

## Introduction

The 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service requested the Public Governance Committee to report back to the OECD Council on progress made by member countries in implementing the Recommendation. The forthcoming report presents the progress made in implementing the 2003 Recommendation, it summarises the general trends in recent developments for modernising conflict-of-interest policy and also outlines governance arrangements for:

1. Preventing conflict-of-interest situations after leaving public office employment; and
2. Improving transparency and accountability in lobbying.

### Improving governance arrangements to ensure transparency in lobbying

#### *Public opinion has raised questions about the legitimacy of public decisions*

Existence of large interest groups and their efforts to influence policy making is a reality in modern democracies. However, assertions are made that it frequently borders on influence peddling and that lobbyists have privileged access to decision makers and their representations too often take place behind closed doors where the public interest may not be well represented. At this point the integrity of public institutions becomes threatened.

Purely penalising illegal influencing of public decision making, however, may not be sufficient to maintain trust in decision making. “Good governance” arrangements, particularly those clarifying expected standards of behaviour and improving transparency and accountability of decision making become essential.

#### *Ensuring impartial decision making is a key concern for ministers to maintain trust in government*

“Vocal vested interests” over the “wishes of the whole community” in public decision making was considered a major threat to public trust at the recent OECD Ministerial meeting on *Strengthening Trust in Government: What Role for Government in the 21st Century?*<sup>1</sup>. Maintaining trust in the legitimacy of public decisions requires functioning frameworks and arrangements for ensuring:

- Transparency – by enhancing openness on actors influencing policy making as the public has a right to know how public decisions were influenced by stakeholders or vested interests; and
- Accessibility – by providing a level playing field for all stakeholders interested in participating in the development of public policies in order to ensure that the “public” also has a voice, and not only the “privileged”.

#### *Good governance also involves anticipation of risks and potential solutions*

There is limited concern about lobbying activities in many European countries. For example, in Scandinavian countries established practices, unwritten traditions and social partnership recognise interest groups and provide them with access to decision makers. However, influenced by the various scandals in the past decade, public opinion increasingly considers existing lobbying practices as somewhat illegal or at least unethical and calls

for immediate action.

***After a decade public expectations have given new impetus to revisit current arrangements for lobbying***

The OECD survey shows<sup>2</sup> that only five countries<sup>3</sup> have already set rules on lobbying, and even fewer have experience of long-established legal frameworks for improving transparency in lobbying. Public expectations in the early nineties were at the origin of the updates of rules in Canada and the United States, when the European Parliament also established new rules on lobbying at the supra-national level.

After a decade of experience, higher expectations of transparency and integrity brought lobbying back to the political agenda in these countries and the European Union. The issue of formal regulation on lobbying also reached political support in a growing number of countries across the world.

***Commitment to improve existing systems is demonstrated by initiatives across countries***

Nowadays, several proposals for legislation on lobbying have been presented to legislators in North America, Europe and Asia to meet expectations of increased transparency that put more public light on relationship between public officials and representatives of interest groups. However, setting rules for lobbying has proved very difficult in many cases because it is not only an important aspect of good governance but also a sensitive political issue.

***Sharing lessons on key aspects of existing arrangements provides potential solutions...***

Although government programmes – for example in Hungary, Ireland and Slovakia – and broad socio-political consensus – for example the K-PACT<sup>4</sup> in Korea – widely supported the development of a legal framework for lobbying in the past few years, concrete proposals were often rejected by legislators. It took a long drawn-out debate in many countries, for example in Hungary, Ireland, Mexico, Poland and Slovakia to reach political consensus on the approach and key elements, such as definitions, scope and effective measures to be included in the laws.

***...and support depoliticised debate on key aspects of lobbying***

The key aspects of rules on governance arrangements for lobbying that need to be considered when regulating lobbying include:

- Aims – Why legislation, what is the purpose of rules?
- Subject – What is lobbying and what activities are excluded?
- Scope – Who is a lobbyist and who is the lobbied?
- Standards of behaviour – What standards could reflect public expectations?
- Implementation – How to increase transparency and administer implementation? How to combine incentives, sanctions and enforcement to increase compliance?

***Findings show several commonalities in key elements that could be considered in policy design, including...***

Survey results show that no single concept and definition exist for lobbying in OECD countries. The common approach in five countries with rules providing governance arrangements for lobbying principally focused on the lobbyists. However, guidance may also be available for officials, for example in the Directory of Civil Service Guidance in the United Kingdom.

Key commonalities of existing rules on lobbying include:

*...purpose of rules,...*

- Their overall aim is to increase transparency and maintain trust in decision making. The preparation of the 2005 Polish Act demonstrates how the original aim of the Government Bill to support the prevention and prosecution of trading in influence was transformed to improve transparency in law making<sup>5</sup>.

*...formal sources of rules,...*

- Their primary source is legal regulations, though codes of conduct are also used for setting rules, particularly for senior public officials. Voluntary codes are rarely used in OECD countries.

*...transparency standards and...*

- Measures for increasing transparency are at the heart of lobbying regulations. Similar standards for transparency reflect shared expectations across the five countries with rules on lobbying. For example, all of them require registration of lobbyists to provide a basis for ensuring transparency of lobbying activities. Lobbyists are also commonly obliged to disclose the purpose and name of a client when undertaking lobbying, and to provide periodic reports on key aspects of lobbying activities. An emerging trend is to request more disclosure on issues of growing concern, such as providing information on lobbying expenses, contingency payments, public funding received by the client, past employment of the lobbyist as a public official, and also to make disclosed information public for allowing closer scrutiny<sup>6</sup>.

*...support measures for implementation*

- Improving compliance is a common concern. Review and verification of information provided in registrations and reports are the most commonly used measures for supporting the implementation of rules. Countries also explore the potential benefits provided by the Internet, in particular in filing lobbying registration and disclosure reports, for example mandatory electronic filing should be submitted to the Clerk of the House of Representatives in the United States<sup>7</sup>.

*Survey findings also reveal diverging aspects in...*

Survey results also revealed diverging views on key aspects of rules on lobbying, such as:

*...defining the subject,...*

- Definition of lobbying – There is no single definition used across OECD countries. Legal rules often establish very complex definitions, for example in Canada and the United States; or focus exclusively on limited aspects, such as lobbying in the law-making process at the central level in Poland.

*...delimiting the scope, and...*

- The primary scope of regulations is professional lobbyists. However, the definitions and even the classification of lobbyists differ from country to country. For example, Canada recently introduced further distinction between corporate and other organisations' in-house lobbyist, in addition to consultant-lobbyists. Lobbying can also be undertaken without payment according to, for example the proposed Bill on Lobbying in Slovakia.

*...providing administering capacity...*

- Administering agencies and penalties also vary from country to country. There is no single solution to determine the body in charge of administering the rules on lobbying. According to the national context, this organisation can be independent, such as the Registrar in Canada, the Clerk of the House of Representatives and the Secretary of the Senate

in the United States, whereas countries with recent laws on lobbying dedicated an organisation subordinated to central government ministries in Hungary and Poland.

*...and sanctions...*

- Sanctions are generally imposed either on public officials or on lobbyist with the exception of the United Kingdom where both administrative sanctions for lobbyists and disciplinary sanctions for officials could be applied.

*...as these elements should be closely considered in the country context*

These diverging aspects may direct policy makers in identifying what elements of legislation on lobbying should principally reflect domestic concerns and should be closely considered in the national socio-political and administrative context. A proper definition of lobbying, for example is essential as it provides a basis for adequately addressing public concerns in a given country. A too narrow or too wide definition could possibly render legislative efforts ineffective.

*Challenges, such as improving compliance remain*

Achieving compliance remains a constant challenge across countries to put rules on lobbying into effect. Commitment to review the actual level of compliance and involvement of stakeholders in the review process are two fundamental pillars to provide options for improving existing arrangements.

*Developing a proactive approach to properly reflect increasing public expectations...*

The survey findings provide grounds for developing a proactive approach to support:

- Awareness raising and understanding of the potential risks of lobbying to the integrity of public decision making.
- Preparedness of decision makers to properly address emerging expectations, and find adequate solutions in order to avoid overreacting.

*...and better combine measures for improving standards of behaviour and transparency in lobbying...*

If legislation is determined to be necessary, the central choices lie within a spectrum between disclosure of lobbying activities to improve transparency at one end, and regulation to set standards of conduct for lobbying in line with public expectation at the other.

*...can be supported by practical instruments developed on the basis of identified good practices*

Maintaining trust in democratic institutions requires clarification of the “rules of the game” in decision making. The development of principles to support governance arrangements for improving transparency and accountability in lobbying will provide decision makers with policy options, based on good practice, to properly address this sensitive political issue, and to promote integrity of public institutions through application of good governance principles in daily practice.

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<sup>1</sup> Statement by the Chairman Mr. Alexander Pechtold, Minister of Government Reform and Kingdom Relations, The Netherlands on 28 November 2005 in Rotterdam. The full text of the Statement can be consulted at <http://www.oecd.org/dataoecd/0/11/35806296.pdf>. Further information on the event is available at <http://www.modernisinggovernment.com/>.

<sup>2</sup> For details on approaches and regulations in OECD countries see Governance arrangements to ensure transparency in lobbying: A comparative overview GOV/PGC/ETH(2006)5 and Lobbying: Key policy issues GOV/PGC/ETH(2006)6.

<sup>3</sup> Canada, Hungary, Poland, the United Kingdom and the United States.

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- <sup>4</sup> Article 7 of the Korean Pact on Anti-Corruption and Transparency supported the preparation of legislation on lobbying.
- <sup>5</sup> For details on the preparation of the Polish Act on Legislative and Regulatory Lobbying see “Developing a legal framework for lobbying: The Polish experience”, GOV/PGC/ETH(2006)7.
- <sup>6</sup> For example the Lobby Reports received by the Office of Public Records of the United States Senate can be viewed at <http://sopr.senate.gov/> where visitors can also make search according to thirteen criteria.
- <sup>7</sup> For more information on the mandatory electronic filing, including the Lobby Registration Form and the Lobby Reporting Form, see the new Lobbying Disclosure web site at <http://lobbyingdisclosure.house.gov/>.