Towards transparent and democratic lobbying

Lobbying is playing an increasingly important role in the public decision making process. Clear and transparent lobbying practices can provide decision makers with the information needed to understand complex issues. However, non-regulated lobbying activities can lead to certain abuses, such as decisions based on particular private interests rather than the general public interest, undue costs for the community, as well as loss in public confidence in elected officials and institutions.

Lobbying should be regulated in order to prevent possible abuses — opacity, conflicts of interest, the revolving door, and influence peddling. For 4 years, Transparency International France has campaigned for rules to be adopted not only for lobbyists, but also for all actors involved in public policy making.
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Definition of lobbying

In France, lobbying (or the main activity of interest groups) is neither defined nor regulated. Lobbying concerns many, therefore it is useful to develop a clear definition of what is meant by the term "lobbying" as well as the terms lobbyists and policy makers.

Transparency International France proposes to use the definition provided by Quebec, which defines lobbying as "any communication, written or oral, between a representative or an interest group and a public decision maker in order to influence decision-making.”

Lobbying regulation: best practices

Quebec has the most advanced legislation on lobbying. The Law on Transparency and Ethics in Lobbying was voted in 2002, which established a Commissioner in charge of lobbying. The Commissioner must be appointed by at least two thirds of the National Assembly.

The Commissioner’s role is to enforce lobbying regulation in all public institutions (the Parliament, ministries, departments, municipalities ...). He/she can conduct investigations and, in case of non-compliance, impose disciplinary measures and sanctions. The Commissioner recently stated at a conference on parliamentary ethics organized on October 25, 2012 by Transparency France, that his role is also to promote transparency and good practice to all stakeholders.

Under Quebec lobbying legislation, lobbyists are required to register in a public register. This register has more than 3000 members and is steadily increasing. Lobbyists must declare their lobbying activities, specify the people and organizations they wish to meet and the positions they intend to defend.

The law also regulates the passage of those holding public office into the private sector. For a period of 2 years after their mandate, these individuals are not allowed to carry out any lobbying activities with institutions where they may have worked or with which they were connected.

1. The current situation of lobbying regulation in France

Lobbying regulation in France is behind compared to the situation in North America. This is also the case for several other European countries. Since 2009, only a "normative embryo" exists in the French Parliament, where both Houses have chosen to use separate measures. Registers for interest representatives and codes of conduct have been implemented in both the National Assembly and the Senate. In exchange for their registration, interest representatives are given a badge, which grants them access to certain rooms of the Assembly and the Senate. According to one lobbyist, the badges allow them to move freely throughout the premises. In addition, lobbyists are aware that a badge is not necessary for them to set up meetings or contact a Parliament member.

Reports published in 2010 and 2011 by Transparency International France indicate that existing measures are far from satisfactory: the number of registered interest representatives is low, operation of the registry is not transparent, parliamentarians are not aware of the registry’s existence, there is an absence of rules and sanctions, etc. More concerning is the fact that lobbying regulations have been reduced to an issue of access and security, rather than being based on the transparency of the public decision making process. At least two major shortcomings should be emphasized: existing regulations only target lobbyists, not policy makers. In addition, in the case where no physical meeting has taken place, regulations do not provide rules for the transparency of the information and arguments provided to parliamentarians.

Current measures, therefore, do not provide a clear idea of the extent that parliamentarians are being influenced, nor of the human and financial resources invested by lobbyists.

Moralization of public life and lobbying regulation — During the last presidential campaign, in response to one of our seven proposals to strengthen the ethics of public life, François Hollande pledged to "regulate lobbying at all levels of the public decision-making process and facilitate the participation of citizens and civil society.”

A first step was taken with the signing of a code of ethics at the first Council of Ministers. The charter emphasizes the principles of consultation and transparency. It states that institutional partners and the general public should be consulted via the Internet. The principal of Open Data also became a rule of government. While remaining attentive to its implementation, Transparency International France welcomed the adoption of this charter. However, it must be stressed that the charter has no legal value, control procedures were not specified, and finally, it does not apply to Ministry staff (or under unknown conditions). The same rules should be applied to all relevant individuals who participate in the public policy making process.

Transparency International France regretted that lobbying regulation was not included in the Commission on the reform and ethics of public life (or the Jospin Commission)'s mission statement, which was created last July. As might be expected, the statement does not significantly address the issue of lobbying. The Jospin Commission submitted it to the government on November 9. An entire chapter is devoted to some strong proposals on the prevention of conflicts of interests. However, only a single vague article refers to lobbying.
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This topic is as important in restoring public confidence as in preventing conflicts of interest, therefore Transparency International France calls upon the President to maintain his commitments made during his campaign. To create a foundation of trust in public decision-making, an ambitious framework should be adopted for policy makers and lobbyists, whether they are acting on their own behalf or on the behalf of third parties. This framework should guarantee equitable representation and access for economic, social, environmental and cultural interests in public debates. It should also ensure the integrity of exchanges and the traceability of the public decision-making process.

The term “policy makers” refers to all persons involved in the decision-making process or in the development of public policies. Therefore, this includes elected officials (local and national) and their staff, members of government and their advisors, advisors to the President of the Republic, members of senior administrative management, staff of public institutions who may play a role in the decision-making process (this includes independent administrative authorities) and, finally, staff working in the public expertise sector.

Why should interactions between lobbyists and policy makers be regulated? — Lobbying regulation must meet several objectives, which include ensuring that policy makers have equal access to information as well as guaranteeing the integrity of exchanges and the traceability of public decisions. Once these objectives are met, lobbying contributes to democratic practices and processes. Policy makers may not have extensive knowledge on all subjects - and this is especially true in the context of legislative inflation. Lobbyists can provide key information and shed light on complex issues, thereby efficiently contributing to informed public policy decisions.

Fairness. If lobbyists aim to protect specific interests or promote certain causes, decision-makers must, for their part, seek a balanced way to consult the various interest groups involved in a particular debate. This allows policy makers to benefit from differing views, even contradictory ones. Furthermore, policy makers must arbitrate between the different positions presented and base their decisions with the general interest in mind. Ensuring the equity of access to policy makers contributes towards a decision that is not the result of particular interests.

Integrity. For Transparency International France, the lobbyist exists de facto and is not reprehensible in itself. However, a number of recent scandals, for example within the European Parliament, indicate that abuses are possible. Therefore, by ensuring the integrity of lobbying, certain negative consequences (lack of transparency, conflicts of interest, revolving door, and influence peddling) can be avoided.

2. Rules that need to be defined for public policy makers

The term “policy makers” refers to all persons involved in the decision-making process or in the development of public policies. Therefore, this includes elected officials (local and national) and their staff, members of government and their advisors, advisors to the President of the Republic, members of senior administrative management, staff of public institutions who may play a role in the decision-making process (this includes independent administrative authorities) and, finally, staff working in the public expertise sector.

In 2010, Slovenia adopted a measure calling for more complete lobbying regulation. The Law for the Prevention of Corruption and Integrity established a mandatory register for lobbyists. The register contains the lobbyist’s name, tax identification number, address, contact information of their company, contact information of their employer or the interest group they represent and the domain of lobbying activity. Apart from the tax identification number, all information is published and made available on the Internet.

The law also stipulates that policy makers must check that lobbyists are registered before they can be consulted. When contacted by a lobbyist, policy makers must also inform the relevant authorities within a period three days. During the lobbying process, policy makers should be in regular contact with the Commission for the Prevention of Corruption regarding the progress of their work.

Penalties also exist for non-compliance with lobbying regulations. These sanctions include the prohibition of lobbying in a certain area or a temporary ban on lobbying (min. 3 months max. 24 months).
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Existing measures in the Parliament

Although the National Assembly and the Senate regularly work together, they preferred to adopt two separate measures on lobbying.

On 2 July 2009, the Office of the National Assembly adopted a policy initiative entitled, "the rules of transparency and ethics applicable to the activities of interest representatives in the National Assembly." The initiative came into force in October 2009. It established a public register with voluntary registration, provides lobbyists access to certain rooms of the Assembly and a code of conduct.

The Senate adopted "a first set of rules to better regulate the activity of interest groups" in October 2009. It entered into force on 1 January 2010. These rules are essentially the same as those found in the Assembly, with the exception of the register, which is theoretically required. In addition, lobbyists are required to declare any foreign travel invitation proposed to Senators, their staff and officials. However, in the 3 years that the measure has existed, only 2 invitations have been made public.

Enrollment in the registers is low in both the National Assembly and the Senate. In December 2012, 173 lobbyists were registered with National Assembly and 115 with the Senate. These are very low figures considering the 4635 organizations that were auditioned between June 2007 and June 2010 (figures come from a study conducted by Transparency International France and Regards Citoyens in March 2011).

Two reasons explain the low registration numbers. Enrolling in the register - even that of the Senate – is not vital for lobbyists, as it is still possible for them to meet with parliamentarians simply by scheduling a meeting. In addition, registration is limited to one person per organization, which does not allow several lobbyists of the same company to register individually. Under these conditions, the very purpose of the register is undermined – i.e. to make transparent those requesting access to parliamentarians.

Traceability. As public decisions are made on behalf of citizens, they must be able to understand how their representatives base their decisions: who were the people and organizations they met and what were the positions or arguments that were presented? How was the consultation process of the different interest groups carried out? Traceability strengthens the legitimacy and credibility of actions made within the public domain.

However, the situation as it stands today does not guarantee the above principles. For the moment, no institution has put in place a system that grants equitable access to policy makers to the different interest groups involved. For example, in terms of traceability, the study conducted in 2011 by Transparency International France and Regards Citoyens, found that only 38% of reports published by the National Assembly between July 2007 and July 2010 contained a list of people and organizations interviewed by policy makers.

What are our recommendations for policy makers? — The issues surrounding lobbying regulation should not only be addressed to the Parliament, nor should it be restricted within the physical confines of the Parliament. This is because lobbying activities carried out by interest groups take place throughout the decision-making process: during the preparation phase of texts, during the regulatory phase and, of course, during the discussions at the Parliament. Ministry cabinets are prime targets for lobbyists as the majority of laws originate at the Elysee. In addition to the Executive and the Parliament, lobbyists also interact with independent administrative authorities (AAI) and local authorities, which also play an important role in public policy making.

Due to the plurality of actors involved and the fact that lobbying activities take place throughout the decision-making process, Transparency International France proposes that a unified system is established to regulate the public decision making process in France.

Traceability of the public decision making process

- Collective footprint: the list of all the individuals and organizations consulted during the drafting of a report or preparation of a text should be included in the annexes of these texts or in legislative records available online,
- Individual footprint: the names of people and organizations consulted by policy makers should be made publically available. This could be done for example by posting their agendas online,
- Post any positions, arguments, and information communicated to policy makers,
- Ensure that all votes made in Parliament are transparent and adhere to the delegations of votes.

Rules regarding the responsibility of policy makers

- Precise declarations of interests should be made public, and include details all offices and positions currently held or held in the past five years, income and benefits received from these activities, as well as the activities of spouses,
- Policy makers should not be able to accept gifts, receive special treatment or any monetary incentives that may influence the decision-making process,
- The application of Article 432-13 of the Penal Code should be upheld, which prohibits the “revolving door” and extends this principal to all decision makers.

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Risks regarding the responsibility of parliamentarians
- Increase the transparency of trips taken by members of Parliament and limit their participation to 3 working groups and 1 friendship group. Publish the summary reports of group meetings on the website,
- Increase the transparency of parliamentary clubs by requiring them to provide information on their activities,
- Make public the list of gifts superior to € 150, which parliamentarians should declare to the compliance officer of the National Assembly and the Office of the Senate. Any holiday or trip invitations received from a natural or legal person should also be declared,
- Strengthen the prevention of conflicts of interests by prohibiting any other professional and/or paid activity during the parliamentary term (except when there are exceptions stipulated in legislation concerning certain professions, i.e. medical professions which require a continuity of practice). Any management or administration activities in a public organization or private company should also be prohibited.

Risks regarding parliamentary staff
- Create a status for parliamentary staff, applying the same rules of conduct as members of Parliament,
- A list of parliamentary staff, holding contracts and paid with public funds should be made available. They should be prohibited from being paid for lobbying or consulting activities,
- Prohibit the provision of parliamentary staff badges by a parliamentarian, to any person carrying out activities directly related to lobbying,
- As an employer, parliamentarians hold the responsibility of ensuring that their staff respects the application of these rules.

Organization of parliamentary seminars
- The principle of a Parliamentary Seminar should be defined,
- Sponsorship or funding from interest groups, who are concerned by current public debates should not be accepted,
- The transparency of seminars should be improved by creating a webpage dedicated especially to this activity: the names of organizers and legislators who sponsored the event, and the sources and methods of financing should be specified.

Organization of public consultations
- During the preparation of texts by the government and the two Houses, procedures for public consultation should be systematically organized. All interested organizations should be able to participate. Registered individuals should be informed of the organization of these consultations,
- The procedures for public consultations should be harmonized: they should be implemented within a reasonable timeframe and not during summer holiday seasons. All contributions received during the consultation process should be published, along with the list of organizations that participated in the consultation.

Single, reliable register for lobbyists
- A single mandatory register for interest representatives should be created and made available for use by all national public institutions. More than one lobbyist per organization should be able to register,
- A classification system should be adopted for all concerned actors, which could be based on the typology developed by Transparency International France,
- Daily dated accounts and statistics should be published. This information should provide details on the monthly evolution of registrations and the distribution of the different categories of lobbyists based on the classification used by the European Transparency register.
A single authority should oversee compliance with these rules, which would be responsible for administering the register and preparing a public annual report. This authority would have inspection and investigation powers and would be able to impose sufficiently dissuasive sanctions – including disciplinary sanctions (e.g. exclusion from the register) or criminal sanctions. Policy makers, lobbyists, or citizens would all be able to lodge a complaint.

For Transparency International France, it is also essential that the process of developing rules be subject to an independent evaluation one year after its entry into force. This would allow for improvements, if necessary.

3. Rules to define for lobbyists

Interest representatives, interest groups, lobbying groups... all of these different terms are often used interchangeably with "lobbyist", which has a negative connotation in France. All relate to the same activity: a person or organization aiming to influence decisions in favor of the specific cause they promote.

A lobbyist can directly carry out activities with companies, associations, advocacy NGOs, foreign governments, etc., or on behalf of third parties - independent consultants, consulting firms, lobbying firms, trade associations, think tanks, etc.

**How are lobbying practices currently regulated?** — There is currently no general framework regulating the interactions between lobbyists and public officials. The only exceptions are found in the Penal Code, which penalizes bribery and influence peddling. This lack of regulation makes abuses possible and reinforces the suspicion and negative perception that society has of lobbying and lobbyists.

Against this backdrop, a growing number of lobbyists are working towards improving the image of their profession. Consequently, some lobbying professionals have chosen self-regulation. The French Association for lobbying advice (AFCL, which brings together public affairs firms and lobbying professionals), the Association of Professionals Responsible for Relations with the Public Authorities (ARPP, which includes corporate lobbyists), and the BASE association (a network of lobbyists from a wide variety of sectors) have all adopted their own code of ethics.

For their part, companies are also beginning to develop charters on lobbying activities. For example, with the support of our association, the Lafarge Group adopted its own charter on lobbying in April 2010. This movement is still in its beginning stages, however is expected to grow.

Thanks to the partnership between Transparency International France and the European non-financial rating agency Vigeo, a criterion on the practice of corporate lobbying has been included within their social responsibility rating system. Companies are evaluated by independent analysts on corporate lobbying practices in addition to other social responsibility (SR) issues. Companies wishing to improve their lobbying practices now have a reliable benchmark on which to base their progress. Transparency International France also works with several companies and organizations to help them adapt their lobbying practices based on the highest standards.
What are our recommendations for lobbyists? — To ensure transparent and accountable practices, Transparency International France proposes the following set of recommendations for interest representatives:

**Transparency and consistency with CSR commitments**
- Integrate lobbying practices within social responsibility (SR) initiatives and ensure that it is consistent with the commitments made under the CSR,
- Adopt a charter on responsible lobbying for organizations and their service providers,
- Report to the institutions with which the lobbying is carried out (such as those operating the registers) and follow the codes of conduct and regulations of these institutions,
- Key positions communicated to policy makers should be made publically available, before and during the time of the debate via its website and in its sustainability or CSR report,
- Adherence to any think tanks and professional associations should be made publically available.

**Relationship with policy makers**
- Refrain from holding public office (national or European),
- Refrain from carrying out any professional activities similar to those carried out by parliament staff such as Ministerial Counselors, national or international civil servants, national experts, and court experts. Their associated advantages (notably their access badges) should not be taken advantage of,
- Refrain from offering any benefits, gifts, or monetary incentives with the intention of influencing policy makers and which could compromise their impartiality,
- Refrain from any attempt to obtain information or influence decisions by illegal means,
- Disseminate only reliable, verifiable, and updated information.

**Ensure financial transparency**
- For interest groups who work on behalf of their own interests, the budget for lobbying "in house" and fees paid to public affairs firms should be specified,
- For mandated organizations, the interests they represent as well as the fees paid to them by clients should be specified. If this is not possible because of confidentiality reasons, budgets earned by sector should be indicated,
- The contributions made to political parties (when permitted by the courts) should be made public.
1 Find the summary reports produced by TI France of existing measures here: http://www.transparency-france.org/ewb_pages/div/Encadrement_du_lobbying.php


3 In France, Article 39 of the Constitution of 1958 stipulates that legislative initiatives may be drawn up either by the Prime Minister or the Parliament. The term Bill is used when the legislation is initiated by the Prime Minister. When it is proposed by the Parliament, the terms Proposed law or draft legislation is used.

4 The French Criminal Code criminalizes the bribery of "policy makers" in section 433-1 with a penalty of 10 years imprisonment and a € 150,000 fine for violations. It also criminalizes the trafficking of influence under Article 432-11 with sentences of up to 10 years imprisonment and a fine of € 150, 000.

5 You can find this charter and the observations we made on our website: http://www.transparency-france.org/ewb_pages/div/Encadrement_du_lobbying.php

6 Vigeo to take into account the "lobbying" practices of businesses, press release from Transparency International France and Vigeo, 18 June 2010.