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Authors: Lucas Amin and José María Marín

Reviewers: Julius Hinks, Suzanne Mulcahy and Casey Kelso

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SUMMARY

To many observers, lobbying seems to be a process in which wealthy interest groups shape public policy unfairly in secret meetings with governments. This negative perception prevails for good reason: the vast majority of lobbying worldwide is unregulated and very little is known about who politicians and officials meet, and why. 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.

By regulating lobbying, governments can protect the integrity of democracy and renew public trust in the state. The challenge is to prohibit unfair, unethical activity while facilitating transparent, equitable public access to policymaking. This briefing discusses:

- why tackling lobbying is a priority for OGP members
- trends and good practice in regulation
- existing commitments and recommendations for inclusion in action plans

Few countries regulate lobbying but there has been a small surge of policymaking over the past decade. OGP members Chile and Ireland have overseen notable reforms while five EU states (including Ireland) have introduced mandatory registers for lobbying disclosures in the past eight years. To protect against the risks of undue influence, unfair competition and conflicts of interest, and to make decisions 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, responsive channels for public consultation of public policies
- introduce mandatory codes of conduct for officials and lobbyists and ensure there are appropriate sanctions in place for non-compliance

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

Access to policymakers 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 OECD outlines three related risks that arise: undue influence, unfair competition and regulatory capture.

For example, efforts to reform the European financial sector have been "stalled, thwarted and watered down, in large part due to intense lobbying by the financial lobby in Europe," according to research by Transparency International.ⁱⁱⁱ Meanwhile, in 2018, as scrutiny of technology companies has intensified in the United States, Google, Amazon, Facebook, Microsoft and Apple spent a collective record amount of US\$64 million "to fight numerous legislative and policy battles." Elsewhere, the government of Azerbaijan has invited parliamentarians from the United States, United Kingdom and Australia" on lavish all-expenses-paid trips to the state in efforts to promote its interests abroad and to counter criticism of systemic corruption, election rigging and human rights abuses. Vi

Lobbying is further 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. Lobbying helps to rotate the "revolving door" as personnel move between public and private sectors with the promise of privileged access to information on their previous employers. Lobbyists have also been used as intermediaries to pay political campaign donations and receive bribes.

The economic and social costs of these governance risks are potentially profound but challenging to measure. For example, when an official with a conflict of interest awards a contract to operate a railway to an undeserving but well-connected firm, the results might include unfair price rises, the use of unsafe or unsuitable equipment, unreliable schedules, 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.^{xi} British law, for example, has an extremely narrow definition of lobbying that applies to less than four per cent of lobbyists.^{xii}

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

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

Governments should address lobbying through the Open Government Partnership 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." 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 Open Government Partnership and there are invaluable resources and perspectives inside the partnership.xiv

Secondly, policymakers 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." Ultimately, lobbying regulations not only protect policy from corruption risks, they improve stakeholder participation in policymaking. The Open Government Declaration is expressly focused on these issues too. The declaration, signed by all 79 OGP 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." Regulating lobbying effectively is therefore essential to fulfilling these objectives.

Thirdly, the Open Government Partnership 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. Technical support, the opportunity for peer learning and, of course, the rich participation of civil society helps governments to design policies based on new technologies and best practices.

OGP PARIS DECLARATION AND LOBBYING TRANSPARENCY

On 7 December 2016, the Steering Committee of the Open Government Partnership endorsed the "Paris Declaration on Open Government". The Paris Declaration is a set of collective actions through which governments and civil society organisations can work together to push open government forward and advance reform at global, national and subnational levels.

Transparency in lobbying is one collective action within the Paris Declaration. Countries and civil society organisations 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 recommendations including the creation of public registers of lobbyists, registers of meetings with senior public officials and integrity measures such as codes of conduct and disclosure of conflict of interests. The aim is to ensure more trust in decision-making processes.

TRENDS AND EXAMPLES OF GOOD PRACTICE IN LOBBYING

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:

- providing a clear, broad yet unambiguous definition of lobbying, lobbyists and the public officials that the legislation applies to
- ensuring that sufficient information about lobbyist interactions with officials is disclosed including the date, location, purpose and beneficiaries of a meeting, the identities of all in attendance, memoranda and communications related to the meeting
- ensuring that disclosures are timely (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.xvii Lobbyist organisations must disclose the names of the parties to the lobbying and the policy area, as well as the broad intentions and specific details of the lobbying (for example to amend a specified subsection of a piece of legislation). The information should include summaries of all meetings and correspondence within the reporting period.xviii In its four years of operation, more than 36,000 returns have been filed by almost 2,000 registered lobbyists. In 2018, the Irish government also launched an eight-point code of conduct for lobbyists to observe.xiix

Participation

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

- implementing a formal, 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 considered
- publishing the results of all interactions between government and third parties during the policymaking process this is known as a "decision-making footprint" or "legislative footprint" xx

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 interministerial 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 that 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.**

Accountability

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

- establishing mandatory codes of conduct for 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, who reports to both houses of parliament annually and following each investigation. 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). XXIIII

EXISTING COMMITMENTS

No country in the world has perfect laws to regulate lobbying but the Open Government Partnership has been a forum for progressive legislation in this area. For example, Chile, Ireland and France 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 which parties are considered lobbyists and public officials, and it 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.^{xxiv}

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, provides for a mandatory public register of lobbying and sanctions for non-compliance include fines up to €2,500 (US\$ 2,742) and prison sentences of up to two years.^{xxv} 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.^{xxvi}

At subnational level, the City Council of Madrid pledged and delivered a mandatory register of lobbyists, which is now operational. The Independent Reporting Mechanism reports that the reform led to a major increase in access to information. The commitment is the only subnational one of its kind and may serve as inspiration to the 20 other local members of the Open Government Partnership.

A further 11 OGP members have made another 15 commitments to reform lobbying. These are: Afghanistan, Colombia, Croatia, Georgia, Hungary, Ireland, Italy, Latvia, Mongolia, North Macedonia and Romania. During its third action plan cycle (2016-18), Italy implemented a public register of lobbyists which applies to "any natural or legal person professionally representing legal interests" at the Ministry of Economic Development. The country's fourth action plan (2019-21) aims to develop oversight of lobbyists across a wider group of departments and agencies.

Romania has introduced a public register of meetings between lobbyists and officials. However, the Independent Reporting Mechanism stated: "The platform has not been used by any major watchdog or anti-corruption NGOs, as information provided on RUTI is insufficient to uncover abuse of power." Latvia has pledged to introduce statutory lobbying regulations, but is yet to implement changes. xxviii

WHAT ELEMENTS SHOULD A COMMITMENT ON LOBBYING INCLUDE?

Enhancing the integrity and quality of the policymaking process requires joined-up, 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. 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.

It is critical that disclosure regulations apply to the wide range of entities that engage in lobbying, including consultant lobbyists, in-house lobbyists, public affairs firms, non-government organisations, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations, academics and pro-bono office holders of incorporated entities. The regulations should also apply to relevant political representatives and administrative officials, and capture meaningful information about meetings and communications that enables the public to understand the purpose and outcomes of the interactions.

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. Government should publish a copy of all written and verbal submissions to the consultation online and demonstrate in its response how and why certain views have been considered 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^{xxx} 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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Transparency International International Secretariat Alt-Moabit 96 10559 Berlin Germany

Phone: +49 - 30 - 34 38 200 Fax: +49 - 30 - 34 70 39 12

ti@transparency.org www.transparency.org

Blog: voices.transparency.org Facebook: /transparencyinternational Twitter: @anticorruption