

INTERNATIONAL STANDARDS FOR LOBBYING REGULATION

Towards greater transparency,
integrity and participation.



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The International Standards for Lobbying Regulation are the result of two years of collaborative work with civil society led by **Transparency International, Access Info Europe, Sunlight Foundation** and **Open Knowledge**. This initiative is unique in that it draws on the experience of a broad coalition of civil society organisations active in the field of lobbying transparency and open governance, and goes further than existing regulations and standards. The Standards aim at providing clear guidance to policymakers, governments and international organisations that are thinking of or are in the process of enacting lobbying legislation. They also serve as a reference point for civil society organisations to campaign in their countries to ensure that efforts to regulate lobbying are robust, comprehensive and effective.

INTRODUCTION

The 38 standards set out here build on best practice from existing lobby regulations and also reference various existing international standards on the matter. However, they go beyond what is already available by addressing three critical and inter-related areas of effective regulation of lobbying: transparency, integrity and participation, and in this way go further than previous initiatives. They aim at internationally applicable standards, but with an awareness and respect for national differences.

As of May 2015, at least **20 countries** worldwide have a specific lobbying regulation in place at the national level;¹ though the quality of regulation varies widely. Even though lobbying regulations are found mostly in industrialised regions, they are relevant for any country: lobbying scandals all around the world including in developing countries are testimony to the need for better regulation² and a number of publications launched in recent years are proof of the growing interest in lobbying regulation.³

The purpose of lobbying regulation is to ensure transparency of the impact of lobbying on the decision-making process, as well as accountability of decision-makers for policies and legislation enacted. Lobby regulation should aim to ensure a level playing field for all actors to participate in the decision-making process on an equal footing, and there should be specific mechanisms in place to prevent potential conflicts of interest that may arise from attempts to influence the decision-making process. It is important to note also that regulation is only one element of a strategy to ensure fair lobbying, and that enforcement of any regulation, but also a broader willingness by all actors involved to act ethically, will be crucial to creating an environment of ethical and fair lobbying and public decision-making.

These standards remain under ongoing review and any suggestions for their further development or refinement is welcome.

1 Australia, Austria, Brazil, Canada, Chile, France, Georgia, Germany, Hungary, Ireland, Israel, Lithuania, Macedonia, Montenegro, Peru, Poland, Slovenia, Taiwan, United Kingdom, and the United States.

2 In 2014, the U4 Anti-Corruption Resource Centre included "Lobbying" as a topic into its training course for development practitioners, www.u4.no/training/online-training/money-in-politics-curbing-corruption-in-political-finance; see also Nauro F. Campos, In pursuit of policy influence: Can lobbying be a legitimate alternative to corruption in developing countries?, U4 Brief 2009:1, www.u4.no/publications/in-pursuit-of-policy-influence-can-lobbying-be-a-legitimate-alternative-to-corruption-in-developing-countries.

3 See for example Transparency International, Lobbying in Europe – Hidden Influence, Privileged Access, 2015: www.transparency.org/whatwedo/publication/lobbying_in_europe. Sunlight Foundation, International Lobbying Disclosure Guidelines, 2014: sunlightfoundation.com/policy/lobbying/guidelines/; Access Info Europe, Lobbying Transparency via Right to Information Laws, 2013: www.access-info.org/wp-content/uploads/Lobby_Transparency_via_RTI_26_June_2015.pdf and OECD "Lobbyists, Government and Public Trust", Volume 1 "Increasing Transparency through Legislation" (2009), Volume 2 "Promoting Integrity through Self-regulation" (2012), Volume 3 "Implementing the OECD Principles for Transparency and Integrity in Lobbying" (2014: www.oecd.org/gov/ethics/lobbying.htm

GUIDING PRINCIPLES

Lobbying is a legitimate activity and an important part of the democratic process.

There is a significant public interest in ensuring the transparency and integrity of lobbying, as well as diversity of participation and contribution to public decision-making.

Any regulatory measures to secure these ends shall be proportionate, fit for purpose and not impede on the individual rights of assembly, free speech and petition of government.

REGULATORY SCOPE

The lobbying framework should clearly and unambiguously define what is lobbying and who is to be considered a lobbyist and lobbying target for the purposes of regulation.

Definitions

1. **'Lobbying'** – the term should cover any direct or indirect communication with a public official that is made, managed or directed with the purpose of influencing public decision-making.
2. **'Public Official'** – shall include any individual with decision-making powers (and their advisors), who are elected, appointed or employed within the executive or legislative branches of power at national, sub-national, or supra-national levels; within private bodies performing public functions; and within public international organisations domiciled or operational in the country concerned.
3. **'Lobbyist'** – should entail any natural or legal person who engages in lobbying activities, whether for private, public or collective ends, whether for compensation or without.
4. **'Public decision-making'** – shall include the creation and amendment of legislation or any other regulatory measures; the development, modification and implementation of public policies, strategies and programmes; and the awarding of government contracts or grants, administrative decisions or any other public spending decisions.

Exceptions

5. Citizen interactions – the interaction of individual citizens with public officials concerning their private affairs shall not be considered lobbying, save for where it may concern individual economic interests of sufficient size or importance so as to potentially compromise public interest. In such case, a careful balancing act needs to be made on the respective benefit and efficacy of regulation, as well as due consideration given to any constitutional protections and guarantees.
6. Public officials, diplomats, political parties – if deemed necessary, the regulation may exclude public officials acting in their official capacity, diplomatic agents of foreign states and political parties (since they play a quasi-public role).

TRANSPARENCY

The lobbying interactions between lobbyists and public officials shall be transparent, increasing awareness on the operation of government, contributing to stakeholder participation and allowing for public confidence and oversight. The responsibility for transparency should be shared by the lobbyists and the public official, but it is public officials who must be accountable to the public for decisions taken.

Lobbying Register

1. Mandatory register – the framework should require the establishment of a mandatory lobbying register to which the lobbyists, and all organisations who lobby whether by employing in-house or other lobbyists, must sign up in order to conduct their lobbying activities, and within which such activities are to be reported on a periodic basis along with any designated supplementary information.
2. Timely registration and reporting – the initial lobbyist registration should take place in a timely fashion, before any lobbying activity takes place. Information should be updated shortly after any relevant changes occur. The frequency of activity reporting should be set with the aim of allowing for the meaningful analysis and intervention from other parties (minimum quarterly, ideally close to real-time).
3. Information disclosed – among others, the register shall include information on:
 - a. lobbyist identity
 - b. the subject matter of lobbying activities and outcomes sought
 - c. the ultimate beneficiary of lobbying activities (where relevant)
 - d. the targeted institution and/or the public official concerned
 - e. the type and frequency of lobbying activities
 - f. any supporting documentation shared with the public officials
 - g. lobbying expenditure, including in-kind (calculated to set criteria, in cost bands, if need be)
 - h. sources of funding, per client and per dossier
 - i. any political contributions, including in-kind
 - j. any prior roles as public official held by the individual and/or family members
 - k. public funding received

4. Accessibility, openness and comparability of data – the information should be made available online, through a single website, free of charge, indexable and downloadable in full as machine readable open data (as per opendefinition.org). As far as possible, this data should conform to existing open data standards. A unique identifier shall be assigned to each lobbyist and organisation registered. Linking the information to other data sets, including those arising from proactive government disclosure, is highly recommended.
5. Minimal administrative burden – the system should allow for ease of registration and reporting, and look to minimise the administrative burden involved. The public sector obligations in terms of proactive disclosure and the public right to know should factor in achieving the right balance of mutual duties for lobbying transparency.

Public Access to Information

6. Access to information law – a comprehensive access to information law shall guarantee the public's right of access to information, including information about lobbying.
7. Limited exceptions – the law should clearly set out a limited number of exceptions to address the privacy, security, financial sensitivity, decision-making process and any other legitimate concerns, which should be bound by a harm and public interest test applied in line with internationally accepted standards.
8. Proactive publication – the public bodies and officials should proactively publish their organisational, programmatic, administrative, financial, and business schedule information, summaries of meetings and other interactions with third parties, as well as any background documentation and preparatory analyses received or commissioned in the course of their work. These obligations shall also extend to the operation of any expert and consultative bodies convened by the public sector.
9. Decision-making footprint – where possible, and certainly for all legislative and policy initiatives, this information should be clustered around the individual items for consideration, producing a 'decision-making footprint', outlining the history, public engagement and overall process for the initiative. The footprint should also link to the lobbying register data.
10. Clear, Free and Comprehensive – all information must be made public without charge (excluding actual costs on delivery) and without limits to reuse. Any key information and analysis should be presented in a form that is accessible and comprehensible to both citizens and interest groups. All recently generated data proactively released shall be published as machine readable open data.

INTEGRITY

Both lobbyists and public officials should be subject to clear and enforceable standards of conduct and a system for managing conflicts of interest. The onus for proper behaviour shall sit with both parties; however the public officials shall have heightened responsibilities given their role as the holders of entrusted power.

Public Officials

1. Codes of Conduct – all public officials shall have an applicable set of rules laying out the key standards of conduct, including for their dealings with third parties. Such rules may be institution dependent, but should include:
 - a. Key behavioural principles including those of transparency, integrity, responsiveness, impartiality, fairness, accountability and serving the public interest
 - b. The duty to keep a true and detailed record of their actions, including of meetings with lobbyists
 - c. The duty to avoid lobbying contacts with unregistered lobbyists, and to report any violations of the lobbying rules to their superiors or relevant bodies
 - d. The duty of confidentiality, subject to the public access to information regime
 - e. A comprehensive mechanism for dealing with any real, potential or apparent conflicts of interest, including the incompatibilities of being a lobbyist
 - f. A comprehensive guidance for dealing with gifts and hospitality, including their registration or decline
 - g. A system for assets and interests disclosure by the public official, as well as by their family and business partners depending on the scope of the decision-making power of the official. Post-employment restrictions – there should be a proportionate moratoria (or ‘cooling-off periods’) of at least 2 years before former public officials can lobby their former institutions concerning their prior duties. Approval from a designated ethics agency may be required before the public official can take up such a position.
2. Pre-employment restrictions – prospective public officials, excluding those elected into office, but particularly those hired or seconded into advisory and regulatory roles, shall be subject to a conflicts of interest vetting process that may necessitate their recusal or supervision for certain aspects of their activities, or a disqualification from the potential position. Omission to declare details that may be relevant for identifying potential conflicts of interests should trigger disciplinary procedures.

Lobbyists

3. Statutory code of conduct – there should be a statutory code of conduct for lobbyists developed in close consultation with all stakeholders and interested parties.
4. Behavioural standards – the code shall lay out the core behavioural standards, particularly with regards to honesty and the avoidance of undue influence.
5. Self-regulation – supplementary measures shall be taken to encourage lobbyists to voluntarily adopt, publicise and report on additional ethical commitments, including through collective action. Such commitments shall be backed by internal control and sanction mechanisms, and be integrated within their broader corporate social responsibility (CSR) and governance strategy.

PARTICIPATION & ACCESS

Both pressure groups and the public at large should enjoy an open and fair access to public decision-making, allowing for a diversity of input, better policies, and ultimately more representative and trusted democracy.

Public Participation in Decision-making

1. Right to participate – there should be a generally recognised right for all groups and public at large to participate in public decision-making, extending in particular to legislative and policy matters, within all levels of governance.
2. Public consultation process – a legal framework should lay out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies and laws, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies.
3. Equal opportunity – there shall be an obligation on public authorities to provide an equal opportunity for participation to various interest groups and the public at large.
4. Timely and effective contribution – the public authorities should be obliged to provide an adequate time period for consultation allowing sufficient time for review of the preparatory materials under discussion, and should strive to promote effective participation at the appropriate stage, while decisions are still open.
5. Publication of results – the (written and verbal) views of participants in the consultation process shall be made public, and the authorities should outline how the various views have been taken into account and why.
6. Refusals of the right – the public authorities shall provide a written justification for any refusal of the right to participate, and those excluded shall have options available to challenge and contest that exclusion in a procedure that is expeditious enough to provide for participation in case the refusal is overturned.

Expert/Advisory Groups

7. Balanced composition – there should be a legal obligation on public authorities to strive for a balanced composition of expert and advisory bodies, representing a diversity of interests and views.
8. Disclosure of interests – advisory and expert group members shall be required to disclose their interests and affiliations relevant to items under consideration in advance of any work on the issue.

Lobbyist incentives

9. Lobbyist incentives – any lobbyist incentives should be considered with care, so as not to entrench special privilege of organised interests over those of individual citizens.

OVERSIGHT, MANAGEMENT AND SANCTIONS

There should be sufficient oversight and support for the operation of lobbying regulations, as well as effective sanctions for cases of violation

1. Management & Investigation – an independent, mandated and well-resourced oversight body or coordinated mechanism should be charged with:
 - a. managing lobbying registration
 - b. reviewing potential conflicts of interest
 - c. collating and disseminating the locations of proactively disclosed information
 - d. monitoring compliance (including pro-active verification and spot-audits of reports)
 - e. following up on complaints
 - f. investigating apparent breaches and anomalies
 - g. consulting on and defining further regulatory provisions where there is a mandate
2. Advice, analysis and awareness raising – this body or mechanism should also offer guidance and training to lobbyists and public officials on the application of relevant laws, analyse trends and report on their findings, raise awareness among the public and the profession on recent developments; and promote best practice in the sector.
3. Complaint mechanism – there should be a well-publicised complaint mechanism that allows anyone to report violations either openly, confidentially or anonymously and to be informed on the specific outcome of the complaint, subject to any privacy limitations.
4. Sanctions – lobbyists and public officials shall be subject to effective, proportionate and dissuasive sanctions for the violation of lobbying rules. These sanctions should have a sliding scale, including the threat of criminal sanctions, (temporary) de-registration, and disciplinary proceedings for public officials. Those sanctioned may have their name and employer information published. Public sector contracts concluded in violation of essential regulations could be deemed null and void where appropriate. Personal liability should attach to the leadership of organisations where they are found to have consented to or connived in the commission of the offence.

REGULATORY FRAMEWORK DESIGN

Lobbying regulations should take into account the local context, and be aligned with the broader regulatory and policy framework in place.

1. Local context – insofar as it is not contrary to the guiding principles, the lobbying regulations should address the particularities of the local context, including any socio-political considerations (such as presence of ‘corporatism’, or formalised social partnerships); the degree of informal and professional lobbying; and the nature of public concerns that potentially give rise to regulation.
2. Broader regulatory framework – the design of lobbying regulations necessitates a thorough review, consistency with and potential amendment of the broader regulatory framework, else the entirety of lobbying regulation may prove futile. This concerns in particular the laws and policies on:
 - a. trading in influence, bribery and other corrupt conduct
 - b. political finance (limits and transparency) and sponsoring of election candidates or parties
 - c. public procurement and state benefits (due process and supervision mechanisms)
 - d. media law (independence and sponsorship)
 - e. labour law (collective bargaining)
 - f. whistle-blower protection
 - g. legislative procedure (including bringing of items under urgency)
 - h. judicial and administrative review
 - i. rights to freedom of speech, assembly and petition of government
3. Periodic review – the regulatory framework should be subject to an initial review one year after the commencement of the legislation and following that, further periodic review for its effectiveness and compliance with guiding principles.

