



# Lobbyists, Governments and Public Trust

VOLUME 3

IMPLEMENTING THE OECD PRINCIPLES FOR  
TRANSPARENCY AND INTEGRITY IN LOBBYING

HIGHLIGHTS



## Foreword

Citizens' trust in government provides the foundation for good governance and effective policy-making. This is especially true in the current post-crisis context in which structural reforms involve difficult choices, and where the confidence of citizens and markets is critical for fostering economic and social development. However, public opinion surveys suggest that trust in government is waning in most OECD member countries. This is partly due to the perception that policy decisions are driven by private interests at the expense of the public good.

Lobbying is a fact of public life in all countries. It has the potential to promote democratic participation and can provide decision makers with valuable insights and information, as well as facilitate stakeholder access to public policy development and implementation. Yet, lobbying is often perceived as an opaque activity of dubious integrity, which may result in undue influence, unfair competition and regulatory capture to the detriment of fair, impartial and effective policy making.

To level the playing field among all stakeholders in the policy-making process, the OECD adopted in 2010 the Recommendation on Principles for Transparency and Integrity in Lobbying – the sole international instrument aimed at mitigating lobbying-related risks of corruption and undue influence. This report takes stock of progress made by OECD member countries in implementing the Principles and shows that, while progress has been made in a number of countries, more is needed to safeguard the government decision-making process across most OECD member countries.

There is evidence of an emerging consensus on the need for transparency. Fourteen OECD member countries have introduced lobbying regulations to this effect, and others are considering to do so. More countries have introduced regulation in the past five years than in the previous 60. While this is a significant step forward, lobbying regulation has at times been scandal-driven instead of forward-looking, with questionable cost-benefit outcomes. The resulting regulations are sometimes incomplete and do not fully meet the expectations of legislators and lobbyists as to what should be disclosed, the adequate level of transparency, and options for managing lobbying systems once they are in place. Promoting compliance and enforcement is proving to be a particular challenge. Enforcement of codes of conduct and integrity standards remains relatively low, and the bulk of surveyed lobbyists indicate that there are either no sanctions for breaching codes of conduct or, if there are, they are not compelling enough to deter breaches. An additional challenge is that of poor coordination of transnational lobbying practices, which results in different requirements for the same actors in different jurisdictions.

Moving forward, this report also suggests how the OECD Principles can be applied in practice to promote greater trust and improve the quality of decision making. Since it takes two to lobby, both governments and lobbyists need to take their share of responsibility. In the case of governments, it is crucial to strengthen the implementation of the wider integrity framework and adapt it to evolving and emerging risks.

Furthermore, in order to measure costs, identify benefits and monitor performance of lobbying regulations and frameworks, countries would benefit from identifying relevant data, benchmarks and indicators relative to transparency in lobbying, the public decision-making process and, ultimately, the broader integrity framework. Finally, the review identifies a need to revisit and take stock of policies for managing conflict of interest to ensure that revolving door practices, as well as the unbalanced representation and influence of advisory groups, are effectively mitigated.

Addressing concerns related to lobbying practices and undue influence in the decision-making process is a key lever for restoring trust in government. This report will contribute to the OECD's broader efforts in helping governments regain public confidence, not only in the area of lobbying, but also in regulation, conflict of interest and campaign financing. Securing fairness in policy making and building solid foundations to ensure that public institutions serve the public interest are essential to advance better policies for better lives.



Angel Gurría  
OECD Secretary-General

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The Public Governance Committee and the Public Sector Integrity Network reviewed the progress made in OECD member countries in the autumn of 2013. The OECD Council adopted the monitoring report on 12 March 2014.

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## Executive summary

This report reviews how risks and concerns related to lobbying have evolved and identifies lessons learned in designing and implementing measures and cost-effective solutions for safeguarding the integrity of the decision-making process. This contributes to the OECD Strategy on Trust – adopted by Ministers at the OECD Ministerial Council Meeting in May 2014 – which includes a module on “Securing fairness in policy making”, in which curbing policy capture by private interests and ensuring political participation is a main element.

On 18 February 2010, the OECD Council adopted the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying. The Public Governance Committee (PGC) had led the development of the Recommendation which remains the only international instrument to address concerns over lobbying practices, offer guidance on how to meet expectations of transparency and accountability, and support a level playing field in public decision making. When adopting the Recommendation, the Council requested that the PGC report back to it on progress made in implementing the Recommendation in three years and regularly thereafter in consultation with the Regulatory Policy Committee and other relevant Bodies. Three years later, the PGC is now taking stock of the progress made in implementation by OECD member countries and key and other partner countries.

The findings of this review show that lobbying is a fact of life in the public decision-making process. It can provide decision-makers with valuable insight and data and facilitate stakeholders’ access to the development and implementation of public policies. However, it can also lead to undue influence, unfair competition, and regulatory capture to the detriment of the public interest and effective public policies.

Improving the transparency and integrity of the public decision-making process, particularly by using regulation to address concerns over lobbying, has been high on many governments’ agendas in the past three years. More countries have introduced regulation in the past five years than in the previous 60. Experience shows, however, that in most cases regulation has been reactive and scandal-driven instead of forward looking. Consequently, strong transparency measures designed to foster trust in public decision making have too often resulted in overshooting, whereby countries have over-zealously addressed concerns. Many have also struggled with balancing the administrative cost of transparency mechanisms. Nevertheless, lobbying regulation has generally created more openness and transparency in lobbying practices.

Although 41% of OECD member countries have acted to set or tighten lobbying standards, the process of doing so has not been without its challenges. Some have amended laws that were already in place while others, which enacted new regulations that were repealed, had to legislate again at a later date. More seasoned regulators of the lobbying industry, like the United States and Canada, have updated their rules. The process of approving legislation on lobbying has also been both complex and lengthy in countries, sometimes requiring several rounds of voting and having to overcome significant legislative hurdles.



Countries have also struggled to implement lobbying regulations and there are still shortcomings in compliance and enforcement strategies. Enforcement of integrity standards and codes of conduct remains relatively weak and most lobbyists surveyed by the OECD indicated that there were either no sanctions for breaching standards or codes of conduct or, if there were, that they were not compelling enough to deter breaches. Although compliance among public officials is usually promoted through awareness raising and training, greater efforts to educate them are required. Legislation generally incorporates sanctions for public officials, although there is limited information on whether they are applied.

While countries have increasingly opted to regulate lobbying practices, experience has shown that streamlining lobbying regulations into the wider integrity framework remains central to addressing lobbying-related risks effectively. There is a general consensus that while it takes two to lobby, the main responsibility for safeguarding the public interest and rejecting undue influence lies with those who are lobbied, and therefore a sound public-sector integrity framework is essential.

Furthermore, countries' experience in the last three years has revealed new or heightened risks related to lobbying that demand special attention and an innovative, modern integrity framework. Revolving-door practices and, in particular, pre-public employment risks continue to threaten the integrity of public decision making. Only one-third of OECD member countries place any restrictions on hiring lobbyists to fill regulatory or advisory posts in government. Similarly, the influence of private interests through advisory groups has emerged as a growing concern. Although members of advisory groups have direct access to decision makers and are therefore able to lobby from the inside, such groups are not generally required to ensure a balanced representation of interests in their make-up.

Good governance requires assessment and data, and lobbying is not an exception. Yet, most countries struggle to measure the costs and benefits of enhancing transparency and integrity in lobbying and have trouble monitoring the performance of measures in place. Collecting data on the costs and benefits for government and lobbyists alike is key to better understanding lobbying in different country contexts, to assessing whether measures taken meet their intended objectives, and to deciding if money could be better spent elsewhere. Despite the availability of technology which considerably reduces the burden of collecting and analysing quantitative data, there is little lobbying data available in most countries.

## **Policy directions**

- Focus efforts on the implementation of the Recommendation on Principles for Transparency and Integrity in Lobbying to strengthen confidence in the public decision-making process and restore trust in government.
- Identify relevant data, benchmarks, and indicators relative to transparency in lobbying, the public decision-making process and, ultimately, the broader integrity framework in order to measure costs, identify benefits, and monitor performance.

- Strengthen the implementation of the wider integrity framework, as it is the prime tool for safeguarding transparency and integrity in the decision-making process in general and lobbying practices in particular. Countries could seize the opportunity to reflect on new integrity challenges and constraints and identify innovative and cost-effective measures.
- Review policies for managing conflict of interest to ensure that revolving door practices and the unbalanced representation and influence of advisory groups are effectively mitigated. Countries would benefit from highlighting and sharing good practices so as to identify the conditions for policies and practices that effectively safeguard the integrity of the public decision-making process and contribute to building trust in government.



## I. Why address lobbying risks and concerns now?

Lobbying can be a valuable component in the public decision-making process. In an increasingly complex policy landscape, it may afford decision-makers valuable insights and data and stakeholders access to public policy development and implementation. Yet, in practice, lobbying is also a global multi-billion dollar business and a source of concern for policy makers and citizens alike. Since the adoption of the Recommendation of the OECD Council on Principles for Transparency and Integrity in Lobbying (known as “the Recommendation”) in February 2010, a growing number of OECD member and partner countries have been discussing lobbying in the political and policy arena and its part in economic crises, elections, scandals, and dwindling trust in governments.

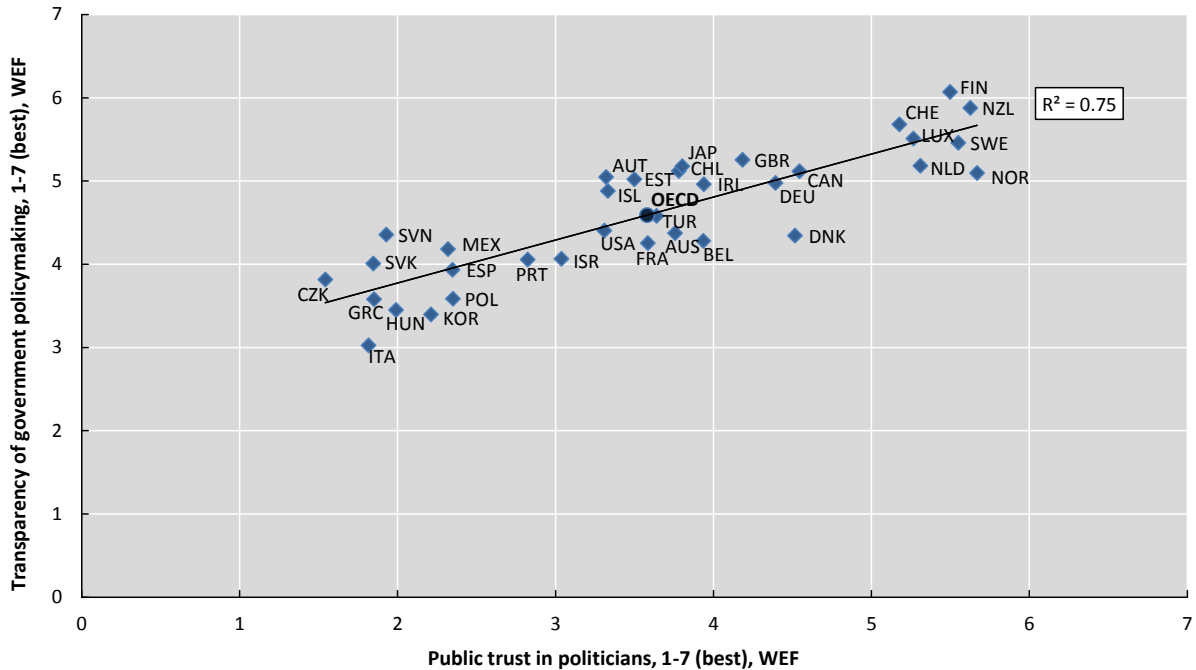
### Lobbying is central to dwindling trust in government

Available data suggest that trust in the public decision-making process and in governments in general is waning in the vast majority of OECD countries (OECD, 2013a). Citizens express doubts about their governments’ ability to make the right decisions. There is a widespread view that governments are not able to effectively regulate markets, that business exerts undue influence over public policy, and that the distribution of burdens and rewards across society is unfair. Indeed, the global financial and economic crisis highlighted serious failures of governance – from revolving doors to conflicts of interest and regulatory capture. Such mistrust is heightened by concerns over fairness in fiscal consolidation and in the sacrifices required by structural reform. This sentiment was confirmed in the debates at the OECD Forum on Transparency and Integrity in Lobbying in June 2013. Participants emphasised that:

- an underlying question countries face is that of fairness;
- there is a crisis of confidence; and
- a major problem at the heart of the democratic system is a sense that the wealthy finance political parties only to further their own interests.

Indeed, changes in the perceived transparency of public decision making are strongly correlated with changes in trust (see Figure 1). The 2013 Edelman Trust Barometer found that about half of the respondents surveyed in 26 countries distrusted government. Amongst the key factors they cited to explain the prevailing distrust were “wrong incentives driving policies” and “corruption/fraud”. Together, the two factors accounted for half of all reasons for trusting government less. They point to an urgent need to address the credibility of the bodies formally involved in public decision making and to strengthen the underlying institutional conditions that shape the decision-making process. Answering that need requires looking into lobbying practices so as to ensure fair decision making and a level playing field for all the stakeholders seeking to influence the process.

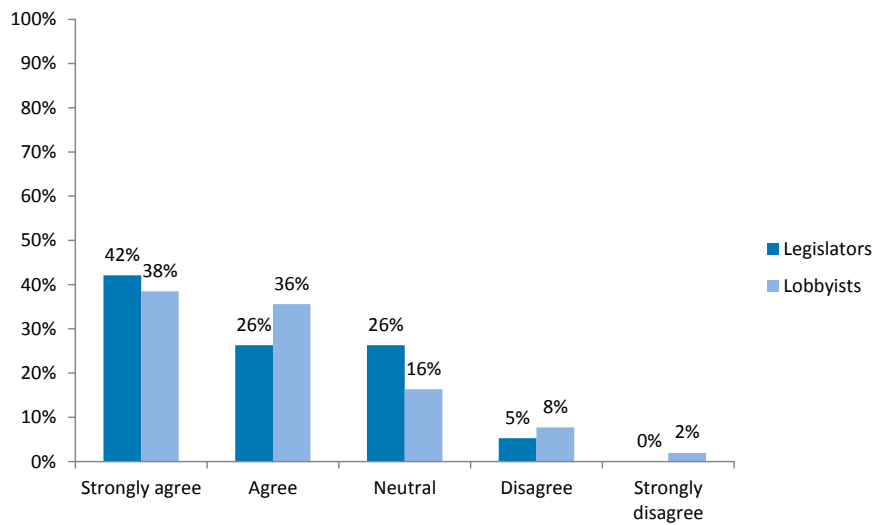
**Figure 1. Correlation between public trust in politicians and transparency in government policymaking, 2013**



Source: World Economic Forum (WEF) (2013), *Global Competitiveness Report 2013-2014*, World Economic Forum, Geneva, [www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf).

Lobbyists and legislators surveyed in 2013 in two OECD surveys widely shared the opinion that transparent lobbying would increase citizens' trust in the decision-making process. Most respondents (74% of lobbyists and 68% of legislators) expressed their agreement or strong agreement, which suggests that addressing concerns over transparency in lobbying (*e.g.* deals behind closed doors) could be a key policy lever for restoring trust in governments (Figure 2).

Developing an adequate framework that enhances transparency and accountability in lobbying so as to foster trust in government begins with countries clarifying public concerns. A careful analysis should take into account all available options – policy measures, legislation, and voluntary or mandatory regulation – with the aim of drawing up a proposal that adequately addresses concerns within each country's socio-political and administrative context.

**Figure 2. Transparent lobbying increases citizens' trust in the public decision-making process**

Source: OECD 2013 Survey on Lobbying for Lobbyists and OECD 2013 Survey on Lobbying for Legislators.

### Lobbying may result in undue influence, unfair competition, and regulatory capture

Lobbying is perceived in most countries as a mechanism for perpetuating special interests at the expense of the public interest. Indeed, the literature has demonstrated that the disproportionate, unregulated influence of interest groups may lead to state capture (Kaufmann, Hellman and Geraint, 2000). In a 2013 Burson-Marsteller survey 24% of politicians and senior officials across 20 European countries said that the worst aspect of lobbying was that it gave undue weight to elites and the wealthy, while 14% considered that it facilitated undue influence in the democratic process. As many as 55% of respondents in Norway and 40% in Hungary believed that lobbying favoured the rich and powerful, while the figure was 33% in the Czech Republic, 26% in Greece, and 24% in France.

Legislators and lobbyists themselves harbour similar suspicions and negative perceptions. The number of lobbyists who believe that inappropriate influence-peddling in their trade is a frequent problem increased significantly between 2009 and 2013 (Figure 3).

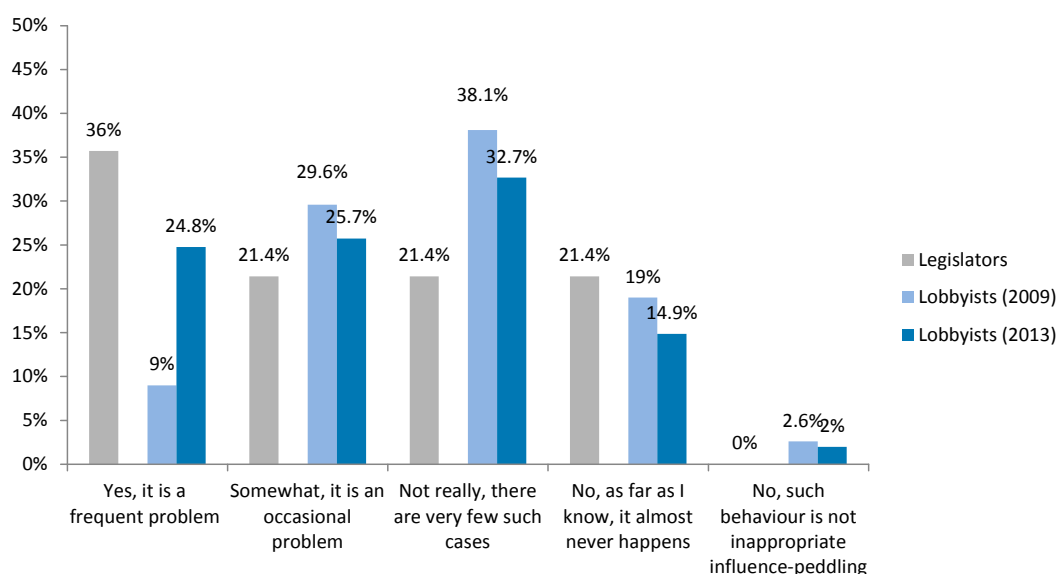
Suspicion of lobbying is widely fuelled by real-life instances. Cases of undue influence in public decision-making processes and regulatory capture to the detriment of the public interest have surfaced in a number of countries. Informed opinion has voiced the view that certain economic crises were partly caused by the influence of specific interests on government decision-making. For example, an IMF working paper published in 2009 links intensive lobbying by the financial, insurance and real estate industries in the United States (US) with high-risk lending practices (Igan, Mishra and Tressel, 2009).<sup>1</sup> The paper reveals how lenders who lobby more intensively on the issues of mortgage lending and securitisation have (i) more lax lending standards measured by loan-to-income ratios,

1 OECD (2013c) addresses the same issue.

(ii) a greater tendency to securitise, and (iii) faster-growing mortgage loan portfolios. In other words, lenders who lobby engage in riskier lending (*ibid.*).

Not only does the public at large pay the price of undue influence and regulatory capture, but fair market competition also suffers. Without adequate safeguards, lobbying may result in the *de facto* abuse of dominant market positions – and even quasi-monopolies – by those companies that have the necessary wealth and right connections. The undoubted upshot is more costly goods and services for consumers and negative impacts on countries' economic performances.

**Figure 3. Inappropriate influence-peddling by lobbyists – e.g. giving gifts to obtain favours from officials or misrepresenting issues – is a frequent or occasional problem**



*Note:* Respondents were asked: “Generally speaking, do you think that inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, is a problem?”

*Source:* OECD 2013 Survey on Lobbying for Lobbyists, OECD 2009 Survey on Lobbying and OECD 2013 Survey on Lobbying for Legislators.

### Transnational lobbying practices raise new global concerns

In 2013, the OECD conducted a review of how countries had implemented the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying in the previous three years. The monitoring review showed that lobbying practices are evolving. As globalisation and interdependency between countries have increased dramatically in recent years, lobbying strategies and practices have become more transnational. For example, US corporations now regularly lobby the European Parliament and Commission to influence decision-making in the European market, which in turn has an impact on the United States market. Similarly, lobbyists may be active in one or more European country and simultaneously lobby supranational institutions. The convergence and emergence of such global practices has spawned new concerns and risks. Who is shaping them?

Disparate rules and degrees of transparency across different countries and jurisdictions favour the proliferation of lobbying practices and inconsistent international responses. In addition, different rules for the same actors in different jurisdictions may not only result in different levels of influence, but in uneven playing fields depending on the jurisdictions in which lobbyists operate. Transnational lobbying raises questions of transparency and competition at a global level. Accordingly, countries should give special attention to cross-border lobbying practices and also address them at the global and supranational levels. To that end, they would benefit from coming together with regional and international institutions in coalitions that incorporate multi-level governance processes.





## II. Governments are shedding more light on lobbying

Improving the transparency and integrity of the public decision-making process, particularly by using regulations to address concerns over lobbying, has been high on many governments' agendas in the past three years – and continues to be so today. Although scandal has driven the growth in regulation in most cases, the result has nevertheless been more openness, information and transparency in lobbying practices.

### More countries have regulated lobbying in the past five years than in the previous sixty

The aforementioned concerns have prompted more and more countries to opt for the regulation of lobbying. Their experiences show that the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying (the Recommendation) has been essential in helping them to develop their regulations in the past four years.

From the 1940s to the early 2000s (Figure 4), only four countries regulated lobbying practices. Since 2005 an additional ten countries have followed suit. Regulations may be mandatory systems – as they are in Canada and the United States (US), for example – or voluntary schemes, as in France. A number of countries, such as Ireland, have legislation on lobbying in the pipeline.

Although 41% of OECD member countries have acted to tighten lobbying standards, doing so has not been without its challenges. Some have amended statutory or regulatory provisions that were already in place, while others have enacted new ones only to see them repealed, before legislating or regulating once more at a later date. Australia, for instance, first regulated lobbying through the Lobbyist Registration Scheme of 1983 before it abolished the scheme in 1996. Its current Lobbying Code of Conduct, introduced in 2008, also establishes a lobbyist register. Similarly, Hungary introduced Act XLIX on Lobbying Activities in 2006, repealed it in 2011, then brought in an integrity management regulatory system for state administration bodies and lobbyists in February 2013.<sup>2</sup>

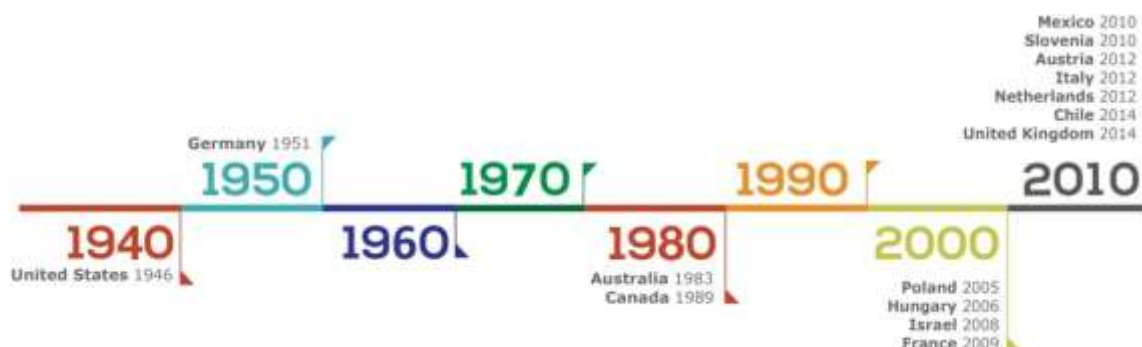
Some countries have endured complex, lengthy struggles to secure approval for legislation on lobbying, sometimes having to take it through several rounds of voting and overcome significant legislative hurdles. Mexico, for example, has regulated lobbying in the legislative branch since 2010, but only after years of parliamentary debate dating back to 2002.

More seasoned regulators of the lobbying business like the US and Canada updated their bodies of law. The US replaced the Federal Regulation of Lobbying Act of 1946 by the 1995 Lobbying Disclosure Act, while Canada has made several amendments to its *Lobbyists Registration Act* of 1989 and supplemented it with the *Lobbying Act* of 2008. On 27 February and 26 June 2013, the Bureau of France's National Assembly adopted a new regulation that restated the terms of relationships between *députés* and representatives of interest groups. Among other things, the regulation strengthened the

2 Magyar Közlöny 30. Szám (2013. február 25).

reporting requirements that had been in place since 2009 and made registration legally binding.

**Figure 4. OECD countries are increasingly opting to regulate lobbying<sup>3</sup>**



Nevertheless, most OECD countries do not regulate lobbying. Over half (56%) of the politicians and senior officials<sup>4</sup> from 20 European Union (EU) countries surveyed by Burson-Marsteller in 2013 were of the opinion that lobbying was not sufficiently regulated in their countries. The percentage of respondents who held that view was particularly high in countries – such as Portugal (100%), Spain (93%), the Czech Republic (88%), and Italy (87%) – where the government has not yet regulated lobbying. However, half or more of the decision makers questioned in Norway (59%), Denmark (57%) and Poland (50%) felt that lobbying was amply regulated.

<sup>3</sup> *Australia*: Lobbying was first regulated in Australia through the Lobbyist Registration Scheme of 1983, but the scheme was abolished in 1996. The current Lobbying Code of Conduct – which also established a lobbyists' register – was introduced in 2008.

*Canada*: The Lobbyists Registration Act of 1989 has been amended several times and in 2008 was renamed the Lobbying Act.

*Chile*: Chile enacted a law regulating lobbying in January 2014. However, this report refers to laws and practices adopted until December 2013 and therefore Chile's law is not analysed.

*France*: On 27 February and 26 June 2013, the Bureau of the French Assemblée Nationale – on the proposal of Mr Christophe Sirugue, President of the Delegation responsible for interest representatives – adopted a new regulation that restated the terms of relationships between députés and representatives of interest groups.

*Germany*: Lobbying was first regulated through Article 73 of the Rules of Procedure of the German Bundestag in 1951.

*Hungary*: Hungary introduced Act XLIX on Lobbying Activities in 2006, repealed it in 2011, then brought in an integrity management regulatory system for state administration bodies and lobbyists in February 2013 (Magyar Közlöny 30. Szám [2013. február 25]).

*Italy*: With Ministerial Decree No. 2284 of 6 February 2012, the Italian Ministry of Agricultural, Food and Forestry Policies regulated stakeholders' participation in the decision-making process of drafting bills and regulations under its authority. In addition to the ministry's regulation of lobbying, three Italian regions have introduced rules on the transparency of political and administrative activities, namely Toscana (2002), Molise (2004) and Abruzzo (2010).

*Poland*: The Act on Legislative and Regulatory Lobbying was passed by the Sejm (Lower House of Parliament) in July 2005. The Act was amended in 2011.

*United Kingdom*: The United Kingdom enacted the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 in January 2014.

*United States*: The Federal Regulation of Lobbying Act of 1946 was replaced in 1995 by the Lobbying Disclosure Act.

<sup>4</sup> Interviewees included politicians (members of national legislatures and Members of the European Parliament) and senior officials from national governments and the EU institutions. In total, nearly 600 interviews were conducted.

## Regulation has been reactive and scandal-driven instead of forward looking

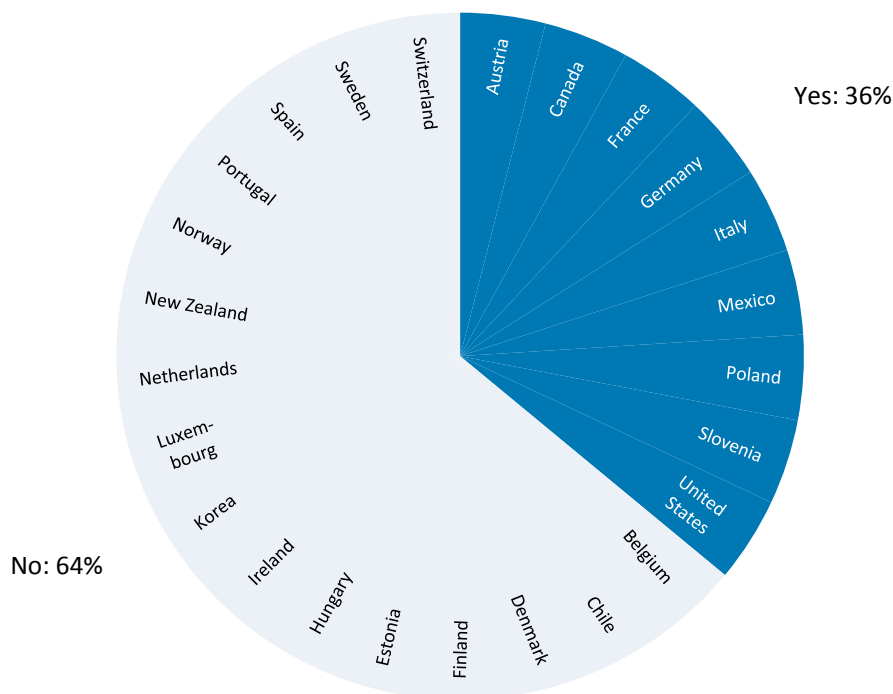
With a consensus among stakeholders and decision makers that lobbying should be regulated and that currently it is not sufficiently regulated, the growing number of countries opting to regulate lobbying is an encouraging sign. To date, however, most have introduced or reformed lobby regulations on an *ad hoc* basis and largely in response to political scandals. At times, therefore, strong transparency responses designed to foster trust in public decision-making have resulted in over-regulation.

Building the necessary consensus among stakeholders before scandals take place and harnessing enough political support has been difficult. However, experience shows that it has been less of a challenge in countries that have taken a more forward-looking, incremental approach. In light of concerns over lobbying and public decision making and citizens' waning trust, governments would benefit considerably from an approach that is less reactive or scandal-driven.

## Concerns, scandals, and political will generally determine levels of transparency

A common feature of lobbying regulations is that they require lobbyists to disclose information about their practices and business through a register that serves as a platform to manage disclosed information. Of the 26 countries that responded to the OECD's Survey on Lobbying Rules and Guidelines 9 of them – namely Austria, Canada, France, Germany, Italy (Ministry of Agriculture), Mexico, Poland, Slovenia and the United States – have lobbyist registers in place (Figure 5).

**Figure 5. Lobbying registers in place in OECD countries**



*Note:* Italy's responses refer to the register operated by the Ministry of Agriculture.

Germany's response refers to the public list of associations that lobby the German Federal Parliament (Bundestag) or Federal Government and is kept by the President of the Bundestag.

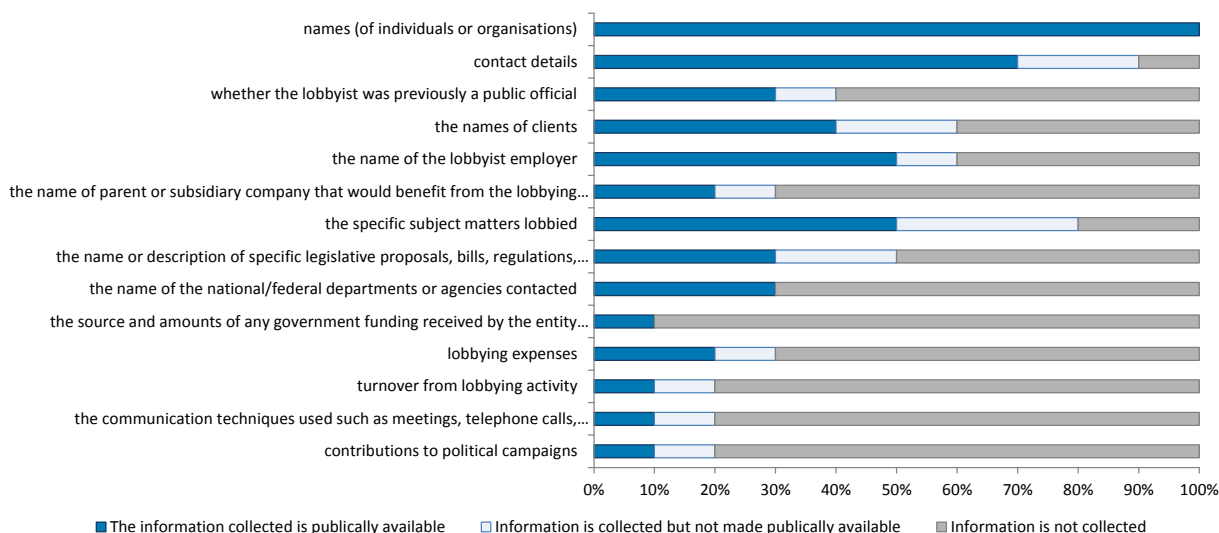
There is no information available for Japan.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

So as to promote informed decision making and enable scrutiny, registers should contain information that is ample and relevant, to shine a light on lobbyists and key aspects of lobbying activities. There is less chance of influence peddling in an open, transparent decision-making process where information on who seeks to influence which policies is publicly available. However, any supplementary disclosure requirements should take into consideration the legitimate information needs of key players in the public decision-making process. Countries with lobbying registers commonly require lobbyists (and lobby firms) to publicly disclose their names, their contact details, their employer's name, and who their clients are (Figure 6).

However, the amount and type of information disclosed and made publicly available varies widely depending on the resources available to run a lobbying register, a country's particular concerns, and the maturity of the system in place. For example, Canada and the United States – which have had lobbying registers in place for longer than most OECD countries – generally disclose more information than countries with more recent regulations. Experience shows that concerns over lobbying (often prompted by scandal) and political will are the factors that chiefly determine the transparency of lobbying practices as measured by the amount, type, and availability of information disclosed.

**Figure 6. Disclosure and public availability of lobbying information**



Note: Data shows an aggregate of information from Australia, Austria, Canada, France, Germany, Italy (Ministry of Agriculture), Mexico, Poland, Slovenia, the United States and the EP/EC Joint Transparency Register.

Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

## Countries struggle with balancing the administrative costs of transparency mechanisms

A key challenge that governments face is that of striking a balance between collecting and managing information on lobbying activities and reaping the benefits of doing so. The administrative burden on lobbying oversight bodies of implementing rules and guidelines and on lobbyists of complying with them, together with the annual cost of running institutional support mechanisms, has led a number of countries to exclude some types of activities from the scope of the regulation and, therefore, not to include them in their registers. Worth highlighting is that, although many OECD countries have introduced a number of arrangements to minimize red tape, Austria is so far the only one to have calculated the regulatory burden on lobbyists of complying with rules. In the Regulatory Impact Assessment which it conducted under the terms of the Lobbying Act, the Federal Ministry of Justice came to the conclusion that the burden on lobbyists was very light compared to their earnings.<sup>5</sup>

One ploy used by a number of countries – *e.g.* Canada, Slovenia, and the United States – is not to register communication that is already on public record. This includes formal presentations to legislative committees, public hearings, established consultation mechanisms, or information related to the decision-making process already in the public domain. The approach has effectively eased administrative burdens, avoided duplication, and helped save money. In Slovenia, for example, records of meetings between senior public officials and lobbyists are available under the Access to Public Information Act, but are not included in the register.

In most OECD countries with registers, lobbyists who are defined as such by a country's statutory or regulatory rules may submit their registrations and activity/spending reports online in order to lighten their administrative load and save time and money (Table 1). Of lobbyists surveyed in 2013, over two-thirds (69%) said that it took them 30 minutes or more to register. Electronic submissions also streamline the work of lobbying oversight bodies, which manage and monitor the application of lobbying rules.

Austria, Canada, and the United States have also established “thresholds” beyond which lobbyists – *i.e.* individuals whose activities are within the ambit of those countries' regulations and legislation – are required to register (Table 1). In this way, lobbyists and lobbying oversight bodies are relieved of paperwork and anybody who lobbies on more than an occasional *ad hoc* basis is registered. Canada's Lobbying Act, for example, exempts from its definition of in-house lobbyists those who spend under a certain time lobbying and those whose work is not remunerated. According to Article 7(1)(b) of the act, a person needs to register his or her lobbying “duties” if they “constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee”. The Canadian Commissioner of Lobbying has interpreted “significant” to mean 20% of one individual's time.

Contrary to the situation in many OECD countries, the majority of surveyed lobbyists believe that lobbying activities below certain established time or remuneration thresholds should be covered by lobbying rules and guidelines. While governments seek to define

5 See [www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_01465/fname\\_232777.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01465/fname_232777.pdf).

who is a lobbyist concisely and cost-effectively, lobbyists believe that coverage needs to be more all-embracing.

**Table 1. Mechanisms in place to lessen the administrative burden for oversight bodies of implementing and managing lobbying rules and guidelines in selected OECD countries**

	Electronic submission of registrations	Electronic submission of activity/spending reports	Electronic (automatic) verification that all information was submitted	Below a certain threshold in terms of for example time spent on lobbying, lobbyists do not need to register
Austria	●	●	○	●
Canada	●	●	○	●
France	○	○	○	○
Germany	○	○	○	○
Italy	●	●	●	○
Mexico	○	○	○	○
Poland	●	○	○	○
Slovenia	●	●	●	○
United States	●	●	●	●
<b>Total OECD9</b>				
Yes	6	5	3	3
No	3	4	6	6

*Note:* In Italy, responses refer to the system put in place by the Ministry of Agriculture.

*Source:* OECD 2013 Survey on Lobbying Rules and Guidelines.

### III. Addressing emerging concerns on integrity

While more and more member and partner countries have opted to regulate lobbying, experience has shown that streamlining regulations into the wider integrity framework remains crucial to mitigate such lobbying-related risks as undue influence and unfair competition. The last three years, however, have shown that there are new and heightened risks that demand special attention and the modernisation of integrity frameworks.

#### **Operational public sector integrity frameworks are essential to the mitigation of lobbying risks**

Expectations of open and fair decision making have put mounting pressure on governments to ensure that private interests do not improperly affect official decisions. A sound integrity framework is essential to meeting those expectations. Accordingly, countries have implemented a wide variety of mechanisms. They range from those designed to promote a culture of integrity among decision makers and increase the transparency of the decision-making process to ones that strengthen conflict of interests management and others that protect whistleblowers and enable them to report wrong-doing.

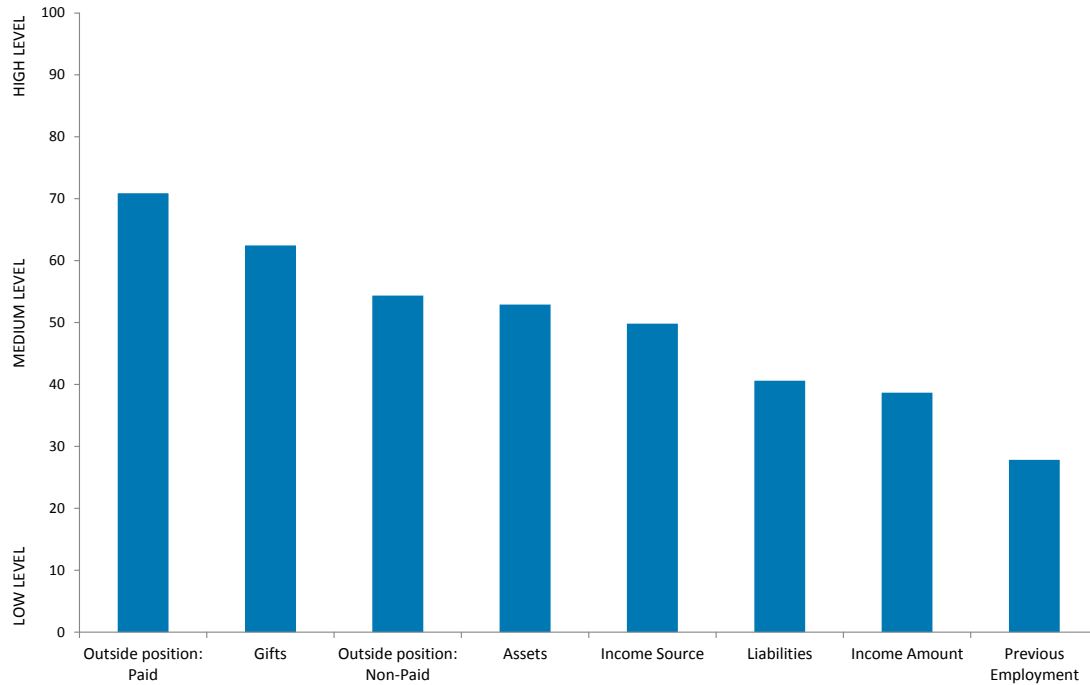
In OECD member countries, practice reveals that decision makers' disclosure of private interests continues to be an essential tool for managing conflicts of interest and ensuring the integrity of public decision making (OECD, 2013a). Interestingly, the private interests of decision makers that most preoccupy OECD countries, who either prohibit them or require their disclosure, are "paid outside positions" and "gifts" – which reflects concerns over the decision-making process and lobbying practices (Figure 7).

Moreover, many countries' legislation or codes of conduct are increasingly setting standards of conduct for dealings between public officials and lobbyists – a trend supported by the vast majority of stakeholders. In the OECD's 2013 survey on lobbying, most of the lobbyists and legislators surveyed felt that rules – in the form of legislation, codes of conduct, or guidelines – should govern lobbying (Figure 8).

A view to emerge at the OECD Forum on Transparency and Integrity in Lobbying in June 2013 was that lobbying risks should be mitigated first and foremost – and sometimes solely – through the proper implementation of a broader integrity framework. The Netherlands, for example, argued that the debate and reforms may be focusing too narrowly on transparency and lobbying registries while overlooking the fact that they are a means to an end of a fair, inclusive decision-making process. In other words, regulating lobbying is not the only way to address concerns and mitigate risks related to lobbying. Even more important is the design and implementation of a sound public sector integrity framework.

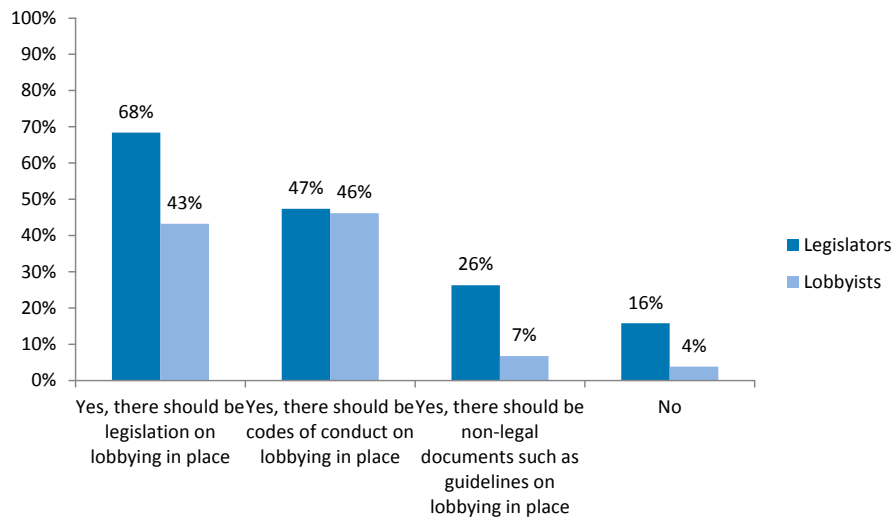


**Figure 7. Levels of disclosure of decision makers’ private interests in the three branches of government and the public availability of disclosed information**



Source: OECD 2012 Survey on Managing Conflict of Interest

**Figure 8. Stakeholders believe that there should be rules on lobbying**



Note: Respondents were asked: "Do you believe that there should be rules/guidelines related to lobbying in place?"

Source: OECD 2013 Survey on Lobbying for Lobbyists and OECD 2013 Survey on Lobbying for Legislators.

## Although it takes two to lobby, lobbied officials are responsible for safeguarding the public interest and rejecting undue influence

Governments have the primary responsibility of regulating and controlling the conduct of public officials who may be lobbied, as set out in the Principles of the Recommendation. However, lobbyists and their clients also share a duty not to exert or be swayed by illicit influence and to comply with professional standards of conduct – particularly professionalism – when conducting their business.

As part of their responsibility, lobbyists have created professional groups to regulate their own activities – generally on a voluntary basis through *i*) codes of conduct, *ii*) registers, and/or *iii*) monitoring/enforcement systems.

Codes of conduct remain the principal tool of self-regulation. Of the lobbyists surveyed in 2013 by the OECD, 97% responded that they were governed by a code of conduct drawn up by a business, a lobbyists’ association, or the government (Box 1). Most were also of the opinion that their code provided clear guidance and principles that were easily applied to specific situations.

Similarly, lobbyists have made it their own duty to foster a culture of integrity in their profession through awareness raising and training initiatives. Although 86% of the lobbyists surveyed by the OECD had received training, none had received any from their governments.

### Box 1. Lobbyists’ associations’ codes of conduct: the Association of Government Relations Professionals and the European Public Affairs Consultancies’ Association

The codes of conduct established by lobbyists associations’ generally specify that lobbyists should provide truthful information when interacting with officials and not cause public officials to violate any laws, rules, or regulations.

The code of ethics of the Association of Government Relations Professionals (formerly the American League of Lobbyists) asserts that a lobbyist should conduct lobbying activities with honesty and integrity. Article 1.2 states: “If a lobbyist determines that the lobbyist has provided a public official or other interested person with factually inaccurate information ... the lobbyist should promptly provide the factually accurate information to the interested person.” The code also stipulates that a lobbyist should not cause public officials to violate any law, regulation, or rule applicable to them.

The Code of Conduct of the European Public Affairs Consultancies’ Association (EPACA) similarly establishes that, when lobbying, “public affairs practitioners ... shall neither directly nor indirectly offer or give any financial inducement to any elected or appointed public official, or staff of their institutions and political groups, nor propose nor undertake any action which would constitute an improper influence on them”.

Sources: Association of Government Relations Professionals, Code of Ethics, <http://grprofessionals.org/join-all/code-of-ethics>; EPACA (European Public Affairs Consultancies’ Association), Code of Conduct, [www.epaca.org/uploads/Code\\_of\\_Conduct\\_-\\_adopted\\_2013.pdf](http://www.epaca.org/uploads/Code_of_Conduct_-_adopted_2013.pdf).

However, there are still gaps in lobbyists’ compliance strategies. The enforcement of integrity standards and codes of conduct remains relatively low and most lobbyists surveyed by the OECD indicate that there are either no sanctions for breaching standards or codes of conduct or, if there are, they are not compelling enough to deter breaches.

The OECD’s review of how countries have implemented the Recommendation over the last three years reveals an emerging sense that there should be greater focus on the responsibility of those who are lobbied, namely public officials. They are the guardians of the public interest and, although it takes two to lobby, it is ultimately incumbent on them to safeguard the public interest and reject undue influence. Slovenia, for example, makes public officials responsible for registering any meetings they may have with a lobbyist (Box 2). Other countries have made deliberate policy decisions to place the registration and reporting onus solely on lobbyists, rather than public officials. There are a number of rationales for this, including ensuring that the lobbying industry (and not taxpayers) pays as much of the cost of its own regulation as possible, the fact that public officials are not well-placed to provide information about lobbyists and their clients, and to avoid a chilling effect on public officials meeting with outside parties.

### **Box 2. The requirement for all Slovenian public officials to report meetings with lobbyists**

Although it is up to the lobbyist to register in order to work in Slovenia, the responsibility for reporting any meetings with public officials lies with the official him- or herself. Any official who has dealings with a lobbyist is required to record:

- the name of the lobbyist;
- information on whether the lobbyist has identified him- or herself in accordance with the provisions of the Integrity and Prevention of Corruption Act;
- the area of lobbying;
- the name of the interest group or any other organisation for which the lobbyist is lobbying;
- any enclosure;
- the date and place of the visit by the lobbyist;
- and the signature of the person lobbied.

The person lobbied should forward a copy of the record to his or her superior and the Commission for the Prevention of Corruption within three days. The Commission keeps these records for 5 years. Article 24 of the act also states that any public official who has reasonable grounds to believe that he or she has been requested to engage in illegal or unethical conduct may report it to his or her superior or to the person authorised by the superior.

*Source:* Government of Slovenia (2010), Slovenian Integrity and Prevention of Corruption Act, [www.kpk-rs.si/upload/t\\_datoteke/ZintPK-ENG.pdf](http://www.kpk-rs.si/upload/t_datoteke/ZintPK-ENG.pdf).

### **The “revolving door” is a major risk to the integrity of public decision making**

The OECD’s review of how the Recommendation has been implemented shows that, in the last three years, an issue of increasing concern has been the practice of “revolving doors” – the movement of staff between related public and private sectors – and its negative effects on trust in the public sector. It was the risk most commonly cited by lobbyists, while legislators also listed it as an emerging threat to transparency and integrity. Legislators leaving the public for the private sector is not the only issue. It is also problematic when former assistants to members of parliament and other parliamentary staff start working as lobbyists.

The revolving door is not new and appears to be a practice in all countries surveyed by the OECD. Indeed, as many as a quarter of lobbyists had previously held positions in the public sector, according to respondents. Most said they had held senior managerial or advisory positions in ministries, working as ministerial advisors, managers and heads of parliamentary staff, and advisors to prime ministers. For example, in the United States, movement between Congress and “K Street”<sup>6</sup> has increased dramatically. Three percent of retiring Members of Congress became lobbyists in 1974. By 2012, that number had risen to 42% among members of the House of Representatives and 50% among senators (Gerson, 2012).

Movement between the public and the private sectors can be mutually beneficial, contributing to the development of personnel and improved organisational competencies (Äijälä, 2001). However, it also heightens exposure to conflicts of interest and impropriety (the misuse of insider information, position, and contacts). In post-public service employment a further risk is “switching sides” – when a public official joins the private sector to work in the particular field in which he or she worked as a public servant (Box 3).

### **Box 3. Financial gains for lobbyists with connections to serving politicians**

A study from 2010 showed that lobbyists who had previously worked in the office of a US senator suffered a 24% drop in generated revenue when the senator left office and that ex-staffers’ lobbying revenue dropped by 50% in a single semester after their employers had left the Senate. The study found that “lobbyists are able to cash in on their connections” and that “being connected to a powerful politician is a key determinant of the demand for a lobbyist’s services”. Moreover, lobbyists connected to serving politicians earned significantly higher revenues, with ex-staffers working for serving senators estimated to earn 63% more than those with no such connections.

*Source:* Blanes I Vidal, J., M. Draca, C. Fons-Rosen (2010), “Revolving door lobbyists”, *CEP Discussion Papers*, No. 0993, Centre for Economic Performance, London School of Economics and Political Science, London, p. 18., <http://eprints.lse.ac.uk/31546/1/dp0993.pdf>.

Concern over revolving doors has prompted countries to take measures to prevent and contain conflict of interest in pre- and post-public employment situations in order to ensure the integrity of present and former public officials (Table 2). Australia, Canada, Chile, Slovenia, and Norway, for instance, have a “cooling-off” period, during which former public officials are not to lobby their former government organisations (Box 4) (OECD, 2010). In the European Union (EU), the 2013 Staff Regulations for officials and the terms of employment of other EU servants establish a 12-month cooling-off period for senior officials (European Parliament, 2013b).

<sup>6</sup> K Street in Washington D.C. is known as a centre for numerous think tanks, lobbyists and advocacy groups. It has become a byword for Washington D.C.’s lobbying industry.

**Table 2. Restrictions in place on public officials engaging in lobbying activities after leaving public sector**

	Yes, for senior public officials in the executive branch	Yes, for senior public officials in the legislative branch	Yes, for public officials in the executive branch	Yes, for public officials in the legislative branch
Austria	○	○	○	○
Belgium	○	○	○	○
Canada	●	●	●	●
Chile	●	○	●	○
Estonia	○	○	○	○
Finland	○	○	○	○
France	○	○	●	●
Germany	●	●	●	●
Hungary	○	○	○	○
Ireland	●	●	○	○
Italy	●	○	●	○
Korea	●	●	●	●
Luxembourg	○	○	○	○
Mexico	●	●	●	●
Netherlands	●	○	●	○
New Zealand	○	○	○	○
Norway	○	○	○	○
Poland	○	○	○	○
Portugal	●	●	●	●
Slovenia	●	●	○	○
Spain	●	○	○	○
Sweden	○	○	○	○
Switzerland	○	○	○	○
United States	●	●	●	●
Brazil	●	○	○	○
<b>Total OECD24</b>				
● Yes	12	8	10	7
○ No	12	16	14	17

*Notes:* In Finland, there are general rules on post-employment secrecy. The Ministry of Finance has issued guidelines for public-sector employment contracts and for evaluating the need for a cooling-off period when a public servant resigns.

New Zealand has no general restrictions. However, some employment contracts may have a restraint of trade clause forbidding the use of certain information.

Norway has general post-employment regulations and regulations on secrecy in place.

Slovenia bans public officials from lobbying for two years after they leave office.

In Sweden, officials bound by confidentiality of information rules continue to be so even after their employment terminates.

*Source:* OECD 2013 Survey on Lobbying Rules and Guidelines.

#### Box 4. Post-public employment restrictions in selected OECD member countries

A number of countries use cooling-off periods as their main tool for addressing post-public employment concerns. During such periods, public officials are generally not allowed to lobby their previous employers.

Article 7 of *Australia's* Lobbying Code of Conduct establishes a cooling-off period of 18 months for ministers and Parliamentary secretaries and 12 months for ministerial staff. During the period, they are forbidden from engaging in lobbying activities relating to any matter on which they worked in their official capacities.

The *United Kingdom's* Ministerial Code prohibits ministers from lobbying the government for two years after they leave office.

In *Chile*, public officials in the executive branch of government are prohibited for a period of six months from working in or for companies that were under the supervision and control of the public body in which they were previously employed.

Article 56 of *Slovenia's* Integrity and Prevention of Corruption Act establishes that officials may not lobby until two years have elapsed after they left office. Similarly, Article 36 stipulates that an official may not act as a representative of a business entity that has established or is about to establish business contacts with the body in which he or she held office until two years have passed since he or she left office.

In *Canada*, there are similar post-public employment restrictions, though the cooling-off period is considerably longer. For a period of five years after they cease to be designated public office holders, Article 10.11(1) of the Canadian Lobbying Act prohibits designated public office holder from:

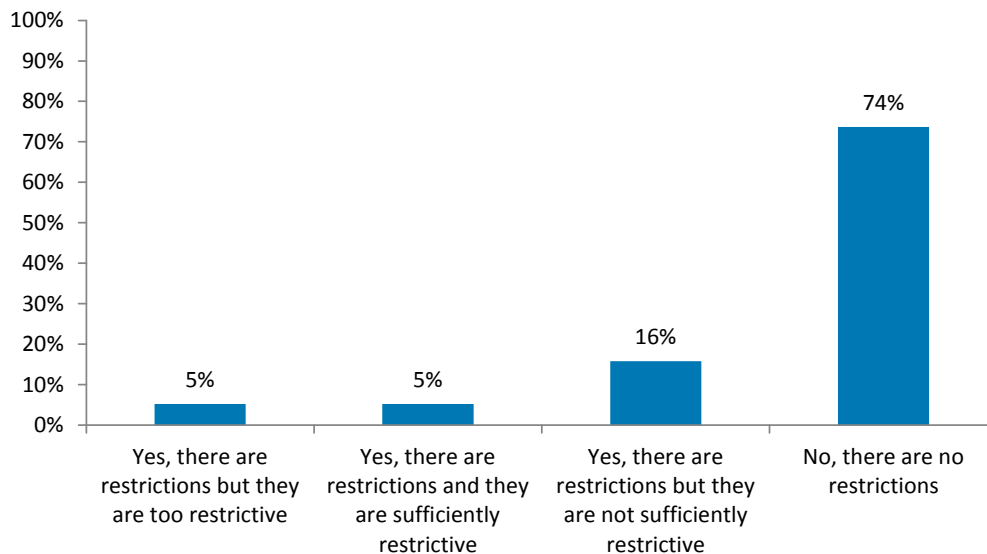
- (a) communicating with a public office holder in respect of:
  - i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons;
  - ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament;
  - iii) the making or amendment of any regulation as defined in subsection 2(1) of the *Statutory Instruments Act*;
  - iv) the development or amendment of any policy or program of the Government of Canada;
  - v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada, or
  - vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada;
- or (b) to arrange a meeting between a public office holder and any other person.

The activities listed are covered under the ban if they are carried out for remuneration and apply to consultant lobbying.

*Source:* Australian Government, Lobbying Code of Conduct, [http://lobbyists.pmc.gov.au/conduct\\_code.cfm](http://lobbyists.pmc.gov.au/conduct_code.cfm); UK Government's Cabinet Office, Ministerial Code, Article 7.25, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61402/ministerial-code-may-2010.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61402/ministerial-code-may-2010.pdf); Slovenian Government, Integrity and Prevention of Corruption Act, [www.kpk-rs.si/upload/t\\_datoteke/ZintPK-ENG.pdf](http://www.kpk-rs.si/upload/t_datoteke/ZintPK-ENG.pdf); Federal Government of Canadian, Lobbying Act (R.S.C., 1985, C. 44 (4th Supp.)); OECD 2013 Survey on Lobbying Rules and Guidelines.

In legislatures – be they Parliament or Congress – where the impact of lobbyists can be particularly acute, there is a need for greater safeguards. However, as many as 74% of surveyed legislators responded that their countries had no restrictions in place for controlling legislators’ lobbying activities after they left office (Figure 9).

**Figure 9.** Generally, no restrictions (*e.g.* cooling-off periods) are in place to control legislators who engage in lobbying activities after leaving a legislature



*Note:* Respondents were asked “After a Parliamentarian leaves Parliament/Congress, are there restrictions in place (*e.g.* a “cooling-off” period) for engaging in lobbying activities?”

*Source:* OECD 2013 Survey on Lobbying for Legislators.

In addition to cooling-off periods, governments may require public officials to disclose offers of future employment where there is a risk of conflict of interest and to seek permission before accepting the offer. Approving decisions on post-public employment is generally the responsibility of senior management in public organisations. In the UK, the Business Appointment Rules for Civil Servants require most senior civil servants to obtain permission before they take up business appointments.<sup>7</sup> Similarly, according to the UK’s Ministerial Code, ministers must seek advice from the independent Advisory Committee on Business Appointments in the two years after they leave office about any appointment or employment they wish to take up.<sup>8</sup> In Norway, if transition contravenes post-employment regulations, politicians who are considering accepting a new job, taking up a position outside the public service, or starting a business should disclose to the Committee on Outside Political Appointments the requisite information at least two weeks before commencing their new position (OECD, 2010).

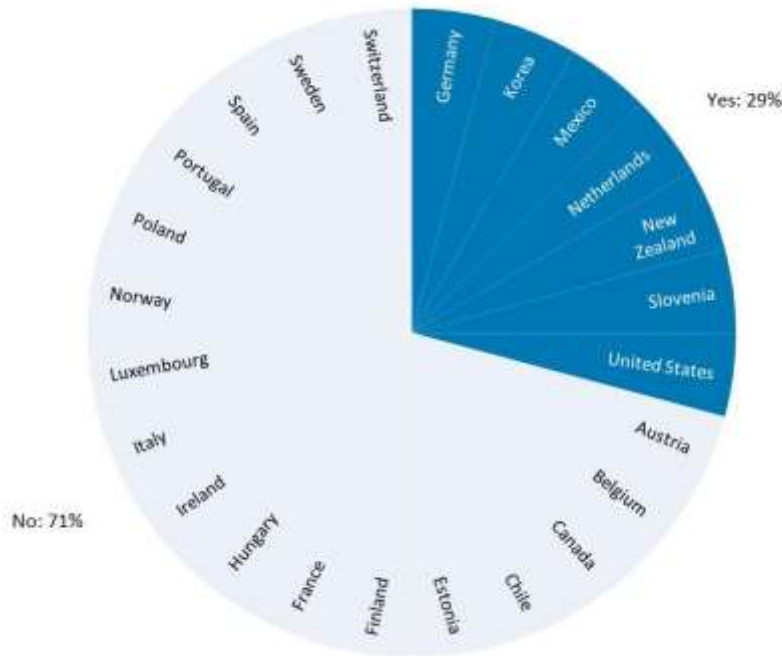
7 Available at: <http://acoba.independent.gov.uk/media/25653/business%20appointment%20rules%20for%20civi%20servants%20feb%202011.pdf>.

8 Article 7.25 of the Ministerial Code at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61402/ministerial-code-may-2010.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61402/ministerial-code-may-2010.pdf).

Only 25% of surveyed OECD members require officials to obtain permission before taking up a private-sector appointment where they may lobby their previous colleagues. This minority requirement was further confirmed by legislators, the vast majority of whom (79%) responded that they did not have to obtain permission before transferring to such a position.

While many OECD members have introduced some form of restriction on public officials’ post-public employment, they have paid the issue of pre-public employment little attention. Less than one-third of surveyed OECD Member countries place restrictions on hiring lobbyists to fill a regulatory or advisory post in government (Figure 10).

**Figure 10. Restrictions on hiring lobbyists to fill a regulatory or advisory post in government in OECD countries**



Source: OECD 2013 Survey on Lobbying Rules and Guidelines.

As many as 46% of surveyed lobbyists said that there were no restrictions in place. Over a quarter of them (28%) know if there were any restrictions on employing lobbyists for regulatory or advisory positions in government.

Countries that address pre-public employment concerns may do so either by requiring officials to cease their previous activities or by limiting the activities or projects in which new employees can participate. Slovenia prohibits anyone being hired for a post in government to remain registered as a lobbyist. In Sweden, however, general conflict of interest rules do not typically restrict the hiring of job applicants because of their professional background, though they might limit the type of decisions they could be involved in making. At the European Union (EU) level, the appointing authority has to examine whether a candidate for a position as an official has “any personal



interest such as to impair his independence or any other conflict of interest’ (European Parliament, 2013b). The candidate has to declare any actual or potential conflict of interest to the appointing authority.

### **Insider lobbying: influence of private interests through advisory groups is an emerging concern**

An advisory group is a body put in place by the executive or legislative branches of government to provide advice, expertise, or recommendations. Such groups comprise public- and/or private-sector members and/or representatives from civil society. In OECD member countries, these advisory groups go under many different names. Australia refers to them as Advisory Committees or Consultative Committees, while the United Kingdom calls them Advisory Committees, Advisory Councils or Advisory Boards. OECD governments make wide use of advisory groups: over 82% of OECD members said they regularly consult advisory groups when drafting primary laws.

Most OECD countries require membership, agendas, minutes, participants' submissions and other information relating to advisory groups to be made publicly available so that stakeholders can scrutinise their work. Nevertheless, the OECD's review shows that a serious emerging risk to the integrity of public decision making is the influence of private interests vested in advisory groups. When, for example, corporate executives or lobbyists advise governments as members of an advisory group, they are no longer external lobbyists, but actors who are part of the decision-making process and have direct access to decision makers. As many as 79% of surveyed legislators believe that such groups exert influence on public decision-making processes and outcomes. Moreover, almost half (47%) believe that they are driven by special interests, not by the interests of the public or society at large. One example of the response to the risk of expert groups being captured by special interests is the debate in the EU (Box 5).

### Box 5. The debate on the risk of capture of EU expert groups by special interests

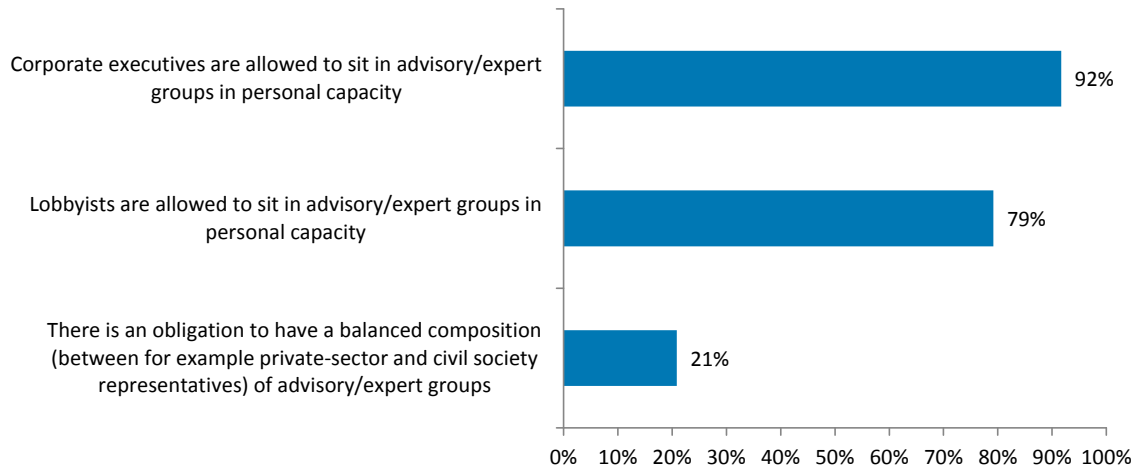
Reflecting growing concern over the presence of lobbyists and corporate executives in expert groups, low levels of transparency, and problematic practices, Members of the European Parliament (MEPs) voted in favour of freezing part of the budget for the Commission's expert groups until new rules were introduced to safeguard against capture by special interests and to improve transparency. The freeze was lifted one year later in September 2012 when the Commission committed to address concerns over expert groups across all DGs and to enter into an informal dialogue to draw up guidelines for all new groups.

In parallel, the European Court of Auditors concluded that, of the agencies they reviewed, none of those working on vital decisions affecting the safety and health of consumers adequately managed their experts' conflict of interest situations. The shortcomings identified were, however, of varying degrees. In the audit of the European Food Safety Authority (EFSA), for example, the Court of Auditors found that experts were advocates and reviewers of the same concepts. As a result, the scientific experts played conflicting roles and most of the members of one of EFSA's scientific bodies had been advocates of a concept (through previous publications, participation in workshops and expert groups, etc.) which had been subject to analysis by the same scientific body. In another case, two EFSA experts were simultaneously advising a private organisation while reviewing the same concept as members of the EFSA scientific body. In both cases, EFSA concluded that there was no conflict of interest.

In its 2013 report on the discharge of EFSA's budget for the financial year 2011, the European Parliament noted that EFSA had taken a number of steps following the Court of Auditors' audit. They included: introducing a comprehensive framework for avoiding potential conflicts of interest in 2007 and thereafter regularly reviewing and updating it; appointing an ethics adviser in 2012; applying the framework proposed by the Commission on Ethics and Integrity; and adopting a specific gift policy in July 2012. Although the Parliament acknowledged EFSA's efforts to improve its prevention and management of conflict of interests, it noted that the independence and competence of its external experts remain questioned by fellow food safety experts and watchdog NGOs. EFSA has scheduled an evaluation of its independence policy to be completed by the end of 2013.

*Sources:* European Parliament, 2012 Budgetary Procedure Conciliation Document – Joint Text, Doc No 4-19-11-2011, amended by budget line, Consolidated Document. p. 17, [www.europarl.europa.eu/document/activities/cont/201112/20111206ATT33432/20111206ATT33432EN.pdf](http://www.europarl.europa.eu/document/activities/cont/201112/20111206ATT33432/20111206ATT33432EN.pdf); Banks, M. (2011), “NGO welcomes move to block funding for EU 'expert groups'”, *The Parliament*, online journal, 1st November, [www.theparliament.com/latest-news/article/newsarticle/ngo-welcomes-move-to-block-funding-for-eu-expert-groups/#.UfDgee5KQwq](http://www.theparliament.com/latest-news/article/newsarticle/ngo-welcomes-move-to-block-funding-for-eu-expert-groups/#.UfDgee5KQwq); European Court of Auditors (2012) *Management of Conflict of Interests in Selected EU Agencies*, Special Report No. 15, Publications Office of the European Union, Luxembourg, <http://eca.europa.eu/portal/pls/portal/docs/1/17190743.PDF>; European Parliament Resolution of 17 April 2013 with observations forming an integral part of its Decision on the discharge of the budget of the European Food Safety Authority for the financial year 2011 (C7-0258/2012 – 2012/2196(DEC)) [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2013-0146+0+DOC+PDF+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2013-0146+0+DOC+PDF+V0//EN).

The majority of OECD countries (79%) indicated that there was no obligation to balance numbers of private sector and civil society representatives in advisory groups. There were also few restrictions when it came to which actors were allowed to sit as members in advisory groups. Lobbyists were allowed to sit in, in a personal capacity in 79% of respondent countries while corporate executives could attend these sessions in 92% of these cases (Figure 11).

**Figure 11. Advisory groups: a balanced composition of interests?**

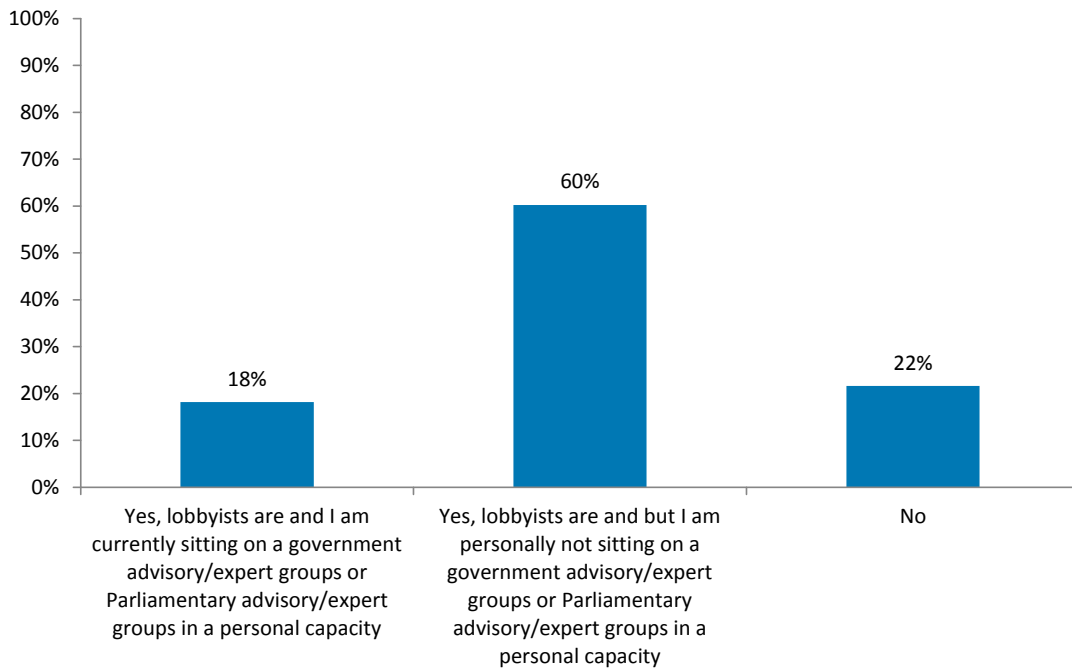
*Note:* Data in the graph present an aggregate of information provided by Austria, Belgium, Canada, Chile, Estonia, Finland, France, Germany, Hungary, Ireland, the Italian Ministry of Agriculture, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland, and the United States.

*Source:* OECD 2013 Survey on Lobbying Rules and Guidelines.

Evidence shows that having lobbyists as members of advisory groups is common practice. The vast majority of lobbyists surveyed by the OECD (78%) responded that they were allowed to sit in on advisory groups in a personal capacity. Approximately one-fifth (18%) of lobbyists questioned were currently doing so (Figure 12). However, concerns over the composition of advisory groups – in particular that lobbyists should be members – could be dealt with by making membership information publicly available. Canada’s Lobbying Act, for example, allows the public to ascertain whether any member of an advisory group is also a lobbyist. Consequently, any decision to appoint a lobbyist to an advisory group becomes a matter of political and/or public judgement.

Half of the legislators questioned were of the opinion that lobbyists should not be allowed to sit in on advisory groups in a personal capacity, and 47% of surveyed legislators believed that the same should apply to corporate executives.

**Figure 12. Lobbyists are allowed to sit in on government and Parliamentary advisory/expert groups in a personal capacity**



*Note:* Respondents were asked the question “Are lobbyists allowed to sit in government advisory groups or Parliamentary advisory/expert groups in a personal capacity?”

*Source:* OECD 2013 Survey on Lobbying for Lobbyists.

### Measuring the costs and benefits of enhancing transparency and integrity in lobbying remains a challenge

Compliance is a particular challenge for countries when – by increasing transparency, for example – they seek to address rising concern over lobbying. Setting clear, enforceable rules and guidelines is necessary but not sufficient. Ensuring compliance and deterring and detecting breaches requires a coherent spectrum of strategies and mechanisms, which includes a system of monitoring and enforcement. Not only would such a system strengthen compliance, but it would also allow governments to carefully balance the cost and benefits of the system and identify effective measures to address concerns.

All components of good governance require assessment and data. Lobbying is no exception. Yet, most countries still struggle to measure the costs and benefits of enhancing transparency and integrity in lobbying. To better understand lobbying in different country contexts, it is of the utmost importance to gather data on costs for governments and lobbyists as well as on such benefits as greater trust in government and better informed, balanced, effective policies. Although technology considerably reduces the burden of collecting and analysing data, there is still little quantitative data available today.



## **IV. The way forward: capitalising on the OECD principles to further reinforce a fair and inclusive decision-making process**

The review of how countries have implemented the Recommendation on Principles for Transparency and Integrity in Lobbying shows that OECD members, key partners, and other partner countries have used it as a benchmark in designing or revising lobbying regulations and public decision-making processes. The approach and content of the Recommendation has proven applicable across different countries, ranging from Austria, Australia, Chile, and Canada to Hungary, Ireland, Poland, Slovenia, and the United Kingdom. In countries with no lobbying regulations in place, the Recommendation has shaped the debate on policy options to address the risks and concerns related to the transparency and integrity of lobbying in countries like Brazil and Portugal.

Yet, while the Recommendation is relevant as a guiding reference for the public decision-making process, the review of countries' experiences over the past three years reveals that evolving public decision making and lobbying practices have spawned new risks which could weaken citizens' trust in government and compromise fair decision-making. Such risks warrant special attention. The following key recommendations were therefore approved by the OECD Council in March 2014.

### **Continue efforts to address lobbying concerns and risks in the decision-making process as a key policy lever for fostering trust**

The OECD's work on a Forward-Looking Agenda on Trust identifies public trust as the cornerstone of effective governance and what legitimises the authority of the state over individuals. Trust in government is also necessary for economic growth and social progress. Yet, citizens' trust in government is declining. Efforts to make the public decision-making process more reliable, fairer, and transparent can contribute to restoring trust.

Lobbying practices lie at the heart of identified concerns and risks. Citizens, civil society, and businesses have a right to know who is influencing the public decision-making process. Transparency in lobbying would help promote a level playing field, informed participation, and accountability.

The Recommendation has already guided many countries in designing or revising lobbying regulations. Efforts to support the implementation of the Recommendation could strengthen confidence in the public decision-making process and restore trust in government. Moving forward, it is essential to keep up those efforts and to review and address the challenges that countries currently face – such as who should be covered by lobbying regulations – and analyse the effectiveness of implementing alternative integrity measures – such as the transparency of decision makers' agendas – in addressing lobbying concerns. To follow up the continued implementation of the Recommendation, a valuable contribution will be for the Public Governance Committee (PGC) to report back to the Council on Principles for Transparency and Integrity in Lobbying within the next three years.

The wider implications of integrity in the public decision-making process also need to be considered. Risks to integrity from undue influence are connected to a wide variety of policy communities. Input from them could contribute to developing innovative data and additional tools to address common concerns. For example, as stated earlier, undue influence in and capture of the public decision-making process harm competition. It is therefore essential to reach out to other policy communities (*e.g.* Competition) in order to grasp the full spectrum of implications and identify sector-based approaches which, when combined, may produce comprehensive solutions. The OECD's relevant committees (*e.g.* Regulatory Policy Committee, Competition Committee, Corporate Governance Committee) should combine their efforts to develop innovative tools that effectively address common concerns and provide the evidence necessary to continue informing current debate in member, key partner, and other partner countries.

### **Invest in measuring benefits and costs and monitoring performance**

Collecting evidence and data that relate to lobbying, the public decision-making process and, ultimately, the broader integrity framework is essential to identifying benefits, measuring costs, and monitoring performance. Since implementing measures to make lobbying more transparent and decision making fairer is not without cost, it is crucial to evaluate whether such measures meet intended objectives or whether money could be better spent elsewhere.

Findings from the review point to data collection being a major challenge for countries. Currently, limited data are collected in these areas and the data that are available are inconsistent and incomparable. It is necessary to develop a set of relevant data, benchmarks, and indicators to enable governments to measure the impact of their integrity policies, particularly on lobbying and the public decision-making process. The collection of relevant, credible data to support evidence-based policy making should also be co-ordinated with other policy communities in order to address mutual concerns.

### **Identify and promote innovative integrity frameworks that reflect the needs and concerns of countries in the 21st century**

The review of member countries' implementation of the Recommendation showed that many rely heavily, and at times solely, on their integrity framework to safeguard the public interest and mitigate risks related to the public decision-making process. In that regard, a sound integrity framework indeed remains essential. However, integrity risks are evolving and so should integrity frameworks.

In 1998, the OECD Council adopted a Recommendation on Improving Ethical Conduct in the Public Service which contains the Principles for Managing Ethics in the Public Service that have helped countries design, review, and implement an integrity framework. The Principles have guided OECD work in the area of public sector integrity for the past fifteen years, but recent experiences – such as the Public Sector Integrity Review of Italy (OECD, 2013b) – demonstrated that practices in the public sector are changing. These changing practices, together with globalisation and the emergence of transnational lobbying, have led to new concerns being raised. Countries are facing new challenges and constraints that require them to regularly review and adapt their integrity frameworks.

Ministers at the 2013 Ministerial Council Meeting reaffirmed the OECD's role as a global standard-setter and called on the Organisation to proactively update and upgrade

its existing standards and respond to any gaps in global standard setting where appropriate. In that light and in order to support countries' work, the 1998 Principles will therefore be reviewed to ensure that they accurately reflect the needs of countries in the 21<sup>st</sup> century. Updating the Principles will not only help countries strengthen the transparency and integrity of their public decision-making processes, it will also provide a whole-of-government integrity framework applicable to all stages of the policy cycle.

### **Review policies for managing conflict of interest in revolving door practices and the unbalanced representation and influence of advisory groups**

The review of countries' implementation of the Recommendation on Principles for Transparency and Integrity in Lobbying revealed that risks and concerns are evolving. They need to be matched with effective policies and practices to safeguard the integrity of the public decision-making process.

In the past decade, the OECD has led the way in supporting countries in their efforts to introduce and implement systems for managing conflict of interest in the public sector. However, evolving lobbying practices have created new risks or intensified existing ones, particularly in areas where conflict of interest management systems present shortcomings. Two such areas are concerns over revolving door practices in pre- and post-public employment and the unbalanced representation and influence of advisory groups.

Interaction (*i.e.* offering expert advice, expertise or recommendations through advisory groups) and movement between the public and the private sectors (*i.e.* by public officials taking up positions in the private sector or *vice versa*) can be mutually beneficial. They may help to improve organisational competencies and the quality of decisions. However, this mutual interplay also increases exposure to the risks of misuse of insider information and the abuse of position and connections. It jeopardises the integrity of public decision making when advisory groups are dominated by certain private interests and heightens risks of conflict of interest.

Focusing efforts on revolving doors and advisory groups could help to develop alternative ways of addressing the attendant risks and contribute to safeguarding the fairness of the public decision-making process.





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# Lobbyists, Governments and Public Trust

## VOLUME 3

### IMPLEMENTING THE OECD PRINCIPLES FOR TRANSPARENCY AND INTEGRITY IN LOBBYING

#### HIGHLIGHTS

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