

ORGANISATION
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DRAFT PRINCIPLES FOR TRANSPARENCY AND INTEGRITY IN LOBBYING

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DRAFT FOR COMMENT

Introduction

Lobbying: Global practice and concerns

1. Private interests seeking to influence legislation and government decisions are part of the policy-making process in modern democracies around the globe. Lobbying can improve decision making by providing valuable insights and data, but it can also lead to unfair advantages for vocal vested interests if the process is opaque and standards are lax. A sound framework for lobbying is particularly important in the context of financial and economic crisis, when critical decisions are taken quickly, massive amounts of public monies are spent and regulations for entire industries are rewritten.

2. Lobbying involves oral or written communication with a public official to influence legislation, policy or administrative decisions.¹ While lobbying often focuses on the legislative branch at the national and sub-national levels, it also takes place in the executive – for example, to influence the adoption of regulations or the design of projects and contracts.

3. Actual lobbying practices are deeply embedded in a country's democratic and constitutional contexts. They are related to constitutional rights to petition government, interest representation, and consultation mechanisms, such as 'social partnerships' and public hearings.

4. But there are risks when citizens perceive that lobbying is unfair and procedures are not transparent – and lose confidence in the integrity of democratic institutions. These concerns have intensified worldwide public debate on lobbying and governments should take a role in these debates. In many societies, the public fears that the impressive mobilisation of private resources through lobbying gives unfair advantages to privileged "vocal vested interests" and overrides the "wishes of the whole community". These concerns were cited as a major threat to public trust by the Chair of the OECD 2005 Ministerial meeting on *Strengthening Trust in Government: What Role for Government in the 21st Century?*² Moreover, allegations are often made that, too frequently, lobbying borders on exercising undue influence.

Enhancing transparency, integrity and propriety in lobbying: The good governance approach

5. Lobbying is widely considered a legitimate activity *per se*, given the complexity of modern government decision making and the widespread impact of public policies. However, it has been negatively perceived in many countries. To combat outright abuses, legislators have established criminal provisions against illicit influencing of public decision making, such as trading in influence, bribery and corruption. However, merely penalising illicit influencing of public officials is not sufficient to maintain trust in government – especially in the face of concerns that accessibility to public officials by the 'privileged' results in potential bias or lack of transparency and accountability in government decision making.

6. There is a growing recognition that disclosure of information on key aspects of communication between public officials and lobbyists is essential for transparency in 21st century democracies. Transparency in lobbying activities will inform the development of public policies and enable citizens to

exercise their right to public scrutiny. Effective standards and procedures that ensure openness, transparency and integrity will provide a level playing field for all stakeholders in the development of public policies, and reinforce public trust. Measures promoting a culture of integrity – particularly those that clarify expected standards of conduct for both public officials and lobbyists – are a vital part of ‘good governance’.

7. Increased public expectations of openness, transparency, accountability and integrity in public life have given new impetus to revisit existing governance arrangements in recent years. Lobbying is on the political agenda in the Americas, Europe, Asia and Australia. Many countries are considering or developing guidelines and rules requiring lobbying disclosure in order to address demands to shed light on communications between public officials and lobbyists.

8. Since ‘it takes two to lobby’, both public officials and lobbyists share responsibility to apply good governance to lobbying. To avoid the stigmatisation of lobbying, both sides should make efforts to foster transparency and integrity. For instance, encouraging voluntary disclosure of “public policy positions and participation in public policy development and lobbying” is an emerging corporate governance good practice to promote social responsibility.³

Aims and structure of principles

9. Many countries obtained political support in developing or updating guidelines and rules on lobbying. Setting standards and procedures for enhancing transparency in lobbying, however, has proved difficult in several cases. This exercise can easily become a sensitive political issue. When lobbying reaches the political agenda, policy makers and legislators must quickly decide whether to develop guidelines and rules. If the response is yes, the challenge is how to achieve a framework that is balanced and fair to all stakeholders, and which adequately addresses concerns within the socio-political and administrative contexts.

10. The principles are a point of reference to provide decision makers with directions and guidance, in particular when the policy debate calls for a timely response. The principles do not advocate rules as the sole possible solution. On the contrary, they allow decision makers to take into account all available options in order to meet public expectations for openness, transparency, accountability, integrity and efficacy when they consider, draft, debate or implement relevant guidelines or rules.

11. The principles are a policy instrument from the Public Governance Committee to support the OECD strategic response to build a stronger, cleaner and fairer economy. The principles are part of a broader set of initiatives triggered by the financial crisis to set standards and principles for economic activity, such as the G8’s ‘Lecce Framework’ on integrity, propriety and transparency in business, and the G20’s Global Charter for Sustainable Economic Activity.

12. The principles are primarily directed at decision makers at the central government level. The principles can also provide general guidance for sub-national level governments to enhance transparency and integrity in lobbying, and improve their governance systems.

13. Rather than providing detailed provisions and technical advice, the principles address a series of interrelated issues that logically steer the development of guidelines and rules into a consistent country framework for enhancing transparency and integrity in lobbying. Guidelines stimulate the application of values and principles by fostering appropriate behaviour. Enforceable boundaries on what is acceptable might be set in the form of self-regulation, regulation requiring voluntary or mandatory compliance or even legislation. The principles are structured as follows:

- *Building an effective framework for openness, transparency and integrity* to promote a level playing field, through developing guidance and rules that adequately address public and corporate concerns related to access to public officials – including civil and public servants, employees and holders of public office whether elected or appointed in the executive and legislative branches. The framework should also conform to the socio-political, legal and administrative context, and suitably define the actors and lobbying activities covered.
- *Enhancing transparency* through disclosure of key aspects of lobbying such as its objective, beneficiaries, funding sources and targets.
- *Fostering a culture of integrity* by providing guidelines and rules on expected behaviour in lobbying for both public officials and lobbyists.
- *Creating mechanisms for effective implementation and compliance* by putting in place a coherent spectrum of strategies and practices. This is particularly challenging when countries address new concerns, such as transparency in lobbying.

14. The principles were developed on the basis of experiences with both government regulation/legislation and self-regulation of lobbyists in OECD member and non-member countries.⁴ The lessons learned from comparative reviews, country case studies, and an analytical framework endorsed by the Public Governance Committee provided the ground for developing the guiding principles. They reflect experiences of countries with diverse socio-political and administrative contexts. The principles were developed in parallel with the Green Paper of the European Transparency Initiative and the Code of Conduct for Interest Representatives developed by the European Commission as part of its European Transparency Initiative at the supra-national level in Europe.⁵

15. The principles are intended to be used in conjunction with relevant policy and legal instruments and guidance to promote good governance at the national and international levels. These include, in particular:

- Promoting integrity in the public service, for example by the 1998 OECD *Recommendation on Improving Ethical Conduct in the Public Service*, the 2003 OECD *Recommendation on Guidelines for Managing Conflict of Interest in the Public Service*, and the 2008 OECD *Recommendation on Enhancing Integrity in Public Procurement*.⁶
- Engaging citizens for better policies and services, for example by the *Guiding Principles for Open and Inclusive Policy Making* revised in 2009.⁷
- Improving access to and use of public sector information, for example by the 2008 OECD *Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information*.⁸
- Enhancing quality of government regulations, for example by the 1995 OECD *Recommendation on Improving the Quality of Government Regulation*, and the 2005 *OECD Guiding Principles for Regulatory Quality and Performance*.⁹

16. Promoting good corporate governance, for example by the OECD Principles of Corporate Governance revised in 2004, the OECD Guidelines for Multinational Enterprises revised in 2000,¹⁰ the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions that entered into force in 1999¹¹ and the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones¹² adopted by the OECD Council in 2006.

DRAFT PRINCIPLES FOR TRANSPARENCY AND INTEGRITY IN LOBBYING

I. Building an effective framework for openness, transparency and integrity

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

17. To foster citizens' trust in public decision making, governments should make careful efforts to ensure fair and equitable representation of positions. This will preserve the benefits of free information flow, which is indispensable to obtaining balanced information that leads to informed policy debate and formulation of effective policies. Allowing all stakeholders fair and equitable access to participate in the development of public policies is crucial to protect the integrity of decisions and to safeguard the public interest by counterbalancing vocal vested interests.

2. Guidelines and rules on lobbying should proportionally address the perceived problem and risk, be consistent with the wider policy and legal frameworks that foster good governance and respect the socio-political and administrative context.

18. Countries should particularly consider constitutional principles, established democratic practices and traditions – such as public hearings, or institutionalised consultation processes that engage representatives of employers and employees in 'social partnerships'. They should not directly copy guidelines and rules from one jurisdiction to another, as each political system views the intention of guidelines and rules differently. Instead, they should consider all available options to select a suitable solution that addresses key concerns like accessibility and integrity, and takes into account the national context, for instance the level of trust and measures necessary to achieve compliance. Governments should also consider the scale and nature of the lobbying industry within their jurisdictions; where professional lobbying is limited, leaders should contemplate alternative options to regulation for enhancing transparency, accountability and integrity in public life.

19. Effective guidelines and rules for openness, transparency and integrity in lobbying should be an integral part of the wider policy and regulatory framework that sets the standards for good governance. Governments should take into account guidelines and rules already in place to foster a culture of openness, transparency and integrity. This includes citizen engagement through public participation and the right to petition government, freedom of information legislation and rules on political parties and election campaign financing, codes of conduct for public officials and lobbyists, as well as provisions against illicit influencing.

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

20. Definitions of "lobbying" and "lobbyists" should be robust and sufficiently explicit to not allow space for misinterpretation. In defining the scope of lobbying activities, it is necessary to balance the diversity of entities and individuals that might engage in lobbying activities with the measures to enhance

transparency, taking into account the specificities of various stakeholders (such as their capacities and resources). Guidelines and rules should primarily target those who receive compensation for carrying out lobbying activities, such as consultant lobbyists and in-house lobbyists. Where public concern demands, definition of lobbying activities should be considered more broadly and inclusively to provide a level playing field for all interest groups that aim to influence public decisions.

21. Definitions should clearly specify what actors or activities are not covered by guidelines and rules, for example the compensation is below agreed threshold or the communication is already on public record, such as formal presentations to legislative committees, public hearings and established consultation mechanisms. Such exceptions should reflect constitutional conventions, the socio-political context and practical realities.

II. Enhancing transparency

4. Countries should provide an adequate degree of transparency to supply public officials and citizens with sufficient information on lobbying that aims at influencing government decisions.

22. Disclosure of lobbying activities should provide sufficient information to enable public scrutiny; it should be carefully balanced with considerations of legitimate exemptions, in particular the protection of confidential information. Meaningful disclosure should provide pertinent but parsimonious information on key aspects of lobbying activities.

23. Core disclosure requirements should elicit information that captures the objective of lobbying activity, identifies its beneficiaries, and points to those offices that are its targets. Any supplementary disclosure requirements should take into consideration the legitimate information needs of key players in the public decision-making process, for example to understand where lobbying pressure and resources come from and whether they reflect broad domestic public opinion. Voluntary disclosure may involve social responsibility considerations about a corporation's participation in public policy development and lobbying. To adequately serve the public interest, disclosure on lobbying activities should be contained in a registry and should be updated in a timely manner in order to provide accurate information that allows effective analysis by public officials and citizens.

5. Countries should enable civil society organisations, the media and the general public to scrutinise lobbying activities.

24. The public has a right to know how public institutions and public officials manage their contacts with lobbyists. Countries should consider using new information and communication technologies, such as the Internet, to make information available in an accessible and cost-effective manner. Public scrutiny should also be facilitated by processes that ensure timely access to disclosed information. This, in return, enables the inclusion of diverse views to provide balanced information in the development and implementation of public policies.

III. Fostering a culture of integrity

6. *Governments should foster a culture of integrity in public organisations and decision making by providing clear guidelines and rules of conduct for public officials contacted by lobbyists.*

25. Governments should provide principles, standards, rules and procedures that give public officials clear directions on how they are permitted to engage with lobbyists. Public officials should conduct their communication with lobbyists in line with relevant guidelines and rules in a way that bears the closest public scrutiny. In particular, they should maintain impartiality and avoid preferential treatment, share only authorised information and not misuse ‘confidential information’, and avoid conflicts of interest. Decision makers should set an example by their personal conduct in their relationship with lobbyists.

26. Governments should also consider establishing specific restrictions for public officials leaving office in order to prevent the misuse of ‘confidential information’ and ‘switching sides’, in a specific process in which former officials were substantially involved. To maintain trust in government it may be necessary to impose a ‘cooling-off’ period that restricts ‘revolving door’ practices in which former public officials lobby their past organisations.

7. *Lobbyists should follow standards of professionalism and transparency; they share responsibility for fostering a culture of integrity, transparency and propriety in lobbying.*

27. Governments have the primary responsibility for establishing clear standards of conduct for public officials who are lobbied. Since ‘it takes two to lobby’, however, lobbyists should also ensure that they avoid exercising undue influence and follow professional standards in their relations with public officials, with other lobbyists, with their clients and with the public.

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

IV. Mechanisms for effective implementation and compliance

8. *A coherent spectrum of strategies and mechanisms should carefully balance incentives and sanctions, and involve key actors to achieve compliance.*

29. Compliance is a particular challenge when countries address new concerns such as transparency in lobbying. Setting clear guidelines and rules is necessary, but alone is insufficient for success. To ensure compliance, countries must design and apply a coherent spectrum of strategies and mechanisms including properly resourced monitoring and enforcement. Mechanisms must raise awareness of expected standards and rules; enhance skills and understanding of how to apply them; encourage leadership to foster an organisational culture of integrity and openness; as well as mandate formal reporting or audit of implementation and compliance. All key actors – in particular public officials and lobbyists – should be involved both in establishing standards and rules and putting them into effect. This helps to establish a common understanding of expected standards. All elements of the strategies and mechanisms should reinforce each other; this co-ordination will help to achieve the overall objectives of enhancing transparency and integrity in lobbying.

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

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

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

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1. *Lobbyists, government and public trust: Increasing transparency through legislation*, OECD, 2009; *Lobbyists, government and public trust: Promoting integrity by self-regulation*. OECD, GOV/PGC(2009)9 According to the *Green Paper of the European Transparency Initiative* “lobbying means all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions.” The *Green Paper* defines lobbyists “as persons carrying out such activities, working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units (“in-house representatives”) or trade associations”.
 2. Statement of Chairman Alexander Pechtold, Minister of Government Reform and Kingdom Relations, the Netherlands, 28 November 2005 in Rotterdam. The full text of the Statement can be consulted at www.oecd.org/dataoecd/0/11/35806296.pdf. Further information on the event is available at www.modernisinggovernment.com/.
 3. For example, the Global Reporting Initiative (GRI) requires disclosure on lobbying and participation in public policy development, as well as the total value of financial and in-kind contributions to political parties, politicians and related institutions. For further information, consult the GRI Reporting Framework at www.globalreporting.org/ReportingFrameworkDownloads/.
 4. *Lobbyists, government and public trust: Increasing transparency through legislation*, OECD, 2009; *Lobbyists, government and public trust: Promoting integrity by self-regulation*. OECD, GOV/PGC(2009)7. The Special Session on Lobbying: Enhancing Transparency and Accountability brought together policy makers and leading experts from OECD countries and non-members on 7-8 June 2007 in Paris (www.oecd.org/gov/ethics/lobbying).
 5. The European Commission launched the European Transparency Initiative in November 2005. The Green Paper addressed the need for a more structured framework for the activities of interest representatives (ec.europa.eu/transparency/eti/results_en.htm). The Commission approved the Code of Conduct for Interest Representatives and launched the Register of Interest Representatives in 2008 (<https://webgate.ec.europa.eu/transparency/regrin/welcome.do>).
 6. The three Recommendations on public service integrity can be consulted at www.oecd.org/document/53/0,3343,en_2649_34135_2516085_1_1_1_1,00.html.
 7. The Guiding Principles can be consulted in *Focus on Citizens: Public Engagement for Better Policy and Services* (OECD, 2009) at www.oecd.org/gov/publicengagement/focus.

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8. The Recommendation can be consulted at www.oecd.org/dataoecd/0/27/40826024.pdf.
 9. The Recommendation and Guiding Principles can be consulted at:
www.oecd.org/document/38/0,3343,en_2649_34141_2753254_1_1_1_1,00.html.
 10. The Principles and Guidelines can be consulted at www.oecd.org/daf/corporateaffairs and www.oecd.org/daf/investment/guidelines.
 11. The OECD Convention and country monitoring reports can be consulted at www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html.
 12. The *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* can be consulted at http://www.oecd.org/document/26/0,3343,en_2649_34889_36899994_1_1_1_1,00.html.