



TRANSPARENCY  
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Korruptsioonivaba Eesti

# LOBBYING IN ESTONIA

MAPPING THE PLAYERS,  
RISKS AND POLITICAL  
CONTEXT

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# EXECUTIVE SUMMARY AND RECOMMENDATIONS

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## SUMMARY

Lobbying in Estonia is ill-defined, and although of clear democratic benefit, has a negative perception in the public eye due to repeated scandals and intertwined relations between business and public sector. There is no regulation of lobbying, nor is there an active debate on ethics of lobbying. While we believe that ethical lobbying is a necessary part of a healthy democracy, our report “Lobbying in Estonia: Mapping the Players, Risks and Political Context” shows that lobbying, when left unchecked and unregulated, presents risks and undermines democratic decision-making.

Our report examines and scores lobbying practices in Estonia through three essential dimensions – transparency (24%), integrity (27%) and equality of access (35%). The percentage is the score that each dimension received based on the assessment. The report sheds light on areas within the general political culture in Estonia which are most vulnerable to risky lobbying practices, including: hidden party financing; non-transparent practices in some stages of consultation and law-making; intertwined relations between business and the public sector; and weak democratic safeguards within political parties, which can hamper transparent decision-making.

There is insufficient transparency at multiple levels and stages of the public decision-making process, leaving citizens and interest groups in the dark. The integrity mechanisms are weak, with insufficient monitoring and enforcement, allowing for conflicts of interest. As there is no common understanding of ethical lobbying in Estonia, undesirable influencing practices are able to flourish. For example, lobbyists do not always say who they represent or what they advocate for and, as a result, narrow interests can dominate in highly technical and area-specific laws. Moreover, unequal resources between those seeking to design policies and laws often result in disproportionate influence. Although some participation mechanisms do exist, they are not codified, leading to a diverse and confusing practice, and furthermore are often pro forma and rushed, preventing the effective input of the broader public into government decision-making. This is only exacerbated by the lack of any self-regulation initiatives, and the relative weakness or absence of the NGO and media watchdogs.

Decision-making in parliament is especially problematic because it is often difficult to know why certain decisions were taken and who has been influential in the course of decision-making processes. Furthermore, there is lack of oversight on lobbying ethics, and oftentimes communication between lobbyists and decision makers happens out of the public eye, behind closed doors. The decision makers are not obliged and often fail to explain why some amendments are accepted while others are not and which interest groups and parliamentarians have contributed via working groups or proposals leading to lack of transparency in legislative processes in the Estonian parliament.

While this report primarily focuses on lobbying at the national level, we have also found that there are significant risks around lobbying of local governments, particularly in terms of how funding decisions are made. Further research in this area would be essential to ensure integrity and transparency of public decision-making in Estonia. Also, scandals within political parties concerning hidden funding and non-democratic decision making, as well as recent cases of concealed lobbying

practices to influence legislative acts (for example the Medicines Act in 2014) refer to the need to urgently regulate lobbying.

## RECOMMENDATIONS

In light of the risks of undue lobbying, this report presents several recommendations to increase transparency and decrease ambiguity via further clarification and regulation of lobbying.

- Improve consultation practices: publish legislative drafts earlier and include information on the input provided by interest groups. Consultation practices should be unified by the State Chancellery and the Ministry of Finance by focussing on this topic in ethics trainings.
- Introduce a legislative footprint in order to follow how drafts become laws. The Ministry of Justice in cooperation with other relevant state offices (the State Chancellery, the Parliament) should initiate a new regulation to start collecting and publishing further details on legislative input.
- Establish codes of conduct and self-regulation mechanisms for lobbyists and public sector employees. Larger NGOs, trade and industry organizations should work on self-regulation.
- MPs and consultant lobbyists should be the first targets of regulation because, as the report reveals, these two groups tend to be involved in the most concealed lobbying practices. This is further illustrated by the 2013 Global Corruption Barometer (GCB) where 33% of the respondents feel that the parliament is corrupt or extremely corrupt.<sup>1</sup> MPs should continue to discuss and establish rules of ethics to include how to deal with lobbyists.
- Increase internal party democracy and monitor party funding more effectively as 55% of respondents to the GCB felt that political parties were corrupt or extremely corrupt.<sup>2</sup> The parties should make their procedures more transparent, for example publish details of their rules of decision making, voting results, and how they establish their priorities.
- Provide equal, transparent and timely access to decision-making processes by interest groups as well as the media. Estonian Data Protection Inspectorate in co-operation with the State Chancellery and the Ministry of Finance should clarify what kind of documents are to be published by public officials. Ideally, the Parliament should publish detailed minutes of their committee meetings.

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<sup>1</sup> <http://www.transparency.org/gcb2013/country/?country=estonia>

<sup>2</sup> <http://www.transparency.org/gcb2013/country/?country=estonia>



# INTRODUCTION

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TI's European NIS regional report *Money, Power and Politics* (2012) found that in most European countries, the influence of lobbyists is shrouded in secrecy and a major cause for concern. When undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the decisions that may affect them. Problems arise when lobbying is non-transparent and unregulated and where privileged access is granted to a select few while others are excluded from decision-making processes. Corporate lobbying in particular raises concerns because it often involves companies with vast sums at their disposal developing close relationships with lawmakers and thus gaining undue and unfair influence in a country's politics and policies.<sup>3</sup>

A recent *Eurobarometer* report revealed that 81% of Europeans agree that overly close links between business and politics in their country has led to corruption and more than half believe that the only way to succeed in business in their country is through political connections.<sup>4</sup> This corroborates the data from TI's *Global Corruption Barometer* 2013, which found that in many European countries more than 50% of people believe their country's government is to a large extent or entirely run by a few big interests.<sup>5</sup> This report is part of a regional project involving the assessment of lobbying regulations and practices in 19 European countries.<sup>6</sup>

This report begins by mapping the lobbying landscape in Estonia, giving a contextual analysis of the national historical, socio-political and legal situation with regard to lobbying. Chapter III (Lobbying Landscape) also discusses the intensity and scale of lobbying efforts and the various cultural understandings of the term "lobbying" and perceptions of lobbying practices in the country. Other relevant issues such as self-regulation of lobbying activities and the role of the media and civil society as watchdogs in monitoring and reporting on lobbying activities are also discussed.

Following on from this, Chapter IV (Regulating Lobbying: Room for Improvement) of the report assesses the degree to which national regulation (public law and private self-regulation) adequately provides for **transparency** of lobbying activities and public decision-making, **ethical lobbying** and conduct by public officials and **equality of access** to public decision-making processes, using a series of 65 assessment questions.<sup>7</sup>

Lobbying is not a well-researched topic in Estonia. Researcher and well-known lobbyist, Ott Lumi, has written on this subject but is a lone voice in the field.<sup>8</sup> Inclusion practices have been analysed by the PRAXIS think tank but their most recent study on inclusion practices in the ministries<sup>9</sup> dates from 2010 before inclusion was made a norm by Good Practice for Preparing Legislation and Technical

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<sup>3</sup> See TI (2012) <http://www.transparency.org/enis/report>

<sup>4</sup> See Eurobarometer (February 2014) Special Report on Corruption: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm)

<sup>5</sup> See TI (2013) <http://www.transparency.org/gcb2013/report>

<sup>6</sup> The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

<sup>7</sup> See Annex 2 for more details on the methodology and research approach used in this study.

<sup>8</sup> Lumi, O. (2014). A comparative insight into the status of the lobbying regulation debate in Estonia, *Journal of Public Affairs* 14(1), 44-53

<sup>9</sup> PRAXIS centre for policy studies, Institute of Baltic Studies (2010). Lõpparuanne: Valitsusasutuste kaasamispraktikate analüüs. (Report on Inclusion Practices of Governmental Authorities)

Rules<sup>10</sup> (HÖNTE, 2011). The lack of secondary data on lobbying is evident therefore Transparency International Estonia used additional methods to gather input.<sup>11</sup>

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<sup>10</sup> It is a law on compiling legislative acts

<sup>11</sup> Check Annex 2 on methodology

# LOBBYING LANDSCAPE

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## WORK IN PROGRESS

Estonia is a unitary parliamentary democracy with a single chamber parliament (101 members). The election system is proportional, with closed lists. In 2011, 14 people entered Riigikogu with a personal mandate, 69 with a regional mandate and 19 with the compensation mandate or so-called redistributed votes, while the minimal number of votes for assigned parliamentarians was 308.<sup>12</sup> The policymaking is centralized and MPs are not obliged to carry out the mandate of their constituencies. The government is small and divided between 11 ministries and 13 ministers. OECD describes the country's governing structure as a hybrid, combining strong vertical silos and formal, legalistic arrangements with many personal and informal networks.<sup>13</sup>

A common description of a country of 1.3 million is that “everybody knows everybody”, while according to Eurobarometer, only 29% see nepotism as an issue.<sup>14</sup> Indeed, though personal connections between people are undeniably and unavoidably close-knit, it does not often grant a competitive advantage. Corporatism is more often caused by the similarity of the social background of people occupying the leading positions,<sup>15</sup> and manifests itself in professional networks and connections.

Since regaining independence and after the turmoil of the 1990s, the political system has become more stable, to the degree of being described as “cemented”.<sup>16</sup> There is less mobility in the political elite, the parties are becoming increasingly hierarchical, while lacking internal democracy and monopolizing their power via various legal means such as tying state funding of the parties to the seats in parliament. A high level of political corruption is perceived as a major problem and political parties are seen as the most corrupt entities (55%) and most likely to accept bribes.<sup>17</sup> 7% of the businessmen admitted having paid bribes during the year 2013.<sup>18</sup> 47% of respondents claimed that corruption in Estonia has increased or increased a lot during the previous 2 years.<sup>19</sup> Only 37% of the population claim to be interested in politics<sup>20</sup> and democracy is mostly characterized by a representative rather than participatory approach. The low civic activism is often seen as a post-totalitarian legacy and civil society organizations lack means to act as a watchdog.

Since 2005, the coalition has been formed by the liberal Reform Party (RE) that mentions freedom as an essential element of its ideology. It is seen as a primacy of personal freedoms above institutions, society and state. Its policy mainly concerns the private sector, advocates low taxes and privatization. Economically liberal yet conservative national values are shared by more or less all Estonian parties. Even the most left-wing Social-Democratic Party (SDP) is considered centrist,

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<sup>12</sup> (<https://www.rahvakogu.ee/pages/valimissusteem>)

<sup>13</sup> Estonia: Towards a Single Government Approach, OECD Publishing, 2011, pages 5-6: <http://www.oecd-ilibrary.org/content/book/9789264104860-en>

<sup>14</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf)

<sup>15</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)5\\_Estonia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)5_Estonia_EN.pdf)

<sup>16</sup> See for example: <http://epl.delfi.ee/news/arvamus/marju-lauristin-aeg-on-muuta-eesti-poliitiliskultuuri.d?id=65394004>

<sup>17</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf)

<sup>18</sup> [http://www.ey.com/Publication/vwLUAssets/Pettuseriskide\\_alane\\_uuring\\_Eestis/\\$FILE/Pettuseriskide%20alane%20uuring.pdf](http://www.ey.com/Publication/vwLUAssets/Pettuseriskide_alane_uuring_Eestis/$FILE/Pettuseriskide%20alane%20uuring.pdf)

<sup>19</sup> Global Corruption Barometer 2013

<sup>20</sup> <http://www.worldvaluessurvey.org/WVSOnline.jsp>



resulting in parties playing with image rather than ideological cards and “winner takes all” mentality majoritarianism in governance.<sup>21</sup> On the other hand, the small size of society and public administration makes the implementation of new policies and innovation efficient and fast.

These values fall in line with *World Value Survey* results which show that the Estonian population considers secular-rational values more important. The population places greater emphasis on survival rather than self-expression.<sup>22</sup> It is often explained by socio-economic development and income, lack of material and physical sense of security of the population. The acceptance of ambivalent practices also translates into political culture, with alleged corporatism contributing further to the on-going climate of tolerance of potentially corrupt behaviour.<sup>23</sup> While political parties see themselves having the undisputed legitimacy obtained via elections, there has been growing public discontent and decrease of trust in the political parties and the parliament, claiming that majoritarianism in political culture undermines chances for setting long-term goals, transparent and widespread cooperation networks, and knowledge-based governance.

## LEGAL CONTEXT: KEEPING UP APPEARANCES

There is no lobby regulation in Estonia and very little public interest to regulate lobbying beyond the established inclusion processes. Estonia has signed and ratified the UNCAC and the Council of Europe Criminal Law Convention on Corruption. GRECO's Fourth Evaluation Round recommended the introduction of rules on how MPs engage with lobbyists and other third parties who seek to influence the legislative process. As a result, there have been attempts to regulate lobbying.<sup>24</sup>

In 2011, the Minister of Justice at the time, Kristen Michal, took the issue of lobbying into his agenda. The initial aim was to deliver a proposal for a legal definition, and a more concrete approach to lobbying to apply into Estonian law.<sup>25</sup> The ministry prepared an analysis and different stakeholders including the Estonian Employers' Confederation, Transparency International Estonia (TIE), the Estonian Chamber of Commerce and Industry, and the Estonian Service Industry Association, were asked to work on rules on regulating lobbyists. Whether it was aimed to be a binding rule set or a self-regulatory mechanism is unknown. First drafts were prepared but with the resignation of the minister Kristen Michal, the political priorities changed and support for lobbying laws and self-regulation faded.

In March 2014, a new coalition government added lobbying regulations to their programme. During interviews it was revealed that at the moment the Ministry prefers self-regulation and other soft measures rather than detailed legislation. The Ministry plans to include former partners to discuss possible lobbying regulation. According to Kristen Michal, now an MP of the governing coalition, the current plan is to target legislators, establishing further openness when publishing policy plans (publishing relevant documents already in the early planning stage) and publishing information on interest groups that have provided input (orally, in written form, during formal consultations or otherwise). Recently, it was announced that the anti-corruption committee is also discussing

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<sup>21</sup> [http://www.vikerkaar.ee/index1.php?page=Arhiiv&a\\_act=article&a\\_number=4918](http://www.vikerkaar.ee/index1.php?page=Arhiiv&a_act=article&a_number=4918)

<sup>22</sup> <http://www.worldvaluessurvey.org/WVSOnline.jsp>

<sup>23</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)5\\_Estonia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)5_Estonia_EN.pdf)

<sup>24</sup> GRECO (2012). Fourth Evaluation Round: Evaluation Report Estonia (Corruption prevention in respect of members of parliament, judges and prosecutors), p.11

<sup>25</sup> Lumi, 2014: 49-50

regulating lobbying in the parliament.<sup>26</sup> However, parliamentary elections coming up in March 2015 mean that this goal might not be reached or will be hurried, which can result in poor implementation.

Although lobbying itself is not defined nor directly regulated by a lobbying act, lobbying-related activities are regulated by several laws: the Anti-Corruption Act, the Penal Code, the Civil Service Act and the Political Parties Act. In addition, there are rules for inclusion and consultation with interest groups: the Good Practice for Preparing Legislation and Technical Rules (Hea Õigusloome ja normitehnika eeskiri),<sup>27</sup> and the Inclusion Code of Practice (Kaasamise Hea Tava),<sup>28</sup> for all branches of government to consider. In practice however, the parliament does not comply because there are no formal rules or procedures to regulate consultation practices. Lack of formalization means that every committee follows their own individual practice.

The Estonian Service Industry Association has been advocating their Good Regulatory Practice (Hea Õigusloome Tava)<sup>29</sup> which should also be followed by legislators. This document emphasizes responsible and transparent decision making. Every year a committee consisting of Service Industry Association, Lawyer's Association, the law department of University of Tartu, editorial staff of newspaper Postimees, NENO,<sup>30</sup> and others choose the best and worst legislative acts. The transparency and inclusion of the legislative process are assessed by 8 criteria which, among others, include the openness of the process and the end-quality of the act.

The Estonian Public Information Act (PIA) is a rather comprehensive document regulating access to information. The act does not regulate data on lobbying. Access to information is not always straightforward because only state owned companies (in addition to public offices such as ministries) are obliged to disclose data concerning the fulfilment of public duties. Public duties, however, are not defined by law, and the term is open for interpretation. With no clear understanding of the specific nature of public information, documentation, and misuse of the "classified" clause, it is impossible to correctly and timely request information. Journalists expressed concerns that especially MPs see themselves as "untouchables" and do not allow access to information despite being obliged by PIA.

To explain how political party financing influences lobbying outcomes, it is necessary to look at the Political Parties Act (PPA). Though monitoring and verification of party financing and spending has been made increasingly stricter, there are still cases of concealed party financing that show the loopholes in the PPA. In 2012, during the Silvergate affair it appeared that party members donated money of which origin they did not know.<sup>31</sup> Yet at the time, unlimited cash donations were allowed. The efforts to conceal the original source of money indicate hidden links between businesses and politicians. It can be assumed that these donations of unknown origin can serve a purpose to influence policy decisions. There have been other cases where businessmen have been linked to certain politicians or political parties. Toomas Annus, an entrepreneur active in the construction sector, was recently convicted of granting gratuities by arranging an apartment for the Minister of Agriculture at the time. This also revealed his hidden donations to Rahvaliid (People's Union) that

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<sup>26</sup> Committee minutes from June 16, 2014

[http://www.riigikogu.ee/?page=proto\\_otsing&op=ems&startDate=04.04.2011&permanentGroup=fe0c2235-8e81-7b79-a0b3-37936a362e52&choice=2&specialGroup=e4f2977a-e8c3-4fa0-8f3d-9df9acd6377f&x=15&y=10](http://www.riigikogu.ee/?page=proto_otsing&op=ems&startDate=04.04.2011&permanentGroup=fe0c2235-8e81-7b79-a0b3-37936a362e52&choice=2&specialGroup=e4f2977a-e8c3-4fa0-8f3d-9df9acd6377f&x=15&y=10)

<sup>27</sup> <https://www.riigiteataja.ee/akt/H%C3%95NTE>

<sup>28</sup> <https://www.siseministerium.ee/30329/>

<sup>29</sup> <http://teenusmajandus.ee/teemad/hot/>

<sup>30</sup> Network of Estonian Nonprofit Organizations

<sup>31</sup> Reference to the original newspaper article of the whistle-blower who first publicly discussed illicit political party financing schemes - Silver Meikar: erakondade rahastamisest. Ausalt, Postimees, 22.05.2012

<http://arvamus.postimees.ee/849254/silver-meikar-erakondade-rahastamisest-ausalt/>

have been tied to influencing decisions concerning land deals that benefitted Annus's construction company (Merko).<sup>32</sup>

Vague rules on lobbying can easily lead to trading in influence.<sup>33</sup> Influence peddling is also mentioned in the Penal Code and sanctions foresee punishment by pecuniary measures or imprisonment. This clause in the Penal Code has been criticized for being too vague. A Supreme Court decision from 2012 is a poignant example where a local government official used his position to steer decisions in a direction that benefitted his close business associates but as **the line between ethical lobbying (interest consideration) and unlawful practices (trading in influence) was not clearly distinguished**, the court could not convict the official in question.<sup>34</sup> However, the provision on trading in influence has been amended so that there is more ground to convict officials when they have unethically influenced decisions.

## LOBBYING IN A COUNTRY WHERE EVERYBODY KNOWS EVERYBODY

The main lobbyists are trade and industry associations, private enterprises, consultant lobby firms and civil society organizations. Trade unions, industry associations and professional unions are the oldest and most transparent lobby groups in the country. Further distinction is made between in-house lobbyists<sup>35</sup> and consultant lobbyists.<sup>36</sup> Larger businesses (usually multinational) employ lawyers or have PR departments. In addition, personal contributions from CEOs are considered highly effective when lobbying politicians. It was confirmed that Estonia does not differ from the rest of the world, lobbying is where money and profits are: energy, health and pharmaceuticals, waste management, forestry, construction, mining, transport, gambling, alcohol and the tobacco industry.

Public relations professionals and lawyers are known as consultant lobbyists. The emerging group of professionals from the PR sector who openly define themselves as lobbyists have a background in high-level party politics, public administration, or more often the media, where they have established contacts and an understanding of the system. There are two main PR agencies, Meta Advisory and Corpore that handle government relations for clients. Other PR firms like Hamburg & Partners, Rull & Rumm, and PR Concept also list lobbying under the services they provide, however, it forms a very small percentage of their turnover.

The most active lobbyists in Estonia are law firms. Many of them offer their clients full service of legal analysis and representation. Only few companies manifest their field of specialization. Based on interviews, all larger law firms are active in lobbying in numbers around 10 law firms. To name a few, there is Sorainen, Raidla Lejins & Norcous, Glikman Alvin & Partners and Aivar Pilv Law Office. They have published areas of expertise but none have openly disclosed a list of their clients in relation to lobbying. In spite of this, during heated debates the lawyers publish expert opinions in the media. The public can only then indirectly follow their line of work through the media. As an excuse for not disclosing their clients, law firms refer to trade secrets and client confidentiality.

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<sup>32</sup> <http://ekspress.delfi.ee/news/paevauudised/harra-annus-hakake-raakima.d?id=68985839>

<sup>33</sup> Corrupt use of actual or presumed influence in violation of official duties with the objective of obtaining or providing favours from or to a third person, while also violating public interest

<sup>34</sup> Lumi, 2014: 49-50

<sup>35</sup> Permanent employees of a group or organization who present the group's concerns and policy proposals to legislators

<sup>36</sup> A consultant lobbyist is an individual paid to lobby on behalf of a client.

Consultant lobbyists have always been present mainly representing business interests. In the 1990s law firms were recruited by legislators to draft laws, giving them special insider positions, expertise and a competitive advantage in lobbying. It is difficult to assess the sums spent on representation, it is estimated that the price of a smaller legal analysis starts from 10 000 Euros. The average hourly wage of a top attorney is 135 Euros.<sup>37</sup> Several interviewees assessed said there are around 20-30 professional lobbyists who could be categorized as consultant lobbyists,<sup>38</sup> while the number could reach 300 when various interest representation organizations and in-house specialists are included.

The Estonian lobbying scene is as small as the country itself. Often people know each other through previous studies or work. Calls between interest groups and decision makers are regular practice and not only because of personal connections but also because it increases efficiency. In 2010, 66% of the civil servants reported they often use personal links when contacting interest groups, whilst 23% reported they almost always use informal meetings and contacts.<sup>39</sup> Further unofficial channels like personal e-mails are often or almost always used by 87% of officials which further illustrates the importance of personalized direct communication in Estonia.<sup>40</sup> As “everybody knows everybody” and can establish a personal connection with a decision-maker, the challenges of lobbyists are not so much about getting through to the civil servant. It is more about using poor transparency of the processes, locating the right institution and official on time, providing timely and high-quality legal analyses, and negotiating if one is lucky to be included in consultations. If legislation translates into profits or losses, has multiple stakeholders and becomes a political interest, a multitude and sometimes more problematic tactics are used, such as pulling personal strings and influencing political parties.

It is estimated that about 20-30 unions exist, as well as around 60-70 professional associations, about 10 trade associations, and approximately 110 more or less active non-profit organizations that belong under NENO.<sup>41</sup> Some larger industry and trade associations, civil society organizations have established a regular working relationship with policy-makers and professional input is welcomed during formal inclusion and beyond. The organizations disseminate research papers, newsletters, hold roundtables, propose meetings and have proactive means to include decision-makers. Sometimes these working relations are diffused with personal contacts, making it rather difficult to distinguish hidden and ethical practices.

Civil society organizations are only starting to understand the importance of lobbying. The most active lobbyists are the established and institutionalized NGOs, who, in order to act as a viable partner in formal interest representation processes, are entitled to regular public funding.<sup>42</sup> Their core lobbyists are the main activists or general managers of the organization and in few cases are supported by in-house PR specialists or lawyers. There are an increasing number of examples of coordinated advocacy meaning that interest groups team up for a charitable or professional cause.

**Civic activism has been rather low**, though years 2012 and 2013 saw some extensive teachers' strikes and public protest against the Anti-Counterfeiting Trade Agreement (ACTA) draft. According to *OECD Better Life Index*, Estonia scores a rather low 2.3 for civic engagement (involvement in democracy) which among 34 countries places it just above Russia.<sup>43</sup> Because internet petitions and

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<sup>37</sup> Interview with the respondent

<sup>38</sup> paid to lobby on behalf of a certain client

<sup>39</sup> PRAXIS, 2010: 44

<sup>40</sup> Ibid. 47

<sup>41</sup> Altogether there are around 30 000 NGOs of which over 10 000 are housing cooperatives

<sup>42</sup> <http://www.riigikogu.ee/rito/index.php?id=16661>

<sup>43</sup> <http://www.oecdbetterlifeindex.org/countries/estonia/>

campaigns are cheap and require minimum civic effort, they are often used to influence public opinion. Actual referendums are very rare

## NO COMMON UNDERSTANDING OF LOBBYING

**Lobbying (lobimine) as a term has a negative connotation** in Estonian and is used to define the practice of advancing narrow interests by using non-transparent means. Therefore, it is very difficult to have an open discussion on lobbying practices, as it is often treated as an accusation, especially by lobbying targets and civil society organizations. Conversely, **inclusion of interest groups and the term 'interest representation' is seen positively**. There are voluntary but highly recommended inclusion practices in place for state offices since late 2011,<sup>44</sup> which prescribe consulting with interest groups when a draft for legislation is planned or being written.

To generalize, there are **three types of lobbying** that stakeholders in Estonia distinguish. There are **inclusion** practices where interest groups are formally invited to provide input. Secondly, there is **ethical lobbying** with organizing official meetings, writing letters, initiating media campaigns and other proactive measures to suggest changes through regular communication. Thirdly, there is **unethical lobbying** where practices border corruption with cases that fall into an ethically or legally grey area. Examples include expensive gifts and discounts, encouraging officials to steer decisions by using their position (trading in influence), hidden party financing and unofficial meetings during free time. The interviewees confirmed that lobbying and interest representation have increased with time and it has become more professional.

When asked which groups match the definition of a 'lobbyist', policy-makers (lobbying targets) named trade associations, with public affairs agencies (58%) and professional organisations (57%) being other common responses. Non-governmental organisations (NGOs) were named as lobbyists by more than half of the respondents (51%) but companies were named by less than half (47%). Trade unions were deemed to be lobbyists by only 40% of respondents.<sup>45</sup> These results also reflect which groups are more active in lobbying and interest representation in Estonia.

**Lack of transparency is identified as the most negative aspect of lobbying in Estonia.** The **most positive aspect of lobbying is that "it ensures the participation of social and economic actors and citizens in the political process"**.<sup>46</sup> Legislators expect lobbyists to be clear about their motivations. All (Estonian) respondents (policy-makers) agreed that ethical and transparent lobbying helps policy development hence there should be fertile ground to regulate lobbying.<sup>47</sup> Additionally, 83% of decision-makers are willing to disclose information about their meetings if asked (the European average is 37%), however based on the interviews TIE conducted, the willingness to report meetings publicly was approached very cautiously by the lobbying targets while lobbyists were much more positive.

According to GRECO, **vested interests exert significant influence on MPs during the legislative process**.<sup>48</sup> This is further amplified by the top-down management practices within parties where top politicians direct the decisions in each party. Party leadership is very centralized and local party units have a minor role.<sup>49</sup> Commonly, the party secretary is the person who should be influenced in

<sup>44</sup> There were inclusion practices before 2011 (since 2005, and consultation was used in the 1990s) but since 2011 the process has visibly intensified, and formalized

<sup>45</sup> Burson-Marsteller, 2013: 8

<sup>46</sup> Burson-Marsteller, 2013: 6

<sup>47</sup> Burson-Marsteller, 2013: 28

<sup>48</sup> GRECO, 2012: 11

<sup>49</sup> <http://www.ohuleht.ee/530368/erakonna-sisedemokraatia-kujunemine>

order to ensure the support of the whole party. They then whip votes of other politicians. The strict top-down approach is common and a risk because politicians do not critically assess why they support or oppose a certain opinion. Though the leadership of the party is usually satisfied with internal party democracy, lower level politicians find it problematic.<sup>50</sup> They mainly state insufficient inclusion practices and lack of discussion within parties.<sup>51</sup> In short, an increasing amount of opinion leaders and social scientists have reported and raised their concerns over decreasing internal party democracy in Estonia.<sup>52</sup>

A lobbyist interviewed referred to the top down party management as a “good organization culture” and deemed the deals with leaders a beneficial aspect of the job. There are alternative examples where a lobbyist needs to argue her case in front of all faction members. This practice ensures that decisions are made more democratically and that issues are discussed before final voting. Thus, it is of utmost importance that parties develop better internal party democracy practices. The aforementioned Silvergate affair on concealed party funding caused political parties to declare efforts to develop internal party democracy by setting binding ethics rules for its members. However, since the end of the scandal, there seems to be **no sign of any party enforcing further openness or transparency within their organization.**

Following GRECO recommendations, in June 2014, former MP and now a MEP, Kaja Kallas, proposed a draft on MP ethics, which is in first legislative stages in the Parliament. Despite this, Estonia’s anti-corruption strategy is primarily concerned with simpler forms of corruption; the so-called “lower level” corruption including activities which are mainly related to fairness and transparency in business and the public sector.<sup>53</sup> Detailed regulation of lobbying via codes of conduct with actual enforcement mechanisms go beyond it, defining the work of legislative branches itself.

## REGULATING THE UNDEFINED

As lobbying is not defined and as there is no clear understanding of who a lobbyist is, **no formal self-regulatory norms exist for lobbyists as a group.** In addition, there have been no independent efforts among lobbyists to self-regulate. However, most of the groups that participate in lobbying in Estonia have more general ethics codes to guide them in their conduct.

PR professionals, the bar association and NGOs have ethics codes. PR professionals have an association that has 72 members. Unfortunately, it was revealed that most PR specialists who are active in lobbying are not part of the association. Their ethics code covers very general topics like honesty and responsibility in defending the interests of their clients.<sup>54</sup> The Estonian Bar Association has 910 members, and has a thorough ethics code appropriate to their name. Independence from public and private interests and confidentiality to the client is emphasized. Also, acting only in the interest of the client is mentioned, however an attorney must be truthful in relations with clients, colleagues, the court, and the public.<sup>55</sup>

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<sup>50</sup> [http://www.riigikogu.ee/public/Riigikogu/MSI/MA\\_Getter\\_Tiirik.pdf](http://www.riigikogu.ee/public/Riigikogu/MSI/MA_Getter_Tiirik.pdf)

<sup>51</sup> [http://www.riigikogu.ee/public/Riigikogu/MSI/MA\\_Getter\\_Tiirik.pdf](http://www.riigikogu.ee/public/Riigikogu/MSI/MA_Getter_Tiirik.pdf)

<sup>52</sup> [http://www.sirp.ee/index.php?option=com\\_content&view=article&id=17614:vaelja-vaelja-erakonna-seest-&catid=9:sotsiaalia&Itemid=13&issue=3434](http://www.sirp.ee/index.php?option=com_content&view=article&id=17614:vaelja-vaelja-erakonna-seest-&catid=9:sotsiaalia&Itemid=13&issue=3434)

<sup>53</sup> [http://www.kogu.ee/wp-content/uploads/2013/05/EIA2013\\_eng.pdf](http://www.kogu.ee/wp-content/uploads/2013/05/EIA2013_eng.pdf) p.85

<sup>54</sup> [http://www.epra.ee/index.php?option=com\\_content&view=article&id=5&Itemid=2&lang=et](http://www.epra.ee/index.php?option=com_content&view=article&id=5&Itemid=2&lang=et)

<sup>55</sup> <https://www.advokatuur.ee/est/oigusaktid/eetikakoodeks>



As for NGOs, NENO has prepared several guidebooks on how to effectively and ethically influence the decision-making process.<sup>56</sup> NENO consists of 110 civil society organizations. The NGOs ethics code encourages organizations to be transparent, accountable, and open about their interests. It also encourages independence from state and business organizations and advocating citizens' interests.<sup>57</sup> Trade associations and unions have behavioural codes to ensure ethical conduct when advocating an interest. However, **lobbying as such is not mentioned in any of the codes.**

## WATCHDOGS: LETTING THE TAIL WAG THE DOG?

### The role of media

Various experts confirmed that both media and civil society scrutinize political processes. Therefore they exercise effective soft control. Two main dailies along with other media outlets were purchased by two independent Nordic corporations in the 1990s. Later, local media owners have regained control of the main media outlets, but in general, Estonian media has been considered politically and economically independent. A high variety of media together with a small audience makes the media market very competitive and journalists interviewed claim that with limited interests, little remains unnoticed unless access to information is prevented. On the other hand, with limited resources, the investigative capacity of the media is low.

There have been examples of how companies have tried to control media content to influence the public and decision makers as a result. During discussions to raise excise tax on alcohol and tobacco, the CEO of Philip Morris Estonia sent several letters to different media outlets suggesting that raising the tax will increase the market for illegal cigarettes.<sup>58</sup> However, the company representatives refused to appear in the news articles themselves and tried to convince outside experts to advance Philip Morris's agenda in secret. This time the scheme failed as it was reported by the media. Nevertheless, it illustrates the risk that sometimes **resourceful interests initiate concealed PR/media campaigns to pressure policy makers and the public.** Though the level of independence in Estonian media is visible and they continue reporting on controversial policy matters like the Medicines Act, Alcohol Excise Tax, Political Parties Act, there should be more emphasis on educating journalists to acknowledge that sometimes they could be used in hidden lobbying schemes.

Still, Estonia has been at the forefront of the *Press freedom Index* (3<sup>rd</sup> place in the 2012 Reporters Without Borders ranking). 2013 and 2014 brought a change as one of the two corporations Eesti Meedia and later Baltic News Service agency were purchased by Margus Linnamäe, a local investor. He is also one of the owners of pharmaceuticals company Magnum Medical which is behind one of the most disputed lobbying incidents (see case study below). While Estonia maintained its 2013 *Freedom House Index* score (15<sup>th</sup>-17<sup>th</sup>), Reporters Without Borders 2014 report showed a dramatic drop to the 11<sup>th</sup> position,<sup>59</sup> partly due to efforts to politicize the board and running of the public broadcasting company.

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<sup>56</sup> <http://www.ngo.ee/trykised>

<sup>57</sup> <http://www.ngo.ee/eetikakoodeks>

<sup>58</sup> <http://www.delfi.ee/news/paevauudised/eesti/tubakafirma-philip-morris-teeb-varjatud-lobitood-tubakaaktsiisi-tousu-vastu.d?id=58697088>

<sup>59</sup> <http://rsf.org/index2014/en-index2014.php>

## Pharmacies : The case of limiting the establishment of new pharmacies (2005- now)

In 2005, the Medicines Act was changed to set a limit to establishing new pharmacies. The act was intended to protect the interests of consumers in rural areas by setting a limit to how many people per pharmacy there should be in a locality (3000 people per pharmacy). There is also a limit to how many pharmacists there can be, therefore there is an overall limit to the number of people suitable to manage a pharmacy. In addition, it was supposed to increase fair competition, to have more pharmacies in rural areas and fewer in cities. This objective has not been reached. The opposite came to be, as this law enabled the two major wholesale medicals companies to expand their ownership of pharmacies up to 81%.<sup>60</sup>

Since 2010-2011 patient organizations and state offices expressed concerns that this law has strengthened the market position of the main pharmacy chains (Tamro, Magnum Medical) and hinders free competition and therefore drives up prices. The Supreme Court, the Chancellor of Justice, and the Estonian Competition Authority started to express concern from 2010-11 onwards that this limit was not justified and unconstitutional (entrepreneurial freedom). The analysis prepared by the State Audit Office confirmed that the 2005 provision had propitiated a situation where two medicals companies owned 81% of the pharmacy market.<sup>61</sup> The current Chancellor of Justice who prepared the judicial analysis for the 2005 law when working for the Estonian Pharmacies Association (which is under strong influence from the market leaders) and then supported the limit, now claims that the provision is unconstitutional.

There are two competing associations: one for pharmacies and the other for pharmacists. The former is strongly influenced by the main pharmaceutical distributors (Tamro, Magnum) and its analyses and legal opinions represent only limited interests (not all pharmacies and definitely not patient interests). More recently the Supreme Court decided it was necessary to change the law by June 2014. The ministry of social affairs started its work but due to alleged difficulties in preparing legislation and including interest groups, the parliament's social committee took initiative to resolve the issue and impose a rule where all the pharmacies should up to 50% be owned (co-owned) by trained pharmacists. These changes were later scrapped in the committee and some media outlets suspect influence by the two market leaders. Due to the parliament's procedures being more covert, it is also unclear who exactly wrote the first draft of the bill. The social affairs committee has not shed much light on the issue.

In addition, the small pharmacies association objected to the bill saying that it could not resolve the lack of pharmacies in rural areas. A Finnish pharmacy chain who strongly lobbied for opening the market to increase its share of business in Estonia strongly supported the bill.

<sup>60</sup> Riigikontroll (State Audit Office) (2012). Ülevaade riigi vara kasutamisest ja säilimisest 2011. aastal, Tallinn, p. 37

<sup>61</sup> Ibid.

In the media, the lawyers from different sides strongly advocated their agenda to gain public support. But it was at times unclear who they represented. It also showed the weakness of the ministry to properly involve different stakeholders, and how committee members were under great pressure from lawyers and the media to decide on a very technical matter (risk for advancing narrow interests) in a very short time. Therefore, the procedure was problematic; it was rushed due to the Supreme Court's decision coming into force in June, and how MPs who had reached political consensus were stuck between strong lobby groups and unable to decide due to lack of resources (independent expert knowledge). Many suggestions could not be discussed due to the time pressure. So in the end when it was decided that there will be a transition period of 1.5 years until the market is opened, it pleased the two biggest sellers but also small pharmacies that hope new suggestions can now be added before the final decision on how the market should function.

Further risks in this case include: the interest group that had more resources (money) could hire better legal representation to prepare legal analyses; public and consumer interests were not considered much as they were not involved in preparing the draft; the legislation that changed the whole market was initially hidden behind the law on narcotic drugs; also, the topic is technical so narrow interests can prevail more easily. The Pharmacies Association is located in the same building as Magnum Medicals. They have identical opinions hence indicating the influence of one over the other.

The only interest groups in the discussions besides state authorities according to the Riigikogu opinion letters were limited to pharmacies (Euroapteek and Ülikooli Apteek) and a law firm representing the Pharmacies' Association (indirectly the market leaders). The case also shows that since 2005 the inclusion practices have improved somewhat and it is more difficult to push through changes advocated by a self-interested business as more stakeholders need to be consulted and engaged in the process.

If consultant lobbyists had the requirement to state who they represent and what they advocate, it would be much easier to check for biased decision making. Therefore a code of conduct for lobbyists is necessary. Moreover, access to both enterprises and civil society organizations should be equal and on the same grounds. State offices therefore need to unify their practices in order for all authorities to engage in meaningful consultations.

## Risks

### **Personal relations and influence in the parliament**

Allegedly, businessmen can directly influence members of the committee.

### **Hidden, concealed decision making processes and insufficient inclusion practices**

In 2005, very limited interests were included. In 2014, many more groups were involved yet allegedly there was no one to represent patients or rural communities.

There was **no impact analysis** when the limits were imposed. During the discussion to change the law, the arguments have been superficial as the market leaders emphasized how it is necessary to maintain a high quality of pharmacies, however they never specified what factors make up this quality. There has been little research and analysis on what rural pharmacies need, so deciding on best measures has been based more on gut feeling rather than meaningful debate or analysis.

**Expert information overload on technical questions** brings about a situation where decision-makers have difficulties deciding

Committee members were bombarded by legal opinions of lawyers from all sides, and lacking personal technical knowledge of the topic it was difficult for them to decide. The parliament's legal department is considered most neutral but its capacity to initiate new legislation or add big changes like in this case is limited.

**Unequal resources** (expertise, finances) create unequal access and influence

Large businesses have better resources. Patients were not involved in discussions, probably because of weak organization and lack of expertise (people, money, legal know-how).

**Narrow business interests gained an advantage through the opaque system**

There was no one to represent public interest, thus the discussion on legislation became a competition between different pharmacy chains. Due to the issue being very specific and technical there was not a lot of public debate on the issue, only the lawyers from different sides kept commenting on the law in the media.

**Professional organizations under great influence of businesses**

Professional organizations may be influenced to not represent their real interests but the interest of a few businesses that dominate their membership.

**In 2005, only one analysis was used to decide**

It is easier to manipulate information when there is unequal access. On top of this, it is easier to influence when legislation is technical and there is lack of public discussion and knowledge. In 2005, there were not many legal opinions represented and thus one specific document set the limits.

## News sources

<http://www.postimees.ee/2790902/joks-ued-apteegipiirangud-oleksid-riigikohtu-otsusega-vastuolus>

<http://aripaev.ee/article/2014/3/13/radikaalselt-apteekide-kallale>

<http://www.aripaev.ee/?PublicationId=fddc3fc4-c650-4077-9a10-6d9f0acc6dae>

<http://www.riigikogu.ee/?op=ems&page=eelnou&eid=16d438de-c8ef-4d2f-bfee-c0e284a4d196&>

## Civil society organizations

Donations to NGOs from private individuals are almost non-existent in Estonia. Some NGOs have a strong partnership with the government and receive operating grants from corresponding ministries (e.g. Development Cooperation Roundtable from the Ministry of Foreign Affairs). Some of the income is project based from different government programmes (KÜSK<sup>62</sup> for example). Therefore, some organizations have established a regular policy-making relationship with the executive and the legislative branch (NENO, for example but also larger trade associations like the Employers' Confederation). This raises a risk of dependent **NGOs that could become another voice of the**

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<sup>62</sup>KÜSK is the National Foundation of Civil Society (NFCS). It is state financed civil society fund in Estonia.

**government.** Allegedly, the Integration and Migration Foundation Our People (MISA) has for years been under strong influence of politicians and their funding decisions have been greatly political.<sup>63</sup>

Another problem arises from the **mixed role of sectional groups and NGOs:** a role of an expert and a role of representing its members. Sometimes it is unclear which of the two roles they take. An expert role differs from the representative role as the latter requires collecting the opinions of members. If this is not done properly, legitimacy deficit appears and can mean **problems with internal democracy.** A report on NGO internal democracy states that though the overall results illustrate significant internal democracy, the leaders of NGOs very strongly influence the agenda of their organizations.<sup>64</sup> The same was reported by the 2012 *CSO Sustainability Index* for Estonia.<sup>65</sup> However, the majority of NGO leadership believes that every regular member of the NGO should have an equal opportunity to shape the agenda of their organization. Putting these ideas into practice is often hindered by lack of resources.<sup>66</sup>

**Lack of resources leads to passivity in scrutinizing legislative process on the part of the NGOs** as watchdogs. NGOs tend to lack people and legal know-how which, in turn, is connected to shortage of financial resources. In 2010, 45.1% of interest groups partnering ministries reported they lack people in order to be properly involved in discussions on legislation.<sup>67</sup> This was confirmed by TIE interviewees, both NGOs and legislators concurred. Furthermore, 46% of the respondents to the Praxis study stated passivity as the main problem of interest groups.<sup>68</sup> During the interview at the Ministry of Economic Affairs, similar sentiments were expressed by officials. They added that larger umbrella organizations are usually better prepared to discuss legislative drafts. Though these interdependence and capacity issues arise, NGOs such as NENO see themselves as independent. To illustrate, their initiatives include acting as watchdogs during elections to make sure the campaigns of the candidates are ethical.

In short, though some NGOs do not criticize the government for fear of losing funding or not having sufficient resources, others have continuously raised problematic issues, like internal party democracy, election laws, and party financing.<sup>69</sup> Increased civil society activism has reportedly already improved policy-making practices.<sup>70</sup> Increase in civic activism and raising issues of transparency and openness was also reported by USAID's *CSO Sustainability Index* in 2012.<sup>71</sup> Internal democracy and funding woes therefore seem to be more acute problems for NGOs.

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<sup>63</sup> <http://kultuur.err.ee/v/kultuurileht/ca241081-70b3-4d5c-9270-dfb228bc71cd>

<sup>64</sup> PRAXIS, 2014: 41

<sup>65</sup> USAID, 2012: 3

<sup>66</sup> Praxis, 2014: 62-63

<sup>67</sup> Praxis, 2010: 59

<sup>68</sup> Praxis, 2010: 59

<sup>69</sup> USAID, 2012: 4

<sup>70</sup> <http://uudised.err.ee/v/eesti/a5410e4d-1369-4a18-a8f6-7e55489b094f>

<sup>71</sup> <http://www.usaid.gov/europe-eurasia-civil-society/cso-sustainability-2012/estonia>

# REGULATING LOBBYING: ROOM FOR IMPROVEMENT

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In this section, we provide a more detailed assessment of the regulation of lobbying and related activities in Estonia, with a focus on transparency, integrity measures and equality of access to decision-makers.

## TRANSPARENCY: MULTI-SPEED DEVELOPMENTS

When looking at transparency around lobbying practices, our research sought to answer the following overarching question: to what extent does the public have sufficient knowledge of: (a) who is lobbying public representatives; (b) on what issues they are being lobbied; (c) when and how they are being lobbied; (d) how much is being spent in the process; and, (e) what is the result of these lobbying efforts? We also sought to investigate whether the onus for transparency is placed on both lobbyists and public officials/representatives. Our findings offer a rather mixed picture and lack of transparency is identified as a significant problem with regard to lobbying in Estonia.

According to the Public Service Act and Civil Service ethics code, **the obligation for transparency is on public officials**. These documents require that civil servants behave professionally, prioritize public interest over narrow interests, and report any encountered unethical behaviour. In order to track how bills become laws, there is a general list of upcoming primary legislation published in the coalition treaty. More detailed programmes can be found in the working programmes of ministries. However, there is no periodical publication of a full list of regulation to be prepared, modified or reformed.<sup>72</sup> **Hence, there is a lack of information during early stages of legislative acts.**

**The drafts** are published online on two databases (one for governmental<sup>73</sup> and the other for the parliamentary<sup>74</sup> phase) but **information is deficient** in both cases. Opinions of working group participants, justifications and working group composition remain hidden in the governmental phase. In the parliamentary phase, the committee protocols are brief, while substantial protocols remain secret. In the early 2000s, all committees recorded and published their minutes in detail but with Res Publica taking power in 2003, the minutes gradually became very general stating only the names of the participants, time of the meeting, topics discussed and overview of voting (anonymous).<sup>75</sup> Ironically in its campaign Res Publica pledged to fight against corruption, however, they initiated changes that made decision-making in the parliament much more opaque.

**Inclusion in the parliamentary phase is almost impossible to follow.** In light of this, the public has very little knowledge on who is lobbying public representatives, what issues are lobbied, how and when lobbying happens as well as the cost and the results of lobbying. These problems occurred during legislative discussions of the Medicines Act 2014. Some of the participants

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<sup>72</sup> OECD (2011). Regulatory Management Indicators: Estonia (Christiane Arndt, Gregory Bounds, Emmanuel Job and Helge Schröder)

<sup>73</sup> <http://eelnoud.valitsus.ee/main#vG41N9fA>

<sup>74</sup> [http://www.riigikogu.ee/?op=ems&page=en\\_otsing&emshelp=true](http://www.riigikogu.ee/?op=ems&page=en_otsing&emshelp=true)

<sup>75</sup> <http://kes-kus.ee/uhe-koosoleku-salaprotokollid/>



(lawyers) were not mentioned and information available in the parliament draft database was partial. This illustrates significant non-transparency of legislative processes in the parliament. Non-transparency allows for MPs to avoid responsibility and significantly reduces their integrity and popularity among the electorate.

**The only mechanism to check for interested parties comes from the explanatory memoranda that accompanies legal drafts.** Among other things it should include the description of the process of how the bill was initiated and list the participants who have contributed to the bill. Though this practice has become the norm, it is often impossible to find all information in the memorandum. While for the Green Paper for alcohol and tobacco policy the participants of working groups are listed, which is described in more detail in the case study below, **it is not apparent how the process was conducted or which opinions were expressed by the participants.** In many cases the bills lack any mention of non-governmental institutions that have participated. The previous Consumer Credit Act of 2012 is an example where it is stated that interest groups were included but specific organizations are not named. This information can be inquired from the responsible ministry but for better transparency, it should be included in the annex. There should be a unified system of annexes where the process and the participants are listed for each law and where the process of consultation and inputs is described.

## Green Paper on Alcohol and Tobacco

The Green Paper on alcohol and tobacco was written in 2012 to analyze the current situation in Estonia and to set goals for the future. The two aspects under scrutiny are raising overall alcohol excise tax and how light and hard alcohol are taxed differently. The overall tax was set to be increased by 5% per year. This was advocated by alcohol producers and exporters. Consumer and health groups advocated a 15% increase per year. In 2012 when the Green Paper was published the health groups seemingly lost the issue, as a 5% increase became the norm.

Additionally, there were conflicting interests among the beer and vodka producers (as vodka producers needed to start paying much higher duties than beer producers). They bombarded policy-makers and other stakeholders with studies and started a media campaign to gain public support for their position. The politicians of a party soon took over the rhetoric used by beer producers' associations and neglected both consumer and health specialists' concerns. Tight business-politics relationships have been speculated due to the representative (Tarmo Noop) of the beer producer being the long-time member and donor of the RE party. He also sent supporting material directly to the minister that was later used by the minister to protect beer producers' interests.

In 2014, with the new government coalition taking office, the coalition has promised to increase alcohol tax by 15% a year which is something that the health groups lobbied for. However, it has been said that this change was initiated because the new coalition needed more money in the budget. Therefore, the concern was less about health and more about collecting taxes.

The lack of publishing of the opinions and reasons for final decisions is a visible problem in this case. Therefore more information on participants should be given. Further, to prevent biased decision making, documents and studies that were used while writing this paper

should be published. Furthermore, introducing ethical lobbying would prevent personal direct informal contact which contributes to non-transparency.

## Risks

**Personal relations** between entrepreneurs, politicians (belonging to the same party)  
When businessmen belong to a political party, they have easier access to leading politicians, especially when regularly donating to the party. Even if it is rather easy for any organization to contact politicians, it is probably easier for party financiers.

### Party financing

Private donations by businessmen can mean unequal access to the legislative process. Even if it is impossible to buy legislation, it certainly helps to get better access.

### Biased research

If only one study is used to establish a policy, it can result in biased policy outcomes.

### Differences in resources

Resourceful organizations can more easily commission studies and employ lawyers to prepare their argumentation. They can also afford more expensive marketing and media campaigns.

### Ignoring public interest

Due to influence by resourceful organizations, health groups feel that politicians are more concerned about the profit of private companies and less about people's health.

### Foreign lobby

Allegedly, an international beer producer owning companies in Finland and Estonia lobbies the Estonian government on its alcohol policy (a case of foreign influence and narrow interests)

## Sources

<http://maaleht.delfi.ee/news/tarbija/tarbijauudised/viinavabrikandid-tahavad-olle-hinda-40-sendi-vorra-tosta.d?id=65742474>

<http://terve-eesti.ee/2013/01/10/kutse-alkoholipoliitika-roheline-raamat-on-uldsonaline-ning-plaanitud-meetmed-vahetohusad-2/>

<http://terve-eesti.ee/2013/01/15/meediakajastus-alkoholipoliitika-rohelisele-raamatule-esitatus-taiendusettepanekute-osas/>

<http://www.ohtuleht.ee/506374/terviseedendajad-utlevad-alkoholivabadele-paevadele-kindla-ei>

**In addition, there is no regulation or practice to publish meeting agendas, documents from lobbyists of senior public officials or public representatives.** Despite that, parliamentary committees publish official opinion letters received from interest groups online (participant, time and opinion can in this case be seen). TIE suggests that annexes should also include tables of opinions from interest groups during the preparatory ministry phase. In short, though **some information on interest group participation is required to be published, many details remain unknown.**

There is no registry for lobbyists (interest groups included in decision making) which means that the public has very little knowledge on organizations and people that are involved in lobbying. Though ministries have partners' lists, these are not published. **Therefore any specific information on who participated in working groups before writing the drafts is not published.** This information is undisclosed and can only be requested from the ministry in the hope that they respond.

Though some lobby groups (trade and industry associations, NGOs, unions) publish their agendas, and results of lobbying, the costs and tactics remain hidden. There are organizations including an NGO advocating traditional family values<sup>76</sup> that does not publish its source of income. In relation to law and PR firms everything is hidden and very general information on their services is provided. **Publishing any type of information is strictly voluntary for interest groups.** In relation to transparency in political party funding, donations can be tracked online by using the time of the donation. This does not resolve the problem of channelled contributions, monetary or otherwise, plus it is not possible to search the database specifically for names. In addition, the size of payments and their validity is not monitored. In short, the lack of obligations for lobbyists creates a situation where **most organizations do not publish their interests, goals or costs.**

Besides having no registry there is no single oversight body tasked with monitoring and sanctioning unethical lobbying. Ministry of Finance deals with general civil service ethics, Ministry of Justice handles corruption related topics and the State Chancellery is responsible for inclusion practices. However, they do not register lobbyists, follow their conduct, or sanction them. Usually, unethical conduct is picked up by the media or non-governmental watchdogs that can refer the cases to the police if any threat of corrupt practices is detected. If corrupt practices are discovered the names of the offenders are published. Mainly, within existing legislation, unethical lobbying can be linked to trading in influence which is therefore at the moment the only formally regulated area. Recently, **the border between lobbying and trading in influence was better defined, thus from January 2015 there is more clarity on how to distinguish lobbying from unethical influencing.**

## PUBLIC SECTOR INTEGRITY: MPs AKA UNTOUCHABLES

Transparency of lobbying must be embedded within a broader public sector integrity framework which mitigates the risks of conflicts of interest when important decisions are being taken. Our research sought an answer to the following overarching questions about integrity: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives? Again, the Estonian situation leaves a lot to be desired.

In Estonia there is no lobbying ethics code in place for either lobbyists or lobbying targets. **Civil servants are regulated by the Civil Service Act and a general code of ethics that places the obligation to perform ethically on them.** Also, PR professionals, the bar association, NGOs and some trade and industry organizations have general written ethics codes. Still, it is useful to remember that as lobbying remains a confusing concept, these ethics codes are not relevant in the strict context of lobbying. There is no ethics code for MPs though since 2011 this has been advocated by TIE.

For the civil service, **there are no pre and post-employment restrictions between the government and lobby sector.** The only one-year restriction that applies is for an official who wants to move from the controlling authority to the organization controlled or audited before. Thus

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<sup>76</sup> SA Perekonna ja Traditsiooni Kaitseks (An NGO to protect traditional family values) <http://saptk.ee/>

there have been cases where former MPs or government officials move directly to the lobby sector. These MPs can potentially use previous relations to advance the interests of their clients. As there is no cooling-off period, there is also no authority monitoring officials that could use previously collected inside knowledge to advance specific interests, increasing the risk of conflicts of interest.

Relations between powerful private enterprise lobbyists and politicians also illustrate the state of integrity in Estonia. The connections between parties and private sector remain but have decreased due to stricter laws and monitoring of corruption but networks of influence are still sometimes visible. The collapse of the IRL and RE coalition on 2013, that had stood strong for almost two parliamentary terms, has uncovered some rather evident links of who is representing whose interest in the government. Gathering policy input from various interest groups is the main function of parties. However as an example it is worth knowing that allegedly in 2014 the coalition fell because the Reform Party suggested to unbundle Eesti Energia's (the largest energy producer and distributor owned by the state) grid operations. IRL strongly defended Eesti Energia's position.<sup>77</sup> In light of this it is interesting that allegedly renewable energy producers competing with Eesti Energia have links with the Reform Party.<sup>78</sup>

Although **conflicts of interest** are regulated in the Anti-Corruption Act, in relation to civil servants performing ancillary activities, the **regulation remains weak**. Mainly, the official only needs an approval from her or his direct superior to conduct ancillary activities; and needs to be sure that the provided services are not already covered by public tasks. This clause has resulted in a legally grey area where it is possible to use inside information for personal benefit.

Both the Anti-Corruption Act and the Civil Service Act regulate how public officials should deal with gifts and hospitality issues. An official shall refuse to accept a benefit defined as income derived from corrupt practices or, deliver the benefit immediately to his or her agency, unless the benefit is considered to be common courtesy. Also, the officials need to declare gifts that exceed this limit. It is up to the official to report possibly corrupt income and it is up to the superior to make a decision on further proceedings. Though these provisions can be interpreted differently, the regulation is rather thorough and it is easy for any member of the public to report misconduct. Despite the seemingly effective legislation, there was a case in 2012 where two car dealers (Volvo and Audi) offered unreasonable discounts for MPs who then purchased their cars.<sup>79</sup> The motivations of the car dealers are unclear but the example illustrates how **the current rules and norms allow MPs to accept questionable discounts and gifts**.

The main control mechanism concerning gifts and ancillary activities for civil servants is issuing a declaration of interest. The officials are allowed business activities when interests are disclosed and do not cause a conflict of interest. Also, ancillary activities (and thus income) should be disclosed in the declaration. Therefore, any biased decision making can be scrutinized, especially when the declarations are since 2014 being published online. However, there are about 7000 civil servants who need to issue a declaration and **it is clear that not all of those declarations will be inspected due to a lack of qualified personnel**. TIE suggests two ways to effectively verify the declarations: automatic control where a system checks for irregularities to be followed on up if any doubts arise; and a risk-based approach where the monitoring authority prepares systematic checks, establishes risk areas, and monitors selected officials or organizations each year.

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<sup>77</sup><http://www.bbn.ee/article/2013/4/9/ruling-coalition-clashes-over-eesti-energia>

<sup>78</sup> <http://uudisvoog.postimees.ee/?DATE=20140312&ID=334282>

<sup>79</sup> <http://epl.delfi.ee/news/eesti/automaatsed-allahindlused-riigikogulastele-audi-ja-volvo-hiigelkingitud.d?id=64560368>

Corrupt use of influence, public property and inside information is regulated by the Anti-Corruption Act, which also covers sanctions. Officials and agencies performing public duties are prohibited from corrupt use of inside information. Disclosing confidential information is additionally regulated by the Civil Service Act. It states that an official shall not disclose a state or trade secret, classified information of foreign states and other information for internal use which becomes known to him or her due to his or her service during the period of the service relationship and after the release from service. These provisions should foster the integrity of civil servants. There have been some scandals involving corrupt use of influence and inside information when in 2007 among others the Minister of Environmental Affairs purposefully guided public procurement deals.<sup>80</sup> Though legislation has since then been reformed to avoid such events, the Anti-Corruption Act is still considered to contain loopholes where it is difficult to detect where influence transforms into corruption.

It should be kept in mind that the rules of inclusion, PIA and Civil Service Act are followed by civil servants but MPs often find ways how these regulations (access to information, complying with inclusion practices) do not apply to them. Journalists noted that the general feeling among MPs seems to be that they cannot be forced to comply with all rules and recommendations. As emphasized by GRECO and several interviewees and by this very research – there is no control mechanism for parliamentarians besides asset and gift declarations, and self-scrutiny. The non-transparency in the parliament procedures puts **MPs** in the most vulnerable position and thus the **integrity among officials is most questionable**. Advancing the transparency in parliamentary procedures, and through that, the integrity of MPs, should be seen as the highest priority

In conclusion, **integrity is the onus of public officials**. Still, as the concept of lobbying remains ambiguous, the interpretation of these rules in relation to lobbying can greatly vary among officials and lobbyists, and thus threaten integrity in relation to lobbying.

## EQUALITY OF ACCESS: TICKING THE BOX

When regulating lobbying, transparency and integrity measures are crucial but they must be accompanied by rules that allow for equality of access to decision makers which is essential to fairness and pluralism in the political system. Our research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests. The findings are mixed in this regard.

Though there is a rather comprehensive inclusion framework in place in Estonia, it **is not a legal obligation** for the government or the parliament. Despite that, the ministries practice inclusion regularly. The practice across ministries varies greatly. The parliament has no formal rules to include interest groups and so it depends on committees and officials whether wide interests are represented in discussions for legislation or not.

The problem that occurs most often is **that officials across government branches have different and sometimes insufficient inclusion practices and as a result interest groups feel left out or uninformed until it is too late**. This was already a problem in 2010 when it was identified that the practices of inclusion greatly differ among civil servants.<sup>81</sup> An example comes from the most recent amendment to the Medicines Act (2014). The Social Affairs Ministry failed to engage a wide range of stakeholders in time and failed to present a new draft to the parliament which meant that the social

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<sup>80</sup><http://epl.delfi.ee/news/eesti/seitse-aastat-maadevahetuse-saagat-ja-see-pole-veel-koik.d?id=64554734>

<sup>81</sup> PRAXIS (2010), Valitsusasutuste kaasamispraktikate analüüs

affairs committee in the parliament initiated the law itself. Yet as a process, initiating a law in the parliament is much more opaque. It is also considered to be a late stage for influencing legislation. As a result, the groups contact MPs as a last resort to present their suggestions. This tactic is disapproved and presents a risk of hidden lobbying.

A more positive example comes from the consumer credit act, regulating advertisements of fast loans (2014) where the Ministry of Economic Affairs arranged several meeting sessions with stakeholders and asked for opinions from affected groups that confirmed they were happy with being included at an early stage. This illustrates that inclusion practices across state offices should be unified, thus encouraging and training civil servants in this field is an important goal.

There is relatively good access for established partners of ministries, for example in 2010, 90% of officials that were inquired about inclusion practices said they have identified relevant interest groups to consult with.<sup>82</sup> Nevertheless, **in practice, not everyone can freely participate in the legislative process.** Though there are ways any citizen can access information on planned and discussed legislation, presenting an opinion still requires specific knowledge on how to follow and comment on the drafts. This makes it more difficult for newcomers to participate in policy-making. Yet, it is understandable that the ministry wants area specific know-how so it would be impossible to publish all working group and consultation information when legislation is planned. When a bill has become a law however, the contributors and their opinions should be published and included in the annexes of laws so the origin of provision would be clear.

Deficiencies in inclusion also exist in the parliament. The parliament's Procedures Act includes a couple of provisions suggesting inclusion of affected interest groups when initiating or discussing legislative drafts. However, it was confirmed that usually inclusion in the parliament depends on specific committees and officials. Therefore, when inclusion practices are not unified and transparent, there is a risk that interests are not equally represented.

**A related problem in connection to inclusion is that it is often rushed and late.** Interviewees agreed and brought an example of recent value added tax laws that were rushed on purpose because the state budget for the next year was not in balance, so the need for collecting more tax topped the necessity to constructively discuss with business associations on how to resolve the problem together.<sup>83</sup> Therefore, in some cases **interest groups feel their opinions are not considered or only asked for ticking the box.** This was also a problem mentioned in 2010, when interest groups expressed concerns that often inclusion is carried out as a formality, not to gather constructive input.<sup>84</sup>

Furthermore, **sometimes information is not easily accessible;** over 50% of interest groups who had participated in the *Praxis* study emphasized this aspect.<sup>85</sup> This was confirmed during TIE interviews. Interest groups, when not informed, have trouble following new legislative proposals and end up reacting too late when a proposal has already reached the parliament and inclusion is more restricted. This translates into inequality in accessing legislative procedures.

It is difficult to assess the diversity of ideas and the origin of contributions in inclusion practices. Inclusion should be balanced according to the good practice of inclusion. There are ministries and

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<sup>82</sup> PRAXIS (2010), Valitsusasutuste kaasamispraktikate analüüs

<sup>83</sup> <http://majandus24.postimees.ee/2800588/koda-kaalub-1000-euroste-tehingute-seaduse-parast-oiguskantsleri-pole-poordumist>

<sup>84</sup> PRAXIS, 2010: 62

<sup>85</sup> PRAXIS, 2010: 59



officials who treat inclusion as a way to gather relevant expertise and opinions. For example, the Ministry of Economic Affairs succeeded to include a wide variety of experts and influenced groups during discussions on the Consumer Credit Act while the Ministry of Social Affairs during discussions on the Medicines Act (2014) included only three groups (of which one was a state authority). However, it was mentioned by some interviewees that the practice at the Ministry of Economic Affairs is not always so peachy. For example, one of the officials gave interest groups one day to decide when to meet and concluded the next day that silence equals approving the suggested time. Furthermore, informal consultations, public notices on coordination rounds, posting drafts online (from a certain step), consulting with advisory/expert groups and preparatory committees are rather regular though the process (participants, opinions, decisions, agendas) itself is not transparent.

## Rules for responsible lending and advertising regulations for financial services (consumer credit)

In 2012, the parliament's justice commission gave the Ministry of Justice a task to prepare legislation to specify the Law of Obligations Act in connection to consumer credit agreements and responsible lending; and to specify the Advertising Act of financial services, including consumer credit advertising regulations. This has been followed by another proposal in 2014 to further regulate the market. Yet in the media and by politicians these changes are considered superficial. These rules are among the first that regulated the fast loan (SMS loan) market.

These two initiatives show good inclusion practices in Estonia that have been developed since 2011, although there are some negative aspects. On the one hand, it is rather easy to track the legislative process, proposals and positions of different stakeholders and the reasons behind why provisions were either accepted, not accepted or modified. In addition, the proposal was published online to gather ideas from members of the public so this piece of legislation was widely distributed and actual know-how and opinions were very welcome. This involvement was definitely helped by high public and media interest in the topic. On the other hand, when the first law was discussed the fast loan companies were not formally consulted (but would have had access due to the public consultation phase). However, with recent legislation their opinions were formally asked, so inclusion practices have further improved.

In 2012, different groups starting from different viewpoints managed to reach a consensual decision (allegedly with proper legal means and formal practices).

It is interesting to note that the main players in that field welcome these regulations in order to clear the market from shady loan companies. Another good example from this case is that all the proposals are rather thoroughly discussed (this is published) by legislators and reasons for deciding one way or another are explained. In this case, the traditionally self-involved parties reached a consensual decision that brought public good. To summarize risks, it might be worth pointing out that when the legislation proposes minor changes and/ or has strong public support the inclusion procedures are followed and when the legislation touches upon very technical and narrow interests the lack of public debate can lead to more covert practices where it is easier for a business to push through its individual interests.

## Good practice

### Consensual decision making

Though the loan companies were not formally consulted, in the end they welcomed the changes made in 2012. They were officially involved in 2014 when new regulations were being discussed.

### Inclusion of different wide ranging interests

Everyone, including private citizens could suggest changes to the draft. However, loan companies were not formally included as they lacked an association, and did not take initiative themselves.

### Inclusion of the public

The draft was put online to gather input from everyone. Also, in 2014 youth and parent groups were encouraged to present opinions.

### Transparent legislative footprint

The legislation can easily be tracked online. There are online systems for government drafts, parliamentary proceedings, and an opinion web for citizens. All legislation including general policy plans go through the first system, laws through the second, and a few ones through the third system.

### Continued work to improve the situation

The ministry has continued to regulate fast loans, and they have improved their inclusion practices. Also, fast loan companies are preparing to start their association in order to have a representation organization.

## Sources

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<http://majandus24.postimees.ee/1286150/kiirlaenuandjate-elu-muutus-tanasest-veidi-keerulisemaks>

<http://aripaev.ee/Default.aspx?PublicationId=f386222e-be52-4866-ab5c-947a900dd071>

Though it is true that officials in ministries and in the parliament compile the drafts, it is clear that they consult with different stakeholders and gather information before writing the drafts. This ensures equality of access. Yet, it is somewhat interesting that politicians that initiate a law are unable to explain where original drafts or changes to the drafts originate. In short, **there is incomplete information on the origin of some provisions**. This was the case with the 2014 Medicines Act where the initiating MP Margus Tsahkna could not later explain to the media, why and how some of the provisions ended up in the bill. This presents a risk where a narrow lobbied interest could easily slip in because changes in provisions are not scrutinized thoroughly.

There are no requirements as regards to the composition of working groups and no assurances that both civil society and business should be equally represented. CEOs could participate in a personal capacity. Based on the interviews, when businesses directly contact policy-makers, it is the top management such as the CEOs who call up politicians and personally send them materials. It clearly presents a risk because one-sided information can result in biased policy decisions. However, inclusion experts from ministries confirmed that they want to achieve balance within working groups and prefer interest groups that provide substantial expertise, or represent a wider opinion.

Another factor related to equality of access is that highly technical legislative drafts require topical know-how from affected stakeholders. This means that **decision-makers depend heavily on the input of participating groups**. It raises the risk of passing laws that can benefit narrow interests only. Usually these laws concern technical profitable sectors. This risk was demonstrated when the Medicines Act 2014 was discussed. Almost every interest group was represented by a law firm which had prepared a complicated legal analysis. It was difficult for the committee members to assess the impact of different suggested ideas because they lacked expertise and were bombarded with conflicting analyses.

# ANNEX 1: SECTION IV – DATA COLLECTION QUESTIONNAIRE

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## DEFINITIONS

- 1. To what extent does the law clearly and unambiguously define ‘lobbyists’ to capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics?**

**0 – No definition/Wholly inadequate definition covering a small proportion of lobbyists**

1 – Partially but inadequately/too narrowly/too broadly defined

2 – The law clearly and unambiguously defines lobbyists to include professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.

Check all categories covered by law:

- ☐ Professional lobbyist
- ☐ Private Sector Representatives
- ☐ Public affairs consultancies
- ☐ Representative from NGO
- ☐ Representative from a for-profit corporation
- ☐ Representative from industry/professional association
- ☐ Trade unions
- ☐ Think tanks
- ☐ Law firms
- ☐ Faith-based organisations
- ☐ Academics
- ☐ Other, please specify \_\_\_\_\_

- 2. To what extent does the law/regulation define ‘lobbying targets’ in a sufficiently broad manner to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions?**

**0 – Lobbying targets are not defined in law/ Wholly inadequate definition covering a small proportion of lobbying targets**

1 – Lobbying targets are inadequately defined in law (including some but not all of the above-mentioned targets)

2 – Lobbying targets are broadly and adequately defined in law to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions

Check all categories covered by law:

- ☐ National Legislators
- ☐ Subnational Legislators
- ☐ National Executive
- ☐ Subnational Executives
- ☐ Executive Advisors
- ☐ High-level public officials
- ☐ Regulatory bodies
- ☐ Private bodies performing public functions
- ☐ Other, please specify \_\_\_\_\_

**3. To what extent is the term ‘lobbying’/‘lobbying activities’ clearly and unambiguously defined in law/regulation to include any contact (written or oral communication, including electronic communication) with lobbying targets (see above) for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position?**

**0 – No definition/Wholly inadequate definition covering a small proportion of lobbying activity**

1 – Partially but inadequately/too narrowly defined

2 – Definition is clear and unambiguous and is comparable to the following international standard<sup>86</sup>: any contact (written or oral communication, including electronic communication) with lobbying targets for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position.

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<sup>86</sup> See Sunlight Foundation Lobbying Guidelines (<http://sunlightfoundation.com/blog/2013/12/03/announcing-sunlights-international-lobbying-guidelines/>), the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying (2014, forthcoming) and Council of Europe Parliamentary Assembly Recommendation 1908 (2010) on lobbying in a democratic society

# TRANSPARENCY

**Framing Questions to bear in mind when constructing the narrative for this section: To what extent does the public have sufficient knowledge of (a) who is lobbying public representatives (b) on what issues they are being lobbied (c) when and how they are being lobbied (d) how much is being spent in the process (e) what is the result of these lobbying efforts etc? Is the onus for transparency placed on both lobbyists and public officials/representatives?.**

## Access to Information

### **4. To what extent is there a comprehensive access to information law that guarantees the public's right to information and access to government data?**

0 - No law exists

1- Law exists but with inadequacies<sup>87</sup>

#### **2 – Comprehensive law in place**

There is a comprehensive access to information law but it does not relate to lobbying.

### **5. In practice, to what extent do citizens have reasonable access to information on public sector activities and government data?<sup>88</sup>**

0 - In practice, citizens face major problems in accessing information and/or frequent violations of the law

#### **1- In practice, access is not always straightforward/citizens often face obstacles to access**

2 – In practice, it is easy for citizens to access to information on public sector activities and government data

Access is not always straightforward because usually only state owned companies are obliged to disclose data concerning the fulfilment of public duties. Public duties, however, are not defined by the law. Also, people are not always informed about what information they can ask and from whom. In addition, the state offices can easily delay the answer.

### **6. Do access to information laws apply to lobbying data?**

#### **0 - No law exists/Law does not apply to lobbying data**

1- Some but not all lobbying data accessible under access to information laws

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<sup>87</sup> The most comprehensive attempt to rate the quality of access to information laws is the RTI Rating [http://www.rti-rating.org/country\\_data.php](http://www.rti-rating.org/country_data.php) which is not a perfect rating system but is worth consulting. For Bulgaria, France and Spain see also Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries [http://www.opensocietyfoundations.org/sites/default/files/transparency\\_20060928.pdf](http://www.opensocietyfoundations.org/sites/default/files/transparency_20060928.pdf). Further sources include National Integrity System Assessments & Global Integrity reports.

<sup>88</sup> A useful source for most countries will be the Open Data Barometer <http://www.opendataresearch.org/project/2013/odb>



## 2 – Access to information laws cover lobbying data

There is no specified term for „lobbying data“. There are no registries that cover lobbying data..

## Registration and Disclosure by Lobbyists

### 7. Is there a lobbyist register in the country?<sup>89</sup>

#### 0 - No register exists

1- Voluntary register exists/A register for a particular institution exists but does not apply to all lobbying activity

2 – A mandatory register exists

Lobby, lobbying, lobbyist are not defined, therefore no register exists. In house lobbyists are covered by partners' lists that state offices have separately put together but consultant lobbyists are not listed in any way.

### 8. Where a register exists, to what extent does it capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics in the country?

0 – Wholly inadequate scope covering only a small proportion of lobbyists

1 – Register captures may of the categories of lobbyists mentioned above but there are still some gaps

2 – The register clearly captures professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.

Check all categories covered by register:

- ☐ Professional lobbyist
- ☐ Private Sector Representatives
- ☐ Public affairs consultancies
- ☐ Representative from NGO
- ☐ Representative from a for-profit corporation
- ☐ Representative from industry/professional association

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<sup>89</sup> These questions refer in the main to a public lobbyist registry which would apply to a broad range of lobbying targets across a range of public institutions (see Definition questions for 'best practice' scope of institutions and targets that should be covered by a registry). Where individual institutions have adopted their own registries, these should be assessed using the framework but the narrative should explicitly state the limitations in scope of the institutions covered. Furthermore, in such cases, scoring should be discussed with TI-S, as there are comparability issues to consider.

- ☐ Trade unions
- ☐ Think tanks
- ☐ Law firms
- ☐ Faith-based organisations
- ☐ Academics
- ☐ Other, please specify \_\_\_\_\_

**9. To what extent are lobbyists required to register in a timely (within 10 days of beginning of lobbying activity) manner?**

0 - No compulsory registration

1 - Lobbyists required to register, but with significant time lag (more than 10 days)

2 – Lobbyists required to register within 10 days of beginning lobbying activity

**10. To what extent are lobbyists required to report regularly on their lobbying activities and expenditures in a timely manner (max real-time - min quarterly)?**

0 – No requirement to report/Reporting less often than annually

1 – Reporting requirement less often than quarterly but more often than annually

2 - Realtime - Quarterly reporting required

**11. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant personal and employment information: name of the organization (if applicable); address and contact information; names of all active lobbyists working on behalf of the organization (if applicable)?**

**0 - No information required to be publicly disclosed by lobbyists**

1 - Only basic information required to be publicly disclosed

2 - Sufficient information required to be publicly disclosed

The lobbyists have no requirements to publicly disclose any relevant information. However at least some NGOs (including trade associations) have published in which policy areas and consultation groups in the ministries they participate.

Check all categories covered by law:

- ☐ Name (of individual or organisation)
- ☐ Address and contact details
- ☐ Names of all active lobbyists working on behalf of organisation
- ☐ Other

**12. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on lobbying objectives and clients: name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied?**

**0 - No information required to be publicly disclosed by lobbyists**

1 - Only basic information required to be publicly disclosed

2 - Sufficient information required to be publicly disclosed

Check all categories covered by law:

- ☐ Name of the persons or organizations paying for the lobbying activities
- ☐ Names of the lobbyists' clients
- ☐ Specific subject matter lobbied
- ☐ Specific legislative proposals, bills, regulations, policies, programmes, grants, contributions or contracts sought

**13. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on who they are lobbying and what they are advocating: name and title of the public representative or public body with whom the lobbyist engaged and the date and type of such engagement as well as any information and/or supporting documentation communicated to policymakers?**

**0 – No requirement to report**

1 – Only basic information required to be publicly disclosed

2 - Sufficient information required to be publicly disclosed

Lobbyists are not required to disclose information on who they are lobbying and what they are advocating. However, larger NGOs engaged in advocacy and larger trade and industry organizations, unions, publish their goals, sometimes the names of the representatives.

Check all categories covered by law:

- ☐ The name of the public representative or public body with whom the lobbyist engaged
- ☐ Date of engagement
- ☐ Type of engagement (personal visit, accepted invitation to event, official hearing)
- ☐ Supporting documentation communicated to policymakers

**14. To what extent are lobbyists and organizations that lobby required to publicly disclose lobbying expenditures, including spending on efforts to support lobbying, loans, sponsorships, retainers, or the purchase of tickets for fundraising events?**

**0 - No information on expenditures required to be publicly disclosed by lobbyists**

- 1 - Only basic information on expenditures required to be publicly disclosed
- 2 - Sufficient information on expenditures required to be publicly disclosed

There is no obligation to publicly disclose any financial information on lobbying activities.

**15. To what extent are lobbyists and organizations that lobby required to publicly disclose political donations to parties and candidates?**

**0 - No requirement for public disclosure of political donations**

- 1 - Insufficient requirements for public disclosure of political donations
- 2 - Sufficient information on political donations required to be publicly disclosed

Lobbyists are not required to disclose political donations. However, private sources of funding must be reported quarterly by each party, also campaign costs that state the name, sum and date of the donation.

**16. To what extent are lobbyists required to publicly disclose 'in kind' contributions: In-kind contributions may include advertising, use of facilities, design and printing, donation of equipment, or the provision of board membership, employment or consultancy work for elected politicians or candidates for office?**

**0 - No information on 'in-kind' contributions required to be publicly disclosed by lobbyists**

- 1 - Insufficient information on 'in-kind' contributions required to be publicly disclosed by lobbyists
- 2 - Sufficient information on 'in-kind' contributions required to be publicly disclosed

In-kind contributions are also not required to be disclosed by lobbyists. However, any discounts and favours to a party need to be included in the online database for party funding like other donations.

**17. Is information disclosed by lobbyists publicly available online in a searchable machine-readable open-data format?**

**0 - Information not available online**

1 - Information available online but not in a searchable machine-readable open-data format (eg. Hand-written and scanned documents used)

2 - Information publicly available online in a searchable machine-readable open-data format

There is no database, therefore no online searchable machine-readable version of disclosed information exists.

**18. To what extent do the lobbyists register and provide sufficient/timely information in line with legislative obligations?**

**0 - Little or no compliance with legal obligations**

1 - Some lobbyists comply but there are many cases of non-compliance

2 - Broad compliance with legal obligations

There is no lobby registry in the country and thus information regarding legislative obligations is not provided.

## Oversight, Verification and Sanctions

**19. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing registration of lobbyists, offering guidance to individuals and organisations, monitoring returns, and investigating apparent breaches or anomalies (this includes powers to investigate complaints made but also to instigate investigations even where no complaint has been lodged)?**

**0 - No oversight entity exists**

1 - Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight

2 - A fully mandated and resourced oversight entity is in place

In relation to lobbying, there is no authority to oversee the activities of lobbyists. There is State Chancellery to coordinate inclusion practices, also each government office is responsible for the proper implementation of inclusion practices.

**20. To what extent is there a pro-active verification mechanism to audit disclosures and reports and detect anomalies?**

**0 - No verification mechanism exists**

1 - Verification exists but is inadequate

2 - Adequate verification mechanism exists

There is no mechanism to audit disclosure, reports, and detect anomalies in relation to lobbyists in place.

**21. In practice, to what extent are anomalies detected and followed up on by the oversight body?**

**0 - Little or no detection of anomalies**

1 - In general, the oversight body is somewhat active in following up on anomalies detected

2 - In general, the oversight body is active in following up on anomalies detected

**22. In practice, to what extent are anomalies detected and reported by others (e.g. investigative journalists) followed up on by the oversight body?**

0 - Little or no detection of anomalies

1 - In general, the oversight body is somewhat active in following up on anomalies detected and reported by others

**2 - In general, the oversight body is active in following up on anomalies detected and reported by others**

Media and some larger and more active civil society organizations do report anomalies related to lobbying. These are sometimes picked up by state authorities to check for unlawful activities (e.g. hidden party funding, undue influence)

**23. To what extent does the law provide for penalties for knowingly filing a false lobbying registration return or failure to file a return?**

**0 - No penalties exists**

1 - Penalties exist but they are inadequate

2 - Adequate penalties exist in law

**24. To what extent are penalties for knowingly filing a false return or failure to file a lobbying registration return implemented in practice?**

**0 - Never**



1 - Sometimes

2 - Always

**25. To what extent are oversight bodies required to publicly disclose the names of all individuals or organizations found to have violated lobbying rules or regulations?**

**0 - No requirement to publicly disclose names of those who violate rules**

1 - Disclosure of names of those who violate rules is at the discretion of the oversight body

2 - Mandatory disclosure of names of those who violate rules and details of the violation

**26. To what extent are the names of all individuals or organizations found to have violated lobbying rules or regulations published in practice?**

**0 - Never**

1 - Sometimes

2 - Always

If unethical lobbying results in corruption (influence peddling, self-dealing, etc.), the names are published. However, when there is a grey area of lobbying (legally correct but maybe not ethically), nothing can be published (because the area is unregulated).

## Legislative Footprint

**27. To what extent does the law require the publication of a 'Legislative Footprint' (document that details the time, event, person, and subject of legislators' and senior public officials'<sup>90</sup> contact with a stakeholder) as an annex to all legislative records?**

0 - No legislative footprint foreseen in law

**1 - Piecemeal requirements to indicate who has sought to influence legislative or policy making processes in place**

2 - The law requires publication of a legislative footprint as an annex to all legislative records

The explanatory memoranda should list consulted parties. There is no obligation to mention the time, events and specific people. In the parliamentary phase the times of committee meetings and readings are published, as well as written opinions by interest groups.

**28. In practice, do legislators/public officials publish a legislative footprint including details of the time, person, and subject of contacts with stakeholders?**

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<sup>90</sup> Generally senior public officials are considered as those in management positions with decision-making authority.

0 - No information on contacts publicly disclosed by legislators/public officials

**1 - Some but insufficient information on contacts publicly disclosed by legislators/public officials**

2 - Sufficient details of legislators' contact with stakeholders published

Partners are listed for more recent legislative acts (since 2011) and also their opinions in the annex details suggestions by state offices and interest groups. Contacts and detailed times of contact are not listed.

**29. To what extent are senior public officials required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?**

0 - No requirement to make documentation related to meetings public

1 - Piecemeal requirements to make documentation related to meetings public

2 - The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

**30. To what extent are public representatives (national and subnational legislators) required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?**

**0 - No requirement to make documentation related to meetings public**

1 - Piecemeal requirements to make documentation related to meetings public

2 - The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

There is absolutely no requirement to make documentation related to meetings in the governmental phase public. Committee meetings, readings in the parliament are announced, also participants and final decisions. Nothing else is published.

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## INTEGRITY

**Framing Questions to bear in mind when constructing the narrative for this section: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?.**

### Post-employment and Pre-employment Restrictions

**31. To what extent does the law provide proportionate moratoria or ‘cooling off periods’ before former members of parliament, senior public servants, ministers and advisers can work as lobbyists?**

**0 - No cooling off period in place**

1 - Less than 2 year cooling off period in place

2 - Cooling off period of at least 2 years in place

There are no requirements for public representatives to publish documentation related to meetings. However, parliament committees publish letters of opinions sent by the interest groups.

**32. To what extent do ‘cooling off periods’ for those who wish to work as lobbyists apply to former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers?**

**0 - No cooling off period in place**

1 - Cooling off period is in place but does not apply to all categories above

2 - Cooling off period applies to all categories above

There is no cooling off period for former members of parliament, senior public servants, ministers and advisers to work as a lobbyist unless they have exercised direct control (monitoring, audit) over the institutions they later want to work for. There the cooling-off period is 1 year.

Tick categories covered:

- ☐ Former members of parliament (national)
- ☐ Former members of parliament (sub-national)
- ☐ Former members of national Executive
- ☐ Former members of subnational Executives
- ☐ Advisors
- ☐ Senior Public Servants
- ☐ Senior staff of regulatory bodies
- ☐ Other

**33. In practice to what extent do former members of parliament, senior public servants, members of the executive and advisers move easily and directly into the lobbying sector?**

0 - There have been a significant number of cases of former members of parliament, senior public servants, ministers, ministerial advisers moving directly into the lobbying sector

**1 - There have been a number of cases of former members of parliament, senior public servants, ministers, ministerial advisers to moving directly into the lobbying sector**

2 - Former members of parliament, senior public servants, ministers, ministerial advisers rarely move directly into the lobbying sector, usually respecting a cooling off period

**34. To what extent does the law require former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers to receive permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?<sup>91</sup>**

**0 - No permission required**

1 - Insufficient Restrictions (Insufficient coverage)

2 - Permission required and applies to all above-mentioned categories

There is no requirement for permission to move from the governmental sector to the lobby sector.

**35. In practice, to what extent do former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers seek permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?<sup>92</sup>**

**0 - Never**

1 - Sometimes

2 - Always

As there is no requirement to seek for permission, former MPs, members of the executive and advisers never seek permission from an ethics office.

**36. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing post and pre-employment restrictions, offering guidance to individuals and organisations, and investigating apparent breaches or anomalies?**

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<sup>91</sup> A good source of information for this indicator is the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying, p.59-62

<sup>92</sup> A good source of information for this indicator is the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying, p.63

## **0 - No oversight entity exists**

1 - Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight

2 - A fully mandated and well-resourced oversight entity is in place

There is no oversight entity charged with managing post and pre-employment restrictions between government authorities and the lobby sector. It relies on the best judgment of the official to decide whether they can accept a position.

## Code of Ethics for public sector employees

### **37. To what extent is ethical/responsible lobbying addressed in public sector codes of conduct (e.g. do they specify standards on how public officials should conduct their communication with interest groups, specify a duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors?)**

0 - No code of conduct exists for public officials and/or codes of conduct do not reflect ethical lobbying guidelines

#### **1 - Codes of conduct address ethical lobbying in a piecemeal or insufficient manner**

2 - Codes of conduct comprehensively address ethical lobbying

There is a general civil servants' code of ethics that requires civil servants to act in public interest and not pursue personal or narrow goals. They are also required to report any corrupt activities. However, lobbying is not mentioned anywhere thus interpretation of these ethical norms in relation to lobbying vary.

### **38. To what extent do public sector codes of conduct specify standards on how public officials should deal with conflicts of interest issues?**

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect conflict of interest issues

#### **1 - Codes of conduct address conflict of interest issues in a piecemeal or insufficient manner**

2 - Codes of conduct comprehensively address conflict of interest issues

Conflicts of interests are prohibited, however the term is not clearly defined and thus leaves room for interpretation.

### **39. To what extent do public sector codes of conduct specify standards on how public officials should deal with gifts and hospitality issues?**

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect gifts and hospitality issues

**1 - Codes of conduct address reflect gifts and hospitality issues in a piecemeal or insufficient manner**

**2 - Codes of conduct comprehensively address reflect gifts and hospitality issues**

Gifts that exceed what is considered common courtesy are not allowed to be accepted. Any gifts that exceed this limit are to be declared and reported so the organization managers can decide how to proceed. Hospitality issues are not regulated.

**40. To what extent do public sector codes of conduct deal comprehensively with interest and asset declaration issues?**

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect asset declaration issues

1 - Codes of conduct address asset declaration issues in a piecemeal or insufficient manner

**2 - Codes of conduct comprehensively address asset declaration issues**

There is a specific obligation for officials to declare their interests (assets). Over 7000 officials have this obligation, therefore the requirement is strict and comprehensive.

**41. To what extent is there a complaint mechanism allowing any public official or citizen to report violations of the public sector code of conduct?**

0 - No complaints mechanism exists

1 - Complaints mechanism exists but is limited in scope

**2 - Robust complaints mechanism exists**

Any citizen can report any suspicious activities to the police. Officials have a requirement to report any corruption related activity.

**42. To what extent are there training and awareness-raising programmes for public officials on integrity issues, including lobbying rules and guidelines?**

0 - No training/awareness-raising programmes exist on integrity issues

**1 - Piecemeal and irregular approach to training/awareness-raising on integrity issues**

**2 - Comprehensive and regular training/awareness-raising on integrity issues**

The Ministry of Finance is responsible for training and awareness-raising programmes that concern civil service ethics. The Ministry of Justice carries out trainings in relation to anti-corruption. However, lobbying is not addressed and the topics are more general (ethics) or more specific (corruption) and thus the area in between (lobbying) is not sufficiently addressed.

## Code of ethics for Lobbyists

**43. To what extent is there a statutory code of conduct for lobbyists including clear sanctions for failure to adhere to lobbying regulations?**

**0 - No code of conduct exists**

1 - Code of conduct exists but it is inadequate

2 - Statutory code of conduct including sanctions exists

There is no statutory code of conduct, clear sanctions or lobbying regulations.

**44. In practice, to what extent are sanctions applied for failure to adhere to lobbying regulations?**

**0 - Sanctions rarely/never applied**

1 - Sanctions applied, but inconsistently

2 - Sanctions consistently applied

No regulations exist for lobbying, thus no sanctions apply unless lobbying turns into corruption (influence peddling, self-dealing, revolving door, ancillary activities, etc.)

**45. To what extent does the law and/or the lobbyists' code of conduct require disclosure regarding and provide restrictions on lobbyists being hired to fill a regulatory, financial decision-making or advisory post in government?**

**0 - No disclosure requirements or restrictions in place**

1 - Insufficient Restrictions and disclosure requirements (e.g. lobbyist must deregister but no further restrictions)

2 - Sufficient disclosure requirements and restrictions in place (e.g. potential veto of appointment and/or restriction in types of decisions the employee would be involved in making)

There is no requirement for lobbyists to provide disclosure when hired to fill a post in government.

**46. To what extent does the law and/or codes of conduct prohibit simultaneous employment as a lobbyist and a public official?**

**0 - No mention of prohibition of simultaneous employment as a lobbyist and a public official**



1 - Law/Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official

2 - Law/Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

There is no mention in the law/ codes of conduct of prohibiting a simultaneous employment as a lobbyist and as a public official. However, there are restrictions to what activities (not to distribute public work related know-how) the public official can engage in besides working as a civil servant.

**47. To what extent is there a complaint mechanism allowing any policy-maker or citizen to report violations of the lobbying regulations?**

**0 - No complaints mechanism exists**

1 - Complaints mechanism exists but is limited in scope

2 - Comprehensive complaints mechanism exists

As there is no single binding code of conduct for lobbyists, the complaint mechanism is lacking. The media has brought up problematic cases of lobbying but it is not connected to any code of conduct.

## Self-regulatory Codes of Ethics for Lobbyists

**48. To what extent are there self-regulatory code(s) of ethics managed by professional association(s) for lobbyists or by companies themselves?\***

0 - No code of ethics exists

**1 - Code of ethics exists but it is inadequate**

2 - Code of ethics including sanctions exists

The Bar Association and PR specialists have an ethics code but it doesn't specifically concentrate on lobbying. NGOs also have recommended practices on how to represent interests. Businesses, trade & industry organizations and unions do not have written codes.

**49. To what extent do existing self-regulatory codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations?\***<sup>93</sup>

0 - Codes do not provide any behavioural principles that steer lobbyists away from unethical situations

**1 - Codes mention behavioural principles but are vague and/or incomplete**

2 - Codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations

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<sup>93</sup> Based on OECD (2009) Lobbyists, government and public trust: Promoting integrity by self-regulation, p.33 <http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=gov/pgc%282009%299>

Check all categories covered by codes:

- ☒ Requiring honesty and accuracy of information provided to public officials
- ☐ Requiring early disclosure to public officials of the identity of client and interests being represented
- ☐ Refraining from using information obtained in violation of the law
- ☐ Refraining from encouraging public officials to violate the law
- ☐ Banning gifts above a de minimis value, fees, employment or any other compensation from a lobbyist to a public official.
- ☐ Requiring speedy disclosure of any conflict of interest and management of such conflicts of interest or recusal
- ☐ Making ethics training a condition of membership in the association.
- ☐ Establishing a reasonably independent mechanism for monitoring and enforcing compliance to the ethics code.
- ☐ Others, please specify \_\_\_\_\_

**50. To what extent do existing self-regulatory codes require lobbyists to publicly disclose the identity of who they are representing and what they are lobbying for?\***

0 - No information required to be publicly disclosed by lobbyists

**1 - Only basic information required to be publicly disclosed and/or the information is not public**

2 - Sufficient information required to be publicly disclosed (name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied)

The codes do not require lobbyists to publicly disclose the identity of who they are representing and what they are lobbying for. However, the NGO code makes it desirable for organizations to clearly and openly represent themselves.

**51. To what extent do existing self-regulatory codes prohibit simultaneous employment as a lobbyist and a public official?\***

**0 - No mention of prohibition of simultaneous employment as a lobbyist and a public official**

1 - Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official

2 - Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

Simultaneous employment as a lobbyist and a public official is not prohibited.

**52. To what extent is there a complaint mechanism allowing any member or non-member of the association to report violations of the lobbying code of ethics?\***

0 - No complaints mechanism exists

**1 - Complaints mechanism exists but is limited in scope**

2 - Robust complaints mechanism exists

No complaint mechanism for non-members exists, otherwise some monitoring of members' activities exists.

**53. To what extent are there reasonably independent mechanisms for the monitoring and enforcement of compliance with the ethics code(s)?\***

**0 - No monitoring and enforcement mechanisms exists**

1 – The monitoring mechanism exists but is not independent, or is limited in scope

2 – A robust and reasonably independent monitoring and enforcement mechanism exists

It seems, there is no monitoring and enforcement of ethics codes principles. Although, in some cases there are some ad hoc mechanisms in place (Bar Association).

## EQUALITY OF ACCESS – THE LEVEL PLAYING FIELD

**Framing Questions to bear in mind when constructing the narrative for this section: Are there sufficient spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests?.**

### Consultation and Public Participation in Decision-making

**54. To what extent is the Parliament required by law to allow citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input?**

0 - The legal framework does not consider the provision of input to the legislative process.

**1 - The legal framework allows for citizens and the public (corporations, civic organizations) to provide input to parliament, but it does not make any provisions regarding equal access, sufficient notice and time to receive this input**

2 - Parliament is required by law to allow the citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input.

There is an unwritten practice in the Parliament to include interest groups to provide input regarding items under consideration. The practice differs per committee but the rules are not formalized thus there are no requirements for equal access.

**55. To what extent does the legal framework lay out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies?**

0 - There are no procedures and rules for participation in policy discussions and decision making processes, or they are ad hoc to each policy and decision making process.

**1 - There are some provisions for making public the means of participation in policy, but they are not specific, or they are relegated to policy directives.**

2 - Yes, there is a specific regulatory framework that clearly lays out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies.

There are laws (Good Practice for Preparing Legislation and Technical Rules and Inclusion Code of Practice) that make it highly recommendable to consult with groups that are affected by legislation under consideration, discussion. The time frames, rules for participation are to be interpreted by the officials to allow reasonable access and time. There is always a public notice when a legislative draft is prepared and written and there is possibility to comment.

**56. To what extent does the legal framework explicitly require public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes?**

0- There are no provisions regarding the consultation of groups and stakeholders affected by policy.

**1- Some provisions regarding the equal participation of affected groups exist, but they are not specific, or they are relegated to policy directives.**

2- The legal framework explicitly requires public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes.

It is highly recommended to include participants from all relevant interest groups in the decision-making process. In practice, however, the laws are not explicit in requiring this.

**57. In practice, which of the following forms of public participation are routinely used?<sup>94</sup>**

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<sup>94</sup> A good source of information for indicators 56-58 is the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying, p. 20. The indicator questions draw heavily on the OECD draft report.

- ☒ Informal consultation with selected groups
- ☒ Broad circulation of proposals for comment
- ☐ Public notice and calling for comment
- ☐ Public meeting
- ☒ Posting proposals online
- ☒ Advisory/Expert Groups
- ☒ Preparatory Public Commission/committee
- ☐ Others, please specify \_\_\_\_\_

**58. In practice, to what extent are consultations open to participation from any member of the public?**

0 - Consultations are rarely/never open to any member of the public

**1 - Consultations are sometimes but not always open to any member of the public**

2 - Consultations are generally open to any member of the public

As work groups are targeted to specific stakeholders and consultations require know-how on accessing relevant policy documents online, it can be difficult for any member of the public to participate. However, the plans and drafts are published in an online system, so a citizen could always contact the relevant ministry to present their opinions.

**59. In practice, to what extent are the views of participants in the consultation process made public?**

0 - The views of participants in the consultation process are rarely/never made public

**1 - The views of participants in the consultation process are sometimes but not always made public**

2 - The views of participants in the consultation process are always made public

The views of government offices and consulted interest groups are made public after the publication of first drafts. However, the expert group discussions before first drafts are written remain hidden from the public.

**60. To what extent does the legal framework explicitly require public authorities to provide a detailed justification on why and how various submissions have or have not been taken into account in policy and decision-making processes after consultation?**

0 - There are no provisions requiring public authorities to explain whether and how they have considered participation, or there is no participation provided for.

**1 - There are some provisions requiring public authorities to explain whether and how they have considered submissions, but they are not specific, or they are relegated to policy directives.**

2 - The law explicitly requires public authorities to provide a detailed justification on why and how submissions have or have not been taken into account in policy and decision-making processes after consultation.

The legal framework does require public authorities to provide justifications on why and how various submissions have or have not been taken into account. Usually they document opinions of different state offices but also non-governmental entities. The quality of explanations differs across state offices which means there is room for improvement.

## Advisory/Expert Group Composition<sup>95</sup>

**61. To what extent is there a legal obligation to have a balanced composition (between private sector and civil society representatives) of advisory/expert groups?**

**0 - No requirement to have balanced composition**

2 - The law requires meaningful balanced composition between private sector and civil society representatives

Advisory groups are composed based on what the responsible official thinks accounts for balanced composition.

**62. In practice, to what extent is there a balanced composition (between private sector and civil society representatives) of advisory/expert groups?**

0 - Advisory groups are generally biased towards particular interests

**1 - Advisory groups are sometimes balanced, sometimes not**

2 - There is a meaningful balance between private sector and civil society representatives on advisory groups

Both private sector and civil society representatives are included where relevant though sometimes it is difficult to include groups that represent consumers, or general public interest.

**63. To what extent are lobbyists prohibited from sitting on advisory/expert groups in a personal capacity?**

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<sup>95</sup> Following the OECD definition, here an advisory or expert group refers to any committee, board, commission, council, conference, panel, task force or any subcommittee set up by government (executive, legislative or judicial branch) or any of its subgroups to provide it with advice, expertise or recommendations. In some countries, advisory groups will be regulated differently depending on which sector/institution is concerned. If this is the case, we suggest the focus should be on parliamentary advisory group involved in the process of legislating. A good source of information for this set of indicators is the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying, p. 66-68. The indicator questions draw heavily on the OECD draft report.

**0 - Lobbyists can freely sit on advisory groups in a personal capacity**

2 - Lobbyists are prohibited from sitting on advisory/expert groups in a personal capacity

There is no regulation on whether lobbyists can sit on advisory groups in personal capacity but generally it is disapproved and thus not practiced.

**64. To what extent are corporate executives prohibited from sitting on advisory groups in a personal capacity?**

**0 - Corporate executives can freely sit on advisory groups in a personal capacity**

2 - Corporate executives are prohibited from sitting on advisory/expert groups in a personal capacity

Corporate executives are not prohibited from sitting on advisory groups, however it is not a common practice as the inclusion practices require that wider interests are represented.

**65. With regard to advisory/expert groups, to what extent is membership information, agendas, minutes and participants' submissions required to be made public?**

0 - Information not publicly available

**1 - Information available, but only on request**

2 - Information publicly available online or in print form

In relation to expert/ advisory groups in the executive phase, information on participants should be made public, in practice it varies. Agendas, minutes are not published. Formal submissions sent after first drafts and official written suggestions sent to parliamentary committees are public.



# ANNEX 2: METHODOLOGY

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This report is part of the European Commission funded 'Lifting the Lid on Lobbying' project, which sees 18 European countries assess the situation with regard to lobbying and its regulation in their country.<sup>96</sup> The report aims to:

- Assess existing lobbying regulations, policies and practices in Estonia
- Compile evidence about corruption risks and incidences related to lack of lobbying control
- Highlight promising practice around lobbying found in Estonia
- Provide recommendations and solutions for decision-makers and interest representatives in the public and private sector.

## DEFINITIONS

The definition of lobbying for this project is “**Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making carried out by or on behalf of any organized group**”.<sup>97</sup>

The term, “Lobbyists”, can include not only professional lobbyists, but private sector representatives (in-house lobbyists), public affairs consultancies, representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organizations and academics.<sup>98</sup>

We believe that regulation should capture all who lobby professionally and our definition purposefully excludes individual citizens lobbying on their own behalf as this is considered part of a normal healthy democratic process and not something which should be unduly regulated.

## DATA COLLECTION AND VALIDATION

The research was carried out by Hanna Jemmer during the period from March to July 2014. When conducting the research, the researcher drew on numerous secondary sources such as the *Vigeo*

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<sup>96</sup> The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

<sup>97</sup> This definitions draws heavily on the Sunlight Foundation Lobbying Guidelines (<http://sunlightfoundation.com/blog/2013/12/03/announcing-sunlights-international-lobbying-guidelines/>), the OECD Draft Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying (2014, forthcoming) and Council of Europe Parliamentary Assembly Recommendation 1908 (2010) on lobbying in a democratic society.

<sup>98</sup> See Transparency International (2012) Regional Policy Paper 'Lobbying in the European Union: Levelling the Playing Field', accessible online at [http://www.transparency.de/fileadmin/pdfs/Themen/Politik/ENIS\\_Regional\\_Policy\\_Paper\\_Lobbying.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Politik/ENIS_Regional_Policy_Paper_Lobbying.pdf)

study on transparency and integrity of lobbying,<sup>99</sup> *Burson-Marsteller's European Lobbying Survey*,<sup>100</sup> GRECO's 4<sup>th</sup> evaluation round on preventing corruption in Estonia<sup>101</sup> and Ott Lumi's paper on lobbying in Estonia.<sup>102</sup>

This secondary data was complemented by primary data obtained from 24 in-depth interviews with policy-makers (and former policy-makers), lobbyists and experts in the field of lobbying (private enterprises, industry and commerce federations, unions, NGOs, think tanks, law firms, and public relations specialists). Interviews were particularly useful for finding out additional information not on the public record, and for gathering evidence on the implementation of regulations and more generally, what is happening in practice. A list of interviewees is included in Annex 3 of this report. In one case, anonymity was requested by an interviewee because of the sensitivity of the information and this was granted. Additionally, in Estonia the Ministry of Justice (legal aspects of inclusion), Ministry of Finance (civil service ethics) and Ministry of Social Affairs were consulted. With this method it was possible to map the lobbying landscape and more specifically, to discover and analyse problems, and suggest solutions.

The research was primarily qualitative however, a quantitative element was also included in order to evaluate the robustness and efficacy of national regulations and self-regulation mechanisms around lobbying and to allow for some comparison across the countries.<sup>103</sup> To this end, a set of 65 indicators were scored by the researcher, based on the qualitative information gathered through the research. A 3-point scale was used to score the indicators.<sup>104</sup> In order to calculate the overall scores for the country, and for the three dimensions of Transparency, Integrity and Equality of Access, a simple aggregation was performed. Specifically, a total score (as a percentage) was calculated for 10 sub-dimensions (Access to information, Lobbying registration systems, Verification and oversight mechanisms, Legislative footprint, Pre- and post-employment restrictions, Codes of conduct/ethics for policymakers, Codes of conduct/ethics for lobbyists, Self-regulation of the industry, Consultation and participation mechanisms in public-decision-making and Expert and advisory group composition). A simple average was then calculated to provide an overall score for the three key dimensions of Transparency, Integrity and Equality of Access. The overall country score was calculated by averaging these three dimensions. This report provides a detailed look at the lobbying landscape in Estonia and highlights key gaps and deficiencies in the approach to regulating lobbying, which are leaving society exposed to the risks of unclear and unfair decisions being taken by public officials and representatives in the name of the people. Our aim is to bring attention to the issue and promote positive change. To this end, the report puts forward a set of key recommendations and solutions suggesting how the weaknesses identified should be tackled.

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<sup>99</sup> Vigeo (2013). Transparency and Integrity of Lobbying: A new challenge for CSR: <http://www.vigeo.com/csr-rating-agency/en/etude-lobbying-062013>

<sup>100</sup> Burson-Marsteller (2013). A Guide to Effective Lobbying: the View of Policy-Makers. <http://lobbyingsurvey.burson-marsteller.eu/>

<sup>101</sup> GRECO (2013). 4th Evaluation Round Report: Estonia, Council of Europe, [http://www.coe.int/t/dghl/monitoring/greco/news/news\(20130108\)eval4estonia\\_EN.asp](http://www.coe.int/t/dghl/monitoring/greco/news/news(20130108)eval4estonia_EN.asp)

<sup>102</sup> Lumi, O. (2014) A comparative insight into the status of the lobbying regulation debate in Estonia, *Journal of Public Affairs* 14(1), 44-53

<sup>103</sup> A regional report compiling and comparing the national results is foreseen for publication in early 2015.

<sup>104</sup> In a limited number of cases, where no logical intermediary position exists, only a minimum value of 0 and a maximum value of 2 are offered.

# ANNEX 3: LIST OF INTERVIEWS

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1. Aivar Hundimägi (2014) Journalist (Äripäev) on lobbying, 23.04
2. Allar Jõks (2014) A lawyer (Sorainen) and former Chancellor of Justice on lobbying, 3.06
3. Gea Otsa (2014) PR and inclusion practices specialist (Ministry of Economic affairs) on lobbying and inclusion practices in Estonia, 2.06
4. Indrek Raudjalg (2014) PR specialist (Hamburg & Partnerid) on lobbying, 7.05
5. Indrek Raudne (2014) Former politician, a current businessman on lobbying, 6.05
6. Jaanus Tehver (2014) Lawyer (Tehver & Partnerid) on lobbying in Estonia, 28.03
7. Joonas Kulli (2014) Business lobbyist (Credit Star Group) on lobbying, 16.05
8. Kaido Rosin (2014) Advisor in the Parliament's economic affairs committee, 17.04
9. Kristen Kanarik (2014) Advisor to the current minister of justice on lobbying, 11.04
10. Kristen Michal (2014) Former minister of justice, current Reform Party faction leader in Parliament on lobbying, 30.04
11. Kristina Narusk (2014) Lobbyist (Estonian Service Industry Association) on lobbying in Estonia, 16.04
12. Maiu Uus (2014) Think tank (PRAXIS) on lobbying and inclusion practices in Estonia, 29.05
13. Margus Tsahkna (2014) A former social affairs committee head MP on lobbying, 8.05
14. Maris Jesse (2014) Director of the National Institute for Health Development on lobbying, 15.05
15. Marko Udras (2014) Lobbyist (Estonian Chamber of Commerce and Industry) on lobbying, 30.04
16. Neve Hõbemägi (2014) Former lobbyist, current government relations specialist (banking sector, medicals sector) on lobbying in Estonia, 26.05
17. Ott Lumi (2014) PR specialist (Meta Advisory) on lobbying in Estonia, 9.04
18. Raimo Poom (2014) Journalist (Eesti Päevaleht) on lobbying in Estonia, 8.07
19. Rasmus Pedanik (2014) Former political advisor (Ministry of Interior Affairs) on lobbying in Estonia, 4.04
20. Tarmo Noop (2014) CEO of A. LeCoq and former CEO of Beer Producers' Association of Estonia on lobbying in Estonia, 23.05

21. Tarmo Vahter (2014) Journalist (Eesti Ekspress) on lobbying in Estonia, 8.07
22. Toomas Tamsar (2014) CEO of Estonian Employers' Confederation on lobbying, 22.05
23. Urmo Kübar (2014) NGO (Network of Estonian Non-profit Organizations) on lobbying, 7.04



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