

# **RECOMMENDATIONS ON LOBBYING FOR OPEN GOVERNMENT PARTNERSHIP NATIONAL ACTION PLANS**

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# SUMMARY

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To many observers, lobbying appears to be a process in which well-resourced interest groups shape public policy according to their own interests in clandestine meetings with officials. This negative perception prevails for good reason: the vast majority of lobbying worldwide is unregulated. Integrity norms and public safeguards are rare – while scandal is never far away.

Yet lobbying is also an age-old practice with legitimate purpose: it is a means of participation in public decision-making. 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.

The regulatory challenge for governments is to prohibit unethical activity while facilitating transparent and equitable public access to policy-making.

This briefing discusses:

- why tackling lobbying is a priority for Open Government Partnership (OGP) members
- trends and good practice in regulation
- existing and model commitments in national action plans

Few countries regulate lobbying but there has been a small surge of policy-making over the past decade. OGP members Chile and Ireland have introduced notable reforms while six EU states (including France and Ireland) have introduced mandatory registers for lobbying disclosures in the past eight years.<sup>1</sup> To protect against the risks of undue influence, unfair competition and conflicts of interest, and ensure decisions are made that are demonstrably in the national interest, governments must create robust frameworks to regulate lobbying.

Transparency International recommends that governments:

- establish a mandatory, open-data, public register of records of interactions between lobbyists and public officials
- create open, equitable and responsive channels for public consultation of public policies
- introduce mandatory codes of conduct for both officials and lobbyists and ensure there are appropriate sanctions in place for non-compliance

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<sup>1</sup> European Parliament, *Infographic: Regulation of lobbying across the EU*, 2016, available at: [www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS\\_ATAG%282016%29595830\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS_ATAG%282016%29595830_EN.pdf) [accessed 13/04/18]

# WHY IS TRANSPARENCY AND INTEGRITY IN LOBBYING RELEVANT FOR FIGHTING CORRUPTION?

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In principle, lobbying is an important part of the democratic process that allows stakeholders to participate in policy formulation. In practice, however, access to policy-makers is usually dominated by opaque, select interests, and the professional lobbyists who represent them, while the public and its representative organisations struggle to engage in decision-making. The Organisation for Economic Co-operation and Development outlines three related risks of lobbying – undue influence, unfair competition and regulatory capture<sup>2</sup> – and there are notable, recent examples of each of these challenges.

Azerbaijani officials have invited parliamentarians from the US, UK and Australia<sup>3</sup> on lavish all-expenses-paid trips to the state in efforts to promote its interests abroad and counter criticism of systemic corruption, election rigging and human rights abuses.<sup>4</sup> In another case in 2017, the construction company Carillion was awarded British public contracts worth £1.3 billion (US\$1.67 billion) after it had fallen into financial difficulty and shortly before its creditors forced it to cease trading and liquidate its assets – raising questions about the firm's influence in government.<sup>5</sup> Efforts to reform the financial sector since 2008 have been “stalled, thwarted and watered down, in large part due to intense lobbying by the financial lobby in Europe,” according to Transparency International.<sup>6</sup>

Lobbying is also entwined with additional corruption and political integrity risks. It drives conflicts of interest when parliamentarians are permitted to earn second incomes as advisors or non-executive directors of companies.<sup>7</sup> Lobbying can give an unethical spin to the “revolving door” as personnel move between public and private sectors with the promise of privileged access to and information on their previous employers.<sup>8</sup> Lobbyists have also been used as intermediaries to pay political campaign donations<sup>9</sup> and receive bribes.<sup>10</sup>

The economic and social costs of these governance risks are potentially profound – if challenging to measure. For example, when a transport official with a conflict of interest awards a contract to operate a railway to an undeserving firm, the results might include unfair price rises, the use of unsafe or unsuitable equipment, unreliable schedules, crowding out more honest, law-abiding firms from the market, or all of the above.

Twenty-two countries maintain registers of lobbyist interactions with public officials, according to the Sunlight Foundation, although many of them fail to regulate the full spectrum of lobbying activity.<sup>11</sup> British law, for example, has an extremely narrow definition of lobbying which captures less than 4 per cent of all interactions.<sup>12</sup>

Yet the large majority of countries worldwide, particularly those in the developing world, do not have lobbying registers at all. The public do not know how many lobbyists work in their countries, who they meet with, what they discuss and whether and how they influence decisions.

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<sup>2</sup> OECD, *Transparency and integrity in lobbying*, 2013, available at: [www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf](http://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf) [accessed 13/04/18]

<sup>3</sup> “Heaping on the caviar diplomacy”, *The Economist* (web), October/November 2016; “War of words over shuttle diplomacy in Azerbaijan”, *The Australian* (web), 23 January 2016; “Revealed: The £700k hospitality bill for MPs’ visits to repressive regimes”, *iNews* (web), 4 March 2018.

<sup>4</sup> Council of Europe, *Report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly*, 2018.

<sup>5</sup> “UK government questioned over Carillion contracts after profit warnings”, *Reuters* (web), 15 January 2018.

<sup>6</sup> S. Mulcahy, *Lobbying in Europe* (Transparency International: 2015).

<sup>7</sup> UK Parliament, *MPs and second jobs: Key issues for the 2015 Parliament*, available at: [www.parliament.uk/business/publications/research/key-issues-parliament-2015/parliament-politics/mp-second-jobs/](http://www.parliament.uk/business/publications/research/key-issues-parliament-2015/parliament-politics/mp-second-jobs/) [accessed 13/04/18].

<sup>8</sup> “More ex-ministers take private sector jobs amid ‘revolving door’ claims”, *The Guardian* (web), 20 July 2017.

<sup>9</sup> “Political donations by lobbyists rising”, *Open Secrets* (web), 11 January 2018.

<sup>10</sup> “Operation Car Wash: Is this the biggest corruption scandal in history?”, *The Guardian* (web), 1 June 2017.

<sup>11</sup> “Influence Abroad: The state of global lobbying disclosure”, *Sunlight Foundation* (web), 30 November 2016.

<sup>12</sup> S. Goodrich, *Accountable Influence: Bringing Lobbying out of the Shadows* (Transparency International UK, 2015)

# WHY IS IT IMPORTANT TO INCLUDE COMMITMENTS ON LOBBYING IN OGP NATIONAL ACTION PLANS?

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Governments should regulate lobbying through the OGP for at least three reasons.

Firstly, reform in this area is becoming a political imperative to restore the public's waning trust in government. The European Parliament Think Tank notes, "The recent populist backlash against traditional political systems in many countries has put the issue of ethics at the forefront of government attempts to demonstrate that public policy is carried out without undue influence or interference from vested interests."<sup>13</sup> Ensuring that the channels of influence into government are transparent and equitable is an integral part of these efforts. Restoring trust is also a priority for the OGP and there are invaluable resources and perspectives inside the partnership.<sup>14</sup>

Secondly, policy-makers think lobbying transparency delivers better policy. In a survey of 600 European parliamentarians and officials, 89 per cent agreed that "ethical and transparent lobbying helps policy development."<sup>15</sup> Ultimately, lobbying regulations not only protect policy from corruption risks, they improve stakeholder participation in policy-making. The Open Government Declaration is expressly focused on these issues, too. The declaration, signed by all 75 members, states, "We commit to making policy formulation and decision-making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities."<sup>16</sup> Regulating lobbying effectively is therefore essential to fulfilling these objectives.

Thirdly, the OGP also helps governments deliver lobbying policies by working collaboratively. The provision of formal timelines and accountability mechanisms for governments helps them to overcome some of the challenges of implementing commitments in their national contexts. Meanwhile, technical support, the opportunity for peer learning and, of course, the rich participation of civil society help governments to design policies based on new technologies and best practices.

## OGP PARIS DECLARATION AND LOBBYING TRANSPARENCY

The Paris Declaration is a set of collective actions that governments and civil society organisations (CSOs) can join forces and work together on to push open government forward, and advance reform at the global, national and subnational levels.

Transparency on lobbying is one collective action within the Paris Declaration. Countries and CSOs committing to transparency in lobbying seek to establish frameworks and measures to regulate lobbying. Based on the work of the [International Standards for Lobbying Regulation](#), countries can continue to build on the various recommendations – such as public registers of lobbyists, registers of meetings with senior public officials, integrity measures such as codes of conduct, and disclosure of conflict of interests – to ensure more trust in decision-making processes.

To see what collective actions have been proposed on lobbying and to include your own, visit: <https://paris-declaration.ogpsummit.org/>.

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<sup>13</sup> European Parliament Think Tank, *Regulating lobbying in Canada*, 2017, available at: [www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2017\)603896](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)603896) [accessed 13/04/18].

<sup>14</sup> Open Government Partnership, *Trust: The Fight to Win It Back*, available at: [www.opengovpartnership.org/trust](http://www.opengovpartnership.org/trust) [accessed 27/04/18].

<sup>15</sup> S. Mulcahy, *Lobbying in Europe* (Transparency International: 2015).

<sup>16</sup> Open Government Partnership, *Open Government Declaration*, available at: [www.opengovpartnership.org/open-government-declaration](http://www.opengovpartnership.org/open-government-declaration) [accessed 27/04/18].

# TRENDS AND EXAMPLES OF GOOD PRACTICE IN LOBBYING

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## Transparency

A growing number of governments are mandating lobbyists to register and disclose information about their meetings and communications with government officials. Good regulations share some common principles, including:

- ensuring 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, trades unions, think tanks, law firms, faith-based organisations, academics and pro-bono office holders of incorporated entities) and all key lobbying targets
- ensuring that sufficient information about the lobbyist interactions with officials is disclosed, including, for example, the date, location, purpose and beneficiaries of a meeting, the identities of all in attendance, memoranda and communications related to the meeting
- ensuring disclosures are timely (i.e. published on a quarterly basis) and accessible (published online, free of charge in open-data format through a single portal)

The Irish Lobbying Act (2015) provides clear definitions of the parties and circumstances that the legislation applies to. Those defined as lobbyists must register with the Standards in Public Office Commission and three times a year submit returns of their activities, which are disclosed on a single, searchable, online, open-data register.<sup>17</sup> Lobbyist organisations must disclose the names of the parties to the lobbying and the policy area, broad intention and specific details of the lobbying (for example to amend a specified subsection of a piece of legislation). This includes summaries of all meetings and correspondence that took place within the reporting period.<sup>18</sup> As of April 2018 almost 21,000 returns have been filed.

## Participation

Lobbying is a legitimate activity that allows the public to participate and helps governments make better policy. Many governments recognise this and create open and equitable channels to liaise and consult with their stakeholders. Good practice includes:

- implementing a formal and transparent process for public consultation in the formulation and evaluation of policy, which ensures that all parties can submit documents and attend public meetings
- responding publicly to consultations and demonstrating whether and how stakeholder submissions were taken into account
- publishing the results of all interactions between government and third parties during the policy-making process. This is known as a “decision-making footprint” or “legislative footprint”<sup>19</sup>

In Slovakia, all legislative proposals “including the legislative text, the justification for the regulation, its explanatory memorandum and its impact assessment” are published online at the same time as they are sent for inter-ministerial comment (another part of the legislative process). Members of the public can make individual comments or add their signatures to collective ones for a period which is usually 15 days. When a collective comment receives 500 signatures, ministries are obliged to provide a written response that explains whether and how the comment was taken into consideration or why it was rejected.<sup>20</sup>

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<sup>17</sup> Lobbying.ie, search function, available at: [www.lobbying.ie/app/home/search](http://www.lobbying.ie/app/home/search) [accessed 15/04/18]

<sup>18</sup> Standards in Public Office Commission, *Regulation of Lobbying Act 2015*, [accessed 27/04/2018]

<sup>19</sup> J. Berg and D. Freund, *EU legislative footprint: what's the real influence of lobbying?* (Transparency International: 2015).

<sup>20</sup> OECD, *Government consultation portal (Slovak Republic)*, available at: [www.oecd.org/gov/regulatory-policy/SVK-Consultation-Portal.pdf](http://www.oecd.org/gov/regulatory-policy/SVK-Consultation-Portal.pdf) [accessed 30/04/18]

## Accountability

To achieve integrity in lobbying, public officials and lobbyists must be held to account for their actions. Governments must ensure an independent regulator enforces its rules. Good practice includes:

- establishing mandatory codes of conduct for both public officials and lobbyists, which address formal duties, standards of conduct and record-keeping practices
- regulating the post-employment activities of public officials to ensure that their access to privileged information is not exploited
- empowering an independent regulator to receive and investigate public complaints, impose sanctions and transparently report on outcomes

Under Canada's Lobbying Act, the Commissioner of Lobbying is appointed by and reports to both houses of parliament, which helps to insulate her from political pressure. The commissioner has three responsibilities: to maintain the public register of lobbyists, to promote public awareness of the Act, and to conduct compliance-focused reviews and investigations. Members of the public can report alleged breaches of the Act and the related Code of Conduct to the commissioner for investigation.<sup>21</sup> Penalties laid out in the law include fines and prison sentences. The commissioner can refer suspected breaches of the Act to law enforcement bodies who have jurisdiction to decide whether to investigate. Of the 190 investigations conducted since 2000, 14 have been referred to the police and four have resulted in convictions (all since 2013).<sup>22</sup>

## EXISTING COMMITMENTS

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No country in the world has perfect laws to regulate lobbying but the OGP has been a forum for progressive legislation. Chile, Ireland and France, for example, have used their national action plans to implement mandatory public registers of lobbying.

Chile became the first Latin American state with legislation on lobbying disclosure after announcing a lobbying law in its first national action plan. The law includes a legal definition of lobbying, and of which parties are considered lobbyists and public officials. It also mandates the creation of a public register for disclosing lobbyist contact with government. There are sanctions and fines for non-compliance. Chile's second national action plan contained a commitment on effective implementation, which included creating complementary regulations, training lobbyists and officials on their new duties, and providing technical support to ensure the disclosure platform was operational.<sup>23</sup>

Ireland (also described above) used its first national action plan to announce its Regulation of Lobbying Act 2015. The law includes a broad definition of lobbying, and provides for a mandatory public register of lobbying and sanctions for non-compliance including fines up to €2,500 (US\$2,900) and prison sentences of up to two years.<sup>24</sup>

In France, the "Sapin II" anti-corruption law mandates the creation of a public register of lobbying, but the level of transparency is limited. For example, lobbyists do not have to state who they meet in parliament, and disclosures are only reported after the end of the lobbyist's financial year.<sup>25</sup>

Latvia has sought to use a national action plan to improve introduced statutory regulation, although the country has made limited progress thus far. Estonia has pledged to introduce lobbying rules and principles of representation of interests for its members of parliament, but its progress has not been reviewed by the Independent Reporting Mechanism.

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<sup>21</sup> Office of the Commissioner of Lobbying of Canada, *Administrative Reviews and Investigations – Compliance Statistics*.

<sup>22</sup> European Parliament Think Tank, *Regulating lobbying in Canada*, 2017, available at:

[www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BR\(2017\)603896](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BR(2017)603896) [accessed 13/04/18].

<sup>23</sup> J. Sahd and C. Valenzuela, *Lobby Law in Chile: Democratizing Access to Public Authorities* (Open Government Partnership: 2016); A. Sanhueza, *Chile informe de avance 2014–2015* (Open Government Partnership).

<sup>24</sup> European Parliament Think Tank, *Transparency of lobbying: The example of the Irish Lobby Register*, 2016, available at:

[www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BR\(2016\)586636](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BR(2016)586636) [accessed 13/04/18].

<sup>25</sup> "Transparence du lobbying : Après la publication d'un décret très en-deça des attentes, Transparency International appelle Emmanuel Macron à renforcer le dispositif", *Transparency International France* (web), 11 May 2017.

# WHAT ELEMENTS SHOULD A COMMITMENT ON LOBBYING INCLUDE?

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Enhancing the integrity and quality of the policy-making process requires coherent, forward-thinking regulations.

Transparency International recommends that governments make the following three commitments:

## Establish a mandatory, open-data, public register of records of interactions between lobbyists and public officials

Mandatory public registers must disclose sufficient information about an interaction. This should include, at a minimum, the date, location, purpose and beneficiaries of the meeting, the identities of all in attendance, and memoranda and communications related to meetings and other communications. This information must be registered and disclosed in a timely fashion (for example on a quarterly basis) and published in open-data format on a single, online, free-to-access platform.

## Create open, equitable and responsive channels for public consultation

Authorities must provide the public with an equal opportunity to participate by ensuring that consultations are open to all, widely promoted and run for a sufficient period of time to permit participants to review the issues under consideration and provide meaningful responses. Governments should publish a copy of all written and verbal submissions to the consultation online and demonstrate in their response how and why certain views have been taken into account and others have been disregarded.

## Introduce mandatory codes of conduct for both officials and lobbyists and ensure there are appropriate sanctions in place for non-compliance

The International Standards for Lobbying Regulation<sup>26</sup> state that public officials' codes of conduct must be comprehensive and address key behavioural principles, record-keeping obligations, the duty to avoid unregistered contact with lobbyists, conflicts of interest procedures, gifts and hospitality registrations and interest and asset disclosures. Lobbyist codes of conduct should be developed in open consultation. Both codes must be robustly enforced by an independent regulator, which is constituted to receive and investigate complaints from the public, impose meaningful sanctions that act as a deterrent, and report transparently on its activities and outcomes.

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<sup>26</sup> Transparency International, *International Standards for Lobbying Regulation*, 2016.



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