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LOBBYING IN EUROPE

Hidden Influence, Privileged Access

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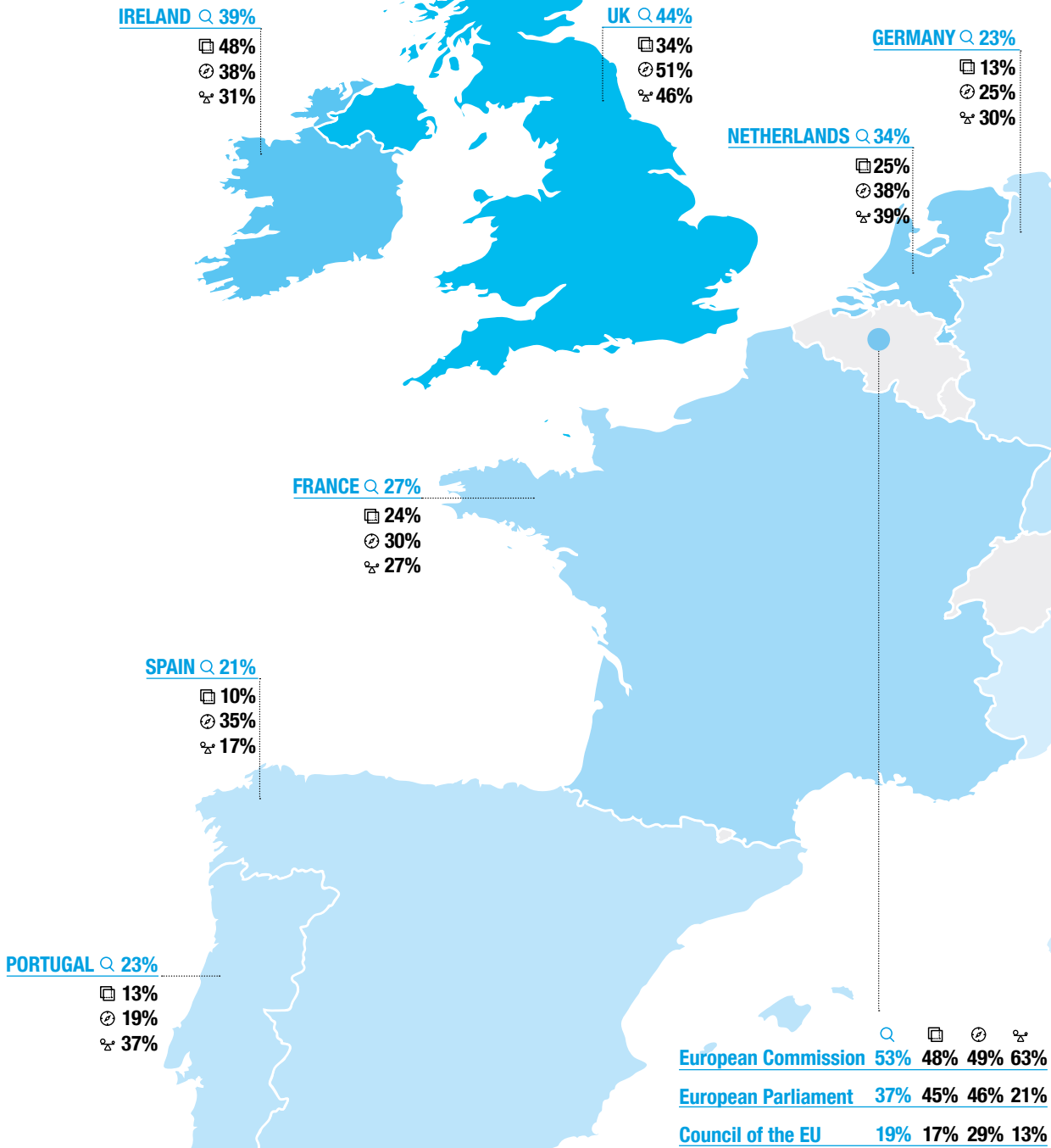
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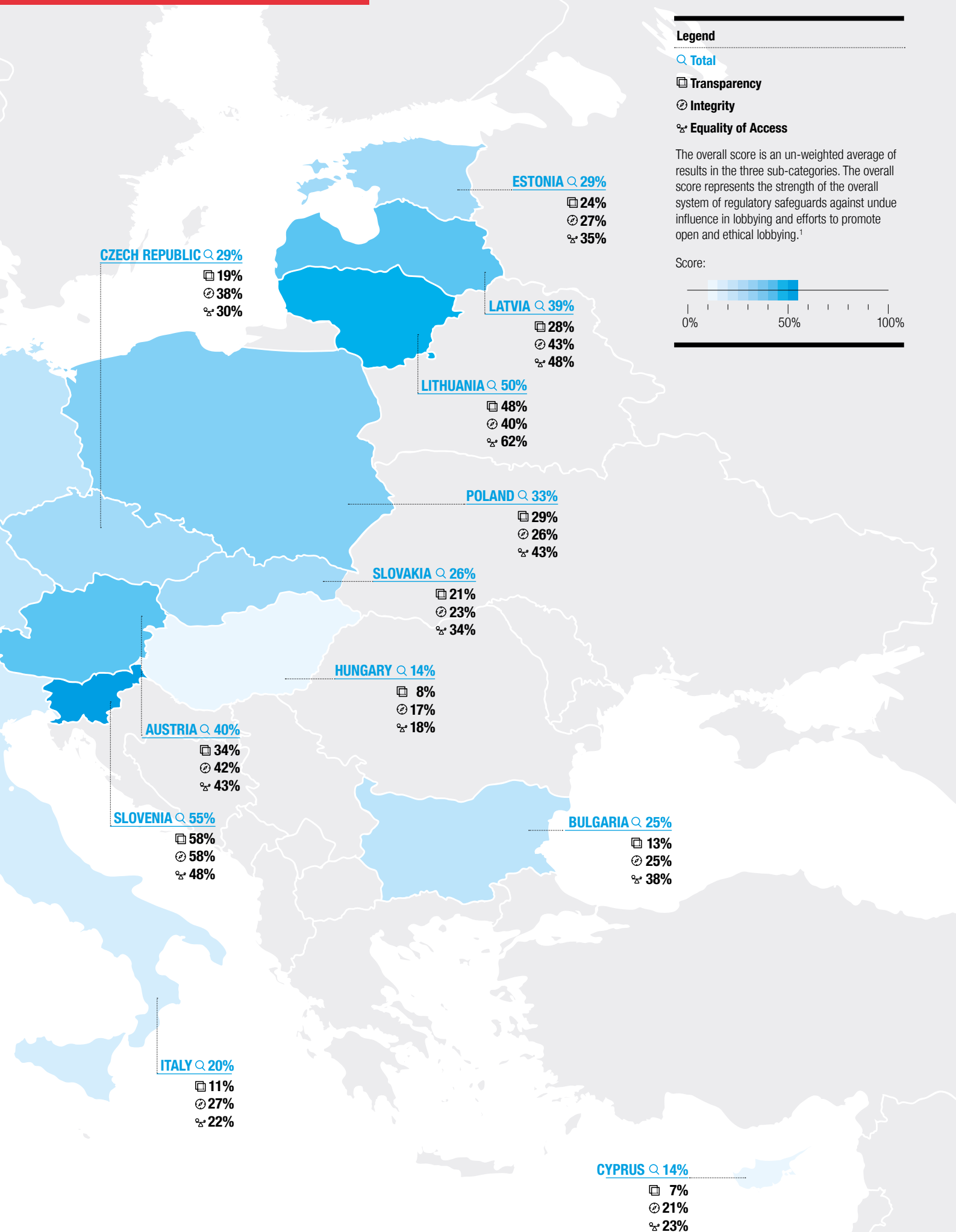
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RESULTS OVERVIEW

How strong are safeguards against undue influence and rules to promote ethical lobbying in European political systems?





HIGHLIGHTS

Quality of Lobbying Regulation

19

countries
and three EU institutions

31%

average score

Transparency

Average score %



26%

Integrity

Average score %



33%

Equality of Access

Average score %



33%

Key Statistics

7/19

countries

have a dedicated lobbying regulation
(Austria, France, Ireland, Lithuania, Poland,
Slovenia and the United Kingdom).

58%

of EU citizens

believe their country's government is to a large
extent or entirely controlled by a few big interests
(Transparency International Global Barometer, 2013)

36%

**average quality of
lobbying regulation
for the three EU
institutions**

53%

European Commission

37%

European Parliament

19%

Council of the EU

EXECUTIVE SUMMARY

Lobbying is any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making, and carried out by or on behalf of any organised group.

This report examines the practice of lobbying and the attempts to regulate it in 19 European countries and within the three core EU institutions.² It comes at a time when public trust in government is at an all-time low and the practice of lobbying is widely associated with secrecy and unfair advantage. It also comes at a moment when an increasing number of governments in Europe are promising to tackle the problem of undue influence in politics, and the need for good government is particularly pressing given the range of economic, social and political challenges currently faced by European countries and EU institutions.

Lobbying is an integral part of a healthy democracy, closely related to universal values such as freedom of speech and the right to petition of government. It allows for various interest groups to present their views on public decisions that may come to affect them. It also has the potential to enhance the quality of decision-making by providing channels for the input of expertise on increasingly technical issues to legislators and decision-makers. According to a 2013 survey of 600 European parliamentarians and officials, 89 per cent agreed that, “ethical and transparent lobbying helps policy development”.³

Despite this, multiple scandals throughout Europe demonstrate that without clear and enforceable rules, a select number of voices with better resourcing and contacts can come to dominate political decision-making. At the very least, this can skew individual decisions, and at the worst, it can lead to wide-scale institutional and state capture. At present, unfair and opaque lobbying practices constitute one of the key corruption risks facing Europe, and six out of 10 European citizens consider their government to be seriously influenced or entirely co-opted by a few vested interests.⁴

This report compiles the results of national level studies examining how lobbying manifests itself across Europe and the quality of responses by both governments and the EU institutions to the risks and realities of undue influence in public decision-making. It is the first time that such a holistic and comparable assessment has been carried out.

A particular focus of the report is on reviewing the three critical and inter-related elements of effective lobbying regulation: firstly, whether interactions between lobbyists and public officials are made transparent and open to public scrutiny (transparency); secondly, whether there are clear and enforceable rules on ethical conduct for both lobbyists and public officials (integrity); and thirdly, how open is public decision-making to a plurality of voices representative of a wide range of interests (equality of access). Any serious effort to combat undue influence in politics must recognise that transparency measures must be accompanied by broader measures to strengthen public integrity and promote opportunities for access by a wide range of citizens to the political system.

The overall results of the research give cause for concern and suggest that attempts to date to promote open and ethical lobbying standards by both governments and lobbyists have been piecemeal and ineffective. Much of the influence remains hidden and informal; there are serious conflicts of interest at play; and certain groups enjoy privileged access to decision-makers. The risks of undue influence remain high and, on occasion, this has resulted in drastic and far-reaching consequences for the economy, the environment, social cohesion, public safety, and human rights. Greater efforts by both the public sector and all those seeking to influence public decisions are urgently required to address the issue.

6 out of 10 European citizens consider their government to be seriously influenced or entirely co-opted by a few vested interests.



KEY FINDINGS

The lobbying landscape in Europe is diverse, complex and becoming more complicated

A broad range of interest groups and their representatives are looking to inform and influence public decision-making, contributing to a generally dynamic democratic environment. A number of actors attempting to influence decisions, from the private, public, not-for-profit and legal fields, do not consider themselves to be lobbying as such, and the activity is frequently called by another name – advocacy, public affairs or interest representation.

In most countries, lobbying as a stand-alone profession and consultancy service is still in its nascent stages. However, with the EU integration process increasingly making Brussels a hub of European policy-making, there is a growing professionalisation of the lobbying industry there. At national level, the system of sectoral representation and institutionalised partnerships with government is still present. However, a new pattern is emerging whereby the better resourced actors, in particular the larger corporate actors, are increasingly doing their own lobbying rather than relying on representation from business associations.

Hidden and informal influence persists in Europe

A diversity of lobbying techniques are being put to use, from open participation in consultative processes to direct communications with decision-makers and the organisation of grassroots campaigns. Much of it is legitimate – however, some of the activities are specifically designed to confuse and conceal their true origins and beneficiaries from public decision-makers and any

external observers. At the more extreme end, this includes acting through front organisations or creating the semblance of public support through manipulated and/or purchased opinions (also known as “astroturfing”).

A notable portion of influencing efforts across the examined countries occur outside of any formal participatory or consultative channels, drawing on informal relationships and a variety of social interactions. In a number of states as diverse as Ireland, Portugal or Hungary, this influence is deeply intertwined with familial, class or business interest structures, creating opportunities for a culture of patronage and insular elites.

The nexus between business and politics is growing ever stronger, creating serious conflicts of interest, and with it, the risk of regulatory and policy capture. Of particular concern is the practice of carrying out lobbying activities while holding office, as well as the post-employment “revolving door” between the public and the private sectors. Disproportionate and hidden political finance also plays a notable role.

Despite serious risk factors, lobbying regulation in Europe is woefully inadequate, allowing undue influence to flourish

Measured against international standards and emerging best practice, the 19 European countries and the three EU institutions achieve an overall score of just 31 per cent for the quality of their promotion of transparency, integrity and equality of access in lobbying.

The vast majority of European countries reviewed have no comprehensive regulation of lobbying and no system in

**Slovenia is the only country
that managed a score
exceeding 50 per cent.**

1/19

place to systematically record contacts between lobbyists and policy-makers. Europe lags behind Canada and the United States in this regard. Of the 19 countries examined, only 7 have laws or regulations specifically regulating lobbying activities (Austria, France, Ireland, Lithuania, Poland, Slovenia and the United Kingdom). Many of the lobbying related laws and regulations that exist in Europe are, to varying degrees, flawed or unfit for purpose. There are also problems with weak implementation and lack of enforcement of existing rules.

Only one country – Slovenia – and the European Commission, manage a score exceeding 50 per cent. However, they too are faced with a range of problems including gaps in regulatory coverage, loopholes and poor implementation of rules. It is notable that the majority of countries at the centre of the financial crisis (Cyprus, Spain, Italy and Portugal)⁵ sit at the bottom of the table, together with Hungary. No less concerning is the performance of the Council of the EU, one of the most powerful institutions in Europe, which is third from last with a score of just 19 per cent (and sitting at a polar opposite from the European Commission in terms of the ranking).

Transparency



average score

26%

Citizens and interest groups have little opportunity to know who is influencing public decisions, on what issues and how. Few countries have any requirements on the public sector to record information about their contacts with lobbyists and lobbying interest groups. The information that is documented is frequently too narrow or sporadic, and often is not proactively released to the public. Although all countries except for Cyprus have access to information laws, in practice, citizens, media or other interest groups face practical hurdles in making a successful information request.

The seven countries and the two EU institutions that have specific lobbying regulations have all opted for a register as the cornerstone of their approach, requiring lobbyist registration and, in most cases, a periodic reporting of activities. Lobby registers can be useful in allowing citizens to track influence in the political process if they are designed with comprehensive definitions (including all who seek to influence public decisions), if they are mandatory, and if they are coupled with meaningful oversight mechanisms. However, none of the existing registers examined by this report fulfil these criteria. It is important to note that even a comprehensive register of lobbyists is not a panacea to undue influence. It is only one measure among many others that are required to open decisions up to public scrutiny.

1/19

Only Austria has a mandatory code of conduct for lobbyists in place.

Integrity

average score **33%**

Neither lobbyists nor public officials are subject to clear and enforceable ethical rules regarding lobbying activity, which is particularly troubling given the low levels of transparency. Although most countries have introduced a public sector code of conduct, a number of countries are still missing a similar one for legislators. The codes of conduct that are in place are frequently incomplete and do not provide sufficient behavioural guidance on how to deal with lobbying third parties. Particular problems are present around conflicts of interest management, including the periodic disclosure of interests. Although the majority of states have some revolving door regulations requiring a 'cooling-off' period before former public officials can lobby their former colleagues, only one country, Slovenia, has instituted one for the legislators and even in this case it is not properly applied in practice. None of the 19 countries assessed was found to have effective monitoring and enforcement of the revolving door provisions.

In terms of core ethical guidance for lobbyists, only one country (Austria) has a mandatory code of conduct and under Ireland's recently adopted Regulation of Lobbying Act (2015) a regulator is authorised to issue the same; a few others have voluntary provisions. One positive finding is that in most countries there are some voluntary initiatives and attempts to self-regulate lobbying activities, including the promotion of codes of conduct. However, in most cases, these are limited to particular professional associations, which constitute only a fraction of those looking to influence public decision-making. The codes are also usually voluntary and often with insufficient detail and weak complaint mechanisms.

Equality of Access

average score **33%**

Public participation is inadequately protected, and certain groups are able to enjoy privileged access to public decision-making. While a variety of public consultation mechanisms do exist across most countries, implementation is usually inconsistent across government, and in no cases are there comprehensive requirements to provide detailed explanations on which views were taken into account and why. A further significant concern is regarding lobbying from the inside through expert and advisory groups convened by the public sector. Only one country (Portugal) has a legal requirement to strive for a balanced composition of these bodies, and in most countries their operations remain opaque to the outside world.

The status quo of a high risk of undue influence on public decision-making, coupled with inadequate regulation and oversight, has led to a serious impact on the public good, as well as on the reputation of all parties. The expert interviews and case studies outlined in this report and the underlying national studies demonstrate the high cost of the current approach, including its contribution to instances of environmental degradation, financial collapse, human rights abuse, and the endangerment of public safety, amongst others. It has also tarnished the reputation of all those lobbyists and lobbying groups as well as public officials and public institutions that do wish to conduct their operations in an open and ethical way. Levels of public trust are low and given that much of the lobbying activity remains below the radar, the true scale of the problems is likely to be much higher.

Despite the serious shortcomings in the regulatory frameworks across the EU, there are indications of positive momentum for reform. An increasing number of countries, including Estonia, France, Italy and Lithuania, amongst others, are signalling a willingness to tackle the issue, with proposals at various stages of development. For all its shortcomings, the recently adopted Irish lobbying law raises the bar in terms of the quality of regulation in Europe. There are also a number of other promising practices throughout Europe, with a few

included in this report. A growing number of professional lobbyists and corporates are committing to higher ethical standards in their interactions with government, and are in fact supportive of reforms, recognising the moral imperative but also the benefits to reputation and the need for a level playing field. There have also been some promising developments in Brussels, and ongoing work on an international legal instrument on lobbying under the auspices of the Council of Europe.

This overall trajectory is encouraging and to be applauded. However, for these efforts to be truly effective, a much more holistic approach to tackling the issue is essential. Unfortunately, many of the efforts to date have been too narrow in scope and do not take account of a broader framework of transparency, integrity and equality of access in lobbying (as well as the broader regulatory framework).

Equally, a sense of urgency, leadership and political commitment is required to ensure that such measures do not stall at their deliberative stage (as so frequently was the case in the past), but are adopted, and more critically, enforced. Only then can public policy again serve the public good, citizens can recover their trust in government, and the term “lobbying” can be associated with participatory democracy rather than corruption.

KEY RECOMMENDATIONS

The following are key recommendations for governments and lobbyists to promote ethical lobbying and deter undue influence:⁶

Ensure information on lobbying activities is published and made easily accessible to the public.

Ensure lobbying regulation is based on a set of broad definitions which capture all who engage in lobbying activities (including consultant lobbyists, in-house lobbyists, public affairs firms, NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations, academics and pro-bono office holders of incorporated entities) and all key lobbying targets.

Establish and strengthen existing registers of lobbyists by making them mandatory, requiring timely registration by lobbyists, recording detailed information on who lobbyists represent, who they target, with which resources, with what purpose and using which supporting evidence.⁷

Ensure a “legislative footprint” is created for every legislative or policy proposal to ensure full transparency of decision-making processes. This would include tracking and publishing external input and contact between lobbyists and public officials.

Require that public officials and representatives publish information on their meetings and interactions with lobbyists including calendars, agendas, and documentation received from lobbyists.

All those seeking to influence public policy (including professional lobbyists, businesses and civil society organisations) must ensure they are proactively transparent about their advocacy and lobbying including the publication of:

- Policies, expenditure and individuals lobbying on the organisation's behalf
- Political contributions and political involvement
- Position papers and supporting documentation presented in support of lobbying efforts

Create an ethical firewall between lobbyists and the public sector.

Establish minimum 'cooling-off' periods before former public and elected officials can work in lobbying positions that may create conflicts of interest and create a permissions process from a designated ethics office before a lobbying-related appointment can be taken up by former public officials, former members of parliament, and former members of the executive (national and subnational levels).

Amend existing codes of conduct for public officials to guarantee they include clear behavioural standards related to lobbying and how they should interact with interest groups.

Introduce a statutory code of conduct for lobbyists laying out the core principles of ethical lobbying.

Lobbyists must commit to carry out their work with integrity, in coherence with their Corporate Social Responsibility (CSR) policy, ensuring that information conveyed is factually accurate and honest and that they do not misrepresent their status or the nature of their communications.

Promote diverse participation in public decision-making from individuals and groups with a range of perspectives.

Approve legal requirements that allow citizens, interest groups and corporate bodies to equally input into legislative items under consideration.

Introduce a legal requirement on public bodies to publish the results of consultation processes, including the views of participants in the consultation process.

Make open all calls for applications to sit on advisory/expert groups and introduce selection criteria to ensure a balance of different interests.

Ensure rules are enforced and that there are meaningful sanctions for unethical behaviour.

Establish an adequately resourced independent oversight body to enforce rules regarding the transparency of lobbying activities and ethical conduct (post-employment, conflicts of interest, gifts and hospitality).

RESEARCH FRAMEWORK AND METHODOLOGY

This report brings together the findings of 19 national assessments carried out in 2014, examining the practice of lobbying and attempts to regulate it across Europe. The research framework was developed by Transparency International with reference to internationally recognised standards on the regulation of lobbying and prevention of undue influence. These standards include, amongst others, the OECD's "10 Principles for Transparency and Integrity in Lobbying"⁸ and their 2014 progress report on the implementation of those principles,⁹ the Venice Commission's Report on the Role of Extra-Institutional Actors in the Democratic System,¹⁰ Transparency International's Open Governance Scorecard Standards,¹¹ the Sunlight Foundation's International Lobbying Disclosure Guidelines,¹² and Access Info Europe's Standards of Lobbying Disclosure.¹³ Using these standards as a starting point, a methodology consisting of 65 indicator questions was developed. The methodology was refined in consultation with several of the above-mentioned organisations.

The 65 indicators correspond to three core dimensions and 10 sub-dimensions, which are considered to be a comprehensive approach to lobbying regulation. The three core dimensions are **transparency, integrity and equality of access**.

- The extent of transparency indicates how open decision-making is and to what extent the public can access information on who is lobbying public officials and representatives, on what issues, when and how they are being lobbied, how much is being spent in the process, and what the results of these lobbying efforts are.
- The level of integrity demonstrates how effectively countries ensure ethical conduct among public officials, representatives and lobbyists.
- The degree of equality of access shows how well a system allows for a plurality of voices in public decision-making and the contribution of ideas and evidence by a broad range of interests.

Assessment methodology

Each national assessment sought to assess existing lobbying regulations, policies and practices, compile evidence about corruption risks and incidences related to lack of lobbying control, highlight promising practices around lobbying found in the country, and provide recommendations and solutions for decision-makers and interest representatives in the public and private sector.

The research was conducted from March to August 2014. It involved an initial desk review of legal and policy documents and existing secondary data. National researchers then carried out in-depth interviews with policy-makers, lobbyists and experts on lobbying in the country. In total, 161 interviews were conducted with a total of 180 interviewees across the 19 countries. The research was primarily qualitative, but in order to give a quantitative evaluation of lobbying regulations at national and EU level, the researchers answered and

The 10 sub-dimensions of a comprehensive lobbying regulation system

Transparency

- 1 Access to public information, via freedom of information (FOI) regimes
- 2 Lobbyist registration systems
- 3 Oversight of registration system and sanctions for non-compliance
- 4 Pro-active disclosure by public officials, including legislative footprint

Integrity

- 5 Pre and post-employment restrictions to reduce risks associated with the revolving door between the public and private sector
- 6 Codes of conduct for public sector employees
- 7 Codes of ethics for lobbyists
- 8 Self-regulation by lobbyist associations

Equality of Access

- 9 Consultation and public participation mechanisms
- 10 Expert/advisory group composition and policies

scored the 65 indicator questions.¹⁴ In order to assess the EU level rules and regulations, Transparency International's Brussels-based EU liaison office applied the assessment element of the methodology to the European Commission, the European Parliament and the Council of the European Union.

A three-point scale was used to score the indicators, with a minimum score of 0 and a maximum score of 2. In order to calculate the overall scores for the country/EU institution and for each of the three dimensions – transparency, integrity and equality of access – a simple aggregation was performed. Specifically, a total score (as a percentage) was calculated for 10 sub-dimensions. A simple un-weighted average was then calculated to provide a score for each of the three dimensions.

Similarly, the overall country/EU institution score is an un-weighted average of these three dimensions. No differential weighting was applied to individual indicators, sub-dimensions or to the core dimensions. The scores were reviewed and validated at international level by the research team at the Transparency International Secretariat in order to ensure cross-country comparability.

The resulting scores allow a comparison of attempts to promote open and ethical lobbying and of the quality of safeguards against undue influence at the national and EU levels. The regional analysis in this report draws mainly on the 19 national assessment findings and the EU level assessment. Additional secondary sources from Transparency International and other organisations were also drawn upon where relevant.

THE LOBBYING LANDSCAPE IN EUROPE

Many actors across Europe are engaged in lobbying activities, looking to influence and inform public decision-making, and in the process often competing or cooperating with each other. This diversity includes, but is not limited to, those with economic interests, professional interests and civil society interests.

This chapter maps out how influence is wielded in politics across Europe, by whom, using which techniques and with what impact. How influence is brought to bear in a country's political system varies across Europe and depends on many factors, including, amongst others, the degree of institutionalisation of lobbying within the system, the size of the country, the political culture and the maturity of the lobbying industry. With so many different organisations and individuals lobbying, it is inevitable that there is variation in the techniques used to influence, including how openly and ethically individuals and organisations behave.

A vibrant lobbying scene

A myriad of actors across Europe are engaged in lobbying activities, looking to influence and inform public decision-making, and in the process often competing or cooperating with each other. This diversity includes, but is not limited to, those with economic interests (such as companies and corporations), professional interests (such as trade and labour unions or representatives of professional societies) and civil society interests (such as environmental or religious groups).¹⁵ The overall variety of action and input by these groups is generally helpful to public decision-making, and it contributes to a largely dynamic democratic environment.

Some actors who engage in lobbying activities do not consider themselves lobbyists as such – lawyers often fall into this category – and others use different names, such as public affairs or public relations consultants. Civil society groups and non-governmental organisations sometimes prefer to label their activities as “advocacy”, rather than “lobbying”. This is in part due to the negative connotations linked with the term “lobbyist” in many countries in Europe.

Desperately seeking influence: A view from the frontline

In Hungary, interviewees spoke of companies desperately hunting for opportunities to meet with members of the government. Tactics included taking part in overseas government business delegations and attending football matches, even if they were known not to have an interest in the sport.¹⁶

In Ireland, the houses of parliament are a major site for lobbying. Several interest group interviewees said they routinely positioned themselves in various places around the Leinster House complex, including the coffee dock and the Dáil bar, in order to “buttonhole” politicians.¹⁷

In Italy, the lounge of the exclusive fidelity club of Alitalia (the Italian airline) at Linate airport in Milan, where there is the flight connection with Rome, is known to be a strategic location where lobbyists meet policy-makers on a regular basis.¹⁸

In the pharmaceutical sector alone, conservative “official” estimates show €40 million spent on lobbying, while other more realistic estimates show €91 million.

€91 million

The persistence of informal influence

Much lobbying across Europe takes place outside the formal channels and is invisible to the public eye. In small and medium-sized countries, lobbying patterns are tied in with familial, social and class networks. Elites in such contexts are inevitably close-knit and this allows for a culture of patronage and informal influence to flourish. Connections between family, friends and old school colleagues often determine who has the ear of the decision-maker and which decision will be taken. Several states demonstrate serious signs of crony capitalism and, in the case of Hungary, state capture.¹⁹

Most informal lobbying takes the form of direct communication and happens in social settings, such as receptions, golf clubs, airport lounges, parliament bars, corporate boxes at football stadiums and horseracing tracks. These forums have been described as the “anterooms of lobbying”,²⁰ because while they may not provide an immediate opportunity for a meaningful dialogue, they are likely to trigger future and potentially substantive communication, which often eventually translates into influence. Regulation struggles to capture this type of lobbying because these communications and interactions are “by design” kept off the record.

Growing professionalisation and diversification of the lobbying landscape

Despite the persistence of informality, in most countries there is a growing professionalisation of lobbying, with lobbying and public affairs consultancies increasingly contracted to represent business and other third-party interests and to convince decision-makers on issues of interest to their clients. The clients of these professional lobbyists include companies, associations, public sector agencies and non-governmental organisations.

There is also an increasingly wide array of actors providing professional lobbying services, including for example, lawyers and large accountancy firms. In countries such as Portugal and Estonia, legal professions are the primary channels of professional lobbying, and in a number of others they are significant players. In recent years, the presence in Brussels of large European and US-based law firms – and their lobbying of the EU institutions on behalf of corporate clients – has been noted.²¹ Lawyers have been particularly reluctant to identify themselves as lobbyists and have argued that transparency requirements should not apply to them due to confidentiality concerns associated with the lawyer-client privilege. It is telling that, of the approximately 7,000 organisations registered in the EU’s voluntary Transparency Register, only 88 are law firms.²² Recently, concerns have also been raised about the influence of “The Big 4” accountancy firms – PwC, Ernst & Young, Deloitte and KPMG – at the national level²³ and in influential European Commission expert groups.²⁴

Fragmentation of business interests

Lobbying is often associated in the public mind with the representation of business interests. However, the cluster “business” encompasses many varied actors, with a broad range of interests and huge variation in terms of size, budget, scope of influence and lobbying behaviour. Traditionally, businesses channelled their influence through associations, which lobbied on their behalf. In countries with a corporatist tradition, spanning much of continental Europe, the participation of such associations along with other interest groups has historically been quasi-institutionalised within the decision-making processes.

Associations continue to have importance in representing business interests in Europe, particularly for small and medium-sized enterprises, and, in some countries, they remain a primary channel for business to articulate their interests. In Lithuania, for example, it has been noted that several business associations even have assigned offices on public premises and are listed in the official contact list as “representatives to the Government”.²⁵

However, companies are not relying on associations alone to represent their interests. Increasingly, lobbying is carried out by in-house lobbyists and directly by the senior management of companies. This is especially true of large corporations, which are not surprisingly among the most active lobbyists in Europe and often enjoy disproportionate access to key decision-makers.

Increasing lobbying spending by powerful sectors

Due to the lack of mandatory reporting mechanisms at the EU level and in most countries in Europe, it is impossible to know the true scale of lobbying activity and the amounts of money spent on it. The few estimates and indicators that do exist, however, point to increased intensity of lobbying and rising levels of spending.²⁶ Sectors such as pharmaceuticals, finance, telecommunications and energy dominate the lobbying landscape in Europe. Conservative estimates based on entries into the EU’s Transparency Register from 2012 suggest an annual spend of €40 million to influence EU affairs by the pharmaceutical sector alone. This figure is most likely a gross underestimation due to imprecise, non-transparent and absent declarations. A more realistic figure of €91 million has been put forward.²⁷ Equally remarkable are estimates of lobbying spending by the finance industry.²⁸

It is important to note that while corporations often have large sums of money at their disposal, smaller companies can struggle to bring influence to bear through lobbying and often find it difficult to gain access to policy-makers. Similarly, smaller NGOs and civil society organisations operate with restricted resources, which can limit their influence. Larger NGOs are strong players on the lobbying landscape and increasingly devote significant budgets to lobbying and advocacy activities, sometimes in the hundreds of thousands of euros.²⁹

Sophistication of lobbying techniques

Much lobbying takes the form of direct communication, either through public hearings during consultation processes, formal meetings with decision-makers, or by having a discrete word in the ear of a close contact. However, more sophisticated indirect lobbying techniques are also gaining traction in countries across Europe, some of which are questionable and give cause for concern. These include the mobilisation of the public through advertisements, public relations campaigns, funding advocacy organisations or think-tanks, and the use of grassroots campaigns.³⁰

The use of grassroots lobbying is particularly prevalent. Organisations instigate campaigns (online petitions, letters to the government or parliamentarians, public debates, leaflets, and demonstrations, amongst others) with the aim of pressuring politicians to listen. In its benign form, this type of citizen engagement can be empowering for citizens. However, this technique can also involve something more sinister when it takes the form of “astroturfing”, the controversial practice of lobbyists hiding behind front groups to give a semblance of grassroots popular support for a cause, which is in fact funded by private interests.

The drafting of legal texts by lobbyists has caused controversy at the national level and at EU level.³¹ That lobbyists suggest amendments is not a problem *per se*, but when entire passages of lobbyists’ position papers are copy-pasted into laws, there is an obvious concern of disproportionate influence being brought to bear. This has led to calls for the publication of all submissions and supporting documentation by lobbyists on particular pieces of legislation.

Astroturfing: A lobbying technique that lends legitimacy to concealed interests

In 2012, the Department of Health in the UK published documentation revealing complaints that a lobby group largely financed by the tobacco industry had tried to fake signatures, thus overstating third-party support for their campaign against plain packaging regulation in the United Kingdom.³² The industry argued that some half a million people were opposed to the measure, evidenced by the signing of petitions, online forms and postcards/ letters delivered to the Department of Health.

However it was later revealed that some of the expressions of support were faked. The “Hands Off Our Packs” campaign, run by the tobacco front group Forest and believed to be financed in large part by the tobacco industry, contracted an agency to recruit signature collectors, which then incentivised staff based on the number of signatures garnered.³³ Forest subsequently admitted that a number of signatures had been falsified, but denied that this was encouraged or intentional and attributed blame to the individual signature collector.³⁴

The recently adopted Regulation of Lobbying Act in Ireland has the potential to be the first national law in Europe to address astroturfing and make it more difficult for industries or others to conceal their interests behind such organisations, requiring them to disclose their indirect lobbying efforts.

Private/public sector nexus

Most lobbying discourse assumes a separation of public institutions and officials on the one hand, and lobbying interests on the other. However, this is not necessarily the case. The emergence of private-public partnerships, the outsourcing of public services, secondments into the public sector, and the use of advisory bodies all carry the risk of lobbying from the “inside”, with private actors having access to potentially privileged information and performing dual functions.

Conversely a range of scandals throughout Europe also demonstrate the potential of unaddressed conflicts of interest on the part of public officials and representatives. Various cases examined in the course of this research include instances of public officials advising on or conducting lobbying activities while in office; concealed private interests in the course of public decision-making; and the influence of disproportionate and hidden political finance.

A particularly acute problem, and the threat to integrity most commonly cited by lobbyists,³⁵ is the revolving door between the political world and the lobbying world. Although the exchange of expertise between the public and private sector can be positive, the situation can also present serious post- and pre-employment conflicts of interest, with the potential of regulatory and institutional capture. Examples of risky revolving door practices between business and politics abound in almost every European country examined, revealing this to be a widespread problem with ineffective oversight. The absence of rules, or in some cases their poor enforcement, allows risks of abuse of power and misuse of office or former office.

The revolving door between business and politics in Europe

In Portugal, of the past 19 finance ministers, 14 have previously worked in banks or financial institutions. Bankers have also been the most represented professional group in cabinet, amounting to 54 per cent of government positions since the establishment of the democratic state. 230 members of parliament have taken up 382 positions in financial institutions before or after holding a government role. These close links between business and politics also extend to the regulator's office. Since 1986, all heads of the Central Bank have gone on to jobs in banking. The financial sector's influence over political decision-making is perceived as extensive and commonplace.³⁶

Similarly, in Spain, serious concern has been raised about former members of the executive branch transitioning to the business world and conversely, business executives transitioning to regulatory agencies. This has been characterised by the Council of Europe's Group of States against Corruption (GRECO) as "a serious threat to the credibility of the nation's institutions".³⁷ Some examples of former politicians, with impressive networks of former colleagues and unrivalled access to decision-makers, are former presidents of Spain, Felipe González, who became a Gas Natural Fenosa Board Member³⁸ and José María Aznar, whom Endesa (the largest utility company in Spain) hired as an external consultant and who has served as a board member in five other multinational corporations, including as advisor to the global Vice-President of KPMG and President of KPMG in Spain.³⁹

In the Netherlands, the revolving door also swings freely. One example of many is the case of Jack de Vries, former state-secretary of the Ministry of Defence. De Vries was an advocate of the purchase of the Joint Strike Fighter (JSF) airplane, which because of its increasing costs has been severely disputed. De Vries resigned from public service in 2010, but in 2011 he joined Hill and Knowlton, a communication and advisory agency, which also represented the Dutch airline industry and backed the JSF purchase. When asked if he would be the contact person with the Ministry of Defence, De Vries stated that he did not know but he also did not see "any objections or problems" in contacting the Ministry. A regulation specific to this sector prohibits the Ministry from engaging with ex-governmental officials until two years after their employment, if they represent the business community.⁴⁰

Social impact of opaque lobbying and undue influence

When lobbying is unregulated and remains under the radar of public scrutiny, the potential for undue influence increases. Without a robust ethical firewall between the public sector and lobbyists, decisions can be taken that do not serve the public interest but rather a narrow set of private interests. This can have very damaging consequences for society and has been linked in Europe to cases of environmental degradation, financial collapse, human rights abuse, and the endangerment of public health and safety, amongst others.

A pertinent example is the global financial crisis. While the reasons for the financial crisis are many and varied, opaque lobbying by powerful individuals and companies in the banking sector (see Focus on Finance section), who often enjoyed disproportionate access to key decision-makers, has been linked to the failed economic policies that led to the crisis. Recognising this, an International Monetary Fund (IMF) working paper stated that, "prevention of future crises might require weakening political influence of the financial industry and closer monitoring of lobbying activities to understand the incentives better".⁴¹

FOCUS ON FINANCE

Post-crisis financial reform thwarted due to intense lobbying by financial sector

As Europe emerges from the latest financial crisis, in an attempt to prevent a recurrence, there have been several financial sector reform efforts at the national and EU levels. But reform has been stalled, thwarted and watered down, in large part due to intense lobbying by the financial lobby in Europe. Post-crisis reforms have been criticised as “rather tweaking than reforming the system”⁴² and many fear the renewed capture of regulations by the financial industry.⁴³ The complexity of the sector and related regulation has led to a situation where the debate has mostly been left to experts – primarily representatives of the financial sector itself – whereas the regulation of financial services has a strong public interest dimension.⁴⁴

Financial lobbyists continue to be among the most powerful lobbies in Europe. At the EU level, for example, spending by financial lobbyists dwarfs that of many other sectors. A recent report by Corporate Europe Observatory (CEO) estimated that the financial sector spends €120 million per year on lobbying in Brussels and employs more than 1,700 lobbyists. Their report involved investigative research, uncovering and analysing data which is not easily accessible to the average citizen, indicating the opacity of much lobbying activity in this sector. CEO estimated that the financial industry lobbied the post-crisis EU regulation through over 700 organisations and outnumbered civil society organisations and trade unions by a factor of more than seven.⁴⁵

At the national level too, the scale and effectiveness of the financial lobby is evident. In France, in 2013, the law of separation and regulation of banking activities was diluted significantly following intense lobbying by the sector. The final text fell far short of the original draft, which had been heralded as ambitious and would have gone a long way to creating a stronger barrier between banks’ investment and trading activities, on the one hand, and commercial banking activities, on the other, thus protecting ordinary consumers if banks performed poorly on the financial markets. The law, as it was eventually passed, has been criticised as “of minimal impact” and “essentially cosmetic”.⁴⁶ Close links between the financial sector and the Treasury, including the pattern of many former Treasury officials moving directly into lucrative jobs in the private banking sector, have been seen as a major factor contributing to the weakening of the law.⁴⁷

Until recently, the vast majority of the large banks were not registered in the voluntary EU Transparency Register, although they were lobbying vigorously in Brussels. The announcement by the new Juncker Commission in November 2014 that they would in the future only meet registered lobbyists prompted a flurry of registrations, including from the large banks.⁴⁸

Perhaps even more important is the need for the public interest to be more clearly reflected in financial sector decision-making. This can only be achieved by requiring balance in advisory and expert groups to ensure they are not dominated by industry and by broadening consultation mechanisms on public policy to encourage participation from non-financial industry stakeholders.

FOCUS ON PHARMACEUTICALS

Photo: Flickr/Greencolander

Regulatory capture and the pharmaceutical lobby in France⁴⁹

Mediator was a drug marketed to overweight diabetics, but also often prescribed to healthy women as an appetite suppressant when they wanted to lose weight. It became the subject of a major scandal when it was allowed to stay on the market in France until 2009, despite increasing evidence of suspected public health risks with the drug and despite the fact that it had been withdrawn from the market in Spain and Italy in 2004. Conservative estimates suggest that the delay in withdrawing the drug resulted in the deaths of 220–300 people, but other studies have put the death toll at 1,300.⁵⁰ Thousands more complain of cardiovascular complications that have limited their daily lives.⁵¹

The case sparked a furor about the lobbying power of pharmaceutical companies in France. The official report cited “pressure” exerted by the company behind the drug, Servier, which had reportedly lobbied policy-makers and health experts to keep Mediator on the market and have it recognised as an anti-diabetes drug.⁵² A trial to determine whether the company misled patients and authorities about the drug was postponed in 2013 and is expected to start in 2015. The company has assured all those who suffered due to the drug will be compensated, but denied the allegations of wrongdoing.⁵³

There have been suggestions that conflicts of interest contributed to the regulator acting too slowly, and favouring the interests of the company over the public interest.⁵⁴ After the scandal, according to *Le Figaro*, Servier also reportedly tried to influence elected officials to minimise its responsibility in the scandal by seeking to change the conclusions of the Senate’s fact-finding report,⁵⁵ and softening the reform initiated in the wake of the scandal.⁵⁶ The reform of the regulator was passed, but with some loopholes including inadequate regulation of gifts and hospitality.

Another sector of intense lobbying is the pharmaceutical sector (see Focus on Pharmaceuticals section). In France, aggressive lobbying of regulators by pharmaceutical companies has been linked to a notorious case of a drug with suspected health risks being allowed to stay on the market allegedly resulting in hundreds, possibly thousands, of avoidable deaths.

However, in this and other sectors, there were also examples of lobbying by companies and organisations with positive social impacts. In Italy, for example, a group of small pharmaceutical manufacturing companies carried out a lobbying campaign to have what are known as “orphan drugs” excluded from a ruling regarding hospital expenditures. Orphan drugs are used to treat rare diseases and typically earn meagre profits for drug companies. Their inclusion in the general ruling applying to all drugs would have made them economically unsustainable and therefore unavailable to patients who needed them. Lobbying transparently and using a solid evidence-base and the power of persuasion, this modest group of small manufacturing industries succeeded in its campaign to save the orphan drugs, showing the potential of lobbying to have positive social impact.⁵⁷ Such cases remind us that lobbying itself is not the problem; instead it is opacity, unethical conduct and unfair access to public decision-makers.

Necessity of comprehensive regulation

The lobbying landscape in Europe is complex. It involves an increasingly diverse set of actors, bringing ever more sophisticated influencing techniques to bear. The status quo, where most lobbying remains unregulated and opaque leads to disproportionate and unfair policy influence by a subset of society representing select interests.

There are signs of a growing momentum to address the issue, however. Investigative journalists and grassroots and international NGOs are doing important work to detect and prevent undue influence,⁵⁸ and there is emerging leadership from some corners of the business

and the lobbying community.⁵⁹ At national, regional and international levels, there is a growing recognition of the need to promote “responsible”, “ethical” and “open” lobbying.⁶⁰ Perhaps surprisingly, lobbyists also tend to welcome minimum standards for lobbying. According to a survey carried out by Burson Marsteller in 2013, 55 per cent of professional lobbyists agreed, and 24 per cent strongly agreed, that greater transparency in lobbying would help to reduce the actual or perceived problems of influence peddling by lobbyists.⁶¹ Likewise, 70 per cent of lobbyists surveyed by the OECD in 2014 agreed that transparency should be mandatory for all in the profession.⁶²

Experience shows, however, that regulating lobbying poses significant challenges and reformers face reluctance from various quarters with opponents citing, amongst other concerns, fears of administrative overload. Achieving effective regulation requires striking a balance without creating an onerous bureaucratic burden for lobbyists and decision-makers. The process must start with consensus building across all affected groups including business people, politicians, public administrations and civil society. In many countries reform will necessitate a major shift of political culture. Notwithstanding these challenges, adequate regulation is without doubt a crucial element to tackling undue influence in politics.

LOBBYING REGULATION IN EUROPE

The average score for the quality of lobbying regulation in European countries and institutions is just 31 per cent, indicating that most are substantially ill-equipped to deal with the issue of undue influence.

There is a growing awareness across Europe that uncontrolled lobbying has serious consequences, ultimately allowing the distortion and co-option of public power through undue influence. In this chapter, there is a comparison of European countries' attempts to tackle it, mainly through different forms of regulation. The results offer a sobering picture of lobbying control in Europe. The response by both governments and organisations has been wholly insufficient and not nearly far-reaching enough to detect and prevent undue influence and promote a culture of ethical lobbying.

Overall, European countries perform poorly when measured against international standards and best practice in lobbying regulation.⁶³ Of the 19 countries and the EU institutions assessed, the average score for the quality of the regulatory system is just 31 per cent, indicating that most are substantially ill-equipped to deal with the issue of undue influence. This assessment measured not only whether there was a lobbying registration system in place, but comprised a comprehensive assessment of broader public sector transparency, the existence of integrity mechanisms to prevent unethical behaviour and the degree to which political systems are accessible to a plurality of voices.

Across all three categories of transparency, integrity and equality of access the results were poor, with regional averages for the categories ranging from 26 per cent for transparency to 33 per cent for integrity and equality of access.

Of the 19 countries studied, no country came close to having the ideal safeguards to detect and deter undue influence; nor did they have adequate measures in place to promote open and ethical lobbying. Only one country, Slovenia, and one EU institution, the European Commission, achieved a score above 50 per cent, thanks to their fairly robust transparency and integrity measures. However, these too fall short in terms of their regulatory coverage, the extent of implementation, and the quality of monitoring and enforcement.⁶⁴

The vast majority of countries have no regulation of lobbying whatsoever and no process to systematically register contacts between lobbyists and policy-makers. Europe lags behind the United States and Canada in this regard.⁶⁵ Of the 19 countries examined, only seven have laws or regulations specifically regulating lobbying (Austria, France, Ireland, Lithuania, Poland, Slovenia and the United Kingdom). The research also suggests that the laws and regulations that do exist across Europe are, to varying degrees, flawed or unfit for purpose and there are also serious problems with implementation and enforcement of rules.

Self-regulation by lobbyists themselves has not been sufficiently developed either. Lobbyist associations have an important role to play in promoting good practice through awareness raising, training and providing ethical guidance to those seeking to influence policy. The study found some examples of companies' own efforts to lobby responsibly and transparently, but these remain very much the exception rather than the rule.

0/19

No country came close to having the ideal safeguards to detect and deter undue influence.

It is striking that the average score for the EU institutions – with their significant power and impact throughout Europe – is only 36 per cent. Most concerning, is the performance of the Council of the EU, which received less than a fifth of the possible marks. Also of note is that the larger EU member states – France, Germany, Italy and Spain, and to a lesser extent, the United Kingdom – all perform particularly badly when it comes to lobbying regulation. These are powerful players at the European level, and the decisions made in their capitals have the potential to affect all EU citizens.

Occupying the bottom of the table are Cyprus and Hungary. In Cyprus, a discussion on lobbying regulation is virtually non-existent and citizens have one of the highest rates of perception of state capture across the EU.⁶⁶ In Hungary, there was a poorly designed lobbying law in the past, and the country has recently seen a systematic dismantling of oversight institutions, threatening the fundamentals of the democratic state.

The overall picture emerging from the research suggests that even reforming countries have not taken a holistic view of the issue of undue influence. This is exemplified by the fact that the most popular regulatory tool is the lobby register. Installing a registration system for lobbyists in an effort to increase transparency will not promote meaningful change unless it is accompanied by a broader framework promoting integrity among lobbyists and public sector employees, as well as concerted efforts to equalise opportunities of access to political decision-makers.

Following the money: The link between lobbying and political financing

Lobbying is but one of many forms of political activity and attempts to regulate it without tackling the parallel issue of political finance are likely to be unsuccessful. The prime example is the United States, where corporate money and political influence remain inextricably linked despite concerted efforts to regulate lobbyists. If corporate donations, for example, are not capped and/or if the system is so opaque that citizens do not know who is behind donations to parties and candidates, then money can buy access and influence.

In some European countries, political financing is considered relatively well regulated. In France, for example, while legislation in this area is not perfect, corporate donations are banned and the financing of political activities by private economic interests is not a major avenue for the exercise of undue influence. Recent years have seen some notable improvements in the legal framework regulating political finance, including in Bulgaria (2011), Cyprus (2012), Estonia (2014), France (2013), Ireland (2012), Italy (2014), Lithuania (2012), Slovakia (2014) and Spain (2012).⁶⁷

However, a number of countries still suffer from substantial loopholes in their regulatory frameworks. In the UK, for example, where there is no cap on donations in place, there are serious concerns that a handful of wealthy individuals and organisations may be able to exert influence by making large donations: £250m of the £432m donated to political parties between 2001 and mid-2010 was from single donations of more than £100,000 made by individuals, companies or trade unions.⁶⁸ In a number of countries, indirect and in-kind contributions also provide loopholes for exerting influence: Sponsorships and donations (Cyprus), political fundraising events (UK), debt forgiveness (Spain) and the use of front organisations (Lithuania, Portugal, Slovenia) are being used to bypass the safeguards set up against undue influence, dependency and privilege in politics. In addition, in a number of European countries, including Bulgaria, Cyprus and Hungary, the regulatory framework is undermined by a non-existent or ill-functioning enforcement culture. Parties, politicians and contributors break the rules without fear of consequences, contributing to a culture of impunity around political financing and influence.

embargoed until 10am Brussels time,
15 April 2015

1

TRANSPARENCY



embargoed until 10am Brussels time,
15 April 2015

1

TRANSPARENCY

embargoed until 10am Brussels time,
15 April 2015

1

TRANSPARENCY

100%

58%

Best performing country
Slovenia

26%

Average score
including EU institutions

7%

Worst performing country
Cyprus

1

TRANSPARENCY

A regional average score of 26 per cent reveals a low level of transparency around lobbying in particular, and public decision-making more broadly.

The public has a right to know who is in the room contributing ideas and trying to convince decision-makers on matters of public interest. In most European countries, citizens face obstacles in exercising that right and the public does not have sufficient knowledge of who is trying to influence whom, when, where, how and on what issues, how much is being spent in the process or the results of these lobbying efforts.

A regional average score of 26 per cent reveals a low level of transparency around lobbying in particular, and public decision-making more broadly. While general access to information (understood as the existence and functioning of a freedom of information regime) comes out as the strongest aspect of the transparency landscape, more specific issues, such as registration and disclosure by lobbyists and oversight, as well as the existence of legislative footprints which allow citizens to know who has influenced the passage of a law, are revealed to be weak or non-existent across the region.

Access to information: A prerequisite for transparency of decision-making

Lobbying transparency via freedom of information

When it comes to ensuring transparency, it should be expected that all European countries at a minimum have comprehensive and functioning access to information laws. These laws should empower citizens to find out what happens in their public institutions, including how decisions are made. This is essential for citizen and media oversight of decision-making, even if the data acquired is *post factum*, and thus comes too late to alter decisions that have already been made.

All countries studied have an access to information law, with the notable exception of Cyprus, but across the region there are significant weaknesses, both in terms of the quality of laws and their implementation. In all but two countries (Slovakia and the United Kingdom) access is not always straightforward and citizens face obstacles to accessing information on public sector activities and government data. In the majority of countries, it is not possible for information on lobbying to be accessed through freedom of information requests, either because contacts are not documented and thus the data does not exist, or because exceptions keep such information private (Bulgaria, Cyprus, Estonia, France, Hungary, Italy, Lithuania, Portugal, Spain,⁶⁹ the United Kingdom).⁷⁰

Pro-active public sector transparency

It is increasingly recognised that access to information in a reactive form is not enough to build a culture of openness about public decision-making. Few dispute that, while lobbyists bear responsibility for their actions, the primary onus for transparency is on public officials and representatives: those who are accountable to the citizenry and have a duty to act, and be seen to act, in the open and with integrity. Public officials and institutions should, therefore, be required to pro-actively publish information on how decisions are made, which meetings they hold with various individuals and groups, what documentation is submitted in attempts to influence them, and who they invite to sit in an advisory capacity on various expert groups. Clustering such information around particular items under discussion, and adjoining it to other relevant data, relating for example to programmatic, procedural and decision-maker background, can make for a powerful decision-making “footprint”, ensuring that the overall work of the public sector is more open and comprehensible to the public, and reducing the risk of undue influence. 👍 see p34/1

How robust are lobbying transparency mechanisms in European countries and EU institutions?

Scale 0-100, where 0 is the weakest and 100 is strongest. Overall score based on an un-weighted average of results in four sub-categories. Results are presented in descending order with highest scoring country/EU institution appearing first.

%					
	Access to information	Registration and disclosure by lobbyists	Oversight of register and transparency rules	Pro-active public sector transparency mechanisms including legislative footprint	Overall score
Slovenia	67	60	56	50	58
Ireland	67	64	50	13	48
European Commission	67	50	38	38	48
Lithuania	50	50	56	38	48
European Parliament	67	50	38	25	45
United Kingdom	67	33	25	13	34
Austria	50	57	19	13	34
Poland	50	27	13	25	29
Latvia	50	13	0	50	28
Netherlands	67	10	0	25	25
Estonia	50	0	13	33	24
France	33	30	10	21	24
Slovakia	83	0	0	0	21
Czech Republic	75	0	0	0	19
Council of the EU	67	0	0	0	17
Bulgaria	50	0	0	0	13
Germany	50	0	0	0	13
Portugal	33	0	0	17	13
Italy	33	10	0	0	11
Spain	33	7	0	0	10
Hungary	33	0	0	0	8
Cyprus	17	0	0	13	7
Regional average	50	22	14	17	26

Are legislators required by law to publish a legislative footprint including details of the time, person and subject of contacts with stakeholders, and do they do so in practice?

	In law	Practice
yes	Latvia Poland	none
Partially/piecemeal approach	Austria Estonia European Commission France Lithuania Netherlands Slovenia	Cyprus Estonia European Commission European Parliament France Lithuania Netherlands Poland Portugal Slovenia United Kingdom
no	Bulgaria Council of the EU Cyprus Czech Republic European Parliament Germany Hungary Ireland Italy Portugal Slovakia Spain United Kingdom	Austria Council of the EU Germany Hungary Ireland Italy Latvia Slovakia Spain

Only Latvia and Poland have a variation of a legislative footprint obligation written in law.

2/19

Several countries, most notably Slovakia, have various proactive transparency measures written into law. The recently adopted Catalan Transparency and Access to Information act goes furthest of any instruments examined, stipulating a general duty of proactive release as well as listing a wide diversity of minimum types of information for publication.⁷¹ However, in none of the countries examined are lobbying targets required to proactively publish comprehensive information on meetings, calendars, agendas, visitor logs or documentation received from lobbyists. Slovenia comes closest, with the anti-corruption agency releasing a weekly summary of public sector contacts and a monthly excel sheet with all information from lobbying contact reports, apart from the name of the lobbyist. Some lobbying-related information is also divulged in Latvia and Lithuania. 👍 see p35/1

Legislative footprints absent or poorly implemented

An important step to move closer to the ideal of proactive disclosure by default is to implement a legislative footprint; a document that would detail the time, person and subject of a decision-maker's contact with stakeholders, and include any supporting materials provided by lobbyists in the course of legislative development. Such a footprint would give a picture of the interests mobilised by a decision-making process and thus help the public, the media and anyone interested to scrutinise legislative work.⁷² It would also help address the issue of disproportionate influence by providing an incentive for policy-makers to seek out a balanced representation of views in their decision-making processes. The legislative footprint should ideally be a "live" document, updated in close to real time, but an obligation to publish such a list as an annex to legislative reports would be a good start.

Only two countries of the 19 examined, Latvia and Poland, have a variation of a legislative footprint obligation written in law. In Latvia, any draft law that comes before the Latvian parliament should enclose an explanatory note, in which, among other things, all consultations that have been held while preparing the draft law should be specified.⁷³ In principle, this explanatory note should also indicate the lobbyists with whom the submitter of the draft law has consulted, but the footprint does not function as intended in practice, because institutions do not follow the rules and there is no oversight or verification system in place to compel them to do so or to penalise them for non-compliance.⁷⁴

In Poland, the act on lobbying compels ministries to publish all documents related to the drafting of particular legal acts. Those interested in a piece of legislation, including professional lobbyists, must provide relevant ministries with declarations describing the interest that they are planning to defend or promote during their work. Those declarations are also made public.

A number of countries have taken a more piecemeal approach, requiring the publication of some level of documentation, providing a mini-footprint related to decision-making by public officials.⁷⁵ In France, the authors of parliamentary reports in the National Assembly must annex a list of persons consulted. However, this obligation does not apply to other institutions that participate in the decision-making process. Therefore, while there are requirements for tracking the consulted interests groups at the Assembly level, the potential of the measure is not used to the fullest since it fails to provide an exhaustive list of all consulted interest groups at the final stage of legislation.

How comprehensive are definitions of lobbyists, lobbying targets, lobbying activities in national and EU lobbying regulations?

Countries/institutions included in the table are those with lobbying regulation in place. They are presented in descending order from those with strongest definitions to weakest.

	To what extent does the law clearly and unambiguously define "lobbyists"?	To what extent does the law/regulation define "lobbying targets"?	To what extent is the term "lobbying"/"lobbying activities" clearly and unambiguously defined?
European Parliament			
European Commission			
Ireland			
Slovenia			
Austria			
Poland			
United Kingdom			
Lithuania			
Netherlands			
France			

 Comprehensive, clear and unambiguous definition

 Partially but inadequately/too narrowly/too broadly defined

 No definition/wholly inadequate definition

10/19

10 countries have some form of lobby register in place.

Lobby registers: An effective accountability tool or mere window-dressing?

Lobby registers are fast becoming the most popular transparency tool in the field of lobbying. Of the 19 countries studied, 10 have some form of lobby register in place. These vary from mandatory registers at the national level (Austria, Ireland, Lithuania, Poland, Slovenia, the United Kingdom) to voluntary registers applying to select institutions (National Assembly and Senate in France, the Netherlands, EU Transparency Register) or registers which target institutions at a sub-national level (Tuscany, Molise and Abruzzo, Italy and Catalonia, Spain).

In theory, a mandatory register for lobbyists has the potential to deter undue influence from two perspectives. First, it provides an easy to access “go to” point for politicians and public officials to vet those who approach them with a view to influencing a decision-making procedure. It also allows public scrutiny; giving citizens and other interest groups the chance to evaluate, fact-check or counter the arguments put forward by lobbyists, and track their influence.⁷⁶ Perhaps most importantly, the register can achieve what public sector disclosure cannot – capturing information known only to the lobbyists, information which is of public interest. This may include, for example, the volume of lobbying expenditure, indirect lobbying tactics or channels, and the ultimate clients and beneficiaries of lobbying actions. The effectiveness of a register, however, depends largely on how it is constructed.

Existing registers across European countries and the EU have yet to fulfil their potential as tools of meaningful transparency and accountability. The registers are criticised on a number of fronts including defective definitions limiting the scope of the register, non-mandatory reporting and/or public disclosure, the use of inaccessible or non-user-friendly data formats, and

weak or absent oversight and sanctions. Some promising examples also emerge, such as the recently adopted Irish law, but it remains to be seen if that will deliver on its promise.  [see p34/2](#)

Defective definitions: The devil's in the detail

The definition of a lobbyist and what constitutes lobbying are crucial to the effectiveness of any lobby register, and indeed any form of lobbying regulation. The study found that lobbyists, lobbying targets and lobbying activities are often too narrowly defined in law, which results in weak registers that fail to capture those seeking to influence laws and policies. In some cases the result is that only a small fraction of lobbyists fall within the net of the register. None of the existing national laws were found to have adequate definitions across the board.

An acute example is the recently adopted UK Lobbying Act (2014), which has been described as “glaringly inadequate” and “deliberately evasive”.⁷⁷ The Association of Professional Political Consultants in the United Kingdom has estimated that the register will capture only around 1 per cent of those who engage in lobbying activity. Additionally, the Act is concerned only with the lobbying of a very narrow group of possible targets – ministers, permanent secretaries and special advisers. It does not apply to the lobbying of members of parliament or local councillors, the staff of regulatory bodies, private companies providing public services, or any but the most senior members of the civil service. The potential exclusion of lawyers from the legal definition of lobbyists has also been criticised.

Lithuania's lobbying register has faced similar criticism because most de facto lobbyists in the country, including companies acting in their own interests, business associations, trade unions, religious organisations, various public institutions, and non-profits do not have to officially register, meaning that the vast majority of lobbying activities remain off the record. The Chief Official Ethics Commission, the designated oversight body for the register, has repeatedly called on Parliament since 2005 to address the flaw, noting that it leads to the overall “failure” of the regulation.⁷⁸

How do existing national lobbying registers in Europe measure up against each other?

Scale 0-100, where 0 is the weakest and 100 is strongest. Overall register score based on an un-weighted average of results of two sub-categories, for countries that have a registration system in place. Results are presented in descending order with highest scoring country/EU institution appearing first.

%	Registration and disclosure by lobbyists	Oversight of register and transparency rules	Overall score for lobbying registers
Slovenia	60	56	58
Ireland	64	50	57
Lithuania	50	56	53
EU Transparency Register	50	38	44
Austria	57	19	38
France (National Assembly and Senate registers)	39	16	28
Poland	27	13	20
United Kingdom	33	25	19
Netherlands (House of Representatives Lobbyists Register)	10	0	5

In Slovenia, a country often held up as a good practice example in this area, the definitions of both lobbying and lobbied targets are fairly broad, although the latter fails to include employees of state- and municipal-owned companies and external advisors when legislation is outsourced. The registration itself is confined only to professional lobbyists, however a broader range of actors are captured through public sector reporting on contacts, including in-house employees and representatives of organisations. A weakness of the law is the reported abuse of exceptions, namely the rule that those who lobby in the public interest to strengthen the rule of law and protect human rights fall outside the ambit of the act. The exclusion is made on the basis that the public has the constitutional right to participate in public affairs. However, some evidence shows that lobbyists use this category as a legal loophole to influence public officials on other matters, thus bypassing the obligation to register and to report.⁷⁹

Quality and usability of information varies

The scope and quality of the information that lobbyists are required to disclose in a register will in large part determine whether or not such a register is effective. The information disclosure requirements vary across countries – in general, when compared internationally to other

lobbying registration systems, for example, in the United States and Canada, the quality of information gathered by European registers is much weaker and less detailed.

Lithuania and Slovenia have the broadest reporting requirements in Europe. All registers record lobbyists' names and the specific issue lobbied, with the notable exception of the EU's Transparency Register where information on specific lobbying objectives is not easily found. Poland and the United Kingdom do not require any financial disclosure on the part of lobbyists, and this is also the case for the new Irish law. No country makes it mandatory for supporting documentation (for example, lobbying position papers, amongst others) to be published, which represents a major blind spot in the lobbying transparency architecture.

In terms of the usability of the information produced through registration systems, the study found that user-friendly formats are the exception rather than the rule in Europe. In the United Kingdom and Austria, data is available online in a searchable machine-readable open-data format, although in Austria an important range of data on certain types of lobbyists remains undisclosed. In Slovenia, a major impediment to public use of the data is that, although an excel sheet with most information

Only in Lithuania is the oversight body required to publicly disclose the names of all individuals or organisations found to have violated lobbying rules or regulations.



on lobbying contacts is released on a monthly basis, the underlying reports (which are the only way to obtain the lobbyist's name) must be requested and are only provided in a pdf format, which is of little use for those who wish to analyse the data and delve deeper into influencing patterns.

Oversight and sanctions are missing or weak

Lobbying disclosure, reporting, registration and publication of information should be overseen by an independent government entity. Such an agency should have strong investigative powers and be responsible for spot-checking and auditing reported data. It should also have sanctions at its disposal to deter and punish individuals and organisations that fail to comply, as well as being tasked with awareness raising and other preventative activities.

 see p35/2 Slovenia and Lithuania have an agency with close to adequate enforcement powers on paper, but lack of capacity hampers the oversight agency in Slovenia as well as lobbying not being a priority issue for the agency. In Austria, Poland and the United Kingdom, capacity problems extend beyond inadequate human and financial resources to a lack of teeth in terms of investigative and punitive powers.

Only in Lithuania is the oversight body required to publicly disclose the names of all individuals or organisations found to have violated lobbying rules or regulations. The absence of this provision in other countries would appear to be an under-usage of an important deterrent tool; that of naming and shaming those who break the rules.

None one of the agencies have the sufficient means to carry out effective preventative work, either in the realm of awareness-raising, or in the promotion of good practice and training on compliance. Most do not have a single full-time staff working on the issue of lobbying. By contrast, one of the better-resourced and most effective oversight agencies worldwide, the Canadian Office of the Commissioner of Lobbying (OCLA), has an annual budget of close to €3 million and a pool of 28 employees.⁸⁰

The combination of inadequate regulation, oversight and enforcement and lack of preventative measures explains the high rate of non-compliance with rules. In each of the countries examined, the number of registered lobbyists and contacts are improbably low in comparison to the actual scale of lobbying activities which the rules are designed to capture (as limited as they are). For example, in 2013, only 25 actors were registered to have lobbied the Polish parliament (the Sejm) – 20 entrepreneurs, 4 individuals and 1 non-governmental organisation.⁸¹ While in Slovenia, the Ministry of Health reported having only 8 lobbying contacts for the same year, despite having a major health reform underway, and the relevant Minister in charge noting the strong pressure from various interest groups.⁸²

The verdict on lobbying transparency

Overall, the findings suggest that transparency around lobbying is far too weak across Europe. Without the means to know who is influencing public decisions, it is little wonder that the public assumes that a cosy elite take decisions without balanced input, decisions that ultimately affect their health, their pensions, their social services and their future.

Governments have gravitated towards the idea of a lobby register as a quick-fix solution to regulating lobbying and shining a light on the influence industry. However, lobby registers are not a panacea to undue influence, and they must be carefully designed and properly implemented with meaningful oversight in order to make a difference.

In addition, a register of lobbyists somehow assumes that it is lobbyists that are the problem. This is not necessarily the case. Governments must put much more emphasis on pro-active transparency by public institutions, placing the primary onus for transparency on public officials and representatives; those who exercise public power and are ultimately accountable to the citizenry.

34/1

SPAIN, BRUSSELS

Individual MPs show the way on proactive transparency

In the absence of a comprehensive national approach, a small number of legislators and senior public officials are starting to lead by example, harnessing the power of technology and social media tools to be more transparent about their contact with lobbyists. In Spain, for example, several deputies use their Twitter and Facebook accounts to provide virtually daily summaries of their meetings and activities; some have published their calendars and agendas online;⁸³ and at least one deputy has linked his social media channels, biweekly agenda and personal blog with a list of commitments, statement of assets and interests, and documents signed in relation to his political activity.⁸⁴

In Brussels, a growing number of MEPs are leading the charge on transparency by publishing regular diaries, meetings agendas and/or “lobby lists” including Michèle Rivasi,⁸⁵ Reinhard Buetikofer,⁸⁶ Heidi Hautala⁸⁷ and Richard Corbett.⁸⁸ Also of note is the recent practice by current MEP Julia Reda, who is rapporteur for reviewing the 2001 EU Copyright Directive. Reda publishes an online accountability report including a detailed list and analysis of all lobbying meetings requested and taken by her in the course of conducting the work.⁸⁹

Although such initiatives are still rare, they demonstrate the potential of proactive transparency and the practical channels and tools to deliver on the promise of public accountability.

34/2

IRELAND

Ireland's Regulation of Lobbying Act is a good start, but just one piece of the integrity puzzle

On March 11th 2015, the Irish legislature passed a new Regulation of Lobbying law. The law aims to shine some light on the links between lobbyists and key decision-makers in the political and public service systems. When it enters into force in September 2015, it will require those communicating with senior civil and public servants in specific areas to supply details in an online publicly accessible database.

The law defines lobbyists as employers or their staff (where the employer has more than 10 employees), third-party lobbyists (those who are paid by a client to lobby), and anyone lobbying about the development of zoning of land. This definition appears to be sufficiently broad to encompass lobbying by public affairs professionals, as well as in-house lobbyists from businesses, professional, representative or voluntary organisations, trade unions, charitable, non-profit and faith based organisations.

Lobbying targets are termed “designated public officials”. These are defined as: ministers and ministers of state, members of the legislature (Dáil Éireann and Seanad Éireann), members of the European Parliament for constituencies in the state, members of local authorities and special advisers. Public servants as prescribed are expected to include the top echelon of

secretaries general and assistant secretaries in the civil service and equivalent grades in local authorities. At central government this means that only communications with the top tier of staff – some 240 people in total – will have to be detailed in the lobby register. However, the law allows the minister to include other public servants or office holders in the definition of the lobbied if this is in the public interest.

The specific matters on which lobbyists must file returns are communications with lobbying targets in relation to: initiation, development or modification of any public policy or programme, preparation of legislation, or award of any grant, loan, contract, etc. However, this definition excludes matters which relate only to the implementation of any such policy, programme, legislation, award, etc., or matters of a “technical nature”. One significant aspect of the new law is its definition of communications as including oral or written communications, which are made personally either directly or indirectly, thus giving it the potential to capture “astroturfing” by those seeking to influence.

As for the register itself, it will contain basic information including the name, business address and contact details of the lobbyists; the names and organisations of the lobbying targets; the subject of the lobbying communications and the results they were intended to secure; and the extent and type of lobbying activities. It falls short of requiring the publication of supporting documentation submitted by lobbyists to policy-makers, a measure which would strengthen the law significantly.



35/1

SLOVENIA

Obligation to document lobbying contacts in Slovenia

The Slovenian Integrity and Prevention of Corruption Act adopts a dual-track approach to capturing lobbying data, requiring public officials to file a report on each meeting with a lobbyist and an annual summary of activities from professional lobbyists. The officials who are lobbied are required to log the date, place, and subject matter of the lobbying contact; the lobbyist's name and who they represented; any documents submitted; and an indication of whether the lobbyist identified themselves in accordance with the Act. A signed copy of the report has to be forwarded to the official's superior and the national anti-corruption agency within three days of lobbying contact. All data is subject to the Slovenian access to information law which is considered to be one of the strongest in the world.⁹⁰

Although the framework itself is largely sound, the implementation has been lacking. Most national-level officials do not report their lobbying contacts, and virtually none do so at municipal level. While the oversight agency has adequate powers to issue sanctions and penalties for non-compliance with the rules, in practice it rarely utilises them. An increased emphasis on awareness-raising and enforcement by the oversight agency has, however, helped to improve the compliance rates year on year, but their efforts have been hampered by limited resourcing and the deprioritisation of lobbying as an issue for the agency.⁹¹ Training of public officials to ensure their understanding of their obligations is also insufficient. Prior field tests have also shown that the implementation of the access to information law is inconsistent.⁹²

35/2

SLOVENIA

A strong oversight system in need of better resourcing

The Slovenian registration, supervision and prosecution body for lobbying is the Commission for the Prevention of Corruption (CPC). The agency has powers of investigation and can mete out sanctions for violations of legal provisions regarding lobbying registration and reporting, for both lobbyists and lobbying targets.

The lobbyist must not give any inaccurate, incomplete or deceptive information to the lobbying target, nor must he or she act against the regulations governing the conduct of lobbied persons (including a ban on receiving gifts in relation to the lobbyists' function or public assignments). The sanctions that the agency holds include a written warning; prohibition on further lobbying on a certain matter, or for a certain period of time (no shorter than 3 months or longer than 24 months); and exclusion from the register. Lobbyists are excluded from and

lose their lobbyist status if they report false data, or if they are sentenced to more than 6 months in prison for an intentionally committed criminal offence in the Republic of Slovenia.

The CPC can also fine those acting as professional lobbyists without registering as such, to the tune of between €400 and €1,200. The interested organisations, on behalf of whom the lobbyist has unlawfully lobbied, can also be held responsible for lobbyist violations and be fined by the CPC up to €100,000. The same penalty is predicated for an interest organisation that consciously employs a non-registered lobbyist.⁹³

Formally, the measures of supervision, scrutiny and sanctioning in the field of lobbying and other related influences are clear and very well organised. The CPC has wide jurisdiction and the ability to act proactively in its supervisory and punitive roles. In practice, these measures and the possibilities the CPC has are not fully exercised due to insufficient staff and other resources, as well as lobbying being deprioritised as an issue, indicating insufficient political will to tackle undue influence. It is worth noting that the CPC does not have a dedicated employee working on the issue of lobbying.

2

INTEGRITY

100%

58%

Best performing country
Slovenia

33%

Average score
including EU institutions

Worst performing country
Hungary

17%

2

INTEGRITY

With a regional average score of 33 per cent for integrity, it is clear that standards written in law and ethical conduct in practice are falling far short of what is needed to protect the system from being captured by the interests of a few influential individuals and organisations.

Transparency is a means to an end – it shines a light on those in positions of responsibility, thus promoting ethical behaviour and deterring undue influence in the exercise of public power and in business conduct. However, transparency measures must be embedded within a broader integrity framework that provides clear behavioural standards for politicians and public officials and those seeking to influence them.

For public decision-makers, such an integrity framework requires clear expectations of impartiality and fidelity to public interest; practical guidance on how to deal with gifts and hospitality, handling of official information, and communication with third parties; as well as a robust system of conflicts of interest management, including periodic disclosure of interests, rules regarding incompatibility of simultaneously acting as a lobbyist while in office, and control of the revolving doors between the public and the private sectors.

On the lobbying side too, ethical conduct is key. This should entail being open about one's identity and interests pursued; providing honest, reliable and up-to-date information; respecting institutional rules and avoiding improper influence (particularly inducements); preventing actual or perceived conflicts of interest; not lobbying contrary to one's institutional commitments, including corporate social responsibility (CSR) policies; and proactively publishing information about lobbying positions and activities, particularly if there is no national system of reporting.

Weaknesses in the integrity infrastructure can be addressed through a combination of regulations, robust and enforceable codes of conduct, and the promotion of good practice from within the lobbying interest groups. With a regional average score of 33 per cent for integrity, it is clear that standards written in law and ethical conduct in practice are falling far short of what is needed to protect the system from being captured by the interests of a few influential individuals and organisations.

How robust are integrity mechanisms designed to promote ethical lobbying among lobbyists and decision-makers in European countries and EU institutions?

Scale 0-100, where 0 is the weakest and 100 is strongest. Overall score based on an un-weighted average of results in four sub-categories. Results are presented in descending order with highest scoring country/EU institution appearing first.

%

	Post-employment and pre-employment restrictions	Codes of conduct for public sector employees	Code of conduct for lobbyists	Self-regulation of lobbying by professional bodies	Overall score
Slovenia	67	75	60	30	58
United Kingdom	40	40	33	92	51
European Commission	67	50	30	n/a	49
European Parliament	50	58	30	n/a	46
Latvia	33	67	20	50	43
Austria	8	67	60	33	42
Lithuania	50	58	50	0	40
Ireland	40	42	13	58	38
Netherlands	8	75	0	67	38
Czech Republic	25	50	20	58	38
Spain	58	58	0	25	35
France	22	42	7	50	30
Council of EU	42	25	20	n/a	29
Estonia	8	67	0	33	27
Italy	8	50	0	50	27
Poland	17	67	20	0	26
Germany	17	42	0	42	25
Bulgaria	33	42	0	25	25
Slovakia	42	42	10	0	23
Cyprus	58	25	0	0	21
Portugal	42	17	0	17	19
Hungary	8	50	0	8	17
Regional average	32	49	16	36	33

In 4 out of the 19 European countries studied there are no measures to regulate the revolving door between the public sector and the lobbying world.

4/19

The revolving door between the political world and the lobbying world

Personal contacts, inside information and influence are essential for lobbyists. It is well known that companies and other organisations often use former public officials for lobbying purposes because of their extended networks and insider knowledge on how politics works. Movement between the public sector and the lobbying world poses particular risks of conflicts of interest, for example:

- ▶ Public officials might allow the agenda of a previous private sector employer to influence their government work, being overly sympathetic to a sector that they have a responsibility to regulate.
- ▶ Public officials may give undue consideration to the interests of future or potential employers (this may take the form of deliberate abuse of office, but this is not always the case).
- ▶ Former public officials who accept jobs in business might influence their former government colleagues to make decisions in a way that favours their new employer.
- ▶ Former public officials might use confidential information to benefit their new employers.
- ▶ Such movement can also give rise to a perception of a conflict of interest and undermine public and investor confidence in decision-making.

Controlling the risk of the revolving door using post-employment restrictions is an internationally recognised norm.⁹⁴ While most countries have some form of post-

employment restrictions in place for limited categories of officials, the scope, coverage and the length of time of the “cooling-off period” varies widely. In 4 out of the 19 European countries studied (Austria, Hungary, Italy, Latvia) there are no measures to regulate the revolving door between the public sector and the lobbying world.

Where rules do exist, often they do not cover the range of lobbying targets necessary to fulfil their risk mitigation potential. A major gap is that members of parliament are very rarely covered by post-employment restrictions, despite them being among the primary targets of lobbying activities and thus a high-risk category. In only 1 country out of the 19, Slovenia, are MPs supposed to abide by cooling-off periods before moving into positions that may create conflicts of interest and our research found that the rules are not applied in practice.⁹⁵ While some argue that parliamentarians should not be subject to such constraints due to the sometimes short-lived nature of electoral office, it is worth noting that legislators in 32 states in the United States are subject to cooling-off periods running up to 2 years duration.⁹⁶

In France, while robust rules have recently been put in place for public officials, parliamentarians are exempt from these rules and they can even continue to carry out consulting work and lobbying while in office. The situation is similar in Portugal and Spain. In Germany, the limited rules that do exist apply only to administrators in the ministries and not to other significant lobbying targets such as ministers and parliamentary state secretaries.

Apart from problems with the design of the laws themselves, primarily to do with their scope and the length of moratoria, implementation has been problematic at best. No country included in this study is found to have


see
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Only in Slovenia are MPs supposed to abide by cooling-off periods before moving into positions that may create conflicts of interest.

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adequate oversight of revolving door rules. The risks are high when it comes to the revolving door and the research shows that the importance of mitigating them has not been sufficiently recognised by the political leadership in European countries.

Codes of conduct: Regulating behaviour of lobbying targets and lobbyists

While public sector codes of conduct are fairly common across Europe, a number of EU countries still lack codes of conduct for parliamentarians. Those missing codes for parliamentarians include Cyprus, the Czech Republic, Hungary, Italy, the Netherlands, Slovakia, Slovenia and Spain.⁹⁷ Given that parliamentarians are a major lobbying target, the lack of clear rules guiding their behaviour as public representatives in general and how they deal with lobbyists in particular is of major concern.

There are some relatively robust codes of conduct, for example in Austria, the Netherlands and the European Parliament. In Slovenia, officials' conduct is fairly adequately regulated by law, including the reporting of lobbying contacts. Apart from the Slovenian case, none of the public sector codes of conduct examined explicitly and unambiguously specify standards on how public officials should conduct their communication with interest groups, nor do they specify a duty of documentation of contacts or a duty to report unregistered or unlawful lobbying to superiors.

Overall public sector codes of conduct fail to provide clear guidance on what constitutes good lobbying and how public officials should conduct their communications with external individuals and groups. This is further compounded by inadequate training on and enforcement of the existing codes in most jurisdictions, as well as insufficient regulatory powers. In Cyprus and Ireland for example, the oversight agencies cannot initiate investigations without a complaint.

Concerning ethical guidance for lobbyists, only two countries have statutory rules of conduct – Austria and Slovenia. Both lay out core behavioural principles, although Austria's goes further and encourages lobbying organisations to adopt and publish additional measures. Non-legally binding codes exist in France, Lithuania, Slovenia and the EU institutions. There is also the promise of a statutory code of conduct in the UK Lobbying Act. The recently adopted Irish lobbying law foresees a by-law arrangement, empowering but not requiring the regulator to issue a compulsory code, and to amend it as necessary in consultation with the lobbying community.

Overall, however, most countries have no requirements or guidance for organised interests to conduct their lobbying with certain ethical standards, and no recourse or sanction should inappropriate behaviour short of bribery or trading in influence take place.

In the vast majority of countries (15 of the 19) self-regulatory codes of conduct have been drawn up by the lobbying industry.

15/19

Building integrity from within: Business and lobbyist community reform efforts

While the primary responsibility for acting with integrity rests with public officials and representatives, lobbyists and lobbying organisations must play their part by taking ethical lobbying seriously and showing themselves to be pioneers of integrity. There are many reasons for companies to lead the charge. Apart from any moral considerations, acting with integrity can help build a strong reputation, with both clients and investors, particularly at a time of low public confidence in the corporate sector. The Edelman Trust Barometer (2014), for example, found that, globally, only 1 in five people trust business leaders to make ethical and moral decisions⁹⁸ – presenting a unique opportunity to lead by example. There is also strong evidence that ethical lobbying can allow for more effective engagement with public decision-makers,⁹⁹ and in the long-run, it can build the reputation of lobbying as a profession and help to bring about a level playing field.

Self-regulation from within the lobbying community can play an important role in starting a conversation about ethics and fairness in lobbying and supporting lobbyists through awareness-raising, training and providing ethical guidance. In the vast majority of countries (15 of the 19) self-regulatory codes of conduct have been drawn up by the industry, usually by professional associations of lobbyists or PR associations. The stronger codes include specific behavioural principles that steer lobbyists

away from unethical situations (Austria, France, Italy, the Netherlands and the United Kingdom), prohibit simultaneous employment as a lobbyist and public official (the Czech Republic, France, Ireland, Italy, the United Kingdom), and have robust complaint mechanisms (the United Kingdom). The challenge with these codes is that they are invariably voluntary and apply only to lobbyists who are members of the association. Membership numbers vary widely across associations, ranging from a rather meagre 120 members of Il Chioistro, one of the Italian associations of lobbyists, to 1000 individual members in the Public Relations Institute of Ireland (PRII). The effectiveness of the codes drawn up by such associations has been called into question and in a number of cases enforcement of codes appears piecemeal or absent. As an example, since the introduction of the code of conduct by the PRII in Ireland in 2003, not one complaint has been filed against PRII members and the institute has not conducted any investigations for violations of the code.¹⁰⁰



see p45/1

Apart from these professional initiatives, the research identified a slow but promising trend across Europe whereby a number of pioneering companies are starting to introduce and implement a culture of responsible political engagement. At its best, this includes adopting internal policies for transparent and ethical conduct, streamlining these with corporate social responsibility (CSR) commitments, establishing internal control and training mechanisms, providing adequate channels for complaints, extending the measures to agents and representatives, and being open about these undertakings.¹⁰¹ However, unfortunately the adoption of such practices is still at its nascent stages and lags behind the developments in North America.¹⁰² This has been attributed in part to a comparatively lower level of shareholder activism in Europe.¹⁰³



see p44/2

Although international reporting frameworks appear to be growing in traction, none of them require a comprehensive account of the full public policy engagement of a company.

0

A number of multinational firms operating in the EU are also participating in international efforts for more transparent and ethical business conduct. Important initiatives such as the UN Global Compact and the Global Reporting Initiative allow businesses to sign up and to periodically report on their corporate governance and sustainability practices.

Although these international reporting frameworks appear to be growing in traction, so far none of them require a comprehensive account of the full public policy engagement of a company, what policy issues it engages in, how and with what resources. The ISO 26000 Standard on Social Responsibility goes furthest of any of the frameworks, providing broad vision and strong language on what constitutes responsible political involvement. However, the standard does not include detailed guidance or indicators for implementation and reporting, and does not allow for certification unlike some other ISO standards. This prevents its use as an effective management tool and potentially discourages adoption. The most thoroughly developed framework in the area, the G4 from the Global Reporting Initiative, covers only the matter of political contributions (financial and in-kind), and even then calls for reporting only if

political engagement is deemed “materially relevant” to the operations of the business. This is an apparent retrograde step¹⁰⁴ on the earlier G3 framework which had at least asked companies to report on their public policy positions, even if not the resources or the methods used in lobbying for such objectives.

The shortcomings in the current frameworks hamper their potential to play a more central role in encouraging ethical lobbying and allowing companies to showcase their good behaviour on corporate political engagement when they comply with such standards. The matter is particularly acute given the move towards mandatory non-financial reporting within a number of countries and at the EU level. In 2014, the EU adopted a directive¹⁰⁵ requiring companies and groups with more than 500 staff to disclose their non-financial information, including on social and anti-corruption measures, and are encouraging the use of international reporting frameworks. The directive will apply to some 6000 organisations across the EU and is expected to be operational by 2017.¹⁰⁶

44/1

FRANCE

France's new post-employment restrictions are a good start, but MPs should be covered too

In France, the law requires a cooling-off period of three years between the end of a public service mandate and the transition to a company that the person was previously responsible for in terms of surveillance or control activities. This prohibition applies to all public officials, including cabinet ministers and advisers of the president. Since the establishment of the transparency law in 2013, this requirement also applies to members of government and key local authorities. The Public Service Ethics Commission and the High Authority for Transparency in Public Life are responsible for monitoring its implementation.

However, monitoring is complex in practice. Although these two institutions are independent, there is concern about the resources available to them in relation to the scope of their missions. For example, the Public Service Ethics Commission is responsible for all public officials, who numbered 5.5 million on 31 December 2012. In addition, the recommendations it issues oblige the administration only if there are indications of incompatibility. Further, the Committee has no control over the implementation in the case of recommendation with reservations – which represent, for example, nearly 42 per cent of the recommendations submitted to the State Civil Service.¹⁰⁷ It should be emphasised that the required cooling-off period does not apply to MPs, who are a primary lobbying target, and is not explicitly intended to cover lobbying activities.

44/2

FRANCE

Civil society and business lead the charge on ethical conduct in France

Transparency France has been working to put this issue on the public agenda since 2008, which has led the organisation to engage in regular exchanges with businesses and to help them adapt their lobbying practices to the highest standards. The organisation has contributed to the development of lobbying charters in several global companies, and has worked to ensure that ethical lobbying is mainstreamed into corporate social responsibility discourse.

The first cooperation was with the building materials company Lafarge, which in April 2010 became the first French corporate to develop and publish its charter on lobbying. The charter sets

out a general framework for lobbying activities at all levels of the enterprise and applies to relationships with all types of policy-makers (professional associations, parliamentarians, civil servants, think-tanks, etc.). Transparency France also worked with the non-financial rating agency Vigeo to include the evaluation of lobbying practices in its CSR assessment. Following on from this, in February 2014, seven French companies signed a joint statement on promoting transparent and honest lobbying practices and urged others to consider the principles recommended by Transparency France regarding their lobbying activities.

Since then, numerous other companies – the signatories have a consolidated worldwide turnover of €266 billion – have signed the document. The statement is open to all organisations (members and non-members of Transparency France) that wish to move forward on this issue and show their commitment to social responsibility.¹⁰⁸



45/1

UK

The United Kingdom's professional lobbyist associations provide clear ethical guidance to lobbyists

Both the Chartered Institute of Public Relations (CIPR) and the Association of Professional Political Consultants (APPC) have codes of conduct with which members are expected to comply. The CIPR has a membership of over 10,000 individual public relations and public affairs practitioners. The APPC has 80 public affairs consultancies as members, roughly accounting for over 85% by turnover of the UK's public affairs industry.¹⁰⁹ These codes include specific behavioural principles that steer lobbyists away from unethical situations, for example, requiring honesty and accuracy of information provided to public officials, requiring early disclosure to public officials of the identity of clients and interests being represented, urging members to refrain from using information obtained in violation of the law and to refrain from encouraging public officials to violate the law, and banning gifts above a certain minimum value, fees, employment or any other compensation from a lobbyist to a public official.

The UK Public Affairs Council (UKPAC) is an umbrella body bringing together the two main professional associations, and whose main role is to host an online voluntary register of lobbyists and set out some guiding principles on conduct. If UKPAC receives a complaint that an organisation has violated its guiding principles, it refers this to the body of which the organisation is a member for investigation. The APPC has its

own complaints mechanism: anyone can make a complaint, which is then addressed first by an independent adjudicator and then by a panel of three independent persons. The role of the independent adjudicator and panel members is outsourced to an external body, the Centre for Dispute Resolution (CEDR).

The complainant must specify which aspect of the APPC Code of Conduct has been breached, provide evidence and agree to abide by the APPC rules for dealing with complaints. The APPC (through CEDR) convenes a panel as required responsible for disciplining members who breach the Code. The panel is empowered to warn or reprimand a member, or to require remedial action to minimise the risk of further breaches of the Code by the member. It can also suspend a member from the APPC, recommend that the APPC Management Committee expel the respondent from membership of the APPC, or require the member to issue an apology or retraction in such terms and to publish it in such a manner as the APPC Management Committee may direct. Decisions may be published and will always be published in the case of expulsion or suspension. The panel consists of three persons from outside the profession appointed by CEDR on the basis of their knowledge and reputation.

However, ethics training is not a condition of membership. Moreover, although the UKPAC Code requires members to provide names of all clients, it does not distinguish between clients and "those paying for lobbying activities", and does not require information on the specific subject matter lobbied. The UKPAC Code does not "prohibit" simultaneous employment as a lobbyist and a public official but regards it as "inappropriate".

3

EQUALITY OF ACCESS

100%

62%

Best performing country
Lithuania

33%

Average score
including EU institutions

13%

Worst performing country
Cyprus

EQUALITY OF ACCESS

With a regional average score of 33 per cent for equality of opportunities to participate in public decision-making, it is clear that consultation and public participation is not being taken seriously enough in European countries.

Discussions about lobbying and how best to regulate it must take account of a crucial point: gaining influence requires access to decision-makers. If opportunities of access are skewed in favour of a privileged few, then all the transparency and integrity in the world will not make for a fair and pluralist political system. With a regional average score of 33 per cent for equality of opportunities to participate in public decision-making, it is clear that consultation and public participation is not being taken seriously enough in European countries. Democracy depends on the ability of all citizens to make their preferences known, but public officials and representatives “cannot consider voices they do not hear, and it is more difficult to pay attention to voices that speak softly”.¹¹⁰

Diverse participation and the contribution of ideas and evidence by a broad range of interests are necessary for the development of policies, laws, and decisions that best serve society and broad democratic interests. Any attempt to regulate lobbying must address this broader issue of equality of opportunities of access. There are various ways to promote the pluralism of voices, including amongst others, public consultation and engagement mechanisms and participation in expert or advisory groups that provide input on policies and laws.

Inadequate consultation mechanisms

Formal mechanisms exist to allow citizens to have their voices heard during policy- and law-making processes in most European countries. Of the 19 countries assessed, 17 place some requirements on public officials to engage citizens through public consultation mechanisms with the strongest protections existing in the newer EU member states of Bulgaria, Latvia, Lithuania, Poland and Slovenia. Notably in most cases, the provisions are rarely codified in law, which can lead to a diverse and confused practice

17/19

17 countries place some requirements on public officials to engage citizens through public consultation mechanisms.

among various government departments, as well as limited redress for citizens or interest groups where the consultation is omitted.

The wider democratic culture has a major impact on the type of consultation processes used and the openness or exclusivity of those processes. A number of EU countries (Austria, Bulgaria, France, Germany, Hungary, Ireland, Italy, the Netherlands, Slovakia and Slovenia) are marked by corporatism or neo-corporatism, which implies privileged access to “social partners” who represent the interests of those seen to be primarily affected by the policy under consideration. These usually include associations of industry, trade unions, labour unions and agricultural associations. While this type of social partnership approach is not in itself problematic, a lack of transparency around whose preferences are taken into account is.

The research found that despite the existence of multiple and varied avenues for citizens and groups to voice their preferences, it is wholly unclear which voices decision-makers actually listen to. None of the countries studied have functioning mechanisms requiring policy-makers to explain or justify why and how various submissions have or have not been taken into account in final decisions.¹¹¹

Do existing rules promote a plurality of voices in the political system? How inclusive are public consultation mechanisms and how robust are advisory group composition rules?

Scale 0-100, where 0 is the weakest and 100 is strongest. Overall score based on an un-weighted average of results in two sub-categories.¹¹² Results are presented in descending order with highest scoring country/EU institution appearing first.

%

	Consultation and public participation in decision-making	Robustness of advisory/expert group rules	Overall score
European Commission	67	60	63
Lithuania	83	40	62
Slovenia	75	20	48
Latvia	75	20	48
United Kingdom	29	63	46
Austria	67	20	43
Poland	67	20	43
Netherlands	58	20	39
Bulgaria	50	25	38
Portugal	33	40	37
Estonia	50	20	35
Slovakia	58	10	34
Ireland	42	20	31
Germany	50	10	30
Czech Republic	50	10	30
Italy	33	10	22
European Parliament	42	0	21
France	33	10	27
Hungary	25	10	18
Spain	33	0	17
Cyprus	25	0	13
Council of EU	25	0	13
Regional average	46	19	33

None of the countries studied have functioning mechanisms requiring policy-makers to justify why and how various submissions have or have not been taken into account in final decisions.

0/19

In a number of countries (Bulgaria, the Czech Republic, Germany, Ireland, Lithuania, the Netherlands, Slovakia, Slovenia, the United Kingdom) there are non-legally binding guidelines or policy documents that make reference to policymakers' obligations to justify their decisions. However, in general they are rather weak and overall found to be insufficient. Placing a stronger onus on decision-makers to document and publish not only the results of public consultations, but also which submissions have influenced the outcome of the decision-making process and how, would contribute to making citizens more aware and give them greater ownership of public decisions.  [see p51](#)

Advice as a form of influence: Expert and advisory groups

Advisory and expert groups¹¹³ provide another significant forum for participation and input from stakeholders, particularly in areas where public administration lacks internal expertise. They play a vital role in shaping thinking around new policies and laws and in crafting the content of decisions that affect the public. It is crucial that such advisory groups are balanced and that representatives of the interests of all those affected by a proposed law or policy have a seat at the table. In particular, it is critical that no single interest category dominates advisory groups, in order to safeguard the broader public interest.

The research shows that the vast majority of European countries do not pay enough attention to ensuring a balanced composition of advisory groups. Such a

balanced composition is legally provided for in only 1 of the 19 countries assessed (Portugal). Among the worst offenders when it comes to not paying enough attention to ensuring balance are Cyprus, the Czech Republic, France, Germany, Hungary, Italy, Slovakia and Spain; all scoring just 10 per cent or less in an assessment of their measures to ensure balanced advisory groups.

Furthermore, only in Lithuania and the United Kingdom are lobbyists prohibited from sitting on advisory groups in a personal capacity. In none of the countries studied are corporate executives prohibited from sitting on advisory groups in a personal capacity. This poses a major risk of concealed interests having undue influence in the policy process.

Apart from the composition of these influential groups, it should also be possible for interested citizens to know about their agendas, what is discussed at their meetings and what are the positions of the various members. In a number of countries (the Czech Republic, France, Germany, Italy, Latvia, Slovakia and Spain) none of this information is made available and these advisory groups are shrouded in a veil of secrecy. It may well be the case that they have nothing to hide but the lack of transparency inevitably breeds distrust.

Consultation mechanisms exist on paper, but in practice they have too often become mere box-ticking exercises rather than meaningful platforms for broad democratic participation from a cross-section of society. Reforms of existing structures, such as how public consultations are run and how advisory groups are constituted, would be a good start to achieving a better balance in the representation of interests in public decision-making in Europe and ultimately achieving greater equality of access to public decision-making.



PROMISING PRACTICE

SLOVAKIA

e-consultation in Slovakia

The Slovak Interdepartmental Comments Procedure and its accompanying Directive require that all official documents designated for government sessions have to be first published online for consultation. Any interested parties are allowed to comment including government ministries, public bodies, organised interests and the public at large. The standard period for consultation is 10-15 days, and in exceptional situations this may be shortened to five days.

The comments can be submitted by email or through a dedicated online portal¹¹⁴ following compulsory registration. This portal is open to view, and compiles a range of information per item, as well as tracking the overall process of the initiative.

The comments themselves are divided into the following categories: general, particular, material, legal, legislative-technical and technical-linguistic. There is an opportunity to designate certain parts of the feedback as “essential”, requiring it to be considered by the proposer of the bill. There is also a category of Collective Comment (CC) where a particular view is

expressed jointly by at least 500 natural and/or legal persons. “Essential” comments that are subject of conflict and have been submitted through CC or by a government entity are subject to a special consultation/ dispute resolution process. All comments are responded to by the proposer of the legislative change, noting whether they are accepted, partially accepted, or declined, and why. Following the consultation procedure, the proposals are tabled for government discussion and from then on, if applicable, move to parliament.

This system has made the creation of legislation more open to the public, fostering participation and understanding of government decision-making and creating some safeguards against undue influence. It has also improved the communication between the ministries and other involved bodies. However, the comments portal is not very intuitive, the notifications are sometimes not well communicated and the submission periods are not always respected. Moreover, the proposals and amendments by members of parliament do not have to go through this process which creates a big window of opportunity for opaque influence.

4

FOCUS ON BRUSSELS



100%

53%

European Comission

37%

European parliament

19%

Council of EU

4

FOCUS ON BRUSSELS: REGULATING LOBBYING IN THE LOBBYING CAPITAL OF EUROPE

After Washington, D.C., Brussels has the highest density of lobbyists in the world. The three core EU institutions – the European Commission, European Parliament (EP) and the Council of the EU – are all major targets of lobbying. In recent years, numerous scandals regarding undue influence have emerged from the centre of EU decision-making. These include MEPs accepting cash for amendments from journalists posing as lobbyists,¹¹⁵ industry lobbyists being seconded as experts to the European Commission and shaping EU policy from the inside,¹¹⁶ and perhaps most famously the “Dalligate” scandal, which led to the resignation of a commissioner after an associate allegedly solicited bribes from a tobacco lobbyist in exchange for favours.¹¹⁷

In the assessment of the regulatory system to ensure transparency, integrity and equality of access when it comes to lobbying, the average score for the three core EU institutions was just 36 percent. The European Commission performed best of the three institutions at 53 per cent, while the European Parliament scored 37 per cent and the Council of the EU a meagre 19 per cent. This poor performance indicates that there is a long way to go to safeguard the EU institutions against undue influence.

The most pressing issues regarding lobbying at EU level are the reform of the voluntary EU Transparency Register; increasing decision-making transparency in all the core institutions by, for example, creating effective legislative footprints; strengthening the post-employment rules; and ensuring that there are meaningful sanctions for breaches of lobbying and transparency rules.¹¹⁸

Transparency: New Commission strengthens transparency but gaps remain

Since 2011, the European Transparency Register, a voluntary register of those lobbying the European Commission and European Parliament, has been in place. There are many weaknesses to the system, as it currently operates. Firstly, registration for those lobbying the European Commission and the European Parliament remains voluntary with the consequence that not

all lobbyists register. Secondly, monitoring of the register is weak with no independent body tasked with oversight, while sanctions for misuse should be more effective. Thirdly, the Council of the EU, one of the most important decision-making bodies in Brussels, does not participate in the register.

On a more positive note, the definition of lobbying in use at EU level is sound. Lobbyists are defined as all organisations and self-employed individuals engaged in “activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the EU institutions”.¹¹⁹ The new Juncker Commission has indicated that it will propose in 2015 an inter-institutional agreement with the European Parliament and the Council of the EU to create a register for lobbyists covering all three institutions. If this comes to pass, it will strengthen the system, but still falls short of a mandatory register, which would require a legislative proposal to be initiated.

The new Commission has also made positive changes regarding pro-active transparency on the part of EU officials. As of 1 December 2014, commissioners, members of their cabinets and directors-general must publish information about meetings held with lobbyists. This information includes the dates, locations, names of the organisations and self-employed individuals met, and the topics of discussion. This is a welcome development, as it may help to further a culture of transparency within the Commission and it may also shed light on lobbying by organisations that are not registered in the voluntary system. However, its scope is limited and it is not clear how the rules will be enforced, given there is no independent body to oversee their implementation. As noted by the European Ombudsman, only the names of the commissioner or the director general involved in the meeting must be published, but not the lobbyists’ names (only the organisation or company name).¹²⁰ Furthermore, a rather broad exceptions clause allowing the withholding of information for “the protection of any other important public interest recognised at Union level” is a potential loophole that

Average score for the EU institutions

36%

could hamper transparency in practice.¹²¹ Last but not least, these rules do not apply to the European Parliament or the Council of the EU.

As yet, the new Commission has not signalled its intention to go further with transparency and push for a mandatory legislative footprint, namely a requirement for Commission officials to record and disclose all contacts and input received from lobbyists for draft policies, laws and amendments. A 2008 resolution of the European Parliament recommended the use of legislative footprints on a voluntary basis. According to the resolution, “a rapporteur may, as he or she sees fit (on a voluntary basis), use a ‘legislative footprint’, i.e. an indicative list, attached to a Parliamentary report, of registered interest representatives who were consulted and had significant input during the preparation of reports”. A limited number of parliamentarians have voluntarily provided legislative footprints, though clearly the low level of uptake on the “suggestion” put forward in the resolution indicates that more robust measures are necessary at EU level in order for the legislative footprint to take hold.¹²²

Integrity rules insufficient

Transparency International's EU Integrity Study (2014)¹²³ found that the rules to detect, prevent and punish unethical behaviour by MEPs and senior EU figures are often inconsistent or contain gaps. Codes of conduct and general ethics rules are inconsistent and lack proper oversight. None of the ethics committees that exist to advise MEPs and EU officials on compliance with ethics rules is genuinely independent. These advisory bodies and offices are generally reactive, dealing with issues as they arise, rather than proactively monitoring compliance (e.g. through conducting thorough spot-checks on declarations). They are also powerless to issue binding recommendations or administrative sanctions for breaches of rules.

There are also deficiencies regarding the duration and scope of obligations that former members and officials of institutions have after leaving office: “cooling-off periods” range from 18 months for former commissioners to none at all for MEPs. When the first Barroso Commission left office in 2010, no fewer than six commissioners went

through the revolving door by promptly taking up private sector positions. Outgoing commissioners receive a generous three-year “transition allowance” and many have argued that this allowance should come with a longer and stricter ‘cooling-off’ period than the 18 months that currently applies. The recent furore over the former chair of the European Parliament Committee on Economic and Monetary Affairs (ECON), Sharon Bowles, taking up a position as a non-executive director at the London Stock Exchange is yet another example of the revolving door phenomenon at the EU level.¹²⁴

European Commission expert groups: Privileged access for a select few?

When it comes to ensuring that a plurality of voices is heard by EU policy-makers, a key issue raised is the composition of European Commission expert groups. Alter-EU has documented corporate dominance at the expense of civil society and other interests’ involvement in many powerful expert groups at EU level. They found, for example, that in the Data Retention Experts Group as of 2013 all seven non-governmental members represented the interests of telecommunications corporations. They also found numerous examples of lobbyists sitting in a personal capacity in important expert groups, including those dealing with tax, intellectual property and finance issues. Calls for public participation in expert groups at EU level are uncommon and overall transparency in the selection process and their functioning is lacking.¹²⁵

Acknowledging that this is a major problem at EU level, the European Ombudsman, Emily O'Reilly, recently opened an investigation into the composition and transparency of the European Commission's expert groups. This is a good sign and maybe a step towards ensuring that those affected by decisions have a say in EU policy-making.

RECOMMENDATIONS

to national decision-makers¹²⁶

GOAL 1: TRANSPARENCY

Guarantee the public has sufficient information on contact between lobbyists and public officials to understand how decisions are made and to hold their representatives to account.

► Review immediately all laws, policies and practices on access to information in countries where acute problems were found. Access to information laws should adhere to fundamental principles¹²⁷ and all information must be considered “public by default”, including data on lobbying.

► **Bulgaria, Cyprus, the Czech Republic, France, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Slovenia, Spain**

► Require public institutions and representatives to capture and proactively publish information on their interactions with lobbyists including meeting summaries, calendars, agendas and documentation received.

► **All countries**

► Ensure a “legislative footprint” is created for every legislative proposal to ensure full transparency of decision-making processes. ► **All countries**

► Disclose publicly the membership of government and parliamentary expert and advisory groups, as well their agendas, minutes and participants’ submissions. ► **All countries**

► Establish and strengthen existing registers of lobbyists by making them mandatory and requiring timely registration and periodic reporting on activities by all professional lobbyists and organised interest groups.

STRENGTHEN: Austria, France, Ireland, Lithuania, Netherlands, Poland, Slovenia, the United Kingdom

ESTABLISH: Bulgaria, Cyprus, the Czech Republic, Estonia, Germany, Hungary, Italy, Latvia, Portugal, Slovakia, Spain

► Ensure that the registers apply to both direct and indirect lobbying efforts targeting the full range of institutions and individuals performing public decision-making functions. ► **All countries**

► Ensure that the registers capture a minimum set of lobbying-related information including lobbyist details; client identity (if applicable); target institutions and officials; the intent of lobbying activities; summary expenditure incurred; and any political donations and in-kind contributions provided.

► **All countries**

► Ensure that the information complies with open data principles,¹²⁸ including being available online, free of charge, in an easily accessible machine-readable format. Linking the various data sets, including through a single portal, and allowing for bulk download is highly recommended. ► **All countries**

GOAL 2: INTEGRITY

Ensure lobbyists and public officials act with integrity and ethics in their interactions.

- Strengthen existing codes of conduct for public officials with particular attention to:

Conflicts of interest including the incompatibilities of being a lobbyist ► [Bulgaria, Cyprus, the Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, Portugal, Slovakia, Spain, the United Kingdom](#)

Gifts and hospitality ► [Bulgaria, Cyprus, Estonia, France, Ireland, Lithuania, Poland, Portugal, Slovakia, Spain, the United Kingdom](#)

Interest and asset declarations ► [Bulgaria, Cyprus, the Czech Republic, Hungary, Ireland, Italy, Poland, Portugal, Slovakia, Slovenia, the United Kingdom](#)

Duty to document contacts ► [All countries \(except Slovenia\)](#)

- Establish minimum ‘cooling-off’ periods before former public and elected officials can work in lobbying positions that may create conflicts of interest and a permissions process from a designated ethics office before a lobbying-related appointment in the private sector can be taken up by former public officials, former members of parliament, and former members of the executive (national and subnational levels).

INTRODUCE: [Austria, Hungary, Ireland, Italy, Latvia, the Netherlands](#)

AMEND: [Bulgaria, Cyprus, the Czech Republic, Estonia, France, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain, the United Kingdom](#)

- Introduce a statutory code of conduct for lobbyists laying out the core ethical principles including honesty and accuracy of information provided; early disclosure of identity and interests; respect for institutional rules incumbent on public officials; prohibition of undue influence, including inducements and gifts and hospitality above a minimum value; and a speedy resolution of conflicts of interests. ► [All countries](#)

RECOMMENDATIONS

to national decision-makers¹²⁶

GOAL 3: EQUALITY OF ACCESS

Promote diverse participation in and contribution to political decision-making processes to ensure they are not captured by a select few interests.

- ▶ Establish a legal right of citizens and interest groups to provide input into legislative and policy items under consideration. ▶ [Bulgaria, Cyprus, the Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, the Netherlands, Portugal, Slovakia, Spain, the United Kingdom](#)
- ▶ Ensure the legal framework explicitly lays out the varied means for public participation in legislative and policy processes, including timeframes, mechanisms for dissemination of information, attendance and participation rules, and channels to submit comments. ▶ [Bulgaria, Cyprus, the Czech Republic, Estonia, France, Hungary, Ireland, Italy, the Netherlands, Poland, Portugal, Slovakia, Spain, the United Kingdom](#)
- ▶ Introduce a legal requirement on public bodies to publish the results of consultation processes, including the views of participants in the consultation process. ▶ [Austria, Bulgaria, Cyprus, the Czech Republic, Estonia, France, Hungary, Ireland, Italy, Latvia, the Netherlands, Portugal, Slovenia, Spain, the United Kingdom](#)
- ▶ Introduce a legal obligation on public authorities to strive for a balanced composition of expert and advisory bodies, representing a diversity of interests and views. ▶ [All countries](#)
- ▶ Make open all calls for applications to sit on advisory/expert groups and ensure common selection criteria are used to balance different interests. ▶ [All countries](#)
- ▶ Introduce a legal requirement that advisory and expert group members disclose their interests and affiliations relevant to items under consideration. ▶ [All countries](#)
- ▶ Prohibit lobbyists and corporate executives from sitting on advisory/expert groups in a personal capacity. ▶ [Austria, Bulgaria, Cyprus, the Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain](#)

GOAL 4: OVERSIGHT

**Ensure compliance and effective operation
of the rules**

- Ensure the operation of an adequately resourced independent oversight body or mechanism to enforce rules regarding the transparency of lobbying activities and ethical conduct (post-employment, conflicts of interest, gifts and hospitality). The body should also focus on carrying out effective promotional and educational measures. ► [All countries](#)

RECOMMENDATIONS

**to all professional lobbyists,
companies and organisations,
including NGOs, who seek
to influence public policy.**

GOAL

Foster a culture of integrity among companies and organisations seeking to influence public policy.

- ▶ Be aware of and comply with all the applicable laws, regulations, rules and codes of conduct concerning lobbying activities
- ▶ Register in all lobby registers in jurisdictions where lobbying is undertaken, including those that are voluntary.
- ▶ Establish internal policies and procedures for transparent and ethical conduct, and ensure these are integrated with organisation's anti-corruption policies and corporate social responsibility commitments.
- ▶ Be proactively transparent about the organisation's lobbying and other forms of political engagement, including:
 - Policies, expenditure and individuals lobbying on the organisation's behalf
 - Political contributions and activities
 - Positions papers and supplementary documents presented in support of lobbying efforts
 - Indirect political involvement including funding and support for civil society organisations, scientific research and public relations
- ▶ Ensure all lobbying efforts, political activities and spending are reported as part of annual reporting and, specifically, as part of corporate social responsibility reporting.
- ▶ Ensure lobbying is carried out with integrity, that information conveyed is factually accurate and honest and that lobbyists do not misrepresent their status or the nature of their communications.
- ▶ Avoid potential conflicts of interest, actual or perceived undue influence, and respect the rules incumbent on public officials.
- ▶ Train the organisation's employees and representatives on the above measures, and ensure they apply to any consultants and agents acting on the organisation's behalf.

RECOMMENDATIONS

to EU institutions

GOAL 1

Increase the transparency of lobbying and decision-making within core EU institutions, and ensure meaningful sanctions for misconduct.

- ▶ Make the Transparency Register mandatory for all interest representatives and extend the register to cover the Council of the EU.
▶ [European Commission, European Parliament and Council of the EU](#)
- ▶ Publish legislative footprints to uniformly track contacts and input received for draft policies, laws and amendments. ▶ [European Commission, European Parliament and Council of the EU](#)

GOAL 2

Address conflicts of interest by strengthening ethics rules for lobbyists, EU officials and MEPs.

- ▶ Amend the European Parliament's code of conduct and introduce a 'cooling-off' provision to prevent MEPs from moving straight into a job that might create a conflict of interests. ▶ [European Parliament](#)
- ▶ Strengthen oversight of the EU ethics infrastructure through independent oversight bodies, who can proactively monitor and detect breaches of the rules. ▶ [European Commission, European Parliament and Council of the EU](#)
- ▶ Make full use of the existing mechanisms for breaches of lobbying transparency and integrity rules. ▶ [European Commission, European Parliament and Council of the EU](#)

GOAL 3

Promote diverse participation in and contribution to EU decision-making processes to ensure they are not captured by a few select interests.

- ▶ Make open all calls for applications to sit on European Commission expert groups, ensure common selection criteria to balance different interests, and make membership and group activities fully transparent.
▶ [European Commission](#)
- ▶ Ensure greater transparency regarding expert group membership and activities by publishing information on the selection process for expert groups as well as publishing detailed minutes of expert group meetings.
▶ [European Commission](#)

ENDNOTES

- 1 See Chapter 2 for a full explanation of the scoring methodology.
- 2 National assessments were conducted in 2014 in Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and the United Kingdom. The EU institutions reviewed are the European Commission, the European Parliament, and the Council of the EU.
- 3 Burson Marsteller, *A Guide to Effective Lobbying in Europe: The View of Policymakers* (London: Burson Marsteller, 2013).
- 4 Transparency International, *Global Corruption Barometer 2013* (Berlin: Transparency International, 2013).
- 5 Greece was not in the cohort of countries reviewed for the current report.
- 6 See our more detailed set of recommendations targeted at national governments, EU institutions, lobbyists and civil society at the end of this report.
- 7 While exemptions for some small operations could be justifiable in certain cases, broadly speaking, registers should be inclusive of all lobbyists, and, with this in mind, administrative burden should be minimised.
- 8 The OECD Principles for Transparency and Integrity in Lobbying, available at: www.oecd.org/gov/fightingcorruptioninthepublicsector/oecdprinciplesfortransparencyandintegrityinlobbying.htm
- 9 OECD, 2014.
- 10 Council of Europe, *Report on the Role of Extra-Institutional Actors in the Democratic System (Lobbying)* Adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013) (Strasbourg: Council of Europe, 2013).
- 11 Transparency International, *Open Governance Standards* (Berlin: Transparency International, forthcoming).
- 12 Sunlight Foundation, 2013.
- 13 Access Info Europe, *Lobbying Transparency via Right to Information Laws* (Madrid: Access Info Europe, 2013).
- 14 The full methodology and research questionnaire online at www.transparency.org
- 15 The breakdown is borrowed from John Hogan, Raj Chari and Gary Murphy, "Lobbying Regulation Across Four Continents: Promoting Transparency?" APSA 2009 Toronto Meeting Paper, 2009.
- 16 Interviews with a representative of a professional association in Hungary, confirmed by an interview with a government public official.
- 17 See TI Ireland, *Influence and Integrity: Lobbying and its Regulation in Ireland* (Dublin: TI Ireland, 2014).
- 18 F. Galletti, *Alta pressione* (Venice: Marsilio, 2011).
- 19 See also Transparency International Hungary National Integrity System Assessment (Budapest: Transparency International Hungary, 2012), Bertelsmann Stiftung, *Sustainable Governance Indicators: 2014 Hungary Report* (Gütersloh: Bertelsmann Stiftung, 2014) and Mihály Fazekas and István János Tóth, "From corruption to state capture: A new analytical framework with empirical applications from Hungary" Working Paper Series: CRCB-WP/2014:01 (Corruption Research Center, Budapest, 2014).
- 20 TI Hungary, *Lifting the Lid on Lobbying: National Report of Hungary* (Budapest: TI Hungary, 2014), p.20.
- 21 For detailed discussion of this phenomenon, see for example Eric Lipton and Danny Hakim, "Lobbying Bonanza as Firms Try to Influence the European Union", *New York Times* (web), 18 October 2013.
- 22 See EU Transparency Register statistics: <http://ec.europa.eu/transparencyregister/public/consultation/statistics.do?locale=en&action=prepareView> (accessed November 2014).
- 23 Maeve McClenaghan, "How 'Big Four' get Inside Track by Loaning Staff to Government", *Bureau of Investigative Journalism*, 10 July 2012.
- 24 See for example "Commission gets Advice on Tax Policies from LuxLeaks Tax Dodgers", *Corporate Europe Observatory*, 25 November 2014, <http://corporateeurope.org/expert-groups/2014/11/commission-gets-advice-tax-policies-luxleaks-tax-dodgers>
- 25 TI Lithuania, "Backstage Politics: Understanding lobbying in Lithuania" (Vilnius: TI Lithuania, 2015).
- 26 See for example "The Power of Lobbies", *Corporate Europe Observatory*. <http://corporateeurope.org/power-lobbies>; and the EU Transparency Register statistics.
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- 28 "The Fire Power of the Financial Lobby: A Survey on the Size of the Financial Lobby at the EU Level", *Corporate Europe Observatory*, 9 April 2014, <http://corporateeurope.org/financial-lobby/2014/04/fire-power-financial-lobby>
- 29 For example, both Greenpeace and Transparency International EU Liaison Office spend in the region of €1 million lobbying the EU institutions each year. See EU Transparency Register statistics.
- 30 Edward T. Walker and Christopher M. Rea, "The Political Mobilisation of Firms and Industries", *Annual Review of Sociology* (web), 18 June 2014, pp.281–304.
- 31 Nikolaj Nielsen, "MEPs Copy-pasting Amendments from US Lobbyists", *EU Observer*, 12 February 2013.
- 32 UK Department of Health, "FOI release – correspondence about the Government's consultation on the packaging of tobacco products", 13 September 2012, <https://www.gov.uk/government/publications/dh-foi-release-correspondence-about-the-government-s-consultation-on-the-packaging-of-tobacco-products--2>
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- 34 See letter from Simon Clark, Forest Director to Department of Health published online here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213681/FOI-734767-13.4.pdf
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- 36 See TI Portugal, *The Influence Market in Portugal* (Lisbon: TI Portugal, 2014).
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- 44** Finance Watch, Finance Watch Response to the Public Consultation on Stakeholder Consultation Guidelines, (Brussels: Finance Watch, 30 September 2014).
- 45** "The Fire Power of the Financial Lobby", 2014.
- 46** Scheherazade Daneshkhu and Hugh Carneg, "France Unveils Banking Reform", Financial Times, 19 December 2012.
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- 48** James Panichi, "Banks Sign Up to Lobbying Register", European Voice, 4 December 2014.
- 49** For a detailed account of the case, see the official report issued by the French General Inspectorate of Social Affairs (IGAS), "Enquête sur le MEDIATOR", 2011, <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/114000028/0000.pdf>
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- 51** Angelique Chrisafis, "France Shaken by Fresh Scandal over Weight-loss Drug Linked to Deaths", Guardian, 6 January 2013.
- 52** IGAS, 2011 p.97
- 53** "Servier indemniser tous les patients qui ont souffert du Mediator", Le Monde, 14 May 2014
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- 55** "Mediator: Comment Servier a corrigé le rapport du Sénat", Le Figaro, 13 September 2013.
- 56** "Mediator: le lobbying de Servier pour minimiser ses responsabilités", Le Figaro, 26 September 2011.
- 57** Transparency International Italy, Lobbying and Democracy: Representing Interests in Italy (Milan: TI Italy, 2014, pp 38-39).
- 58** Among many others, some prominent initiatives have emanated from the Sunlight Foundation
<http://sunlightfoundation.com/policy/lobbying/guidelines/>; Alter-EU www.alter-eu.org/ and LobbyPlag <http://lobbyplag.eu/map>
- 59** Vigeo, "Executive Summary: Transparency and Integrity of Lobbying: A New Challenge for CSR", www.vigeo.com/csr-rating-agency/images/stories/SUMMARY_TABLE_OF_CONTENT_final.pdf
- 60** At the time of writing, there are strong indications of imminent measures to strengthen lobbying rules at EU level (James Panichi, "Commission sets Tough Disclosure Laws", European Voice, 15 November 2014) and at the Council of Europe, the European Committee on Legal Co-operation (CDCJ) has commissioned a feasibility study on a Council of Europe legal instrument concerning the regulation of lobbying activities, which is currently under consideration.
- 61** Burson Marsteller, 2013.
- 62** OECD, 2014, p.51.
- 63** These standards are drawn from the increasing literature on lobbying regulation and empirical examples. Among the most relevant sources for standards are the OECD, 2014, Council of Europe Parliamentary Assembly Recommendation 1908 (2010) on lobbying in a democratic society and the Sunlight Foundation Lobbying Guidelines (2013), <http://sunlightfoundation.com/blog/2013/12/03/announcing-sunlights-international-lobbying-guidelines/>, as well as the work by Chari et al., 2010. In terms of empirical examples, the Canadian model is often held up as a best practice of lobbying regulation.
- 64** The overall percentage per country is the un-weighted average of the scores for the three dimensions. Each of those dimension scores is the un-weighted average of the corresponding sub-dimension scores. In total, 65 indicators of transparency, integrity and equality of access to decision-makers are included in the assessment. See Methodology note for further details and the full methodology online at www.transparency.org
- 65** It is important to note that both the U.S. and Canada continue to face challenges in tackling undue influence. In Canada, there is a rather robust lobbying registration system but a 20 percent activity threshold for registering as an in-house lobbyist allows a significant portion of lobbying activity to go unrecorded. In the U.S., attempts to regulate lobbying have not been accompanied by concerted effort on the issue of political financing and as a result, corporate money and political influence remain inextricably linked.
- 66** Global Corruption Barometer, 2013.
- 67** See national research reports for more detail on these improvements.
- 68** Committee on Standards in Public Life, 'Political Party Finance: Ending the big donor culture, Thirteenth Report', November 2011.
- 69** The Law in Spain entered into force in December 2014 for state entities, and will enter into force in December 2015 for regional entities. Although it is not possible to say to what extent institutions will comply with the law, on paper the law has considerable weaknesses and many exceptions.
- 70** See national reports for further details on country specific weaknesses.
- 71** See Law 19/2014 on Transparency, Access to Public Information and Good Governance, chapters II and III.
- 72** Draft Report on the Development of the Framework for the Activities of Interest Representatives (Lobbyists) in the European Institutions (2007/2115(INI)), Committee on Constitutional Affairs, 12 February 2008.
- 73** Latvian Saeima Rules of Procedure, Article 79.3 and 85.5.6.
- 74** TI Latvia Transparency of Lobbying in Latvia (Riga: TI Latvia, 2015)
- 75** These include Austria, Cyprus, Estonia, France, Lithuania, the Netherlands, Poland and Slovenia.
- 76** Sunlight Foundation, 2013.
- 77** Cave and Rowell, 2014, p.269.
- 78** See for example Chief Official Ethics Commission, Activity Report 2010 (Vilnius: Chief Official Ethics Commission), p 31.
- 79** TI Slovenia, Lifting the Lid on Lobbying: Slovenia. Call for Transparent and Ethical Lobbying (Ljubljana: TI Slovenia, 2014) p.17
- 80** The Office of the Commissioner of Lobbying of Canada, www.ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00007.html
Figures as of January 2014.
- 81** Stefan Batory Foundation Lifting the Lid on Lobbying: Call for better regulation and practice (Warsaw: Stephan Batory Foundation, forthcoming).
- 82** TI Slovenia, 2014, p16.
- 83** See for example, calendar of Deputy María González Veracruz: www.mariagonzalezveracruz.com/mi-agenda-publica/ and agendas of the deputies of the Iniciativa per Catalunya Verds (ICV) party <http://www.iniciativa.cat/icv/sections/agenda>
- 84** Deputy Odón Elorza. See: www.odonelorza.com
- 85** See <http://www.michele-rivasi.eu/agenda/agenda-%E2%80%93-semaine-du-13-au-18-octobre-paris-lyon-bruxelles-douai-et-valence/>
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- 87** See <http://heidihautala.com/en/parlamentti/lobbarilista/>
- 88** See <http://www.richardcorbett.org.uk/transparency/lobbying/>
- 89** See <https://juliareda.eu/2015/01/report-eu-copyright-rules-maladapted-to-the-web>

90 The Slovenian Public Access to Information Act (ZDIJZ) was ranked second in the world on the Global Right to Information Rating 2014. See: www.rti-rating.org

91 For more in depth focus on the Slovenian enforcement framework, see section Promising Practice: A strong oversight system in need of better resourcing, p. 35

92 See Transparency International Slovenia National Integrity System Study (Ljubljana: Transparency International Slovenia, 2011).

93 Article 79, Integrity and Prevention of Corruption Act in English, www.kpk-rs.si/upload/datoteke/ZintPK-ENG.pdf

94 Article 12 UN Convention against Corruption calls for "restrictions [...], for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure".

95 See Transparency International Slovenia, 2011.

96 For details see the National Congress of State Legislatures: www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx

97 Transparency International, 2012.

98 Edelman Trust Barometer, 2014, www.edelman.com/insights/intellectual-property/2014-edelman-trust-barometer/trust-in-business/

99 Burson Marsteller, 2013.

100 TI Ireland, 2014

101 For more on best practice in organisational lobbying policy and practice see the Transparency International France Guide for the development of lobbying charters (Guide pour l'élaboration d'une charte de lobbying) (TI France, Paris: 2014), and Transparency International Germany Model declaration for responsible lobbying (Verhaltenskatalog für verantwortliche Interessenvertretung) (Berlin: TI Germany, 2009).

102 See for example Vigeo, Transparency and integrity in reporting: A new challenge for CSR (Vigeo, Paris: 2013). The study compared the reported lobbying practices of 424 European and 321 North American firms. About half (54%) of companies under review did not report on their lobbying activities in Europe, while this percentage declined to 24% in the U.S. The average European score for compliance with best practice in lobbying reporting and control was 33/100.

103 Vigeo, 2014, p5.

104 See Dieter Zinnbauer, Getting Serious About Corporate Citizenship – The Essential, Yet Missing Building Blocks for Responsible Corporate Behaviour (Berlin: Transparency International, 2013).

105 Directive 2014/95/EU.

106 See http://europa.eu/rapid/press-release_STATEMENT-14-291_en.htm

107 Commission de Déontologie de la Fonction Publique, Accès des Agents Publics au Secteur Privé. Rapport au Premier Ministre (Paris: Direction Générale d'Administration de la Fonction Publique, 2014) p.15.

108 For more on the statement and its signatories, see http://www.transparency-france.org/ewb_pages/div/Lobbying_actions_entreprises.php.

109 For further information on the respective associations, see <http://www.cipr.co.uk/> and <http://www.appc.org.uk/>

110 Kay Lehman Schlozman, Sidney Verba and Henry E. Brady, The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy (Princeton, NJ: Princeton University Press, 2012).

111 In Hungary such legal obligation exists in Article 11 Act CXXXI (2010) on public participation in the preparation of legislation. This article requires a summary that outlines the reasons why opinions

received in the consultations were refused. Though formally this law is in force, in practice this provision is not enforced and has always been totally disregarded.

112 In France, there are no experts groups in Parliament. Therefore the question of robustness of advisory groups applies only to other public institutions. In this case, the overall score for equality of access is calculated slightly differently from other countries. An average score for equality of access is first calculated for the Senate, the Assemblée Nationale and other public institutions and the overall score represents an aggregate of these three scores.

113 Following the OECD definition, here an advisory or expert group refers to any committee, board, commission, council, conference, panel, task force or any subcommittee set up by government (executive, legislative or judicial branch) or any of its subgroups to provide it with advice, expertise or recommendations. In some countries, advisory groups will be regulated differently depending on which sector/institution is concerned. If this is the case, we suggest the focus should be on parliamentary advisory groups involved in the process of legislating.

114 <https://lt.justice.gov.sk/>

115 "Ex-Austrian MEP Imprisoned in Lobbying Scandal", EurActiv.com, 15 January 2013.

116 Alter-EU, Bursting the Brussels Bubble: The Battle to Expose Corporate Lobbying at the Heart of the EU, (Brussels: Alter-EU, 2010) pp.114-122.

117 Peter Spiegel, "Dalli and the Bribery Scandal that won't go Away", Financial Times, 30 April 2013.

118 Transparency International EU, The European Union Integrity System (Brussels: Transparency International EU, 2014).

119 See the EU Transparency Register, <http://ec.europa.eu/transparencyregister/info/your-organisation/whoRegister.do?locale=en>

120 Panichi, 4 December 2014.

121 See Article 11 of European Commission, "Commission Decision on the Publication of Information on Meetings held between Directors-General of the Commission and Organisations or Self-employed Individuals", C(2014) 9048, 25 November 2014, http://ec.europa.eu/news/2014/docs/c_2014_9048_en.pdf

122 "Making the Case for a Legislative Footprint in the European Parliament", Association of Accredited Public Policy Advocates to the European Union, 7 November 2014, www.aalep.eu/making-case-legislative-footprint-ep

123 Transparency International EU, 2014.

124 "Seitenwechsel: Londoner Börse engagiert mächtige EU-Politikerin", Der Spiegel, 26 August 2014

125 Alter-EU (2013) A Year of Broken Promises: Big business still put in charge of EU Expert Groups, despite commitments to reform (Brussels: Alter-EU, 2013).

126 Note that the design of lobbying regulations necessitates a thorough review and potential amendment of the broader regulatory framework. This concerns in particular the laws and policies on criminalisation of trading in influence, bribery and other corrupt conduct, transparency and limits on political finance, public procurement, media sponsorship, labour law (particularly on collective bargaining), whistleblower protection, legislative procedure (including bringing of items under urgency), judicial and administrative review rights to freedom of speech, assembly and petition of government.

127 Article 19, The Public's Right to Know: Principles on Freedom of Information Legislation (London: Article 19, 1999).

128 See Sunlight Foundation Open Data Guidelines <http://sunlightfoundation.com/opendataguidelines/> Also, Annotated 8 principles for lobbying data, <http://opengovdata.org/>

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