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GOV/PGC/ETH(2006)5

Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

23-Jan-2006

English - Or. English

**PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE
PUBLIC GOVERNANCE COMMITTEE**

**GOVERNANCE ARRANGEMENTS TO ENSURE TRANSPARENCY IN LOBBYING:
COMPARATIVE OVERVIEW**

Expert Meeting on Managing Conflict of Interest in the Public Service

**26-27 January 2006
Château de la Muette, Paris**

This paper supports discussions in Session III by outlining the approaches and regulations on lobbying in place in OECD countries.

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JT00197349

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GOVERNANCE ARRANGEMENTS TO ENSURE TRANSPARENCY IN LOBBYING: A COMPARATIVE OVERVIEW

1. Introduction and questions for discussion

“Vocal vested interests” over the “wishes of the whole community” in public decision-making was considered a major threat to public trust at the OECD Ministerial meeting on *Strengthening Trust in Government: What Role for Government in the 21st Century?*¹ on 28 November 2005 in Rotterdam. Existence of large interest groups and their efforts to influence policy making is a reality in modern democracies.

What is legitimate influence on public decision making? This is the question for public opinion. How government chose to address this question will define what strategies they adopt. Governments could either specify illegitimate influence in great detail and invest heavily in enforcement, or can utilise the power of transparency to reveal the true nature of the actors involved in the policy-making process. The public expects frameworks and arrangements to be in place to maintain trust in the legitimacy of public decisions, through:

- Enhancing openness on actors influencing policy making; and
- Providing a level playing field for all stake holders interested in participating in development of public policies.

This paper outlines the approaches and regulations that have been developed in OECD countries for lobbying to support discussion on:

- *What are the main concerns related to lobbying? Is it related to the integrity of public decision making or lobbyists' behaviour?*
- *How could these concerns be addressed by governments? By improved transparency mechanisms or by setting standards for lobbying?*
- *What governance arrangements succeed in maintaining impartiality in public decision-making (in particular against undue influence)? What measures could ensure transparency and accountability in lobbying?*

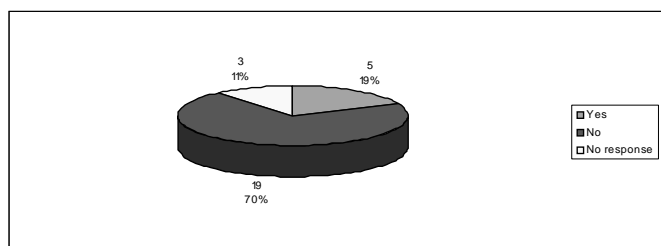
2. Concerns and rules

Several countries have experienced **scandals** of undue influence by lobbyists. In some cases very senior public officials, including elected representatives and government members were involved. As a consequent reaction, initiatives were launched to clarify conditions for lobbying and to provide an adequate legal framework for example in Hungary and Poland. Although recent efforts for legislating lobbying can be observed from Asia through Europe to the Americas, only very few OECD countries have already established rules for lobbying²:

¹ See Statement by the Chairman Mr. Alexander Pechtold, Minister of Government Reform and Kingdom Relations, The Netherlands. The full text of the Statement can be consulted at <http://www.oecd.org/dataoecd/0/11/35806296.pdf>. Further information on the event is available at <http://www.modernisinggovernment.com/>.

² All figures in this paper are based on responses received before 20 January from 29 countries to the OECD Country Information Sheet on managing Conflict of Interest, GOV/PGC/ETH(2006)4.

Figure 1. Specific rules put in place for lobbying



Canada, the United Kingdom and the United States have **established rules** for lobbying for many years whereas Poland passed the Act on lobbying in July 2005, and is in the phase of preparing its implementation. Providing rules for lobbying was also included in government programmes (e.g. in Ireland in 2000 and in Hungary in 2002) and a bill on lobbying was sent to the Parliament in Slovakia. This bill aims at setting legal regulation for lobbying as business activity for legal communication between representatives of public authority and lobbyists representing interests of business or non-governmental organisations. The bill is at the second reading before the Parliament.

Box 1. Government intention to regulate lobbying: Ireland

The *Taoiseach's* (Prime Minister) major policy statement of 3 December 2000 on "Regulatory Framework for Public Life" referred to the Government's intention, *inter alia*, "to introduce a regulation and registration system for those who operate on a paid basis as lobbyists in one form or another seeking to influence political and public sector decision making". Responsibility was assigned at that time to the Minister of State at the Department of Enterprise, Trade and Employment who, with the assistance of an interdepartmental working group, submitted a paper on the Regulation of Lobbyists for consideration to the Joint *Oireachtas* Committee on Members' Interests in July 2001. It was not reported on prior to the automatic dissolution of the Committee at the time of the 2002 general election. The *Taoiseach* in January 2003 assigned responsibility for the regulation of lobbyists to the Minister for the Environment, Heritage and Local Government.

The Department of the Environment, Heritage and Local Government commissioned the Institute of Public Administration to undertake preliminary research on the position regarding lobbyists in developed countries in summer 2003. The report was placed in the *Oireachtas* Library and published on DEHLG website³ in summer 2004. Following a selective tendering process, a contract for further research was awarded to a joint Trinity College Dublin and Dublin City University Research Team in April 2005. The research project is examining the systems of regulation of lobbyists at all levels of public life in Germany, Canada, the United States and in European Union Institutions, all of which have formal systems in place, thereby facilitating an assessment of their relevance to Irish public life.

However, there is **no single concept** and definition for lobbying; they reflect the countries' political and legal context. In Mexico, for example, the activities of the Ministry of the Interior representing the executive branch before the Congress to influence legislation have also been considered as lobbying. Existing rules define how to co-ordinate contacts of the executive branch with legislators. Though, there are also two private bills filed before the Federal Congress submitted by governing and opposition party members that take into consideration emerging socio-political concerns of influencing legislation by legitimate private interests. The purpose of these bills is to regulate lobbying by individuals, groups and organisations representing private interests.

Public concerns in many countries moved the issue of formal regulation on lobbying onto the political agenda. However, setting rules for lobbying has proved **very difficult** in many countries because it is not only an important aspect of good governance but also a sensitive political issue. Although a national consensus was reached on the necessity to legislate lobbying⁴ in Korea and all stakeholders signed the

³ <http://www.environ.ie>

⁴ Article 7 of the Korean Pact on Anti-Corruption and Transparency supported the preparation of legislation of lobbying.

Korean Pact on Anti-Corruption and Transparency, the bill was rejected in the Parliament in July 2005, mainly by the strong opposition from the Korean Bar Association. A system of registry and reporting lobbyist activities was proposed for the Parliament in Norway, but the motion was defeated. The recent Ethical Guidelines for Civil Servants requires civil servants not take direct contact with the Parliament without consulting their ministers beforehand. A draft law introduced by the Polish Government was substantially modified in an almost two year long debate at the *Szejm* before its approval in July 2005. In Italy there has been a lengthy debate about the need to introduce regulations defining lobbying and imposing restrictions on such activities. Bills on lobbying were presented in Parliament in the last two decades but none of them were enacted. Currently, regulations exist at the regional level, but this does not rule out the possibility that the Parliament may adopt national legislation.

Though the vast majority of OECD countries has no specific rules in place for lobbying, **illegally** influencing public decision making is a common concern and generally addressed in penal codes (e.g. in continental European countries as France, Germany, Spain, etc). Often influenced by the various scandals in the past decades, public opinion in many countries considers lobbying practices as illegal or at least unethical.

Some of the OECD countries (e.g. Scandinavian countries) consider specific rules on lobbying unnecessary as the benefits of open democracies outweigh the potential dangers of unregulated lobbying. Although no formal rules exist, **established practices** recognise interest groups and provide access to Parliamentarians, for example in Denmark.

Box 2. Rules on admittance of delegations to address a Parliamentary Standing Committee in Denmark

Lobbying Standing Committees of the Parliament (*Folketing*) could either be through delegations or petitions in Denmark. The following conditions and procedural rules are applied in the admittance of delegations to address a Standing Committee:

- Conditions – Members of the delegation must have a natural and credible affiliation to the delegation (e.g. member, employee, lawyer, etc.).
- Procedural rules – the spokesperson of the delegation is entitled to make a short statement on the position of the delegation, then the committee may ask questions and receive replies. The hearing is short and not a forum for negotiations.
- Documentation – in the preparation of the hearings the delegation must submit all necessary information on the delegation (names of members and their affiliation, written documents) that is contained in the archives of the committee. The views expressed by the delegation during the hearing are included in the deliberation of the committee.

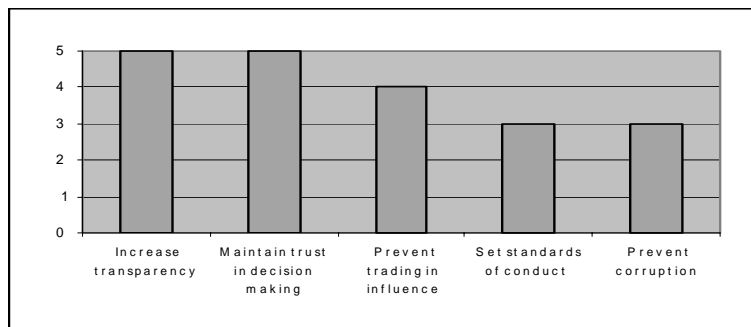
In Germany, the *Bundestag* maintains a "Public list of **registered associations** and their representatives" in the Parliamentary Archive. The primary purpose of this list is to provide the Parliament and its committees with information on competent contact persons on various issues.

“**Social partnership**” also provides a framework for consulting statutory representatives of large economic interest groups, such as employers’ organisations (Chambers of Industries, Commerce, etc) and employees’ organisations (e.g. Trade Unions and associations of professions) in the law-making process, although these interest groups are not considered as lobbyists. Special cards may be issued to provide access to Parliamentarians in certain cases.

Well-developed relations between large interest groups and government may also be based on **unwritten traditions**. Informal contacts were largely facilitated by personal connections with interest groups, for example members of Parliament and elected officials were also members of or were paid by large interest groups.

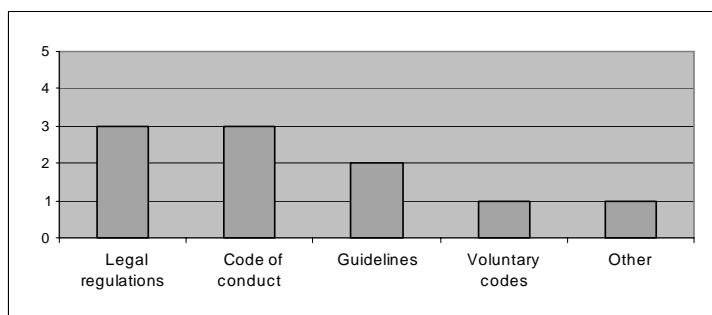
When countries establish rules on lobbying, the **main aim** is to increase transparency and maintain trust in decision making. The preparation of the recent Polish Act shows how the original aim of the bill to prevent influence peddling shifted to improve transparency in law making⁵.

Figure 2. Purpose of rules



The primary **source** of rules on lobbying is law; though codes of conduct are also used for setting rules, particularly for senior public officials. The United States has the longest history of legislating lobbying⁶, the Lobbying Disclosure Act is dated from 1995⁷. In Canada the Regulations Amending the Lobbyists Registration Act and an Act to Amend the Lobbyists Registration Act came into force simultaneously on 20 June 2005, bringing into force a series of improvements and clarifications to the existing Lobbyists Registration Act and to the accompanying Lobbyists Registration Regulations which date back to 1985, and had been amended for the first time in 1995⁸.

Figure 3. Formal source of rules



Voluntary codes are rarely used in OECD countries (the United Kingdom). Such codes are regarded as a potential instrument for self-regulation not only for lobbyist but also for public officials. In the Czech Republic a voluntary Code of Ethics was approved for members of both Chambers of the Parliament in 2005. This Code also includes guidance on how to maintain relations with interest groups, and under what conditions and where a deputy could communicate with lobbyists.

Voluntary professional codes of ethics and conduct are considered practical instruments to set professional standards for lobbyists. Introducing such a voluntary code of conduct has been considered in

⁵ For further details on the Polish Act on Legislative and Regulatory Lobbying see “Developing a legal framework for lobbying: The Polish experience” GOV/PGC/ETH(2006)7.

⁶ The Federal Regulations on Lobbying Act was passed in 1946.

⁷ The Act can be found at <http://www.senate.gov/reference/resources/pdf/contacting10465.pdf> .

⁸ More information is available at the Lobbyists Registration Branch home page at <http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/Home>

some countries (e.g. in Belgium) as an instrument to gain greater respectability on the lobbyist profession. However, developing a code solely is not sufficient to influence public perception of lobbying. Demonstrated adherence to stated provisions of such voluntary codes and enhanced openness in lobbying are also necessary to gain genuine respect for lobbyists. Professional bodies with voluntary codes support recent initiatives to legislate lobbying activities (e.g. the Public Relations Institute of Ireland and the Public Relations Consultants Associations in Ireland).

3. Defining lobbying and lobbyists

A proper definition of lobbying provides a basis for adequately addressing the public concerns. However, a too narrow or too wide definition could possibly render legislative efforts ineffective. There is **no single definition of lobbying** used across OECD countries. A simple definition of lobbying can be found in guidelines. For example in the United Kingdom lobbying is defined as “outside interest groups or individuals seeming to influence government politics”. Legal rules often establish more complex definitions. Although this definition could also be partial, for example in Poland the new Act exclusively focuses on lobbying in the law-making process at the central level⁹. Legislation does not define explicitly lobbying in Mexico. However, the activities of the Federal Public Administration are considered lobbying that aim to influence those bills before the Federal Congress in which the Administration has an interest because of its administrative function.

Box 3. Defining lobbying: The United States

The Lobbying Disclosure Act, while not restricting conduct in any way, requires reporting on the following:

“*Lobbying contacts*” are defined as any oral, written or electronic communication to an official defined by the Act that is made on behalf of a client with regard to:

- The formulation, modification, or adoption of Federal legislation (including legislative proposals).
- The formulation, modification, or adoption of a Federal rule, regulation, executive order, or any other programme, policy, or position of the United States Government.
- The administration or execution of a Federal programme or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license).
- The nomination or confirmation of a person for a position subject to confirmation by the Senate.¹⁰

“*Lobbying activities*” are defined as contacts and any efforts in support of such contacts, including preparation or planning activities, research and other background work that is intended, at the time of its preparation, for use in contacts and co-ordination with the lobbying activities of others. Activities that are not considered to be lobbying activities are incorporated into the exceptions to the definition of a lobbying contact. Such activities include, for example¹¹:

- Request for a meeting, a request for the status of an action or any other similar administrative request, if the request does not include an attempt to influence a covered executive or legislative branch official.
- Testimony given before a committee, subcommittee or task force of the Congress, or submitted for inclusion of the public record of a hearing conducted by such a committee, subcommittee or task force.
- A written comment filed in the course of a public proceeding or any other communication made on the record in a public proceeding.

⁹ The Act establishes two categories:

- "Lobbying" defined as any activity – carried out through legally acceptable means – aimed at influencing an authority in drafting legislative proposals.
- "Professional lobbying" is a paid practice of private advocacy for third persons in order to ensure that their interests are represented in drafting legislative proposals.

¹⁰ Exceptions to the definition of a lobbying contact can be found in the Lobbying Disclosure Act of 1995 at <http://www.senate.gov/reference/resources/pdf/contacting10465.pdf>.

¹¹ For the complete list of exceptions see <http://www.senate.gov/reference/resources/pdf/contacting10465.pdf>

Legislations also give precise **definitions of lobbyist**. According to the Lobbying Disclosure Act in the United States, a lobbyist is any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a six month period. Providing a clearer definition of lobbying was also a key element in the recent amendments in the Lobbyist Registration Act in Canada. The current Act distinguishes between the following three types of lobbyists:

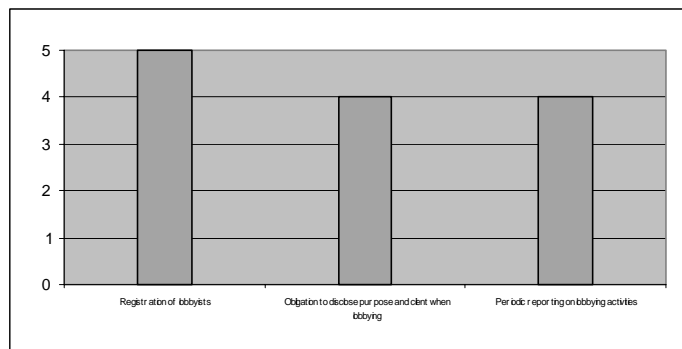
- Consultant-lobbyists.
- In-house lobbyists (corporate); and
- In-house lobbyists (organisations).

Volunteer work is excluded in Canada, as payment must be made to the lobbyists for the activities defined as lobbying activities under the Act. In Poland, lobbyists can be both a natural person (individual) and a legal person (company). Professional lobbyists must be registered in an official database, including their name and contact data (in the case of company, the entrepreneur’s register number in the National Court Register or an economic activity number must be provided).

4. Measures for increasing transparency in lobbying

Measures for increasing transparency are at the heart of regulation on lobbying. Failure to provide information to the public risks low compliance with regulations. The **registration** of lobbyists provides the ground for ensuring the transparency of lobbying activities. Lobbyists are also frequently required to **disclose** the purpose and the name of client when undertaking lobbying. In addition, lobbyists are obliged to report on their lobbying activities.

Figure 4. Measures for increasing transparency in lobbying



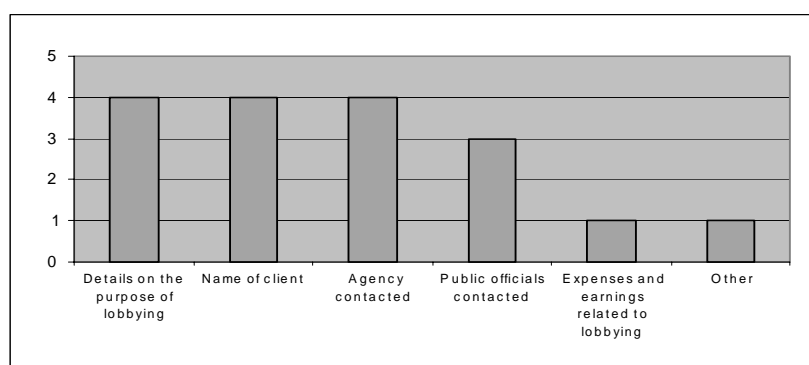
The Bill on Lobbying in Slovakia requires professional lobbyists to register and obtain trade permission for their lobbying activity. Lobbying can also be undertaken without payment. In this case lobbying does not require trade permission, but may be subject to reporting if it is performed by legal entity or businessman.

Box 4. Improving transparency in lobbying in European institutions: The supranational approach

The second largest lobbyist community works in Brussels to influence European law making. The three principal actors of the European Union have developed separate approaches to deal with lobbyist and interest groups:

- The *European Commission* -- the initiator of Community legislation is considered the primary institution where the lobbying process begins. However, the Commission has not developed a formal regulatory framework for lobbyist, instead, it encourages self-regulation and puts specific emphasis on the consultation process to give interested parties a voice. In order to support the dialogue with civil society, the Commission publishes its directory of non-profit making civil society organisations¹².
- The *European Parliament* – facing increasing lobbying activities that particularly intensified after the introduction of the co-decision procedure, the European Parliament made several attempts to develop a formal regulatory framework for lobbying. The 1996 modifications of the Rules of Procedures took a comprehensive approach that targeted both lobbyist and Members of the European Parliament (MEP). The rules for lobbyists are based on incentives for voluntary compliance. In exchange for accepting the provisions of the Code of Conduct for Lobbyist¹³ and signing a public register¹⁴ a pass¹⁵ is granted for lobbyists to facilitate their access to the Parliament. At the same time the European Parliament also introduced a code of conduct¹⁶ for its members that requires MEPs to refrain from accepting any gift or benefit in the performance of their duties and to make an annual declaration indicating their professional activities and additional support granted to them by third parties.
- The *Council* – has not developed rules for lobbyists.

Figure 5. Disclosed information on lobbying



Disclosing vital information on actual lobbying activities has become a general requirement in countries with regulations on lobbying. Information requested generally includes the identification of purpose, the client, the contacts as well as earnings and expenses related to lobbying. To reflect public concern, the Lobbyists Registration Act also requires information on past employment as a public office holder, means of communication and public funding received by the client or employer.

¹² The directory can be consulted at http://europa.eu.int/comm/civil_society/coneccc/index_en.htm.

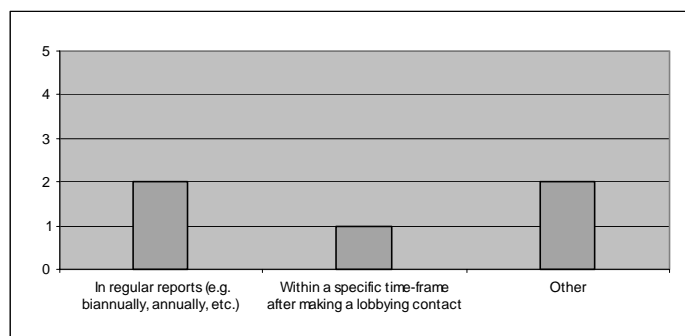
¹³ Article 3 of Annex IX of the Rules of Procedures of the European Parliament lists ten requirements that can be consulted at <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+RULES-EP+20050905+ANN-09+DOC+XML+V0//EN&HNAV=Y>. Any breach of this code may lead to the withdrawal of the pass issued to the persons concerned and, if appropriate, their firms.

¹⁴ The public register of lobbyists is kept by the College of Quaestors and recently made available at <http://www.europarl.eu.int/parliament/expert/lobbyAlphaOrderByOrg.do?language=EN>.

¹⁵ This pass is valid for one year and may be renewed. Lobbyists must wear this pass in a visible manner in the course of their visit.

¹⁶ The Code of Conduct for the Members of the European Parliament is set out in the Annex I of the Rules of Procedures of the European Parliament, see <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+RULES-EP+20050905+RULE-009+DOC+XML+V0//EN&HNAV=Y>.

Figure 6. Frequency of disclosure



Disclosure is required in regular **reports** (e.g. in annual reports in Poland), however, its frequency could depend on the types of lobbyist, as the Canadian case shows:

Box 5. Reporting requirements in Canada

Reporting requirements depend on the types of lobbyist according to the Lobbyists Registration Act:

- Consultant-lobbyists -- consultants who lobby on behalf of a client must register within 10 days of entering into an undertaking and must advise the Registrar within 30 of the completion or termination of an undertaking.
- In-house lobbyists (corporate) -- each employee of a corporation who spends a significant¹⁷ part of his or her time lobbying federal public office holders must file a return within two months of commencing these activities. This is an individual responsibility. Thereafter, the lobbyist must file an annual return within two months of the beginning of the corporation's fiscal year; or within two months of the calendar year if the corporation does not have a fiscal year.
- In-house lobbyists (organisations) -- the most senior paid officer must register on behalf of the organisation within two months of commencing lobbying activities where the total amount of time spent by all paid employees of an organisation is equal to a significant part of the duties of one individual's time. Thereafter, the senior officer must file a return every six months.

In order to ensure that the public register is correct and up-to-date, the amended legislation requires all three types of lobbyists to file returns on a semi-annual basis.

5. Administering and enforcing rules on lobbying

Countries have no single solution to determine the **body in charge of administering** the rules on lobbying. According to the national context, this organisation can be:

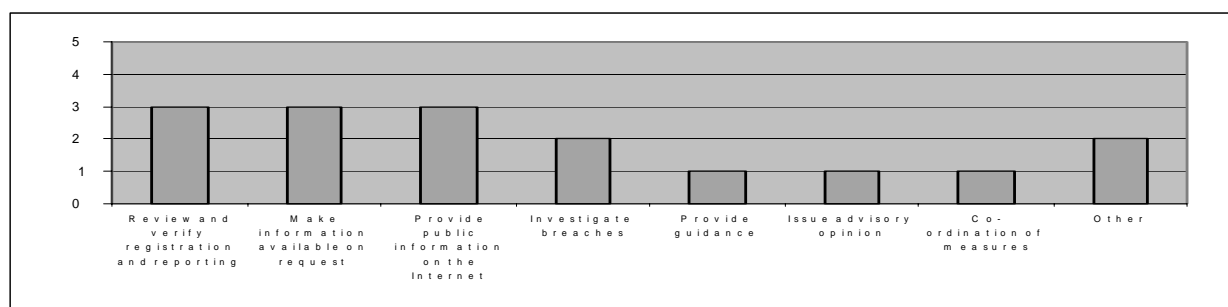
- The Secretary of the Senate and the Clerk of the House of Representatives in the United States.
- An independent unit such as the Registrar within the Department of Industry in Canada.
- Central government ministries (e.g. the Ministry of Interior and Administration in Poland and the Ministry of Interior in Mexico).

The Bill on Lobbying in Slovakia proposes that the Chancellery of the National Council administer the central list of lobbyist, whereas regional lists of lobbyist would be administered by the office of the regional self-governments.

Achieving compliance with obligations of registration and disclosure has been a major concern across countries. The challenge is identifying how to improve compliance through using a combination of measures.

¹⁷ Interpreted as equivalent to 20 percent of an individual's time.

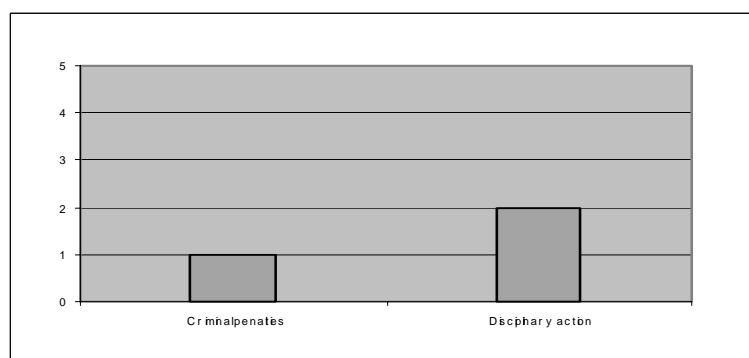
Figure 7. Measures used for administering rules on lobbying



Review and verification of information provided as well as making information available are the most commonly used measures for implementation of rules. Requesting corrections in writing to ensure the accuracy, completeness and timeliness of the registrations is also the responsibility of the Secretary of the Senate and the Clerk of the House of Representatives in the United States. In Canada the Registrar takes part in communications and outreach.

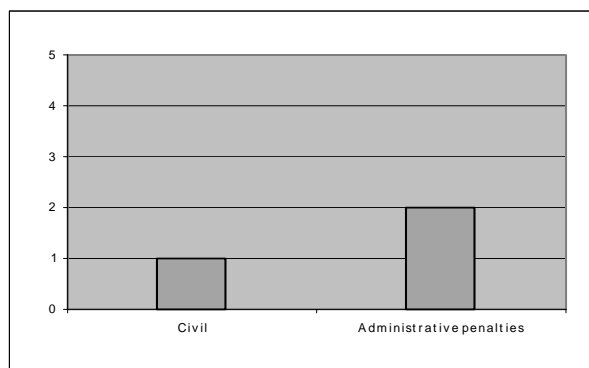
Countries generally impose **sanctions** either on public officials or on the lobbyist with the exception of the United Kingdom that could apply both administrative sanctions for lobbyists and disciplinary sanctions for officials. Mexico established both criminal and disciplinary sanctions for public officials breaching rules on lobbying.

Figure 8. Sanctions for public officials



Canada and the United States put the focus of **sanctioning on the lobbyists**. In Canada, lobbyists who do not comply with the registration provisions of the Act may face a fine of up to CAD 25 000 and/or up to 6 months in jail, upon summary conviction in a court of law. Penalties can reach CAD 100 000 and/or 2 years in jail upon conviction by way of indictment. However, there is a two-year time limit after which no charges can be laid pursuant to the Act. Breaches of the Code of Conduct do not carry fines or jail sentences, but the results of any investigation by the Registrar of Lobbyists must be presented before both houses of Parliament. There is no limitation period preventing the Registrar of Lobbyists from investigating breaches of the Code of Conduct. In the United States, a lobbyist who knowingly fails to correct a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House; or to comply with any other provisions of the act, may be subject to a civil fine of not more than USD 50,000. Administrative penalties can be imposed on lobbyists for non-compliance in the United Kingdom and Poland where those who carried out "professional lobbying" without registration in the official database can be fined a sum of 3000 - 50000 PLN (about 750 - 12500 EUR).

Figure 9. Sanctions for lobbyists



6. Summary of preliminary findings

- The findings of the survey show that growing public concern about lobbying has **pushed proposals for legislation on lobbying onto the political agenda** in many countries, although only a few countries have already established legal frameworks for lobbying. Even these countries face demand for further improving their system to meet expectations of increased transparency that put more public light on relationship between public office holders and representatives of interest groups.
- Although countries with specific rules on lobbying have a **common approach**, they rather focus on lobbyists; **diverging definitions** and scope reminds policy-makers that legislation on lobbying reflects the national socio-political and administrative context. However, properly defining who is a lobbyist and what activities are considered lobbying are essential to provide a sound basis for effective legislation.
- The survey findings reveal that legislation has more **commonalities on what information must be disclosed** and by whom whereas penalties and administering agencies vary from country to country. This demonstrates that transparency, a major driving force for legislating lobbying, applies universal standards across countries.
- However, maintaining trust in democratic institutions requires **daily application of good governance principles** in decision making, in particular:
 - Transparency – the public has a right to know how public decisions were influenced by stakeholders or vested interests.
 - Accessibility -- providing equal access to policy makers in order to ensure that the “public” also has a voice, and not only the “privileged”.
- Consequently, **achieving compliance** remains a constant challenge that requires using a combination of measures and mechanisms as well as commitment to review actual level of compliance to improve existing arrangements.