

CALL FOR EVIDENCE ON REGULATION OF LOBBYISTS

BASED ON

OECD PRINCIPLES FOR TRANSPARENCY AND INTEGRITY IN LOBBYING

I. Building an Effective and Fair Framework for Openness and Access

1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.

Public officials should preserve the benefits of the free flow of information and facilitate public engagement. Gaining balanced perspectives on issues leads to informed policy debate and formulation of effective policies. Allowing all stakeholders, from the private sector and the public at large, fair and equitable access to participate in the development of public policies is crucial to protect the integrity of decisions and to safeguard the public interest by counterbalancing vocal vested interests. To foster citizens' trust in public decision making, public officials should promote fair and equitable representation of business and societal interests.

Questions

1.1 What issues need to be examined, in developing an effective regulatory system for lobbying in Ireland, to maintain a level playing field between all stakeholders wishing to influence any specific Government legislative or policy initiative?

1.2 What elements of the design or operation of a regulatory regime could create a risk of a diminution of citizen access to their TD?

1.3 How can this risk be mitigated?

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

Countries should weigh all available regulatory and policy options to select an appropriate solution that addresses key concerns such as accessibility and integrity, and takes into account the national context, for example the level of public trust and measures necessary to achieve compliance. Countries should particularly consider constitutional principles and established democratic practices, such as public hearings or institutionalised consultation processes.

Countries should not directly replicate rules and guidelines from one jurisdiction to another. Instead, they should assess the potential and limitations of various policy and regulatory options and apply the lessons learned in other systems to their own context. Countries should also consider the scale and nature of the lobbying industry within their jurisdictions, for example where supply and demand for professional lobbying is limited, alternative options to mandatory regulation for enhancing transparency, accountability and integrity in public life should be contemplated. Where countries do opt for mandatory regulation, they should consider the administrative burden of compliance to ensure that it does not become an impediment to fair and equitable access to government.

Questions

2.1 What specific factors need to be considered in the Irish context to ensure that the regulatory system properly recognises the scale and nature of lobbying activity in Ireland?

2.2 What are the main lessons to be learned from other jurisdictions in developing an appropriate and effective regulatory system for regulating lobbyists in Ireland?

2.3 Is there any specific international approach to the regulation of lobbyists that represents a good model for developing an approach aligned to Ireland's specific requirements?

2.4 Given the commitment in the Programme for Government to introduce a statutory register of lobbyists, what features of the system will help ensure it does not impede fair and equitable access to Government and does not give rise to a disproportionate administrative burden?

2.5 Please provide any views on the draft Bills previously published by the Government parties in Opposition for the regulation of lobbyists including whether they provide an appropriate legal framework for the regulation of lobbyists in Ireland?

If not, how might they be enhanced to meet regulatory objectives?

3. Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.

Effective rules and guidelines for transparency and integrity in lobbying should be an integral part of the wider policy and regulatory framework that sets the standards for good public governance. Countries should take into account how the regulatory and policy framework already in place can support a culture of transparency and integrity in lobbying. This includes stakeholder engagement through public consultation and participation, the right to petition government, freedom of information legislation, rules on political parties and election campaign financing, codes of conduct for public officials and lobbyists, mechanisms for keeping regulatory and supervisory authorities accountable and effective provisions against illicit influencing.

Questions

3.1 What areas of the wider policy and regulatory framework in Ireland are particularly relevant to the design and operation of a regulatory system for lobbying?

3.2 What changes or reforms may need to be considered in these areas to help underpin the effectiveness of the regulation of lobbying activities?

4. Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying.

Definitions of 'lobbying' and 'lobbyists' should be robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes. In defining the scope of lobbying activities, it is necessary to balance the diversity of lobbying entities, their capacities and resources, with the measures to enhance transparency. Rules and guidelines should primarily target those who receive compensation for carrying out lobbying activities, such as consultant lobbyists and in-house lobbyists. However, definition of lobbying activities should also be considered more broadly and inclusively to provide a level playing field for interest groups, whether business or not-for-profit entities, which aim to influence public decisions.

Definitions should also clearly specify the type of communications with public officials that are not considered 'lobbying' under the rules and guidelines. These include, for example, communication that is already on public record – such as formal presentations to legislative committees, public hearings and established consultation mechanisms.

Questions

4.1 What is the appropriate scope of lobbying activities that should be regulated in Ireland consistent with these OECD principles which ensures that all forms of 'lobbying' fall within the regulatory system?

4.2 Should any exemptions or exclusions be considered?

4.3 In view of 4.1 and 4.2 above what robust, comprehensive and sufficiently explicit definitions of 'lobbying' and 'lobbyist' can be developed and applied in practice that will avoid misinterpretation or the emergence of loopholes in an Irish context?

4.4 How can any regulatory system be designed to capture not solely individuals who receive compensation for carrying out lobbying activities but professional service providers (e.g. members of the legal, accountancy, medical and other professions), representative bodies and other organisations that engage in significant lobbying?

4.5 What thresholds of, for example, time spent on lobbying activities (e.g. as a proportion of working year) or compensation received (e.g. as a proportion of total compensation) might help identify when registration may be appropriate?

II. Enhancing Transparency

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

Disclosure of lobbying activities should provide sufficient, pertinent information on key aspects of lobbying activities to enable public scrutiny. It should be carefully balanced with considerations of legitimate exemptions, in particular the need to preserve confidential information in the public interest or to protect market-sensitive information when necessary.

Subject to Principles 2 and 3, core disclosure requirements elicit information on in-house and consultant lobbyists, capture the objective of lobbying activity, identify its beneficiaries, in particular the ordering party, and point to those public offices that are its targets. Any supplementary disclosure requirements should take into consideration the legitimate information needs of key players in the public decision-making process. Supplementary disclosure requirements might shed light on where lobbying pressures and funding come from. Voluntary disclosure may involve social responsibility considerations about a business entity's participation in public policy development and lobbying. To adequately serve the public interest, disclosure on lobbying activities and lobbyists should be stored in a publicly available register and should be updated in a timely manner in order to provide accurate information that allows effective analysis by public officials, citizens and businesses.

Questions

5.1 What types of information should be disclosed by registered lobbyists in Ireland to allow for adequate public scrutiny, openness and transparency?

5.2 What would be considered legitimate exemptions from core disclosure requirements?

5.3 Should such information be fully available to the public by way, for example, of an electronic register?

6. Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities.

The public has a right to know how public institutions and public officials made their decisions, including, where appropriate, who lobbied on relevant issues. Countries should consider using information and communication technologies, such as the Internet, to make information accessible to the public in a cost-effective manner. A vibrant civil society that includes observers, 'watchdogs', representative citizens groups and independent media is key to ensuring proper scrutiny of lobbying activities. Government should also consider facilitating public scrutiny by indicating who has sought to influence legislative or policy-making processes, for example by disclosing a 'legislative footprint' that indicates the lobbyists consulted in the development of legislative initiatives. Ensuring timely access to such information enables the inclusion of diverse views of society and business to provide balanced information in the development and implementation of public decisions.

Questions

6.1 Do any possible conflicts of objective potentially arise between the public interest in the public being informed on who has sought to influence legislative or policy making processes and other important public policy objectives?

6.2 If so, how can these conflicts be properly managed?

III. Fostering a Culture of Integrity

7. Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.

Countries should provide principles, rules, standards and procedures that give public officials clear directions on how they are permitted to engage with lobbyists. Public officials should conduct their communication with lobbyists in line with relevant rules, standards and guidelines in a way that bears the closest public scrutiny. In particular, they should cast no doubt on their impartiality to promote the public interest, share only authorised information and not misuse 'confidential information', disclose relevant private interests and avoid conflict of interest. Decision makers should set an example by their personal conduct in their relationship with lobbyists.

Countries should consider establishing restrictions for public officials leaving office in the following situations: to prevent conflict of interest when seeking a new position, to inhibit the misuse of 'confidential information', and to avoid post-public service 'switching sides' in specific processes in which the former officials were substantially involved. It may be necessary to impose a 'cooling-off' period that temporarily restricts former public officials from lobbying their past organisations. Conversely, countries may consider a similar temporary cooling-off period restriction on appointing or hiring a lobbyist to fill a regulatory or an advisory post.

Questions

7.1 What principles, rules, standards and procedures may be appropriate to regulate how public officials are allowed to engage with lobbyists, over and above those already in place in Ireland, for example under Ethics Legislation?

7.2 What specific considerations arise, if any, in relation to the design of a regulatory system for lobbyists to meet the commitment included in the Programme for Government that no senior public servant (including political appointees) or Minister can work in the private sector in any area involving a potential conflict of interest with their former area of public employment, until at least two years have elapsed after they have left?

8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.

Governments and legislators have the primary responsibility for establishing clear standards of conduct for public officials who are lobbied. However, lobbyists and their clients, as the ordering party, also bear an obligation to ensure that they avoid exercising illicit influence and comply with professional standards in their relations with public officials, with other lobbyists and their clients, and with the public.

To maintain trust in public decision making, in-house and consultant lobbyists should also promote principles of good governance. In particular, they should conduct their contact with public officials with integrity and honesty, provide reliable and accurate information, and avoid conflict of interest in relation to both public officials and the clients they represent, for example by not representing conflicting or competing interests.

Questions

8.1 What factors or considerations should guide and inform the implementation of the commitment included in the Programme for Government to introduce rules concerning the practice of lobbying?

8.2 What should these rules relate to and should they apply on a statutory or non-statutory basis?

8.3 What are the main advantages and disadvantages of the different approaches available?

8.4 Should the early introduction of a statutory register of lobbyists in Ireland be given priority over the introduction of rules concerning the practice of lobbying?

IV. Mechanisms for Effective Implementation, Compliance and Review

9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.

Compliance is a particular challenge when countries address emerging concerns such as transparency in lobbying. Setting clear and enforceable rules and guidelines is necessary, but this alone is insufficient for success. To ensure compliance, and to deter and detect breaches, countries should design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement. Mechanisms should raise awareness of expected rules and standards; enhance skills and understanding of how to apply them; and verify disclosures on lobbying and public complaints. Countries should encourage organisational leadership to foster a culture of integrity and openness in public organisations and mandate formal reporting or audit of implementation and compliance. All key actors – in particular public officials, representatives of the lobbying consultancy industry, civil society and independent 'watchdogs' – should be involved both in establishing rules and standards, and putting them into effect. This helps to create a common understanding of expected standards. All elements of the strategies and mechanisms should reinforce each other; this co-ordination will help to achieve the overall objectives of enhancing transparency and integrity in lobbying.

Comprehensive implementation strategies and mechanisms should carefully balance risks with incentives for both public officials and lobbyists to create a culture of compliance. For example, lobbyists can be provided with convenient electronic registration and report-filing systems, facilitating access to relevant documents and consultations by an automatic alert system, and registration can be made a prerequisite to lobbying. Visible and proportional sanctions should combine innovative approaches, such as public reporting of confirmed breaches, with traditional financial or administrative sanctions, such as debarment, and criminal prosecution as appropriate.

Questions

9.1 What factors would be expected to yield the best outcomes in terms of compliance with regulatory requirements put in place in Ireland?

9.2 What mechanisms should be introduced in order to deter and detect breaches of compliance?

9.3 Should there be an electronic registration and report-filing systems for lobbyists?

9.4 What sanctions and/or incentives should be introduced to encourage full compliance?

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

Countries should review – with the participation of representatives of lobbyists and civil society – the implementation and impact of rules and guidelines on lobbying in order to better understand what factors influence compliance. Refining specific rules and guidelines should be complemented by updating implementation strategies and mechanisms. Integrating these processes will help to meet evolving public expectations for transparency and integrity in lobbying. Review of implementation and impact, and public debate on its results are particularly crucial when rules, guidelines and implementation strategies for enhancing transparency and integrity in lobbying are developed incrementally as part of the political and administrative learning process.

Questions

10.1 What further consultation mechanisms might be appropriate in relation to the development of legislative proposals for consideration by Government?

10.2 Who should be involved in any consultation process?

PLEASE NOTE THAT RESPONSES CAN RELATE TO ALL OR TO ANY SPECIFIC SET OF QUESTIONS ABOVE.