in the submissions received?**

The general view emerging from the submissions is that costs should not apply to those registering. One view suggests “*It would be inappropriate to create a registration ‘fee’ system that placed a cost on registered bodies*”<sup>198</sup> and is agreed with by “*There should be no fee for making an annual return or any other report.*”<sup>199</sup> The opposite view argues “*...it is appropriate that lobbyists themselves contribute to the cost of the register, through an annual registration fee...*”<sup>200</sup>

### **11.3.3 What was the approach in the Private Members’ Bills?**

The Fianna Fáil PMB (2012), and the Labour Party PMB (2008), state that the Minister may introduce a fee for filing a return.<sup>201</sup> The Fine Gael draft Bill does not make any direct reference to a fee.<sup>202</sup>

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<sup>198</sup> Irish Business and Employers Confederation (IBEC)

<sup>199</sup> The Irish Farmers Association (IFA)

<sup>200</sup> Conor McGrath Public Affairs

<sup>201</sup> Fianna Fáil PMB 2012, *Lobbyists Bill*, section 4 and Labour Party PMB, *Registration of Lobbyists Bill*, section 14.

<sup>202</sup> See the Fine Gael draft Bill in the *New Politics* document 2010.

#### **11.4 Recommendation 15: Registration Fees**

In view of current severe budgetary pressures, it is recommended that a fee structure should be considered to cover the cost of the establishment and maintenance of the lobbying register. It is not expected that the level of fee would be set at a level which acted as a significant disincentive to registration.

##### **11.4.1 Points for further review**

What fee range would be considered appropriate on an annual basis for ongoing registration and reporting of lobbying activities?

## **Chapter 12: “Cooling-off” Period**

### **12.1 Introduction**

The Programme for Government commits to amending "...*the rules to ensure that no senior public servant (including political appointees) or Minister can work in the private sector in any area involving a potential conflict of interest with their former area of public employment, until at least two years have elapsed after they have left the public service.*"

A proposed cooling-off period, in the context of the regulation proposed in this paper, refers to a period of time after leaving office during which former office holders (and possibly others) would be barred from engaging in certain lobbying activity. This measure has been introduced in other jurisdictions although the period of time chosen has varied. The measure is sometimes identified as designed to address the “revolving door syndrome” which arises when individuals move from a ministerial or senior administrative role to a private sector employment in a closely related area where a conflict of interest exists or might be perceived to exist between their new and previous role.

#### **12.1.1 What is the practice abroad?**

##### *Canada*

All state jurisdictions in Canada have cooling-off periods. Under the federal regulations this consists of a period of five years.<sup>203</sup> The provinces have different time periods in place from six months upwards.

##### *Australia*

In Australia there is a ‘cooling-off’ period for Ministers and Parliamentary Secretaries of 18 months and for Ministerial staff of 12 months.<sup>204</sup> Previous discussion included increasing the cooling-off period to 2 years but this has not yet been implemented.<sup>205</sup>

##### *EU Institutions*

Any former MEP who engages in lobbying directly linked to the European Union decision making process shall not benefit from the facilities granted to former Members for the duration of the activity in question.<sup>206</sup>

Former Commissioners cannot engage in any lobbying activity of Commissioners and their staff for 12-18 months after leaving office. Indeed any activity pursued by a former Commissioner during this period will need to be approved by the Commission.<sup>207</sup>

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<sup>203</sup> Canada, Lobbying Act, Section 10.11.

<sup>204</sup> Australia, Lobbying Code of Conduct, Section 7.1.

<sup>205</sup> Possible Reform to the Lobbying Code of Conduct and Register of Lobbyists, Discussion Papers, July 2010, p.7.

<sup>206</sup> Code of Conduct for Members of the European Parliament with respect to financial interests and conflict of interest, Annex 1, Article 6, in Rules of Procedure of the European Parliament.

<sup>207</sup> EU Institutions, Code of Conduct for Former Commissioners, 2011, Section 1.2.

### **12.1.2 What was recommended in the submissions received?**

A minority of the submissions mention a ‘cooling off’ period, however, when it is mentioned, it is in the context of a recommendation to proceed with such a provision. A two year cooling-off period for former public office holders is proposed in several submissions. Sometimes these recommendations extend to former civil servants, former special advisers and former chairs of Oireachtas Committees. One submission advises that the ban extend to giving behind the scenes advice or consultations.<sup>208</sup>

Other submissions refer to the need for greater transparency in relation to the lobbying activities of former office holders. Two submissions agree with the position of the UK-based Alliance for Lobbying Transparency that a mandatory register should include information on any public office held by lobbyists within 5 years to reveal the ‘revolving door’.<sup>209</sup>

### **12.1.3 What does the independent international analysis/academic research say about cooling off periods?**

#### *OECD*

The OECD has recommended that countries impose restrictions on public officials leaving office. It is stated that it might be necessary to impose a ‘cooling off’ period that temporarily restricts former public officials from lobbying their past organisations.

*Raj Chari, John Hogan and Gary Murphy ‘Regulating Lobbying a Global Comparison’*

The ‘cooling off’ period was used as a factor in calculating scores on an index in this book, so it can be inferred from the inclusion of the cooling off period that it is deemed to be important in an effective regulatory system.

### **12.1.4 What was the approach in the Private Members’ Bills?**

In the 2008 Private Members Bill the Labour Party states that a Member of Dáil Éireann or of Seanad Éireann shall not engage in any lobbying activities. It also states that a person who is a director or member of, or who occupies a position of employment in a public body, shall not for the duration of such appointment, membership or employment, and for 2 years thereafter, engage in lobbying activities in respect of the business or affairs of that body. A special adviser is subject to similar rules.

This creates a ‘cooling off’ period for former members of public bodies and former special advisers but does not mention former office holders.

In the Fine Gael draft lobbying Bill contained in the “New Politics” document 2010 it is stated that a one year ‘cooling off’ period for ex local and central government officials would be applied. However the draft Bill contained in this document states that public officials would be restricted from engaging in lobbying activity for three years after leaving office.

### **12.1.5 Wider context**

Although the Mahon Tribunal Report does not directly make the recommendation that a cooling-off period be implemented, several related points are made. The Report notes that “...corruption risks stem from the fact that, having left public office, public officials are

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<sup>208</sup> Dr Elaine Byrne.

<sup>209</sup> The Irish Heart Foundation and One Family.

*frequently engaged as lobbyists. Consequently, in some instances, a public official's behaviour in office may be influenced by the promise of a lucrative career as a lobbyist on leaving that office. Moreover, former public officials who are engaged as lobbyists may obtain privileged access from their former colleagues and may be privy to inside information which is not available to their competitors. This raises questions regarding both the fairness and the transparency of government decisions.”<sup>210</sup>*

## **12.2 Recommendation 16: ‘Cooling off’ period**

Consistent with the recommendation contained in the Programme for Government it is recommended that no senior public servant (including political appointees) or Minister can work in the private sector in any area involving a potential conflict of interest with their former area of public employment, until at least two years have elapsed after they have left the public service.<sup>211</sup>

### **12.2.1 Points for further review**

Further detailed legal analysis will be required in relation to this recommendation to ensure that it is sharply focused on the limited number of cases where a significant conflict of interest or perceived significant conflict of interest would be expected to arise. On the basis of a preliminary legal analysis, it is believed that the wider the restriction, the greater the likelihood that it may be vulnerable to legal challenge on the basis that it impacts adversely on an individual’s constitutional rights. The restriction should, therefore, be targeted at prohibiting direct involvement in lobbying where the particular individual previously had a direct responsibility or involvement as a public official in relation to the specific matter and, for example, might be involved in lobbying those with whom they had previously worked.

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<sup>210</sup> The Mahon Tribunal Report p2637 (6.06)

<sup>211</sup> Programme for Government: Government for National Recovery 2011-2016, 2011

## **Chapter 13: Access to Parliament and its Environs**

### **13.1 Introduction**

The regulation of lobbyists overseas can sometimes be accompanied by access rights to Parliamentary Buildings and its environs e.g. the current voluntary EU Transparency Register uses access rights to the EU institutions to encourage registration.

#### **13.1.1 Current arrangements for access**

The regulation of access to the Leinster House complex is a matter for the Oireachtas. Particular rules apply to lobby groups. Any changes to the current arrangement would be a matter for the Houses of the Oireachtas to determine.

#### **13.1.2 What is the practice abroad?**

##### *EU Institutions*

Although the European Parliament and the European Commission have amalgamated their voluntary registers to create the European Transparency Register it is still necessary (in theory) for a lobbyist to be registered in order to lobby within the Parliament building. Passes are issued for a period of one year. However, there are recent indications that this system is not now working as intended.<sup>212</sup>.

##### *France*

The French register of lobbyists is based entirely on access. The National Assembly and the Senate have separate registers. Registration on the register of the National Assembly qualifies the registrant to an access pass which is only valid for one day at a time. The Senate issues passes valid for one year to registrants. These regulations do not hinder lobbyists entering these buildings on invitation.

##### *Germany*

In order to lobby within the *Bundestag* registration on a register is necessary. Registrants are issued with access passes to Parliamentary buildings when they register. It is necessary to be registered to be heard at Parliamentary committees and registered associations can participate in the preparation of federal legislation.

However, deputies can invite organisations in to present information even if they are not registered and thus there is a loophole in this system. Ministers can, by law, also receive delegations. Furthermore, in Germany, Bills are drafted by the civil service and the Head of a relevant division can invite organisations and groups who will be affected by a particular Bill in for consultation.

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<sup>212</sup> This now reflected in the requirement for lobbyists to queue and get an access badge each time he/she wishes to enter the European Parliamentary building owing to security concerns..

### **13.1.3 What was recommended in the submissions received?**

The majority of the submissions do not mention this issue. A small number mention the issuing of access badges in a positive light in order to ensure equal access for all stakeholders.<sup>213</sup>

Several submissions are against the introduction of an access pass system.<sup>214</sup> Another submission broadly agrees although it is acknowledged that there is room for debate on this issue.<sup>215</sup> Significantly, it is also noted that the access privileges granted to former office holders should be suspended for as long as they are operating as lobbyists.<sup>216</sup>

### **13.1.4 What does the independent international analysis/academic research say about access issues?**

#### *OECD*

In the research carried out by the OECD it is observed that the Society of European Affairs Professionals (SEAP), which operates in Brussels, has laid emphasis on developing cooperative relationships between the lobbying community and members and staff of the European Parliament, European Commission and European Council. SEAP works with members and staff of the European Union institutions (EU) advising on proper procedures governing access to the premises and governmental officials.<sup>217</sup>

#### *Jonathon Fallon*

Fallon has analysed issues of access and lobbying. He is of the opinion that regulation of access of lobbyists to Leinster House is necessary if an attempt is being made to grant all stakeholders equal access to their representatives. He observes that the current situation sees those with contacts having greater access to Leinster House. He does also note, however, that much lobbying takes place outside this building.<sup>218</sup>

### **13.1.5 What was the approach in the Private Members' Bills?**

The only party to mention this issue in any way is Fine Gael. However, it is not clear that access is really the issue being addressed. The draft bill attached to the "New Politics" (2010) document states that accreditation cards should be issued to registrants but it is not specified if this would enable access.<sup>219</sup>

### **13.1.6 Wider context**

In countries where registration is linked to access to parliamentary buildings, removal of access badges can accompany suspension or removal from the register (e.g. France). Fines and terms of imprisonment are the other sanctions imposed.

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<sup>213</sup> See for example the submission of the PRCA.

<sup>214</sup> See the TASC submission and the Transparency International Ireland submission.

<sup>215</sup> See the submission of Conor McGrath Public Affairs.

<sup>216</sup> See the submissions of Conor McGrath Public Affairs and Transparency Ireland.

<sup>217</sup> OECD *Lobbyists, Government and Public Trust: Promoting Integrity by self-regulation*, 2009, p30

<sup>218</sup> Jonathon Fallon (of EPS Consulting) "Access: insider perk or key to transparency?", Journal of Public Affairs 11(2) 2011.

<sup>219</sup> Fine Gael draft Bill, section 26B (4), in "New politics" (2010)

### **13.2 Recommendation 17: Access to Leinster House**

It is recommended that all registrants on the lobbying register be required to state, as a disclosure requirement, any access rights that they have to these buildings.

The issue of whether registrants should be issued with access badges is an issue for the Houses of the Oireachtas to determine.

While recognising that it is entirely and exclusively a matter for the Houses of the Oireachtas themselves, it may be appropriate for the Houses of the Oireachtas to consider the case for reviewing its internal arrangements in respect of lobbying activities in light of, for example, the principles and objectives set out in the legislation and the operation of the regulatory system.

## **Appendix 1**

### **Lobbying in Ireland**

The lobbying industry in Ireland is by no means sizeable; a 2010 figure estimates that there are between 100-200 consultant lobbyists and around 500-600 in-house lobbyists operating in Ireland.<sup>220</sup> Such is the relatively small size of the professional lobbying industry in Ireland that it has been described as a ‘sub-sector’ of the broader PR industry.<sup>221</sup> In Ireland generally lobbying is carried out by;-

- (i) A small number of dedicated public affairs practitioners
- (ii) General service PR firms
- (iii) Professional services firms (particularly large accounting and legal firms)
- (iv) Corporate finance companies
- (v) Trade associations and representative groups
- (vi) Former politicians, ex civil servants and former journalists on an individual basis
- (vii) The corporate affairs functions of large corporate entities
- (viii) Charities and NGOs
- (ix) Trades unions and employers groups

Lobbying in Ireland may not occur on a scale similar to London, Brussels or Washington but it is growing. Most PR firms, agencies and NGOs now have ‘public affairs’ or ‘parliamentary affairs’ divisions that specifically target decision makers to further policy and legislation in their fields of interest. It has been argued that the growth of the lobbying sector in Ireland can be attributed to an overload of the political system; whereby TDs and Senators receive relatively little funding for researchers and policy advisors compared to the high demands placed on them by constituents to formulate policy. The lobbying industry has grown to fill this information vacuum.<sup>222</sup>

However, lobbyists in Ireland do not only target members of the Oireachtas. It has been noted that lobbyists contribute to the policy making process through civil service officials, such as Principal Officers or Assistant Secretaries.<sup>223</sup>

One concern that has been voiced about the lobbying environment in Ireland is the ‘revolving door’ relationship the lobbying industry has with Irish politics. Some notable lobbyists have come from a lobbying background, entered public office, only to return to employment in the lobbying industry after they have served their term.<sup>224</sup>

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<sup>220</sup> Conor McGrath, ‘Lobbying Regulation: An Irish solution to a Universal Problem?’ in John Hogan, Paul F. Donnelly and Brendan K. O’Rourke (Eds) *Irish Business and Society: Governing, Participating and Transforming in the 21<sup>st</sup> Century*. (Dublin: Gill and Macmillian. 2012), p218

<sup>221</sup> Conor McGrath, ‘Lobbying Regulation: An Irish solution to a Universal Problem?’ in John Hogan, Paul F. Donnelly and Brendan K. O’Rourke (Eds) *Irish Business and Society: Governing, Participating and Transforming in the 21<sup>st</sup> Century*. (Dublin: Gill and Macmillian. 2012), p218

<sup>222</sup> Conor McGrath, Lobbying Regulation: An Irish solution to a Universal Problem? In John Hogan, Paul F. Donnelly and Brendan K. O’Rourke (Eds) *Irish Business and Society: Governing, Participating and Transforming in the 21<sup>st</sup> Century*. (Dublin: Gill and Macmillian. 2012), p217

<sup>223</sup> Harry McGee, *Irish Political Lobbying: Who’s who and how does it work?* Irish Times, Saturday 25 March 2010.

<sup>224</sup> Conor McGrath, *The lobbyist with ‘balls of iron and a spine of steel’: why Ireland needs lobbying reform*, (Journal of Public Affairs, 2009), (9), p266.

The terms “lobbying” and “lobbyists” in Ireland have, over the years, become increasingly synonymous with scandal and corruption. However, if anything, this has provided the impetus to bring about serious reform in Ireland, shed a greater light on the policy making process and identify who is attempting to influence it in Ireland. It has been argued in academic research that lobbyists are generally in favour of introducing a register to bring transparency to their profession.<sup>225</sup> Consistent with this view, it has been claimed that lobbyists in Ireland also support the idea of register to bring their profession out of the shadows.<sup>226</sup> However, so long as lobbying in Ireland remains opaque and closed to scrutiny, negative perceptions are likely to continue to haunt the industry.

The proposed regulatory structure must recognise the diverse and dispersed nature of lobbying in Ireland. Inputs to policy development do not just come from dedicated public affairs practitioners and their clients, but also from a very broad and diverse range of sources. A model leading to the regulation of some, but not all, of the categories listed above will leave important gaps and not support the achievement of the transparency and integrity objective of the regulatory initiative. For example, simply regulating the political consultancy sector would leave the majority of lobbyists unregulated.

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<sup>225</sup> R.Chari, J.Hogan and G.Murphy, *Regulating Lobbying: A Global Comparison*, (Manchester: Manchester University Press 2010) p147.

<sup>226</sup> Harry McGee, *Irish Political Lobbying: Who's who and how does it work?*, Irish Times, Saturday 25 March 2010.

## **Appendix 2**

### **Submissions to the Department of Public Expenditure and Reform's Public Consultation Process**

| <b>Initials</b>        | <b>Title</b>  |
|------------------------|---|
| ASH Ireland            | Action on Smoking and Health  |
|                        | Age Action Ireland Ltd.   |
|                        | Alcohol Action Ireland  |
| AOI                    | Association of Optometrists Ireland   |
|                        | Barnardos   |
|                        | BirdWatch Ireland   |
|                        | Chambers Ireland  |
| CAI & CCAB-I           | Chartered Accountants Ireland and Consultative Committee of Accounting Bodies |
|                        | Conor McGrath Public Affairs  |
| Cúram                  | Cúram (Irish Parent & Carers NGO)   |
|                        | Department of Jobs, Enterprise and Innovation                                 |
|                        | Dr Elaine Byrne (Adjutant Lecturer, Trinity College)                          |
| DIMA                   | Dublin International Insurance & Management Association                       |
|                        | Eve Rowan, Ciara O'Sullivan and Killian Keys (DIT Students)                   |
| FODO                   | Federation of Ophthalmic and Dispensing Opticians                             |
| FODO                   | Federation of Ophthalmic and Dispensing Opticians (Letter)                    |
|                        | Fianna Fáil   |
|                        | FLAC  |
| GCF Consulting         | Free Legal Advice Centers Ltd.  |
|                        | GCF Consulting  |
|                        | Hume Brophy   |
| IPAV                   | Institute of Professional Auctioneers and Valuers                             |
| IBEC                   | Irish Business & Employers' Confederation                                     |
| ICS                    | Irish Cancer Society  |
| ICTR                   | Irish Charities Tax Reform Group  |
| ICTU                   | Irish Congress of Trade Unions  |
| ICSH                   | Irish Council for Social Housing  |
| IFA                    | Irish Farmers Association   |
| IHF                    | Irish Heart Foundation  |
|                        | Irish Hospice Foundation  |
| IMO                    | Irish Medical Organisation  |
| INOU                   | Irish National Organisation for the Unemployed                                |
| IPU                    | Irish Pharmacy Union  |
| IPOA                   | Irish Property Owners Association   |
| ISCP                   | Irish Senior Citizens Parliament  |
| ISME                   | Irish Small and Medium Enterprises Association                                |
| ITIC                   | Irish Tourist Industry Confederation  |
|                        | JohnPlayer  |
| Law Society of Ireland | Law Society of Ireland  |
|                        | Mason Hayes & Curran  |
|                        | Nessa Childers M.E.P.   |
| Older & Bolder         | Older & Bolder  |
|                        | One Family  |

|            | PolicyAction   |
|------------|--|
| PIBA       | Professional Insurance Brokers Association                                   |
| PRCA       | Public Relations Consultants Association Ireland                             |
| PRII       | Public Relations Institute of Ireland  |
| RAI        | Restaurants Association of Ireland   |
| RGDATA     | Retail Grocery, Dairy & Allied Trades Association                            |
| SJI        | Social Justice Ireland   |
| SVP        | Society of St. Vincent de Paul   |
| TASC       | TASC   |
|            | The Advocacy Initiative  |
|            | The Advocacy Statement Designed  |
| ASI        | The Alzheimer Society of Ireland   |
| treoir     | The National Federation of Services for Unmarried Parents and their Children |
|            | The Wheel  |
|            | Transparency Ireland   |
|            | Valuation Office   |
| VOICE      | Voice of Irish Concern for the Environment                                   |
| Arthur Cox | Working Group of Irish Charity Law Practitioners                             |
| Arthur Cox | Working Group of Irish Charity Law Practitioners (Australian Definition)     |

## Appendix 3

### References

#### **Ireland**

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[http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/civil\\_service/lobbyists.aspx](http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/lobbyists.aspx)

### **Canada**

*Legislation*

The Lobbying Act.

*Reports*

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[http://www.lobbyistsregistrar.bc.ca/images/pdfs/New\\_Requirements\\_for\\_Lawyers.pdf](http://www.lobbyistsregistrar.bc.ca/images/pdfs/New_Requirements_for_Lawyers.pdf)

### **The United States (US)**

*Federal Legislation*

The Lobbying Disclosure Act.

*State Legislation*

Comprehensive Government Ethics Reform Act, Tennessee, 2006.

### **The European Union**

*Legislation/Codes of Conduct*

Interinstitutional Agreement on the European Transparency Register.

Treaty on the Functioning of the European Union (TFEU).

Code of Conduct for Commissioners, 2011.

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### **France**

#### *Legislation/Rules/Codes*

*Instruction Générale du Bureau de l'Assemblée Nationale, article 26:* <http://www.assemblee-nationale.fr/representants-interets/index.asp#code>

Rules of Procedure of the National Assembly 2010, article 79: <http://www.assemblee-nationale.fr/english/8ac.asp>

*Représentants d'intérêts à l'Assemblée Nationale, code de conduite applicable aux représentants d'intérêts adopté par le Bureau le 2 juillet 2009:* <http://www.assemblee-nationale.fr/representants-interets/index.asp#code>

*Règlement du Sénat et Instruction Générale du Bureau, XXII bis:*

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### **Germany**

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## Web-based Research

### The United Kingdom (UK)

United Kingdom Public Affairs Council (UKPAC): <http://www.publicaffairscouncil.org.uk/>

### Canada

Canadian Federal Register of Lobbyists: <http://www.ocl-cal.gc.ca/eic/site/012.nsf/Intro>  
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Register of Lobbyists in Ontario: <https://lobbyist.oico.on.ca/LRO/GeneralSettings.nsf/vwEnHTML/Home.htm>

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The US Federal Register of Lobbyists: <http://disclosures.house.gov/ld/ldsearch.aspx>

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### Germany

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### Australia

The Australian Register of Lobbyists: [http://lobbyists.pmc.gov.au/who\\_register.cfm](http://lobbyists.pmc.gov.au/who_register.cfm)

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Office of the Revenue Commissioners: <http://www.revenue.ie/en/index.html>

The Public Relations Institute of Ireland (PRII): <http://www.prii.ie/>

Standards in Public Office Commission (SIPo): <http://www.sipo.gov.ie/en/>

The Code of Athens: [http://www.prii.ie/show\\_content.aspx?idcategory=1&idsubcategory=1](http://www.prii.ie/show_content.aspx?idcategory=1&idsubcategory=1)

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## **Appendix 4**

### **Extract from the Final Report of Mahon Tribunal**

#### **Recommendations on Lobbying**

The Tribunal recommends that:-

1. Professional lobbyists should be subject to registration requirements.
2. Professional lobbyists should be regularly required to disclose at a minimum:-
  - the identity of their clients;
  - the objects of their lobbying activity;
  - details of the public institutions and public officials being lobbied.
3. Professional lobbyists should be required to adhere to a statutory-based code of conduct.
4. Public officials should be given clear guidance on how they are expected to engage with professional lobbyists with specific reference to lobbyists who are former public officials.
5. Senior Officeholders should be required to record and publish details regarding their contacts with professional lobbyists.

## **Appendix 5**

07 Feb 2008

### **Codes of practice**

PRII members currently subscribe to three codes - the European Code of Professional Practice, adopted by the European Public Relations Confederation (CERP) in 1978 and commonly known as the Code of Lisbon, the International Code of Ethics, also known as the Code of Athens and the PRII Code of Practice for Public Affairs & Lobbying.

- [Code Of Lisbon](#)
- [Code Of Athens](#)
- [PRII Code of Practice for Public Affairs & Lobbying](#)

### **PRII Code of Professional Practice for Public Affairs & Lobbying**

*This Code was adopted by the 20th annual general meeting of members of the Public Relations Institute of Ireland, held in Dublin on 08 December 2003*

The Public Relations Institute of Ireland (PRII) believes that professional public affairs practice and lobbying are proper, legitimate and important activities, which ensure an open two-way communication between national and local government (including the Oireachtas, the entire public service, as well as other bodies funded wholly or mainly from public funds), the institutions of the European Union (EU) and bodies whose activities and interests are governed, regulated, impacted or otherwise influenced by such institutions. Furthermore, PRII believes that the existence of a defined code for the practice of public affairs and lobbying will serve to enhance the integrity of the democratic process.

Public relations practitioners will, from time to time, make representations to public representatives of all types, whether elected, co-opted, appointed, public servants, those employed in the public service, or those appointed to public bodies (for the purposes of this Code all such people will henceforth be referred to as public officials).

In order to ensure that the activities of its members are conducted to the highest possible standards of practice and ethics, the Public Relations Institute of Ireland has adopted this Code of Professional Practice, which is a condition of membership of the Institute.

The code will direct PRII members as to acceptable and appropriate standards of behaviour in public affairs activity. It complements the obligations of public officials under the Ethics in Public Office Acts, Local Government Acts, Electoral Acts and standard terms of employment and other rules which also govern the activities of such officials.

For the purposes of this Code of Professional Practice, public affairs practice is defined as:

All activity associated with representing the interests of a client or employer in relation to any matter of public policy, including:

- Provision of professional advice to clients/employers on matters relevant to public policy or law; or procurement, selection, nomination or appointment for public contract or office;

- Lawful and ethical actions intended to promote a change of public policy or law;
- The making of representations, or the advocacy of a point of view, to any persons or institutions, including the provision of information and advice.

## **Code of Professional Practice**

All members of the Public Relations Institute of Ireland:

### **A. Conduct towards the public**

1. Shall at all times be familiar with and observe all relevant EU, local, national and international law in force, shall have due regard for the public interest and shall not seek to improperly influence the decision-making processes of government, whether local or national, or the E.U. Institutions.
2. Shall take reasonable steps to ensure that all information supplied, and representations made, by them to third parties is factually accurate and honest.
3. Will actively disclose, at the earliest possible opportunity, the identity of clients on whose behalf they are making representations on matters of public policy or decision-making, current or proposed legislation, or in respect of the business of the Oireachtas, Northern Ireland Assembly, local authorities, the European Parliament or any other parliament or legislative assembly.
4. Shall ensure that any financial relationships involved in their professional dealings are legal and ethical. PRII members will neither offer or give, nor cause a client/employer to offer or give, any inducement or reward, direct or indirect, to any public official or person acting on their account.
5. Shall act at all times in a professional, ethical and reasonable manner and shall not bring unreasonable or undue pressure or influence to bear in their activities as public affairs practitioners. All public officials should, at all times, be treated with courtesy and respect.
6. Where he/she is a member of a local authority or is appointed by the government to any state or semi-state body, or is engaged by such organisations on a consultancy basis, shall not offer public affairs consultancy services to third parties in respect of the business or related activities of that authority, body or organisation as well as to related, linked or subsidiary organisations.
7. Shall not offer public affairs consultancy services and simultaneously be a member of the Oireachtas, Northern Ireland Assembly, UK Parliament, European Parliament, or other parliaments or legislative assemblies.
8. Shall not offer public affairs consultancy services for financial reward or other inducements and simultaneously be employed in the Public Service or engaged as a full time advisor to government.
9. Shall, while attending any parliamentary or other representative assembly, national or local government building, observe the rules and procedures of that institution.

### **B. Conduct towards clients / employers**

10. Recognise their duty of professional care to their clients and/or employers.

11. Shall take all necessary steps to ensure that they are properly informed of their clients' or employers' relevant concerns and interests and shall at all times properly and honestly represent these interests.
12. Shall properly inform clients about any potential conflicts of interest, or of any competing interests arising from their professional practice or other business, family or social associations. If it should emerge that an actual conflict of interest exists and it cannot be resolved, the member must cease to act for that client. A member may represent such competing interests only:
  - a. where he/she has obtained the explicit and informed consent of all the parties involved, and;
  - b. where the member is enabled to act for each of the parties with an equal professionalism and duty of care.
13. Shall, in all cases where any conflict of interest or potential conflict arises between their professional duties and their personal activities, give precedence to their professional responsibilities and where necessary either cease the relevant personal activity or withdraw from their professional duty.
14. Have a positive duty in all their professional dealings to maintain full and proper client confidentiality.
15. Where he/she forms the opinion that the objectives or activities of his or her client/employer may be unethical, illegal or contrary to good professional practice, including this code of conduct, are required to so advise the client/employer. In circumstances where this advice is not acted upon in the appropriate manner, the member shall forthwith cease to act on behalf of the client/employer in such matters.
16. Shall not make improper claims regarding their access to, or influence over, any institution of the European Union, national or local government, public official or member of the media.
17. Shall not knowingly guarantee the achievement of results nor undertake assignments which are beyond the member's capabilities.

### **C. Conduct towards the profession**

18. Reaffirm their commitment to the European Code of Professional Practice (Code of Lisbon) and the International Code of Ethics (Code of Athens) and their successors.
19. Shall not bring professional public affairs and public relations practice into disrepute.

### **Breaches of the Code**

Breaches of this Code of Conduct shall be treated as breaches of the Disciplinary Code of the Public Relations Institute of Ireland and shall be subject to such procedures and sanctions as provided for in the Disciplinary Code.

### **Revisions**

The Council of the Public Relations Institute of Ireland may from time to time propose amendments to the code as outlined to members in the event of any further legislative or relevant other developments that in the Council's opinion might require such a change in the interests of its members and in the spirit of the code.

## **Appendix 6**

### **The 10 Principles for Transparency and Integrity in Lobbying**

#### **I. Building an effective and fair framework for openness and access**

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

Public officials should preserve the benefits of the free flow of information and facilitate public engagement. Gaining balanced perspectives on issues leads to informed policy debate and formulation of effective policies. Allowing all stakeholders, from the private sector and the public at large, fair and equitable access to participate in the development of public policies is crucial to protect the integrity of decisions and to safeguard the public interest by counterbalancing vocal vested interests. To foster citizens' trust in public decision making, public officials should promote fair and equitable representation of business and societal interests.

##### ***2. Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts.***

Countries should weigh all available regulatory and policy options to select an appropriate solution that addresses key concerns such as accessibility and integrity, and takes into account the national context, for example the level of public trust and measures necessary to achieve compliance. Countries should particularly consider constitutional principles and established democratic practices, such as public hearings or institutionalised consultation processes.

Countries should not directly replicate rules and guidelines from one jurisdiction to another. Instead, they should assess the potential and limitations of various policy and regulatory options and apply the lessons learned in other systems to their own context. Countries should also consider the scale and nature of the lobbying industry within their jurisdictions, for example where supply and demand for professional lobbying is limited, alternative options to mandatory regulation for enhancing transparency, accountability and integrity in public life should be contemplated. Where countries do opt for mandatory regulation, they should consider the administrative burden of compliance to ensure that it does not become an impediment to fair and equitable access to government.

##### ***3. Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.***

Effective rules and guidelines for transparency and integrity in lobbying should be an integral part of the wider policy and regulatory framework that sets the standards for good public governance. Countries should take into account how the regulatory and policy framework already in place can support a culture of transparency and integrity in lobbying. This includes stakeholder engagement through public consultation and participation, the right to petition government, freedom of information legislation, rules on political parties and election campaign financing, codes of conduct for public officials and lobbyists, mechanisms for keeping regulatory and supervisory authorities accountable and effective provisions against illicit influencing.

##### ***4. Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider***

*or develop rules and guidelines on lobbying.*

Definitions of 'lobbying' and 'lobbyists' should be robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes. In defining the scope of lobbying activities, it is necessary to balance the diversity of lobbying entities, their capacities and resources, with the measures to enhance transparency. Rules and guidelines should primarily target those who receive compensation for carrying out lobbying activities, such as consultant lobbyists and in-house lobbyists. However, definition of lobbying activities should also be considered more broadly and inclusively to provide a level playing field for interest groups, whether business or not-for-profit entities, which aim to influence public decisions.

Definitions should also clearly specify the type of communications with public officials that are not considered 'lobbying' under the rules and guidelines. These include, for example, communication that is already on public record – such as formal presentations to legislative committees, public hearings and established consultation mechanisms.

## **II. Enhancing transparency**

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

Disclosure of lobbying activities should provide sufficient, pertinent information on key aspects of lobbying activities to enable public scrutiny. It should be carefully balanced with considerations of legitimate exemptions, in particular the need to preserve confidential information in the public interest or to protect market-sensitive information when necessary. Subject to Principles 2 and 3, core disclosure requirements elicit information on in-house and consultant lobbyists, capture the objective of lobbying activity, identify its beneficiaries, in particular the ordering party, and point to those public offices that are its targets. Any supplementary disclosure requirements should take into consideration the legitimate information needs of key players in the public decision-making process. Supplementary disclosure requirements might shed light on where lobbying pressures and funding come from. Voluntary disclosure may involve social responsibility considerations about a business entity's participation in public policy development and lobbying. To adequately serve the public interest, disclosure on lobbying activities and lobbyists should be stored in a publicly available register and should be updated in a timely manner in order to provide accurate information that allows effective analysis by public officials, citizens and businesses.

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

The public has a right to know how public institutions and public officials made their decisions, including, where appropriate, who lobbied on relevant issues. Countries should consider using information and communication technologies, such as the Internet, to make information accessible to the public in a cost-effective manner. A vibrant civil society that includes observers, 'watchdogs', representative citizens groups and independent media is key to ensuring proper scrutiny of lobbying activities. Government should also consider facilitating public scrutiny by indicating who has sought to influence legislative or policy-making processes, for example by disclosing a 'legislative footprint' that indicates the lobbyists consulted in the development of legislative initiatives. Ensuring timely access to

such information enables the inclusion of diverse views of society and business to provide balanced information in the development and implementation of public decisions.

### **III. Fostering a culture of integrity**

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

Countries should provide principles, rules, standards and procedures that give public officials clear directions on how they are permitted to engage with lobbyists. Public officials should conduct their communication with lobbyists in line with relevant rules, standards and guidelines in a way that bears the closest public scrutiny. In particular, they should cast no doubt on their impartiality to promote the public interest, share only authorised information and not misuse ‘confidential information’, disclose relevant private interests and avoid conflict of interest. Decision makers should set an example by their personal conduct in their relationship with lobbyists.

Countries should consider establishing restrictions for public officials leaving office in the following situations: to prevent conflict of interest when seeking a new position, to inhibit the misuse of ‘confidential information’, and to avoid post-public service ‘switching sides’ in specific processes in which the former officials were substantially involved. It may be necessary to impose a ‘cooling-off’ period that temporarily restricts former public officials from lobbying their past organisations. Conversely, countries may consider a similar temporary cooling-off period restriction on appointing or hiring a lobbyist to fill a regulatory or an advisory post.

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

Governments and legislators have the primary responsibility for establishing clear standards of conduct for public officials who are lobbied. However, lobbyists and their clients, as the ordering party, also bear an obligation to ensure that they avoid exercising illicit influence and comply with professional standards in their relations with public officials, with other lobbyists and their clients, and with the public.

To maintain trust in public decision making, in-house and consultant lobbyists should also promote principles of good governance. In particular, they should conduct their contact with public officials with integrity and honesty, provide reliable and accurate information, and avoid conflict of interest in relation to both public officials and the clients they represent, for example by not representing conflicting or competing interests.

### **IV. Mechanisms for effective implementation, compliance and review**

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

Compliance is a particular challenge when countries address emerging concerns such as transparency in lobbying. Setting clear and enforceable rules and guidelines is necessary, but this alone is insufficient for success. To ensure compliance, and to deter and detect breaches, countries should design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement. 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. Countries should encourage organisational leadership to foster a culture of integrity and openness in public organisations and mandate formal reporting or audit of implementation and compliance. All key actors – in particular public officials, representatives of the lobbying consultancy industry, civil society and independent 'watchdogs' – should be involved both in establishing rules and standards, and putting them into effect. This helps to create a common understanding of expected standards. All elements of the strategies and mechanisms should reinforce each other; this co-ordination will help to achieve the overall objectives of enhancing transparency and integrity in lobbying.

Comprehensive implementation strategies and mechanisms should carefully balance risks with incentives for both public officials and lobbyists to create a culture of compliance. For example, lobbyists can be provided with convenient electronic registration and report-filing systems, facilitating access to relevant documents and consultations by an automatic alert system, and registration can be made a prerequisite to lobbying. Visible and proportional sanctions should combine innovative approaches, such as public reporting of confirmed breaches, with traditional financial or administrative sanctions, such as debarment, and criminal prosecution as appropriate.

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

Countries should review – with the participation of representatives of lobbyists and civil society – the implementation and impact of rules and guidelines on lobbying in order to better understand what factors influence compliance. Refining specific rules and guidelines should be complemented by updating implementation strategies and mechanisms. Integrating these processes will help to meet evolving public expectations for transparency and integrity in lobbying. Review of implementation and impact, and public debate on its results are particularly crucial when rules, guidelines and implementation strategies for enhancing transparency and integrity in lobbying are developed incrementally as part of the political and administrative learning process.

# **The 10 OECD Principles for Transparency and Integrity in Lobbying: A Good Governance Approach**

## **A comprehensive and non-prescriptive approach**

The Principles present the available regulatory and policy options to decision makers. They reflect experiences of countries with diverse socio-political and administrative contexts. The Principles were developed in parallel with the European Transparency Initiative and the Code of Conduct for Interest Representatives of the European Commission.

## **Whole of government scope**

The Principles provide guidance to decision makers in the executive and legislative branches at both national and sub-national level.

## **A unique international policy instrument**

The Principles are part of the OECD strategy to build a stronger, cleaner and fairer economy. They link to a broader set of initiatives triggered by the financial crisis to set standards and principles for economic activity. These include the G8 'Lecce Framework' on Propriety, Integrity and Transparency in Business Activity and the G20 Global Charter for Sustainable Economic Activity.

## **Wide multi-stakeholder consultation on the Principles for Transparency and Integrity in Lobbying**

The OECD completed a wide consultation in mid December 2009 with over a hundred stakeholders, including legislators, representatives of the private sector, lobbying associations, civil society, trade unions, think tanks, academics, and international and regional government organisations. All stakeholders acknowledged that the Principles are timely and relevant. The feedback signaled that the Principles properly address the main concerns and provide pillars for applying good governance principles in lobbying, in particular:

- Recognising the shared responsibility of both public officials and lobbyists;
- Levelling the playing field to engage stakeholders in public policies;
- Making information on lobbying activities publicly accessible to allow scrutiny; and
- Setting up effective mechanisms for implementation and compliance.

Based on the results of the multi-stakeholder consultation, the consolidated Principles were endorsed by government representatives in January 2010.

## **Next steps**

On 18 February 2010, the Principles were approved by the OECD Council and adopted as an OECD Recommendation. The OECD Recommendation demonstrates the commitment of countries to review practices and update their frameworks for transparency and integrity in lobbying.

## **Further reading**

A comparative review of potential and limitations of existing legislation and government regulations is available in the OECD publication *Lobbyists, Government and Public Trust, Volume 1: Increasing Transparency through Legislation*.

Details on the OECD survey conducted amongst the largest sample of lobbyists and experiences on self-regulation measures applied by lobbyist associations is available in a forthcoming OECD publication *Lobbyists, Government and Public Trust, Volume 2: Promoting Integrity by Self-regulation*.

## **Access to Leinster House**

### **1. Entrance Point Access Controls**

#### **a) Visitor access arrangements**

- I. The entrance point for visitors to Leinster House is through Kildare St. Gate where the main resources for security checking are located.
- II. Visitors entering through Kildare St. Gate are required to pass through the airport type checking of bags and clothing. Items considered as being dangerous and which could be used to cause injury to others will be held in safety at the gate pavilion and returned to the visitor on departure; illegal weapons will be handed over to An Gardaí.
- III. Visitors are required to wear and display a Visitor Pass which is prepared at the reception desks.

#### **b) Members of Other Parliaments, Diplomatic Corps and Distinguished Visitors**

The formal entrance for Members of Other Parliaments, Diplomatic Corps, and Distinguished Visitors is through Merrion St gate. Kildare St gate may also be used if required. Under normal security arrangements this category of visitor is not required to go through a security search or wear visitor Pass Cards.

#### **c) Leinster House Pass Card Holders**

- I. The entrance points for Pass Card holders, (Oireachtas Staff, Political Party Staff and Political Correspondents etc.), are through Kildare St. Gate and Merrion St. Gate.
- II. Under normal security arrangements Leinster House Pass Card holders are not required to pass through a security search.
- III. Leinster House Pass Card holders may be requested to present their pass at the gate controls for verification.
- IV. Leinster House Pass Card holders are required to visibly display their Passes on the provided necklace, or other forms of visible display such as clipped on clothing, when in the House and Office areas.

**Note:- Serving and Former Members are not required to pass through search checks.**

### **2. Lobby Groups Entering Leinster House**

- a) Due to considerations of security, health and safety, and in the general interests of Members and staff, it is inappropriate that lobby groups should be permitted to enter Leinster House in large numbers to engage Members in several concurrent meetings, or to be invited to use the restaurant and bar facilities for the same purpose. Members should not sponsor lobby groups to hold meetings in Leinster House when such conditions prevail or when advised of them by their Party Whip or the Superintendent.
- b) Lobby groups who wish to engage with several Members at a time should be advised to make their own arrangements for a private meeting room in close proximity but outside the precincts of Leinster House.
- c) The meeting facilities for Members who wish to receive moderate sized lobby or constituency groups are available in Leinster House 2000 (Meeting Rooms A,B,C,D).

- Each of these meeting rooms are available to Members to reserve in advance of a meeting. Lobby groups have no rights to reserve rooms in Leinster House.
- d)** At all times when in the House visitors should be accompanied by their host Member or the Member's Leinster House staff representative (Blue Pass Holder).
  - e)** Members should not bring more than two visitors to their office at any time, larger groups should be met in the Leinster House meeting rooms.
  - f)** A lobby group which has been sponsored by a Member should not be permitted to 'door step' other Members with their cause; any visitors engaging in this type of activity shall be asked to desist immediately and if refusing to do so may be asked to leave the House.
  - g) Size of Delegations and Deputations.**  
The maximum number of people in a delegation or deputation allowed into the House to visit a Member is ten, this restriction on size does not apply to school tours.
  - h) Persons Taking Part in Protests.**  
Persons participating in a protest outside gates of Leinster House are not permitted to enter the Houses while the protest is taking place.

## **MEPS - FORMER MEMBERS - MEMBERS OF OTHER PARLIAMENTS**

### ***1 Facilities for Irish MEPs***

The facilities in Leinster House which are available to Irish MEPs are as follows:

- The right to listen to debates in the Dáil lobby or in the Distinguished Visitor's Gallery;
- The right to be supplied with the daily issues and bound volumes of Parliamentary debates.
- The right to be supplied with Iris Oifigil, on request, and
- The right of access to the Oireachtas Library (*Reading Room facilities*).
- Access to Members' Restaurant and Members' Bar.
- Car Parking.

### ***2 Facilities for Former Members***

The facilities in Leinster House which are available to Former Members are as follows:

- Access to Members' Restaurant and Members' Bar.
- Car parking
- Access to the Library (*Reading Room facilities*)
- Access to the Public Gallery except on certain occasions such as 'Budget Day'.

### ***3. Members of Other Parliaments***

*The facilities in Leinster House which are available to Members of Other Parliaments are as follows:*

- Access to Members' Restaurant and Members'